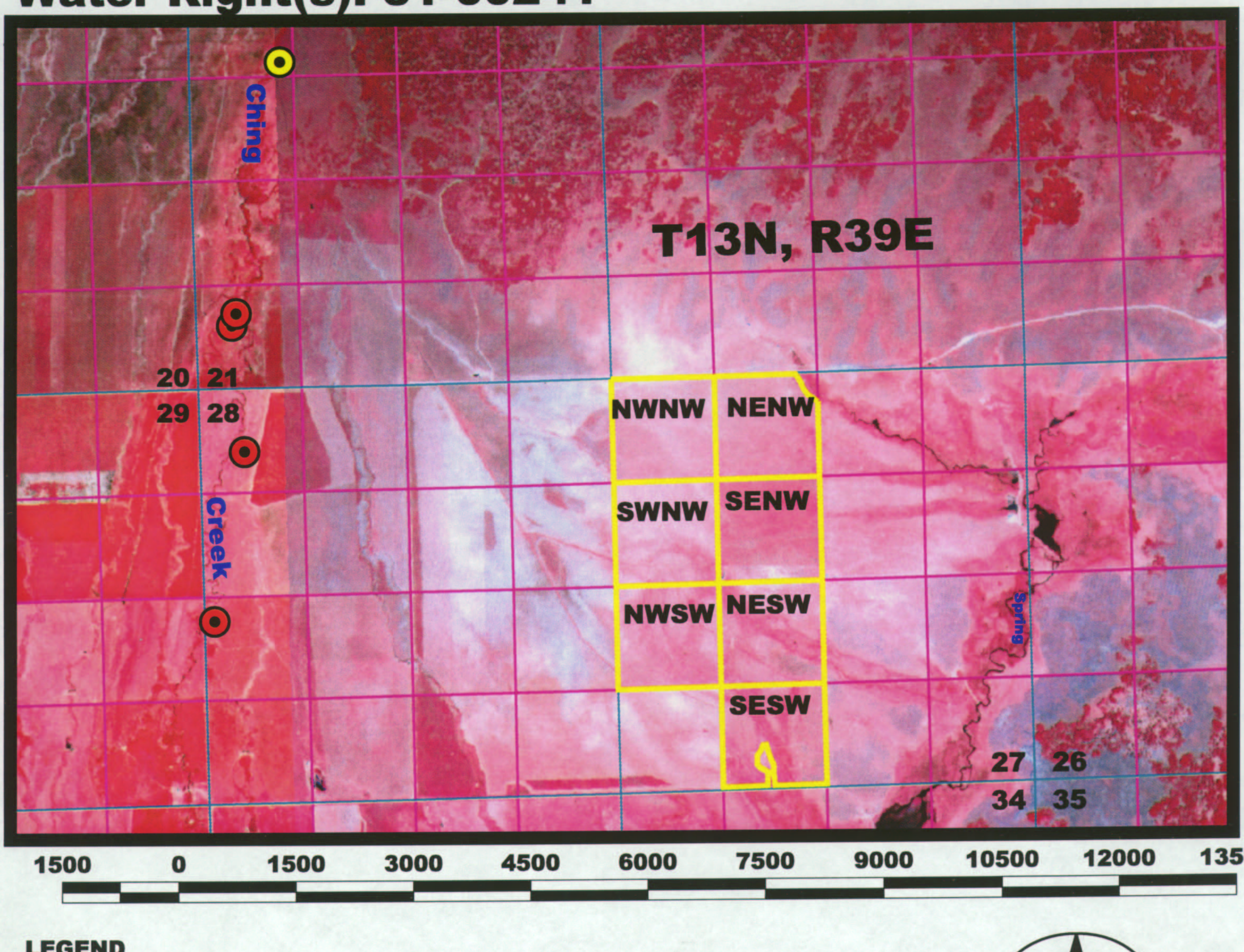
STATE OF IDAHO

Department of Water Resources

Eastern Region

Claimant: M. Munns

Water Right(s): 31-00241



LEGEND

- Point of Diversion
- SESE — Place of Use
- Section Line
- Quarter-section line

Legal Description: T13N, R39E
Sec. 27 NW, E2SW, NWSW

Point(s) of Diversion: T13N, R39E
Sec. 21 SENWNW

N

GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by: A. Ruberry
Date: Oct. 2000

