

Adm  
7/15/85

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: A36-07720  
Date Received: 4/28/1989  
Receipt No: 5009/88  
Received By: AD

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OCT 13 1989

COPY  
FOR YOUR FILES  
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Department of State Lands and  
Natural Resources  
NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: BLUE LAKES TROUT FARM, INC. 208-733-4631  
Address: P.O. BOX 1237  
TWIN FALLS, ID 83301

2. Date of Priority: JUN 08, 1977

3. Source: WASTE WATER Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 09S      | 17E   | 29      | NE     | SE     |     | 19  | JEROME |

5. Description of diverting works:  
DITCH & RACEWAYS.

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S. | (or) | A.F.A. |
|------------------|-------|-------|--------|------|--------|
| FISH PROPAGATION | 01/01 | 12/31 | 37.100 |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
H/300000-400000 LBS.YR.

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|--------|-----|-----|------|-------|
| 09S      | 17E   | 29      | NE     | SE  | 19  | FISH |       |

11. Place of use in counties: JEROME

A36-07720

Page 1

Date: 09/15/89

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

13. Other Water Rights Used:

LIC. 36-2356, 36-7210 & 36-7427.

14. Remarks:

FACILITY VOLUME = 1.5 AF.

WATER USED UNDER THIS LICENSE IF DISCHARGED INTO A NATURAL CHANNEL SHALL MEET IDAHO WATER QUALITY STANDARDS.

15. Basis of Claim: LICENSE

16. Signature(s)

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

Number of attachments:                     

**For Organizations:**

I do solemnly swear or affirm that I am                      President                      of                      Title

Blue Lakes Trout Farm, Inc.                     , that I have signed the foregoing                      Organization document in the space below as                      President                      of                      Title

Blue Lakes Trout Farm, Inc.                      and that the statements contained in the                      Organization foregoing document are true and correct.

*Greg M. Greene*  
Signature of Authorized Agent

                      
President, Blue Lakes Trout Farm, Inc.  
Title and Organization

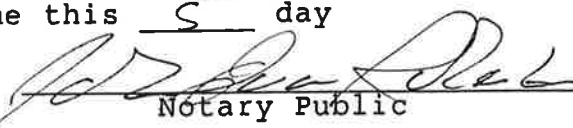
10/5/89  
Date

State of Idaho )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 5 day

of October 19 89

Seal

  
Notary Public

Residing at Twin Falls

My Commission Expires 12-3-92

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, J. Evan Robertson will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature

Nelson, Rosholt, Robertson, Tolman & Tucker

Address P.O. Box 1906, Twin Falls, ID 83303

Date

10-12-89

Last Name Blue Lakes Trout Ident. Number \_\_\_\_\_

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FEB 04 1990

MICROFILMED

OCT 19 1984

Copies White-State, Yellow-Claimant



State of Idaho

# DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

18-Jul-1990 13:51

A36-07210 \*  
J. EVAN ROBERTSON  
P.O. BOX 1906

TWIN FALLS ID 83303

RE: Field examination of a water right claimed  
in the Snake River Basin Adjudication

Dear Counselor,

The field staff of this agency may need to conduct water right field examinations of your client's water right claim(s) during the coming season. The field examiner may be visiting your client's property to obtain information necessary to verify the water use.

If a field exam is necessary your client will be contacted directly about the examination unless you contact us otherwise. If you wish to accompany your client at the time of any field examination, or if you have any questions regarding the field examination, you may contact this office.

Sincerely,

Allen Merritt, P.E.  
Water Rights Supervisor

\*Other Water Right Numbers:

A36-07427  
J. EVAN ROBERTSON  
P.O. BOX 1906

TWIN FALLS ID 83303

A36-07072  
J. EVAN ROBERTSON  
P.O. BOX 1906

TWIN FALLS ID 83303

A36-07720  
J. EVAN ROBERTSON  
P.O. BOX 1906

TWIN FALLS ID 83303

A36-02356  
J. EVAN ROBERTSON  
P.O. BOX 1906

TWIN FALLS

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Department of Water Resources

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Department of Water Resources  
Southern Region

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DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

FILED \_\_\_\_\_

North Snake Ground Water District

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

*'R' records modified 11-5-99.*

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

In Re SRBA

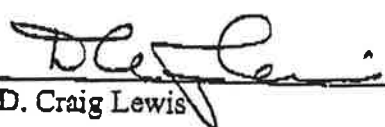
Case No. 39576

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

Notice of Appearance as Co-Counsel  
(Consolidated Issues)

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

DATED this 1<sup>st</sup> day of November, 1999.

  
D. Craig Lewis

CERTIFICATE OF SERVICE

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

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

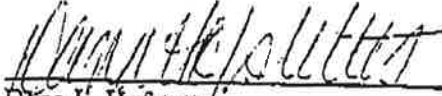
Dan Steenson  
Ringert Clark  
P. O. Box 2773  
Boise, ID 83701-2773  
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

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

Idaho Department of Water Resources  
Document Depository  
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Boise, Idaho 83720-0098  
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Chief, Natural Resources Division  
Office of the Attorney General  
P. O. Box 44449  
Boise, Idaho 83711-4449  
\* U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

D:\1780\2\ac\CSF3640

  
Dana L. Hofstetter

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Department of Water Resources  
Southern Region

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Department of Water Resources

36-07720 South  
DJ  
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DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

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

In Re SRBA

Case No. 39576

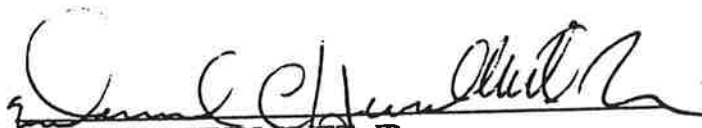
) Subcase Nos. 36-02356, 36-07210, 36-  
) 07427, 36-07720 (Blue Lakes)

) ORDER STAYING PROCEEDINGS ON  
) CHALLENGE  
)

On July 23, 1998, The North Snake Ground Water District filed a *Notice of Challenge* in the above subcases. The court has reviewed the issues to be challenged and finds them to be similar or identical to issues in other subcases currently before the Special Masters. In the interests of judicial economy, the proceedings in the above challenges are STAYED. These subcases will be reviewed when subcases in which these matters arise are completed by the Special Masters.

IT IS SO ORDERED

DATED August 21, 1998



DANIEL C. HURLBUTT, JR.

Presiding Judge

Snake River Basin Adjudication

ORDER STAYING PROCEEDINGS  
ON CHALLENGE

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Department of Water Resources  
Southern Region

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Department of Water Resources  
Adjudication Bureau

1998 MAR 18 AM 11:03

SRBA  
IDAHO

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

|                |   |                              |
|----------------|---|------------------------------|
| In Re SRBA     | ) | Subcases 36-02356, 36-07210, |
|                | ) | 36-07427 and 36-07720        |
| Case No. 39576 | ) |                              |
|                | ) | SPECIAL MASTER'S REPORT      |
|                | ) | (Amended)                    |

FINDINGS OF FACT

Claims and *Director's Report*:

36-02356

Blue Lakes Trout Farm, Inc. (Blue Lakes), was granted leave to file its second amended notice of claim under 36-02356 on July 2, 1997. It claimed a total of 100 cfs from Alpheus Creek for fish propagation, domestic and commercial uses with a priority date of May 29, 1958, based on a license. In his *Amended Director's Report Regarding Claim to Water Right No. 36-02356*, dated July 7, 1997, the Director recommended the claim as filed. However, under the quantity element, the Director included the language -- facility volume 10.66 af. The Director also described the non-irrigation uses: "commercial/fish facility; domestic/2 homes; fish/49 ponds, hatch." The single contested issue in this and the other three subcases is whether facility volume should be decreed by the SRBA Court for fish propagation water rights.

36-07210

Blue Lakes filed its claim under 36-07210 claiming 45 cfs from Alpheus Creek for fish propagation with a priority date of November 17, 1971, based on a license. The Director recommended the claim as filed, but under remarks, the Director included the same language as before -- facility volume 10.66 af. The Director described the non-irrigation uses: "fish/49 ponds, 38 hatchery tanks."

### 36-07427

Under 36-07427, Blue Lakes claimed 52.23 cfs from Alpheus Creek for fish propagation with a priority date of December 28, 1973, based on a license. Again, the Director recommended the claim as filed, but with the remark -- facility volume 3.67 af. The Director described the non-irrigation uses: "fish/commercial fish facility, 10 ponds @ 20' x 200' x 4'." The Director also included under remarks: "A measuring devise of a type approved by IDWR shall be maintained as part of the diverting works."

### 36-07720

Finally, under 36-07720, Blue Lakes claimed 37.1 cfs from waste water for fish propagation with a priority date of June 8, 1977, based on a license. Unlike before, in the remarks section of the *claim*, Blue Lakes stated: "facility volume = 1.5 af, water used under this license if discharged into a natural channel shall meet Idaho water quality standards." The Director recommended the claim as filed, but with facility volume 1.16 af. The Director described the non-irrigation uses: "fish propagation/10 ponds @ 14' x 120' x 3'." Under remarks, the Director also stated: "Return flow if discharged to a surface water system shall meet Idaho water quality standards."

### TRIAL

Trial was held on September 4, 1997, at the SRBA Courthouse in Twin Falls, Idaho. Norman M. Semanko appeared for claimant Blue Lakes; Daniel V. Steenson appeared for intervenor Clear Lakes Trout Company (Clear Lakes)<sup>1</sup>; and Nicholas B. Spencer appeared for IDWR.

On July 24, 1997, IDWR lodged its *Report Regarding IDWR's Recommendation of Fish Propagation Facility Volume Pursuant to Claim to Water Right Nos. 36-02356, 36-07210, 36-07427, 36-07720*. David R. Tuthill, Jr., IDWR's Adjudication Bureau Chief, prepared the *Report* and attached his *Affidavit*. Before trial, counsel agreed to the admission of both documents. Mr. Tuthill appeared and testified at trial for purposes of cross-examination.

Before trial, counsel also agreed on facility volume for each water right, if such is decreed by the SRBA Court. The following figures represent total storage volume capability, as opposed to operational flow:

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<sup>1</sup> Clear Lakes' *Motion to Participate* in 36-02356 was granted on July 30, 1997.

