

RECEIVED

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MAY 28 1999

Department of Water Resources
Southern Region

Department of Water Resources

1999 MAY 26 AM 11:34

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

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

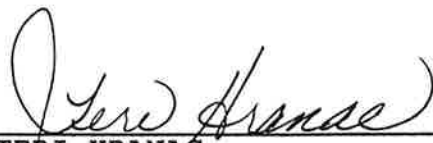
Water Right(s): 36-08141

On May 26, 1999, Special Master FRITZ X HAEMMERLE issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

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

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

DATED May 26, 1999.


TERI HRANAC
Deputy Clerk

1999 MAY 26 AM 11: 34

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
	)	
	)	FOR WATER RIGHT 36-08141

I. FINDINGS OF FACT

A *Motion to File Late Notice of Claim* was filed for this water right on January 9, 1998, by the claimant Banbury Pipe Co. The unopposed *Motion* was subsequently granted. *Order Granting Motion to File a Late Notice of Claim* (May 19, 1998). On January 14, 1999, a *Director's Report* was filed for this water right.

An *Order Setting Subcase Deadlines* was issued on January 20, 1999, setting forth the deadlines for filing Objections to the *Director's Report*. The *Order Setting Subcase Deadlines* was placed on the Docket Sheet. No Objections were filed to the *Director's Report* and the time for filing Objections has expired.

II. CONCLUSIONS OF LAW

Therefore, IT IS RECOMMENDED that this water right be decreed with the elements as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 36-08141*.

DATED: May 26, 1999.



FRITZ X. HAEMMERLE, Special Master
Snake River Basin Adjudication

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)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-08141

1999 MAY 26 AM 11:34
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: THE BANBURY PIPE COMPANY
C/O DWAIN KNIGGE
4799 A RIVER ROAD
BUHL, ID 83316

SOURCE: BANBURY SPRINGS TRIBUTARY: SNAKE RIVER

QUANTITY: 1.00 CFS

PRIORITY DATE: 01/20/1983

POINT OF DIVERSION: T08S R14E S33 SWSWNE Within Gooding County
NWNWSE

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
Commercial 01-01 TO 12-31 1.00 CFS

COMMERCIAL GREENHOUSES

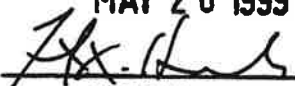
PLACE OF USE: Commercial Within Twin Falls County
T08S R14E S32 NWSW SESE
S33 LOT 07 (SWSW)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

RECOMMENDATION

MAY 26 1999


SPECIAL MASTER

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

1999 MAY 26 AM 11:34

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 36-08141

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 May 26, 1999, with sufficient first-class postage prepaid to the following:

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

THE BANBURY PIPE COMPANY

Represented by:
PATRICK D. BROWN
812 SHOSHONE ST E
TWIN FALLS, ID 83301
Phone: 208-735-8812



TERI HRANAC
Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
05/26/99

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

36-08141

Date Received

Receipt Number

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

MAY 27 1998

Division of Water Resources
Twin Falls Region

Please type or print clearly

1. Name of Claimant (s) Banbury Rice Co. Phone (208) 543-6777Mailing Address 40 Duane Knigge
4799 A River Road, Buhl, Id Zip 833162. Date of Priority (Only one (1) per claim) Jan. 20, 19833. Source of water supply (a) Banbury Springs
which is tributary to (b) Snake River4. a. Location of existing point of diversion is: Township 8S Range 14E Section 33
SW 1/4 of SW 1/4 of NE 1/4, Govt. Lot, _____ B.M., County of GoodingAdditional points of diversion if any: § NW NWSE of Section 33 (total collection area)

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Collection ditch to concreteheadbox to 20" steel pipe

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Commercial purposes from 1/1 to 12/31 amount 1.0 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.0 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
8S	14E	32														C		C	
		33											C						107

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes _____ No X
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
The landowner owns shares of stock in the claimant Corporation

36-02038 and 36-10906 or None ()

