

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: **A36-15461**
Date Received: ~~8/31/1988~~ 10/14/92
Receipt No: 5015077
Received By: HHT

COPY
FOR YOUR FILES
DO NOT RETURN

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

1. Name: STANLEY E HOSKOVEC 208-837-4956
Address: 2856 S 900 E
HAGERMAN ID 83332
AND/OR
Name: BARBARA HOSKOVEC 208-837-4956
Address: 2856 S 900 E
HAGERMAN ID 83332

2. Date of Priority: APR 4, 1910

3. Source: WEATHERBY SPRINGS Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	14E	30		NE	SW		GOODING

5. Description of diverting works:
25HP PUMP, SPRINKLERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	01/01	12/31	0.400		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	26	SW	NW		IRR	40.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	13E	26	NW	SW		IRR	40.0
Section Acres							80.0
Total Acres							80.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
A36-15157

14. Remarks:

THIS CLAIM IS BASED ON BENEFICIAL USE BUT THE USE IS ALSO DESCRIBED IN 36-00198. THIS CLAIM IS BEING FILED IN THE EVENT THAT A36-00198A IS DISALLOWED BY THE COURT DECREE. THIS WATER USE HAS BEEN USED UNINTERRUPTED SINCE THE 1911 DECREE (SEE ATTACHED AFFIDAVITS). WE DO NOT BELIEVE THE DECREED RIGHT WAS SUPERCEDED BY THE 1932 DECREE BECAUSE THE 20 INCHES IDENTIFIED IN 36-00198A IS NOT MENTIONED IN THE 1932 DECREE AND IS A SEPARATE PARCEL OF LAND FROM THAT DESCRIBED IN 36-00009 AND 36-00010. THERE WERE 2 PARCELS OF 60 ACRES AND 20 ACRES RESPECTIVELY.

15. Basis of Claim: BENEFICIAL USE

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: 2 affidavits
3 maps.

For Individuals:

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

Signature of Claimant(s): X Stanley E. Workman Date: 10/14/92
Barbara J. Workman Date: 10/14/92

State of Idaho)
County of Twin Falls) SS.

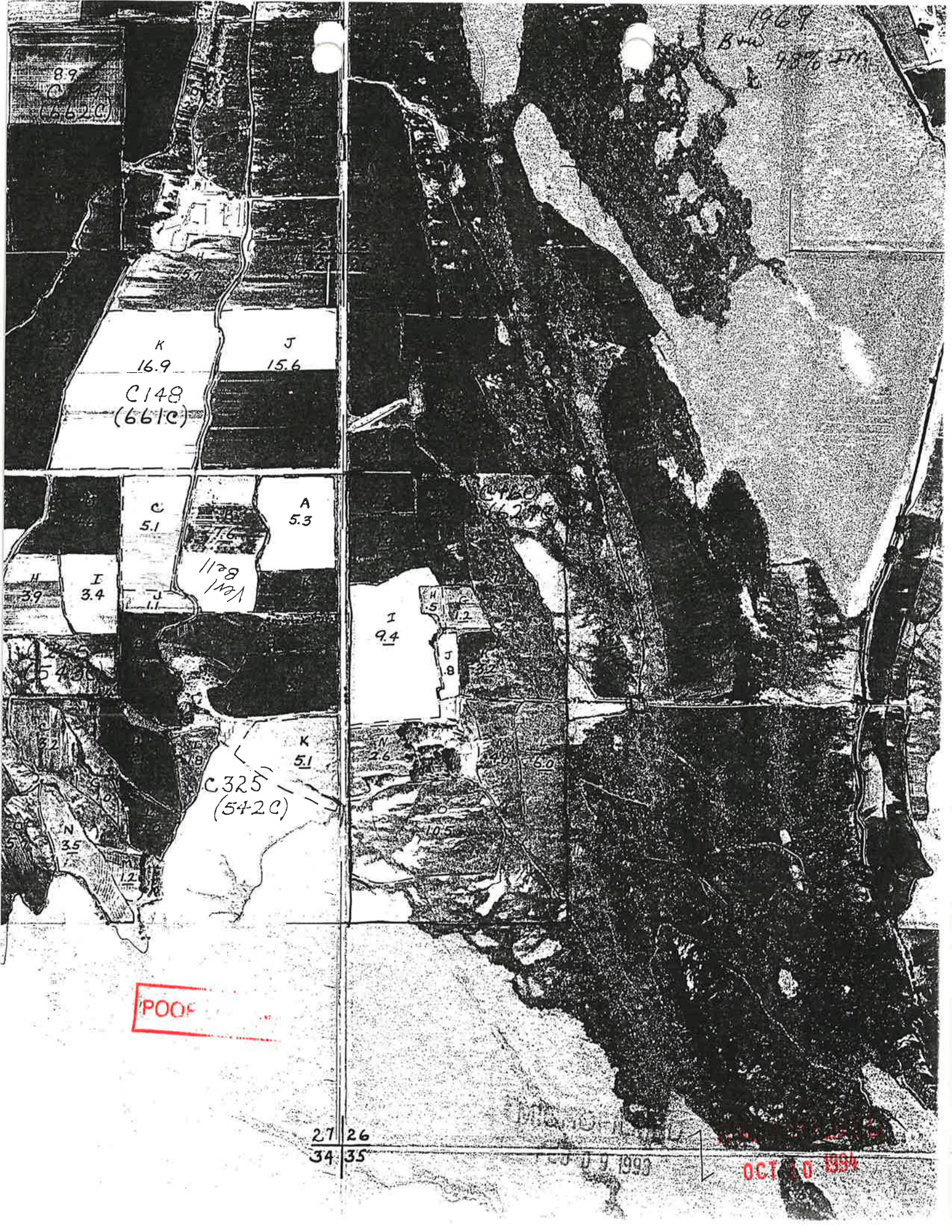
Subscribed and sworn (or affirmed) before me this 14th day
of October 19 92

Charles E. Stevens
Notary Public

Seal

Residing at Twin Falls

My Commission Expires 7/18/95



1968
Brw 78% Fm

8.9
C
(662C)

K
16.9
C148
(661C)

J
15.6

C
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A
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Bell
Verl

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3.4

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H
5
J
8

C120
(6621E)

C325
(542C)