36-02356- 15 af  
36-07210- 15 af  
36-07427- 5.2 af  
36-07720- 1.5 af.

*Reporter's Transcript*, p. 137.

Blue Lakes called as its only witness James E. Parsons, research and technical director for Blue Lakes Trout Farm. Clear Lakes called Harold Johnson, office manager of Idaho Trout Processors, the processing and sales company for trout raised at several hatcheries, including Clear Lakes, Rimview, Rainbow, White Springs and Fisheries Development.

At the close of trial, counsel for Blue Lakes and Clear Lakes asked to submit post-trial memoranda in lieu of closing argument. Blue Lakes lodged its *Post-Trial Memorandum* on September 15, 1997. Clear Lakes lodged its *Post-Trial Brief* on September 17, 1997.

## TESTIMONY

### David R. Tuthill, Jr.

Mr. Tuthill stated in his *Report* that IDWR recommended facility volume in fish propagation rights pursuant to I.C. §42-1411(2)(j) and I.C. §42-1411(2)(k).<sup>2</sup> *Report*, p. 2. Those provisions required:

The director shall determine the following elements, to the extent the director deems appropriate and proper, to define and administer the water rights acquired under state law:

...

- (j) conditions on the exercise of any water right included in any decree, license, or approved transfer application; and
- (k) such remarks and other matters as are necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director.

Given those duties, Mr. Tuthill essentially said the Director recommended facility volume for fish hatcheries to protect water quality and water quantity:

7. To the extent necessary to satisfy their rights, water right holders are entitled to the maintenance of both water quantity and quality on their water source as of the date of their appropriation of water.

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<sup>2</sup> In 1997, I.C. §42-1411(2)(j) was amended to become I.C. §42-1411(2)(i). I.C. §42-1411(2)(k) is now I.C. §42-1411(2)(j).

8. The beneficial use of water pursuant to a water right cannot be changed or enlarged in such a way that other water right holders on a source will be injured.

...

12. An increase in facility volume may affect the public interest in such matters as the impacts of increased production, or the impact of the expansion on water quantity or quality. The facility volume parameter gives other users and the public notice of the expansion, and triggers IDWR's public interest review.

13. IDWR has described water rights for fish propagation purposes with facility volume parameters in licenses since 1979, pursuant to an Administrator's Memorandum to the Regional Offices and Water Allocation Section. Before 1979, IDWR did not include a facility volume descriptor in fish propagation water right licenses. The impetus for inclusion of facility volume in fish propagation water rights was to prevent the impact of fish propagation facilities on each other relative to water quality.

*Report*, pp. 2-4. Also see IDWR's "Administrator's Memorandum," Blue Lakes Exhibit 14.

Mr. Tuthill concluded in his *Report* that, although facility volume is an imperfect parameter to describe the extent of beneficial use of a fish propagation water right, it is useful:

Water rights should explicitly describe fish propagation facility volume to allow for effective protection of water rights and water uses that may be impacted by the fish propagation use. This is the most convenient and effective means to define and administer water rights with sufficient specificity to prevent significant expansions in facility volume that may result in enlargement in use of the right or injury to other water rights.

*Report*, p. 5.

At one point in the trial, Mr. Tuthill said that "facility volume is an indicator of extent of consumptive use." *Reporter's Transcript*, p. 61. But, he also acknowledged that consumptive use is no longer an element of a non-irrigation water right.<sup>3</sup> He agreed that fish propagation on the scale of Blue Lakes is essentially non-consumptive because losses are unmeasurable. *Reporter's Transcript*, pp. 115-116.

Mr. Tuthill said that under the quantity element of a fish propagation water right, three "parameters" must be reported:

Because under our present interpretation of fish propagation water rights we consider that for an accurate, appropriate determination of extent of beneficial use three parameters are required that relate to quantity -- rate of flow, total volume diverted, and facility volume. So regardless of how many parameters were described on the

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<sup>3</sup> See I.C. §42-1401A(2).

original license or decree, we identify those three parameters at this point in the adjudication.

*Reporter's Transcript*, pp. 16-17.<sup>4</sup>

Mr. Tuthill could not think of any other use of water for which IDWR identified the quantity element three different ways. *Reporter's Transcript*, p. 18. He said IDWR decides what may or may not be necessary to define or administer a water right based on administrative experience:

So with fish propagation, for example, we found that quantification of rate of flow and volume diverted was not sufficient. So we added facility volume as a further quantification to resolve problems that had come up on Billingsley Creek.

*Reporter's Transcript*, pp. 19-20.

Later in his testimony, Mr. Tuthill agreed that disputes between fish propagators along Billingsley Creek actually concerned water quality rather than water quantity:

Well, the department for decades paid no attention to water quality. As a result of competition for rights in the Billingsley Creek area, in the Hagerman area, we began to look at impacts to water quality as affecting water rights, water quantity rights.

*Reporter's Transcript*, p. 42.<sup>5</sup>

Mr. Tuthill suggested that facility volume is necessary for future administration:

It's my understanding that in the SRBA we need to provide attributes to the water rights that define extent of beneficial use. Now, if a water right changes over time, then one needs to be able to go back and see what water right was originally decreed.... Does that mean that we're measuring water quality within the department of water resources? No. It means that we're defining the water right so that if

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<sup>4</sup> IDWR's goal is to include facility volume in all fish propagation rights, both existing and future. *Reporter's Transcript*, p. 155.

<sup>5</sup> The following discussion took place near the end of Mr. Tuthill's testimony:

THE COURT: Well, if you're concerned about water quality with fish facilities, does that concern for quality apply to any other users other than fish propagators?

A. Historically, other uses that have negative impact on quality would be irrigation. And in most cases an irrigation return flow is still acceptable for further irrigation. So it hasn't been a show stopper for other irrigation rights.

Industrial and commercial uses that have a high impact on water quality are often totally consumptive relative to the source. They either treat the water or land [?] apply it or do something different.

Fish propagation is the one use where return flow has affected other users to the point of being problematic from a water delivery standpoint, the quality of return flow.

*Reporter's Transcript*, p. 154.

changes occur that impact that parameter, we can go back to a benchmark. And that's our charge in the SRBA.

*Reporter's Transcript*, pp. 29-30.<sup>6</sup>

Mr. Tuthill acknowledged that authority to regulate water quality is primarily vested in the Department of Health and Welfare, Division of Environmental Quality (DEQ). "However, there are numerous instances in which water *quantity* issues within IDWR's area of responsibility affect water *quality* issues." *Report*, p. 2, paragraph 9.

Mr. Tuthill summarized IDWR's role concerning water quality:

A. We establish benchmarks from which to evaluate changes to water quality. We don't evaluate those changes or profess to have the expertise. That's expertise beyond the department. But we do establish water use benchmarks that provide the basis for evaluating changes.

Q. Who does the evaluation?

A. That would be experts in water quality, if that question would come up.

Q. In other words, it would be the Division of Environmental Quality?

A. Yes.

*Reporter's Transcript*, p. 74.

At trial, Mr. Tuthill confirmed that his training is in agricultural and civil engineering and water rights investigation and administration. He does not consider himself an expert in water quality and has no special training or employment skills in water quality. *Reporter's Transcript*, p. 4.

Mr. Tuthill cited *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985), as an example of coordination between IDWR and DEQ on water quality review of an application for facility expansion. *Reporter's Transcript*, pp. 75-76. In fact, IDWR views *Shokal* as requiring that it "look at water quality relative to the water rights." *Reporter's Transcript*, pp. 146-147. The fact that DEQ has the expertise in water quality matters does not deter IDWR from its own review:

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<sup>6</sup> Mr. Tuthill agreed that a larger facility does not always adversely affect water quality:

But if additional ponds are built, then our interpretation has been that in the general case additional ponds will result in additional impact on the water source. It's not always the case... But in the general case, additional ponds, the incentive for the additional ponds would be additional production, additional impact on the water source.

*Reporter's Transcript*, p. 139.

A. We would solicit input from DEQ; however, we could not delegate our responsibility to DEQ because it's a responsibility attributed to the department of water resources.

Q. Has the department of water resources in its rules adopted any standards or rules with respect to water quality?

A. There are rules relative to water appropriation, water allocation, appropriation of new water rights which define local public interest. And in that they define the water quality. But specific water quality parameter rules have not been adopted.

*Reporter's Transcript*, pp. 79-80.

Mr. Tuthill said that facility volume "incorporates a storage component." However, he conceded that by its own "rule of thumb," IDWR will not specify a storage right if the facility will not fill in a day. *Reporter's Transcript*, pp. 105-108. So, where a facility like Blue Lakes turns over water many times each day from a direct flow right, it is not considered a storage right.

On April 3, 1997, IDWR called a meeting of fish propagators in Basin 36 in Buhl. The purpose of the meeting was "to discuss 'facility volume' parameter of a water right with a fish propagation use." In the notice of the meeting, IDWR said it was "open to the discussion of alternative mechanisms for quantifying the water quality impacts of fish propagation facilities, to enable proper protection for and distribution of water rights." Blue Lakes Exhibit 6. Of the twenty people who attended the meeting, all who spoke opposed inclusion of facility volume. *Reporter's Transcript*, p. 24, and Blue Lakes Exhibit 9.<sup>7</sup>

#### **James E. Parsons**

Mr. Parsons, research and technical director at Blue Lakes Trout Farm, said they have no current plans to expand their facilities. Before any facility could be expanded, Blue Lakes would

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<sup>7</sup> On April 21, 1997, Idaho Fish and Game wrote to IDWR in opposition to facility volume parameter for fish propagation water rights. Fish and Game was concerned because it was changing the way it managed its conservation hatcheries and that meant changing facility configurations and rearing volumes. Fish and Game also had a suggestion:

It appears the major rationale for considering facility volume to limit a fish propagation water right is to prevent degradation of water quality to a downstream water user. IDFG suggests using the NPDES [National Pollutant Discharge Elimination System] Discharge Monitoring Report criteria... These parameters are flow related and measure the net impact any hatchery has on the water quality of a stream. Since the permits are based on the net change in these water quality parameters, changes to an upstream facility would not necessarily result in a downstream facility being unable to meet NPDES permit requirements.

