

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: A45-00293  
Date Received: 5/10/1989  
Receipt No: 5007079  
Received By: AD

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: BENNIE SMYER - 673-6727 208-673-6642  
Address: P.O. BOX 128 83311  
ALBION, ID  
AND/OR  
Name: RENEE SMYER 208-673-6642  
Address: P.O. BOX 128 83311  
ALBION, ID
2. Date of Priority: MAR 01, 1882
3. Source: HOWELL CREEK Trib. to: MARSH CREEK
4. Point of Diversion:  

|          |       |         |        |        |     |     |        |
|----------|-------|---------|--------|--------|-----|-----|--------|
| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
| 12S      | 25E   | 21      | SE     | NW     | SW  |     | CASSIA |
5. Description of diverting works:  
DIVERSION DAM TO DITCH
6. Water is used for the following purposes:  

|            |       |       |        |      |        |
|------------|-------|-------|--------|------|--------|
| Purpose    | From  | To    | C.F.S. | (or) | A.F.A. |
| IRRIGATION | 03/15 | 11/15 | 0.500  |      |        |
7. Total Quantity Appropriated is:  
0.500 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 129.0 Acre Feet Per Annum.
9. Non-irrigation uses:  
NONE

10. Place of Use:

| Township      | Range | Section | 1/4 of | 1/4 | Lot | Use | Acres |
|---------------|-------|---------|--------|-----|-----|-----|-------|
| 12S           | 25E   | 15      | NW     | SW  |     | IRR | 13.0  |
|               |       |         | SW     | SW  |     | IRR | 30.0  |
| Section Acres |       |         |        |     |     |     | 43.0  |
| Total Acres   |       |         |        |     |     |     | 43.0  |

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:  
WASTEWATER FILING

14. Remarks:

15. Basis of Claim: DECREED  
Case Number:  
Court :  
Decree date:

R. L. WOOD, ET. AL.  
Decree Plaintiff

vs

WM. STOKES, ET. AL.  
Decree Defendant

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1 Map

**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): Bernie Smyer Date: 5-10-89  
Renee Smyer Date: 5-10-89

State of Idaho )  
County of Term Falls ) SS.

Subscribed and sworn (or affirmed) before me this 10<sup>th</sup> day.  
of May 19 89

[Signature]  
Notary Public

Seal

Residing at Kimberly, Id.  
My Commission Expires 6/30/92



9/20/94

## COMMUNICATION DOCUMENTATION

File No.

This form is to be used to document public record information requests regarding any SRBA claim or other water right. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request.

IDWR Employee/Agent Allen Merritt Date September 25, 1995

Contact person(s) JIM KEMPTON, STATE REPRESENTATIVE (673-6261)

### Substance of Communication:

Returned Mr. Kempton's call. He was asking questions pertaining to a sewage land application proposal by Bennie Smyers. He wanted to know if our department was involved with the water quality aspects of this proposal. I told him I thought it would be DEQ. He then asked about water rights for the Smyer's property in W $\frac{1}{2}$  Sec 15 T12S, R25E. I looked them up and then called him back. We discussed them in general then I made proof reports and sent them to him so he could look them over.

Rights involved:

WR

AJ

45-07663

45-00293

45-04158

45-07608

45-07605

~~A45-00293~~

A45-04158

A45-10495

DEC 03 1996



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

DEPT INTERNET WEB SITE: [www/idwr.state.id.us](http://www.idwr.state.id.us)

SOUTHERN REGION

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

May 4, 2004

BENNIE SMYER  
PO BOX 128  
ALBION ID 83311

RE: SNAKE RIVER BASIN ADJUDICATION CLAIMS 45-293, 45-4158, 45-13751, & 45-13752

Dear Bennie

Please review my preliminary recommendations to confirm that they accurately represent your historic irrigation practices. I have defined the places of use for the above claims, as I understand how the water can reach the recommended place of use. The southern most place of use recommended for 45-293 and 45-13751 likely does not exactly outline the irrigated ground. As that area is rough and as you stated, the irrigated ground is the ground that the water can cover, I feel that the outlined area represents an aggregate of the irrigated acres.