K
5.1

N
2.6

6.0

10.5

POOF

27 26
34 35

OCT 9 1993

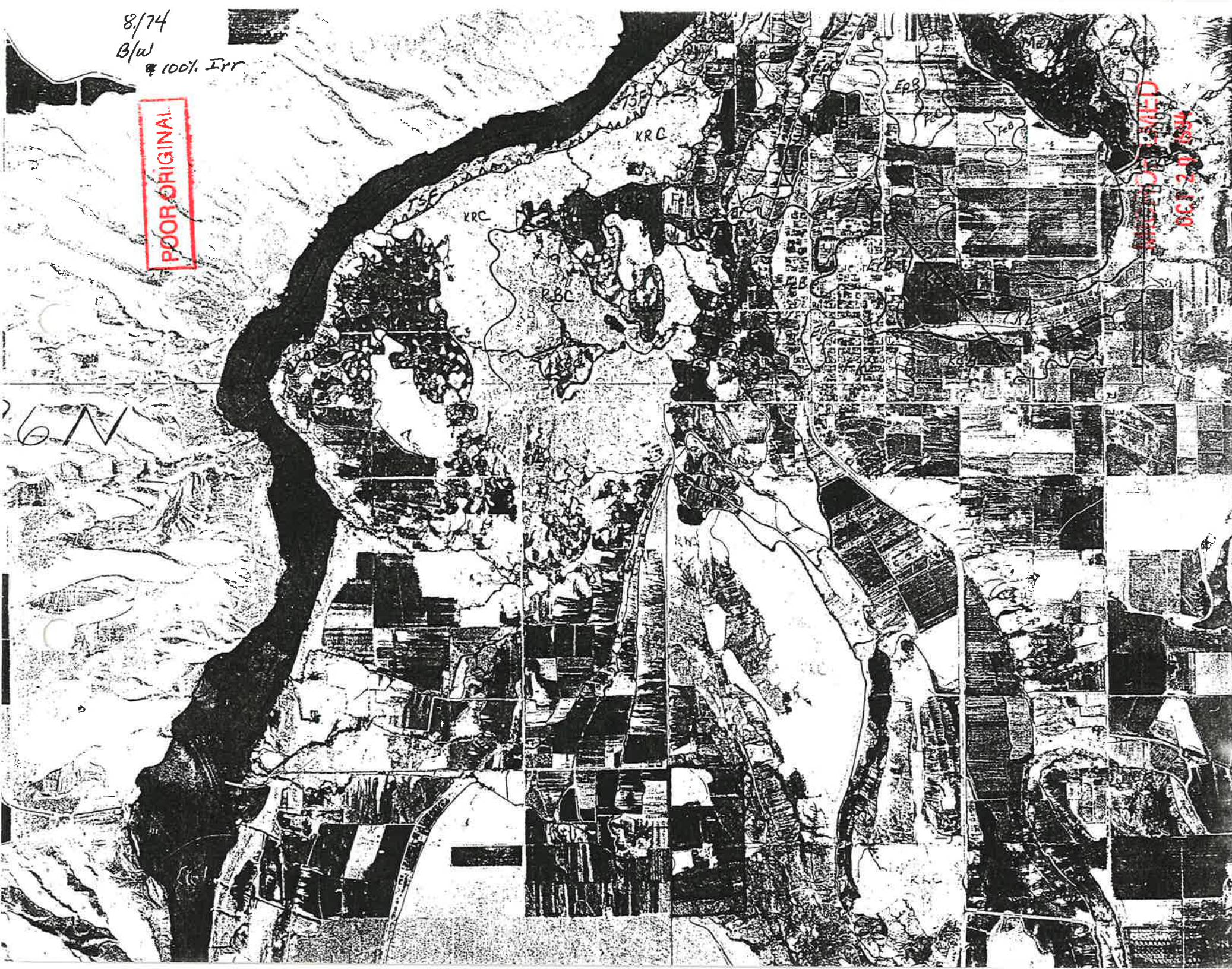
OCT 30 1994

8/74

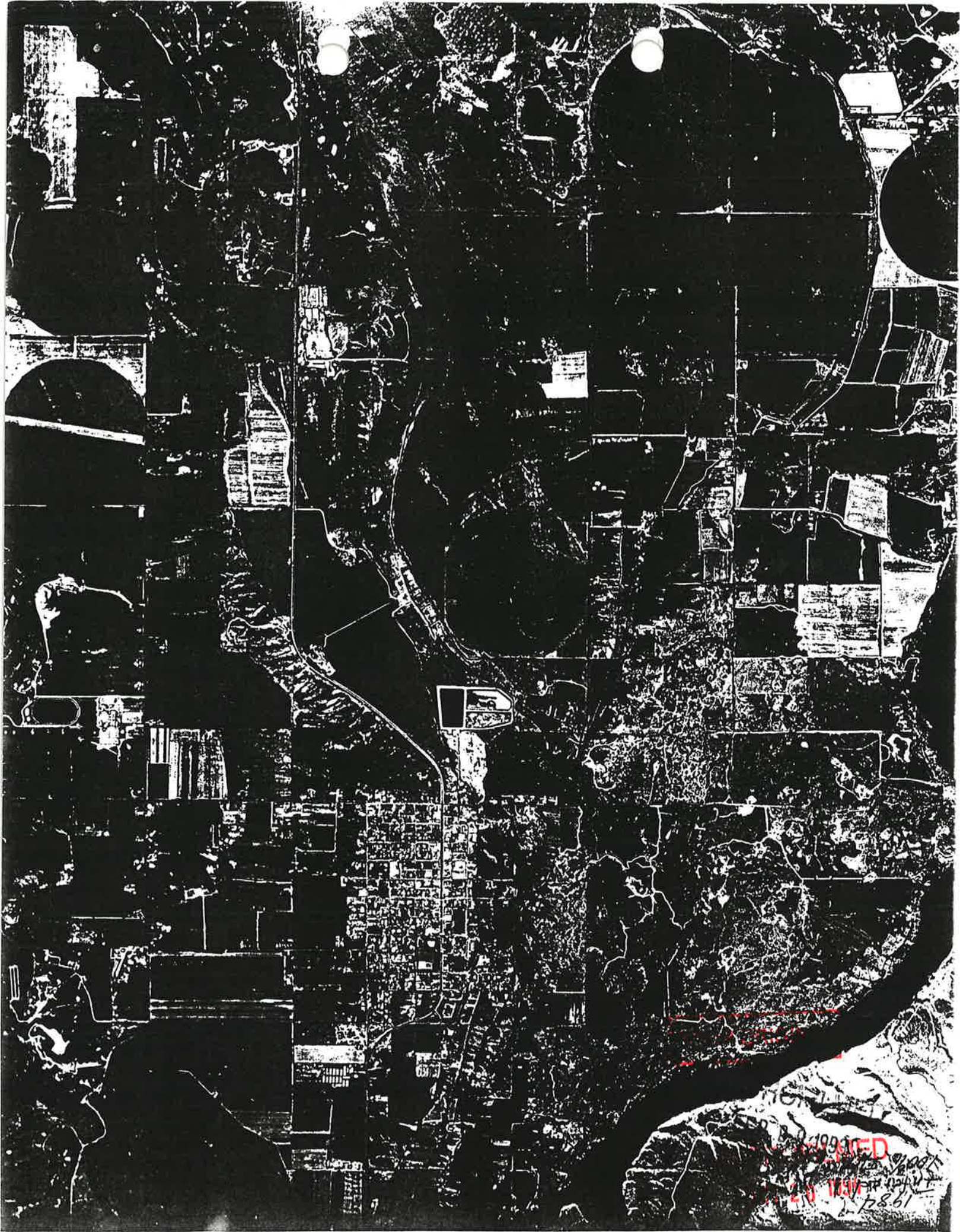
B/W

100% Irr

POOR ORIGINAL



8/74 B/W 100% Irr



AFFIDAVIT

County of

being first duly sworn,

deposes and says:

deposes and says: This land has been irrigated on Plan & Barbados. Hasbrouck ever since. Day & Jean Cook can remember. Day has been all his life - since 1911 & he remembers the water districts & ditches well - & this water always on the place & it has been irrigated

Very Cook Sean Cook
(Signature)

Subscribed and sworn to before me this 14 day of October, 1992.

