

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: **A37-00252**

Date Received: 12/ 6/1988

Receipt No: C003752

Received By: ownership change *jk*

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

1. Name: AUBREY SPRING RANCH L L C 208-765-1414
Address: PO BOX 6600
COEUR D'ALENE ID 83816-1933

2. Date of Priority: JUN 1, 1887

3. Source: LOVING CREEK Trib. to: SILVER CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
01S	19E	14	NW	NE	NE		BLAINE

5. Description of diverting works:
HEADGATE TO BILL NO. 9 DITCH (OLD WORTHINGTON DITCH)

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.500		

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

8. Total consumptive use is 272.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01S	19E	13	NE	SW		IRR	9.0
			NW	SW		IRR	34.0
			SW	SW		IRR	36.0
			SE	SW		IRR	30.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	109.0
					Total Acres	109.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
37-02553, 37-02575

14. Remarks:
TRANSFERS 3198/3199.

***** MEMO TO FILE *****
DATA BASE SHOWS AUBREY SPRING AS SOURCE.

CLF 12-8-88

OWNERSHIP CHANGE FROM MC MAHAN TO AUBREY SPRING RANCH 3/24/97. jr

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

S. C. FROST, ET. AL.
Decree Plaintiff

ALTURAS WATER COMPANY, ET. AL
vs Decree 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: _____

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

NOV 1 1996

NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are on the back of this page.

Incomplete forms will be returned.

1. Water Right Number(s) _____
 Adjudication Claim Number(s) A37-02686D; A37-07598D; A37-00252; A37-00712; A37-02553A; A37-02575

2. The following **REQUIRED** information must be submitted with this form.
 - A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal document indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.
 - AND
 - B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)
 - OR
 - C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) William A. McMahan
P. O. Box 3125
Ketchum, ID 83340

4. New Owner/Claimant(s) Aubrey Spring Ranch L.L.C.
 Name connector (Check one): ☐ AND, ☐ OR, ☐ AND/OR
 New Mailing Address P. O. Box 6600

 City, State and ZIP Code Coeur D'Alene, ID 83816-1933
 New Telephone Number (208) 765 - 1414

5. Date you acquired the property October 16, 1996

6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.
 Number of acres actually irrigated _____ Number and type of stock _____
 Diversion rate in CFS _____ Number of homes _____ Other uses _____
cubic feet per second
 If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner/Claimant(s) WT Richards Date 11-4-96
 _____ Date _____

8. (Corporations or other organizations must submit a list of directors/officers demonstrating authority to sign form.)
 For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.

BCT 96007804

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

STATE OF IDAHO } 395617
COUNTY OF BLAINE }
I HEREBY CERTIFY THAT THE INSTRUMENT WITNESSED BY ME OR MY
OFFICE AT THE BLAINE COUNTY TITLE
AT 1156 PM
10-17-96
EX OFFICIO RECORDER
BY [Signature] DEPUTY [Signature]
FEES \$ 15.00

(Space above line for Recorder's use)

WARRANTY DEED

FOR VALUE RECEIVED, WILLIAM A. MCMAHAN, TRUSTEE OF THE WILLIAM A. MCMAHAN TRUST, DATED NOVEMBER 25, 1986, AS AMENDED AND RESTATED JUNE 14, 1995, whose address is P.O. Box 3125, Ketchum, ID 83340 ("Grantor"), hereby grants, bargains, sells and conveys unto AUBREY SPRING RANCH, L.L.C., an Idaho limited liability company, whose address is P. O. Box 6600, Couer D'Alene, ID 83816-1933 ("Grantee"), that certain real property situated in Blaine County, Idaho and particularly described as follows (the "Property"):

See Exhibit A attached hereto and made a part hereof by this reference.

TOGETHER WITH all water rights appurtenant to the above-described real property, specifically including, but not limited to, the following rights:

LICENSED RIGHTS

SRBA CLAIM NO.	PRIORITY	PURPOSE
A37-02686D	12/11/1962	Irrigation
A37-07598D	07/08/1977	Irrigation
A37-02553A	06/28/1954	Irrigation
A37-02575	07/13/1955	Irrigation

DECREED RIGHTS

SRBA CLAIM NO.	PRIORITY	PURPOSE
A37-00252	06/01/1887	Irrigation
A37-00712	06/01/1887	Irrigation

P:\WPDATA\JAN\MCH\RAH\WARRANTYDEED001

-1-

BCT 96

RECEIVED

NOV 1 1996

Department of Water Resources

SUBJECT TO the following:

1. Liens for taxes and assessments not yet due and payable;
2. Reservations and exceptions in any patents from the United States or any patent or deed from the State of Idaho;
3. Building and zoning ordinances and regulations;
4. Covenants, conditions, rights-of-way, easements and restrictions of record if any as disclosed by the records of Blaine County, Idaho;
5. The determination in those judicial proceedings known as In Re the General Adjudication of Rights to the Use of Water From the Snake River Basin Water System, Twin Falls District Court Case No. 39576 (the "SRBA") of each and every element of any water right appurtenant to the Property, for Grantor does not make any representation or warranty whatsoever as to any element other than fee simple title to such water rights.

TO HAVE AND TO HOLD, the said Property, with its appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said Property, that said Property is free from all encumbrances except as above-described, and that the Grantor will warrant and defend the same from all lawful claims whatsoever. However, notwithstanding the description of the water rights set forth above, Grantor does not make any representation or warranty as to the amount, volume or any other element of such water rights.

IN WITNESS WHEREOF, Grantor has executed this Warranty Deed as of the date set forth below.

"GRANTOR"

Date: 12/14/96


WILLIAM A. MCMAHAN, TRUSTEE OF THE
WILLIAM A. MCMAHAN TRUST, DATED
NOVEMBER 25, 1986, AS AMENDED AND
RESTATED JUNE 14, 1995

STATE OF IDAHO)

County of Blaine)

ss.

On this 16th day of October, 1996, before me, the undersigned notary public in and for said state, personally appeared WILLIAM A. MCMAHAN, TRUSTEE OF THE WILLIAM A. MCMAHAN TRUST, DATED NOVEMBER 25, 1986, AS AMENDED AND RESTATED JUNE 14, 1995, known or identified to me to be the person whose name is subscribed to said instrument as trustee of said trust and acknowledged to me that he executed the same as trustee of said trust.

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



Sheila Kiermaier
Notary Public for Idaho
Residing at: Blaine, Bonanza, Idaho
Commission expires: Aug 1997, 1998

LEGAL DESCRIPTION

Order Number: 96007804

A parcel of land located within Sections 13 and 14, Township 1 South, Range 19 East, Boise Meridian, Blaine County, Idaho, more particularly described as follows:

COMMENCING at a brass cap marking the Northeast corner of said Section 14, which point is North 89° 31' 00" East 2640.89 feet from the North 1/4 corner of said Section 13;

THENCE South 89° 06' 49" West 1014.43 feet along the North boundary of said Section 14 to a 5/8" rebar on the Southwest boundary of the U.P.R.R. right-of-way, which point is the REAL POINT OF BEGINNING.

THENCE continuing South 89° 06' 49" West 298.37 feet along said North Boundary of Section 14 to an aluminum cap marking the Northwest corner of the E1/2NE1/4, Section 14;

THENCE South 0° 13' 42" East 5239.68 feet along the West Boundary of said E1/2NE1/4, Section 14 and also the West boundary of the E1/2SE1/4, section 14 to a 5/8" rebar on the North Boundary of Highway No. 20;

THENCE North 89° 56' 22" East 2641.92 feet along the North Boundary of said Highway No. 20 to a 5/8" rebar at the intersection of said Highway No. 20 and the East Boundary of the SW1/4SW1/4, said Section 13;

THENCE North 0° 19' 28" East 1248.96 feet along said East Boundary of the SW1/4SW1/4, Section 13, to an aluminum cap at the Northeast Corner of said SW1/4SW1/4;

THENCE South 89° 42' 28" East 898.34 feet along the South Boundary of the NE1/4SW1/4, Section 13, to a 5/8" rebar at the Southwest Boundary of said U.P.R.R. right-of-way;

THENCE North 39° 09' 48" West 5155.23 feet along said Southwest Boundary of the U.P.R.R. right-of-way to the POINT OF BEGINNING.

AND

A parcel of land located within the SW1/4 SW1/4, Section 13, Township 1 South, Range 19 East, Boise Meridian, Blaine County, Idaho more particularly described as follows:

Commencing at a 5/8 inch rebar by L.S. 792 marking the SW1/16 corner, also the northwest corner of said SW1/4 SW1/4, Section 13, which point is the REAL POINT OF BEGINNING;

thence South 0° 19' 28" East 1248.96 feet along the west boundary of said SW1/4 SW1/4 to a 5/8 inch rebar by L.S. 792 marking the north boundary of Idaho State Highway No. 20;

thence North 89° 56' 22" East 1332.51 feet along said Highway No. 20 to a 5/8 inch rebar by L.S. 792 marking Milt Fife's southwest corner on the east boundary of said SW1/4 SW1/4, which point lies 86.6 feet North 0° 27' 27" West from the South One Quarter corner of said Section 13;

thence North 0° 27' 27" West 708.18 feet, more or less, along said east boundary SW1/4 SW1/4 and Milt Fife's west boundary to a 5/8 inch rebar by L.S. 792 on the southwest boundary of the old U.P.R.R. right-of-way;

thence North 39° 09' 48" West 689.74 feet along said old U.P.R.R. Right-of-Way

Continued on next page

Attached Legal Description
Order Number: 96007804

to a 5/8 inch rebar by L.S. 792 on the north boundary of said SE1/4 SW1/4;
thence North 89°42'28" West 898.34 feet along said north boundary SE1/4 SW1/4
to the POINT OF BEGINNING.

Note: The street address is purported to be 14482 U.S. Highway 20,
Blaine County, Idaho 83313

CHANGE OF WATER R. IT OWNERSHIP
McMAHAN / AUBREY SPRING RANCH, L.L.C.

BASE

5021

LINE

X 5675

ITIN

TIS

1.309

P/4

-P/D for
A37-00252
A37-00712

P/O for
A37-02553A
Permit 37-07870

-7/D for
A37-02575

-P/D for
A37-02686D
A37-02598D

7/4 for portion
of Permit
37-07810

400



IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION
222 SHOSHONE ST E
TWIN FALLS ID 83301
(208) 736-3033

PHILIP E BATT
GOVERNOR

KARL J DREHER
DIRECTOR

October 23, 1996

AUBREY SPRING RANCH LLC
PO BOX 6600
COEUR D'ALENE ID 83816-1933

RE: SRBA CLAIM NOS. A37-02686D, A37-07598D, A37-02553A,
A37-02575, A37-00252, A37-00712

Gentlemen:

Pursuant to notification that you presently own the property in which the above referenced Adjudication Claims are appurtenant, I have enclosed a NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP form. Please complete it per the instructions on the back of the form, attach the required information (I already have a copy of the warranty deed) and return them to me in the enclosed self-addressed envelope. I will then make the changes in our computer records and forward copies back to you.

Sincerely,

A handwritten signature in cursive script that reads 'Trish Fawcett'.

Trish Fawcett
Technical Records Specialist

/tf
Enclosures

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

STATE OF IDAHO

COUNTY OF BLAINE

} ss 395617

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN MY OFFICE AT THE REQUEST

BLAINE COUNTY TITLE

AT 1:56 P.M.

10-17-1996

EX-OFFICIO RECORDER

BY [Signature] DEPUTY

FEES \$ 15.00

Deed

(Space above line for Recorder's use)

WARRANTY DEED

OCT 22 1996

Department of Water Resources

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DECREED RIGHTS

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3. Building and zoning ordinances and regulations;
4. Covenants, conditions, rights-of-way, easements and restrictions of record if any as disclosed by the records of Blaine County, Idaho;
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TO HAVE AND TO HOLD, the said Property, with its appurtenances unto the said Grantee and to the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said Property, that said Property is free from all encumbrances except as above-described, and that the Grantor will warrant and defend the same from all lawful claims whatsoever. However, notwithstanding the description of the water rights set forth above, Grantor does not make any representation or warranty as to the amount, volume or any other element of such water rights.

IN WITNESS WHEREOF, Grantor has executed this Warranty Deed as of the date set forth below.

"GRANTOR"

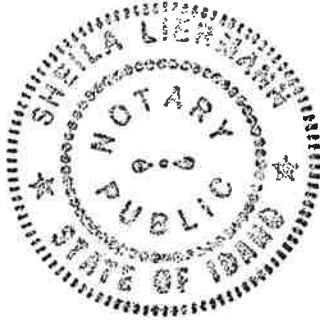
Date: 10/14/96


WILLIAM A. MCMAHAN, TRUSTEE OF THE
WILLIAM A. MCMAHAN TRUST, DATED
NOVEMBER 25, 1986, AS AMENDED AND
RESTATED JUNE 14, 1995

STATE OF IDAHO)
)
County of Blaine) ss.

On this 16th day of October, 1996, before me, the undersigned notary public in and for said state, personally appeared WILLIAM A. MCMAHAN, TRUSTEE OF THE WILLIAM A. MCMAHAN TRUST, DATED NOVEMBER 25, 1986, AS AMENDED AND RESTATED JUNE 14, 1995, known or identified to me to be the person whose name is subscribed to said instrument as trustee of said trust and acknowledged to me that he executed the same as trustee of said trust.

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



Sheila Lienmann
Notary Public for Idaho
Residing at: Blaine County, Idaho
Commission expires: Aug 30, 1998

LEGAL DESCRIPTION

Order Number: 96007804

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COMMENCING at a brass cap marking the Northeast corner of said Section 14, which point is North 89° 31' 00" West 2640.89 feet from the North 1/4 corner of said Section 13;

THENCE South 89° 06' 49" West 1014.43 feet along the North boundary of said Section 14 to a 5/8" rebar on the Southwest boundary of the U.P.R.R. right-of-way, which point is the REAL POINT OF BEGINNING.

THENCE continuing South 89° 06' 49" West 298.37 feet along said North Boundary of Section 14 to an aluminum cap marking the Northwest corner of the E1/2NE1/4, Section 14;

THENCE South 0° 13' 42" East 5239.68 feet along the West Boundary of said E1/2NE1/4, Section 14 and also the West boundary of the E1/2SE1/4, section 14 to a 5/8" rebar on the North Boundary of Highway No. 20'

THENCE North 89° 56' 22" East 2641.92 feet along the North Boundary of said Highway No. 20 to a 5/8" rebar at the intersection of said Highway No. 20 and the East Boundary of the SW1/4SW1/4, said Section 13;

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Continued on next page

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**Note: The street address is purported to be 18482 U.S. Highway 20,
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Continued on next page

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to the POINT OF BEGINNING.

**Note: The street address is purported to be 18482 U.S. Highway 20,
Blaine County, Idaho 83313**

BLAINE COUNTY TITLE

208 SPRUCE AVENUE NORTH
P.O. BOX 3176 - KETCHUM, IDAHO 83340
(208) 726-0700
(208) 726-8406 (FAX)
1-800-346-6879
(OUTSIDE OF IDAHO)

SCOTT E. MARY
PRESIDENT

IDAHO DEPARTMENT OF WATER RESOURCES
IDWR SOUTHERN REGION
222 SHOSHONE ST E
TWIN FALLS, ID 83301-6105

October 18, 1996

RE: Escrow No. 96007804 AUBREY SPRINGS RANCH/MCMAHAN

Dear IDWR,

With regards to the above described real estate transaction, please find enclosed the following:

____ Title Commitment
____ Closing Statement
____ Deed of Trust - Instrument No. _____
____ Note
XX Warranty Deed - Instrument No. _____
____ Quitclaim Deed - Instrument No. _____
____ Escrow Instructions
____ Tax Notice
____ Insurance Binder
____ Lender's Documents
____ Cover Letter(s) - Copy
____ Owner's Policy No. _____
____ Mortgagee's Policy No. _____
____ Endorsements _____
____ Lot Book Report
____ Lien Affidavit
XX Other: IDWR ASSIGNMENT OF PERMITS (3)
____ Other: _____
____ Check # _____ in the amount of \$ _____
____ Representing: _____

If you should have any questions, please do not hesitate to contact the undersigned.