16

21

T13N R39E

Munns & Mangum
31-00241

21 22

28 27

21

28

Ching

Spring

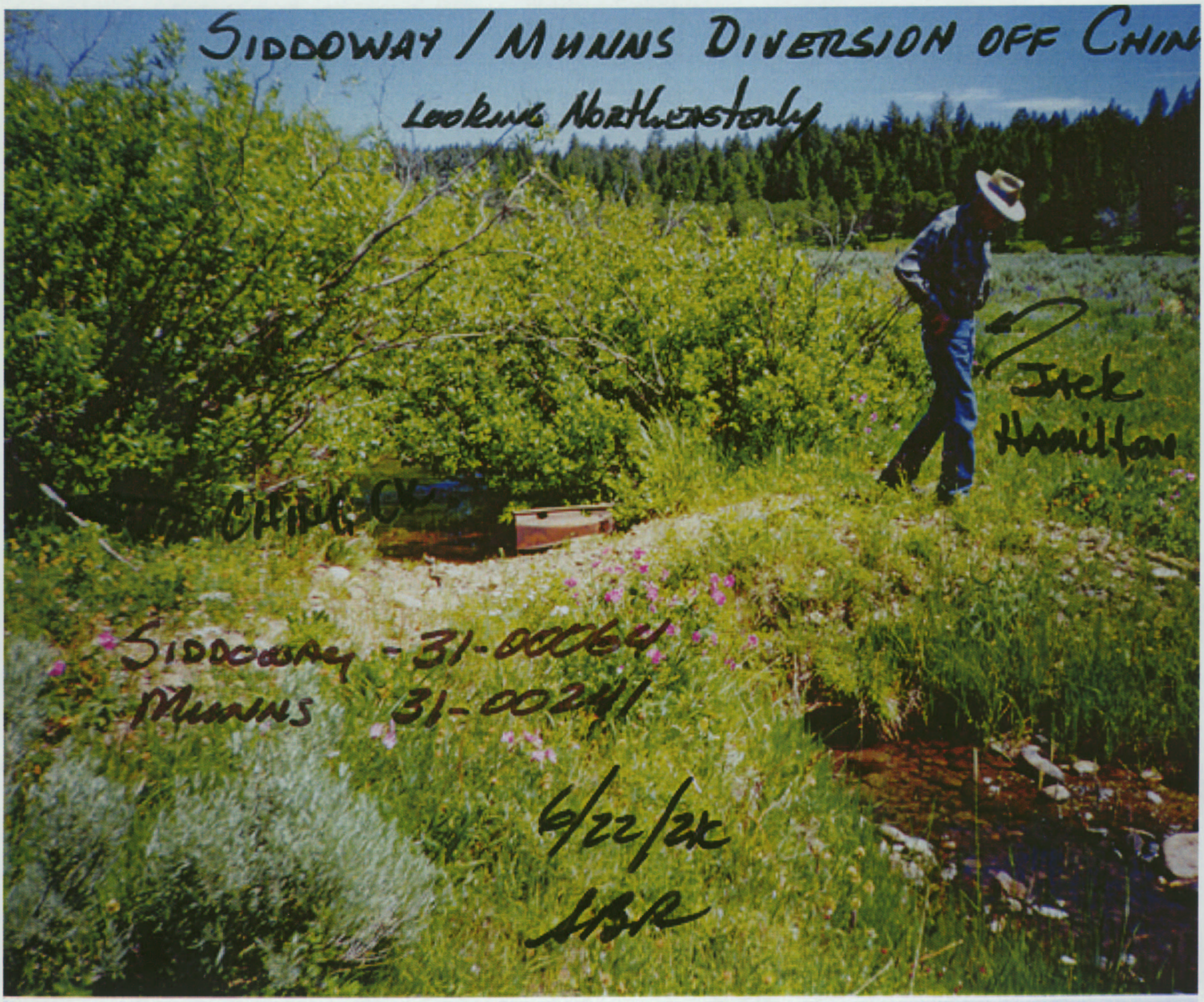
28 27

33 34

L.D. Taylor
31-00235

Creek

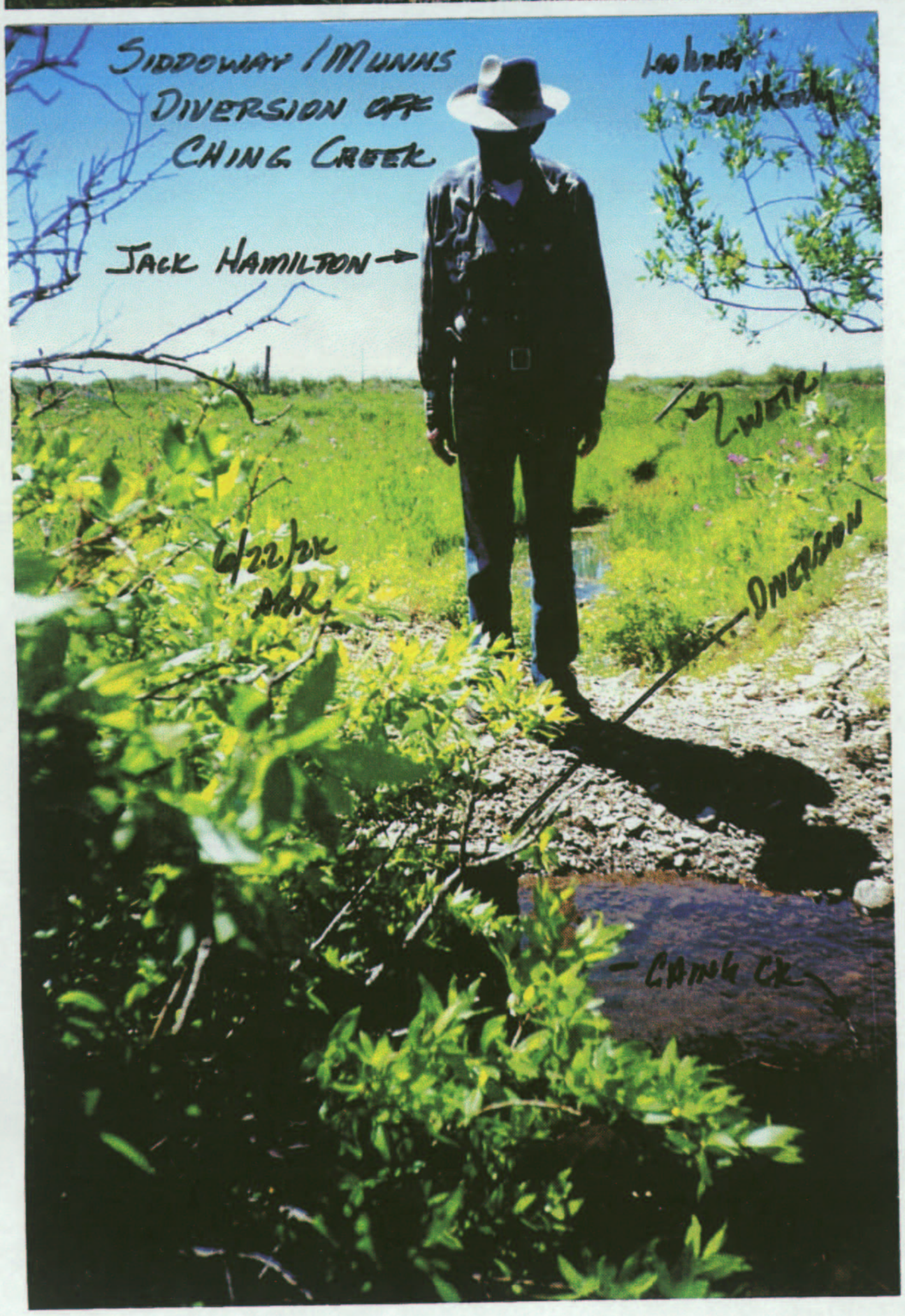
Creek



T. 13N. R39E

Sec. 21 SENWNW

Ditch Splitter
Munns & Siddoway



Ching Creek Diversion;

Harold Siddoway
31-00064

Merlin Munns
31-00241

T13N, R39E

17 16
20 21

Ching

M. Munns
31-00241

NWNW 39 | NENW 38
SWNW 40 | SENW 40
NWSW 40 | NESW 40
SESW 37

20 21
29 28

Creek

T13N, R39E

Spring

29 28
32 33

Creek

10/18/2000

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

RIGHT NUMBER: 31-241

NAME AND ADDRESS: MARIE MUNNS
MERLIN J MUNNS
915 E 7800 S
REXBURG, ID 83440
TONI MANGUM
VERGIL MANGUM
1560 E 1500 N
TERRETON, ID 83450

SOURCE: CHING CREEK TRIBUTARY: Spring Creek

QUANTITY: 3.2 CFS

~~THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE SHALL NOT EXCEED 13,000 GALLONS PER DAY.~~ Delete

PRIORITY DATE: 08/21/1903

POINT OF DIVERSION: T13N R39E S21 SENWNW Within CLARK County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	05-01 10-31	0.05 CFS
IRRIGATION	05-01 10-31	3.20 CFS

PLACE OF USE:

IRRIGATION Within CLARK County

T13N R39E S27	NENW	38	T13N R39E S27	NWNW	39
T13N R39E S27	SWNW	40	T13N R39E S27	SENW	40
T13N R39E S27	NESW	40	T13N R39E S27	NWSW	40
T13N R39E S27	SESW	37			

274 ACRES TOTAL

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR STOCKWATER USE 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. SECTION 42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

Stockwater 130 cattle

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: **A31-00241**
Date Received: 11/30/1994
Receipt No: EO2-0529
Received By: K.V.

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: MERLIN J MUNNS 208-356-6536
   Address: 915 E 7800 S
   REXBURG ID 83440
   AND/OR
   Name: MARIE MUNNS 208-356-6536
   Address: 915 E 7800 S
   REXBURG ID 83440
   AND/OR
   Name: VERGIL MANGUM 208-663-4807
   Address: 1560 E 1500 N
   TERRETON ID 83450
   AND/OR
   Name: TONI MANGUM 208-663-4807
   Address: 1560 E 1500 N
   TERRETON ID 83450

A3100241

2. Date of Priority: AUG 21, 1903

3. Source: CHING CREEK Trib. to: SPRING CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
13N	39E	21	SW NW		CLARK

5. Description of diverting works:
   HEADGATE IN CREEK AND DITCH TO FLOOD IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	3.200		
STOCKWATER	04/15	11/15	1.000	To Irr	

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

MICROFILMED NOV 1994 1996

8. Total consumptive use is 700.0 Acre Feet Per Annum.

9. Non-irrigation uses:
STOCKWATER, 130 RANGE CATTLE

10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
13N	39E	27	NE	NW		IRR	40.0
			NW	NW		IRR	40.0
			SW	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	40.0
			NW	SW		IRR	40.0
			SE	SW		IRR	40.0
						Section Acres	280.0
						Total Acres	280.0

11. Place of use in counties: CLARK

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

13. Other Water Rights Used:

14. Remarks:
TRANS. 2291.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

ERNEST SAUVE (Decree Plaintiff) vs W. H. ABBOTT (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 ____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

MICROFILMED NOV 14 1996

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): X Martin J Munns Date: 11-30-94

_____ Date: _____

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this 30th day of November 19 94

