

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

Water Right 23-4040

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: A23-04040
Date Received: 9/13/1988
Receipt No: E 002257
Received By: HWS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KELLY CANYON SKI AREA INC.
Address: 865 PANCHERI C/O TETON CRANE
INC.
IDAHO FALLS, ID

208-529-2538

83401

2. Date of Priority: JUN 01, 1959

3. Source: KELLY CANYON STREAM

Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	41E	28	SE	NE	SE		JEFFERSON

5. Description of diverting works:
PUMP & SPRINKLER SYSTEM AND WATER TROUGH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.220		
STOCKWATER	05/01	11/01	0.060		

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:
S/150 HEAD CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	41E	28	NE	SE		IRR	3.0

A23-04040

Page

1

Date: 09/13/88

MICROFILMED

NOV 10 1992

A2304040

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	41E	28	NE	SE		STOCK	
Section Acres							3.0
Total Acres							3.0

11. Place of use in counties: JEFFERSON

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

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM
Water Right Number: 234040

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): Robert K. Useike Date: Sept 13-88

Date: _____

X For Organizations:

I do solemnly swear or affirm that I am Robert R. Useike of
Kelly Canyon Ski Area Inc. that I have signed the foregoing
document in the space below as Secretary-Treasurer of
Kelly Canyon Ski Area Inc. and that the statements contained in the
foregoing document are true and correct.

Robert R. Useike
Signature of Authorized Agent
Sec. Treasurer
Title and Organization
Sept 13-88
Date

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 13th day
of September 19 88

Betty Thompson
Notary Public

Seal

Residing at Idaho Falls

A23-04040

Page

My Commission Expires 6-94
3 Date: 09/13/88

MICROFILMED

NOV 10 1992

ACKNOWLEDGEMENT OF WATER RIGHTS

THIS DOCUMENT will acknowledge that Kelly Canyon Winter Park, L.L.C. by virtue of interests granted to its predecessors in interest has a water right to remove and use water in and from that certain spring and that certain well and that certain unnamed stream located on the real property more particularly described as follows:

Tract 1:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: SW $\frac{1}{4}$ SE $\frac{1}{4}$
S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM: A piece of land in the SE $\frac{1}{4}$ of said Section 28, described as follows:

Starting at the intersection of the Kelly Canyon Ski Hill, Inc. property and the South right of way line of the Forest Service Road, which point lies North 37°44' West 2,173.4 feet from the Southeast Corner of Section 28, said Township and Range, running thence South 83°0' West along the right of way of said Forest Service Road a distance of 600 feet; thence South 0°13' East 300 feet; thence North 83°0' East 600 feet to the West property line of the Kelly Canyon Ski Hill, Inc., property, running thence North 0°13' East 300 feet along said boundary to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM: Kelly Canyon Road right of way.

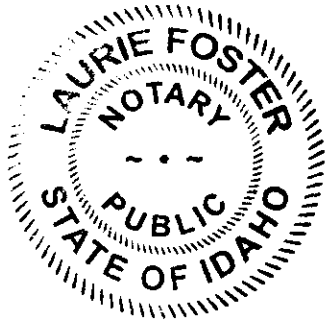
Tract 2:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: E $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM: Kelly Canyon Road Right of way.

SUBSCRIBED AND SWORN to before me this 3rd day of ~~February~~ ^{March}, 2004.



Laurie Foster

Notary Public for Idaho

Residing at: Rigby, Idaho

My Commission Expires: 5/11/09

A RIGHT TO THE USE OF CERTAIN WATERS IN SAID SPRING LOCATED ON FIRST PARTIES' LAND UNDER THE TERMS AND CONDITIONS HEREINAFTER SET FORTH; AND

WHEREAS, THE PARTY OF THE SECOND PART INTENDS BY THIS AGREEMENT TO GRANT, BARGAIN AND SELL UNTO THE PARTIES OF THE FIRST PART, ALL OF THE TIMBER ON THE REAL PROPERTY HEREINAFORE DESCRIBED, OWNED BY PARTY OF THE SECOND PART, WHICH IS SUITABLE FOR THE USE OF FIRST PARTIES, THEIR HEIRS, ADMINISTRATORS, EXECUTORS AND ASSIGNS, FOR RANCH AND FARM PURPOSES, TOGETHER WITH THE RIGHT OF FIRST PARTIES, THEIR AGENTS AND EMPLOYEES, TO HAVE THE RIGHT OF INGRESS, EGRESS AND REGRESS FROM, ON, OVER AND ACROSS SAID LANDS OF SECOND PARTY, FOR THE PURPOSE OF CUTTING AND REMOVING SAID TIMBER FROM SAID PREMISES, PROVIDED, HOWEVER, THAT NO TIMBER SHALL BE CUT BY THE PARTIES OF THE FIRST PARTY WHICH WILL INTERFERE WITH EITHER THE LANDSCAPING OR OPERATION OF THE SKI RUN ON HILL IN THE DISCRETION OF THE PARTY OF THE SECOND PART;

WHEREAS, THE PARTY OF THE SECOND PART INTENDS TO GRANT TO THE PARTIES OF THE FIRST PART UNDER THE TERMS AND CONDITIONS OF THIS AGREEMENT, A PERPETUAL EASEMENT TO THE RIGHT TO AND FOR ALL PASTURAGE AND GRAZING UPON THE PREMISES OWNED BY THE PARTY OF THE SECOND PART, AS HEREINAFORE DESCRIBED.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL COVENANTS AND AGREEMENTS TO BE PERFORMED BY THE PARTIES HERETO, ONE UNTO THE OTHER, IT IS AGREED AS FOLLOWS:

1. THE PARTIES OF THE FIRST PART RESERVE UNTO THEMSELVES FOR STOCK WATERING PURPOSES, THE WATERS OF THE SPRINGS LOCATED ON THE FOLLOWING DESCRIBED PROPERTY IN JEFFERSON COUNTY, IDAHO, TO-WIT:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER
(SE1/4 NE1/4) OF SECTION 28, TOWNSHIP 4 NORTH, RANGE
41 EAST OF THE BOISE MERIDIAN, IN JEFFERSON COUNTY,
IDAHO.

