

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: A29-02041
Date Received: 3/15/1990
Receipt No: EP12382
Received By: EMC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name:	LAUREL H. TAYLOR	208-237-2050
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	HARRY R. HARTWIGSEN	208-237-2050
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	ROBERT E. HART	
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	JAMES W. HART	
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	DAVID J. HART	
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202

A2902041



2. Date of Priority: APR 27, 1906

3. Source: LITTLE POCA TELLO CREEK Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	35E	5	SW	SW			BANNOCK
		8	NW	NE			BANNOCK

5. Description of diverting works:
TWO RETENTION PONDS, PIPELINE AND SPRINKLER SYSTEM.

A29-02041

Page 1

Date: 03/15/90

MICROFILMED

NOV 13 1992

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.000		

7. Total Quantity Appropriated is:

2.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 250.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	35E	6	SE	SW		IRR	40.0
			SW	SE		IRR	37.0
			SE	SE		IRR	23.0

Section Acres 100.0

Total Acres 100.0

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:

ORIGINALLY THE HEAD OF A DITCH WAS LOCATED AT THE RETENTION POND IN SECTION 8. NOW WATER FROM THIS POND IS RELEASED BACK INTO THE CREEK CHANNEL AND THEN REDIVERTED INTO THE LOWER POND IN SECTION 5. WATER FROM THE LOWER POND IS DIVERTED INTO A GRAVITY FLOW SPRINKLER SYSTEM AND CAN ALSO BE PUMPED USING A PORTABLE PUMP.

15. Basis of Claim: LICENSE
Water Right Number: 1963

16: Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): Harry R. Hartungsen Date: 3-15-90

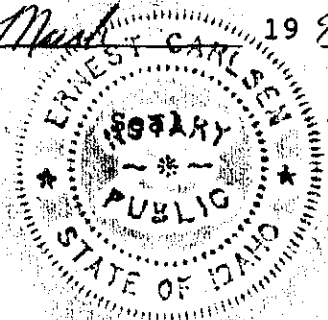
Date: _____

State of Idaho)
County of Bonnaville) SS.

Subscribed and sworn (or affirmed) before me this 15 day

of March 19 90.

Ernest Carlson
Notary Public



Residing at Adelphi Falls, ID.

My Commission Expires 6-14-1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

W. & H. Livestock
C/O John McNabb
976 McNabb Rd
Inkom, Idaho 83245

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: Diversion on Little Pocatello Creek

Dear Sir:

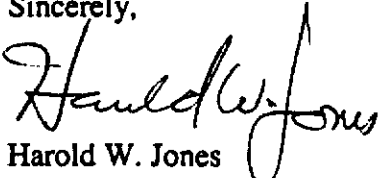
It has come to the attention of the Department of Water Resources that you may be diverting water for stockwater and domestic purposes from Little Pocatello Creek without the benefit of a water right.

Currently there is a water right holder on Little Pocatello Creek called Hart Company Partnership. They hold license 29-02041 for irrigation and domestic use. I have checked the database and there is no other apparent filings.

There is no requirement for stock watering directly out of a stream but if a pipeline or ditch is used then an approve filing needs to be made. Be aware that new form 113 is available for that transition. Our office supports moving stock out of the stream.

If you have any questions please contact me at the Idaho Falls Office.

Sincerely,


Harold W. Jones
Water Resource Supervisor

HWJ/ck

COPY

MEMORANDUM

TO: Harold Jones

October 12, 2000

FROM: Keith C. Wilson

RE: Letter dated April 19, 2000, from Harry Hartwigsen

On April 25, 2000, in response to a letter from Harry Hartwigsen (Hart Company Partnership), I met with Harry Hartwigsen & Jim Hart. They were concerned about land development and diversions upstream of their diversions on Little Pocatello Creek (Sec 08 NE ¼, T06S, R35E,) and stockwater diversion from an Unnamed Spring (Sec 05, SE¼, T06S, R35E).

Little Pocatello Creek:

- Photo page 1 - Silted in Reservoir.
- Photo page 2 - Silted in Reservoir.
- Photo page 3 - Plank walk to Reservoir control structure
- Photo page 4 - Road culvert upstream of Reservoir w/PVC Pipe through culvert, & stock tanks.
- Photo page 5 - Photo of water quality just above PVC pipe to domestic trailer.
- Photo page 6 - Stream with black PVC pipe supplying water to domestic trailer.

Mr. Hartwigsen and Mr. Hart were concerned with the clearing of land above the reservoir. They claim that before the clearing of the land above the reservoir that they had only had to clean out the silt in the reservoir once in = 20 years. They said that after the land was cleared the reservoir silted-in (Photo pages 1, 2, & 3), in only one year. They feel that the current owner will continue developing and using water, and will use the water of Little Pocatello Creek, with or without filing for water rights, thus infringing (stealing) their water rights from Little Pocatello Creek. Mr. Hart and Mr. Hartwigsen also noted that other than their water rights there were no other water right filings for either stockwater or domestic. [Point of Diversion in NE¼ Sec 08, T06S, R35E: 29-02041 / A29-02041 (Hartwigsen & Hart).]

It appears that the black PVC pipe through the culvert (Photo page 4) has been used to fill the stock tanks (Photo page 4); however, there was no diversion into the stock tanks at the time of the field inspection.

I do not know what to make of the black PVC pipe going to the domestic trailer (Pages 5 & 6). The poor water quality of Little Pocatello Creek (Photo page 5 & 6) would make it unsuitable for domestic purposes. No evidence of irrigation was observed. Without irrigation I have no idea as to what the water is being used for or whether or not beneficial use is occurring.

The USGS map of the area indicates that Little Pocatello Creek is an intermittent stream (Map #1). In discussion with Greg Taylor, Little Pocatello Creek would not come under the stream alteration section of the Idaho Code.