Robert H. Lawason
(Notary Public)

Residing at

My Commission Expires

Hagerman

March 28, 1994

MICROFILMED
FEB 09 1993
OCT 20 1994

INPUT: AJ_SELECTION:HHT-NOA-BROWN1.SEL

TYPE OF ACTION: ADD

MODIFY ALL FIELDS FLAG:

LAST NAME: BROWN

ADDRESS LINE 1: HEPWORTH NUNGESTER LEZAMIZ

ADDRESS LINE 3: PO BOX 389

CITY: TWIN FALLS

STATE: ID ZIP: 833030389

FIRST NAME: PATRICK D

ADDRESS LINE 2:133 SHOSHONE ST N

PHONE NUMBER: (208) 734-7510

36-00048C ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00055W ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00085A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00085B ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00089C ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00090E ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00103D ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-00198A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-04071 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-07369B ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-10671 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-15157 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-15176 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-15184 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
36-15461 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00048C ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00055W ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00085A ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-00085B ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
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A36-04071 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-07369B ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-10671 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-15157 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-15176 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-15184 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE
A36-15461 ATTORNEY NAME SUCCESSFULLY ADDED TO NAME FILE

MICROFILMED
OCT 20 1994

1 HEPWORTH, NUNGESTER & LEZAMIZ,
2 CHARTERED
3 133 Shoshone St. North
4 P.O. Box 389
5 Twin Falls, ID 83303-0389
6 Telephone: (208)734-7510
7 Attorneys for Claimant
8 (PPK\21530sup.noa\lmr)

RECEIVED

FEB 22 1993

Department of Water Resources
Adjudication Bureau

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

11 * * * * *

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

Case No. 39576

16 The State of Idaho, ex rel.)
17 R. Keith Higginson in his)
18 official capacity as director)
19 of the Idaho Department of)
20 Water Resources,)

HAGERMAN WATER RIGHT OWNERS,
INC. AND ITS INDIVIDUAL
MEMBERS' SUPPLEMENTAL
NOTICE OF APPEARANCE

Petitioner,

vs.

21 United States; State of Idaho;)
22 and all claimants to the use)
23 of water from the Snake River)
Basin Water System,)

Respondents.

* * * * *

COMES NOW the law firm of Hepworth, Nungester & Lezamiz
and supplements its Notice of Appearance to add on behalf of



Hepworth,
Nungester,
& Lezamiz

SUPPLEMENTAL NOTICE OF APPEARANCE - 1

MICROFILMED

- OCT 20 1994

Hagerman Water Right Owners, Inc. and its individual members, the following individuals:

Irma M. & Herman W. Petrick	A36-00048C
Creed & Saundra Robinson	A36-00090E
Creed & Saundra Robinson	A36-00089C
Stanley E. Hoskovec	A36-15461
Stanley E. Hoskovec	A36-10671
Stanley E. Hoskovec	A36-15157
Stanley E. Hoskovec	A36-00198A
Jack Martin	A36-00055W
K. Gary Olesen	A36-00103D
Layne Osborne	A36-15184
Layne Osborne	A36-15176
Marilyn Miller & Richard Waite	A36-00085A
Marilyn Miller & Richard Waite	A36-00085B
Marilyn Miller & Richard Waite	A36-07369B
Carl & Mary Lee Pothier	A36-04071

DATED This 19 day of February, 1993.

HEPWORTH, NUNGESTER & LEZAMIZ

By 
PATRICK D. BROWN
Attorneys for Respondents

CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the respondents in this matter, certifies that he caused to be mailed a copy of the above and foregoing SUPPLEMENTAL NOTICE OF APPEARANCE on the 19 day of February, 1993, to:



Hepworth,
Nungester,
& Lezamiz

SUPPLEMENTAL NOTICE OF APPEARANCE - 2

MICROFILMED
OCT 20 1994

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

5 Chief, Natural Resources Division (1)
6 Office of Attorney General
7 State of Idaho
8 P.O. Box 44449
9 Boise, Idaho 83711-4449

10 The United States Department of Justice (1)
11 Environment and Natural Resources Division
12 550 West Fort Street, Box 33
13 Boise, ID 83734

14 
15 _____
16 Patrick D. Brown



Hepworth,
Nungester,
& Lezamiz

SUPPLEMENTAL NOTICE OF APPEARANCE - 3

MICROFILMED
OCT 20 1994

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: DEC-19-1997

PAGE: A-1

 RIGHTS FROM: SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

RIGHT NUMBER: 36-15461

NAME AND ADDRESS: STANLEY E HOSKOVEC
 BARBARA HOSKOVEC
 2856 S 900 E
 HAGERMAN ID 83332

SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 0.4 CFS
 0.13 0.78

PRIORITY DATE: 03/23/1932

POINT OF DIVERSION: T07S R14E S30 SENESW Within GOODING County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	<u>Irrigation Season</u>	0.4 CFS
		03/13 11/13	0.13 0.78

PLACE OF USE: IRRIGATION Within GOODING County
 T07S R13E S26 SWNW 40 NWSW 36
 NWSW 33

76 ACRES TOTAL
~~73 ACRES TOTAL~~

USE OF THIS RIGHT WITH RIGHT NO. 36-15157 IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 76 ACRES IN A SINGLE
IRRIGATION SEASON.

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

*USE OF THIS RIGHT WITH RIGHT NO. 36-15157 IS LIMITED TO A
 TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 223 AF AND TO
 THE IRRIGATION OF A COMBINED TOTAL OF 73 ACRES IN A SINGLE
 IRRIGATION SEASON.*

*WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND
 NORTH PIPELINE.*

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE

WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND
NORTH PIPELINE.

RECEIVED

JAN 02 1998

Department of Water Resources
Southern Region

OCT 21 1997

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(s) 36-15157, 36-15461, 36-00198A

Case 39576

STANDARD FORM 5

This form is used to report the stipulated elements of a water right acquired under state law and/or a federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the element of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

Date: 10/21/97

Stanley E. Workman Charles L. Hoskins
IDWR Concurrence

Stanley E. Workman
Claimant

Stanley E. Workman
Objector

Barbara J. Hoskins
Claimant/Attorney

Barbara J. Hoskins
Objector/Attorney

Claimant/Attorney

Objector/Attorney

36-00198A recommended under 36-15157. 36-00198A is disallowed

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-16-1997

PAGE: A-1

RIGHTS FROM: SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

RIGHT NUMBER: 36-15157

NAME AND ADDRESS: STANLEY E HOSKOVEC
BARBARA HOSKOVEC
2856 S 900 E
HAGERMAN ID 83332

SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 1.2 CFS

THE QUANTITY FOR NON-IRRIGATION USE IS LIMITED TO THE AMOUNT BENEFICIARILY
USED FOR STOCKWATER, 200 DAIRY & BEEF

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

PRIORITY DATE: 03/08/1902

POINT OF DIVERSION: T07S R14E S30 SENESW Within GOODING County

PURPOSE AND

PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	<u>Irrigation Season</u> 03/19 11/19	1.2 CFS
	STOCKWATER	03-15 11-15	0.13 CFS
	STOCKWATER	11-16 03-14	0.23 CFS

PLACE OF USE: IRRIGATION Within GOODING County
T07S R13E S26 SWNW 40 NWSW 36

76 75 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO 36-15461 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 75 ACRES IN A SINGLE
IRRIGATION SEASON.

STOCKWATER Within GOODING County
T07S R13E S26 SWNW NWSW

STOCKWATER Within GOODING County
SAME AS OTHER USE

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR

RECOMMENDATION

OCT 21 1997

Alx. Heand
SPECIAL MASTER

C.2.H.
B.D.N.
S.E.N.
Scr

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-16-1997

PAGE: A-2

36-15157 (CONT.)

STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

USE OF THIS RIGHT WITH RIGHT NO 36/13461 IS LIMITED TO A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 223 AF AND TO THE IRRIGATION OF A COMBINED TOTAL OF 73 ACRES IN A SINGLE IRRIGATION SEASON.

0.10 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING NON-IRRIGATION SEASON.

WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND NORTH PIPELINE.

THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 36/00009 AND 36/00010.

EXPLANATORY MATERIAL:

BASIS OF CLAIM - DECREE

~~0.10 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT DURING NON-IRRIGATION SEASON.~~

~~WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND NORTH PIPELINE.~~

~~THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 36-00009 AND 36-00010.~~

200 DAIRY & BEEF

B.S.N

C-2.7
B.S.N
S.E.N
See

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: OCT-15-1997
PAGE: A-1

RIGHTS FROM: SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

RIGHT NUMBER: 36-15461

NAME AND ADDRESS: STANLEY E HOSKOVEC
BARBARA HOSKOVEC
2856 S 900 E
HAGERMAN ID 83332

SOURCE: WEATHERBY SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: .4 ~~0.3~~ CFS C.2.74

PRIORITY DATE: 03/23/1932

POINT OF DIVERSION: T07S R14E S30 SENESW Within GOODING County

PURPOSE AND

PERIOD OF USE: PURPOSE OF USE PERIOD OF USE
IRRIGATION Irrigation Season
03/13 11/13QUANTITY
0.3 CFS
.4C.2.74
B.D. 16PLACE OF USE: IRRIGATION Within GOODING County
T07S R13E S26 SWNW 40 NWSW 35.26

76.75 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 36-15157 IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 75 ACRES IN A SINGLE
IRRIGATION SEASON.

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

USE OF THIS RIGHT WITH RIGHT NO. 36-15157 IS LIMITED TO A
TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 225 AF AND TO
THE IRRIGATION OF A COMBINED TOTAL OF 75 ACRES IN A SINGLE
IRRIGATION SEASON.

WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND
NORTH PIPELINE.

EXPLANATORY MATERIAL: BASIS OF CLAIM ~~BENEFICIAL USE~~
~~WATER IS DELIVERED THROUGH THE BAR S DITCH, CURREN DITCH AND~~
~~NORTH PIPELINE.~~

No OK

RECOMMENDATION

OCT 21 1997

A.K. H. H. H.
SPECIAL MASTERC.2.74
B.D. 16
SEN

RECEIVED

JAN 02 1998

Department of Water Resources
Southern Region

OCT 21 1997

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

SUBCASE(S) 36-00198A, 36-15157
36-15461
SPECIAL MASTER'S REPORT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The Director of the State of Idaho Department of Water Resources examined the claim and his Report contained a recommendation of the elements of this water right.

- 36-15157
36-15461 >
- ☐ There were no objections to this claim; however, this claim is used in combination with another claim which is the subject of an objection.
 - ☒ All objections to this claim were resolved by stipulation of the parties at hearing or with a *Standard Form 5*. All parties to the subcase and IDWR have signed the *Standard Form 5*.
 - ☐ All objections to this claim were resolved at trial. The court made oral findings of fact and conclusions of law at the trial and they are incorporated herein reference.

Therefore, based on the file and record herein, IT IS RECOMMENDED that this claim be decreed with the elements as set forth in the attached *Special Master's Recommendation for Partial Decree*.

DATED: 10-21-97

Rx. Heenan
Special Master
Snake River Basin Adjudication

36-00198A recommended under 36-15157.
36-00198A is disallowed.

RECEIVED

JAN 02 1998

Department of Water Resources
Southern Region

OCT 21 1997

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

SUBCASE(S): 36-00198A, 36-15157, 36-1546,

NOTICE OF ISSUANCE and SERVICE

Special Master FRITZ X. HAEMMERLE issued a **SPECIAL MASTER'S REPORT AND RECOMMENDATION** for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 9.

The documents were served only on parties to the subcase and IDWR. They were not served on the Presiding Judge. Parties to this subcase may file a *Motion to Alter or Amend* with the Special Master, but must do so within 14 days of the date of the **SPECIAL MASTER'S REPORT AND RECOMMENDATION**.

I certify that a true and correct copy of the **SPECIAL MASTER'S REPORT AND RECOMMENDATION** were hand delivered to the following:

Representative of IDWR:

Charles Housinger

Stanley + Barbara Hoskovec
Claimant/Attorney

Claimant/Attorney

Representative of U.S. Dept. of Justice

Party/Attorney

Party/Attorney

DATED 10-21-97

Debbie Lash
Deputy Clerk

CLAIM NUMBERS 36-00198A 36-15157 DATE 10/7/97
36-15461 AGENT [Signature]

TRANSFER NUMBER _____

OBJECTION FILED ☒

TOTAL ACRES FROM RECOMMENDATION 75

GEOGRAPHIC INFO SYSTEM 76

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM	07S	13E	26							40				35					75
GIS										39.9				36.1					76
RECOM																			
GIS																			
RECOM																			
GIS																			
RECOM																			
GIS																			

UPDATED

POLYGON #

UPDATED

B36-DBPOU.DBF 540 ✓

POLYGON CREATED ON 604 ()

ATTRIBUTES OF B36-POU.SHP 540

B36-DBPOD.DBF 463 ✓

ATTRIBUTES OF B36-POD.SHP 463 SENE SW-3

Weatherby Springs

* 36-15461 same POD, just more water

* 36-00198A - disallowed & rec'd. as 36-15157

P/U CONFLICT yes () no (✓)

P/D CONFLICT yes () no (✓)

