

RECEIVED

SEP 13 2004

DEPARTMENT OF
WATER RESOURCES

Michael and Linda Austin
3425 S. Beverly Street
Boise, ID 83709

Telephone
(208) 384-3339 work
(208) 362-1101 home
E-mail: micheal_austin@blm.gov

Judge John Melanson
% Clerk of the District Court
P.O. Box 2707
Twin Falls, ID 83303-2707

September 8, 2004

RE: Motion To Set-Aside Water Right No. 63-18069 to Correct Legal Description and Change Ownership

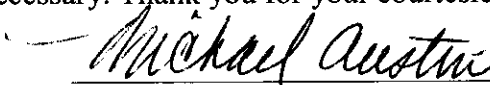
Honorable Judge Melanson and Others:

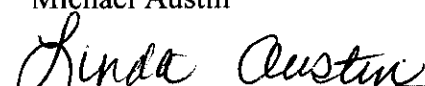
We purchased our current residence in 1999 and only recently learned that the water right that has been decreed to the property has been described in error. Our house was built on a one acre lot in southwest Boise in 1978 and since that time there have been several owners. The owner from which we purchased the property decided to file on the water from the domestic well that serves the property (refer to Exhibit A & B). No prior owner found it necessary to do so up to this time. In the process of making this filing, for whatever reason, the subject well was described as being within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 30; T. 3 N.; R. 2 E., B.M., Ada County, Idaho. The point of diversion is on our residential lot and the point of use is one in the same place.

When I learned there was a water right established for this well I began the process with the Idaho Department of Water Resources of having it transferred to my wife and my names. However, by doing so has revealed the error in the legal description and the reason for which we are petitioning your Court for relief. The correct legal description for my domestic well and property is within the following legal description and illustrated on Exhibits C, D, and E:

T. 3 N.; R. 2 E.; Boise Meridian, Ada County, Idaho
Section 30: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$

Please accept our Motion To Set-Aside the partial decree that has been granted within Water Right No. 63-18069 as being described in error and grant another partial decree with the correct and proper legal description as stated above together with changing the ownership. We are willing to address your court if necessary. Thank you for your courtesies.


Michael Austin


Linda Austin

Enclosures:

Cc: Roxanne Brown, Water Resource Agent, IDWR, Boise, ID 83706

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 63-18069

NAME AND ADDRESS: CARL YUNGBERG
JOYCE YUNGBERG
3425 BEVERLY
BOISE, ID 83709

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 03/01/1978

POINT OF DIVERSION: T03N R02E S30 NWNW Within Ada County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic 1 HOME	01-01 TO 12-31	0.04 CFS

PLACE OF USE: Domestic Within Ada County
T03N R02E S30 NWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.
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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

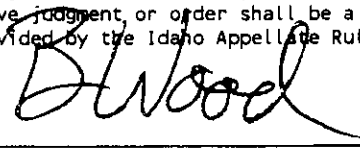

Barry Wood
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT A

DATE: 10/18/99
PAGE: 1

DIVERSION
VOLUME

0.040 CFS

0.040 CFS

Stage: BENEFICIAL USE

ADA County

[illegible]

Other Rights: NONE

- THE QUANTITY OF WATER DECRED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
- THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Audit:	02/19/97	CORR4	05/26/98	CHALKER	10/20/98	JSHURTE	10/26/98	CPDSHAFF
	11/05/98	ADT-DSHA						

EXHIBIT B

A. T. SORENSEN SUBDIVISION - UNIT NO. 3

A PART OF THE W2 OF SECTION 30, T. 3 N., R. 2 E., B.M., AND A RESUBDIVISION
OF A PORTION OF LOTS 23 & 24, HOME ACRES SUBDIVISION NO. 9, ADA COUNTY, IDAHO.

TUDOR ENGINEERING COMPANY

BUILDING SETBACKS

FRONT — 30 FEET
SIDES — 7½ FEET
REAR — 25 FEET

RESTRICTIVE COVENANTS

INSTRUMENT NUMBER

Building and occupancy shall conform to the standards
as established by the Restrictive Covenants as filed in Book
— of Miscellaneous Records of Page —, Ada County, Idaho.