If you have any questions please give me a call or you can come into the office to review the recommendations.

Sincerely

Kelly K Christensen  
Sr Water Resource Agent  
E-mail address: [kchriste@idwr.state.id.us](mailto:kchriste@idwr.state.id.us)

Enclosures

04/21/2004

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

RIGHT NUMBER: 45-293

NAME AND ADDRESS: BENNIE SMYER  
PO BOX 128  
ALBION ID 83111

SOURCE: HOWELL CREEK

TRIBUTARY: MARSH CREEK

QUANTITY: 0.500 CFS

PRIORITY DATE: 03/01/1882

POINT OF DIVERSION:

T12S R25E S21 SENWSW Within CASSIA County

PURPOSE AND  
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/01 10/31

0.500 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County

|               |      |      |               |      |      |
|---------------|------|------|---------------|------|------|
| T12S R25E S15 | NWNW | 2.0  | T12S R25E S15 | SWNW | 16.0 |
| T12S R25E S15 | NWSW | 20.6 | T12S R25E S15 | SWSW | 4.4  |

43 ACRES TOTAL

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A  
COMBINED TOTAL OF 54.5 ACRES IN A SINGLE IRRIGATION SEASON.  
COMBINED RIGHT NOS. 45-293, 45-4158, 13751 and 45-13752.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A  
COMBINED TOTAL OF 43 ACRES IN A SINGLE IRRIGATION SEASON.  
COMBINED RIGHT NOS. 45-293, 45-4158, and 13751.