14. Remarks: the license erroneously locates one greenhouse as
being in the NESE instead of the NWSE of Section 32.

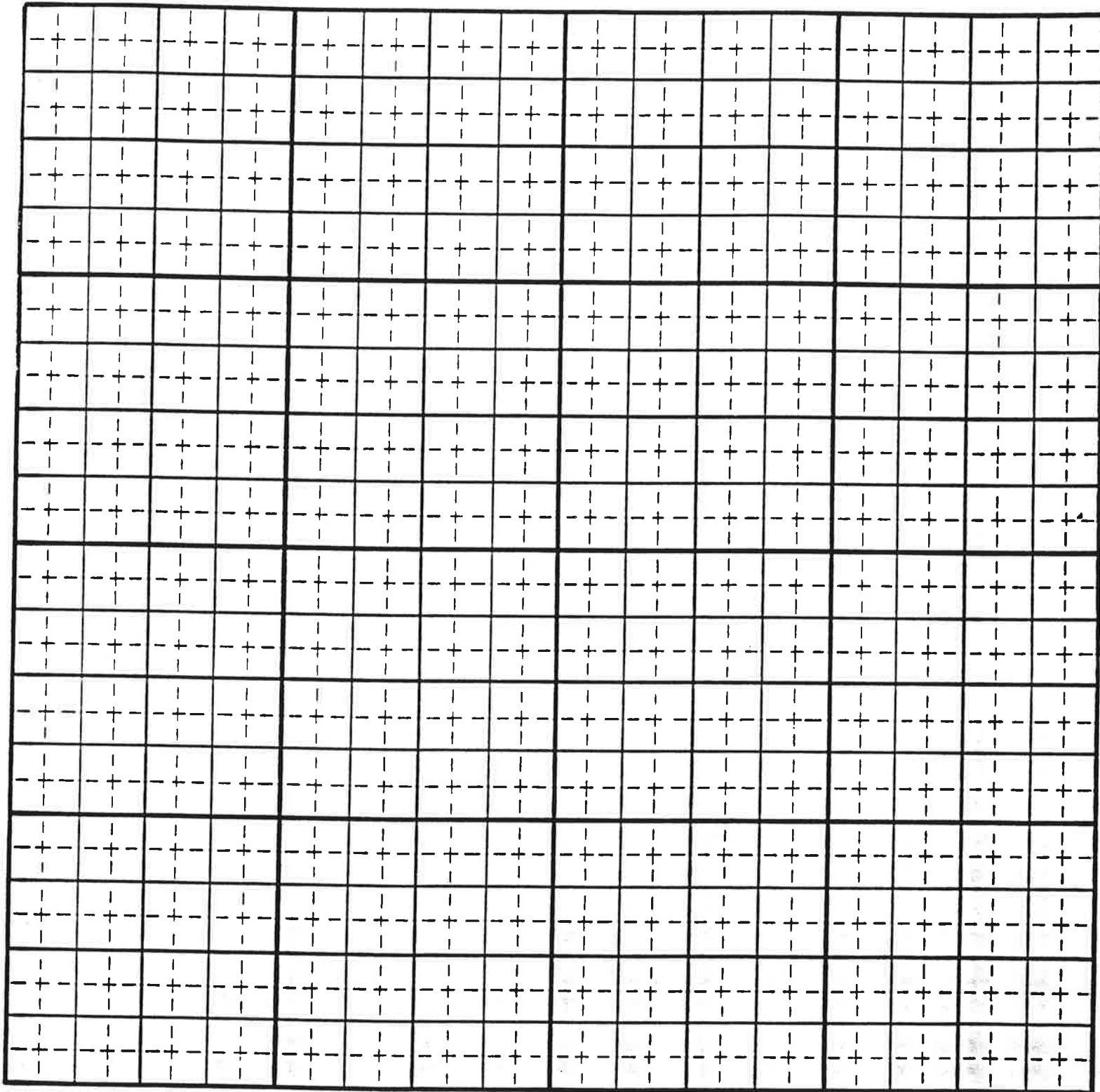
Banbury Pipe Co.

36-08141

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

See attached map



Last Name Banbury Pipe Co.