AND GRANT, BARGAIN AND SELL UNTO THE SAID PARTY OF THE SECOND PART, ITS SUCCESSORS AND ASSIGNS, AN EASEMENT AND RIGHT, USE AND PRIVILEGE TO DRAW AND USE FROM SAID SPRINGS SUCH SURPLUS OR EXCESS WATER FOR COMMERCIAL PURPOSES AS ARE NOT REQUIRED BY THE PARTIES OF THE FIRST PART FOR THE WATERING OF THEIR LIVESTOCK, AND THE SAID PARTIES



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 21, 2002

RE: Investigation of Water Right Claims in the Snake River Basin Adjudication

Dear Claimant:

The Idaho Department of Water Resources (IDWR) is commencing its Snake River Basin Adjudication (SRBA) investigation of water rights in the Blackfoot River, Willow Creek and South Fork of the Snake River Drainages. This investigation is a major effort, and IDWR has hired a contractor, Intrepid Engineering Services, to assist us with this task.

The purpose of this letter is to advise you that personnel from Intrepid will make an effort to contact claimants to arrange for conducting a field investigation and obtain information about your water use. IDWR requests that you provide Intrepid with access to your water diversion system so that their personnel can conduct this field examination. Intrepid will be gathering information on the rate of flow, diversion location and place of use of your water rights. Information collected during this process will be reported to IDWR and used by a Senior Water Resource Agent to prepare a recommendation on the water right.

The process of adjudicating water rights is straightforward for most people, resulting in the issuance of decreed water rights. Experience has shown that water users who work with our agency early in the process to ensure that their recordings are correct have a better experience than those who wait until IDWR has filed its findings with the SRBA Court. Thus, we encourage you to work with our staff and with Intrepid to ensure that the results accurately reflect your water uses.

If you have sold your property, we request that you forward this letter to the purchaser. The new owner is responsible for advising IDWR of the change in ownership so future correspondence will be mailed to the correct party. If you are unable to forward this letter, please send any information regarding a new owner to our Eastern Regional Office located at 900 N Skyline Dr, Idaho Falls, ID, 83402, Attention: Jennifer Crabtree (208) 525-7161.

Sincerely,

Ernest Carlsen
Adjudication Section Supervisor
Eastern Regional Office

RECEIVE

MAR 04 2004

02/04/2004

Department of Water Resources
Eastern Region

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 23-4040

KELLY CANYON WINTER PARK, LLC
PO BOX 51330
IDAHO FALLS ID 83405
Telephone Number: (208) 523-0862

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

We disagree that the water right has been disallowed.

2. Describe the changes you wish to make in the proposed recommendation:

See attached easement document and affidavit.

3. Give a brief explanation as to why you disagree with these portions:

- attached easement establishes right to spring in 1950's
- attached affidavit establishes right to well in 1950's

I AGREE with this proposed recommendation: no changes need to be made.

DATE: 3/4/04

SIGNATURE: J. David Stoddard

Please print your name: J. David Stoddard, Treasurer

IDWR Regional Office,

and
LLC Owner

SEE Letter April 3, 2003 REQUESTING EVIDENCE AND
mapping. No Response.

Chain is for Kove Canyon Stream (brook) NOT Spring

NOT WELL.

3/15/04 No changes to recommendation made. Probs w/ Chain and
OTHR sources.

4/01/04 Changed recommendation w/ Priority, Evidence. Added new chains
on OTHR sources 23-11312 and 23-11313.

OF THE FIRST PARTY SO HEREBY GRANT AND CONVEY UNTO THE SAID PARTY OF THE SECOND PARTY A PERMANENT EASEMENT FOR A WATER PIPE NOT TO EXCEED TWO INCHES IN DIAMETER, EXTENDING FROM THE SPRING LOCATED ON SAID LANDS OF THE FIRST PARTIES, HEREINAFOVE DESCRIBED, AND EXTENDING OVER SAID LANDS TO THE LANDS OF THE PARTY OF THE SECOND PARTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS AND REGRESS OVER SAID LANDS OF FIRST PARTIES IN ORDER TO KEEP AND MAINTAIN SAID PIPE LINE IN GOOD CONDITION AND REPAIR. THE PARTY OF THE SECOND PART EXPRESSLY AGREES THAT ITS SAID PIPE LINE, EXTENDING FROM SAID SPRING OVER THE LANDS OF THE SAID PARTIES OF THE FIRST PARTY, SHALL BE INSTALLED IN SUCH A MANNER AS NOT TO INTERFERE WITH THE FLOW OF THE WATERS OF SAID SPRINGS, OR TO INTERFERE WITH THE FLOW OF THE WATERS FROM SAID SPRINGS TO THE DIVERSION INSTALLATIONS LOCATED IN SAID SPRINGS BY THE SAID PARTIES OF THE FIRST PARTY FOR THE WATERING OF ITS LIVESTOCK, AND SAID PIPE LINE SHALL BE INSTALLED BY SAID PARTY OF THE SECOND PARTY IN GOOD, WORKMANLIKE MANNER.

