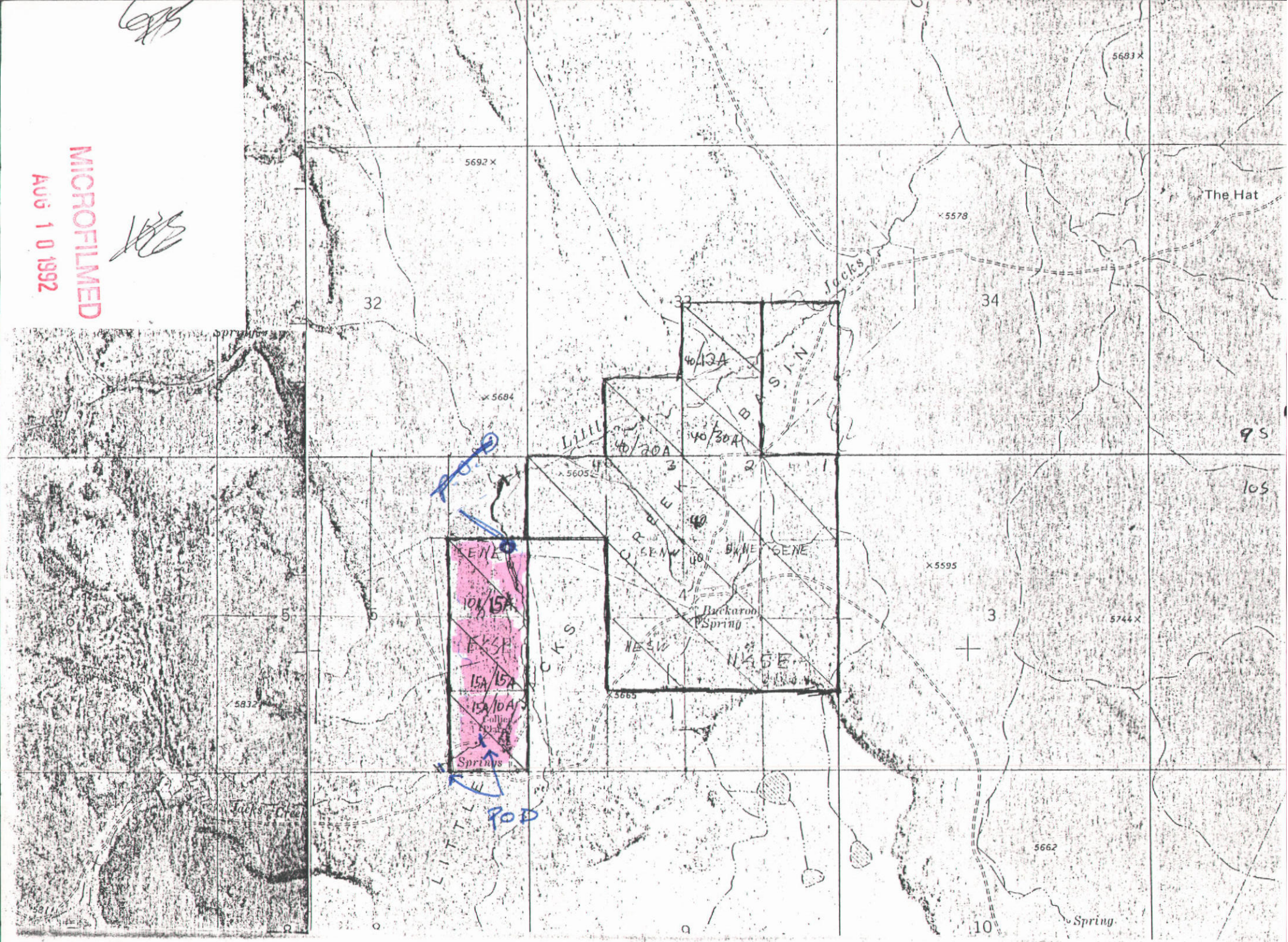
MICROFILMED
AUG 10 1992

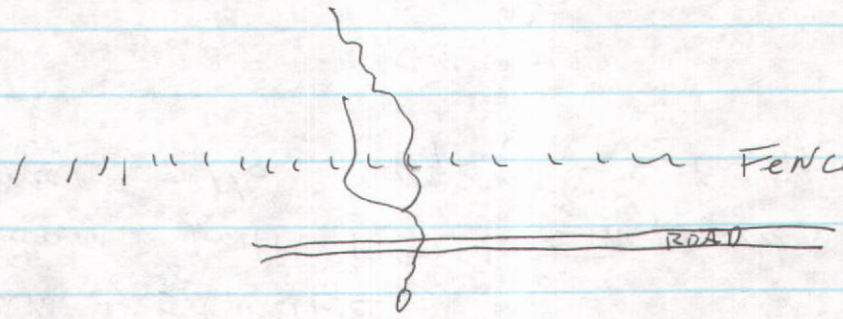


11/29/1993

Check: Owen's groundwater in Bruneau 1986 priority?

Pictures 1 & 2 Spring & ditch leading to (misnamed) Collier now Urquidi place

3 Natural drainage, (ditch) from Res. ~~to~~ past spring → ditch



"Upper ditch" on east side of drainage not used because of BLM - claimant litigation

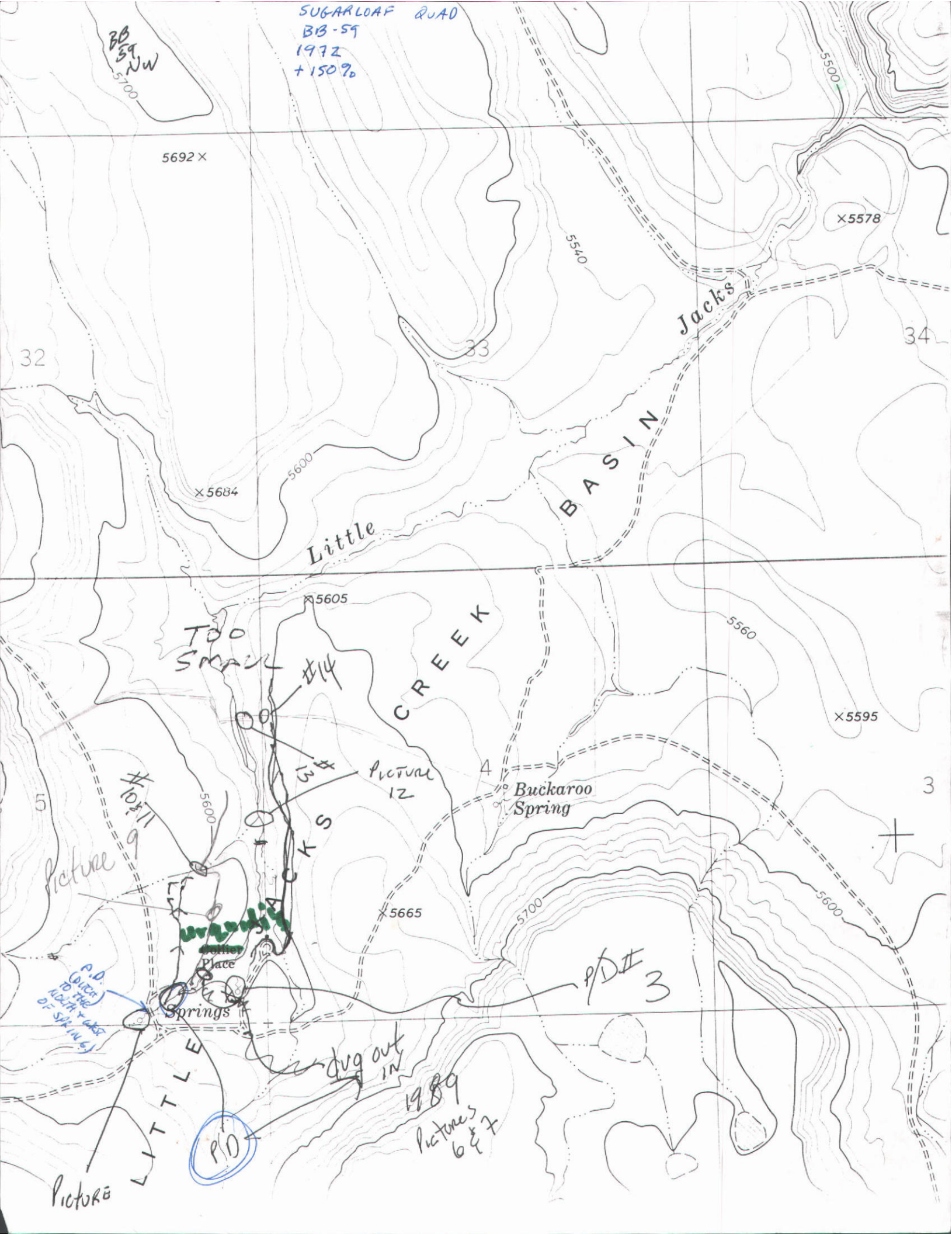
4-7 Springs

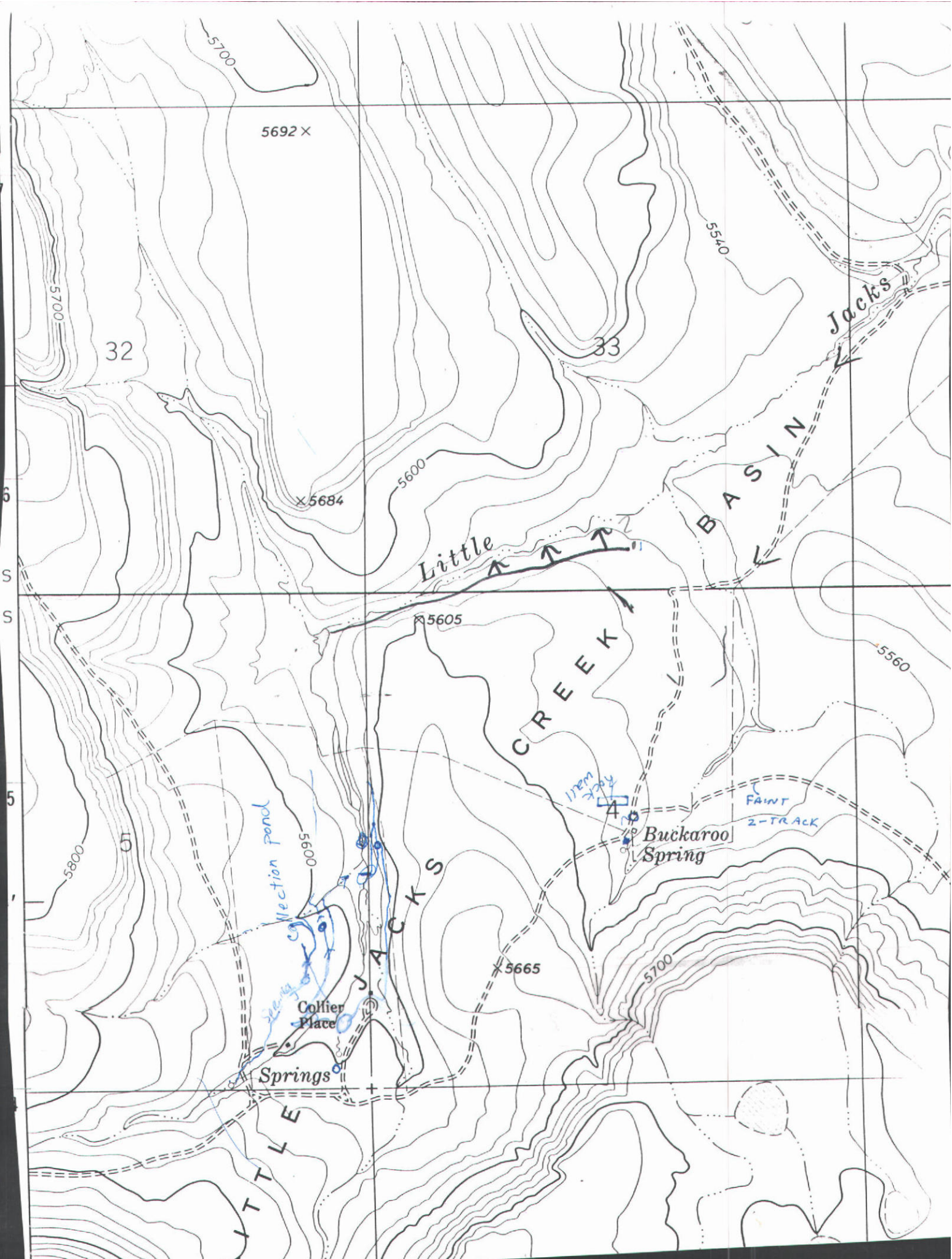
#8 ditch → old homestead
Not full in low years

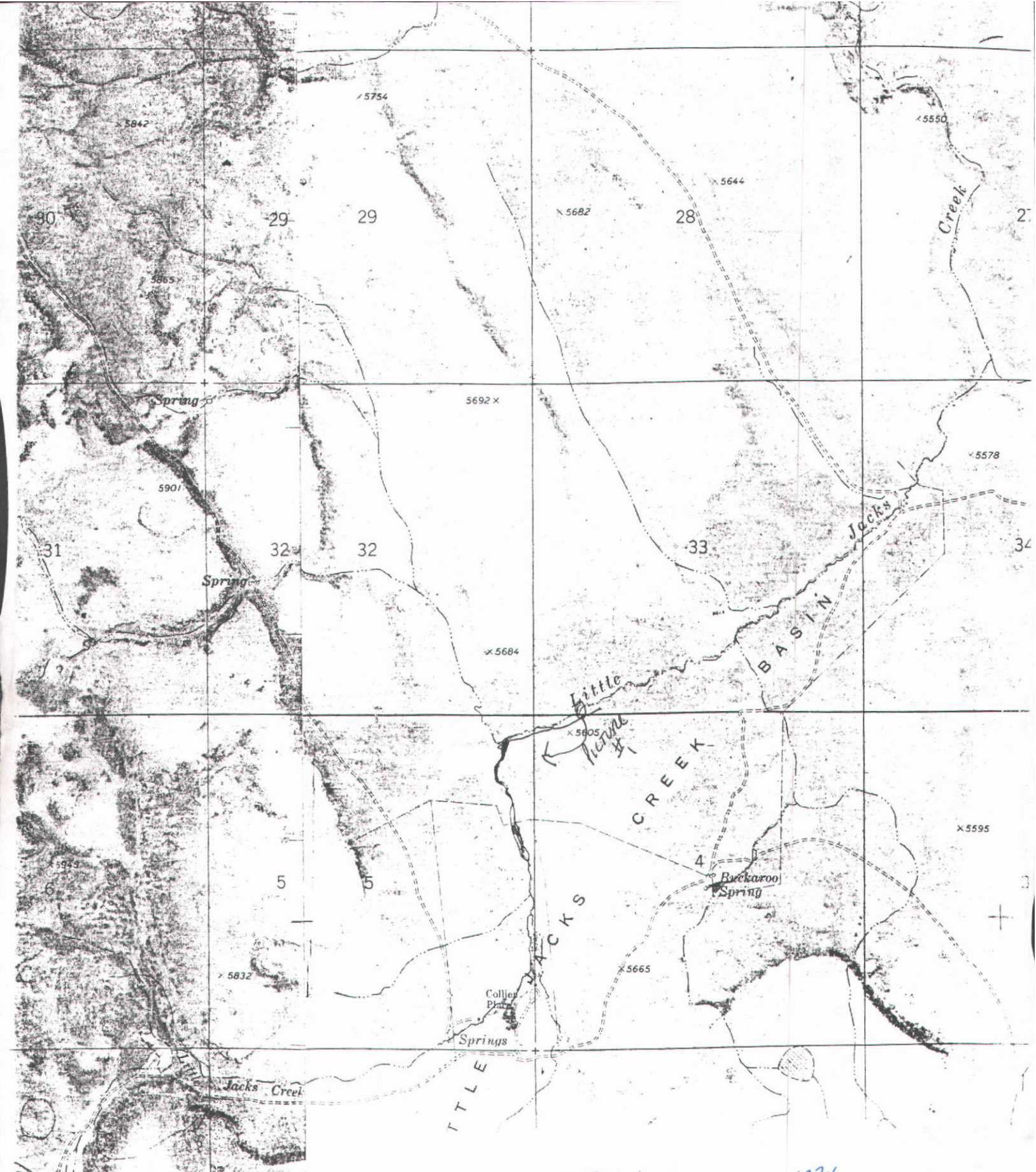
#9 Middle ditch (pencil line) (west side)

#10 & 11 : → From middle ditch down toward

→ Rock pile where middle ditch runs & drainage.
Old mining activity?
dam to shorten ditch's run up & back down little drainage.


