

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 BEAR RIVER BASIN WATER SYSTEM

RECEIVED

OCT 23 2023

CIVIL CASE NUMBER: 79576

Claim ID: 11-4069

Date Received: 10/23/23

Receipt No: P000538

Claim Fee: 263.00 By: MB

IDWR/Preston

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

- Name of claimant(s) Ben Kunz and/or Shelby Kunz Phone (208) 269-0009
Mailing address 24073 Highway 89, Montpelier, Idaho Zip 83254
Street or Box City State
Email address (optional) benjaminkuns@yahoo.com
- Date of priority: (Only one per claim) June 1, 1952 (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
- Source of water supply (Check one) Ground Water () or Other (✓) (a) Bear River
which is tributary to (b) _____
- a. Location of point of diversion is: Township 13S, Range 44E, Section 17,
NW 1/4 of NW 1/4, Govt. Lot _____, BM, County of Bear Lake
Parcel no. 13S44E170000 (04084.00)
Additional points of diversion, if any: _____
If available, GPS Coordinates _____
b. If instream flow, beginning point of claimed instream flow is:
Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
Ending point is: Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
- Description of existing diversion works (dams, reservoirs, ditches, wells, pumps, pipelines, headgates, etc.),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.
Diesel pump and motor which delivers water from the river east through a mainline.

14. Basis of claim (Check one) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 11-4069

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Bear River Basin Water System 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: 6

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) *Ben Kunz* Date: 10/12/23
Shelby Kunz Date: 10/12/23

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am, and that I have signed the foregoing document in the space below as the

_____ of _____
Agent's title (Please print) Name of organization (Please print)

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

Signature of Authorized Agent _____ Date _____

Printed Name of Authorized Agent _____

16. Notice of Appearance:

Notice is hereby given that I, (please print) Thomas J. Budge, Attorney, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature *Thomas J. Budge* Date October 13, 2023

Address PO Box 1391, Pocatello, Idaho 83204-1391, tj@racineolson.com

Name of claimant(s) Ben Kunz and/or Shelby Kunz Claim ID _____

Close

Water Right Report : 11-4069(Statutory Claim/Active)

Water Right Owners

Owner Type	Name	Address	City	State	Postal Code
Current Owner	KUNZ, WAYNE	866 ADAMS ST	MONTPELIER	ID	83254

Water Right Status

Priority Date : 6/1/1952
Basis : Statutory Claim
Status : Active

Water Source

Source	Source Qualifier	Tributary	Tributary Qualifier
UNNAMED STREAM		BEAR RIVER	

Points Of Diversion (Location)

Source	Township	Range	Section	Govt. Lot	QQQ	QQ	Q	County	Diversion Type
UNNAMED STREAM	13S	44E	15	0				SW NW BEAR LAKE	

Water Uses

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	4/15	10/15	2.00 CFS	
TOTAL			2.00 CFS	

Places of Use

[Printable View](#)[Paged View](#)

Place of Use Legal Description : IRRIGATION (BEAR LAKE county)

Township	Range	Section	Lot	QQQ	QQ	Q	Acres
13S	44E	9			SW	SW	10
13S	44E	10			SE	SE	5
13S	44E	15			NW	NW	22
13S	44E	15			SW	NW	6
13S	44E	16			NE	NE	4

Irrigation Totals

Total Acres Acre Limit
47.00

Conditions

Code Conditions

CLAIM INCORRECTLY DESCRIBES P/U S11, T13S, R44E, 10 AC.

