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Department of Water Administration  
Eastern District Office

## Affidavit of Publication

I, Lella Cammack, of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with

the issue dated December 14, 1972

and ending with the issue dated Dec. 21, 1972

Lella Cammack

Subscribed and sworn to before me this

15<sup>th</sup> day of January, 1973

Deanna Rubin  
Notary Public

Residence: Arco, Idaho.

My commission expires 7-27, 1974

### NOTICE OF CLAIM TO A WATER RIGHT No. 34-4011

Notice is hereby given that Harvey K. Walker, Box 146, Arco, Idaho, has filed a claim to a water right established by diversion and application to beneficial use of 0.20 cubic feet per second of water from unnamed springs, tributary to sinks with point of diversion in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 25, T. 5N, R. 27E, B.M., Butte County.

The water is claimed to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 50 head of beef cattle with a priority of June 1, 1928.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, 240 South Holmes, Idaho Falls, Idaho, 83401.

R. KEITH HIGGINSON  
Director

Published in the Arco Advertiser, Arco, Idaho on December 14 and December 21, 1972.

34-4011

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

In Re SRBA )  
Case No. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE PURSUANT TO 1987 DEC 13 11:10:53  
I.R.C.P. 54(b) FOR  
Water Right 34-04011

NAME & ADDRESS: YOUNG HARVEY WALKER  
RT 1 BOX 200  
ARCO ID 83213

SOURCE: SPRINGS TRIBUTARY: WOOD CANYON

QUANTITY: 0.2 CFS

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

PRIORITY DATE: 06/01/1928

POINT OF DIVERSION: T05N R27E S25 SWNE Within BUTTE County  
SWNWNE  
NWSWNE  
SWSWNE  
SESWNE  
NENENW  
NWSESE

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE | QUANTITY |
|----------------------------|----------------|---------------|----------|
|                            | STOCKWATER     | 01-01 12-31   | 0.2 CFS  |

| PLACE OF USE: | STOCKWATER    | Within BUTTE County |      |      |      |
|---------------|---------------|---------------------|------|------|------|
|               | T05N R27E S25 | NENE                | NWNE | SWNE | SENE |
|               |               | NENW                | NWNW | SENW | NESE |
|               |               | NWSE                | SWSE | SESE |      |

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A  
DETERMINATION OF HISTORICAL BENEFICIAL USE.

DATED: DEC 3 1998

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication

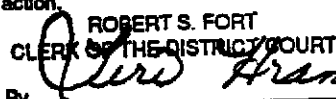
RULE 54(b) CERTIFICATE

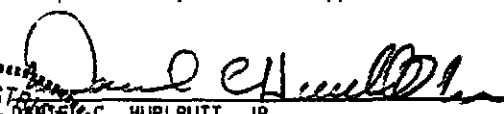
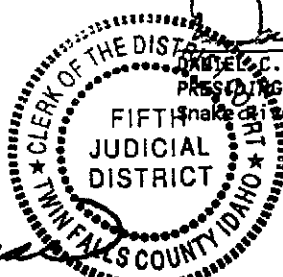
With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment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

DATED: DEC 3 1998

State of Idaho  
County of Twin Falls ss  
I hereby certify the foregoing to be a  
full, true and correct copy of the  
original or file in the above entitled  
action.

PARTIAL DECREE PURSUANT TO  
Water Right 34-04011

ROBERT S. FORT  
CLERK OF THE DISTRICT COURT  
By   
DEPUTY CLERK

  
DANIEL C. HURLBUTT, JR.  
PRESIDING JUDGE  
Snake River Basin Adjudication  


34 4011

Identification No. \_\_\_\_\_

Claim No. \_\_\_\_\_

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 HARVEY K. WALKER  
 post office address Box 146 Arco, Idaho Phone: 527-3014
- 2 The point of diversion is in SEE REMARKS  $\frac{1}{4}$  of         $\frac{1}{4}$  Section        Township         
 Range        B.M. located on unnamed spring  
(name of source)  
 tributary to Sink in Butte 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:
 

|                                                |                     |           |           |
|------------------------------------------------|---------------------|-----------|-----------|
| <u>6/1/1928</u>                                | amount: <u>0.20</u> | c.f.s. or | acre feet |
| _____                                          | amount: _____       | c.f.s. or | acre feet |
| _____                                          | amount: _____       | c.f.s. or | acre feet |
| Total claimed _____ c.f.s. 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 <u>Stockwater</u> | period of use from <u>1/1</u> | to <u>12/31</u> | (both dates inclusive) |
| use _____             | period of use from _____      | to _____        | (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 Two earth dams to  
protect channel; length is 1-35 feet; height is 8 feet;  
 width at bottom is 10 feet; with at top is 4 feet; explain any increase in diversion capacity since structure was first built, giving dates and estimated capacities if known NONE
  - 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 \_\_\_\_\_

34-4011

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 \_\_\_\_\_

d If water is stored name of reservoir NONE ;  
total capacity of reservoir is \_\_\_\_\_ acre feet; active capacity of reservoir is \_\_\_\_\_ acre feet,  
year construction commenced \_\_\_\_\_; year completed \_\_\_\_\_, date first used \_\_\_\_\_  
period of storage is from \_\_\_\_\_ to \_\_\_\_\_; is reservoir drained each year \_\_\_\_\_;  
is reservoir on or off stream \_\_\_\_\_ explain \_\_\_\_\_

has there been any enlargement of the reservoir since it was first built\_\_\_\_\_, if so, give dates and describe\_\_\_\_\_

[illegible]

Explain any significant increase in area irrigated since first use, give dates and acreages if known \_\_\_\_\_

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 50 beef cattle

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 \_\_\_\_\_

9 Remarks: please explain any details of your claim which you feel need clarification or additional explanation  
5 springs located in Section 25; T. 5 N., R. 27 E.  
1-NWNE, 2-SENE, 3-SWNE, 4-NWSE and 5-SESE

State of Idaho

County of Ada } ss.

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 1<sup>st</sup> day of December, 1972.

Larry K. Harker  
Claimant

Anneth S. Fiel  
Notary Public

Residing at Boise, Idaho

My commission expires May 26, 1974

Rec'd #9095 For Department Use Only

|                                                                   |                          |                    |            |
|-------------------------------------------------------------------|--------------------------|--------------------|------------|
| Received by <u>RWH</u> Date <u>12-1-72</u>                        | Exception filed by _____ | Forwarded to _____ | Date _____ |
| Prelim check by <u>RWH</u> Date <u>12-1-72</u>                    |                          | claimant by _____  |            |
| Fee received by <u>ej</u> Date <u>12-1-72</u> Fee \$ <u>10.00</u> |                          |                    |            |
| Approved for publication by <u>NCY</u> <u>12-4-72</u>             |                          |                    |            |
| Published in <u>Boise Tribune</u> Dates <u>12-14-21-22</u>        |                          |                    |            |
| Publication Approved <u>NCY</u> <u>1/17/73</u>                    |                          |                    |            |

34-4011

## 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: | <u>May 18, 1871</u> | amount: <u>0.8 c.f.s.</u> or | _____ | acre feet |
|                           | <u>June 1, 1901</u> | amount: <u>0.4 c.f.s.</u> or | _____ | acre feet |
|                           | Total claimed.      | <u>1.2 c.f.s.</u> 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

#### Eastern District

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

#### Southern District

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

#### Western District

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

# Affidavit of Publication

1973

I Lella Cammack, of the Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of this notice, per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof,

for 2 consecutive weeks, commencing with

the issue dated December 14, 1972

and ending with the issue dated Dec. 21, 1972

Lella Cammack

Subscribed and sworn to before me this

15<sup>th</sup> day of January, 1973

Heenan Puhon  
Notary Public

Residence: Arco, Idaho.

My commission expires 7-27, 1974

## NOTICE OF CLAIM TO A WATER RIGHT No. 34-4011

Notice is hereby given that Harvey K. Walker, Box 146, Arco, Idaho, has filed a claim to a water right established by diversion and application to beneficial use of 6.20 cubic feet per second of water from unnamed springs, tributary to sinks with point of diversion in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 25, T. 5N, R. 27E, B.M., Butte County.

The water is claimed to be used from Jan. 1 to Dec. 31 for stockwatering purposes for 50 head of beef cattle with a priority of June 1, 1928.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, 300 South Holmes, Idaho Falls, Idaho, 83401.

R. KEITH HIGGINSON  
Director

Published in the Arco Advertiser, Arco, Idaho on December 14, and December 21, 1972.

34-4011

## Walker Rites Set Thursday

ARCO — Funeral services will be held Thursday at 2 p.m. at the Baptist Community Church for Harvey K. Walker, 75, of Arco, who died Monday at his home here. Officiating will be Rev. Eugene Duncan.

Masonic ritualistic graveside services will be conducted at the Hillcrest Cemetery here.

Friends may call at the Marvel Memorial Chapel Wednesday from 7-8:30 p.m., and on Thursday from 12 noon until time of service at the church.

Persons desiring may contribute a memorial to the Lost River Hospital in Arco.

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: A34-04011  
Date Received: 12-21-89  
Receipt No: M005454  
Received By: TB

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: YOUNG HARVEY WALKER 208-527-3254  
Address: RT. 1 BOX 200  
ARCO, ID 83213

2. Date of Priority: JUN 01, 1928

3. Source: SPRINGS Trib. to: WOOD CANYON

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County |
|----------|-------|---------|--------|--------|--------|-----|--------|
| 05N      | 27E   | 25      | SW     | NE     | NE     |     | BUTTE  |
|          |       |         | SW     | NW     | NE     |     | BUTTE  |
|          |       |         | NW     | SW     | NE     |     | BUTTE  |
|          |       |         | SW     | SW     | NE     |     | BUTTE  |
|          |       |         | SE     | SW     | NE     |     | BUTTE  |
|          |       |         | NE     | NE     | NW     |     | BUTTE  |
|          |       |         | NW     | SE     | SE     |     | BUTTE  |

5. Description of diverting works:  
DEVELOPED SPRINGS, DUG OUT POOLS FOR STOCK WATERING

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) | A.F.A. |
|------------|-------|-------|--------|------|--------|
| STOCKWATER | 01/01 | 12/31 | 0.200  |      |        |

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
S/ 500 HEAD CATTLE

A34-04011

Page 1

Date: 12/21/89

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10. Place of Use:

| Township | Range | Section | 1/4 | of | 1/4 | Lot | Use   | Acres |
|----------|-------|---------|-----|----|-----|-----|-------|-------|
| 05N      | 27E   | 25      | NE  |    | NE  |     | STOCK |       |
|          |       |         | NW  |    | NE  |     | STOCK |       |
|          |       |         | SW  |    | NE  |     | STOCK |       |
|          |       |         | SE  |    | NE  |     | STOCK |       |
|          |       |         | NE  |    | NW  |     | STOCK |       |
|          |       |         | NW  |    | NW  |     | STOCK |       |
|          |       |         | SE  |    | NW  |     | STOCK |       |
|          |       |         | NE  |    | SE  |     | STOCK |       |
|          |       |         | NW  |    | SE  |     | STOCK |       |
|          |       |         | SW  |    | SE  |     | STOCK |       |
|          |       |         | SE  |    | SE  |     | STOCK |       |

11. Place of use in counties: BUTTE

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

13. Other Water Rights Used:  
NONE

14. Remarks:  
THERE ARE THREE SPRINGS LOCATED IN THE NW,SE,SE OF SECTION 25.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

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

Number of attachments: 2

**For Individuals:**

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

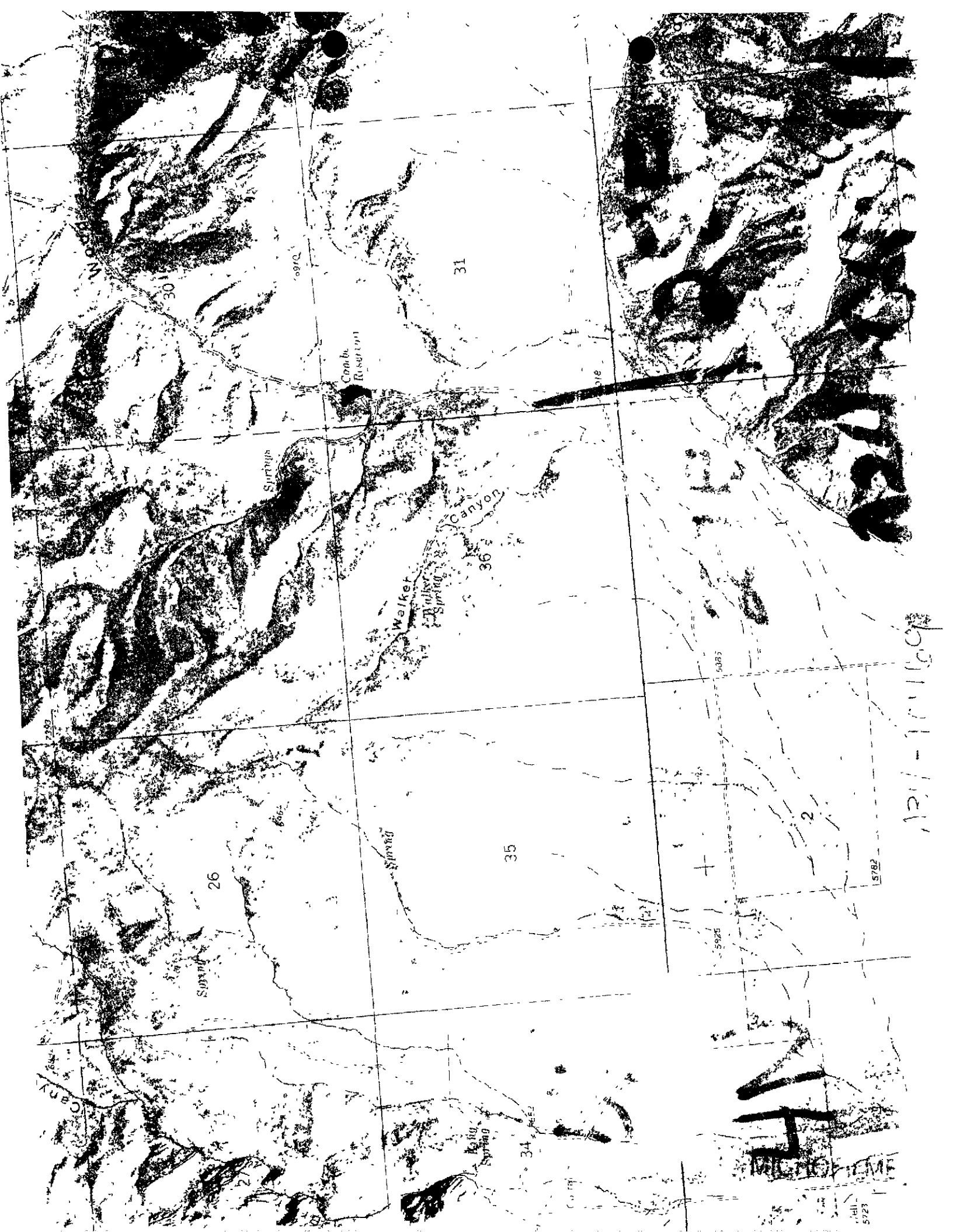
Signature of Claimant(s): Jaime Harvey Walker Date: 12-21-89  
Date: \_\_\_\_\_

State of Idaho )  
County of Butte ) SS.

Subscribed and sworn (or affirmed) before me this 21<sup>st</sup> day  
of December 1989  
Anna Baunhoff  
Notary Public

Seal

Residing at Anna Baunhoff, Notary Public  
Postville, St. Paul, Idaho  
My Commission Expires December 7, 1994



121-101100

41

10000

5723

*DNMF*

# DO NOT FILM

**RACINE, OLSON, NYE, COOPER & BUDGE**

**Law Offices**

**P.O. BOX 1391    POCATELLO, IDAHO 83204**

**TO**

Ronald Carlson  
Eastern Division Director  
Idaho Department of Water Resources  
150 Shoup Avenue, Suite 15  
Idaho Falls, Idaho 83401

LOUIS F. RACINE, JR  
WILLIAM D. OLSON  
W. MARCUS W. NYE  
GARY L. COOPER  
RANDALL C. BUDGE  
JOHN A. BAILEY, JR.  
JOHN R. GOODELL\*  
JOHN B. INGELSTROM  
DANIEL C. GREEN  
REED W. LARSEN  
BRENT O. ROCHE  
FRED J. LEWIS  
KIRK B. HADLEY  
MITCHELL W. BROWN  
ERIC S. HUNN

\*ALSO MEMBER ILLINOIS BAR

LAW OFFICES OF  
RACINE, OLSON, NYE, COOPER & BUDGE  
CHARTERED  
CENTER PLAZA-CORNER FIRST & CENTER  
POST OFFICE BOX 1391  
POCATELLO, IDAHO 83204-1391

TELEPHONE  
AREA CODE 208  
232-6101  
TELEX  
208-232-6109

February 3, 1992

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FEB 05 1992

Department of Water Resources  
Eastern District Office

Norm Young  
Administrator to Water Management Div.  
Idaho Department of Water Resources  
1301 N. Orchard  
Boise, Idaho 83706

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

Ronald Carlson  
Eastern Division Director  
Idaho Department of Water Resources  
150 Shoup Avenue, Suite 15  
Idaho Falls, Idaho 83401

Re: Big Lost River Irrigation District

Gentlemen:

To follow up on our phone conversations regarding the Big Lost River Irrigation District's boundaries, and SRBA claims re: storage rights in Mackay Reservoir as they relate to Harvey Walker and similarly situated water users who have historically used their storage water on lands outside of the boundary of the district or on excluded lands within the district, I am enclosing the following from recent court decisions in the Seventh District by Judge Herndon:

1. Arthur W. Quist, et al. v. Big Lost River Irrigation District, Custer County Case No. CV-90-132:

Final Judgment and Decree entered 12/20/91;

Supplement to Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order dated 11/20/91;

Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order dated 10/29/91.