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

**Idaho Dept of Water Resources  
Claims review notes and narrative**

**Date: 4-21-2004**

**File: 45-293 bennie smyer analysis**

**Prepared by Kelly K Christensen**

**45-293, 45-4158, and 45-10495  
System analysis**

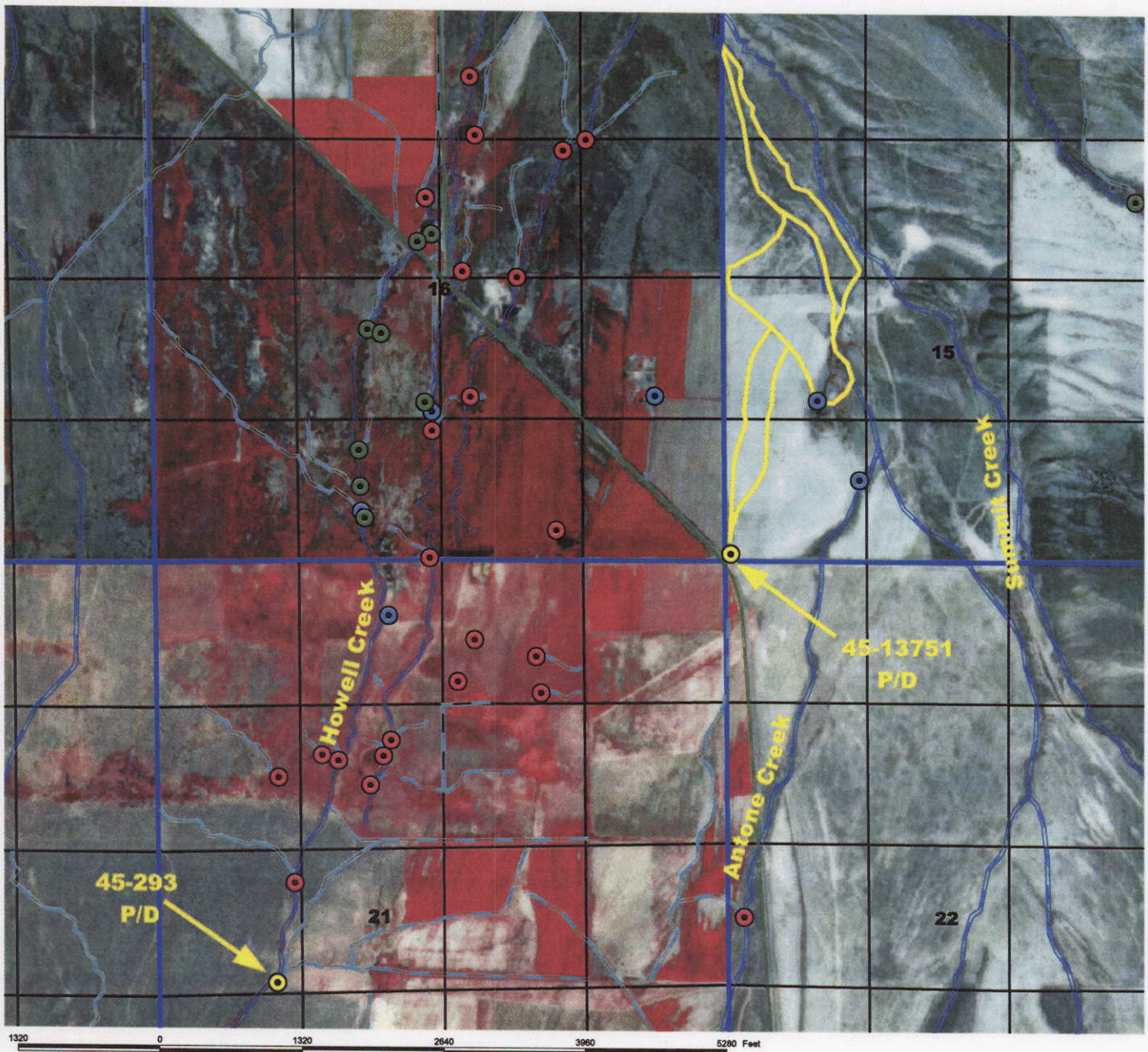
45-293 I am recommending this right as valid although there is no actual ditch that goes from the point of diversion to the place of use. The recommended point of diversion has a shared delivery system used by Clark and Hawker. Bennie stated that he has received water coming from the end of the Clark ditch that dumps water into a culvert that goes under Hwy 77 and enters Bennie's property in the southwest corner. Historically there was an orchard in that corner that is visible in the 1978 ascs aerial photo. A ditch on Bennie's property runs north for a short distance and then bends to the east. The natural flow from this location is primarily to the north but it eventually turns northeast. Use is for irrigating rangeland grass. Bennie stated that he turns the water out of the ditch and that the water covers whatever ground it can reach. If enough water is available, it could eventually reach a ditch coming from a small reservoir that is spring fed (45-4148). From that ditch the water can cover the irrigatable ground that runs to the northwest corner of Bennie's property. The claim identified 43 acres in the W $\frac{1}{2}$ SW $\frac{1}{4}$  of sec 15. The decree covered the W $\frac{1}{2}$  of the W $\frac{1}{2}$  of Sec 15. I am recognizing the claimed acres within the found place of use on the W $\frac{1}{2}$  of the W $\frac{1}{2}$ .

45-4158 I am recommending this right for the ground that lays to the north of the spring location. The historical system is not known nor when it was originally developed but as Howell Creek water is normally not available throughout the entire irrigation season, the spring water likely was used to supplement the Howell Cr water. Bennie identified the spring as Quinn Spring. He stated that there was a ditch located near where the current ditch exists which is physically possible although it is not visible in the earlier available aerial photos. The ditch ends near the NE corner of the Redman irrigated field. Flow from this ditch is to the northeast and again covers all the ground that can be with the available water. The ground slope is significant and has not been leveled to any great extent. Bennie indicated that in the 1930s the then owners supplied vegetables to the Normal School and that the spring water was used to irrigate those crops. I am recognizing a 1932 priority date for the spring. The spring flow currently goes directly into the reservoir and then is diverted out of the reservoir. No measurement was possible for the system as it existed on the date of the field exam but the ditch systems have the capacity to carry the legal limit for the found acres ( $\approx 0.70$  cfs)