Blue Lakes Exhibit 8.

have to prove to DEQ that the enlarged facility meets National Pollutant Discharge Elimination System (NPDES) guidelines. Only then would DEQ approve the expansion.

Blue Lakes' production is measured based on water flow rate-fish reared per cfs. Production is not based on the size of the facility.<sup>8</sup>

Mr. Parsons said Blue Lakes does not recirculate its water. At their average flow rate of 150 cfs, the flow-through time is 77 minutes. That means if the diversion is stopped, the facility would drain in 77 minutes. At maximum capacity, the flow-through time is 100 minutes.

Blue Lakes maintains "quiescent zones" or settling ponds downstream of where its fish are reared. Sizing of the zones changes over the years and often takes production areas out of use. Mr. Parsons guessed that Blue Lakes' facility will have to be expanded in the future to meet higher water quality standards.

Of Blue Lakes' four licenses, only 36-07720, dated May 2, 1983, included a description of facility volume. That license also stated: "Water used under this license if discharged into a natural channel shall meet Idaho Water Quality Standards." Blue Lakes Exhibit 5. Two earlier licenses, 36-07210 and 36-07427, only required the following: "Measuring devices of a type approved by this Department shall be maintained at the point of diversion and the point of effluent discharge." Blue Lakes Exhibits 3 and 4.

### **Harold Johnson**

Mr. Johnson said that Blue Lakes' hatchery and Clear Lakes' are very similar. Both are major facilities and first users of spring water. Both hatcheries developed in segments over many years and now have processing facilities on site.

Mr. Johnson said that DEQ comprehensively regulates hatchery discharges through its "Water Quality Standards and Wastewater Treatment Requirements." Clear Lakes Exhibit 4. Hatcheries incur a substantial expense to meet those standards. If IDWR imposes its own standards, the hatcheries will have to endure additional costs and delays when they change their operations.

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<sup>8</sup> An attachment to IDWR's "Administrator's Memorandum," dated August 7, 1979, stated: "It is difficult to calculate water needs for fish farming since production is usually based on the amount of water available rather than the amount of land or the size of the facilities." Blue Lakes Exhibit 14, p. 4.

Mr. Johnson views IDWR's efforts to impose facility volume on fish propagators as an effort by state agencies to micro-manage private business.

Mr. Johnson said both the Environmental Protection Agency (EPA) and DEQ have taken the position of no net increase of nutrients for the middle reach of the Snake River between Milner Dam and King Hill. That includes the area of Blue Lakes' and Clear Springs' hatcheries. It is part of the Total Maximum Daily Load (TMDL) process to reduce nuisance aquatic growth in the mid-Snake River.

Mr. Johnson said there are no disputes about water quality between fish propagators along Billingsley Creek.

## CONCLUSIONS OF LAW

### I.C. §42-1411(4)

The Director's recommendations of water right claims are entitled to *prima facie* weight:

The director shall file the director's report with the district court, and the director's report shall be a part of the record. Upon filing with the court, the director's report, except for the explanatory material referred to in subsection (1) of this section, shall constitute prima facie evidence of the nature and extent of the water rights acquired under state law. The unobjected to portions of the director's report shall be decreed as reported.

### I.C. §42-1411(4).<sup>9</sup>

Idaho's Supreme Court has approved this statutory presumption and explained how it works:

The Legislature's direction that the contents of the Director's report shall constitute prima facie evidence of some water right claims was a permissible exercise of the authority, recognized in I.R.E. 301, to create an evidentiary presumption. Unless that evidentiary presumption is overcome by the evidence or the application of that presumption is clearly erroneous on its face, the facts set forth in the Director's report are established.

*In Re SRBA Case No. 39576*, 128 Idaho 246, 256, 912 P.2d 614, 624 (1995):

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<sup>9</sup> There was no argument that facility volume might be "explanatory material," probably because of how the Legislature defined the term:

The director may include such explanatory material as he deems appropriate in the director's report. Such explanatory material shall not impose any conditions or restrictions on the rights reported and shall not be subject to objection. This explanatory material shall not be used to support any notice of claim, objection to a notice of claim, or response to an objection.

I.C. §42-1411(1).

### ***Silkey v. Tiegs***

At the same time the Idaho Supreme Court considered the issue of *prima facie* weight given the Director's Report, it discussed the inclusion of administrative provisions in court decrees. The Court said that any provision requiring that the court actively administer the delivery of water would create an unworkable, unconstitutional delegation of authority.

However, the requirement that the district court include in its decree those provisions necessary for the executive to administer the rights decreed is not an impermissible delegation... It is within the constitutional authority of the court to include in its decrees "such general provisions necessary for the definition of the rights or for the efficient administration of the water rights." [paraphrasing *Silkey v. Tiegs*, 51 Idaho 344, 358, 5 P.2d 1049, 1055 (1931)].

*In Re SRBA Case No. 39576*, 128 Idaho at 262, 912 P.2d at 630.

### **Discussion:**

#### **The Issue**

The single legal issue presented in these four subcases may actually be stated two ways:

1. Has Blue Lakes overcome the evidentiary presumption that facility volume is necessary for definition of the rights, clarification of any elements of the rights or administration of the rights by the Director? [I.C. §42-1411(2) and (4)].
2. Is facility volume necessary for definition of the rights or for the efficient administration of the water rights? [*Silkey v. Tiegs*].

The answer to either question necessarily answers both. In these subcases, Blue Lakes has presented sufficient evidence to overcome the *prima facie* weight given the Director's Report. Facility volume is not necessary for definition or clarification of Blue Lakes' rights or for efficient administration of the rights by the Director. Rate of flow (cfs) and total volume diverted (afy) define the quantity element of Blue Lakes' fish propagation rights.

What was clear from the evidence is that IDWR is struggling to fairly administer a limited resource. Until recently, IDWR was seldom asked to administer water in priority over a broad area. Now, it must come to grips with that duty in the form of conjunctive management of surface and

ground water. Mr. Tuthill was obviously concerned over delivery of water (quantity) when he mentioned the SRBA Court's decision in *Musser*.<sup>10</sup> *Reporter's Transcript*, p. 157.

But as much as Mr. Tuthill and IDWR were concerned about water quantity, they were far more concerned about water quality. During Mr. Tuthill's cross-examination, *Shokal v. Dunn* was mentioned no fewer than 13 times. He agreed that water quality was the primary concern when he prepared his *Report* before trial. *Reporter's Transcript*, p. 77.

As IDWR has struggled with administrative provisions, it looked for tools to help in their efforts. In 1979, IDWR first adopted facility volume to help solve water quality disputes between fish propagators in the Billingsley Creek area. Mr. Tuthill personally drafted IDWR's 1979 "Administrator's Memorandum." Blue Lakes Exhibit 14 and *Reporter's Transcript*, pp. 7-8. The Memorandum required that facility volume be included in construction plans for all fish propagation applications for 1 cfs or greater.

While water quality along Billingsley Creek may have been a contested issue in 1979, none of those fish hatcheries now see it as a problem. In fact, they oppose any facility volume provision in their decrees because the NPDES Discharge Monitoring Report criteria and DEQ's Water Quality Standards and Wastewater Treatment Requirements protect water quality. The hatcheries view facility volume in water right decrees as duplicative and counter-productive. The fact is that whether IDWR includes facility volume in permits and licenses or the SRBA Court decrees facility volume, hatcheries must still meet EPA and DEQ water quality standards. Those are the same standards IDWR would apply before approving any facility enlargement because IDWR has no water quality standards.

The main concern with including facility volume in fish propagation water rights is that the term is amorphous. Mr. Tuthill said that facility volume "cuts across three different areas-- quantity, nature of use and place of use." *Reporter's Transcript*, p. 103. For that reason, it is virtually impossible to conclude that facility volume is necessary for definition or clarification of any element of a right or for administration of a right. It should be no surprise that Mr. Tuthill called facility volume a "parameter":

---

<sup>10</sup> *Order and Memorandum Decision Granting Petition for Writ of Mandate*, dated August 5, 1993. Affirmed, *Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994).

I suspect that parameter is not defined relative to the adjudication statutes. I see it as a generic term that would perhaps be broader than elements, yes.

*Reporter's Transcript*, p. 28.

### **Water Quantity**

A weak argument was made that facility volume would aid the Director in delivery of water by assuring that hatcheries take no more water from the source than they can beneficially use. There were suggestions that facility volume would also prevent unauthorized increases in the volume of water diverted and thus greater losses through evaporation and seepage.

The argument is weak because IDWR acknowledged that fish propagation use of water is essentially non-consumptive with no storage component. Besides, water losses to evaporation or seepage are unmeasurable at the level of flows appropriated by Blue Lakes.

### **Water Quality**

IDWR's main concern to include facility volume in fish propagation water rights is water quality. But control of water quality is the responsibility of DEQ which comprehensively occupies the field. If the Court were to include facility volume in Blue Lakes' water rights as IDWR recommended, nothing would change. DEQ enforces water quality standards and IDWR routinely defers to DEQ's expertise. Whether a fish facility remains the same or is changed in any way, it must still comply with DEQ's water quality standards.

IDWR is right in stating that it has authority to consider whether the design of any particular facility will meet all environmental requirements:

We believe this to be a correct assessment of the law, but add a word of caution regarding the differing functions of Water Resources [IDWR] and the Department of Health and Welfare [DEQ]. Water Resources must oversee the water resources of the state, insuring that those who have permits and licenses to appropriate water use the water in accordance with the conditions of the permits and licenses and the limits of the law. It is not the primary job of Water Resources to protect the health and welfare of Idaho's citizens and visitors-- that role is vested in the Department of Health and Welfare, including compliance with the water quality regulations and monitoring effluent discharge in our state's water-ways.

*Shokal v. Dunn*, 109 Idaho at 340-341, 707 P.2d at 451-452.

The fact that IDWR has a duty to consider whether a fish hatchery meets water quality standards is not to say that IDWR must include facility volume to protect water quality. Facility

volume may be a useful tool, but it is not necessary for definition or clarification of Blue Lakes' rights or for efficient administration of the rights by the Director.