Norm Young  
David Shaw  
Ronald Carlson  
Page 2  
February 3, 1992

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2. Young Harvey Walker v. Big Lost River Irrigation District, et al., Butte County Case No. 14-90:

Final Judgment entered 12/18/91;

Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order entered on 12/20/91;

You will note the Quist Judgment in paragraph 9 specifically determined certain lands to be in or out of the District and mandated in paragraph 10 that the District prepare and maintain complete and accurate maps and legal descriptions of lands within the District, together with excluded lands. The SRBA claims originally filed by the District did not provide specific legal descriptions of property within the District to which the storage water was appurtenant, merely indicating that it was appurtenant to "lands within the district". I believe the District has since prepared complete legal descriptions and maps which, if not already submitted to you, are available and should be used for purposes of the Director's Report and the proposed Decree.

Regarding the Walker Decision, you will note the Court's Findings 11, 22, 36 and Conclusions 7, 9 and particularly 10, all address to some extent the District's plan of operation and practice of rotation. In Conclusion 10 and in paragraph 4 of the Final Judgment the Court states:

"The historic practice of combining and rotating decreed water, storage water and well water within the district is lawful and proper and results in conservation and the efficient use of water in accordance with Idaho law and state water policy."

Consistent with I.C. § 43-316, which states that legal title to all property vested in an irrigation district is held "in trust", for the approved uses, and based upon uncontroverted evidence presented at trial that the users in the District, not the District itself, buy, sell and rent storage water and receive all proceeds therefrom, the Court held in paragraph 5 of the Judgment:

"5. The BLRID holds the right to store water within the Mackay Reservoir, which is held in trust for, dedicated and set apart for use on lands within the district to which said storage water has been apportioned for irrigation purposes."

Norm Young  
David Shaw  
Ronald Carlson  
Page 3  
February 3, 1992

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However, because of Walker's historic practice of combining and rotating his decreed water with his storage water for use on lands inside and outside the district, the district in paragraphs 7 and 8 was estopped by the doctrines of estoppel, waiver and laches from preventing the delivery of Walker's storage water for use on his lands outside the district.

During trial, several other users testified that they similarly rotated their storage water and have historically applied it to beneficial use at times on some lands which are either outside of the district's perimeter boundary or on excluded land within the perimeter boundary. Walker filed SRBA claims claiming his right to use his storage water on those lands outside the district as well as those inside the district consistent with the court's judgment. Numerous other individuals similarly situated who have not filed SRBA claims on their storage water outside the district are particularly concerned because the district's SRBA claims likely only describe the lands within the district.

It would seem that Walker and these others could solve the entire problem easily and avoid drawn out controversy if the district would simply annex these lands in the district or if they could successfully petition the court for inclusion of their lands within the district pursuant to Title 43, Chapter 10, Idaho Code. Whether or not the district would be cooperative remains to be seen. The Department's involvement would be helpful in resolving the problem and most appreciated. In discussing this with the district's attorney, Roger Ling, he generally concurs that bringing these lands within the district would solve the problem. He is going to make an inquiry of the board to see whether or not they would be supportive.

I haven't yet seen the Director's Report and proposed Decree but expect Walker will be bringing in his copy shortly. We will file a Notice of Error and will request a conference or hearing involving the Department and the district.

It certainly would appear to be in everyone's best interest if we could eliminate the antagonism and expense that will undoubtedly be faced if the district, the water users and the Department remain at odds over the place of use of the supplemental water, both administratively and through the adjudication process.

Norm Young  
David Shaw  
Ronald Carlson  
Page 4  
February 3, 1992

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Thank you for your consideration and input and I would welcome any additional input or suggestions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall C. Budge". The signature is stylized with a large, looped "R" and a cursive "Budge".

RANDALL C. BUDGE

RCB:rr  
Enclosures

DEC 24 1991

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

RECEIVED

YOUNG HARVEY WALKER,

Plaintiff,

vs.

BIG LOST RIVER IRRIGATION  
DISTRICT, RICHARD E. REYNOLDS,  
LEWIS ROTHWELL, JAMES CLYDE  
LAMBERT, BYRON R. PEHRSON,  
and GERALD STEWART,

Defendants.

CASE NO. 14-90

FEB 05 1992

Department of Water Resources  
Eastern District Office

JUDGMENT

The above-entitled matter was tried before the Court, The Honorable James C. Herndon, District Judge, presiding. The Court having reviewed the testimony and evidence entered its Memorandum Decision, Findings of Fact and Conclusions of Law on October 2, 1991, with judgment to be entered in accordance therewith.

NOW, THEREFORE,

IT IS HEREBY ORDERED ADJUDGED AND DECREED AS FOLLOWS:

1. Plaintiff Young Harvey Walker ("Walker") is the sole and lawful owner of certain irrigated real property which is the subject matter of this action and consists of 397.3 acres located in Sections 6, 7 and 8, Township 3 North, Range 27 East, B.M., commonly known as the "Home Place", and 321.1 acres located directly to the east in Sections 3, 4 and 9 of Township 3 North,

Range 27 East, B.M., commonly known as the "Butte City" place, all in Butte County, Idaho, as described more specifically in Exhibit 7. The "Home Place" lies within the Big Lost River Irrigation District ("BLRID") and the "Butte City" place lies just east of the boundary outside of the BLRID.

2. Plaintiff Walker's lands have appurtenant water rights to 527 inches of decreed water rights in the Big Lost River with priority dates ranging from May 1, 1885 to May 1, 1892, a licensed well with a priority date of October 1, 1962, and 15,467.5 inches of storage water in the Mackay Reservoir, which water rights are set forth more specifically and summarized in Exhibit 7.

3. Walker's decreed and storage water rights since the early 1940s and his well water since 1961, have been combined, rotated, and applied to beneficial use for irrigation purposes on his "Home Place" within the District, and the "Butte City" place outside of the District, all with the knowledge and without objection by the BLRID, prior to 1990. In accordance with Idaho Code §§ 42-1416 and 1416A, Walker has validly applied all of his described waters to beneficial use on all of his irrigated lands described above as set forth in his SRBA claims, Exhibit 6, and is entitled to do so.

4. The historic practice of combining and rotating decreed water, storage water and well water within the District is lawful and proper and results in conservation and the efficient use of water in accordance with Idaho law and state water policy.

5. The BLRID holds the right to store water within the Mackay Reservoir, which is held in trust for, dedicated and set

apart for use on lands within the District to which said storage water has been apportioned for irrigation purposes. The BLRID maintains and controls the delivery system and is responsible for the delivery of water stored in the Mackay Reservoir. It is the responsibility and obligation of the water district to ensure that each decreed right is delivered to the appropriate point of diversion, and the watermaster is not the agent of the irrigation district.

6. The BLRID and Walker established an implied contract pursuant to which the BLRID must deliver to Walker his decreed and storage water for use on his lands both inside and outside of the BLRID. This contractual obligation fits into the water rotation practice customary in the area and is not detrimental to the BLRID or other landowners within the District.

7. The BLRID is estopped from interfering with or preventing the delivery of storage water beyond its boundary to Walker for use at his "Butte City" place property.

8. The BLRID is prevented by the doctrines of estoppel, waiver and laches from enforcing against Walker any policy which refuses or interferes with the delivery of Walker's storage water for use inside or outside of the BLRID.

9. The Restraining Order and Writ of Mandate previously issued by the Court are hereby made permanent. The BLRID is directed to deliver Walker's decreed and storage water to his "Home Place" and the "Butte City" place property and restrained from interfering with the delivery and use of such water.

10. The BLRID's refusal to deliver Walker's storage water for use at the "Butte City" place wrongfully and unlawfully interfered with Walker's use and enjoyment of his decreed and storage water rights and the District's contractual obligation to deliver the same and was contrary to the well-established historic practice of delivery and use. As a direct and proximate result thereof, Walker was deprived of the use and enjoyment of his storage water at "Butte City" place during the 1990 irrigation season, lost his first crop of hay.

11. Judgment is entered in favor of Walker and against BLRID for crop loss damages of \$8,906.25 and costs of \$444.60 for a total Judgment in the sum of \$9,350.85, together with interest at the statutory rate.

LET EXECUTION ISSUE HEREON.

DATED this 18<sup>th</sup> day of December, 1991.

James C. Herndon  
JAMES C. HERNDON  
DISTRICT JUDGE

cc: Randall C. Budge  
Roger D. Ling

**COPY**

**RECEIVED**

FEB 05 1992

Department of Water Resources  
Eastern District Office

FILED IN DISTRICT COURT, BUTTE, IDAHO

December 30, 1991 AT

2:52 p.m.

James C. Herndon  
JAMES C. HERNDON  
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE

YOUNG HARVEY WALKER,

Plaintiff,

vs.

BIG LOST RIVER IRRIGATION  
DISTRICT, RICHARD E. REYNOLDS,  
LEWIS ROTHWELL, JAMES CLYDE  
LAMBERT, BYRON R. PEHRSON, and  
GERALD STEWART,

Defendants.

Case No. 14-90

AMENDED MEMORANDUM  
DECISION, FINDINGS OF  
FACT, CONCLUSIONS OF  
LAW AND ORDER

**I. INTRODUCTION**

This Amended Memorandum Decision supplements, adds, deletes and modifies the Memorandum Decision, Findings of Fact, Conclusions of Law entered herein on October 2, 1991.

Plaintiff Young Harvey Walker (Walker) asks this court to issue an alternate writ of mandate and compel the defendant Big Lost River Irrigation District (BLRID) to divert and deliver certain Mackay Reservoir storage waters to the Arco canal for delivery beyond the BLRID boundary to Walker's Butte city property.

Walker contends that his irrigation waters, including flowage rights from the Big Lost River and storage rights from the Mackay Reservoir, have by historic practice and agreement between the parties and their predecessors always being delivered to the BLRID

boundary so that Walker could rotate the irrigation waters between his property within and lands without the boundaries of the district.

BLRID counters that the use of storage waters has always belonged to the BLRID for use within the boundaries of the district and BLRID has no authority to transport them beyond district lines.

Pursuant to stipulation, the court dismissed individual defendants Richard E. Reynolds, Lewis Rothwell, James Clyde Lambert, Byron R. Pehrson and Gerald Stewart.

This case was tried before the court, without a jury, on April 19, 1991, May 9, 1991 and May 10, 1991.

On the basis of the testimony of the witnesses, the exhibits introduced and admitted into evidence, and the record, the court makes the following Findings of Fact and Conclusions of Law:

## II. FINDINGS OF FACT

1. Walker, a long-time resident of Butte County, Idaho, owns the following property involved in this matter: 397.3 acres located in Sections 6, 7 and 8, Township 3 North, Range 27 East, B.M., commonly known as the "Home place", and 321.1 acres directly to the east of the first parcel in Sections 3, 4 and 9 of Township 3, North, Range 27 East, B.M., commonly known as the "Butte City place". The Walker properties are located just east of the city of Arco, in the southeast corner of the BLRID. In that area, the district boundary generally runs north and south and divides the Walker property with the "Home place" lined just west of the boundary within the district, and the "Butte City place" just

outside the district boundary to the east.

2. Defendant BLRID is an irrigation district duly organized and existing under the laws of the State of Idaho, pursuant to Idaho Code (I.C.) § 43-304, et seq. The BLRID organized in its present form on July 9, 1920 and was affirmed by court decree on February 24, 1921. The lands within the BLRID are located in the counties of Custer and Butte, State of Idaho. Its principal place of business is Mackay, Idaho.

3. BLRID is the record owner of the Mackay Dam and Reservoir facility and a system of canals used to divert, transport and deliver water diverted under various individually owned water rights, both for surface waters in Big Lost River and its tributaries and groundwater from various wells, in addition to stored water. BLRID's system of canals and laterals is used, and has been used for many years, to transport both groundwater diverted from wells and surface water from the Big Lost River as well as the storage water from the reservoir to locations within and without the BLRID boundaries. One of the canals owned at least in part by the BLRID, but maintained and operated by it is commonly known as the Arco Canal. About one-half of the Arco Canal is inside the district and one-half is outside the district and what is commonly known as the "Arco Tract" area.

4. The Arco Tract association was formed in 1944 and maintained the Arco Canal outside the district until it was taken over by the BLRID in about 1955.

5. The BLRID lands are within the counties of Butte and

AMENDED MEMORANDUM DECISION, FINDINGS  
OF FACT, CONCLUSIONS OF LAW AND ORDER

Custer, State of Idaho, and are irrigated from Big Lost River and its tributaries rising in the Lemhi National Forest in Custer County, Idaho and flowing in a general southeasterly direction through Custer County and Butte County, and from groundwater.

6. By a Decree dated March 15, 1923 entered by the United States District Court in and for the District of Idaho, Eastern Division, in The Utah Construction Company v. John F. Abbot, et al, the rights to the use of waters of the Big Lost River and its tributaries were adjudicated. In the Abbott Decree of March 15, 1923, Utah Construction Company was granted the right to divert at its points of diversions described in the Decree and to impound at its reservoir (known as the Mackay Reservoir) or in part to divert and in part to impound at said reservoir all of the waters of Big Lost River and its tributaries to the extent of Two-Thousand Two-Hundred (2,200) cubic feet per second of time according to the dates of priority set forth in said Decree, and the water stored in said reservoir to be thereafter released from said reservoir at the pleasure of The Utah Construction Company through the gates of the Mackay Reservoir Dam and thence down the natural channel of Big Lost River for use at its diversion into the Blaine Canal or the Arco Canal, or at such other points of diversion which The Utah Construction Company may establish, for irrigation and other beneficial uses.

7. The Abbott Decree describes the lands of The Utah Construction Company to which said water rights of The Utah Construction Company shall be appurtenant, and such other lands as

The Utah Construction Company or its successors may thereafter by sale, rental or distribution, dedicate thereto the use of such waters for irrigation. Said Decree further established the water rights of the individual landowners within the BLRID to use water from Big Lost River.

8. The BLRID purchased the water rights of the Utah Construction Company as the water rights of the Utah Construction Company were insufficient to irrigate the lands of the Utah Construction Company and the lands within the BLRID had an inadequate water supply. By the purchase of the Mackay Dam and Reservoir and the rights to store water therein from the Utah Construction Company, the BLRID was able to provide lands within the BLRID a supplemental water supply for those lands within the district which had a natural flow right from the Big Lost River with the priority of June, 1884 or junior to that date. (See Findings of Fact and Conclusions of Law dated January 25, 1936).

9. On April 1, 1935 the Board of Directors of BLRID adopted a resolution by which it approved a general Plan of Operations and the sale of bonds of the district and to use the funds obtained from said bonds for the purchase of the storage, flood water and natural flow rights in Big Lost River and its tributaries, the Mackay Dam and storage reservoir, the Carey Act Project and a main diversion canal known as the Blaine Canal, belonging to The Utah Construction Company, and all other irrigation works and holdings of said company in Butte and Custer Counties, Idaho.

10. Meanwhile, certain lands had been excluded from the BLRID

and certain lands had been annexed, including the certain lands that were bonded and excluding certain lands that were not bonded in connection with the assessment and apportion of benefits pertaining to the BLRID's purchase of the Utah Construction Company assets and construction of the Mackay Reservoir. The District Court of the Sixth Judicial District (now the Seventh Judicial District) of the State of Idaho, in and for the County of Custer, approved the project, including the construction of the dam, storage of water, and annexed an exclusion of lands, by its judgment and decree entered on January 25, 1936. The judgment also includes: the formation and adoption of the plan of operation for the district was approved; all proceedings in connection with the assessment and appointment of benefits for the caring out of such plan, and the payment of the bonds issued for the purchase of the irrigation works and the water rights of the Utah Construction Company, which include the Mackay Dam and Reservoir, were affirmed; and the court found that certain (but not all) of the lands within the district require a supplemental storage water right from the reservoir and irrigation works to be acquired by the district.

11. Pursuant to the 1936 Decree and a plan of operation adopted by the BLRID, acquired certain lands, ditchworks, and the Mackay Dam along with certain water rights appurtenant to private owned lands within The Utah Construction Company's Carey Act Project the BLRID then liquidated the real property, abandoned all canals and distributing systems of The Utah Construction Company below the point on the Blaine Canal known as the Bifurcation Works

except for a portion known as the Lower Blaine Canal and the Arco Canal. Shortly after the 1936 litigation, the BLRID disposed its property and since then owns no land upon which water could be beneficially used. The district has not sold, or leased any storage water or received any proceeds therefrom. When lands within the district are sold to which storage water is appurtenant, the storage water is transferred to the new owner and remains with the land. It has been a regular practice for the members or water users in the BLRID to sell or lease their storage water and individually receive any proceeds. The BLRID stores the water in the Mackay Reservoir but holds it in trust for the benefit of and delivery to the lands where the storage water is needed for irrigation purposes.

12. The transfer of the water rights from the Utah Construction Company to the BLRID was approved by the Department of Reclamation, State of Idaho, Transfer No. 808, for use on lands within the BLRID on May 14, 1953.

13. Walker's lands straddle the BLRID boundary.

A. The following lands are within the district: On December 19, 1973, Walker received a gift deed to an undivided one-half interest in the E $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 6, Township 3 North, Range 27 East of the Boise Meridian, Butte County, Idaho from his mother Goldie Y. Walker, and thereafter he purchased the other undivided one-half interest in said property. On April 6, 1991, Walker received a Personal Representative's Deed to the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$ , Lot 2 (NW $\frac{1}{4}$  of the NE $\frac{1}{4}$ ), E $\frac{1}{2}$  of the SW $\frac{1}{4}$ , and the W $\frac{1}{2}$  of the SE $\frac{1}{4}$

in Section 6; the N $\frac{1}{2}$  of the NE $\frac{1}{4}$  in Section 7 and the N $\frac{1}{2}$  of the NW $\frac{1}{4}$  in Section 8, all in Township 3 North, Range 27 East of the Boise Meridian, Butte County, Idaho. These lands were conveyed from the Estate of Walker's mother Goldie Y. Walker. These lands are shown on Assessment Roll No. 29 of the district, and have certain decreed natural flow rights appurtenant to said lands and have an allocation for stored water.