2. THE PARTY OF THE SECOND PARTY HEREBY GRANTS, BARGAINS AND SELLS UNTO THE PARTIES OF THE FIRST PARTY, THEIR HEIRS AND ASSIGNS, A PERPETUAL EASEMENT TO CUT AND REMOVE ALL OF THE TIMBER LOCATED ON THE FOLLOWING DESCRIBED REAL PROPERTY OWNED BY THE PARTY OF THE SECOND PARTY, TO-WIT:

THE EAST HALF OF THE SOUTHEAST QUARTER (E $\frac{1}{2}$ SE $\frac{1}{4}$)
OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 41 EAST
OF THE BOISE MERIDIAN, IN JEFFERSON COUNTY, IDAHO,

WHICH IS SUITABLE FOR RANCH AND FARM PURPOSES, TOGETHER WITH THE RIGHT OF THE FIRST PARTIES, THEIR AGENT AND EMPLOYEES, OF INGRESS, EGRESS AND REGRESS FROM, ON, OVER AND ACROSS THE SAID LANDS OF SECOND PARTY FOR THE PURPOSE OF CUTTING AND REMOVING SAID TIMBER FROM SAID PREMISES; PROVIDED, HOWEVER, THAT NO TIMBER SHALL BE CUT BY THE PARTIES OF THE FIRST PARTY WHICH WILL INTERFERE WITH EITHER THE LANDSCAPING OR OPERATION OF THE SKI RUN OR HILL IN THE DISCRETION OF THE PARTY OF THE SECOND PARTY. THE PARTY OF THE SECOND PARTY HEREBY FURTHER GRANTS, BARGAINS AND SELLS UNTO THE PARTIES OF THE FIRST PARTY,

-4-

THEIR HEIRS AND ASSIGNS, A PERPETUAL EASEMENT TO AND FOR THE RIGHT TO ALL PASTURAGE AND GRAZING UPON THE ABOVE DESCRIBED PREMISES OWNED BY THE PARTY OF THE SECOND PART.

3. THESE EASEMENTS SHALL CONSTITUTE APPURTENANCES TO THE LANDS AND BURDENS RUNNING WITH THE LANDS, AND SHALL BE PERPETUAL AND FOREVER.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE HEREUNTO SET THEIR HANDS THE DAY AND YEAR FIRST ABOVE WRITTEN.

C. Warren Blakely
Beatrice A. Blakely
Lawrence C. Blakely
John M. Blakely
PARTIES OF THE FIRST PARTY

KELLEY CANYON SKI HILL,
INCORPORATED

BY E. B. [Signature]
PRESIDENT

PARTY OF THE SECOND PART

(SEAL)
ATTEST:

Lawrence C. Blakely
SECRETARY

-5-

STATE OF IDAHO }
COUNTY OF JEFFERSON }

ss.

ON THIS 20TH DAY OF DECEMBER, 1959, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED C. WARREN BLAKELY AND BEATRICE D. BLAKELY, HUSBAND AND WIFE, AND LAWRENCE BLAKELY AND ZELLA MAX BLAKELY, HUSBAND AND WIFE, KNOWN TO ME TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE FOREGOING 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 ABOVE WRITTEN.

NOTARY PUBLIC IN AND FOR THE STATE OF IDAHO, RESIDING AT RIGBY, IDAHO MY COMMISSION EXPIRES 3-26-62

(SEAL)

STATE OF IDAHO }
COUNTY OF JEFFERSON }

ss.

ON THIS 9TH DAY OF DECEMBER, 1959, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED E. BUD JOHNSON AND LAWRENCE BLAKELY, KNOWN TO ME TO BE THE PRESIDENT AND SECRETARY-TREASURER, RESPECTIVELY, OF THE CORPORATION THAT EXECUTED THE FOREGOING INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION 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.

NOTARY PUBLIC IN AND FOR THE STATE OF IDAHO, RESIDING AT RIGBY, IDAHO MY COMMISSION EXPIRES 3-26-62

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RETURN SERVICE REQUESTED

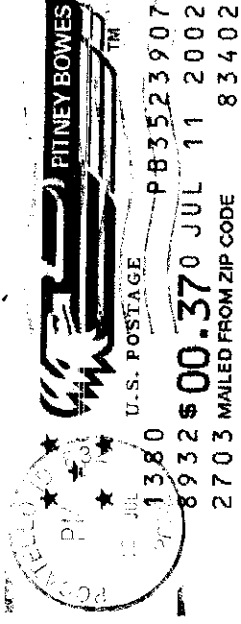


**NOT DELIVERABLE
AS ADDRESSED,
UNABLE TO FORWARD**

23-4040
KELLY CANYON SKI AREA INC
C/O TETON CRANE INC
865 PANCHERI
IDAHO FALLS, ID 83401

Not at Kelly Canyon
RECEIVED
JUL 23 2002
Department of Water Resources
Eastern District

83402+3344



1/28/04 CONTACTED DAVID STODDARD TO REMIND
HIM I NEED EVIDENCE.

April 3, 2003

Kelly Canyon Ski Area Inc
C/O Teton Crane
865 Pancheri
Idaho Falls ID 83401

2/04/04 DISALLOW CLAIM
NO RESPONSES.