### **Post-Trial Proceedings**

A *Preliminary Report & Recommendation and Order* was filed on October 22, 1997. Because no one then filed a motion to alter or amend, a single *Special Master's Report* with separate *Special Master's Recommendations* for 36-02356, 36-07210, 36-07427 and 36-07720 was filed on November 25, 1997.

However, on December 16, 1997, Blue Lakes filed a *Motion to Alter or Amend* in 36-02356 only. Blue Lakes sought to increase the annual volume for domestic use and proportionately increase the total annual volume for the right. On March 10, 1998, the *Order Granting Motion to Alter or Amend* was entered allowing the higher amounts in 36-02356. The other three claims remained unchanged.

### **Conclusion**

Blue Lakes Trout Farm, Inc., is entitled to partial decrees adjudicating its water rights under claims 36-02356, 36-07210, 36-07427 and 36-07720 as described in the attached *Special Master's Recommendations for Partial Decrees for Water Rights 36-02356, 36-07210, 36-07427 and 36-07720*.

DATED: March 18, 1998.



---

Terrence A. Dolan  
Special Master  
Snake River Basin Adjudication

## CERTIFICATE OF MAILING

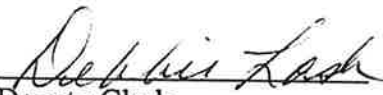
I certify that a true and correct copy of the **SPECIAL MASTER'S REPORT (Amended)** was mailed on March 18, 1998, with sufficient first-class postage to the following:

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

Director of IDWR  
Box 83720  
Boise, ID 83720-0098

Norman M. Semanko  
Box 1906  
Twin Falls, ID 83303-1906

Daniel V. Steenson  
Box 2773  
Boise, ID 83701-2773

  
Deputy Clerk

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

In Re SRBA )  
Case No. 39576 )  
SPECIAL MASTER'S RECOMMENDATION FOR  
PARTIAL DECREE FOR  
Water Right 36-02356

NAME & ADDRESS: BLUE LAKES TROUT FARM INC  
PO BOX 1237  
TWIN FALLS ID 83301

SOURCE: ALPHEUS CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 100.00 CFS  
72243.49 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT FOR DOMESTIC USE SHALL  
NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 05/29/1958

POINT OF DIVERSION: T09S R17E S28 Lot 14 (NESWSW) Within JEROME County

| PURPOSE AND<br>PERIOD OF USE: | PURPOSE OF USE   | PERIOD OF USE | QUANTITY     |
|-------------------------------|------------------|---------------|--------------|
|                               | COMMERCIAL       | 01-01 12-31   | 0.13 CFS     |
|                               |                  |               | 93.95 AFY    |
|                               | FISH PROPAGATION | 01-01 12-31   | 99.83 CFS    |
|                               |                  |               | 72147.14 AFY |
|                               | DOMESTIC 2 HOMES | 01-01 12-31   | 0.04 CFS     |
|                               |                  |               | 2.4 AFY      |

PLACE OF USE: COMMERCIAL Within JEROME County  
T09S R17E S29 Lot 19 (NESE)

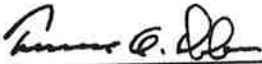
FISH PROPAGATION Within JEROME County  
T09S R17E S29 Lot 14 (SWNE) Lot 19 (NESE) Lot 18 (NWSE)

DOMESTIC Within JEROME County  
T09S R17E S29 Lot 19 (NESE)

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR  
DOMESTIC USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

DATED: 3.18.98

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION  
Water Right 36-02356

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

In Re SRBA

Case No. 39576

)  
) SPECIAL MASTER'S RECOMMENDATION FOR  
)  
) PARTIAL DECREE FOR  
)  
) Water Right 36-07210  
)

NAME & ADDRESS:

BLUE LAKES TROUT FARM INC  
PO BOX 1237  
TWIN FALLS ID 83301

SOURCE:

ALPHEUS CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY:

45.00 CFS  
32521.5 AFY

PRIORITY DATE:

11/17/1971

POINT OF DIVERSION:

T09S R17E S28 LOT 14 (NESWSW)

Within JEROME County

PURPOSE AND  
PERIOD OF USE:

PURPOSE OF USE  
FISH PROPAGATION

PERIOD OF USE  
01-01 12-31

QUANTITY  
45.00 CFS  
32521.5 AFY

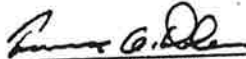
PLACE OF USE:

FISH PROPAGATION  
T09S R17E S29

Within JEROME County  
Lot 14 (SWNE) Lot 19 (NESE)

Lot 18 (NWSE)

DATED: 11-25-97

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION  
Water Right 36-07210

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

In Re SRBA )  
Case No. 39576 )  
SPECIAL MASTER'S RECOMMENDATION FOR  
PARTIAL DECREE FOR  
Water Right 36-07720

NAME & ADDRESS: BLUE LAKES TROUT FARM INC  
PO BOX 1237  
TWIN FALLS ID 83301

SOURCE: WASTE WATER TRIBUTARY: SNAKE RIVER

QUANTITY: 37.1 CFS  
26812.2 AFY

PRIORITY DATE: 06/08/1977

POINT OF DIVERSION: T09S R17E S29 LOT 19 (SWNESE)

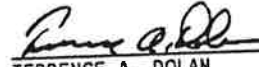
Within JEROME County

PURPOSE AND  
PERIOD OF USE: PURPOSE OF USE  
FISH PROPAGATION

| PERIOD OF USE | QUANTITY    |
|---------------|-------------|
| 01-01 12-31   | 37.1 CFS    |
|               | 26812.2 AFY |

PLACE OF USE: FISH PROPAGATION Within JEROME County  
T09S R17E S29 Lot 19 (NESE)

DATED: 11-25-87

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION  
Water Right 36-07720

In Re SRBA  
Case No. 39576

SPECIAL MASTER'S RECOMMENDATION FOR  
PARTIAL DECREE FOR  
Water Right 36-07427

TRIBUTARY: SNAKE RIVER

Within JEROME County

PERIOD OF USE  
01-01 12-31

|          |     |
|----------|-----|
| QUANTITY |     |
| 52.23    | CFS |
| 37746.6  | AFY |

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

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

DATED: 11-25-97

  
TERRENCE A. DOLAN  
Special Master  
Snake River Basin Adjudication

PAGE 1  
NOV-3-1997

1998 MAR 18 AM 11:23

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED *[Signature]*

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

In Re SRBA )

Case No. 39576 )  
\_\_\_\_\_ )

CERTIFICATE OF MAILING

Water Right(s): 36-02356  
36-07210 36-07427 36-07720

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on March 18, 1998, with sufficient first-class postage prepaid to the following:

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

STATE OF IDAHO

Represented by:

CLIVE STRONG

OFFICE OF ATTORNEY GENERAL

STATE OF IDAHO

PO BOX 44449

BOISE, ID 83711-4449

Phone: 208-334-2400

CERTIFICATE OF MAILING

PAGE 1  
03/18/98

CLEAR LAKES TROUT COMPANY

Represented by:  
DANIEL V. STEENSON  
599 W BANNOCK ST  
PO BOX 2773  
BOISE, ID 83701-2773  
Phone: 208-342-4591

BLUE LAKES TROUT FARM

Represented by:  
JOHN E. ROBERTSON  
PO BOX 1906  
TWIN FALLS, ID 83303  
Phone: 208-734-0700

BLUE LAKES TROUT FARM

Represented by:  
NORMAN M. SEMANKO  
PO BOX 1906  
TWIN FALLS, ID 83303  
Phone: 208-734-0700

  
DEBBIE LASH  
Deputy Clerk

1998 MAR 18 AM 11:28

DISTRICT COURT  
TWIN FALLS CO. IDAHO  
FILED

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

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

NOTICE OF ISSUANCE OF  
SPECIAL MASTER'S  
RECOMMENDATION

Water Right(s): 36-02356  
36-07210 36-07427 36-07720

On March 18, 1998, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

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

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

DATED March 18, 1998.

  
DEBBIE LASH  
Deputy Clerk

April 14, 1998

**NOTE TO FILE**

FROM: V.Hancock

CLAIM NO: 36-02659 -07004 -07080 -07731 -02356 -07210 -07427  
and 36-07720

Matt Howard requested copies of these entire files. Sent copies to him at Beeman and Hoffstetter this date.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

00:00:15  
09/08/90

PAGE: 1  
GENERAL INFORMATION

CLAIM NUMBER: A36-07720

LAST: BLUE LAKES TROUT FARM INC.  
ADDRESS: P.O. BOX 1237  
CITY: TWIN FALLS  
PHONE NUMBER: 208-733-4631

FIRST:

STATE: ID ZIP: 83301

OWNER CODE: C

T: ROBERTSON  
ADDRESS: P.O. BOX 1906  
CITY: TWIN FALLS  
PHONE NUMBER: 208-000-0000

FIRST: J. EVAN

STATE: ID ZIP: 83303

OWNER CODE: A

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE  
Y

FIELD  
EXAMINER

CLAIM REMARKS: FACILITY VOLUME = 1.5 AF.  
WATER USED UNDER THIS LICENSE IF DISCHARGED INTO A NATURAL  
CHANNEL SHALL MEET IDAHO WATER QUALITY STANDARDS.  
FISH PRODUCTION = 300000-400000 LBS./YR.

MICROFILMED  
FEB 04 1993

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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**R PROOF**

**CVR**

**MAPS**

**PHOTOS**

**MISC**

OCT 19 1994

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

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

Case No. 36-07720 -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)

MICROFILMED

OCT 19 1994

2. Person who filed objection:

Name: BLUE LAKES TROUT FARM INC  
Address: PO BOX 1237  
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

11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:  
NON-IRRIGATION USES

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 11 and 14, and all allegations of the objection regarding those items, IDWR responds as follows: Idaho Code Section 42-1411(2) provides that the director's reports shall include "such other matters as are necessary to define the right." The description of non-irrigation uses and the remark as to facility volume correctly describe the current use of water diverted for fish propagation purposes. Description of the current use of water diverted for fish propagation purposes is necessary to define the right and to prevent future expansions in use of the right. The remaining contested remarks are necessary for the efficient administration of water rights, which IDWR recommends be included in the decree pursuant to Idaho Code Section 42-1412(a).