45-10495 Recommended as 45-13751 and 45-13752. The original claim listed wastewater as the source and identified two points of diversion. One point is where the decreed water enters the property in the southwest corner of the property (see 45-293 narrative). Under normal circumstances the majority of water entering Bennie's property is wastewater coming off of the Clark property. As the wastewater comes from decreed water and is used on the same ground as Bennie's decreed place of use, this water was no doubt being used in conjunction with the decreed water use. Therefore, I am recognizing a 3-18-1910 priority date. The place of use would be the same as the decreed place of use, which is  $\approx 46$  acres. No measuring device exists and no water was available for measurement, however it appears that the system is capable of diverting the recommended 1" per acre. All water coming off the Clark property has to go onto Bennie's property.

The second point of diversion is from an unnamed channel east of the first point of diversion. This channel is a continuation of the Pine/Antone stream channel coming off of the Clark property to the south. Water in this channel could be excess Pine/Antone water or field runoff from Clark's Howell Creek rights, however as the water is in the channel for over  $\frac{1}{2}$  mile prior to being diverted it is recognized as an unnamed stream source locally known as Antone Creek. The development date of the current point of diversion is unknown but is being accepted as being developed at the same time as the Quinn Spring development of 1932. Antone Creek was identified through right 45-256 as a source in the Bridger vs Tremayne decree (3-17-1910). As Antone Creek was not recognized as a source for this property in any of the decrees in this area, it does not hold that the system was in place by 1910. This system can irrigate  $\approx 25$  acres. 13 acres overlap with the other systems. No water was flowing and no measurement could be made but the system appears to be capable of diverting the recommended rate.

## RECOMMENDED PLACE OF USE FOR 45-293 AND 45-13751

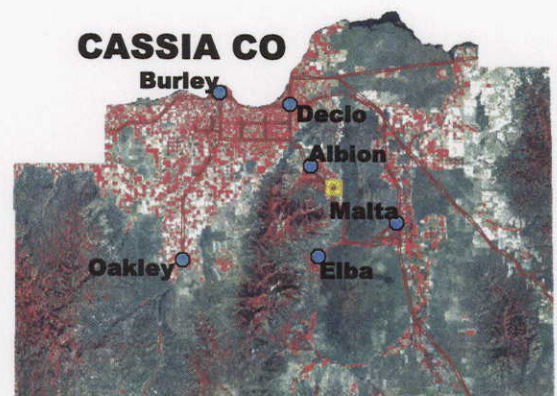


**PLACE OF USE**  
TWP 12S, RNG 25E, SEC 15  
Data entry on April 21, 2004

-  RECOMMENDED POINT OF DIVERSION
-  RECOMMENDED PLACE OF USE
-  TOWNSHIP LINES
-  SECTION LINES
-  QUARTER/QUARTER LINES