Sincerely,

BLAINE COUNTY TITLE ASSOCIATES


MELODY MATTSON
ESCROW ASSISTANT

C7

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: A37-00252
Date Received: 10/14/1988
Receipt No: C003752
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: WILLIAM A. MC MAHAN 208-622-4400
Address: P.O. BOX 3125
KETCHUM, ID 83340

2. Date of Priority: JUN 01, 1887

3. Source: LOVING CREEK Trib. to: SILVER CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
01S	19E	14	NW	NE	NE		BLAINE

5. Description of diverting works:
HEADGATE TO BILL NO. 9 DITCH (OLD WORTHINGTON DITCH)

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.500		

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

8. Total consumptive use is 272.5 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
01S	19E	13	NE	SW		IRR	9.0
			NW	SW		IRR	34.0
			SW	SW		IRR	36.0
			SE	SW		IRR	30.0

Section Acres 109.0

A37-00252

Page 1

Date: 12/08/88

RECORDED
FEB 22 1993

10. Place of Use: Continued

Total Acres 109.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
37-02553, 37-02575

14. Remarks:
TRANSFERS 3198/3199.

***** MEMO TO FILE *****
DATA BASE SHOWS AUBREY SPRING AS SOURCE.

CLF 12-8-88

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

S. C. FROST, ET. AL.
Decree Plaintiff

vs

ALTURAS WATER COMPANY, ET. AL.
Decree Defendant

MICROFILMED
FEB 22 1993

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

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

Notary Public

Seal

Residing at _____
My Commission Expires _____

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: 39356

Ident. Number A37-00252Date Received 10-14-88Receipt Number C003752

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

OCT 14 1988

Department of Water Resources
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) William A. McMahan Phone (208) 622-4400
Mailing Address Box 3125, Ketchum, ID Zip 83340

2. Date of Priority (Only one (1) per claim) June 1, 1887

3. Source of water supply (a) Loving Creek
which is tributary to (b) Silver Creek

4. a. Location of existing point of diversion is: Township 1S Range 19E Section 14,
NW 1/4 of NE 1/4 of NE 1/4, Govt. Lot, B.M., County of Blaine

Additional points of diversion if any: none

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, 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. Headgate with submerged orifice

measuring device to Bill No. 9 Ditch (old Worthington Ditch)

MICROFILMED
FEB 22 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For irrigation purposes from April 1 to Nov. 1 amount 2.5 or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 2.5 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 272.5 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) none

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	
1S	19E	13									9	34	36	30					

Total number of acres irrigated 109

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

12. Do you own the property listed above as place of use? Yes yes No _____
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.
37-2553; 37-2575

or None ()

14. Remarks: Transfers 3198 and 3199

MICROFILMED
FEB 22 1993

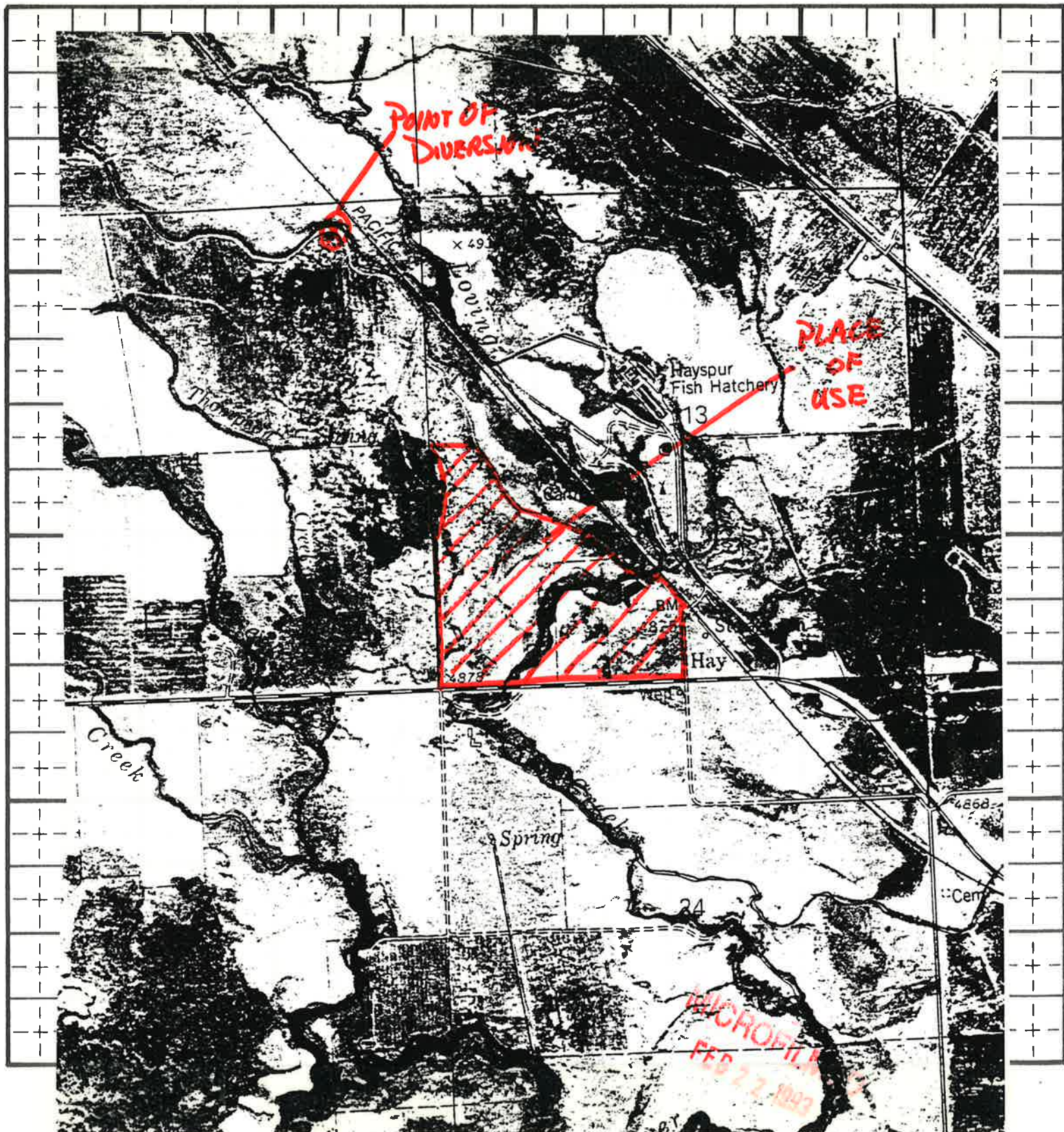
Last Name McMAHAN Ident No. _____

Copies: White -State, Yellow-Claimant

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

Scale: 2 inches equals 1 mile

TOWNSHIP 1 SOUTH, RANGE 19 EAST, B.M., BLAINE COUNTY



Last Name McMAHAN

Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit _____
Decree _____ 37-0252
If applicable provide IDWB Water Right Number _____ 12/13/1909
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant S.C. Frost et al v. Alturus Water Company, et al

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 none

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 9/12/88

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

Title _____

of _____, that I have signed the foregoing

Organization

document in the space below as _____

Title

of _____

Organization

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

Signature of Authorized Agent _____

Title and Organization _____

Date _____

State of Idaho/or Blaine)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this 12th day of September 19 88

SEAL

Notary Public James P. Speck

Residing at East Fork FD

My Commission Expires 1/22/91

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, JAMES P. SPECK 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 _____

Address Hogue, Speck & Aanestad, P.O. Box 987, Ketchum, ID 83340

Date 9/12/88

Last Name McMahan

Ident. Number _____

Copies White-State, Yellow-Claimant

MICROFILMED
FEB 22 1993

RECEIVED

FEB 21 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Aubrey Spring Ranch, LLC

8836 North Hess Street, Suite D

Hayden, ID 83835

208-762-5534

February 17, 2012

37-252

37-712

37-2553A

37-2575

37-2686 D

37-7598 D

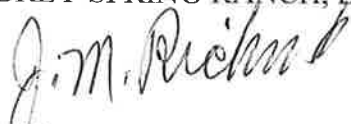
Allen Merritt, PE
Southern Region Manager
State of Idaho
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

Dear Mr. Merritt:

We are in receipt of your letter of February 13, 2012, concerning the clerical error made on water right records. We agree that the error concerning Right No. 37-2553B should be corrected so that it shows belonging to Three Creeks Ranch, LLC not Aubrey Spring Ranch, LLC

Yours very truly,

AUBREY SPRING RANCH, LLC



John M. Richards
Partner

JMR/pab

ANNEXED
FEB 21 2012

Merritt, Allen

From: Merritt, Allen
Sent: Tuesday, February 21, 2012 12:57 PM
To: Baxter, Garrick; Jones, Doug; Peppersack, Jeff; Fritschle, Carter
Cc: Skaggs, Pam; Keen, Shelley
Subject: RE: RE: Error on Condition on Aubrey Spring Ranch LLC decrees
Attachments: DOC005.pdf

Folks,

Attached is a letter I received today from Aubrey Spring Ranch, LLC. It appears they are onboard with correcting the clerical error on their rights. I presume Carter will take care of getting the partial decrees corrected. If there is something else our office can do let me know.

Thanks,

Allen

-----Original Message-----

From: Merritt, Allen
Sent: Monday, February 13, 2012 12:08 PM
To: 'Jim Speck'; Baxter, Garrick; Jones, Doug; Peppersack, Jeff
Cc: Skaggs, Pam; Keen, Shelley; Fritschle, Carter; 'Steve Fisher'; 'Jack Croul'
Subject: RE: RE: Error on Condition on Aubrey Spring Ranch LLC decrees

Jim,

I believe we can move forward with considering a transfer.
Do you have any influence with Aubrey Spring to advise them to return a letter?

Allen

-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Monday, February 13, 2012 11:53 AM
To: Baxter, Garrick; Jones, Doug; Peppersack, Jeff; Merritt, Allen
Cc: Skaggs, Pam; Keen, Shelley; Fritschle, Carter; 'Steve Fisher'; 'Jack Croul'
Subject: RE: RE: Error on Condition on Aubrey Spring Ranch LLC decrees

Allen,

Thanks. Can you now continue to process the transfer application Steve Fisher is planning to submit for the Three Creeks Ranch water rights?

Jim

-----Original Message-----

From: Merritt, Allen
Sent: Monday, February 13, 2012 11:17 AM
To: Baxter, Garrick; Jones, Doug; Peppersack, Jeff; Speck, James
Cc: Skaggs, Pam; Keen, Shelley; Fritschle, Carter

Here is the letter being sent out today.

Allen

2012 FEB 21
RECEIVED

From: Baxter, Garrick
Sent: Monday, February 13, 2012 10:24 AM
To: Jones, Doug; Merritt, Allen; Peppersack, Jeff
Cc: Skaggs, Pam; Keen, Shelley; Fritschle, Carter
Subject: RE: Error on Condition on Aubrey Spring Ranch LLC decrees

I recommend trying to contact Aubrey Springs one more time and working with Carter to communicate the error to the court.

-Garrick

From: Jones, Doug
Sent: Monday, February 13, 2012 10:08 AM
To: Baxter, Garrick; Merritt, Allen; Peppersack, Jeff
Cc: Skaggs, Pam; Keen, Shelley
Subject: RE: Error on Condition on Aubrey Spring Ranch LLC decrees

I concur that the reference to 37-2553B should NOT be on the Aubrey springs rights -252, -712, -2553A, -2575, -2686D & -7598D.

Inclusion of -2553B on those rights should not interfere with operation of -2553B's decreed place of use or processing any potential applications. This error would only impact operation of -2553A and associated rights &/or interfere with processing any future applications with the department by Aubrey Springs.

I believe we tried to get Aubrey Springs on board with changes to their rights when we processed the correction for -2553B in the name of Three Creek Ranch, but never heard back from them.

Doug

From: Baxter, Garrick
Sent: Friday, February 10, 2012 1:32 PM
To: Merritt, Allen; Peppersack, Jeff
Cc: Skaggs, Pam; Keen, Shelley; Jones, Doug
Subject: RE: Error on Condition on Aubrey Spring Ranch LLC decrees

Does Doug agree that the inclusion of 37-2553B on Aubrey Springs water rights was an error? Have we contacted Aubrey Springs and do they agree that it is an error? If yes on both accounts, we could write the court a letter explaining that there was a clerical mistake on Aubrey Springs rights and 37-2553B should not be on there. Whether or not to process the transfer will have to depend on how confident you are that it is an error and whether the condition really affects the rights being transferred. Seems like this error only impacts the Aubrey Springs rights but I might be missing something.

From: Merritt, Allen
Sent: Friday, February 10, 2012 1:14 PM
To: Peppersack, Jeff; Baxter, Garrick; Speck, James
Cc: Skaggs, Pam; Keen, Shelley; Jones, Doug
Subject: Error on Condition on Aubrey Spring Ranch LLC decrees

Folks,

A few days ago Steve Fisher, a consultant for Three Creeks Ranch, LLC represented by Jim Speck visited the office to discuss a proposed transfer for their rights 37-2553B and 37-7811. They proposed building a pond and moving around acres. These rights were decreed on 11/30/2010 after objection and correction. I understand the objection involved overlap of acres with Aubrey Springs Ranch which I understand was resolved. Currently the three Creeks Ranch rights have the following limitations:

Right Nos. 37-2553B and 37-7811 are limited to the irrigation of a combined total of 195 acres in a single irrigation season.

During the discussion I found that Aubrey Springs rights that were decreed which are right next door have the following limitations:

Right Nos. 37-252, 37-712, 37-2553A, 37-2553B, 37-2575, 37-2686D and 37-7598D are limited to the irrigation of a combined total of 224 acres in a single irrigation season.

Note that the pou for the Three Creeks Ranch rights and the Aubrey Springs rights are distinctly separate.

I told Mr. Fisher there appeared to be an error on the decrees that needs to be corrected before the transfer can be considered.

SCANNED
Fr 12 12

I received a call from Jim Speck today indicating that it was not fair to hold up a transfer because of an apparent error on another parties water rights since they have no control over what they do.

How do we get this corrected? Do we process a transfer irrespective of the limitation imposed on another water right owned by others that appears to be in error?

Attachment(s): DOC004.pdf

Dept. of Water Resources
Adjudication Bureau
P. O. Box 83720
Boise, ID 83720-0098

ADDRESS SERVICE
REQUESTED

FIRST CLASS



02 1A \$ 00.52
0004310839 NOV 21 20
MAILED FROM ZIP CODE 837

NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

RECEIVED
NOV 27 2006
DEPARTMENT OF
WATER RESOURCES

37-2553 A
37-252
37-2553 B
37-2575
37-2686
37-712
37-7548A
Pr20

AUBREY SPRING RANCH LLC
PO BOX 6600
COEUR D'ALENE ID 83816-1933

Twin Falls, Idaho 83301-3380

**Department of Water Resources
Southern Region**

SEP 16 2004

RECEIVED

NOT DELIVERABLE
AS ADDRESSED
UNABLE TO FORWARD

AUBREY SPRING RANCH LLC
PO BOX 6600
COEUR D ALENE ID 83816-1933

37-252
37-212
37-2575

Southern



765-1414

電話 1-674-5531 香港 475

[illegible]

5.0.

RECEIVED
JAN 21 1992

Department of Water Resources

James P. Speck
HOGUE, SPECK & AANESTAD, P.A.
120 East Avenue
P.O. Box 987
Ketchum, Idaho 83340
Telephone: (208) 726-4421

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. 39576

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

NOTICE OF APPEARANCE

Petitioner,

vs.

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

A37-00252
- 00712
- 02553A
- 02575
- 02686D
- 07598D

DESCRIPTIVE SUMMARY

Notice of Appearance of James P. Speck of the law firm
of Hogue, Speck & Aanestad, P.A. for William A. McMahan and other
parties.

NOTICE OF APPEARANCE - 1

jps\water\srbanot.app

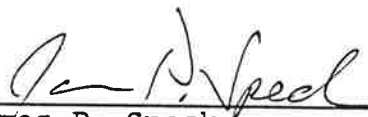
MICROFILMED
OCT 24 1994

1 TO: PETITIONER AND ITS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that James P. Speck of the law firm
3 of Hogue, Speck & Aanestad, P.A. hereby enters its appearance as
4 attorneys of record for William A. McMahan and numerous other
5 parties as identified in Claims filed in this action.

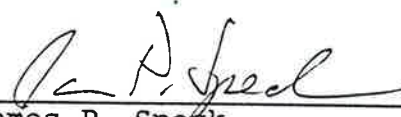
6 DATED this 17th day of January, 1992.

7 HOGUE, SPECK & AANESTAD, P.A.

8
9 By 
10 James P. Speck

11 CERTIFICATE OF MAILING

12
13 I hereby certify that on January 17, 1992, a true and
14 correct copy of the foregoing document was mailed, postage
15 prepaid, to the parties listed on Exhibit "A" attached hereto.

16
17 
18 James P. Speck

19
20
21
22
23
24
25
26
27 NOTICE OF APPEARANCE - 2

28 jps\water\srbanot.app

Roger D. Ling
Ling, Nielsen & Robinson
P. O. Box 396
Rupert, ID 83350

Roy L. Eiguren
Josephine P. Beeman
Davis, Wright & Tremaine
Suite 700
702 West Idaho Street
Boise, ID 83702

Craig R. Zaiss, Esq.
P. O. Box 628
Parma, ID 83660-0628

Albert P. Barker
Don A. Olowinski
Steven R. Ormiston
Hawley, Troxell, Ennis & Hawley
P. O. Box 1617
Boise, ID 83701

Scott L. Campbell
Elam, Burke & Boyd
P. O. Box 1539
Boise, ID 83701

Bruce M. Smith
Rosholt, Robertson & Tucker
P. O. Box 2139
Boise, ID 83701-2139

William F. Ringert
David Hammerquist
Ringert, Clark, Harrington,
Reid, Christenson & Kaufman
P. O. Box 2773
Boise, ID 83701

Peter G. Monson
Indian Resources Section
Environment & Natural Resources
Division
U.S. Department of Justice
P. O. Box 44378
Washington, D.C. 20026-4378

John A. Rosholt
James C. Tucker
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303-1906

Rebecca Craven
Elliott L. Moffett
Douglas R. Nash
Danial C. Picard
Nez Perce Tribe
P. O. Box 365
Lapwai, ID 83540

Jeanette Wolfley
Candy L. Jackson
Tribal Attorneys Office
Shoshone-Bannock Tribes
P. O. Box 36
Fort Hall, ID 83203

Wayne B. Slaughter, Jr.
Terry T. Uhling
J.R. Simplot Company
P. O. Box 912
Pocatello, ID 83204

Carolyn M. Minder
Snake River Basin Adjudication
7283 Obsidian
Boise, ID 83709

Kent W. Foster
Holden, Kidwell, Hahn & Crapo
P. O. Box 50130
Idaho Falls, ID 83405

Steven L. Herndon
Legal Department
Idaho Power Company
P. O. Box 70
Boise, ID 83707

James Annest, Esq.
P. O. Box 686
Burley, ID 83318

EXHIBIT A -- CERTIFICATE OF MAILING

MICROFILMED

OCT 24 1994

Gary Ebert
P. O. Box S
Ontario, OR 97914

Kenneth S. Gallant
Associate Professor
College of Law
University of Idaho
Moscow, ID 83843

Doug Grant
College of Law
University of Idaho
Moscow, ID 83843

Janet O'Crowley
Committee for Idaho's High Desert
P. O. Box 664
Picabo, ID 83348

Don F. Pickett, Esq.
Route 1, Box 80
Oakley, ID 83346

David B. Shaw, Chief
Adjudication Bureau
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83706

Lorraine Bodi -
Office of General Counsel
NOAA
7600 Sand Point Way N.E.
Seattle, WA 98115

Gary L. Boyle
USDA Forest Service
324 25th Street
Ogden, UT 84401

Robert D. Dellwo, Esq.
601 West Riverside, No. 1900
Spokane, WA 99201-0913

Lester Edelman
U.S. Army Corp of Engineers
Room 8220
10 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Mark Eissler
Office of General Counsel
Bonneville Power Administration
P. O. Box 3621
Portland, OR 97208

Maurice O. Ellsworth
U.S. Attorney
U. S. Federal Building, Box 37
550 West Fort Street
Boise, ID 83702

Bill Lloyd
CH2M Hill
P. O. Box 8748
Boise, ID 83707

Fred Lyons, Clerk
Supreme Court Building
451 West State Street
Boise, ID 83720

Don L. Roberts
City Attorney
P. O. Box 617
Lewiston, ID 83501

Edward Jiran
Department of Energy
Room 6H065
1000 Independence Ave., S.W.
Washington, D.C. 20585

Larry Echohawk
Idaho Attorney General
Room 210, Statehouse
Boise, ID 83720

EXHIBIT A -- CERTIFICATE OF MAILING

MICROFILMED
OCT 24 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

March 24, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JAMES P SPECK
HOGUE SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

RE: OWNERSHIP CHANGE - ADJUDICATION CLAIM NOS. A37-00252,
A37-00712, A37-02553A, A37-02575,
A37-02686D, A37-07598D
WILLIAM MC MAHAN/AUBREY SPRING RANCH

Mr. Speck;

Pursuant to the notification that you are representing the claimants on the above referenced Adjudication Claims, please find the enclosed copies of the claims showing the ownership records have been changed as you requested.