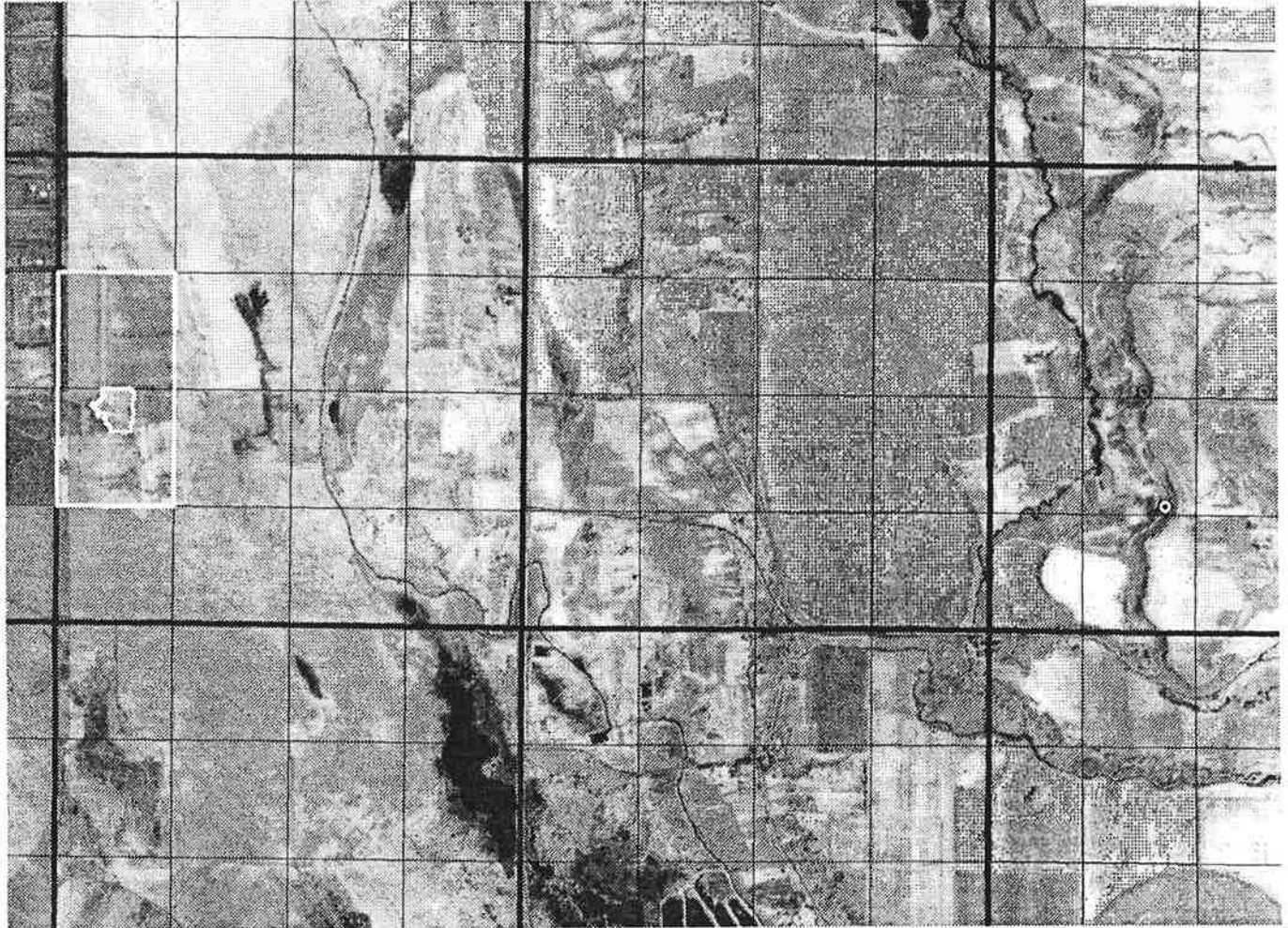
READY FOR DECREE yes (✓) no ()

SENT FOR DECREE yes (✓) no ()

10/24/97 sur Settled in SRBA court for 76 Acres.

IDAHO DEPARTMENT OF WATER RESOURCES

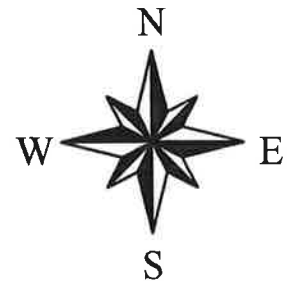
36-15157 & 36-15461
STANLEY & BARBARA HOSKOVEC



660 0 660 1320 Feet



TNS 7S, RNG 13E, SEC 26



⊙ RECOMMENDED POINT OF DIVERSION

RECOMMENDED PLACE OF USE



SECTION LINES



QUARTER/QUARTER LINES

GIS PLACE OF USE PRESENTATION
1987 and/or 1988 NAPP PHOTOGRAPHY
DATA ENTRY OCTOBER 1997
BY JEANIE ROBERTSON

SUBCASE NO. 36-15461

	CLAIM (10/14/92)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Stanley & Barbara Hoskovec	N/A	Stanley & Barbara Hoskovec	Stanley & Barbara Hoskovec
BASIS OF CLAIM	Beneficial Use		Beneficial Use	
SOURCE	Weatherby Springs		Weatherby Springs	
QUANTITY	0.40 cfs		0.30 cfs	XX - requests maximum quantity as "decreed and/or beneficially used"
PRIORITY DATE	4/4/1910		3/23/1932	XX - requests as claimed.
PURPOSE OF USE	Irrigation		Irrigation	XX - requests stockwater be included.
PERIOD OF USE	1/1 - 12/31		3/15 - 11/15	XX -requests year round for both uses.
POINT OF DIVERSION	T07S R14E S30		T07S R14E S30	
PLACE OF USE	T07S R13E S26 80.0 acres		T07S R13E S26 75.0 acres	XX - requests 78 acres

remarks	"This claim is based on beneficial use but the use is also described in 36-00198. This claim is being filed in the event that A36-00198A is disallowed by the court decree. This water use has been used uninterrupted since the 1911 decree (see attached affidavits). We do not believe the decreed right was superseded by the 1932 decree because the 20 inches identified in 36-00198A is not mentioned in the 1932 Decree and is a separate parcel of land from that described in 36-00009 and 36-00010. There were 2 parcels of 60 acres and 20 acres respectively."		"Use of this right with right no. 36-15157 is limited to a total combined annual consumptive use volume of 225 af and to the irrigation of a combined total of 75 acres in a single irrigation season. Water is delivered through the Bar S Ditch, Curren Ditch and North Pipeline."	XX - requests that all remarks, except for last sentence be deleted.

R PROOF

CVR

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MICROFILMED

OCT 20 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. 36-15461 -0001

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

RESPONSE TO OBJECTION

Petitioner,)

vs.)

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

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

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OCT 20 1994

2. Person who filed objection:

Name: STANLEY E & BARBARA HOSKOVEC
Address: 2856 SOUTH 900 EAST
HAGERMAN ID 83332

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

3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
4. ☒ Priority Date: I respond to the objection concerning the priority date.
7. ☒ Purposes of Use: I respond to the objection concerning the purpose(s) of use.
8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I respond to the objection concerning:
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.

14. |X| Other: I respond to the objection concerning:

ALL MATTERS RAISED IN THE CLAIMANTS' ANSWER
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 3 and 3.a, and all allegations of the objection regarding those items, IDWR responds as follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402); (3) the recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (4) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

In response to Statement of the Objection item 4, and all allegations of the objection regarding that item, IDWR responds as follows: This right was claimed based on beneficial use with a priority date prior to the 1932 New International Mortgage Company v. Idaho Power Decree. IDWR recommended a priority as of the day after the decree was issued based on the following: (1) Because the claimed place of use was decreed rights in the 1932 decree, the claimant's predecessor in interest was a party to the decree, the claimant is bound by the decree, and is precluded from asserting rights prior to the decree that should have been claimed in the previous adjudication; and (2) Information available to IDWR indicated that the claimed right is not part of any of the rights listed in the decree. IDWR further responds that, to the extent the claimant now asserts that the claimed right is decreed, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a director's report is filed, just as a party must obtain leave of the court to file a late claim after the director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

In response to Statement of the Objection item 7, and all allegations of the objection regarding that item, IDWR responds that it recommended the same purpose or purposes of use that were

(Over)

identified on the notice of claim and that were found when the claim was investigated. By identifying in the objection an additional use or uses that the claimant did not list on the notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a director's report is filed, just as a party must obtain leave of the court to file a late claim after the director's report is filed. Once leave of the court is granted, IDWR can investigate the amended claim and make an appropriate recommendation to the court.

In response to Statement of the Objection item 8, and all allegations of the objection regarding this item, IDWR responds as follows: Idaho Code Sec. 42-1411(2)(g) requires the director to determine the period of use of each water right acquired under state law that is recommended in the director's report. IDWR's irrigation season of use standards have evolved over time as better technical information has become available. A necessary consequence of this is that, depending on when a particular license was issued, water rights in the same area have been licensed inconsistently, some licenses being issued with different lengths of season listed and some being issued with no season of use listed. To remedy this problem IDWR has developed irrigation season of use standards for various climatic areas throughout the state based on a 75% chance of a 24 degree Fahrenheit frost. The period of the year during which this water right may be used is consistent with the standard irrigation season of use for the area in which the place of use of this water right is located. The director's report does not prohibit pre-season or post-season irrigation; subject to the conditions set forth in general provision 12b of the director's report, water may be used for irrigation outside the standard season of use.