Dates

Licensed Date :
Decreed Date :
Permit Proof Due Date :
Permit Proof Made Date :
Permit Approved Date :
Permit Moratorium Expiration Date :
Enlargement Use Priority Date :
Enlargement Statute Priority Date :
Application Received Date :
Protest Deadline Date : [Privacy](#)

Other Information

State or Federal :
Water District Number : 11
Generic Max Rate Per Acre : 0
Generic Max Volume Per Acre : 0
Civil Case Number :
Decree Plaintiff :
Decree Defendant :
Swan Falls Trust or Nontrust :
Swan Falls Dismissed :
DLE Act Number :

Ben Kunz and/or Shelby Kunz

6. Water is claimed for the following purposes:

(dates are inclusive MM-DD) (cfs) (acre-feet)

For Irrigation purposes from 04/15 to 10/15 amount 2.0 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 2.0 (cfs) and/or (b) _____ (acre-feet)

8. Non-irrigation uses; describe fully (e.g., Domestic: Give number of households served; Stockwater: Type and number of livestock, etc.) _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13S	44E	8													28.5	16.5	27	40	112
13S	44E	9							0.7			39.5	10						50.2
13S	44E	17	40	9		1.4													50.4

Parcel no(s). 13S44E087200 (03977.00), 13S44E088400 (03972.00), 13S44E170000 (04084.00), 13S44E095600 (03979.00), and 13S44E095400 (03980.00) Total number of acres irrigated 212.6

10. In which county(ies) are lands listed above as place of use located? Bear Lake

11. Do you own the property listed above as place of use? Yes (☒) No (☐)
If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

Montpelier Irrigation Company water or None (☐)

13. Remarks (Include an explanation of the priority date selected):

This claim is based on beneficial use. See the attached affidavits and statutory claim 11-4069.

List of Attachments to Claim Form:

1. IDWR Water Right Report of 11-4069

2. IDWR Map of 11-4069

3. Map depicting the current point of diversion and place of use

4. Affidavit of Reed P. Peterson.

5. Affidavit of Thomas L. Hulme.

6. Homestead records.

Name of claimant(s) Ben Kunz and/or Shelby Kunz

Claim ID _____

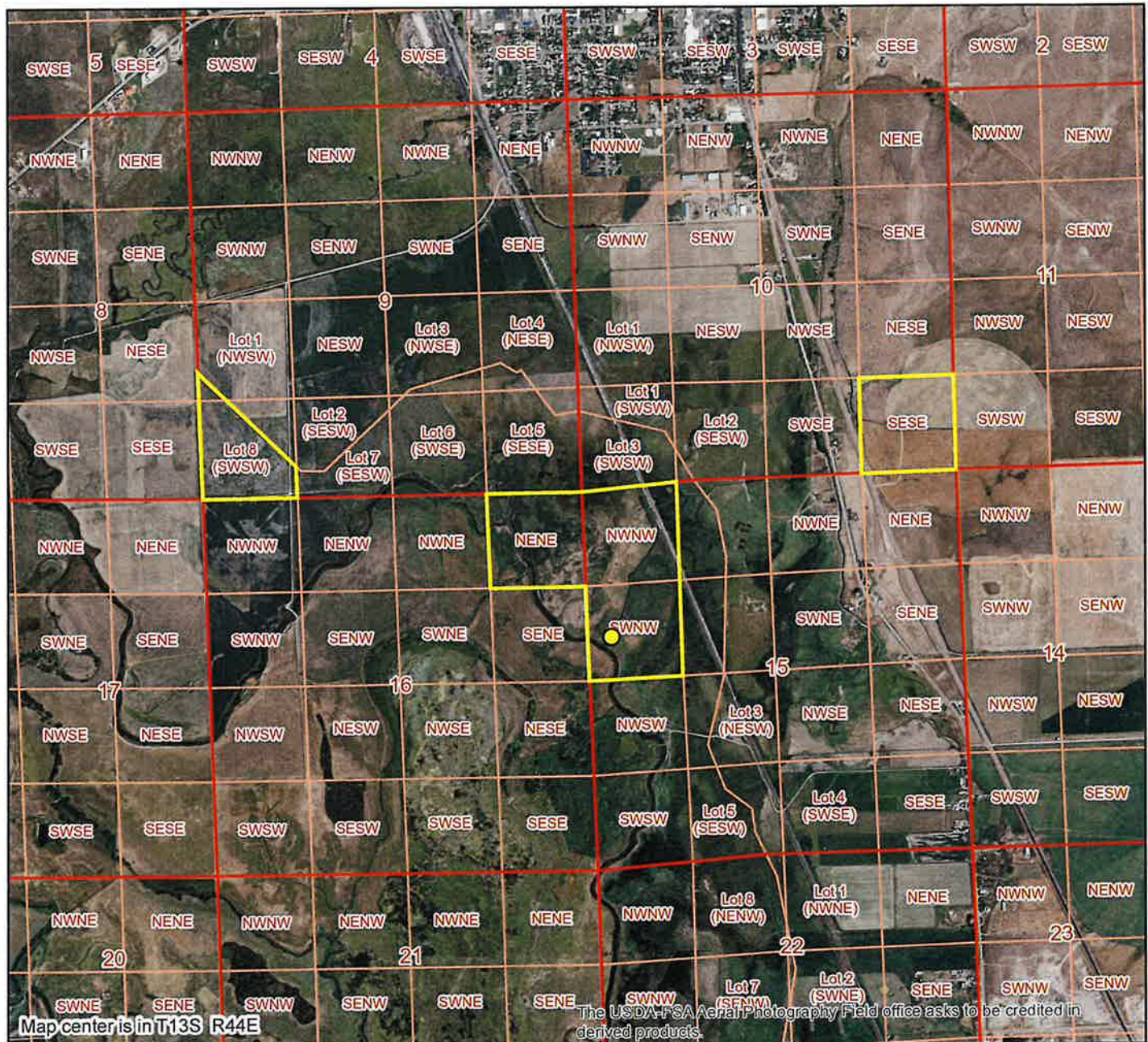
State of Idaho
Department of Water Resources