B. The following lands are outside the district: On December 19, 1973 Walker received a gift deed from his mother Goldie Y. Walker to a fraction of the S $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 3, W $\frac{1}{2}$  of the SW $\frac{1}{4}$ , a fraction of the SE $\frac{1}{4}$  of the SW $\frac{1}{4}$  and a fraction of the S $\frac{1}{2}$  of the SE $\frac{1}{4}$  in Section 4, all in Township 3 North, Range 27 East of the Boise Meridian, Butte County, Idaho. He also is the owner of the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 9, Township 3 North, Range 27, East of the Boise Meridian. All of these parcels were previously owned by Harvey K. Walker, plaintiff's father, and George Walker, plaintiff's grandfather.

14. Prior to 1978, the Walker property was flood irrigated. Since 1978 the property has entirely been sprinkler irrigated, excepting a small part of the "Butte City place" property which remains flood irrigated. In 1978, approximately \$110,000.00 was expended to purchase and install a large and expensive sprinkler system which consists of 8 wheel lines at "Butte City" and 5 wheel lines at the "Home place", which have since been used to irrigate the properties. The source of water consists of certain decreed rights in the Big Lost River, storage water from Mackay Reservoir

and ground water from a well drilled in 1961 and operated since that time on the "Home place". With the exception of the well used to irrigate on the "Home place", all other water is delivered to the property by the BLRID via the Arco Canal.

15. Walker's water rights are summarized in Exhibit 7 and consist of decreed rights in the Big Lost River with priority dates ranging from 1885 to 1892, an allocation to storage water in the Mackay Reservoir and a licensed well with a priority date of October 1, 1961. (Exhibits 7, B, C, D) The district's records are consistent regarding the priority date and quantities of Walker's decreed and storage water delivered by the district via the Arco Canal. (Exhibits 10, W, X, Y, Z, R. Lundy)

16. Walker owns 527 inches of decreed water rights in the Big Lost River with priority dates ranging from 5/1/1885 to 5/1/1892. Two hundred eighty-two (282) miner's inches of these decrees were originally appurtenant to the "Butte City place" property. The delivery of these decreed water rights has been reflected or charged by the district against an account identified as Number 1144A. A total of 245 inches of water was originally decreed appurtenant to the "Home place" with delivery of such waters reflected or charged by the BLRID against accounts identified as Numbers 8 and 29. These decreed rights are identified as follows, to-wit:

BUTTE CITY PLACE/ACCOUNT NO. 1144A:

| <u>Priority Date</u> | <u>Inches</u> |
|----------------------|---------------|
| 5/1/1885             | 32            |

|           |    |
|-----------|----|
| 10/2/1885 | 40 |
| 5/1/1887  | 80 |
| 6/1/1887  | 70 |
| 5/1/1892  | 60 |

"HOME" PLACE/ACCOUNT NOS. 8 AND 29:

|           |           |
|-----------|-----------|
| 5/1/1885  | 5         |
| 10/1/1885 | 140       |
| 5/1/1887  | 80        |
| 5/1/1892  | <u>20</u> |

|              |            |
|--------------|------------|
| <u>Total</u> | <u>527</u> |
|--------------|------------|

17. All of Walker's water rights have been applied to beneficial use during the irrigation season on all of his lands, both the "Home place" inside the district and the "Butte City place" outside the district. The decreed and storage waters, originally appurtenant to the "Home place", is at times rotated and applied to beneficial use on the "Butte City place" and at times the water originally decreed appurtenant to the "Butte City place" is rotated and applied to beneficial use on the "Home place". (Witnesses H. Walker, A. Quist, D. McDonald, R. Helderma, C. Peterson, B. Morgan, H. Lengel, D. Storer)

18. Additionally, based upon a full Mackay Reservoir, Walker has available 15,596 miner's inches of storage water in Mackay Reservoir, which was originally decreed appurtenant to the "Home place". Delivery by the district is reflected in Accounts Nos. 8 and 29.

19. All assessments by the District to Walker for operation, maintenance and other charges under the various accounts have been paid in full by Walker.

20. Walker follows an irrigation practice which began in the mid-1940's with his father and has been followed each and every year since Walker took over the family farm operation in 1972. As a regular and customary irrigation practice Walker combines the decreed water rights and storage water and rotates between the "Home place" and the "Butte City place" as needed for the crops. This practice was adopted and followed because of the small amount of water available most years for the Walker properties. The larger stream of water reduces evaporation and shrinking and results in a more efficient use of water.

21. After the well was drilled on the "Home place" in 1961, ground water from the well was used to supplement the decreed and storage water in dry years as a regular part of the rotation.

22. On February 7, 1944, Articles of Incorporation were filed on behalf of Arco Tract Association, Inc., a non-profit irrigation company under the laws of the State of Idaho. George E. Walker, plaintiff's grandfather subscribed to 185 shares of said corporation.

23. On June 5, 1946, Water License No. 19501 was issued by the State Reclamation Engineer of the State of Idaho, to the Arco Tract Association granting it the right to use 16.3 second feet of water with a priority date of May 8, 1944. This water license is a flood water right entitling the Arco Tract Association to use that water when it is available during the spring runoff. A portion of the water under this license was made appurtenant to the NE $\frac{1}{4}$  of the NE $\frac{1}{4}$  and the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  in Section 9, Township 3

North, Range 27 East of the Boise Meridian located outside the BLRID boundaries and now owned by Walker.

24. On March 4, 1944, the BLRID entered into an agreement with Arco Tract Association, Inc. whereby the district granted Arco Tract Association, Inc. permission to enlarge the district's Arco Canal to increase its capacity above the 3,500 miner's inches the BLRID needed to convey water from the Big Lost River to the stockholders of the Arco Tract Association, Inc. for use on their lands outside the BLRID. The agreement also provided the payment of all operation and maintenance charges and ditchriders' charges of the district as levied and assessed from season to season, according to the acreage served by the Arco Tract Association, Inc.

25. All of Walker's lands located outside the BLRID boundaries received natural flow water rights appurtenant to those lands through the Arco Canal pursuant to the Arco Tract Association Agreement. In addition to the licensed rights, held by the Arco Tract Association, certain earlier decreed flowage rights from Big Lost River have been transferred to a portion of Walker's lands and are being transported through the Arco Canal.

26. On July 6, 1956, the BLRID directors and members and officers of the Arco Tract Association, Inc. met formally to discuss certain long standing troubles that had occurred between the district and the association, primarily relating to the assessments of the BLRID against the Arco Tract Association, Inc. Plaintiff's father, Harvey Walker, was present at that meeting as one of the representatives of the Arco Tract Association, Inc.

Also present was O.T. Jones who received water for a tract of land outside of the boundaries of the district through the Arco Canal, but was not a member of the Arco Tract Association. They discussed the possible annexation to the BLRID of the lands within the Arco Tract Association. It was then explained that the storage water of the district had been allocated to specific land within the district and no new lands coming into the district would be able to receive such stored water.

27. The BLRID by-laws provide for the diversion and distribution of storage and natural flow rights within the district and charges the board of directors with the supervision of the distribution of water to the consumers. The by-laws further provide that storage waters in the Mackay Reservoir are to be distributed to those lands whose owners participated in the bond issue approved by the January 25, 1936 judgment and decree.

28. Thus, the directors of the BLRID at one time formulated a policy that all stored water would be used on lands within the district. However, this policy was not always followed.

29. The BLRID's plan of operation also provides that stored water in the Mackay Reservoir not used during an irrigation season is carried over for use in the next year and apportioned in the next irrigation season to all lands to which stored water has been made appurtenant. In addition, the BLRID recorded "surplus" water.

30. "Surplus" water is defined as decreed waters that were available for use pursuant to a decree, but were not used upon the property which the waters were decreed. The BLRID then would note

the availability of the water and its non use by the decreed right user and credit the "surplus" or unused waters to the water users account. The waters not used then would be either used by someone else within the system or stored. Surplus waters are in addition to the stored waters which were accumulated during the non-irrigation times of the year.

31. During the years 1987, 1988, 1989 and 1990, the Mackay Reservoir did not fill to its storage capacity and during these years the landowners within the district did not have sufficient water during each irrigation season to complete the irrigation of their crops.

32. Although the Agreement between the BLRID and the Arco Tract Association, Inc. has not been rescinded or terminated, the individuals receiving their water through the Arco Canal for use on lands outside the district have since approximately 1973 paid their proportionate toll charges directly to the BLRID and not through the Association.

33. In 1982 and for several years prior thereto, landowners receiving water under the agreement between the district and the Arco Tract Association paid the ditchriders hired by the district for the distribution of the water after it left the boundaries of the district. This practice was terminated after 1982.

34. The evidence establishes that the BLRID, through its directors and ditchriders, had actual knowledge that Walker combined and rotated his water rights between his "Home place" and the "Butte City place". Art Quist, who served as director on the

district board from 1960 to 1977 and held various offices including chairman, testified that he and other board members were aware of Walker's irrigation practices resulting in storage water being used upon his property outside of the district. Additionally, five different ditch riders employed by the district over the period 1983 through 1988 all knew that Walker customarily combined and rotated his water including the storage water. Walker's water was routinely delivered for use outside the district on his "Butte City place" lands. Each testified that to the extent that decreed and/or storage water was available under Walker's accounts, based upon the water conditions, it was delivered when and where Walker requested. Roy Helderman (Ditch rider 1983, 1984) indicated that he was taught by Cloy Olson, his predecessor and ditch rider for many years; and, further that it had been the practice at time to deliver Walker's storage water to the "Butte City place" property as requested. Ditch rider Cal Peterson (1985, 1986) indicated that he had raised a question about whether or not Walker's storage water should be delivered to his "Butte City place" property since it was outside the district. In response he was instructed by the BLRID director Willard Bell to deliver the storage water as Walker requested. Additionally, he testified that the watermaster in 1985, Mr. Gabbert, and the watermaster in 1986, Doug Rosenkrance, also were aware that Walker's storage water was being delivered outside the district and had accompanied him along the Arco Canal on occasion and actually observed that Walker's storage water was being delivered to Butte City. The 1988 ditch rider, Brent Morgan,

also testified he checked with the watermaster Doug Rosenkrance, who again authorized him to deliver Walker's storage water outside the district. Harvey Lengle, who was a ditch rider during half of 1986 and all of 1987, not only obtained approval from watermaster Doug Rosenkrance, but also discussed the matter with the district's ditch rider supervisor, George Gilbert, who informed him that it was acceptable to deliver Walker's storage water outside the district as had been the historic practice. Ditch rider Doug Storer (1987, 1988) also testified concerning his rotation and delivery of Walker's storage water outside the district, indicating that the practice of combining and rotating decreed and storage water rights resulting in use of the same on lands other than to which they were originally decreed was a common practice throughout the district. Several of these ditch riders also testified that in their opinion no harm or injury was caused to anyone by reason of Walker's water practices and that the practice of combining and rotating water promoted conservation and efficient irrigation practices.

35. The court also finds from the evidence that storage water was delivered to Walker's "Butte City place" property and charged against the "Home place" accounts 8 and 29 for the BLRID's bookkeeping and accounting purposes. Prior to 1982 the separate ledger cards were maintained for Account No. 1144A entitled "Arco Tract" and Accounts 8 and 29 entitled "Arco Canal". After 1982, all of the account numbers were reflected on a single ledger card entitled "Arco Canal". However, the ditch riders' records, Exhibit

11, for 1989, do not show any account number to which water was charged throughout the irrigation season. In the years 1979, 1980, and 1981, there were numerous weekly periods that the Arco Tract ledger reflected actual deliveries of storage water charged to Account No. 8 when no water was being used under Account 29 under the "Arco Canal" ("Home place") ledger card. That is, storage water was being delivered to "Butte City place" at times when no decreed water was available.

36. Neither the Bylaws of the district, Exhibit 14, the plan of operation, Exhibit 15, nor the 1936 Judgment and Decree, or Findings of Fact and Conclusions of Law, Exhibits D and C, pertaining to the assessment and apportionment of benefits, expressly preclude the delivery of storage water outside of the district, except for non-payment of assessments. Notwithstanding, it is implicit from a review of these documents that it was originally intended that storage water from the Mackay Reservoir would be used within the boundaries of the district on lands that were bonded to pay for the reservoir. It appears to have been the district policy that storage water would only be used in the district boundary. (Exhibits N. R. R. Lundy) However, any such policy has not been historically policed or enforced by the district. Until recently the boundaries of the District have not been significant to the District. The BLRID lacks an accurate map of property within the district, and has not maintained a list of property owners or a complete legal description of BLRID lands. (Cross-Examination of Board Members L. Rothwell, G. Stewart, E.

Goff, R. Reynolds).

37. The testimony is undisputed that other members of the district have combined and rotated their decreed and storage water as a result of their irrigation practices and used their storage waters to irrigate lands outside the district boundaries. For approximately 30 years, Robert Thornton has used storage water on 40 acres of land excluded from the district. Herman Aikele has a 30-acre parcel outside of the district boundaries on which he has rotated and used his storage water since the 1960's. Additionally, during the last three years, he has purchased storage water which has been transferred and applied to use on other land outside of the district. Director Gerald Stewart has used his storage water to irrigate 3 acres which is outside the district. Additionally, his son Craig Stewart, as a part of his rotation practices, has used his storage waters to irrigate 110 acres outside of the district over the past 14 years.

38. It has never been the policy or practice of the district to refuse the delivery of decreed water to lands outside of the district, except if assessments are unpaid. There has been no failure or refusal by the District to deliver Walker's decreed water rights to Walker's irrigated land pursuant to his requests at the "Home place" and "Butte City". The district has no jurisdiction nor authority over the delivery of decreed water which is controlled by the Idaho Department of Water Resources; more specifically the watermaster elected or appointed for the water district.

39. In 1990, the present district board adopted and began efforts to enforce several policies, including the policy against delivery storage water outside of the district. Exhibit 22. In March of 1990, a notice or letter concerning these policies was sent to each water user in the district, including Walker.

40. During the winter of 1989/1990 and continuing through the 1990 irrigation season the Big Lost River Valley suffered from drought and shortage of flow waters for irrigation. At the beginning of the 1990 irrigation season, the district refused to deliver any storage water to Walker (or to any other user outside the district) to his "Butte City place" property in an effort to enforce its policy against delivering storage water outside of the district. Upon receiving notice of this refusal, Walker attempted to lease from Joe Johnson a well about 1/2 mile away and exchange his storage water with this well water so it could be utilized to irrigate his hay crop at Butte City. As required by the district, Walker applied to the Idaho Department of Water Resources to transfer the water. After numerous protests were filed, the transfer application was withdrawn by Walker. Accordingly, as it was dry year making the decreed rights largely unavailable, Walker had no water available to irrigate his crops at Butte City. Consequently, he lost his entire first crop of hay on 47.5 acres.

41. Walker and the BLRID had no written agreement for the transportation of irrigation waters. Walker relied on the written agreement between the old Arco Canal Association and the custom and use that had developed over the years whereby the district would

deliver Walker's decreed waters together with storage waters, to the head gate situated near the BLRID boundary on the Arco Tract Canal. Walker (and his predecessors in interest) and the BLRID knew that Walker commingled and rotated all of his decreed waters for both parcels and at times used all the waters on the "Butte City place" property. He paid all his assessments as required to the BLRID. The BLRID and Walker in effect had an implied agreement whereby they would deliver Walker's water as the directed and he would pay his ditch and acreage assessments.

42. The BLRID knew that Walker rotated his water within or without the district and it continued to deliver the water at Walker's direction. Walker reasonably relied upon the delivery of his irrigation water and when the BLRID refused to delivery it, Walker was unable in 1990 to grow a full crop.

43. Based on an average yield of 2-1/2 tons per acre, Walker lost a total of 118.75 tons of first crop hay. The going price of hay in 1990 ranged from \$75 to \$95 per ton. Walker estimates his production costs at \$20.00 per ton.

44. After this suit was filed the Court issued an injunction and writ of mandate compelling the delivery of storage water, the district began delivering storage water to "Butte City place" on or about July 20, 1990, enabling Walker to raise a normal second crop of hay. The District questioned if Walker would have had sufficient storage water available for two crops. However, based upon the testimony of Rita Lundy and her review of the water available in Walker's water accounts at the end of August (Exhibits

X and W) Walker had 3647 inches of water available under Accounts 8 and 29, which would have been sufficient to raise a normal first crop of hay in addition to the second crop, had the district not deprived him of the use of storage water at "Butte City place" early in the irrigation season. Furthermore, had Walker run short of water he could have purchased additional storage water as he did in prior years. Additional water was available as indicated by the Directors, some of whom purchased additional water in 1990.

45. In November of 1987, the State of Idaho commenced general adjudication of all water rights, both surface and ground in the entire Snake River Basin, which includes the Big Lost River drainage. The case is entitled "In Re the General Adjudication of rights to the Use of Water from the Snake River Basin Water System" (SRBA), and has been assigned Civil No. 39576 in the Fifth Judicial District for the State of Idaho, in and for the County of Twin Falls. The Idaho Department of Water Resources pursuant to the provisions of Chapter 14, Title 42, Idaho Code, which governs general adjudications, has been taking claims for all water rights within the various basins deemed to be tributary to the Snake River Water System, including the Big Lost River drainage, designated as Basin No. 34. Any dispute between the parties concerning the expansion of and/or the place of use of any of Walker's water rights as claimed by his SRBA filings is not properly before this Court because jurisdiction lies with Judge Hurlbutt in the Sixth District.