In response to Statement of the Objection 9 and all allegations of the objection regarding those items, IDWR responds that the recommended water right accurately describes the total number of acres within each 40 acre subdivision upon which IDWR found water was beneficially used for irrigation under this water right.

In response to Statement of the Objection item 10 and all allegations of the objection regarding that item, IDWR responds as follows: (1) Idaho Code Sec. 42-1411(2)(i) requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. (2) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho

Code"; therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings. (3) The annual volume of consumptive use recommended for this right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (4) The recommendation of the director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right. (5) The eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

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

In response to Statement of the Objection item 14, and all allegations of the objection regarding that item, see attached "IDWR's Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," IDWR responds as follows: Insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of the court to file a late claim after the director's report is filed.

(Over)

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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. A36-15461	8
IDWR's Response to Answer, Affirmative Defenses, and Prayer for Relief of Claimant	4

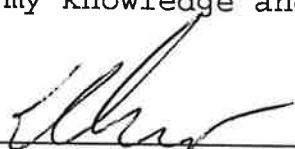
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

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



Signature of person filing response

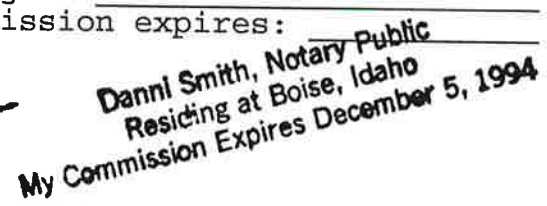
By: 

(Attorney signing in
representative capacity)

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



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



(Over)

CERTIFICATE OF MAILING

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

1. Original to:

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

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

See No. 3

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

Name: HEPWORTH NUNGESTER & LEZAMIZ
Address: PATRICK D BROWN
& PENELOPE PARKER
PO BOX 389
TWIN FALLS ID 83303

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734



Signature of Respondent or attorney
mailing on Respondent's behalf

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-15461

Date Received: 8/31/1988 10/14/92

Receipt No: 5015077

Received By: HLT

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: STANLEY E HOSKOVEC 208-837-4956
Address: 2856 S 900 E
HAGERMAN ID 83332

AND/OR

Name: BARBARA HOSKOVEC 208-837-4956
Address: 2856 S 900 E
HAGERMAN ID 83332

2. Date of Priority: APR 4, 1910

3. Source: WEATHERBY SPRINGS Trib. to: BILLINGSLEY CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
07S	14E	30	NE	SW			GOODING

5. Description of diverting works:
25HP PUMP, SPRINKLERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	01/01	12/31	0.400		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
07S	13E	26	SW	NW		IRR	40.0

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A36-15461

Page 1

Date: 06/14/92

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07S	13E	26	NW SW		IRR	40.0
Section Acres						80.0
Total Acres						80.0

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
A36-15157

14. Remarks:

THIS CLAIM IS BASED ON BENEFICIAL USE BUT THE USE IS ALSO DESCRIBED IN 36-00198. THIS CLAIM IS BEING FILED IN THE EVENT THAT A36-00198A IS DISALLOWED BY THE COURT DECREE. THIS WATER USE HAS BEEN USED UNINTERRUPTED SINCE THE 1911 DECREE (SEE ATTACHED AFFIDAVITS). WE DO NOT BELIEVE THE DECREED RIGHT WAS SUPERCEDED BY THE 1932 DECREE BECAUSE THE 20 INCHES IDENTIFIED IN 36-00198A IS NOT MENTIONED IN THE 1932 DECREE AND IS A SEPARATE PARCEL OF LAND FROM THAT DESCRIBED IN 36-00009 AND 36-00010. THERE WERE 2 PARCELS OF 60 ACRES AND 20 ACRES RESPECTIVELY.

15. Basis of Claim: BENEFICIAL USE

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: 2 affidavits
3 maps.

For Individuals:

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

Signature of Claimant(s): X Stanley E. Workman Date: 10/14/92
Barbara J. Workman Date: 10/14/92

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FEB 09 1994

State of Idaho

County of Twin Falls)
) SS.

Subscribed and sworn (or affirmed) before me this 14th day
of October 19 92

Gordon S. Givens
Notary Public

Seal

Residing at Twin Falls

My Commission Expires 7/18/95



1969
B+W
98% FM.

8.9
C149
(6620)

K
16.9
C148
(6610)

J
15.6

C160
(6298)

C325
(5420)

POOR ORIGINAL

MICROFILMED

OCT 20 1974

OCT 9 1993

27 26
34 35

01/17

B/w

100% Irr

POOR ORIGINAL

6N

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OCT 20 1994



AFFIDAVIT

County of

deposes and says: I have seen Water master
of water district 63 — 36.A

since 1956. I have been called on to measure the water to the Stanley Hoskovec place numerous times. I have always delivered 80 minors inches to that property.

(Signature)

Subscribed and sworn to before me this 14th day of October, 1992

(Notary Public)

Residing at

My Commission Expires

MICROFILMED
FEB 09 1993
MICROFILMED
OCT 20 1994

AFFIDAVIT

County of

deposes and says:

deposes and says: This land has been
irrigated on Pan & Barbados
Mashoes ever since Cay & Jean
Cook were remembered Cay has been
all his life - since 1811 & he re-
members the water districts &
ditches well - & how water always
on the place & it has been irrigated

Very Cook Sean Cook
(Signature)

Subscribed and sworn to before me this 1st day of October, 1992.

Robert H. Lawason
(Notary Public)

Residing at

My Commission Expires

Надпись

March 28, 1994

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FEB 09 1993
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IDWR'S RESPONSE TO ANSWER, AFFIRMATIVE DEFENSES AND PRAYER FOR
RELIEF OF CLAIMANT

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

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

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OCT 20 1994

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

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

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

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

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

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

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

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

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

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 22 1993

Department of Water Resources
Southern Region Office

POOR ORIGINAL

Receipt No: 8015688

Date: 4/22/1993
Time: 10:28:53

Received

From: HEPPORTH NUNGESTER CHART..

Type of Payment	Program Acct Class	Amount
COPIES OF ADJUDICATION FILES	64100 229 21 1/80	47.60

Total

CHECK

10382

\$47.60

Region: SOUTHERN

Signature:

R. Foster

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OCT 20 1994

HEPWORTH, NUNGESTER AND LEZAMIZ, CHARTERED

10362

DATE	DESCRIPTION	INVOICE #	CHECK AMOUNT	DEDUCTION	NET AMOUNT
04/13/93	Department of Water Resources Hagerman/921530 - CPY		47.60		47.60

RECEIVED

APR 23 1993

Department of Water Resources
Southern Region Office

CHECK DATE 04/20/93	CONTROL NUMBER 10362	TOTALS ► GROSS:	47.60	DED:	0.00	NET:	47.60
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OCT 20 1994



Department of Water Resources
222 Shoshone Street E.
Twin Falls, ID 83301

Date April 20, 1993

Name HEPWORTH NUNGESTER & LEZAMIZ
133 SHOSHONE N
Address TWIN FALLS ID 83301

No. of Copies	Material	Cost
120	copies of RED FILE Documents as requested by Hagerman Water Right Owners @ .05 ea.	\$ 6.00
TOTAL		\$ 6.00

Please find enclosed the form(s) and/or information you requested. The charge, if any, is indicated above.

