

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: A37-10446
Date Received: 7/07/1988
Receipt No: _____
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ANDREW FITZGERALD 208-886-7716
Address: 425 N. 250 W.
SHOSHONE, ID 83352
OR
Name: AGNES L. FITZGERALD 208-886-7716
Address: 425 N. 250 W.
SHOSHONE, ID 83352

2. Date of Priority: DEC 31, 1910

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
05S	17E	8	SE	NE	SE		LINCOLN

5. Description of diverting works:
DRILLED WELL, APP.250'DEPTH,W/PUMP & P/L

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
COMMERCIAL	01/01	12/31	0.220		
STOCKWATER	01/01	12/31	0.330		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
STOCKWATER FOR 500 HEAD/DAIRY, COMMERCIAL FOR 500 HEAD MILK COWS

A37-10446

Page 1

Date: 07/07/88

MICROFILMED
FEB 25 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05S	17E	8	NE	SE		COMMER	
			NE	SE		STOCK	

11. Place of use in counties: LINCOLN

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

13. Other Water Rights Used:
N/A

14. Remarks:

COMMERCIAL USE IN DAIRY BARN FOR MILKING OF 500 HEAD OF MILK COWS

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: _____

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): *Agnus St. Ignace* Date: 7-7-88
_____ 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 _____

INTER-DEPARTMENT MEMO

TO: Claim A37-10446

SUBJECT: Water Use

FROM: Jim Stanton

DATE: 2-22-93

Today I spoke with Mr. Fitzgerald concerning water use on this property. He stated that there was a 500-head feedlot on this property prior to 1978. A large dairy was built on the property in 1978 by the previous owner. Mr. Fitzgerald bought the dairy in 1981. The facility now has about 900 animals. I told him that his claim probably would not cover the dairy fully, suggesting that he file for a water permit or that he purchase groundwater for transfer to this property. This claim appears to represent an illegal groundwater use.

(X) For your information

() Response required

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Jim Stanton
signature

FEB 25 1993

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:

Ident. Number

Date Received

Receipt Number

39356

A37-10446

7/7/88

S000 717

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s)

ANDREW FITZGERALD &/OR
AGNES FITZGERALD

Phone (208)

886-7716

Mailing Address

425 N 250 W SHOSHONE ID

Zip

83352

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

1910

3. Source of water supply (a)

GROUND WATER

which is tributary to (b)

4. a. Location of existing point of diversion is: Township

55

Range 17E

Section 8

SE

1/4 of NE

1/4 of SE

1/4, Govt. Lot,

B.M., County of

Additional points of diversion if any:

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 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. WELL & PUMP

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FEB 25 1993

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Commercial purposes from 1/1 to 12/31 amount 0.22 or _____
 For Stockwater purposes from 1/1 to 12/31 amount 0.33 or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.33 (cfs) and/or (b) _____ (acre feet)

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

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) C/ See Remarks (Dairy Barn)

10. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- 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	
5S	17E	8													S/C				

Total number of acres irrigated _____

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

12. Do you own the property listed above as place of use? 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. _____ or None (✓)

