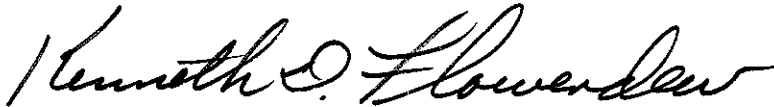


M E M O

RE: Exception to Claim No. 37-4040

I, Kenneth D. Flowerdew, am filing an exception to the above referenced claim due to recent information which has been brought to my attention. This exception to Claim No. 37-4040 is filed with regard to the following:

On September 5, 1974, I personally inspected the area and the flow of water under the Hill City road into the two existing reservoirs was zero. Therefore, in Item 9 of the remarks filed by the applicants in their claim, a requirement of 3 cfs of water to flow is unrealistic since this would adversely affect decreed right holders upstream on Clover Creek. The priority of 1912 for use of the water may be inaccurate since the waters of this area were entered into Court on August 27, 1917, for decree.



Kenneth D. Flowerdew
Water Resource Technician II
Southern District Office
Department of Water Resources
Twin Falls, Idaho

MICROFILMED

May 21, 1973

RE: Claims to a Water Right Nos. 37-4041 - Robert A. and/or Bernardine M. Erkins
37-4040 - Robert A. and/or Bernardine M. Erkins

Mr. Robert A. Erkins
P. O. Box 232
Buhl, ID 83316

Dear Mr. Erkins:

The Department of Water Administration has completed the processing of your claim to a water right, and no further action is authorized under Sections 42-225a and 42-225b of the Idaho Code. Your claim will be retained in our files and will be available at any time for use by you or the court.

As you are aware, the filing of your claim does not, in itself, guarantee you a water right, it only records and preserves the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included in your claim file, you may have that information or evidence added at any time. Please refer to your claim number when corresponding with this office.

We are enclosing, for your records, a copy of the claim. If you have any questions or if we can be of further assistance, please feel free to call upon us.

Very truly yours,

Bob Haynes
District Engineer
Southern District

BH:alv

Enc: Copy of claims

37 4040

May 10, 1973

Mr. John Tschannen
Bliss, Idaho
83314

Dear Mr. Tschannen:

We are in receipt of your letter concerning Claims to a Water Rights Nos. 37-4040 and 37-4041.

The purpose of the claim is to maintain a record of rights which have been established by prior diversion and beneficial use of water. The Department of Water Administration takes no action on a Claim to a Water Right and takes no position concerning the accuracy or validity of a claim. The forms are made available to the courts should a legal question concerning the rights come up.

In an exception to a Claim to a Water Right, the individuals filing that exception should state what information in the claim is not correct. The exception should be in affidavit form and sworn before a Notary Public.

Because your letter does not indicate what in the claim is incorrect and is not notarized, I am returning it. If we can be of any assistance in this matter, please don't hesitate to call or come into our office in Twin Falls, Idaho.

Very truly yours,

Bob Haynes
District Engineer
Southern District

BH:alw
Enc.

cc: Andrew E. Falls
Sterling Bray

37 4040

1973

1973 - Harold H. Smith and/or Wilma A. Smith

1973 - Wilma A. Smith

1973 - Bert L. Smith and/or Bernardine H. Smith

1973 - Bert L. Smith and/or Bernardine H. Smith

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

(signature of claimant)

Very truly yours,

Bob Haynes
District Engineer
Southern District

Bill submitted _____ by _____

1973 - Bert L. Smith and/or Bernardine H. Smith

37 4040

NOTICE OF CLAIM TO A WATER RIGHT

NO. 37-4040

Notice is hereby given that Robert A. and/or Bernardine M. Erkins,
P. O. Box 232, Buhl, ID
has filed a claim to a water right established by diversion and application
to beneficial use of 3.0 cubic feet per second ~~acre feet per annum~~
of water from a small stream from an unnamed spring, tributary to Clover Creek
with point of diversion in the SESE¹/₄, Sec. 30, T. 4S, R. 13E, S.H., Gooding
County,

The water is claimed to be used from Jan. 1 to Dec. 31 for fish culture
and from April 1 to Oct. 1 for the irrigation of 177 acres
with a priority of 1-1-1;
the place of use is within the SESE¹/₄, Sec. 30, T. 4S, R. 13E, S.H.,
Gooding County,

Any exception to this claim of water right may be filed with the Idaho
Department of Water Administration, 1041 Blue Lakes Boulevard North, Twin
Falls, Idaho, 83301.