GIS PLACE OF USE PRESENTATION  
1987/1988 NAPP AERIAL PHOTOGRAPHY  
DATA ENTRY BY KELLY K CHRISTENSEN



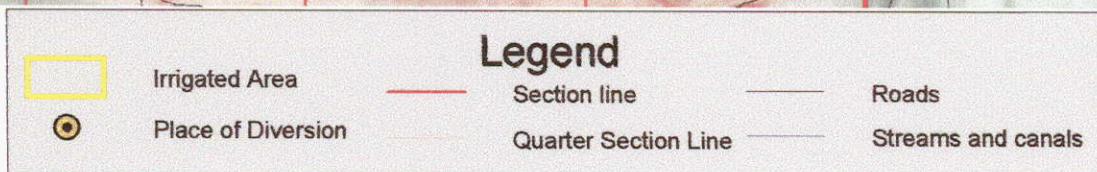
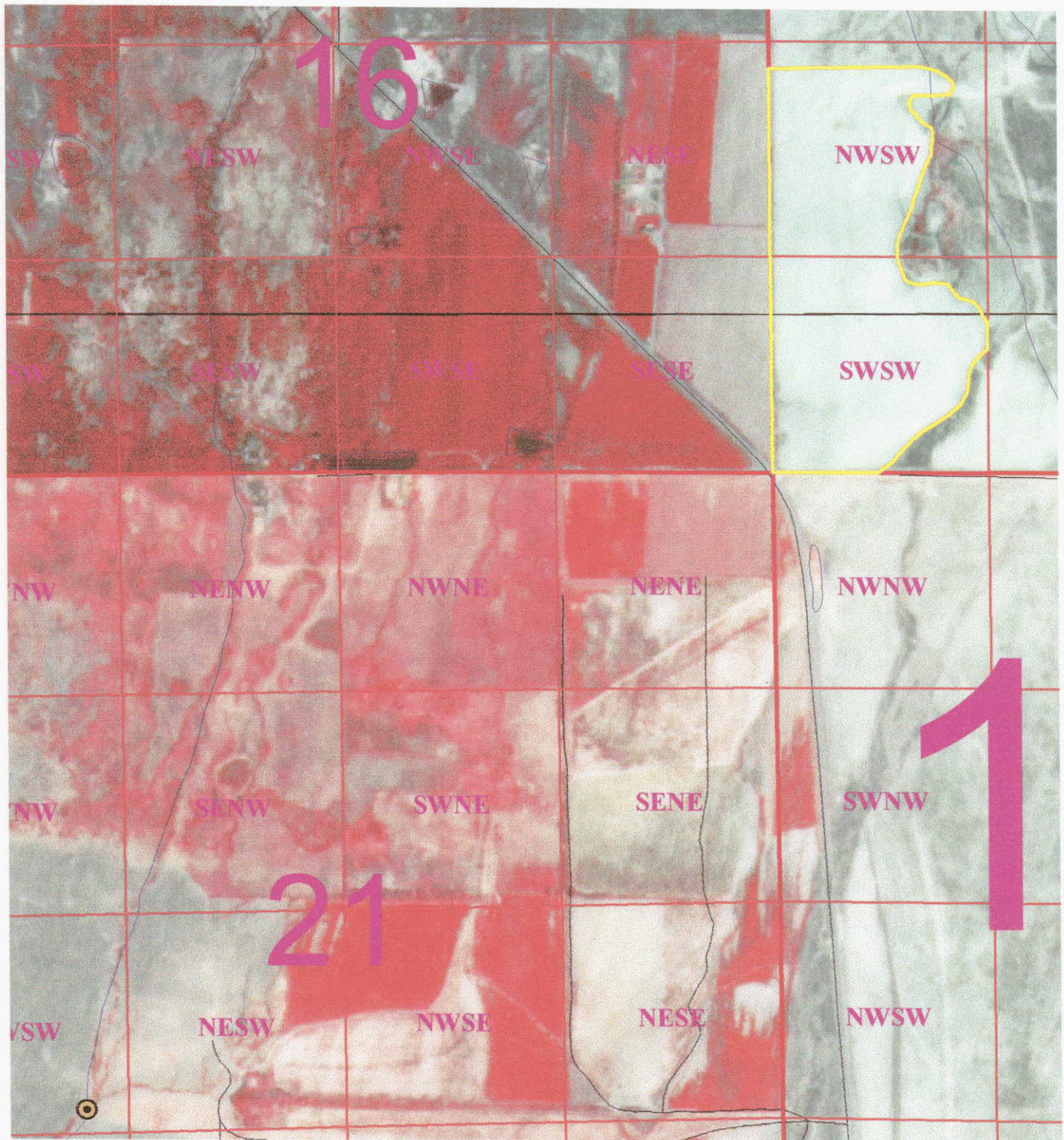
Log for claim A45-00293