If you should have any questions, feel free to give me a call at the office.

Sincerely,


Jeanie Robertson
Sr. Water Right Agent

/jr

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
ATTORNEYS

TERRY G. HOGUE
JAMES P. SPECK
DOUGLAS J. AANESTAD
TRACY DUNLAP
MICHELE C. MESKE

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340
(208) 726-4421
FAX (208) 726-0752

HAILEY OFFICE:
16 WEST CROY STREET
SUITE K
POST OFFICE BOX 460
HAILEY, IDAHO 83333
(208) 788-3567
FAX (208) 788-4230

November 14, 1996

NOV 15 1996

Department of Water Resources

Mr. Allen Merritt
Idaho Department of Water Resources
222 Shoshone East
Twin Falls, Idaho 83301

Re: Notice of Change of Water Right Ownership

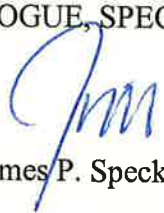
Dear Allen:

Enclosed you will find a Notice of Change of Water Right Ownership for several SRBA claims formerly filed and owned by William A. McMahan and now acquired by the Aubrey Spring Ranch, L.L.C. I have also included a copy of a Notice of Appearance indicating my firm will represent the new claimant/owner in the SRBA for these claims. Please let me know immediately if you need any additional information for this change of ownership.

Thank you for your continuing cooperation and assistance in these matters.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.


James P. Speck

JPS:rb
enc.

pc: Mr. Jim English (w/enc.)
Jim Johnson (w/enc.)

RECEIVED

NOV 13 1996

Department of Water Resources

Claimant Name:

Aubrey Spring Ranch, L.L.C.

Attorney Name & Address:

James P. Speck

Hogue, Speck & Aanestad, P.A.

120 East Avenue

P. O. Box 987

Ketchum, Idaho 93340

(208) 726-4421

FAX: (208) 726-0752

**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 APPEARANCE

DESCRIPTIVE SUMMARY

This is a notice of appearance by counsel on behalf of the new claimant and purchaser of the water rights identified below.

NOTICE OF APPEARANCE

The law firm of Hogue, Speck & Aanestad hereby enters its appearance in the action on behalf of Claimant Aubrey Spring Ranch, L.L.C. for the following water right claims: A37-000252, A37-00712, A37-02553A, A37-02575, A37-02686A and A37-07598A.

DATED this 14th day of November, 1996.

HOGUE, SPECK & AANESTAD, P.A.

By 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 1996, I served a true and correct copy of the foregoing NOTICE OF APPEARANCE on the following persons in the manner designated below:

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

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
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JAMES P. SPECK

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

IN RE THE GENERAL ADJUDICATION)
OF THE RIGHTS TO THE USE OF WATER FROM)
THE SNAKE RIVER BASIN WATER SYSTEM.)
THE STATE OF IDAHO, EX. REL. R. KEITH)
HIGGINSON, AS DIRECTOR OF THE IDAHO)
DEPARTMENT OF WATER RESOURCES,)

Petitioner,)

vs.)

Civil No. 39576

THE UNITED STATES; THE STATE OF IDAHO;)
AND ALL CLAIMANTS TO THE USE OF WATER)
FROM THE SNAKE RIVER BASIN WATER SYSTEM,)

Defendants.)

DEPOSITION OF WILLIAM MOLYNEUX

Blaine County, Idaho
September 30, 1993

Shipman and Shipman
Certified Shorthand Reporters
Post Office Box 1506
Hailey, Idaho 83333
(208) 788-3818

Reported by:
Diane M. Shipman, CSR

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A P P E A R A N C E S

For the Petitioner:

STATE ATTORNEY GENERAL'S
OFFICE
Department of Fish and Game
Post Office Box 25
Boise, Idaho 83707
By: STEPHEN V. GODDARD, ESQ.

For the Defendants:

HOGUE, SPECK & AANESTAD
Attorneys at Law
Post Office Box 987
Ketchum, Idaho 83340
By: JAMES R. SPECK, ESQ.

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I N D E X

WITNESS:

WILLIAM MOLYNEUX

EXAMINATION:

By Mr. Goddard

2 34 36

By Mr. Speck

26 36 37

DEPOSITION EXHIBITS:

MARKED

1 - Map

1

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DEPOSITION OF WILLIAM MOLYNEUX, taken at the instance of the Petitioner, at the Hayspur Fish Hatchery, in the County of Blaine, State of Idaho, on September 30, 1993, at 8:30 a.m., before Diane M. Shipman, a Notary Public and Certified Shorthand Reporter in and for the State of Idaho, pursuant to notice and in accordance with the Idaho Rules of Civil Procedure.

(Deposition Exhibit 1 marked for identification.)

MR. GODDARD: We're going to take the deposition of Mr. Bill Molyneux, and it's taken pursuant to the Idaho Rules of Civil Procedure.

WILLIAM MOLYNEUX,
produced as a witness at the instance of the Petitioner, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. GODDARD:

Q. Now, Bill, would you state your name and spell your last name, please.

A. A.W. Molyneux, M-o-l-y-n-e-u-x.

Q. Okay. Thank you. And where do you live, Bill?

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1 A. Three and a half miles west of Picabo on
2 Highway 20.

3 Q. Okay. And how long have you lived there?

4 A. This is my forty-first summer.

5 Q. Okay. And what's your occupation?

6 A. Farmer, rancher.

7 Q. And how long have you been a farmer or
8 rancher, approximately?

9 A. Sixty years.

10 Q. Sixty years. Okay.

11 And how long have you farmed or ranched in the
12 Picabo area?

13 A. Forty-one.

14 Q. Okay. So are you familiar with the area
15 around Thompson Creek?

16 A. Yes.

17 Q. And how did you become familiar with that
18 particular area?

19 A. In 1971 I leased that property from Paul
20 Kriley.

21 Q. Do you know how to spell Mr. Kriley's last
22 name?

23 A. K-r-i-l-e-y.

24 Q. Thank you.

25 Now, did you know an individual by the name of

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1 Hohenberg?

2 A. Yes.

3 Q. And did he used to farm down in that area?

4 A. Yes.

5 Q. And did you do some custom farm work for him?

6 A. Yes.

7 Q. And when was that?

8 A. In the 50s, late 50s.

9 Q. Okay. Would that be after he acquired the
10 property from Mr. Mallon; do you know?

11 A. I don't remember whether he was the first
12 after Mr. Mallon sold or not. I don't remember that.

13 Q. Okay. Now, when you did the custom work for
14 Mr. Hohenberg, what did this consist of? What did you
15 do?

16 A. I mowed and baled his hay.

17 Q. Did he have any other kind of crop besides hay
18 down in there that you're aware of?

19 A. No.

20 Q. Do you know whether or not he had any farming
21 machines?

22 A. He didn't.

23 Q. Okay. So you basically --

24 A. He hired me or other people, but I done the
25 most of it.

MICROFILMED
OCT 24 1981

1 Q. Okay. Were you familiar with how he irrigated
2 his crops?

3 A. I never had anything to do with the
4 irrigating.

5 Q. Okay. Are you familiar with what kind of a
6 system he had? Did you see --

7 A. It was gravity. He did have a little portable
8 sprinkler that he moved around and run it with a tractor,
9 but I just visualized that. I didn't keep track of it.

10 Q. Okay. When you say it was gravity, did he
11 divert out of Thompson Creek, do you know?

12 A. Yes, I think so.

13 Q. Could you mark on this map here, if you could,
14 approximately where you think its diversion point was.

15 Here, use this green pen, if you would,
16 please.

17 A. Right here.

18 Q. Okay. And you marked that with a little green
19 X on Deposition Exhibit 1.

20 Now, do you know where his ditch went from
21 there, Bill, down to his point of use? Do you recall?

22 If you can, would you draw it in, to the best
23 of your recollection.

24 A. From here across the highway, and then it
25 meandered down through here. This is not the actual

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1 line, I'm sure. It meandered on the curvature of the
2 land, --

3 Q. Okay.

4 A. -- but it delivered water here.

5 Q. Okay. When you say "it delivered water here,"
6 would...

7 Do you know approximately how many acres he
8 irrigated there?

9 A. This here was 22 acres, and then there was a
10 little piece across this lane here.

11 Q. Okay. Would you write in "22 A" in the area
12 where he had the one parcel of ground.

13 A. (Witness complies.)

14 Q. And then you say he also irrigated the
15 other --

16 A. It was probably four or five acres here.

17 Q. Okay. Do you want to write in "4/5."

18 A. (Witness complies.)

19 Q. Okay. Was that four to five acres irrigated
20 out of Thompson Creek?

21 A. Yes, yes.

22 Q. Okay. Now, did he irrigate any other land out
23 of Thompson Creek, as far as you know?

24 A. No.

25 Q. Okay. Did he irrigate any other land down

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1 there, as far as you're aware of?

2 A. As far as I know, no, he didn't.

3 Q. Okay. As far as you know, in the late 50s,
4 then, Mr. Hohenberg was only irrigating this 26 to 27
5 acres?

6 A. Yes. And then he put a sprinkler in the creek
7 up here and sprinkle irrigated some of this here.

8 Q. Okay. Do you want to mark that with an "SP,"
9 the land that he irrigated with a sprinkler.

10 A. (Witness complies.)

11 Q. Okay. Do you know about how many acres that
12 was? Do you have any idea?

13 A. No.

14 Q. Okay. Do you know of any other place that Mr.
15 Hohenberg irrigated?

16 A. No, I don't.

17 Q. Okay. Do you know what the rough boundaries
18 of his property were?

19 A. Yes.

20 Q. Okay. Maybe I'll wait.

21 Then were you familiar with what happened up
22 in this area on the map that's north of the highway and
23 it shows the spring on one side and Thompson Creek, the
24 name "Thompson" for Thompson Creek? Did you have a
25 chance to observe that area at all back in there?

1 A. Here? In here?

2 Q. Yes, sir.

3 A. No, I never did.

4 Q. Okay. Then I believe you said that you leased
5 this farm ground starting about 1992; is that correct?

6 A. '71.

7 Q. '71. And you leased it through --

8 A. '71, '72, '73, '74. Bill bought it in the
9 summer of '75, and I paid you the lease money that year,
10 and I continued to run it through that summer, and then
11 the next year Bill, he run it.

12 Q. So then you had it through '71 through '75; is
13 that correct?

14 A. Yes.

15 Q. Okay. Now, are you familiar with the
16 irrigation system that was in operation at that time?

17 A. Yes.

18 Q. Okay. Now, using this yellow marker if you
19 can, would you sketch in the boundaries of the place that
20 you farmed in the '71 to '76 time period, the area that
21 you leased.

22 Can you do that?

23 I mean, I know you can't probably do it
24 exactly.

25 A. I can't?

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1 That's what you think.

2 Q. Okay.

3 A. Whoops. I got off the line there. I was
4 looking to where I was going instead of what I was doing.

5 Okay. What line do I use here?

6 Q. Whatever line is...

7 The red one, I think, is the section line, and
8 the black one...

9 I don't know what that is. I think the red
10 one is the section line, if that helps you.

11 A. Let's see. I've got to go back this way. If
12 the red one is the section line, it's got --

13 Q. I think it's this red one down here is the
14 section line. I don't know.

15 A. No, it's not right, is it, Bill? This is the
16 little cabin right there. This is the big house. I
17 would say...

18 Hum.

19 Q. Well, it only has to be approximately.

20 A. Well, I don't know where to go here on this
21 line.

22 Q. Okay. Well, put in...

23 Okay. That's just so we know the general area
24 that we're talking about.

25 Now, are you familiar with the irrigation

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1 system that was in place when you farmed it then?

2 A. Yes.

3 Q. Okay. Is it...

4 Was it any different then than the one that
5 was in existence when you custom farmed it for Mr.
6 Hohenberg?

7 A. Yes.

8 Q. What was...

9 Oh, it was different?

10 Okay. Can you draw in for us how it was
11 different.

12 A. What do you want me to draw with; my pistol?

13 Q." No; that green pen.

14 A. Okay. They drilled a well.

15 Q. Do you know who drilled the well?

16 A. A guy by the name of Lou Hubsman.

17 Q. Okay.

18 A. Across the creek right here, down this road,
19 there was a ditch here. There was a ditch here, there
20 was a ditch here.

21 Q. Now, that's the system that was in place in

22 19 --

23 A. Now, this is a drain ditch here.

24 Q. Okay. Do you know who dug that drain ditch?

25 A. I think Hubsman did when he first bought the

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1 place.

2 Q. Okay.

3 A. And Bill covered it up.

4 Q. Okay. "Bill" meaning Mr. McMahan?

5 A. Yes.

6 Q. Do you know what year that Mr. Hubsman drilled
7 that well, approximately?

8 A. No, I don't.

9 Q. Okay. So that's the system that was in place
10 when you took over the farm?

11 A. Um-hum.

12 Q. Okay. So he irrigated, then, just the 22
13 acres here and four to five acres here on Thompson Creek;
14 is that correct?

15 A. Yes.

16 Q. And then the rest of the land that the ditches
17 that you've drawn in green east of there?

18 A. I commingled this water here, right there at
19 that point.

20 Q. Okay. So the land then east of the road that
21 comes down into the house that you've drawn the line
22 along was irrigated, then, from the well; is that
23 correct?

24 A. East of the road; this here, yes.

25 Q. Okay. And do you know about how many acres

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1 we're talking about over there?

2 A. Of farm ground?

3 Q. Yeah.

4 A. I wouldn't have no idea.

5 Q. Okay.

6 A. Two hundred. Close.

7 Q. Okay.

8 A. Two hundred twenty maybe.

9 Q. Okay.

10 A. A lot of this down in here we never farmed
11 because it was so far away from the water.

12 Q. When you say a lot of this here, you mean down
13 towards the southern end of the property?

14 A. Southeast.

15 Q. Okay. Down in Section 24?

16 A. Um-hum.

17 Q. Now, I think I asked you when that well was
18 drilled, but I don't remember what you said. Excuse me.
19 Let me ask you again, just to make sure.

20 Do you recall what year that well was drilled?

21 A. No, I don't.

22 Q. But it would have been, as far as you know, --

23 A. It was before '71.

24 Q. Okay. Before '71.

25 A. It was several years before '71. I'm saying

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1 two or three.

2 Q. Okay. Very good.

3 Now, when you took the water out of Thompson
4 Creek to run it down to irrigate this land down here that
5 you have indicated, did you ever measure or estimate the
6 flow in Thompson Creek?

7 A. Yes.

8 Q. And how much water did you divert from
9 Thompson Creek; do you know?

10 A. As much as I could get.

11 Q. Okay. How much about was that?

12 A. Never over 125 inches, which is 2.25 --

13 Q. Okay?

14 A. -- cfs.

15 Q. Now, you say never over that.

16 Did you get a lot less than that a lot of
17 years?

18 A. Yes.

19 Q. What was the normal amount that you probably
20 got?

21 A. Normal?

22 Q. Yeah, over the five.

23 A. For that year or for all years? For the five
24 years that I run it or --

25 Q. Yes, sir.

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1 A. Well, now, that's a tough question.

2 Q. Okay. Was it usual to get 125 inches, or was
3 that the exception?

4 A. That was the good year.

5 Q. That was the good year?

6 A. Yes.

7 Q. The other four years you got less?

8 A. There might have been two or three of them
9 years that I got a lot less and maybe two of them was
10 normal. Normal would be 125 inches of water.

11 Q. Okay. Then when you got the water from
12 Thompson Creek down to the place of use down here, I
13 guess it would be the southwest corner of the place, did
14 you have trouble irrigating those fields down there with
15 the water from Thompson Creek?

16 A. On the dry years, yes. We had this in lanes,
17 probably 36 to 40 feet lanes. The water couldn't get out
18 of the lane. You'd put all of the water in this lane and
19 leave it 24 hours, and if it started backing up on you,
20 why, you put it on the next lane, and then three or four
21 days you went back and put that water back on that lane,
22 and most of the time it would go through.

23 Q. You mean by --

24 A. If you had your full head of water, why, it
25 would go through, but on the short water years, I'm

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1 saying it would back up on you.

2 You're not familiar with that, --

3 Q. You're right.

4 A. -- but I am.

5 Q. Does that mean you couldn't get the water down
6 to the end of the field? Is that what it means?

7 A. Yes.

8 Q. Okay. Now, during the time that you irrigated
9 the place, did you use sprinklers?

10 A. None.

11 Q. Okay. So you just...

12 How did you irrigate the property north of the
13 highway that you put with an "SP?"

14 A. There was a pipe underground and a valve on
15 the pump you opened under the highway and it went into an
16 open ditch. That's the way you irrigated this field.

17 Q. North of the well?

18 A. Um-hum.

19 Q. Okay. So there was a ditch actually that went
20 up through that field, too?

21 A. Yes. Oh, yes. We better mark that ditch.

22 Q. Okay. Now, what about the land that was
23 immediately adjacent to the well? It would be just out
24 of the highway on the northeast corner. Did you irrigate
25 that?