SUGARLOAF QUAD
BB-59
1972
+150%
BB 59 NW
5700
5692 X
5500
X5578
5540
Jacks
34
32
33
5600
X5684
BASIN
Little
X5605
TOO SMALL
#14
CREEK
5560
X5595
#13
Picture 12
4
Buckaroo Spring
3
#10 & 11
5
Picture 9
5600
JACKS
X5665
5700
5600
Soldier Place
Springs
P.D. (QUICA) TO THE NORTH + WEST OF SPRING S.)
P/D #3
dug out in 1989
Pictures 6 & 7
P/D
LITTLE
Picture


5700
5692 ×
5540
Jacks
32
33
5700
5600
×5684
Little
BASIN
5605
CREEK
5560
Item
4
FAINT
2-TRACK
Buckaroo
Spring
5800
5
5600
Section pond
JACKS
5665
5700
Collier
Place
Springs
LITTLE



BB5QNW 1974

1979 BB58

51-0205 Photos taken by M.M. 11/29/1993



105 02E
35
Photo taken from draw. Draw which comes in from the West into L Jacks in NESE "Upper" ditch through sagebrush



105 02E
35
Dam in Stream

51-02005 photos taken by M.M. 11/29/1993



T 10 S R 02 E
S 5 SWSE + SESE area
NE of Spring in SESWSE



"Upper" ditch on W. side of property
Runs from area of Spring in SESWSE in Northerly direction, Parallel to drainage. Runs through Sagebrush along the contour of the hill Looking S + E toward home "Collier Place"

PHOTOGRAPHER AND DATE OF PHOTOS T Minicucci 11/29/1993

FILE NO. A51-02065 T10S R02E S.5



① Recommended point of diversion. Spring area has been dug out and ditched to the North. Old homestead building in background.



② Ditch leading from spring. Recently maintained

PHOTOGRAPHER AND DATE OF PHOTOS M Minnucci 11/29/1993

FILE NO. A51-02065 T10S R02E S. 5



① POU from NORTH end of parcel, looking SOUTH up the drainage. POU is meadow in the middle-Right of the photograph.



② Fence line between SENE (on left) and NENE (on Right).

No IRRIGATION IN # SENE.

51-02065 photo's by M.M.

11/29/1993



T10S R02E
35 SESESE
leading around house to ditch on east side of creek



T10S 02E
35 SESWSE
Spring @ bottom of drainage leading out of res.

51-02065 photos taken by M.M.

11/29/1993



T10S, R02E
S5 SESWSE
Spring area
on West
Side of Road



10S 02E
S5 SWSE
Drainage /
old ditch?
leading from
Res in NENE
S7 past
Spring in
the SESWSE
S5 to
the "upper"
ditch (most
westerly ditch)
Looking West
up toward
the dam

51-~~02065~~ Photos taken by M.M.
2058A+B Goes in file 51-02065



10S 02E
S5 NENE4E
Ditch
leading from
dam. Newly
maintained
NOBlu
found
POU

51-02005 photos taken by M.M. 11/29/1993



"Upper" ditch (most westerly" from Spring area in SESWSE. Recently maintained. Runs N, parallel to drainage through sagebrush.



Dam in Stream

NAME OF APPLICANT W. J. Owens #13961

81-02065

SEC.

T 10 S. R 2 E

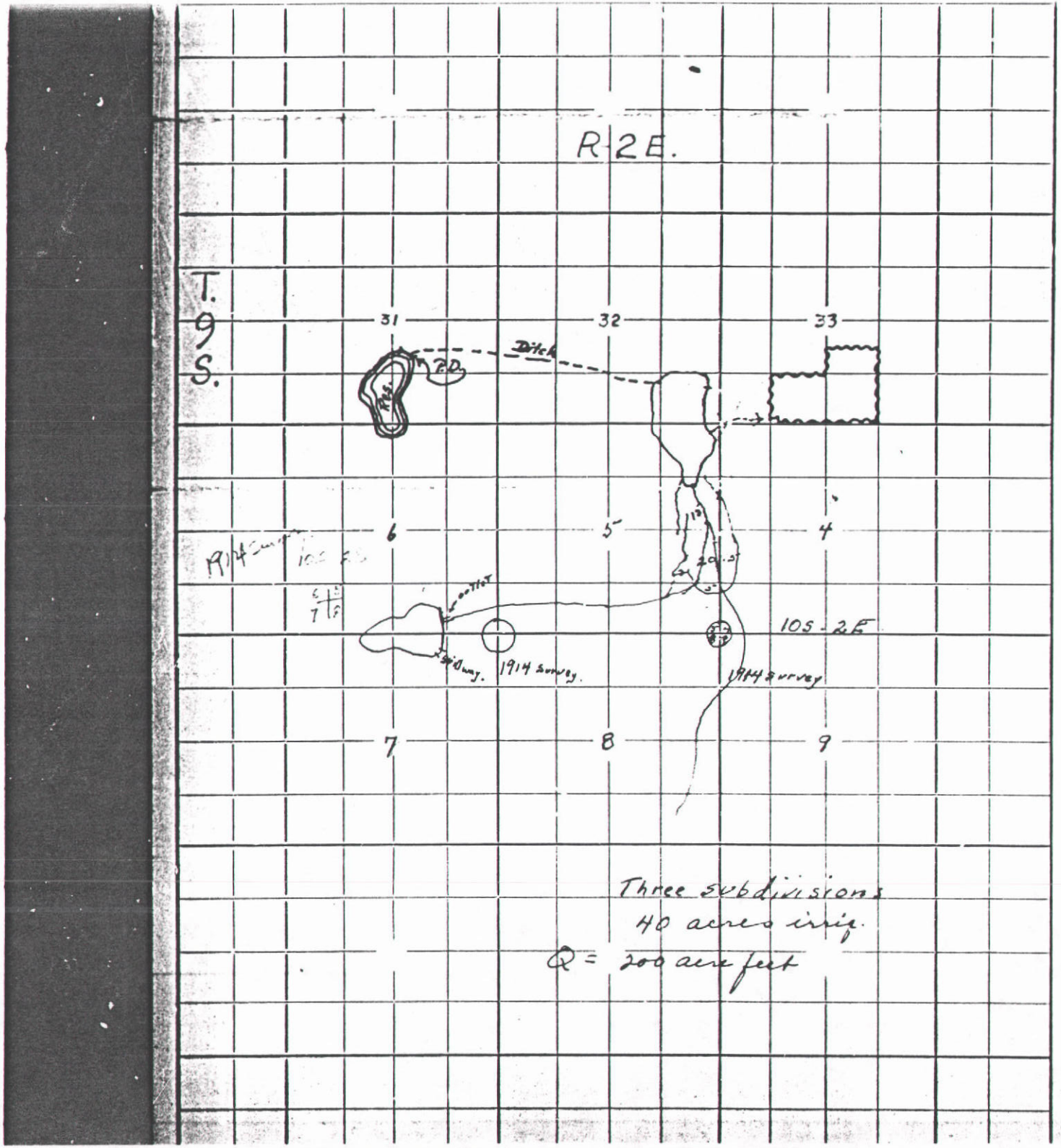
Spring

Spring

SCALE 2 INCHES = 1 MILE. DRAW PLAN IN INK.

13961

51-02252



1. Name of applicant...

2. Source of water supply

3. Location of point of di...
T. 10 S. ..... R.

4. Describe works as the...
Dam = 110 yds. long x ...
upstream end. T...
Good riprap ... S...
Stream channe...
No water in ...

5. Water is used for: Ir...

6. State whether or not w...

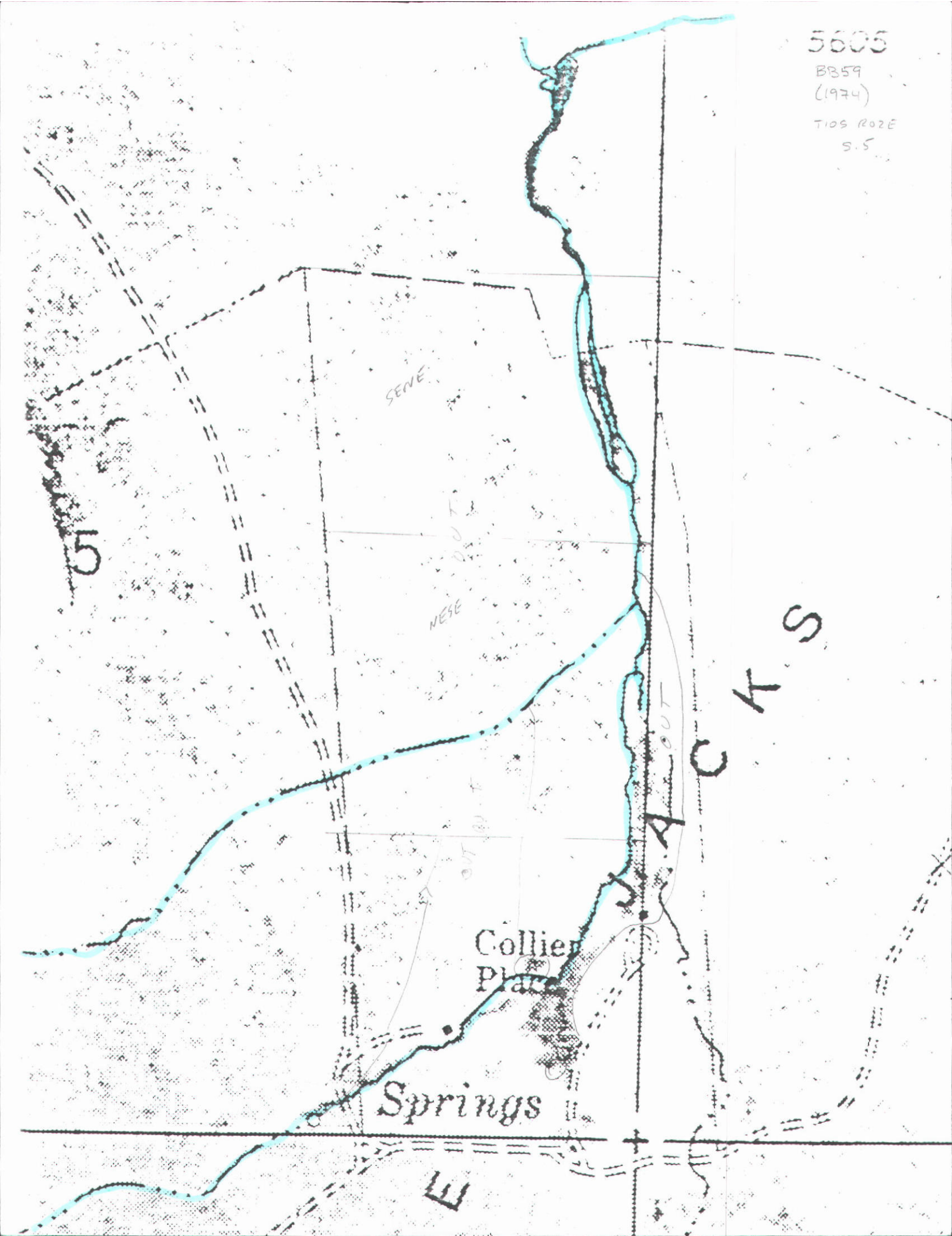
7. List legal subdivisions ... of acres under cultiva... than irrigation):
~~N½ SE¼, SE¼ SW¼ Secti...~~
W½ SE¼, S...
This is a...

(Submit map on ...