CHANGES TO THE DIRECTOR'S REPORT

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

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

No. of  
Pages

Notice of Claim No. A36-07720

4

(Over)

NOTED  
MICROFILMED

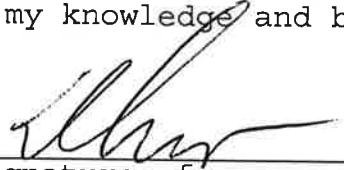
VERIFICATION (Must be Completed)

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 30<sup>th</sup> day of August,  
1993.

  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: \_\_\_\_\_

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

CERTIFICATE OF MAILING

I hereby certify that on the 30<sup>th</sup> day of August, 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: J EVAN ROBERTSON  
Address: PO BOX 1906  
TWIN FALLS ID 83303-1906

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

AD  
7/15/85

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: A36-07720  
Date Received: 4/28/1989  
Receipt No: 5009/EE  
Received By: AD

RECEIVED

OCT 13 1989

Department of Water Resources  
Southern Region Office

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: BLUE LAKES TROUT FARM, INC. 208-733-4631  
Address: P.O. BOX 1237  
TWIN FALLS, ID 83301

2. Date of Priority: JUN 08, 1977

3. Source: WASTE WATER Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 09S      | 17E   | 29      | NE     | SE     |     | 19  | JEROME |

5. Description of diverting works:  
DITCH & RACEWAYS.

6. Water is used for the following purposes:

| Purpose          | From  | To    | C.F.S. | (or) | A.F.A. |
|------------------|-------|-------|--------|------|--------|
| FISH PROPAGATION | 01/01 | 12/31 | 37.100 |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
H/300000-400000 LBS.YR.

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use  | Acres |
|----------|-------|---------|--------|-----|-----|------|-------|
| 09S      | 17E   | 29      | NE     | SE  | 19  | FISH |       |

11. Place of use in counties: JEROME

A36-07720

Page 1

Date: 09/15/89

MICROFILMED  
FEB 04 1993  
OCT 19 1994

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

13. Other Water Rights Used:

LIC. 36-2356, 36-7210 & 36-7427.

14. Remarks:

FACILITY VOLUME = 1.5 AF.

WATER USED UNDER THIS LICENSE IF DISCHARGED INTO A NATURAL  
CHANNEL SHALL MEET IDAHO WATER QUALITY STANDARDS.

15. Basis of Claim: LICENSE

16. Signature(s)

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

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

For Organizations:

I do solemnly swear or affirm that I am \_\_\_\_\_ President \_\_\_\_\_ of  
\_\_\_\_\_ Title

Blue Lakes Trout Farm, Inc. \_\_\_\_\_, that I have signed the foregoing  
Organization  
document in the space below as \_\_\_\_\_ President \_\_\_\_\_ of  
\_\_\_\_\_ Title

Blue Lakes Trout Farm, Inc. \_\_\_\_\_ and that the statements contained in the  
Organization  
foregoing document are true and correct.

*Henry M. Greene*  
Signature of Authorized Agent

President, Blue Lakes Trout Farm, Inc.  
Title and Organization

10/5/89  
Date

State of Idaho )  
County of Twin Falls ) SS.

Subscribed and sworn (or affirmed) before me this 5 day

of OCTOBER 19 89

Seal

[Signature]  
Notary Public

Residing at Twin Falls

My Commission Expires 12-3-92

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FEB 04 1993  
OCT 19 1994

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, J. Evan Robertson will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature

J. Evan Robertson

Nelson, Rosholt, Robertson, Tolman & Tucker

Address P.O. Box 1906, Twin Falls, ID 83303

Date

10-12-89

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FEB 04 1993

Last Name Blue Lakes Trout Ident. Number \_\_\_\_\_

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Copies: White-State, Yellow-Claimant  
OCT 19 1994

MAY 13 1964

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

Case No. 36-07720

### OBJECTION

36-07720 -0001/  
93-04-0351

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

## Respondents.

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.

OBJECTION -1-

OCT 19 1994

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

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: BLUE LAKES TROUT FARM, INC.

Address: P.O. Box 1237  
Twin Falls, Idaho 83301

Briefly describe your interest in this water right:

Owner of right.

2. Owner of the water right:

Name: BLUE LAKES TROUT FARM, INC.

Address: P.O. Box 1237  
Twin Falls, Idaho 83301

3. If this objection is filed by an attorney:

Attorney Name: J. Evan Robertson

Attorney Address: P.O. Box 1906  
Twin Falls, Idaho 83303-1906

Attorney Phone No.: (208) 734-0700

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)

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

The inclusion of description of non-irrigation uses.

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.

Box 11: The inclusion of remarks in recommendation and the reduction of facility volume.

Box 14: The inclusion of description of non-irrigation uses.

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.

Remove from recommendation remarks that were not claimed and recommend the remaining remarks as claimed.

Remove "10 ponds @ 14'x120'x3'" description from recommendation of non-irrigation uses.

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

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

---

---

---

VERIFICATION (Must be Completed)

State of Idaho

County of ADA

JOHN K. SIMPSON, being first duly sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. § 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.

BLUE LAKES TROUT FARM  
Signature of person filing objection

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

Subscribed and sworn to before me this 29th day of April, 1993.

[Signature]  
Notary Public for Idaho  
Residing at: Boody  
My commission expires: 12-17-97



(Over)

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I, *W. [unclear]*, hereby certify that on the 30th 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: BLUE LAKES TROUT FARM, INC.  
Owner's address: P.O. Box 1237  
Twin Falls, Idaho 83301

3. One copy to:

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

4. One copy to:

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

  
\_\_\_\_\_  
Signature of Objector or attorney  
mailing on Objector's behalf

**NOTICE OF ERROR**

**RESPONSE**

**CORRECTED R PROOF**

**MICROFILMED**

**FEB 0 4 1993**

AUG-24-1992

# NOTICE OF ERROR FORM

RECEIVED

SEP 23 1992

Department of Water Resources

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: 36-07720

2. Name: Blue Lakes Trout Farm, Inc.

Address: J. Evan Robertson, Attorney

P.O. Box 1906

Twin Falls, ID 83303

Weekday Telephone Number: 734-0700

RECEIVED

SEP 28 1992

Department of Water Resources  
Southern Region Office

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FEB 04 1993

**TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE**

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

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

Non-irrigation uses.

Remarks

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

Non-irrigation uses to be reviewed.

Remarks to be reviewed.

5. Describe why you disagree with the proposed recommendation:

Recommended non-irrigation uses may contain error. Recommended remarks may contain error.

6. Date:

SIGNATURE

A handwritten signature in black ink, appearing to read "John Smith", is written over a horizontal line.



State of Idaho

# DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS  
Governor

R. KEITH HIGGINSON  
Director

06-Oct-1992 09:54

J. Evan Robertson, Attorney  
PO Box 1906  
Twin Falls, ID 83303

RE: Snake River Basin Adjudication (SRBA)  
Notices of Error - A36-07720, A36-02356, A36-07427, A36-07210  
in the name of Blue Lakes Trout Farm, Inc.

Dear Mr. Robertson:

We are in receipt of the Notices of Error filed on the above referenced claims. We are not making any changes to the recommendations at this time.

There were three issues raised on the above referenced Notices of Errors. These issues were: Non-irrigation uses; Remarks; and Place of Use. A review of the files did not uncover any discrepancies in the place of use recommended for each of the SRBA claims. If you have specific information regarding an error, please forward that information by October 13, 1992 and we will review the files again.

Regarding the Non-irrigation uses and Remarks, I spoke with you on the phone and you stated that the issue was specifically the ponds described in the Non-irrigation uses and the facility volume identified in the Remarks. Based on our understanding of the law, the facility volume (determined by the ponds) associated with the priority date of a water right is an essential element of that right. We have used our records and available information to determine the facility volumes for each water right. If you feel there is an error, please forward supporting documents to this office by October 13, 1992 and we will review the information.

If you still do not agree with the proposed IDWR recommendation to the court, you may file an objection with the court after you receive the final recommendation or your water right. Information about the objection process will be included when the final recommendation is received.

Sincerely,

Helen Harrington-Thornton  
Water Resource Agent

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

| OWNER<br>CODE    | NAME & ADDRESS                                                                    | PRIORITY<br>DATE | WATER USE        | USE PERIOD<br>FROM TO | DIVERSION<br>RATE | DIVERSION<br>VOLUME |
|------------------|-----------------------------------------------------------------------------------|------------------|------------------|-----------------------|-------------------|---------------------|
| C                | BLUE LAKES TROUT FARM INC<br>PO BOX 1237<br>TWIN FALLS ID 83301<br>(208) 733-4631 | 06/08/1977       | FISH PROPAGATION | 01-01 12-31           | 37.10 CFS         | 26812.2 AFA         |
| TOTAL DIVERSION: |                                                                                   |                  |                  |                       | 37.10 CFS         | 26812.2 AFA         |

Water Source: WASTE WATER

Tributary to: SNAKE RIVER

Stage: LICENSE

Point(s) of Diversion: T09S R17E S29 Lot19(SWNESE)

JEROME County

Place of use Legal Description for: FISH PROPAGATION

| NE  |     |    |   | NW   |      |      |      | SW |      |      |      | SE   |   |      |      |      |      |   |      |      |      |      |   |
|-----|-----|----|---|------|------|------|------|----|------|------|------|------|---|------|------|------|------|---|------|------|------|------|---|
| T   | R   | S  | : | NENE | NWNE | SWNE | SENE | :  | NENW | NWNW | SWNW | SENW | : | NESW | NWSW | SWSW | SESW | : | NESE | NWSE | SWSE | SESE | : |
|     |     |    |   | Lt   | Ac   | Lt   | Ac   |    | Lt   | Ac   | Lt   | Ac   |   | Lt   | Ac   | Lt   | Ac   |   | Lt   | Ac   | Lt   | Ac   |   |
| 09S | 17E | 29 | : |      |      |      |      | :  |      |      |      |      | : |      |      |      |      | : |      |      |      |      | : |
|     |     |    |   |      |      |      |      |    |      |      |      |      |   |      |      |      |      |   |      |      |      |      |   |

09S 17E 29 : : : 19-F :

POU County: JEROME

Non-Irrigation Uses: FISH PROPAGATION/ 10 PONDS @ 14'X 120'X 3'

Other Rights: NONE

Conditions of Approval:

- L08 - RETURN FLOW IF DISCHARGED TO A SURFACE WATER SYSTEM SHALL MEET IDAHO WATER QUALITY STANDARDS.
- G01 - THIS RIGHT REMAINS SUBJECT TO THE RIGHT OF THE ORIGINAL APPROPRIATOR, IN GOOD FAITH AND IN COMPLIANCE WITH STATE LAWS GOVERNING CHANGES IN USE AND/OR EXPANSION OF WATER RIGHTS, TO CEASE WASTING WATER, TO CHANGE THE PLACE OR MANNER OF WASTING IT, OR TO RECAPTURE IT.
- G02 - THIS RIGHT IS SUBJECT TO ADMINISTRATION AS PART OF THE NATURAL SOURCE TO WHICH THE WASTE IS TRIBUTARY.