It appears that the reservoir capacity and hydraulic height of the reservoir would not place it under the Safety of Dams program. According to Lewis Rounds there are no files in the Safety of Dams program for any reservoirs on Little Pocatello Creek.

I informed Mr. Hartwigsen & Mr. Hart that the silting-in of the reservoir on Little Pocatello Creek was a civil matter, however, they should contact the BLM, DEQ, and any other regulatory agency about the clearing of the land and the resulting decrease in water quality.

As far as the diversions from Little Pocatello Creek I informed them that this office would contact the current owner and inform him of the requirements to file for a diversion from a surface water source.

Memorandum (cont.)

To: Harold Jones

October 12, 2000

From: Keith C. Wilson

RE: Letter from Harry Hartwigsen - Little Pocatello Creek/Unnamed Spring

Unnamed Spring:

Photo page 7 - Old stock tank and pipe from spring location.

Photo page 8 - Black PVC pipe flowing water just below old stock tank.

According to Mr. Hartwigsen and Mr. Hart, the current land owner had fenced in his property and had cut off their access to a supply of water for stockwater from the spring. They indicated that the spring was on BLM ground that they had leased for years, and the tank was on the other land owners property. They wanted to know if they could pipe the water to another location for stockwater.

Point of Diversion & Place of use in SE¼ Sec 05, T06S, R35E:

A29-10589 (Hartwigsen & Hart) Spring, Allotment # 06094

Source AKA Cement Trough Spring

A29-12587 (BLM) Spring, Record # 2903700190

A29-12588 (BLM) Spring, Record # 2903700190

A29-12590 (BLM) Spring, Record # 2903700191

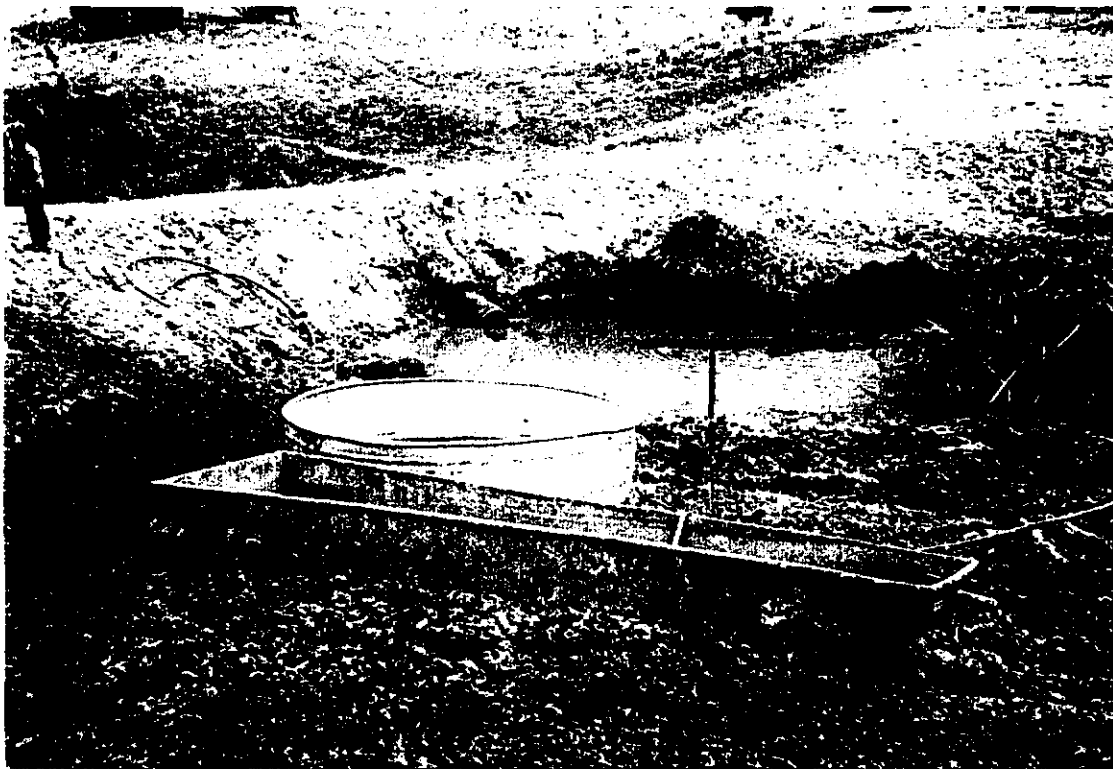
I informed Mr. Hartwigsen and Mr. Hart that they would need to contact the BLM about the BLM requirements on diverting the spring for stockwater (i.e. special use permit). They could also check with the BLM to see if the owner had a special use permit to divert the water from BLM land.

Mr. Hartwigsen and Mr. Hart were also informed that a transfer would have to be filed with IDWR to change the place of use.

I told Mr. Hartwigsen and Mr. Hart that I did not know of any way that they could force the current owner of the land to allow them access to the spring water for stockwater purposes.