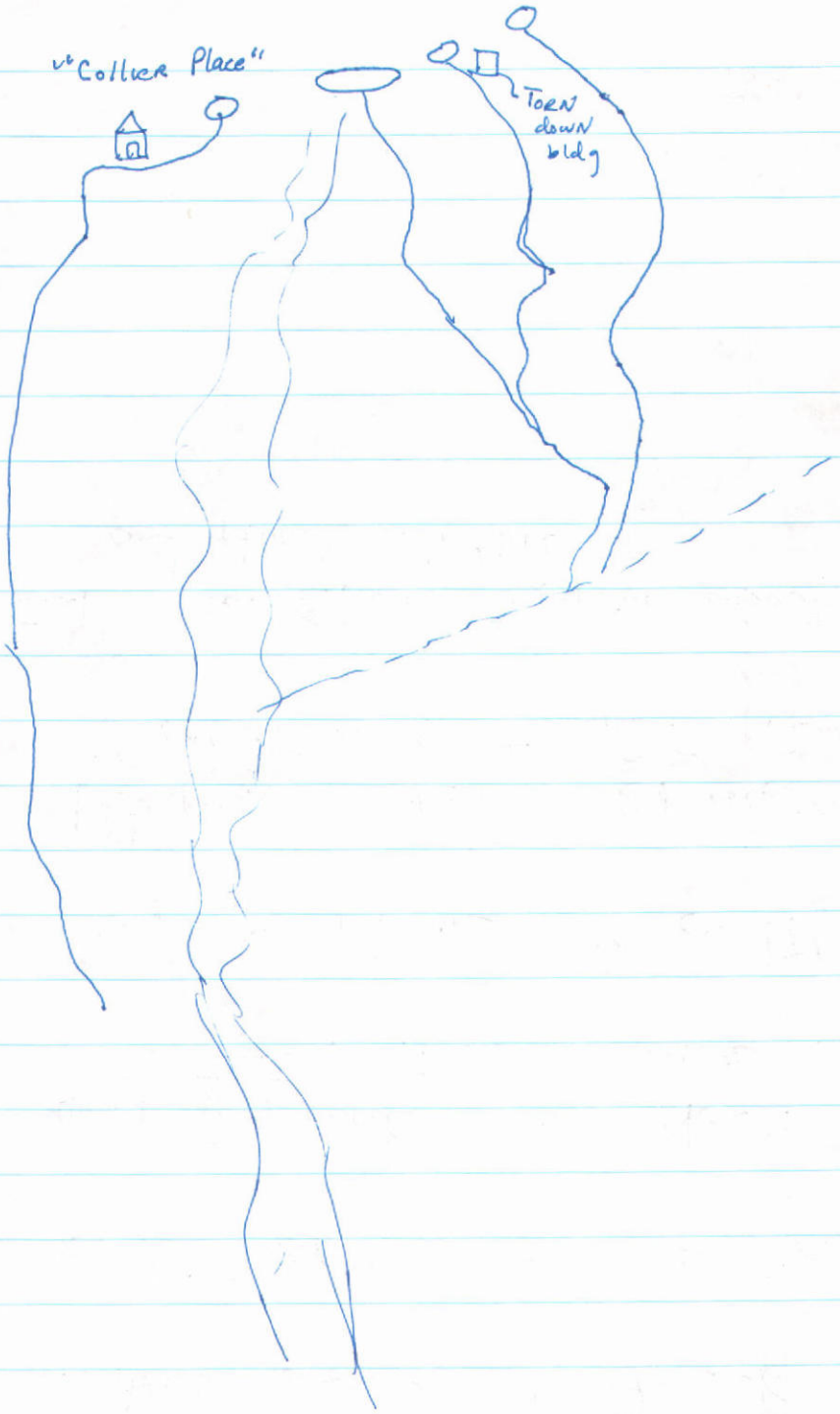
8. What large stream w...

Remarks:
Pasture ...
Some brome ...
Estimated

This examination was m...


5605
B359
(1974)
TIOS ROZE
S.5
SENE
NESE
Collier
Place
Springs

7/19/1995



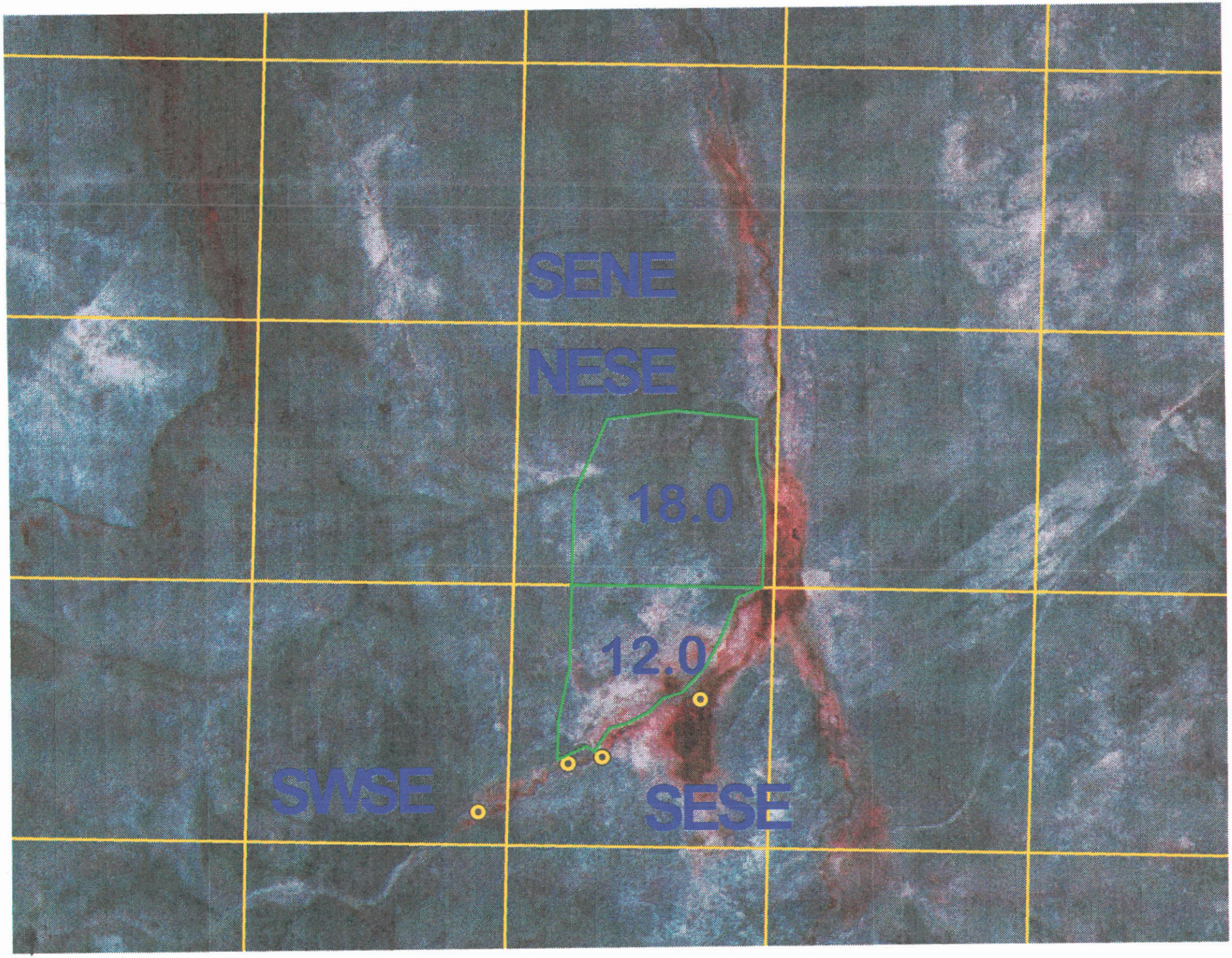
5 4
8 9

32 33
5 4

LITTLE

BUCKAROO SPRING

JACKS


SENE
NESE
18.0
12.0
SWSE
SESE

Idaho Dept of Water Resources

T10S, R02E, S05
Claim(s) : 51-02065
Owner(s): John Urquidi
Prepared by: Sue Bock
Date: 5/22/1998

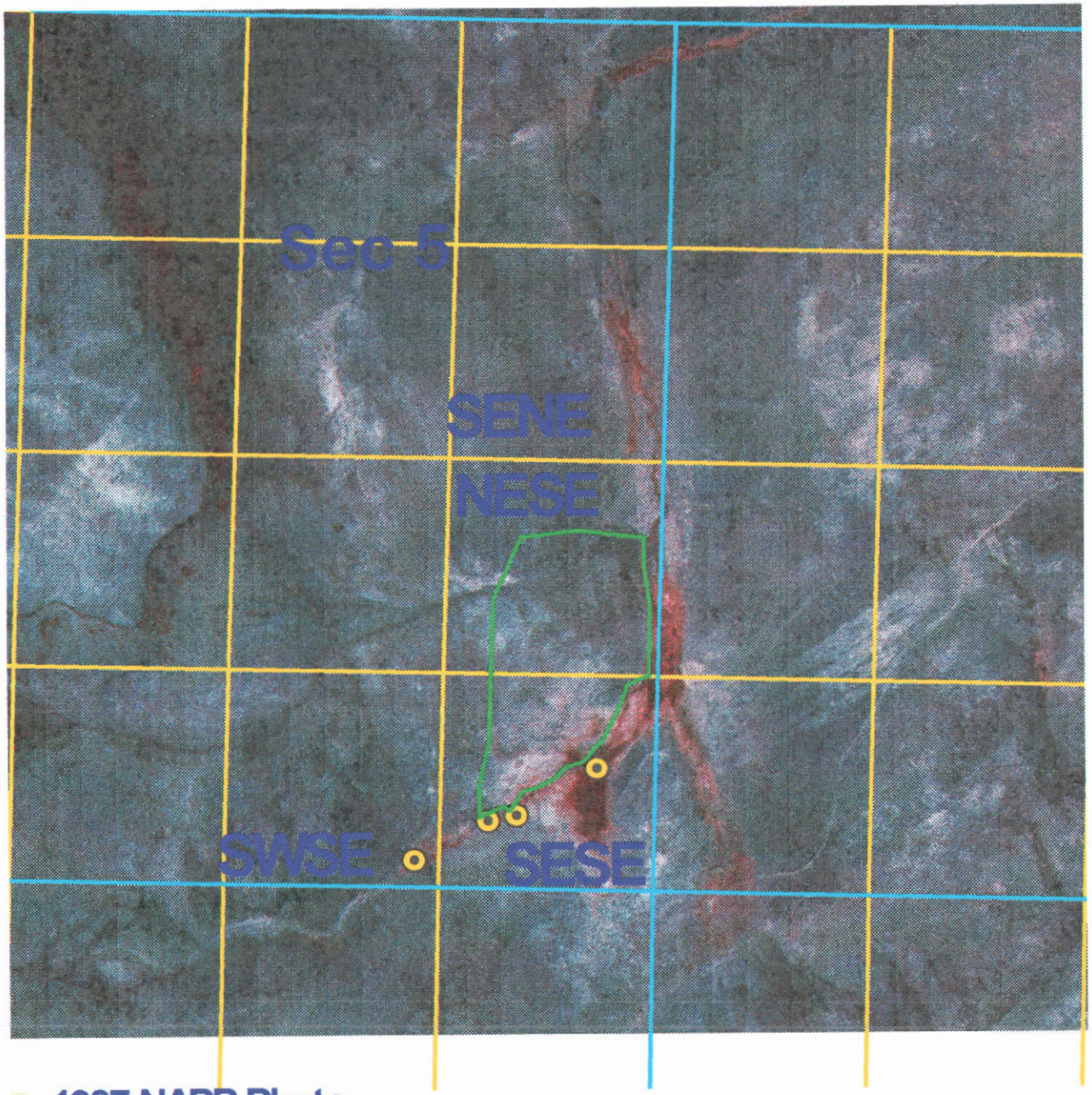
SW Legal Description

Place of Use

Point of Diversion

Section Lines

1/4 1/4 lines



1987 NAPP Photo

N
W E
S

0 0.25 0.5 0.75 1 Miles

USDA-FHA
Form FHA 440-50
(6-20-73)

Position 1

CROP-SHARE-CASH FARM LEASE

THIS LEASE is entered into this 16 th day of January, 19 77,
between John C. Urquidi, landlord, of Bruneau, Idaho (Address)
and Leland Frank Davis, tenant, of Bruneau, Idaho (Address)

A. PROPERTY RIGHTS.—The landlord hereby leases to the tenant, to occupy and use for agricultural and related purposes, the following-described property, hereinafter referred to as the "farm," located in Owyhee County, State of Idaho, and commonly known as the farm.

Clara Ocamica and Harriet Urquidi property in 32-10S-4E: 32, 23, 24, 26, 27, of 12S-4E:19-12S-5E: 21-7S-6E: 22-7S-6E: 17-10S-4E: 18-10S-4E: 19-10S-4E; Harriet Urquidi property in 15, 16, 21, 22 of 6S-5E; John C, Urquidi property in 33-9S-2E: 4-10S-2E: 5-10S-2E

and consisting of 2713 acres, more or less, together with all buildings and improvements thereon and all rights thereto except as specified below:

1. Reservation of land and buildings.—The landlord reserves the right to use the following land and buildings for the following purposes:

Clara Ocamica home, outbuildings, and approximately 5 acres

2. Right of entry.—The landlord reserves the right of himself, his agents, his employees, or his assigns to enter the farm at any reasonable time for purposes (a) of consultation with the tenant; (b) of making repairs, improvements, and inspections; (c) of developing mineral resources; and (d) after notice of termination of the lease is given, of plowing, seeding, fertilizing and such customary seasonal work, none of which is to interfere with the tenant in carrying out regular farm operations.

3. No right to sublease.—The landlord does not convey to the tenant the right to lease or sublet any part of the farm or to assign the lease to any person or persons whomsoever.

4. Transfer of farm.—If the landlord should sell or otherwise transfer title to the farm, he will do so subject to the provisions of this lease.

5. Heirs and successors.—The terms of this lease shall be binding upon the heirs, executors, administrators, and successors of both landlord and tenant in like manner as upon the original parties. However, in event the lease is for more than one year, the heirs or successors of the tenant shall have the option to give written notice of termination effective at the end of the lease year in which death occurs.

6. Right to lease.—The landlord warrants that he has the right to lease the farm, and will defend the tenant's possession against any and all persons whomsoever.

7. Rent additional land.—The tenant will not, unless he shall first have obtained written consent of the landlord, farm more than ..... acres of additional land and will not enter into any other business, occupation, or sideline.

8. Additional agreements regarding property rights:

B. LAND USE AND LIVESTOCK PRODUCTION

1. Land use.—The agreed-upon use of the land is outlined in the following table:

USE OF LAND	ACRES	FIELDS	SEED VARIETY	KIND AND AMOUNT OF FERTILIZER PER ACRE
FOR FAMILY LIVING				
WOODLAND				
FARMSTEAD AND LOTS				
TOTAL		xxxxxxxxx	xxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

2. Livestock production.—The tenant on his own may engage in the following production of livestock:

KIND OF LIVESTOCK	MAXIMUM NUMBERS	SPECIAL HEALTH, SANITATION, OR FEEDING PRACTICES

3. **Acres and numbers.**—The acres of crops and the fields on which grown and numbers of livestock shown above are those planned for the first year of this lease. They may be adjusted within the year or from year to year by mutual agreement.

4. **Crop and livestock adjustments.**—If it is impracticable in any year, from causes beyond the tenant's control, to grow the crops and keep within the number of livestock according to the plan shown, appropriate adjustments will be made by mutual agreement between the parties.

5. **Restriction on livestock.**—Neither the owner nor the tenant shall bring livestock that is not covered by this agreement on the farm during the period of the lease without express permission of the other party.

6. **Home use.**—The tenant and landlord may take for home use the following kinds and quantities of jointly owned crops:

---

7. **Buying and selling.**—The two parties will buy and sell jointly owned property according to the following agreement:

---

8. **Division of property.**—At the termination of this lease, all jointly owned property will be divided or disposed of as follows:

C. IMPROVING, CONSERVING, AND MAINTAINING THE FARM.—To improve the farm, conserve its resources, and maintain it in a high state of cultivation, the two parties agree as follows:

1. **General maintenance.**—The tenant will maintain the farm during his tenancy in as good condition as at the beginning, normal wear and depreciation and damages from causes beyond the tenant's control excepted.

2. **Good husbandry.**—The tenant will operate the farm in an efficient and husbandlike way, will do the plowing, seeding, cultivating, and harvesting in a manner that will conserve the landlord's property.