Water Right

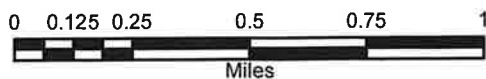
11-4069

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



Date created: 7/6/2023



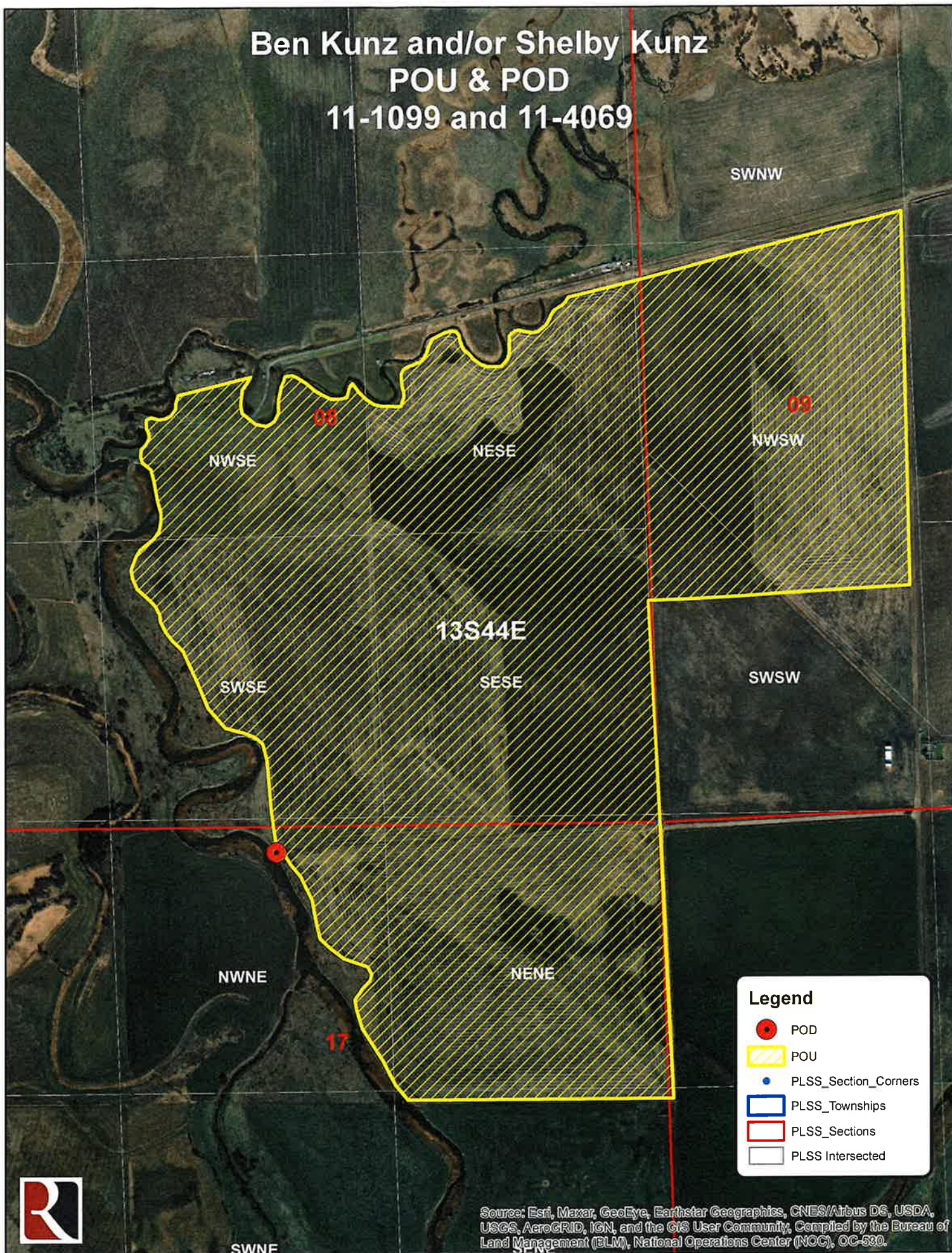
Legend

- Point of Diversion
- Place of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters



Ben Kunz and/or Shelby Kunz

Ben Kunz and/or Shelby Kunz
POU & POD
11-1099 and 11-4069



AFFIDAVIT OF REED P. PETERSON FEBRUARY 1, 2018

I, Reed P. Peterson, first being duly sworn upon oath, hereby deposes and says as follows:

The information contained in this affidavit is based upon my personal knowledge.

1. I was born April 10, 1946. I am 71 years old and have lived in the Montpelier area most of my life. I am familiar with the 360 acres in Sections 8, 9, and 17; Township 13 South; Range 44 East that is currently owned by Susan Kunz or Benjamin Wayne Kunz. Most of this acreage, my wife and I owned between December 2, 1976 until February 11, 1985, and my parents owned approximately 30 years prior to that time.