Keith C. Wilson
Senior Resource Agent

Date



R35E

T

→
Flow

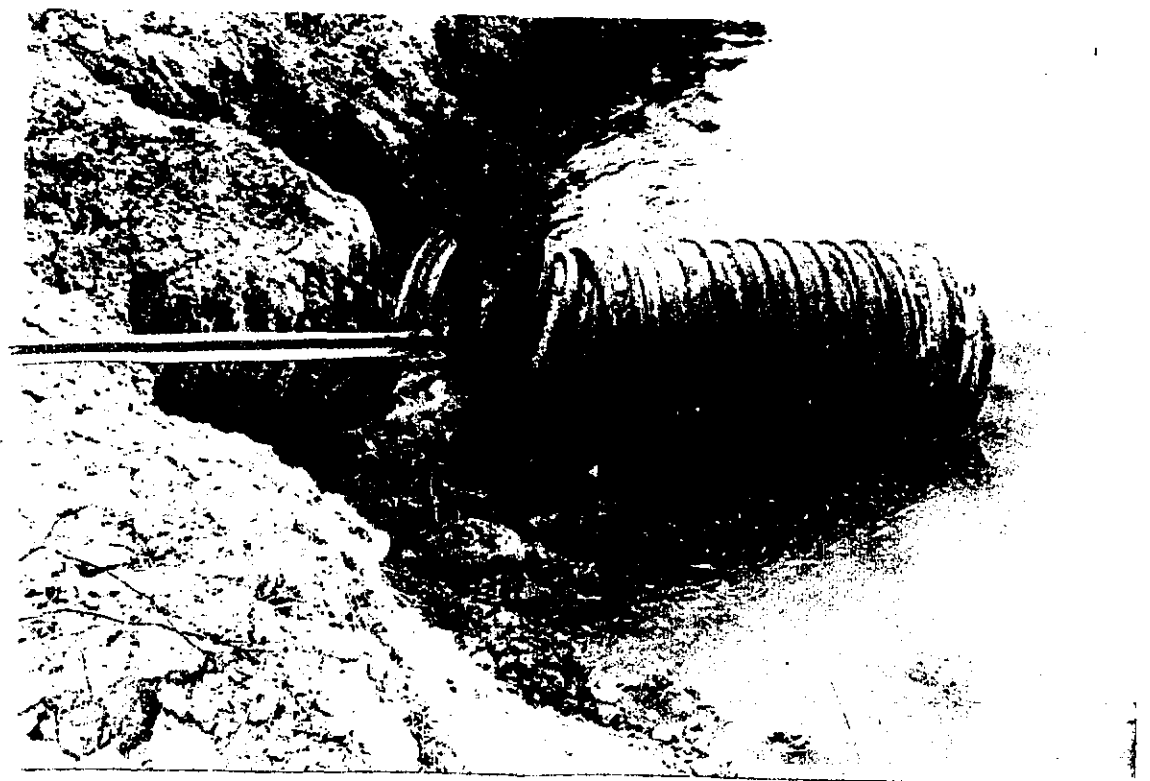
6
S

Sec 8

NW $\frac{1}{4}$ NE $\frac{1}{4}$

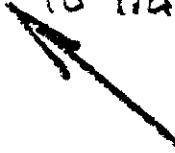
Down stream side of road

Pipe inside of
Culvert appears
to have diverted
water for stockwater



4-25-2000

To Trailer



DIVERSION TO
Domestic
Trailer



NOTE WATER QUALITY

DOMESTIC DIVERSION

PAGE 5

5

TRAILER
LOCATION

Map of
District



T
6
S

R35E

Domestic
DIVERSION

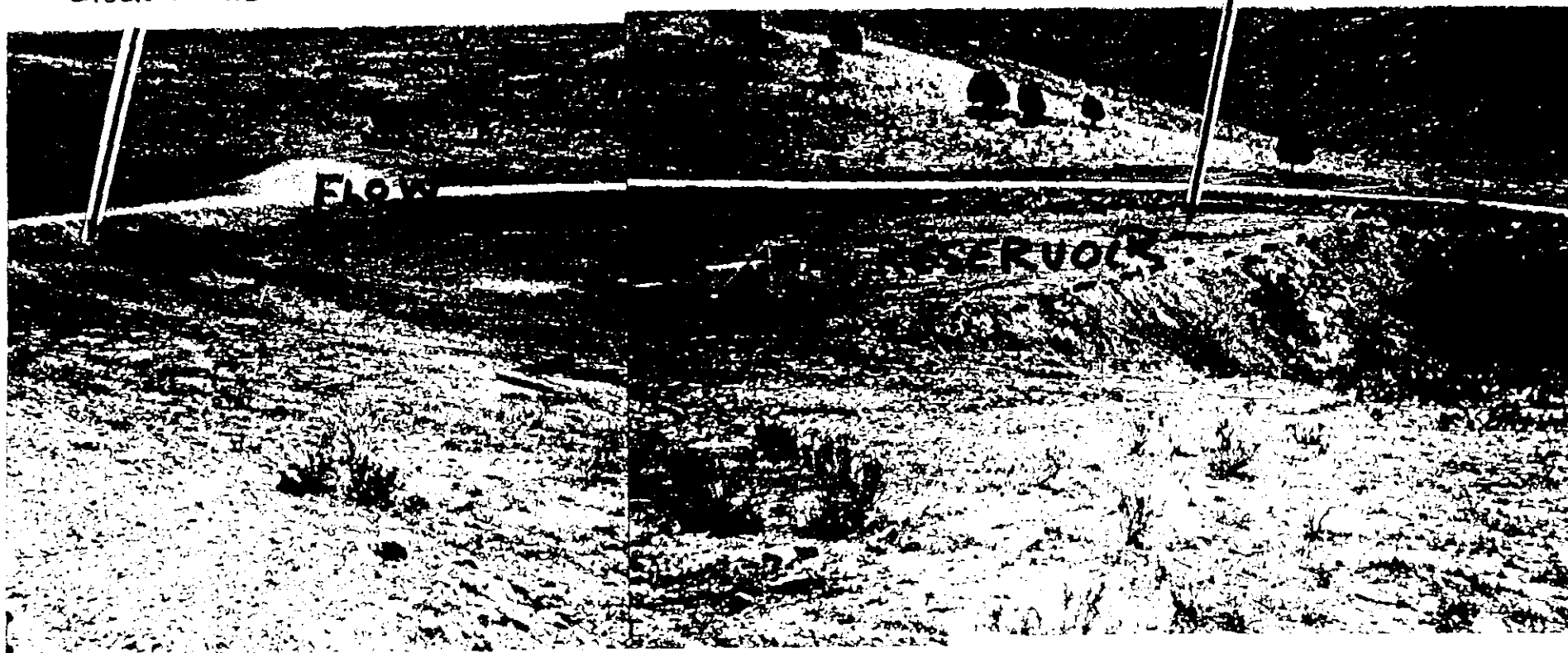


8

T
6
S R3SE SEC 8

STOCK TANKS

PLANK WALK



VIEW SOUTH

PAGE 1

T
6
S R35E SEC 8

PLANK WALK

DAM

Stock Troughs

RESERVOIR



VIEW LOOKING WEST
(downstream)