3. **Cropping practices.**—The tenant will *not*, without oral consent of the landlord, (a) plow permanent pasture or meadowland, (b) cut live trees for sale or personal uses, but will take for fuel or use on the farm only dead or unmarketable timber designated by the landlord, (c) allow livestock other than his own on stalkfields or stubblefields, (d) burn or remove cornstalks, corncobs, straw, or other crop residues grown on the farm, (e) pasture new seedings of legumes or grasses in the year they are seeded, and (f) plant legumes on land not known to be thoroughly inoculated without first inoculating the seed.

4. **Livestock practices.**—In caring for his livestock, the tenant will follow health and sanitation measures and guard against disease.

5. **Manure and crop residue.**—The tenant will spread the manure, straw, or other crop residues on the farm as soon as practicable on fields agreed upon by the two parties, except as follows:

---

6. **Pasturing.**—The tenant will prevent tramping of fields by stock and rooting by hogs when injury to the farm will be done.

7. **Waste.**—The tenant will not commit waste on or destroy any of the farm and will use due care to prevent others from so doing.

8. **Fire protection.**—The tenant will not, without written consent of the landlord, house automobiles, motortrucks, or tractors in barns, or otherwise violate restrictions in the landlord's insurance policy, which restrictions the landlord shall make known to the tenant.

9. **Replace losses.**—The landlord will replace or repair as promptly as possible the dwelling or any other building that may be destroyed or damaged by fire, flood, or other cause beyond the control of the tenant or make rental adjustments in lieu of replacements.

10. **Noxious weeds.**—The tenant will use diligence to prevent noxious weeds from going to seed on the farm and will destroy the same, and will keep the weeds and grass cut or destroyed on the fields, farmstead, roadside, and fence rows. Treatment of weed infestation and cost thereof shall be handled as follows:

---

11. **Maintenance of improvements.**—The tenant will keep the buildings, fences, and other improvements on the farm in as good repair and condition as they are when he takes possession, and in as good repair and condition as they may be put during the term of the lease, ordinary wear and tear, loss by fire, or unavoidable depreciation or destruction excepted.

12. **Materials and labor.**—The landlord will furnish materials and the tenant will perform labor for normal maintenance and repairs, except that skilled labor which the tenant himself is unable to perform satisfactorily will be furnished by the landlord. Additional agreements regarding materials and labor:

---

13. **Purchase of materials.**—The tenant may buy, without further authorization, materials for normal maintenance and repairs in a total amount not to exceed $..... within each year, and the landlord will credit or reimburse the tenant for such expenditures, as follows:

---

14. **Add improvements.**—The tenant will *not*, without written consent of the landlord, (a) erect or permit to be erected on the farm any nonremovable structure or building, or (b) incur any expense to the landlord for such purpose, or (c) add electrical wiring, plumbing, or heating to any buildings, and, if consent is given, he will make such additions meet standards and requirements of power and insurance companies.

15. **Conservation practices.**—The tenant will control soil erosion as completely as practicable by stripcropping and contouring, and by filling in or otherwise controlling small washes or ditches that may form.

16. **Conservation structures.**—The tenant will keep in good repair all terraces, open ditches, and inlets and outlets of tile drains, preserve all established watercourses or ditches including grass waterways when seed and fertilizer are furnished by the landlord, and refrain from any operation or practice that will injure them.

17. **Compensation for improvements.**—The two parties will carry out new conservation practices and measures and make other improvements, and share contributions and costs necessary for completion of such practices and improvements as set forth below. The tenant will be reimbursed by the landlord when the practice, measure, or improvement is completed, or the tenant will be compensated for its unexhausted value when he leaves the farm, according to the table below:

17 (Continued). Compensation for Improvements Table.

CONSERVATION PRACTICE, MEASURE, OR OTHER IMPROVEMENT	DATE TO BE COMPLETED	ESTIMATED COST (DOLLARS)	PERCENT TO BE FURNISHED BY LANDLORD AND BY TENANT						VALUE PLACED ON TENANT'S CONTRIBUTION (DOLLARS)	RATE OF ANNUAL DEPRECIATION (PERCENT)
			MATERIALS		LABOR		MACHINERY			
			L	T	L	T	L	T		

18. Additional agreements relative to conservation and improvements:

19. Review of conservation program.—A new schedule covering conservation practices and improvements will be prepared each year on an appropriate form which will become a part of this lease when signed by the two parties.

20. Preparing or seeding land.—When the tenant leaves the farm, if the total acreages of prepared or seeded land are greater than at the beginning of his tenancy, he will be compensated by the landlord on the basis of the value of such excess acreages. If such total acreages are less than at the beginning of his tenancy, the tenant will compensate the landlord on the basis of the value of such deficiency, provided that the deficiency is not due to drought, flood, or other causes beyond the control of the tenant. The acreages at the beginning of this tenancy and the rates of payment are as shown in the table at the right above.

20 (Continued). Preparing or Seeding Land Table.

PREPARED OR SEEDED	ACRES AT BEGINNING	RATE PER ACRE

21. Removable improvements.—Minor improvements of a temporary or removable nature, not provided for in item 17 of this section, which do not mar the condition or appearance of the farm may be made by the tenant at his own expense. The tenant may at any time this lease is in effect, or within a reasonable time thereafter, remove such improvements, provided he leaves in good condition that part of the farm from which they are removed.

22. Compensation for damages.—When the tenant leaves the farm he will pay the landlord reasonable compensation for any damage to the farm for which the tenant is responsible, except ordinary wear and depreciation and damages beyond the tenant's control.

D. SHARING COSTS AND RETURNS.—All costs and returns shall be divided between landlord and tenant as provided below, unless otherwise specifically noted elsewhere in this lease.

1. Rental rate.—The tenant agrees to pay as rent the share of the quantities of crops [illegible] cash as indicated below:

				PLACE OF SALE OR DELIVERY	DATE OF SALE, DELIVERY, OR PAYMENT
(crop) and hill property and	27/3		$25,000.00		March 20
[illegible] rights					
[illegible] BUILDINGS	[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]			

2. Additional agreements in regard to rental rates:

$25,000.00 per year for the first 2 years with provision for this amount to be increased or decreased should economic conditions warrant. Increase or decrease not to exceed 3% per year.

3. Expenses.—Expenses, including investments in personal property, shall be supplied by the tenant, except as indicated in section 17 and except as follows:

INVESTMENTS IN PERSONAL PROPERTY	FURNISHED BY LANDLORD	EXPENSES	FURNISHED BY LANDLORD	EXPENSES	FURNISHED BY LANDLORD
TRACTOR		LABOR		LIMING MATERIAL	
MACHINERY AND EQUIPMENT		MAINTENANCE—BUILDINGS		FERTILIZER	
		MAINTENANCE—FENCES			
		MACHINE REPAIRS		SEED	
		FUEL—TRACTOR			
		FUEL—TRUCK		BLM fees	X
		FUEL—OTHER		ELECTRICITY	
		CUSTOM WORK AND HAULING		TELEPHONE	
		WEED CONTROL MATERIAL		INSURANCE—BUILDINGS	X
		INSECTICIDES		INSURANCE—CROPS	
		FEED PURCHASED OR SUPPLIED		TAXES—REAL ESTATE	X
LIVESTOCK		LIVESTOCK EXPENSES		TAXES—PERSONAL	

4. Additional agreements relative to expenses:

E. TERM OF LEASE

1. Term.—The term of this lease shall be five year(s) from January 16, 1977, to January 16, 1982, and this lease shall continue in effect from year to year thereafter until written notice of termination is given by either party to the other at least ____ months before expiration of this lease or any renewal.

2. Continuous occupancy.—The tenant agrees that he or his agent will possess and occupy the farm continuously during the term of the lease.

3. Surrender of possession.—The tenant agrees to surrender possession and occupancy of the premises peaceably at the termination of the lease.

4. Review of lease.—A request for general review of the lease may be made at least ____ days prior to the final date for giving notice to terminate this lease. Amendments and alterations to this lease shall be made in writing.

F. MISCELLANEOUS PROVISIONS

1. No partnership created.—This lease shall not be deemed to give rise to a partnership relation, and neither party shall have authority to obligate the other without written consent, except as specifically provided in this lease.

2. Government programs.—The farm will be operated in compliance with Government programs as follows:

3. Debts and accidents.—Each party agrees that the other party shall in no way be responsible for the debts or liabilities or accidents or damages caused by the other party.

4. Willful neglect.—Willful neglect, failure or refusal by either party to carry out any substantial provision of this lease shall forfeit to the other party the benefits of any proceedings provided for herein.

5. Farm records.—The tenant agrees to keep [illegible] production records of all income and expenses of [illegible] which records shall be accessible to the landlord at [illegible] furnish an annual report to the landlord on or before the following date ____. Accounts between the two parties shall be settled on or about ____.

6. Arbitration of differences.—Any differences between the parties as to their several rights and obligations under this lease that are not settled by mutual agreement after thorough discussion shall be submitted for arbitration to a committee of three disinterested persons, one selected by each party hereto and the third by the two thus selected, and the committee's decision shall be accepted by both parties.

7. Additional agreements:

IN WITNESS WHEREOF, the parties have signed this lease on the date first above written.

Witnesses:

Raymond L. Gaskey

Sandra L. Lohrisch

(Landlord) Clara Deamer

John C. Deamer

Leslie A. Deamer Estate

(Tenant)

(Acknowledgment in appropriate form to be attached)

FARM LEASE

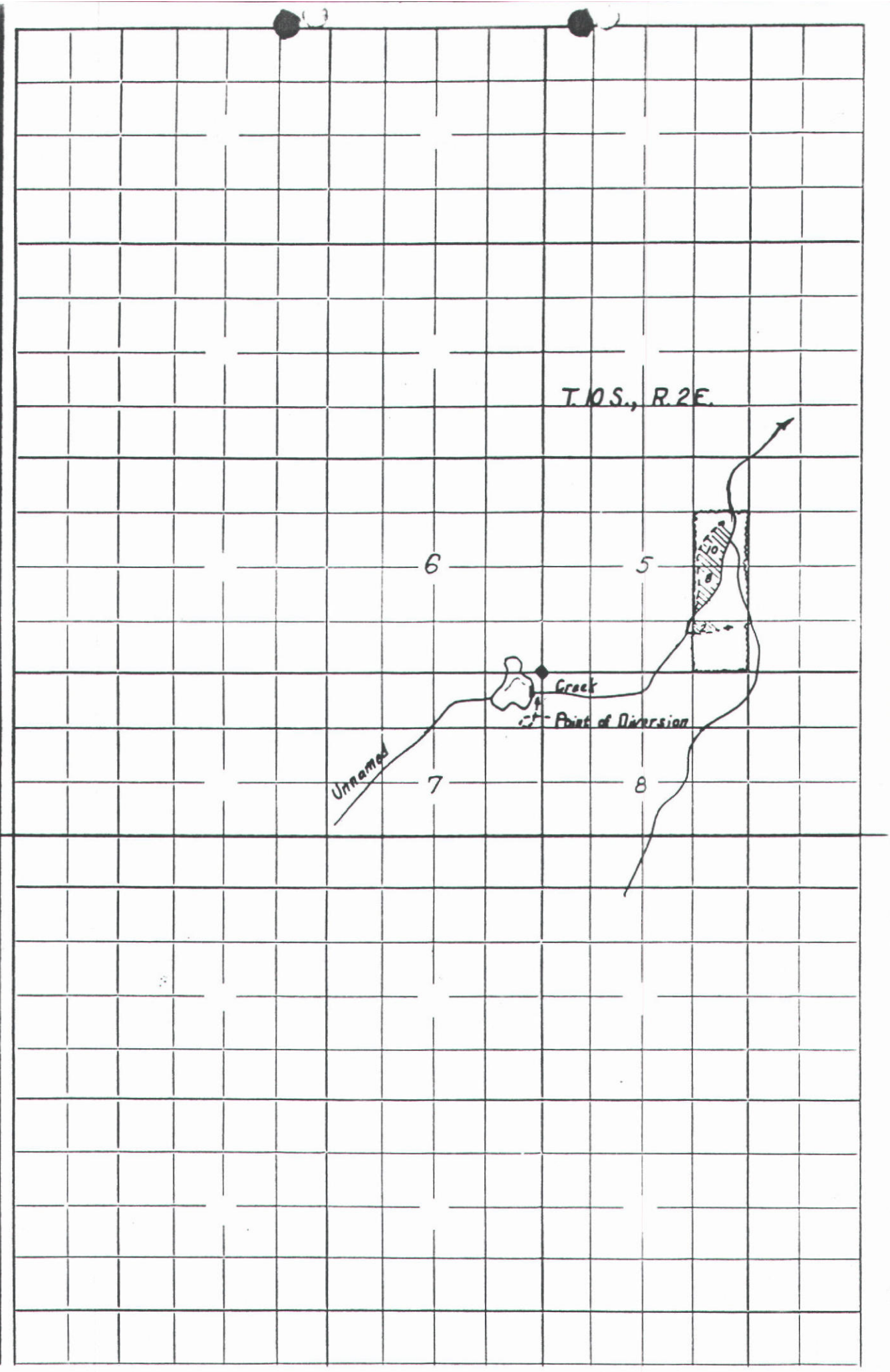
(Landlord)

