

ROUTING AND TRANSMITTAL SLIP

Date

11-8-91

Name, office symbol, room number,
(including Agency/Post)

Initials

Date

Carter Fritschle

Idaho Dept. of Water Res.
Statehouse

Boise, ID 83720

	File	Note and Return
Approval	For Clearance	Per Conversation
Requested	For Correction	Prepare Reply
State	For Your Information	See Me
Comment	Investigate	Signature
Disposition	Justify	

KS

Field data on
springs in Papoose
Creek area. I
originally estim. a
total of 50-100 gpm.

RECEIVED

Use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

Name, org. symbol, Agency/Post)

J. Satten

Room No. — Bldg.

Department of Water Resources

Phone No.

OPTIONAL FORM 41 (Rev. 7-76)

Prescribed by GSA
FPMR (41 CFR) 101-11.206

1988 — 241-174

MAIL HANDLING ANNEX



POSTAGE AND FEES PAID

U.S. DEPARTMENT OF THE INTERIOR

INT-415



N EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

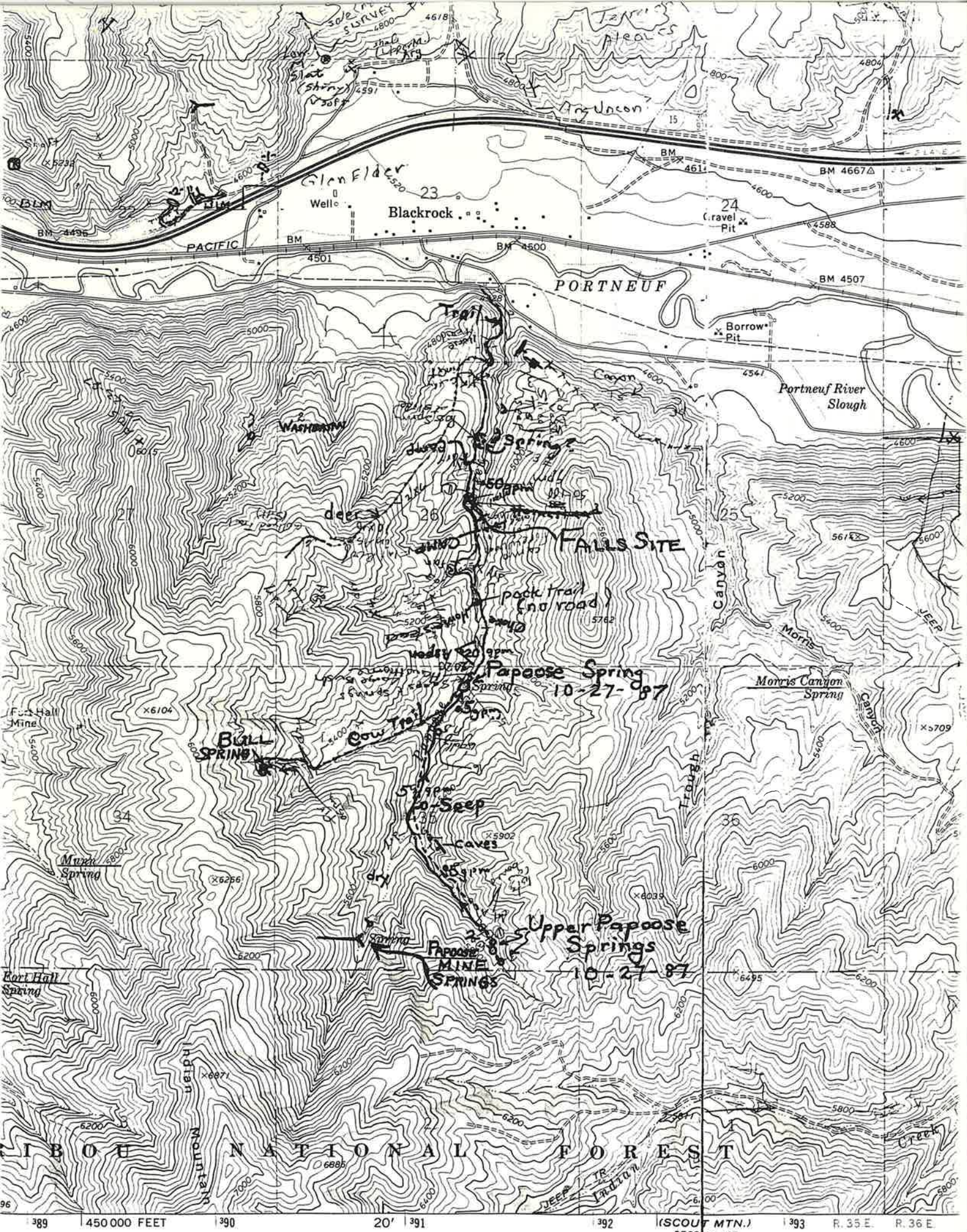
POCATELLO RESOURCE AREA
FEDERAL BUILDING, SUITE 172
250 SOUTH 4TH AVENUE
POCATELLO, IDAHO 83201

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE, \$300

Carter Fritschle
Idaho Dept. of Water Resources
Statehouse
Boise, ID 83720

11-8-91



Claim Identification No. A29-04064A



CLF

Mr. Smith's place of use

3-15-90

Claim Identification No. A29-04064A



CLF

Place of use, looking north

10-18-90

10

[illegible]

A hand-drawn diagram on graph paper. A horizontal line is drawn across the middle of the page. On this line, there are four points labeled from left to right: 23, 24, 26, and 27. Between points 23 and 24, there is a shaded rectangular region with diagonal lines. To the right of this shaded region, the letters 'PD' are written. A vertical line segment is drawn from point 26 down to the bottom edge of the graph paper.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

William H. Davis
(Claimant)

(Claimant)

Residing at 10410 FALLS, IDAHO

2/19/78

Variable	Mean	SD	Min	Max
Age	37.2	10.5	22	55
Gender	0.48	0.50	0	1
Marital status	0.65	0.48	0	1
Education	12.5	1.2	9	16
Income	1.2	0.8	0	3
Health status	0.75	0.43	0	1
Stress level	2.1	0.9	1	4
Life satisfaction	3.2	0.7	1	5
Work engagement	3.8	0.6	1	5
Organizational commitment	4.1	0.5	1	5
Job satisfaction	3.5	0.8	1	5
Turnover intention	1.5	0.7	0	3
Organizational citizenship behavior	2.8	0.6	1	4
Employee well-being	3.0	0.7	1	4
Work-life balance	2.5	0.8	1	4
Job stress	2.2	0.9	1	4
Organizational trust	3.3	0.6	1	4
Employee engagement	3.6	0.7	1	4
Job performance	3.9	0.6	1	4
Organizational identification	3.1	0.7	1	4
Employee loyalty	3.4	0.6	1	4
Job satisfaction	3.5	0.8	1	5
Turnover intention	1.5	0.7	0	3
Organizational citizenship behavior	2.8	0.6	1	4
Employee well-being	3.0	0.7	1	4
Work-life balance	2.5	0.8	1	4
Job stress	2.2	0.9	1	4
Organizational trust	3.3	0.6	1	4
Employee engagement	3.6	0.7	1	4
Job performance	3.9	0.6	1	4
Organizational identification	3.1	0.7	1	4
Employee loyalty	3.4	0.6	1	4

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

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.

Notice is hereby given that _____ Hyrum Martin Palmer

(name of claimant)
Rt. #2, Box 41-A, Inkom, Idaho 83245 _____,
claims a right to the diversion and beneficial use of _____
(mailing address) of

the public water of the State of Idaho

The extent and nature of said claim is as follows:

(1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Papoose Creek
Portneuf River, tributary to, _____

(2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount	0.30	Use	Irrigation	Period of Use:	From	Apr. 1	To	Nov. 1
Amount		Use		Period of Use:	From		To	
Amount		Use		Period of Use:	From		To	
Amount	(cfs, gpm or a/d)	Use	(dom., irri., stock, etc.)	Period of Use:	From		To	(both dates inclusive)

(3) Total quantity of water claimed: 0.30 cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

(4) Priority claimed: (the date water was first applied to beneficial use) May 1, 1889

A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

(5) A) Point of diversion: (give location of point where water is diverted from its source)

NW 1/4 NE 1/4 Sec. 26 Twp. 7S Rge. 35E
 B. M. County of Bannock

Additional points of diversion:

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. _____

Gravity flow pipeline and sprinkler system

(6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

B) If the water is used for other than irrigation, fully describe that use, being as specific as possible:

(7) If you are claiming water as a member of an organization, list name of organization:

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 No.
39576 and
Civil Case No.
41798

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

DIRECTOR'S
REPORT

Petitioner,

vs.

United States, State of Idaho, and all
unknown claimants to the use of water
from the Snake River Drainage Basin
Water System,

Respondents.

THERON J. SMITH and CARMA B. SMITH,
husband and wife,

Plaintiffs,

vs.

JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a single
person; BILLIE JEANNE CROXALL, a single
person; VIRGIL T. GERMER and LAURA GERMER,
husband and wife; KEITH HIGGINSON, Director
of the Idaho Department of Water Resources;
and JOHN DOES I, II, III and IV,

Defendants.

Descriptive Summary

This document is the Director's Report recommending the water rights of the Plaintiffs and Defendants in the case of Smith v. Scoffield, et al., Civil Case No. 41798, which case is consolidated with the Snake River Basin Adjudication, Civil Case No. 39576.

INTRODUCTION

The above-entitled cause was initiated by the Plaintiffs' filing of a complaint seeking a private adjudication of water rights pursuant to Idaho Code § 42-1404 in the district court for the Sixth Judicial District in and for Bannock County. The complaint sought an adjudication of rights to an unnamed spring and to Papoose Creek, a stream to which said spring is tributary. IDWR sought and was granted an order changing venue in this action from the District Court in and for Bannock County to the District Court in and for Twin Falls County. Further, IDWR sought and was granted an order to consolidate this action with the Snake River Basin Adjudication (SRBA).

The parties were directed to file notices of claims with IDWR in the SRBA, and IDWR was directed to prepare an expedited report of the claims involved in this matter. Notices of claims to water rights from the unnamed spring and Papoose Creek were filed by the parties. In March and October of 1990, and in April of 1991, IDWR conducted field examinations as to the relevant water rights in this matter as required by law.

Based on the relevant files and records of IDWR and the above-entitled court, and on the investigation by IDWR of the claims and the water system, the director makes the recommendations set forth below.

GENERAL PROVISIONS

The director recommends that the following general provisions be included in the decree determining rights to water from Papoose Creek and the unnamed spring tributary to Papoose Creek, in

DIRECTOR'S REPORT - Page 2

addition to the water rights recommended to be decreed and the claims recommended to be disallowed.¹

General Description of the Parties' Property and its Environment

1. The sources of water for the parties' claims are Papoose Creek and an unnamed spring tributary to Papoose Creek in IDWR's Administrative Basin 29. Papoose Creek originates in Section 2, T. 8 S., R. 35 E., B.M. at an elevation of approximately 5,500 feet. Papoose Creek flows in a northerly and then westerly direction until it flows into the Portneuf River. The unnamed spring originates in the NW 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. and is tributary to Papoose Creek, but there is no evidence overland flow of water from the spring to the stream. A map labeled Exhibit "A" shows the sources and points of diversion of the rights claimed in this action, and the lands owned by the claimants of those rights. Exhibit "A" is attached hereto and incorporated herein by this reference.

IDWR Standards for Beneficial Use

2. Domestic use, as used in this report, is the use of water in a home, and for other purposes in connection therewith, including up to one-half acre total of irrigation.

3. Stockwater use, as used in this report, is the use of water for care and watering of livestock.

¹These provisions are applicable to water rights from Papoose Creek and the spring tributary to Papoose Creek, which are located in IDWR's administrative Basin 29. Provisions that are generally applicable to water rights from Basin 29 will be included in a Director's Report for Basin 29 that will be filed with the District Court in the SRBA at a later date.

4. For rights or portions of rights for domestic or stockwater use, the annual volume of diversion is the volume actually diverted and beneficially used, subject to a maximum of 13,000 gallons per day.

5. The maximum annual volume of diversion for irrigation of lands in the Papoose Creek area is 4 acre feet per calendar year (AFY) per acre.

6. The maximum annual volume of consumptive use required for irrigation of lands in the Papoose Creek area is 3 acre feet per calendar year (AFY) per acre.

7. For a right or portion of a right not used for irrigation purposes, the consumptive use is so small that it is deemed de minimus. The consumptive use shown is the consumptive use for irrigation purposes.

8. When stockwater is not specifically included for a water right that includes irrigation, a portion of the quantity described for irrigation use may be used for purposes of maintaining a reasonable flow for stockwatering use during the irrigation season.

Administration

9. The surface flows of the unnamed spring tributary to Papoose Creeek do not provide a significant amount of water to the surface flows of Papoose Creek, and rights to the spring have historically been used independent of the rights from Papoose Creek. Therefore, the rights to the spring will be administered separately from the rights to Papoose Creek. Diversion pursuant to junior rights from the spring is not subject to closure to provide water to senior water rights from Papoose Creek.

10. When water is not being beneficially used for domestic or stockwater purposes pursuant to Rights No. 29-10011A and 29-10011B, water must be allowed to remain in the cistern which collects water from the unnamed spring tributary to Papoose Creek, for use pursuant to Right No. 29-10103.

11. This report includes all rights of the named parties in this action to water from Papoose Creek and the unnamed spring tributary to Papoose Creek.

DIRECTOR'S RECOMMENDATION OF WATER RIGHTS

The claims of the named parties to this action are recommended to be decreed as described in the List of Recommended Water Rights and the List of Rights/Claims Not Recommended, which are attached hereto and incorporated by reference herein. In view of the fact that this action involves highly contested claims to a discrete water system within Administrative Basin 29, which action began as a private adjudication and was thereafter consolidated with the SRBA, the director offers the following brief explanation for his recommendation of the rights of the parties obtained after IDWR field investigation and a review of information available to the director. All rights recommended are more fully described in the List of Recommended Water Rights.

12. Information available to IDWR was not sufficient to support a finding that water from Papoose Creek has been beneficially used on the place of use claimed under Claim No. 29-04064A, which claim is therefore recommended for disallowal.

13. With regard to Claim No. 29-04064B, information available to IDWR supports a conclusion that .04 cfs of water from Papoose

Creek was appropriated by beneficial use commencing in 1927, and is used for irrigation of two acres.

14. With regard to Claim No. 29-04064C, information available to IDWR supports a conclusion that .02 cfs of water from Papoose Creek was appropriated by beneficial use commencing in 1927, and is used for irrigation of .7 acres.

15. With regard to Claim No. 29-04064D, information available to IDWR supports a conclusion that .03 cfs of water from Papoose Creek was appropriated by beneficial use commencing in 1927, and is used for irrigation of 1.3 acres.

16. With regard to Claim No. 29-04067, information available to IDWR supports a conclusion that .22 cfs of water from Papoose Creek was appropriated by beneficial use commencing in 1960, and is used for irrigation of 11.1 acres.

17. With regard to Claim No. 29-10010, information available to IDWR supports a conclusion that .01 cfs of water from Papoose Creek was appropriated by beneficial use commencing in 1969, and is used for irrigation of less than 1/2 acre.

18. With regard to Claim No. 29-10011A, information available to IDWR supports a conclusion that .01 cfs of water from the unnamed spring has been appropriated by beneficial use for stockwater use commencing in 1945.

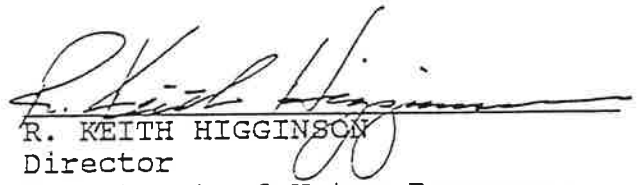
19. With regard to Claim No. 29-10011B, information available to IDWR supports a conclusion that .01 cfs of water from the unnamed spring has been appropriated by beneficial use for domestic use for one home commencing in 1969.

20. With regard to Claim No. 29-10103, information available to IDWR supports a conclusion that .01 cfs of water from the

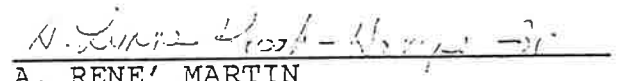
unnamed spring has been appropriated by beneficial use for domestic use in one home commencing in 1970.

21. Since the capacity of the spring and the diversion system used to deliver Rights No. 29-10011A, 29-10011B, and 29-10103 is limited to .01 cfs, a remark limiting the combined total of these rights to .01 cfs is included in the director's recommendation of each right.

DATED this 31st day of December, 1991.


R. KEITH HIGGINSON
Director
Department of Water Resources


CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division


A. RENE' MARTIN
Deputy Attorney General
Department of Water Resources

Instructions for Use of List of Recommended Water Rights

Each water right in the list of recommended water rights includes a description of the following elements:

RIGHT NUMBER: Each right includes a water right number assigned by IDWR for identification purposes. The first two digits of a water right number indicate IDWR's administrative basin number.

NAME AND ADDRESS: The name and address of the claimant shown in the list of recommended water rights is the name and address shown on the notice of claim, or on the most recent notice of change in address or change in ownership properly filed pursuant to Idaho Code §42-1409(7).

SOURCE: The source is the water body to which the claimant has a right. For surface water sources, the list of recommended water rights also shows the water body to which the source is tributary. The source is shown at the top of each page in the list of recommended water rights.

MAXIMUM QUANTITY: The quantity of the right is the maximum rate of flow in cubic feet per second (CFS) and/or the maximum volume of water in acre feet per calendar year (AFY). Maximum quantity is shown for each purpose of use in addition to the total maximum quantity. Except for instream flow rights or where otherwise stated in the recommended water right, the maximum quantity is the quantity diverted (and stored, for rights that include storage purposes) at the point of diversion.

CONSUMPTIVE USE: Consumptive use is the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage. The quantity shown in the list of recommended water rights is the maximum annual volume of consumptive use in AFY.

PRIORITY DATE: This is a calendar date which is used to determine the relative priority of the right in relation to other rights from the same source, and is determined based on the method of appropriation.

POINT OF DIVERSION: The point of diversion is the point at which water is diverted from the source, and is generally indicated in the list of recommended water rights by a legal description of the 40 acre tract (¼ section or 1/16 section) or government lot within which the point of diversion is located. In some instances, the point of diversion is indicated

by a legal description of the ten acre tract (~~1/4~~ section or 1/64 section) within which the point of diversion is located.

A point of diversion listed with a "B" suffix indicates the beginning point of an instream flow right. A point of diversion listed with an "E" suffix indicates the ending point of an instream flow right.

A point of diversion listed with an "I" suffix indicates a point of injection, and a point of diversion listed with an "R" suffix indicates a point of redirection. Points of injection and redirection are indicated where water is diverted from one source, injected into another source, and then redirected, or where water from one source is exchanged with water from another source.

PURPOSE OF USE: Purpose of use indicates the general category of the type of use made of the water; typical purposes include irrigation, domestic, and stockwater purposes.

PERIOD OF USE: The period of use is the portion of the calendar year when water may be used for a particular purpose. The dates shown in the list of recommended water rights are inclusive.

PLACE OF USE: The place of use is the location where water is used, which is generally indicated in the list of recommended water rights by a legal description of the 40 acre tract (~~1/4~~ section or 1/16 section) or government lot where the water is used. For irrigation rights, the number of irrigated acres in each 40 acre tract or government lot is generally listed alongside the description of the tract or lot.

BASIS OF RIGHT: The basis of right is the method by which the water right was established or the document that evidences the water right. The basis of right may be a decree (where the water right was previously adjudicated by a court), posted notice (an historical method of appropriation that is no longer available); beneficial use (an historical method of appropriation that is available only in limited circumstances today); permit (where IDWR has approved an application for a new appropriation); or license (where an appropriation has been completed pursuant to a permit).

OTHERS: The elements of a water right include such other elements as are necessary to define the right. In the list of recommended water rights, any other elements necessary to define the right are listed under "remarks" or "non-irrigation uses."

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

AJ5856NP

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM

TRIBUTARY: PORTNEUF RIVER

SOURCE: PAPOOSE CREEK		05/01/1927 IRRIGATION		04-01 10-31	.04	CFS	STATUTORY CLAIM
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29-04064B RONALD J. SCOFFIELD, JR.
TARA L. SCOFFIELD
5195 W PORTNEUF RD
INKOM ID 83245

POINT OF DIVERSION:
T07S R35E S26
NENWNE

PLACE OF USE: IRRIGATION

T07S R35E S23
2.0 ACRES TOTAL
SESE 2.0

REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE: 29-04064C, 29-04064D, 29-10010

TOTAL QUANTITY: .04 CFS
CONSUMPTIVE USE: 6.0 AFY

29-04064C JOSEPH MATTHEWS
TAINA MATTHEWS
5230 W PORTNEUF RD
INKOM ID 83245

POINT OF DIVERSION:
T07S R35E S26
NENWNE

PLACE OF USE: IRRIGATION

T07S R35E S23
0.7 ACRES TOTAL
SESE 0.7

REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE: 29-04064B, 29-04064D, 29-10010

TOTAL QUANTITY: .02 CFS
CONSUMPTIVE USE: 2.1 AFY

29-04064D JOSEPH MATTHEWS
TAINA MATTHEWS
5230 W PORTNEUF RD
INKOM ID 83245

POINT OF DIVERSION:
T07S R35E S26
NENWNE

PLACE OF USE: IRRIGATION

T07S R35E S23
0.7 ACRES TOTAL
SESE 0.7

REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE: 29-04064B, 29-04064D, 29-10010

TOTAL QUANTITY: .02 CFS
CONSUMPTIVE USE: 2.1 AFY

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: DEC-31-1991
PAGE: A-2

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: PAPOOSE CREEK TRIBUTARY: PORTNEUF RIVER						
29-04064D	TRACY R. THOMPSON THOMAS R. THOMPSON 5208 W PORTNEUF RD INKOM ID 83245	05/01/1927	IRRIGATION	04-01 10-31	.03	CFS STATUTORY CLAIM
POINT OF DIVERSION: T07S R35E S26 NENWNE						
PLACE OF USE: IRRIGATION						
T07S R35E S23 SESE 1.3						
1.3 ACRES TOTAL						
REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064D, 29-04064C, 29-10010						
29-04067	VIRGIL T. GERMER 5268 W PORTNEUF RD INKOM ID 83245	04/01/1960	IRRIGATION	04-01 10-31	.22	CFS STATUTORY CLAIM
POINT OF DIVERSION: T07S R35E S23 SWSESE						
PLACE OF USE: IRRIGATION						
T07S R35E S23 NESE 11.1						
11.1 ACRES TOTAL						
REMARKS: RIGHTS HAVE ALSO BEEN CLAIMED TO WATER FROM OTHER SOURCES FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE, WHICH WILL BE INCLUDED IN A DIRECTOR'S REPORT TO BE FILED AT A LATER DATE. ANY WATER RIGHTS RECOMMENDED IN THE BASIN 29 REPORT FOR THE SAME PURPOSE OF USE AT THE SAME PLACE OF USE DESCRIBED ABOVE WILL CONTAIN REMARKS LIMITING THE COMBINED USE OF THIS RIGHT AND THE RIGHTS FROM THE OTHER SOURCES. THE CONSUMPTIVE USE VOLUME OF THIS RIGHT SHALL NOT EXCEED 33.3 AF IN A SINGLE IRRIGATION SEASON.						

TOTAL QUANTITY:
CONSUMPTIVE USE:

TOTAL QUANTITY:

AJ5856NP

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

DATE: DEC-31-1991
PAGE: A-3

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: PAPOOSE CREEK						
TRIBUTARY: PORTNEUF RIVER						

29-10010

THERON SMITH
5137 W PORTNEUF RD
INKOM ID 83245

01/02/1969 IRRIGATION

04-01 10-31

.01 CFS BENEFICIAL USE

POINT OF DIVERSION:

T07S R35E S26

NENWNE

PLACE OF USE: IRRIGATION

T07S R35E S23

SESE 0.3

0.3 ACRES TOTAL

REMARKS: THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE: 29-04064D, 29-04064C, 29-04064D

TOTAL QUANTITY:
CONSUMPTIVE USE:
.01 CFS
.9 AFY

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: DEC-31-1991
PAGE: A-5

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SPRING						
TRIBUTARY: PAPOOSE CREEK						
29-10103	RONALD J. SCOFFIELD, JR. TARA L. SCOFFIELD 5195 W PORTNEUF RD INKOM ID 83245	09/01/1970	DOMESTIC	01-01 12-31	.01	CFS BENEFICIAL USE
	NON-IRRIGATION-USES: DOMESTIC, 1 HOME					
	POINT OF DIVERSION: T07S R35E S26		NEUNWE			
	PLACE OF USE: DOMESTIC					
	T07S R35E S23		SESE			
	REMARKS: RIGHT NOS. 29-10011A AND 29-10011B ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE AND THROUGH A COMMON CISTERN. THE TOTAL COMBINED RATE OF DIVERSION FOR ALL THREE RIGHTS IS 0.01 CFS.					
			TOTAL QUANTITY:		.01	CFS

AJ5857NP

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS/RIGHTS NOT RECOMMENDED

DATE: DEC-31-1991
PAGE: B-1

W.R. NUMBER	NAME & ADDRESS	CLAIM DISPOSITION	REASON
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29-04064A	SMITH, THERON 5137 W PORTNEUF RD INKOM ID 83245	DISALLOWED	NO BENEFICIAL USE FOUND.
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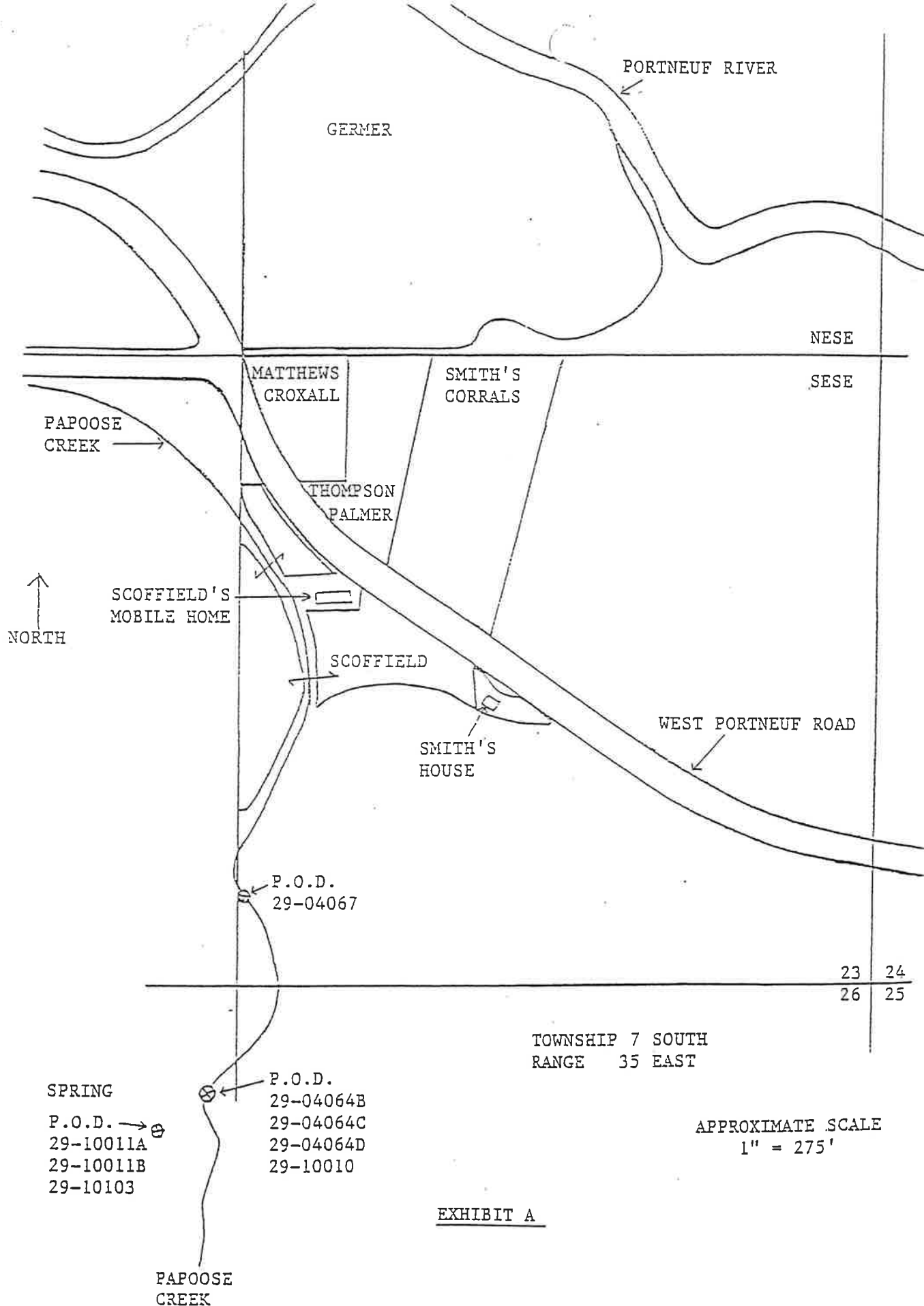


EXHIBIT A

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,

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

Petitioner,

vs.

United States, State of Idaho, and all
unknown claimants to the use of water
from the Snake River Drainage Basin
Water System,

Respondents.

THERON J. SMITH and CARMA B. SMITH,
husband and wife,

Plaintiffs,

vs.

JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a single
person; BILLIE JEANNE CROXALL, a single
person; VIRGIL T. GERMER and LAURA GERMER,
husband and wife; KEITH HIGGINSON, Director
of the Idaho Department of Water Resources;
and JOHN DOES I, II, III and IV,

Defendants.

Case No. 39576
and

Case No. 41798

DIRECTOR'S
REPORT

*Changes made
except for No 7
p. 20*

Descriptive Summary

This document is the Director's Report recommending the water
rights of the Plaintiffs and Defendants in the case of Smith v.
Scoffield, et al., Civil Case No. 41758, which case is consolidated
with the Snake River Basin Adjudication, Case No. 39576.

up
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INTRODUCTION

The above-entitled cause was initiated by the Plaintiffs' filing of a complaint seeking a private adjudication of water rights pursuant to Idaho Code § 42-1404 in the district court for the Sixth Judicial District in and for Bannock County. The complaint sought an adjudication of rights to an unnamed spring and to Papoose Creek, a stream to which said spring is tributary.→ Papoose Creek originates in Section 2, T. 8 S., R. 35 E., B.M. The unnamed stream tributary to Papoose Creek originates in Section 26, T. 7 S., R. 35 E., B.M. Responses were filed by defendants Scoffield, Palmer, Croxall, Germer, and the Director of the Idaho Department of Water Resources (IDWR). IDWR sought and was granted an order changing venue in this action from the District Court in and for Bannock County to the District Court in and for Twin Falls County. Further, IDWR sought and was granted an order to consolidate this action with the Snake River Basin Adjudication (SRBA).

The parties were directed to file notices of claims with IDWR in the SRBA, and IDWR was directed to prepare an expedited report of the claims involved in this matter. Notices of claims to water rights from the unnamed spring and Papoose Creek were filed by the parties. In March and October of 1990, and in April of 1991, IDWR conducted field examinations as to the relevant water rights in this matter as required by law.

Based on the files and records of IDWR and the above-entitled court relevant to this matter, and on the investigation by IDWR of

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the claims and the water system, IDWR recommends the following findings of fact, conclusions of law, and decree of water rights:

FINDINGS OF FACT

Definitions

1. The phrase "acre-foot" or the acronym "af" refers to the volume of water sufficient to cover one acre of land one foot deep with water; one af is equal to 43,560 cubic feet or about 325,851 gallons.

2. The phrase "cubic foot per second" or the acronym "cfs" refers to a unit of measure of the rate of flow of water; one cfs is equal to fifty miner's inches of water in Idaho, or about 449 gallons per minute.

3. The phrase "consumptive use" is defined in Idaho Code § 42-1401A as the amount of water that does not remain in the water system after use or is not returned to the water system through return flows or seepage, whether or not treatment for purposes of maintaining water quality is required before the water may be returned to the water system. For irrigation purposes, consumptive use is that amount of water used through evapotranspiration by the crop minus the effective precipitation.

4. The term "statutory claim" refers to a water right document filed by a water right claimant with IDWR pursuant to Idaho Code § 42-243.

5. The term "adjudication claim" or "claim" refers to a notice of claim filed by a water right claimant with IDWR in the SRBA pursuant to Idaho Code § 42-1409.

6. The term "application" refers to an application filed with IDWR for a permit to make an appropriation of the public waters of the state of Idaho.

7. The terms "IDWR" or "Department" are used interchangeably and refer to the Idaho Department of Water Resources; the term "Director" refers to the Director of the Idaho Department of Water Resources.

8. "Domestic purposes" is defined in Idaho Code § 42-111 as:

A. The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day or

B. Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

9. The phrase "irrigation use" means water use limited to application of water to the land surface or root zone of the soil for the purpose of producing crops on that land.

10. The phrase "stockwater use" refers to the use of water for livestock husbandry and maintenance of equipment and facilities for livestock husbandry.

Procedural History of the Adjudication

11. The plaintiffs initiated this adjudication by filing a complaint in July of 1989 in the District Court of the State of Idaho in and for Bannock County, for the purpose of adjudicating their claims to an unnamed spring and Papoose Creek, into which the unnamed spring flows.

12. Answers were filed by Defendants Scoffield, Palmer, Croxall, and IDWR. Defendant Germer's attorney filed a notice of appearance only.

14. IDWR filed a motion for change of venue to the District Court in and for Twin Falls County, which motion was granted by the District Court in and for Bannock County.

14. In August of 1989, IDWR filed a motion to consolidate this matter with the SRBA, which motion was granted by the District Court in and for Twin Falls County on October 31, 1989.

15. Notices of claims in the SRBA have been submitted in this matter by the following persons:

- a. Theron Smith;
- b. Ronald J. Scoffield and Tara L. Scoffield;
- c. Billie Jeanne Croxall;
- d. D. Grace Palmer;
- e. Virgil T. Germer.

16. The parties have submitted various documents relating to ownership of the subject properties and to their claims to water rights. The parties have also filed claims to water rights from other sources not at issue here.

17. In a separate Bannock County district court proceeding involving some of the same parties as the instant matter, depositions were taken of Billie Jeanne Croxall and Marvin Lee Mumme in May of 1991. The testimony given in those depositions was used as additional evidence in this matter.

SRBA Claims Filed in this Matter

18. The plaintiffs Smiths have submitted claims for three separate water rights:

- (a) Claim No. A29-0406A⁴ to .04 cfs of the waters of Papoose Creek with a priority of May 1, 1889, for irrigation 4/1 to

11/1 of 1.8 acres in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.;

(b) Claim No. A29-10011 to .02 cfs of the waters of an unnamed spring tributary to Papoose Creek with a priority of April 1, 1945, for year round domestic and stockwater use in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.;

(c) Claim No. A29-10010 to .02 cfs of the waters of Papoose Creek with a priority of January 2, 1969, for irrigation 4/1 to 11/1 of 1.0 acre in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.

19. Defendants Scoffields have submitted claims for two separate water rights:

(a) Claim No. A29-4064B to .164 cfs of the waters of Papoose Creek with a priority of May 1, 1889, for irrigation 4/1 to 11/1 of 8.2 acres in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.;

(b) Claim No. A29-10103 to .02 cfs of the waters of an unnamed spring tributary to Papoose Creek with a priority of September 1, 1927 for year round domestic use in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.

20. Defendant Billie Jeanne Croxall has filed Claim No. A29-04064C to .022 cfs of the waters of Papoose Creek with a priority of May 1, 1889 for irrigation 4/1 to 11/1 of 1.1 acres in SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. Joseph and Tahna Matthews have subsequently filed a change in ownership with IDWR and are the current claimants of this right.

21. Defendant D. Grace Palmer has filed Claim No. A29-04064D to .031 cfs of the waters of Papoose Creek with a priority of May

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1, 1889 for irrigation 4/1 to 11/1 of 1.5 acres in SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. From a review of the evidence in this matter, it appears that a Mr. and Mrs. Thompson are Mrs. Palmer's successors in interest to this claim, but no change in ownership with IDWR has yet been filed.

22. Defendant Virgil T. Germer has filed Claim No. A29-04067 to .26 cfs of the waters of Papoose Creek with a priority of April 1, 1945 for irrigation 4/11 to 11/1 of 13 acres upon SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.

Records of IDWR Relating to Claims Filed in this Proceeding

Official notice is taken of the following files and records of IDWR:

23. IDWR's files contain a statutory claim filed by Hyrum Martin Palmer on August 30, 1976 pursuant to Idaho Code § 42-243. The claim is for .26 cfs of the waters of Papoose Creek for irrigation 4/1 to 11/1 on 13 acres in NE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The priority date claimed is May of 1938. IDWR assigned No. 29-4067 to this claim to a water right.

24. IDWR's files contain a second statutory claim filed by Hyrum Martin Palmer on May 3, 1976 pursuant to Idaho Code § 42-243. The claim is for .30 cfs of the waters of Papoose Creek for irrigation 4/1 to 11/1 on 15 acres in SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The priority date claimed is May 1, 1889. IDWR assigned No. 29-4064 to this claim to a water right.

25. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to Mr. Theron Smith .036 cfs or 1.8 miner's inches of statutory claim No. 29-4064 for use on 1.8 acres located in the SE 1/4 SE 1/4 Section 32, T. 7 S.,

R. 35 E., B.M. The claim reflected by said assignment was designated by IDWR as No. 29-4064A.

26. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to Mr. Harold G. Payne .1638 cfs or 8.19 miner's inches of statutory claim No. 29-4064 for use on 8.19 acres located in the SE 1/4 SE 1/4 of Section 23, T. 7 S., R. 35 E., B.M. The claim reflected by said assignment was designated by IDWR as No. 29-4064B.

27. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to Stanley G. or Billie J. Croxall .022 cfs or 1.1 miner's inches of statutory claim No. 29-4064 for use on 1.1 acres located in the SE 1/4 SE 1/4 of Section 23, T. 7 S., R. 35 E., B.M. The claim reflected by said assignment was designated by IDWR as No. 29-4064C.

28. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to D. Grace Palmer .0316 cfs or 1.58 miner's inches of statutory claim No. 29-4⁰~~064~~ for use on 1.58 acres located in the SE 1/4 SE 1/4 of Section 23, T. 7 S., R. 35 E., B.M. The claim reflected by said assignment was designated by IDWR as No. 29-4064C. ✓

29. IDWR's files contain an "Assignment of Claim" dated April 21, 1986 whereby Mrs. H. Martin Palmer assigned to Virgil and Laura Germer statutory claim No. 29-4067 to .26 cfs or 13 miner's inches for use on 13 acres located in NE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M.

30. The remainder of statutory claim No. 29-4064 not assigned by the above described partial assignments is designated in the records of IDWR as claim No. 29-4064E. (HAS THIS BEEN CLAIMED?) NO

31. IDWR's files contain records of at least one other water right, in the name of a person other than the named parties, in the Papoose Creek water system. (LYNNE: THIS IS FROM YOUR ANSWER. I'M NOT SURE WHAT IT'S BASED ON.)

32. IDWR has obtained a copy of a warranty deed dated November 19, 1927, identified as Instrument No. 134504 by the Bannock County Recorder's Office, by which Samuel J. Palmer and Nora I. Palmer, his wife, conveyed to Hyrum Martin Palmer 80 acres of land, which parcel included the SE 1/4 SE 1/4 of Section 23, T. 7 S., R. 35 E., B.M., together with all appurtenant water rights and conveyance, diversion, and storage systems.

History of Land Ownership and Water Use

Based on records of IDWR and its further investigation into this matter, as well as evidence presented by the parties to this action, the following factual findings are made, with specific evidentiary items relied upon listed in parentheses for each finding. A map is attached hereto as Exhibit "A" to illustrate these findings.

33. Hyrum Martin Palmer obtained ownership of the entire SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M., on November 19, 1927. This includes the lands of all parties to this action except lands owned by the Germers. (Warranty deed referenced in paragraph 32 above.) (LYNNE: I'D LIKE YOU TO LOOK AT THIS DEED TO MAKE SURE THIS IS CORRECT.)

34. In 1940 Hyrum Martin Palmer and D. Grace Palmer, hereinafter "the Palmers," obtained ownership of the land now owned by Germers located in the NE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. (Affidavit of D. Grace Palmer, dated December 4, 1990;

Answer of D. Grace Palmer, Exhibit "C".)

35. In 1945 Hyrum Palmer built the cistern in question in this matter, hereinafter "the cistern," and installed a pipe from the cistern for domestic and stockwater use by the Palmers. The water source for the cistern was an unnamed spring which is tributary to Papoose Creek. The cistern was located on the seven-acre parcel south of the West Portneuf Road which is now owned by the Scoffields. The cistern was connected to the Palmers' house at its present location, and also to their barn, which was on the 1.8 acre parcel now owned by Theron Smith. (Croxall deposition, p. 5, 33-34.)

36. In 1958, Mr. and Mrs. Palmer sold 1.1 acres of their land to their daughter, Billie Jeanne Croxall, and her husband Stanley Croxall, hereinafter "the Croxalls." The Croxalls built their home on the property that same year, and connected to the cistern for their domestic use. (Croxall deposition, pp. 4, 21-22, 34-35; Croxall deposition Exhibit 2.)

37. In 1959, the Croxalls drilled a well on their property. At this time Mr. Palmer hooked up the cistern to the Croxalls' pressure tank associated with their well, allowing the Croxalls to mix the cistern water and well water or alternate between the two. (Croxall deposition, p. 4.)

38. In 1960, the Palmers installed a gravity flow irrigation system to conduct water from Papoose Creek in a more efficient manner than their previous system for irrigation of their orchard and yard. Any excess water from this diversion was allowed to flow to the 13-acre parcel now owned by Germers. (Affidavit of D. Grace Palmer, dated December 4, 1990; Croxall deposition pp. 6, 31, 33.)

39. In 1969, the Palmers conveyed to Theron Smith the parcel on which his residence is located. The Smith residence was built that same year. (Complaint, Exhibit G; ^{two unnumbered pages following Complaint,} information from Bannock ^{Exhibit G,} County Assessor's Office.) When the Smith residence was constructed, the Palmers connected the residence to the cistern to allow the Smiths a source of domestic water. (Croxall deposition, p. 36.) Smiths also began using water from Papoose Creek for irrigation of this parcel at this time. (Affidavit of D. Grace Palmer, dated December 15, 1990; Answer of D. Grace Palmer.)

40. In 1970, the Palmers sold Mr. and Mrs. Germer the 13-acre parcel the Germers now own, reserving water rights to themselves by the deed except for surplus waters of Papoose Creek which were conveyed to the Germers. (Complaint, Exhibit A.)

41. Also in 1970, the Palmers' granddaughter, Sharel Wheeler, moved a mobile home onto ^{an approximately one-acre parcel} property ~~deeded~~ ^{property} to her by the Palmers, which property is the current site of the Scoffield mobile home. While Ms. Wheeler's primary domestic source of water was the Croxalls' well, her mobile home was also connected by a pipe to the cistern for her domestic use. (Croxall deposition, p. 36-37.)

42. In 1971, the Palmers conveyed to Croxalls the seven-acre parcel south of the West Portneuf Road now owned by Scoffields. This is the property on which the cistern is located. (Croxall deposition, p. 4; Croxall deposition Exhibit 4.)

43. In 1973, Cinda Mumme, daughter of the Croxalls, and her husband Marvin Mumme purchased the parcel of land on which the mobile home was located from Ms. Mumme's sister, Sharel Wheeler. (Mumme deposition, p. 4.)

44. In 1976, Mr. Croxall accidentally broke the pipe which connected the Croxall home and shop to the cistern, permanently terminating the Croxalls' use of cistern water. The Mummes' use of ^{ground?} cistern water was also terminated as a result of this incident. Mrs. Palmer's use of cistern water was not affected by the incident. (Croxall deposition, pp. 7, 43-44, 46.)

45. In 1978, Theron Smith purchased from Palmers the 1.8 acre parcel north of the West Portneuf Road, obtaining rights to Papoose Creek by such conveyance. (Croxall deposition, p.8; Complaint, Exhibit B.)

46. In 1980, the Palmers drilled a well for domestic use and discontinued using cistern water. (Croxall deposition, pp. 6, 46.)

47. In 1983, Cinda Mumme resumed use of cistern water in the mobile home after her divorce from Marvin Mumme in 1979. (Croxall deposition, p. 51-52.)

48. ^{Also} In 1985, Cinda Mumme conveyed to Croxalls the one-acre parcel on which the Scoffields' mobile home is now located. (Croxall deposition, p. 22; Croxall deposition, Exhibit 3.)

49. In 1985, the Croxalls conveyed the seven-acre parcel south of the West Portneuf Road to Harold Payne, husband of Cinda (Mumme) Payne. This is the property on which the cistern is located. (Croxall deposition, p. 6; Croxall deposition Exhibit 9.)

50. In approximately 1986, various parties to this action became involved in a dispute over their relative rights to Papoose Creek and to the cistern water from the unnamed spring. (Croxall deposition, pp. 8, 12-13; 51, 57-58; Croxall deposition Exhibits 7 and 8; Complaint, Exhibit B; Answer of D. Grace Palmer, Exhibit "A".)

- was water from the cistern available?

add this

51. In 1987, Harold and Cinda (Mumme) Payne conveyed to Scoffields both the seven-acre parcel south of the West Portneuf Road and the one-acre parcel where the Scoffield mobile home is located. (Complaint, Exhibit D; Affidavit of Tara S. Scoffield re claim A29-10103.)

Field Examination

52. IDWR personnel conducted field examinations of water rights claimed in this proceeding in March and October of 1990 and in April of 1991. The examinations included an investigation of the diversion structures, the uses made of the water diverted, amounts diverted, and the lands upon which the water was used.

General Description of the Parties' Property and its Environment

53. The sources of water for the parties' claims are Papoose Creek and an unnamed ^{spring} stream which is its tributary. Papoose Creek originates in Section ² 26, T. ⁹ 7 S., R. 35 E., B.M. at an elevation of approximately 5,500 feet. Papoose Creek flows in a northerly and then westerly direction until it flows into the Portneuf River. The unnamed ^{spring} stream relevant to this matter originates in the NW 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. and is tributary to Papoose Creek. (CHECK THESE DESCRIPTIONS.) Exhibit "B" shows the sources, points of diversion and places of use of rights claimed in this action. Exhibit "B" is incorporated herein by this reference.

IDWR Standards for Beneficial Use

54. The period of the year when water is beneficially used for irrigation is when the chance of temperatures of 28 degree^s F. or lower is 50% or less. The period of use for irrigation where plaintiffs' and defendants' property is located is from April 1 through November 1 of each year, for a total of 214 days.

55. The period of use for domestic and stockwater purposes is year round.

56. A maximum diversion rate of .02 cfs per acre of irrigated land is reasonably required at the point of diversion for the irrigation of land in the area where plaintiffs' and defendants' property is located. (CHECK THIS.) ✓

57. A maximum diversion rate of .02 cfs for indoor uses and .02 cfs for outdoor uses is reasonably required for household use in a single family home.

58. The consumptive use for irrigation in the area where plaintiffs' and defendants' property is located is 2.5 af per acre per annum.

59. Domestic and stockwater use is deemed non-consumptive.

Description of Uses Found by Field Examination

60. The point of diversion for Smiths' claim No. A29-04064A is NW 1/4 NE 1/4 NE 1/4 Section 26, T. S., R. 35 E., B.M., and the place of use is a 1.8 acre parcel located in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. Water may be diverted from Papoose Creek by means of a pipeline to a concrete box covered with a trash screen. The water is piped from the concrete box to Mrs. Palmer's land. Mr. Smith must connect to risers on Mrs. Palmer's property in order to irrigate the 1.8 acres of land pursuant to this claim. Due to the location of ^b ^d buildings and other physical elements of the land, there is only one acre of the 1.8 acres claimed that is capable of being irrigated. Field examination revealed that Mr. Smith stores farm equipment on the property with apparently no irrigation use for at least five years. (NOTE: MAY WISH TO SIMPLIFY TO NO BENEFICIAL USE FOUND.) ✓

*Germer
stated
water has been
used within
last 5 years*

61. The point of diversion for Smiths' claim A29-10011 to an unnamed spring tributary to Papoose Creek for domestic and stockwater use is NE 1/4 NW 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. The place of use is a home and corral area located in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The gravity flow system includes an underground pipeline from a developed spring tributary to Papoose Creek to a cistern located on or near the southern tip of the Scoffield property. Two pipelines leave the cistern, one supplying water to the Scoffields' mobile home, and the other supplying water to the Smith home and corrals. Mr. Smith has a well for in-house use; if the well should fail, a valve can be opened and the water from the spring can be used in the house. Mr. Smith's use of this system for domestic ^{purposes} is only as a backup for ✓ his domestic well. There are eight hydrants in the corrals and pasture area on the north side of the road for stockwater, where approximately sixty head of cattle were located at the time of ✓ inspection. Also, there were approximately 45 head of horses ✓ located in the field to the east of the corrals at that time.

62. The point of diversion from Papoose Creek for Smiths' claim No. A29-10010 is the same as that for claim No. A29-04064A in the NW 1/4 NE 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. The place of use is the lawn near the Smith residence and six fruit trees located nearby in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The diversion system is the same system as for claim A29-04064A. (See Paragraph No. ⁶⁰ 35 above.) A black plastic 1-1/4" ✓ pipe branches from the main line and runs to the east side of the Smiths' lawn. The lawn and six fruit trees are irrigated with a

garden hose. Less than 1/2 acre of irrigation was found by field inspection.

63. The point of diversion from Papoose Creek for Scoffields' claim No. A29-04064B is the same as that for claim A29-04064A in the NW 1/4 NE 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. The place of use is the pasture area around the Scoffields' mobile home in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The diversion system is the same system as for claim A29-04064A. (See Paragraph No. ⁶⁰35 above). ^{Riser & handlines as well as faucets} Faucets are fitted to the pipeline to connect garden hoses with sprinklers to irrigate the pasture. Very sparse vegetation was observed on the pasture land, ^dand three horses were in the pasture. Many of the acres belonging to Scoffields appear to have never been irrigated. Only about two acres appear to be susceptible to irrigation. (NOTE: I'M NOT SURE WHAT CARTER MEANS HER^e--IS IT ACTUALLY IRRIGATED, OR IS IT JUST POSSIBLE?) ✓

64. The point of diversion from Papoose Creek for Mrs. Croxall's claim No. A29-04064C is the same as that for claim No. A29-04064A in the NW 1/4 NE 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. The place of use is a lawn and pasture located near Mrs. Croxall's home in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The diversion system is the same system as for claim No. A29-04064A. (See Paragraph ⁶⁰35 above.) Mrs. Croxall's access to the mainline from Papoose Creek is across Mrs. Palmer's land. The water is piped across Mrs. Palmer's land by means of aluminum hand lines. Mrs. Croxall has a well for domestic use. Approximately 0.7 acres of Mrs. Croxall's land can be irrigated with this system. ✓

65. The point of diversion from Papoose Creek for claim No. A29-04064D is the same as that for A29-04064A in the NW 1/4 NE 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. The place of use is the area surrounding Mrs. Palmer's house in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The diversion system is the same system as for claim No. A29-04064A. (See Paragraph ⁶⁰~~35~~ above.) Two risers from the mainline from Papoose Creek are located on Mrs. Palmer's land from which Mrs. Croxall and Mr. Smith also divert water from Papoose Creek. Aluminum handlines are used for irrigation from the mainline. This land appears to be the most developed of the lands to which the Palmers' original claim No. 29-04064 was appurtenant. Approximately 1.3 acres of Mrs. Palmer's land can be irrigated with this system. ✓

66. The point of diversion from an unnamed spring tributary to Papoose Creek for Scoffields' claim No. A29-10103 is in the NE 1/4 NW 1/4 NE 1/4 Section 26, T. 7 S., R. 35 E., B.M. The place of use is a mobile home in the SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The diversion system is shared with the Plaintiffs as to their claim No. A29-10011. (See Paragraph ⁶¹~~36~~ above.) A pipe teeing off the line to Mr. Smith's home runs to an outside faucet under the Scoffields' mobile home. There is no other domestic source for the Scoffield mobile home. *2 lines from the cistern can (or could) supply Scoffields*

67. The point of diversion from Papoose Creek for Germers' claim No. A29-04067 is north of the current points of diversion for all other rights claimed in this proceeding, and is located in the SW 1/4 SE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. (NOTE: THERE IS SOME REASON TO BELIEVE THAT THIS POD WAS THE ORIGINAL ONE FOR THE OTHER 29-04064 RIGHTS, PER CARTER. DOES THIS INFO MATTER?)
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The place of use is approximately 13 acres of field and lawn located in the NE 1/4 SE 1/4 Section 23, T. 7 S., R. 35 E., B.M. The system diverts water from Papoose Creek by means of a pipe section, a ditch, and another pipe section discharging water into a 55-gallon drum with a trash screen. From the drum the water enters a pipeline to Mr. Germer's land. There are 13 risers for handlines for irrigation. Water from the Portneuf River is also pumped through the same pipeline pursuant to a possible separate right. Groundwater pursuant to a possible separate right can also be pumped through this system for irrigation and fire protection. Field inspection revealed approximately 11.1 acres irrigated pursuant to this claim.

CONCLUSIONS OF LAW

Based upon the findings of fact in this matter as outlined above, the following conclusions of law are adopted:

Applicable Legal Authority

1. Prior to May 19, 1971, a new right to the use of surface water in Idaho could be established by diverting unappropriated water and applying it to a beneficial use. The date of priority under this method is the date of application of the water to a beneficial use. SandPoint Water & Light Co. v. Panhandle Development Co., 11 Idaho 405, 83 P. 347 (1905); Nielsen v. Parker, 19 Idaho 727, 115 P. 488 (1911); Crane Falls Power & Irrigation Co. Ltd. v. Snake River Irrigation Co. Ltd., 24 Idaho 63, 1313 P. 655 (1913).

2. Beneficial use is the measure and the limit of an appropriative water right. Idaho Code § 42-104 (1977) and § 42-1402.

3. An appropriative right is defined by a determination of the following:

- a. source of water supply;
- b. date of priority;
- c. rate of diversion;
- d. nature of use;
- e. point of diversion;
- f. place of use;
- g. period of use;
- h. annual volume of consumptive use;
- i. such other matters as are necessary to define the right. Idaho Code § 42-1411(2).

4. Idaho Code § 42-243 provides that all parties using or claiming rights to the use of water for other than domestic purposes which are based on diversion and application to a beneficial use ("statutory claims") were required to file a claim with IDWR by June 30, 1983. Idaho Code § 42-245 provides that a person claiming a beneficial use right who did not file a statutory claim as required by § 42-243, waived and relinquished said right. However, said waiver and relinquishment does not apply if a claim to the right was filed by June 30, 1990 in a general water rights adjudication proceeding commenced prior to June 30, 1988, under the provisions of chapter 14, title 42, Idaho Code.

5. Idaho Code § 42-246 provides that a statement of claim filed pursuant to Idaho Code § 42-243 shall be admissible in a general adjudication of water rights as evidence of the times of use and the quantity of water the claimant was withdrawing or diverting as of the year of the filing, only if the quantities of the water in use and the time of use when a controversy is mooted are substantially in accord with the times of use and quantity of water claimed. A claim shall not otherwise be evidence of the priority of the claimed water right.

6. Water rights may be forfeited if they are not applied to a beneficial use for a period of five continuous years. Idaho Code § 42-222; Jenkins v. State, Department of Water Resources, 103 Idaho 384; 647 P.2d 1256 (1982).

7. (ADD SOMETHING RE THE MANDATORY PERMIT STATUTE.)

Conclusions as to Water Rights

WATER RIGHT NUMBER	STG STS	PRIORITY DATE	O C	CLAIMANT NAMES	SOURCES OF WATER	TRIBUTARIES TO
R29-04064A	/I	05/01/1889	C	THERON SMITH	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064B	S/	05/01/1927	C	RONALD J. SCOFFIELD, JR. C TARA L. SCOFFIELD	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064C	S/	05/01/1927	C	JOSEPH MATTHEWS C TAHNA MATTHEWS	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064D	S/	05/01/1927	C	TRACY R. THOMPSON C THOMAS R. THOMPSON	PAPOOSE CREEK	PORTNEUF RIVER
R29-04067	S/	04/01/1960	C	VIRGIL T. GERMER	PAPOOSE CREEK	PORTNEUF RIVER
R29-10010	J/	01/02/1969	C	THERON SMITH	PAPOOSE CREEK	PORTNEUF RIVER
R29-10011	/Z	04/01/1945	C	SPLIT RIGHT	SPRING SPLIT RIGHT	PAPOOSE CREEK
R29-10011A	J/	04/01/1945	C	THERON SMITH	SPRING	PAPOOSE CREEK
R29-10011B	J/	01/02/1969	C	THERON SMITH	SPRING	PAPOOSE CREEK
R29-10103	J/	09/01/1970	C	RONALD J. SCOFFIELD, JR. C TARA L. SCOFFIELD	SPRING	PAPOOSE CREEK

AJ5811NP
SELECTION FILE: CLF-SMITH-V-SCOFFIELD-R-RECORD

IDAHO DEPARTMENT OF WATER RESOURCES
SELECTION FILE CONTENTS

DATE: 12/27/91
TIME: 16:53:07
PAGE: 1

R29-04064A	R29-04064B	R29-04064C	R29-04064D	R29-04067	R29-10010	R29-10011	R29-10011A	R29-10011B	R29-10103
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TOTAL RECORDS IN SELECTION FILE: 10

MEMORANDUM

To: Rene' Martin
Carter Fritschle

From: Roxanne McCarthy

Re: Smith vs Scofield

Date: March 10, 1992

=====

Theron Smith called today for Keith Higginson. Mr. Higginson was not available and since Carter and Rene' were both out of the office, I spoke with him.

Mr. Smith was concerned about the wording of #9, under General Provisions, in the Director's Report. He said that he did not understand it. I explained to him that "Diversion pursuant to..." meant that a user of the spring will not be asked to stop using the water to provide for a user of Papoose Creek because the two sources will be administered independently.

Additionally, he disagrees with our finding of disallowal for 29-04064A. He claims that the parcel could not be irrigated due to threats from Scofield. He also intends to irrigate this parcel in 1992. I informed him that his only recourse at this time would be to file an objection with the court.

He claims to have filed an objection. I asked him if he had done so through an attorney and he replied that he was "...taking care of it myself.". I did not tell him of his obligation to send a copy of the objection to IDWR.

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 Drainage
Basin Water System.

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

Petitioner,

vs.

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

Respondents.

THERON J. SMITH and CARMA B.
SMITH, husband and wife,

Plaintiffs,

vs.

JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a
single person; BILLIE JEANNE
CROXALL, a single person; VIRGIL R.
GERMER and LAURA GERMER, husband
and wife; KEITH HIGGINSON, Director
of the Idaho Department of Water
Resources, and JOHN DOES I, II,
III and IV,

Twin Falls County
Civil Case No. 39576

and

Bannock County
Civil Case No. 40169-A

ORDER SETTING STATUS
CONFERENCE AND ORDER
EXPEDITING HEARING

*Matthews
Tahna Matthews
775-4507 home
237-0387
work*

*She will call the
Hot Line on Dec. 16*

ORDER SETTING STATUS CONFERENCE AND
ORDER EXPEDITING HEARING

The above-entitled matter is hereby set for a Status Conference to be held in Twin Falls at the Snake River Basin Adjudication Courthouse, located at 253 Third Avenue North at 1:00 p.m. The Status Conference will be heard on December 17, 1991.

The parties are ordered to be prepared to discuss the status of this litigation which has been pending since July 12, 1989 and further be prepared to argue before the Court why this matter should not be dismissed given the case's consolidation into the Snake River Basin Adjudication.

The Court is hereby exempted from the Docket Sheet Procedure Order adopted February 24, 1988 for the reason that the setting of a Status Conference in this matter is based upon the Court's own initiative and directly impacts the rights of the Plaintiffs and Defendants described above. There is no reason for requiring the Court to set this matter for hearing as outlined by the Order of February 24, 1988. The Court hereby sets this Status Conference on an expedited basis.

DATED this 20 day of November, 1991


DANIEL C. HURLBUTT, JR.
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER SETTING STATUS CONFERENCE AND ORDER EXPEDITING HEARING was mailed this 21st day of November 1991 in an envelope with sufficient first-class postage prepaid thereon to the following:

Thomas J. Holmes
Attorney at Law
P.O. Box 1641
Pocatello, ID 83204

Reed W. Larsen
Center Plaza
P.O. Box 1391
Pocatello, ID 83204-1391

Jay & Tara Scoffield
5195 West Portneuf Road
Inkom, ID 83245

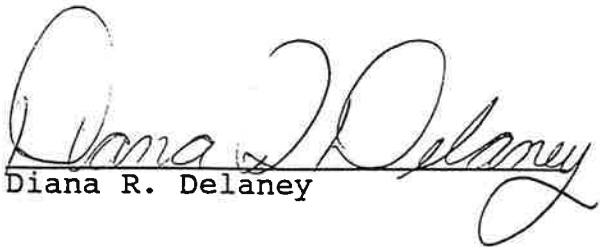
Billie Jeanne Croxall
5230 West Portneuf Road
Inkom, ID 83245

Grace Palmer
5208 West Portneuf Road
Inkom, ID 83245

A. Lynne Krogh-Hampe
Deputy Attorney General
Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Clive Strong
Office of the Idaho
Attorney General
Room 210, Statehouse
Boise, ID 83720

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


Diana R. Delaney

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

March 18, 1992

RECEIVED
MAR 19 1992
FLEX
232-6109
Department of Water Resources

Clerk of the Court
Twin Falls County Courthouse
P.O. Box 126
Twin Falls, ID 83303

RE: Smith v. Scoffield, et al.
Case No. 39576

Dear Clerk:

Enclosed for filing you will find Objection to Director's Report. Please file the same with the Court's records.

Sincerely,


REED W. LARSEN

RWL:cr

Enclosure

cc: Counsel of record
Parties of record

Reed W. Larsen
RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED
P.O. Box 1391 - Center Plaza
Pocatello, ID 83204-1391
Telephone: (208) 232-6101

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 Drainage Basin)
Water System,)

Case Nos. 39576
41798

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

**OBJECTION TO
DIRECTOR'S REPORT**

Petitioner,)

vs.)

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.)

THERON J. SMITH and CARMA B.)
SMITH, husband and wife,)

Plaintiffs,)

vs.)

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)
single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)
and wife; KEITH HIGGINSON, director)

of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
)
Defendants.)
)

COME NOW the Defendants, Virgil T. and Laura Germer, Thomas and Tracy Thompson, and Joseph and Tahna Matthews, by and through counsel and hereby enters their objection to the Director's report submitted to this Court, said Director's report being dated December 31, 1991.

The above Defendants object to Paragraph No. 13, Page 5, of the Director's report on the grounds and for the following reasons:

1. That the priority date of 1927 is not the appropriate priority date;

2. There was no beneficial use of the .04 CFS of water from Papoose Creek prior to 1970;

3. When the Germers moved to the property in 1970, the property in question was not irrigated and there was no water being diverted and put to beneficial use on the property identified in regard to Claim No. 29-04064B. In 1970, when the Germers moved to the property, it was obvious that the property had not been irrigated for more than five years and it did not appear that the property had ever been irrigated.

Beyond the objection above stated, the above-named Defendants have no further objection to the Director's Report.

RESPECTFULLY SUBMITTED this 18 day of March, 1992.

RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED

By


REED W. LARSEN

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18 day of March, 1992, a true, correct and complete copy of the foregoing was mailed, postage prepaid, to the following:

Billie Jeanne Croxall
5230 W. Portneuf Road
Inkom, ID 83245

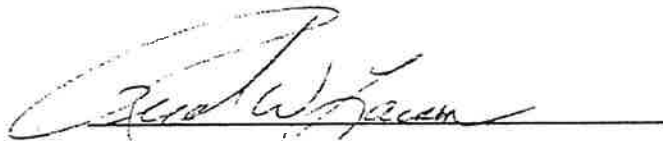
Grace Palmer
5208 W. Portneuf Road
Inkom, ID 83245

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

Peter C. Monson
U.S. Attorney
Land & Natural Resources Div.
Indian Resources Section
P.O. Box 44378
Washington, D.C. 20026

A. Rene' Martin
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Jay and Tara Scoffield
5195 W. Portneuf Road
Inkom, ID 83245



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

March 24, 1992

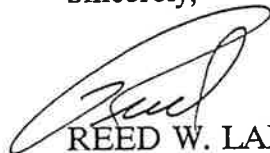
Clerk of the Court
District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

RE: State of Idaho v. USA; Case No. 39576
Smith v. Scoffield, et al; Case No. 41798

Dear Clerk:

Enclosed you will find AMENDED OBJECTION TO DIRECTOR'S REPORT. Please file the same with the Court's records.

Sincerely,



REED W. LARSEN

RWL:cr
Enclosure
cc: Counsel & Parties of Record

Reed W. Larsen
RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED
P.O. Box 1391 - Center Plaza
Pocatello, ID 83204-1391
Telephone: (208) 232-6101

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 Drainage Basin)
Water System,)

Case Nos. 39576
41798

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

**AMENDED OBJECTION TO
DIRECTOR'S REPORT**

Petitioner,)

vs.)

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.)

THERON J. SMITH and CARMA B.)
SMITH, husband and wife,)

Plaintiffs,)

vs.)

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)
single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)
and wife; KEITH HIGGINSON, director)
of the Idaho Department of Water)

Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)
_____)

COMES NOW the Defendants, Virgil T. and Laura Germer, by and through counsel, and hereby enters an amended objection to the Director's Report. Germers, Thompsons and Matthews entered an objection dated March 18, 1992. The purpose of this objection is to clarify one issue as it relates to Germers' water rights.

Defendants Germers, respectfully object to Paragraph 16 of the Director's Report. In the Director's Report, the Director has established a priority date of 1960, for the date when water was put to beneficial use on the 11.1 acres. Defendants Germer respectfully submit that the property was used and irrigated as early as 1940 when Palmers obtained the property and certainly by 1945 when Palmer's warranty deed was recorded. See attached Exhibit "A" which is the warranty deed to Palmers for the property which Germers now own.

At the time Germers purchased the property, the property was watered from Papoose Creek and had been for an extended period of time. Germers respectfully believe the use began in 1940 and no later than 1945 as indicated on his application.

RESPECTFULLY SUBMITTED this 24th day of March, 1992.

RACINE, OLSON, NYE, COOPER
& BUDGE, CHARTERED

By 
REED W. LARSEN

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24th day of March, 1992, a true, correct and complete copy of the foregoing was mailed, postage prepaid, to the following:

Billie Jeanne Croxall
5230 W. Portneuf Road
Inkom, ID 83245

Larry Echohawk
Attorney General
Statehouse, Room 210
Boise, Id 83720

A. Rene' Martin
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Jay and Tara Scoffield
5195 W. Portneuf Road
Inkom, ID 83245

Grace Palmer
5140 Cole Street
Chubbuck, ID 83202

Peter C. Monson
U.S. Attorney
Land & Natural Resources Div.
Indian Resources Section
P.O. box 44378
Washington, D.C. 20026

A handwritten signature in dark ink, appearing to read "Peter C. Monson", is written over a horizontal line.

Warranty Deed

This Indenture, Made this 19th day of November in the year of our Lord one Thousand Nine Hundred and Twenty-seven between Samuel J. Palmer and Nora I. Palmer, his wife of Bannock County of Idaho, the parties of the first part, and Hyrum Martin Palmer of Bannock County of Idaho, the party of the second part.

WITNESSETH That the said party 1st of the first part, for and in consideration of the sum of

Dollars,

lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged and for other good and valuable considerations by these presents, Grant, Bargain, Sell and Convey and Confirm unto the said party of the second part, and to his heirs and assigns forever: All that certain lot, piece or parcel of land situate, lying and being in the County of Bannock, State of Idaho, bounded and more particularly described as follows, to-wit:

The Southwest Quarter of the Southwest Quarter of Section Twenty-four; and the southeast quarter of the southeast quarter of Section Twenty-three; in Township Seven (7) South, Range Thirty-Five (35) East of the Boise Meridian, and containing 80 acres, more or less. Together with all water, water rights, privileges and franchises belonging to or with the said lands, or any part or parcel thereof, for the irrigation of the same or for domestic or culinary purposes thereon, and all dams, ditches, flumes, reservoirs, aqueducts, or other works used for the storage, diversion or distribution of any such waters on or in conveying the same to, upon or over the said lands, or any part or parcel thereof.

Together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or otherwise appertaining and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, and to his heirs and assigns forever. And the said party of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, and to his heirs and assigns against the said party of the first part and their heirs, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals, and the said party of the second part has hereunto set his hand and seal, this 19th day of November 1927.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Paul Bickling, Notary Public, State of Idaho, County of Bannock, in and for said County and State, personally appeared: Samuel J. Palmer and Nora I. Palmer.

STATE OF IDAHO, County of Bannock, On this 19th day of November, 1927, before me, Paul Bickling, Notary Public, in and for said County and State, personally appeared: Samuel J. Palmer and Nora I. Palmer, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Paul Bickling, Notary Public, State of Idaho, County of Bannock, in and for said County and State, personally appeared: Samuel J. Palmer and Nora I. Palmer.

On this 19th day of November, 1927, before me, Paul Bickling, Notary Public, in and for said County and State, personally appeared: Samuel J. Palmer and Nora I. Palmer, his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

Paul Bickling, Notary Public, State of Idaho, County of Bannock, in and for said County and State, personally appeared: Samuel J. Palmer and Nora I. Palmer.

Thomas J. Holmes
JONES, CHRISTENSEN, JORGENSEN, ROBISON,
HOLMES and ROBISON, Chartered
Attorneys at Law
P. O. Box 967
405 W. Whitman
Pocatello, Idaho 83204
(208) 232-5911

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 Drainage Basin)
Water System,)

Case No. 39576

and

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

Case No. 41798

AFFIDAVIT OF
THERON J. SMITH

Petitioner,)

vs.)

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.)

THERON J. SMITH and CARMA B.)
SMITH, husband and wife,)

Plaintiffs,)

vs.)

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)

single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)
and wife; KEITH HIGGINSON, director)
of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
)
)
Defendants.)
)

STATE OF IDAHO)
 :SS
County of Bannock)

Theron J. Smith, being first duly sworn states:

1. He is a resident of Bannock County, Idaho, with personal knowledge and competent to testify as to the facts set forth below.

2. Attached to this Affidavit as Exhibit "A" is a map prepared by me. On the map I have labeled my well, which was drilled in 1974, the Palmer well, which was drilled in approximately 1980 and the Croxall well. I have no personal knowledge of the Croxall drilling date, but I understand from reading the Deposition of Jeanne Croxall in Bannock County Case No. 41456-C that their well was redrilled in approximately 1961.

3. I have put a separate key to the map indicating the description of points B through I and points, X, Y and Z.

4. When I moved out here in 1968, Palmer's water ran from the cistern through points A, B, C, D and E. We hooked on with new pipe at point C and went to point I to the house and to points G, H and F to cattle water troughs.

5. In 1968, water also ran to the Palmer house from point D and from the cinder block barn and point Z to the Croxall home and then under the road from Croxall's home to what is now the Scoffield trailer, but which, at that time, was owned by Sheryl Wheeler and later sold to her sister Cindy Mumme. In 1976 there was a break in the line between the Croxall home and Cindy Mumme's trailer at point X on the map.

7. It is my understanding that at that time the Mumme trailer was being supplied water from the Croxall well and also had the ability to be supplied with water from the cistern.

8. As a result of the 1976 incident, the cistern water was shut off at point Z, outside of the barn and no cistern water ran from the point Z to the Croxall home or to the Scoffield trailer. The sole source of water at that point for the Scoffield trailer, then owned by Cindy Mumme, was the Croxall well.

9. After the pipe break in 1976 and shutting off of the water to the Croxall home at point Z, I was still able to get water from the cistern for domestic use and for the corrals.

10. After the 1976 incident, the water still ran the same as set out in paragraph 4 above, except that no water ran from the cinder block barn and point Z through the Croxall home to the trailer.

11. In 1984, I put in a new one inch plastic pipe from point B down through points C, D, E, and over to F. When I put

in this new pipe, it completely eliminated water running to Palmer's home from point D and it also eliminated water running over to my house from point C to point I.

12. I still had cistern water to my house, however, because of the loop, and so in 1984 the cistern water ran from the cistern through point B, C, D, E and over to F and then back up to G, H and I. There was no water running from point I to point C.

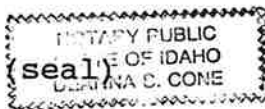
13. I drilled my domestic well in 1974.

14. In 1983, I installed a pipe at point Y between the cistern line and Cindy Mumme's trailer, which is now referred to as the Scoffield trailer.

DATED this 16 day of December, 1991.


Theron J. Smith

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 16th day of December, 1991.




NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 10-8-93

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing AFFIDAVIT OF THERON J. SMITH was mailed this ____ day of December, 1991, in an envelope with sufficient first-class postage prepaid thereon to the following:

Reed W. Larson
Attorney at Law
P. O. Box 1391
Pocatello, Idaho 83204

Isaac McDougall
Attorney at Law
P. O. Box 4048
Pocatello, Idaho 83205

Billie Jeanne Croxall
5140 Cole
Chubbuck, Idaho 83202

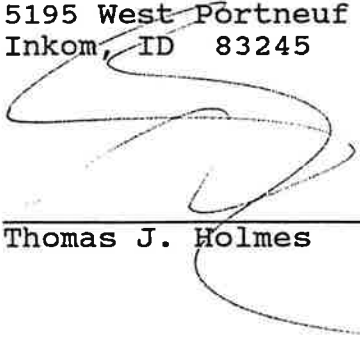
Grace Palmer
5140 Cole
Chubbuck, Idaho 83202

Jim Jones
Attorney General
Statehouse, Room 210
Boise, Idaho 83720

Peter C. Monson
U. S. Attorney
Land & Natural Resources Div.
Indian Resources Section
P. O. Box 44378
Washington, D. C. 20026

A. Lynne Krogh-Hampe
Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

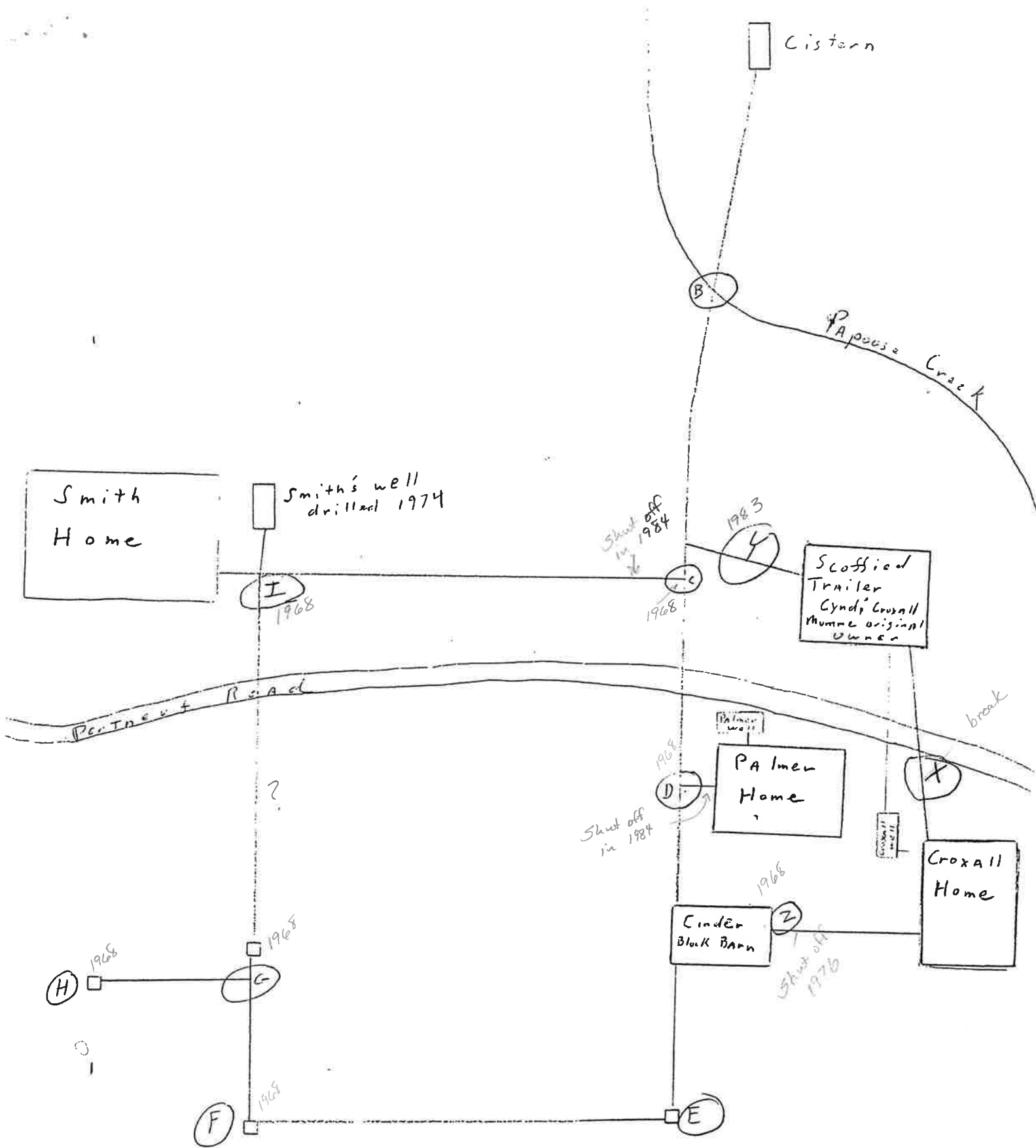
Jay and Tara Scoffield
5195 West Portneuf Road
Inkom, ID 83245



Thomas J. Holmes

MAP KEY

- B - Start of new plastic pipe put in by Smith in 1984 and which ran from point B to point C, D, E and F. This plastic pipe completely cut Palmers off from the cistern water and also eliminated the line running from point C to point I. From this time on, Smith's water ran from point B through C, D, E, F, G, H and I, making a loop, but not running between points C and I.
- C - Point where Smith hooked on to the cistern line in 1968 to get cistern water.
- D - Connection from the cistern line to Palmer's home. Point E, F, G and H water troughs originally used by Palmer, but purchased by Smith with the ground in 1978.
- E - Water troughs originally used by Palmer but purchased by Smith with the ground in 1978.
- I - Point of connection into Smith's home in 1968. In 1974 a well was drilled for Smith and tied into the same line so that cistern water could supply Smith's home and Smith's well pump could also supply well water to cistern and Palmer's home.
- X - Break in line from Croxall's house to Scoffield's trailer (then owned by Cindy Mumme) - 1976.
- Y - Line from cistern to Scoffield's trailer put in 1983 by Smith for Cindy Mumme.
- Z - Cistern water disconnected from barn to Croxall's home - 1976.



□ = Troughs used by Smith

RECEIVED
MAR 24 1992

THERON and CARMA SMITH
5137 W. Portneuf Road
Inkom, ID 83245
(208) 775-3604

Department of Water Resources

March 22, 1992

CLERK OF THE COURT
TWIN FALLS COUNTY COURTHOUSE
P O BOX 126
TWIN FALLS ID 83303

RE: Smith v. Scoffield, et al.
Case Nos. 39576
41798

Dear Clerk:

Enclosed for filing in the above-referenced matter, please find Plaintiffs' Objections to Director's Report.

Sincerely,


Theron J. Smith

TJS/dsc
smith03.221

Enclosure

cc: Reed Larson
Billie Jeanne Croxall
Grace Palmer
Peter C. Monson
A. Lynne Krogh-Hampe
Jay and Tara Scoffield

Theron J. Smith, Pro se
5137 W. Portneuf Road
Inkom, ID 83245
(208) 775-3604

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 Drainage Basin)
Water System,)

Case No. 39576

and

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

Case No. 41798

Petitioner,)

vs.)

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.)

PLAINTIFFS' OBJECTIONS
TO DIRECTOR'S REPORT

THERON J. SMITH and CARMA B.)
SMITH, husband and wife,)

Plaintiffs,)

vs.)

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)
single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)

and wife; KEITH HIGGINSON, director)
of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)

COMES NOW, plaintiffs, Theron J. Smith and Carma B. Smith,
and do make the following objections to the Director's Report
dated December 31, 1991:

1. Objection to No. 12. Plaintiffs object to disallowing
Claim No. 29-04064A. One acre of this property has been in
pasture from 1968 to 1989, to my personal knowledge. I have
pastured cows, sheep and horses there from 1978 through 1989.
See Affidavit of Wayne Taysom. There were trees and pasture
being irrigated in the year 1956, as shown by attached aerial
photo taken October 6, 1956 by the ASCS office. Affidavits of
Clayton Koger, Don Gunter, Morris Dayley, LeRoy Bartu and Marvin
Mumme, all of whom were well acquainted with the property,
indicate that Claim No. 29-04064A and Claim No. 29-04064D is
where the majority of the water from Papoose has been used. The
reason that it showed little, if any use, was due to fights over
the water with Scoffields. There was a lack of water for
irrigating my pasture, due to Scoffields controlling the water,
and that added with the expenses involved in planting and
harvesting a crop that was not watered adequately was not
economically feasible, nor worth getting shot over.

2. Objection to No. 13. Plaintiffs object to the conclusion of Claim No. 29-04064B. In 1960 Martin Palmer put in a pipeline with a head box in Papoose Creek south of the property owned by Scoffields. It ran from there to the north across Portneuf Road. The first opening on this line was just north of the Portneuf Road where it still exists. In 1970, an opener was welded to the mainline south of the road to provide water to irrigate the property now known as the Scoffield property. In 1961 Martin bought a new tractor, sold his horses and used all of the water on property north of the road. No water was used on the Scoffield property from 1960 to 1970 and therefore the priority date should be changed from 1927 to 1970. The 1956 and 1968 ASCS maps show sagebrush and no signs of irrigation on this property. Affidavits of Morris Dayley, Don Gunter and Clayton Koger also indicate a 1970-71 priority date should be in effect.

3. Objection to No. 14. Plaintiffs object to the conclusion of Claim No. 29-04064C. The attached 1956 ASCS aerial photo shows this property in sagebrush with no signs of irrigation. A well was drilled in 1959 to provide both culinary and irrigation water. My observations since 1968 are that this property never used Papoose water for irrigation before 1982 as the pipe leading from the mainline to this property was installed after that time. Affidavits of Don Gunter, Morris Dayley, Marvin

Mumme and LeRoy Bartu support my personal observations.
Therefore, priority date of this property should be 1982.

4. Objection to No. 20. Plaintiffs object to the conclusion of Claim No. 29-10103. There is insufficient water to meet the needs of claims 29-10011A and 29-10011B which are senior rights. The 1970 priority date also should be dropped back to 1983, as no water was delivered to this residence between the years 1976 and 1983, as is verified by testimony of Mrs. Croxall on pages 43 and 44 of her deposition taken May 23, 1991 and Affidavit of Marvin Mumme. The plaintiff, Theron Smith, personally disconnected the water in 1976 and rehooked it in 1983.

Respectfully submitted,

DATED this 22 day of March, 1992.


Theron J. Smith

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFFS' OBJECTIONS TO DIRECTOR'S REPORT mailed this 22 day of March, 1992, in an envelope with sufficient first-class postage prepaid thereon to the following:

Reed W. Larson
Attorney at Law
P. O. Box 1391
Pocatello, Idaho 83204

Jim Jones
Attorney General
Statehouse, Room 210
Boise, ID 83720

Billie Jeanne Croxall
5140 Cole
Chubbuck, Idaho 83202

Grace Palmer
5140 Cole
Chubbuck, Idaho 83202

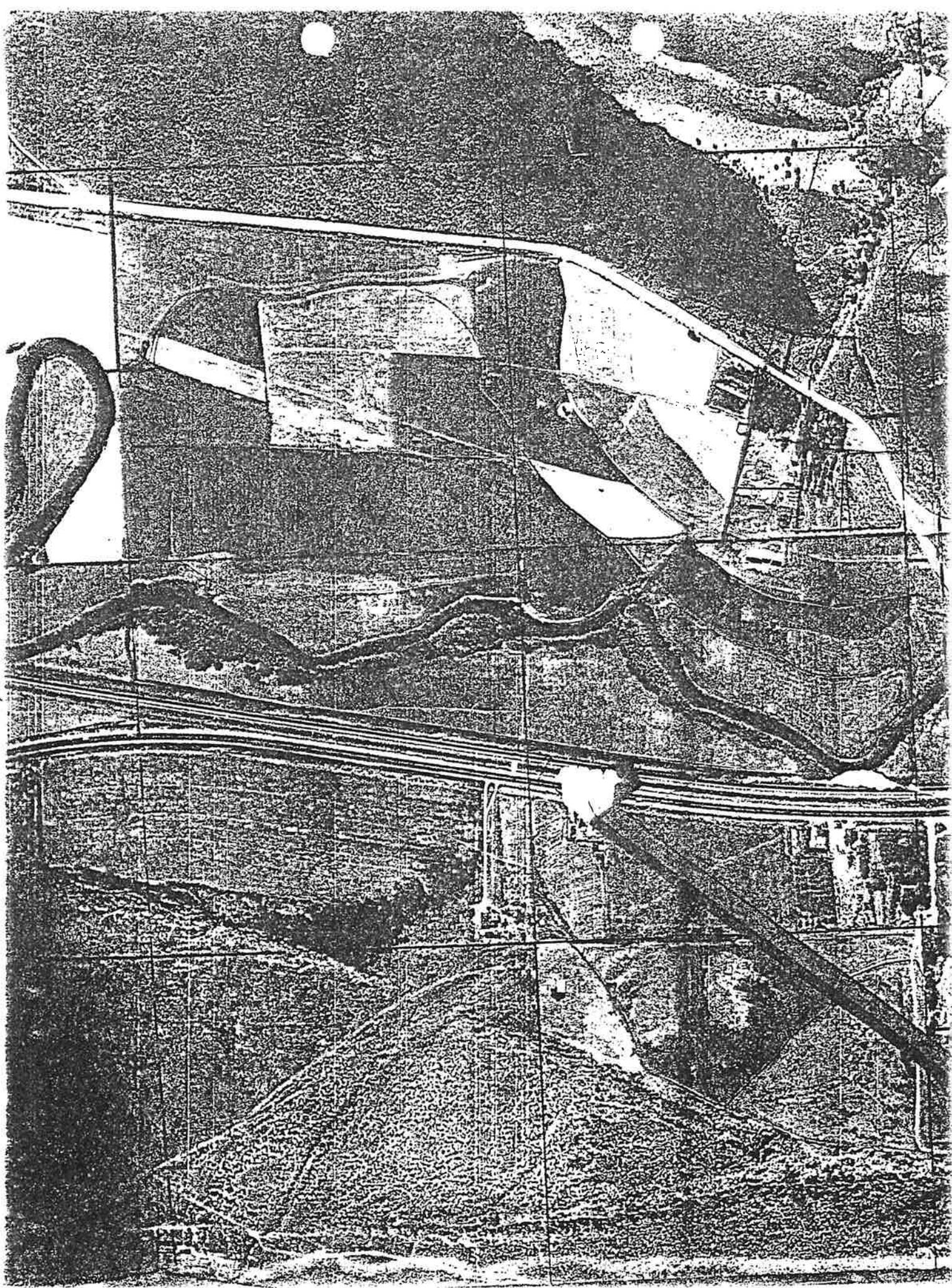
Peter C. Monson
U. S. Attorney
Land & Natural Resources Div.
Indian Resources Section
P. O. Box 44378
Washington, D. C. 20026

A. Lynne Krogh-Hampe
Dept. of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Jay and Tara Scoffield
5195 West Portneuf Road
Inkom, ID 83245


Theron J. Smith

F



Pro Se

AFFIDAVIT OF LeROY BARTU -, Page 1
dsc smith03.171

of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)

STATE OF IDAHO)
:SS
County of Bannock)

LeRoy Bartu, being first duly sworn states:

1. I was well acquainted with the Croxalls, Palmers and Wheelers as I worked with Stan Croxall and Marvin Wheeler and I was on the property often around 1970.

2. The water was basically used on the plots of ground on the Director's Report known as the Thompson, Palmer and Smith's corrals. Mr. Palmer started irrigating what is shown as the Scoffield property around 1970 or 1971 with any extra water.

3. The Palmers and Smiths used water for their yards continuously by means of garden hoses piped from the mainline from Papoose.

4. The Croxalls irrigated their property from their well and pumped water across the road to Wheeler's trailer, now shown as Scoffield's mobile home.

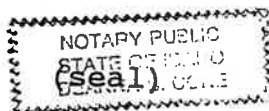
5. The cistern water was used by Palmers and Smiths exclusively.

DATED this 17th day of March, 1992.



LeRoy Bartu

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 17th day of March, 1992.



Stone
NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 1993

Theron Smith
5137 W. Portneuf Road
Inkom, Idaho 83245

Pro Se

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 Drainage Basin
Water System,

Case No. 39576

and

Case No. 41798

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

AFFIDAVIT OF
MORRIS DAYLEY

Petitioner,

vs.

United States; State of Idaho; and
all unknown claimants to the use
of water from the Snake River
Drainage Basin Water System,

Respondents.

THERON J. SMITH and CARMA B.
SMITH, husband and wife,

Plaintiffs,

vs.

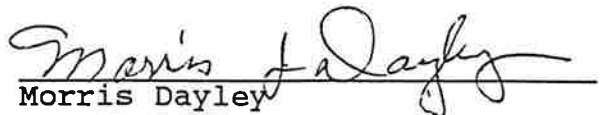
JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a
single person; BILLIE JEANNE
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband
and wife; KEITH HIGGINSON, director)

of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)
_____)

STATE OF IDAHO)
:SS
County of Bannock)

Morris Dayley, being first duly sworn states:

1. I farmed the property owned by Martin Palmer in 1966.
 2. At that time no land south of the Portneuf Road was irrigated.
 3. The land was covered with sagebrush and there were no means to use water on it.
 4. The water was piped to the north of the road, where it was used on the grove of trees and pasture to the east of his house, his orchard and yard.
 5. I also recall no water was used by Stan Croxall.
- DATED this 17 day of ^{MARCH} ~~January~~, 1992.


Morris Dayley

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 17 day of ~~January~~ ^{MARCH}, 1992.

(seal)


NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 6 8 93

Theron Smith
5137 W. Portneuf Road
Inkom, Idaho 83245

Pro Se

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 Drainage Basin)
Water System,)

Case No. 39576

and

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

Case No. 41798

AFFIDAVIT OF
DON GUNTER

Petitioner,)

vs.)

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.)

THERON J. SMITH and CARMA B.)
SMITH, husband and wife,)

Plaintiffs,)

vs.)

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)
single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)
and wife; KEITH HIGGINSON, director)

of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)

STATE OF IDAHO)
:SS
County of Bannock)

Don Gunter, being first duly sworn states:

1. I farmed the property owned by Martin Palmer in 1967.
2. As to the water coming from Papoose Creek, all of it ran through a pipe that was used north of the Portneuf Road on his orchard, around the house and a grove of trees and a pasture to the east of his house.
3. There were no means or attempts to water south of the road, as it was covered with sagebrush and there were no openers on the pipe south of the road.
4. No water was used by Stan Croxall.

DATED this 3-17-92 day of ~~January~~, 1992.

Don Gunter
Don Gunter

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 17th day of ~~January~~, 1992.

MARCH

(seal)

Boone
NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 10-8-93

Theron Smith
5137 W. Portneuf Road
Inkom, ID 83245

Pro Se

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 Drainage Basin)
Water System,)

Case No. 39576

and

Case No. 41798

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

AFFIDAVIT OF
CLAYTON KOGER

Petitioner,)

vs.)

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.)

THERON J. SMITH and CARMA B.)
SMITH, husband and wife,)

Plaintiffs,)

vs.)

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)
single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)

and wife; KEITH HIGGINSON, director)
of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
)

Defendants.)
)
)

STATE OF IDAHO)
:SS
County of Bannock)

Clayton Koger, being first duly sworn states:

1. I was called out to the Palmer residence after a flash flood to divert Papoose Creek in 1966.

2. I built the large dike that is there at this time.

3. The only water that passed north of the dike was piped down across the Portneuf Road to be used on the Palmer property north of the road.

4. The property south of the road was covered with sagebrush and showed no sign of every being farmed or irrigated by man.

DATED this 17 day of ^{MARCH}~~January~~, 1992.


Clayton Koger

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 17 day of ^{MARCH}~~January~~, 1992.


NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 6-8-93



Pro Se

In Re the General Adjudication of)
Rights to the Use of Water from)
the Snake River Drainage Basin)
Water System,)

and

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

AFFIDAVIT OF
MARVIN MUMME

Petitioner,

vs.

United States; State of Idaho; and)
all unknown claimants to the use)
of water from the Snake River)
Drainage Basin Water System,)

Respondents.

THERON J. SMITH and CARMA B.
SMITH, husband and wife,

Plaintiffs,

VS.

JAY SCOFFIELD and TARA SCOFFIELD,)
husband and wife; GRACE PALMER, a)
single person; BILLIE JEANNE)
CROXALL, a single person; VIRGIL T.)
GERMER and LAURA GERMER, husband)
and wife; KEITH HIGGINSON, director)

of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)

STATE OF IDAHO)
:SS
County of Bannock)

Marvin Mumme, being first duly sworn states:

1. I lived in the trailer that is shown on the Director's Report as Exhibit "A" from June 1973 to Aug 79.

2. While I was there, a water priority system was used:

A. The property shown as Thompson, Palmer and Smith's corrals was owned by the Palmers and had first rights.

B. The Smiths had a one and one-half (1½) inch hose hooked to the pipeline which delivered water to their yard, orchard and garden. This ran continuously as did the yard water going to Palmer's yard.

C. The Matthews, Croxall property used no water from Papoose. All of their culinary and irrigation water was pumped from their well and they pumped water to us as well.

D. The property south of Scoffield's mobile home was owned by Stan Croxall at that time and was next in right.

E. The property north of Scoffield's mobile home was last in right.

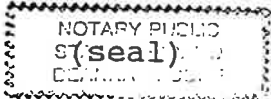
F. The water was not used on these properties was overflowed to the Germers.

3. The cistern water was used by the Palmers and Smiths. Smiths' well was used as a backup system, but Palmers' water sometimes still froze up in the winter.

DATED this 19 day of March, 1992.


Marvin Mumme

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 19th day of March, 1992.




NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 10.8.93

Pro Se

AFFIDAVIT OF WAYNE TAYSOM - Page 1
dsc smith01.174

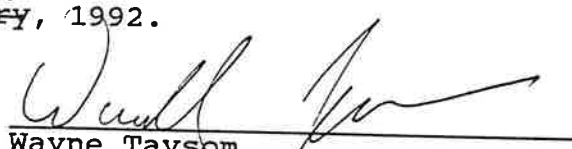
of the Idaho Department of Water
Resources, and JOHN DOES I, II,
III and IV,
Defendants.

STATE OF IDAHO)
 :SS
County of Bannock)

Wayne Taysom, being first duly sworn states:

1. The land to the east of the Palmer home and orchard was irrigated pasture in 1987, as I pastured my horse there along with some of Smith's horses.

DATED this 17th day of ^{March}~~January~~, 1992.


Wayne Taysom

SUBSCRIBED AND SWORN TO, before me, the undersigned Notary Public, this 17th day of ^{March}~~January~~, 1992.


NOTARY PUBLIC - STATE OF IDAHO
Commission Expires: 4-13-92

(seal)

RECEIVED
MAR 23 1992

Department of Water Resources

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,

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

Petitioner,

vs.

United States, State of Idaho, and all
unknown claimants to the use of water
from the Snake River Drainage Basin
Water System,

Respondents.

THERON J. SMITH and CARMA B. SMITH,
husband and wife,

Plaintiffs,

vs.

JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a single
person; VIRGIL T. GERMER and LAURA GERMER,
husband and wife; KEITH HIGGINSON, Director
of the Idaho Department of Water Resources;
and JOHN DOES I, II, III and IV,

Defendants.

Civil Case No.
39576 and
Civil Case No.
41798

NOTICE OF FILING
OBJECTION TO
THE DIRECTORS
REPORT

Objection Administration;

#10. Beneficial use of unnamed spring for domestic use dates back to 1945 when Mr. Palmer piped cistern water into his home he continued to use the cistern water in his home until Mr. Palmer drilled a well in 1980. prior to construction of the cistern Mr. Palmer used water from the unnamed spring and papoose creek which ran right behind his home at 5208 W. Portneuf Rd. from 1927.

Mr. Palmer began sharing the cistern water with his kids in 1959 until they drilled a well, and with Mr. Smith in 1969 to water Mr. Smith's stock with the understanding water to Mr. Palmer's home was first priority and Smith was not to empty cistern. EXHIBIT # D

Mr. Palmer legally retained water rights to the cistern until those rights were conveyed with sale of property that the cistern sits on.

the Scoffields are not objecting to Smith having a water right to the cistern, only that Palmers domestic use water right predates Smiths stock and domestic use.

Palmers domestic water right was conveyed to the property the Scoffields now own, which places Scoffields domestic water first priority according to first in time- first in line.

#13. Water from papoose creek is used to irrigate 3.8 acres not 2(two) as stated in Directors report. Irrigation of 3.8 acres is supported by exhibit #A.

#16. Water claim #29-04067 from papoose creek should be voided or reduced as the Germers also have a water claim from the Portneuf river that includes this same 11(eleven) acre piece of property.

The water from Papoose creek when used for claim #29-04064B, #29-04064C, #29-04064D, #29-10010 does not leave enough water to support this claim. That is why when Germers bought that piece of property from the Palmers ALL water rights from Papoose creek were purposely withheld from the deed to the land. Exhibit #C

#19. Claim #29-10011B is a double claim as the Smiths have had a well that has served as their domestic water since 1969. This Claim should be denied considering the Smiths only used the cistern less than a year in 1969 and have not used the cistern water for their home since that time, their well has been their sole domestic water.

#20. Please see the answer to #10.

CERTIFICATE OF MAILING

I hereby certify that I deposited into the United States Mail a true and correct copy of the foregoing Objection to the Directors report to the following.

Reed W. Larson
Attorney at law
P.O. Box 1391
Pocatello, Idaho
83204

Billie Jean Croxall
5140 Cole
Chubbuck, Idaho
83202

Grace Palmer
5140 Cole
Chubbuck, Idaho
83202

Peter C. Monson
U.S. Attorney
Land & Natural Res. Div.
Indian Resources Section
P.O. Box 44378
Washington, D.C. 20026

Jim Jones
Attorney General
Statehouse, room 210
Boise, Idaho 83720

Theron & Carma Smith
5137 W. Portneuf Rd.
Inkom, Idaho 83245

A. Lynne Krogh-Hampe
Dept. of water Resources
1301 N. Orchard Street
Boise, Idaho 83720

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho
83303-2707

Mailed this 18 day of March, 1992 in an envelope with sufficient first class postage prepaid.

Tara Scoffield
Tara Scoffield

A hand-drawn map of a farm property. The map is divided into three main sections labeled 'Pasture A', 'Pasture B', and 'Pasture C'. A dashed line represents a 'Creek' running along the bottom and right sides. A 'Hill side' is indicated on the left. Two homes are marked: 'Smith home' (a rectangle) and 'Scottfield home' (a rectangle). A 'cistern' is marked with a small square. Dimensions are given for various boundaries: 408' for the left boundary, 150' for the bottom-left boundary of Pasture B, 218' for the bottom boundary of Pasture B, 100' for the bottom boundary of Pasture A, and 605' for the right boundary of Pasture A. The text 'Pasture A', 'Pasture B', and 'Pasture C' are written in large, stylized letters. The text 'Hill side' is written vertically. The text 'Creek' is written horizontally. The text 'Smith home' and 'Scottfield home' are written inside their respective rectangles. The text 'cistern' is written next to the small square. The text 'Pasture A', 'Pasture B', and 'Pasture C' are written in large, stylized letters. The text 'Hill side' is written vertically. The text 'Creek' is written horizontally. The text 'Smith home' and 'Scottfield home' are written inside their respective rectangles. The text 'cistern' is written next to the small square.

* Shaded area
measure $= 500\text{ ft} \times 150\text{ ft}$

A-42,253 sq ft = .97 AC

→ B 32.700 s₂ft = .75 ft

$$C_{90,000} S_2 f^+ = 2.07 \text{ A.}$$

Total Irrigated 3.79a.

2



SE 1/6 corner 544'

874

II 27

61

14

52.66%

-60665

M. L. 506.5

271.40'

$\in \frac{1}{11}$ -convex

the grantors, do hereby grant, bargain, sell and convey unto
VIRGIL T. GERMER and LAURA B. GERMER, husband and wife

the grantees, the following described premises, in Bannock County Idaho, to wit:

Commencing at the Southeast 1/16 corner of Section 23,
Township 7 South, Range 35 E.B.M., Bannock County,
Idaho, and running thence East along the 1/16 line 846
feet to a point; thence at right angles North to the center-
line of the Portneuf River; thence in a Northwesterly direction
following the centerline of said Portneuf River to a point that
is 650 feet, more or less, North of the Southeast 1/16 corner;
thence South along the said 1/16 line 650 feet, more or less,
to the Point of Beginning...

Commencing at the Southeast 1/16 corner of Section 23,
Township 7 South, Range 35 E.B.M., Bannock County,
Idaho, and running thence East 392 feet to a point; thence
South 25 feet; thence at right angles West a distance of
392 feet; thence North 25 feet to the Point of Beginning...

GRANTOR RESERVES ALL WATER RIGHTS FROM PAPOOSE CREEK.
GRANTEE IS ENTITLED TO ALL SURPLUS WATER FROM PAPOOSE
CREEK.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees,
their heirs and assigns forever. And the said Grantors do hereby covenant to and
with the said Grantees, that they are the owners in fee simple of said premises; that they are free
from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: 12-17-70

Hyrum M. Palmer
Grace Palmer

STATE OF IDAHO, COUNTY OF Bannock
On this 1st day of December 1970,
before me, a notary public in and for said State, personally
appeared

Hyrum M. Palmer and Grace Palmer,
husband and wife

known to me to be the same persons are
subscribed to the within instrument, and acknowledged to
me that they executed the same.

Shirley E. Barr
Notary Public
Residing at Pocatello, Idaho
Comm. Expires 7-15-71

NO. 475246
RECORDED AT REQUEST OF
Am. Land Title Co.
DEC 24 35 PM '70
OFFICIAL RECORDS BK. NO. 237
BANNOCK COUNTY, IDAHO
CLERK OF COUNTY RECORDER
FEE \$1.00 DEPUTY

1 IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
2 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

3 THERON J. SMITH and CARMA B.)
4 SMITH, husband and wife,)
5 Plaintiffs,)

6 vs.)

Case No. 41456-C

7 R. JAY SCOFFIELD and TARA)
8 SCOFFIELD, husband and wife,)
9 Defendants.)

10

11

12

ORAL DEPOSITION OF JEANNE CROXALL

Taken on May 23, 1991

13

14

15 APPEARANCES:

16

For the Plaintiffs:

THOMAS J. HOLMES
Jones, Christensen, Jorgensen,
Robison, Holmes & Robison
Attorneys at Law
405 West Whitman
Pocatello, Idaho 83204

17

18

19

20

For the Defendants:
(Pro Se)

TARA SCOFFIELD
5195 West Portneuf
Inkom, Idaho 83245

21

22

23

Also Present;

Theron J. Smith
Virgil Germer

24

25

ORIGINAL

I N D E X

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1 BE IT REMEMBERED that on the 23rd day of May,
2 1991, the deposition of JEANNE CROXALL, produced as a witness
3 at the instance of the Defendants in the above-entitled action
4 now pending in the above-named court, was taken before Susan
5 P. Israel, CSR and notary public, State of Idaho, at the
6 Bannock County Courthouse, Pocatello, Idaho.

7
8 WHEREUPON, the following proceedings were had:

9
10 JEANNE CROXALL,

11 called as a witness at the instance of the Defendants, having
12 been first duly sworn, was examined and testified as follows:

13 EXAMINATION

14 BY MS. SCOFFIELD:

15 Q Would you please state your name and current
16 address for the record?

17 A Jeanne Croxall, 5140 Cole, Chubbuck, Idaho, 83202.

18 Q And your previous address to that?

19 A Was 5330 West Portneuf Road -- I said 53, I meant
20 5230.

21 Q Did you ever own the property the Scoffields own
22 now?

23 A Yes.

24 Q Was that the small parcel where the trailer sits
25 or was that the large six acres?

1 A No, it was 7 acres that we owned.

2 Q And does the cistern sit on the 7 acres or does it
3 sit on the smaller portion?

4 A Well, it set on the 7 acres that we owned.

5 Q And when did you acquire that property?

6 A Well, we purchased it from my dad by contract in
7 1971. And we didn't go through a title company. He drew up
8 the deed himself and he held the deed until we got it paid
9 for, at which time he came in himself and had it recorded and
10 came and give us the deed. And I don't know the year, but it
11 should have been around 1974 that we had it paid for.

12 Q Can you tell me what properties that the cistern
13 water was used on?

14 A Well, in the beginning when we moved out there, my
15 father hooked -- he had the cistern water to his house with
16 the pipe going on to his barn. And then after we moved out
17 there, we bought the acre there at 5230 West Portneuf Road in
18 1958, my father hooked us up to the cistern. And then the
19 next year we drilled a well, at which time he hooked -- he
20 himself, my father, hooked us up, the cistern water, to our
21 pressure tank. That was in 1959. And then maybe I should
22 say, a year later our well went dry, and so we had to use the
23 cistern water as it was hooked up until we could have it
24 redrilled, which was about a year later. But we left it
25 hooked up like that. It was plumbed into our shop and it was

1 hooked into our pressure tank where we had the valve that we
2 could shut it on and off with.

3 Q So in 1971 when you bought the property, the
4 cistern was on the property, the larger parcel?

5 A Yes, it was on the property. It was also hooked
6 to our pressure tank in our -- the cistern was also hooked to
7 our pressure tank. But at that time my daughter -- well, my
8 father gave her an acre across -- it wasn't quite an acre,
9 across the road, and she connected a pipe to our pressure
10 tank. So the cistern actually was connected to the trailer
11 house by opening the valves, whenever she moved out there and
12 put the trailer house in, and I don't know, it was probably
13 1960, something like that.

14 Q And then when you sold the property to Payne, was
15 the cistern water ever excluded from that or the cistern
16 itself?

17 A No, it never was. He understood when he bought
18 the property that he was getting the cistern as his property.
19 It was so stated to him. I don't know if it was in the
20 contract or not. It said everything that is on the property
21 stays, is his. It did say that in the contract.

22 Q And when was the cistern built and by whom?

23 A It was built in 1945 by my father, and we helped
24 him, me and my brother and sisters.

25 Q And who built and installed the catch box from the

1 spring and the pipe that goes into the cistern?

2 A My father did in 1945, at which time he put the
3 water from the cistern into his house.

4 Q Did you have any agreement with Mr. Smith
5 regarding the use of the cistern water?

6 A We didn't at all. My mother was hooked up to it
7 until she drilled a well. In 1980 she drilled her well.

8 Q And did you ever convey or imply any cistern
9 rights to Mr. Smith during the time you owned the property?

10 A No, we did not.

11 Q And the time you owned the property was from 1971
12 until when?

13 A Until we sold it to Mr. Payne. I can't remember
14 the year. It was after my husband got so sick he couldn't
15 work it anymore. Probably maybe '85. I can't remember the
16 year exactly or exact date.

17 Q Can you tell us about what water lines Mr. Smith
18 has installed to take water from the cistern and from the
19 spring, from the creek, from Papoose Creek specifically?

20 A What water lines that's there?

21 Q Yes.

22 A Well, my father put in -- this isn't about the
23 water, is it? My father put in the water line for the
24 irrigation water out of the canyon in about 1960. I know it
25 was -- my kids were pretty big when he done it.

1 Q Was the Parcel No. 1 which the Scoffields now own,
2 the larger 7-acre parcel, was that ever sold to Martin Mumme?

3 A Oh, no, never.

4 MR. SMITH: And it's Marvin Mumme.

5 MS. SCOFFIELD: Marvin Mumme, excuse me.

6 A He never owned anything except that little -- it's
7 not quite an acre that he bought from my other daughter who
8 lives in Idaho Falls.

9 Q (By Ms. Scoffield) Is it true that you allowed
10 Mr. Smith to use the cistern water so long as he did not run
11 it dry?

12 A My mother told him that he could water the cows
13 with it, yes, she did.

14 Q And was it ever known to you that Mr. Smith ever
15 drained the cistern?

16 A Oh, yeah, frequently, especially when my daughter
17 lived there.

18 Q And have you ever drained the cistern?

19 A Well, I can't say that I haven't because I might
20 have.

21 Q How does that compare to how Mr. Smith has drained
22 it, how many times?

23 A We only drained it maybe a few times while we were
24 hooked to it through the years. I don't know, maybe I should
25 say in 1976 my husband broke the pipe. The pipe, as far as I

1 know, when I sold my property last fall, the pipe that hooked
2 me to the cistern was still in the ground, and Mr. Matthews
3 and Mr. Thompson, unless they removed that pipe, it is still
4 there.

5 Q Has Mr. Smith ever harassed you about the water
6 even after you've sold the property located at 5230 West
7 Portneuf and moved?

8 A Yes, he was going to take it away from me, he was
9 going to take Harold's water away from him. We didn't deserve
10 it.

11 Q Has Mr. Smith ever been eager to share the water?

12 A No, not really. Well, I should say this to keep
13 the facts straight. All the while that I and my husband owned
14 the property that you now own, Mrs. Scoffield now owns, never
15 once did Mr. Smith say anything about the water or how we used
16 it. Not once can I ever recall did he ever say anything about
17 the water. It was only after we sold the property to Mr.
18 Payne.

19 Q And to the best of your knowledge when did Mr.
20 Smith acquire water rights from Papoose Creek?

21 A To the best of my knowledge the only water right
22 he acquired from Papoose Creek was in 1978 when he purchased
23 1.8 acres of land from my mother. Until then, as I understood
24 it, he had no water rights whatsoever to the creek.

25 Q Have the current owners of your previous property

1 located at 5230 West Portneuf Road ever called you concerning
2 water and water rights?

3 A Yes, yes, they have.

4 Q And can you expand on what they told you?

5 A Well, they were afraid that they were going to
6 take the water away from them.

7 Q Who's they?

8 A They didn't say a name really.

9 Q Okay.

10 A And I told them not to worry, that it was recorded
11 on my deed that I had 1.1 miners inches of water out of that
12 canyon.

13 Q Have you ever been contacted concerning Mr.
14 Scoffield making any improvements to the property that he
15 currently owns located at 5195, such as the removal of cars in
16 the creek ditch, dead fowl in the creek, and water pipes that
17 run through his property?

18 A I've never been contacted about it.

19 Q Mr. Germer or Mr. Smith have never come to you and
20 said that they can't take the cars out of there because the
21 valley will flood?

22 A Well, I myself would say that. If those old cars
23 and things -- see, before 1967 the creek ran in a different
24 direction than it did when we had a terrible flood in 1967, at
25 which time it left a foot of dirt around our property and my

1 mother's property. And we just took the tractor and scooped
2 the dirt away. But there for over a year or two hardly -- not
3 even grass would grow after this, and that's what deposited
4 all of those rocks down where they are now. I mean, it
5 sounded worse than thunder when the storm was -- actually not
6 even raining, when the flood came out of the canyon, there
7 wasn't rain at the time. But it changed the course of the
8 creek and deposited just tons and tons and tons of rock. And
9 the rocks that are around my property that I owned out there
10 that I sold to Matthews came down in that flood, and it took
11 tractors to move them and we made a fence around there in case
12 it flooded again, it would catch the debris and stop the water
13 from going into the house. But it just took out the -- it
14 just ruined it, just ruined the canyon, it left it nothing but
15 a rocky mess of debris.

16 Q Did you ever request for Mr. Germer to bury and
17 repair his water lines that run across the Scoffield property?

18 A Yes, we felt that they should be buried.

19 Q And was that ever done?

20 A I don't know.

21 Q Was that property ever surveyed to the best of
22 your knowledge?

23 A Well, I can't say. I thought, but I don't know,
24 that my father had it surveyed when he gave us the deed to it,
25 but I don't know this. I can't say for a fact that he did,

1 but maybe there's a record of it somewhere, I don't know.

2 Q And at that time that you did purchase the
3 property, you were under the assumption that the cistern was
4 on your property?

5 A The thought never even entered my mind that it
6 wasn't on it. And I asked my mother and she said the thought
7 never even entered her mind. But that's hearsay because she's
8 not here.

9 Q When was the fence installed around the property
10 and by whom, the Scoffield property located at 5195 West
11 Portneuf Road?

12 A Oh, that fence has been there for at least 50
13 years and it's been patched and repatched, but I can't even
14 remember when it was built. I remember when we had it as a
15 horse pasture, the property that the Scoffields now own, that
16 the gate was where Mr. Smith's house is now and I always
17 thought this was rather dumb because we would have to go from
18 my mother's house up around to where Mr. Smith's house is now
19 to get the horses out of the horse pasture. And after we
20 bought it, my husband did fix a gate where the present gate is
21 now by the mailboxes.

22 Q Can you give us --

23 A Or maybe my dad did before. But for years the
24 gate to the horse pasture was where Mr. Smith's house is now.

25 Q So we are assuming that your father put up the

1 fence, then?