### III. CONCLUSIONS OF LAW

1. This action between Walker and the BLRID is to resolve a controversy over the delivery of irrigation water. Jurisdiction exists over the parties in the subject matter of this action and venue is proper in Butte County, Idaho.

2. However, the court specifically limits this decision to the resolution of the claims raised by the parties on the delivery of the water only and does not address any water right claims. All claims and controversies concerning claims to ground water, surface water, storage water, changes of the place of use, and transfers, fall within the jurisdiction either with the IDWR or within the Snake River Adjudication with jurisdiction and venue in the Fifth Judicial District Court for Twin Falls County, and this court has no jurisdiction to adjudicate those matters.

3. The validity or invalidity of the water rights referred to herein and every element and aspect thereof are matters which are the subject of a pending adjudication proceedings under Chapter 14, Title 42, Idaho Code, which was filed in the Fifth Judicial District Court for Twin Falls County, Case No. 39576, and in which plaintiffs have filed notices of claim for each of said water rights. This court will not attempt to determine the validity or invalidity of any water rights or any element or aspect of any such water right claimed by plaintiffs or either of them, whether it be change of use, place of use, expansion of use, or otherwise.

4. The BLRID has no authority or jurisdiction over the delivery of decreed water rights (by statute, exclusively

controlled by the State of Idaho, Department of Water Resources) except in the event of non payment of assessments for the maintenance and costs of the delivery system.

5. Walker is the sole and lawful owner of certain irrigated real property which is the subject matter of this action and consists of 397.3 acres located in Sections 6, 7 and 8, Township 3 North, Range 27 East, B.M., commonly known as the "Home place", and 321.1 acres located directly to the east in Sections 3, 4 and 9 of Township 3 North, Range 27 East, B.M., commonly known as the "Butte City" place, all in Butte County, Idaho, as described more specifically in Exhibit 7. In the area of Walker's property, the District boundary runs generally north and south and divides the Walker property with the "Home Place" place lying just west of the boundary within the district and the "Butte City place" lying just east of the boundary outside of the district, as illustrated in the maps, Exhibits 1 and 2.

6. Walker's lands have appurtenant a total of 527 inches of decreed water rights in the Big Lost River, with priority dates ranging from May 1, 1885 to May 1, 1892, a licensed well with a priority date of October 1, 1961, and 15,467.5 inches of storage water at the Mackay Reservoir.

7. Walker's decreed and storage water rights since the early 1940's and his well water since 1961, have been combined, rotated, and applied to beneficial use for irrigation purposes on his "Home place" within the district, and the "Butte City place" outside of the district, all with the knowledge of the district and without

objection by the BLRID, prior to 1990.

8. In accordance with Idaho Code §§ 42-1416 and 1416A, Walker has applied all of his described waters to beneficial use and on all of his irrigated lands as described above and as set forth in his SRBA claims, Exhibit 6.

9. Without the combined and rotating of the decreed, storage and well waters between the "Butte City place" property and the "Home place" Walker would not have had sufficient waters to irrigate his lands beneficially and grow either alfalfa or grain crops.

10. The historic practice of combining and rotating decreed water, storage water and well water within the district is lawful and proper and results in conservation and the efficient use of water in accordance with Idaho law and state water policy.

11. The right to store water within the Mackay Reservoir on the BLRID is held by BLRID for the benefit of lands within the BLRID to which said stored water has been apportioned by the district, and said stored water is needed for the proper irrigation of the lands within the district.

12. The title to the water rights held by the BLRID is vested in the district and held by the district in trust for, and dedicated and set apart to, the use on lands within the district to which said storage water has been apportioned for irrigation purposes.

13. It is the responsibility and obligation of the watermaster of the water district to insure that each decreed right

is delivered to the appropriate point of diversion, and the watermaster is not the agent of the irrigation district. The BLRID maintains and controls the delivery system.

14. The BLRID and Walker established an implied contract whereby the BLRID would deliver decreed water and storage water to Walker for use on his lands both inside and outside of the district. The contracts fit into the rotation practice -- a customary practice in the area -- and was not detrimental to the landowners within the district.

15. The district is estopped from interfering with or preventing the delivery of storage water beyond its boundary to Walker for use at his "Butte City place" property. The doctrine of quasi-estoppel applies to this case based upon the affirmance and acquiescence by the district in delivering and permitting the delivery and use of Walker's storage water outside of the district at "Butte City place" since the early 1940's and the reasonable reliance thereon by Walker in the development and operation of his farm. Given the capital expenditures for installing, operating and maintaining an expensive irrigation system, it would be unconscionable and ruinous to Walker's farming operation and cause irreparable harm to allow the district to completely alter its prior course of conduct and now begin to enforce a policy which effectively deprives Walker of the use of his storage water rights, by reason of which the doctrine of quasi-estoppel clearly applies.

16. Though the district may at one time have had a right to refuse the delivery of storage water for use outside of the

district, and could enforce such a policy with respect to new deliveries outside the district, it clearly is also barred by the doctrines of waiver and laches from now enforcing such a policy against Walker. The doctrines of estoppel, waiver and laches would also apply to others who have likewise made use of their storage water outside the district for many years without objection and preclude the district from depriving them of the delivery of their storage water rights for use consistent with their historic practices.

17. The district's refusal to deliver Walker's storage water for use at "Butte City place" wrongfully and unlawfully interfered with Walker's use and enjoyment of his decreed and storage water rights and the District's contractual obligation to deliver the same, all contrary to the well-established historic practice of delivery and use. As a direct and proximate result of depriving Walker of the use of his storage water at "Butte City place" in the 1990 irrigation season, Walker lost his first crop of hay and was damaged in the amount of \$8906.25.

18. The Restraining Order and Writ of Mandate previously issued herein are made permanent. The BLRID is directed to deliver Walker's decreed and storage water to his "Home place" place and the "Butte City place" property in accordance with Walker's historic practices described above and is restrained from interfering with the delivery and use of such water.

19. Walker prevailed in this litigation and is entitled to his costs. However, the court concludes that no statutory nor

contract provision provides for attorney fees to be assessed as costs and therefore awards no attorney fees. The court specifically finds that the action was not brought nor defended frivolously.

#### IV. JUDGMENT

THEREFORE, judgment is hereby entered in favor of Walker and against BLRID. The court grants BLRID's Motion to Disallow Costs in part and grants it in part. The court allows costs in the sum of \$444.60. The court does not allow the preparation of exhibits since they were prepared "in house" nor a charge for the partial hearing transcript. Also, the court does not award the discretionary costs. The court concludes that the award of discretionary costs are not required by either statute or law, and to award them would be unjust and disproportionate.

IT IS SO ORDERED.

DATED this 20<sup>th</sup> day of <sup>December</sup> ~~November~~, 1991.

  
\_\_\_\_\_  
JAMES C. HERNDON  
District Judge

cc: Randall C. Budge, Esq. and Louis F. Racine, Jr., Esq., P.O.Box 1391; Pocatello, Idaho 83405-1391  
Roger D. Ling, Esq., P.O. Box 396, Rupert, Idaho 83350

RECEIVED

FEB 05 1992

Department of Water Resources  
Eastern District Office

OCT 30 1991

BINGHAM COUNTY, IDAHO.

*Re. Order 29, 1991* AT

*3:00 p.m.*

*James C. Herndon*  
JAMES C. HERNDON  
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

ARTHUR W. QUIST, WILLARD O. BELL, )  
L. VAUGHN JENSEN, MITCHELL SORENSEN, )  
HARLAN SMITH, LYNN ROTHERWELL, JOHN )  
L. POWERS and DON AIKELE, )

Plaintiffs, )

vs. )

BIG LOST RIVER IRRIGATION, DISTRICT )  
BOARD OF DIRECTORS, LOUIS ROTHWELL, )  
BRYON R. PEHRSON, JAMES CLYDE )  
LAMBERT, RICHARD E. REYNOLDS, GERALD )  
STEWART and ERNEST GOFF, )

Defendants. )

Case No. CV-90-132

AMENDED  
MEMORANDUM DECISION,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

# I. INTRODUCTION

Plaintiffs Arthur W. Quist, Willard O. Bell, L. Vaughn Jensen, Mitchell Sorensen, Harlan Smith, Lynn Rotherwell, John L. Powers and Done Aikele (plaintiffs) challenge the most recent Big Lost River Irrigation District (BLRID) election of the Board of Directors, (Tuesday, December 11, 1990) and its results.

The BLRID and its directors defendants Louis Rothwell, Byron R. Pehrson, James Clyde Lambert, Richard E. Reynolds, Gerald Stewart and Ernest Goff (BLRID or defendants) contend that the December 11, 1990, election was properly held and canvassed according to law and that the present directors are validly elected

AMENDED MEMORANDUM DECISION, FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER

and qualified to serve. Defendants claim that plaintiffs must prove that the alleged irregularities will cause an actual change in the result of the election and that in order to establish the irregularities each voter must be called as a witness to testify concerning his or her qualifications and how he or she voted.

Plaintiffs counter that they only need to show that the irregularities are sufficient to change the result.

By stipulation and agreement, the court received evidence at trial on the alleged irregularities and the parties briefed, argued and submitted the following issues:

1. Is the City of Arco properly excluded from the BLRID and therefore city residents not entitled to vote in district elections?

2. Must the plaintiff establish that the election irregularities are "sufficient to change the result" or must they prove the irregularities caused "actual change in the result of the election. . .?"

The remaining issues were reserved, and the taking of additional testimony continued.

The court orally ruled that the lands within the City of Arco should be excluded from the BLRID and therefore city residents are not entitled to vote in district elections. After consideration of the evidence and the law, the court reserved a ruling on whether the plaintiff needs to establish that the election irregularities are "sufficient to change result", or whether the plaintiff must establish that the irregularities caused "actual change in the

result of the election". The court then scheduled a court trial on the remaining issues on the election challenge for August 28 and 29.

The BLRID, through its counsel, had generally agreed that if the court found that the procedure followed by the district on excluding the City of Arco that the entire municipality was excluded, along with the Mackay and Moore communities. However, at second trial, the BLRID argues that the stipulation, or statements made by it, should be construed as the district saying that certain property was not listed as being within the confines of the district, but that it should not be taken as an admission that the communities could be entirely excluded. Thus, the court also must consider whether or not the BLRID entered into a binding stipulation whereby it can no longer claim Arco, Moore, or Mackay residents as voting members of the district.

Added  
By letter, counsel for the plaintiffs and the defendants filed objections and request corrections to the Findings of Fact and Conclusions of Law entered herein on September 27, 1991. After discussion, the court supplements and amends and modifies the September 27, 1991, findings and substitutes for the September 27, 1991, Memorandum Decision, Findings of Fact, and Conclusions of Law this Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order.

The court has listened to additional testimony on August 28 and 29 and considered the file, exhibits, the demeanor of the witnesses and the parties, and the record generally, and has been

AMENDED MEMORANDUM DECISION, FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER

advised as to the law and therefore makes the following Findings of Fact and Conclusions of Law:

## II. FINDINGS OF FACT

1. That plaintiffs, Arthur W. Quist, Willard O. Bell, L. Vaughn Jensen, Mitchell Sorensen, Harlan Smith, Lynn Rotherwell, John L. Powers and Don Aikele (plaintiffs), are now, and were at all times mentioned herein residents of Butte County or Custer County, State of Idaho, duly registered voters and qualified electors of the BLRID.

2. That defendant BLRID is a quasi-municipal corporation organized under the laws of the State of Idaho pursuant to Idaho Code (I.C.) § 43-304, et seq., with its principal place of business in the City of Mackay, Custer County, Idaho.

3. That defendant BLRID's Board of Directors, Louis Rothwell, Byron R. Pehrson, James Clyde Lambert, Richard E. Reynolds and Gerald Stewart, were each members of the Board of Directors of the District at the time of the most recent election of the Board of Directors on Tuesday, December 11, 1990, and at the canvass of votes and declaration of the results of election on Monday, December 17, 1990. That following said election defendant Ernest Goff was declared elected to replace defendant James Clyde Lambert and defendant Gerald Stewart was re-elected, effective as of the first meeting of the Board of Directors in January, 1991, from which date all of said defendants continue to act as the BLRID's Directors, excepting James Clyde Lambert.

4. That on Tuesday, December 11, 1990, the BLRID conducted

an election to elect two members of its Board of Directors wherein plaintiff John L. Powers ran against the defendant Ernest Goff and plaintiff Don Aikele ran against defendant Gerald Stewart. Powers and Goff were duly nominated and placed on the ballot for the position of director in one division of the district and Aikele and Stewart were duly nominated and placed on the ballot for the position of director of another division of the district.

5. That on Monday, December 17, 1990, at the BLRID's office and principal place of business in Mackay, Idaho, the BLRID's Board of Directors convened as the Board of Canvassers and declared defendant Gerald Stewart to be re-elected over plaintiff Don Aikele by a vote of 202 to 180; and further, declared defendant Ernest Goff to be a newly-elected member to the Board of Directors over contestant John Powers by a vote of 198 to 184.

6. Prior to the election on Tuesday, December 11, 1990, the BLRID provided nominating petitions (see plaintiffs' Exhibit 1, nominating petition of Gerald Stewart, as an example); posted a Notice of Election in three public places in each precinct and in the office of the BLRID board, at least four weeks before the date of the election (see plaintiffs' Exhibit 4); published Notice of Election once a week for two consecutive weeks (October 18, 1990 and October 25, 1990) in a newspaper having general circulation within the BLRID (the publication of the Notice of Election was completed not less than 15 days before December 11, 1990); appointed three election judges in each precinct (the district comprises of three precincts), and held the election for directors

on the second Tuesday of December, 1990.

7. The election judges and the electors executed an Elector's Oath wherein they stated under oath that in part:

[T]hat I am a bonafide resident of this state and a resident of this county; . . . that I am not now registered and entitled to vote, at any other place in the state and I own land within the Big Lost River Irrigation District, and am a resident of the county within which the district, or portion thereof, is located; . . . .

See plaintiffs' exhibit 6, defendants' exhibit B and D.

8. In its instructions to election judges the BLRID provides a general instruction sheet (defendants' Exhibit A) and then on the December 11, 1990 election the BLRID additionally instructed:

Please be advised that your duty is solely to conduct the election by allowing anyone who wishes to vote to sign the Electors [O]ath and give them a ballot. If the votes cast are illegal it will be the Board of Directors who shall make that decision - so even if you know someone is not a member and they wish to swear that they are by signing that Oath, its okay because your job is to see that it all runs smoothly.

There will be Board of [C]anvassers on December 17th, and at that time the Directors count all the ballots and decide if there has been any errors. . . .

Plaintiffs' Exhibit 5.

The BLRID further instructed on November 8, 1990:

Please read the enclosed copy of the Elector's Oath. As you can see anyone who votes swears that he (or she) is a member of the BIG LOST RIVER IRRIGATION DISTRICT. THEREFORE THERE WILL NOT BE ANY MEMBER LISTING for you to check this year. If someone votes who is NOT A MEMBER, they will be responsible for this violation and it will be up to the members of the Board whether they wish to pursue this action in Court. . . .

Id.

9. The BLRID furnished the election judges in each precinct a list of landowners compiled from the BLRID assessment book.

However, individuals were allowed to vote even if their name did not appear on the list provided that they signed the Elector's Oath. All voters executed an oath provided by the election judges.

10. The BLRID directors, acting as a Board of Canvassers, canvassed the returns and declared elected the persons having the highest number of votes for each office -- Gerald Stewart for director from Division 2 and Ernest Goff for Division 5. Thereafter, the BLRID's secretary made out and delivered to Stewart and Goff a Certificate of Election.

11. The BLRID does not have an accurate map or other instrument, which shows the exact location of the landowners within the district boundaries. Thus, the directors, sitting as the Board of Canvassers, made no specific effort to verify the residency of the electors. The BLRID actually consists of land within Butte and Custer counties. At trial the parties provided maps of the district prepared for the trial (Exhibits 20 and J) and the maps depict an irregular shape of the perimeter boundary and resemble a checkerboard in that various parcels of land within the perimeter boundary had been excluded and various parcels annexed. The district lands include real property described in the May 12, 1920, order creating the BLRID (Exhibit 17) less lands excluded by order of the Board of Directors (Exhibits 18, I, L) plus lands annexed by the BLRID by order of the Board of Directors (Exhibits 18, I, L).

12. The BLRID maintains an assessment book containing legal descriptions of the BLRID lands and a list of the persons who own, claim or have in possession or control of the said lands and the

number of acres attributed to each person. However, the BLRID is not certain at all that all persons owning land within the district nor the district boundaries themselves are accurate. The assessment book is kept for the purpose of taxing the lands within the district for the operation of the district.

13. Although the records are deficient and the mapping not accurate, the district records substantially comply with the statutory requirements set forth in Chapter 7, Title 43, of the Idaho Code.

14. In 1963 the then directors of the BLRID and the members of the City Council of Arco discussed assessments of city lands considered within the BLRID boundaries. The district pointed out that the community benefited from ". . . the fact that the irrigation district was in operation (and) made the valley more productive and all properties more valuable . . . " (see defendants' Exhibit H). The council members complained that in most cases in the city of Arco no ditches were maintained and no water was delivered and the assessments were too high. The result of the meeting was that the city refused to collect or pay assessments for the BLRID. (see defendants' Exhibit H).

15. Then on March 7, 1972, the City Council again met with the directors of the BLRID and asked that the city of Arco be excluded from the district and that assessments considered delinquent by the BLRID be resolved. According to the minutes of the BLRID meeting, the BLRID considered the city in arrears in assessments in the sum of \$3,375.12, including penalty and

interest. The BLRID passed a motion whereby the delinquent assessments would be cancelled on the condition that the city petition for exclusion from the district and "turn the storage water back to the district". The BLRID then agreed to reapportion the 3,580 inches of storage rights to the Butte county cemetery district and 2,000 inches of storage water to the Arco cemetery (see plaintiffs' Exhibit 10) on March 15, 1972 the City of Arco filed a formal petition for exclusion of the NE $\frac{1}{4}$ , Section 36, Township 4 North, Range 26, East of the Boise Meridian. (plaintiffs' Exhibit 11). The BLRID minutes of April 4, 1972, note:

"Petition for Exclusion -- City of Arco: Motion was made by Arthur W. Quist to approve Petition for Exclusion for the City of Arco. Seconded by James S. Babcock"

Plaintiffs' Exhibit 12.