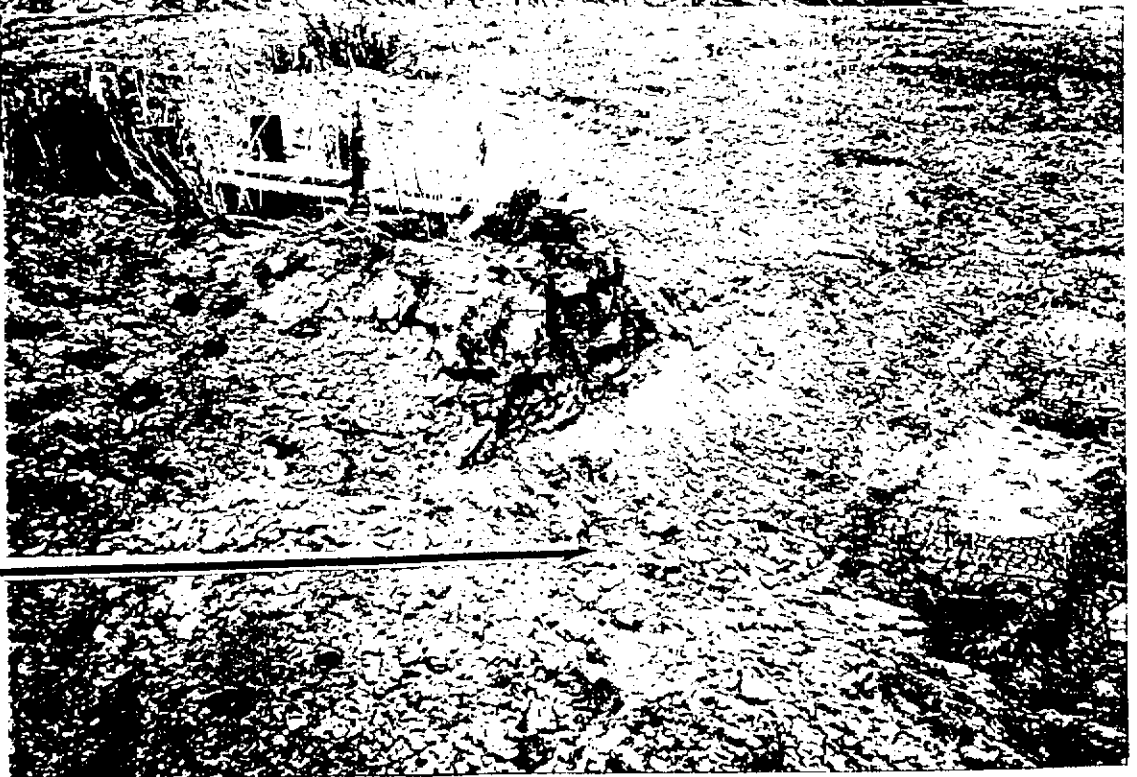
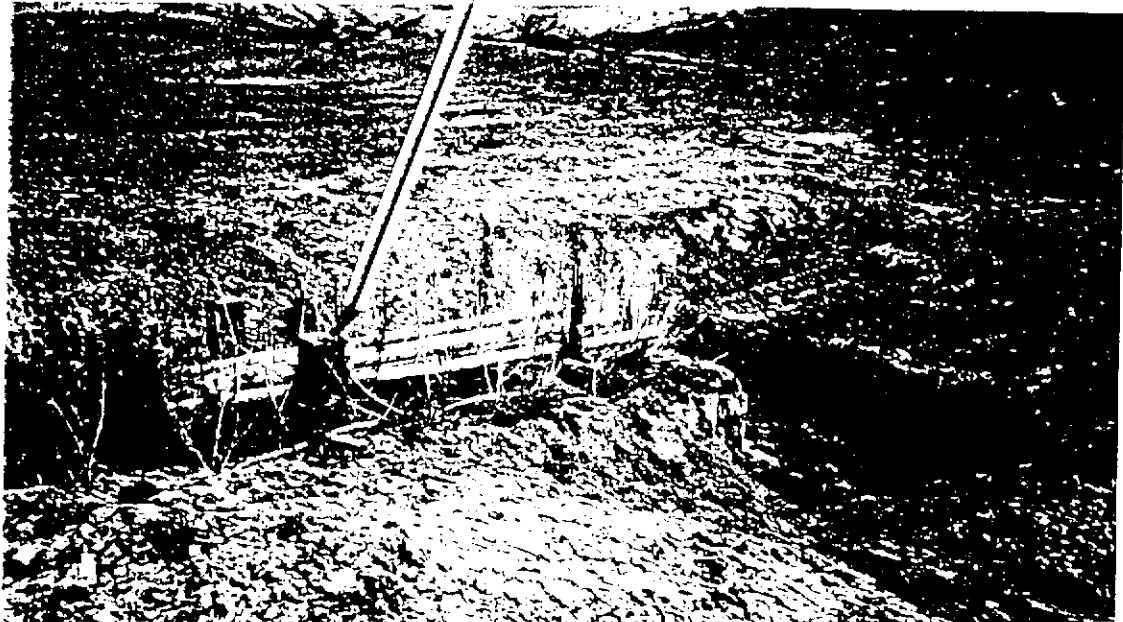
FLOW
Little Pocatello
Creek