Remarks: FACILITY VOLUME 1.16 A.F.

Dates: Exam Made Date: Verified Date:

Misc: Water District Number: Field Inspection Flag:  
Presumption Flag:

Comments: Date: 09/04/1991 User-ID: CLELLAND Subject: FACILITY VOLUME 50,400 CUBIC FEET. MAP INDICATES ADDITIONAL PLACE OF USE AND POD BUT WAS NOT CLAIMED THEREFORE NOT ALLOWED. ALSO, THE ADDITIONAL PONDS WOULD INCREASE FACILITY VOLUME BY 0.10 AF AND WOULD NEED AN APPLICATION FOR PERMIT.

Date: 09/04/1991 User-ID: CLELLAND Subject: COPIED FROM REMARKS  
FACILITY VOLUME = 1.5 AF.  
WATER USED UNDER THIS LICENSE IF DISCHARGED INTO A NATURAL

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=====

Comments: Date: 09/04/1991 User-ID: CLELLAND Subject: COPIED FROM REMARKS  
CHANNEL SHALL MEET IDAHO WATER QUALITY STANDARDS.  
FISH PRODUCTION = 300000-400000 LBS./YR.

Date: 09/24/1992 User-ID: SCHULTZ Subject: NOTICE OF ERROR (NOE)  
RECEIVED NOE 9/23/92. CHANGED NOE FLAG FROM BLANK TO A.  
CLAIM VERIFIED 8/4/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 10/06/1992 User-ID: THORNTON Subject: NOTICE OF ERROR RECONCILIATION  
CHANGED FLAG FROM A TO B - NO CHANGE.  
SENT LETTER TO ATTORNEY ROBERTSON REGARDING THE FACILITY VOLUME,  
PONDS IN NON-IRRIG. AND POU.

Audit: 10/06/92 THORNTON

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FEB 04 1993

**R PROOF**



**CVR**



**MAPS**



**PHOTOS**



**MISC**

**MICROFILMED**  
FEB 04 1993

Water Right Number - R36-07720

Prefix Translation: RESEARCH

Old (D) Number -

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

\*\*\* A - ATTORNEY \*\*\*  
ROBERTSON

J EVAN

1 - PO BOX 1906  
2 -  
3 -  
City- TWIN FALLS  
Phone - 208-000-0000

State- ID Zip- 83303

\*\*\* C - CURRENT OWNER \*\*\*  
BLUE LAKES TROUT FARM INC

1 - PO BOX 1237  
2 -  
3 -  
City- TWIN FALLS  
Phone - 208-733-4631

State- ID Zip- 83301

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +  
06/08/1977 17 SOUTHERN L - LICENSE

+ - - - - Source - - - - - + + - - - - Tributary - - - - - +  
WASTE WATER SNAKE RIVER

+ - - - - Point of Diversion - - - - - +  
TwN Rng Sec Tract Lot RFlg County  
09S 17E 29 SW NE SE 19 (53) JEROME

+ - - - - Water Use - - - - - +  
Code Description Period From Period To Diversion Rate Diversion Volume  
19 - FISH PROPAGATION 01/01 12/31 37.100 26812.20

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +  
37.100 26812.20 0.0

+ - - - - Place of Use - - - - - +  
TwN Rng Sec Tract Lot Acres Code Description County  
09S 17E 29 NE SE 19 19 FISH PROPAGATION (53) JEROME

Total Acres:

+ - - Diversion Means - DITCH & RACEWAYS

+ - - Non-Irrigation Use - FISH PROPAGATION/ 10 PONDS @ 14'X 120'X 3'

+ - - Other Rights for Same Use - NONE

+ - - - - Remarks - - - - - +  
FACILITY VOLUME 1.16 A.F.

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FEB 04 1993

Water right number - R36-07720

Prefix Translation: RESEARCH

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

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

No Old Water Right Numbers Found

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

- L08 - RETURN FLOW IF DISCHARGED TO A SURFACE WATER SYSTEM SHALL MEET  
- IDAHO WATER QUALITY STANDARDS.
- G01 - THIS RIGHT REMAINS SUBJECT TO THE RIGHT OF THE ORIGINAL  
- APPROPRIATOR, IN GOOD FAITH AND IN COMPLIANCE WITH STATE LAWS  
- GOVERNING CHANGES IN USE AND/OR EXPANSION OF WATER RIGHTS, TO  
- CEASE WASTING WATER, TO CHANGE THE PLACE OR MANNER OF WASTING IT,  
- OR TO RECAPTURE IT.
- G02 - THIS RIGHT IS SUBJECT TO ADMINISTRATION AS PART OF THE NATURAL  
- SOURCE TO WHICH THE WASTE IS TRIBUTARY.

+ - - - Decree Plaintiff - - - +

+ - - - Decree Defendant - - - +

+ - Decree Date - +  
00/00/0000

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

Date: 09/04/1991 User Id: CLELLAND Subject: COPIED FROM REMARKS  
FACILITY VOLUME = 1.5 AF.

WATER USED UNDER THIS LICENSE IF DISCHARGED INTO A NATURAL  
FISH PRODUCTION = 300000-400000 LBS./YR.

CHANNEL SHALL MEET IDAHO WATER QUALITY STANDARDS.

Date: 09/04/1991 User Id: CLELLAND Subject: FACILITY VOLUME

50,400 CUBIC FEET. MAP INDICATES ADDITIONAL PLACE OF USE AND POD BUT WAS NOT CLAIMED THEREFORE NOT ALLOWED. ALSO, THE ADDITIONAL  
PONDS WOULD INCREASE FACILITY VOLUME BY 0.10 AF AND WOULD NEED AN APPLICATION FOR PERMIT.

+ - - Audit Fields - - +

08/04/92 ROBERTSO

+ - - - - 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         | - 08/04/1992 | Old Judicial District   | -       |
| Claim Received Date  | - 09/15/1989 | Last Amended Date     | - 00/00/0000 | Temporary Right         | - P     |
|                      |              | Receipt Number        | - S009188    | Water District          | -       |
|                      |              | POU Ownership Flag    | - Y          | Federal/State Indicator | - S     |
|                      |              | Name Connector        | -            | Presumption Flag        | -       |
|                      |              |                       |              | Notice of Error Flag    | -       |

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STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
ADJUDICATION CLAIM VERIFICATION REPORT

00:00:15  
09/08/90

PAGE: 12  
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-07720

| WR ELEMENT                | FIELD EXAM<br>Y/N | CORRESPONDENCE<br>SENT/RECEIVED<br>BY WHOM/DATE | FIELD EXAM<br>BY WHOM/DATE | CHANGE<br>CLAIM<br>Y/N | VERIFIED BY<br>CODE | COMPLETED<br>REVIEW<br>WHOM/DATE | COMPLETED<br>DATA ENTRY<br>WHOM/DATE | VERIFIED<br>DATE<br>WHOM/DATE |
|---------------------------|-------------------|-------------------------------------------------|----------------------------|------------------------|---------------------|----------------------------------|--------------------------------------|-------------------------------|
| PRIORITY DATE             |                   |                                                 |                            | N                      |                     | See<br>9-4-91                    | DB                                   |                               |
| POINT OF DIV              | Y                 |                                                 |                            | N (Y)                  | 1, 6                |                                  |                                      |                               |
| SOURCE                    |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PERCEDE OF USE            | Y                 |                                                 |                            | N                      |                     |                                  |                                      |                               |
| DIV. AMOUNT<br>CFS/VOLUME |                   |                                                 |                            | Y (Y)                  | 6                   |                                  |                                      |                               |
| CONSUMPTIVE USE           |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PURPOSES                  |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| PERIOD OF USE             |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| BASIS OF CLAIM            |                   |                                                 |                            | N                      |                     |                                  |                                      |                               |
| REMARKS                   | Y                 |                                                 |                            | N (Y)                  | 6.                  |                                  |                                      |                               |

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"VERIFIED BY" CODES

TOPO MAP/ORTHO-PG = 1  
ASCS MAP = 2  
WATERMASTER RECORDS = 3  
NAEP 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.