2 A I don't know. I guess he did. It's been there as
3 long as I can remember.

4 Q Has anybody ever objected to those fence lines
5 previous to your --

6 A Never, not once have I ever known of anyone to
7 object.

8 Q The BLM did a survey approximately '87, 1988. Did
9 they ever advise you that the cistern wasn't on that property
10 up there?

11 A No. In '87 we didn't own the property.

12 Q Okay. To your knowledge did they ever?

13 A No, to my knowledge they never ever said that the
14 cistern was not -- was on their property.

15 Q Can you give us some insight about the vegetation
16 and the trees that grow around this cistern?

17 A Well, they're old trees, they've been there for
18 years and years and years and years and --

19 Q Did you ever have to clean roots out of the top of
20 the cistern from the tree?

21 A We had to clean out weeds and moss out of it all
22 the time, but I never -- I didn't clean it, my husband did
23 when we helped clean it.

24 Q And to the best of your knowledge did Mr. Smith
25 ever threaten to take all of the creek water from anyone?

1 A From Harold Payne after we sold him the ground.
2 As I understood, that was what the fight was over.

3 MS. SCOFFIELD: I'm done.

4 EXAMINATION

5 BY MR. HOLMES:

6 Q Mrs. Croxall, my name is Tom Holmes, I'm the
7 attorney for Mr. Smith.

8 And I would like you to -- we've talked about
9 pieces of ground and it gets very confusing as to what you're
10 talking about. Do you suppose you could just take this large
11 piece of paper in front of you and draw in, just sketch, and
12 all we're asking for is kind of the relationship of items to
13 items. So why don't you draw in the road, maybe figure out
14 which end is north. Let me tell you what I'm going to ask
15 you. I'm going to ask you to draw in where your house is,
16 your property --

17 A Let's just draw Portneuf Road something like -- it
18 comes around, comes up and goes this way (indicating), and I
19 think probably you put north over here (indicating), I don't
20 know.

21 Q That's fine.

22 A And here at the bend, the property that I owned
23 that I sold to Matthews was right here (indicating) -- well,
24 it came up to here (indicating) and then it came over like
25 this (indicating).

1 Q Now, when you say Matthews, when was that sale?

2 A Last fall in October.

3 Q So this was basically your house, then?

4 A Yes.

5 Q Could you just label in Croxall slash Matthews and
6 draw where your house is?

7 A It was about right here (indicating), something
8 like -- I don't know, I can't do this.

9 Q This is fine, you're doing exactly what we need.
10 Now, where was your mother's house in relation to
11 this ground?

12 A It was --

13 Q When I say her house, I really mean her property
14 and her house.

15 A It was like (indicating) and the property line
16 come down about like that (indicating).

17 Q Would you put Grace Palmer up in there?

18 A I haven't got this right. (Witness complies.)
19 She sold it to Mr. Thompson.

20 Q And then where is this 1.8 acres that Smith bought
21 from your folks?

22 A Here's the road (indicating), it's over about like
23 that (indicating).

24 Q Why don't you put Smith in there?

25 A (Witness complies.)

1 Q Smith 1.8.

2 A And my mother had 1.5 and I had 1.1.

3 Q Now, across the road, on the south side of this
4 road out there, could you draw in what is now what we call the
5 Scoffield property?

6 A Well, it goes -- I don't know, I don't know where
7 this line -- if this line comes here (indicating) or not. I
8 don't know. I'm just saying this is the road. I don't know
9 if it comes down here or not (indicating), but it's up in here
10 like that -- or I think it comes over like -- I don't know,
11 something like that (indicating).

12 Q Now, within this Scoffield property, you talked
13 about -- I got a little confused. You talked about 6 acres, 1
14 acre, and 7 acres.

15 A No, we had 7 acres. Somebody else had 6. It was
16 7 on the deed.

17 Q And then she said something about Parcel 1, so
18 when we talk about Parcel 1 and Parcel 2 --

19 A It was what my daughter owned, it wasn't quite an
20 acre, and it was right here where the trailer house sat
21 (indicating).

22 Q When you say your daughter, who's that?

23 A Both my daughters owned it at times.

24 Q Who owned it first?

25 A My daughter Sharel owned it first, my father gave

1 it to her.

2 Q Then who owned it after that?

3 A My daughter Cinda bought it from Sharel and Marvin
4 Wheeler.

5 Q And does this end up as where the Scoffield
6 trailer is?

7 A Yes, here's their trailer (indicating).

8 Q Why don't you just put a T in the middle?

9 A (Witness complies.)

10 Q Go ahead.

11 A This should come to the road, though, I mean it's
12 not straight.

13 Q This small ground does abut the road down here
14 (indicating)?

15 A Yes, it comes onto the road here (indicating), so
16 it shouldn't be up this high.

17 Q Do you want to just extend it down to the road?

18 A Well, it should be more like this (indicating)
19 because it abuts onto the road just as it comes around the
20 bend.

21 Q So the trailer is actually down there a ways?

22 A Down here (indicating).

23 Q Why don't you put a T-2 in there so we know that's
24 where you feel the trailer ought to be.

25 A Okay (witness complies).

1 Q This was the small piece, and that combined with
2 the large piece made 7 acres, is that correct?

3 A Well, see, we bought this from my daughter Cinda,
4 I and my husband bought it from her. And then when my husband
5 realized he couldn't take care of this anymore, he sold it, so
6 at that time we owned all of this (indicating).

7 Q The whole 7 acres?

8 A The whole 7, 8, acres, whatever it is, we owned it
9 all, and we sold it to Harold Payne.

10 Q Okay. On the Payne deed it talks about -- and I
11 can get it if you want to see it, it talks about Parcel 1 and
12 Parcel 2.

13 A Well, that would probably be -- I don't know which
14 would be which.

15 MS. SCOFFIELD: I have those deeds right here.

16 A You would have to get the acreage to say which was
17 which.

18 Q (By Mr. Holmes) Okay, but what you sold Payne is
19 this whole large piece (indicating)?

20 A All of it.

21 Q Why don't you put up in the larger piece, just put
22 Payne slash Scoffield so we know what we're looking at.

23 A (Witness complies.)

24 Q Now, where is Tuck Smith's house?

25 A It's over here (indicating), it's down closer to

1 the road probably right here (indicating).

2 Q Do you have any idea where his property lines run?

3 A No, not really.

4 Q When we talk about Papoose Creek, where does that
5 run on this property? Do you want to draw that in in blue?

6 A I don't know exactly how it comes. Say it comes
7 down out of the canyon, and now -- see, it used to go right
8 behind my mother's house so that it used to come right down
9 this way (indicating). But now after that flood demolished
10 all this, it comes down around here (indicating) and goes
11 along the side of the hill and under the road down here where
12 Murrays live.

13 Q Do you want to just write Papoose Creek on that?

14 A (Witness complies.)

15 Q Now, where's this cistern?

16 A It's -- say that's the creek (indicating), and
17 it's -- I don't know where it is now. I haven't been out
18 there.

19 Q Where did you think it used to be?

20 A Say this was the property line (indicating), I
21 thought it would be about right here (indicating).

22 Q Do you want to just put a little C there?

23 A (Witness complies.)

24 Q What's on the other side, I guess it would be
25 south of this property line, is that BLM?

1 A That was BLM.

2 Q Do you want to write BLM over there?

3 A (Witness complies.)

4 Q Now, when you say -- when we started this
5 deposition, you said the cistern was on our property. Now, is
6 it your understanding --

7 A When do you mean, what time -- at what frame in
8 time do you mean? It was on our property after we bought it,
9 but before then my dad owned it.

10 Q When you owned this property that we've labeled
11 the Payne/Scofield property --

12 A Yes, we understood that the cistern was on our
13 property, because this old fence come up around here
14 (indicating) and was on the other side of it.

15 Q When you say the fence, is that basically the line
16 there?

17 A Well, yeah. Like I said, I haven't done it right.

18 Q But if I asked you to draw the fence in, would
19 that be drawn in any different than what you've drawn here?

20 A I don't know. I mean, it's so crazy because I
21 can't do this without some kind of a map. The fence, it's not
22 square like that. Say this would be the fence like this
23 (indicating), comes over like that (indicating).

24 Q So it went south of the cistern then, the fence?

25 A Yes.

1 Q So when you say you thought the cistern was on
2 your property, you really were talking in reference to the
3 fence, then?

4 A Yes, and we understood that we owned the ground --

5 Q Right.

6 A -- when we bought it from my dad.

7 Q Now, you yourselves or to your knowledge your
8 husband never had that line surveyed?

9 A No, but I think my father did.

10 Q But that's a recollection?

11 A Yeah.

12 Q You don't have a copy of a survey?

13 A I don't have.

14 MS. SCOFFIELD: There was a survey done by
15 Northwest Engineering and we can get a copy of that.

16 MR. HOLMES: Okay.

17 Q (By Mr. Holmes) Now, Mrs. Scoffield has referred
18 to a survey by Northwest. You don't have a copy of that?

19 A No, I don't have anything. I threw most of my
20 stuff away when I sold my property. I wasn't -- I thought I
21 was finished with all this BS.

22 Q So you don't have anything in your possession that
23 really shows where that line is?

24 A Only the recorded deed that we had.

25 Q Right.

1 A I mean, that was recorded.

2 Q Right.

3 Let's talk about deeds. Why don't we go off the
4 record and let's start marking some stuff, Sue.

5 (Deposition Exhibits
6 Nos. 1 through 9 were
 marked for identification.)

7 Q (By Mr. Holmes) Mrs. Croxall, I'm going to hand
8 you some deeds and I'll refer to them by the deposition
9 exhibit number so our record is clear.

10 Now, this map that we've been working on we've
11 marked as Deposition Exhibit 1. Now, it's possible that some
12 of these deeds that I'm going to hand you are not necessarily
13 related to this particular property, but I'm going to ask you
14 and just tell me what you know.

15 A Okay.

16 Q I'm handing you first what's been marked
17 Deposition Exhibit 2, which is a December 24, 1957, warranty
18 deed from your parents, Hyrum and Grace Palmer, to you and
19 your husband Stanley.

20 A Yes.

21 Q What property this?

22 A This is where this house -- that's this property
23 (indicating).

24 Q This is the 1.1 acres that you've labeled
25 Croxall/Matthews?

1 A Croxall/Matthews, yes.

2 Q Could you just take this blue pen and just write
3 down here, let's write Deposition Exhibit 2.

4 A Like that (indicating)?

5 Q Yes, why don't you put a D-2.

6 A (Witness complies.)

7 Q Now I'm handing you what's been marked Deposition
8 Exhibit 3. This is a 1985 deed from Helen Mumme to you and
9 your husband. What property is that?

10 A This is that little piece right here (indicating).

11 Q Where the trailer is?

12 A Yes.

13 Q Do you want to put D-3?

14 A (Witness complies.)

15 Q Now, on this particular trailer property, just so
16 I understand, what was the chain on that again from your
17 parents? Your parents gave it to who?

18 A They gave it to my daughter Sharel Kune, but her
19 name was Wheeler then, Sharel Wheeler.

20 Q Was she married?

21 A She was married to Marvin Wheeler.

22 Q And then they sold to Cinda?

23 A To Cinda Mumme.

24 Q And who was she married to?

25 A She was married to Marvin Mumme at that time.

1 Q And then what happened as far as their involvement
2 with the land, what did they do with it?

3 A Just lived on it.

4 Q I mean, how did they get rid of it?

5 A Cinda got it in the divorce decree and then we
6 bought it from her.

7 Q Now, this deed is from Helen Cindakay Mumme. Is
8 that your daughter?

9 A That was my daughter, and that was her name at
10 that time when we bought it.

11 Q So her first name is actually Helen?

12 A Yes.

13 Q Now, as far as Marvin Mumme's involvement in this
14 ground out there, did he ever own any other ground or have an
15 interest in any other ground except what you've labeled as
16 D-3?

17 A No, none whatsoever.

18 Q Now, during the time that Cinda and Marvin Mumme
19 were occupying this ground you've labeled D-3, who occupied
20 this larger piece of ground that's south of the highway that
21 we've written Payne/Scoffield on it?

22 A I and my husband owned it.

23 Q Now, handing you what's been marked Deposition
24 Exhibit No. 4 --

25 A Do you want to put anything on that?

1 Q No, not yet.

2 -- this looks to be a 1971 deed from your folks to
3 you and your husband.

4 A Yeah, that's that property, that Payne/Scoffield,
5 I guess. I'm not sure.

6 Q Well, it looks like it's a little smaller than
7 that.

8 A It was supposed to be -- I understood it was about
9 7 acres.

10 MS. SCOFFIELD: This one is the small one, this is
11 the 205 by 260.

12 MR. HOLMES: So this is the same as 3?

13 MS. SCOFFIELD: I think so -- no, this is the
14 exception, this (indicating). It runs 205 feet by 260.

15 A When we bought this (indicating), my dad didn't
16 have it surveyed and he marked it off just with a thing, and
17 when he sold -- I don't know -- he had it surveyed --

18 MS. SCOFFIELD: This is a wrong deed, this one
19 here (indicating).

20 MR. GERMER: Can I maybe help you on this for
21 giving you a starting corner, this point right here
22 (indicating) --

23 THE WITNESS: That's nothing to do with this at
24 all.

25 MR. GERMER: I'm saying right here is the 116th

1 parallel line where most all of my deeds and all of them comes
2 more or less from this point right here (indicating).

3 A Anyway, he gave me one little deed -- I had two
4 deeds to this ground (indicating), one of them was for --
5 where's the road? -- was for -- well, that curve is not right,
6 it comes up here (indicating) -- for a piece along here
7 (indicating), I think it was 25 feet wide. So I had two deeds
8 to this property.

9 Q (By Mr. Holmes) That's the D-2 property?

10 A Yes.

11 Q So as far as Exhibit 4, you're not real sure what
12 piece that is, you would have to sit and study the legals?

13 A Yeah, I wouldn't know.

14 Q Handing you what's been marked No. 5, this is a
15 1973 deed from your folks to you and your husband, and it does
16 have a piece excepted out. What piece of ground is that?

17 A What piece is excepted out?

18 Q Well, see, it says, there's a long legal here, and
19 then it says excepting therefrom, and then it lists this small
20 piece of ground.

21 A I don't know what small piece of ground that would
22 be.

23 Q What piece of ground did this deed to you, this
24 Exhibit 5?

25 A All of this (indicating).

1 Q Why don't you put 5 up there, D-5.

2 A (Witness complies.)

3 MS. SCOFFIELD: I can tell you what this is
4 excepting out. This is excepting out the 150 by 40 of Mr.
5 Smith's property here (indicating) and the parking space there
6 (indicating).

7 Q (By Mr. Holmes) Handing you what's been marked
8 Deposition Exhibit 6, this is a 1978 deed and it refers to a
9 parcel containing 6.4 acres. Do you know what piece of ground
10 that is?

11 A And it's deeded when?

12 Q 1978.

13 A Well, all the ground I know he sold in 1978 was to
14 Mr. Smith -- or it's the 25 feet that was here (indicating) --
15 how much ground is it?

16 Q She's pointed out this is a correction correcting
17 the legal description.

18 A I don't know what that is.

19 Q This Exhibit 6 --

20 MS. SCOFFIELD: This is this piece right here
21 (indicating).

22 Q (By Mr. Holmes) Why don't you put a D-6 up there.

23 A (Witness complies.)

24 Q She's pointed out that this has a phrase that
25 corrects this prior warranty deed, corrects the legal

1 description.

2 I'm handing you what's been marked Deposition
3 Exhibit No. 9. Can you identify that for me? It looks like
4 it's a 1985 deed from you and your husband to Mr. Payne.

5 A It probably is then.

6 Q It refers on Exhibit A, the legal description, as
7 a Parcel 1 and a Parcel 2. Now, would this have been the deed
8 where you and your husband sold Mr. Payne --

9 A All this ground (indicating).

10 Q That would be D-3 and D-5 and D-6?

11 A Yeah.

12 Q Now, then, Exhibits 7 and 8 are a couple quit
13 claim deeds. One is from your mother to Harold and one is
14 from your mother to you and your husband. Can you tell me
15 what those deeds are or what they do?

16 A I don't know.

17 Q Do you know why they were prepared?

18 A When were they prepared? Oh, in '86. That's when
19 Tuck was going to take the water away from us, so we went in
20 to your firm.

21 Q To Mr. Jones?

22 A Well, it's the same thing, you're altogether.

23 Q That's before I was there.

24 A And told him -- and said there was a question in
25 our mind, and he said, well, the water went with the ground,

1 but he said if it would make you feel better, he would fix
2 these for us, and he did. So they were done by your firm.

3 Q So then this Exhibit 8, which is from your mother
4 to you and your husband, talks about 1.1 miners inches?

5 A To clarify the water rights that was recorded with
6 the Water Resource Board.

7 Q Okay.

8 And then Exhibit 7 talks about 8.19 miners inches
9 to Mr. Payne, is that correct?

10 A Um-mm (affirmative). We did that because Harold
11 was upset thinking that he was going to lose the creek, and
12 mother said, no, the water goes with the land and it's so
13 stated by the Water Resource Board. But Harold was upset, and
14 that's why we went into your firm and that's why we contacted
15 the lawyer and he said, well, if it will make you feel better,
16 we will do this, but he said it is not necessary because the
17 water goes with the land.

18 But why are we discussing all this water for when
19 it's the cistern you're supposed to be talking about? The
20 irrigation water has nothing to do with the cistern except
21 that it is part of Papoose Creek.

22 Q Well, now, I guess -- let's go back to Exhibit 1.

23 A What's that, this map?

24 Q This map.

25 A Yeah.

1 Q Now, when you talk about the cistern and Papoose
2 Creek and the water --

3 A It's all Papoose Creek.

4 Q Would you explain what portion -- how Papoose
5 Creek gets into the cistern? Does it all get into the
6 cistern? Tell me about that.

7 A Papoose Creek is composed of many little streams
8 that run out of the rocks down through the canyon, which is
9 Papoose Canyon. There's some here and there's some there.
10 They come out of the rocks, they come out from underneath the
11 trees. In the summertime a lot of them go dry. As I
12 understand it, all these little springs as they go into the
13 one, all of them compose Papoose Creek, they make up the
14 creek. And one little stream, to keep the cattle out of it,
15 it came out of a rock, my dad put it into the cistern so the
16 cattle couldn't stomp in the water and get it dirty because
17 that's what they drank.

18 Q Let me clarify what you said. You said one little
19 stream I think.

20 A Yeah, and there's lots of little streams.

21 Q Are you talking about a spring?

22 A Papoose Creek is all springs from the head of the
23 canyon down. They come out at different places. But all of
24 them compose Papoose Creek. You can't say this little stream
25 is not part of it, or that little stream is not part of it.

1 All of it composes it.

2 Q I understand. What was it your dad did to get
3 drinking water?

4 A He piped it into a cistern.

5 Q Piped what?

6 A Part of Papoose Creek.

7 Q Did he pipe the creek or did he go up and tap a
8 spring?

9 A Papoose Creek is springs, it is nothing but
10 springs. He piped in one of those springs.

11 Q That's what I'm trying to ask.

12 A Well, that's what I was trying to tell you.

13 Q From the cistern, then, does all of Papoose Creek
14 go into the cistern?

15 A No, just one of the springs, just the same as some
16 of the springs don't even go into the irrigation pipe. They
17 seep out around it and down.

18 Q Again, to try and get it clear, is all that goes
19 into the cistern this one spring?

20 A I don't know if it all goes in there or if there's
21 more going out into the ground. I know that part of a spring
22 was piped into it and I don't know if it was all of it.

23 Q Of just one spring?

24 A I don't know if there's one or more springs up
25 there under those rocks. All I know is that there was one

1 pipe coming from that into the cistern.

2 Q One collection point up there?

3 A Yes.

4 Q So there was water, then, that did not -- of
5 Papoose Creek that did not run into the cistern?

6 A Most of it didn't. We're just talking about a
7 minute spring.

8 Q How was that water that didn't go into the cistern
9 piped? Where was it piped?

10 A When he built the cistern, it just came down the
11 canyon, the rest of it. But because the canyon is gravel, it
12 would -- in the spring -- or in the summertime Papoose Creek
13 would go dry and the water would never go down past the road,
14 because it used to go underneath the road, underneath a bridge
15 where the mailboxes are there.

16 Q Let's take a point in time and let's just take
17 this point in time when Tuck Smith moved out there in the late
18 sixties.

19 A Okay.

20 Q What sort of piping was done with Papoose Creek,
21 where was the water piped?

22 A Well, in 1960 my dad put in some old pipe to carry
23 the water down so it would go across the road into his yard
24 because his lawn used to burn up. He didn't even have a lawn
25 until 1960.

1 Q Does Virgil Germer get any of that water?

2 A When he sold the property to Virgil Germer, he
3 told him that he could have second water rights to the creek.

4 Q Now, as I understand it, Germer lives north of the
5 road down there?

6 A Yes.

7 Q Roughly where does Germer live?

8 A Oh, he lives down -- this is his property from
9 here over (indicating), so here (indicating).

10 Q Do you want to just write Germer in there.

11 A (Witness complies.)

12 Q So where did these pipes run? Do you want to just
13 draw a pipeline on there?

14 A Oh, the pipeline came down the canyon here
15 (indicating) and it went right behind my mother's garage down
16 like this (indicating), and it stopped just about right there
17 (indicating).

18 Q Do you want to just put pipe, water pipe, on
19 there.

20 A (Witness complies.)

21 Q Was that water used for irrigation only?

22 A Yeah, it wasn't fit for human consumption, there
23 were cattle all along the creek.

24 Q When it got down here to the north end of the road
25 where it terminates --

1 A There's a large valve there that you can shut the
2 water pipe off. It's on Mr. Thompson's property now.

3 Q Did your dad while he was alive use that water
4 that came out of this pipe?

5 A Well, of course he did.

6 Q What did he use it for?

7 A To irrigate his orchard and yard.

8 Q So he used it on this 1.5 acres?

9 A Um-mm (affirmative).

10 Q Did he water any stock with it?

11 A No -- I mean, I don't know that he watered stock
12 with it. It wasn't piped over to the barn to water stock with
13 it.

14 Q How did he water stock in the barn?

15 A Well, during the summertime he had a fence that
16 went from his corral down to the river, and mostly they drank
17 -- when he had cattle, he had his pasture along the river
18 after he bought the river ground. But he had a water trough
19 there, but he sometimes watered his cattle with the cistern,
20 and then -- but year after year after year the water pipe from
21 the cistern down would freeze up in the wintertime, and so my
22 father and mother got into the habit of going to California,
23 and I'd say for the last 12, 10 or 12, years they went to
24 California in the wintertime because that water to their house
25 would freeze up. And this is one reason why my dad put --

1 hooked this cistern pipe to our pressure tank, so that we
2 could water his cattle with our well. But then he had a heart
3 attack and couldn't do that anymore.

4 Q Let's just kind of clean up the map here a little
5 bit. So when you talk about the cistern water getting down
6 for use with cattle, that was by a different pipe than what
7 you've labeled here?

8 A Yes, it was the one that went to his house.

9 Q Can you draw that pipe in?

10 A Oh, it just came down from the cistern and just
11 followed it down, went to his house and down to his barn and
12 then over to our house.

13 Q Where was the barn?

14 A It was right here -- well, it was down here
15 farther, right here was the barn (indicating).

16 Q And that barn is on ground, the 1.8 acres, that
17 Smith now owns?

18 A That Smith now owns. But the water from the
19 cistern was never meant to water cows, it's only supposed to
20 hold 1200 gallons. It was only for household use. But he did
21 use it to water his cattle at times.

22 Q Your dad?

23 A Um-mm (affirmative).

24 Q When was this cistern water -- you show this
25 cistern water going from your parents' house over to your

1 house.

2 A My father put that in in 1958 before we drilled
3 our well so we could have water in our house from the cistern.

4 Q Do you want to just put 1958 on it?

5 A It has to be about 1958, yeah, because it was the
6 year that we built our house. We didn't have our well
7 drilled. And then the next year our well, after we drilled
8 it, went dry.

9 Q Now, as far as this other pipe going down to your
10 folks' place, when was that put in?

11 A Which pipe?

12 Q From the cistern down.

13 A In 1945.

14 Q Do you want to just write 1945 on there?

15 A (Witness complies.)

16 Q And when did you say you drilled your well?

17 A We drilled our well the year after we got the
18 property, so it would have been probably in 1958 that he
19 hooked us up over here (indicating). He himself put it in so
20 he would have water for his cattle in case, but then our dumb
21 well went dry and we had to have it redrilled the next year.

22 Q When was that?

23 A It was the year after.

24 Q Now, when did your daughter Sharel move a trailer
25 in on this D-3 property?

1 A Oh, I can't remember the exact year. It was when
2 her little boy was about -- it was probably -- I'm not sure of
3 the date. I would have to figure it up. He's 26, and he was
4 4, so it would have been 22 years ago.

5 Q So it would be early '71?

6 A I'd say about 1970.

7 Q And what was the source of water for that trailer?

8 A Well, they had just a garden hose hooked onto the
9 irrigation pipe that came down here (indicating), and then we
10 hooked them up to our well because my dad had told Mr. Smith
11 that he could use cistern water until he got his well drilled.

12 Q As far as hooked up to your well, can you just
13 kind of draw that piping arrangement in?

14 A Say here's our pumphouse (indicating), and this
15 came over here to our pressure tank from the cistern, and then
16 from the pressure tank it went across the road up to the
17 trailer house. And they mainly used that water. My little
18 grandson got really ill -- we were using the cistern water and
19 my little grandson got really ill, and I took a sample of it
20 from our pipes in to have it tested by the health bureau, and
21 they said it was highly contaminated by surface bacteria, so
22 that was coming from the cistern.

23 Q When was this pipeline later crossed from your
24 well?

25 A When they moved their trailer in.

1 Q Just write a date in there so mostly it will help
2 us identify that.

3 A Probably 1970.

4 Q 1970, okay.

5 So now you show a line going from your property,
6 which is D-2, over to this D-3 trailer?

7 A Yes, and the cistern water went all the way from
8 the cistern clear down into the trailer house if you opened
9 this valve on our pressure tank.

10 Q So you had a way on your pressure tank, then, to
11 mix the cistern water in with your well water and get it over
12 to the trailer?

13 A Yes, we did, if you wanted to. All you had to do
14 was open the valve. The water from the cistern went into our
15 pressure tank. And we had pumped water from our well up into
16 the cistern with our pump when it was new. You couldn't do it
17 after it got older.

18 Q Just so I understand, if you opened the valve, if
19 you wanted to, you could then take your pump and run water
20 clear back up through into the cistern?

21 A Yes, we could. It took 42 pounds of pressure to
22 put it there.

23 Q When was this water -- when did you normally mix
24 the cistern water in with your well water as far as getting it
25 over to the trailer?

1 A Not very often. We kept that turned off because
2 we didn't like the cistern water.

3 Q And why was that?

4 A Because a lot of times it was dirty. One time a
5 range bull died right on the top of it and we didn't realize
6 it was right on the top of it. And my husband was taking
7 water to the job for the men to drink, 5 gallon, and they all
8 became ill. And then I noticed maggots in the water, and we
9 went up there and the range cow was covered with maggots and
10 they were dripping down into the cistern because it didn't
11 have a good lid on it and it had rained and just washed them
12 all in, and it kind of made me ill.

13 Q Was that before or after you had the water tested
14 to see if it was contaminated?

15 A That was before. The health department, we called
16 them then and they told us how to clean out the cistern and
17 sterilize it with Clorox and then not use it for 24 hours, and
18 at that time we were using it in our house.

19 Q About when was that?

20 A I don't know the year.

21 Q Well, just roughly, or relate it to something.

22 A I just can't give you a year because I just can't
23 remember.

24 Q About how many years was it after Sharel had moved
25 in out there?

1 A It was before Sharel moved in.

2 Q That you had the water tested?

3 A No, it was when her little boy was about 5 or 6
4 months old and he had this diarrhea so bad that we was afraid
5 that we was going to have to hospitalize him, and we came to
6 find out that he had eaten some of my philodendron plant, but
7 I had already taken the sample into the health department.

8 Q And then it came back contaminated?

9 A Highly contaminated with surface bacteria, as I
10 recall, that was the report.

11 Q So that would have been in the -- she moved out
12 there in '70 and this kid was 6 months old?

13 A About 6 months old.

14 Q So about when would that have been?

15 A Like I said, he's 26 now, this year he'll be 26,
16 and he was about 6 months old. I don't know exactly what year
17 it was. Does the health department keep records?

18 Q I'm just trying to place it at a time after she
19 moved out there.

20 A I don't know what -- when it was.

21 Q But your recollection is, if he's 26 now, it would
22 have been --

23 A That was her oldest boy that's 26 now. When she
24 moved out there, her youngest boy was the baby. Well, she
25 lived there twice in her trailer house.

1 Q Okay.

2 A And they moved their trailer house, they sold it
3 and bought a bigger one. When they bought the bigger one,
4 they lived in that trailer park out on South Fifth until her
5 little boy was about -- her youngest little boy was about 6
6 months old. But her -- but she lived there first until her
7 little girl was about -- well, her third little girl was born
8 when they lived in that trailer park on South Fifth, but her
9 first two children when they lived in the trailer house there
10 with us.

11 Q Let me try it another way.

12 A Okay.

13 Q What kid got sick?

14 A Her oldest boy got sick.

15 Q And how old was he?

16 A He was about 6 months old then.

17 Q When he got sick?

18 A Um-mm (affirmative).

19 Q And that's when you had the water tested?

20 A Yes.

21 Q Was she living in the trailer then?

22 A She was living there, but the trailer at that time
23 wasn't here, it was down on our property.

24 Q So it would have been a few years before?

25 A It would have been a few years before they moved

1 their trailer from that trailer park out here.

2 Q Here's what I'm trying to get at. After you
3 discovered the water was contaminated, the cistern water was
4 contaminated, how often did you mix it with your well water?

5 A Well, we never mixed it very often, but it was
6 pumped into our -- hooked up to our shop, the plumbing was
7 hooked up into the shop, and I couldn't shut the cistern water
8 off from the shop, my dad had to do that over by the barn, and
9 that would shut it all off, but he never shut it all off until
10 I asked him to.

11 Q So how often was the cistern water run over into
12 the trailer?

13 A The trailer was hooked to the cistern water before
14 it came into the pressure tank when they had the trailer on
15 our property. But when they moved it up to here (indicating)

16 --

17 Q That's what we're talking about.

18 A I don't know, not very often. We didn't open that
19 hardly ever.

20 Q Like once a year?

21 A Oh, probably, once or twice a year. I never
22 thought to keep track of things like that.

23 Q That's understandable. And why would you run the
24 cistern water over to the trailer once or twice a year, why
25 would you do that?

1 A Sometimes we would just open that valve up.

2 Q Just to test it?

3 A Yeah, to see if that line was okay and stuff. It
4 was just there. But we could always turn it on in our shop,
5 until my husband broke the pipe, and then I had my dad cut it
6 off. And Mr. Smith was there at the time when I went and
7 asked my dad, I said our shop is flooding --

8 Q Before we move on to that, I just want to get
9 focused here.

10 So from the -- when Sharel moved her trailer over
11 onto the D-3 property in the early seventies, the main source
12 of water --

13 A Was our well.

14 Q -- was your well?

15 A Yes.

16 Q Occasionally, once or twice a year, the cistern
17 water --

18 A It could be turned on at any time. It was there.
19 All you had to do was open a valve and it would mix.

20 Q But it wasn't done more than once or twice a year?

21 A I don't know how often it was done. I can't say
22 how often it was done.

23 Q So the cistern wasn't the main water supply to
24 that trailer?

25 A No, it wasn't.

1 Q Now --

2 A But it was hooked to it, I mean, it could be.

3 Q I understand that.

4 Now, you indicated there was a point in time when
5 the cistern water coming to the shop was disconnected.

6 A Yes, that was in 1976.

7 Q Now, did that also disconnect it to the trailer?

8 A It disconnected it so it couldn't go into our
9 pressure tank.

10 Q And where was this disconnect made?

11 A It was made over here by the barn. He had a valve
12 that went down into the ground so it wouldn't freeze and it
13 was over here that he could shut it off. But he never ever
14 did it, that's why our shop flooded when my husband -- my
15 husband ran over the pipe with a tractor loaded with rocks and
16 broke this pipe.

17 Q When you say broke this pipe, that's really right
18 back of your house?

19 A Yes, right back of our house.

20 Q And after that, then the water --

21 A Was not used from the cistern on our property.

22 Q Was the line just shut off or was it disconnected?

23 A It was shut off at the time. I don't know what
24 Mr. Smith done with it after he purchased it.

25 Q And it was shut off over here at the barn because

1 it was leaking, it was running all over the floor of your
2 trailer?

3 A No, all over in our shop.

4 Q Excuse me. I mean your shop.

5 A Water was in there four inches deep. I didn't
6 know where it was coming from at first.

7 Q What part of 1976 was that, summer, winter,
8 spring?

9 A It would have had to have been in the spring
10 because that's why I was building this flower garden, he was
11 hauling the rock with the tractor, that's how come he broke
12 it.

13 Q Let me just make sure I'm clear. From the spring
14 of 1976 on cistern water could not --

15 A It couldn't be used past that -- it was never used
16 past this point (indicating) from 1976 when I had my dad shut
17 it off.

18 Q So from that point on your water line from your
19 pump was the sole source of water for the trailer?

20 A Yes, it was.

21 Q Until something else was done?

22 A Yeah, it was, the sole source -- well, I don't
23 know, I can't say it was the sole source of water to the
24 trailer house because they could hook up the pipe from the
25 irrigation hose in to flush the toilet and things if they

1 wanted to, and I don't know if they did or not, but I don't
2 think they did.

3 Q That wasn't cistern water, though, that would be
4 irrigation water from Papoose Creek?

5 A It would be irrigation water, it was not cistern.

6 Q From the creek?

7 A Yes.

8 Q Now, do you know what year --
9 Should we take just a little break?

10 MS. SCOFFIELD: No, she's got to be out of here by
11 at least a quarter after eleven.

12 A 11:30. I have a dental appointment at 11:30.

13 Q Let me ask you this. This matter is set for trial
14 in June, are you aware of that?

15 A Yes, and I'm aware that I won't be here. I've
16 already purchased three tickets to Alaska.

17 Q So this deposition, then, is being taken in lieu
18 of your testimony?

19 A Yes.

20 Q I'm going to have questions that are going to go
21 longer than the time we've got. Could we reschedule? Could
22 you come back later?

23 A No, I can't, not any other time. I'm going to
24 Alaska. I've got my days down to the hours. If you want to
25 go ahead and try to finish, go ahead. That dentist isn't that

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MR. HOLMES: Let's go off the record a second.

(Short recess.)

Q (By Mr. Holmes) After the cistern water was shut off from the trailer in 1976, then who continued to use the cistern water?

A My mother in her house. The main use of the cistern was water in her house.

Q And then, let's see, when did she dig a well?

A In 1980.

Q And did she discontinue using the cistern water?

A Yes.

Q In 1980?

A Um-mm (affirmative).

Q At that point who was using the cistern water?

A I don't know. I don't know if Mr. Smith was using it for his cows or not.

Q Now, you've said when this was deeded to Payne, you said it was you and your husband's understanding that the cistern was on your ground.

A Yes.

Q And you didn't realize -- you hadn't surveyed the ground?

A No.

Q Now, by what document, written document, did you

1 give the cistern to Mr. Payne?

2 A By the written thing in our contract stating that
3 everything that was on the property went with it. The trailer
4 house, the cistern, the water pipes, that was all in the
5 contract.

6 Q Now, when you say contract, you're talking about
7 the deed?

8 A No, the contract that we -- that the title company
9 -- no, it was a lawyer who drew it up. His name was Robison,
10 Jess Robison.

11 Q Do you still have that deed -- or that contract?

12 A No. I don't know if they do or not. It was
13 nothing to do with us, I mean, it was their contract.

14 Q Payne's?

15 A Um-mm (affirmative), it was Payne's.

16 Q And do you remember, did you give the deed to
17 Paynes at the time you did the contract or when they paid you
18 off?

19 A They paid us cash.

20 Q So you gave them a deed immediately?

21 A Yes.

22 MS. SCOFFIELD: Can I ask some questions instead
23 of wasting time?

24 MR. HOLMES: No, I'm not done yet.

25 Q (By Mr. Holmes) I believe we -- I'm looking for

1 their deed to Payne. Do we have that in here? Here it is.

2 Going back to Exhibit 9, which is a warranty deed
3 from you and your husband to Payne, besides this deed and the
4 contract that we don't have a copy of, was any other document
5 signed between you and Payne?

6 A No. But in the contract we gave him everything
7 that was on the property, including the trailer house,
8 including the water pipe and the cistern and everything that
9 was there. That was according to the contract, he got
10 everything.

11 Q Now, were those things -- when you talk about the
12 water pipe --

13 A The sprinkler water pipe that he sprinkled with.

14 Q Okay. Were those things itemized out or did you
15 just lump it as all appurtenances or something like that?

16 A It just more or less stated that everything on the
17 property went to Mr. Payne, everything that was there.

18 Q So there's no other document, then, other than
19 those two things, the deed and the contract?

20 A No, there's no other document.

21 Q Now, this deed doesn't specifically mention --

22 A It's just for the ground, it's not for the trailer
23 house or the stuff that went with it.

24 Q Did you give him a separate bill of sale or
25 something for the cistern?

1 A It went with the property, it was on the property.
2 Everything on the property went to him.

3 Q Okay. But if the line reveals that the cistern
4 wasn't on the property, then it didn't go to him?

5 A Well, as we understood it at the time, it was on
6 our property.

7 Q Okay.

8 A And by the old survey things, they changed their
9 lines, I guess, when they resurveyed it.

10 Q But you don't know, do you?

11 A But I don't know that.

12 Q Okay.

13 Do you know how much water was available out of
14 that cistern?

15 A Well, my father -- I don't know how much was
16 available. My father told me that he estimated that it held
17 1200 gallons. You could very easily drain it if you opened
18 the pipes wide in just a little while.