Apparently no formal order was ever prepared and recorded with the Butte or Custer counties recorders. No other written documents of notation appears in either the City Council minutes or the BLRID minutes. However, the BLRID waived the assessment against the city and subdivision lands, <sup>situated w/i the NE $\frac{1}{4}$  Sec. 36</sup> within the city and transferred the storage rights from the city and its property owners to the Butte County and Arco cemeteries. BLRID assistant secretary-treasurer Rita Lundy explained that the secretary-treasurer of the district prepared the minutes from notes taken by another employee, who had terminated her employment with the district. The directors formally approved the minutes on October 9, 1973. Although the city council petitioned (the City Mayor executed the formal

petition) the district, the city itself owned no lands. The individual property owners did not appear in person either at the BLRID meeting or by petition. No assessments have been made by the BLRID on lands within the NE $\frac{1}{4}$  of Section 36, Township 4 North, Range 26 East, Boise Meridian, since 1972.

revised [ 16. The BLRID admits that Exhibit I establishes the lands excluded from the district. Exhibit I includes lands within the following subdivisions: the Arco original townsite, the Arco First, Second and Third Additions, Arco Acreages, the Arco Danielson Addition, the Dee First and Second Additions, Farmers Addition (also referred to as "Farmers" and "Farmers Subdivision"), Hammond Subdivision, the Jones Subdivision, the Kay-Cee Subdivision, Mackay Acreage, Monson Subdivision, Royal Neighbors of America No. 902, Putnam Subdivision, Reinhart Subdivision, Rolland Acres, Sherman Subdivision, and the Mackay Townsite.

revised [ 17. The court specifically finds that the following real property to-wit: NE $\frac{1}{4}$ , Section 36, Township 4 North, Range 26, East of the Boise Meridian, is excluded from the district (order of the BLRID on April 4, 1972) and that said area includes the original Arco townsite, the Arco City Park and the Arco First, Second and Third Additions. The court specifically finds that the original Mackay townsite is excluded from the district. The major portions of the Moore townsite are excluded, but the district records do not establish with any specificity as to the lots included and the lots excluded. Defendants Exhibit I set forth excluded lands by owner's name and property description on an

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AMENDED MEMORANDUM DECISION, FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER

All the individuals named on plaintiffs' list of qualified voters, plaintiffs' Exhibit 14, testified except for Marva and Vernon Barnes, Diane and Roy Hopla, Jay and Sue Pearson, and Larmin and Ann Anderson. The Pearsons and the Andersons were stricken from the exhibit at the first trial. The Hoplas, according to counsel, were outside the area and plaintiff reserved the right to call them at a later date if necessary. However, plaintiffs submit an Affidavit from Roy and Diane Hopla wherein they state they reside outside the boundaries of the district and that they each voted for Aikele over Stewart but neither could remember how they voted in the Goff-Powers election. All the witnesses set forth on defendants' list of unqualified voters (plaintiffs' Exhibit 15) testified. The trial court's record shows that during the first portion of the trial the BLRID stipulated that the following on plaintiffs' list (plaintiffs' Exhibit 14) were unqualified voters: Lewis Beardall, Diane Hopla, Roy Hopla, Jim Kochenderfer, Sharon Longhurst, Harriet Makinson, Edyth Moore, Paul Nelson, William Parsons, Harold Rothwell, Raymond Shotsman, Shirley Shotsman, Betty Williams and Joe Williams.

20. William and Mattie Anderson testified that they owned the following property: Lots 4, 5, 6; all of Block 5, Farmer Subdivision to the City of Arco. According to defendants' Exhibit I, certain lands situated within the Farmer Subdivision were excluded from the district by resolution on March 20, 1978. However, no record produced by either party indicates that the Anderson lands are excluded. The record shows that the Andersons

receive water from the BLRID and pay an assessment. Thus, the court determines that the Anderson lands are within the district.

21. The parties agree that Lewis Beardall owns property outside the district and was not entitled to vote. Mr. Beardall voted for Don Aikele and John Powers.

22. Deloy and Kathy Braswell, 950 West Grand, Arco, Idaho, own Lots 17 through 24, inclusive Lot 1, Block 2, all in the Jones Subdivision to the city of Arco. They have received no water nor water bills from the district since the late 1960's. The BLRID records show their lands excluded from the district. Kathy Braswell voted for Stewart and could not remember her vote in the Goff-Powers election. Mr. Braswell voted for Stewart and Powers.

23. Robert and Rene Gonzalez own lands within the district.

24. Fern Guthrie owns property within the district, but these lands that were not bonded to construct the Mackay reservoir. Mrs. Guthrie also receives water from the BLRID and pays her assessments. Plaintiff's Exhibit 14 indicates that Mrs. Guthrie lands are situated outside the district. However, she testified she owns lands in the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 28, Township 4 North, Range 26 East, B.M., and that said lands lie east of the old Shortline railroad tracks. The district records show her out, but she testified that the Guthrie's received storage water and have paid assessments to the district. The court concludes she is within the district.

25. Lots 3 through 5, inclusive, Block 10, Arco Townsite owned by Roy and Vanetta Kirkland are outside the boundaries of the

BLRID. Mr. Kirkland voted for Stewart and Goff, and Mrs. Kirkland voted for Stewart and Goff.

26. Jim and Lisa Kochenderfer own land outside the boundaries of the district. Mr. Kochenderfer voted for Stewart, but could not remember his vote in the Goff-Powers election. Mrs. Kochenderfer voted for Stewart and Goff.

27. Sharon Longhurst owns property outside the BLRID boundaries and situated within the Grand View Subdivision to Arco. She voted for Goff but could not remember her vote in the Stewart-Aikele election.

28. The parties agreed that Harriet Mackinson owns property outside the BLRID. Mrs. Mackinson voted for Stewart, but could not remember her vote in the Goff-Powers election.

29. The parties agreed that Edythe Moore owns property outside the BLRID, but she could not remember her vote in either the Stewart-Aikele or the Goff-Powers elections.

30. Ralph and Vetta Moss own property situated within the SW $\frac{1}{4}$  of the SW $\frac{1}{4}$ , Section 26, Township 4 North, Range 23 East, B.M. The parties after a review defense Exhibit I and other documents agreed that Moss's lands are "outside the boundary of the district." Mr. Moss voted for Stewart and Goff and Mrs. Moss voted for Stewart and Goff.

31. Paul Nelson owns a parcel one mile west of the Arco city limits. Nelson testified that he bought the land in September, 1990 and was situated outside the district. The BLRID records and the exhibits indicate that Nelson's predecessor (Alvin Blair)

petitioned out of the district. (See defendants' Exhibit I). Nelson voted for Stewart and Goff.

32. William Parsons owns three parcels of land situated within the Hammond Subdivision to the City of Arco (Lots 2, 3, 4, Block 20, Hammond Subdivision, excluded from the BLRID (see defendants' Exhibit I). Also, the BLRID records do not list the property. The court determines that Mr. Parsons is outside the district. Mr. Parsons voted for Stewart and Goff.

33. Alvin and Gertude Roessner own property on Grand Avenue, Arco, and also on Fox Lane near the Big Lost River. They testified that they receive irrigation water for a three acre parcel. However, the records do not establish by the preponderance of the evidence whether the Roessner lands are within or without the district. Roessners declined to testify as to how they voted until a determination was made as to whether or not they are within or without the irrigation district. The court concludes that the Roessners are in the district.

34. Harold Rothwell owns lands within the city of Moore (Lots 13-15, Block 11; Lots 1-18, Block 14, Moore Townsite). These lands are excluded from the district. See plaintiffs' Exhibit 18, page 7. Mr. Rothwell voted for Aikele and Powers.

35. Lonnie Secrist lives within the Arco original townsite and does not own land within the district. Mr. Secrist could not remember for whom he voted in either the Stewart-Aikele election or the Goff-Powers election.

36. Melva Secrist (Lonnie's mother) owns lands in the Moore

original townsite (Lots 7-10, Block 6). She explains that her lands had been listed in the published exclusion resolution in March, 1978, but that her husband (now deceased) had protested and her lands remain within the district. In any event, she could not remember for whom her votes were cast.

37. Raymond and Shirley Shotsman own a parcel of land situated in Rolland Subdivision outside the BLRID. The parties agree that Shotsman lands are excluded from the district and that Shotsman have received no water nor have they been assessed. Mr. Shotsman voted for Stewart and Goff and Mrs. Shotsman voted for Stewart and Goff.

38. Dale Smith is the personal representative and heir of law of his mother's estate, which owns lands within the district.

39. Wanda Smith (no relation to Dale Smith) owns land within the BLRID.

40. Terry Stewart owns Lot 1 of Block 10 of the Johnson addition to Moore and situated in the BLRID.

41. Joe and Betty Williams own Lot 17, Block 4, Dee Second Addition to the City of Arco. These lands were excluded by petition and resolution on May 20, 1978. Mrs. Williams voted for Stewart and Goff and Mr. Williams voted for Stewart and Goff.

42. Tony Bailey exercised a power of attorney granted by his employer, P U Ranch, he owns no lands of his own within the district. He voted for Stewart and Powers.

43. Raquel Bailey (no relation to Tony Bailey) was not a resident of the State of Idaho for six months and actually owned no

land at the time of the election. She voted for Stewart and Goff.

44. Clyde Beverland lives at 410 North East Street, Arco, Idaho, and leases with a lease-purchase agreement an 80-acre parcel in Section 22, near Moore, Idaho. He also owns a lot in the DeCordia Addition to Arco and the Farmer Subdivision in Arco. His mother is the vested owner of the 80-acre parcel, and the Farmer's Addition lots are excluded from the district. However, the court can't determine from defendants' Exhibit I, or any other document, whether or not by the preponderance of the evidence the DeCordia Subdivision lot has been excluded or remains within the district. The records show he paid no assessments on the DeCordia lot. He does pay an assessment on his mother's 80-acre parcel. Mr. Beverland voted for Stewart and Goff.

45. Fred Friedel resides in Mackay outside the boundaries of the BLRID, but he could not recall whom he voted in either election.

46. Robert Jameson owns lands admittedly outside the district where he resides and also the Ken's Club in Mackay, Idaho. Mr. Jameson voted for Aikele and Powers.

47. John and Joanne Johnston own lands near Arco, Idaho, which the parties agree are excluded. Johnstons indicated that they voted because of the ground water issues and had never checked to see if they were within or without the district. Mr. Johnston voted for Aikele and Powers and Mrs. Johnston voted for Aikele and Powers.

48. Dave Nelson owns property within the district and also

requirements of I.C. § 43-113.

7. [Irrigation district nearly as practicable in accordance with state. I.C. §§ 43-112, 207, 208] the conduct of elections in irrigation districts pertaining to the general election of the boundaries of the three or more irrigation districts and accurate maps and legal descriptions of the boundaries of the District. In the property descriptions and records of BLRID lands and the annexation of the district did not maintain a complete list of property within the BLRID boundaries and the district were generally known to the district prior to voting to execute an election. I.C. § 43-112.

8. Elections in irrigation districts require the registration of qualified electors and the registration of qualified electors is required by I.C. § 43-113. The election judges had no authority to deny the right to vote upon the person's oath before an election judge. This was the result of the BLRID election.

9. The BLRID maintained an accurate list of assessing (taxing) the acreage and the assessment roll was not maintained.

AMENDED MEMORANDUM DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

manages the San Felipe Ranch once for his parcel partnership vote was

49. Doug Rosen participated in the partnership, but less than Aikele and Powers.

50. John and Idaho, which the partnership of Rosenkrance voted for, voted for Aikele and Powers.

51. W. M. Sayer, situated in Section 3 of the BLRID.

52. Kent and Gaffney, 31, near Arco, but all Stewart and Goff and remember his ballot.

53. Gerald Twit Mackay, Idaho, towns: in either election.

54. Clinton and Mackay, all excluded from remember for whom he Powers.

55. In summary, 13, Goff 15 and Powers  
AMENDED MEMORANDUM DECISION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

required to maintain it -- for the purpose of providing a list of eligible voters.

10. The BLRID election procedures used in connection with the election on December 11, 1990, substantially meet the statutory requirements. [However, the district should for future elections prepare and maintain complete and accurate maps and legal descriptions of the lands within the district and define the actual boundaries of the district, together with the excluded lands.]

11. The 160 acres located in the NE $\frac{1}{4}$  of the Section 36, Township 4 North, Range 26 East, Boise, Meridian, is excluded from the BLRID and that the said area includes the original Arco Townsite, the Arco City Park, the Arco First, Second and Third Additions. Persons only owing land within this area were not qualified to vote at the election held by the BLRID on December 11, 1990.

12. The owner of record of an undivided interest in real property located within an irrigation district, not held by partnership or a corporation, is a qualified elector of the district as an owner of land within the district if the person meets the other qualifications of electors of the district. I.C. § 43-111.

13. All persons nominated and placed on the ballot for the position of director were lawfully nominated by qualified electors of the district and all persons elected to the Board of Directors in the election of December 11, 1990, were qualified electors of the district and qualified to serve as a member of the Board of

Directors of said district.

14. No person is entitled to vote as a qualified elector in an irrigation district under a Power of Attorney that the person may hold that has been executed by the owner of record of the real property located in the district.

15. When the owner of lands within an irrigation district is deceased, the devisees of the owner qualify as the owners of the lands upon the death of the owner of record, and are a qualified elector if they meet the other qualifications provided by I.C. § 43-111.

16. The following voters did not meet the statutory qualifications:

- |                       |                         |
|-----------------------|-------------------------|
| 1. Roy Hopla          | 15. Paul Nelson         |
| 2. Diana Hopla        | 16. William Parsons     |
| 3. Lewis Beardall     | 17. Harold Rothwell     |
| 4. Deloy Braswell     | 18. Lonnie Secrist      |
| 5. Kathy Braswell     | 19. Raymond D. Shotsman |
| 6. Roy Kirkland       | 20. Shirley Shotsman    |
| 7. Venetta Kirkland   | 21. Joe Williams        |
| 8. Jim Kochenderfer   | 22. Betty Williams      |
| 9. Lisa Kochenderfer  | 23. Tony Bailey         |
| 10. Sharon Longhurst  | 24. Raquel Bailey       |
| 11. Harriet Mackinson | 25. Dwight Beverland    |
| 12. Edythe Moore      | 26. Fred Friedel        |
| 13. Ralph Moss        | 27. Robert Jameson      |
| 14. Vetta Moss        | 28. John Johnston       |

29. Joanne Johnston
30. Dave Nelson (partnership  
vote)
31. Doug Rosenkrance
32. John Rosenkrance
33. Lucille Rosenkrance
34. Kent Thorngren
35. Gail Thorngren
36. Gerald Twitchell
37. Clinton Whitney
38. Mattie Whitney

17. The following individuals were qualified voters on  
December 11, 1990:

1. William Anderson
2. Mattie Anderson
3. Robert Gonzalez
4. Rene Gonzalez
5. Alvin Roessner
6. Gertude Roessner
7. Melva Secrist
8. Fern Guthrie
9. Dale Smith
10. Wanda Smith
11. Terri Stewart
12. Dave Nelson (his property vote)
13. W. M. Sayer

18. Pursuant to I.C. § 34-2001, an election may be contested:

1. For malconduct, fraud or corruption on the part of the judges of election in any precinct, township or ward, or of any board of canvassers, or any member of either board sufficient to change the results.

5. When illegal votes have been received or legal votes rejected at the pools sufficient to change the result.

6. For any error in the board of canvassers in counting votes or in declaring the result of the election, the error would change the result.

8. For any cause which shows that another person was legally elected.

19. Lands within the Big Lost River Irrigation District that were not assessed for the repayment of bonds of the district issued for the purchase of the Mackay Dam and Reservoir are not excluded from the district, as only such lands within the district that received benefits from the purchase of the Mackay Dam and Reservoir and the water stored therein were assessed for the redemption of the bonds issued by the irrigation district.

20. No malconduct, fraud or corruption occurred on the part of the judges of the BLRID election in any precinct or any Board of Canvassers of any member of either board sufficient to change the results of the elections. I.C. § 34-2001.

21. No legal votes were rejected, but 38 illegal votes were received. The illegal votes received were not sufficient to change the result of either election.

22. The court concludes that no cause has been shown to indicate that any person was legally elected other than those certified to be elected in the BLRID election of December 11, 1990, or that the election was not substantially conducted in accordance

with the laws of the State of Idaho relating to irrigation districts.

23. Gerald Stewart and Ernest Goff were duly elected as directors of the Big Lost River Irrigation District on December 11, 1990.

24. Plaintiffs argue that pursuant to I. C. § 34-2001 they need only establish that the election irregularities are "sufficient to change the result" of the election. Defendants contend that the statute requires the plaintiffs to show that the election irregularities caused an "actual change in result of the election."