This Subdivision lies in Zone "H" as established by the Boise Air Terminal
Airport Ordinance passed May 10, 1960, by the Board of Ada County Commissioners
and effective that date.

The Subdividers hereby acknowledge that all of the provisions contained in
Sections 723, 822, 628, 73, 1232, 1231, and 121 of the aforesaid Ordinance have
been read and explained to them by the Administrator of the Ada County Planning
and Zoning Commission.

That lot Owners shall leave 65% of each lot in Zone "H" open and free of structures.

That no structure on any lot in the Subdivision shall be erected higher than
150 feet above the elevation of the nearest point on the centerline of Runway 10-L.

That the established noise level of this area is 80 decibels of jet noise.

That the parallel aircraft traffic pattern established June 1, 1969, is in
operation over this area at an altitude of 1000 feet above the terrain.

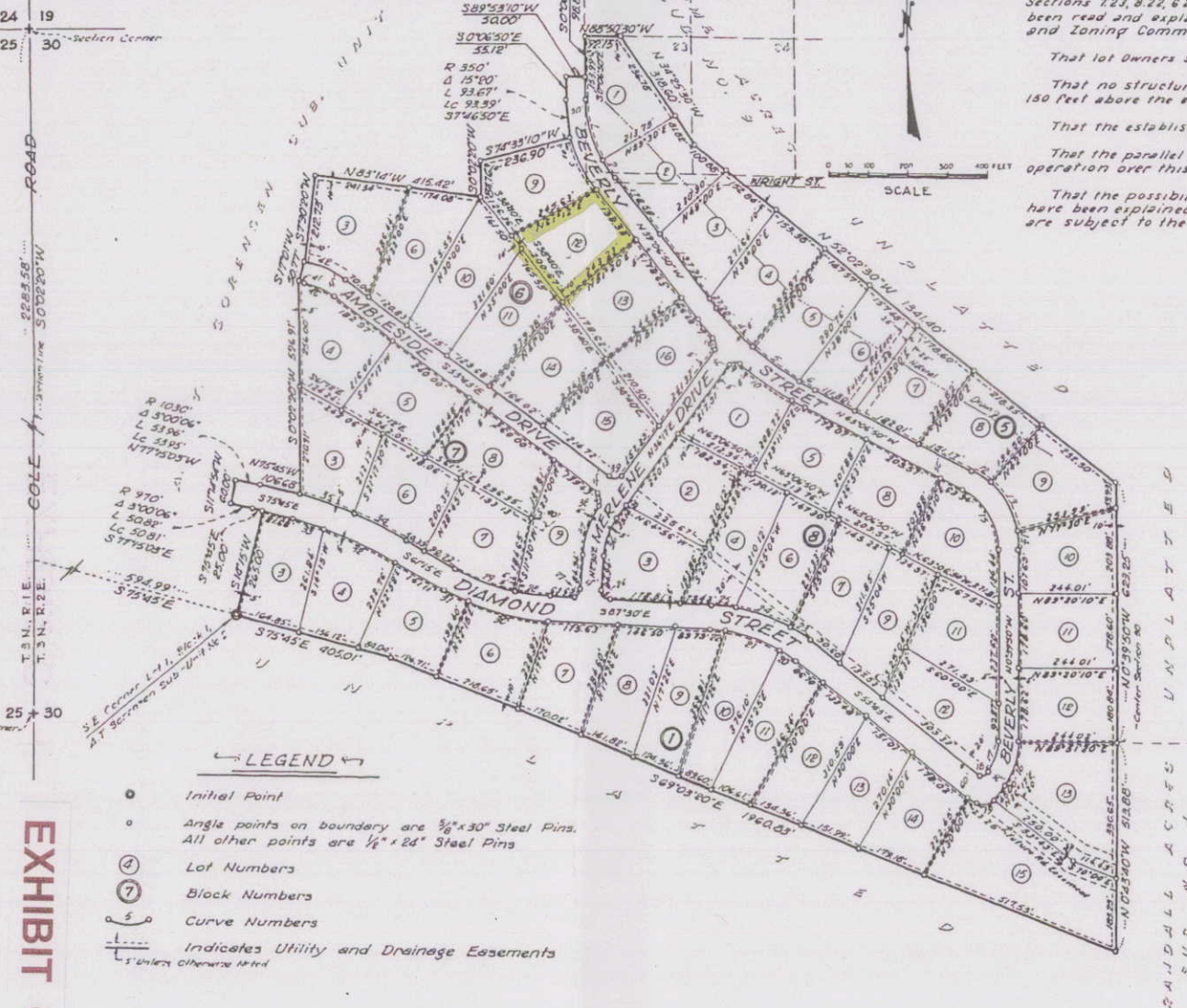
That the possibility of an increase in noise levels and Airport hazards
have been explained and that any and all conveyances in this Subdivision
are subject to the above conditions.