19 Q Do you know as far as in miners inches or c.f.s.
20 or anything how much ran into it?

21 A No, I don't. A stream ran into it that was about
22 the size of this pen (indicating).

23 Q A pencil stream?

24 A Yes.

25 Q Do you know how much water was in Papoose Creek

1 that didn't run into the cistern?

2 A No. It varied so much. You couldn't say how much
3 from spring to fall.

4 Q In these various -- in some of these deeds,
5 particularly these quit claim deeds that were prepared by Mr.
6 Jones, I believe that's Exhibit 8 and Exhibit 7, there's a
7 reference to miners inches of water. Do you know if that
8 amount of water was available?

9 A I don't even know what a miners inch of water is.

10 Q Now, have there been any -- to your knowledge have
11 there been any threats of litigation against you?

12 A Yes.

13 Q As a result of failure to deliver enough water?

14 A I don't know what you mean by deliver enough
15 water.

16 Q What threats of litigation have been made against
17 you?

18 A The one that Tuck instigated to get the water out
19 of the creek.

20 Q Is that the one that got shift over to Twin Falls?

21 A Yes.

22 Q Any other threats of litigation?

23 A Well, that's the only one that I know of that's
24 been ongoing.

25 Q Has Harold Payne ever threatened to sue you over

1 the water?

2 A Yeah, he did, he said when you sold me that
3 ground, he said, the water went with it. And that's why we
4 went into your office, because he was upset. He thought maybe
5 that he could take the water away from him, and that's why we
6 went into your office and talked to Mr. Jones, and he said if
7 it will set your minds at ease, we'll draw up these quit claim
8 deeds.

9 Q Have there been any threats of lawsuits by
0 Scoffields against you?

1 A No.

2 (Discussion off the record.)

3 MR. HOLMES: I don't have any further questions
4 right now.

5 RE-EXAMINATION

6 BY MS. SCOFFIELD:

7 Q I do real quick.

8 At what time was the water directly hooked up to
9 the trailer located at the Scoffield property?

0 A What water?

1 Q The cistern water. When was it hooked for
2 domestic water?

3 A When Cindy did it?

4 Q Whenever it was done.

5 A I think Cindy did it in 1983 is when she hooked up

1 to the cistern with the trailer as far as I can recall.

2 Q And at that point, then, the water from the
3 cistern and the cistern itself was owned by whom?

4 A Well, it just was there. The water belongs to
5 Papoose Creek.

6 Q Who owned the property here in Exhibit D-5 and
7 D-6?

8 A Here (indicating)?

9 Q Yes, in 1983.

10 A I and my husband did.

11 Q So this cistern actually was on this property?

12 A Yes. In fact, I'm the one that told her to hook
13 up to it.

14 MR. SMITH: The cistern was in the same place
15 where it was before you moved it.

16 Q (By Ms. Scoffield) To the best of your knowledge
17 has the cistern water been used continuously from when Cindy
18 hooked it up to the mobile home to today?

19 A As far as I know it has, when there's been water,
20 when it wasn't run dry.

21 Q Since the time that someone got sick and you had
22 the water tested and Cindy and Harold had been using that for
23 sole domestic water from the cistern from 1983 until the
24 Scoffields now own it in 1991, has anyone ever gotten sick off
25 the water to your knowledge?

1 A Not to my knowledge.

2 MS. SCOFFIELD: That's all.

3 RE-EXAMINATION

4 BY MR. HOLMES:

5 Q When you said your daughter Cindy was hooked
6 directly to the cistern in 1983 --

7 A Yes, to the cistern pipe.

8 Q -- who helped her do that?

9 A I did. I told her to go over and hook up to it.

0 Q To your knowledge did Mr. Smith have anything to
1 do with that hook-up?

2 A No. I went over and told him that I didn't want
3 to mess up his pipe, that we was hooking onto it. He was
4 raging mad and he said she can't hook up to that pipe. And I
5 said, well, she's going to. And he went down to my mother and
6 said, I own that cistern, and on and on. And my mother told
7 him, no, you can water your cows, you don't own the cistern,
8 Cindy is going to hook up to it. He said she'll only hook up
9 if I say she can, and he said I say she can, after I am the
0 one that told her to hook up to it.

1 Q So even though he protested, he did ultimately say
2 as far as he was concerned she could hook up?

3 A Yeah, because there was nothing else he could do
4 about it. I told her to hook up to it.

5 Q We forgot to go into this. I think we can do this

1 briefly. Was there a period of time that Smith used this
2 cistern water around his house?

3 A I don't think so, only in it. I don't know if he
4 used it around it or not. But if he used it around his house
5 to water the yard, there would have been no water in the
6 cistern.

7 Q What about using it in the house?

8 A My father told him that he could use it in the
9 house until he got his well drilled.

0 Q And do you know when Smith drilled his well?

1 A No, I don't, but I know for years after he drilled
2 it, that the water solely went to my mother's house, so I
3 assumed he wasn't using it, but I don't know.

4 Q Do you know for certain that he wasn't?

5 A No, I don't know if he was or wasn't. I know he
6 wasn't supposed to be, but that don't mean if he was or not.

7 Q When we're talking about he wasn't supposed to be,
8 we're talking about he wasn't supposed to be using the cistern
9 water in his house?

0 A After he drilled his well, he wasn't supposed to
1 because my mother -- it would go dry so much. My dad would
2 even leave it on.

3 Q What would?

4 A The cistern.

5 Q It would go dry?

1 A He would drain it.

2 Q Who would?

3 A My dad.

4 Q Doing what?

5 A When he would water the cows sometimes and leave
6 it on.

7 Q So that was something that would happen fairly
8 often?

9 A At times, yeah. I even drained it at times. But
0 I don't know if he was using it or not. But I know he had no
1 water right to use it if he was.

2 Q When you say no water right to use it, you're
3 talking about in his house?

4 A A legal water right to use it.

5 Q In his house?

6 A Yes, after the five years. He wasn't supposed to
7 use it.

8 Q After he drilled his well?

9 A Um-mm (affirmative).

0 Q When you say after the five years, you mean the
1 same thing, after he drilled his well?

2 A My dad just mentioned that figure, but my dad is
3 dead, so what he said don't mean nothing.

4 Q But, then, as far as your understanding, if Smith
5 used the cistern water in his house after he drilled his well

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A Then he was stealing.

Q And it would not have been with the permission of you or your mother or your father or your husband?

A I don't think they would have cared, I mean, they're not that way.

Q But to your knowledge they didn't give permission?

A He wasn't supposed to be using it in there. It was supposed to be solely for my mother, and she used it until she drilled her well.

Q When you say solely for your mother --

A Her house.

Q And, additionally, whatever rights he had by virtue of this 1.8 acres, correct, Smith?

A He had no water right actually from the cistern, only to water his cows. Mother told him that he could water his cows with it.

Q So he was able to do that?

A Yeah, I guess, unless it froze up. I don't know. I didn't go over and see.

Q Do you have any knowledge of an agreement between your mother and Tuck?

A No, I don't. I know that we could pump water into their house with our well until they cut the pipe in '76.

Q "Their house" is your mother's?

1 A And Tuck should have had his well drilled by then.

2 MR. HOLMES: I don't have any other questions.

3 THE WITNESS: And the pipe was cut when she
4 drilled the well. Using the cistern water wouldn't go in her
5 house -- I mean, Tuck's well wouldn't go in her house.

6 MR. SMITH: It did until she dug her well.

7 MR. HOLMES: We'll deal with that later.

8 THE WITNESS: We could have put it in there from
9 our pump, too, because we were hooked up, too, in '76.

10 MR. HOLMES: I'm done.

11 MS. SCOFFIELD: I'm finished.

12 THE WITNESS: Well, I just would like to say one
13 thing for the record. That after we sold that property to Mr.
14 Payne, Mr. Smith brought a paper over and wanted my mother to
15 sign it giving him the right to the cistern and the second
16 water rights to the creek. And my mother was very upset. And
17 she understood that the Water Resource Board wanted her to
18 sign this. She was to sign it, have it notarized, and send it
19 to the Water Resource Board. And she was so upset, she said
20 how can I do this when I don't own the cistern and Mr. Germer
21 has the second water rights. So I took her up to the Water
22 Resource Board and she went in and asked them what they wanted
23 -- why should she sign this, because she didn't feel it was
24 legal. And they told her, they said, lady, this did not
25 originate in our office. And they examined the document, they

1 called in what they said was their lawyer. I don't know who
2 these men were, they worked in the Water Resource Board. And
3 he came in and examined this document and the records and he
4 turned around to my mother and looked her straight in the eye
5 and these were his exact words, he said, "Lady, you would be
6 crazy if you signed that document." And I just want that on
7 the record. They also gave her warnings of other ways that he
8 might try to take the creek away from her.

9 MR. HOLMES: I don't have any questions as a
10 result of that.

11 MS. SCOFFIELD: (Shakes head negatively.)

12 THE WITNESS: This document is a part of the
13 record that went to Burley. I think Tara has a copy of it.

14 MR. HOLMES: Mrs. Croxall, she can't stop typing
15 until we all agree we're done.

16 THE WITNESS: Okay.

17 MR. HOLMES: As long as you keep talking, anything
18 you say we can then ask you questions.

19 THE WITNESS: That's fine, because I would like to
20 be asked questions about this.

21 MR. HOLMES: But I'm done asking questions and I
22 think Mrs. Scoffield is done asking questions. So are we done
23 with the deposition?

24 THE WITNESS: As far as I'm concerned.

25 MR. HOLMES: Okay.

(Witness excused.)

(By agreement of the parties, the signature of the
witness was waived.)

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1 STATE OF IDAHO)
2 County of Bannock) SS.
3

4 I, SUSAN P. ISRAEL, CSR and notary public in and
5 for said county and state, do hereby certify that the facts as
6 stated by me in the caption hereto are true; that the above
7 and foregoing answers of the witness,

8 JEANNE CROXALL,
9 to the interrogatories as indicated were made before me by the
10 said witness, after being first duly sworn to testify the
11 truth, and the same were thereafter reduced to typewriting
12 under my direction; that the above and foregoing deposition,
13 as set forth in typewriting, is a full, true, and correct
14 transcript of proceedings had at the time of taking said
15 deposition.

16 I further certify that I am neither attorney nor
17 counsel for, nor related to, nor employed by any of the
18 parties to the action in which this deposition is taken, and
19 further that I am not a relative or employee of any counsel
20 employed by the parties hereto, or financially interested in
21 the action.

22 GIVEN UNDER My Hand and Seal of Office on this
23 30th day of May, 1991.

24 Susan P. Israel
25 Notary Public In and For
the State of Idaho

For Value Received

Helen Cindakay Mumma

the grantor, do hereby grant, bargain, sell and convey unto

Stanley G. and Billie J. Croxall, husband and wife,
5230 West Portneuf Rd. Inkom, Idaho
whose current address is

5230 West Portneuf Rd. Inkom, Idaho

the grantee, the following described premises, in Bannock County Idaho, to wit:

Commencing at the SE 1/16 corner of Sec. 23, Twp. 7 So., R. 35 E. B.M.; thence S 1° 48' E. on E 1/16 line of said Sec. 23, 260 ft. to the true point of beginning; thence continuing S. 1° 48' E. on said E 1/16 line 260 feet; thence N 88° 06' E. 205 feet; thence W. 1° 48' W. 100 ft., more or less to a point in the center line of existing Co. Road; thence in a Northwesterly direction along said center line of Co. Road to a point that is 69 ft. more or less East of the point of beginning; thence W. to point of beginning. Excepting therefrom the following described property to wit; Beginning at the SE 1/16 corner of Sec. 23, Twp. 7 S., R. 35 E.B.M., thence S 1° 48' E. along the West line of SE 1/4 Sec. 260 feet to the true point of beginning; thence N 88° 06' E parallel to S 1/16 line of said Sec. 23, 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the point of beginning.

THIS DOCUMENT BEING RERECORDED TO CORRECT LEGAL DESCRIPTION

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor do hereby covenant to and with the said Grantee, that he the owner in fee simple of said premises; that they are free from all incumbrances

and that he will warrant and defend the same from all lawful claims whatsoever.

Dated:

Helen Cindakay Mumma 7/29/85

STATE OF IDAHO, COUNTY OF
On this 29th day of July, 1985,
before me, a notary public in and for said State, personally
appeared

Helen Cindakay Mumma

NOTARY PUBLIC

known to me to be the person whose name is
subscribed to the within instrument, and acknowledged to
me that she executed the same.

Residing at: *Bozeman, Montana*
Comm. Expires: *Life*
Notary Public, Idaho

NO. 754907
PIONEER TITLE CO. 10
85 AUG 8 3:15
FEE 2.00
LARRY J. GARDNER
429

NO. 754079
Billie J. Croxall
85 JUL 29 12:35
JF
LARRY J. GARDNER
FEE 2.00
428

DEPOSITION EXHIBIT

3
5-23-91

WARRANTY DEED

924
For Value Received

7707

HYRUM MARTIN PALMER, and GRACE PALMER, husband and wife
the grantors, do hereby grant, bargain, sell and convey unto

REVENUE STAMPS

STANLEY GEORGE CROXALL and BILLIE JEANNE CROXALL, husband and wife
5230 W. PORTNOLLY RD. INKAM, ID 8324
the grantees, the following described premises, in Bannock County Idaho, to wit

A parcel of land located in SE 1/4 SE 1/4 Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian thence S. 1° 48' E. along the west line of SE 1/4 SE 1/4 260 feet to the true point of beginning; thence N. 88° 06' E., parallel to S 1/16 line of said section 23, 205 feet; thence at right angles South, 25.1 feet; thence in a Northwesterly direction to the point of beginning...

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: May // , 1971

Hyrum Martin Palmer
Grace Palmer

STATE OF IDAHO, COUNTY OF Bannock
On this // day of May, 1971,
before me, a notary public in and for said State, personally appeared

Hyrum Martin Palmer and Grace Palmer,
husband and wife

NOTARY SEAL

known to me to be the persons whose names are
subscribed to the within instrument, and acknowledged to
me that they executed the same.

James DeBolt

Residing at Pocatello, Idaho
Comm. Expires

NO. 770700
RECORDED AT REQUEST OF
Billie Jeanne Croxall
'86 APR 30 P2:19
OFFICIAL... NO 442
BANNOCK CO. IDAHO
LARRY W. SMITH RECORDER
FEE 2.00 DEPUTY jc

DEPOSITION
EXHIBIT

4
5-23-91

For Value Received

HYRUM MARTIN PALMER and GRACE PALMER, husband and wife,
the grantors, do hereby grant, bargain, sell and convey unto

STANLEY G. CROXALL and BILLIE JEANNE CROXALL, husband and wife,
Route #2, Inkam, Idaho,
the grantees the following described premises, in Bannock County Idaho, to-wit:

A tract of land located in the SESE of Section 23, Township 7 South,
Range 35 East, Boise Meridian, Bannock County, Idaho, described as follows:
Beginning at the Northwest corner of the SESE of Section 23, Township
7 South, Range 35 East; thence East along the North line of said SESE
546 feet; thence South 9°57' West to the Southerly line of an existing
county road (known as Portneuf Road), to the True Point of Beginning;
thence South 9°57' West to the South line of said SESE; thence West,
along said South line 316 feet, more or less, to the Southwest corner
of SESE; thence North, along the West line of said SESE to a point 520
feet; thence North 1°48' West 100 feet; more or less, to the Southerly
line of Portneuf Road; thence Southeasterly along the Southerly line
of said road to the Point of Beginning.

EXCEPTING THEREFROM the following described parcel of land;
A tract of land located in the SESE of Section 23, Township 7 South,
Range 35 East, Boise Meridian, Bannock County, Idaho, described as
follows:

Beginning at the Northwest corner of the SESE of Section 23, Township
7 South, Range 35 East; thence East along the North line of said SESE
546 feet; thence 59°57' West to the Southerly line of an existing county
road (known as Portneuf Road), to the True Point of Beginning; thence
West, along the Southerly line of said road 40 feet; thence South 9°57'
West 150 feet; thence East 40 feet; to a point that bears South 9°57'
West 150 feet of the True Point of Beginning; thence North 9°57' East
150 feet to the True Point of Beginning.

Reserving to the Grantor an easement for domestic water pipe and an
easement for irrigation pipe over and under said premises.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees,
heirs and assigns forever. And the said Grantor do hereby covenant to and
with the said Grantee s, that t he y the owner s in fee simple of said premises; that they are free
from all incumbrances

and that t he y will warrant and defend the same from all lawful claims whatsoever.

Dated: October 23, 1973

Hyrum Martin Palmer

Hyrum Martin Palmer

Grace Palmer

Grace Palmer

STATE OF IDAHO, COUNTY OF

On this 23 day of OCTOBER, 1973,
before me, a notary public in and for said State, personally
appeared

Hyrum Martin Palmer
Grace Palmer
NOTARY SEAL

known to me to be the person s whose name s
subscribed to the within instrument, and acknowledged to
me that t he y executed the same.

John J. Thompson
Notary Public

Residing at *Boise*, Idaho
Comm. Expires

NO. 517842
RECORDED AT REQUEST OF

Hyrum Martin Palmer

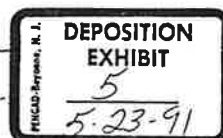
JAN 10 9 53 AM '74

OFFICIAL RECORD BOOK NO. 264
BANNOCK COUNTY, IDAHO
TIM ERIKSEN, RECORDER

FEES 1.00 DEPUTY 1n

Mail to:

BANNOCK TITLE COMPANY



2-1
WARRANTY DEED

593849

383

For Value Received Hyrum Martin Palmer and Grace Palmer, husband and wife,

the grantor s, do's hereby grant, bargain, sell and convey unto
Stanley G. Croxall and Billie Jeanne Croxal, husband and wife,
whose current address is Rt. 2, Inkorn, Idaho

the grantee s, the following described premises, in BANNOCK County Idaho, to wit:

This deed is being recorded to correct deed 517842 Book 264 recorded in
Bannock County Jan 10, 1974

LEGAL DESCRIPTION:

H. MARTIN PALMER
REMAINING PARCEL SOUTH OF PORTNEUF ROAD
A PARCEL OF LAND SITUATED IN THE SOUTHEAST QUARTER OF THE
SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 SOUTH, RANGE
35 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, MORE
PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/16 CORNER ON THE SOUTH LINE
OF SAID SECTION;
THENCE NORTH 1° 48' 00" WEST ALONG THE EAST 1/16 LINE
OF SAID SECTION, 799.25 FEET;
THENCE NORTH 88° 06' 00" EAST, 205.00 FEET;
THENCE NORTH 1° 48' 00" WEST, 70.75 FEET TO THE
SOUTHERLY RIGHT OF WAY OF PORTNEUF ROAD;
THENCE SOUTH 59° 36' 27" EAST ALONG SAID SOUTHERLY
RIGHT OF WAY, 218.72 FEET;
THENCE SOUTH 09° 57' 00" WEST, 150.00 FEET;
THENCE SOUTH 59° 36' 27" EAST, 40.00 FEET;
THENCE SOUTH 09° 57' 00" WEST, 599.09 FEET MORE OR
LESS TO THE SOUTH LINE OF SAID SECTION;
THENCE SOUTH 88° 23' 00" WEST ALONG SAID SOUTH
LINE, 271.40 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING (6.4) ACRES MORE OR LESS.

DEPOSITION
EXHIBIT
6
5-23-91

387

2-2

5938

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee
 their heirs and assigns forever. And the said Grantor do hereby covenant to
 with the said Grantee, that he the owner in fee simple of said premises; that they are
 from all Incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated:

2-15-78

2-15-78

Gerraine Martin Palmer
Grace Palmer

STATE OF IDAHO, COUNTY OF

On this 15th day of Feb., 1978,
 before me, a notary public in and for said State, personally
 appeared

Gerraine Martin Palmer
and
Grace Palmer

NOTARY SEAL

known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Gerraine Martin Palmer

Notary Public
 , Idaho

Residing at *Pocatillo*
 Comm. Expires *4-24-79*

NO. 593849
 RECORDED AT REQUEST

Grace Palmer

FEB 15 2 32 PM '78

OFFICIAL RECORDS 315
 PIMMIDGE & CO., INC.
 100 N. 2ND ST., BOISE, IDAHO 83720
 (207) 253-1211

1577

2-1

779337 *AK*QUIT CLAIM DEED

FOR VALUE RECEIVED, GRACE PALMER, a widow, hereby quit claims and conveys to HAROLD G. PAYNE whose address is 5195 West Portneuf Road, Inkom, Idaho, 83245, all her right, title, and interest in the following described water rights, to wit:

All water rights, including 8.190 miner inches of the waters of Papoose Creek, a tributary of the Portneuf River, all of which water rights are appurtenant to the following described real property:

PARCEL 1: A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows: Beginning at the East 1/16 corner on the South line of said Section; thence N1°48'00" West along the East 1/16 line of said Section, a distance of 799.25 feet; thence North 88°06'00" East, 205.00 feet; thence North 1°48'00" West, 70.75 feet to the Southerly right of way of Portneuf Road; thence South 59°36'27" East along said Southerly right of way, 218.72 feet; thence South 09°57'00" West, 150.00 feet; thence South 59°36'27" East, 40.00 feet; thence South 09°57'00" West, 599.09 feet more or less to the South line of said Section; thence South 88°23'00" West along said South line, 271.40 feet to the Point of Beginning.

PARCEL 2: Commencing at the Southeast 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East on the East 1/16 line of said Section 23, a distance of 260 feet to the True Point of Beginning; thence continuing South 1°48' East on said East 1/16 line 260 feet; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet more or less to a point in the center line of existing County Road; thence in a Northwesterly direction along said center line of County Road to a point that is 69 feet more or less East of the Point of Beginning; thence West to point of beginning. Excepting therefrom the following described property, to wit:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East along the West line of SE1/4SE1/4 260 feet to the true point of beginning; thence North 88°06' East

LISTENSEN, Chartered
409 WEST WYTHAM
O, IDAHO 83204

DEPOSITION
EXHIBIT

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5-23-91

1578

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779337

parallel to South 1/16 line of Section 23, a distance of 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the point of beginning.

DATED this 29th day of August, 1986.

Grace Palmer
Grace Palmer

STATE OF IDAHO)
) ss
County of Bannock)

On this 29th day of August, 1986, before me the undersigned notary public personally appeared GRACE PALMER, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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

Barbara Fugate
Notary Public
Residing at: Pocatello, Idaho

NOTARY SEAL

NO. 779337
RECORDER AT REQUEST OF
Lamont Jones

'86 SEP -2 P1:33

OFFICIAL POWER BY NO. 449.
BANNOCK COUNTY, IDAHO
LARRY W. GHAN RECORDER
FEE 4.00 DEPUTY Jo

and CHRISTENSEN, Chartered
SOL 167 - 405 WEST MAIN
POCATELLO, IDAHO 83204

1576

QUIT CLAIM DEED

779336

FOR VALUE RECEIVED, GRACE PALMER, a widow, hereby quit claims and conveys to STANLEY G. CROXALL and BILLIE JEANNE CROXALL, husband and wife, whose address is 5230 West Portneuf Road, Inkom, Idaho, 83245, all her right, title, and interest in the following described real property situate in Bannock County, Idaho, to wit:

A parcel of land located in SE1/4SE1/4 Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence S. 1°48'E. along the west line of SE1/4SE1/4 260 feet to the true point of beginning; thence N. 88°06'E., parallel to S 1/16 line of said Section 23, 205 feet; thence at right angles South, 25.1 feet; thence in a Northwesterly direction to the point of beginning.

Together with all appurtenances and all water and water rights, including 1.1 miners inches of water from Papoose Creek.

This Deed is recorded to clarify the water rights which were conveyed to Grantees by Warranty Deed dated May 11, 1971, and recorded as Instrument No. 770700 in the official records of the County Recorder of Bannock County, Idaho.

DATED this 29th day of August, 1986.

Grace Palmer
Grace Palmer

STATE OF IDAHO)
) ss
County of Bannock)

On this 29th day of August, 1986, before me the undersigned notary public personally appeared GRACE PALMER, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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

NO. 779336
RECORDER AT REQUEST OF
Lamont Jones
'86 SEP -2 P1:33

Barbara Luper
Notary Public
Residing at: Pocatello Idaho

OFFICIAL RECORDS NO. 449
BANNOCK COUNTY, IDAHO
LARRY H. JAMES, RECORDER
FEE 2.00 DEPUTY JC



NOTARY SEAL

JONES and CHRISTENSEN, Chartered
P O BOX 867 - 405 WEST WYATT
POCATELLO, IDAHO 83204

34

WARRANTY DEED

For Value Received

2-1

754908

STANLEY G. CROXALL and BILLIE JEANNE CROXALL, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

HAROLD GILBERT PAYNE, an unmarried person

the grantees, whose current address is 5230 W. Portneuf Rd.

the following described premises, in

Bannock

County Idaho, to-wit:

See attached exhibit "A"

DEPOSITION
EXHIBIT

9

5-23-91

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee, that they are the owners in fee simple of said premises; that they are free from all incumbrances except reservations of record, easements of record, taxes and assessments for the year 1985 and subsequent years which are not yet due and payable.

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: August 7, 1985

Stanley G. Croxall
STANLEY G. CROXALL

Billie Jeanne Croxall
BILLIE JEANNE CROXALL

STATE OF IDAHO, COUNTY OF Bannock
On this 7th day of August, 1985,
before me, a notary public in and for the said State, personally appeared
Stanley G. Croxall & Billie Jeanne Croxall

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Residing at Boise, Idaho
Comm. Expires 6/2/87

STATE OF IDAHO, COUNTY OF

I have the re:

at this 19 of De

NO. 754908

PIONEER TITLE CO.

AUG -8 P3:16

By-

Fees Paid

INSTRUMENT NO.

EXHIBIT "A"

PARCEL I

A parcel of land situated in the Southeast Quarter of the Southeast Quarter of Section 23, Township 7 South, Range 35 East, Boise Meridian, Bannock County, Idaho, more particularly described as follows:

Beginning at the East 1/16 corner on the South line of said Section; thence North 1°48'00" West along the East 1/16 line of said Section, a distance of 799.25 feet; thence North 88°06'00" East, 205.00 feet; thence North 1°43'00" West, 70.75 feet to the Southerly right of way of Fortneuf Road; thence South 59°36'27" East along said Southerly right of way, 218.72 feet; thence South 09°57'00" West, 150.00 feet; thence South 59°36'27" East, 40.00 feet, thence South 09°57'00" West, 599.09 feet more or less to the South line of said Section; thence South 88°23'00" West along said South line, 271.40 feet to the Point of Beginning.

PARCEL II

Commencing at the Southeast 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East on the East 1/16 line of said Section 23, a distance of 260 feet to the True Point of Beginning; thence continuing South 1°48' East on said East 1/16 line 260 feet; thence North 88°06' East 205 feet; thence North 1°48' West 100 feet more or less to a point in the center line of existing County Road; thence in a Northwesterly direction along said center line of County Road to a point that is 69 feet more or less East of the Point of Beginning; thence West to point of beginning. Excepting therefrom the following described property to wit:

Beginning at the SE 1/16 corner of Section 23, Township 7 South, Range 35 East, Boise Meridian, thence South 1°48' East along the West line of SE 1/4 SE 1/4 260 feet to the True Point of Beginning; thence North 88°06' East parallel to South 1/16 line of Section 23, a distance of 205 feet; thence at right angles South 25.1 feet; thence in a Northwesterly direction to the Point of Beginning.

Warranty deed

329189

THIS INDENTURE, Made this 24th day of December in the year of our Lord One Thousand Nine Hundred and fifty seven between Hyrum Martin Palmer and Grace Palmer, his wife of Pocatello, County of Bannock, State of Idaho the part 1st of the first part, and Stanley George Croxall and Billie Jeanne Croxall, his wife of Pocatello, County of Bannock, State of Idaho the part 1st of the second part:

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One (1) DOLLARS, lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged and for other good and valuable considerations, do by these presents, Grant, Bargain, Sell and Convey and Confirm unto said parties of the second part, and to their heirs and assigns forever: All that certain lot piece or parcel of land situate, lying and being in the County of Bannock State of Idaho, bounded and more particularly described as follows, to-wit:

Beginning at the SE $\frac{1}{4}$ corner of Sec. 23, T7S, R35E, B.M.; thence S.1°-48'E. on East $\frac{1}{2}$ line of said Sec. 23 25.0 feet to the TRUE POINT OF BEGINNING; thence continuing S.1°-48'E. 235.0 feet; thence N.88°-06'E. parallel to South $\frac{1}{2}$ line of said Sec. 23, 205.0 feet; thence N.1°-48'W. 235.0 feet; thence S.88°-06'W. 205.0 feet, more or less, to the TRUE POINT OF BEGINNING, same being in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 23, T7S, R35E, B.M., and containing 1.11 acres; subject, however to right of way for existing County highway.

No internal revenue stamps as this is a gift deed.

Together with all and singular, the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereto incident unto the said parties of the second part, and to their heirs and assigns forever. And the said parties of the first part, and their heirs the said premises in the quiet and peaceable possession of the said parties of the second part and their heirs and assigns against the said parties of the first part, and their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seal the day and year first above written.

Signed, Sealed and Delivered in the Presence of

[Signature]

Hyrum Martin Palmer
Grace Palmer [Seal]

_____ [Seal]



329189

STATE OF IDAHO,
County of Bannock } ss.

On this 24th day of December in the year 1957, before me,

Arlene Petty a Notary Public in and for said County and State, personally appeared

Hyrum Martin Palmer and Grace Palmer, his wife

known to me to

be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first



Arlene Petty
Notary Public.

Residence Pocatello, Idaho

329189

NO. _____
RECORDED AT REQUEST OF
Stanley G. Croxall
Rt 1 South
JAN 30 2 09 PM '58
OFFICIAL RECORD BK. NO. 130
BANNOCK COUNTY, IDAHO
SARAH DEYANEY, RECORDER
FEE 1.50 DEPUTY 1.00

329189

WARRANTY DEED

TO

Dated _____, 19____

STATE OF IDAHO,

County of _____ } ss.

I hereby certify that this instrument was filed for record at the request of

at _____ minutes past _____

o'clock _____ M., this _____ day

of _____ A. D. 19____

at my office and duly recorded in Book _____

of Dredt at page _____

Ex-Officio Recorder.

By _____ Deputy.

Fee, \$ _____

000-PRIMER 0-0000, INC., POCATELLO, IDAHO

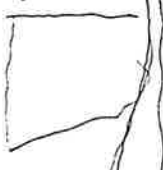
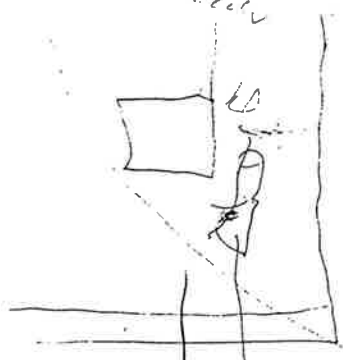
1.1

Ground
Met. 100

Palmer
Shoreline

Small
Pract. 8

1.5
1958



Reed

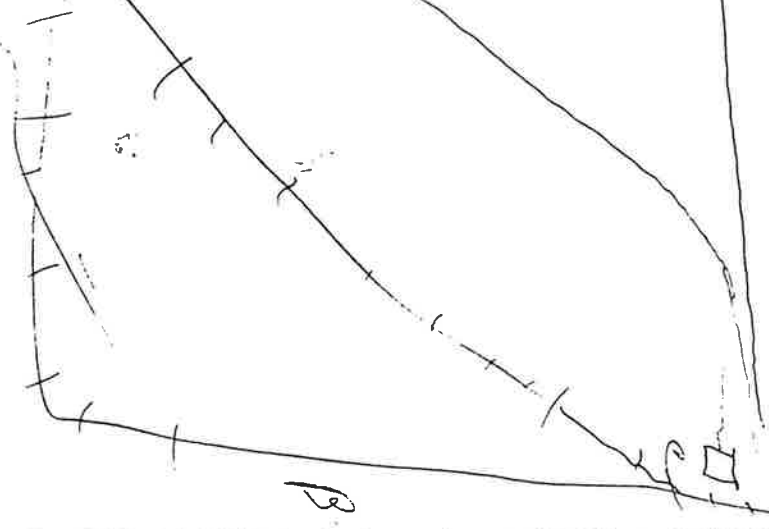
1.5
1958



with
1945
D. 5

D. 4

1.2



Carter

9/11

We need to get a list of the water rights to submit with the stipulation and as part of the partial decree.

Can this be done from the "B" record?

Dan

29-04064D	5-1-1927	Thompson	0.03 cfs	1.5 ac
29-04064A	5-2-1927	Smith	0.018 cfs	0.9 ac
29-10010	1-2-1969	Smith	0.006 cfs	0.3 ac
29-04064B	5-1-1970	Scottfield	0.02 cfs	2.0 ac
29-04064C	5-2-1970	Matthews	0.02 cfs	1.0 ac
29-04067	4-1-1971	Germer	0.22 cfs	11.1 ac

Dan,

This is one way in which we could list the Papoose Creek rights, but I am not sure if Germer will like to see his priority date advanced to 1971.

Carter

9-14-92

WATER RIGHT NUMBER	STG STS	PRIORITY DATE	O C	CLAIMANT NAMES	SOURCES OF WATER	TRIBUTARIES TO
R29-04064A	J/-	05/01/1889	C	THERON SMITH	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064B	S/-	05/01/1927	C	RONALD J. SCOFFIELD, JR. C TARA L. SCOFFIELD	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064C	S/-	05/01/1927	C	JOSEPH MATTHEWS C TAHNA MATTHEWS	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064D	S/-	05/01/1927	C	TRACY R. THOMPSON C THOMAS R. THOMPSON	PAPOOSE CREEK	PORTNEUF RIVER
R29-04067	S/-	04/01/1960	C	VIRGIL T. GERMER	PAPOOSE CREEK	PORTNEUF RIVER
R29-10010	J/-	01/02/1969	C	THERON SMITH	PAPOOSE CREEK	PORTNEUF RIVER
R29-10011	/Z	04/01/1945	C	SPLIT RIGHT	SPRING SPLIT RIGHT	PAPOOSE CREEK
R29-10011A	J/-	04/01/1945	C	THERON SMITH	SPRING	PAPOOSE CREEK
R29-10011B	J/-	01/02/1969	C	THERON SMITH	SPRING	PAPOOSE CREEK
R29-10103	J/-	09/01/1970	C	RONALD J. SCOFFIELD, JR. C TARA L. SCOFFIELD	SPRING	PAPOOSE CREEK

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
R29-04064A	THELSON SMITH 5137 W PORTNEUF RD INKOM ID 83245	05/01/1889	IRRIGATION	04-01-11-01	0-04-CFS	
		5-2-1927		10-31	0.018 CFS	
		TOTAL DIVERSION RATE:				
		TOTAL DIVERSION VOLUME:				
		CONSUMPTIVE USE:				
					0.04 CFS	0.018 CFS
					0.00 AFA	
					2.7 AFA	OK
SOURCE: PAPOOSE CREEK						
POINT OF DIVERSION:						
T07S R35E S26 NE NWNE						
PLACE OF USE: IRRIGATION						
SAME AS: IRRIGATION						
T07S R35E S23 SESE 0.9						
CONDITIONS OF APPROVAL:						
REMARKS: ~~NO BENEFICIAL USE FOUND.~~ F06 29-040648, 29-04064C, 29-04064D, 29-10010						
OTHER RIGHTS: NONE.						

THERON and CARMA SMITH
5137 W. Portneuf Road
Inkom, ID 83245
(208) 775-3604

RECEIVED
JUL 23 1992

Department of Water Resources

July 21, 1992

[Handwritten signature]

CLERK OF THE COURT
TWIN FALLS COUNTY COURTHOUSE
P O BOX 126
TWIN FALLS ID 83303

RE: Smith v. Scoffield, et al.
Case Nos. 39576
41798

Dear Clerk:

Enclosed for filing in the above-referenced matter, please find Plaintiffs' Response to Defendant Scoffields' Objections to Director's Report.

Sincerely,

Theron J. Smith

TJS/dsc
smith07.211

Enclosure
cc: Reed Larson
Peter C. Monson
A. Lynne Krogh-Hampe
Jay and Tara Scoffield

RECEIVED
JUL 23 1992

Department of Water Resources

Theron Smith
5137 W. Portneuf Road
Inkom, ID 83245

Pro Se

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 Drainage Basin
Water System,

Case No. 39576

and

Case No. 41798

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

PLAINTIFFS' RESPONSE
TO DEFENDANT
SCOFFIELDS' OBJECTIONS
TO DIRECTOR'S REPORT

Petitioner,

vs.

United States; State of Idaho; and
all unknown claimants to the use
of water from the Snake River
Drainage Basin Water System,

Respondents.

THERON J. SMITH and CARMA B.
SMITH, husband and wife,

Plaintiffs,

vs.

JAY SCOFFIELD and TARA SCOFFIELD,
husband and wife; GRACE PALMER, a
single person; BILLIE JEANNE
CROXALL, a single person; VIRGIL T.
GERMER and LAURA GERMER, husband
and wife; KEITH HIGGINSON, director)

PLAINTIFFS' RESPONSE TO DEFENDANT SCOFFIELDS' OBJECTIONS TO
DIRECTOR'S REPORT - Page 1
dsc smith07.201

of the Idaho Department of Water)
Resources, and JOHN DOES I, II,)
III and IV,)
Defendants.)

COMES NOW plaintiff Theron Smith and responds to the following objections made by Scoffields in their Objections to Director's Report filed March 23, 1992, as follows:

1. Scoffields' Objection to Finding No. 10: Objection is made to this objection as follows:

A. Mr. Martin Palmer never sold the cistern to anyone, as it was not on his property and was therefore not his to sell.

B. Mr. Martin Palmer conveyed water rights and right-of-ways to myself in 1978 in Warranty Deed recorded in Bannock County, Idaho as Instrument No. 614649.

C. From 1976 through 1983 all water from the cistern was used in the Palmer residence, the Smith residence and to water my livestock.

2. Scoffields' Objection to Finding No. 19: Objection is made to this objection as follows:

A. We have used the cistern water since 1968 in our home and for our livestock. Our well is used as a back up to the cistern.