Ident No. 36-08141

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one, Beneficial Use _____ Posted Notice _____ License X Permit _____
Decree _____

If applicable provide IDWR Water Right Number 36-08141

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

16. Signature (s)

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

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am Attorney in fact Title _____

of Banbury Pipe Co. Organization _____ that I have signed the foregoing

document in the space below as Attorney in fact Title _____ of Banbury Pipe Co. Organization _____

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature]

Title and Organization Attorney in fact for Banbury Pipe Co. Date 1-9-98

State of Idaho/or _____)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 8th day of January 19 98

SEAL

Notary Public Laura L. McMillan

Residing at Jerome, Id

My Commission Expires 8/24/2001

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, Patrick D. Brown, Hepworth, Lezanne & John Horst 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 [Signature]

Address 133 Shoshone St. N., P.O. Box 389, Twin Falls, ID 83303-0389

Date 1-9-98

Last Name Banbury Pipe Co. Ident. Number 36-08141

Copies White-State, Yellow-Claimant

SEC. 29

lot 4

SEC. 28

lot 7

27 28
32 33

lot 2

Ponds

SEC. 32

LIVESTOCK

SEC. 33

lot 3

lot 6

Pond

PONDS

SEC. 4

1 GREENHOUSE
1 DOMESTIC

IRRIGATION



State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08141

Priority: January 20, 1983

Maximum Diversion Rate: 1.00 CFS

Maximum Diversion Volume: 72.0 AF

This is to certify, that BANBURY PIPE CO
C/O DOUGLAS ELGAN
PO BOX 82
GOODING ID 83330

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated January 20, 1983; and has submitted Proof of Beneficial Use on May 25, 1990. An examination indicates that the works have a diversion capacity of 13.250 cfs of water from:

BANBURY SPRINGS

tributary to SNAKE RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
COMMERCIAL	01/01 to 12/31	1.00 CFS	72.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SWSWNE , Sec. 33, Township 08S, Range 14E
NWNWSE , Sec. 33, Township 08S, Range 14E
GOODING County

PLACE OF USE: COMMERCIAL
TWN RGE SEC

08S 14E 32 NESE SESE
33 Lot 7(SWSW)

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. The issuance of this right in no way grants any right-of-way or easement across the land of another.

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08141

CONDITIONS/REMARKS:

6. The total combined rate of diversion under this right and right 36-02038 shall not exceed 13.25 cfs.
7. Multiple springs are captured in a collection ditch located within SWSWNE and NWNWSE, S33, T08S, R14E.
8. Commercial use is for greenhouses.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 18TH day of DECEMBER, 19 92.

Acting for  R. Keith Higginson, Director

State of Idaho
Department of Water Resources

RECEIVED

DEC 9 1992

APPROVED

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 36-08141

Department of Water Resources

Date of Priority: January 20, 1983

Maximum Diversion Rate: 1.00 CFS
Maximum Diversion Volume: 72.0 AF

Comes now
C/O SALLY HOECK
4810 RIVER RD
BUHL ID 83316

BANBURY PIPE CO

and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 36-08141, and requests that the permit be changed as follows:

Source: BANBURY SPRINGS

tributary to SNAKE RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
COMMERCIAL	01/01 to 12/31	1.00 CFS	72.0 AF

LOCATION OF POINT(S) OF DIVERSION:

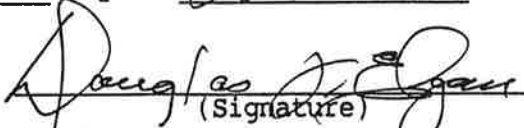
SWSWNE , Sec. 33, Township 08S, Range 14E
NWNWSE , Sec. 33, Township 08S, Range 14E
GOODING County

PLACE OF USE: COMMERCIAL
TWN RGE SEC

08S 14E	32	NESE	SESE
	33	Lot 7(SWSW)	

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at Twain Falls, this 7th day of December, 1992.


(Signature)
for Banbury Pipe Co.

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 36-08141

FOR DEPARTMENT USE ONLY

Preliminary check by MIS Fee = 20.00 Received by MIS # 5015217 Date 12-7-92

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, R. Keith Higginson, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 36-08141 with the following;

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. The issuance of this right in no way grants any right-of-way or easement across the land of another.
6. The total combined rate of diversion under this right and right 36-02038 shall not exceed 13.25 cfs.
7. Multiple springs are captured in a collection ditch located within SWSWNE and NWNWSE, S33, T08S, R14E.
8. Commercial use is for greenhouses.