PAGE 2

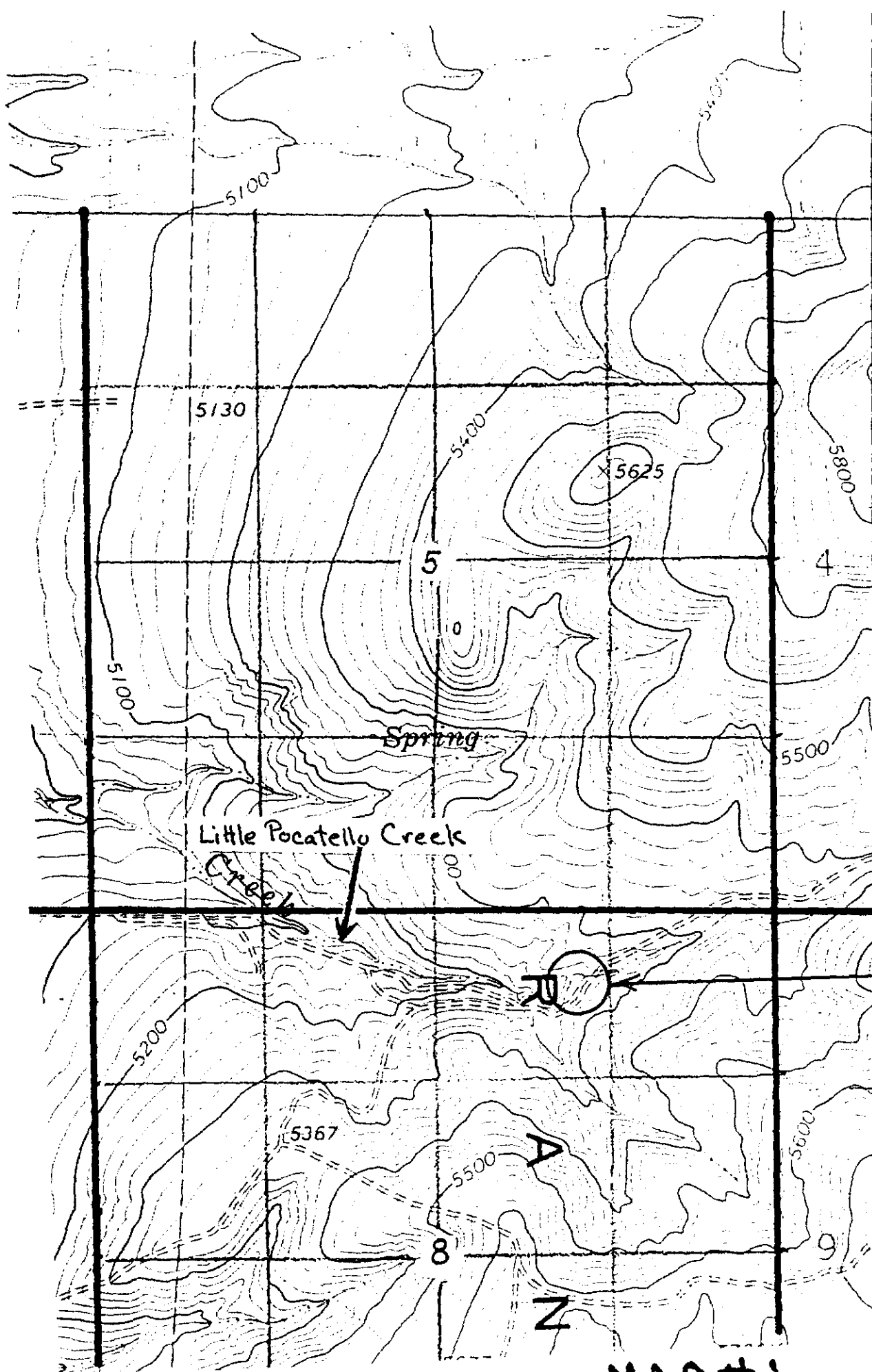
T R35E
6 Sec 8
S

PLANK WALK to get to Controlling works
of Dam

DAM CREST



According to
Harry Hartwigsen
Control works
still 6-8'
below hole



(MOONLIGHT A
3569 IV NE

4754
T-6-S

T. 6 S.
R35E

4753
Little Pocatello
Creek

RESERVOIR

55'