2. Based upon my personal knowledge and recollection, this acreage was irrigated as early as 1973, and has continued to be irrigated until the present day, with water from Montpelier Irrigation Company and the old Bear River Channel. Having only 12 shares in Montpelier Irrigation Company, most of the water used was from the old Bear River Channel.
3. This acreage is outlined on the attached map, as well as the meanderings of the old river channel. The location in which the pump sat is also indicated.

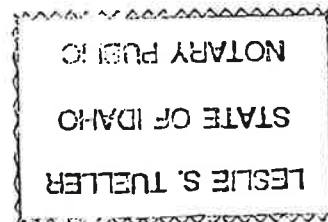

Reed P. Peterson

STATE OF IDAHO, COUNTY OF BEAR LAKE

On this 1st day of February, before me, a notary public in and for the state, personally appeared Reed P. Peterson, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

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


Notary Public
Residing at Montpelier
My Commission Expires: 3-1-23



Ben Kunz and/or Shelby Kunz

Affidavit Of Thomas L. Hulme

October 6th, 2023

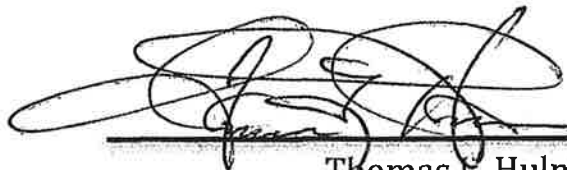
I, Thomas L. Hulme, first being duly sworn upon oath, hereby deposes and says as follows:

The information contained in this affidavit is based upon my personal knowledge:

1. I was born December 31, 1957. I am 65 years old and lived in the Montpelier area most of my life. I am familiar with the 360 acres in Section 8, 9 and 17; Township 13 South; Range 44 East, which is currently owned by Susan T. Kunz and Benjamin W. Kunz. Most of the acreage my father, Philip Hulme, owned between 1970 to 1978, some of which he leased prior to purchasing. To my best recollection, I was 11 or 12 when my brother Brad Hulme and I started moving sprinkle pipe, flood irrigating and haying on this property.
2. Based upon my personal knowledge and recollection, this acreage was irrigated as early as 1969 and has continued to be irrigated to this current day with water from the Montpelier Irrigation Company using sprinkler pipe and flood irrigation. Having only 12 shares in the Montpelier Irrigation Company most of the water was pumped from the Old Bear River Channel with sprinkler pipe.
3. This acreage is outline on the attached map, as well as the meanderings of the Old Bear River Channel. The power line and electric pumps are also indicated, which are still present, but the water from the Montpelier Irrigation Company was insufficient so a large diesel pump was placed on the bank of the Old Bear River Channel as indicated on the map.

IN WITNESS WHEREOF, I have set my hand hereto this 9 day
of October, 2023

Ben Kunz and/or Shelby Kunz


Thomas L. Hulme

Affidavit- page 1

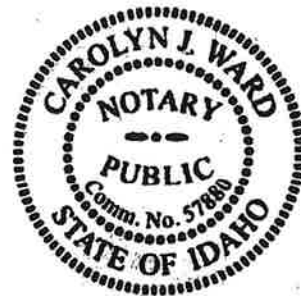
STATE OF IDAHO

County of Ada

On this 9th day of October, 2023 before me, a notary public in and for the state, personally appeared, Thomas L. Hulme, known to me to be the person who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHERE OF, I hereunto set my hand and seal the day and year in the certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at: Carneyville, Wyo
My Commission Expires: 5/11/2023



Affidavit-page 2

Ben Kunz and/or Shelby Kunz

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Albert Kunz, being called as witness in support of the Homestead entry of Jacob Kunz for N. 7, E. 4, S. 2, Sec. 8, T. 13, R. 44, B. 1, M., testifies as follows:

Ques. 1.—What is your name, age, and post-office address?

Ans. Albert Kunz, 35 years, Montpelier, Bear Lake Co. Idaho.

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes; Yes.

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No; No; No.

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Meadow land.

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. July 15th 1889; at same time.

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes.

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Not any.

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 100 acres, 6 seasons.

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Dwelling house, cellar, wagon shed, well, 3 tables, barn, corral, stack yard, 300 rods fence and water ditch, value about \$400.00.

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No. Yes.

(Sign plainly with full christian name.)

Albert Kunz

I HEREBY CERTIFY that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 6th day of Oct, 1894, at my

office at Pasis in Bear Lake County, Ida not that
the judge of District Court of Bear Lake Co. is on this day absent from said County
(SEE NOTE ON FOURTH PAGE.)

CLERK OF THE DISTRICT COURT OF JUDICIAL
DISTRICT OF THE STATE OF IDAHO, in and for
Bear Lake County.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

HOMESTEAD PROOF—TESTIMONY OF CLAIMANT.

Jacob Kunz, being called as a witness in his own behalf in support of homestead entry, No. 3373, for SE 1/4 7E 4 E 2 NE 1/4 Sec. 8, T. 13 N. R. 44 E. testifies as follows:

Ques. 1.—What is your name, age, and post-office address?

Ans. Jacob Kunz, 60 years, Montpelier, Bear Lake Co. Idaho

Ques. 2.—Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?*

Ans. No; I am a naturalized citizen

Ques. 3.—Are you the identical person who made homestead entry, No. 3373, at the Blackfoot, Idaho land office on the 5th day of July

1893, and what is the true description of the land now claimed by you?

Ans. Yes; SE 1/4 7E 4 E 2 NE 1/4 Sec. 8, T. 13 N. R. 44 E.