A. AJ CLAIM: # A36-07720 PRIORITY DATE: 06-08-1977 STAGE: L  
B. WR RECORD: # 36-07720 PRIORITY DATE: 06-08-1977 STAGE: L

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N)

DATABASE  
N

FIELD  
EXAMINER  
W

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

REMARKS:

RECOMMENDED PRIORITY DATE:  
06-08-1977

REVIEWED BY W

DATE 12/26/90

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A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

| RIGHT     | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY   |
|-----------|------|------|------|-----|-----|-----|-----|--------|
| A36-07720 | 09S  | 17E  | 29   | sw  | NE  | SE  | 19  | JEROME |

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

WR RECORDS IN SAME 40 ACRE TRACT  
36-07757

SOURCE: WASTE WATER

TRIB: SNAKE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

| RIGHT  | TWP. | RGE. | SEC. | 1/4 | 1/4 | 1/4 | LOT | CNTY   |
|--------|------|------|------|-----|-----|-----|-----|--------|
| -07720 | 09S  | 17E  | 29   |     | NE  | SE  | 19  | JEROME |

OTHER WR RECORDS WITH SAME WR POD

36-07757

AJ CLAIMS IN SAME 40 ACRE TRACT  
A PREFIX R PREFIX  
NONE NONE

SOURCE: WASTE WATER

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

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

DATABASE  
Y  
N

FIELD  
EXAMINER

*[Signature]*

REMARKS:

*able to describe 10 Ac tract*

*see 9-4-91*

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

| TWP. | RGE. | SEC.            | 1/4 | 1/4 | LOT | COUNTY |
|------|------|-----------------|-----|-----|-----|--------|
|      |      | <del>same</del> | SW  |     |     |        |

SOURCE: WASTE WATER

TRIB: SNAKE RIVER

REVIEWED BY:

DATE:

12/26/90

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FEB 04 1993

A. ROOT WATER RIGHT NUMBERS: A36-07720

B. POU LISTING

| TWP         | RNG | SEC | 1/4 | 1/4 | LOT | NAME                                                      | AJ<br>#/ACRES                | WR<br>#/ACRES   | LANDSAT<br>DATA | FIELD<br>EXAM. | RECOMM.<br>ACRES |
|-------------|-----|-----|-----|-----|-----|-----------------------------------------------------------|------------------------------|-----------------|-----------------|----------------|------------------|
| 09S         | 17E | 29  | NE  | SE  | 19  | BLUE LAKES TROUT FARM INC.<br>PROFESSIONAL INVESTORS LIFE | A36-07720 /<br>INA36-00200 / | 36-07720 /<br>- |                 |                | 10 Ponds         |
| TOTAL ACRES |     |     |     |     |     |                                                           | A36-07720                    |                 |                 |                |                  |

ARE <sup>uses</sup> ~~IRRIGATED~~ ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, ☒ YES ( ) NO ( )  
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE  
Y

FIELD  
EXAMINER  
*[Signature]*

SUMPTION FLAG:

REMARKS:

*Confirmed by OPQ*

*Map indicates possible pou & ponds  
in SWSW, Lot 14, Sec 28 but no claim  
was made for the additional point of Division  
or Place of Use*

RECOMMENDATIONS:

TOTAL ACRES: *N/A*

REVIEWED BY: *W*

DATE: *12/26/90*

Allow Ponds:

$$10 \times 14 \times 120 \times 3 = 50,400 \text{ cu. ft.}$$

MICROFILMED  
FEB 04 1993

A. AJ CLAIMED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY |
|-------------------------------------|---------------------|--------------------|
| A36-07720 FISH PROPAGATION          | FROM 01-01 TO 12-31 | 37.100 CFS         |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 37.100 CFS         |

B. WR RECORDED USES:

| PURPOSES                            | MONTH/DAY           | DIVERSION QUANTITY |
|-------------------------------------|---------------------|--------------------|
| 36-07720 FISH PROPAGATION           | FROM 01-01 TO 12-31 | 37.100 CFS         |
| TOTAL DIVERSION RATE/VOLUME CLAIMED |                     | 37.100 CFS         |

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

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

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(/) N( )

RECOMMEND TO WR STANDARDS OR OTHER?

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

REMARKS:

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y( ☒ ) N( ☐ )

AJ TOTAL CLAIMED DIVERSION RATE: 37.100 CFS  
WR ROOT RIGHT TOTAL DIVERSION RATE: 37.100 CFS

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

FLOW MEASUREMENT REQUIRED?

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

FIELD  
DATABASE EXAMINER  
Y       

B.

FLOW MEASUREMENT

MEASUREMENT METHOD \_\_\_\_\_, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: ~~A36-02356, A36-07210 & A36-07427~~

*DONE*

NO CLAIMS FOUND WITH SAME POU AND IRRIGATION USAGE

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

| CLAIM NO. | PURPOSES         | NAME                               | MONTH/DAY           | RATE       | VOLUME |
|-----------|------------------|------------------------------------|---------------------|------------|--------|
| A36-07720 | FISH PROPAGATION | BLUE LAKES TROUT FARM INC.         | FROM 01-01 TO 12-31 | 37.100 CFS |        |
| A36-00200 | FISH PROPAGATION | PROFESSIONAL INVESTORS LIFE INEROM | 01-01 TO 12-31      | 40.000 CFS |        |

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES \_\_\_\_\_ x 0.02 CFS/ACRE = \_\_\_\_\_ CFS  
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y( ) N( )

\*\*\* IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y( ) N( ) \*\*\*

2. IRRIGATION CONSUMPTIVE USE

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

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

TOTAL CONSUMPTIVE USE \_\_\_\_\_ AE/A

3. IRRIGATION DIVERSION VOLUME

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

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

TOTAL DIVERSION VOLUME \_\_\_\_\_ AE/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y( ) N( )

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

1b. CALCULATIONS

*DIV VOL*  
 $37.1 \text{ cfs} \times 1.98 \times 365 =$

$= 26,812.2$

*FAC. VOL.*

$50,400 \div 43560 =$

$= 1.16 \text{ AF}$

MICROFILMED

FEB 04 1993

RECOMMENDATIONS:

| REC. PURPOSES        | REC. PERIOD |       | REC. DIV |          | REC. DIV          |          | REC. CONS. |          |
|----------------------|-------------|-------|----------|----------|-------------------|----------|------------|----------|
|                      | FROM        | TO    | RATE     | CFS      | VOL.              | AF/A     | USE        |          |
| FISH PROPAGATION     | 01-01       | 12-31 | DATABASE | EXAMINER | DATABASE          | EXAMINER | DATABASE   | EXAMINER |
|                      |             |       | 37.100   | /        | <del>68,400</del> |          | 0.0        | /        |
| TOTAL FOR THIS RIGHT |             |       | 37.100   |          | 26,812.2          |          | 0.0        |          |

REVIEWED BY:

DATE:

*lw*  
*12/26/90*  
*see - 9-4-91*

*DOB = 1.16 AF*

*Committee:*  
*FAC. Vol*  
*50,400 cuft.*  
*map indicates additional pool but*  
*was not claimed therefore not allowed. Also*  
*the additional FAC. Vol (0.10 AF) would require*  
*a permit.*

A. CHECK ONLY THE FOLLOWING THAT APPLY:

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

ACCEPTED  
AS CLAIMED ( ☒ )  
NEEDS  
REVIEW ( )  
*N/A* ( )

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-07720

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE  
37.100

EXAMINER  
*N/A*

CFS

SPLITS:

| OLD RIGHT<br>NUMBERS | CURRENT<br>CLAIM NUMBERS | DIVERSION<br>RATE | CURRENT "R"<br>CLAIM NUM. | "R" DIV.<br>RATE | WR RIGHT<br>NUMBERS | DIVERSION<br>RATE |
|----------------------|--------------------------|-------------------|---------------------------|------------------|---------------------|-------------------|
| -                    | A36-07720                | 37.100            | -                         |                  | 36-07720            | 37.100            |
| TOTAL CFS            |                          | 37.100            |                           |                  |                     | 37.100            |

DIVERSION RATE REVIEW

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

DATABASE  
Y

FIELD  
EXAMINER  
\_\_\_\_\_  
\_\_\_\_\_

REMARKS:

AUTHENTICATION:

SIGNATURE: *[Signature]*

DATE: *9-4-91*  
*12/26/90*

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

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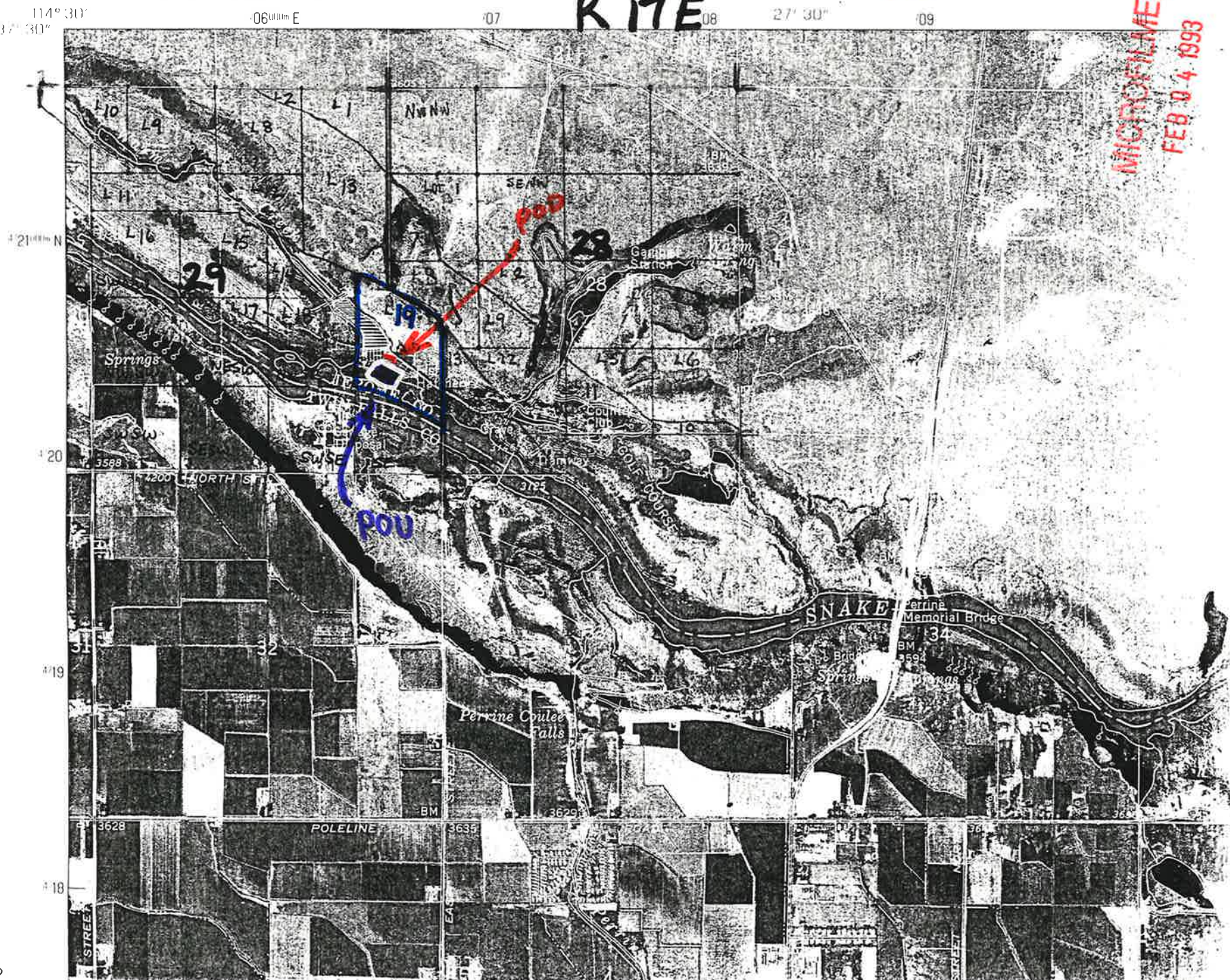
FEB 0 4 1993