CURVE DATA

CURVE NO.	RADIUS	Δ	LENGTH	BEARING	LONG CHORD DISTANCE
1	300'	30°33'10"	129.10'	N15°10'15"W	127.84'
2	300'	2°30'30"	12.10'	N14°08'35"W	48.04'
3	300'	13°40'00"	144.57'	N18°03'15"W	143.55'
4	775'	9°19'00"	126.51'	N43°51'25"W	126.19'
5	775'	10°15'00"	147.88'	N54°06'40"	147.66'
6	485'	4°18'00"	86.46'	N10°11'51"W	62.97'
7	100'	20°35'00"	47.70'	N13°10'36"W	44.60'
8	80'	10°46'40"	25.90'	N27°01'25"W	25.91'
9	80'	11°19'34"	16.517'	N35°03'15"W	16.291'
10	80'	11°19'34"	16.517'	N45°03'15"W	16.291'
11	80'	11°19'34"	16.517'	N55°03'15"W	16.291'
12	80'	11°19'34"	16.517'	N65°03'15"W	16.291'
13	80'	11°19'34"	16.517'	N75°03'15"W	16.291'
14	80'	11°19'34"	16.517'	N85°03'15"W	16.291'
15	80'	11°19'34"	16.517'	N95°03'15"W	16.291'
16	80'	11°19'34"	16.517'	N105°03'15"W	16.291'
17	80'	11°19'34"	16.517'	N115°03'15"W	16.291'
18	80'	11°19'34"	16.517'	N125°03'15"W	16.291'
19	80'	11°19'34"	16.517'	N135°03'15"W	16.291'
20	80'	11°19'34"	16.517'	N145°03'15"W	16.291'
21	80'	11°19'34"	16.517'	N155°03'15"W	16.291'
22	80'	11°19'34"	16.517'	N165°03'15"W	16.291'
23	80'	11°19'34"	16.517'	N175°03'15"W	16.291'
24	80'	11°19'34"	16.517'	N185°03'15"W	16.291'
25	80'	11°19'34"	16.517'	N195°03'15"W	16.291'
26	80'	11°19'34"	16.517'	N205°03'15"W	16.291'
27	80'	11°19'34"	16.517'	N215°03'15"W	16.291'
28	80'	11°19'34"	16.517'	N225°03'15"W	16.291'
29	80'	11°19'34"	16.517'	N235°03'15"W	16.291'
30	80'	11°19'34"	16.517'	N245°03'15"W	16.291'
31	80'	11°19'34"	16.517'	N255°03'15"W	16.291'
32	80'	11°19'34"	16.517'	N265°03'15"W	16.291'
33	80'	11°19'34"	16.517'	N275°03'15"W	16.291'
34	80'	11°19'34"	16.517'	N285°03'15"W	16.291'
35	80'	11°19'34"	16.517'	N295°03'15"W	16.291'
36	80'	11°19'34"	16.517'	N305°03'15"W	16.291'
37	80'	11°19'34"	16.517'	N315°03'15"W	16.291'
38	80'	11°19'34"	16.517'	N325°03'15"W	16.291'
39	80'	11°19'34"	16.517'	N335°03'15"W	16.291'
40	80'	11°19'34"	16.517'	N345°03'15"W	16.291'
41	80'	11°19'34"	16.517'	N355°03'15"W	16.291'
42	80'	11°19'34"	16.517'	N365°03'15"W	16.291'

LEGEND

- Initial Point
- Angle points on boundary are ⅝" x 30" Steel Pins.
All other points are ⅝" x 24" Steel Pins
- ① Lot Numbers
- ⑦ Block Numbers
- ⑤ Curve Numbers
- Indicates Utility and Drainage Easements
— Entry otherwise noted



TUDOR ENGINEERING COMPANY



This plot is included solely for the purpose
of showing and locating said premises and
does not constitute any liability for variance
any, in measurement and locating ascertained
actual survey.