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1 A. Yes.

2 Q. How did you irrigate that?

3 A. Gravity.

4 Q. And that's again out of the well?

5 A. Um-hum.

6 Q. Was there a ditch up there?

7 A. (Witness indicating.)

8 Q. Okay. You're marking that ditch in green.

9 Okay.

10 Now, when you were farming that area there,
11 did you also notice if there were any activities that
12 took place north of the highway and west of the area that
13 you've marked "sprinkler," any farming activity there?

14 A. Yeah, this was farmed.

15 Q. Okay. And who farmed that; do you know?

16 A. Ellsworth bought that from Daley.

17 Q. Cy Daley?

18 A. Yes, but I don't remember which year.

19 Q. Okay.

20 A. It was either Ellsworth or Daley that was
21 farming there.

22 Q. Now, Bill, when you got the water out of
23 Thompson Creek to put into the ditch, you tried to
24 maximize the water you could get out of Thompson Creek;
25 is that correct?

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1 A. I tried to get the maximum water that was
2 there.

3 Q. Okay.

4 A. It took special work to get it out of there,
5 too, because I used dam material to lay, and straw.
6 There was a little seepage by, but not very much.

7 Q. Did you raise the dam at all or the diversion
8 structure that Mr. Mallon put in there?

9 A. No. I never did do any dirt work, no.

10 Q. Okay. Do you have any idea how much water
11 actually got down from the point of diversion north of
12 the highway to where you actually put on the field?

13 A. Most years it wasn't enough.

14 No, I never did measure down there.

15 Q. Okay. When you say it wasn't enough, you mean
16 to irrigate that 22 or 26 acres?

17 A. Yeah.

18 Q. Okay. Did you ever hear of a creek called
19 Aubrey Creek, A-u-b-r --

20 A. Not until this came up.

21 Q. Okay. When you say "not until this came up,"
22 you mean not until just the last couple years?

23 A. Correct.

24 Q. So have you known the creek, then, that we're
25 talking about as Thompson Creek?

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1 A. Ever since I've been in this country, yes.

2 Q. Okay. Now, since you farmed that place from
3 1971 to 1976 --

4 A. Five.

5 Q. Excuse me. You're right. '75.

6 -- have you noticed any other changes that
7 have taken place in there, as far as agriculture goes?

8 A. Yes.

9 Q. Okay. What's happened?

10 A. Bill, he done a -- refurbished the whole
11 irrigation system. He made a nice place out of it.

12 Q. Okay. Now, when you say "refurbished," did he
13 rebuild the ditches, or did he change the ditches from
14 the way --

15 A. He put it under a sprinkler.

16 Q. Okay. So by "Bill," you meant Mr. McMahan?

17 A. Yes. From the well.

18 Q. Okay. So Bill's been, as far as you know,
19 irrigating it with sprinklers from the well?

20 A. Um-hum.

21 Q. The same lands that were irrigated before, as
22 far as you can tell?

23 A. Yes.

24 Q. Now, when Mr. Kriley farmed the place, do you
25 recall when that was, when the insurance company had it?

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1 A. Paul Kriley went to work for Lou Hubsman.

2 Q. Okay.

3 A. And Lou Hubsman got into some financial
4 problems, and he sold his interest in that piece of
5 property, which there was several pieces of property in
6 the valley that he sold to Republic National. And then
7 Republic, we bought the property what we bought from
8 Republic National in '75, and Bill McMahan, that was the
9 year he bought this piece of property.

10 Q. That we've been talking about?

11 A. Yes.

12 Q. Okay. And then did Mr. Kriley just work for
13 Mr. Hubsman, or did he continue on with --

14 A. He continued.

15 Q. -- with the insurance company?

16 A. He continued, yes.

17 Q. Okay. And --

18 A. He lived there in the house the years that I
19 farmed the place.

20 Q. Which house is that?

21 A. This house here.

22 Q. Do you want to circle that and put --

23 A. "PK?"

24 Q. Yeah. That's fine. Just some way to identify
25 it to the left of it.

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1 Now, did you ever talk to Mr. Kriley about
2 problems with getting adequate water down there?

3 A. Yes.

4 Q. And did you talk to him about getting adequate
5 water from Thompson Creek?

6 A. Yes.

7 Q. What did he tell you?

8 A. He said, You lease it, it's your problem.

9 Q. What did you take that to mean?

10 A. Well, I already knew of the problem.

11 Q. Getting adequate water from Thompson Creek?

12 A. Yes.

13 Q. And did you find his prediction to be true?

14 A. Yes.

15 Q. Did he tell you anything else about irrigating
16 the land down in that piece of property?

17 A. He said some of these ditches washed pretty
18 bad here, and this ditch here where they put a fill here
19 in this ditch here was pretty flat.

20 Q. Okay. And that's the ditch --

21 A. He says, That's the only problem you've got.

22 Q. Okay. And that's the ditch immediately south
23 of the highway?

24 A. Yes.

25 Q. Okay. The reason I'm asking you some of these

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1 questions is to make sure that it's clear to someone that
2 reads the transcript what we're talking about.

3 A. Um-hum.

4 Q. Did Mr. Kriley indicate to you that he was
5 going to put in those ditches, or as far as you knew,
6 were they already there?

7 A. No. Paul put the gravity irrigation system in
8 after they drilled this well.

9 Q. Okay. So whenever that was.

10 A. Um-hum.

11 Q. Very good. Thank you.

12 MR. GODDARD: Off the record. I just want to
13 quickly check my notes.

14 (Pause in the proceedings.)
15

16 Q. BY MR. GODDARD: We're back on the record now.
17 When you went down and farmed the custom farm
18 for Mr. Hohenberg in the 50s, were you aware of about
19 what the ground water table was like in that time frame?

20 A. Yeah. This place from here below the creek,
21 it's subirrigated. That's why the drain was put in there
22 to get rid of the sub, except for this 22 acres. This
23 wasn't. This was not subirrigated.

24 Q. But a lot of the rest of it east of the road
25 that comes down there was subirrigated, except maybe for

1 high ground, or how would you characterize it?

2 A. Below the creek.

3 Q. Below the creek. Okay. Below the creek.

4 A. Yes.

5 Q. Okay.

6 A. It took minimal water.

7 Q. Minimal water. Okay.

8 Then during the time frame that you then
9 farmed it from '71 to '75, did the water table change at
10 all during that time?

11 A. It would fluctuate from year to year.

12 Q. Okay. But was it still a pretty high ground
13 water table?

14 A. Yeah, especially down in here. The way we
15 done that, we'd take a tractor and a disk and put the
16 disk barely in the ground, and then we'd go in seventh
17 gear as fast as the tractor would pull it to stir the top
18 of the ground and leave it for a few days. The sun would
19 dry it, and then you could plow it.

20 Q. Okay. And that's down on the southern end of
21 the --

22 A. Especially down in here.

23 Q. Okay. You want to mark that somehow and
24 figure out what you want to call it, the area that we're
25 talking about.

1 A. Whoops.

2 Yeah, I'm in the right place. From here over.

3 Q. Okay. So from a little squiggly green line
4 going towards the east, the area that we're talking about
5 you've marked with an "SG."

6 Does that stand for subground?

7 A. Yep.

8 Q. Okay. Very good.

9 What kind of crops did you grow down on this
10 place?

11 A. Barley and hay is all I ever grew there.

12 Q. Okay. So the barley you grew in the area
13 that's marked the 22 acres; right?

14 A. Yes.

15 Q. And then what about this four to five acre
16 piece over here? What did you grow over there?

17 A. I grew barley there, too.

18 Q. Did you grow any barley on any of the rest of
19 the place, or was it just pasture?

20 A. Yes, this was barley.

21 Q. Okay.

22 A. I planted this in barley. This was in when I
23 first...

24 This was in alfalfa pasture, this piece.

25 Q. Do you want to put an "AL" that was in

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1 alfalfa.

2 A. Now, that was part of the years; not all the
3 five. So how do you want to put it?

4 Q. Well, put an "AL" in the place that was
5 alfalfa then for most of the time.

6 What else was it in besides alfalfa?

7 A. Barley.

8 Q. Well, why don't you put an "A" and a "B" in
9 that area where you had alfalfa and barley, and then down
10 in the area that you've got marked "subground," was that
11 the area you had barley?

12 A. Um-hum. Yes.

13 Q. All right. What about just west of there,
14 between there and the house? Did you grow barley?

15 A. That was barley, too.

16 Q. Okay. And what about up in that parcel by the
17 well up --

18 A. Up here?

19 Q. Yes, sir.

20 A. For two years this was in hay, and then I
21 planted it -- plowed it and planted it in barley.

22 Q. Okay. And then north of the highway?

23 A. And this was in barley and alfalfa.

24 Q. Okay. Very good.

25 A. When you bought that place this high piece of

1 ground here was in alfalfa.

2 Do you remember, Bill?

3 MR. McMAHAN: I don't know if I'm entitled to
4 comment at this point.

5 THE WITNESS: So what do you want me to put
6 here?

7 MR. GODDARD: Well, put "hay" and -- "H" and
8 "B" where you had hay and barley, and then north of the
9 highway where in that little parcel up there, whatever
10 you do there, hay and barley.

11 Okay. Now, there's a little piece west of...

12 You're changing the "A" down there to an "H,"
13 I see.

14 Q. BY MR. GODDARD: All right. Now, the little
15 parcel east of Mr. Kriley's house, did you grow anything
16 in there?

17 A. This was the same crop, this whole thing.

18 Q. Okay. All right. So everything north of
19 Loving Creek in there --

20 A. There was 44 acres there.

21 Q. Oh, okay. Do you want to put "44" in.

22 Do you know the acreage of any other places?

23 A. No, I just remember that one. OCT 24 1994

24 Q. Okay. Very good.

25 A. And there's one...

1 This was my producing ground here.

2 Q. And that's why?

3 A. And this. And this produced good, too.

4 Q. Do you know how much was in this one north of
5 the road; how many acres?

6 A. Oh, 28 or 30 or something like that.

7 Q. Do you want to write "28 to 30" in there.

8 A. (Witness complies.)

9 MR. GODDARD: Okay. Thanks. I don't have any
10 more questions for Bill right now.

11

12 EXAMINATION

13 BY MR. SPECK:

14 Q. What was the reason, Bill, that you grew
15 alfalfa in some years and barley other years?

16 A. Rotation.

17 Q. And what's the reason for rotation?

18 A. To clean ground --

19 Q. So it's really --

20 A. -- of weeds.

21 Q. It's really proper land management?

22 A. Farm management.

23 Q. You mentioned while you leased the property
24 from '71 to '75 that the water table would fluctuate from
25 year to year.

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1 A. Yes.

2 Q. Would it also fluctuate during the irrigation
3 season?

4 A. Yeah. It would come up during the irrigation
5 season.

6 Q. So the water table was generally low at the
7 beginning of the season; is that right?

8 A. Not always, no.

9 Q. How would you describe a typical year for the
10 fluctuation of the water table?

11 A. High water would be probably in June; June the
12 15th.

13 Q. And then would it go down from there until
14 when?

15 A. It would go down to the end of the irrigation
16 season. Your irrigation season on that ground would end
17 in July.

18 I'm talking about gravity irrigation only.

19 Q. Okay. When you leased the land, I gather that
20 Paul Kriley wasn't the owner. It was Republic National;
21 is that correct?

22 A. Yes.

23 Q. In the 1950s when you did custom work for Mr.
24 Hohen...

25 A. Hohenberg.

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1 Q. ...Hohenberg, how many years did you do that?

2 A. Two.

3 Q. Do you remember which years?

4 A. No.

5 Q. The irrigation system during the years that
6 you leased it, did that consist of all ditches, or were
7 there any underground pipes?

8 A. There was...

9 The only underground pipe on the place was
10 right here, and it wasn't underground. It was a flume
11 where it crossed the creek.

12 Q. I believe you told Mr. Goddard in answer to
13 his question your best estimate of the number of acres
14 that you farmed during those years, and I don't recall
15 the answer, so I'm going to ask you again.

16 How many acres did you farm?

17 A. Of actual farm ground, I think it was two to
18 220.

19 Q. You mean 200 to 220?

20 A. Yes.

21 Q. Did you ever take any water out of Loving
22 Creek for irrigating land?

23 A. No.

24 Q. At the diversion works, such as they were,
25 from Thompson Creek was there any kind of a measuring

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1 device?

2 A. There was a head gate is all.

3 Q. Is that a no? Does that mean there was no
4 measuring device?

5 A. Well, the water master measured water there; a
6 guy by the name of Les Busby.

7 Q. Do you know at what point he measured the
8 water?

9 A. He measured at the diversion. There was a
10 head gate right there, and he measured --

11 Q. Could you draw "HG" and a little arrow to
12 point to the place where the head gate was.

13 A. (Witness complies.)

14 Q. So that would be the bottom or the outlet of
15 the lake; is that correct?

16 A. Yes.

17 Q. Okay. Was there any head gate or measuring
18 device at the inlet to the lake?

19 A. Hum-um. No.

20 Q. Was the lake sealed in any way?

21 A. Man sealed.

22 Q. And what does that mean?

23 A. Straw and visqueen. It was a subby area, and
24 it was hard to seal.

25 Q. So when you described earlier the work that

1 you did on the diversion work, is that part of the work
2 that you do each year?

3 A. Yes, that was a yearly deal. The more time
4 you spent there, the more water you gained.

5 Q. Did you yourself ever actually measure any of
6 the water at that head gate?

7 A. Actually?

8 Q. Yes.

9 A. No.

10 Q. Did you keep any records of how much water
11 flowed out of the head gate?

12 A. No. That was the Water Department's job.

13 MR. SPECK: Why don't we go off the record for
14 a second here.

15 (Discussion held off the record.)

16 Q. BY MR. SPECK: Bill, during the time that you
17 owned -- I'm sorry -- that you leased this land, was
18 there a ditch that ran just to the south of the road,
19 meaning Highway 20, from the Thompson Creek delivery
20 system? Do you recall that?

21 A. South?

22 Q. I'm going to --

23 A. Point?

24 Q. Yes. Right here, below the road.

25 Was there a ditch that ran along here? Do you

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1 recall that?

2 A. No, I don't.

3 Q. Okay. Do you recall if at any time while you
4 leased the land whether or not there was a ditch that
5 delivered water from Thompson Creek through a culvert
6 under this ranch road into this system just below the
7 house marked "PK?"

8 A. Paul might have done that the last two years
9 that I ran that place.

10 Q. Okay. So that's possible?

11 A. Yes. It seems to me that there was the last
12 part of my lease --

13 Q. Would you draw that ditch in.

14 A. -- a diversion that come and commingled here.

15 Q. What I'd like you to do is to just label that
16 ditch that you drew in with a 1 and a circle, because I
17 have no imagination, and would you then label the point
18 of commingling with a 2 and a circle.

19 A. (Witness complies.)

20 Q. Okay. So then during those last two years of
21 your lease from that point downhill, shall we say, you
22 were irrigating with commingled water from the well and
23 Thompson Creek; is that right?

24 A. Not exclusively.

25 Q. What do you mean by that?

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1 A. Well, for the simple reason this place here,
2 there's a high point here, the water wouldn't come back
3 this way.

4 Q. Yes.

5 A. So this area here took most of the Thompson
6 Creek water.

7 Q. Okay.

8 A. When it was irrigated, it went into this.

9 MR. GODDARD: Excuse me. I think for the
10 record, when you said "this area here..."

11 THE WITNESS: The 22 acres.

12 MR. GODDARD: Okay. I just want to make sure
13 that it's clear where you were talking about.

14 Q. BY MR. SPECK: Okay. And then any water that
15 was not necessary to use on that 22 acres you would then
16 take through the ditch labeled "1"?

17 A. Yes.

18 Q. And commingle it to point labeled "2"?

19 A. That wasn't entirely so, because this well
20 produced so much water that this ditch here would flood
21 on me and get out in the fields.

22 Q. Okay.

23 A. So I had some control here. If I was
24 irrigating this field, why, a guy could use this here.

25 Q. Okay.

1 A. Thompson Creek water.

2 Q. When you say "this field," you mean the one
3 that is labeled "H/B?"

4 A. Yes.

5 Q. And also has "44 A" in it?

6 A. Yeah.

7 Q. Okay.

8 MR. SPECK: Off the record.

9 THE WITNESS: Thanks for resting my brain.

10 (Discussion held off the record.)

11 Q. BY MR. GODDARD: Bill, you said this ditch
12 here would flood out --

13 MR. SPECK: Wait a minute. Wait a minute.
14 I'm not done.

15 MR. GODDARD: I know. I'm just doing
16 clarification points.

17 By that, you mean the road that's the ditch
18 east of the farm road going into the place?

19 THE WITNESS: Yes.

20 MR. GODDARD: Okay.

21 (Discussion held off the record.)

22 MR. SPECK: At this point I have no other
23 questions.

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FURTHER EXAMINATION

BY MR. GODDARD:

Q. Okay. If we can go back on the record for just a little bit, Bill, you indicated that the gravity irrigation season you say ended in July.

A. Yes.

Q. What would you put as the time frame around this country for when you'd irrigate using gravity type systems and surface water?

A. What time frame?

Q. Yeah. When would you start? You said it ended in July. Just the dates.

A. The main irrigation season for grain, it ends in July.

Q. When would you start?

A. The latter part of May, middle of May.

Q. Okay. And end when about in July; the end of July or --

A. The 20th.

Q. Okay. Now, when Mr. Speck asked you about that, you were very specific when you said, I'm only talking about the gravity irrigation season.

Now, obviously you meant another type of irrigation season is also here.

A. Sprinkler.

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1 Q. Okay.

2 A. We sprinkled 3,000 acres.

3 Q. When are we talking about?

4 A. And we shut down our time frame between the
5 20th of July even this year. We never run past the 4th
6 day of August on our irrigation with sprinkler.