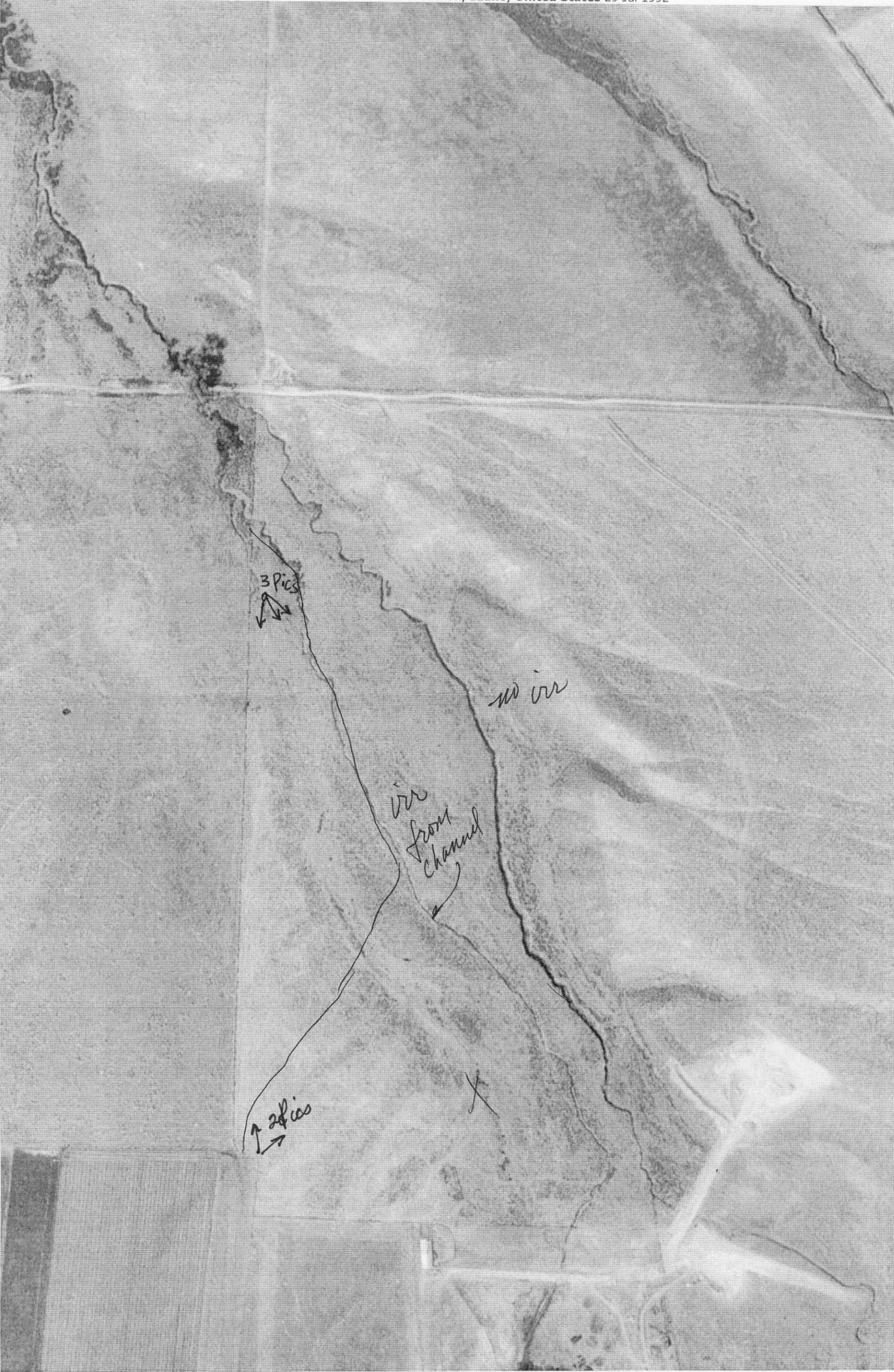
Spatial Dynamics MWY

4/12/00

| TR      | SEC | QQ   | Acres<br>Claimed | Acres<br>Found | COMMENT |
|---------|-----|------|------------------|----------------|---------|
| 12s25e  | 15  | NWSW | 13               | 24             |         |
| 12s25e  | 15  | SWSW | 30               | 32             |         |
| Totals: |     |      | 43               | 56             |         |