Notary Public

Seal

GREGORY J. TAYLOR NOTARY PUBLIC STATE OF IDAHO

Residing at Idaho Falls

My Commission Expires 3/3/98

MICROFILMED
NOV 14 1996

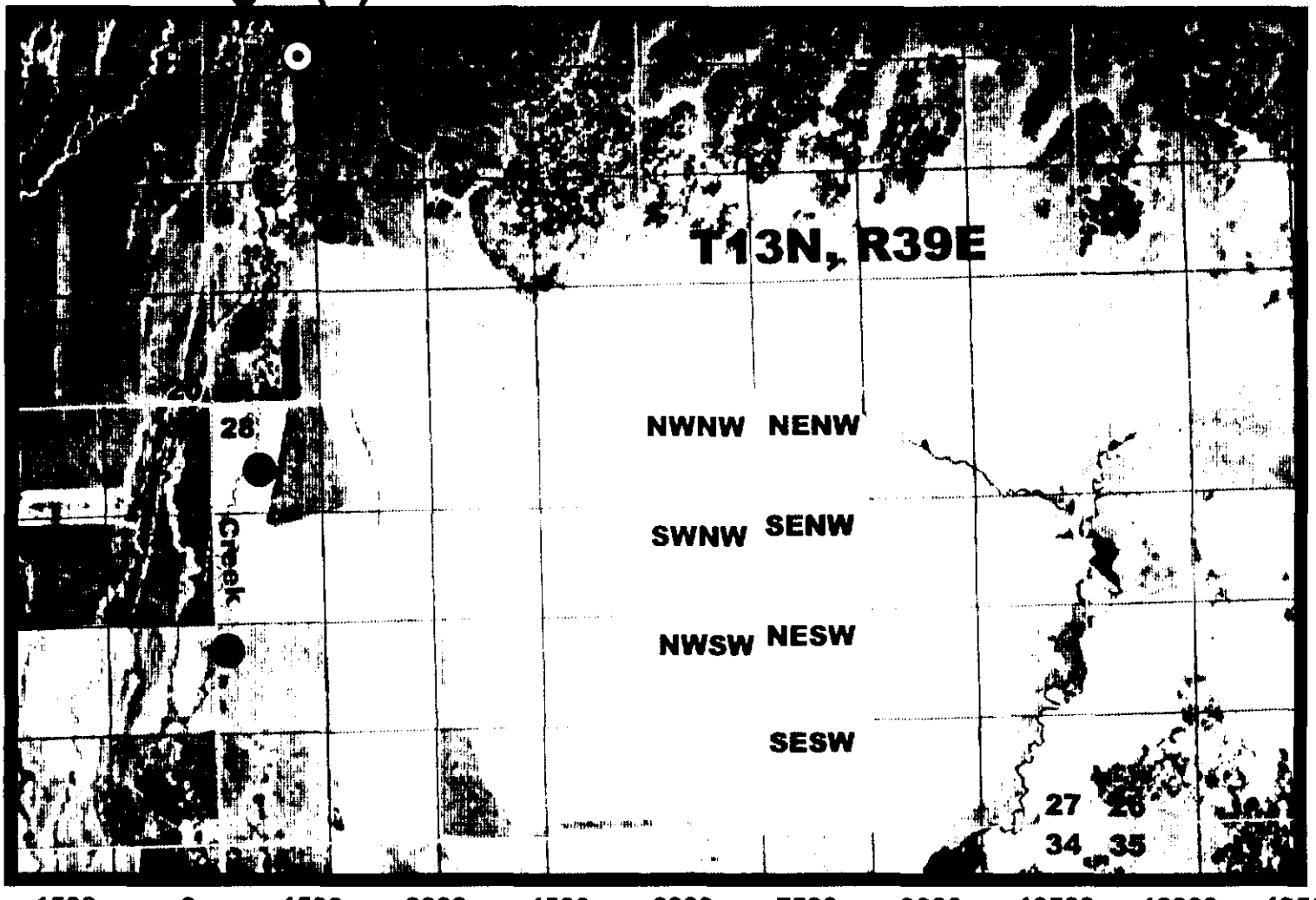
STATE OF IDAHO

Department of Water Resources

Eastern Region

Claimant: M. Munns

Water Right(s): 31-00241



LEGEND

Point of Diversion

SESE Place of Use

Section Line

Quarter-section line

Legal Description: T13N, R39E
Sec. 27 NW, E2SW, NWSW

Point(s) of Diversion: T13N, R39E
Sec. 21 SENWNW

N

GIS Place of Use Illustration
1987/1988 NAPP photography
Prepared by: A. Ruberry
Date: Oct. 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

14:03:00
01/04/95

PAGE: 1

GENERAL INFORMATION

CLAIM NUMBER: All-Basin

Ford exam 6-22-2K

PAGE: 3

PRIORITY DATE REVIEW PAGE

CLAIM NUMBER: A61-00241

Claims same as Decree

OR

HT

DATE 1-31-95

PAGE: 4

POINT OF DIVERSION REVIEW SHEET

CLAIM NUMBER: A01-00241

A01-00241	12N	01E	11	SW	NW				CLAIM		

6/22/22

SJR

NOTES: POD DECREED AS "NE¼ & NW¼ SEC. 21 T13N R39E. Tx 2291 CHANGES POD TO NWNW SEC. 21 AND ADD A POD AT NE NW SEC. 5 T13N R39E. THE POD IN NENW SEC 5 (Right 31-00240) WAS DECLARED FORFEITED 8 July 1982 BY IDAHO SUPREME COURT No. 13705, 1982 CANYON No. 60. Tx # 2291 DATED 17 May 1979. THE CLAIMED POD DON'T FIT THE Tx - No RECORDED Tx's SINCE ACTUAL POD IS AT SE NW/NW SEC. 21: VISITED 6/22/2K BSR. CFS? WMON

13N	39E	21	SE	NW	NW			Clark

COL

BSR 6/22/2K

CORRUGATED PIPE W/HEADGATE. WATER 2/100' DOWN DITCH. SEE PHOTO
SPLITTER IS ABOUT ½ mi BELOW POD WHERE MUNNS TAKES 31-00241 AND SUDDUTH TAKES NIC 31-00064.

PAGE: 6
PLACE OF USE REVIEW SHEET

CLAIM NUMBER: 6
ADJ-00841

A. ADJ WATER RIGHT NUMBER: ADJ-00841

B. POU HISTORY

TYP	SYS	DES	T/S	R/A	S/M	STATUS	FROM	TO	SOURCE	CFS	ACRES
✓					*	Tx POU					✓
✓						Tx POU					✓
✓						Tx POU					✓
✓						Tx POU					✓
✓						Tx POU					✓
✓						Tx POU					✓
✓						Tx POU					✓

POU Approved per Tx 2291, 1979 to this QQ.

*POU Tx'd off (2291) SWSE to NENW Sec. 27.

By TA

SEE GIS for Ac & Distrib.

5. IS WATER USAGE FOUND IN EXCESS OTHER THAN THOSE CLAIMED? Y(___) N(✓)

A. IF YES, ARE THESE EXCESS USAGES MINOR (___), OR ARE THEY LARGE BY AN AMOUNT OF MORE (___)

LIST BY A'S RIGHTS WITH A CAVU POU AND INFORMATION USAGE:

[illegible]

6. [illegible] ___ ✓

A. [illegible]

[illegible]

7. [illegible] ___ ✓

A. [illegible]

8. [illegible] ___ ✓

9. [illegible] ___ ✓

10. [illegible] ___ ✓

A. [illegible] ___ ✓

CHECK DOCUMENTS USED TO VERIFY POU: (✓) DESCHUTES QUAD, IDWR NO. 444 ; (✓) TUMALO QUAD, IDWR NO. 444 ;
(✓) NAVI, IDWR NO. 444 SW ; ( ) AP'D PHOTO; ( ) OTHER

NOTES:

6/22/22
1-31-95

PURPOSE OF USE, PERIOD OF USE, DIVERSION RATE AND DIVERSION VOLUME REVIEW SHEET

CLAIM NUMBER: A31-00241

X. STATEMENT OF USE

	PURPOSE OF USE	PERIOD OF USE (MM/DD/YYYY)	DIV. RATE PER USE	DIV. VOL PER EACH USE
A31-00241	IRRIGATION	FROM 04/15 TO 10/15	3.0000 CFS	[redacted]
A31-00241	DOMESTIC	FROM 01/01 TO 12/31	0.0100 CFS	
	TOTAL DIVERSION RATE/VOLUME		3.0100 CFS	

Stockwater is defined by decree.

I. USE PREVIOUSLY USED:

	PURPOSE OF USE	PERIOD OF USE (MM/DD/YYYY)	DIV. RATE PER USE	DIV. VOL PER EACH USE
A31-00241	IRRIGATION	FROM 04/01 TO 11/01	3.0000 CFS	
	TOTAL DIVERSION RATE/VOLUME		3.0000 CFS	

A. WERE THE PLACES WHERE USE OF THE WATER WAS CLAIMED TO BE MADE ON [illegible] USE? Y(✓) N( )

B. IS THE CLAIMED PURPOSE OF USE THE SAME AS PREVIOUSLY USED? MAY( ) Y( ) N(✓)

C. WERE THE PLACES OF USE CLAIMED TO BE SERVED BY THE DIVERSION WORKS [illegible]? Y( ) N(✓)

D. DOES THE CLAIMED PURPOSE OF USE [illegible]? Y(✓) N( )

E. SHOULD THE PURPOSE OF USE BE ABANDONED? Y(✓) N( )

F. DO ANY DIVERSION WORKS SERVE [illegible]? MAY( ) Y( ) N(✓)

G. DO THE DIVERSION WORKS APPEAR TO BE CAPABLE OF DIVERTING THE CLAIMED DIVERSION RATE? MAY( ) Y( ) N(✓)

H. DOES THE CLAIMED DIVERSION RATE EXCEED [illegible]? MAY(✓) Y( ) N( )

I. DO ANY DIVERSION WORKS APPEAR TO BE CAPABLE OF DIVERTING THE CLAIMED DIVERSION VOLUME? MAY(✓) Y( ) N( )

NOTES: DECREED/CLAIMED AS 3.2 cfs. NO APPARENT SPLITS OR SUBSEQUENT TX'S. SAVES # 2291
CLAIMS STOCKWATER (1.0 cfs) FOR 130 HD CATTLE. STD SHOWS 101-200 HD = 0.05 cfs
∴ STOCKCLAIM IS REDUCED TO 0.05 cfs.

DIVERSION AMOUNT REVIEW SHEET

CLAIM NUMBER: A81-00841

AZ CLAIM TOTAL DIVERSION RATE: 5.00A DEC

US BOOK DEMO TOTAL DIVERSION AMOUNT: 5.00A DEC

A. DO THE CLAIMED TOTAL DIVERSION RATE AND/OR AMOUNT EXCEED ANY APPLICABLE DIVERSION LIMIT? YES ___ NO ✓ N/A ___

B. CAN ANY CLAIMED DIVERSION BE DENIED BY VIRTUE OF OTHER THAN WATER RIGHT ISSUES? YES ___ NO ✓

A. ALL CLAIMS BASED ON BENEFICIAL USE (INCLUDING DIRECT DIVERSIONS AND STORAGE) REQUIRE A USER QUESTIONNAIRE.

B. IF CLAIM IS FOR IRRIGATION, IS THE CLAIMED ACREAGE FOR EACH FIELD AS SHOWN ON THE QUESTIONNAIRE REASONABLE? ___ ✓

A. IS AN APPLIED WATER DUTY FOR CLAIMED DIVERSION GIVEN IN THE DECREE OR CONTESTED? ___ ✓

C. CLAIMED DIV. EXCEEDS DECREED DUTY? ___ ✓

VERIFIED BY: W M DOLIVERIOS

A. [illegible]

[illegible]

B. [illegible]

C. [illegible]

D. [illegible]

E. [illegible]

REVERSION AMOUNT REVIEW SHEET CONTINUED

12

CLAIM NUMBER: ADJ 00241

NOTES:

ATTACHED

RECOMMENDATIONS REVIEW SHEET

CLAIM NUMBER: A01-00DA1

RECOMMENDATIONS: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

RES. PURPOSE OR USE	RES. PERIOD (ASH TR)		RES. DEV. AREA USE		AVE. DEV. VOL. RATE		RES. STRG. USE	
DESCRIPTION	BEGIN	END	DURATION	QUANTITY	DURATION	QUANTITY	BEGIN	END
	05/01	10/31	Both	3.20 cfs 0.05		—		
TOTAL FOR THIS CLAIM				3.20				

NOT RECOMMENDED (SEE DEFICIENCY, STRUCTURE, OR POINT CHECK)

NON-RECOMMENDED USES (REASONS/NOTES, ENTER N/A IF NONE, OR CLAIM NO. IF CLAIMED)

REVIEWED BY: MBR 6/22/24

TEAM:

DEFICIENCIES FOR CLAIM: C03

RECOMMENDED EXCLUSIONS (REASONS):

RECOMMENDED EXTENSIONS (REASONS):

RECOMMENDED EXTENSIONS (REASONS):

PAGE: 1A
BASIS OF CLAIM REVIEW SHEET

1A
CLAIM NUMBER A21-0021

A. CHECK ITEM WHEN CONSULTING ENGR APPLY:

Decreased / Claimed as 3.2 cfs. Claimed in full

6/22/94
1-31-95

GJ Taylor
GJ Taylor
Water Agent

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION RECORD

11:09:00
01/04/95

PAGE: 15

15

BASIN: 34

CLAIM NUMBER: 34-00241

OUTCROSS INFORMATION

						AT	AT	AT
	"		H.J.T. 1-31-95	N				
	"			N				
	"			N				
	"			N				
	"			N				
	"		AT	Y				

MAPS AND AERIAL PHOTOGRAPHS USED TO DEFINE BOUNDARIES OR CLAIM BY A MINING AGENT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)	IF USED, GIVE APPROPRIATE DATE AND OTHER INFORMATION			ATTACHED
USGS	DATE OF ISSUE	1975	TOWN OR NO. 44	YES ✓ NO
TOPOGRAPHIC	LAST FIELD CHECKED	1975	TOWN OR PT. 44	YES NO ✓
MAP	DATE OF PHOTO	7-23-87	TWP. OR MIN. 44 SW	YES NO ✓
USGS AERIAL PHOTO				
USFS AERIAL PHOTO				
BLM OR OTHER AERIAL PHOTO				
USFS OR BLM MINERAL STATUS PLAT				
USFS OR BLM MINERAL MAP				
SURVEYOR'S PLAT (BLM)				
OTHER				
OTHER				
OTHER				

TYPE OF INFORMATION (CHECK IF USED)	IF USED, GIVE APPROPRIATE DATE AND OTHER INFORMATION	ATTACHED
CERTIFICATE OF LOCATION		
NOTICE POST LOCATION		
AFFIDAVIT OF ASSESSMENT WORK		#2291, circa 1978 w/ court case.
AMENDED LOCATION		
PATENT APP.		
NOTICE OF INTENT TO PATENT		
NOTICE OF TRESPASS		
PROPRIETARY USE AGREEMENT		
OTHER	Decree Excerpt Pg. 16B	
OTHER		

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

(A)10:20
01/04/05
17

PAGE: 17

01/25/2001

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: March 9, 2001

Water right number: 31-241

TONI MANGUM
1560 E 1500 N
TERRETON ID 83450
Telephone Number: (208)663-4807

MERLIN J MUNNS
915 E 7800 S
REXBURG ID 83440
Telephone Number: (208)356-6536

VERGIL MANGUM
1560 E 1500 N
TERRETON ID 83450
Telephone Number: (208)663-4807

MARIE MUNNS
915 E 7800 S
REXBURG ID 83440
Telephone Number: (208)356-6536

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

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

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

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

DATE: 1-31-01 **SIGNATURE:** Merlin J Munns

Please print your name: Merlin J Munns

IDWR Regional Office, 900 N Skyline, Idaho Falls, ID 83402, 2085257161

01/25/2001

NOTICE OF ERROR
REPLY

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

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Telephone Number: (208)356-6536

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

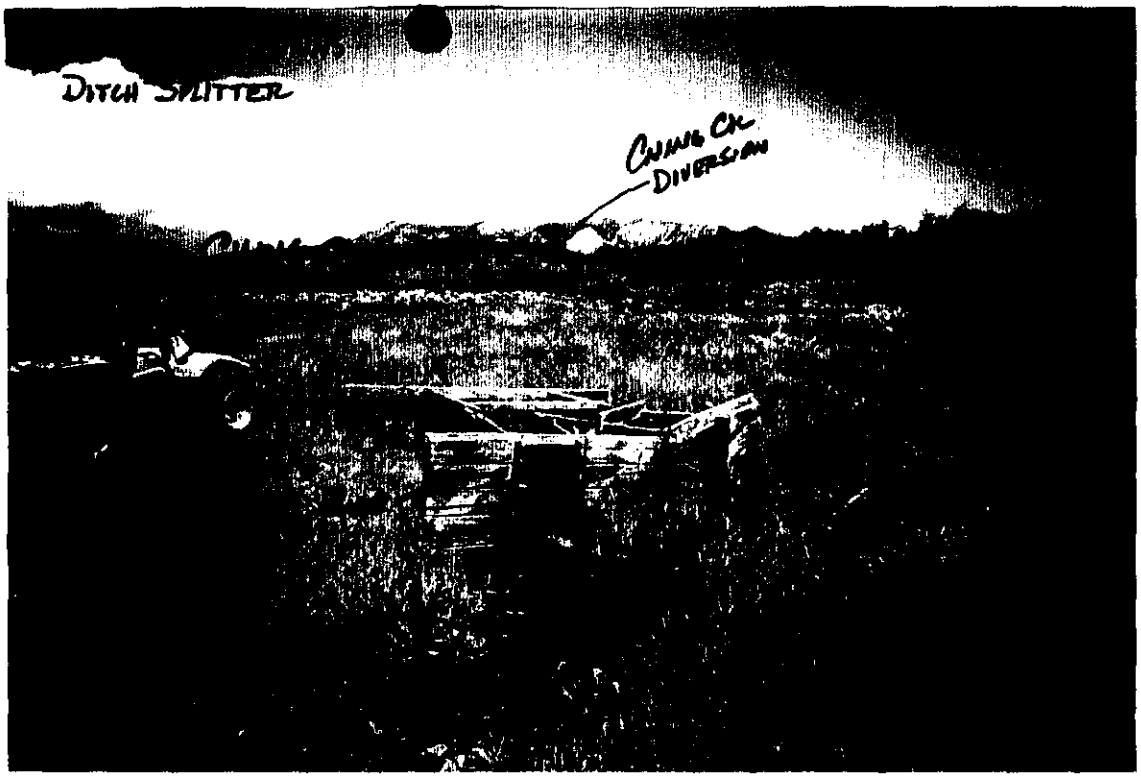
3. Give a brief explanation as to why you disagree with these portions:

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

DATE: 2/22/2001 **SIGNATURE:** Toni Mangum

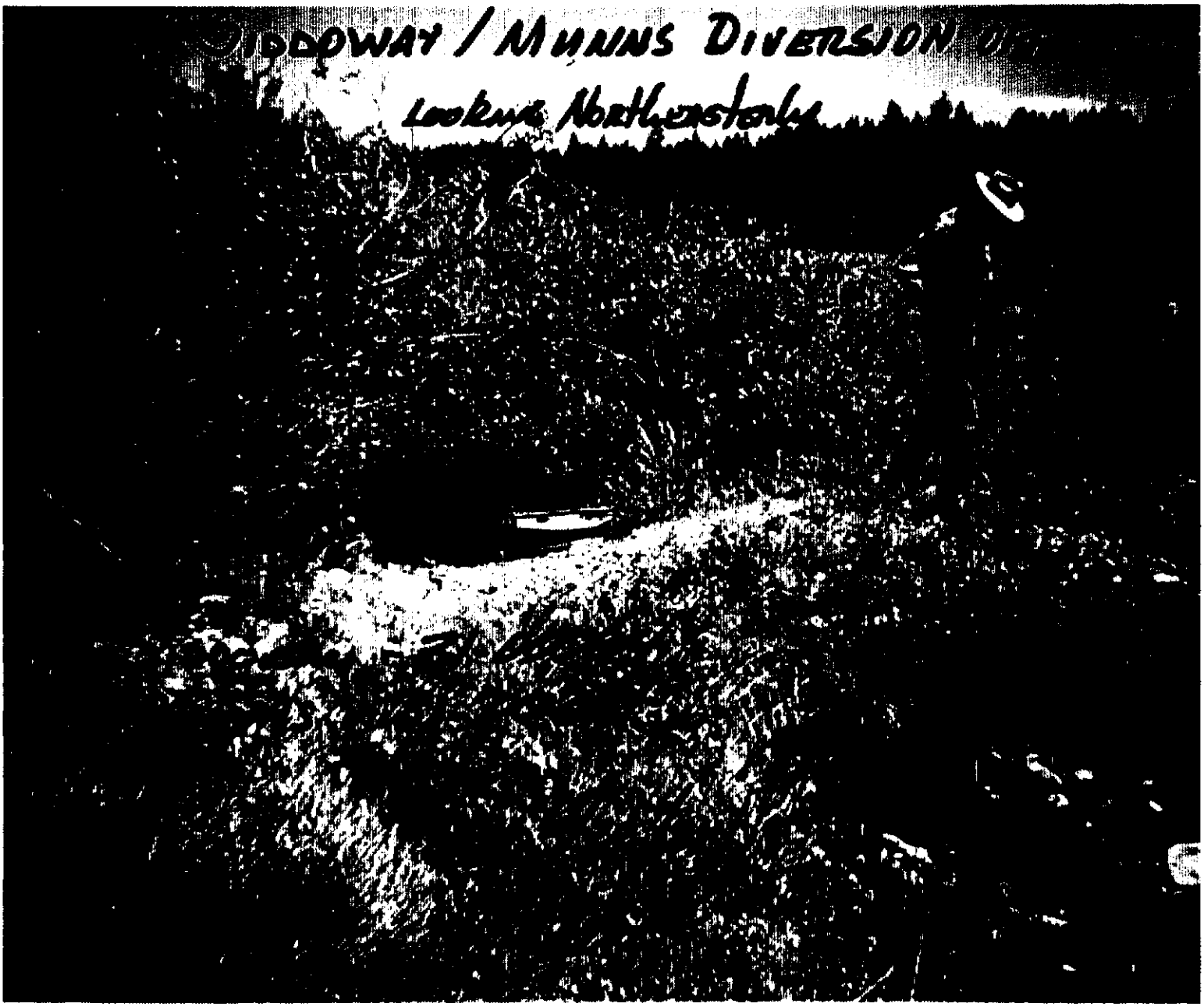
Please print your name: Toni Mangum

IDWR Regional Office, 900 N Skyline, Idaho Falls, ID 83402, 2085257161

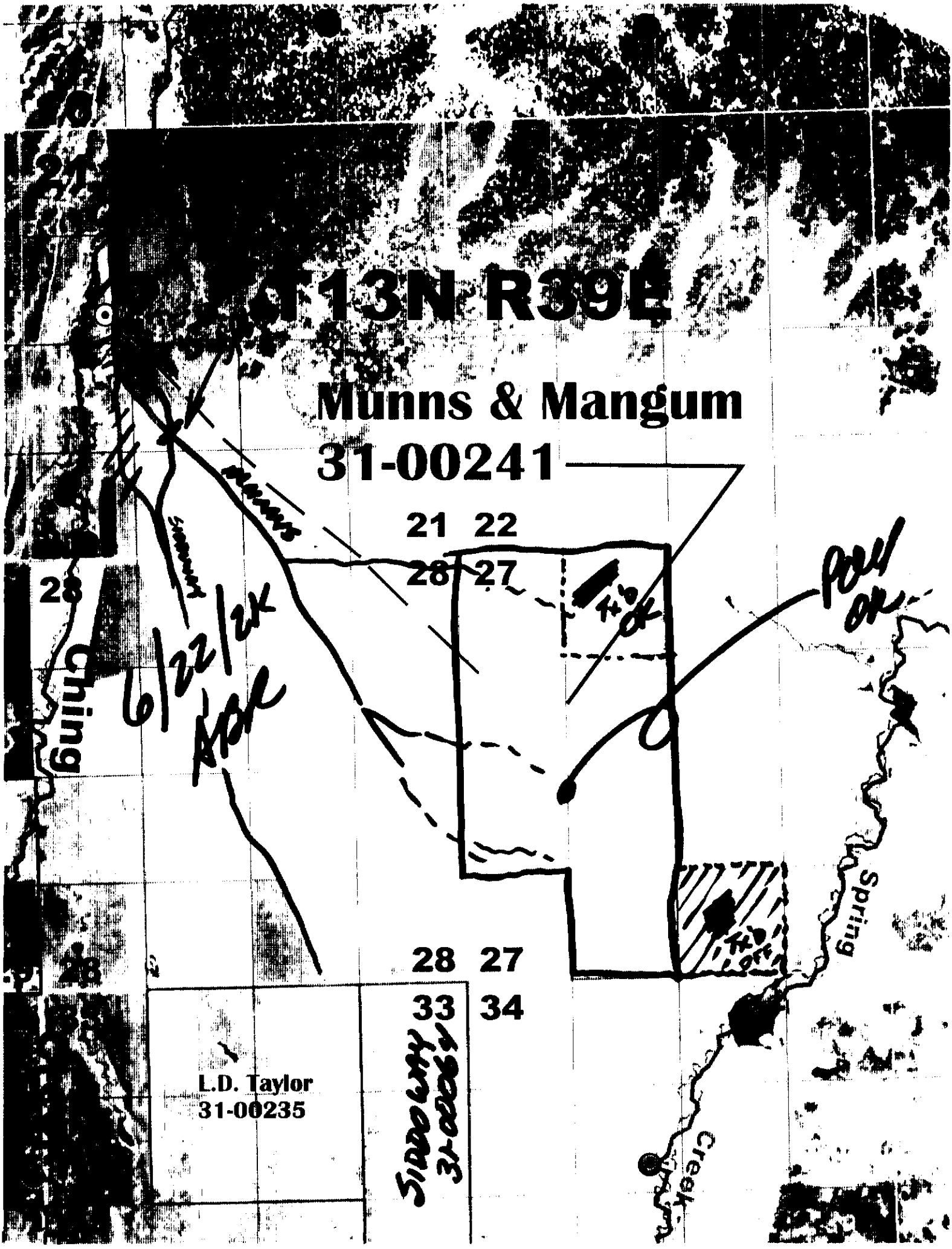


DITCH SPLITTER
MUNNS & SIDDOWAY

CHING CREEK DIVERSION;
HAROLD SIDDOWAY
31-00064
MERLIN MUNNS
31-00241



T. 13N. R39E
Sec. 21 SENWNW


T13N R39E
Munns & Mangum
31-00241
21 22
28 27
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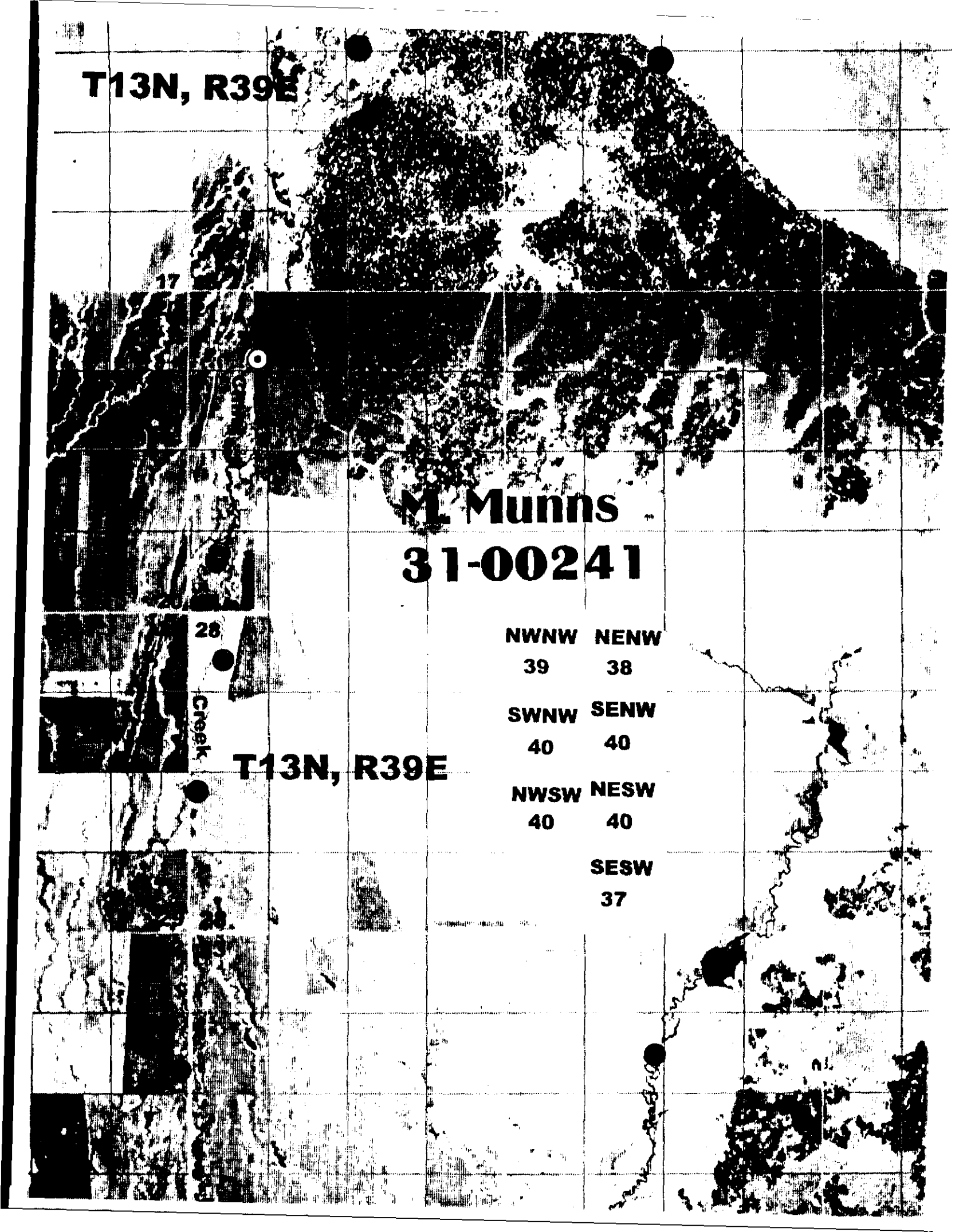
Munns
Chinq
6/22/2K
Add
Pool Or
Spring
28 27
33 34
L.D. Taylor
31-00235
Creek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Creek
T13N, R39E
M Munns
31-00241
NWNW 39
NENW 38
SWNW 40
SENW 40
NWSW 40
NESW 40
SESW 37