Plaintiffs eloquently argue:

Although Goff prevailed over Powers by a margin of 9 [actually 11] votes, the fact that 11 voters had no memory how they voted and there are 6 [actually 12] questionable when interviews started] additional questionable voters [The court concludes these 12 were within the district and not required to reveal the vote.] renders it improper for the Court to determine with reasonable certainty whether the election should be confirmed or annulled. Give these uncertainties, the total number of illegal votes received at the election, the irregularities in advertising the election, accepting and canvassing the votes, a new election should be conducted. . . . I.C. § 34-2001 provides the Court with authority to order a new election where malconduct, illegal votes, error in the board of canvassers and/or any other cause is sufficient to change the result of the election. Actual change in the result of the election is not required under a reasonable and logical interpretation of I.C. § 34-2001. Plaintiffs' statutory interpretation is supported if I.C. § 34-2001 is read in conjunction with I.C. § 34-2021 describing the final judgment the Court may enter relative to an election contest case. I.C. § 34-2021 provides the Court with various alternatives, indicating that the Court shall "confirm or annul the election, according to the right of the manner; or . . . declare as elected the person who shall appear to be duly elected, or in the alternative,

... order a new election to be held at a time and place as described by the Court." (Emphasis added.)

Since the results of the election are in doubt due to the number of irregularities, the number of illegal votes and the number of illegal voters who could not recall who they voted for, the Court should exercise proper discretion and order a new election. Huffaker v. Edgington, 30 Idaho 179, 163 P.793; Jaycox v. Varnum, 39 Idaho 78, 226 P.285.

Plaintiffs' Post-Trial Brief, pp. 9-10 (editing added).

Plaintiffs point is well taken. Jaycox v. Varnum, supra, controls. See Henley v. Elmore County, 72 Idaho 374, 242 P.2d 855 (1952). However, this court concludes an application of the principles in Jaycox and Henley require the court to sustain the election. [Election irregularities occurred and the district needs to address them] but they do not require that the December 11, 1990 election be invalidated.

Jaycox, supra, places upon the contestant "the burden of proving for whom the illegal votes were cast in order to show that he was elected" Id. 39 Idaho at 82, 226 P. at 289. Henley states the proposition more succinctly: "The burden of proof was on the respondent, as the contestant, to prove two things: illegal votes, and that these illegal votes changed the result of the election." 72 Idaho at 381, 242 P.2d at 862. Plaintiffs failed to establish that the irregular votes would have changed the result of the election. At best, if the court speculates and adds the votes from those who couldn't remember in favor of plaintiffs then one election, the Goff -- Powers election, ends in a tie. The Supreme Court's analysis in Jaycox, however, does not allow the court to speculate in this area.

The Supreme Court in Jaycox directs that the illegal votes must change the result of the election. The Supreme Court emphasizes again this principle in Henley. According to the evidence, the illegal or irregular votes did not change the outcome of the election.

Also, the court notes that plaintiffs refer to "fraud." Fraud was not an element in Jaycox or Henley and this court specifically finds that no fraud or intentional wrongdoing was involved in this case. The court notes that the principles of law set forth in the 1917 case, Huffaker v. Edgington, supra, were refined and incorporated in Jaycox and Henley.

Finally, plaintiffs argue that the court should exercise his discretion and apply the alternative remedy set forth in I.C. § 34-2021 and order a new election.

However, this court concludes that he is restricted to the application of the alternative remedy only in the event that the illegal votes were sufficient to change the outcome of the election. In this instance, the illegal or irregular votes did not change the outcome of the elections and therefore the alternative remedy is not available.

New 25. After discussion with counsel, the court considers a need exists to clarify the purpose of this judgment. This action is not a quiet title action nor a declaratory judgment as to the lands situated within the boundaries of the BLRID. Thus, the judgment is binding on only those parties to the litigation. [ This court concludes that the election procedures, including the lands

determined to be within or without the BLRID, binding on the BLRID and as such, must be considered in the BLRID's future elections. ✓ Thus, so far as the BLRID is concerned, the following lands are excluded from the district:

*Michael* *Habit*  
The 160 acres located in the northeast quarter of Section 36, Township 4 North, Range 26 East, B.M.; the Arco, Mackay and Moore original townsites; the following subdivisions: in Arco -- Arco First Addition, Arco Second Addition, Arco Third Addition, Arco Acreages, Arco Danielson Addition, Dee First Addition, Dee Second Addition, Farmers Subdivision, Hammond Subdivision, Jones Subdivision, Kay-Cee Subdivision, Putnam Subdivision, Reinhart Subdivision, Rolland Acres, Sherman Subdivision, and Arco City Park; and in Mackay -- Mackay Acreage, Monson Subdivision, Royal Neighbors of America No. 901. Lands within the BLRID that were not assessed for the repayment of bond of the district issued for the purchase of the Mackay dam and reservoir are not excluded from the district.

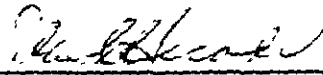
The court concludes that the BLRID <sup>and</sup> in its electorate needs direction on future elections; <sup>(add ~)</sup> In the event that property owners consider certain lands within the district that the court has ruled out then the court considers the appropriate procedure would be for either the district or the land owner to petition for inclusion pursuant to statute.

26. Judgment should be entered in favor of the defendants and against the plaintiffs, and defendants shall have judgment against plaintiffs for their costs as provided by I.C. § 34-2020, which

judgment shall also be against the United Fire & Casualty Company,  
surety under the bond filed by plaintiffs up to the sum of  
\$3,000.00.

IT IS SO ORDERED.

DATED this 17<sup>th</sup> day of October, 1991.

  
\_\_\_\_\_  
JAMES C. HERNDON  
District Judge

cc: Randall C. Budge, Esq., P.O.Box 1391, Pocatello, ID 83204-0391  
Roger D. Ling, Esq., P.O. Box 396, Rupert, ID 83350

RECEIVED

FEB 05 1992

Department of Water Resources  
Eastern District Office

FILED IN CLERK'S OFFICE AT BLACKFOOT  
BINGHAM COUNTY, IDAHO

December 20, 1991 at

4:26 p.m.

*[Signature]*

JAMES C. H.  
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

ARTHUR W. QUIST, WILLARD O. BELL, )  
VAUGHN JENSEN, MITCHELL SORESENSEN, )  
HARLAN SMITH, LYNN ROTHERWELL, )  
JOHN L. POWERS and DON AIKELE, )

Plaintiffs, )

vs. )

BIG LOST RIVER IRRIGATION DISTRICT )  
BOARD OF DIRECTORS, LOUIS ROTHWELL, )  
BYRON R. PEHRSON, JAMES CLYDE )  
LAMBERT, RICHARD E. REYNOLDS, )  
GERALD STEWART, and ERNEST GOFF, )

Defendants. )

CASE NO. CV-90-132

JUDGMENT

The above-entitled matter was tried before the Court, The Honorable James C. Herndon, District Judge, Presiding. The Court, having reviewed the testimony and evidence entered its Memorandum Decision, Findings of Fact, Conclusions of Law and Order, on September 27, 1991, Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order on October 29, 1991, and Supplement to Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order on December 6, 1991, with Judgment to be entered in accordance therewith.

NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. No person is entitled to vote at district elections unless he (1) possesses all of the qualifications required of

electors under the general election laws of the state and (2) owns land within the district, and (3) is a resident of the county in which the district is located.

2. No registration shall be required in irrigation district elections, but in lieu thereof, the judges of election shall require every elector to subscribe to an elector's oath as a prerequisite to casting his vote, and such vote shall be the usual elector's oath. The electors of the BLRID election of December 11, 1990, all signed an elector's oath which met the requirements of I.C. § 43-113.

3. The owner of record of an undivided interest in real property located within an irrigation district, not held by a partnership or corporation, is a qualified elector of the district as an owner of land within the district if the person meets the other qualifications of electors of the district. No person is entitled to vote as a qualified elector in an irrigation district under a power of attorney that the person may hold that has been executed by the owner of record of the real property located in the district. When the owner of lands within an irrigation district is deceased, the devisees of the owner qualify as the owners of the land upon the death of the owner of record, and are a qualified elector if they meet the other qualifications of electors provided by I.C. § 43-111.

4. Irrigation district elections shall be conducted as nearly as practicable in accordance with the general laws of the state, I.C. §§ 43-112, 207 and 208.

5. The BLRID election procedures used in connection with the election on December 11, 1990 substantially meet the statutory requirements.

6. At the December 11, 1990 election, no legal votes were rejected, but 38 illegal votes were received. The illegal votes received were not sufficient to change the result of the election. No malconduct, fraud or corruption occurred on the part of the judges of the BLRID election in any precinct or any board of canvassers of any member of either board. Election irregularities occurred and the district needs to address them, but they do not require that the December 11, 1990 election be invalidated.

7. Gerald Stewart and Ernest Goff were duly elected as directors of the Big Lost River Irrigation District on December 11, 1990.

8. This Judgment is binding only on the parties to this litigation and is not a quiet title action nor a declaratory judgment as to the lands situated within the boundaries of the BLRID. The election procedures, including the lands determined to be within or without the BLRID are binding on the BLRID and must be considered in BLRID's future elections.

9. The following lands have been excluded from the District:

The 160 acres located in the northeast quarter of Section 36, Township 4 North, Range 26 East, B.M. consisting of the original townsite of the City of Arco, Arco First Addition, Arco Second Addition, Arco Third Addition; original Townsite of the City of Moore and the original Townsite of the City of Mackay.

Portions of the following subdivisions have

been excluded: in Arco -- Arco Acreages, Arco Danielson Addition, Dee First Addition, Dee Second Addition, Farmers Subdivision, Kay-Cee Subdivision, Putnam Subdivision, Reinhart Subdivision, Rolland Acres, Sherman Subdivision, and Arco City Park; and in Mackay -- Mackay Acreage, Monson Subdivision, Royal Neighbors of America No. 901.

Lands within the BLRID that were not assessed for the repayment of bond of the district issued for the purchase of the Mackay dam and reservoir are not excluded from the district.

10. The BLRID and its electorate need direction on future elections. The District did not maintain a complete and accurate map of property within the District. The BLRID shall for future elections prepare and maintain complete and accurate maps and legal descriptions of lands within the District together with the excluded lands. The maps and documents shall be maintained at the office of the District.

11. The District will provide actual notice to those persons set forth in the Findings of Fact not eligible to vote in District elections.

12. The District shall disseminate and publish a summary of the Findings of Fact and Conclusions of Law as they relate to election procedures.

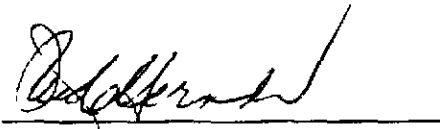
13. In the event that property owners consider certain lands within the District that the Court has ruled out, the appropriate procedure would be for either the District or the Landowner to petition for inclusion pursuant to statute.

14. IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants have judgment against plaintiffs Aruthur W. Quist,

Willard O. Bell, Vaughan Jensen, Mitchell Sorensen, Harlan Smith, Lynn Rotherwell, John L. Powers and Don Aikele for their costs incurred herein in the sum of \$635.10; that plaintiffs have judgment against United Fire & Casualty Company, surety under the bond filed by plaintiffs in this action for said costs in the sum of \$635.10, and that defendants be denied any claim for attorney fees as part of costs.

IT IS SO ORDERED.

DATED this 20th day of December, 1991.

A handwritten signature in dark ink, appearing to read 'J. C. Herndon', is written over a horizontal line.

JAMES C. HERNDON  
District Judge

cc: Randall C. Budge, Esq., P.O. Box 1319, Pocatello, ID 83204-1319  
Roger D. Ling, Esq., P.O. Box 396, Rupert, ID 83350

December 30, 1991 at  
4:25 p.m.

James C. Hill  
JAMES C. HILL  
District Judge

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

ARTHUR W. QUIST, WILLARD O. BELL, )  
L. VAUGHN JENSEN, MITCHELL SORESENSEN, )  
HARLAN SMITH, LYNN ROTHERWELL, JOHN )  
L. POWERS and DON AIKELE, )

Plaintiffs, )

vs. )

BIG LOST RIVER IRRIGATION, DISTRICT )  
BOARD OF DIRECTORS, LOUIS ROTHWELL, )  
BRYON R. PEHRSON, JAMES CLYDE )  
LAMBERT, RICHARD E. REYNOLDS, GERALD )  
STEWART and ERNEST GOFF, )

Defendants. )

Case No. CV-90-132

SUPPLEMENT TO AMENDED  
MEMORANDUM DECISION,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

I. INTRODUCTION

This memorandum supplements, and in certain instances, corrects, modifies and explains the Amended Memorandum Decision, Findings of Fact, Conclusions of Law and Order dated October 29, 1991, and filed on October 29, 1991.

II. AMENDMENTS, CORRECTIONS, ADDITIONS AND DELETIONS

A. Findings of Fact

1. Finding No. 15, P.9, ll 20-21: The following sentence should be deleted:

. . . However, the BLRID waived the assessment against the city and subdivision lands within the city and transferred the storage rights. . .

The following should be inserted in lieu thereof:

. . . However, the BLRID waived the assessment against the city and subdivision lands, situated within the NE

quarter, Section 36, within the city and transferred the storage rights. . .

2. Finding No. 18, p.11; the entire paragraph should be deleted and in lieu thereof the following added:

18. It is impossible to tell from the maps provided by the district which of the many small parcels located and described by metes and bounds descriptions (except those noted as included or excluded), remain within the irrigation district and those which do not. These parcels need to be examined by lot or parcel basis. The court finds from the trial record and exhibits the following exclusions: original townsite of the City of Arco, Arco First Addition, Arco Second Addition, Arco Third Addition, Original Townsite of Moore, and all of the original townsite of the City of Mackay. Portions of the following subdivisions are excluded: Arco Acreages, Arco Danielson Addition, Dee First Addition, Dee Second Addition, Farmers Addition, Hammond Subdivision, Jones Subdivision, Kay-Cee Subdivision, Mackay Acreage, Monson Subdivision, Royal Neighbors of America No. 902, Putman Subdivision, Reinhart Subdivision, Rolland Acres, Sherman Subdivision.

The court finds the BLRID should examine its records and summarize the lands within the various subdivisions which are excluded.

#### **B. Conclusions of Law**

1. Conclusion No. 25, p.29: The following description should be deleted:

The 160 acres located in the northeast quarter of Section 36, Township 4 North, Range 26 East, B.M.; the Arco, Mackay and Moore original townsites; the following subdivisions: in Arco -- Arco First Addition, Arco Second Addition, Arco Third Addition, Arco Acreages, Arco Danielson Addition, Dee First Addition, Dee Second Addition, Farmers Subdivision, Hammond Subdivision, Jones Subdivision, Kay-Cee Subdivision, Putnam Subdivision, Reinhart Subdivision, Rolland Acres, Sherman Subdivision, and Arco City Park; and in Mackay -- Mackay Acreage, Monson Subdivision, Royal Neighbors of America No. 901. Lands within the BLRID that were not assessed for the repayment of bond of the district issued for the purchase of the Mackay dam and reservoir are not excluded from the

district.

In lieu thereof, the following description should be included in this Conclusion:

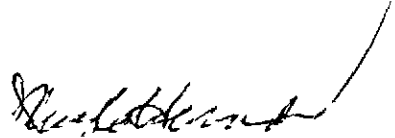
The 160 acres located in the northeast quarter of Section 36, Township 4 North, Range 26 East, B.M., consisting of the original townsite of the City of Arco, Arco First Addition, Arco Second Addition, Arco Third Addition; Original Townsite of Moore, and original townsite of the City of Mackay. Portions of the following subdivisions have been excluded: Arco Acreages, Arco Danielson Addition, Dee First Addition, Dee Second Addition, Farmers Addition, Hammond Subdivision, Jones Subdivision, Kay-Cee Subdivision, Mackay Acreage, Monson Subdivision, Royal Neighbors of America No. 902, Putman Subdivision, Reinhart Subdivision, Rolland Acres, Sherman Subdivision. Lands within the BLRID that were not assessed for the repayment of bond of the district issued for the purchase of the Mackay dam and reservoir are not excluded from the district.

The court concludes that the BLRID and its electorate need direction on future elections. The BLRID shall for future elections prepare and maintain complete and accurate maps and legal descriptions of the lands within the district and define the actual boundaries of the district together with the excluded lands. The maps and documents shall be maintained at the office of the district. The district will provide actual notice to persons set forth herein and not eligible to vote in district elections. The district shall disseminate and publish on or before December 1, 1991, a summary of these findings and conclusions of law as they relate to the election procedures. In the event that property owners consider certain lands within the district that the court has ruled out then the court considers the appropriate procedure would be for either the district or the land owner to petition for

inclusion pursuant to statute.

26. Judgment should be entered in favor of the defendants and against the plaintiffs, and defendants shall have judgment against plaintiffs for their costs as provided by I.C. § 34-2020, which judgment shall also be against the United Fire & Casualty Company, surety under the bond filed by plaintiffs up to the sum of \$3,000.00.

IT IS SO ORDERED.