Township , 12S25E

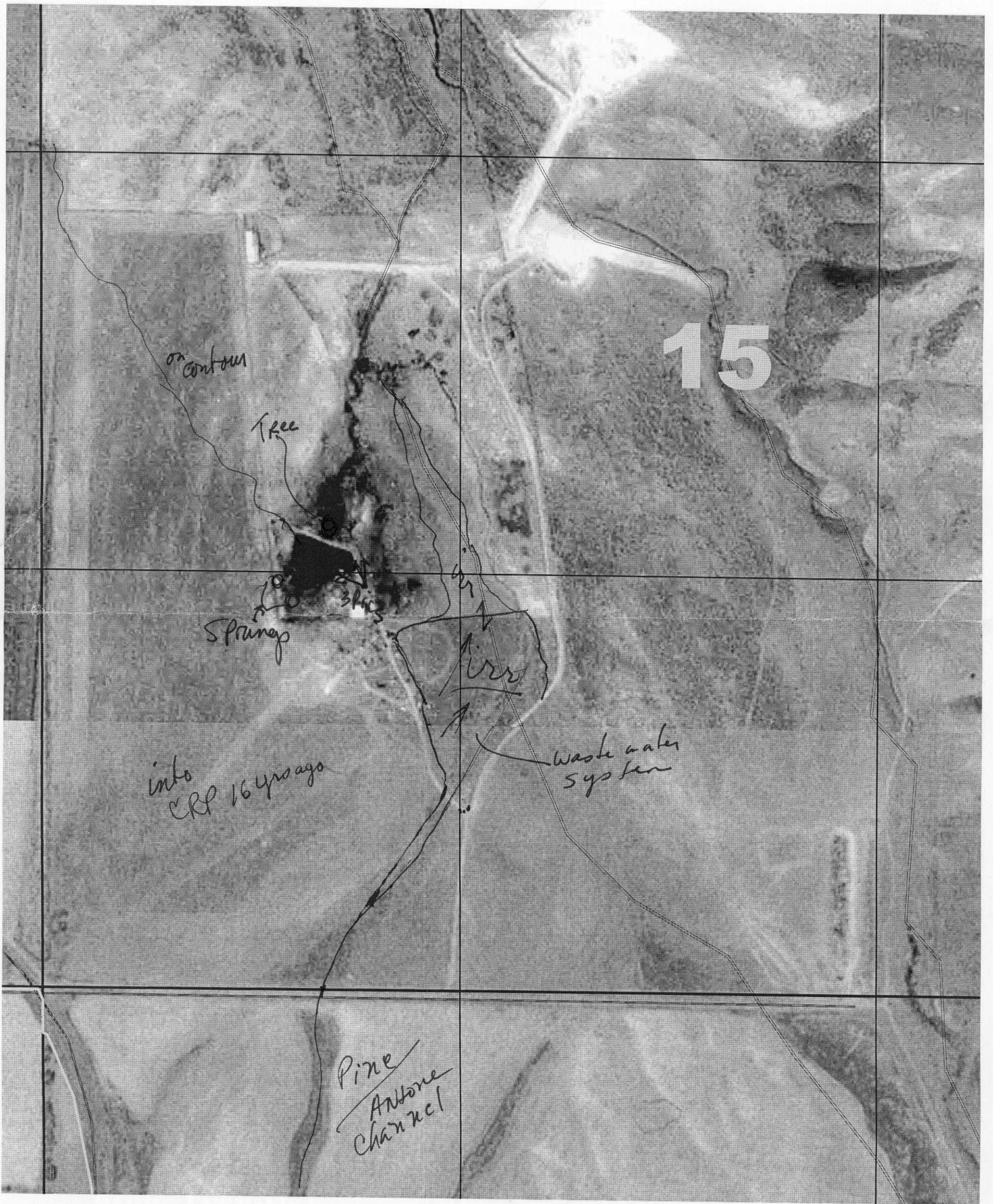




0 100M      0 100yd

Image courtesy of the U.S. Geological Survey

*Field notes*  
4-20-04  
KKC



Field notes  
4-20-04  
KKC