R. KEITH HIGGINSON

Director

Published in the Gooding County Leader, Gooding, ID
on May 3 and May 10, 1973

OK alw 5-1-73

Need Galley Proof

**NOTICE OF CLAIM TO A
WATER RIGHT
NO. 37-4040**

Notice is hereby given that Robert A. and/or Bernadine M. Erkins, P. O. Box 232, Buhl, ID has filed a claim to a water right established by diversion and application to beneficial use of 30 cubic feet per second of water from a small stream from an unnamed spring, tributary to Clover Creek with point of diversion in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, T. 4S, R. 13E, B.M., Gooding County.

The water is claimed to be used from Jan. 1 to Dec. 31 for fish culture and from April 1 to Nov. 1 for the irrigation of 140 acres with a priority of 1912; the place of use is within the S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 30; N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 31, T. 4S, R. 13E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, 1041 Blue Lakes Boulevard North, Twin Falls, Idaho, 83301.

R. KEITH HIGGINSON,
Director

5-3-2tc

37 4040

April 26, 1973

RE: Claim Nos. 37-4040 & 37-4041 - Robert A. and/or Bernardine H. Erkins

Mr. & Mrs. Erkins
P. O. Box 232
Buhl, ID 83315

Dear Mr. & Mrs. Erkins:

Attached are your Receipt Nos. 10861 and 10862 for \$10.00 each for the above referenced Claims to a Water Right which was received in our office on April 25, 1973.

Very truly yours,

Bob Haynes
District Engineer
Southern District

BH:alu

Enc.

37 4040

Identification No. _____

Claim No. 37-4040

Map No. _____

**STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION**

CLAIM TO A WATER RIGHT

Established by Diversion and Application to Beneficial Use

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

(Please refer to the instructions on the back of this form)

1 Name of claimant Robert A. and/or Bernardine M. Erkins dba White Arrow Ranch
post office address P. O. Box 232, Buhl, ID 83316

2 The point of diversion is in SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Section 30 Township 4S
Range 13E B.M. located on small stream from an unnamed spring source located
in NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 29 (name of source) T. 4S, R. 13E, B.M.
tributary to Clover Creek in Gooding County.

3 Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

a Date of priority claimed:

1912 amount: 3.0 cfs or _____ acre feet
_____ amount: _____ cfs or _____ acre feet
_____ amount: _____ cfs or _____ acre feet
Total claimed 3.0 cfs or _____ acre feet.

b Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

use Irrigation period of use from April 1 to Nov. 1 (both dates inclusive)
use Fish culture period of use from Jan. 1 to Dec. 31 (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)
use _____ period of use from _____ to _____ (both dates inclusive)

4 Description of diverting works:

a Surface water diversion dam and/or headgate: material is composed of earth dam with gate valves feeding concrete, metal, and dirt ditches; length is 3000 feet; height is 12 feet; width at bottom is 55 feet; width at top is 20 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known from 1912 to before 1947, water was picked up as it flowed. Before 1947, a levee was built to store water and used as a fishery. Storage area is 45 acre feet. No increase in diversion capacity has resulted but the levee (dam) construction has increased the ability to store water.

b Underground water diverting works: is well flowing or pumped; depth of well is _____ feet; diameter of well is _____ inches; type of pump is _____ capacity of pump is _____ g.p.m.; name and address of well driller is _____

attach well logs if available; has there been any change in pump or motor since well was first completed _____; if so, give dates and explain _____

- c. Conveying works: length of ditch to place of use is 110 feet; width of ditch at top is 2 feet; width of bottom of ditch is 2 feet; depth of water is 1 feet; grade of ditch per 1000 feet is 2 feet; material through which ditch passes is metal or concrete flumes; maximum length of pipe line to first place of use is _____ feet; diameter of pipe line is _____ inches; type of pipe _____; grade of pipe per 1000 feet is _____.

Please explain any changes or increase in size of conveying system since water was first appropriated, giving date and dimensions if possible. none other than the above mentioned construction of the levee (dam) which made it possible to better use the 3 c.f.s. that flowed the year-round and to divert the flood waters (up to 20 c.f.s.) the flowed in spring months of the year. The levee was built before 1947 and raised after 1947 (see Application \$30760).