14. Remarks: Commercial use in dairy barn for milking of 500 head of milk cows.

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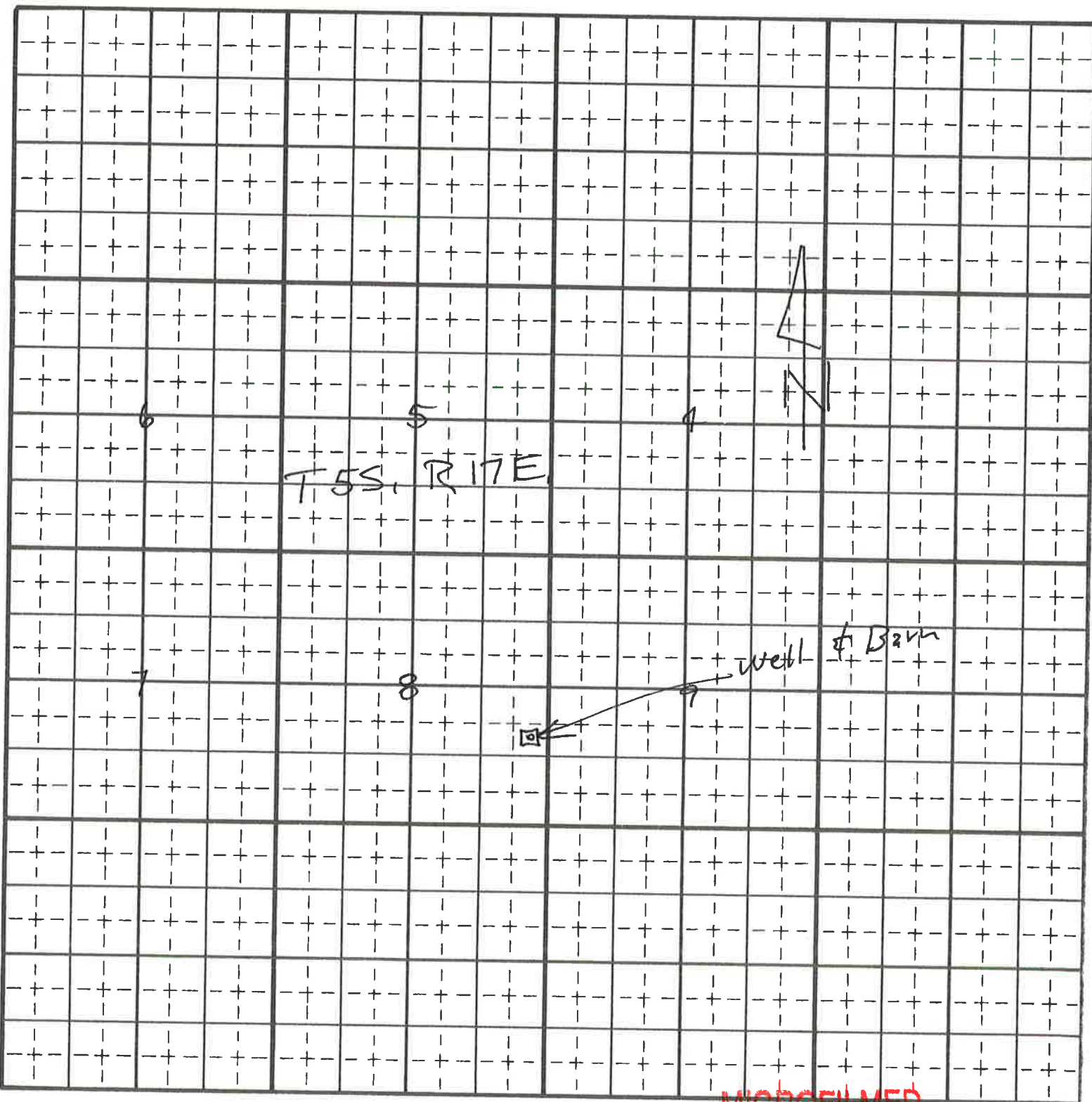
FEB 27 1999

Last Name _____ 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



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FEB 25 1993

Last Name _____ Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice ☐ License ☐ Permit ☐
Decree ☐
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)

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

Number of attachments 0

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

Signature of Claimant (s) *Dynus Ditzler* Date 6/30/88

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 _____ of _____
Title 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 _____)
County of Lincoln) SS.

Subscribed and sworn (or affirmed) before me this 30th day of June 19 88

SEAL

Notary Public *Calleen H. Barney*

Residing at *Shoshone*

My Commission Expires 3/5/92

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, _____ 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 _____

Date _____

Last Name _____ Ident. Number _____

MICROFILMED

FEB 25 1993

Copies White-State, Yellow-Claimant

RECEIVED

JUL 10 2002

06/22/2002

NOTICE OF ERROR
REPLY

Department of Water Resources

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: July 23, 2002

Water right number: 37-10446

AGNES L FITZGERALD

427 N 250 W

SHOSHONE ID 83352

Telephone Number: (208) 886-7716

ANDREW FITZGERALD

427 N 250 W

SHOSHONE ID 83352

Telephone Number: (208) 886-7716

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation; no changes need to be made.

DATE: 7-2-02

SIGNATURE: Andrew Fitzgerald

Please print your name: ANDREW FITZGERALD

IDWR State Office, PO Box 83720, Boise ID 83707-9815

03/28/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-10446

NAME AND ADDRESS: AGNES L FITZGERALD
427 N 250 W
SHOSHONE ID 83352

ANDREW FITZGERALD
427 N 250 W
SHOSHONE ID 83352

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.12 CFS
6.7 AFY

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

PRIORITY DATE: 12/31/1910

POINT OF DIVERSION:

T05S R17E S8 SENESE Within LINCOLN County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.120 CFS 6.70 AFY

PLACE OF USE: STOCKWATER Within LINCOLN County
T05S R17E S08 NESE

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: Beneficial Use

Call - (4-Bros)
Andrew Fitz.
886-7716
Re: 37-10446
called 4/2 9:40
(Lgrmng)



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

March 28, 2002

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

ANDREW FITZGERALD
427 N 250 W
SHOSHONE ID 83352

RE: Water Right Update

Dear Andrew,

This letter is the follow-up review we discussed by phone earlier today. I did not enclose a Change of Address form for you to return as discussed. I found your corrected address (as shown above) already part of other records on our database and I was able to update all your records based on that information. Additionally, I confirmed your corporate name with the State of Idaho as being 4 Bros. Dairy, Inc. Therefore, I will update all our departmental records to reflect that as the correct business name.