  
\_\_\_\_\_  
JAMES C. HERNDON  
District Judge

cc: Randall C. Budge, Esq., P.O. Box 1391, Pocatello, ID 83204  
Roger D. Ling, Esq., P.O. Box 396, Rupert, ID 83350

SUPPLEMENT TO AMENDED MEMORANDUM  
DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

AJ5856NP

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

DATE: FEB-28-1992

PAGE: A-1

JNMF

| RIGHT<br>NUMBER                                                                                                                                                                                                                                                                                                                                                                                     | NAME & ADDRESS                                        | PRIORITY<br>DATE         | PURPOSE OF USE         | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|--------------------------|------------------------|--------------------------|---------------------|-----------------------|
| SOURCE: ARCO CITY DRAIN                                                                                                                                                                                                                                                                                                                                                                             |                                                       | TRIBUTARY: FERRIS SLOUGH |                        |                          |                     |                       |
| 34-02355                                                                                                                                                                                                                                                                                                                                                                                            | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 12/18/1959               | IRRIGATION             | 05-01 10-15              | 1.00<br>333.3       | CFS<br>AFY<br>LICENSE |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                                                                                                                                     |                                                       |                          |                        |                          | 1.00<br>333.2       | CFS<br>AFY            |
| POINT OF DIVERSION:<br>T04N R26E S36 NENWE                                                                                                                                                                                                                                                                                                                                                          |                                                       |                          |                        |                          |                     |                       |
| PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                                                                                                                            |                                                       |                          |                        |                          |                     |                       |
| T03N R27E S06<br>S07                                                                                                                                                                                                                                                                                                                                                                                |                                                       | NESW 8.0<br>NENE 39.0    | SESW 37.0<br>NWNE 25.0 | SWSE 39.0                | SESE 16.0           |                       |
| 164.0 ACRES TOTAL                                                                                                                                                                                                                                                                                                                                                                                   |                                                       |                          |                        |                          |                     |                       |
| REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO<br>IDAHO CODE 42-1416A.<br>USE OF THIS RIGHT WITH RIGHT NO. 34-00257 AND OTHER RIGHTS<br>LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF<br>6.45 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 810<br>AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 324 ACRES IN A<br>SINGLE IRRIGATION SEASON. |                                                       |                          |                        |                          |                     |                       |

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| RIGHT<br>NUMBER            | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|----------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BEAVERLAND SPRINGS |                                                       | TRIBUTARY: SINK  |                |                          |                     |                |
| 34-04032                   | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 04/20/1934       | STOCKWATER     | 01-01 12-31              | .11 CFS             | BENEFICIAL USE |
|                            | NON-IRRIGATION-USES:                                  |                  |                |                          |                     |                |
|                            | STOCKWATER 500 RANGE CATTLE                           |                  |                |                          |                     |                |
|                            | POINT OF DIVERSION:                                   |                  |                |                          |                     |                |
|                            | T05N R27E S30                                         | SENESE           |                |                          |                     |                |
|                            | PLACE OF USE: STOCKWATER                              |                  |                |                          |                     |                |
|                            | T05N R27E S29                                         | NESW             |                |                          |                     |                |
|                            | S32                                                   | SENE             |                |                          |                     |                |
|                            | REMARKS: BLM GRAZING ALLOTMENT 11002 BEAVERLAND PASS  |                  |                |                          |                     |                |
|                            | BLM GRAZING ALLOTMENT 01004 KING SPRINGS              |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                       | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-00257                                                                                                                                                                                                                                              | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 05/01/1885       | IRRIGATION     | 05-01 10-15              | .1                  | CFS DECREE     |
| TOTAL QUANTITY:                                                                                                                                                                                                                                       |                                                       |                  |                |                          | .1                  | CFS            |
| POINT OF DIVERSION:                                                                                                                                                                                                                                   |                                                       |                  |                |                          |                     |                |
| T04N R26E S26                                                                                                                                                                                                                                         |                                                       | NWNWNW           |                |                          |                     |                |
| PLACE OF USE: IRRIGATION                                                                                                                                                                                                                              |                                                       |                  |                |                          |                     |                |
| T03N R27E S06                                                                                                                                                                                                                                         |                                                       | NWNE 35.0        | SWNE 38.0      | NESE 33.0                | NWSE 32.0           |                |
| S07                                                                                                                                                                                                                                                   |                                                       | SWSE 37.0        | SESE 38.0      |                          |                     |                |
| S07                                                                                                                                                                                                                                                   |                                                       | NENE 39.0        | NWNE 25.0      |                          |                     |                |
| 277.0 ACRES TOTAL                                                                                                                                                                                                                                     |                                                       |                  |                |                          |                     |                |
| REMARKS: THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).                                                                                                                                                       |                                                       |                  |                |                          |                     |                |
| WATER IS DELIVERED THROUGH ARCO CANAL.                                                                                                                                                                                                                |                                                       |                  |                |                          |                     |                |
| USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 6.45 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 810 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 324 ACRES IN A SINGLE IRRIGATION SEASON. |                                                       |                  |                |                          |                     |                |
| COMBINED RIGHT NOS.: 34-10479, 34-02440, 34-10473 & 34-02355.                                                                                                                                                                                         |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-00396B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 05/01/1885       | IRRIGATION     | 05-01 10-15              | .64                 | CFS DECEED     |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                       |                  |                |                          | .64                 | CFS            |
| POINT OF DIVERSION:<br>T04N R26E S26                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                       | NWNWNW           |                |                          |                     |                |
| PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                       |                  |                |                          |                     |                |
| T03N R27E S03                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                       | SWSW 39.0        | SESW 22.0      |                          |                     |                |
| S04                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                       | NWSW 37.0        | SWSW 36.0      | SESW 39.0                | SWSE 39.0           |                |
| S09                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                       | SESE 39.0        | SENE 39.0      |                          |                     |                |
| S09                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                       | NENE 33.0        | SENE 39.0      |                          |                     |                |
| 323.0 ACRES TOTAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                       |                  |                |                          |                     |                |
| REMARKS: THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).<br>WATER IS DELIVERED THROUGH ARCO CANAL.<br>USE OF THIS RIGHT WITH RIGHT NO. 34-00003B AND OTHER RIGHTS LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.52 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 807.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 323 ACRES IN A SINGLE IRRIGATION SEASON.<br>2.29 CFS OF RIGHT NO. 34-02491D IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND RIGHT NO. 34-00003B AND THE OTHER RIGHTS LISTED THEREIN. |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                         | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|-------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                  |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-10479                                                                | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 10/02/1885       | IRRIGATION     | 05-01 10-15              | 3.6                 | CFS DECREE     |
| TOTAL QUANTITY:                                                         |                                                       |                  |                |                          | 3.6                 | CFS            |
| POINT OF DIVERSION:                                                     |                                                       |                  |                |                          |                     |                |
| T04N R26E S26                                                           |                                                       | NWNWNW           |                |                          |                     |                |
| PLACE OF USE: IRRIGATION                                                |                                                       |                  |                |                          |                     |                |
| T03N R27E S06                                                           |                                                       | NWNE 35.0        | SWNE 38.0      | NESE 33.0                | NWSE 32.0           |                |
| S07                                                                     |                                                       | SWSE 37.0        | SESE 38.0      |                          |                     |                |
| S07                                                                     |                                                       | NENE 39.0        | NWNE 25.0      |                          |                     |                |
| 277.0 ACRES TOTAL                                                       |                                                       |                  |                |                          |                     |                |
| REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO |                                                       |                  |                |                          |                     |                |
| IDAHO CODE 42-1416A.                                                    |                                                       |                  |                |                          |                     |                |
| WATER IS DELIVERED THROUGH ARCO CANAL.                                  |                                                       |                  |                |                          |                     |                |
| THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-00520A,                |                                                       |                  |                |                          |                     |                |
| 34-00520B, 34-00792.                                                    |                                                       |                  |                |                          |                     |                |
| USE OF THIS RIGHT WITH RIGHT NO. 34-00257 AND OTHER RIGHTS              |                                                       |                  |                |                          |                     |                |
| LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF         |                                                       |                  |                |                          |                     |                |
| 6.45 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 810         |                                                       |                  |                |                          |                     |                |
| AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 324 ACRES IN A         |                                                       |                  |                |                          |                     |                |
| SINGLE IRRIGATION SEASON.                                               |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                                                          | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                                                   |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-00793                                                                                                                                                                                                                                                                                 | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 05/01/1887       | IRRIGATION     | 05-01 10-15              | 3.2                 | CFS DECEED     |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                          |                                                       |                  |                |                          | 3.2                 | CFS            |
| POINT OF DIVERSION:<br>T04N R26E S26                                                                                                                                                                                                                                                     |                                                       | NWNWNW           |                |                          |                     |                |
| PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                 |                                                       |                  |                |                          |                     |                |
| T03N R27E S03                                                                                                                                                                                                                                                                            |                                                       | SWSW 39.0        | SESW 22.0      |                          |                     |                |
| S04                                                                                                                                                                                                                                                                                      |                                                       | NWSW 37.0        | SWSW 36.0      | SESW 39.0                | SWSE 39.0           |                |
| S09                                                                                                                                                                                                                                                                                      |                                                       | SESE 39.0        | SENE 39.0      |                          |                     |                |
| S09                                                                                                                                                                                                                                                                                      |                                                       | NENE 33.0        | SENE 39.0      |                          |                     |                |
| 323.0 ACRES TOTAL                                                                                                                                                                                                                                                                        |                                                       |                  |                |                          |                     |                |
| REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A.                                                                                                                                                                                             |                                                       |                  |                |                          |                     |                |
| WATER IS DELIVERED THROUGH ARCO CANAL.                                                                                                                                                                                                                                                   |                                                       |                  |                |                          |                     |                |
| USE OF THIS RIGHT WITH RIGHT NO. 34-00003B AND OTHER RIGHTS LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.52 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 807.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 323 ACRES IN A SINGLE IRRIGATION SEASON. |                                                       |                  |                |                          |                     |                |
| 2.29 CFS OF RIGHT NO. 34-02491D IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND THE RIGHTS LISTED ABOVE.                                                                                                                                                           |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                          | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                   |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-00003B                                                                                                                                                                                                                                                | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 06/01/1887       | IRRIGATION     | 05-01 10-15              | 1.4                 | CFS DECEED     |
| TOTAL QUANTITY:                                                                                                                                                                                                                                          |                                                       |                  |                |                          | 1.4                 | CFS            |
| POINT OF DIVERSION:                                                                                                                                                                                                                                      |                                                       |                  |                |                          |                     |                |
| T04N R26E S26                                                                                                                                                                                                                                            |                                                       | NWNWNW           |                |                          |                     |                |
| PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                 |                                                       |                  |                |                          |                     |                |
| T03N R27E S03                                                                                                                                                                                                                                            |                                                       | SWSW 39.0        | SESW 22.0      |                          |                     |                |
| S04                                                                                                                                                                                                                                                      |                                                       | NWSW 37.0        | SWSW 36.0      | SESW 39.0                | SWSE 39.0           |                |
| S09                                                                                                                                                                                                                                                      |                                                       | SESE 39.0        |                |                          |                     |                |
| S09                                                                                                                                                                                                                                                      |                                                       | NENE 33.0        | SENE 39.0      |                          |                     |                |
| 323.0 ACRES TOTAL                                                                                                                                                                                                                                        |                                                       |                  |                |                          |                     |                |
| REMARKS: THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).                                                                                                                                                          |                                                       |                  |                |                          |                     |                |
| WATER IS DELIVERED THROUGH ARCO CANAL.                                                                                                                                                                                                                   |                                                       |                  |                |                          |                     |                |
| USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.52 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 807.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 323 ACRES IN A SINGLE IRRIGATION SEASON. |                                                       |                  |                |                          |                     |                |
| COMBINED RIGHT NOS.: 34-00396B, 34-00793, 34-10478, 34-02266A AND 34-02491D.                                                                                                                                                                             |                                                       |                  |                |                          |                     |                |
| 2.29 CFS OF RIGHT NO. 34-02491D IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF THIS RIGHT AND THE RIGHTS LISTED ABOVE.                                                                                                                           |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                                                          | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                                                   |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-10478                                                                                                                                                                                                                                                                                 | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 05/01/1892       | IRRIGATION     | 05-01 10-15              | 1.6                 | CFS DECEED     |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                          |                                                       |                  |                |                          | 1.6                 | CFS            |
| POINT OF DIVERSION:<br>T04N R26E S26<br>PLACE OF USE: IRRIGATION                                                                                                                                                                                                                         |                                                       | NWNWNW           |                |                          |                     |                |
| T03N R27E S03                                                                                                                                                                                                                                                                            |                                                       | SWSW 39.0        | SESW 22.0      |                          |                     |                |
| S04                                                                                                                                                                                                                                                                                      |                                                       | NWSW 37.0        | SWSW 36.0      | SESW 39.0                | SWSE 39.0           |                |
| S09                                                                                                                                                                                                                                                                                      |                                                       | SESE 39.0        | SENE 39.0      |                          |                     |                |
| 323.0 ACRES TOTAL                                                                                                                                                                                                                                                                        |                                                       |                  |                |                          |                     |                |
| REMARKS: THIS RIGHT INCLUDES AN EXPANSION IN IRRIGATED ACRES PURSUANT TO IDAHO CODE 42-1416(1).                                                                                                                                                                                          |                                                       |                  |                |                          |                     |                |
| THIS RIGHT IS A COMBINATION OF OLD RIGHT NOS. 34-00418A, 34-00794 AND 34-00795.                                                                                                                                                                                                          |                                                       |                  |                |                          |                     |                |
| WATER IS DELIVERED THROUGH ARCO CANAL.                                                                                                                                                                                                                                                   |                                                       |                  |                |                          |                     |                |
| USE OF THIS RIGHT WITH RIGHT NO. 34-00003B AND OTHER RIGHTS LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.52 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 807.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 323 ACRES IN A SINGLE IRRIGATION SEASON. |                                                       |                  |                |                          |                     |                |
| 2.29 CFS OF RIGHT NO. 34-02491D IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF RIGHT NO. 34-00003B AND THE OTHER RIGHTS LISTED THEREIN.                                                                                                                                          |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|--------------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                       | TRIBUTARY: SINKS |                |                          |                     |                    |
| 34-02266A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | YOUNG HARVEY WALKER<br>RT.1 BOX 200<br>ARCO ID 83213  | 10/28/1942       | IRRIGATION     | 05-01 10-15              | 2.3                 | CFS LICENSE        |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                       |                  |                |                          | 2.3                 | CFS                |
| POINT OF DIVERSION:<br>T04N R26E S26<br>PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                       | NWNWNW           |                |                          |                     |                    |
| T03N R27E S03                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                       | SWSW 39.0        | SESW 22.0      |                          |                     |                    |
| S04                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                       | NWSW 37.0        | SWSW 36.0      | SESW 39.0                | SWSE 39.0           |                    |
| S09                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                       | SESE 39.0        | SENE 39.0      |                          |                     |                    |
| 323.0 ACRES TOTAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                       |                  |                |                          |                     |                    |
| REMARKS: THIS RIGHT IS LIMITED TO THE IRRIGATION OF 105 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. WATER IS DELIVERED THROUGH ARCO CANAL. USE OF THIS RIGHT WITH RIGHT NO. 34-00003B AND OTHER RIGHTS LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.52 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 807.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 323 ACRES IN A SINGLE IRRIGATION SEASON. 2.29 CFS OF RIGHT NO. 34-02491D IS LIMITED TO USE FOR CONVEYANCE LOSSES IN DELIVERY OF RIGHTS LISTED ABOVE. |                                                       |                  |                |                          |                     |                    |
| 34-02266B                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 10/28/1942       | IRRIGATION     | 05-01 10-15              | 1.4<br>245.0        | CFS<br>AFY LICENSE |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                       |                  |                |                          | 1.4                 | CFS                |
| CONSUMPTIVE USE:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                       |                  |                |                          | 245.0               | AFY                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                       |                  |                |                          | 175.0               | AFY                |
| POINT OF DIVERSION:<br>T04N R26E S26<br>PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                       | NWNWNW           |                |                          |                     |                    |
| T03N R26E S01                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                       | NWSW 35.0        | SWSW 35.0      |                          |                     |                    |
| 70.0 ACRES TOTAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                       |                  |                |                          |                     |                    |
| REMARKS: WATER IS DELIVERED THROUGH MUNSEY CANAL.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                       |                  |                |                          |                     |                    |

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| RIGHT<br>NUMBER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: BIG LOST RIVER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-02491D                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 05/08/1944       | IRRIGATION     | 05-01 10-15              | 2.38                | CFS LICENSE    |
| TOTAL QUANTITY:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                       |                  |                |                          | 2.38                | CFS            |
| POINT OF DIVERSION:<br>T04N R26E S26 NWNWNW                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                       |                  |                |                          |                     |                |
| PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                       |                  |                |                          |                     |                |
| T03N R27E S03                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                       | SWSW 39.0        | SESW 22.0      |                          |                     |                |
| S04                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                       | NWSW 37.0        | SWSW 36.0      | SESW 39.0                | SWSE 39.0           |                |
| S09                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                       | SESE 39.0        |                |                          |                     |                |
| S09                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                       | NENE 33.0        | SENE 39.0      |                          |                     |                |
| 323.0 ACRES TOTAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                       |                  |                |                          |                     |                |
| REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO<br>IDAHO CODE 42-1416A.<br>THIS RIGHT IS LIMITED TO THE IRRIGATION OF 120 ACRES WITHIN THE<br>PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.<br>2.29 CFS OF THIS RIGHT IS LIMITED TO USE FOR CONVEYANCE LOSSES IN<br>DELIVERY OF RIGHT NOS. 34-00003B, 34-00396B, 34-00793, 34-10478,<br>34-02491D & 34-02266A.<br>USE OF THIS RIGHT WITH RIGHT NO. 34-00003B AND OTHER RIGHTS<br>LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF<br>11.52 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF<br>807.5 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 323 ACRES<br>IN A SINGLE IRRIGATION SEASON.<br>WATER IS DELIVERED THROUGH ARCO CANAL. |                                                       |                  |                |                          |                     |                |