- d If water is stored: name of reservoir _____;
total capacity of reservoir is 45 acre feet; active capacity of reservoir is 45 acre feet;
year construction commenced before ⁴⁷; year completed before ⁴⁷; date first used before ⁴⁷
period of storage is from Jan. 1 to Dec. 31; is reservoir drained each year no;
is reservoir on or off stream off explain supplied by "flood & seepage waters from _____ and _____
unnamed spring, a tributary of Hot Springs Creek", see App. 430760 & Permit 895.
if feeder canal is used give maximum carrying capacity 20 cfs; if reservoir is off stream describe
location of reservoir by 40-acre subdivisions Sec. 30, T. 4S, R. 13E, B.M., SE1/4, Sec. 31,
T. 4S, R. 13E, B.M., NE1/4. (See attached USGS map of 1954 showing reservoirs
marked in blue)

has there been any enlargement of the reservoir since it was first built. yes, if so give dates and describe - constructed before 1947 (see App. R30760) which states, "When in July 1947, it was noted that the flood waters were coming with increasing intensity the aforesaid levee was heightened to the proportions of a dam".

- 5 a Where water is used for irrigation describe area irrigated by 40-acre subdivisions and give total acres:

[illegible]

Total number of acres to be irrigated 140

Explain any significant increase in area irrigated since first use, give dates and acreages if known none

Department of Reclamation
MAY 23 1973
Idaho

INSTRUCTIONS

Your claim should set forth all necessary information to describe your claimed right. Failure to give enough information may make your claim of little value. Some of the items in the form may not apply to your situation. Please use additional sheets if space provided is not sufficient to fully answer the questions.

Paragraph No

- 1 Give full name and post office address of person or company making the claim.
- 2 Describe the point of diversion by 40-acre subdivision. Give the name of the source, the drainage to which it is tributary if surface water, and the county in which the point of diversion is located. If there is more than one point of diversion, list others in the remarks section.
- 3 Give the priority dates and the quantities of water that you claim. You should accurately list the dates that you initiated each new use of the water. List separately the dates and amounts of water involved in each enlargement of the diversion. (Example: if you diverted 0.8 c.f.s. of water for irrigation on May 18, 1871, for the first time for use on 40 acres of land, and then later you enlarged the diversion by diverting an additional 0.4 c.f.s. of water to irrigate an additional 20 acres of land on June 1, 1901, your right should be described as follows:

Date of priority claimed: May 18, 1871 amount: 0.8 c.f.s. or acre feet
June 1, 1901 amount: 0.4 c.f.s. or acre feet
Total claimed: 1.2 c.f.s. or acre feet

Since the water was used for irrigation between April 1 and October 31 on that particular farm, part b would be completed as follows:

use irrigation period of use from April 1 to October 31 (both dates inclusive). If the water had been used for any other purpose, you would have described the priority date, amount, use, and period of use in a similar manner.

- 4 Describe the diversion works and explain any changes since the right was first initiated.
- 5 If the water is used for irrigation, give the total acreage and list the lands irrigated by 40-acre subdivisions and complete the other questions.
- 6, 7 & 8 Describe any other uses of water.
- 9 In the remarks section, give any information or details that you feel are not fully covered or that need clarifying. You might explain your operation, where the water is returned to if for an industrial or non-consumptive right, the condition and temperature of the returned water, and any other information to help explain your claim.

You may wish to include as a part of your claim, affidavits of witnesses who are familiar with your right and who have a personal knowledge of the circumstances which you have described in your claim. You may submit maps, drawings, certified copies of posted notices which may have been filed in the county courthouse, water measurement records, or any other document which you feel will support your claim.

Your claim will be advertised in a county newspaper for two weeks. Exceptions to your claim which dispute the water right that you have described may be received by the Department of Reclamation and you will be provided a copy of such exceptions.

The fee for filing a Claim to a Water Right is \$10.00. Your claim and fee may be submitted to one of the following offices:

Northern District
Idaho Dept. of Water Administration
401 Front Avenue, Room 209
Coeur d'Alene, Idaho 83814

Southern District
Idaho Dept. of Water Administration
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Eastern District
Idaho Dept. of Water Administration
240 South Holmes
Idaho Falls, Idaho 83401

Western District
Idaho Dept. of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

b Do you get water through a ditch owned by several users? no If yes give the name of the ditch
_____ The other users and their respective
interests in the ditch are (if known) _____

6 Where water is used for stock watering, give number of each kind of stock watered live fish Number
unknown but would be in the thousands.