Remitted To:
NICK BROWN
(SEE % ATTACH)

RE: EVIDENCE OF PRIORITY FOR WATER RIGHT CLAIM 23-04040

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the end of water rights review in Basin 29. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting the priority date. As the claimant, you are responsible for submitting the necessary proof to support the priority date.

Your claim referenced above, shows a Priority Date of June 1, 1959, for Kelly Canyon Stream (creek).

I have enclosed a photo illustration of the immediate area for your use. Please indicate on the photo the location of the point of diversion (pump) and the 3 acres that are owned and irrigated by you. → Nick's Field Exam

Please return the annotated photo with the evidence of priority.

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

For your reference, I have provided a printout of your Notice of Claim and 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 the entire 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 our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or soon will be conducted by Department personnel.

.....
The Department will not recommend the Notice of Claim be decreed by the court if evidence of a priority date is not submitted. The Notice of Claim will be disallowed.
.....

Please submit the documentation supporting the priority date within 30 days of the date of this letter, referencing all documents with the corresponding Claim number. If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact this office.

Respectfully submitted,

Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on “Evidence of Priority”
Notice of Claim (copy) 23-04040

305982

FIRST AMERICAN TITLE

J 21937

WARRANTY DEED

THIS INDENTURE is made this 5 day of January, 2001, by KELLY INVESTORS, INC., an Idaho corporation ("Grantor"), to KELLY CANYON WINTER PARK LLC, an Idaho limited liability company, whose mailing address is 4622 East 250 North, Rigby, Idaho 83442 ("Grantee").

WITNESSETH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to the Grantor in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, and to the Grantee's successors and assigns forever, all of the following described real property in the County of Jefferson, State of Idaho, to-wit:

TRACT 1:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: SW1/4 SE1/4
S1/2 NW1/4 SE1/4

EXCEPTING THEREFROM: A piece of land in the SE1/4 of said Section 28, described as follows:

Starting at the intersection of the Kelly Canyon Ski Hill, Inc., property and the South right of way line of the Forest Service Road, which point lies North 37°44' West 2,173.4 feet from the Southeast corner of Section 28, said Township and Range, running thence South 83°0' West along the right of way of said Forest Service Road a distance of 600 feet; thence South 0°13' East 300 feet; thence North 83°0' East 600 feet to the West property line of the Kelly Canyon Ski Hill, Inc., property, running thence North 0°13' East 300 feet along said boundary to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM: Kelly Canyon Road right of way.

RECEIVED BY
ASSESSOR

For PLATTING

Date: 1/5/01 Time: 4:05

Instrument # 305982

RIGBY, JEFFERSON, IDAHO

2001-01-05

04:05:00 No. of Pages: 4

Recorded for : FIRST AMERICAN TITLE

CONNIE M. KELLER

Fee: 12.00

Ex-Officio Recorder Deputy

Index to: WARRANTY DEED

TRACT 2:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: E1/2 SE1/4

EXCEPTING THEREFROM: Kelly Canyon Road right-of-way.

TRACT 3:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: A piece of land in the SE1/4 of said Section 28, described as follows: Starting at the intersection of the Kelly Canyon Ski Hill, Inc., property and the South right of way line of the Forest Service Road, which point lies North 37°44' West 2,173.4 feet from the Southeast corner of Section 28, said Township and Range, running thence South 83°0' West along the right of way of said Forest Service Road a distance of 600 feet; thence South 0°13' East 300 feet; thence North 83°0' East 600 feet to the West property line of the Kelly Canyon Ski Hill, Inc., property, running thence North 0°13' East 300 feet along said boundary to the POINT OF BEGINNING.

EXCEPTING THEREFROM: Kelly Canyon Road right of way.

SUBJECT TO all existing easements, patent reservations, rights of way, and protective covenants of record, all applicable zoning ordinances, building codes, laws and regulations, all encroachments, overlaps, boundary line disputes, claims of easements and other matters that would be disclosed by an accurate survey or inspection of the property, and the following matters:

1. Taxes for the year 2001.
2. Reservation of right of way for ditches and canals and other conditions and restrictions contained in the Patent from the United States of America, recorded September 28, 1933, in Book 113 of Patents, at Page 307, records of Jefferson County.
3. Right-of-Way Deed, from LAWRENCE BLAKELY and WARREN BLAKELY, unmarried brothers, Grantors, to UNITED STATES OF

successors shall warrant and defend the property in the quiet and peaceable possession of the Grantee and the Grantee's successors and assigns, against the Grantor and the Grantor's successors, and against every person whomsoever who lawfully holds (or who later lawfully claims to have held) rights in the property as of the date hereof.

In construing this Warranty Deed and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the Grantor has executed the within instrument the day and year first above written.

GRANTOR:

KELLY INVESTORS, INC.

By: Neil Brown
Its: Pres

STATE OF IDAHO)
County of Jefferson)ss.

On the 5th day of January, 2001, before me, the undersigned, a notary public in and for said State, personally appeared Neil Brown, known or identified to me to be the PRESIDENT of Kelly Investors, Inc., and the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation 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.