3. Scoffields' Objection to Finding No. 13: Objection is made to this objection as follows:

A. In 1970 or 1971 about one acre was irrigated from the waters of Papoose. As time went on some water was applied to other parts of the property. There never has been sufficient water to water the property south of the Portneuf Road on a regular basis.

Respectfully submitted,

DATED this 21st day of July, 1992.

JSI
Theron Smith, Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFFS' RESPONSE TO DEFENDANT SCOFFIELDS' OBJECTIONS TO DIRECTOR'S REPORT was mailed this 21st day of July, 1992, in an envelope with sufficient first-class postage prepaid thereon to the following:

Reed W. Larson
Attorney at Law
P. O. Box 1391
Pocatello, Idaho 83204

Jim Jones
Attorney General
Statehouse, Room 210
Boise, ID 83720

Peter C. Monson
U. S. Attorney
Land & Natural Resources Div.
Indian Resources Section
P. O. Box 44378
Washington, D. C. 20026

A. Lynne Krogh-Hampe
Dept. of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Jay and Tara Scoffield
5195 West Portneuf Road
Inkom, ID 83245

JSI
Theron J. Smith

LAW OFFICES
JONES, CHARTERED

405 WEST WHITMAN

P.O. BOX 967

POCATELLO, IDAHO 83204-0967

LAMONT JONES
CRAIG R. JORGENSEN
JACK H. ROBISON
THOMAS J. HOLMES
JESSE C. ROBISON
KELLY KUMM

TELEPHONE: (208) 232-5911
FAX: (208) 232-5962

RECEIVED

DEC 7 1992

Department of Water Resources

December 3, 1992

Nick Spencer
Deputy Attorney General
Department of Water Resources
1301 N. Orchard
Statehouse Mail
Boise, ID 83720

RE: SRBA/Lundburg v. Collins

Dear Nick:

I just wanted to confirm that we are moving forward getting some numbers on lining the pond. There is some question in our minds as to whether a fabric liner would be better or whether bentonite would better preserve the natural environment. We are going to check with Fish and Game and people at the university to get a feel for which sealing approach would be best.

Harriet was somewhat surprised at Trappetts' testimonies that only the Zebarth Spring had supplied water to the pond prior to 1967. She felt otherwise. Her son, Frank Lundburg advises that in 1957, or thereabouts, but shortly after the trade between Pocatello and Harriet's dad was finalized, he went up on the hill and physically dug a ditch that diverted water from the spring into the pond. He was approximately 13 years old when this was done. At that time, Harriet probably was at the Mayo Clinic for health problems so she does not have a separate memory of that but he is very certain of that.

In any event, however, we will continue to pursue the approach we discussed at the settlement conference.

Sincerely,

Thomas J. Holmes

TJH/dac
Indbrg12.032

cc: Mrs. Harriet Lundburg
Brent Morgan, Esq.

1st Measurement

2nd measurement

At Spring

0.043 cfs

0.064 cfs

Freshman
pipe

0.104 cfs

0.099 cfs

Collins's
Sump

0.015 cfs

0.162

0.163

Lundburg's
Intake

0.224 cfs

Well Logs

75

34E

|

SW¹/₄

SWSE¹/₄

12

NW¹/₄

W¹/₂ NE¹/₄

237-0605

CLF - SMITH - V - SCOFFIELD

CLF - LUNDBURG - V - COLLINS

Thomas J. Holmes 232-5911 10-17-90

Out of his office till Monday

Thomas J. Holmes 232-5911 4-8-91

Mr. Holmes -

Dubbe Drilling 237 - 0665

Grimmer - Di Cataldo

Well log shows a flow of 20 gpm

9-8-92 #10 Smith has rights 29-10011A & B which are senior to Scoffield's right 29-10103

Our position in Report

Palmer & Croxall abandoned/forfeited rights to the spring.

Scoffield (the mobile home) had a new appropriation in 1970. (Right recommended in #20)

* Did Palmer's convey right from spring to anybody (Smith or Scoffield property) or was it abandoned in 1980 or 1983.

Smith claims conveyed to him in 1978 by a warranty deed

Scoffield claims right conveyed to mobile home when it was placed on the property in 1970. However, Palmer continued to use the water until sometime in 1980 or 1983.

Smith is claiming "exclusive use" of spring.

"There is only enough water for his use."

Nothing to "give" unless Smith or Scoffield produces a written document conveying the right.

9-8-92

#12 Smith has probably used 29-04064A sometime within the last 5 years.

Has affidavits supporting use.

Possible recommendations for Papoose Creek

0.01	1927	Smith	1/2 ac of 29-04064A
0.03	1927	Palmer - Thompson	29-04064D
0.02	1960	Croxall - Matthews	29-04064C
0.01	1960	Smith	1/2 ac of 29-04064A
0.04	1960 ^{?(1970)}	Scotfield	29-04064B
0.22	1960 ^{?(1971)}	Germer	29-04067 Jr. to above
0.01	1969	Smith	29-10010

#13 Leave 29-04064B at 2 ac. but move priority date to 1960 unless can "prove" it was not irrigated until 1970.

Latest
Version

Disallow	0.01	1927	Smith
OK	+ 0.03 = 0.04	1927	Palmer-Thompson
Disallow	+ 0.02 = 0.06	1960	Croxall-Matthews
Disallow	+ 0.01 = 0.07	1960	Smith
OK	+ 0.01 = 0.08	1969	Smith (Lawn)
	+ 0.04 = 0.12	1970	Scotfield
1960	+ 0.22 = 0.34	1971	Germer

Measured 0.16 cfs 10-18-90

" 0.18 cfs 4-9-91

9-8-92

#14 Leave div. rate and acres the same -
move priority date to 1960. "Proof" of
later priority date.

#16 May wish to advance priority date
of 29-04067 to Spring of 1971 because
warranty deed states "surplus water
only" from Papoose Creek was conveyed
to Germer.

9-8-92

#19 No change to 29-10011B

9-9-92

1927	Palmer - Thompson (29-04064D)	0.03	0.03
1960	Germer (29-04067)	0.22	0.25
1969	Smith (lawn) (29-10010)	0.01	0.26
1970	Scotfield (29-04064B)	0.04	0.30

Disallowed

Smith 29-04064A

Croxall - Matthews 29-04064C

#12 29-04064A disallowed - no change
Need conclusive evidence of irrigation
within the past 5 years. Affidavits are
not conclusive

#13 29-04064B Change priority date to 1970.
Acreage remains at 2.0 - may reduce to
1.8 acres. (North of house). 1956 photo
shows sagebrush and the date the
riser went in.

#14. 29-04064C - Disallow - 1956 and 1976
photos show no irrigation. Assume no
irrigation from Papoose Creek until after
May 20, 1971. (Smith furnished affidavits)

#15 29-04064D No change

#16 29-04067 No change warranty deed does not contradict affidavit.

#17 29-00010 No change

#18 29-00011A No change

#19 29-00011B No change

#20 29-00103 No change

9-10-92

#12 What is presently irrigated can be allowed.
Need to check acreage.

#13 Mr. Smith - no irrigation on Scottfield's from 1961 to
around 1970 Riser installed around 1971.

1970 CXV-2LL-103 ⁸⁻¹⁴⁻⁷⁰ 1 ac. of irrigation in 1970
Early '70's lots of water Papoose Creek flooded
Approx. '75 or '76 East of Papoose creek irrigated
for the first time,

April or May maybe June 1971 cleared
land east of Papoose Creek. - Germer

#14 Matthews - Croxall

1970 (Germer) watered from well primarily

1983 - commenced irrigation from Papoose
Creek -

#16 Germer Possibly transferred water
off of Germer's to develop new
ground.

Priority Order	1. Thompson	1.5"	1.5"	1.5 ac	0.03 cfs
	2. Smith	1.2"	2.7"	1.2 ac ^{0.018} 0.006	0.024 cfs
	3. Scottfield	1"	3.7"	2.0 ac	0.02 cfs
	4. Matthews	1"	4.7"	1.0 ac	0.02 cfs
	5. Germer	11"	15.7"	11.1 ac.	0.22 cfs
					<u>0.314</u>

Smith

per Carter
11/7/91

- where did pipe break
- how was it shut off?
 - at cistern or end of pipe
- when was cross ^{pipe fitting} put in to get water to trailer & Smith corals - (probably in 1983, but we need more info.) -
 - unless it's. were transferred
- more info on Smith's use -
 - when he hooked up -
 - he may have had epil. use for many yrs.
- What about being told he couldn't use cistern for dom. after he drilled well.

Coxall dep. talks about systems different from what he found.

When pipe was broken, might have cut off Smith's stockwater.

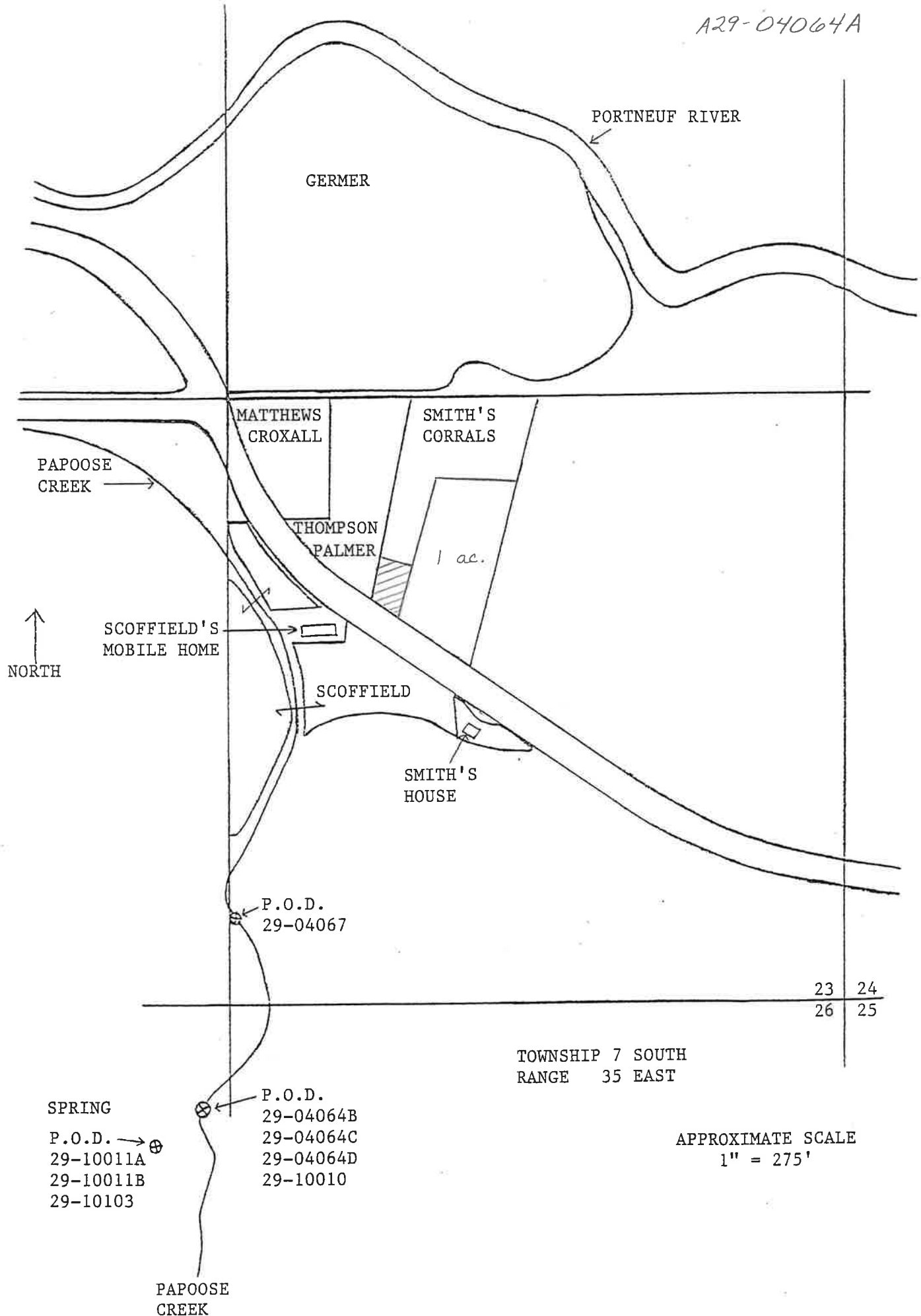
TWP	RNG	SECT	TRACT	LOT	ACRES	WATER	USE	CODE	WATER	LAST	O	STG	PRIORITY	WATER
			1\4	1\4					RIGHT	NAME			DATE	SOURCE
07S	35E	23			43.04				A29-10011	SMITH	C	J	04/01/1945	SPRING
07S	35E	23			43				A29-10094	AGUILAR (DECEASED)	C	J	05/31/1964	GROUNDWATER
07S	35E	23								AGUILAR	C			
07S	35E	23	SW	NE	12.0	01.04			A29-00494A	TERRELL	O	D	06/16/1903	BLACK ROCK CREEK
07S	35E	23								BRANSON	C			
07S	35E	23			7.0	01.04			A29-00494A	TERRELL	O	D	06/16/1903	BLACK ROCK CREEK
07S	35E	23	SE	NE						BRANSON	C			
07S	35E	23			5.0	01			A29-04065	TERRON	C	S	04/01/1926	PORTNEUF RIVER
07S	35E	23	NE	SE						BRANSON	C			
07S	35E	23			8.0	01			A29-04156	SMITH	C	S	05/01/1904	PORTNEUF RIVER
07S	35E	23	NE	SE						BRANSON	C			
07S	35E	23			13.0	01			A29-04067	GERNER	C	S	04/01/1945	PAPOOSE CREEK
07S	35E	23	NE	SE						LARSEN	A			
07S	35E	23			1.8	01			A29-04064A	SMITH	C	S	05/01/1889	PAPOOSE CREEK
07S	35E	23	SE	SE						LARSEN	A			
07S	35E	23			15.0	01			A29-04065	TERRON	C	S	04/01/1926	PORTNEUF RIVER
07S	35E	23	SE	SE						LARSEN	A			
07S	35E	23			1.0	01			A29-10010	SMITH	C	J	01/02/1969	PAPOOSE CREEK
07S	35E	23	SE	SE						LARSEN	A			
07S	35E	23			43.04				A29-10011	SMITH	C	J	04/01/1945	SPRING
07S	35E	23	SE	SE						LARSEN	A			
07S	35E	23			1.1	01			A29-04064C	CROXALL	C	J	05/01/1889	PAPOOSE CREEK
07S	35E	23	SE	SE						LARSEN	A			
07S	35E	23			1.5	01			A29-04064D	PALMER	C	J	05/01/1889	PAPOOSE CREEK
07S	35E	23	SE	SE						LARSEN	A			
07S	35E	23			8.2	01			A29-04064B	PALMER	O	S	05/01/1889	PAPOOSE CREEK
07S	35E	23	SE	SE						SCOFFIELD, JR.	C			
07S	35E	23								SCOFFIELD	C			
07S	35E	23								PAYNE	O			
07S	35E	23	SE	SE		43			A29-10103	SCOFFIELD, JR.	C	J	09/01/1927	SPRING
07S	35E	23								SCOFFIELD	C			
07S	35E	23	SE	SE		43			A29-10101	CROXALL	C	J	08/31/1958	GROUNDWATER
07S	35E	23	SE	SE		43			A29-10102	SCOFFIELD	C			
07S	35E	23	SE	SE		43				PALMER	C	J	07/14/1980	GROUNDWATER
07S	35E	23								SCOFFIELD	C			

AJ0722NP
(0D-22)

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS BY POINT OF DIVERSION

DATE: 03/06/90
PAGE: 1

TWP	RNG	SECT	TRACT	LOT	WATER USE CODE	WATER RIGHT NO.	LAST NAME	O	STG	PRIORITY DATE	WATER SOURCE
07S	35E	26	1\4 1\4 1\4	01		A29-04064B	PALMER SCOFFIELD, JR. SCOFFIELD PAYNE	0 C C 0	S	05/01/1889	PAPOOSE CREEK
07S	35E	26	NW NE NE	01		A29-04064A	SMITH SCOFFIELD, JR.	C	S	05/01/1889	PAPOOSE CREEK
07S	35E	26	NW NE	01		A29-10010	SMITH SCOFFIELD, JR.	C	J	01/02/1969	PAPOOSE CREEK
07S	35E	26	NW NE	01		A29-04064C	CROXALL SCOFFIELD, JR.	C	J	05/01/1889	PAPOOSE CREEK
07S	35E	26	NW NE	01		A29-04064D	PALMER SCOFFIELD, JR.	C	J	05/01/1889	PAPOOSE CREEK
07S	35E	26	NE NW NE	43		A29-10103	SCOFFIELD, JR. SCOFFIELD SCOFFIELD	C C C	J	09/01/1927	SPRING



OD-XXX
AJ5802NP
SELECTION FILE: CLF-SMITH-V-SCOFFIELD

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION NAME INDEX

DATE: 10/17/90
TIME: 10:38:11
PAGE: 1

SELECTION FILE: CLF-SMITH-V-SCOFFIELD

CLAIMANT	SOURCES OF WATER			TRIBUTARIES OF		
	O C	WATER RIGHT NUMBER	STG STA		PRIORITY DATE	
CROKALL, BILLIE J.	C	A29-04064C	J/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
GERMER, VIRGIL T.	C	A29-04067	S/	04/01/1945	PAPOOSE CREEK	PORTNEUF RIVER
LARSEN, REED W.	A	A29-04067	S/	04/01/1945	PAPOOSE CREEK	PORTNEUF RIVER
PALMER, D. GRACE	C	A29-04064D	J/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
PALMER, HYRUM MARTIN	O	A29-04064B	S/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
PAYNE, HAROLD G.	O	A29-04064B	S/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
SCOFFIELD, TARA L.	C	A29-04064B	S/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
SCOFFIELD, TARA L.	C	A29-10103	J/	09/01/1927	SPRING	PAPOOSE CREEK
SCOFFIELD, JR., RONALD J.	C	A29-04064B	S/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
SCOFFIELD, JR., RONALD J.	C	A29-10103	J/	09/01/1927	SPRING	PAPOOSE CREEK
SMITH, THERON	C	A29-04064A	S/	05/01/1889	PAPOOSE CREEK	PORTNEUF RIVER
SMITH, THERON	C	A29-10010	J/	01/02/1969	PAPOOSE CREEK	PORTNEUF RIVER
SMITH, THERON	C	A29-10011	J/	04/01/1945	SPRING	PAPOOSE CREEK

Smith
small?
under
double?

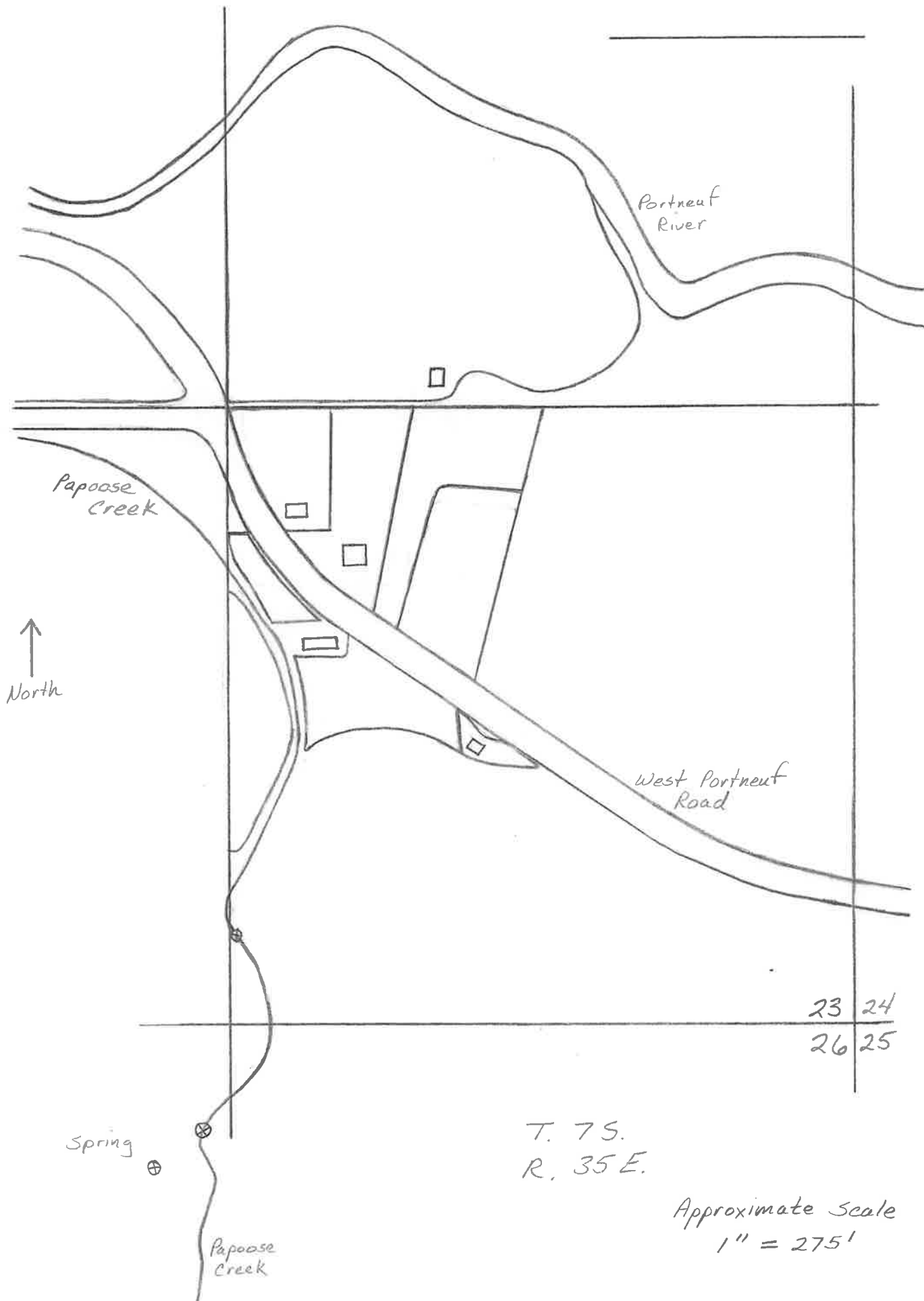
A29-04064A	A29-04064B	A29-04064C	A29-04064D	A29-04067	A29-10010	A29-10011	A29-10103
------------	------------	------------	------------	-----------	-----------	-----------	-----------

TOTAL RECORDS IN SELECTION FILE: 8

CLAIMANT

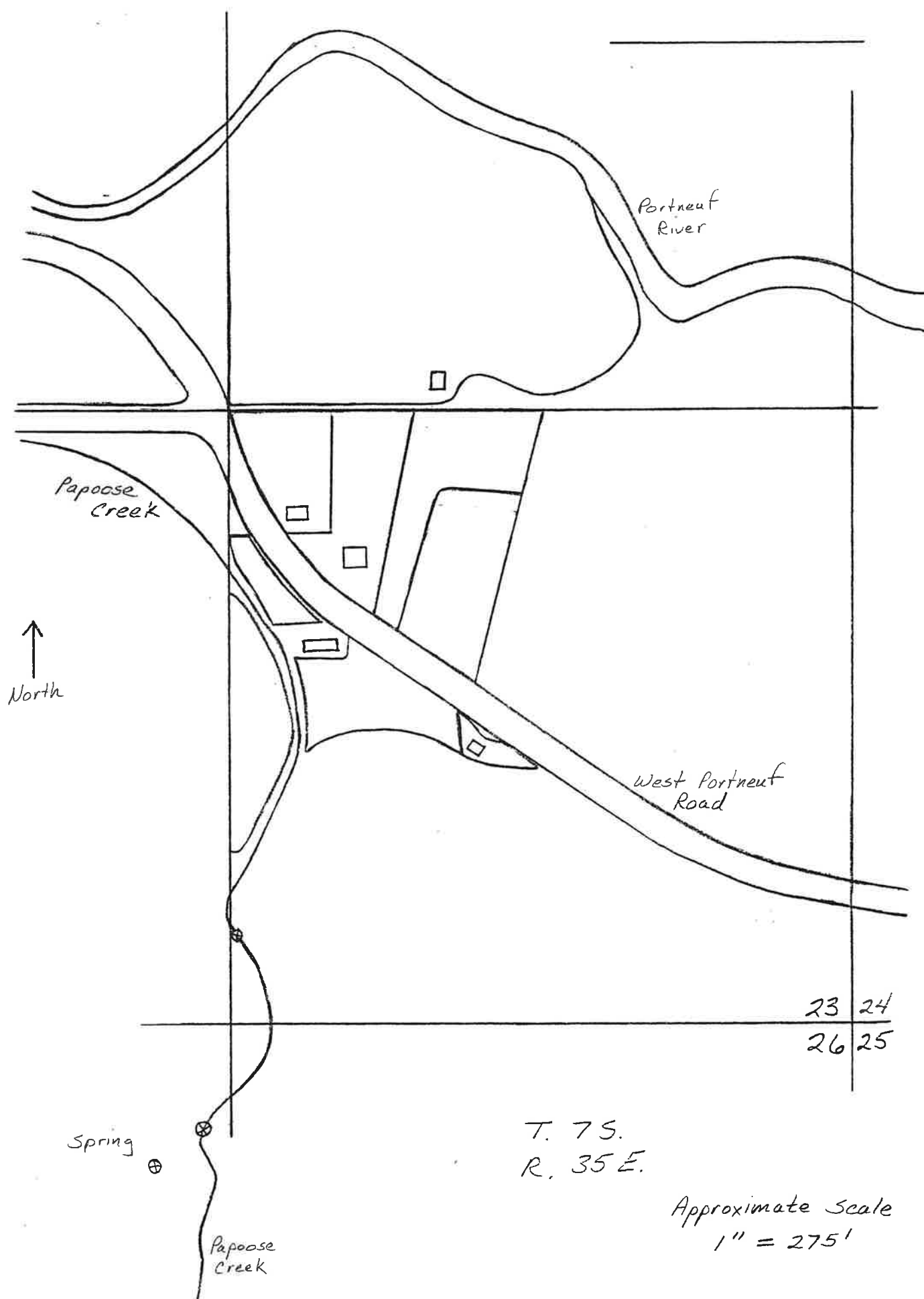
O WATER RIGHT				SOURCES OF WATER		TRIBUTARIES OF	
C	NUMBER	STA	PRIORITY DATE				

CROXALL, BILLIE J.	C A29-04064C	J/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
GERMER, VIRGIL T.	C A29-04067	S/	04/01/1945	PAPOOSE CREEK		PORTNEUF RIVER	
LARSEN, REED W.	A A29-04067	S/	04/01/1945	PAPOOSE CREEK		PORTNEUF RIVER	
PALMER, D. GRACE	C A29-04064D	J/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
PALMER, HYRUM MARTIN	O A29-04064B	S/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
PAYNE, HAROLD G.	O A29-04064B	S/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
SCOFFIELD, TARA L.	C A29-04064B	S/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
SCOFFIELD, TARA L.	C A29-10103	J/	09/01/1927	SPRING		PAPOOSE CREEK	
SCOFFIELD, JR., RONALD J.	C A29-04064B	S/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
SCOFFIELD, JR., RONALD J.	C A29-10103	J/	09/01/1927	SPRING		PAPOOSE CREEK	
SMITH, THERON	C A29-04064A	S/	05/01/1889	PAPOOSE CREEK		PORTNEUF RIVER	
SMITH, THERON	C A29-10010	J/	01/02/1969	PAPOOSE CREEK		PORTNEUF RIVER	
SMITH, THERON	C A29-10011	J/	04/01/1945	SPRING		PAPOOSE CREEK	



A29-04064A	A29-04064B	A29-04064C	A29-04064D	A29-04067	A29-10010	A78-02075	A78-04087	A78-04139	A78-07215
A78-10305	A78-10327								

TOTAL RECORDS IN SELECTION FILE: 12



R36E

T196 #148

2
12.0

Pete Miller #170

T195 #120
Pete Miller

3
37.6

#606
Antonio Aguilera

T1055

T117 #74
Theron Smith

T1647
Grace Palmer
#557

12.3

1
10.9

2
16.5

HEL NHE

3
40.9

25	24
26	25

IDAHO DEPARTMENT OF WATER RESOURCES
SELECTION FILE CONTENTS

DATE: 12/10/91
TIME: 12:31:51
PAGE: 1

R29-04064A	R29-04064B	R29-04064C	R29-04064D	R29-04067	R29-10010	R29-10011	R29-10011A	R29-10011B	R29-10103
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TOTAL RECORDS IN SELECTION FILE: 10

OD-XXX
AJ5801NP
SELECTION FILE: CLF-SMITH-V-SCOFFIELD-R-RECORD

ADJUDICATION
NUMERIC INDEX

DATE: 12/10/91
TIME: 12:32:05
PAGE: 1

WATER RIGHT NUMBER	STG STS	PRIORITY DATE	O C	CLAIMANT NAMES	SOURCES OF WATER	TRIBUTARIES TO
R29-04064A	/I	05/01/1889	C	THERON SMITH	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064B	S/	05/01/1927	C	RONALD J. SCOFFIELD, JR. C TARA L. SCOFFIELD	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064C	S/	05/01/1927	C	JOSEPH MATTHEWS C TAHNA MATTHEWS	PAPOOSE CREEK	PORTNEUF RIVER
R29-04064D	S/	05/01/1927	C	TRACY R. THOMPSON C THOMAS R. THOMPSON	PAPOOSE CREEK	PORTNEUF RIVER
R29-04067	S/	04/01/1960	C	VIRGIL T. GERMER	PAPOOSE CREEK	PORTNEUF RIVER
R29-10010	J/	01/02/1969	C	THERON SMITH C THOMAS J. HOLMES	PAPOOSE CREEK	PORTNEUF RIVER
R29-10011	/Z	04/01/1945	C	SPLIT RIGHT	SPRING SPLIT RIGHT	PAPOOSE CREEK
R29-10011A	J/	04/01/1945	C	THERON SMITH	SPRING	PAPOOSE CREEK
R29-10011B	J/	01/02/1969	C	THERON SMITH	SPRING	PAPOOSE CREEK
R29-10103	J/	09/01/1970	C	RONALD J. SCOFFIELD, JR. C TARA L. SCOFFIELD	SPRING	PAPOOSE CREEK

MEMO

TO: File
FROM: Lynne Krogh-Hampe
DATE: February 12, 1990
RE: Smith v. Scoffield

I. CLAIMS (to Papoose Creek or spring trib to Papoose Creek)

A. Smith

A29-4064A* 1889, .04 cfs to irr 1.8 A (shows lot N of rd.)
A29-10011 1945, .02 cfs for D/1, S/100 (shows same lot, source spring)

✓A29-10010 1969, .02 cfs to irr 1 A (shows lot S of rd.)
Also has two claims (A29-4156 and A29-4215) from Portneuf River for irr of lands in different section.
Also has one claim (A29-4065) from Portneuf River for irr of same lands as A29-4064A.

B. Scoffield

A29-4064B* 1889, .164 cfs for irr of 8.2 A, plus incidental stock
✓A29-10103 1927, .02 cfs for D/1 (source spring) 1990?

C. Croxall

A29-4064C* 1889, .022 cfs for irr of 1.1 A
Also has one claim (A29-10101) from GW for D/1

D. Palmer

A29-4064D* 1889, .031 cfs for irr of 1.5 A
Also has one claim (A29-10102) from GW for D/1

E. Germer

A29-4067 1945, .260 cfs for irr of 13 A

*These claims are all part of one statutory claim for which there are assignments in IDWR files.

Smith says no use before '70, but they apparently didn't get pump till '78. Others say was well, they just replaced pipe.

moved there in '27.

10011 & 10103 -
can pipeline divert .04?
Does cistern limit volume of water right?
See 4067 - no in of so' field
till pressurized system
installed?

II. Notes

The report on these parties' claims will include only the claims to Papoose Creek and the spring tributary to Papoose Creek.

The first step is to do the field work to review the claims, and to provide a fairly detailed report of the results of the field work, including a diagram (from which a map can later be made if necessary) of the diversion works and uses of water.

We also need to get some supporting information on the priority dates claimed, since they all have a basis of beneficial use or statutory claim. A29-10010 and 10103 qualify as small D&S which would normally come under the proposed policy that no supporting information is required for the priority date, but here, all the claims are small and we know there is a current dispute so we probably ought to seek supporting information as to all of them. Note that the statutory claim is evidence of the priority date only as of the date the claim was filed (8/30/76 for 29-4067, and 5/3/76 for 29-4064).

why not claimed?
A29-4064A, A29-4064B, A29-4064C and A29-4064D are portions of A29-4064 that are claimed consistent with the assignments in IDWR files. A29-4064E, which is the remainder that was not conveyed away, was not claimed, and this should be checked out. A29-4067 is claimed consistent with the statutory claim, except that a later priority date is claimed in the adj claim.

MEMO

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FROM: Lynne Krogh-Hampe
DATE: February 12, 1990
RE: Smith v. Scoffield

I. CLAIMS (to Papoose Creek or spring trib to Papoose Creek)

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- ✓ A29-4064D* 1889, .031 cfs for irr of 1.5 A
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E. Germer

- ✓ A29-4067 1945, .260 cfs for irr of 13 A

*These claims are all part of one statutory claim for which there are assignments in IDWR files.

↓
same as beneficial use?

II. Notes

The report on these parties claims will include only the claims to Papoose Creek and the spring tributary to Papoose Creek.

The first step is to do the field work to review the claims, and to provide a fairly detailed report of the results of the field work, including a diagram (from which a map can later be made if necessary) of the diversion works and uses of water.

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A29-4064A, A29-4064B, A29-4064C and A29-4064D are portions of A29-4064 that are claimed consistent with the assignments in IDWR files. A29-4064E, which is the remainder that was not conveyed away, was not claimed, and this should be checked out. A29-4067 is claimed consistent with the statutory claim, except that a later priority date is claimed in the adj claim.

North



P.D. for:

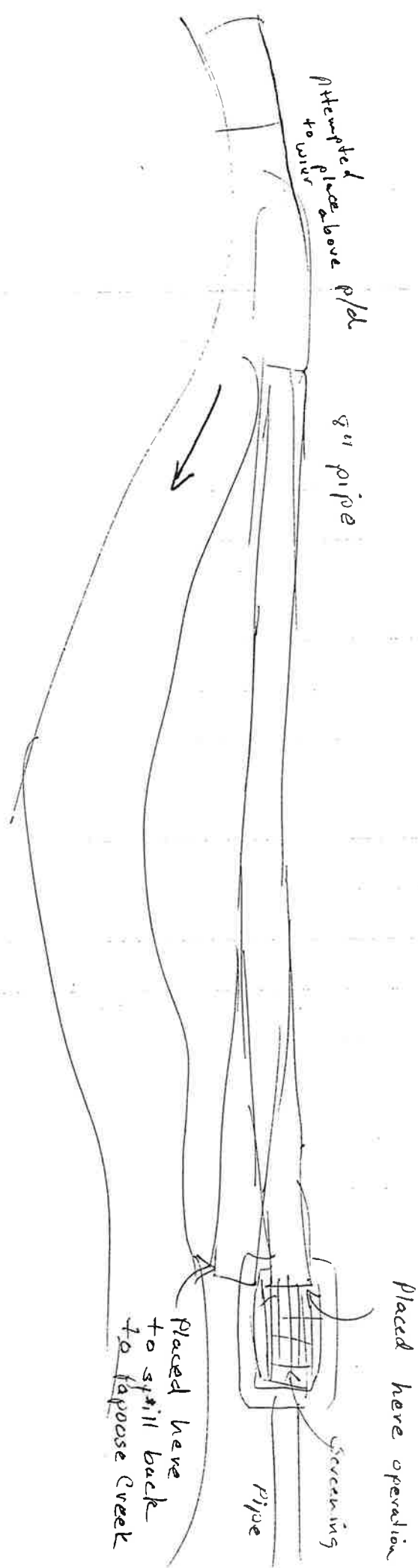
A29-04064A

A29 - 04064B

A29-04064C

A29-04064D

A29-10010



RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
A29-04064A	THERON SMITH 5137 WEST PORTNEUF ROAD INKOM ID 83245	05/01/1889	IRRIGATION	04-01 11-01	0.04 CFS	STATUTORY CLAIM
					0.04 CFS TOTAL	
					0.00 AFA TOTAL	

1927

SOURCE: PAPOOSE CREEK
OTHER RIGHTS: NONE.
CONDITIONS OF APPROVAL:

REMARKS: AC. IRR. = 1.8.

POINT OF DIVERSION:
T07S R35E S26 NWME OK

PLACE OF USE: IRRIGATION
T07S R35E S23 SESE 1.8
1.8 ACRES TOTAL

- priority date should be 1927
- source OK
- POD OK
- POW OK

Center says only 1 acre is capable of irr.
dams like no m. for 5 years / from deep stock
in property.

forfeited?

Water Right Number - A29-040644 Prefix Translation: ADJUDICATION CLAIM Old (D) Number -

*** C - CURRENT OWNER ***
SMITH

HERON

1 - 5137 WEST PORTNEUF ROAD
2 -
3 -
City- INKOM
Phone - 208-775-3604
State- ID Zip- 83245

no ben
use found

Priority Date - 05/01/1889 Region - 15 EASTERN Stage - S - STATUTORY CLAIM Status -

Source - PAPOOSE CREEK Tributary - PORTNEUF RIVER

Twn Rng Sec Tract Lot Rflg County Point of Diversion Stream Index (Blank if no Index Code)

Code Description Period From Period To Water Use Diversion Rate Diversion Volume

01 - IRRIGATION 04/01 11/01 0.040 2.7

Total Div. Rate - 0.040 Total Div. Volume - Total Div. Capacity - Total Consumptive Use - KM Usage -

Diversion Means - PIPELINE TO SPRINKLER SYSTEM.

Non-Irrigation Use - NONE.

Other Rights for Same Use - NONE.

Remarks - AC. IRR. = 1.8.

Old Water Right Numbers - No Old Water Right Numbers found.

Conditions of Approval - No Conditions of Approval found.