7 Where water is used for domestic or municipal purposes give number of families served _____
name of town supplied _____

8 Where water is used for other purposes not above enumerated, give the nature of use the extent of use
and any details regarding the initiation of the right or subsequent later expansion Be as specific as possible
giving dates and quantities. Besides being used for irrigation since 1912 or before (see
App R30760 Permit R895) which states, "during a period of some forty years", a
reservoir system was built before 1947 and enlarged after 1947. The entire flow
was used in the reservoir to maintain bass and bluegill fishing for which a fee was
charged to the public by R.J. Brostrom and a building built to handle the collection
of the fees. Waters were used for fish farming and dike was used for flood control.

9 Remarks: please explain any details of your claim which you feel need clarification or additional explanation
This area had decreed water rights in 1882 and 1884. We can be sure from the Bostrom
Permit R895 and statements contained in there that the water was used for over 40
years prior to 1947. The lowest flow measures at 3 c.f.s. and he reports that the
high flows were coming with "increased intensity", in 1947. He applied for additional
waters because the waters from Hot Springs Creek were "inadequate to irrigate said
lands", see R30760. In July 1953, Gooding County records No. 129072. Bostrom entered
into an agreement to engage Davis-Saegers, earth-moving contractors, agreement dated
October 22, 1951, between Leonard E. and Olga Strout, husband and wife, and R.J.
Bostrom to develop the waters in Dry Creek for use in the Bostrom Reservoir sites
#862 and #863. It is therefore clear that sometime prior to 1947, R.J. Bostrom
constructed a levee and developed a reservoir that was used for irrigation and a
fishery. That the waters impounded by the reservoir system had in effect according
to his statement been used for "some forty years". That R.J. Bostrom in 1951 entered
into an agreement to develop another reservoir. Further, he applied for a permit.

State of Idaho

County of Blaine

Be it known that the undersigned, being duly sworn deposes and says that he, she, they subscribed the
foregoing claim to a water right, together with all attached information, and that the matters and facts therein are
true to the best of the affiants knowledge.

Sworn to before me this 24th day of April 1973

Bernardine M. Erickson
Claimant

Ernest D. Matthews
Notary Public

Residing at Blaine, Idaho

My commission expires Jan. 1, 1977

For Department Use Only

Received by <u>alw</u> Date <u>4-25-73</u>	Exception filed by: _____	Forwarded to claimant by: _____	Date _____
Prelim check by <u>alw</u> Date <u>4-25-73</u> <u>10862</u>	_____	_____	_____
Fee received by <u>alw</u> Date <u>4-25-73</u> Fee <u>\$10.00</u>	_____	_____	_____
Approved for publication by <u>alw</u>	_____	_____	_____
Published in <u>Gooding County Leader</u> <u>5-3 &</u> <u>alw 5-10-73</u>	_____	_____	_____

- 37 4040

Robert A. and/or Bernardine M. Erkins
dba White Arrow Ranch
P.O. Box 232, Buhl, Idaho 83316

9 cont.)

which is Application number R.30760. This was approved August 28, 1952. He was issued Permit number R. 895. A copy of this is enclosed. This permit was then cancelled October 18, 1968 after the work to obtain the permit was completed on August 16, 1963 as certified by Deputy State Reclamation Engineer Ralph W. Thomas.