4752

Z

MAP

SPRING AREA

BLM

PRIVATE

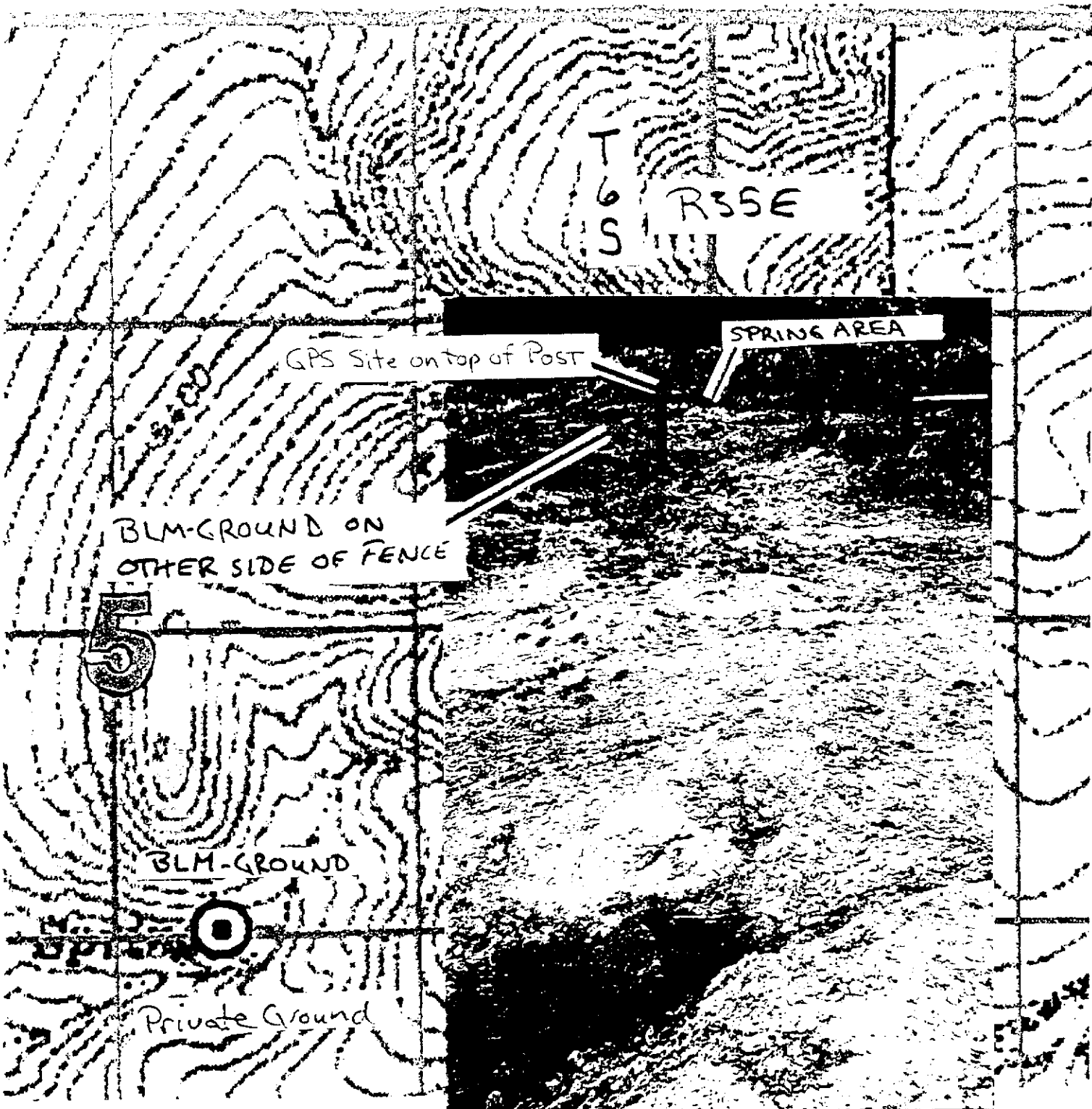
OLD PIPE COMING
FROM Spring

T R 35 E
6 SEC 5
S

Spring area



OLD STOCK
TROUGH





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: Harold Jones
Water Rights Supervisor
CC: Jim Hart
9250 Chubbuck Road
Pocatello, ID 83202
Fr: Bryce Contor
Date: 2/27/2001
Re: Interference with water right 29-2041

Mr. Hart called me today to follow up on a complaint he had lodged with the department about a year ago. Last spring, Keith Wilson went down and made a field inspection. I visited with Keith, he told me that he informed Mr. Hart that without an active water district, the department's ability to regulate is limited.

Mr. Hart asked me several questions that I couldn't properly answer, so I committed to forward this memo to you.

1. What is the procedure to get a water district organized? I looked at Idaho Code 42-604, and it appears that the director may organize water districts upon streams with decrees. Mr. Hart's source is Little Pocatello Creek. The only right referenced on the database for that creek is Mr. Hart's license.
2. Without a water district, is there any authority or ability of the department to regulate water? Mr. Hart is concerned about use of water upstream, preventing him from enjoying his licensed right. The upstream user has cattle, which drink from the stream. He has also checked up the stream, increasing the depth and the percolation losses, as well as constructed diversions for off-stream use of water.
3. Mr. Hart is also concerned about water quality issues from cattle manure in the water. This affects not only Mr. Hart's use of creek water for his cattle, but he fears the aquifer he relies upon for domestic water is being contaminated. I told him that we don't administer water quality regulations, and suggested he contact the Department of Environmental Quality.

Please contact Mr. Hart at 251-6705 and help him understand the follow-up to Keith's inspection last spring.

Conversation Memo

Date: 3/14/01

From: Craig Saxton

Subject: Little Pocatello Creek In-Stream Stock Issue

Mike McNabb came into the office today to inquire about filing and in-stream stockwater right from Little Pocatello Creek.

Background:

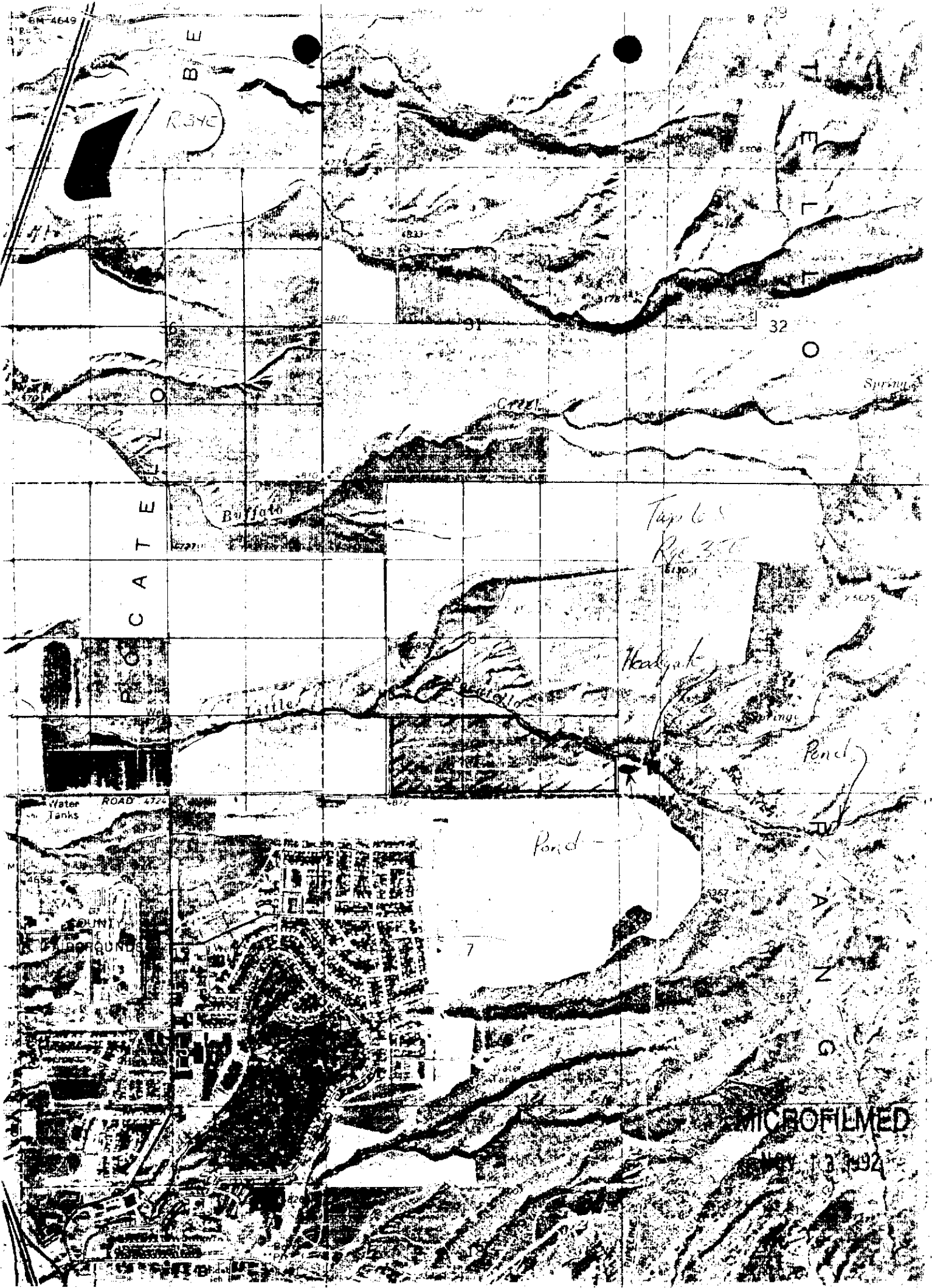
Mike has about 400 head of cattle that he winters on private land. BLM land borders Mike's private land. The cattle drink directly from the creek.

Mr. Hart below him feels that the stock drinking the water is injuring him because it prevents water from filling his ponds. Mr. Hart doesn't have a storage right, but his pond storage is less than what it would take to fill in a 24 hour period (conversation with Keith Wilson). He does however have a licensed irrigation right for 2.0 cfs with a 1906 priority date. Mr. Hart also feels that the cattle are polluting the stream and affecting the water quality in his domestic well. That is a DEQ issue.

Mike doesn't need a water right to have his stock drink directly from the creek that flows through his land, as long as Mike doesn't divert the water from the stream in anyway. Mike was concerned that he was illegal. Harold Jones said that he is not. Any argument needs to be settled in civil court.

Result:

Mike is going to file an in-stream stock adjudication claim based on historical use. If recommended, he will file to move the in-stream use to troughs.



MICROFILMED
MAY 13 1992

Log for claim A29-02041

Spatial Dynamics BTD

9/18/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
06s35e	6	SESW	40	40	
06s35e	6	SWSE	37	39	
06s35e	6	SESE	23	27	
Totals:			100	106	

DATE: 05/24/00
PAGE: 34

Dates:	Exam Made Date:	Verified Date:	Objection Filed Date:
Misc:	Water District Number: 01	Field Inspection Flag: Presumption Flag: C	

AJ5809NP
No. A29-02041

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 35

=====

Audit: 03/15/90 CARLSEN 06/01/94 COX 03/29/95 POST-STD

 Bannock County *
 Little Pocatello Creek *
 2 second feet *
 Irrigation & Domestic *
 Priority 4/27/1906 *

STATE OF IDAHO

Water License No. 1963

WHEREAS, On the 27th day of April, A.D. 1906, SAMUEL M. SHAFFER, of Pocatello, County of Bannock, State of Idaho, duly made application (No. 2750) to me for a permit to use 3.2 cubic feet per second of the waters of Little Pocatello Creek, County of Bannock, State of Idaho, for irrigation and domestic purposes, and,

WHEREAS, On the 28th day of April, A.D. 1906, Permit No. 1963 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 28th day of April, A.D. 1908, and for the application to beneficial use of said water on or before the 28th day of April, A.D. 1912, and,

WHEREAS, On the 28th day of April, A.D. 1908, SAMUEL M. SHAFFER, the holder of said permit, duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by my Certificate No. 1963, dated May 29th, 1908, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 3.2 cubic feet per second of water, with date of priority of April 27th, 1906, and,

WHEREAS, On the 11th day of January, A.D. 1912, SAMUEL M. SHAFFER transferred all his right, title and interest in and to said Permit No. 1963 to MARY E. BROWN of Pocatello, County of Bannock, State of Idaho, and,

WHEREAS, On the 20th day of April, A.D. 1912, MARY E. BROWN, the holder of said permit, duly made proof of the application to beneficial use of 2 cubic feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to MARY E. BROWN, of Pocatello, County of Bannock, State of Idaho, the holder and owner of said Permit No. 1963, a perpetual right, dating from April 27th, 1906, to the use of 2 cubic feet per second of the waters of Little Pocatello Creek, in the County of Bannock and State of Idaho, or so much thereof as may be necessary for the purposes herein below mentioned, to be diverted at a point in the Northeast quarter (NE $\frac{1}{4}$), Section 8, Township 6 South, Range 35, East of the Boise Meridian, and conducted to and upon 100 acres, divided as follows: (40 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, 27 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, 17 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, and 16 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, Township 6 South, Range 35, East of the Boise Meridian, for the purpose of irrigation and domestic use, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 27th day of April, A.D. Nineteen hundred and twelve.