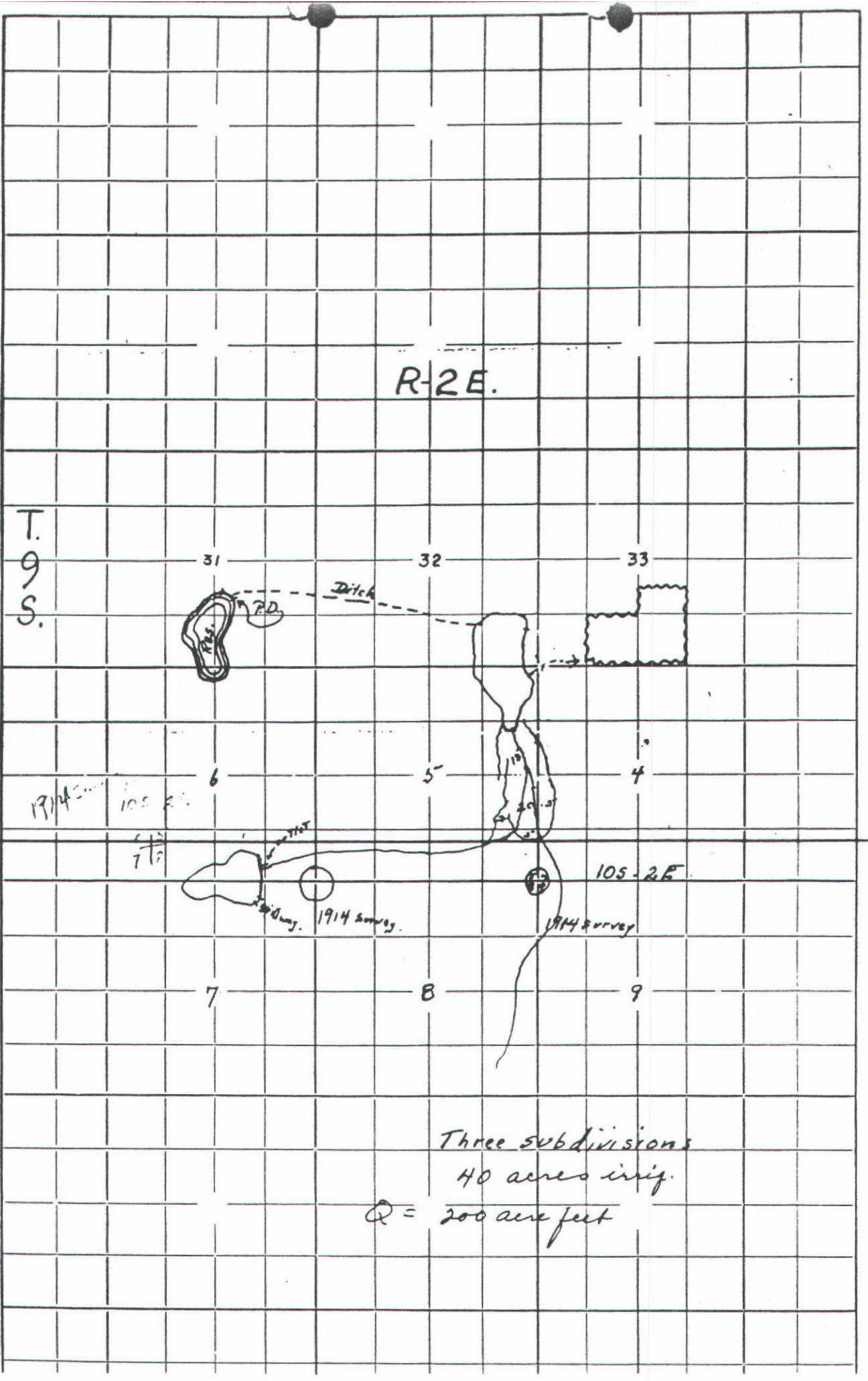
(Tenant)

USE OF THIS FORM FOR [illegible]

This form contains suggested provisions [illegible] Where the parties desire [illegible] and the [illegible] provisions are appropriate [illegible] By using the Annual [illegible] (Form AD 564), dated [illegible] from year to year [illegible] changed from this [illegible] Department of [illegible]

EXHIBIT "A"


T.10S., R.2E.
6
5
7
8
Unnamed
Creek
Point of Diversion


R-2E.
T.
9
S.
31
32
33
Ditch
6
5
4
7
8
9
1914 survey.
1914 survey
105 - 2E
Three subdivisions
40 acres irrig.
Q = 200 acre feet

'93 10 4

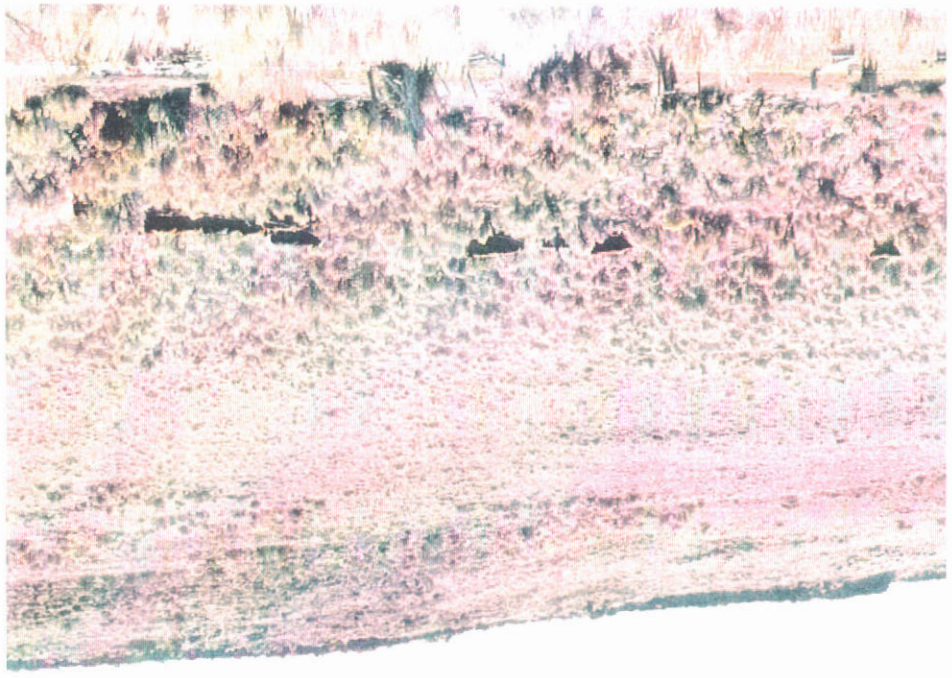
'93 10 3

'93 10 5

'93 10 6









10S 2E

Letter: Date of change of POD
Evidence required

See also letter dated 2/27/1992
Amendment Sept 23 1992

NOT subject to GRO

See other field exams for acreages
@ different times



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: A51-02065
Date Received: 3/10/1989
Receipt No: W002388
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW AMENDED

1. Name: JOHN URQUIDI 208-845-2844
   Address: HC 85 BOX 135
   BRUNEAU ID 83604

2. Date of Priority: APR 5, 1919

3. Source: SPRING Trib. to: LITTLE JACKS CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
10S	02E	5	SE	SW	SE		OWYHEE
			SW	SE	SE		OWYHEE

5. Description of diverting works:
   DAM TO DITCH TO FLOOD IRRIG.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.800		
STOCKWATER	01/01	12/31	0.140		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
   S/ UP TO 500 HEAD RANGE INSTREAM FROM DITCH AND SPRING.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	02E	5	SE	NE		IRR	15.0
			NE	SE		IRR	15.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
10S	02E	5	SE	SE		IRR	10.0
						Section Acres	40.0
						Total Acres	40.0

11. Place of use in counties: OWYHEE

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: LICENSE

Water Right Number: 13961

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): John B Chapman Date: 9/23/92

_____ Date: _____

State of Idaho)
) ss.
County of ADA)

Subscribed and sworn (or affirmed) before me this 23 day of Sept 19 92

Ron Howerton
Notary Public

Seal

Residing at Ron Howerton
Residing at Boise, Idaho

My Commission Expires December 8, 1994

90 00

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: A51-02065
Date Received: 1/19/1989
Receipt No: W002388
Received By: EM

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: JOHN URQUIDI 208-845-2844
   Address: HC 85 BOX 135
   BRUNEAU, ID 83604

2. Date of Priority: APR 05, 1919

3. Source: SPRING Trib. to: LITTLE JACKS CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
10S	02E	5	SE NE		OWYHEE

5. Description of diverting works:
   DAM TO DITCH TO FLOOD IRRIG.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.800		
STOCKWATER	01/01	12/31	0.140		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
   S/ UP TO 500 HEAD RANGE INSTREAM FROM DITCH AND SPRING.

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
10S	02E	5	SE NE		IRR	15.0
			NE SE		IRR	15.0

MICROFILMED
AUG 1 0 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
10S	02E	5	SE	SE		IRR	10.0
						Section Acres	40.0
						Total Acres	40.0

11. Place of use in counties: OWYHEE

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: LICENSE
Water Right Number: 13961

MICROFILMED
AUG 1 0 1992

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): 3/17/89 John Wyatt Date: 3/17/89

_____ Date: _____

State of Idaho)
) ss.
County of Ada)

Subscribed and sworn (or affirmed) before me this 17 day of March 19 89

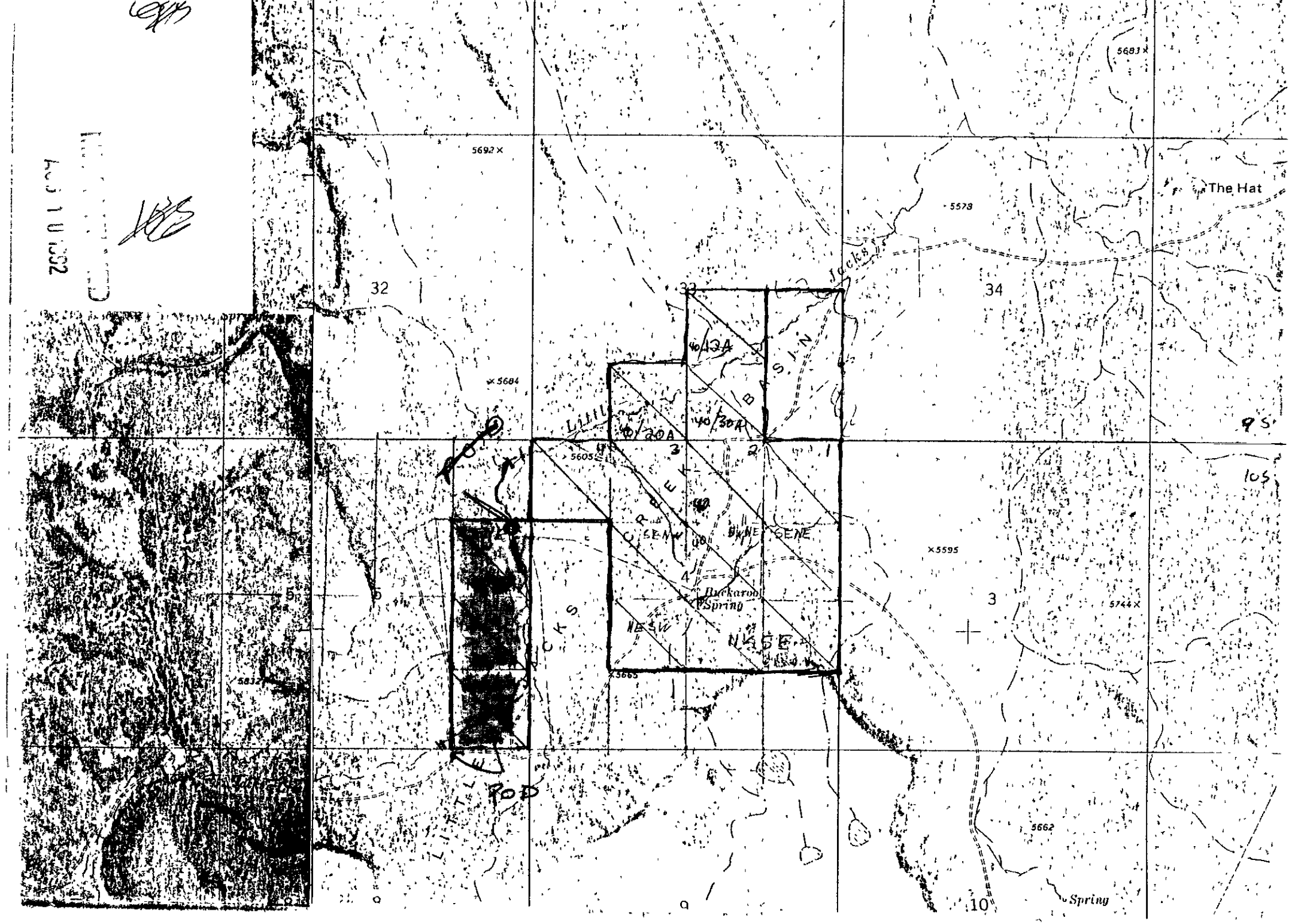
Elda L. Roush
Notary Public

Seal

Residing at Eldon L. Roush Residing at Boise, Idaho

My Commission Expires My Commission Expires September 8, 1994

MICROFILMED
AUG 10 1992


5683
5692
The Hat
5578
32
33
34
9 S
10 S
40/13A
40/30A
40/30B
5684
5605
5595
5744
5665
5662
Burkaroo Spring
Spring
10

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JOHN URQUIDI HC 85 BOX 135 BRUNEAU ID 836049703 (208) 845-2844	04/05/1919	IRRIGATION	04-01	10-31	0.80 CFS	
			STOCKWATER	01-01	12-31	0.11 CFS	
					TOTAL DIVERSION:	0.80 CFS	

Water Source: SPRINGS Tributary to: LITTLE JACKS CREEK Stage: LICENSE

Point(s) of Diversion: T10S R02E S05 SESWSE NESESE SWSESE OWYHEE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
10S	02E	5													18			12	30.0
																	TOTAL ACRES		30.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: OWYHEE

Other Rights: NONE

Conditions of Approval:

N08 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR - STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL - USE.

N05 - THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE - SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks: POU 2 POINTS OF DIVERSION LOCATED IN T10S, R02E, S05, SWSESE.

EXP STOCKWATER, 500 RANGE CATTLE

Dates: Exam Made Date: Verified Date: 07/15/1998 Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

AJ0749NP
No. R51-02065

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 05/21/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JOHN URQUIDI HC 85 BOX 135 BRUNEAU ID 836049703 (208) 845-2844	04/05/1919	IRRIGATION STOCKWATER	~~04-15~~ ~~03-15~~ 01-01	~~11-15~~ 12-31	0.80 CFS ~~0.14 CFS~~ TOTAL DIVERSION: 0.80 CFS	

Water Source: SPRING NESESE 2x SWSESE Tributary to: LITTLE JACKS CREEK Stage: LICENSE

Point(s) of Diversion: T10S R02E S05 ~~SESWSE~~ ~~SWSESE~~ SESWSE OWYHEE County

Place of use Legal Description for: IRRIGATION

	NE				NW				SW				SE				
	NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T R S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
10S 02E 5			~~15~~										~~15~~ 18			~~10~~ 12	~~40.0~~ ~~40.0~~ 30

TOTAL ACRES

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: OWYHEE

Non-Irrigation Uses: S/ EXP UP TO 500 HEAD RANGE INSTREAM FROM DITCH AND SPRING.

Other Rights: NONE

Conditions of Approval:

Dates: Exam Made Date: 11/29/1993 7/19/1995 Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 05/21/98 SBOCK

CID # 13961

N98

POD F04

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

11:24:53
12/26/96

PAGE: 1

1

GENERAL INFORMATION

CLAIM NUMBER: A51-02065

LAST: URQUIDI FIRST: JOHN
ADDRESS: HC 85 BOX 135
CITY: BRUNEAU STATE: ID ZIP: 836049703
PHONE NUMBER: 208-845-2844

OWNER CODE: C

LAST: OWENS FIRST: WILLIAM J
ADDRESS:
CITY: BRUNEAU STATE: ID ZIP: 83604
PHONE NUMBER: 208-000-0000

OWNER CODE: O

	DATABASE	FIELD EXAMINER
FIELD EXAM REQUIRED?		
VERIFICATION REQUIRED DUE TO REMARKS?	N	

NO REMARKS IN CLAIM

FIELD EXAMINATION INFORMATION

CONTACT PERSON: John Urquidi PHONE NUMBER: (208) 845-2844

DATE OF FIELD EXAM: 11/29/1993, 07/19/1995 APPOINTMENT MADE: Y(X) N(___) TIME: ___:___ A(___) P(___)

ACCOMPANIED BY: Mr. Urquidi, claimant PHONE NUMBER: (___) ___-____

RELATIONSHIP TO CLAIMANT: same

DIRECTIONS TO PROPERTY / NOTES:

First field exam drove in w/Mr. Urquidi via Grandview. The second visit K Walker & I drove in alone from Mud Flat Road. Mr. Urquidi met us at the property.