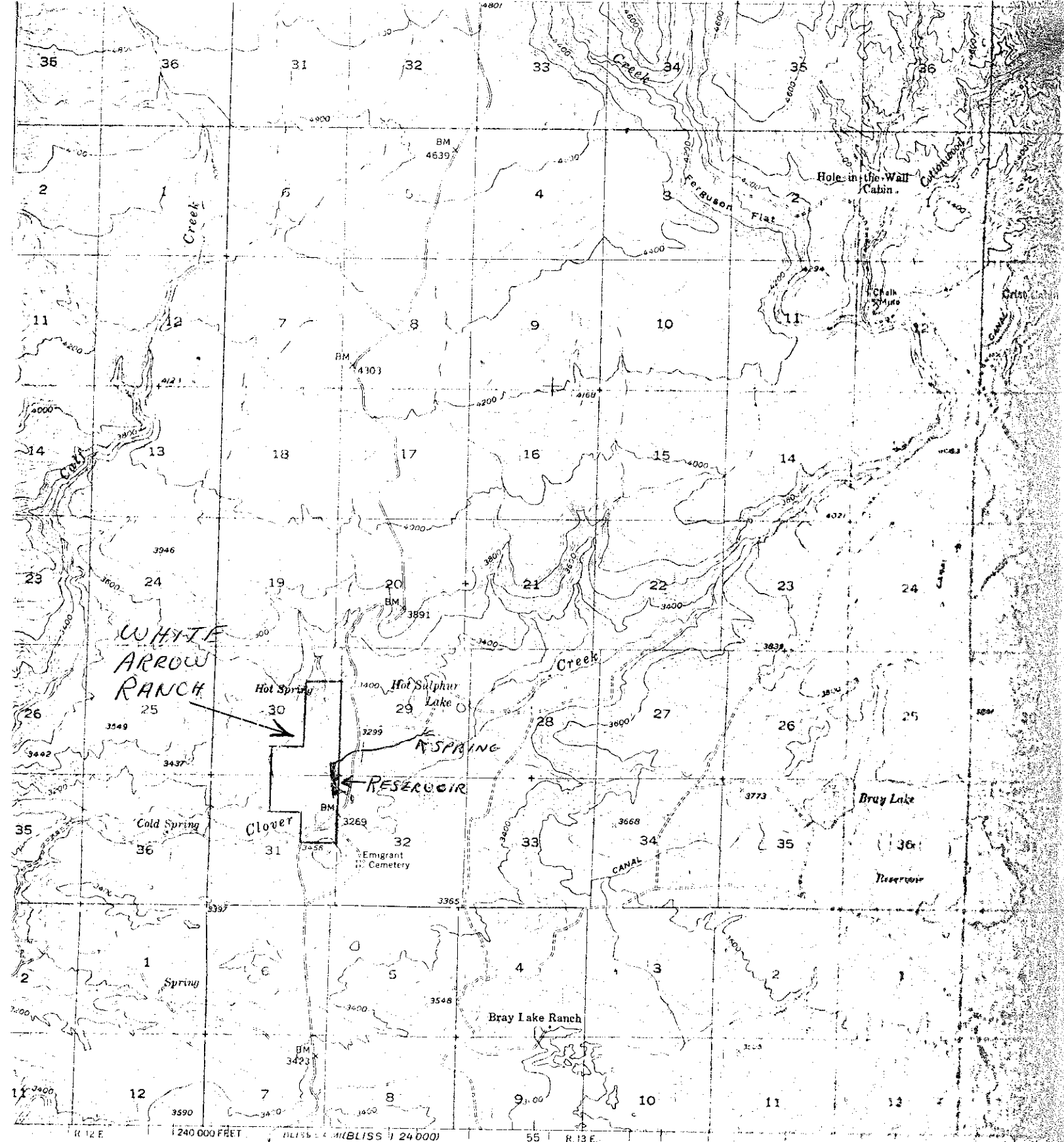
A flood made a washout in the upper reservoir dike in 1965. This however did not effect the flow or waters or the lower reservoirs that had been built prior to 1947 and enlarged then or later. The lower reservoirs were used for water storage and fish production. The owner of the property, R.J. Bostrom, did not willfully abandon his right to any of the reservoirs, the right-of-way granted by the U.S. Bureau of Land Management, the storage waters, the waters that flowed through the area, but rather was unable to repair the damages due to the flood that washed out his upper reservoir because of illness. He was in a rest home for an extended period of time prior to his death in 1970. During this period, the land was leased for cattle grazing on a lease basis. The waters flowed onto the lands from the reservoir system and provided grazing and water for the cattle. All waters went into the ground and did not return to Clover Creek from the reservoirs. No one else could therefore use these waters as they did not flow downstream. See attached map CNP-2T, R.J. BOSTROM 1957.

In August 1971, Mr. & Mrs. Robert Erkins purchased White Arrow Ranch from the estate of Richard J. Bostrom, deceased. They repaired the break in the lower reservoir system (in Sec. 30 and 31) and used the land for grazing in the fall of 1971. The water levels in the reservoir system was raised with fish farm use being continued. Excess waters were returned to Clover Creek for the first time in 6 years. An agreement was reached with the U.S. Bureau of Land Management to rebuild the dike (in Sec. 29) and restore the water level in the upper reservoir. See attached survey map of August 2, 1956 BLM.