If we may be of further assistance, please contact us.

Sincerely,

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OCT 20 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

20-Apr-1993

HEPWORTH NUNGESTER & LEZAMIZ
133 SHOSHONE N
TWIN FALLS ID 83301
ATTN: CHRIS HERNANDEZ

Dear Chris:

Enclosed please find the copies of the contents from the RED FILES in the adjudication folders, as requested by the Hagerman Water Right Owners. If I can be of any further assistance, please give me a call at the office.

Sincerely,


Jeanie Robertson
Records Clerk

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OCT 20 1994



Department of Water Resources
222 Shoshone Street E.
Twin Falls, ID 83301

Date April 13, 1993

Name HEPWORTH NUNGESTER & LEZAMIZ
133 Shoshone N
Address Twin Falls ID 83301

No. of Copies	Material	Cost
952	copies of adjudication files @ .05 ea.	\$ 47.60
TOTAL		\$ 47.60

Please find enclosed the form(s) and/or information you requested. The charge, if any, is indicated above.

If we may be of further assistance, please contact us.

Sincerely,

Janie Robertson

A36-02008 - 50
A36-02009 - 45
A36-00125A - 35
A36-10405 - 17
A36-10055 - 36
A36-10308 - 27
A36-10309 - 26
A36-10310 - 26
(A36-00029B) - 14
A36-00011A - 59
A36-00051C - 43
(A36-00051E) - 47
A36-00039F - 39
A36-15461 - 17
A36-00121 - 53
A36-00119 - 58
A36-00120 - 57
A36-001030 - 64
A36-00198A - 45
A36-15157 - 48
A36-15176 - 64
A36-15184 - 82

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952
x .05
\$47.60

DIRECTOR'S REPORT CONVERSATION MEMO

1. PERSON(S) MAKING THE ENQUIRY:

Include address and phone no.

in case follow-up is needed.

Penny Parker Attorney for HN&L
H2sevin water Right Owners, Inc.

2. SUBJECT OF INQUIRY:

Looked at files. Started to Ask
specific questions about maps, photos, notation
in file.

3. RESPONSE TO INQUIRY:

I told her I could not answer
specific questions but she could write them down
and submit them to our attorney. I told her
she was free to go thru the files and I
showed her the NAPP photos, ortho photo grids,
slides of Gooding Co. and the Country Rural
Address maps.

4. IDWR STAFF AND DATE:

Print name and initial

WATER RIGHT CLAIM (Nos.):

Allen Merritt 4/6/93
Allen Merritt AM
36-00003A

- 00041C
- 00042A
- 15461

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SD-0602-2 Last Name: HOSKOV

S Basin Number: 36

E First Name Role Code Objection Number Issue Number Next Event Next Event Date

L

HOSKOVEC
STANLEY & BA OC 36-00198A-001-WEATHERBY SPRINGS RSPI 09/01/1993
STANLEY E & OC 36-15157-001- " " RSPI 09/01/1993
STANLEY E & OC 36-15461-001- " " RSPI 09/01/1993

Record changes. (As I record)

28565 900 E

HAGERMAN ID 83332

(Enter=Continue)

(GOLD7=This Query)

(Menu _____)

97-93

A " " records
changed.

SAL -

PLZ Δ ADDRESS
ON "A" # " " RECORDS -

COMMENTS -

#PER OBJECTION.

THANK

RECEIVED

SEP 09 1993

Department of
Superiority

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RECEIVED
APR 30 1993
Department of Water Resources
Adjudication Bureau

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

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

Case No. A36-15461
(You must insert the
water right number you
are objecting to)

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

OBJECTION

Petitioner,

36-15461 -0001/
93-04-0496

vs.

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

Respondents.

INSTRUCTIONS

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

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

(Over)

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Stanley E. & Barbara Hoskovec

Address: 2856 South 900 East

Hagerman, Idaho 83332

Briefly describe your interest in this water right:

Decreed right pursuant to 1911 decision in

Jones & Lemmon v. Cook, et al., Decreed right

pursuant to New International Mortgage Bank v.

Idaho Power Company dated 3/22/1932 with a

priority date of 4/04/1910.

2. Owner of the water right:

Name: Stanley E. & Barbara Hoskovec

Address: 2856 South 900 East

Hagerman, Idaho 83332

3. If this objection is filed by an attorney:

Attorney Name: Hepworth, Nungester & Lezamiz

Attorney Address: P. Parker & Patrick D. Brown

P.O. Box 389, Twin Falls, ID 83303

Attorney Phone No.: (208)734-7510; Fax: (208)734-4115

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☐ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☐ Source: I object to the source of water.
3. ☒ Quantity: I object to:
 - a. ☒ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☒ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☒ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☒ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I object to:
 - a. ☐ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☒ Consumptive Use: I object to the annual volume of consumptive use.
11. ☒ Remarks: I object to the "remarks" listed with the water right.

(Over)

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

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

See page 7.

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.

Maximum quantity as decreed and/or beneficially used with

consumptive use changed accordingly; priority date 4/04/1910;

Purpose of use: stockwater and irrigation; period of use: 1/01

to 12/31; Place of use: 78 acres; remarks should be stricken

except for last sentence (water delivered through . . .).

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



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

Right Owners, Inc.'s compendium "A".

VERIFICATION (Must be Completed)

State of Idaho

County of Gooding

Stanley E. & Barbara J. Horkovec, being first duly
(Name of person filing objection)

sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. Sec 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

Stanley E. Horkovec
Signature of person filing objection

By: [Signature]

(Attorney signing in
representative capacity)

1993.

Subscribed and sworn to before me this 20th day of April,

[Signature]
Notary Public for Idaho

Residing at: Hagerman, Idaho

My Commission Expires: 5-10-97

(Over)

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INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

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

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

Owner name: Stanley E. & Barbara Hoskovec

Owner's address: 2856 South 900 East

Hagerman, Idaho 83332

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

Box 3, 3a and 10 -- IDWR recommends an amount less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

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

Box 7 -- Beneficially used for purposes set forth in notice of claim.

Box 8 -- IDWR recommends a period of use less than decreed and/or beneficially used. A reduction in water right would constitute a taking.

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

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

CHANGES TO DIRECTOR'S REPORT, page 4

Objectors reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial.

Question 14., page 4, Other

I.

GENERAL RESPONSE

Except as specifically admitted herein, objectors deny each and every allegation contained in the Director's Report, any related or subsidiary pleadings, and/or any attachments thereto.

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

The objectors admit that Part I of the Director's recommendation contains some claims to water rights appropriated under state law from Reporting Area 3. The objectors deny all other averments because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the averments.

III.

TABLE OF CONTENTS

(DRP-I at 2nd and 3rd unnumbered pages)

The objectors admit that the Table of Contents reflects the page numbers of the referenced sections and deny all other averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment, expressed or implied, is so

indefinite that it prevents the objectors from knowing what would be admitted or denied.

IV.