(seal)

Kathy Moedl
Notary Public for Idaho
Residing at Reksburg
My Commission Expires: 7-16-2005



Pls mail to 50003
K C Wmth Park LLC
PO Box 337
Ririe

Attn: Neil Brown
83443

4/15/03

Re-Mailed To:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RETURN SERVICE REQUESTED

RETURN TO SENDER
NEW ADDRESS IS
P.O. BOX 367
RIRIE, ID 83443
U.S. POSTAGE
2003 APR 11 PM
POCAHELLO ID 83422
8964 \$00.370 APR 11 2003
PB35239-07
0555 MAILED FROM ZIP CODE 83402

RECEIVED
APR 14 2003
Department of Water Resources
Eastern Region

Neil Brown
Ririe

390-5050 all
530-6751

KALLEY CANYON RESORT
5488 KALLEY CANYON RD
RIRIE, IDAHO 83443

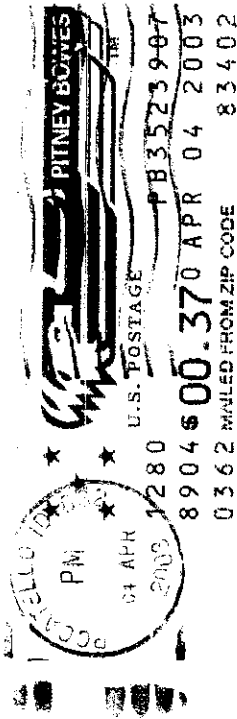
GET NEW (?) NAME,
ADDRESS, ETC.
This NEEDS AT-LEAST
A CHANGE OF ADDRESS.
? Change Owner?

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
900-N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RETURN SERVICE REQUESTED

RECEIVED
APR 10 2003

No phone Book
Listing for
Teton Crane,
Tried to call
Kelly Canyon listing
No this - only
No money
Department of Water Resources
Eastern Region



KELLY CANYON SKI AREA INC
C/O TETON CRANE
865 PANCHERI
IDAHO FALLS, IDAHO 83401

NOT DELIVERABLE
AS ADDRESSED
UNABLE TO FORWARD

83402+3344

4/11/03 Romano Request for Evidence or Priority to:

Kelly Canyon Resort
5488 Kelly Canyon Rd
Riviera ID 83443

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

DELOG
AR
1-5-04

RECEIVED
DEC 31 2003

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

Department of Water Resources
Eastern Region

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided, if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
see attached 23-4040					

2. The following **REQUIRED** information must be submitted with this form:

☒ A. The appropriate **FILING FEE**. See instructions for fee amounts.

☒ B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

☒ C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) are for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s)

Kelly Canyon Ski Area, Inc.
865 Pantheri, Idaho Falls, ID 83401

4. New Owner/Claimant(s)

Kelly Canyon Winter Park, LLC

Name Connector (Check one): [] and, [] or, [] and/or

New Mailing Address

P.O. Box 51330, 1000 Riverwalk Dr., Suite 100

City, State and ZIP Code

Idaho Falls, ID 83405

New Telephone Number

(208) 523-0862

5. Date you acquired the property

1/2/01

KELLY CANYON WINTER PARK LLC
C/O COOPER NORMAN
PO BOX 51330
1000 RIVERWALK DR STE 100
IDAHO FALLS ID 83405-1330

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other		
Total		

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation		
Stock		
Domestic		
Other		
Total		

7. Signature of New Owner(s) or Claimant(s) J. Sant - [Signature]
(include title if applicable) Treasurer

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by

Date

Fee

Received by

Date

Receipt No.

Processed by

AJ

Date

WR

Date

10-25-(50) Snow Making
 10A30 Commercial

DAVE STODARD
 523-0862

Artificial Snow - use
 Not = No WR Farm Will

DAVE STODARD - Partner
 523-0862



Monthly Focus: Roles—
 Your key relationships and
 responsibilities are where
 you spend your time, energy,
 and resources

Unthinking, idle, wild, and young,
 I laugh'd and dance'd and talk'd and sung.
 —Amelia

28

Wednesday
 January 2004

Daily Notes

28th Day 338 Left Week 5

- IN OFFICE Snow/Karl/Liam
- 830- DENNIS KLOPP CALLED TO DISCUSS WR'S
 FROM BURTON SPRING 8/1899, 1890 (P)
 FROM PAUSAGES CR. THAT HAD SPLIT.
- 845 CALLED STAN KLASSEN - DISCUSSED THIS BURTON
 SPR. WATER SPLIT W/ NEIGHBORS - THIS
 DISCUSSION W/ DONALD WUTCH. ABOUT -
- 1015 CALLED DAVE STODARD - RE: KARY CARSON
 23-4090 - DISCUSSED NEED FOR EVIDENCE
 OF PRIORITY OF 1959 AND THE WELL
 NOT HAVING A WATER RIGHT - HILL
 CONTACT NICK BARON TO HAVE him
- CALLED CAROL - RE: SUMMITTILL BARRY
 LANGUAGE FOR HANLEY AND BEN KORN
 5999
 CAROL RETURNED CALL - USE 2000
 FRACTION LANGUAGE FROM 5/09/03
 E-MAIL.
- 1030 TONY CHUDO & WIFE WERE IN SAN ANGELO
 DISCUSSED THEIR 1893 rd AND PAUSAGES
 DRAIN DELIVERY SYSTEM
- 1225 ESTEL TRAUGHMAN & WIFE WERE AT W/ POC
 TO CONVERT 23-500 TO PAUSAGES COMMON
 FRACTION TO CANAL FOR ROAD.
- 145 NICK CALLED - GPS PAUSAGES CANAL HEADGATE
- 315 CALLED CAROL - SUMMITTILL BARRY
 REMAIN 2000 FRACTION → QUANTITIES

2/4/04 NO RESPONSE TO REQUEST FOR EVIDENCE
 OR PRIORITY → DISALLOWED!