Post-it® Fax Note 7671 | Date 3-14 | # of pages ▶
To Allen Rueberry | From Richard Hansen
Co./Dept. EASTERN | Co. State Office

Amended Transfer No. ~~31-0240/31-0241~~
Application No. 31-0240/31-0241

IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT

AMENDED

To Change the Point of Diversion and/or the Place of Use

Name of applicant Keith Ferrin Jenkins Phone 523-0731

Post office address Route 2, Box 153, Idaho Falls, Idaho 83401

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree to P. D. Stoops (Name)
in case of Ernest Sauve vs W. H. Abbott, et. al.
dated November 1, 1930 in U.S. District Court Eastern Division (Name of court) county of Bannock

b. License No. _____ issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant
Applicant purchased property from his father, A. Keith Jenkins, who purchased land from P. D. Stoops and Mr. & Mrs. Tanner & Mr. & Mrs. Sorensen

3. Source of water Ching Creek & Dry Cottonwood Creek & 2 Unnamed streams tributary to Camas Creek

4. Date of priority 31-0240 - 5/28/04 31-0241 - 8/21/03

5. Water is used for the following purposes:
FOR 31-0240 amount 2.40 cfs for irrigation purposes from _____ to _____
31-0241 amount 3.20 cfs for irrigation purposes from _____ to _____
OR amount _____ for _____ purposes from _____ to _____
(month/day – both dates inclusive)

6. Total amount of water under right: a. 5.60 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is (31-0240) SW ¼ of NW ¼ of Section 5
Township 13N Range 39E, B.M., in Clark County
Additional points of diversion, if any (31-0241) NW¼, Sec. 21, T. 3N, R. 39E, B.M.

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13N	39E	27						40	40	40	40	40		40			40		280

Total number of acres to be irrigated 280

NOTE: Place of use for both decreed rights is the same.

B. DESCRIPTION OF PORTION OF RIGHT FOR WHICH THE CHANGE IS REQUESTED (If the entire right is requested changed, omit part B)

1. Amount of water: a. _____ cubic feet per second &/or
   b. _____ acre feet per annum

2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
   Range _____, B.M., _____ County
   Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Change in point of diversion

   a. Amount of water to be diverted 5.60 c.f.s. &/or _____ acre feet

   b. Point(s) of diversion NW ¼ NW ¼, Section 21 Township 13N
      Range 39E, B.M., Clark County
      Additional points NE¼NW¼, Sec. 5, T. 13N, R. 39E, (See Remarks)

   c. Description of diverting works Cement headgate, 24" diameter, with metal slide, and a Cipolletti weir about 100 feet down stream.

   d. Describe the reasons for applying for a change in the point(s) of diversion In about 1967, applicant's father and Harold Sidoway ~~constructed the new point of diversion~~ but applicant's father neglected to register the change with the Department.

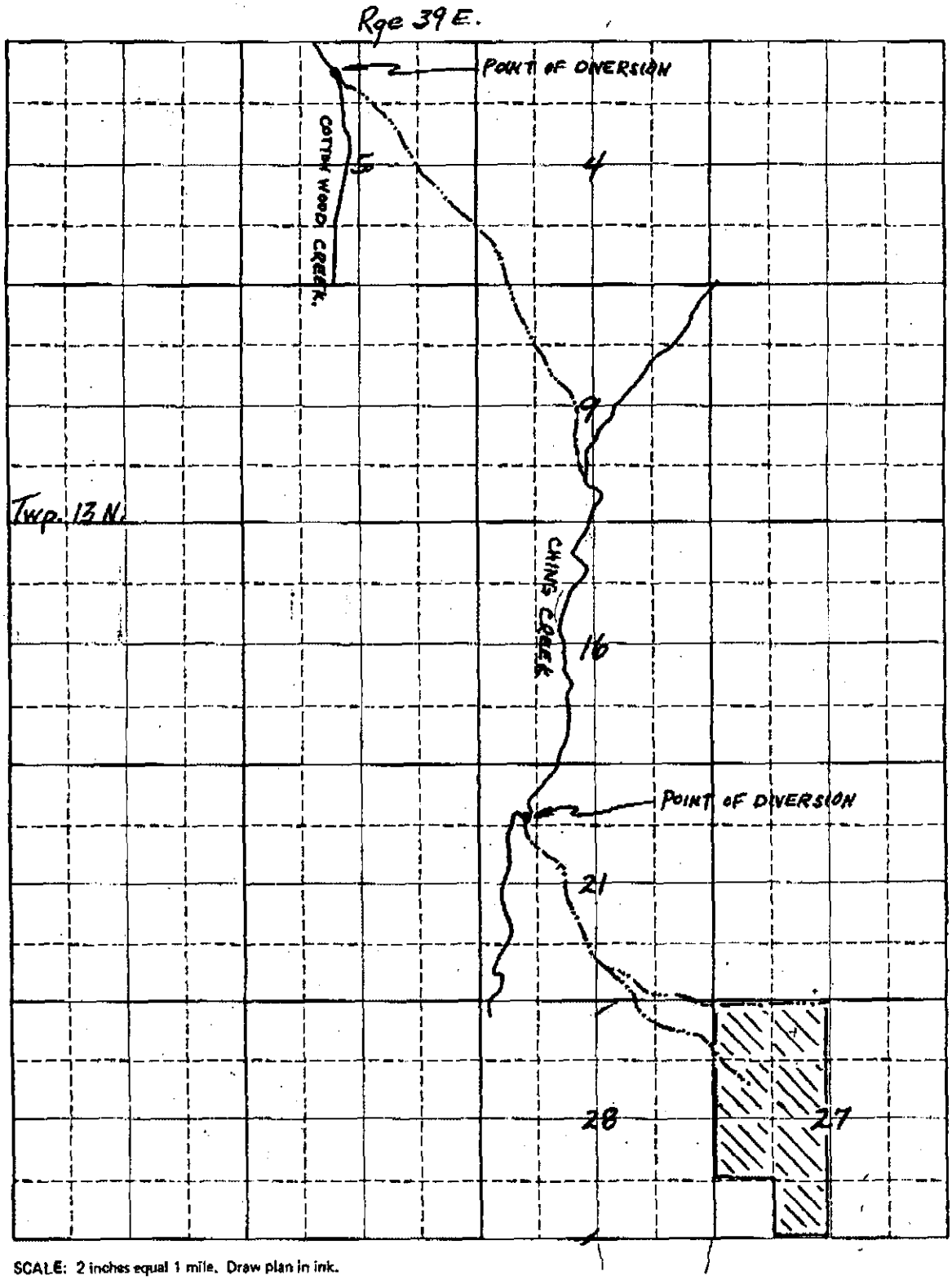
2. Change in place of use

   a. Describe the lands or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13N	39E	27					40	40	40	40	40	40		40					280

Total number of acres to be irrigated 280

b. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

Diverted Forest July 8, 19

3. Remarks Right No. 31-0240 would be diverted from Cottonwood Creek in the NE¼NW¼, Sec. 5, T. 13N, R. 39E. This water would travel through a ditch and eventually flow into Ching Creek. It would then be rediverted from Ching Creek in the NW¼NW¼, Sec. 21, Two. 13N, Rge. 39E, along with Right No. 31-0241. PLUS THE UNNAMED CREEKS

I hereby assert that no one will be injured by such change and the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

Keith Testin Jenkins
(Signature of applicant)

Subscribed and sworn to before me this 27th day of December, 19 78

Ronald D Callen
(Notary public)

My commission expires 2/14/82

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 31-0240/31-0241

1. Approval of ~~said~~ application is subject to the following limitations and conditions:
   * 31-0241 -- PURSUANT TO MEMORANDUM DECISION AND ORDER

2. Denial of ~~said~~ application is for the following reasons:
   * 31-0240

Witness my hand this 17 day of May, 19 79

Director

FOR DEPARTMENT USE ONLY

Received by dh Date 9-13-78

Prelim. check by EMC Fee $35 11533

Receipted by dh Date 9-13-78

Published in Standard Journal
Notice of Correction Nov. 16 & 23, 1978
Pub. dates October 5 & 12, 1979

Watermaster recommendation requested on 9-27-78

_____ rec'd. 10-02-78

Protest filed by Harold Siddoway, Blaine Smith Steve and Gladys Buckland, Jack R. Hamilton Sherman Halverson, Alvin W. Munns & Sons, Inc.

Copies of protest forwarded by dh 10/19, 23 & 24

Hearing held by 2/8/79 Date rc

Recommended for approval denial

by _____

P. D. Stoops

1904 - May 28 — 2.4 c.f.s. — Source: Dry Cottonwood Creek and two unnamed streams, tributaries of Camas Creek.