7 Q. And you start about the same time?

8 A. Yes.

9 Q. The middle of May. Okay.

10 Bill, you are pretty familiar with water
11 rights in the valley; would that be accurate statement?

12 A. I think so.

13 Q. Have you had an opportunity to look at and
14 estimate how much water is in a particular place?

15 A. Well, I started out in Twin Falls where I used
16 55 inches of water over a weir, and that's where I became
17 familiar with the amount of foot of water, and I've done
18 this, I've done -- actually done this water bit for 46
19 years.

20 Q. So do you feel pretty confident in your
21 estimate of the water that came out of Thompson Creek at
22 the diversion point of 100 to 125 inches or less?

23 A. I'm not five inches of water off.

24 MR. GODDARD: That's pretty good. I have no
25 other questions for Bill right now.

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FURTHER EXAMINATION

BY MR. SPECK:

Q. Bill, is the irrigation season that you described the same for barley as it is for grain?

A. Grain is barley. It's the same thing.

Q. Okay. Would you say that the most accurate record of the flows out of Thompson Creek would be the water master's records?

A. Yes.

Q. And if his records were to show that there was delivered at that point 190 inches, would you have any reason to disagree with that?

A. I'd say he was falsifying his record.

Q. Okay. So you said you were within five inches. Anything more than 130 inches, would you be suspect of that?

A. Yes.

MR. SPECK: Okay. I don't have any other questions. I'll let him get back to his potatoes.

FURTHER EXAMINATION

BY MR. GODDARD:

Q. Just one, I guess, that kind of follows up with that.

What would you estimate was the lowest amount

1 of water you got in any year out of Thompson Creek?

2 A. '73 was a below-average year: Between 75 and
3 100 inches.

4 MR. GODDARD: Okay. Thank you.

5

6 FURTHER EXAMINATION

7 BY MR. SPECK:

8 Q. Were there any years during your leasing of
9 the land when the priority was cut on those Thompson
10 Creek water rights by the water master?

11 A. Shut off?

12 Q. Yes.

13 A. Yes.

14 Q. Which years?

15 A. Which years?

16 Geez.

17 Q. All the years, or just...

18 All of the years, or just some of them?

19 A. No, just some of them. That's 87 water.

20 Q. 1887 water.

21 A. Yes. We call it 87 because we know what we're
22 talking about.

23 MR. SPECK: You have to remember, I'm just a
24 lawyer.

25 Okay. Bill. I think I'm done.

MR. GODDARD: And I'm also finished.

(Deposition concluded at 9:40 a.m.)

(Signature requested.)

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V E R I F I C A T I O N

STATE OF IDAHO)
 : ss.
County of Blaine)

I, WILLIAM MOLYNEUX, being first duly sworn on
my oath, depose and say:

That I am the witness named in the foregoing
deposition, consisting of pages numbered 2 to 38,
inclusive;

That I have read the said deposition and know
the contents thereof; that the questions contained
therein were propounded to me; that the answers to said
questions were given by me; and that the answers as
contained therein (or as corrected by me therein) are
true and correct.

D E P O N E N T

SUBSCRIBED AND SWORN to before me this _____
day of _____, 1993.

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OCT 24 1994

NOTARY PUBLIC in and for the
State of Idaho, residing at

My commission expires: _____

REPORTER'S CERTIFICATE

STATE OF IDAHO)
 : ss.
County of Blaine)

I, DIANE M. SHIPMAN, a Notary Public and
Certified Shorthand Reporter in and for the State of
Idaho, do hereby certify:

That prior to being examined, the witness
named in the foregoing deposition was by me duly sworn to
testify the truth, the whole truth, and nothing but the
truth;

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter reduced to typewriting under my direction, and
that the foregoing transcript contains a full, true and
verbatim record of the said deposition.

I further certify that I have no interest in
the event of the action.

WITNESS my hand and seal this 28th day of
October, 1993.

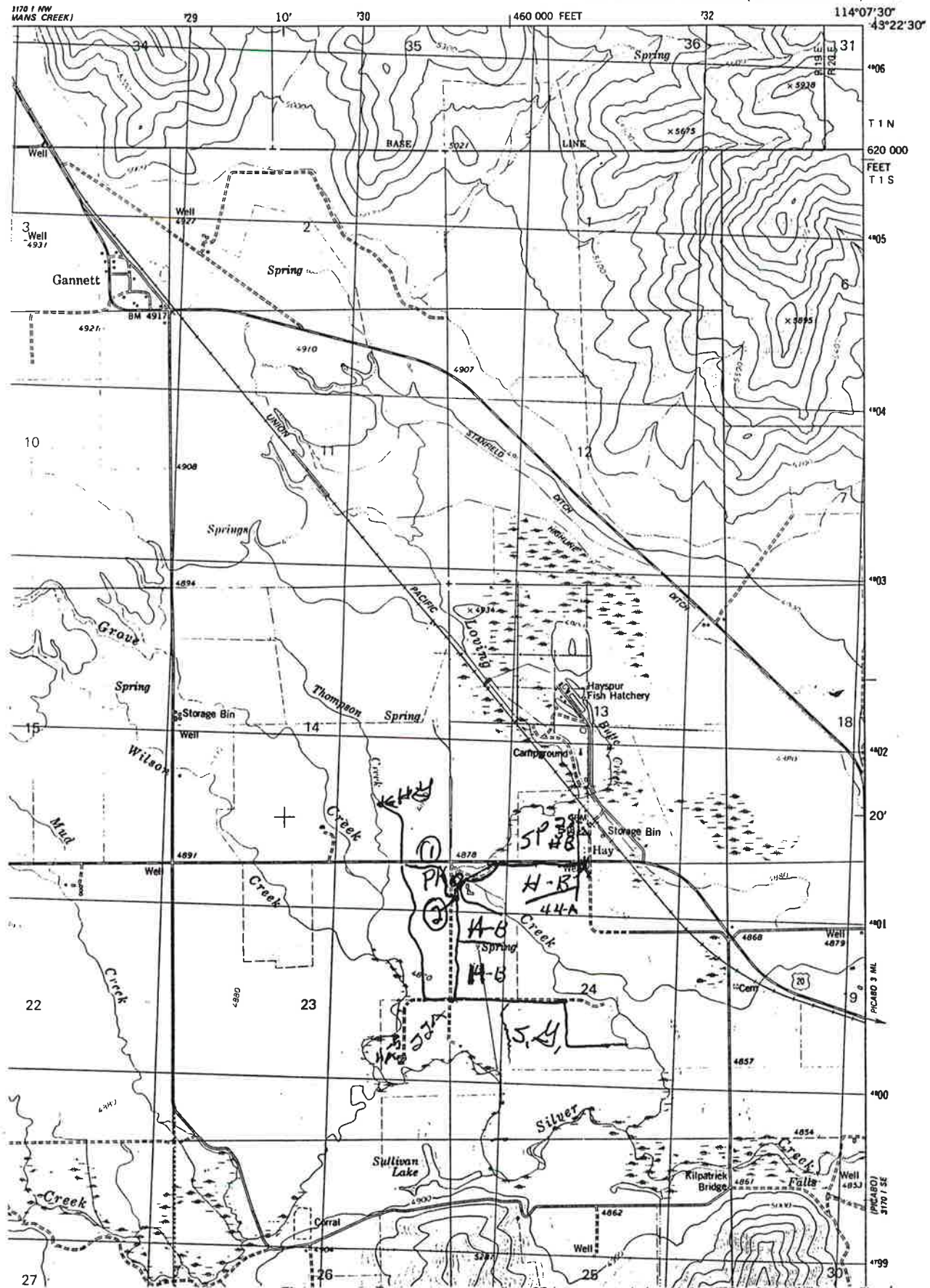
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DIANE M. SHIPMAN, Notary
Public in and for the State
of Idaho, residing at Hailey,
Idaho.
My commission expires: 3-1-96

POON C

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AUG 22 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.)
THE STATE OF IDAHO, EX. REL. R. KEITH)
HIGGINSON, AS DIRECTOR OF THE IDAHO)
DEPARTMENT OF WATER RESOURCES,)
)
Petitioner,)
)
vs.) Civil No. 39576
)
THE UNITED STATES; THE STATE OF IDAHO;)
AND ALL CLAIMANTS TO THE USE OF WATER)
FROM THE SNAKE RIVER BASIN WATER SYSTEM,)
)
Defendants.)

DEPOSITION OF RICHARD C. MALLON

Hailey, Idaho
September 28, 1993

Shipman and Shipman
Certified Shorthand Reporters
Post Office Box 1506
Hailey, Idaho 83333
(208) 788-3818

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Reported by:
Diane M. Shipman, CSR

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A P P E A R A N C E S

For the Petitioner:

STATE ATTORNEY GENERAL'S
OFFICE
Department of Fish and Game
Post Office Box 25
Boise, Idaho 83707
By: STEPHEN V. GODDARD, ESQ.

For the Defendants:

HOGUE, SPECK & AANESTAD
Attorneys at Law
Post Office Box 987
Ketchum, Idaho 83340
By: JAMES R. SPECK, ESQ.

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I N D E X

WITNESS:

RICHARD C. MALLON

EXAMINATION:

By Mr. Goddard

2 49 57 60

By Mr. Speck

35 55 59

DEPOSITION EXHIBITS:

MARKED

1 - Map

1

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1 DEPOSITION OF RICHARD C. MALLON, taken at the
2 instance of the Petitioner, at 1060 Cherry Hill Drive, in
3 the City of Hailey, State of Idaho, on September 28,
4 1993, at 10:30 a.m., before Diane M. Shipman, a Notary
5 Public and Certified Shorthand Reporter in and for the
6 State of Idaho, pursuant to notice and in accordance with
7 the Idaho Rules of Civil Procedure.

8 (Deposition Exhibit 1 marked for
9 identification.)

10 RICHARD C. MALLON,
11
12 produced as a witness at the instance of the Petitioner,
13 having been first duly sworn, testified as follows:
14

15 EXAMINATION

16 BY MR. GODDARD:

17 Q. We're here today to take the deposition of...

18 Do you go by Richard or Dick?

19 A. Richard.

20 Well, Dick. Yeah.

21 Q. ...Dick Mallon.

22 A. Richard C. is what it is, but...

23 Okay.

24 Q. And the last name is Mallon?

25 A. Um-hum.

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1 Q. M-a-l-l-o-n?

2 A. Right.

3 Q. Okay. And Dick, where do you live at the
4 present time?

5 A. Here. Right here.

6 Q. Right now.

7 A. Right here.

8 Q. Yeah. What's the address?

9 A. 1060 Cherry Hill Drive.

10 Q. What's your present occupation?

11 A. I'm retired.

12 Q. Okay. And what did you do previously?

13 A. I ran a ranch down there.

14 Q. Okay. When you say you "ran a ranch down
15 there," where do you mean by "down there?"

16 A. Oh. Down by Gannett.

17 Q. Okay. And could you be more specific as to
18 where your ranch was.

19 A. Well, it was the old Gilhan ranch, if that
20 means anything.

21 Q. Okay. The old Gilhan ranch.

22 A. All right. It was two miles...

23 Let's see.

24 ...two miles south of Gannett and a mile east.

25 Q. Okay. Now, we have what we've marked as

1 Deposition Exhibit Number 1.

2 Could you indicate, using this yellow marker,
3 where we're talking about right here.

4 A. Oh. Well, here's my old house.

5 Q. Okay. Would you just kind of sketch in
6 roughly the boundaries of where your property was; just
7 the general area.

8 A. Well, I suppose it's over here.

9 Yeah, I think this is the way that would go.
10 This is Silver Creek.

11 Let's see. We go...

12 I went down this road, and let's see.

13 This is Hohenberg's house, the guy that
14 bought -- one of the guys...

15 I think this is pretty well-defined here.

16 Q. It doesn't have to be just perfect; just the
17 general area.

18 A. Loving Creek. Yeah.

19 Let's see.

20 It must be like that.

21 Q. Okay. And that's the area that you've marked
22 out in sort of a yellowish --

23 A. Well, now, there's another...

24 There was something north of the road here.

25 Here it is.

1 Q. By "north of the road," you mean what's shown
2 as Highway 20 on the map?

3 A. Yeah. It was an old...

4 This was the old road. I guess they followed
5 it. I don't know.

6 Let's see.

7 One, two, three, four, five, six, seven,
8 eight. That sounds about pretty close. There was eight
9 40s, which is the 320.

10 Q. Okay. And of this 320 acres that you had,
11 approximately how much of it did you farm?

12 A. Well, eventually about...

13 I would just guess at 120. The rest of it was
14 grazing land and land that was worthless really.

15 Q. Why was it worthless?

16 A. Well, it was alkaline, very alkaline in it,
17 and you couldn't grow anything. It was in kind of a
18 swale, you see.

19 Q. When did you acquire this property?

20 A. As far as I can remember, about 1942, '3.

21 Q. Okay. And that was during World War II?

22 A. Yeah. My father bought it. I sent him a
23 bunch of money and told him to buy me something, I don't
24 care what. So he bought this for me with my money.

25 Q. Okay. And how long were you in the service;

1 from when to when the first time?

2 A. Well, the first time was from 1940 to '47.

3 Q. Okay. And during this time did you farm this
4 property?

5 A. I didn't, no.

6 Q. Did you lease it out to someone?

7 A. It was leased to a guy named Spangenberg.
8 That was his name. Spangenberg.

9 Q. Do you know how to spell it?

10 A. S-p-a-n-g-e-n-b-e-r-g.

11 Q. Okay.

12 A. Spangenberg.

13 Q. And did he farm this property during the time
14 period from 1942 to 1947?

15 A. He probably didn't farm all of it; farming, as
16 such. He used it probably for grazing. But see, I broke
17 this land out here over here, yeah, across the road, and
18 then put my sprinklers on, but, see, he wouldn't have had
19 sprinklers, so, therefore, that land was not farmed.

20 Q. These are the two easternmost 40s on your
21 place?

22 A. Yeah. And northeast.

23 Q. Northeast 40s?

24 A. Uh-huh.

25 Q. Okay. Now, when you got the property, did you

1 have water rights out at Thompson Creek?

2 A. Yeah.

3 Q. And on this map there's a little kind of a
4 pond area shown north of the highway on Thompson Creek.

5 Do you see that?

6 A. Yeah. That's a little lake there.

7 Q. Do you know how that lake came into being?

8 A. Yeah. I built it.

9 Q. Okay. You built a dam or a structure --

10 A. I built a dam, and that backed the water up.

11 Q. Do you want to mark with a little green pen
12 here where you built the dam.

13 A. Should I just circle it or...

14 Q. Yeah. Just put an X is okay. And then you
15 can write "dam" on the map if you want.

16 A. (Witness complies.)

17 Q. And when did you build that dam, as best as
18 you can recall?

19 A. Oh, let's see. About 1950, I'd say, or '49 or
20 '50.

21 Q. Why did you build a dam?

22 A. Well, so I could get the water out of where my
23 water right was on Thompson Creek. It would run down
24 here through the grove, and in order to...

25 And it was down at lake bottom, and then I had

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1 to bring the water up to get it on this property down
2 here.

3 Q. When you say this property here, do you want
4 to mark the property you're talking about.

5 A. That's mine. Right here.

6 Q. Okay. Mark it with a "P."

7 A. P?

8 Q. Yeah.

9 A. See, this went through the grove here, and it
10 was down in the creek bottom, you might say, and it had a
11 beaver dam that brought it up a little ways. And then I
12 built this thing here and came around it on higher ground
13 to bring it back up to the level so I could...

14 I gained some altitude so I could get it down
15 to this property here, see.

16 Q. And that's out of Thompson Creek?

17 A. Yeah.

18 Q. Now, how much water came down Thompson Creek
19 at that particular time?

20 A. Well, it sounds...

21 As I remember, it was about a hundred and a
22 quarter or something like that, maybe a hundred and
23 twenty.

24 Q. Inches?

25 A. Yeah.

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1 Q. Okay. And so to get the water to use it, you
2 had to build a dam; right?

3 A. Well, I think at one time they had it come
4 through here, but in doing so, it went into the creek.
5 It went right into Grove Creek, you see; right in here.

6 Q. Now, when you say "they," who do you mean by
7 "they?"

8 A. Well, let's see. I suppose Gilhan when they
9 originally farmed the place or when they got the original
10 water, it ran into this grove here. And all the water
11 was lost in here, and it goes right into Grove Creek. So
12 I built a dam to save that water and push it back where I
13 could get some.

14 Q. Okay. Do you want to label what you're
15 talking about as the grove. Just write "grove" on there.

16 A. It's grove right here.

17 Q. Grove Creek, yeah, but you're talking about a
18 grove, or are you talking about Grove Creek?

19 A. Grove Creek.

20 Q. Okay. So it went back into Grove Creek?

21 A. Yeah. Right here, see.

22 Q. Okay.

23 A. Now, it shows here that...

24 Maybe it is now. I don't know. But it seems
25 to me all that water ran in around in here because it was

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1 real swampy from the water from Thompson Creek that came
2 in.

3 Q. Okay. When you say it was real swampy, is
4 that the area that's indicated on green?

5 A. Yeah.

6 Q. Okay. Do you want to write "swamp" where you
7 were talking about.

8 A. Okay.

9 Q. And write it right over that green patch, just
10 to make sure we know where you're talking about.

11 A. Well, it was a grove, but it was almost under
12 water half the time anyway.

13 Q. Okay. Now, where did Mr. Gilhan take water
14 out of Thompson Creek, if you know?

15 A. Well, it had to have been about here.

16 Q. Okay.

17 A. Right about here.

18 Q. And you marked that with an X?

19 A. Yeah.

20 Q. Now, do you know what lanes Mr. Gilhan
21 irrigated with the water from Thompson Creek?

22 A. Right down here.

23 Q. Okay. He irrigated the same land that you've
24 shown us with a P?

25 A. Yeah.

1 Q. Okay.

2 A. Now, these people probably...

3 I think that's what you own now.

4 They probably originally irrigated this land
5 up here, too.

6 Q. Now, when you say "these people," who do you
7 mean?

8 A. Well, I can't remember their name, but there
9 was Mac, the butcher, lived up here somewhere.

10 Q. Oh, okay.

11 A. He didn't own it. I think he was...

12 There was a couple of women involved in it,
13 and one of them was in the nut house, and the other
14 one...

15 They couldn't sell it because she was non
16 competent, and so they had to wait until she died before
17 they could even sell it.