P03

PERPETUAL EASEMENT AGREEMENT

THIS PERPETUAL EASEMENT AGREEMENT, MADE THIS 7TH DAY OF NOVEMBER, 1959, BY AND BETWEEN C. WARREN BLAKELY AND BEATRICE D. BLAKELY, HUSBAND AND WIFE, AND LAWRENCE BLAKELY AND ZELLA MAE BLAKELY, HUSBAND AND WIFE, HEREINAFTER REFERRED TO AS THE PARTIES OF THE FIRST PARTY, AND KELLEY CANYON SKI HILL, INCORPORATED, AN IDAHO CORPORATION, AUTHORIZED TO DO BUSINESS IN THAT STATE, WITH ITS PRINCIPAL PLACE OF BUSINESS AT Ririe, JEFFERSON COUNTY, IDAHO, HEREINAFTER REFERRED TO AS THE PARTY OF THE SECOND PARTY, WITNESSETH:

WHEREAS, THE PARTIES OF THE FIRST PARTY ARE THE OWNERS OF CERTAIN LANDS SITUATE IN THE COUNTY OF JEFFERSON, STATE OF IDAHO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (SE $\frac{1}{4}$ NE $\frac{1}{4}$) OF SECTION TWENTY-EIGHT (28), TOWNSHIP FOUR (4) NORTH, RANGE FORTY-ONE (41) EAST OF THE BOISE MERIDIAN, IN JEFFERSON COUNTY, IDAHO,

ON WHICH THERE IS A SPRING WHICH ARISES WHOLLY UPON THE PREMISES HEREINAFOVE DESCRIBED AND ENDING WHOLLY UPON THE PREMISES HEREIN-ABOVE DESCRIBED, AS WELL AS OTHER ADJOINING LANDS; AND

WHEREAS, THE PARTY OF THE SECOND PARTY IS THE OWNER OF CERTAIN LANDS SITUATE IN THE COUNTY OF JEFFERSON, STATE OF IDAHO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

THE EAST HALF OF THE SOUTHEAST QUARTER (E $\frac{1}{2}$ SE $\frac{1}{4}$) OF SECTION TWENTY-EIGHT (28), TOWNSHIP FOUR (4) NORTH, RANGE FORTY-ONE (41) EAST OF THE BOISE MERIDIAN, IN JEFFERSON COUNTY, IDAHO.

ON WHICH THERE IS CERTAIN TIMBER AND GRAZING; AND

WHEREAS, THE PARTY OF THE SECOND PARTY DESIRES TO OBTAIN A PERPETUAL EASEMENT FOR A WATER PIPE, NOT TO EXCEED TWO (2) INCHES IN DIAMETER, EXTENDING FROM THE SPRING LOCATED ON FIRST PARTIES' LAND DESCRIBED ABOVE, AND EXTENDING OVER THE LANDS OF SAID PARTIES OF THE FIRST PARTY TO THE LANDS HEREINAFOVE DESCRIBED OWNED BY THE PARTY OF THE SECOND PARTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS OVER THE LANDS OF FIRST PARTIES IN ORDER TO KEEP SAID PIPE IN GOOD CONDITION AND REPAIR; AND

WHEREAS, THE SAID PARTY OF THE SECOND PARTY DESIRES TO OBTAIN

ACKNOWLEDGEMENT OF WATER RIGHTS

THIS DOCUMENT will acknowledge that Kelly Canyon Winter Park, L.L.C. by virtue of interests granted to its predecessors in interest has a water right to remove and use water in and from that certain spring and that certain well located on the real property more particularly described as follows:

Tract 1:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: SW $\frac{1}{4}$ SE $\frac{1}{4}$
S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM: A piece of land in the SE $\frac{1}{4}$ of said Section 28, described as follows:

Starting at the intersection of the Kelly Canyon Ski Hill, Inc. property and the South right of way line of the Forest Service Road, which point lies North $37^{\circ}44'$ West 2,173.4 feet from the Southeast Corner of Section 28, said Township and Range, running thence South $83^{\circ}0'$ West along the right of way of said Forest Service Road a distance of 600 feet; thence South $0^{\circ}13'$ East 300 feet; thence North $83^{\circ}0'$ East 600 feet to the West property line of the Kelly Canyon Ski Hill, Inc., property, running thence North $0^{\circ}13'$ East 300 feet along said boundary to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM: Kelly Canyon Road right of way.

Tract 2:

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

Section 28: E $\frac{1}{2}$ SE $\frac{1}{4}$
EXCEPTING THEREFROM: Kelly Canyon Road Right of way.

Township 4 North, Range 41 East of the Boise Meridian, Jefferson County, Idaho.

EXCEPTING THEREFROM: Kelly Canyon Road right of way.

The Southeast Quarter of the Northeast Quarter (SE ¼ NE ¼) of Section Twenty-Eight (28), Township Four (4) North, Range Forty-One (41) East of the Boise Meridian, in Jefferson County, Idaho.

STATE OF IDAHO)
) ss.
County of Bonneville)

E. Bud Johnson, being first duly sworn on oath, deposes and says:
That he is an individual residing in Bonneville County; that he has read the foregoing
ACKNOWLEDGEMENT OF WATER RIGHTS and knows the contents thereof and that
he verily believes the same to be true.