(SEAL)

A. E. Robinson.

State Engineer.

No. 2750

APPLICATION FOR PERMIT

To appropriate the Public waters of the state of Idaho.

1. Name of applicant - SAMUEL M. SHAFFER
Postoffice address: P. O. - Pocatello.
County - Bannock.
2. The quantity of water claimed is 3.2 cubic feet per second.
3. Source of water supply - Little Pocatello Creek.
County of Bannock.
4. Location of point of diversion - A point in the NE4 sec. 8, T. 6 S., R. 35 E. B. M., whence the N. E. corner of said sec. 8 bears N. 69° 41' E. distant 1614'.
5. To be used for:
 - I. Irrigation and domestic use:
 - (a) Number of acres to be irrigated 160 acres.
 - (b) In the following legal subdivisions - SW4 SW4 sec. 5, S2 SW4 : SW4 SW4 sec. 6, all of T. 6 S., R. 35 E., in Bannock Co., Idaho.
6. Estimated cost of works - \$200.00
7. Description of Works for Diversion:
 - I. Kinds of works - Ditch with dam & small reservoir.
 - II. Dimensions of Works:
 - (a) Height of dam 6 feet, length of dam at top 150 feet, length of dam at bottom 25 feet, material used in construction - earth
 - (b) Capacity of reservoir 22500 cubic feet.
 - (c) size of headgate, width 1.5 feet, height 1 foot.
 - (d) Ditch (flume or pipe) width at bottom 2 feet, width at water line 3 feet, depth of water .75 feet. Average grade per mile is 25 feet. Length of ditch is .75 miles, and it crosses the following quarter sections - NE2 sec. 8, to SW4 SW4 sec. 5, which is the point of intended use.
8. Time required for the completion of the construction of such work is 4 years.
9. Time required for the complete application of the water to the proposed use is 4 additional years.

Remarks:

Part of this work has been done under permit 542 which has lapsed for non-completion of work, Mr. Shaffer being unable to complete it in the time therein specified. There are no contestants or other claimants to this water. The name of the stream/corrected from two and a half mile to Little Pocatello Creek.

G. M. Perry, Surveyor.

Approval of state engineer.

The number of this permit is 1963.

Date of first receipt of application 9 a. m. April 27, 1906.

Recorded in Book 6, page 1963. Approved April 28, 1906.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the state of Idaho and hereby grant the same, subject to the following limitations and conditions:

Work to begin on or before June 27, 1906, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before April 28, 1907.

The whole of said work to be completed on or before April 28, 1908.

The time for the proof of beneficial use of water appropriated in accordance herewith, to extend to April 28, 1912.

Witness my hand this 28 day of April, 1906.

Jas. Stephenson, Jr.

state engineer.

Blank notice of proof of completion mailed applicant January 1, 1908.

Notice of proof received March 4, 1908, fixing April 28, 1908, as date and Pocatello, as place of proof.

Notice for publication mailed Pocatello Tribune March 13, 1908.

Deposition blanks mailed applicant March 13, 1908.

W. A. Samms authorized March 13, 1908, to make examination of works.

His report received April 21, 1908.

Depositions and affidavit of publication received April 30, 1908.

Fees received May 18, 1908.

Certificate of completion issued May 29, 1908.

Permit No. 1963

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom it May Concern:

This is to certify that SAMUEL E. SHAFFER of Pocatello, County of Benneek and State of Idaho, the holder of Permit No. 1963, issued upon Application No. 2750, bearing date of priority of April 27, 1906, authorizing the diversion of 3.2 second feet of the waters of Little Pocatello Creek, County of Benneek, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 3.2 second-foot of the waters of Little Pocatello Creek, that the point of diversion of said waters is in the Northeast quarter of Section 8, Township 6 North,

half of Southeast quarter (SE SE4) and Southeast quarter of Southwest quarter (SE4 SW4) Section 6,
Township 6 South, Range 35 East of Boise Meridian.

Witness my hand this 29th day of May, A.D. 1908.

Jas. Stephenson, Jr.

License issued for 2 second feet
P. 1125

State Engineer.

QUITCLAIM DEED.

THIS INDENTURE, Made this 11th day of January, in the year of our Lord One Thousand Nine Hundred and twelve, (1912) between Samuel M. Shaffer, and Mary Shaffer, his wife, of Pocatello, of the County of Bannock and State of Idaho, the parties of the first part, and Mary E. Brown of Pocatello, of the County of Bannock, and State of Idaho, the party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of Five Hundred and no/100 (\$500.00) 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, do by these presents demise, release and forever Quitclaim unto the said party of the second part, and to her heirs and assigns forever, all that certain water right situated in Bannock County of the State of Idaho, more particularly described as follows, to-wit:

All the right, title and interest of the grantees in and to State Engineer's permit No. 1963, and all the right, title and interest of the grantors in and to 3.2 second feet of the waters of Little Pocatello Creek, in Bannock County, claimed under such permit.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances unto said party of the second part, and to her heirs and assigns forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
in the Presence of

Samuel M. Shaffer (SEAL)

Mary Shaffer (SEAL)

Mary Hamilton

Theo. Turner.

STATE OF IDAHO, }
County of Bannock. } ss

On this 11th day of January in the year 1912, before me Theo. Turner, a Notary Public

of the County of Bannock, State of Idaho, I have seen Samuel M. Shaffer and Mary Shaffer, husband and

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

(SEAL)

Theo. Turner,

Notary Public.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 9.00 a.m.
Mar. 11, 1912.

A. E. Robinson,

State Engineer
W.