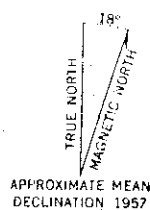
The program developed by R.J. Bostrom in the 1940s to operate a fish farm and charge for fee fishing is being carried out. An application for a private fish farm permit has been sent to the Idaho Fish & Game Department. See letter of July 6, 1972.

Lands have been plowed on the upper part of the farm (Sec. 30) and 100 acres in that area and in the lower area (Sec. 31) will be seeded and irrigated by waters from the reservoir. Another 40 acres will be irrigated for grazing. Prior to being used for irrigation, the waters will be used as they have been used for over twenty years to maintain a commercial fishery. Excess water is discharged into Clover Creek when not needed.

The waters that have been developed under Application No. R. 30760 and Permit No. R. 895 arise in springs as shown on the enclosed map. It would appear that part of these waters might be natural springs and part be waters seeping through a lava dike from Clover Creek. It would therefore be necessary that Clover Creek waters be permitted to seep through in an amount of at least 3 c.f.s. at the low period of the year in order to maintain the level of the reservoirs and operate the fishery. Reference is also made to our application for a Claim to a Water Permit for 300 acre-feet storage submitted on April 10, 1973 and the facts stated in that Claim to be part of the facts for this Claim to a Water Right as they apply.

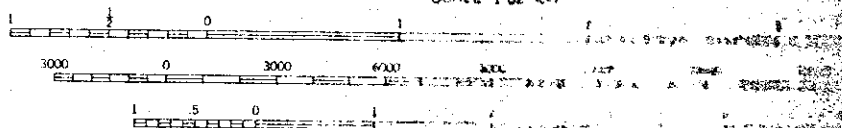


ped. edited and published by the Geological Survey
 rol by USGS and USC&GS
 vgraphy from aerial photographs by multiplex methods
 il photographs taken 1954 Field check 1957
 onic projection. 1927 North American datum
 00 foot grid based on Idaho coordinate system
 al zone
 0 meter Universal Transverse Mercator grid ticks
 11 shown in blue
 acked elevations are shown in brown



APPROXIMATE MEAN
 DECLINATION 1957

37 4040



THIS MAP COMPILED WITH NATIONAL MAP ACTING STANDARDS
 FOR SALE BY U.S. GEOLOGICAL SURVEY DENVER 2 COLORADO OR WASHINGTON 25
 A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

Affidavit of Publication

RECEIVED

COPY OF NOTICE

Title of Notice

State of Idaho, }
County of Gooding } ss.

Department of Fish and Game
Boysen District Office

Alfred E. Hazen being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement

was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the

first publication of said advertisement was on the 3 day

of May, 1913, and the date of the last publication

was on the 10 day of May, 1913

Subscribed and sworn to before me this 10

day of May, 1913
(SEAL)

Mary Ann Hazen
NOTARY PUBLIC

GOODING COUNTY LEADER

Gooding, Idaho

COST OF PUBLICATION

Number of Lines in Notice _____

Number of Insertions _____

_____ Lines at 14¢ _____

_____ Lines at 10¢ _____

TOTAL COST _____

NOTICE OF CLAIM TO A WATER RIGHT NO. 37-4040

Notice is hereby given that Robert A. and/or Bernadine M. Erkins, P. O. Box 232 Buhl, ID has filed a claim to a water right established by diversion and application to beneficial use of 3.0 cubic feet per second of water from a small stream from an unnamed spring, tributary to Clover Creek with point of diversion in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 30, T. 4S, R. 13E, B.M., Gooding County.

The water is claimed to be used from Jan 1 to Dec 31 for fish culture and from April 1 to Nov. 1 for the irrigation of 140 acres with a priority of 1912; the place of use is within the S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 30; N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 31 T. 4S, R. 13E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, 1041 Blue Lakes Boulevard North, Twin Falls, Idaho, 83301.

R. KEITH HIGGINSON
Director

5-3-21

PUBLICATION RATES:

(Idaho Code, (Rev. Statutes) 1956	
7 pt. per line straight	14c
7 pt. per line tabular	20c
7 pt. per line, successive insertions	10c
6 pt. per line, straight	15c
6 pt. per line, tabular	20c
6 pt. per line, successive insertions	10c

No 1854

37 4040