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

A36-7720

R 17 E 08

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FEB 04 1993



9S  
10S

BB 73 c.1976

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

114° 30'  
42° 37' 30"

06 000m E

07

08

27' 30"

09

421000m N

420

419

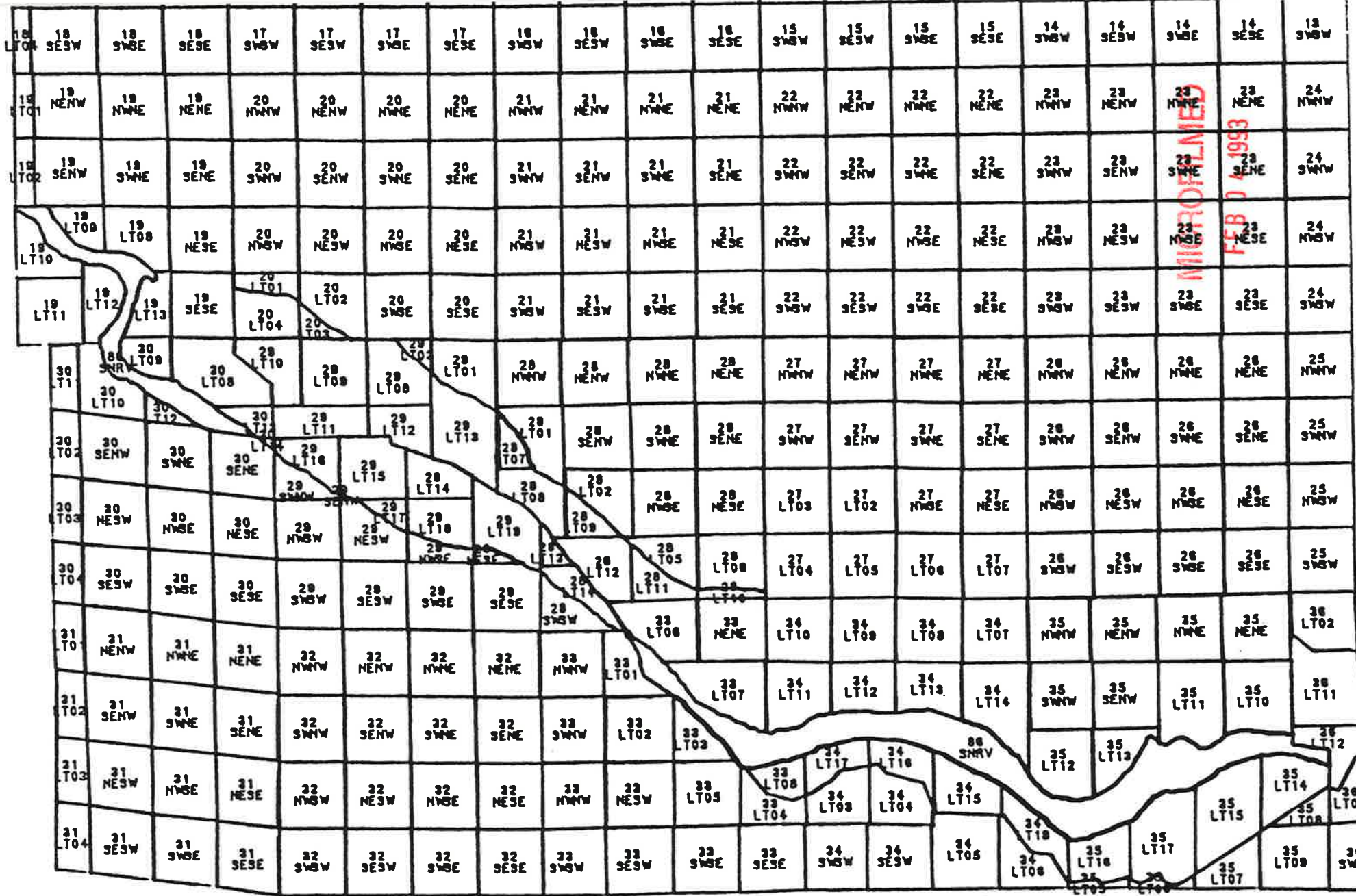
418



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FEB 04 1993

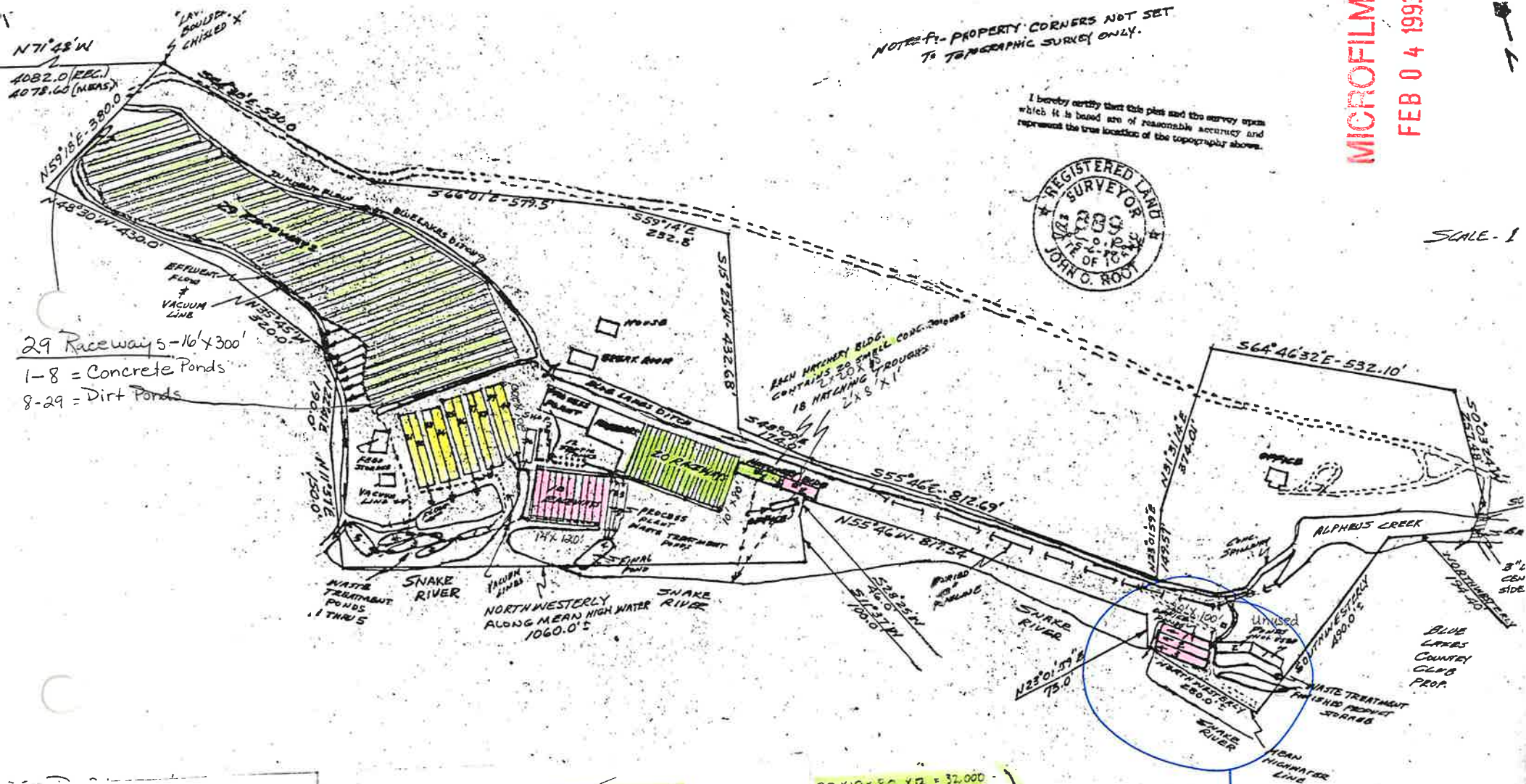
9S  
10S



I hereby certify that this plat and the survey upon which it is based are of reasonable accuracy and represent the true location of the topography shown.



SCALE - 1



36-2356 - 5/29/1958 - 100 cfs  
36-7210 - 11/17/1971 - 45 cfs  
36-7427 - 12/28/1973 - 52.23 cfs  
36-7720 - ~~6/8/1977~~ - 37.1 cfs  
Raceway - each date  
→ Dimensions

$20 \times 20 \times 80 \times 2 = 32,000$   
 $30 \times 10 \times 200 \times 3 = 47,000$   
 $20 \times 20 \times 15 \times 2 = 14,000$   
 $18 \times 2 \times 8 \times 1 = 299$   
 $10 \times 20 \times 200 \times 4 = 160,000$   
 $10 \times 14 \times 120 \times 3 = 50,400$   
 $3 \times 20 \times 100 \times 3 = 18,000$

NOT  
CLAIMED  
NOT  
RECOMMENDED  
see 9-4-91