Witness my hand this 18TH day of DECEMBER, 1992


Acting for R. Keith Higginson, Director

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, Banbury Pipe Company, Inc., of Buhl, County of Twin Falls, State of Idaho, have made, constituted and appointed and by these presents do make, constitute and appoint Patrick D. Brown of the law firm of Hepworth, Lezamiz & Hohnhorst, Chtd. of Twin Falls, Idaho, as power of attorney.

Said attorney is to act in our name, place and stead, and for our use and benefit in regard to all matters involving our ownership, or the adjudication thereof, of water rights pursuant to claim(s) filed in the Snake River Basin Adjudication, Civil Case No. 39576, Fifth Judicial District, State of Idaho.

My attorney is specifically authorized to execute all necessary or proper documents on our behalf in regard to the adjudication of the above mentioned water rights or claim(s), and to negotiate, compromise, or settle all matters relating to the Snake River Basin Adjudication.

This Power of Attorney shall remain in full force and effect until written notice of its revocation or notice of our death is received by any party relying upon this document.

This Power of Attorney shall be not be affected by our disability. It is our intent that this Power of Attorney shall continue in full force and effect in the event of our incapacity.

We further provide that photocopies of this Power of Attorney are to be given equal dignity, full affect, and recognition as if it were the original.

WITNESS my hand this 15 day of December, 1997.

Dwain Knigge President
Banbury Pipe Company, Inc.
by Dwain Knigge, President

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 15th day of December, 1997, before me, the undersigned, a notary public in and for said county and state, personally appeared Dwain Knigge, President, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Deanna L. McMillan
NOTARY PUBLIC FOR IDAHO
Residing at: Jerome, Id
My Commission Expires: 3/24/2001

(BANBUPOA)llm

DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
STATE OF IDAHO



RECEIVED

MAY 22 1998

Department of Water Resources

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
(208) 736-3011
FAX (208) 736-2121

SRBA CHAMBERS
P.O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

May 21, 1998

Dave Tuthill
IDAHO DEPARTMENT OF WATER RESOURCES
P O Box 83720
Boise, ID 83720-0098

RE: Motion to File Late Notice of Claim
36-08141

Dear Dave,

Enclosed, please find the *Order Granting Motion to File Late Notice of Claim* for the above water right, the Notice of Claim and a check in the amount of \$150.00, from Hepworth, Lezamiz and Hohnhorst.

Please notify the court, should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ami Alberdi".

Ami Alberdi
Deputy Clerk of the Court

Enclosures

1998 MAY 19 PM 3:34
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA

Subcase No. 36-08141

Case No. 39576

ORDER GRANTING MOTION TO
FILE A LATE NOTICE OF CLAIM

On January 9, 1998, a *Motion to File a Late Notice of Claim* was filed. All procedural requirements under *Administrative Order 1* were complied with in filing this *Late Notice of Claim*. No valid objections were made to this *Notice of Claim*. The Motion is GRANTED.

IT IS SO ORDERED

DATED: May 19, 1998


DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

ORDER GRANTING MOTION TO FILE
A LATE NOTICE OF CLAIM

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER GRANTING MOTION TO FILE LATE NOTICE OF CLAIM** was mailed on May 21, 1998, with sufficient first-class postage to the following:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC-033
Boise, ID 83734

Patrick D. Brown
Parker Warr & Brown
812 Shoshone Street East
Twin Falls, ID 83301


Deputy Clerk of the Court



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

**PHILIP E. BATT
GOVERNOR**

May 26, 1998

**KARL J. DREHER
DIRECTOR**

PATRICK D BROWN
PARKER WARR & BROWN LLP
812 SHOSHONE ST EAST
TWIN FALLS ID 83301

RE: Snake River Basin Adjudication (SRBA)
Notice of Claim #A36-08141
Banbury Pipe Co.

Dear Mr. Brown:

Notice of Claim to a Water Right #A36-08141 for your client, Banbury Pipe Co., was received from the SRBA Court recently. We have sent receipt #C042397 to the payor of the filing fees for this claim, Hepworth, Lezamiz and Hohnhorst, for their records.

The Notice of Claim will be investigated and reported to the Court in a future supplemental Director's Report. Please contact me at 208/327-7932 if you have any questions.

Sincerely,

Donald V. Shaff
Manager, Adjudication Section

DVS:ss:region

cc: Hepworth, Lezamiz and Hohnhorst w/Receipt #C042397