T. 22 91
31 240

Points of Diversion: In the Southwest Quarter of the Northwest Quarter of Section 5, Township 13 North, Range 39 East, B.M.

Declared forfeited Jenkins vs. Water Resources et al.

For use on the following described land, to-wit: The Northwest Quarter of the Northwest Quarter, the South Half of the Northwest Quarter, the North Half of the Southwest Quarter, the Southeast Quarter of the Southwest Quarter, and the Southwest Quarter of the Southeast Quarter, --all in Section 27, Township 13 North, Range 39 East, B.M.

T. 22 91
31 241

1903 - August 21 — 3.2 c.f.s. — Source: Ching Creek, a tributary of Camas Creek.

POD:
Near E. & NW¼ Sec. 21 T.13N., R.39E.

Point of Diversion: Near the center of the Northwest Quarter of Section 21, Township 13 North, Range 39 East, B.M.

For use on the land described above.

No. 127

POU:
NW¼NW¼, S½NW¼, N½SW¼, S½SW, SWSE Sec. 27 T13N R39E

Amended Transfer No. 31-0240/31-0241

Application No. 2291

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT

AMENDED

To Change the Point of Diversion and/or the Place of Use

Name of applicant Keith Ferrin Jenkins Phone 523-0731

Post office address Route 2, Box 153, Idaho Falls, Idaho 83401

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree to P. D. Stoops (Name)

   in case of Ernest Sauve vs W. H. Abbott, et. al.

   dated November 1, 1930 in Eastern Division U.S. District Court (Name of court) county of Bannock

   b. License No. _____ issued by the Idaho Department of Water Resources

   c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant Applicant purchased property from his father, A. Keith Jenkins, who purchased land from P. D. Stoops and Mr. & Mrs. Tanner & Mr. & Mrs. Sorensen

3. Source of water Ching Creek & Dry Cottonwood Creek & 2 Unnamed streams tributary to Camas Creek

4. Date of priority 31-0240 - 5/28/04 31-0241 - 8/21/03

5. Water is used for the following purposes:

   31-0240 FORFEITED amount 2.40 cfs for irrigation purposes from _____ to _____

   31-0241 amount 3.20 cfs for irrigation purposes from _____ to _____

   amount _____ for _____ purposes from _____ to _____

   (month/day – both dates inclusive)

6. Total amount of water under right: a. 5.60 cubic feet per second &/or

   b. _____ acre feet per annum

7. Location of original point of diversion is (31-0240) SW ¼ of NW ¼ of Section 5

   Township 13N Range 39E, B.M., in Clark County

   Additional points of diversion, if any (31-0241) NW¼, Sec. 21, T. 3N, R. 39E, B.M.

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
13N	39E	27						40	40	40	40	40		40			40		280

Total number of acres to be irrigated 280

NOTE: Place of use for both decreed rights is the same.

Transfer 22
31-0240
31-0241

(12)

1982 Opinion No. 60

IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 13705

KEITH FERRIN JENKINS,

Applicant-Appellant,

v.

STATE OF IDAHO, DEPARTMENT OF WATER RESOURCES, ELWIN BRADSHAW; STEVE BUCKLAND and GLADYS BUCKLAND, SHERMAN HALVERSON; JACK R. HAMIN; BLAINE SMITH; and HAROLD SIDDOWAY;

Protestants-Respondents,

and

ALVIN W. MUNS & SONS, INC.

Protestants.

Pocatello, March 1982 Term

Filed: July 8, 1982

R.H. Young, Clerk

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Clark County, on appeal from a decision of the Department of Water Resources. The Honorable Boyd R. Thomas, District Judge.

Appeal from an order affirming a decision of the director of the Department of Water Resources, denying an application to transfer the point of diversion of a water right. Affirmed.

G. Rich Andrus of Rigby, Thatcher, Andrus, Barton and Walters, Chtd., Rexburg, for appellants.

Kent W. Foster of Holden, Kidwell, Hahn & Crapo, Idaho Falls, for respondents, Bradshaw, et al.

David H. Leroy, Attorney General, Don A. Olowinski, Howard Carsman, and Phillip J. Rassier, Deputy Attorneys General, Boise, for respondent, Department of Water Resources.

SHEPARD, J.

This is an appeal from an order of the district court which affirmed the director of the Department of Water Resources

denial of appellant Jenkins' application to transfer the point of diversion of his decreed water right. We affirm.

Jenkins is the owner of 280 acres of land near the town of Kilgore in Clark County, Idaho. Appurtenant to that property are two separate water rights, one for 2.4 cfs of water from Cottonwood 240
Creek, and the second for 3.2 cfs of water from Ching Creek. Those 241
water rights were adjudicated by decree of federal court in 1930. Both creeks flow southerly in a generally parallel direction from the mountains of Targhee National Forest. Ching Creek is the more easterly and the Jenkins property is located further east of Ching Creek. There are a series of channels approximately 2 miles in length running easterly from Cottonwood Creek to Ching Creek that are the principal subject of this dispute. It is contended by appellant Jenkins that the water representing his Cottonwood right flows from Cottonwood Creek through channels into Ching Creek from whence it is diverted by him together with the water representing his Ching Creek right.

In 1978, Jenkins filed an application with the Department of Water Resources, seeking to transfer the point of diversion for his Ching Creek water right to the location of a recently built headgate. At that time an examination of the records indicated that the decreed point of diversion for Jenkins' Cottonwood right was not located on any stream. Jenkins filed an amended application to transfer the point of diversion of the Cottonwood right and locate that point of diversion on Cottonwood Creek.

Several water users on both Ching and Cottonwood Creeks protested these proposed transfers, and the district water master recommended that the Department deny the transfer of the Cottonwood right. A hearing was held thereon at which all parties were represented by counsel. Thereafter the director of the Department issued an order granting the transfer of the point of diversion of the Ching Creek right but denying the transfer of the point of

diversion of the Cottonwood Creek right. The director found that no water had been diverted from Cottonwood Creek for use on Jenkin's land for the previous 18 years. He also found that waters of both Ching and Cottonwood Creeks were overappropriated. He concluded that to allow a resumption of use of the Cottonwood right would represent an enlargement of the use over the prior 18 years, that the water users would be injured thereby, and that I.C. § 42-222 authorized denial of an application in such circumstances. The director relied upon that portion of I.C. § 42-222 which provides for the forfeiture of a water right not used for five years.

From that decision of the director, Jenkins appealed to the district court. At the outset Jenkins contended that the Department lacked jurisdiction to determine an abandonment or forfeiture and objected to the district court making such a determination on appeal from a decision of the Department. The district court reserved judgment on that issue and held a trial de novo.

At trial much of the testimony centered on the physical nature of the channels connecting Cottonwood Creek with Ching Creek with appellant's testimony indicating that water regularly flowed from Cottonwood to Ching Creek, and protestants' testimony indicating that the physical characteristics of the channel indicated that they carried only spring run off and that the only regular flow of water in the area during the summer occurred in two channels of another creek, tributary to Ching Creek, known as Little Creek.

The trial court found that water from Cottonwood Creek only flowed to Ching Creek irregularly during the spring run off and that any such contribution was not the result of a physical diversion. The court also found that Jenkins took only 3.2 cfs of water from Ching Creek which was the amount he was entitled to under his Ching Creek right, and therefore he received no water in excess of his Ching Creek right, which could be construed as Cottonwood right water. The court also found that there was

insufficient water in the two creeks to meet the then present demand. The court held that the director of the Department had jurisdiction to determine the issues of abandonment or forfeiture as a part of his determination of injury to other water rights, and that even if the director was without that jurisdiction, the district court hearing the case de novo did have the necessary jurisdiction to make that determination. **The court affirmed the decision of the director of the Department in all respects.**

On appeal here Jenkins reasserts his contention that neither the Department nor the district court on appeal from the Department's decision had jurisdiction to determine the question of abandonment of a water right in a transfer proceeding. Jenkins relies primarily on the case of Twin Falls Canal Co. v. Shippen, 46 Idaho 787, 271 P. 578 (1928). In Shippen, the Court, noting "the record fails to show that appellants [protestants] were in any manner injured by the transfer," indicated "[i]n a proceeding to change the point of diversion of water the question of abandonment of priority is not generally before the court, if a proper objection be made thereto . . . [a]nd is a matter to be settled in some other appropriate proceeding." Id. at 791, 271 P. at 579 (emphasis added). Jenkins argues that here a proper objection was made and the district court was foreclosed from inquiring into the abandonment or forfeiture of his Cottonwood water right. In First Security Bank v. State, 49 Idahc 740, 291 P. 1064 (1930) the Court indicated that in a transfer proceeding injury to other appropriators should be considered. The Court stated therein:

> "While the question of abandonment as such is to be settled in some other appropriate proceeding (Twin Falls Canal Co. v. Shippen, 46 Ida. 787, 271 Pac. 578) in an action involving a change in the place of diversion, the reasons why the change will or will not injure other appropriators may be considered, as indicated by the latter portion of the case cited."