PRIORITY DATE REVIEW PAGE

CLAIM NUMBER: A51-02065 2

A. AJ CLAIM: # A51-02065 PRIORITY DATE: 04-05-1919 STAGE: L

B. WR RECORD: # 51-02065 PRIORITY DATE: 04-05-1919 STAGE: L

C. CAN THE PRIORITY DATE CLAIMED BE CONFIRMED BY A DECREE OR LICENSE? Y(___) N(X)

D. HAS THERE BEEN A LATER COURT DECREE OF THE WATER RIGHT(S) FROM THIS WATER SOURCE? Y(___) N(X) Jack's Creek specifically excluded from Brunoau River Decree TH

E. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE? (IF YES, DESCRIBE BELOW) Y(___) N(___)

F. IF THIS CLAIM IS BASED ON A PERMIT, WHERE IS THE PERMIT IN THE LICENSING PROCESS?

PROOF OF BENEFICIAL USE SUBMITTED N/A(X) Y(___) N(___)

FIELD EXAM COMPLETED N/A(X) Y(___) N(___)

FIELD EXAM SENT TO STATE OFFICE N/A(X) Y(___) N(___)

LICENSE ISSUED N/A(X) Y(___) N(___)

* IF THE PERMIT WILL NOT BE LICENSED PRIOR TO THE DIRECTOR'S REPORT, USE CONDITION CODE A01 AND RECOMMEND AS PERMITTED.

G. IF THIS CLAIM IS BASED ON BENEFICIAL USE, IS ADDITIONAL EVIDENCE OF THE PRIORITY DATE REQUIRED? N/A(X) Y(___) N(___)

* FOR CLAIMS BASED ON BENEFICIAL USE, DESCRIBE THE EVIDENCE OF PRIORITY SUBMITTED, INCLUDING THE ANALYSIS OF THE EVIDENCE.

H. IS THE STAGE OF THE CLAIM CODED CORRECTLY? Y(X) N(___)

NOTES: 12/26/1996: This water right was not subject to the Brunoau River Decree The total amount of irrigated acres may be less than licensed - ASCS does not indicate any cropland in the E½ of s.5 so it is as yet unclear if the total number of ~~irrigated acres~~ licensed acres are irrigated now. TH

RECOMMENDED PRIORITY DATE: 04-05-1919

REVIEWED BY TH Thompson DATE 12/26/1996

POINT OF DIVERSION REVIEW SHEET

CLAIM NUMBER: A51-02065

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
A51-02065	10S	02E	5	SE	SW	SE			OWYHEE		
A51-02065	10S	02E	5	SW	SE	SE			OWYHEE		

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A51-02252	R51-10585
A51-10585	R51-10874
A51-10873	
A51-10874	

WR RECORDS IN SAME 40 ACRE TRACT

NONE

SOURCE: SPRING

TRIB: LITTLE JACKS CREEK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
51-02065	10S	02E	5		SE	NE			OWYHEE		

OTHER WR RECORDS WITH SAME WR POD

NONE

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX	R PREFIX
NONE	NONE

SOURCE: SPRING

TRIB: JACKS CREEK

C. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(___) N(X)

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA? N/A(___) Y(___) N(X)

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM? Y(X) N(___)

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(X) N(___)

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE? Y(___) N(X)

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM? Y(X) N(___)

5/21/98 POD Reconnoy 4 pod's as indicated above. Field Exam: Claimed POD could not be found. It was determined that for irrigation to have occured the recommended PODS would have had to been used prior to 1987 (acquisition transfer). We do recognize the POD on the BLM land.

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM 08/08/1920) Y(X) N(__)

AJ FIELD EXAM (DATE OF FIELD EXAM 11/29/1993 07/19/1995 NAME OF EXAMINER ITT, NICUCCI) Y(X) N(__)

OTHER (DESCRIBE IN NOTES BELOW)

NOTES: 12/26/1996: The POD described on the license and shown on the licensing exam does not make physical sense. The ditches would have to flow against the gradient of the drainage if the source were located in the SENE of S.5 Although this against-gradient irrigation is possible, field exams found springs diverted at the southern end of the parcel. Unable to recommend spring in SESWSE, as this spring was not licensed, does not appear on the licensing exam and no date of change was provided by the claimant. See file for copies of letters regarding information (dated 05/17/1995, 12/10/1993).

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: CHECK HERE IF RECOMMENDED AS CLAIMED (__)

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NBR
10S	02E	5	SE	SW	SE			OWYHEE		
10S	02E	5	SW	SE	SE			OWYHEE		
10S	02E	5	SW	SE	SE	__	__	Owyhee		
__	__	__	__	__	__	__	__	__		
__	__	__	__	__	__	__	__	__		
__	__	__	__	__	__	__	__	__		
__	__	__	__	__	__	__	__	__		
__	__	__	__	__	__	__	__	__		

SOURCE: Spring TRIB: Little Jacks Creek

One spring ~~???~~ is recommended for these rights.

ITT

REVIEWED BY: _____ DATE: _____

SYSTEM DESCRIPTION: DESCRIBED BELOW (X), SEE LICENSE FILE (__), OR SEE ATTACHMENT (__)

Springs have been dug out to encourage flow directly into earth ditches. All irrigation is flood irrigation from earth ditches.

12/31/1996: The stream is now called Little Jack Creek, as per USGS Topo "Crab Spring Butte," IDWR No. BB58(1972)

A. ROOT WATER RIGHT NUMBERS: A51-02065

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
10S	02E	5	SE	NE		URQUIDI, JOHN	A51-02065 / 15.0	51-02065 / 15.0		3	
			SE	NE		URQUIDI, JOHN	A51-02252 / 10.0	51-02252 /			
10S	02E	5	NE	SE		URQUIDI, JOHN	A51-02065 / 15.0	51-02065 / 15.0		7	18
			NE	SE		URQUIDI, JOHN	A51-02252 / 15.0	51-02252 /			
10S	02E	5	SE	SE		URQUIDI, JOHN	A51-02065 / 10.0	51-02065 / 10.0			12
			SE	SE		URQUIDI, JOHN	A51-02252 /	51-02252 /			
ADDITIONAL POU FOUND											30
10S	02E	4	SW	SW						1	
			NW	SW						3	

Sx. 4 only 1 acre.

TOTAL ACRES	A51-02065	40.00	40.00	

POU COUNTY: OWYHEE

C. IS WATER USAGE FOUND IN TRACTS OTHER THAN THOSE CLAIMED? Y(X) N(___)

* IF YES, ARE THESE TRACTS LISTED ABOVE (X), OR ARE THEY LISTED ON AN ATTACHED SHEET (___)

LIST OF ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A51-02065	SPRING	URQUIDI, JOHN	0.800	0.020		
A51-02252	UNNAMED STREAM	URQUIDI, JOHN			200.00	5.00

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY			RATE	VOLUME
A51-02065	STOCKWATER	URQUIDI, JOHN	FROM	01-01	TO 12-31	0.140 CFS	
A51-02252	STOCKWATER STORAGE	URQUIDI, JOHN	FROM		TO		200.00 AF/A
A51-02252	STOCKWATER FROM STORAGE	URQUIDI, JOHN	FROM		TO		200.00 AF/A

D. ARE OTHER WATER RIGHTS USED FOR THE SAME PURPOSE? Y(__) N(X)

* IF YES, COMPLETE OVERLAP REVIEW:

OTHER RIGHTS LISTED IN CLAIM: NONE

12/26/1996: Water stored (A51-02252) + licensed for irrigation is no longer used, as per claimant during field exam 11/29/1993. TT

E. IS THE CLAIMED POU THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(__) Y(X) N(__)

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POU, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

F. CAN THE CLAIMED POU BE VERIFIED USING THE WATER RIGHT FILE AND AVAILABLE AERIAL PHOTOS? N/A(__) Y(__) N(X)

G. SHOULD THE CLAIMED POU BE VERIFIED BY FIELD EXAM? Y(X) N(__)

H. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THIS RIGHT? Y(X) N(__)

12/31/1996: See licensing exam for 51-02252 for map with irrigated acres. Two exams done - one in Nov of 1949 and one in April of 1954. These exams show the irrigation along the creek with different acreages than licensed under 51-02065. It appears that irrigation + subirrigation has fluctuated depending on the available water and/or the person drawing the map. TT

CHECK DOCUMENTS USED TO VERIFY POU: (X) ORTHOPHOTOQUAD, IDWR NO. BB59 ; (X) TOPOGRAPHIC QUAD, IDWR NO. BB59 ;
(X) NAPP, IDWR NO. BB59 NW ; (X) ASCS PHOTO; ( ) OTHER _____

NOTES: 12/26/1996: The POU looks to be irrigated by diversions from the spring + by sub-irrigation. The claimant has pushed up small dams in the stream along the place of use. These dams are too small for inclusion in IDWR's dam safety program but may have been placed without a Stream Channel Permit. The OQ and topo maps indicate that the stream is perennial along the POU. There is no water right for diversion or storage of creek water. No diversions from the dam areas was found. These dams are the basis of ~~action~~ complaint by stockwater users further downstream, and subsequent (in) action by IDWR (see file for corr. and documents).

The POU recommended is on the west side of the creek. The acres on the east side are not recommended because they fall in another section and were not licensed or claimed. The spring which feeds the east ditch is not recommended as a point of diversion, since the license is for one spring and the recommended spring is the one that produces water for the licensed acres. There are two ditches on the west side, but only the acres below the lower ditch are recommended. The upper ditch runs through established sagebrush and does not appear to deliver water for beneficial use (other than stock water). See photos in file. ~~TTT~~

RECOMMENDATIONS:

TOTAL ACRES: _____ N/A(___)

REVIEWED BY: _____ DATE: _____

Recommended acres will also depend on whether sub-irrigation can be decreed or not. Field exam on 07/19/1995 found that the ditch stops at the side drainage that runs through the NESE. NAPP ~~is~~ seems to show that ditch OR sub ends here but there is additional sub/IRR? downstream in SENE. Further Review ~~may be~~ Needed. TTT

12/30/1996: Non-use during the 1970's and early 1980's not resolved. Review of ASCS records necessary. TTT

A. AJ CLAIMED USES:

	PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
A51-02065	IRRIGATION	FROM 03-15 TO 11-15	0.800 CFS	
A51-02065	STOCKWATER	FROM 01-01 TO 12-31	0.140 CFS	
	TOTAL DIVERSION RATE/VOLUME		0.800 CFS	

B. WR RECORDED USES:

	PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
51-02065	IRRIGATION	FROM TO	0.800 CFS	
51-02065	DOMESTIC	FROM TO		
	TOTAL DIVERSION RATE/VOLUME		0.800 CFS	

C. DOES THE CLAIMED PURPOSE OF USE CORRECTLY DESCRIBE THE WATER USE? Y(X) N(___)

D. IS THE CLAIMED PURPOSE OF USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(X) N(___)

* IF NO, AND IF THE ACTUAL WATER USE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN PURPOSE OF USE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

E. SHOULD THE CLAIMED PURPOSE OF USE BE VERIFIED BY FIELD EXAM? Y(X) N(___)

F. DOES THE CLAIMED PERIOD OF USE CONFORM TO IDWR STANDARDS? Y(___) N(X)

G. SHOULD THE PERIOD OF USE BE RECOMMENDED TO IDWR STANDARDS? 4-15 TO 10-15 Y(X) N(___)

* IF THE RECOMMENDED PERIOD OF USE IS DIFFERENT THAN IDWR STANDARDS, EXPLAIN IN NOTES BELOW.

H. IS THE CLAIMED DIVERSION RATE FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(___) N(X) Stockwater NOT described separately in license

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION RATE FOR EACH USE WAS DETERMINED.

I. SHOULD THE CLAIMED DIVERSION RATE FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A(___) Y(___) N(X)

J. IS THE CLAIMED DIVERSION VOLUME FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(__) Y(___) N(___)

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION VOLUME FOR EACH USE WAS DETERMINED.

K. SHOULD THE CLAIMED DIVERSION VOLUME FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A(___) Y(___) N(___)

NOTES: 12/26/1996 Stock water was not mentioned on the license. Domestic use WAS shown on the license and it could be argued that the claimed stock are part of a de minimus domestic use. RM

5/21/98 Per Jim Tammonen, 30 acres of irrigation. This does not mean stock only irrigation rights should deduct any of the irrigation acres on Permit #s A25 photo. In 1996 stock might instead not have been recommended. However, by today's criteria, because no livestock have been fenced or confined to irrigate, these two claimants might be issued 30 de minimus irrigation rights.

AJ CLAIM TOTAL DIVERSION RATE: 0.800 CFS

WR ROOT RIGHT TOTAL DIVERSION RATE: 0.800 CFS

A. IS THE CLAIMED TOTAL DIVERSION RATE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(___) Y(X) N(___)

B. CAN THE CLAIMED TOTAL DIVERSION RATE BE VERIFIED USING THE WATER RIGHT FILE? N/A(___) Y(X) N(___)

* ALL CLAIMS BASED ON BENEFICIAL USE (INCLUDING POSTED NOTICES AND STATUTORY CLAIMS) REQUIRE A FLOW MEASUREMENT.

C. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THE DIVERSION RATE? Y(X) N(___)

* IF AN AMOUNT SMALLER THAN THE ORIGINAL DIVERSION RATE IS CLAIMED AND A FIELD EXAM IS NOT REQUIRED, EXPLAIN IN NOTES.

D. SHOULD THE CLAIMED DIVERSION RATE BE VERIFIED BY FIELD EXAM? Y(___) N(X)

E. FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

F. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES _____ x 0.02 CFS/ACRE = _____ CFS
(Taken from pou review)

IS A DIVERSION RATE PER ACRE GREATER THAN 0.02 CFS/ACRE CLAIMED? Y(___) N(___)

IF YES, IS AN ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y(___) N(___)

2. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

3. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION: SEE BELOW (___) OR SEE ATTACHMENT (___)

1b. CALCULATIONS

See 7016 Report Pg 3(c)
It has been decided to allow the amount of water reserved or decreed if this Section is the Commerce Clause, as is in this case.
SB 5/21/08

11
CLAIM NUMBER: A51-02065

NOTES:

WR RECORD CONDITIONS/REMARKS:
016 - See remarks for additional conditions of approval.