IDAHO DEPARTMENT OF WATER RESOURCES  
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| RIGHT<br>NUMBER               | NAME & ADDRESS                                                                                                                           | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM     |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|------------------|----------------|--------------------------|---------------------|--------------------|
| -----SOURCE: GROUNDWATER----- |                                                                                                                                          |                  |                |                          |                     |                    |
| 34-04029                      | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213                                                                                    | 09/12/1919       | STOCKWATER     | 01-01 12-31              | .14                 | CFS BENEFICIAL USE |
|                               | NON-IRRIGATION-USES:<br>STOCKWATER 500 CATTLE                                                                                            |                  |                | TOTAL QUANTITY:          | .14                 | CFS                |
|                               | POINT OF DIVERSION:<br>T03N R27E S09                                                                                                     | NWNE             |                |                          |                     |                    |
|                               | PLACE OF USE: STOCKWATER                                                                                                                 |                  |                |                          |                     |                    |
|                               | T03N R27E S09                                                                                                                            | NENE             | SENE           |                          |                     |                    |
|                               | REMARKS: THIS WATER RIGHT SHALL BE ADMINISTERED AS SEPARATE FROM THE BIG<br>LOST RIVER AND ITS TRIBUTARIES.<br>PARCEL NO. RP03N27E090002 |                  |                |                          |                     |                    |
| 34-10488                      | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213                                                                                    | 06/01/1930       | STOCKWATER     | 01-01 12-31              | .14                 | CFS BENEFICIAL USE |
|                               |                                                                                                                                          |                  | DOMESTIC       | 01-01 12-31              | .08                 | CFS                |
|                               |                                                                                                                                          |                  |                | TOTAL QUANTITY:          | .22                 | CFS                |
|                               | NON-IRRIGATION-USES:<br>DOMESTIC 2 HOMES, STOCKWATER 500 CATTLE                                                                          |                  |                |                          |                     |                    |
|                               | POINT OF DIVERSION:<br>T03N R27E S06                                                                                                     | SEWSE            |                |                          |                     |                    |
|                               | PLACE OF USE: STOCKWATER                                                                                                                 |                  |                |                          |                     |                    |
|                               | T03N R27E S06                                                                                                                            | NWSE             |                |                          |                     |                    |
|                               | PLACE OF USE: DOMESTIC                                                                                                                   |                  |                |                          |                     |                    |
|                               | T03N R27E S06                                                                                                                            | NWSE             |                |                          |                     |                    |
|                               | REMARKS: PARCEL NO. RP03N27E060600A                                                                                                      |                  |                |                          |                     |                    |

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| RIGHT<br>NUMBER     | NAME & ADDRESS                                                                                                                                                                                                                                                                       | PRIORITY<br>DATE | PURPOSE OF USE  | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------|--------------------------|---------------------|----------------|
| SOURCE: GROUNDWATER |                                                                                                                                                                                                                                                                                      |                  |                 |                          |                     |                |
| 34-02440            | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213                                                                                                                                                                                                                                | 10/10/1961       | IRRIGATION      | 04-15 10-15              | 1.55                | CFS LICENSE    |
|                     |                                                                                                                                                                                                                                                                                      |                  | STOCKWATER      | 01-01 12-31              | .02                 | CFS            |
|                     |                                                                                                                                                                                                                                                                                      |                  | TOTAL QUANTITY: |                          | 1.55                | CFS            |
|                     | NON-IRRIGATION-USES:                                                                                                                                                                                                                                                                 |                  |                 |                          |                     |                |
|                     | STOCKWATER, 500 RANGE CATTLE                                                                                                                                                                                                                                                         |                  |                 |                          |                     |                |
|                     | POINT OF DIVERSION:                                                                                                                                                                                                                                                                  |                  |                 |                          |                     |                |
|                     | T03N R27E S06                                                                                                                                                                                                                                                                        | SWSWNE           |                 |                          |                     |                |
|                     | PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                             |                  |                 |                          |                     |                |
|                     | T03N R27E S06                                                                                                                                                                                                                                                                        | NWNE 35.0        | SWNE 38.0       | NESE 33.0                | NWSE 32.0           |                |
|                     |                                                                                                                                                                                                                                                                                      | SWSE 37.0        | SESE 38.0       |                          |                     |                |
|                     | S07                                                                                                                                                                                                                                                                                  | NENE 39.0        | NWNE 25.0       |                          |                     |                |
|                     | 277.0 ACRES TOTAL                                                                                                                                                                                                                                                                    |                  |                 |                          |                     |                |
|                     | PLACE OF USE: STOCKWATER                                                                                                                                                                                                                                                             |                  |                 |                          |                     |                |
|                     | T03N R27E S06                                                                                                                                                                                                                                                                        | SWNE             |                 |                          |                     |                |
| REMARKS:            | THIS RIGHT IS LIMITED TO THE IRRIGATION OF 119 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.                                                                                                                                                          |                  |                 |                          |                     |                |
|                     | USE OF THIS RIGHT WITH RIGHT NO. 34-00257 AND OTHER RIGHTS LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 6.45 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 810 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 324 ACRES IN A SINGLE IRRIGATION SEASON. |                  |                 |                          |                     |                |
|                     | RIGHT NO. 34-10473 IS AN EXPANSION OF THIS RIGHT PURSUANT TO IDAHO CODE 42-1416(2).                                                                                                                                                                                                  |                  |                 |                          |                     |                |
|                     | USE OF THIS RIGHT WITH RIGHT NO. 34-10473 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.55 CFS AND A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 542.5 AF.                                                                                                                        |                  |                 |                          |                     |                |

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| RIGHT<br>NUMBER               | NAME & ADDRESS                                                 | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM     |
|-------------------------------|----------------------------------------------------------------|------------------|----------------|--------------------------|---------------------|--------------------|
| -----SOURCE: GROUNDWATER----- |                                                                |                  |                |                          |                     |                    |
| 34-10469                      | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213          | 06/01/1962       | STOCKWATER     | 01-01 12-31              | .14                 | CFS BENEFICIAL USE |
|                               |                                                                |                  | DOMESTIC       | 01-01 12-31              | .04                 | CFS                |
|                               |                                                                |                  |                | TOTAL QUANTITY:          | .18                 | CFS                |
|                               | NON-IRRIGATION-USES:<br>DOMESTIC 1 HOME, STOCKWATER 500 CATTLE |                  |                |                          |                     |                    |
|                               | POINT OF DIVERSION:<br>T03N R27E S06 SWNESE                    |                  |                |                          |                     |                    |
|                               | PLACE OF USE: STOCKWATER                                       |                  |                |                          |                     |                    |
|                               | T03N R27E S06 NESE                                             |                  |                |                          |                     |                    |
|                               | PLACE OF USE: DOMESTIC                                         |                  |                |                          |                     |                    |
|                               | T03N R27E S06 NESE                                             |                  |                |                          |                     |                    |
|                               | REMARKS: PARCEL NO. RP03N27E067200                             |                  |                |                          |                     |                    |
| 34-10477                      | ANN L KARR<br>ROBERT P KARR<br>PO BOX 682<br>ARCO ID 83213     | 05/14/1973       | DOMESTIC       | 01-01 12-31              | .04                 | CFS BENEFICIAL USE |
|                               |                                                                |                  | STOCKWATER     | 01-01 12-31              | .14                 | CFS                |
|                               |                                                                |                  |                | TOTAL QUANTITY:          | .18                 | CFS                |
|                               | NON-IRRIGATION-USES:<br>DOMESTIC 1 HOME, STOCKWATER 500 CATTLE |                  |                |                          |                     |                    |
|                               | POINT OF DIVERSION:<br>T03N R27E S06 NENWNE                    |                  |                |                          |                     |                    |
|                               | PLACE OF USE: DOMESTIC                                         |                  |                |                          |                     |                    |
|                               | T03N R27E S06 NWNE                                             |                  |                |                          |                     |                    |
|                               | PLACE OF USE: STOCKWATER                                       |                  |                |                          |                     |                    |
|                               | T03N R27E S06 NWNE                                             |                  |                |                          |                     |                    |
|                               | REMARKS: PARCEL NO. RP03N27E060600                             |                  |                |                          |                     |                    |

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| RIGHT<br>NUMBER               | NAME & ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | PRIORITY<br>DATE | PURPOSE OF USE  | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|-----------------|--------------------------|---------------------|----------------|
| -----SOURCE: GROUNDWATER----- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                  |                 |                          |                     |                |
| 34-10473                      | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 08/10/1977       | IRRIGATION      | 04-15 10-15              | .2 CFS              | BENEFICIAL USE |
|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                  | STOCKWATER      | 01-01 12-31              | .02 CFS             |                |
|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                  | TOTAL QUANTITY: |                          | .2 CFS              |                |
|                               | NON-IRRIGATION-USES:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                  |                 |                          |                     |                |
|                               | STOCKWATER, 500 HEAD RANGE CATTLE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                  |                 |                          |                     |                |
|                               | POINT OF DIVERSION:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                  |                 |                          |                     |                |
|                               | T03N R27E S06                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | SWSNE            |                 |                          |                     |                |
|                               | PLACE OF USE: IRRIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                  |                 |                          |                     |                |
|                               | T03N R27E S06                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | NWNE 35.0        | SWNE 38.0       | NESE 33.0                | NWSE 32.0           |                |
|                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | SWSE 37.0        | SESE 38.0       |                          |                     |                |
|                               | S07                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | NENE 39.0        | NWNE 25.0       |                          |                     |                |
|                               | 277.0 ACRES TOTAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                  |                 |                          |                     |                |
|                               | PLACE OF USE: STOCKWATER                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                  |                 |                          |                     |                |
|                               | T03N R27E S06                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | SWNE             |                 |                          |                     |                |
| REMARKS:                      | THIS RIGHT IS LIMITED TO THE IRRIGATION OF 36 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. USE OF THIS RIGHT WITH RIGHT NO. 34-00257 AND OTHER RIGHTS LISTED THEREIN IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 6.45 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 810 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 324 ACRES IN A SINGLE IRRIGATION SEASON. THIS RIGHT IS AN EXPANSION OF RIGHT NO. 34-02440 PURSUANT TO IDAHO CODE 42-1416(2). USE OF THIS RIGHT WITH RIGHT NO. 34-02440 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 1.55 CFS AND A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 542.5 AF. |                  |                 |                          |                     |                |

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| RIGHT<br>NUMBER              | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: KING SPRING          |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-10467B                    | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 10/20/1936       | STOCKWATER     | 01-01 12-31              | .02 CFS             | BENEFICIAL USE |
| TOTAL QUANTITY:              |                                                       |                  |                |                          | .02 CFS             |                |
| NON-IRRIGATION-USES:         |                                                       |                  |                |                          |                     |                |
| STOCKWATER, 500 RANGE CATTLE |                                                       |                  |                |                          |                     |                |
| POINT OF DIVERSION:          |                                                       |                  |                |                          |                     |                |
| T05N R27E S34                |                                                       | NESWNE           |                |                          |                     |                |
|                              |                                                       | SWSWNE           |                |                          |                     |                |
|                              |                                                       | SESWNE           |                |                          |                     |                |
| PLACE OF USE: STOCKWATER     |                                                       |                  |                |                          |                     |                |
| T05N R27E S34                |                                                       | SWNE             |                |                          |                     |                |

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| RIGHT<br>NUMBER                    | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|------------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: SPRING                     |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-02396                           | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 02/09/1961       | STOCKWATER     | 01-01 12-31              | .01                 | CFS LICENSE    |
| TOTAL QUANTITY:                    |                                                       |                  |                |                          | .01                 | CFS            |
| NON-IRRIGATION-USES:               |                                                       |                  |                |                          |                     |                |
| STOCKWATER 500 RANGE CATTLE        |                                                       |                  |                |                          |                     |                |
| POINT OF DIVERSION:                |                                                       |                  |                |                          |                     |                |
| T05N R27E S36 NESENE               |                                                       |                  |                |                          |                     |                |
| PLACE OF USE: STOCKWATER           |                                                       |                  |                |                          |                     |                |
| T05N R27E S36 SENE                 |                                                       |                  |                |                          |                     |                |
| REMARKS: PARCEL NO. RP05N27E360140 |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                                                                       | NAME & ADDRESS                                        | PRIORITY<br>DATE                                     | PURPOSE OF USE       | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM     |
|---------------------------------------------------------------------------------------|-------------------------------------------------------|------------------------------------------------------|----------------------|--------------------------|---------------------|--------------------|
| SOURCE: SPRINGS                                                                       |                                                       | TRIBUTARY: WOOD CANYON                               |                      |                          |                     |                    |
| 34-04011                                                                              | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 06/01/1928                                           | STOCKWATER           | 01-01 12-31              | .2                  | CFS BENEFICIAL USE |
| TOTAL QUANTITY:                                                                       |                                                       |                                                      |                      |                          | .2                  | CFS                |
| NON-IRRIGATION-USES:<br>STOCKWATER 500 CATTLE<br>POINT OF DIVERSION:<br>T05N R27E S25 |                                                       |                                                      |                      |                          |                     |                    |
|                                                                                       |                                                       | SWNE<br>SWNW<br>NWSW<br>SWSW<br>SESW<br>NENW<br>NWSE |                      |                          |                     |                    |
| PLACE OF USE: STOCKWATER<br>T05N R27E S25                                             |                                                       | NENE<br>NENW<br>NWSE                                 | NWNE<br>NWNW<br>SWSE | SWNE<br>SENE<br>SESE     | SENE<br>NESE        |                    |
| REMARKS: PARCEL NO. RP05N27E250100                                                    |                                                       |                                                      |                      |                          |                     |                    |

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| RIGHT<br>NUMBER              | NAME & ADDRESS                                        | PRIORITY<br>DATE | PURPOSE OF USE | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|------------------------------|-------------------------------------------------------|------------------|----------------|--------------------------|---------------------|----------------|
| SOURCE: UNNAMED STREAM       |                                                       | TRIBUTARY: SINKS |                |                          |                     |                |
| 34-10467A                    | YOUNG HARVEY WALKER<br>RT. 1 BOX 200<br>ARCO ID 83213 | 10/20/1936       | STOCKWATER     | 01-01 12-31              | .14 CFS             | BENEFICIAL USE |
| TOTAL QUANTITY:              |                                                       |                  |                |                          | .14 CFS             |                |
| NON-IRRIGATION-USES:         |                                                       |                  |                |                          |                     |                |
| STOCKWATER, 500 RANGE CATTLE |                                                       |                  |                |                          |                     |                |
| POINT OF DIVERSION:          |                                                       |                  |                |                          |                     |                |
| T05N R27E S34 NESENW         |                                                       |                  |                |                          |                     |                |
| PLACE OF USE: STOCKWATER     |                                                       |                  |                |                          |                     |                |
| T05N R27E S34 NWSW           |                                                       |                  |                |                          |                     |                |

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| RIGHT<br>NUMBER                               | NAME & ADDRESS                                       | PRIORITY<br>DATE | PURPOSE OF USE             | PERIOD OF USE<br>FROM TO | MAXIMUM<br>QUANTITY | BASIS OF CLAIM |
|-----------------------------------------------|------------------------------------------------------|------------------|----------------------------|--------------------------|---------------------|----------------|
| SOURCE: WOOD CANYON                           |                                                      | TRIBUTARY: SINKS |                            |                          |                     |                |
| 34-10470                                      | YOUNG HARVEY WALKER<br>RT 1 BOX 200<br>ARCO ID 83213 | 06/01/1925       | STOCKWATER<br>STORAGE      | 01-01 12-31              | 20.0                | AFY            |
|                                               |                                                      |                  | STOCKWATER FROM<br>STORAGE | 01-01 12-31              | 20.0                | AFY            |
|                                               |                                                      |                  | TOTAL QUANTITY:            |                          | 20.0                | AFY            |
| NON-IRRIGATION-USES:                          |                                                      |                  |                            |                          |                     |                |
| STOCKWATER, 500 CATTLE                        |                                                      |                  |                            |                          |                     |                |
| POINT OF DIVERSION:                           |                                                      |                  |                            |                          |                     |                |
| T05N R28E S31 SWNNW                           |                                                      |                  |                            |                          |                     |                |
| PLACE OF USE: STOCKWATER STORAGE              |                                                      |                  |                            |                          |                     |                |
| T05N R28E S31 NESW                            |                                                      |                  |                            |                          |                     |                |
| PLACE OF USE: STOCKWATER FROM STORAGE         |                                                      |                  |                            |                          |                     |                |
| T05N R28E S31 NESW                            |                                                      |                  |                            |                          |                     |                |
| REMARKS: BLM SERVICEBERRY ALLOTMENT NO. 01005 |                                                      |                  |                            |                          |                     |                |
| PARCEL NO. RP0067300                          |                                                      |                  |                            |                          |                     |                |

Water right  
information  
contained below

January 18, 1973

Re: Claim to a Water Right No. 34-4011

Mr. Harvey K. Walker  
Box 146  
Arco, ID 83213

Dear Mr. Walker:

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, 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 your claim. If you have any questions or if we can be of further assistance, please feel free to call upon us.

Very truly yours,

NORMAN C. YOUNG  
District Engineer

NCY:BA

Enc: Copy of claim

34-4011

January 2, 1973

Re: Claim to a Water Right No. 34-4011 - Walker

Arco Advertiser  
Box "C"  
Arco, ID 83213

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application. The legal notice was to have been published in your newspaper on December 14 and 21, 1972.

Your cooperation in this matter will be greatly appreciated.

Very truly yours,

NORMAN C. YOUNG  
District Engineer

NCV:PA

34-4011

December 8, 1972

Re: Application No. 34-7029 - Marshal Todd Perkes  
Claim No. 34-4011 Harvey K. Walker

Arco Advertiser  
P.O. Box "C"  
Arco, ID 83213

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."

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(signature of claimant)

Very truly yours,

NORMAN C. YOUNG  
District Engineer

Bill submitted \_\_\_\_\_ by \_\_\_\_\_

NCY:BA  
Enc: Legal notices (2)

34-4011

**W**  
**NOTICE OF**  
**CLAIM TO A WATER RIGHT**  
**No. 34-4011**

Notice is hereby given that Harvey K. Walker, Box 146, Arco, Idaho, has filed a claim to a water right established by diversion and application to beneficial use of 0.20 cubic feet per second of water from unnamed springs, tributary to sinks with point of diversion in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ , SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 25, T. 5N, R. 27E, B.M., Butte County.

The water is claimed to be used from Jan 1 to Dec 31 for stockwatering purposes for 50 head of beef cattle with a priority of June 1, 1928.

Any exception to this claim of water right may be filed with the Idaho Department of Water Administration, 240 South Holmes, Idaho Falls, Idaho, 83401.

R. KEITH HIGGINSON  
Director

Published in the Arco Advertiser, Arco, Idaho on December 14 and December 21, 1972.

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~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
The place of use is within the

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R. KEITH HIGGINSON

Director

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