18 And maybe that's when you bought it. I don't
19 know.

20 MR. McMAHAN: I don't know now.

21 Q. BY MR. GODDARD: Okay. So you built the
22 diversion structure on Thompson Creek.

23 A. Yeah.

24 Q. And then you built a ditch; is that correct?

25 A. Well, there was an old ditch here.

1 Q. Okay. You want to draw on here where the old
2 ditch was, to the best of your knowledge.

3 A. Well, this is very likely it right here. And
4 Grove Creek, now...

5 No, Wilson Creek.

6 Where's that?

7 Right here.

8 Q. Yeah.

9 A. There was another one there. I'll think of
10 it.

11 Q. Okay. So now when you built the dam in
12 Thompson Creek, then you ran a little ditch from there to
13 someplace?

14 A. Well, I ran it from here...

15 See, I went up to high ground by raising the
16 water, and I got it up to high ground here, see, so I
17 could -- it could come back around to about this way.
18 And that's where the end of the other ditch is that goes
19 here and finally empties into Silver Creek.

20 Q. Okay. And so that's how you got the water
21 then down to your property?

22 A. Uh-huh.

23 Q. Down to where the "P" is?

24 A. Yeah.

25 Q. And about how much land down there did you

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1 irrigate out of Thompson Creek?

2 A. Well, let's see. Let's see.

3 There was 40 here. Probably you couldn't farm
4 it all because the creek was there and creek bottom.
5 There was no way you could farm it. And so I'd say about
6 20, 22, 23 acres maybe down here out of the 40.

7 Q. Okay. So the most that you irrigated out of
8 Thompson Creek, then, was about this, you say, 22
9 acres, --

10 A. Yeah.

11 Q. -- plus or minus a couple.

12 A. That's all I could do there. But see, these
13 people, when I got there, this old ditch was there
14 already, had been there for a hundred years, I guess, so
15 they might have...

16 I think they did, but I didn't know that. I
17 think Bill Molyneux farmed that, and I think that's where
18 he got some water out of it, out of that old ditch that I
19 built.

20 Well, the ditch was there, and I just cleaned
21 it out and made it so I could use the water. It was
22 almost filled in.

23 Q. Do you know of anyone else that had water
24 rights on Thompson Creek?

25 A. I sure don't.

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1 Q. Okay.

2 A. As I say, these people might have, but then...

3 Q. But you don't know?

4 A. You'd have to check with them.

5 Q. Okay.

6 A. But see, I diverted the water from Thompson
7 Creek over to Loving Creek, and then I pulled out...

8 Well, the water master, he said, Well, that's
9 all right as long as you don't do more than what you have
10 coming, see. Heck, I only needed about half of what I
11 was supposed to.

12 Q. Now, when you got your farm down in here, you
13 first got your ranch, who owned the property east of
14 Thompson Creek; do you know?

15 A. Well, Petersons owned...

16 They owned...

17 Peterson and Cy Daley immediately west of it.
18 Now, who owned it east, I don't know.

19 Q. Okay. So you don't know who owned it east?

20 A. I suppose Loving. Cal Loving probably had it
21 originally from these springs right up here.

22 What's that?

23 Oh, that's just an elevation thing. Okay.

24 Q. Okay. What use do you recall was made of this
25 property for farming east of Thompson Creek?

1 A. Cy Daley farmed that.

2 Q. Okay. And how did Cy farm it?

3 A. Well, he plowed it all up and put it into
4 barley. But the way he controlled this, he drained this
5 land, see, this ditch that he built, wherever that was.

6 Where is that grove?

7 Q. Okay.

8 A. Here it is. This spring.

9 It came this way, see. Well, this was swampy
10 ground, so he dug this big ditch and drained it and made
11 decent land out of it. So then when he wanted water, all
12 he did was drop the head gate, and the water would come
13 up from underground water.

14 Q. Okay. Would you label that ditch that he used
15 to drain that place.

16 A. That was Cy Daley's?

17 Q. Yeah. Would you put a little arrow to it and
18 write "drain" so we know which ditch we're talking about.

19 A. That was just drainage.

20 Q. Well, just write "drain."

21 A. Yeah. That's what it was.

22 Q. Okay. So you've now written "drainage" on
23 there.

24 A. See, he didn't come all the way to the road.
25 He stopped it here.

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1 Q. A little north of the highway?

2 A. Yeah.

3 Q. Okay.

4 A. And then he had...

5 I don't think that water...

6 It originally went into Silver Creek by
7 underground spring, see.

8 Or not Silver Creek but Loving Creek.

9 But he controlled it by -- he must have
10 drained that in. Yeah, he did over here, this way, into
11 Loving Creek. But he would control it by dropping the
12 head gate, and then the water, underground subterranean
13 water would come up and irrigate it. But if it got too
14 much, he'd just open it up again.

15 Q. Now, do you recall about when Cy built -- Mr.
16 Daley built that drainage ditch?

17 A. Yeah. It would be, let's see, oh, early '50.
18 About '51 or '2, something like that.

19 Q. Okay. Do you have any idea how many acres he
20 irrigated over in there?

21 A. Well, he didn't irrigate it, as such. He
22 controlled subterranean water by putting that ditch in
23 and dropping the head gate when he wanted it to come up.
24 And other than that, he let it run into Loving Creek.

25 Q. So he just used it as a drain?

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1 A. Yeah. Just controlling subterranean water;
2 that's all.

3 Q. Do you know how many acres that Mr. Daley
4 probably --

5 A. He farmed about 80 acres there.

6 Q. Okay.

7 A. Quite a few acres. It got to be pretty good
8 property after he drained it.

9 Q. Okay. Now, is that kind of typical of that
10 property around Thompson Creek back in those days; that
11 it was pretty swampy and a high water table?

12 A. Well, some years yes and some years no. Some
13 years was more than others, see. All this water that's
14 put in the ground up here underneath -- and I talked to
15 the geologist there -- it hits an impervious strata,
16 okay, up here somewhere. Some of it goes above that
17 impervious strata, and that's the water that comes down
18 in here and comes up in this area here. The rest of it
19 went under that impervious strata, and that created all
20 those wells that they have down there, the pressure
21 wells. See, that's where it came from. So, for what
22 it's worth, you know...

23 Q. Did you ever...

24 A. Okay. Now, the water in Thompson Creek, then,
25 came from a little spring as shown on this map; is that

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1 correct?

2 A. Yeah.

3 Q. And do you want to circle that little spring.

4 A. Well, it looks like this is about it there.

5 Q. Okay.

6 A. Just a depression in the ground. They drained
7 it all is what it was.

8 Q. Okay. Now, Thompson Creek from this spring on
9 down, was it like down towards the bottom end down in a
10 ditch so it was hard to get water out of it?

11 A. Oh, yeah. That's why I built the dam.

12 Q. Okay. Because as far as you knew, you
13 couldn't use water out of it to irrigate unless --

14 A. Well, yeah, it could have been done, but I did
15 it more efficiently, because they took it out in here,
16 you see, and then ran it across to this point here, but
17 they were losing so much water --

18 Q. Okay. That's down below the dam?

19 A. Yeah.

20 So I put the dam up on the higher ground to
21 bring it up so I could control it.

22 Q. Okay. Now, after...

23 Then how long did you farm this ground? How
24 long did you have it? From 1942 to when when did you
25 sell it?

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1 A. It must have been about 1956.

2 Now, there again, I'm guessing. I couldn't
3 swear to it.

4 Q. Okay. And then you sold it to, you think, Mr.
5 Hohenberg?

6 A. Well, there were a couple other ones first.

7 Q. Okay.

8 A. But they failed their payments and everything,
9 and the court reverted to me then. Well, then, the next
10 day I sold it again, and the same thing happened two
11 years later. Each one of them, two years. Then I sold
12 it the third time and he made his payments, see.

13 Q. And that was to, you think, Mr. Hohenberg?

14 A. Uh-huh.

15 Q. Okay. Now, these two previous owners that you
16 sold it to, did they farm the ground; do you recall?

17 A. Yeah, I think they did, but they must have
18 done it badly because they didn't make any money. Or if
19 they did, I didn't get any of it.

20 Q. Okay. So did they change the irrigation
21 structure at all on the place?

22 A. No.

23 Q. Okay. The system, I mean. I said structure.

24 Now, what about Mr. Hohenberg after he got it?
25 Did he change the irrigation system, as far as you know?

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1 A. I don't know.

2 Q. Okay.

3 A. Not that I know of, but then...

4 Q. Okay. Now, you said that you broke out some
5 ground after you got back after World War II, and I think
6 you indicated it was up in the northeast corner --

7 A. Right here.

8 Q. -- of your property.

9 A. And up here. See, that was high ground, and
10 it was sage brush about nine feet high, and I broke it
11 out here. There was 18 acres there I remember.

12 Q. You want to write "18" in that particular
13 place.

14 A. "18" here?

15 Q. Put a little "A" behind it, if you would.

16 A. (Witness complies.)

17 Q. Okay.

18 A. And then up here there's the same thing, see,
19 only it was more acres. Up here on the hill.

20 Q. Okay. Now, you want to indicate --

21 A. I'd say it came down this square right here.
22 See, it comes down to here.

23 Q. About how many acres did you irrigate?

24 A. Well, with the sprinklers, there was the 40.
25 I would say about 28, 9, 28 acres. That's what it was.

1 Q. Okay. Go ahead and write "28 acres" in there
2 down here where you put the "P."

3 A. (Witness complies.)

4 Q. There was another you said, about 22 acres.

5 A. Yeah.

6 Q. Okay. You want to write "22 acres" down
7 there.

8 A. (Witness complies.)

9 Q. Okay.

10 A. Now, this is the one that I irrigated.

11 Q. Okay. Did you irrigate any other lands down
12 there?

13 A. No, you wouldn't, because I was going to on
14 some ground here, but I never did. Any other place where
15 you put water, it was superfluous anyway unless you could
16 drain it. But you put water on that alkaline ground in
17 here, and you'd have nothing, so I didn't --

18 Q. Okay. Now, --

19 A. -- irrigate it.

20 Q. Now, did you talk to...

21 You say you converted to sprinklers.

22 A. Uh-huh.

23 Q. You broke out some ground.

24 How did you get the water to there?

25 A. Well, I had a pump that pumped 40,000 gallons

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1 an hour, and it pumped into the sprinklers.

2 Q. And where did you divert the water from to
3 these sprinklers?

4 A. Well, for the sprinklers, it was right about
5 in here, this ground here. It was right about here, I'd
6 say.

7 Q. Put an "S," would you?

8 A. "S?"

9 Q. Yeah, for sprinkler.

10 A. (Witness complies.)

11 And then down here on this piece, I got it
12 from here.

13 Do you want an "S" there, too?

14 Q. Yeah. Put an "S-2."

15 Better put the first one "S-1" and that one
16 "S-2."

17 A. "S-1" and "S-2."

18 Q. Okay. Now, those look like you diverted from
19 Loving Creek.

20 A. Yeah. That was Loving Creek all along here.
21 All my sprinkler water came out of Loving Creek with
22 permission from the Busbys.

23 Busby; is that his name?

24 A. Okay. And Mr. Busby, who did he work with?

25 A. Well, he was from Richfield. I think the

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1 water was in Shoshone District or something.

2 Q. Was he a water ditch writer or --

3 A. He was a water master we called him. I don't
4 know.

5 Q. Okay. So you talked to Mr. Busby, then, about
6 changing your use of water from Thompson Creek to Loving
7 Creek?

8 A. From time to time. See, I figured I could --
9 when I needed it over here, I could do it and then leave
10 it there for the rest of the time. And he said that
11 would be all right because I was only going to use about
12 50 inches here and the rest of it went right in here.
13 And when I didn't use the water here, I just pulled the
14 head gate and let it go right into Thompson and Grove
15 Creek again.

16 Q. Okay. So what you did is used about 50 inches
17 of water --

18 A. Up here.

19 Q. -- over on the two new places; the 18 acres
20 and the 28 acres?

21 A. Yeah. That sounds about right.

22 Q. Okay. And then the rest...

23 And that was the water that you were moving
24 from Thompson Creek over to there.

25 Now, did you ever file any kind of papers or

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1 any kind of documents --

2 A. No. I asked the water master, and he said
3 he'd check on it, and in the meantime, go ahead.

4 Well, you just did what you wanted to do in
5 those days. In the first place, their records was so bad
6 anyway...

7 If they were great, you wouldn't be talking to
8 me. I'm not so sure what they're still bad.

9 Q. Okay. Then whatever water was in Thompson
10 Creek, then you just let it go down the creek?

11 A. Um-hum. Just pulled the head gate.

12 Q. And did you have trouble getting adequate
13 water out of Thompson Creek to irrigate that 22 acres
14 down there?

15 A. No, not after I fixed it. I could do it the
16 other way, but it was...

17 Well, you were fighting the beaver all the
18 time, and it was just hard to get it, and it was -- the
19 ground would just disappear, and then you'd get it in
20 this ditch here and you'd lose water in that. You'd
21 start out with a lot of water, but I suppose...

22 I don't know what I delivered down here.

23 Q. On the 22 acres?

24 A. Yeah. It could have been fixed, but it wasn't
25 worth it to me.

1 Q. Oh, okay.

2 Now we need to clarify that.

3 So when Mr. Gilhan had the property and you
4 first took it over and then you got back in 1950 or
5 whenever you built this dam up here, evidently you had
6 trouble getting adequate water down to the 22 acres prior
7 to building that dam; is that right?

8 A. Well, I would...

9 I guess it could have been done, but I figured
10 it was easier this way than to fool around in that swamp
11 all the time. They put in channels and everything to
12 raise it up and back and forth and they put a little pond
13 there to get it up there. Well, I went around that.

14 Q. Okay. And then did your system, as far as
15 you're concerned, work much better than theirs?

16 A. Oh, yes.

17 Q. Okay. Then did you have trouble...

18 After you did this, did you have any trouble
19 getting water down here?

20 A. I had all the water I wanted here.

21 Q. Okay. So you had enough to irrigate 22 acres?

22 A. Yeah. Easy.

23 Q. Okay.

24 A. You didn't do it like you do other ground, you
25 know, three, four times a year. You'd do it once, maybe

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1 twice. It depended on the underground water. But once
2 you put water on that, it pulled up the subterranean
3 water to where the roots of the alfalfa were sitting in
4 water.

5 Q. Okay. So you only had to irrigate once or
6 twice.

7 A. That's all I had to. I could have, and I had
8 planned on breaking out more land here and over here and
9 pull it out of Loving Creek again and do sprinklers
10 there, but I sold it in the meantime.

11 Q. After you sold it to Mr. Hohenberg, did you go
12 down there and look at how he used the place?

13 A. No.

14 Q. So you didn't go down and see --

15 A. Well, let's see. I think I went back to Korea
16 then about that time. I didn't...

17 I saw when he built his house. I was down and
18 watched him build part of that. But after that, that
19 summer, that's the only time I saw it.

20 Q. Where did he build his house?

21 Do you want to mark that.

22 A. His house is right here.

23 Q. Do you want to circle that or mark it "HB."

24 A. "HB?"

25 Q. Yeah. Let's see.

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1 "HH. "

2 A. "HH."

3 Q. Hohenberg house.

4 A. Okay. There's another one right over here,
5 this speck. That's not a fly speck. That's a house. It
6 was owned by a guy name Greavy. It was a little cabin is
7 what it was right on Silver Creek.

8 Q. Okay. Now, when you came down and watched him
9 when Mr. Hohenberg was building his house, had he put any
10 additional land under cultivation other than --

11 A. I don't think so. He hadn't at the time, so I
12 don't know what he did after that.

13 Q. All right.

14 A. But when he built this house, I told him he
15 was nuts because he built it too close to Silver Creek.
16 And I said, That thing is just going to sink down. So
17 finally it started sinking, like I said it would, and he
18 put in pilasters there, about 12 by 12 and about ten feet
19 down into the ground to anchor it because this ground was
20 just very soft, and every winter it would change a little
21 bit.

22 Q. Okay. Now, Dick, if we go back to over here
23 in the northeast corner of your place where you irrigated
24 with sprinklers, how many sprinkler heads did you have;
25 do you remember?

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1 A. Well, I said...

2 Let's see. I had 18 and 12. About 40.

3 Q. Okay. So you would have had at the most 40
4 sprinkler heads; right?

5 A. Well, it could have been, give or take a few.

6 Q. Okay. But your best recollection is 40?

7 A. Yeah. About 40.

8 Q. Okay.

9 A. Now, this ground up here, this high ground you
10 had to irrigate three or four times a year or more than
11 that. About every ten days. If you didn't irrigate it,
12 that high ground would drain down.

13 Q. And that's water you used out of Loving Creek
14 with the sprinklers?

15 A. Right. I used quite a bit there.

16 Q. And you only used the water out of Thompson
17 Creek, then, I guess you said, once a year?

18 A. Well, yeah.

19 Q. Or twice maybe.

20 A. Once or twice. Never more than two.

21 Q. Then as far as you know, about how much water
22 would you say was in Thompson Creek? Did you say 125
23 inches?

24 A. Yeah. I think that's what was allocated to
25 me. I don't think you could have got much more than that

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1 out of Thompson Creek, but you know, there just wasn't
2 much more coming out to where I put the dam. Then you'd
3 pick up water all the way down.

4 Q. Okay. And then the only other diversion that
5 you're aware of out of Thompson Creek was the one that
6 Mr. Gilhan had used prior to you changing the system?

7 A. Well, that was right in here in this swampy
8 place. It was a grove. And he used a lot of canvas and
9 stakes to dam it up to force it into this ditch, see.
10 Well, that was a constant thing that the beaver was
11 tearing it up all the time anyhow.

12 Q. Okay. So as far as you know, then, from the
13 time you got the property until you sold it, I think you
14 said in about 1956 --

15 A. I think so.

16 Q. Okay. Well, give or take.

17 A. Yeah.

18 Q. -- the only land that you know of that was
19 irrigated directly out of Thompson Creek was this 22
20 acres down here; correct?