Decree Plaintiff - Decree Defendant - Decree Date - 00/00/0000

Prefix Translation: ADJUDICATION CLAIM

- - -Comments- -
No Comments Found

Adjudication Rights Dates and Flags Area	
Court Report Filing	00/00/0000
Objection Filed Date	00/00/0000
Response Filed Date	00/00/0000
Claim Received Date	06/29/1988
Proof Due Date	00/00/0000
Licensed Date	00/00/0000
Claims Tape Error Flag	-
Fee Exempt Flag	-
Field Inspection Made	00/00/0000
Field Inspection Flag	-
Verified Date	11/04/1986
Last Amended Date	00/00/0000
Proof Made Date	00/00/0000
Receipt Number	E000563
POU Ownership Flag	-
Name Connector	-
Civil Case Number	39576
Old Case Number	-
Old Judicial District	-
Temporary Right	P
Water District	29
Federal/State Indicator	S
Presumption Flag	-
Notice of Error Flag	-

1 - 5137 WEST PORTNEUF ROAD
2 -
3 -
City- INKOM State- ID Zip- 83245
Phone - 208-775-3604

[illegible]

Prefix Translation: ADJUDICATION CLAIM

+ + + + +
+ - - - - Comments- + + + + +
+ - - - - No Comments Found + + + + +

Adjudication Rights Dates and Flags Area	
Court Report Filing	00/00/0000
Objection Filed Date	00/00/0000
Response Filed Date	00/00/0000
Claim Received Date	06/29/1988
Proof Due Date	00/00/0000
Licensed Date	00/00/0000
Claims Tape Error Flag	-
Fee Exempt Flag	-
Field Inspection Made	00/00/0000
Field Inspection Flag	-
Verified Date	00/00/0000
Last Amended Date	00/00/0000
Proof Made Date	00/00/0000
Receipt Number	E000563
POU Ownership Flag	Y
Name Connector	-
Civil Case Number	39576
Old Case Number	-
Old Judicial District	-
Temporary Right	P
Water District	-
Federal/State Indicator	S
Presumption Flag	-
Notice of Error Flag	-

old (D) Number -

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+-----+-----+-----+-----+-----+-----+-----+-----+
| Address |-----+-----+-----+-----+-----+-----+-----+-----+

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State- ID Zip- 83245

State- ID Zip- 83245

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State- ID zip- 0
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State- ID Zip- 83245

	+ - -	- +
Status	- - -	- +

1
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11
12

[illegible]

(3) **ДАННОЕ**

2.0

ready to verify
at 12-10-91

Prefix translation: RESEARCH

Remarks	Division
THE FOLLOWING RIGHTS ARE ALSO DIVERSED THROUGH POINT OF DIVERSION DESCRIBED ABOVE: 29-04064C, 29-04064D, 29-10010	

No Old Water Right Numbers Found

- - Conditions of Approval - -
- - Conditions of Approval found.
No Conditions of Approval found.

+ - - - - Decree Defendant - - - +

--Comments--
No Comments Found

- +
12/10/91 FRITSCHL

Adjudication Rights Dates and Flags Area				Civil Case Number
Court Report Filing	00/00/0000	Field Inspection Made	03/15/1990	39576
Objection Filed Date	00/00/0000	Field Inspection Flag		
Response Filed Date	00/00/0000	Verified Date	00/00/0000	Old Case Number
Claim Received Date	11/08/1989	Last Amended Date	00/00/0000	Old Judicial District
		Receipt Number	E011129	Temporary Right
		POU Ownership Flag	Y	Water District
		Name Connector	AND/OR	Federal/State Indicator
				Presumption Flag
				Notice of Error Flag

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE STATUTORY CLAIM
A29-04064B	RONALD J. SCOFFIELD, JR. TARA L. SCOFFIELD 5195 W. PORTNEUF INKOM ID 83245	05/01/1889 IRRIGATION	04-01 11-01	0.16 CFS	
				0.16 CFS TOTAL	
				0.00 AFA TOTAL	

SOURCE: PAPOOSE CREEK
OTHER RIGHTS: NONE
CONDITIONS OF APPROVAL:

TRIBUTARY: PORTNEUF RIVER

REMARKS:

POINT OF DIVERSION: NWNE
T07S R35E S26

PLACE OF USE: IRRIGATION SESE 8.2
T07S R35E S26
8.2 ACRES TOTAL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

PAGE: 14
QUICKLOOK INFORMATION

CLAIM NUMBER: A29-04064B

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE		CA 11-20-90	CA 3-15-90	Y	6	CA 12-5-91	CA 12-10-91	
POINT OF DIV	Y		CA 3-15-90	Y	5			
SOURCE			CA 3-15-90	N	5			
PLACE OF USE	Y		CA 3-15-90	Y	5			
DIV. AMOUNT CFS/VOLUME	Y		CA 10-18-90 CA 4-9-91	Y	5			
CONSUMPTIVE USE	-		CA 3-15-90	Y	5 + 6	CA 12-16-91		
PURPOSES			CA 3-15-90	N	5			
PERIOD OF USE			CA 3-15-90	N	5 + 6	CA 12-10-91		
BASIS OF CLAIM	Y		CA 3-15-90	N	6			
REMARKS								

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:24:37
11/29/91

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A29-04064B

LAST: PALMER
ADDRESS:
CITY:
PHONE NUMBER: 208-000-0000
OWNER CODE: 0
FIRST: HYRUM MARTIN
STATE: ID ZIP: 00000

LAST: SCOFFIELD, JR.
ADDRESS: 5195 W. PORTNEUF RD
CITY: INKOM
PHONE NUMBER: 208-775-4560
OWNER CODE: C
FIRST: RONALD J.
STATE: ID ZIP: 83245

LAST: SCOFFIELD
ADDRESS: 5195 W. PORTNEUF RD
CITY: INKOM
PHONE NUMBER: 208-775-4560
OWNER CODE: C
FIRST: TARA L.
STATE: ID ZIP: 83245

LAST: PAYNE
ADDRESS: 5195 W. PORTNEUF RD.
CITY: INKOM
PHONE NUMBER: 208-000-0000
OWNER CODE: 0
FIRST: HAROLD G.
STATE: ID ZIP: 832450000

FIELD EXAM REQUIRED?
VERIFICATION REQUIRED DUE TO REMARKS?
NO REMARKS IN CLAIM
DATABASE FIELD EXAMINER
N

A. AJ CLAIM: # A29-04064B PRIORITY DATE: 05-01-1889 STAGE: S
B. WR RECORD: # 29-04064B PRIORITY DATE: 05-01-1889 STAGE: S

C. FIELD EXAM REQUIRED?
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER #128

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y(✓) N()
IF YES EXPLAIN.

REMARKS: Evidence of priority supports 1927 priority date
See notarized statement of D. Grace Palmer dated December 4, 1990

RECOMMENDED PRIORITY DATE:
05-01-1889

REVIEWED BY 5-1-1927 DATE 12-5-91

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A29-04064B	07S	35E	26	NW	NE	NE		BANNOCK

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
NONE NONE
WR RECORDS IN SAME 40 ACRE TRACT
NONE

SOURCE: PAPOOSE CREEK
TRIB: PORTNEUF RIVER

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
29-04064B	07S	35E	26		NW	NE		BANNOCK

OTHER WR RECORDS WITH SAME WR POD
AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX

29-04064A
29-04064C
29-04064D
29-04064E
A29-04064A
A29-04064C
A29-04064D
A29-10010
A29-10103
NONE

SOURCE: PAPOOSE CREEK
TRIB: PORTNEUF RIVER

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY?	(Y/N)	DATABASE	Y	FIELD EXAMINER
DUE TO SOURCE DISCREPANCY?	(Y/N)	N		<i>CH</i>

REMARKS:

NE NW NE appears more likely.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: 1/4 1/4 1/4 LOT

COUNTY

75 35E 24

NE NW NE

Barnack

SOURCE: PAPOOSE CREEK

TRIB: PORTNEUF RIVER

REVIEWED BY: CA

DATE: 12-5-91

A. ROOT WATER RIGHT NUMBERS: A29-04064A
A29-04064C

A29-04064D

A29-04064B

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	35E	23	SE	SE	SE	SCOFFIELD, JR., RONALD J.	A29-04064B / 8.2	29-04064B / 8.0	13.0		
			SE	SE	SE	SMITH, THERON	A29-04064A / 1.8	29-04064A / 2.0			
			SE	SE	SE	THERON, SMITH	A29-04065 / 15.0	29-04065 / 25.0			
			SE	SE	SE	SMITH, THERON	A29-10010 / 1.0	-			
			SE	SE	SE	SMITH, THERON	A29-10011 /	-			
			SE	SE	SE	SCOFFIELD, JR., RONALD J.	A29-10103 /	-			
			SE	SE	SE	CROXALL, BILLIE J.	A29-10101 /	-			
			SE	SE	SE	PALMER, GRACE	A29-10102 /	-			
			SE	SE	SE	MATTHEWS, JOSEPH	A29-04064C / 1.1	29-04064C / 1.0			
			SE	SE	SE	THOMPSON, TRACY R	A29-04064D / 1.5	29-04064D / 2.0			
			SE	SE	SE	PALMER, HYRUM MARTIN	A29-04064E / 2.0	29-04064E / 2.0			
TOTAL ACRES						A29-04064B	8.20	8.00	13.00		

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y () N (X)

C. FIELD EXAM REQUIRED? DATABASE Y
DUE TO POU DISCREPANCY? (Y/N)

FIELD EXAMINER
Y 28

PRESUMPTION FLAG:

REMARKS:

Much of the claimed irrigated acres is dry hillside.

RECOMMENDATIONS:

TOTAL ACRES: 2

REVIEWED BY: CA

DATE: 12-5-91

A. AJ CLAIMED USES:

PURPOSES
A29-04064B IRRIGATION

MONTH/DAY
FROM 04-01 TO 11-01

DIVERSION QUANTITY
.164 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.164 CFS

B. WR RECORDED USES:

PURPOSES
29-04064B IRRIGATION

MONTH/DAY
FROM 04-01 TO 11-01

DIVERSION QUANTITY
.160 CFS

TOTAL DIVERSION RATE/VOLUME CLAIMED

.160 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)	N
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)	Y
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)	N

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☒) N(☐)
Y(☒) N(☐)

Explain in remarks, below.

REMARKS:

Recommended new W.R. Standard

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS? Y () N (X)

AJ TOTAL CLAIMED DIVERSION RATE: 0.164 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.160 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) Y

FIELD EXAMINER cd

B. FLOW MEASUREMENT

MEASUREMENT METHOD Open Channel - Pegasus meter, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y () N (X) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A29-04064B	PAPPOOSE CREEK	SCOFFIELD, JR., RONALD J.	0.164	0.020		
A29-04064A	PAPPOOSE CREEK	SMITH, THERON	0.040	0.022		
A29-04064C	PAPPOOSE CREEK	MATTHEWS, JOSEPH	0.022	0.020		
A29-04064D	PAPPOOSE CREEK	THOMPSON, TRACY R	0.031	0.020		
A29-04065	PORTNEUF RIVER	THERON, SMITH	1.460	0.020		
A29-10010	PAPPOOSE CREEK	SMITH, THERON	0.020	0.020		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A29-10011	DOMESTIC	SMITH, THERON	FROM 01-01 TO 12-31	.020 CFS	
A29-10011	STOCKWATER	SMITH, THERON	FROM 01-01 TO 12-31	.020 CFS	

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES 2 x 0.02 CFS/ACRE = 0.04 CFS
(Taken from p/u review)

1b. CALCULATIONS

reduce to 0.02 cfs/ac.

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y(X) N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 20.5 AF/A

3.0 *

ACRES 2 x CONSUMPTIVE VOL. AF/A FOR AREA 2.5 =

TOTAL CONSUMPTIVE USE 5.0 AF/A * *New standard*

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES x DIVERSION VOL. AF/A FOR AREA 11.4 =

TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	04-01 11-01 10-31	0.164 0.04		20.5 5.4
TOTAL FOR THIS RIGHT				20.5 5.4

REVIEWED BY: CA

DATE: 12-10-91

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP
FORFEIT/ABANDON
ADDITIONAL DIV. AMOUNT

ACCEPTED
AS CLAIMED
(X)
(X)
(X)

NEEDS
REVIEW
()
()
()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 29-04064
TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
0.300

EXAMINER
0.257

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A29-04064A	0.040	-	-	29-04064A	0.040
-	A29-04064C	0.022	-	-	29-04064C	0.020
-	A29-04064D	0.031	-	-	29-04064D	0.030
-	A29-04064B	0.164	-	-	29-04064B	0.160
-	-	-	-	-	29-04064	0.050
-	-	-	-	-	29-04064E	0.050
TOTAL CFS		0.257				0.300

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

DATABASE
N

FIELD
EXAMINER
N

REMARKS:

Portion "E" is not claimed

F06 29-04064C, 29-04064D, 29-10010

AUTHENTICATION:

SIGNATURE:

Arthur Fritschle

DATE:

CA 12-10-91

NAME OF FIELD EXAMINER:

Arthur Fritschle

TITLE:

Sr. W.R. Agent

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:26:26
11/29/91

PAGE: 15
PROFILE REPORT

CLAIM NUMBER: A29-04064B

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	RONALD J. SCOFFIELD, JR. TARA L. SCOFFIELD 5195 W. PORTNEUF INCOM ID 83245 (208) 775-4560	05/01/1889	IRRIGATION	04-01 11-01	0.16 CFS	20.5 AFA
				TOTAL DIVERSION:	0.16 CFS	
				CONSUMPTIVE USE:		

Water Source: PAPOOSE CREEK

Tributary to: PORTNEUF RIVER

Stage: STATUTORY CLAIM

Point(s) of Diversion:

T07S R35E S26

NWNE

BANNOCK County

Place of use Legal Description for: IRRIGATION

	NE	NW	SW	SE	SUM
T R S	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac Lt Ac	: :
07S 35E 23	:	:	:	:	:
TOTAL ACRES					08
					8.2

Other Rights: NONE

Other Water Rights Listing Overlapping Place(s) of use:

A29-04064A A29-04064C A29-04064D A29-10010

Non-Irrigation Use: S/5 CATTLE & HORSES

Dates: Exam Made Date:

Verified Date: 11/04/1986

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

MEMO

TO: File
FROM: Lynne Krogh-Hampe
DATE: February 12, 1990
RE: Smith v. Scoffield

I. CLAIMS (to Papoose Creek or spring trib to Papoose Creek)

A. Smith

A29-4064A* 1889, .04 cfs to irr 1.8 A (shows lot N of rd.)
A29-10011 1945, .02 cfs for D/1, S/100 (shows same lot, source
spring)
A29-10010 1969, .02 cfs to irr 1 A (shows lot S of rd.)
Also has two claims (A29-4156 and A29-4215) from Portneuf River
for irr of lands in different section.
Also has one claim (A29-4065) from Portneuf River for irr of same
lands as A29-4064A.

B. Scoffield

A29-4064B* 1889, .164 cfs for irr of 8.2 A, plus incidental
stock
A29-10103 1927, .02 cfs for D/1 (source spring)

C. Croxall

A29-4064C* 1889, .022 cfs for irr of 1.1 A
Also has one claim (A29-10101) from GW for D/1

D. Palmer

A29-4064D* 1889, .031 cfs for irr of 1.5 A
Also has one claim (A29-10102) from GW for D/1

E. Germer

A29-4067 1945, .260 cfs for irr of 13 A

*These claims are all part of one statutory claim for which there
are assignments in IDWR files.

II. Notes

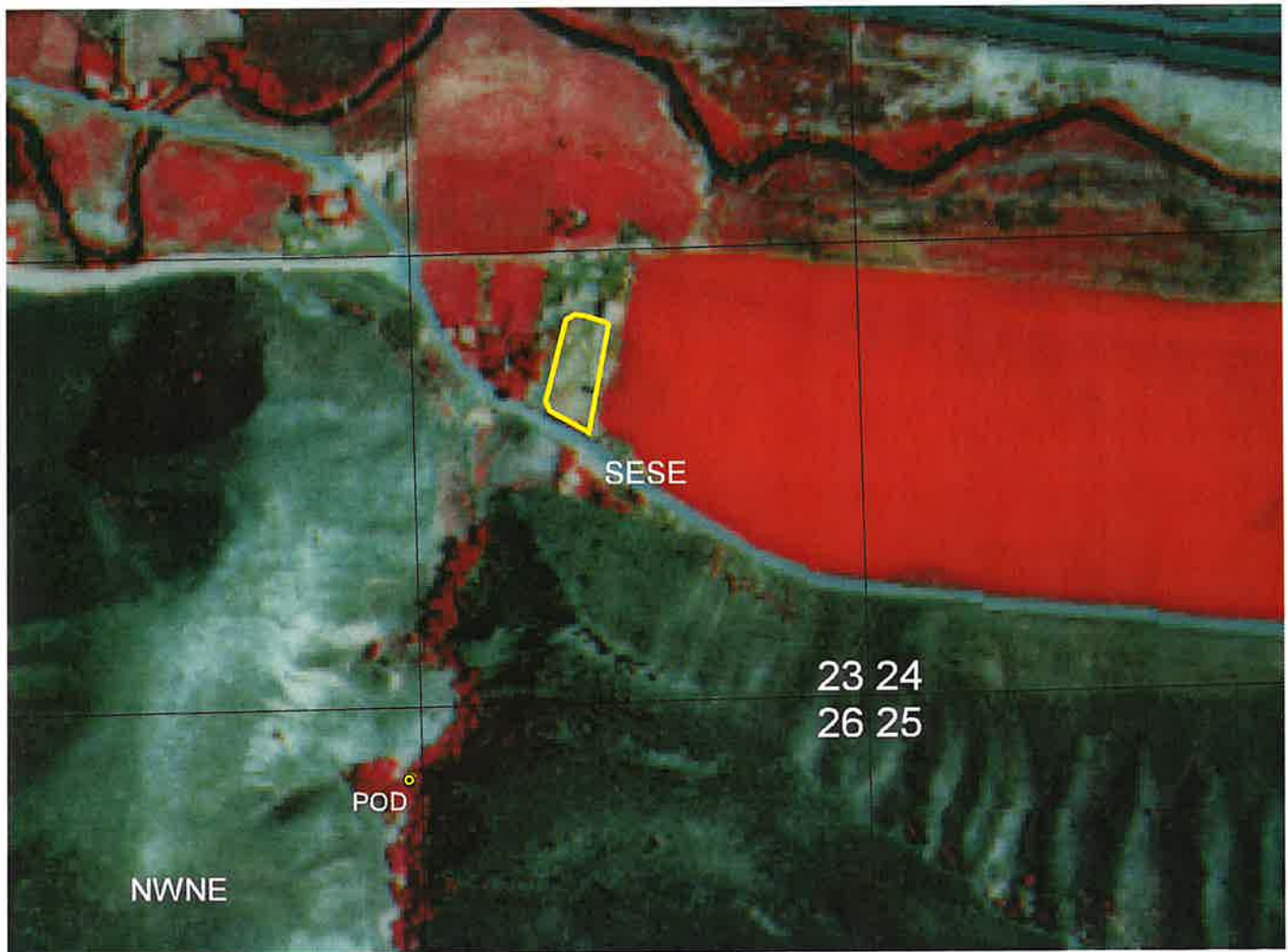
The report on these parties claims will include only the claims to Papoose Creek and the spring tributary to Papoose Creek.

The first step is to do the field work to review the claims, and to provide a fairly detailed report of the results of the field work, including a diagram (from which a map can later be made if necessary) of the diversion works and uses of water.

We also need to get some supporting information on the priority dates claimed, since they all have a basis of beneficial use or statutory claim. A29-10010 and 10103 qualify as small D&S which would normally come under the proposed policy that no supporting information is required for the priority date, but here, all the claims are small and we know there is a current dispute so we probably ought to seek supporting information as to all of them. Note that the statutory claim is evidence of the priority date only as of the date the claim was filed (8/30/76 for 29-4067, and 5/3/76 for 29-4064).

A29-4064A, A29-4064B, A29-4064C and A29-4064D are portions of A29-4064 that are claimed consistent with the assignments in IDWR files. A29-4064E, which is the remainder that was not conveyed away, was not claimed, and this should be checked out. A29-4067 is claimed consistent with the statutory claim, except that a later priority date is claimed in the adj claim.

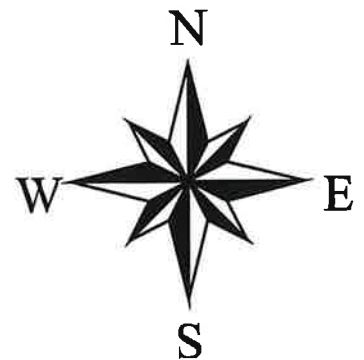
29-4064A



600 0 600 1200 1800 2400 Feet

T07S R35E S23

Map prepared by: Carter Fritschle
Date prepared: 05/10/01
1987-1988 NAPP photography
Idaho Department of Water Resources



11/13/2002

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

RIGHT NUMBER: 29-4064A

NAME AND ADDRESS: CARMA B SMITH
5137 W PORTNEUF RD
INKOM ID 83245

SOURCE: PAPOOSE CREEK

TRIBUTARY: PORTNEUF RIVER

QUANTITY: 0.018 CFS

PRIORITY DATE: 05/02/1927

POINT OF DIVERSION:

T07S R35E S26 NENWNE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

4/01 10/31

0.018 CFS

PLACE OF USE:

IRRIGATION Within BANNOCK County

T07S R35E S23 SESE 0.9

0.9 ACRES TOTAL

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

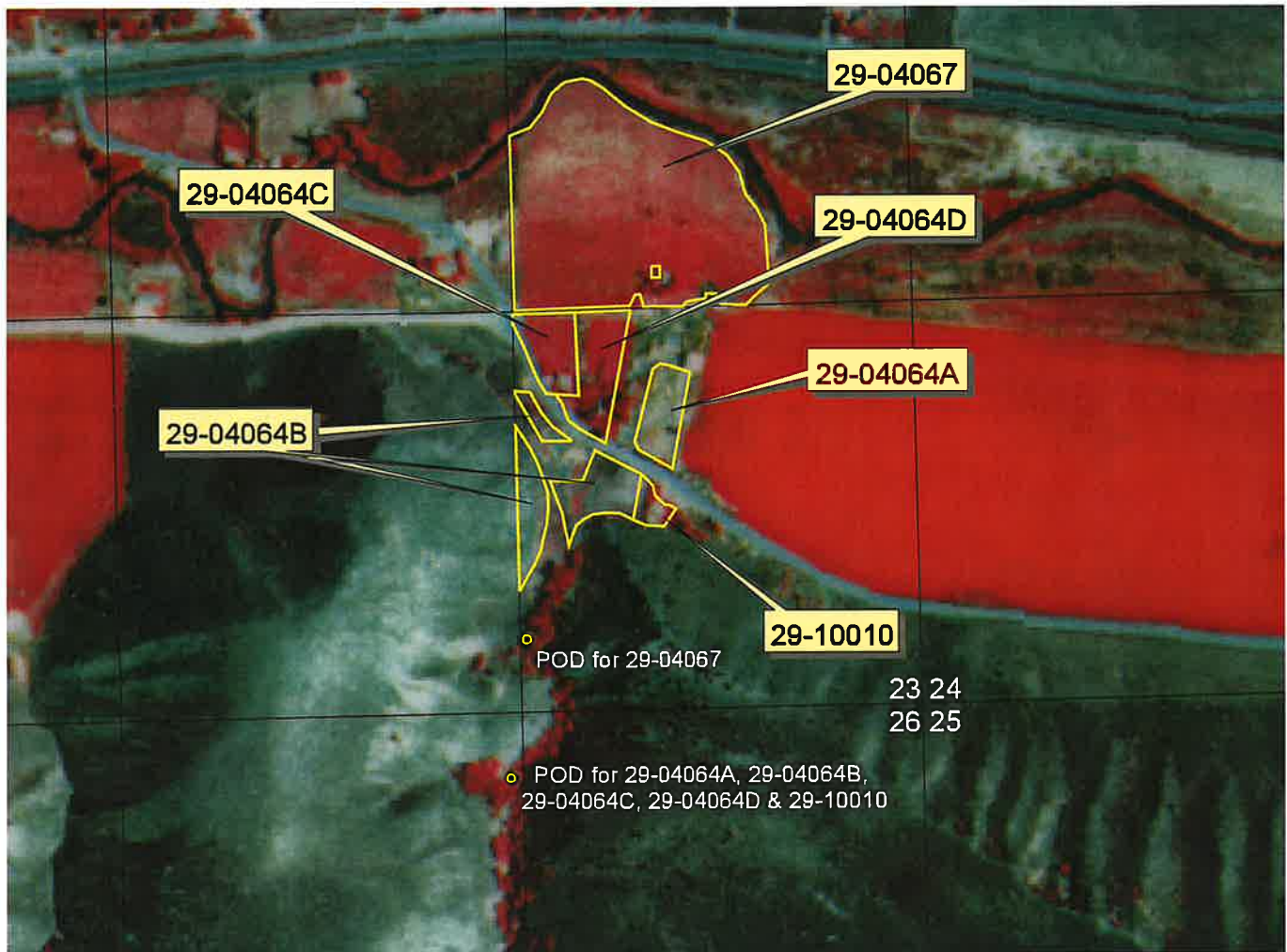
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: Decreed

THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 29-04064B, 29-04064C, 29-04064D,
29-10010

A FINAL PARTIAL DECREE WAS ISSUED FOR THIS RIGHT IN SMITH V.
SCOFFIELD AS PART OF THE SRBA ON NOVEMBER 4, 1992.

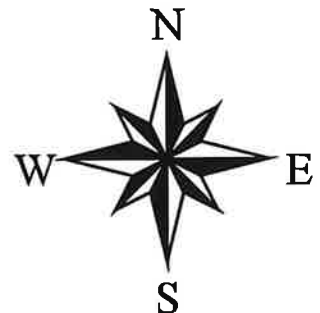
Papoose Creek Water Rights



500 0 500 1000 1500 Feet

T07S R35E S23 & S26

Map prepared by: Carter Fritschle
Date prepared: 05/10/01
1987-1988 NAPP photography
Idaho Department of Water Resources



Water Right Number - A29-04064A

Adj. Flag Translation: Adjudication Temporary Work Area

Old (D) Number -

*** C - CURRENT OWNER ***
SMITH
THERON
1 - 5137 WEST PORTNEUF ROAD
2 -
3 -
City - INKOM
Phone - 208-775-3604
State - ID Zip - 83245

Priority Date - 05/01/1889
Region - 15
Stage - S - STATUTORY CLAIM
Tributary - PORTNEUF RIVER
Status -

Source - PAPOOSE CREEK
Point of Diversion - Stream Index (Blank if no Index Code)

Twn Rng Sec Tract Lot Rflg County
07S 35E 26 NW NE (5) BANNOCK

Code Description Period From Period To Water Use Diversion Rate Diversion Volume
01 - IRRIGATION 04/01 11/01 0.040

Total Div. Rate - 0.040
Total Div. Volume - 2.7
Total Div. Capacity -

Twn Rng Sec Tract Lot Acres Code Description County
07S 35E 23 SE SE 01 IRRIGATION (5) BANNOCK

Total Acres: 1.8

- Diversion Means - PIPELINE TO SPRINKLER SYSTEM.

- Non-Irrigation Use - NONE.

- Other Rights for Same Use - NONE.

Remarks
AC. IRR. = 1.8.

- Old Water Right Numbers
No Old Water Right Numbers found.

- Conditions of Approval
No Conditions of Approval found.

- Decree Plaintiff
Decree Defendant
Decree Date
00/00/0000

Smith
A29-04064A

8 hydrants & from spring for stock water



Approx. 1 acre

3-15-90

North



P.D. for:

A29-04064A

A29-04064B

A29-04064C

A29-04064D

A29-10010



3-15-90

4-8-91 Tel-con with Tom Holmes - OK
to contact Theron Smith to measure spring.

4-8-91 Tel-con with Mrs. Smith (775-3604)
Appt. made for 1:00 p.m. 4-9-91 to measure
the spring.

Castro 4-8-91

Theron Smith

A29-04064A

3-12-90

A29-10011

A29-10010

Appt. 9:00 A.M. Thursday 3-15-90

Directions Exit 63, Turn left 2 miles east along R.R. track. Take first public crossing (there are 2 private crossings before the public crossing) turning right across R.R. tracks. Go .4 miles Brick house on right-hand side of road (5137 W. Portneuf Rd.). 2 steel graneries on opposite side of road.

775-3604

No answer 9:05 AM 10-17-90

" " 9:45 AM 10-17-90

" " 11:45 AM 10-17-90



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

Date: March 7, 1990

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Theron Smith
5137 W. Portneuf Highway
Inkom, ID 83245

Identification no. A29-10010, A29-10011 & A29-04064A

RE: Field examination of a water right claimed in the Snake River
Basin Adjudication

Dear Claimant:

We are planning to conduct water right field examinations in the vicinity of your water right claim on March 14 and 15, 1990. A field examination is needed to verify your water use.

The field examiner will be visiting your property to obtain information necessary for the verification process. If you, or someone with knowledge of your water system could be available at the time of the field examination, it would be appreciated.

You will be contacted by telephone to schedule a time for the field examination. If you have any questions regarding the field examination, you may contact this office at (208) 327-7862.

Sincerely,


Carter Fritschle
Senior Water Resource Agent
Adjudication Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

Date: March 7, 1990

Thomas J. Holmes
Attorney at Law
P.O. Box 1641
Pocatello, ID 83204

Identification no. A29-04177, A29-10010, A29-10011, & A29-04064A

RE: Field examination of a water right claimed in the Snake
River Basin Adjudication

Dear Mr. Holmes:

We are planning to conduct water right field examinations in the vicinity of your client's water right claim on March 14 and 15, 1990. A field examination is needed to verify the water use. The field examiner will be visiting your client's property to obtain information necessary for the verification process.

A copy of the letter sent to your client is enclosed. If you wish to be present with your client at the time of the field examination, or if you have any questions regarding the field examination, you may contact this office at (208) 327-7862.

Sincerely,

Carter Fritschle
Senior Water Resource Agent
Adjudication Bureau

Enclosure:

Copy of letter to client



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

November 20, 1990

Thomas J. Holmes
Attorney at Law
P.O. Box 1641
Pocatello, Idaho 83204

RE: Evidence of priority date for Notices of Claim to a Water Right filed in the Snake River Basin Adjudication (SRBA); claim numbers A29-10010, A29-10011, and A29-~~104064A~~

Dear Mr. Holmes:

The Notices of Claim to a Water Right referenced above have been filed in the SRBA in the name of your client, Theron Smith. The claims indicate the water usage is based on beneficial use. Beneficial use rights are established by the historical use of water, dating back to when water was first used for the purpose claimed. The date the water was first put to use, known as the priority date, has not been confirmed by a license, decree or permit. Please note that certain beneficial use rights are identified as "Statutory Claims". A Statutory Claim is a beneficial use right that was recorded with the Department, but was not confirmed. Since the priority date of a beneficial use water right cannot be confirmed by a field examination, proof must be provided supporting the priority date.

Printouts of your client's claims are enclosed for your reference, as well as the pamphlet entitled "Evidence of Priority". The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. While I encourage you to read all of the pamphlet, I direct your attention to the two sections entitled "What Kind of Evidence is Required" and "Some Examples of Documents Which May Be Evidence of the Priority Date".

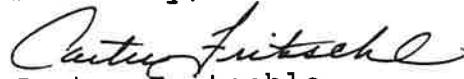
It is the goal of the Department to recommend the historical water rights within the Snake River Basin as accurately as possible. A field examination to verify other items of the claims has been conducted. Since the Department cannot confirm the priority date the way other elements of the water right are confirmed by field examination we are asking for evidence of the priority shown on the Notice to make the record complete before recommending a beneficial use water right to the court.

Thomas J. Holmes
Page 2

The Department will not recommend the claims be decreed by the court as claimed if no evidence of a priority date is submitted.

Please submit the required evidence supporting the priority date to the address shown below by December 20, 1990, referencing all documents with the corresponding claim number. If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

Sincerely,



Carter Fritschle
Senior Water Resource Agent
Adjudication Bureau

Please submit documents to:

Idaho Department of Water Resources
Adjudication Bureau
1301 N. Orchard
Boise, ID 83706-2237

Enclosures:

"Evidence of Priority"

"Adj. Listing of Water Rights"

MEMO

TO: File
FROM: Lynne Krogh-Hampe
DATE: February 12, 1990
RE: Smith v. Scoffield

I. CLAIMS (to Papoose Creek or spring trib to Papoose Creek)

A. Smith

A29-4064A* 1889, .04 cfs to irr 1.8 A (shows lot N of rd.)
A29-10011 1945, .02 cfs for D/1, S/100 (shows same lot, source
spring)
A29-10010 1969, .02 cfs to irr 1 A (shows lot S of rd.)
Also has two claims (A29-4156 and A29-4215) from Portneuf River
for irr of lands in different section.
Also has one claim (A29-4065) from Portneuf River for irr of same
lands as A29-4064A.

B. Scoffield

A29-4064B* 1889, .164 cfs for irr of 8.2 A, plus incidental
stock
A29-10103 1927, .02 cfs for D/1 (source spring)

C. Croxall

A29-4064C* 1889, .022 cfs for irr of 1.1 A
Also has one claim (A29-10101) from GW for D/1

D. Palmer

A29-4064D* 1889, .031 cfs for irr of 1.5 A
Also has one claim (A29-10102) from GW for D/1

E. Germer

A29-4067 1945, .260 cfs for irr of 13 A

*These claims are all part of one statutory claim for which there
are assignments in IDWR files.

II. Notes

The report on these parties claims will include only the claims to Papoose Creek and the spring tributary to Papoose Creek.

The first step is to do the field work to review the claims, and to provide a fairly detailed report of the results of the field work, including a diagram (from which a map can later be made if necessary) of the diversion works and uses of water.

We also need to get some supporting information on the priority dates claimed, since they all have a basis of beneficial use or statutory claim. A29-10010 and 10103 qualify as small D&S which would normally come under the proposed policy that no supporting information is required for the priority date, but here, all the claims are small and we know there is a current dispute so we probably ought to seek supporting information as to all of them. Note that the statutory claim is evidence of the priority date only as of the date the claim was filed (8/30/76 for 29-4067, and 5/3/76 for 29-4064).

A29-4064A, A29-4064B, A29-4064C and A29-4064D are portions of A29-4064 that are claimed consistent with the assignments in IDWR files. A29-4064E, which is the remainder that was not conveyed away, was not claimed, and this should be checked out. A29-4067 is claimed consistent with the statutory claim, except that a later priority date is claimed in the adj claim.

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: A29-04064A
Date Received: 6/29/1988
Receipt No: E000563
Received By: S.M.

RECEIVED
FEB 5 1990

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Department of Water Resources

1. Name: THERON SMITH 208-775-3604
Address: 5137 WEST PORTNEUF ROAD
INKOM, ID 83245

2. Date of Priority: MAY 01, 1889

3. Source: PAPOOSE CREEK Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	35E	26	NW	NE			BANNOCK

5. Description of diverting works:
PIPELINE TO SPRINKLER SYSTEM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.040		

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

8. Total consumptive use is 2.7 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	35E	23	SE	SE		IRR	1.8
Section Acres							1.8

10. Place of Use: Continued

Total Acres 1.8

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:
NONE.