INTRODUCTION

1. INSTRUCTIONS FOR USING THIS REPORT PART I. (DRP-I at page 1)

The objectors admit that Part I consists of seven sections; that the description of the water system includes a brief description of Reporting Area 3 and an illustration of the boundaries of the reporting area; that the water rights and the list of the recommended rights are grouped alphabetically by source and listed chronologically by priority date; that the rights or claims in the list of claims/rights not recommended are listed numerically by water right number; and that brief instructions are found at the beginning of the applicable sections. The objectors deny that any description or any implication that the description of the water system or the illustrations are true and accurate due to lack of knowledge or information regarding the truth of the averment; deny that the general provisions apply to all water rights or define or limit classes of water rights; and deny that the general provisions "will affect your water right," based upon insufficient knowledge or information upon which to form a belief as to the truth of the averments.

2. SCOPE OF THE ADJUDICATION. (DRP-I at page 1 - 3)

The objectors deny all averments in paragraph a., due to lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments.

Regarding paragraph b., the objectors lack sufficient information or knowledge upon which to form a belief as to whether water rights which are not claimed in the adjudication will or will not exist upon entry of the court's decree and, therefore, deny such averment. The objectors admit that the court entered an order dated January 17, 1989, but presently lack sufficient knowledge to know whether any of the other averments concerning the court's order are true or accurate and, therefore, deny the same. The objectors deny that a right must be adjudicated before water may be distributed by the director. The objectors deny all other averments in paragraph b.

3. PURPOSE OF THIS REPORT PART I. (DRP-I at page 3 - 4)

The objectors admit that portion of the first sentence which states "This report contains the Director's recommendations to the SRBA District Court as to the nature and extent of water rights," but deny that such recommendations "are necessary for administration of water rights in Reporting Area 3," and further deny the Director has authority to "administer" such rights.

Regarding the second paragraph, the objectors admit that all water rights remain subject to the applicable law generally, but deny the remainder of the second paragraph.

Regarding the third paragraph of this section, the objectors deny all averments therein based upon lack of knowledge or information upon which to form a belief as to the truthfulness of the averments.

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

1. BOUNDARIES OF BASIN. (DRP-I at pages 4 - 6)

Regarding the first paragraph of this section, the objectors deny all averments due to a lack of knowledge or information upon which to admit or deny.

Regarding the second, third and fourth paragraphs of this section, the objectors admit that as broad statements, those paragraphs are generally accurate but the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to know what would be implicitly admitted or denied and therefore, deny the same.

With respect to the fifth paragraph of this section, the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the averments.

2. WATER SOURCES. (DRP-I at page 6)

The objectors admit that the Snake River Plain Aquifer is the source of outflows of springs located along the Snake River Canyon Wall in the Hagerman Valley. The objectors presently lack sufficient knowledge or information upon which to form an opinion as to the truth of the other averments set out in this section and, therefore, deny the same.

3. DEVELOPMENT OF WATER USE. (DRP-I at pages 6 - 9)

The objectors admit that numerous factual and historical averments are set out in this section, which may be accurate, but

these objectors have no basis for knowing whether some or all of the averments are intended to relate to the objectors' claims and, thus, are prevented from knowing what would be admitted or denied. Therefore, the averments are denied.

VI.

GENERAL PROVISIONS

GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.

(DRP-I at page 9)

The objectors deny that "General Provisions 1 - 8" apply to all water rights in Basin 36 as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to know what would be explicitly admitted or denied. The objectors also specifically deny that general provisions 1-8 apply to the objectors' right.

1. EFFECT OF ADJUDICATION. (DRP-I at page 9)

With respect to paragraph a., the objectors presently have no knowledge or information upon which to form a belief as to the truth of whether a future decree would supersede prior decrees, or whether unclaimed rights would cease to exist and, therefore, deny the same.

Regarding paragraph b., the objectors deny that the Director has any powers to administer water rights other than those specifically delegated by the Legislature of the State of Idaho, and which do not violate the objectors' state and federal constitutional rights, and therefore the averments are denied.

2. GENERAL ADMINISTRATIVE PROVISIONS. (DRP-I at pages 9 - 10)

The objectors admit paragraphs a. and b.

3. CONJUNCTIVE ADMINISTRATION (DRP-I at page 10)

The objectors deny the conjunctive administration provisions based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment expressed or implied is so indefinite that it prevents the objectors from fairly understanding what would be admitted or denied. Additionally, the objectors deny that the Department of Water Resources has any statutory or regulatory authority for the "conjunctive administration" as therein described.

4. ADMINISTRATION OF GROUND WATER RIGHTS (DRP-I at page 10)

The objectors deny the averments within this section.

5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (DRP-I at page 10)

The objectors admit that the springs are hydrologically interconnected with the Snake River Aquifer, but deny all other averments based upon the objectors' lack of sufficient information or knowledge upon which to form a belief as to the averments herein. The objectors additionally deny any said averments expressed or implied because the averments are so indefinite and generalized as to prevent the objectors from fairly understanding what would be admitted or denied.

6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (DRP-I at page 11)

The objectors admit that part of the first sentence of subparagraph a. to the effect that "small domestic and stock water rights from surface water are not subject to administration," but deny the balance of said sentence and said paragraph.

The objectors admit the first sentence of paragraph b., and deny the balance of that paragraph because the criteria set forth therein ("if the director determines that administration is necessary") is so ambiguous, indefinite and uncertain that it prevents the objectors from knowing what would be admitted or denied, and by further reason of the fact that no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department.

The objectors deny the averments in paragraph c. as the averments are inaccurate and because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the matters averred.

7. MEASURING DEVICES AND CONTROL WORKS (DRP-I at page 11)

The objectors deny all averments contained herein as such averments are based upon an indeterminate subjective standards which are so ambiguous and indefinite as to prevent the objectors from fairly knowing what would be admitted or denied. Additionally, no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department as is alleged in this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

AFFIRMATIVE DEFENSE NO. 4

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

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

AFFIRMATIVE DEFENSE NO. 8

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

AFFIRMATIVE DEFENSE NO. 9

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

AFFIRMATIVE DEFENSE NO. 10

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

AFFIRMATIVE DEFENSE NO. 11

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

AFFIRMATIVE DEFENSE NO. 12

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

AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

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

AFFIRMATIVE DEFENSE NO. 19

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

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

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

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

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

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

(WATER\21530ANS)

R PROOF

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MAPS

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PHOTOS

MISC

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FEB 09 1988

Audit: 10/22/92 THORNTON

MICROFILMED
FEB 09 1993

verified
10-22-92
HHS

CLAIM REVIEW

MEMO TO FILE

FROM: Helen Harrington-Thornton

RE: A36-15157, A36-15461

DATE: 10-21-92

Mr. and Mrs. Hoskovec filed a new claim on 10/14/92 based on beneficial use to describe the additional water required for the lands described on 36-15157. They filed this claim in order to claim a right for the water which they contend has always been used on this land, but which we disallowed a portion of claimed under A36-00198. We disallowed that claimed based on the right having been superceded by the 1932 decree. Hoskovecs filed the beneficial use claim in order to cover their bases if the disallowed recommendation is upheld by the court.

I have recommended A36-15461 for the same acres described in A36-15157, for .30 cfs to a combined diversion rate of 1.5 cfs for 75 acres of irrigation. I recommended a priority date of 3/23/1932, the day after the 1932 New Mortgage decree was issued. See A36-15461 for field examination notes.

I changed R36-15157 to add a combined use remark for consumptive use.

MICROFILMED
FEB 09 1993

A36-15461

(see also file
for A36-15157)

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