21 A. Yeah. But I diverted it over to here to
22 Loving Creek with the permission of the guy. He just
23 said, Go ahead and do it.

24 Q. By "diverting," you mean you just moved your
25 place where you took water.

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1 A. Yeah. I just changed it. I didn't divert it.
2 That's the wrong statement.

3 Q. Okay. I'm just checking my notes.

4 A. Yeah. Good.

5 Q. Did you ever know Thompson Creek to be called
6 by any other name?

7 A. Not that I know of.

8 Q. So as far as you know, from --

9 A. In fact, I didn't even know it was Thompson
10 Creek until I found out that I had 100-some inches, 125
11 inches on Thompson Creek. Then I had to find out where
12 Thompson Creek was.

13 Q. Okay. I believe when I talked to you once
14 before that your recollection was that you were the first
15 one down in that whole country to use sprinklers.

16 A. Yeah.

17 Q. Okay.

18 A. I had to order them from Fran Jones, and he
19 didn't have them, of course, and he ordered them out of
20 Salt Lake. And everybody came looking at them. Now,
21 everybody does it. Of course, that was 50, 48 years ago,
22 something like that.

23 Q. Do you remember when you and I talked, oh,
24 quite some time ago, and you indicated that you may have
25 only been able to get maybe only 50 inches of water out

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1 of Thompson Creek? Do you remember that?

2 A. Yeah, but I could have got more --

3 Q. Okay.

4 A. -- if I wanted it, but this seemed...

5 This is about what I delivered down to this
6 property here is about 50 inches, you see.

7 Q. Okay. So that's what you think is the most
8 you got down to the property?

9 A. Well, like I say, that's what I needed. I
10 could have got more.

11 Q. Yeah. Here's...

12 Okay. Let me show you this statement, Dick,
13 and then I'll...

14 Do you remember...

15 MR. SPECK: May I see that first?

16 MR. GODDARD: Oh, before he sees it...

17 I'm just going to see if that's correct, if he
18 wants to change it in any way. If you want, I can have
19 him read the whole...

20 THE WITNESS: What is that statement?

21 MR. GODDARD: Just a copy of an interview.

22 Q. BY MR. GODDARD: Dick, you've seen this copy
23 of your --

24 A. Oh, yeah. I got it right here.

25 Q. Okay. Now, would you read this statement

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1 right here that goes down to --

2 A. Well, yeah. That sounds about...

3 That's about all I needed. Maybe I misstated
4 it.

5 Q. Well, no.

6 So this statement is correct?

7 A. Yeah.

8 Q. Okay. Let me --

9 A. I could have got more if I wanted to go and
10 bypass a lot of this and fill in badger holes, which I
11 could have done with the bulldozer.

12 Q. Okay. So this statement that you made then
13 was, you said, "But what I used here, by the time I got
14 here, I doubt if I had over 50 inches, like I say."

15 MR. SPECK: I think you misread that. I think
16 it says "by the time it got here."

17 MR. GODDARD: Excuse me. I'm sorry. Let me
18 change it.

19 THE WITNESS: Picky, picky.

20 MR. SPECK: Well, that's a major difference.

21 MR. GODDARD: Jim's correct. That's why I
22 want you to make sure I read it...

23 THE WITNESS: That's fine.

24 Q. BY MR. GODDARD: "But what I used here" --

25 A. Down here.

1 Q. The 22 acres.

2 -- by the time it got here..."

3 And by "it," I assume you meant water.

4 A. Water, yeah.

5 Q. "...I doubt if I had over 50 inches, like I
6 say."

7 A. That sounds right to me. That's about all I
8 needed, and there wasn't any need for more. You could
9 have got it by damming up some of these holes along the
10 way.

11 Q. That's fine.

12 But that statement is correct?

13 A. Uh-huh.

14 Q. Okay. Okay.

15 Now, when you irrigated this 22 acres down
16 here with the "P," did you have trouble getting water
17 from the top end of the field down to the bottom end of
18 the field; do you recall?

19 A. No, no. It flowed because it was gravity.
20 All that water is this way, gravity, underneath and on
21 top. It all slopes to the south and east. That's the
22 way that water flowed, and the creeks prove that.

23 MR. GODDARD: Okay. Fine. I don't have any
24 more questions for Dick right at this time, Jim.

25 Do you want to take a short break?

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1 MR. SPECK: Yeah, that would be good.

2 (Recess.)

3

4 MR. GODDARD: If I may, let me ask Mr. Mallon
5 about two questions, and then we'll let you start.

6 MR. SPECK: All right.

7 Q. BY MR. GODDARD: Okay. We'll go back on the
8 record.

9 Dick, looking at the northern --
10 northeasternmost corner of your property up where the 22
11 acres -- where you've written "22 acres," --

12 A. Uh-huh.

13 Q. -- it shows a well.

14 Was that well on the property during the time
15 you owned it?

16 A. Not when I owned it.

17 MR. GODDARD: Okay. Fine.

18 MR. SPECK: Did you mean 28 acres as opposed
19 to 22 acres? I think it's close to where he has written
20 "28 acres."

21 MR. GODDARD: Didn't I say 28?

22 MR. SPECK: No. You said 22.

23 MR. GODDARD: I'm sorry.

24 THE WITNESS: This was the 22 we're referring
25 to there, I suppose.

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1 Now, there again, that's just guessing.

2 Q. BY MR. GODDARD: I realize that, but the well
3 we're referring to, or I was referring to, is in the
4 northeasternmost part of your property.

5 A. Right.

6 Q. In the little block where you've written
7 "28A;" is that correct?

8 A. That sounds just right.

9 Q. Okay. And that well was not present when you
10 owned the property; is that correct?

11 A. Not at all.

12 Q. Okay. Do you know who drilled that well?

13 A. Probably Hubsman or Hohenberg, one of the two.
14 I don't know.

15 MR. GODDARD: Fine. Go ahead, Jim.

16

17 EXAMINATION

18 BY MR. SPECK:

19 Q. Let me ask some further questions about the
20 well.

21 So if the well was not there, then the only
22 water rights that you had available to use on this land
23 were your water rights out of Thompson Creek; is that
24 correct?

25 A. Well, yeah.

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1 Q. Okay. And during the time that you farmed the
2 ranch, did you use the water from Thompson Creek or from
3 Loving Creek, use those water rights every year to farm
4 your ranch?

5 A. Oh, yeah.

6 Q. Okay.

7 A. After I put in those sprinklers, then I farmed
8 it every year.

9 Q. All right. Now, there have been a couple of
10 names flying around here. One is Mr. Hubshalman, and one
11 is Mr. Hohenberg.

12 Do you recall, is Mr. Hubshalman the man to
13 whom you sold the ranch?

14 A. Yeah. Hubshalman, Hubsmith.

15 Hubsman. That was it.

16 Q. And that was approximately in 1956?

17 A. I think so. I guess that would be...

18 The title insurance company would know all
19 that, I suppose.

20 Q. You've identified essentially three different
21 fields which you irrigated.

22 During the time that you owned the ranch, did
23 you irrigate or put irrigation water on any of the land
24 to the east of the field you've marked -- to the west of
25 the field you've marked "28 acres?"

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1 A. Let me see. I'll try and remember.

2 I don't think so, because this land was too --
3 plenty wet with sub water, so I wouldn't have had to
4 irrigate. I wouldn't have done so. So there was land
5 over here that I was going to do, but by that time I sold
6 it.

7 Q. Okay. When you said "this land," are you
8 referring to this 80 acres which is west of the one
9 you've marked "28 acres?"

10 A. Well, there was a 40 and a 40 and an 80 and an
11 80. Yeah. It's 320 acres. Eight 40s total.

12 Q. Um-hum.

13 A. There was a lot of bad land that was worthless
14 there anyway. Creek bottom.

15 Q. Was this road which is on the east of the
16 field you've marked "22 acres," was that there at the
17 time you --

18 A. Yeah. That was, but this one wasn't.

19 Q. Did you put irrigation water on any of the
20 land to the east of this road which marks the eastern
21 boundary of the 22 acre field marked "P?"

22 A. Yeah, I did. That was pasture land there, and
23 I did water that. I didn't do it every year. It was an
24 experiment, and I did it a couple years, and it didn't
25 seem to improve the grass in any way, so I just quit it.

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1 Q. How many acres of pasture ground did you
2 irrigate there?

3 A. Oh, there would probably be about another 25
4 acres, something like that.

5 Q. And that would have been water from Thompson
6 Creek?

7 A. Yeah, that would have been from Thompson
8 Creek, but I didn't do it every year. You know, maybe I
9 got lazy.

10 Q. Anything further east of that 25 acres did you
11 put any water on?

12 A. No, no. But there was some over here that
13 could have been, and I had to -- I had anticipated doing
14 that, which I never did. It would have been about
15 another 25 acres in this area here.

16 Q. Okay.

17 A. It could have been irrigated if I had...

18 As I say, about the time I was going to break
19 it out of sage brush and irrigate it, why, it was...

20 I sold it about that time.

21 MR. SPECK: Okay. Excuse me.

22 (Discussion held off the record.)

23 Q. BY MR. SPECK: Okay. Let's explore that a
24 little bit.

25 This is back on the record.

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1 The 80 acres that I was referring to includes
2 some land that is north and east of Loving Creek and some
3 land that is south and west of Loving Creek; is that
4 right?

5 A. Yeah.

6 Q. Now, did you irrigate any of this land that
7 was north and east of Loving Creek from Loving Creek with
8 the pump from Loving Creek?

9 A. Well, all of this was, --

10 Q. Um-hum.

11 A. -- because I took it out here and put it on
12 the sprinklers and I took it out here and put it on the
13 sprinklers. But I had put a fence in there because I
14 wanted to get this land down here that wasn't too good.
15 There was a lot of grass there, and it wasn't worth
16 farming that ten acres and give up that grass, so I just
17 fenced it. I don't know if the fences are still there or
18 not.

19 Q. Okay. The ten acres you're referring to would
20 be immediately west of the 28 acres?

21 A. Right. Right. It could have been, but I
22 myself didn't do it.

23 Q. Okay.

24 A. It was high ground. You're right. There was
25 a big spring right down below it there somewhere right in

1 about here. Yeah.

2 Q. When is the first time you saw this land?

3 A. It must have been about 1948, because I had it
4 for five years before I even saw it.

5 Q. So you never saw the land when Mr. Gilhan
6 farmed it; is that right?

7 A. No, I didn't, because I bought it from Gilhan.

8 Q. Okay.

9 A. I never saw it on the ranch. I saw him
10 afterwards, but not on the ranch. I didn't see what he
11 farmed.

12 Q. So you don't really know what lands that he
13 farmed, then?

14 A. I really don't. You could see where old
15 ditches were and stuff, and that indicated, but he said
16 his horses were wore out, his machinery was wore out, and
17 he was wore out.

18 Q. And that's why he wanted to sell it.

19 A. That's why he sold it.

20 Q. Okay. Were there any old ditches on the land
21 that you didn't irrigate?

22 A. Yeah, there was.

23 Q. Which land was that?

24 A. Well, it would be right in here, right in this
25 land here, but I could see they were more or less

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1 abandoned. Actually, I filled them in.

2 Q. And that would have been the land south and
3 west of Loving Creek around what's marked as a spring on
4 the map?

5 A. I don't know where he would have got his
6 water, come to think of it, but there was ditches there,
7 old ones; way, way old ones.

8 Q. Okay.

9 A. Unless he'd pump it out of Loving Creek. And
10 he might have been able to do that, but I don't think
11 that would have been too efficient.

12 Q. Okay. When you built the dam and created the
13 lake, is that right on Thompson Creek or --

14 A. Yeah.

15 Q. You didn't have a head gate that diverted out
16 of Thompson Creek, did you?

17 A. No. Huh-uh. I filled Thompson Creek in to
18 raise the water.

19 Q. Did you have any kind of a measuring device?

20 A. Yeah. I built a weir.

21 Q. You built a weir?

22 A. Yeah. I had to put in a weir or he said he
23 couldn't measure it, the water master. So I put in an
24 official weir. And I knew at the time what was official.
25 Today I couldn't tell you.

1 Q. Did you ever take any of the measurements of
2 the water yourself going into the lake?

3 A. No. Huh-uh.

4 Going into? The only thing I could do is
5 measure it going out because that's where the weir was.

6 Q. Okay. Did you ever take any of the
7 measurements going out of the lake?

8 A. Yeah. We measured...

9 Oh, I think...

10 Well, I think that's where I got the 120
11 inches, from that weir.

12 Q. Did you take the full amount of water that you
13 had decreed or that you were entitled to take?

14 A. Into this dam, you mean?

15 Q. Yes.

16 A. Oh, yeah. Whatever came in there, and then I
17 used it from there down to here. But you would lose a
18 certain amount of water there.

19 Q. Right. So you were taking the entire amount
20 of Thompson Creek in that lake?

21 A. No, because I built the dam. And I don't care
22 how good a dam it is, you're going to seep a bunch of it
23 out. So there was a lot of water from Thompson Creek
24 that I didn't even have in that lake. It went down and
25 through the dam. See, it was soft, and how much I don't

1 know. It was probably more. There's probably as much
2 got away as what I had in there, just guessing. I don't
3 know.

4 Q. Where would that have gone, that water have
5 gone?

6 A. It would go right around and right into
7 this -- right into Thompson Creek again, see. But when
8 you put a dam in there, a lot of that water is going to
9 go around it and come right back in.

10 Q. Okay. So that would have ended up in Grove
11 Creek; is that correct?

12 A. Yeah. Well, probably into Thompson Creek and
13 then Grove Creek.

14 Q. Okay. And then where did you take the water
15 out to get it to parcel P?

16 A. Right here at the dam. At the head gate right
17 there.

18 Q. Okay.

19 A. See, I built a gate underneath the dam where
20 if I ever had to...

21 Wait a minute. I think somebody told me I had
22 to be able to lift that water, that head gate so that it
23 could all go right back into Thompson Creek again if I
24 wanted to. But I had an overflow, and I'd let it run
25 back in there anyway.

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1 Q. Do you remember the amount of the water rights
2 that you had?

3 A. Well, I remember 125, but I also remember a
4 190. That might have been from the original. I don't
5 know.

6 Q. Do you remember a man by the name of
7 Worthington?

8 A. Oh, sure.

9 Q. Okay.

10 A. Yeah.

11 Q. Because --

12 A. He was...

13 He owned this property in here and over here.

14 Q. Okay. The two water rights that we're talking
15 about, one was decreed to Gilhan, --

16 A. Yeah.

17 Q. -- that was 125 inches, and the other was
18 decreed to Worthington, and that was 65 inches, which is
19 a total of 190 inches.

20 A. That's where I got the 190, then, I guess.

21 No, but Worthington, how would he ever deliver
22 water over to here from Thompson Creek? It would be
23 impossible.

24 Q. So you don't know what lands these water
25 rights were decreed to, do you?

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1 A. Other than this one. You said 125 to Gilhan.
2 I know where that is, but the 65 that went to Verl might
3 have come off...

4 Well, if he had...

5 Verl might have got it out of Loving Creek,
6 but he couldn't have got it out of Thompson Creek.

7 Q. Do you remember or know of a creek called
8 Aubrey Creek?

9 A. I heard about it.

10 Let's see.

11 Q. Could that have been another name for Thompson
12 Creek?

13 A. No. It might have been up here on this
14 Gannett Road.

15 Where in the heck is it?

16 Web Patterson did this, what Daley did. He
17 followed that road down, drilled or dug a ditch right
18 alongside of the road, and of course it caved in all the
19 time and ruined a lot of the road, but he generated a lot
20 of water which would have eventually come down here. But
21 he put that big ditch in and he diverted it and took it
22 out of Silver Creek. Web Patterson. That's the one Bill
23 Molyneux farmed, see. Or he owned it. I guess he bought
24 it from Web.

25 Q. Okay.

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1 A. But it was the same idea as doing all this.
2 They just drill a hole and then divert the water or put a
3 file on it. It's kind of hard to do.

4 Q. Anyway, the amount of water rights that you
5 had then was 190 inches; is that right?

6 A. I remember that on the title, 190, but I think
7 this was 125, and you said 65, which makes that 190. But
8 how in the devil they'd get water out of Thompson to put
9 over here, I don't know.

10 Well, Verl didn't have a pump -- Worthington.

11 Q. What was the size of the pump that you used in
12 Loving Creek?

13 A. Oh, it pumped 40,000 gallons an hour.

14 Q. Did you only have one pump?

15 A. Uh-huh.

16 Q. And you would move it from one point to
17 irrigate the 18 acres and another point to irrigate the
18 28 acres?

19 A. Yeah. I asked the water master, and he said
20 yeah, that would be all right as long as I didn't pull
21 more here than I had coming here, which I probably used
22 half as much on these things up here.

23 Q. And how much was that again? What was the
24 size; 40,000 gallons?

25 A. 40,000 gallons an hour. I don't know how much

1 inches.

2 Well, it would depend on the pressure. Yeah.
3 I don't know how much inches that would produce.

4 Q. Now, you said earlier that you used 50 inches
5 out of Loving Creek.

6 A. I just guessed at these.

7 Q. Would that have been 50 inches on this piece?

8 A. Yeah. And then they would be 50 inches this
9 piece, and then I'd move the pump and go down and take
10 another -- the same amount out here, the same pump.

11 Q. Okay. So that would have been a total of 100
12 inches for those two pieces of land; is that right?

13 A. Not at the same time.

14 Q. Right.

15 A. Yeah, but total. I suppose that you could
16 figure it that way, but I only pulled about...

17 I don't know how much inches 40,000 would
18 figure out to. Boyle's law says the pressure varies
19 inversely with the volume, and that I remember from
20 college. How that computes into 40,000, I don't know.

21 (Discussion held off the record.)

22 Q. BY MR. SPECK: Just so we know the point of
23 some of these questions about the decreed rights, the
24 Worthington right was decreed for lands that were within
25 what you've outlined here in yellow and on the legal

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1 description of your lands.

2 Did you know that?

3 A. I think that could have been. Well, it might
4 have been. I don't know how he would have delivered it,
5 but then there was a piece of property in here that Verl
6 was going to buy. Whether he ever did or not, I don't
7 know. But no. That was while I was there.