49 Idaho at 745, 291 P. at 1066. See also In re Department of Reclamation, 50 Idaho 573, 300 P. 492 (1931). In Application of

Boyer, 73 Idaho 152, 248 P.2d 540 (1952), the Court was again presented with the question of abandonment raised in a transfer proceeding. There the Court noted that the issues of abandonment and forfeiture, although timely objected to, had been presented and passed on and the Court intended to also consider and pass upon the question. Chief Justice Givens, who was the author of First Security Bank v. State, supra, wrote for a unanimous court stating:

> "We have rather parenthetically held that the question of abandonment it [sic] not pertinent in a proceeding of this kind. Twin Falls Canal Co. v. Shippen, 46 Idaho 787, 271 P. 578; First Security Bank v. State, 49 Idaho 740, 291 P. 1064; Harris v. Chapman, 51 Idaho 283, 5 P.2d 733. Foregoing such pronouncement, to avoid a multiplicity of suits, and since, though respondent timely objected, this issue was presented and passed on, we meet and decide the point without circumlocution."

Application of Boyer, 73 Idaho at 158, 248 P.2d at 543. As it existed at the time pertinent to this proceeding I.C. § 42-222(1), provided in pertinent part:

> "The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby and the change does not constitute an enlargement in use of the original right."

Based on the foregoing decisions and statute, we conclude that the director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other water rights. While ordinarily abandonment and forfeiture are to be determined in a separate proceeding, it is clear that when a water right is sought to be transferred and protestors allege that it has been abandoned or forfeited, and that to allow resumption of that right would cause some injury, a determination of abandonment or forfeiture is necessary for the performance of his powers of

determining injury. The director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights or constitute an enlargement of the original right, and evidence which demonstrates that the right sought to be transferred has been abandoned or forfeited, is probative as to whether that transfer would injure other water rights. If a water right has indeed been lost through abandonment or forfeiture, the right to use that water reverts to the state and is subject to further appropriation. I.C. § 42-222(2); Graham v. Leek, 65 Idaho 279, 144 P.2d 475 (1943). Other parties may then perfect a water right in those waters. Sears v. Berryman, 101 Idaho 843, 623 P.2d 455 (1981); Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976). Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost, Sears v. Berryman, supra, and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder. See Id. Const. Art. 15, § 3; Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966). See also Farmers Irrigati n Co. v. Game & Fish Comm'n. 369 P.2d 557 (Colo. 1962); Holmstrom Land Co. v. Meagher County Newlan Creek Water Dist., 605 P.2d 1060, 1069 (Mont. 1979).

Jenkins also argues that I.C. § 42-222(1) speaks of an "enlargement in use of the original right", and that he is not seeking to enlarge the use over the decreed amount. While we may concede arguendo that Jenkins is not attempting to enlarge the original use of his decreed right, the statute provides that the director "shall approve" the transfer "provided" two conditions are met, i.e., that no other water rights are injured, and that

the original use is not enlarged. Hence if either of the two conditions are not met, there is no authorization to approve the proposed transfer.

Since we hold that the director of the Department had the necessary jurisdiction to determine questions of abandonment and forfeiture, it is clear that on appeal from that decision the district court acquired jurisdiction over the entire controversy. Beecher v. Cassia Creek Irrigation Co., 66 Idaho 1, 154 P.2d 507 (1944); In re Rice, 50 Idaho 660, 299 P. 664 (1931).

Jenkins next asserts that the findings of the district court are insufficient upon which to base a conclusion that his Cottonwood Creek water right was lost through abandonment or forfeiture. We note initially that care must be taken in this type of proceeding to distinguish between abandonment and forfeiture. Each is a related concept but each carries with it distinctive requirements. In the past this Court has used the terms interchangeably, resulting in some confusion. That confusion was compounded by a former statute, now repealed, 1932 I.C.A. § 41-216 (1940 Supp.), which stated that water rights would be "lost and abandoned" by five years of failure to apply them to beneficial uses. It was not until 1944 that this Court clearly pointed out the distinction between the two terms in Carrington v. Crandall, 65 Idaho 525, 532, 147 P.2d 1009 (1944). See Hutchins, The Idaho Law of Water Rights, 5 Id.L.Rev. 1, 73 (1968). In Carrington it was pointed out that forfeiture is a statutory procedure, but that an "actual" abandonment could occur outside the statutory requirements. In the interim, other cases have used the terms interchangeably, e.g., Hodges v. Trail Creek Irrigation Co., 78 Idaho 10, 297 P.2d 524 (1956); Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952). However, this Court has recently reaffirmed that those terms relate to different legal concepts in accordance with Carrington, supra. Sears v. Berryman, 101 Idaho 843, 623 P.2d 455 (1981); Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976). As stated in Sears v. Berryman, supra:

> "Abandonment is a common law doctrine involving the occurrence of (1) an intent to abandon and (2) an actual relinquishment or surrender of the water right. Forfeiture, on the other hand, is predicated upon the statutory declaration that all rights to use water are lost where the appropriator fails to make beneficial use of the water for a continuous five year period. I.C. § 42-222(2)."

101 Idaho at 847, 623 P.2d at 459.

Intent to abandon must be proved by clear and convincing evidence of unequivocal acts, and mere non-use of a water right, standing alone, is not sufficient for a per se abandonment. Sears v. Berryman, supra; Gilbert v. Smith, supra. Intent to abandon is a question of fact to be decided by the trier of fact. Sears v. Berryman, supra. As in Sears, there was no finding by the trial court, nor by the director of the Department, that Jenkins intended to abandon his Cottonwood water right. The record shows only non-use, disclosing no intent to abandon, and hence Jenkins did not lose his water right by common law abandonment.

We then proceed to a determination of whether the findings are sufficient to support a determination of a statutory forfeiture. Jenkins argues that the court below found no point of diversion on Cottonwood Creek for the 2.4 cfs of decreed water, and such was erroneous in view of the decree of the federal court. That decree was an unreported decision of the federal district court in Suave v. Abbot, decided in 1930. That decree establishes that there had been a diversion on Cottonwood Creek and that the water was beneficially used upon the land to which it is appurtenant up to the time of the decree. Morgan v. Udy, 58 Idaho 670, 79 P.2d 295 (1938). Hence, it is established that until the time of that decree, Jenkins' predecessor in interest was using the 2.4 cfs of Cottonwood water. The decree does not establish that the 2.4 cfs of water has continued to flow from one creek to the other, nor does it establish that

Jenkins or his predecessors continued to apply that water to a beneficial use on the land following the 1930 decree.

Statutory forfeiture is based upon the legislative declaration in I.C. § 42-222(2) that water rights may be lost if they are not applied to a beneficial use for a period of five continuous years. Gilbert v. Smith, 97 Idaho 735, 738, 552 P.2d 1220, 1223 (1976). Certain defenses to forfeiture have been recognized. Extension of the five year period may be made upon a showing of good cause, providing the application for extension is made within the first five-year period. I.C. § 42-222(2). Also wrongful interference with a water right or failure to use the water because of circumstances over which the water right holder has no control have been recognized as defenses. Alamo Water v. Darrington, 95 Idaho 16, 501 P.2d 700 (1972); Hodges v. Trail Creek Irrigation Co., 78 Idaho 10, 297 P.2d 524 (1956); Welch v. Garrett, 5 Idaho 639, 51 P. 405 (1897). Further, if use of the water right is resumed after the five year period, but before any third parties make a claim in the water, then the courts will decline to declare a forfeiture. Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952); Wagoner v. Jeffery, 66 Idaho 455, 162 P.2d 400 (1945); Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944). Here Jenkins has raised none of these defenses, and the record is devoid of any evidence to indicate that any of the established defenses would be applicable even if argued. The entire case was tried and appealed on Jenkins' theory that he had used the Cottonwood water the entire time.

Forfeitures are not favored, and clear and convincing proof is required to support a forfeiture. Gilbert v. Smith, 97 Idaho 735, 552 P.2d 1220 (1976); Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952); Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944). Here it was found that Jenkins had not used his Cottonwood water right for 18 years i.e., 1961-1979. It is clear that the director of the Department of Water Resources relied on the forfeiture statute in his decision, and that decision was

affirmed by the trial court "in all respects". While the record could have been made more clear by a specific conclusion of the trial court as to forfeiture, we do not deem such absence to be fatal here.

In abandonment and forfeiture cases, this Court has applied the rule that when there is substantial but conflicting evidence to support the findings of the trial court, those findings will not be disturbed on appeal. Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Graham v. Leek 65 Idaho 279, 144 P.2d 475 (1944); Knutson v. Huggins, 62 Idaho 62 Idaho 662, 115 P.2d 421 (1941). Here the evidence before the trial court was conflicting in numerous issues, i.e., there was dispute over how much water Jenkins used, how many acres it was applied to, the amount and frequency of water flow in the channels between Cottonwood and Ching Creeks, and the soil porosity of those channels. The court found against Jenkins on all of those issues. There is substantial, albeit conflicting, evidence indicating that Jenkins failed to use Cottonwood Creek water for a beneficial use between 1961 and 1979, a period of 18 years. The water master testified that he had delivered water from the two creeks for those 18 years, but has not delivered nor been requested to deliver to

water right. Costs to respondents.

McFADDEN, BISTLINE, and DONALDSON, JJs., concur.

BAKES, C.J., concurring specially:

I concur in the action of the Court in affirming the district court's denial of the change in the decreed point of diversion for Jenkins' Cottonwood right. However, much of what the majority says I cannot agree with in this case, and, therefore, concur only in the result reached by the majority opinion.