Ques. 4.—When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. Bought the house and other improvements at former residence in Idaho. July 15th 1889 and established same about time. One three room log house, other log wagon shed, well, tables, barn, corral, stack yard, 30 cords fence, water ditch, value \$900.00

Ques. 5.—Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. Wife and two children. Yes.

Ques. 6.—For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. None

Ques. 7.—How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. About 100 acres; 6 seasons

Ques. 8.—Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No; No; No.

Ques. 9.—What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Hay land; Black loam soil; most valuable for growing wild hay

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No.

Ques. 11.—Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12.—Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. No.

Ques. 13.—Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. No.

Ques. 14.—Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. None

(Sign plainly with full christian name.)

Jacob Kunz

*(In case the party is of foreign-birth a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.)

HOMESTEAD PROOF—TESTIMONY OF WITNESS.

Arnold Zumbunnen, being called as witness in support of the Homestead entry of Jack Kunz for Sec. 16, T. 24 N., R. 46 E., Sec. 8, T. 13 N., R. 46 E., testifies as follows:

Ques. 1.—What is your name, age, and post-office address?

Ans. Arnold Zumbunnen, 45 years, Montpelier, Idaho

Ques. 2.—Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes; Yes

Ques. 3.—Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. No; No; No

Ques. 4.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Hay land

Ques. 5.—When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. July 15th 1889; at same time

Ques. 6.—Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes

Ques. 7.—For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. None

Ques. 8.—How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. About 100 acres, 6 seasons

Ques. 9.—What improvements are on the land, and what is their value?

Ans. Dwelling house, cellar, wagon shed, well, 300 lbs. hay, Corral & stack yard, 300 rods fence, 1/2 water ditch, Value about \$6000

Ques. 10.—Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No

Ques. 11.—Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge

Ques. 12.—Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. No; Yes

(Sign plainly with full christian name.)

Arnold Zumbunnen

I HEREBY CERTIFY that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 6th day of Oct., 1894, at my

office at Paris in Blaine Lake County, Idaho and that the Judge of District Court of Blaine Lake Co. Id. on the day above said said County

[SEE NOTE ON FOURTH PAGE.]

Edmund King
 Clerk of the District Court 1st Judicial
 District of the State of Idaho, in and for

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)



RECEIVED

OCT 23 2023

IDWR/Preston

October 13, 2023

Idaho Dept. of Water Resources
325 East 600 South, Ste 300
Preston, Idaho 83263-4921
marion.beck@idwr.idaho.gov

Sent via Email & U.S. Mail

**Re: Ben Kunz and Shelby Kunz
Notices of Claims to Water Right Numbers 11-1099 and 11-4069
Bear River Basin Adjudication**

To whom it may concern:

Enclosed for filing please find the originals of two Notices of Claims to Water Rights, together with a check in the amount of \$525.20 for the filing fees (flat fee for each claim of \$50 plus the 212.60 acres being claimed = \$262.60, totaling \$525.20). Please file the original and email the claim numbers assigned to tessa@racineolson.

Thank you for your assistance. Please contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads 'Tessa Sparrow'. The signature is fluid and cursive, with the first name 'Tessa' being more prominent.

TESSA SPARROW
Paralegal

Enclosure

c: Ben and Shelby Kunz



RECEIVED
OCT 23 2023
IDWR/Preston

October 19, 2023

Idaho Dept. of Water Resources
Attn: Christopher Holmes
325 East 600 South, Ste 300
Preston, Idaho 83263-4921
christopher.holmes@idwr.idaho.gov

Sent via Email & U.S. Mail

**Re: Ben Kunz and Shelby Kunz
Notices of Claims to Water Right Numbers 11-1099 and 11-4069
Filing Fees**

Dear Chris:

Enclosed please find a check in the amount of \$313.00 in payment for the filing fees for the two Notices of Claims to Water Rights filed on October 13, 2023.

Thank you for your assistance. Please contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tessa Sparrow', is written over the printed name.

TESSA SPARROW
Paralegal

Enclosure