Stockwater Use
.5CFS 0022 = .11CFS

RECOMMENDATIONS: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

REC. PURPOSE OF USE	REC. PERIOD FROM	TO	REC. DIV RATE CFS DATABASE	EXAMINER	REC. DIV VOL. AF/A DATABASE	EXAMINER	REC. CONS. USE DATABASE	EXAMINER
	~~4-15~~	~~10-15~~						
IRRIGATION	~~03-15~~	~~11-15~~	0.800				0.0	
STOCKWATER	01-01	12-31	~~0.140~~				0.0	
122	4-1	10-31						
Newell #3368								
TOTAL FOR THIS RIGHT				.8				

NON-IRRIGATION USES CLAIMED: S/ UP TO 500 HEAD RANGE INSTREAM FROM DITCH AND SPRING.

NON-IRRIGATION USES RECOMMENDED: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

REVIEWED BY: Sue Baker DATE: 5/21/98

FLAG: C

STANDARD CONDITIONS (CODE):

STANDARD REMARKS (CODE): change in POD
POD 204

EXPLANATORY CONDITIONS (CODE):

EXPLANATORY REMARKS (CODE):

A. CHECK ONLY THE FOLLOWING THAT APPLY:

	ACCEPTED AS CLAIMED	NEEDS REVIEW
OWNERSHIP	( )	( )
FORFEIT/ABANDON	( )	(X)
ADDITIONAL DIV. AMOUNT	( )	( )

B. SPLIT WATER RIGHT REVIEW N/A

ROOT WATER RIGHT NUMBER: 51-02065

TOTAL DIVERSION RATE OF WR SPLITS — DATABASE 0.800 — EXAMINER _____ — CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A51-02065	0.800	-		51-02065	0.800
	TOTAL CFS	0.800				0.800

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N) — DATABASE Y — FIELD EXAMINER Y(___) N(___)

IF NO, IS THE WRITTEN REVIEW DESCRIBED BELOW (___) OR SEE ATTACHMENT (___)?

NOTES:

AUTHENTICATION:

SIGNATURE: _____ DATE: 5/21/98

NAME OF FIELD EXAMINER: _____ TITLE: _____

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)	IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION	COPY INCLUDED IN FILE?
(X) ORTHOPHOTOQUAD	DATE OF PHOTO BB59 IDWR ID NO. 1974	Y( ) N( )
(X) TOPOGRAPHIC	DATE FIELD CHECKED BB58, BB59, IDWR ID NO. 1972 (both)	Y(X) N( )
(X) NAPP	DATE OF PHOTO 08/01/1987 IDWR ID NO. BB59NW	Y(X) N( )
(X) ASCS AERIAL PHOTO	DATE OF PHOTO 1987	Y(X) N( )
( ) ASCS COLOR SLIDE	DATE OF PHOTO	Y( ) N( )
( ) BLM OR USFS AERIAL PHOTO	DATE OF PHOTO	Y( ) N( )
( ) TOWNSHIP SURVEY (GOVERNMENT PLAT)	DATE OF SURVEY	Y( ) N( )
( ) SCS SOIL SURVEY MAP	DATE ISSUED	Y( ) N( )
( ) SUBDIVISION PLAT MAP	DATE OF MAP	Y( ) N( )
(X) OTHER GIS map	DATE 5/22/1998	Y(X) N( )
( ) OTHER	DATE	Y( ) N( )
( ) OTHER	DATE	Y( ) N( )

LIST OF ATTACHMENTS (CHECK IF ATTACHED)	IF ATTACHED, SUPPLY APPROPRIATE INFORMATION		NO. OF PAGES	NOTES
(X) LICENSING FIELD EXAM	DATE OF FIELD EXAM	8/8/1928	2	
(X) WATER RIGHT LICENSE	DATE LICENSE SIGNED	12/8/1928	1	
( ) IDWR APPROVED TRANSFER	DATE TRANSFER APPROVED			
( ) SYSTEM DESCRIPTION	DATE DRAWN			
(X) PHOTOGRAPHS	DATE(S) PHOTOS TAKEN	11/29/93	8	
( ) SPLIT RIGHT REVIEW	DATE REVIEW COMPLETED			
( ) HUBBLE ANALYSIS	DATE ANALYSIS COMPLETED			
( ) CONVEYANCE LOSS ANALYSIS	DATE ANALYSIS COMPLETED			
( ) FLOW MEASUREMENT CALCULATIONS	DATE SYSTEM MEASURED			
(X) OTHER Fieldexam	DATE	4/16/1984	2	51-02252
( ) OTHER	DATE			

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

11:24:53
12/26/96

PAGE: 15
QUICKLOOK INFORMATION

15
CLAIM NUMBER: A51-02065

WR ELEMENT	DATA DISCREPANCY Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	ELEMENT DOCUMENTED WHOM/DATE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE			MH 11/29/1993 2/19/1995	N		SB 5/21/98		
POINT OF DIV	Y			Y				
SOURCE	Y			N				
PLACE OF USE	Y			Y				
DIV. AMOUNT CFS/VOLUME	Y			N				
CONSUMPTIVE USE	-			N/A				
PURPOSES OF USE	Y			N				
PERIOD OF USE	Y			Y				
BASIS OF CLAIM				N				
REMARKS								

BARCODE UPDATED
WHOM/DATE

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JOHN URQUIDI	04/05/1919	IRRIGATION	03-15	11-15	0.80 CFS	
			STOCKWATER	01-01	12-31	0.14 CFS	
					TOTAL DIVERSION:	0.80 CFS	

Water Source: SPRING Tributary to: LITTLE JACKS CREEK Stage: LICENSE

Point(s) of Diversion: T10S R02E S05 SESWSE SWSESE OWYHEE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
10S	02E	5				15									15			10	40.0
																	TOTAL ACRES		40.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: OWYHEE

Non-Irrigation Uses: S/ UP TO 500 HEAD RANGE INSTREAM FROM DITCH AND SPRING.

Other Rights: NONE

Conditions of Approval:

Dates: Exam Made Date: 11/29/1993 07/19/1995 Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

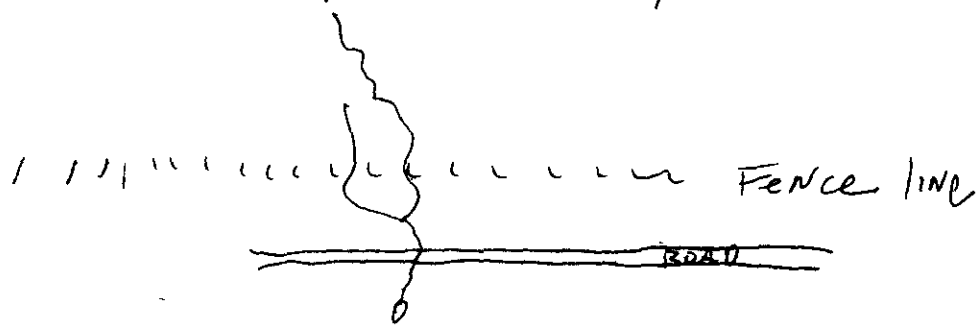
OLD NO. 13961

11/29/1993

Check: Owen's groundwater in Bureau 1986 priority?

Pictures 1 & 2 Spring & ditch leading to (misnamed) Collier now Urquidi place

3 Natural drainage, (ditch) from Res. ~~to~~ past spring → ditch



"Upper ditch" on east side & drainage not used because of BLM - claimant litigation

4-7 Springs

#8 ditch → old homestead
Not full in low years

#9 Middle ditch (pencil line) (west side)

#10 & 11 : → From middle ditch down toward

→ Rock pile where middle ditch runs & drainage.
Old mining activity?
dam to shorten ditch's run up & back down little drainage

Ditch runs @ base of hill on east side

Ditches "bleed" into meadows

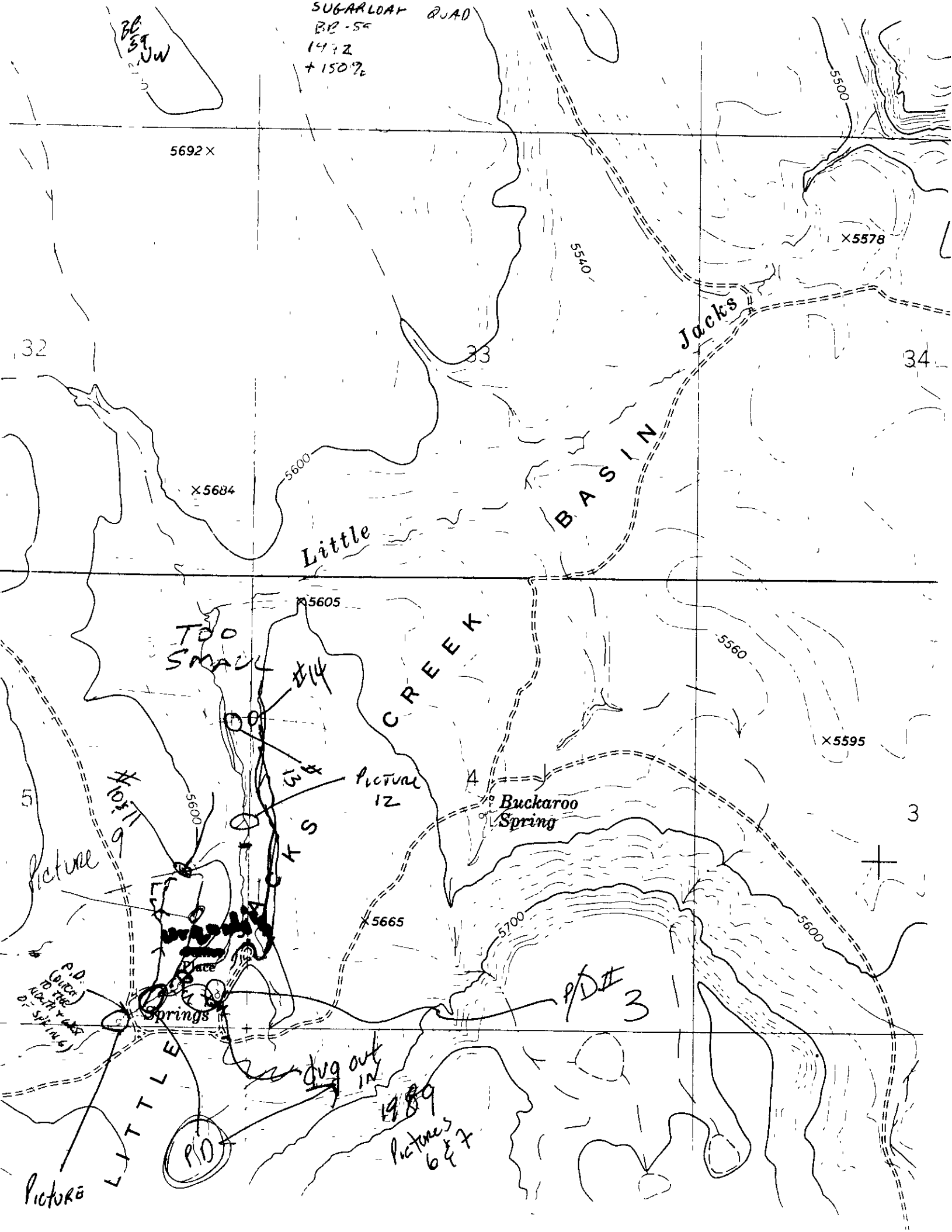
Recommend 1RR acres on BLM ground?
DBL check w/ Don Shaffer