Partial Vacation Wright Lt.
796762 2-15-72

Restrictions

774074 6-22-71

EXHIBIT C

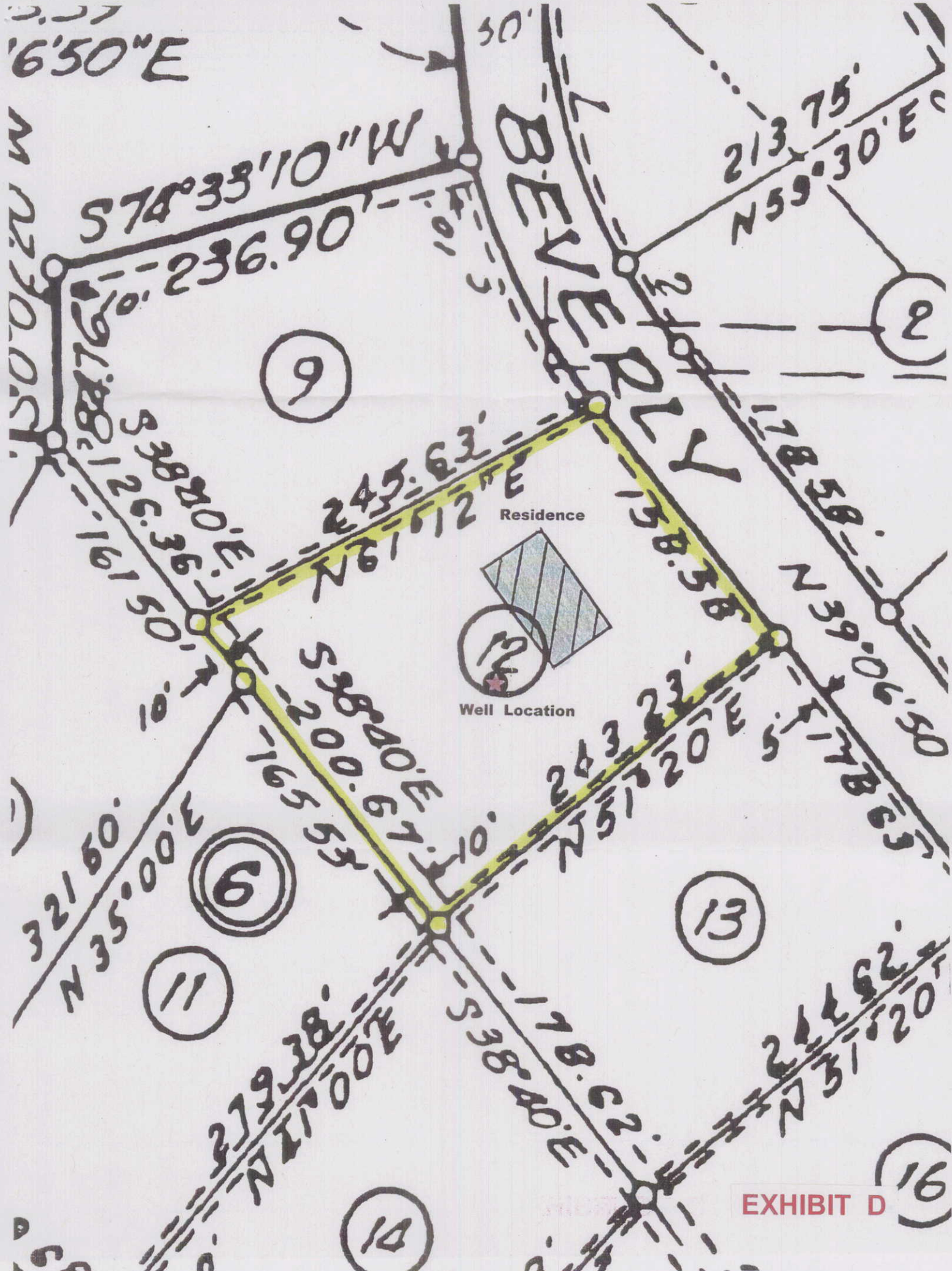