8 What you're talking about was when this was
9 first decreed, which was long ago. I don't know how they
10 would have got that 65 inches to Worthington.

11 Q. Okay. When you said in answer to several
12 questions that all you put on the land was about 50
13 inches, is that all that was left of the 120 or more
14 inches that you diverted out of the lake and through your
15 system by the time it got there?

16 A. Well, that's probably what I had, yeah,
17 because like I say, I hit 120 inches of it here at the
18 dam. A lot of that's going to go around, so I didn't
19 probably ever get 120 inches to here. I know I couldn't.
20 Didn't. I didn't need it anyway, so it doesn't matter.

21 Q. Because there was a lot of loss in your
22 delivery system; is that right?

23 A. Oh, yeah. There would have been, but as I
24 say, I didn't need any more, and a lot of it would just
25 seep around anyway.

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1 MR. SPECK: Okay. I don't have any other
2 questions.

3 Steve?

4
5 FURTHER EXAMINATION

6 BY MR. GODDARD:

7 Q. Mr. Mallon, Mr. Speck asked you about a creek
8 called Aubrey Creek.

9 Do you remember that?

10 A. I remember the name, and I just wonder if that
11 could be...

12 I don't know this, but I wonder if that could
13 have been where Web Patterson dug that ditch and put it
14 into Grove Creek.

15 Q. But as far as you know, it wouldn't have been
16 Thompson Creek?

17 A. No, because Thompson Creek originated below
18 that. See, this is about where Thompson Creek started,
19 see.

20 Q. Okay. So as far as you know, they were two
21 separate water systems?

22 A. Aubrey --

23 Q. Two different creeks. I don't know about
24 systems.

25 A. I don't know where Aubrey Creek is. The only

1 thing I can think of is what Web Patterson diverted, and
2 they might have had a name for it. I don't know.

3 Q. And that's several miles to the northwest of
4 where Thompson Creek is.

5 A. Oh, no. Here's Gannett Road here, see, and he
6 went down this road, and all these springs, he built it
7 here and they tapped into all these springs. You know,
8 one of those could have been Aubrey Creek.

9 Q. Okay.

10 A. One of those there. I don't know that.

11 Q. Okay. So the area you're pointing at when you
12 said "several of these springs," is that sort of in the
13 southeast corner of Section 10?

14 A. Yeah.

15 Q. Okay. Why don't you circle --

16 A. Well, now, see, I just guess at that.

17 Q. I know, but just circle the area that you were
18 talking about just so we have it clear.

19 A. (Witness complies.)

20 Q. Okay.

21 A. And these three springs, he dug that ditch
22 right along here and diverted it into Grove Creek right
23 here.

24 Q. Okay.

25 A. These are three different ones, and they were

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1 pretty good sized springs, too. Bigger, I think, than
2 Thompson.

3 Q. Would you just label that "Aubrey."

4 A. Well, --

5 Q. A-u-b-r-e-y.

6 A. A-u-b-r-e-y.

7 Now, that was the biggest one.

8 Q. Okay.

9 A. So I'll betcha' that was Aubrey Creek. That
10 would be right here.

11 Q. And you put a little arrow to that one you're
12 talking about.

13 A. Yeah, I did.

14 Q. Okay. Now, just to make sure that we have
15 this down, when do you recall putting in the sprinklers?
16 I think I asked you this question before,
17 but...

18 A. Oh, it must have been about 1950.

19 Q. Okay. I think you answered it, but I'm not
20 sure.

21 A. '48, '50.

22 Q. Now, Mr. Speck asked you about...

23 Oh, let me ask you to back up just a second.

24 Would you use this green pen and label where
25 your house used to be.

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1 Can you remember?

2 A. I have to first find it.

3 Here it is right here.

4 Q. Okay.

5 A. Circle it?

6 Q. Yeah, circle it, and why don't you label that
7 "MH."

8 A. What do I call it; "House?"

9 Q. No, just label it "MH," and that would be
10 Mallon house.

11 A. Oh.

12 Q. And just draw a little arrow over to the
13 circle, if you would.

14 A. (Witness complies.).

15 Q. Okay. Thanks.

16 Now, Mr. Speck asked you about your irrigating
17 some land east of the 22 acre parcel down here that's
18 marked with a "P" also, and you indicated that you just
19 did it for a couple years; is that right?

20 A. Um-hum. That would be right in here.

21 Q. Okay. Do you want to label that.

22 A. The only way I could do it was with a
23 sprinkler, though. You could never irrigate that by
24 gravity.

25 Q. Where did you get the water to irrigate that

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1 farm?

2 A. I pulled it out of...

3 It would have been Silver Creek.

4 Q. Silver Creek or Grove Creek?

5 A. No, no. Let me think a minute.

6 Q. Okay.

7 A. Here was this fence line. I'll be doggoned.

8 I think it was right in this corner. I pulled it out of
9 what was Grove Creek by then, because it would have been
10 in this corner.

11 Q. So you would have pulled the water out of
12 Grove Creek?

13 A. To do this.

14 Q. Okay. Then the land that you said you
15 irrigated a couple of years, how many years when you say
16 "a couple" do you mean?

17 A. Oh, two, three.

18 Q. Okay. Why don't you mark that land with the
19 "2/3," the area that we're talking about.

20 A. "2/3?"

21 Q. Yeah.

22 And I believe you said that was about 25
23 acres; is that right?

24 A. Yeah.

25 Q. Then I believe you indicated that it didn't

1 seem to make any difference on the grass growth, so you
2 just went back and used whatever was there; right?

3 A. I didn't see it do too much good from it.

4 Q. Do you know of any other land that was
5 irrigated out of Thompson Creek?

6 A. No.

7 Wait a minute. Bill Molyneux, when he formed
8 this place here, he took it out of Thompson Creek.

9 Q. No, I mean prior to when you were --

10 A. When I was doing it, no.

11 Q. Okay. Now, you indicated that there was some
12 land that had some abandoned ditches on it.

13 Do you remember that when Mr. Speck was --

14 A. Well, they had them all over it, but let's
15 see.

16 They had some right in here by the house, this
17 area here, and there was another ditch came down this
18 way, and there was some ditches here.

19 Now, why they had them, I don't know.

20 Q. Okay. But could they have gotten...

21 Now, would you mark those places that you were
22 just talking about that had the abandoned ditches with
23 little Xs.

24 Well, make it an "AD" --

25 A. Well, --

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1 Q. -- for abandoned ditch.

2 A. It would be in this area here, abandoned
3 ditch, and that's about right, because it came over here,
4 too, and there was a ditch there.

5 Q. Okay. Do you want to mark another area
6 "abandoned ditch," then?

7 A. I guess it was an abandoned ditch. I don't
8 know what the heck it was there for.

9 Q. Okay. But as far as you're aware from that
10 land, those ditches weren't associated with Thompson
11 Creek.

12 A. I never used them.

13 MR. GODDARD: Okay. I don't have any more
14 questions for you, Dick.

15

16 FURTHER EXAMINATION

17 BY MR. SPECK:

18 Q. Dick, the land that you've marked "2/3," you
19 said you pulled water out of Grove Creek to do that.

20 Could that have been out of the Thompson Creek
21 ditch delivery system?

22 A. Yeah.

23 Q. Not out of Grove Creek?

24 A. Well, see, here's Grove Creek here, see,
25 coming down here like this. Here's my ditch that came

1 here. And I would have pulled it from the closest point,
2 which would have been right about here. It would have
3 been Thompson Creek, because it was higher than Grove
4 Creek. See, Grove Creek was a pretty good size creek.

5 Q. Okay. Was any of this land...

6 At the time you owned the ranch, was any of
7 this land to the west of you and east of the Thompson
8 Creek, your delivery system, was any of that farmed?

9 A. That would be in here or east of it.

10 Q. "In here" meaning the land where you've
11 written "MH?"

12 A. That was my house. Everything west of my
13 house was not farmed by me. I think Molyneux did, but
14 not me.

15 Q. But was it farmed by the owners of the land
16 when you owned your land?

17 A. Not that I know of. I didn't. I didn't at
18 all.

19 Q. Okay.

20 A. But see, there was all this that went through
21 here. They could have irrigated it there by flood
22 irrigating. Whether they did or not prior to my time, I
23 don't know.

24 MR. SPECK: Off the record.

25 (Discussion held off the record.)

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1 Q. BY MR. SPECK: Let's go back on the record.

2 There was a little discussion off the record
3 about how the water might have been delivered into those
4 abandoned ditches that you've marked on the map, and is
5 it your understanding that the only way they could
6 have -- the water could have been delivered to them was
7 out of the Thompson Creek system?

8 A. That's right.

9 MR. SPECK: Okay. I don't have any other
10 questions.

11
12 FURTHER EXAMINATION

13 BY MR. GODDARD:

14 Q. I do.

15 Dick, in this area down here that Mr. Speck
16 was talking about, which is the area west of the road
17 that goes by the front of your house, did you ever see
18 that irrigated or farmed while you owned the property?

19 A. Not while I owned it.

20 Q. Okay. Now, the ditches that Mr. Speck just
21 asked you about where the abandoned ditches were,
22 couldn't they have also come out of Loving Creek?
23 Weren't they closer to Loving Creek?

24 A. No, unless they pumped it. This was...
25 Loving Creek was much lower than this land

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1 here.

2 Q. Okay. Now, the one set of ditches is on the
3 east side of Loving Creek that you've got marked as
4 abandoned ditches; right?

5 A. Yeah, there was a ditch there.

6 Q. Okay. Now, that ditch...

7 I mean, this land couldn't have had water
8 delivered to it from Thompson Creek, could it?

9 A. Not up here. It's high ground, and that was
10 much higher than Thompson Creek.

11 Q. Okay.

12 A. But here on these abandoned ditches, well,
13 here is where those abandoned ditches...

14 That's wrong.

15 No. Wait. There was a ditch there. Now, why
16 it was there, I don't know. There was a ditch there.

17 Q. By "there," you mean up in the parcel that
18 says "28 acres?"

19 A. Yeah.

20 Q. Okay. Now, on this map that we're looking at
21 there's a place called "spring" that's down close to
22 where you've marked "abandoned ditches."

23 Do you see that?

24 A. Yeah.

25 Q. And it shows a straight line ditch from ~~there~~ ^{here}

1 down to Loving Creek.

2 Do you know what that ditch is?

3 A. That's new to me.

4 Q. It wasn't there when you owned the property?

5 A. Huh-uh.

6 Q. Okay. Fine.

7 A. It was spring...

8 There was water there all right but no spring,
9 and I don't know what...

10 Maybe they dug a ditch there, --

11 Q. Okay.

12 A. -- a drain ditch. They probably did.

13 Q. Okay. But it wasn't there?

14 A. Not when I was there.

15 Q. Okay. Fine

16 A. In fact, that's the first time I ever saw it.

17 MR. GODDARD: I'm through.

18

19 FURTHER EXAMINATION

20 BY MR. SPECK:

21 Q. One last series of questions.

22 When you acquired your land, how did you learn
23 that your water rights were out of Thompson Creek?

24 A. Well, I think it was on the adjudication of
25 the land. When I bought the land, it would have

1 mentioned the water right on that.

2 Q. Did you talk to the water master?

3 A. Oh, yeah. Busby; yeah.

4 Q. And where did he tell you you were to take
5 your water rights from?

6 A. I didn't even know where Thompson Creek was,
7 and he told me.

8 Q. He told you all of your water rights for your
9 land were out of Thompson Creek; is that right?

10 A. That's what he said.

11 MR. SPECK: Okay. That will do it for me.

12 Steve?

13

14 FURTHER EXAMINATION

15 BY MR. GODDARD:

16 Q. Did you ever go to check on what Mr. Busby had
17 told you, or you just relied upon what he said?

18 A. Well, if he was opposed to it, he would have
19 told me. I assumed that. Of course, it was kind of a
20 catch as catch can in those times.

21 MR. GODDARD: Okay. I guess that ends the
22 deposition.

23 (Deposition concluded at 12:07 p.m.)

24 (Signature requested.)

25

V E R I F I C A T I O N

STATE OF IDAHO)
 : ss.
County of Blaine)

I, RICHARD C. MALLON, being first duly sworn
on my oath, depose and say:

That I am the witness named in the foregoing
deposition, consisting of pages numbered 2 to 60,
inclusive;

That I have read the said deposition and know
the contents thereof; that the questions contained
therein were propounded to me; that the answers to said
questions were given by me; and that the answers as
contained therein (or as corrected by me therein) are
true and correct.

D E P O N E N T

SUBSCRIBED AND SWORN to before me this _____
day of _____, 1993.

NOTARY PUBLIC in and for the
State of Idaho, residing at _____

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My commission expires: _____

REPORTER'S CERTIFICATE

STATE OF IDAHO)
 : ss.
County of Blaine)

I, DIANE M. SHIPMAN, a Notary Public and
Certified Shorthand Reporter in and for the State of
Idaho, do hereby certify:

That prior to being examined, the witness
named in the foregoing deposition was by me duly sworn to
testify the truth, the whole truth, and nothing but the
truth;

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter reduced to typewriting under my direction, and
that the foregoing transcript contains a full, true and
verbatim record of the said deposition.

I further certify that I have no interest in
the event of the action.

WITNESS my hand and seal this 28th day of
October, 1993.

DIANE M. SHIPMAN, Notary
Public in and for the State
of Idaho, residing at Hailey,
Idaho.
My commission expires: 3-1-96

MICROFILMED
OCT 24 1994

3170 1 ME
(LITTLE WOOD RIVER
RESERVOIR)



1799
MICROFILMED
OCT 24 1994

10/27/1988

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME Mo MahaCLAIM IDENT. NO. A-37-00252DATE RECEIVED 10-14-88CK # 1537AMOUNT \$ 577 - 6

1. Is the name and address complete with zip code? YES ☒ NO ☐
2. Is a priority date entered? YES ☒ NO ☐

Is the water use exempt from the Permit requirements, or if it is not exempt, has a Permit been approved or a License issued?

A Permit is required: (1) for groundwater developed after March 25, 1963 (except single family domestic and stockwater wells using less than 13,000 gpd), or (2) for surface water developed after May 20, 1971 (except for instream stockwater). USE CARE IF CLAIM IS RETURNED. REFER TO ADJUDICATION MEMOS # 1 (ADJ. CLAIMS/APPLICATIONS) AND # 9 (REJECTION OF CLAIMS). EXPLAIN IN COMMENTS.

3. (a) Is a source entered? YES ☒ NO ☐
- (b) Is a tributary to entered? (if required) N/A ☒
4. Is the legal description of the p.d. sufficient? YES ☒ NO ☐
5. Is there a description of the diverting works? YES ☒ NO ☐
6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form. YES ☒ NO ☐
- Is the period of use included? YES ☒ NO ☐
- Is a quantity claimed for each use? YES ☒ NO ☐
7. Is a total quantity claimed entered? YES ☒ NO ☐
8. If required is a consumptive use entered? N/A ☒
- Is the consumptive use correct? N/A ☒
9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, see Adjudication Memo # 4. N/A ☒
10. Is (are) the place(s) of use and purpose(s) indicated? YES ☒ NO ☐
11. Is (are) the county(ies) entered? YES ☒ NO ☐
12. Is the ownership of p.u. checked? YES ☒ NO ☐
13. Are other water rights listed or "none" indicated? YES ☒ NO ☐
14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) N/A ☒
15. Is the basis of the claim indicated? YES ☒ NO ☐
16. Is the claim signed by the claimant, and is the signature appropriate? (If an individual is the claimant, has that individual signed the claim, or if an organization is the claimant, is the organization signature block complete?) YES ☒ NO ☐
- Has the claim been signed, sealed, and dated by a notary? YES ☒ NO ☐
- Was this claim filed on time, or was an extension granted? YES ☒ NO ☐
- Is the fee enclosed correct? Exempt ☒
- If this claim is based on an existing water right, has the identification number been entered? N/A ☒
- Should this claim be receipted and data entered? YES ☒ NO ☐

Claim checked by: CAComments: \$159 -MICROFILMED
FEB 22 1993

Water Right Number - 37-00252

Adj. Flag Translation: Standard Water Right Number

Old (D) Number -

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

*** C - CURRENT OWNER ***

MC MAHAN

WILLIAM A.

1 - P.O. BOX 3125

2 -

3 -

City- KETCHUM

State- ID Zip- 833400000

Phone -

MC MAHAN

LAURA L.

1 - P.O. BOX 3125

2 -

3 -

City- KETCHUM

State- ID Zip- 833400000

Phone -

*** O - ORIGINAL OWNER ***

GILLIHAN

J. C.

1 -

2 -

3 -

City-

State- Zip-

Phone -

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
06/01/1887 17 D - DECREED+ - - - - Source - - - - + + - - - - - Tributary - - - - - +
AUBREY SPRING SILVER CREEK+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Stream Index (Blank if no Index Code)
01S 19E 14 NE NE (13) BLAINE+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
01 - IRRIGATION 2.500+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
2.500+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
01S 19E 13 NE SW 9.0 01 IRRIGATION (13) BLAINE
01S 19E 13 NW SW 34.0 01 IRRIGATION (13) BLAINE
01S 19E 13 SW SW 36.0 01 IRRIGATION (13) BLAINE
01S 19E 13 SE SW 30.0 01 IRRIGATION (13) BLAINE

Total Acres: 109.0

+ - Diversion Means - HEATH #10-10A HEADGATE

+ - Non-Irrigation Use -

FEB 22 1989
MICROFILMED

Proof Due Date	- 00/00/0000	Field Exam Made	- 00/00/0000	Field Exam Fee	-
Approved/Denied	- 00/00/0000	Protested Date	- 00/00/0000	Swan Falls	-
Proof Made Date	- 00/00/0000	Hearing Date	- 00/00/0000	Temporary Right	- P
Start Work Date	- 00/00/0000	Verified Date	- 06/18/1985	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	-	Water District	- 37
Licensed Date	- 00/00/0000	Appl Received	- 00/00/0000	Transfer/Amended	- T
Decree Date	- 12/13/1909				