37-10446: I have enclosed a preliminary recommendation of this right as it is proposed. The commercial use has been dropped from the right as we agreed. I see you have other rights for the dairy use filed with IDWR also; they are 37-8807 & 37-8814.

37-7414: This is the permit that has lapsed. Enclosed are copies of the permit application and the letter warning of the lapse for failure to submit Proof of Beneficial Use. There is a copy of the Idaho Code 42-218a that describes the legal affects of the situation. Basically you would have to prove the right was developed between 1975 and 1980 and explain why the delay in filing proof until now. The priority date of the permit would be moved up to the day proof was actually filed. The file was destroyed in 1994 so it has been awhile since contact has been made with this permit.

37-10446

37-7033: This permit is still pending a license to be issued. I have discussed this permit with allocations staff here in our State Office and we have concluded to get the overlapping right, 37-2647, processed thru the SRBA partial decree and then follow-up the final license for this right.

37-2647: I requested a notice of Change of Ownership from you and you informed me this has been done. I have located the changes you submitted to us and I will be updating your ownership of this right as indicate in our records. You do not need to submit further documentation for this matter.

Thank you for your quick responses in addressing your water right questions. There is no action necessary regarding these matters at this time unless you choose to try and re-instate the lapsed permit. If you have further questions on these water rights then please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Clelland", with a large, stylized loop at the end.

STEVE CLELLAND
Sr. Water Resource Agent

Enc:

37-10446

3/28/02
SCC

Review of well logs shows Fitzgerald drilled two new wells in T5S-R17E-S8-NESE; one in 1988 & one in 1993.

Therefore, there is a 3rd well that is there historically as represented by this Claim.
Also three separate depths are listed;
355' - 405' - 250' respectively.

GIS pod link is made for this original well based on location of homestead shown in OPQ Z73, dated 1978.

New wells filed as 37-8807 & 37-8814,
new applications for permit.

Rec'd:

Q for 500 head feedlot as noted in
memo 2-22-93 by J. Stanton.

= 0.12 cfs 6.7 AFA

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. _____

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent: Steve Clelland

3/28/2002 8:40 AM

NAME:

RE:

ANDREW FITZGERALD

CALLBACK

PRIORITY & COO

I returned his call about the proof of priority for the claim **37-10446**. He said he went to Twin Falls and discussed this with them along with some other issues. He believes he cannot support the priority as claimed for the larger dairy uses that were developed in 1978. He would like to have the claim reduced to a de minimis stock water right and drop the commercial use. I said I could do that with the recommendation since no proof will be filed and we have discussed the situation.

We discussed the right **37-7033**, a permit. It has been pending for several years. I offered to look in to the delay and report back to him.

He said he has filed for the COO on the right **37-7414A**. I looked this up and find it is lapsed. I will review this and tell him in a letter what is the status of the permit.

I had requested a COO for the right **37-2647** and he said that had been done at the Southern office but he will send me the info anyway. *(In checking the records the change was made to the recommendation only and not to the claim or WR side records.)*

I confirmed the correct address and he said it has changed from 425 N to 427 N although he gets mail at both addresses. I will send him a change of address form to get all the rights and records coming to the correct address. *(After reviewing the database I find the correct address is already documented to show the 427 N location. No updated form will be needed or sent.)*



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 327-7900 FAX: (208) 327-7866 www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

37-10446
AGNES L FITZGERALD
425 N 250 W
SHOSHONE, ID 83352

March 4, 2002

Re: Evidence of Priority Date for SRBA Claim

RESPONSE DEADLINE
MARCH 29, 2002

Dear Claimant:

The Notice of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit. The Department will, at a later date, conduct reviews and/or field exams for the claims in your area. Since the priority date of a beneficial use water right cannot be confirmed by field examination, **proof must be provided by the claimant** supporting the priority date claimed.

If you no longer own the property to which the claim is appurtenant please forward this correspondence to the present owner, or return it to the Department. If you have received this correspondence from the previous owner of the property it is recommended that you file a Change of Ownership form with the Department in order to receive future mailings and to continue to be a party in the adjudication.

Enclosed you will find a computer printout of your Notice of Claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

PLEASE NOTE: The Department will not recommend the court decree the notice **as claimed** if no evidence of a priority date is submitted. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement should be in the form of a notarized affidavit.

Submit the required evidence supporting the priority date by the date shown above, referencing all documents with the corresponding Notice number. If you have questions not covered by this letter or the enclosed pamphlet, please contact the office listed above.

Sincerely,

Steve Clelland
Water Resource Agent, Sr.

Enclosures

Permit:
37-8814
2 wells →

EST.
Dom
Well ↑

8 9

17 16

37-10446

3/28/02
SCC