E. Bud Johnson

Log for claim 23-04040

Spatial Dynamics BTD

6/6/01

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
04n41e	28	NESE	3	5	
Totals:			3	5	

23-11312 (Larocum)
 KELLY CANYON SPRING WATER IS COLLECTED
 FROM SPRING INTO CONCRETE BOX, THEN PIPED
 DOWN MOUNTAIN TO A 20,000 GALLON UNDER
 GROUND TANK. THEN FROM THE TANK DOWN TO
 IRRIGATED AREA AS SHOWN ON MAP. (SPRING
 SINKS.) Tag # A0012434

NESE Sec. 28
 4n41e
 NO KNOWN
 WATER RIGHT
 23-11313 (Larocum)
 WELL IS LOCATED EAST OF SKI LODGE WITH
 A CONCRETE P.T. NEXT TO IT. FOR A PUMP
 AND PRESSURE TANK. PUMP IS MADE BY C.T.G.
 PUMPS SN# L0243476 60 GPM. WATER
 OUT OF WELL IS USED FOR CULINARY USE
 19 TOILETS + URINALS 14 SINKS 2 HYDRANTS.
 (Supplies water)
 THE WELL IS ALSO USED TO MAKE ARTIF-
 ICIAL SNOW FROM DEC. 1 TO MAR. MOTOR
 IS MADE BY BALDOR INDUSTRIAL MOTORS
 3 HP. SN# F0210292287

Tag # A0012446

NOT PART OF THERE ARE WATER TANKS TO
 KERRY CANYON WATER CATTLE NEAR HEAD OF SPRING
 WINTER PARK HAS 1/2" STEEL PIPE FROM CONCRETE BOX TO
 TANKS.

8-23-03

4:17 PM MVO

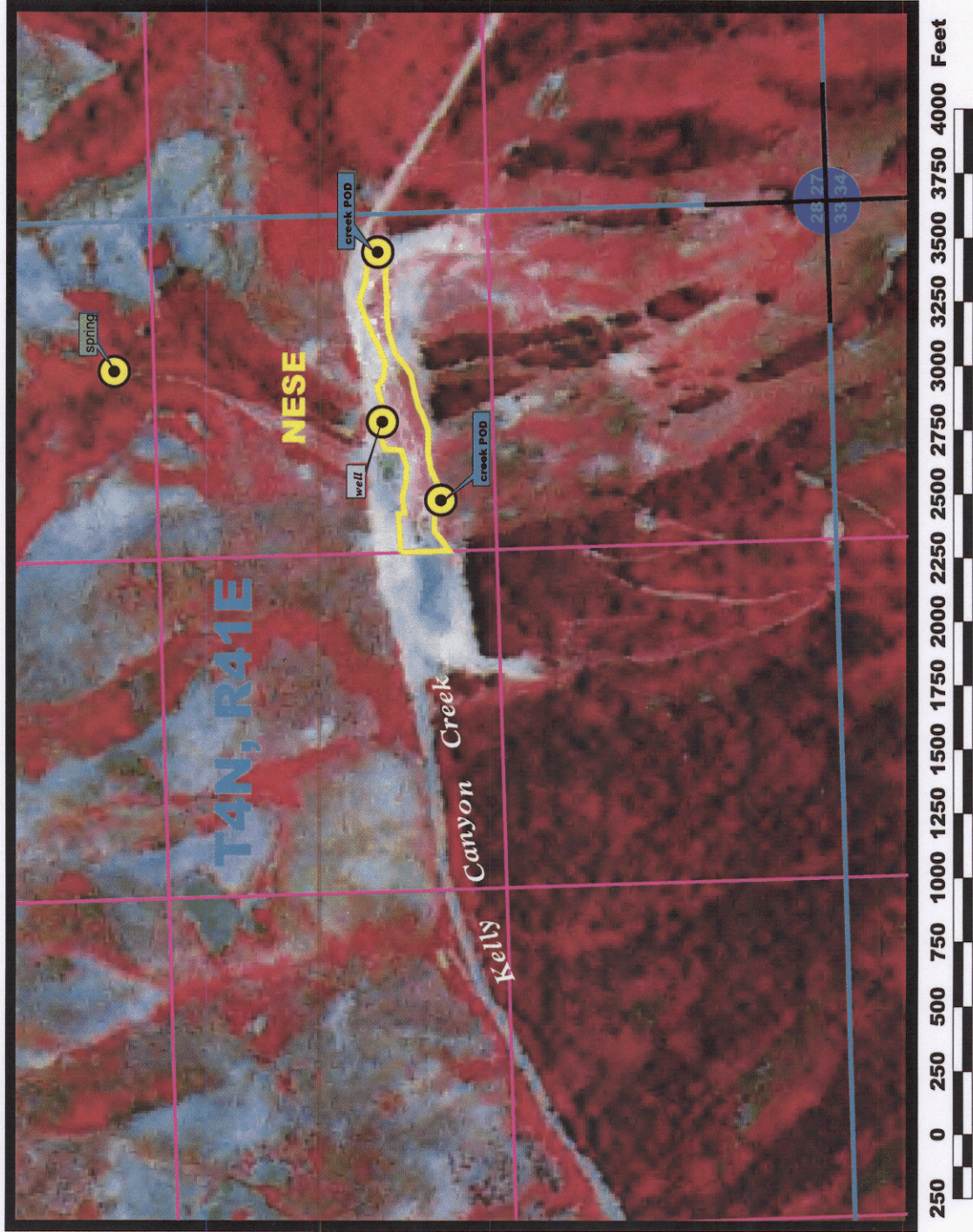
SPATIAL
DYNAMICS



State of Idaho

Department of Water Resources

Eastern Region



Water Right(s):
23-04040 (crk),
23-11312 (spg),
23-11313 (well)