14. Remarks:
AC. IRR. = 1.8.

15. Basis of Claim: STATUTORY CLAIM
Water Right Number:

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: -1-

For Individuals:

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

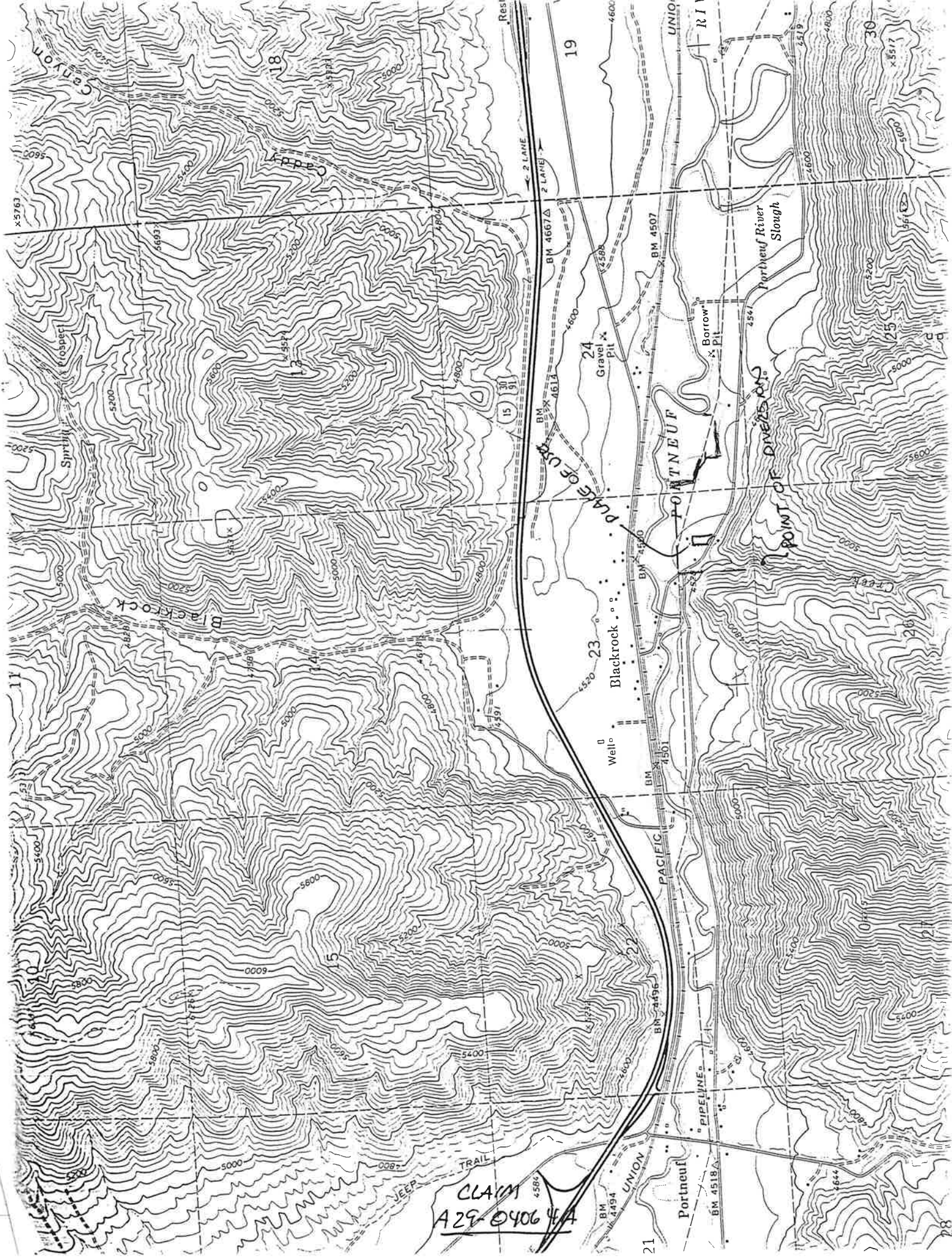
Signature of Claimant(s): Theron J. Smith Date: 29 June 88
Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 29th day
of June 19 88 Deena L. Green
Notary Public

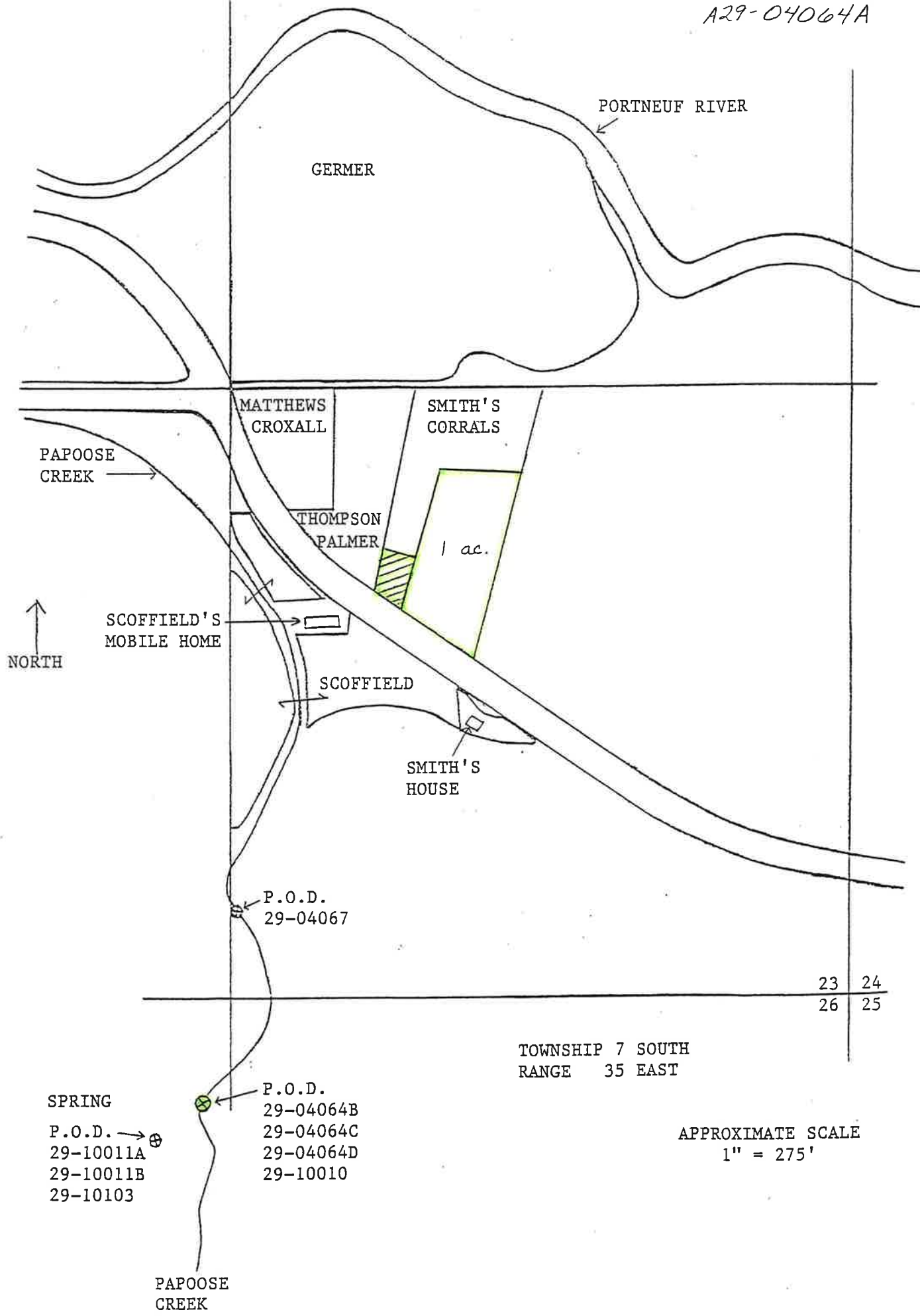
Seal

Residing at Ridgely
My Commission Expires 4-22-1994

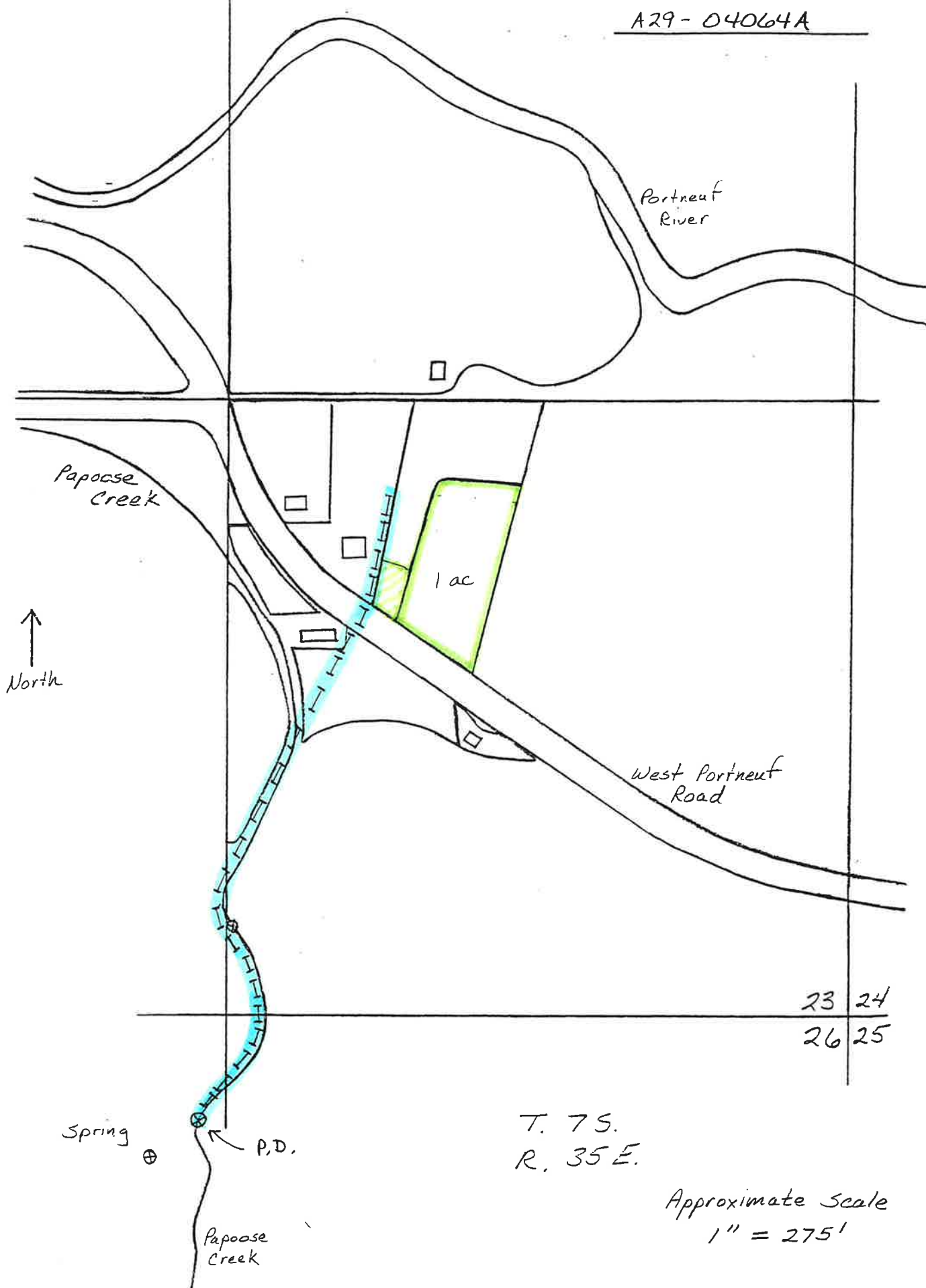


CLAIM
429-0406 4A





A29-04064A



Water Right Number - R29-04064A Prefix Translation: RESEARCH Old (D) Number -

*** C - CURRENT OWNER *** THERON 1 - 5137 W PORTNEUF RD State- ID Zip- 83245

*** A - ATTORNEY *** THOMAS J. 1 - PO BOX 1641 State- ID Zip- 83204

HOLMES 15 EASTERN 2 - 3 - City- INKOW Phone - 208-775-3604 City- POCATELLO Phone - 208-000-0000

Priority Date - + 05/01/1889 Region - + Stage - + Status - + I - DISALLOWED

Source - + PAPOOSE CREEK Point of Diversion - + Tributary - + PORTNEUF RIVER

Twn Rng Sec Tract Lot Rflg County (5) BANNOCK Diversion Rate Diversion Volume Total Consumptive Use - + KW Usage - +

Code Description Period From Period To Water Use Diversion Rate Diversion Volume Total Div. Rate - + Total Div. Volume - +

01 - IRRIGATION 04/01 11/01 11/01 0.040 0.040 0.040 0.040 2.7

Diversion Means - PIPELINE TO SPRINKLER SYSTEM. Non-Irrigation Use - NONE. Other Rights for Same Use - NONE. NO BENEFICIAL USE FOUND.

Ready to verify
at 12-10-91

Water right number - R29-04064A

Prefix Translation: RESEARCH

+ - - - - - Old Water Right Numbers - - - - - +
+ - - - - - Old Water Right Numbers - - - - - +
+ - - - - - No Old Water Right Numbers Found - - - - - +

+ - - - - - Conditions of Approval - - - - - +
+ - - - - - No Conditions of Approval found. - - - - - +

+ - - - - - Decree Plaintiff - - - - - +
+ - - - - - Decree Defendant - - - - - +
+ - - - - - Decree Date - - - - - +
+ - - - - - 00/00/0000 - - - - - +

+ - - - - - Comments - - - - - +
+ - - - - - No Comments Found - - - - - +

+ - - - - - Audit Fields - - - - - +
+ - - - - - 12/10/91 FRITSCHL - - - - - +

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +
+ - - - - - Court Report Filing - - - - - 00/00/0000 - - - - - 39576
+ - - - - - Objection Filed Date - - - - - 00/00/0000 - - - - -
+ - - - - - Response Filed Date - - - - - 00/00/0000 - - - - -
+ - - - - - Claim Received Date - - - - - 06/29/1988 - - - - -

+ - - - - - Field Inspection Made - - - - - 03/15/1990 - - - - -
+ - - - - - Field Inspection Flag - - - - - 00/00/0000 - - - - -
+ - - - - - Verified Date - - - - - 00/00/0000 - - - - -
+ - - - - - Last Amended Date - - - - - E000563 - - - - -
+ - - - - - Receipt Number - - - - - Y - - - - -
+ - - - - - POV Ownership Flag - - - - - - - - - - -
+ - - - - - Name Connector - - - - - - - - - - -
+ - - - - - Civil Case Number - - - - - - - - - - -
+ - - - - - Old Case Number - - - - - - - - - - -
+ - - - - - Old Judicial District - - - - - - - - - - -
+ - - - - - Temporary Right - - - - - P - - - - -
+ - - - - - Water District - - - - - 29 - - - - -
+ - - - - - Federal/State Indicator - - - - - S - - - - -
+ - - - - - Presumption Flag - - - - - - - - - - -
+ - - - - - Notice of Error Flag - - - - - - - - - - -

RIGHT NUMBER	NAME & ADDRESS	PRIORITY		WATER USE	USE PERIOD		MAXIMUM DIVERSION	STAGE
		DATE			FROM	TO		
A29-04064A	THERON SMITH 5137 WEST PORTNEUF ROAD INCOM ID 83245	05/01/1889	IRRIGATION		04-01	11-01	0.04 CFS	STATUTORY CLAIM
							0.04 CFS TOTAL	
							0.00 AFA TOTAL	

SOURCE: PAPOOSE CREEK
OTHER RIGHTS: NONE.
CONDITIONS OF APPROVAL:

TRIBUTARY: PORTNEUF RIVER

REMARKS: AC. IRR. = 1.8.

POINT OF DIVERSION:
T07S R35E S26 NWNE

PLACE OF USE: IRRIGATION
T07S R35E S23 SESE 1.8
1.8 ACRES TOTAL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

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11/29/91

PAGE: 13
QUICKLOOK INFORMATION

CLAIM NUMBER: A29-04064A

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE			CA 3-15-90			CA 12-5-91	CA 12-10-91	
POINT OF DIV	Y	CA 11-20-90	CA 3-15-90	Y disallow	6			
SOURCE			CA 3-15-90		6			
PLACE OF USE			CA 3-15-90		6			
DIV. AMOUNT CFS/VOLUME	Y		CA 3-15-90		6			
CONSUMPTIVE USE			CA 10-18-90		6			
PURPOSES			CA 4-9-91		6			
PERIOD OF USE	-		CA 3-15-90		6			
BASIS OF CLAIM			CA 3-15-90		6			
REMARKS	Y		CA 3-15-90		6			

"VERIFIED BY" CODES

- TOPO MAP/ORTHO-PQ = 1
- ASCS MAP = 2
- WATERMASTER RECORDS = 3
- NAPP PHOTOS = 4
- FIELD EXAM = 5
- OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:24:37
11/29/91

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A29-04064A

LAST: SMITH FIRST: THERON
ADDRESS: 5137 WEST PORTNEUF ROAD
CITY: INKOM STATE: ID ZIP: 83245
PHONE NUMBER: 208-775-3604

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE FIELD EXAMINER
Y

VERIFICATION REQUIRED DUE TO REMARKS?

CLAIM REMARKS: AC. IRR. = 1.8.

FIELD EXAMINATION INFORMATION

CONTACT PERSON: Thomas Holmes, Attorney
Theron "Tuck" Smith

PHONE NUMBER: (208) 775-3604

DATE OF FIELD EXAM: 3/15/90 APPOINTMENT MADE: Y (X) N ()

TIME: 9:00 A (M) P () ALSO 1:00 P.M. on 4-9-91

ACCOMPANIED BY: Tuck Smith

PHONE NUMBER: () -

RELATIONSHIP TO CLAIMANT:

DIRECTIONS TO PROPERTY / REMARKS:

Exit 63 from I 15 Turn left. Go 2 miles east along R.R. track.
Take first public crossing (there are 2 private crossings before the public
crossing) that turns right across R.R. tracks. Go 0.4 miles to
brick house on right hand side of road (5137 W. Portneuf Rd.)
There are 2 steel granaries on opposite side of road.

A. AJ CLAIM: # A29-04064A PRIORITY DATE: 05-01-1889 STAGE: S

B. WR RECORD: # 29-04064A PRIORITY DATE: 05-01-1889 STAGE: S

C. FIELD EXAM REQUIRED?

DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER Y cd

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y(☒) N()
IF YES EXPLAIN.

REMARKS: Evidence of priority supports a 1927 priority date.

RECOMMENDED PRIORITY DATE:
05-01-1889-1927

REVIEWED BY cd DATE 12-5-91

No Beneficial use

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A29-04064A	07S	35E	26		NW	NE		BANNOCK

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX R PREFIX
A29-04064C
A29-04064D
A29-10010

WR RECORDS IN SAME 40 ACRE TRACT

29-04064B
29-04064C
29-04064D
29-04064E

SOURCE: PAPOOSE CREEK

TRIB: PORTNEUF RIVER

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
29-04064A	07S	35E	26		NW	NE		BANNOCK

OTHER WR RECORDS WITH SAME WR POD

29-04064B
29-04064C
29-04064D
29-04064E

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX
A29-04064C
A29-04064D
A29-10010
A29-10103

SOURCE: PAPOOSE CREEK

TRIB: PORTNEUF RIVER

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)
DUE TO SOURCE DISCREPANCY? (Y/N)

DATABASE
Y
N

FIELD
EXAMINER
N
CS

REMARKS:

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:		1/4		LOT	COUNTY
TWP.	RGE.	SEC.			
<u>75</u>	<u>35E</u>	<u>26</u>	<u>NE</u>	<u>NE</u>	<u>Bannock</u>
SOURCE: PAPOOSE CREEK					
TRIB: FORTNEUF RIVER					
REVIEWED BY: <u>CA</u>					
DATE: <u>12-5-91</u>					

No Beneficial use

A. ROOT WATER RIGHT NUMBERS: A29-04064A
A29-04064C

A29-04064D

A29-04064B

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
07S	35E	23	SE	SE		SMITH, THERON	A29-04064A / 1.8	29-04064A / 2.0			13.0
			SE	SE		THERON, SMITH	A29-04065 / 15.0	29-04065 / 25.0			
			SE	SE		SMITH, THERON	A29-10010 / 1.0	-			
			SE	SE		SMITH, THERON	A29-10011 /	-			
			SE	SE		SCOFFIELD, JR., RONALD J.	A29-04064B / 8.2	29-04064B / 8.0			
			SE	SE		SCOFFIELD, JR., RONALD J.	A29-10103 /	-			
			SE	SE		CROXALL, BILLIE J.	A29-10101 /	-			
			SE	SE		PALMER, GRACE	A29-10102 /	-			
			SE	SE		MATTHEWS, JOSEPH	A29-04064C / 1.1	29-04064C / 1.0			
			SE	SE		THOMPSON, TRACY R	A29-04064D / 1.5	29-04064D / 2.0			
			SE	SE		PALMER, HYRUM MARTIN	A29-04064E / 2.0	29-04064E / 2.0			
TOTAL ACRES						A29-04064A	1.80	2.00			13.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y () N (X)
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED? DATABASE FIELD EXAMINER
DUE TO POU DISCREPANCY? (Y/N) Y AL

PRESUMPTION FLAG:

REMARKS:

Approximately 1 acre capable of being irrigated

RECOMMENDATIONS:

TOTAL ACRES:

1

REVIEWED BY:

AA

DATE:

12-5-71

No Beneficial use

A. AJ CLAIMED USES:

PURPOSES
A29-04064A IRRIGATION

MONTH/DAY
FROM 04-01 TO 11-01

TOTAL DIVERSION RATE/VOLUME CLAIMED

DIVERSION QUANTITY
.040 CFS

.040 CFS

B. WR RECORDED USES:

PURPOSES
29-04064A IRRIGATION

MONTH/DAY
FROM 04-01 TO 11-01

TOTAL DIVERSION RATE/VOLUME CLAIMED

DIVERSION QUANTITY
.040 CFS
.040 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	FIELD EXAMINER	DATE
DUE TO WATER-USE DISCREPANCY?	(Y/N)	N
DUE TO DIVERSION RATE DISCREPANCY?	(Y/N)	N
DUE TO PERIOD FROM/TO DISCREPANCY?	(Y/N)	N

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☒) N(☐)
Y(☐) N(☐)

Explain in remarks, below.

REMARKS:

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS? Y(✓) N()

AJ TOTAL CLAIMED DIVERSION RATE: 0.040 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 0.040 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
** If an amount smaller than the original diversion rate is **
** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) Y
FIELD DATABASE EXAMINER

B. MEASUREMENT METHOD Open Channel - Piggy Back FLOW MEASUREMENT SEE ATTACHED CALCULATIONS.
meter

C. ARE OTHER WATER RIGHTS USED? Y() N(✓) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE.

LIST ALL RIGHTS WITH A SAME POV AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A29-04064A	PAPPOOSE CREEK	SMITH, THERON	0.040	0.022		
A29-04064B	PAPPOOSE CREEK	SCOFFIELD, JR., RONALD J.	0.164	0.020		
A29-04064C	PAPPOOSE CREEK	MATTHEWS, JOSEPH	0.022	0.020		
A29-04064D	PAPPOOSE CREEK	THOMPSON, TRACY R	0.031	0.020		
A29-04065	PORTNEUF RIVER	THERON, SMITH	1.460	0.020		
A29-10010	PAPPOOSE CREEK	SMITH, THERON	0.020	0.020		

LIST ALL RIGHTS WITH SAME POV BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A29-10011	DOMESTIC	SMITH, THERON	FROM 01-01 TO 12-31	.020 CFS	
A29-10011	STOCKWATER	SMITH, THERON	FROM 01-01 TO 12-31	.020 CFS	

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES 1 x 0.02 CFS/ACRE = 0.02 CFS
(Taken from P/u review)

1b. CALCULATIONS

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y(X) N()

Reduce diversion rate to 0.02 cfs/ac.

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N(X) ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 2.7 AF/A

ACRES 1 x CONSUMPTIVE VOL. AF/A FOR AREA 2.5 =

TOTAL CONSUMPTIVE USE 2.5 AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES x DIVERSION VOL. AF/A FOR AREA =

TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N(X)

REMARKS: (Include limitations on consumptive use for combined rights.)

RECOMMENDATIONS:

REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
04-01 11-01	DATABASE EXAMINER 0.040 <u>0.02</u>	DATABASE EXAMINER <u> </u>	DATABASE EXAMINER 2.7 <u>2.5</u>
IRRIGATION	0.040 0.02		2.7 2.5
TOTAL FOR THIS RIGHT			

REVIEWED BY: CA

DATE: 12-5-91

No Beneficial use

ACCEPTED AS CLAIMED

$\begin{pmatrix} \text{---} & \text{---} & \text{---} \\ & & \times \end{pmatrix}$
 $\begin{pmatrix} \text{---} & \text{---} & \text{---} \\ \times & \times & \text{---} \end{pmatrix}$

ROOT WATER RIGHT NUMBER: 29-04064

TOTAL DIVERSION RATE OF WR SPLITS	DATABASE
	0.300

EXAMINER
0.257

CFS

OLD RIGHT
NUMBERS

CURRENT
CLAIM NUMBERS

**DIVERSION
RATE**

CURRENT "R"
CLAIM NUM.

"R" DIV.
RATE

WK RGH1
NUMBERS

DIVERSION
RATE

A29-04064A
A29-04064C
A29-04064D
A29-04064B

0.040
0.022
0.031
0.164

31 15 4 5 10 1

29-04064A
29-04064C
29-04064D
29-04064B
29-04064
29-04064E

0.040
0.020
0.030
0.160
0.050

TOTAL CFS

0.257

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

**DATABASE
N**

FIELD
EXAMINER
N
CA

REMARKS:

Portion "E" is not claimed.
No Beneficial use - disallowed

P03 Status I

Status "I"

AUTHENTICATION:

SIGNATURE:

Carter Fritschle

DATE:

12-5-91

NAME OF FIELD EXAMINER:

Carter Fritschle

TITLE:

Sr. W.R. Agent

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:25:16
11/29/91

PAGE: 14
PROFILE REPORT

CLAIM NUMBER: A29-04064A

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	THERON SMITH 5137 WEST PORTNEUF ROAD INKOM ID 83245 (208) 775-3604	05/01/1889	IRRIGATION	04-01 11-01	0.04 CFS	0.04 CFS
					TOTAL DIVERSION: CONSUMPTIVE USE:	2.7 AFA

Water Source: PAPOOSE CREEK

Tributary to: PORTNEUF RIVER

Stage: STATUTORY CLAIM

Point(s) of Diversion:

T07S R35E S26

NWNE

BANNOCK County

Place of use Legal Description for: IRRIGATION

	NE	NW	SW	SE	SUM
T	R	S			
07S	35E	23			
					TOTAL ACRES
					01
					1.8
					1.8

Other Rights: NONE.

Other Water Rights with Same Point(s) of Diversion and Source:

A29-04064C A29-04064D A29-10010

Other Water Rights Listing Overlapping Place(s) of use:

A29-04064B A29-04064C A29-04064D A29-04065 A29-10010

Non-Irrigation Use: NONE.

Remarks: AC. IRR. = 1.8.

Dates: Exam Made Date:

Verified Date: 11/04/1986

Misc: Water District Number: 29

Field Inspection Flag:
Presumption Flag:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

^{Claim}
Permit No. A29-04064A

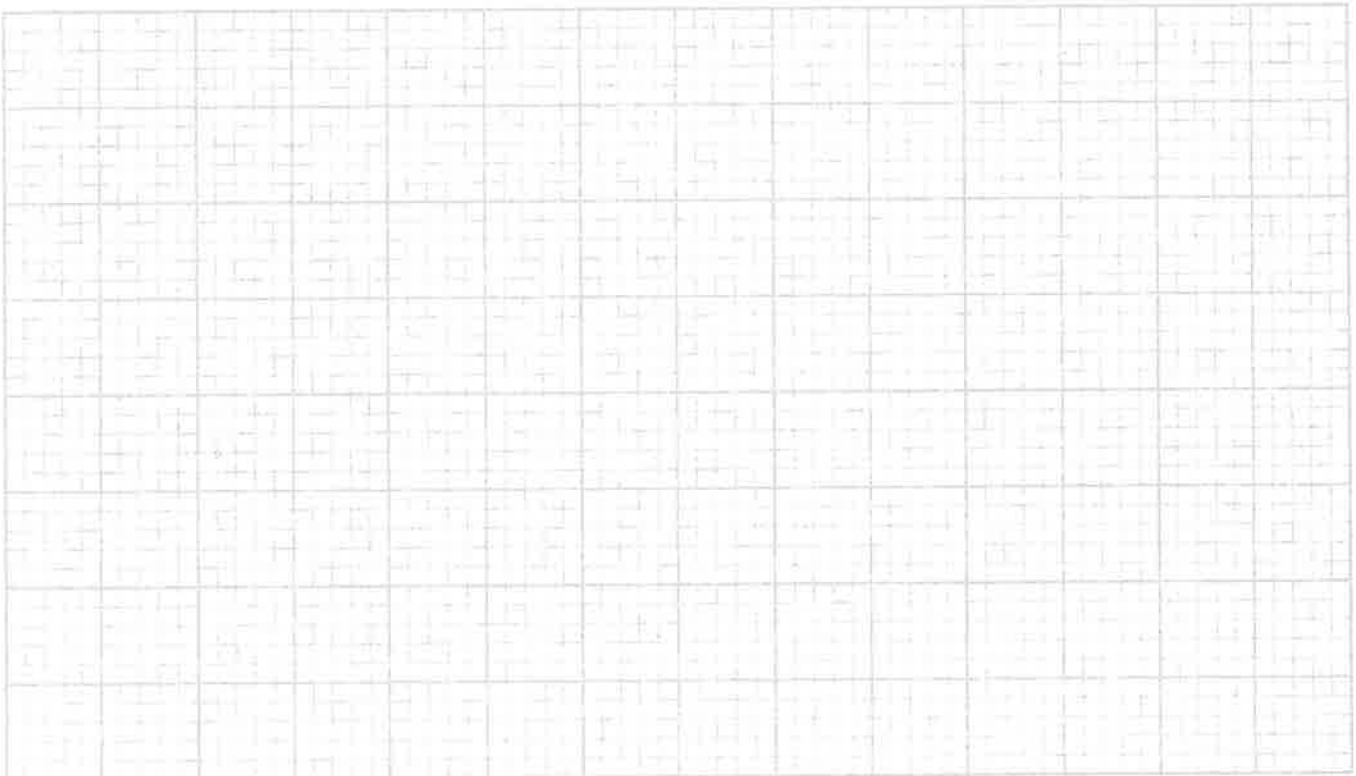
1. Owner: Theron Smith Phone No. 775-3604
Current Address: 5137 W. Portneuf Rd. Inkom, ID 83245
2. Accompanied by: Theron "Tuck" Smith EXAM. DATE: 3-15-90
Address: _____ Phone No. _____
Relationship to Permit Holder: Claimant
3. Source: Papoose Creek tributary to Portneuf River

B. OVERLAP REVIEW

1. Other water rights with same place of use: none for irrigation, A29-10011 for stockwater ☐ Copies Attached
2. Other water rights with same point of diversion: A29-04064B, A29-04064C, A29-04064D, A29-10010 ☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☒ Alternative diagram attached



Scale: 1" = _____

2. ☒ Copy of U.S.G.S. Quadrangle Attached ☐ Aerial Photo Attached
Showing location(s) of point(s) of diversion and (required for irrigation of 10 acres or more).
place(s) of use (required).
☒ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater).

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements:

System not operating, no measurements were made.

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

2. Alternate Method for Checking Purposes:

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____

$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$ _____

2. Volume Calculations for Other Uses:

C.U.

2.5 x 1 = 2.5 Afa

CLAIMANT(S): Theron Smith

ANALYSIS OF THE WATER USE

Mr. Smith was in the process of cleaning up the area claimed as the place of use. Farm machinery and miscellaneous materials had been stored on the land. He stated that he was planning to reseed the area and use it for pasture. Although it appeared that some of the items had been on the land for more than five years, Mr. Germer, whose land borders Mr. Smith's on the north stated that Mr. Smith had irrigated this land within the last five years. If this is true, there still may be a question as to how much of the land was "exposed" and could actually receive water. In order to irrigate the land from Papoose Creek, the handlines must pass through the fence on the west side of Mr. Smith's land to access the two risers from the mainline which are located on Mrs. Palmer's land.

A portion of the land claimed does appear to be irrigated in the HAP photo dated 8-11-80. Mr. Smith has claimed 1.8 acres of irrigation; however by pacing the perimeter of the "open" area, I could only find approximately one acre that could be reasonably irrigated for pasture. The balance of the land was occupied by buildings and/or corrals.

CLAIMANT(S): Theron Smith

SUPPLEMENTAL INFORMATION

A "drive-by" of the place of use claimed for this water right was made on October 18, 1990, and no vegetation was present on this land. The southwest corner of the property (the area denoted with "hash marks" on the map) had machinery stored on it with very little open area.



CLF

Riser located in Mrs. Palmer's lawn, looking east 3-15-90



CLF

Riser located in Mrs. Palmer's pasture, looking S.E. 3-15-90



CLF

Riser located in Mrs. Palmer's lawn, looking east 3-15-90



CLF

Riser located in Mrs. Palmer's pasture, looking S.E. 3-15-90

3. Narrative: Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

The system diverts water from Papoose Creek by means of a pipeline to a concrete box covered with a trash screen. From the concrete box the water is piped to the lands owned by Scottfield, Croxall, Palmer and Smith. The land irrigated by Mr. Smith is the area north of Portneuf Rd where Mr. Smith has been storing his farm equipment. Mr. Smith was in the process of removing his

☒ See Remarks on page 4 for continuation

Well or Diversion Identification No. *	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	NA				

**Code to correspond with No. on map and aerial photo*

5. Point(s) of Diversion:

[illegible]

6. Place(s) of Use:

Indicate Method of Determination

[illegible]

H. REMARKS AND OVERLAP REVIEW ANALYSIS

equipment from this land, and he stated he plans to reseed the land to pasture. The risers that Mr. Smith must connect to in order to irrigate this land are located on the property owned by Mrs. Palmer. Approximately 1 acre will be reseeded, and irrigated with this system.

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use From To	Rate of Diversion Q (cfs)	Annual Volume V (afa)
Irrigation	4-1 11-1	0.02	2.5

2. Recommended Amendments

- ☐ Change P.D. as reflected above
- ☐ Add P.D. as reflected above
- ☐ Change P.U. as reflected above
- ☐ Add P.U. as reflected above
- ☐ None
- ☐ Other

J. AUTHENTICATION

Field Examiner's Name Carter Fritschle

Signature Carter Fritschle

Certification Date _____

Field Report Preparation Date 3-19-90

CONSULTANT SEAL

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

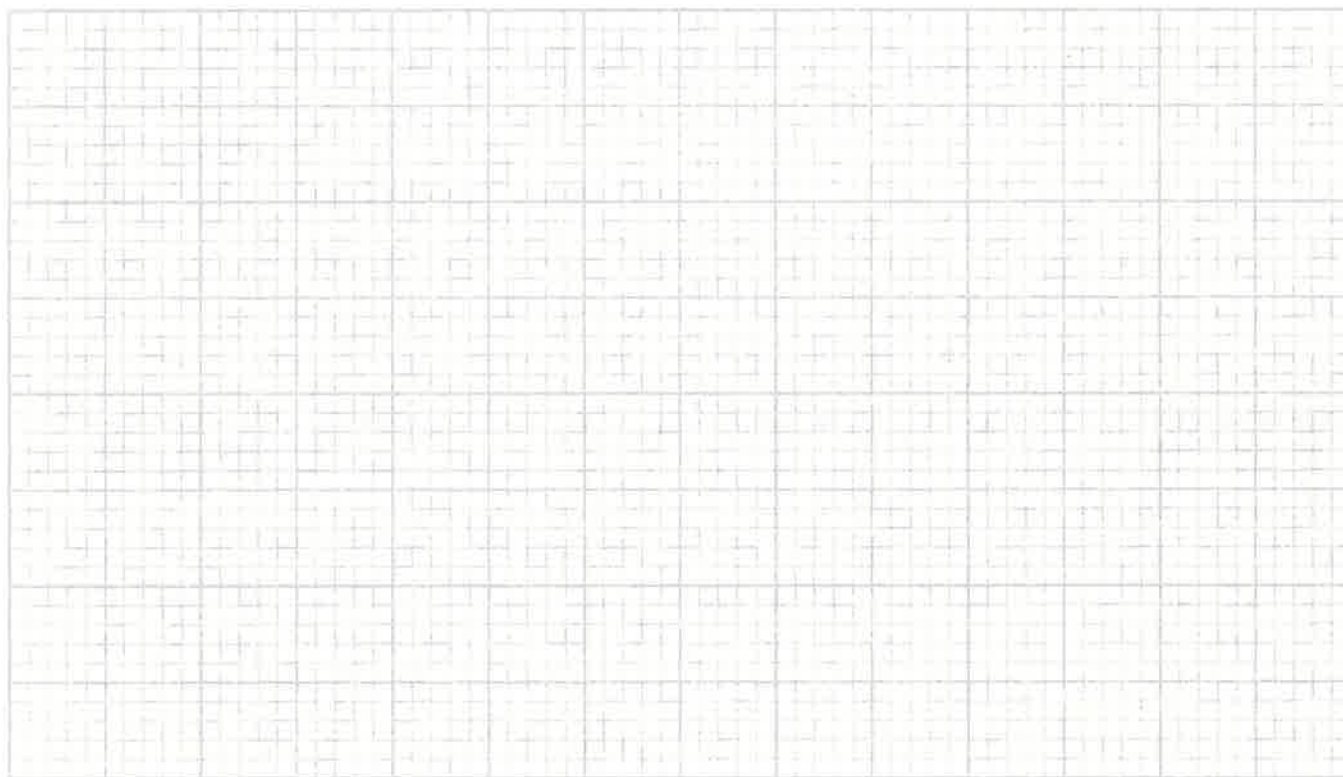
1. Owner: Ronald J. and/or Tara L. Scofield ^{Claim} Permit No. A29-04064B
Current Address: 5195 W. Portneuf Rd., Inkom, ID 83245 Phone No. 775-4560
2. Accompanied by: Ronald "Jay" Scofield, Jr. EXAM. DATE: 3-15-90
Address: _____ Phone No. _____
Relationship to Permit Holder: Claimant
3. Source: Papoose Creek tributary to Portneuf River

B. OVERLAP REVIEW

1. Other water rights with same place of use: none for irrigation, A29-10103 for domestic ☐ Copies Attached
2. Other water rights with same point of diversion: A29-04064A, A29-04064C, A29-04064D, A63-10010 ☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☒ Alternative diagram attached



Scale: 1" = _____.

2. ☐ Copy of U.S.G.S. Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required). ☐ Aerial Photo Attached (required for irrigation of 10 acres or more).
☐ Photo of Diversion and System Attached (required for all but single household domestic groundwater, and stockwater).

System Description (continued)

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

The system diverts water from Papoose Creek by means of a pipeline to a concrete box covered with a trash screen. From the concrete box the water is piped to the lands owned by scottfield, Croxall, Palmer and Smith. The land irrigated under this claim is the pasture area around the scottfield mobile home. Faucets are fitted to the pipeline to connect garden hoses

☒ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	N.A.				

*Code to correspond with No. on map and aerial photo

5. **Point(s) of Diversion:**

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NE	NW	NE	26	7S	35E	Bannock	Ortho Photo Quad

6. **Place(s) of Use:**

Indicate Method of Determination O.Q & ASCS ^{photo} ~~map~~

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
7S	35E	23																2	2

Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements:

system not operating, no measurements were made.

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method:

2. Alternate Method for Checking Purposes:

F. PUMP EFFICIENCY DATA (Optional)

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

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$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$ _____

2. Volume Calculations for Other Uses:

H. REMARKS AND OVERLAP REVIEW ANALYSIS

with "rainbird" type sprinklers to irrigate the pasture. There was very sparse vegetation on the pasture land. The soil is quite rocky, and Mr. Scofield stated he intends to irrigate additional land once he gets it leveled and the debris is removed. There were 3 horses in the pasture at the time of the inspection.

*Additional
information
collected
10-18-90

Approximately 2 acres are presently capable of being irrigated with this system.

*A "standard" riser for handlines is present in the ~~1~~ 1 acre field.

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Irrigation	4-1	11-1	.04	N.A.
Totals:			.04	N.A.

2. Recommended Amendments

- ☒ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name Carter Fritschle

Signature Carter Fritschle

Certification Date _____

Field Report Preparation Date 3-19-90

CONSULTANT SEAL

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.