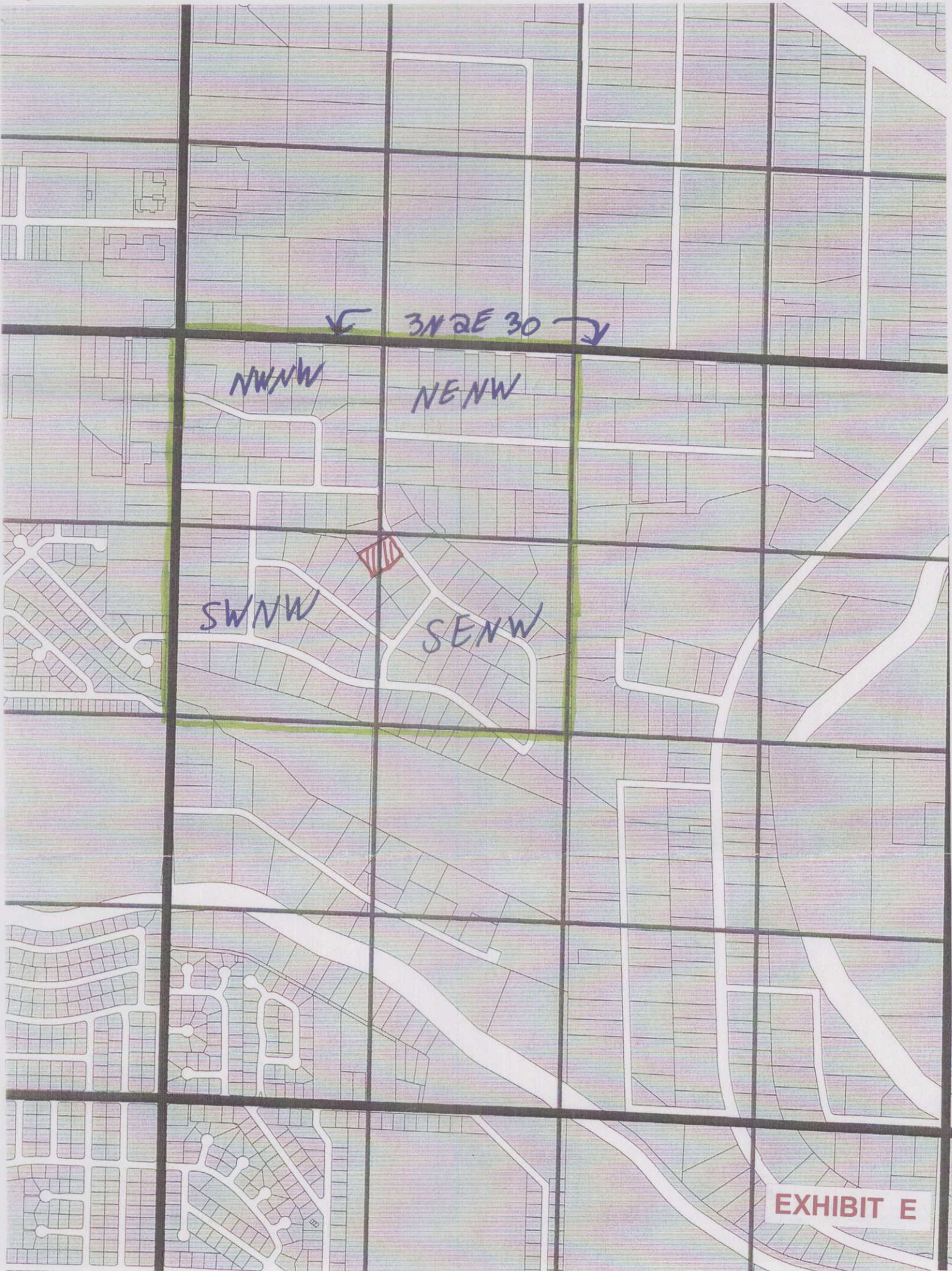


EXHIBIT D



3N 2E 30

NWNW

NENW

SWNW

SENW

EXHIBIT E