Place of Use: (part of)
T4N, R41E
Sec. 28 NESE

Point(s) of Diversion:
T4N, R41E Sec. 28
SENESE, SWNESE (creek)
SWNESE (well), SESENE (spg)

LEGEND

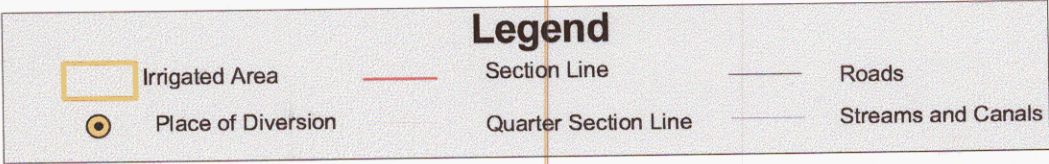
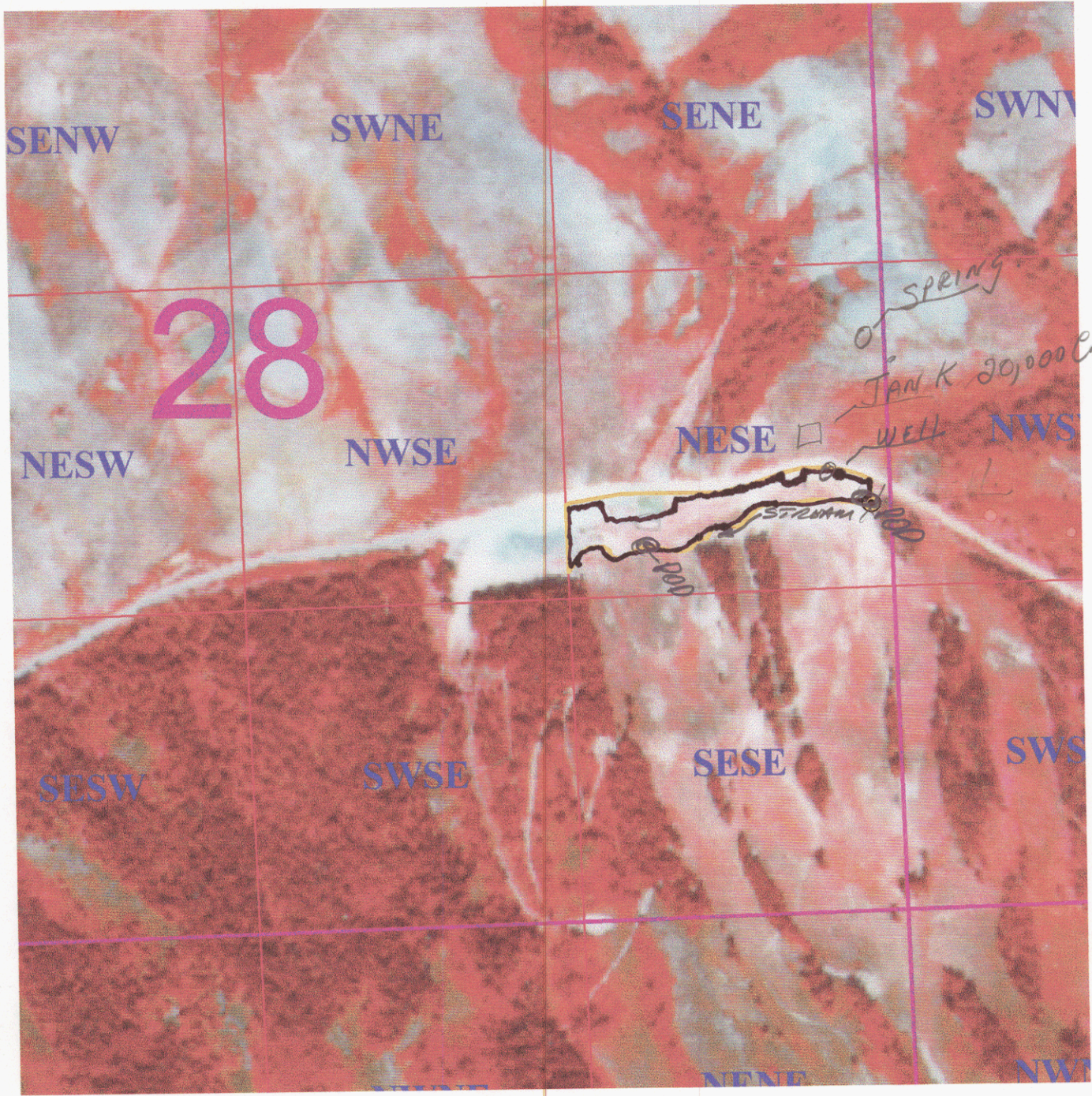
- Point of Diversion
- SESE
- Place of Use
- Section
- Quarter-Quarter



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: A. Ruberry
Date: March 2004

Water Right Claim Number 23-04040
Township , 4N41E

06/06/2001



NLO
8/23/03



HAWLEY GULCH RANGER STATION 3.8 MI.

HAWLEY GULCH RANGER STATION 4 MI.

A23-04040

T4N

Point of Div.
P.O.U.