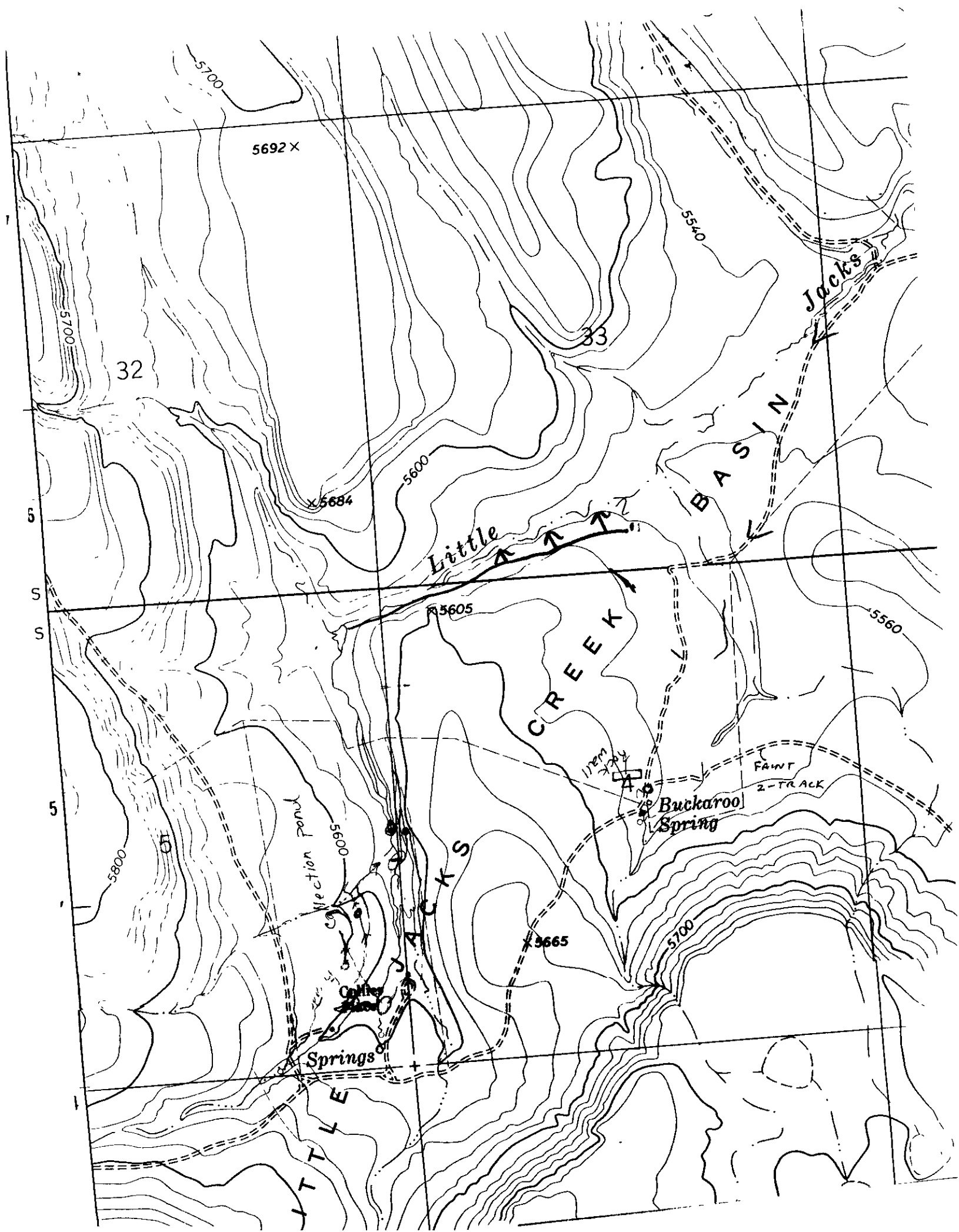
→ If claimant wants to claim

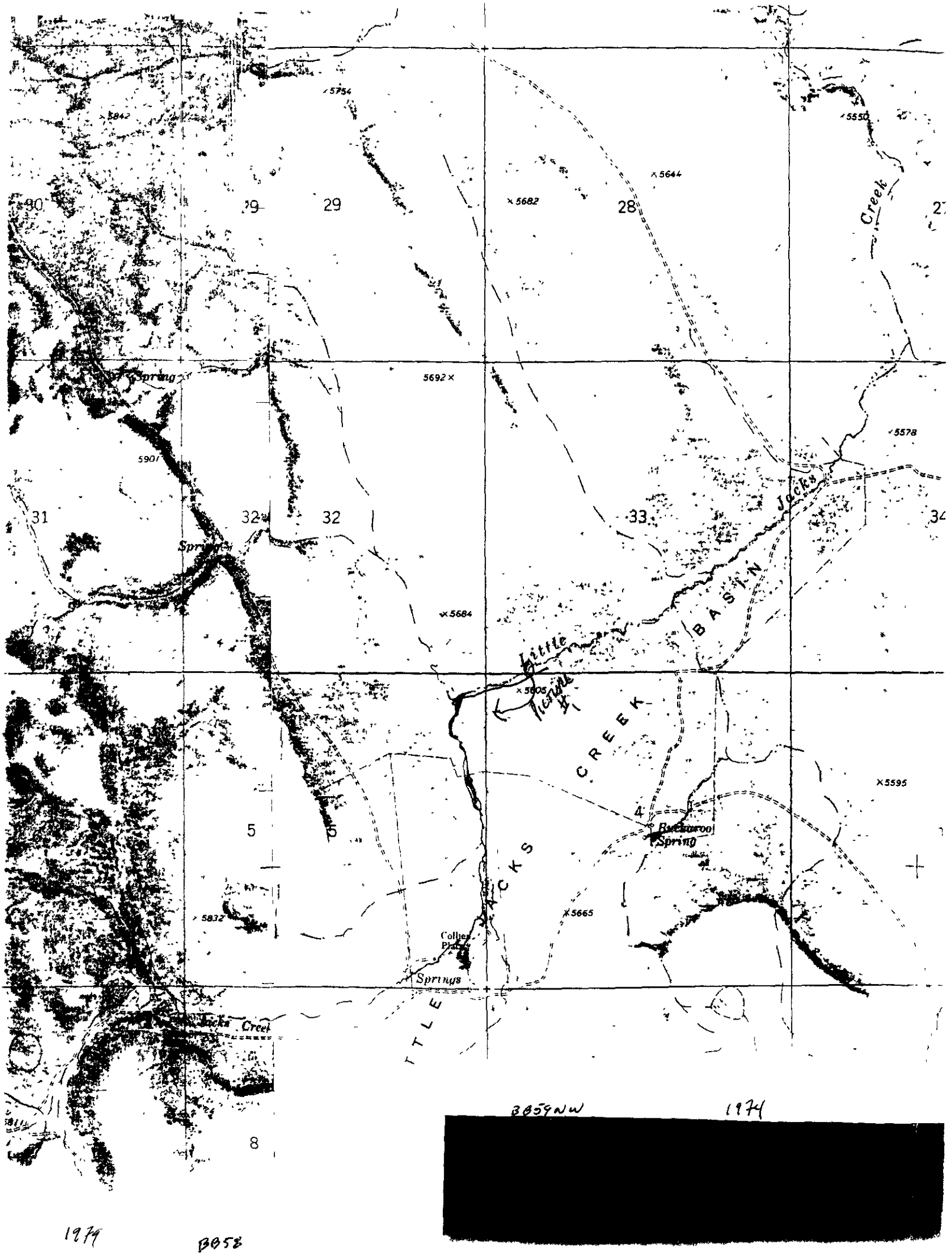
#13 Ditch of far east is in extreme left. Sagebrush ~ 2' high

#51-02252

Headgate & Dam + storage
BLM dam built 1980? Impounds all H_2O in drainage No longer used by claimant.


SUGARLOAF QUAD
BR-56
14 7.5
+ 150 ft
BC 39 NW
5692 ×
5500
×5578
5540
Jacks
32
33
34
BASIN
×5684
5600
Little
CREEK
×5605
TOO SMALL
#14
5560
×5595
PICTURE 12
#10 & 11
5600
Buckaroo Spring
4
3
5
Picture
5665
5700
5600
Place
Springs
P.D. (DRIVEN TO THE ROCK + CUT OF SIGNAL)
P/D II
3
LITTLE
dug out in 1989
Pictures 6 & 7
PD
Picture


5700
5692 ×
5540
Jacks
33
32
5700
5600
×5684
BASIN
Little
CREEK
×5605
5560
ITEM
FAINT
2-TRACK
Buckaroo
Spring
Section Pond
5600
5800
LITTLE JACKS
×5665
5700
Springs


5754
5842
5550
5644
5682
28
29
30
Creek
5692
Spring
5578
5907
31
32
33
Jacks
Spring
5684
Little
Jacks
Creek
5605
BASIN
CREEK
5595
4
Buckaroo
Spring
5
6
5832
5665
Collier
Place
Springs
TTLE
ACKS
Jacks Creek
8
B059NW
1974
1974
B058

FIELD EXAM PHOTO INDEX SUMMARY

Date: 7/19/1995 Roll No.: _____

Photographer: T Minicucci

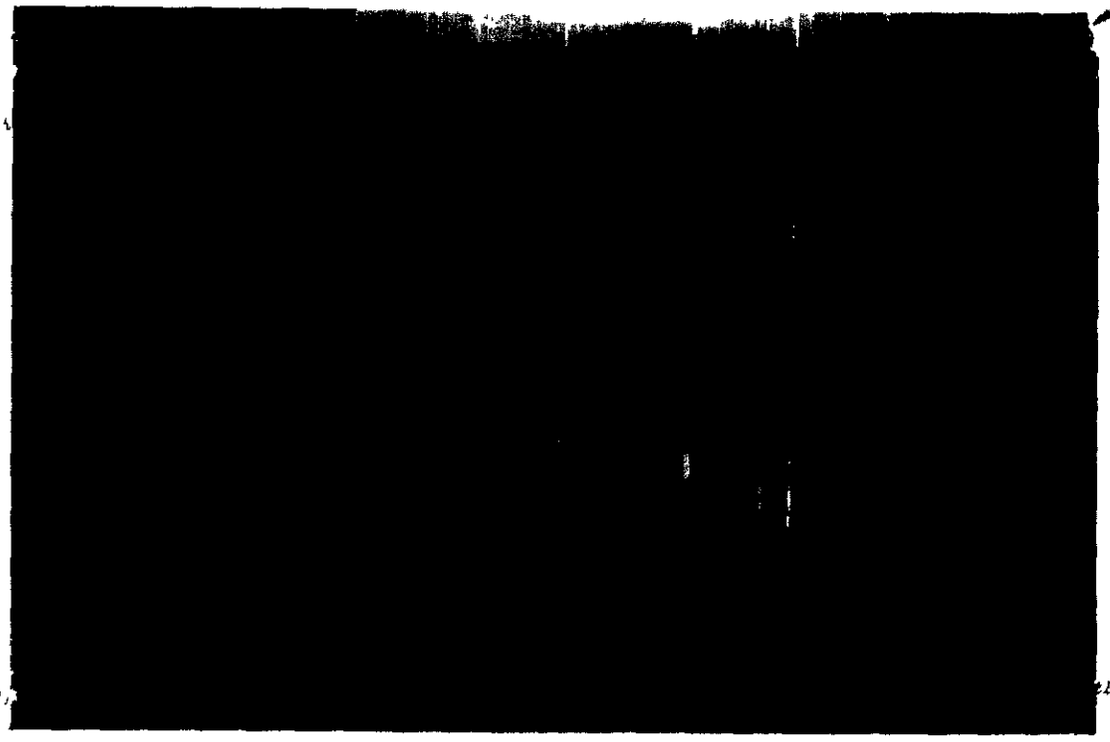
PHOTO NO.	SUBJECT
1	S.4 SWSWNE where faint 2-track comes into road
2	inside remains of bldg shown on topo
3 (3)	Place of use from west to east - you were standing on rock wall
4 (4)	Place of use from north to south From rock wall
5	P/D - (spring under rocks) SESE, Sec 5
6	Collection pond for springs in SESE, Sec 5
7	Spring area near hunting cabin SESE S.5. Leads to ditch along w side of creek
8	Land between upper ditch + prev. pictured ditch on west side
9	Middle ditch (from spring by tree down house) emptying into drainage
10	Picture of drainage in NESE, Sec. 5 on east side of S-5
11	Ditch off dammed area, ~~run~~ joins ditch on east side
12	East side ditch. water is in upper end of ditch, but no longer reaches this pt. NESE S.5
13	OUTLET gate on res. on water side
14	W → E view of res S.33
15	"
16	"
17	NWNW S.4 from rock outcropping. Looking back @ dam
18	" Looking downstream. P/D down-gradient of stream
19	
20	
21	
22	
23	
24	

Send copy of BLM claims on this drainage To John

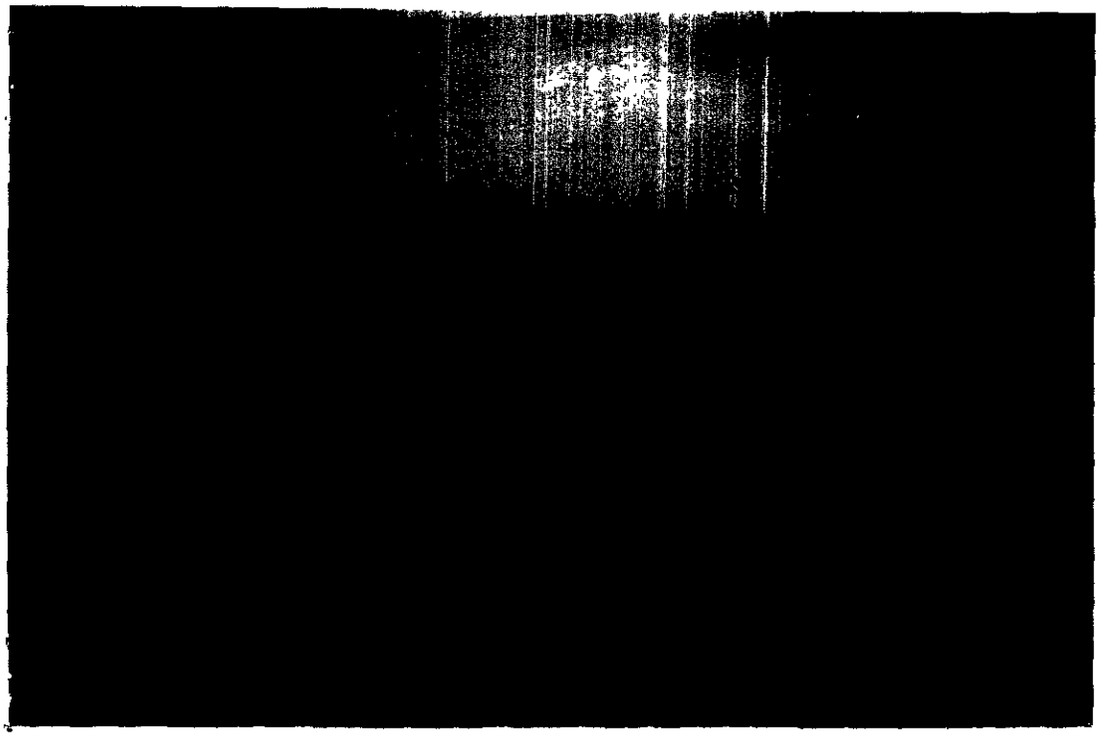
BLM FILING on dam near OX place on L. JACK'S (pg. 17)

Ditches on west side end @ unnamed stream in SE ¼ of S.5 which runs east to west

51-C.2005 photos taken by M.M. 11/29/1993

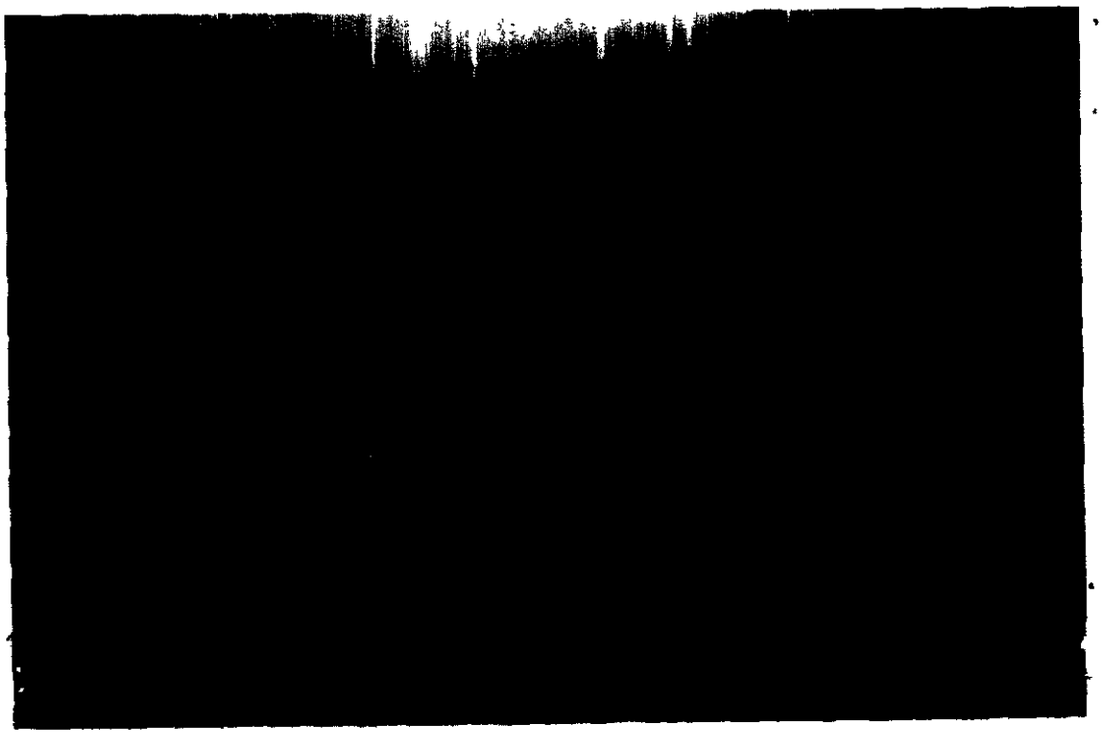


T 10 S R 22 E S 5 SW SE & SE SE area NE of Spring in SE SW SE



"Upper" ditch on W side of property Runs from area of Spring in S E SW SE in Northerly direction, Parallel to drainage. Runs through Sagebrush along the contour of the hill Looking S + E toward home "Collier Place"

S. Lisbon Photos taken by M.M. 11/29/1993



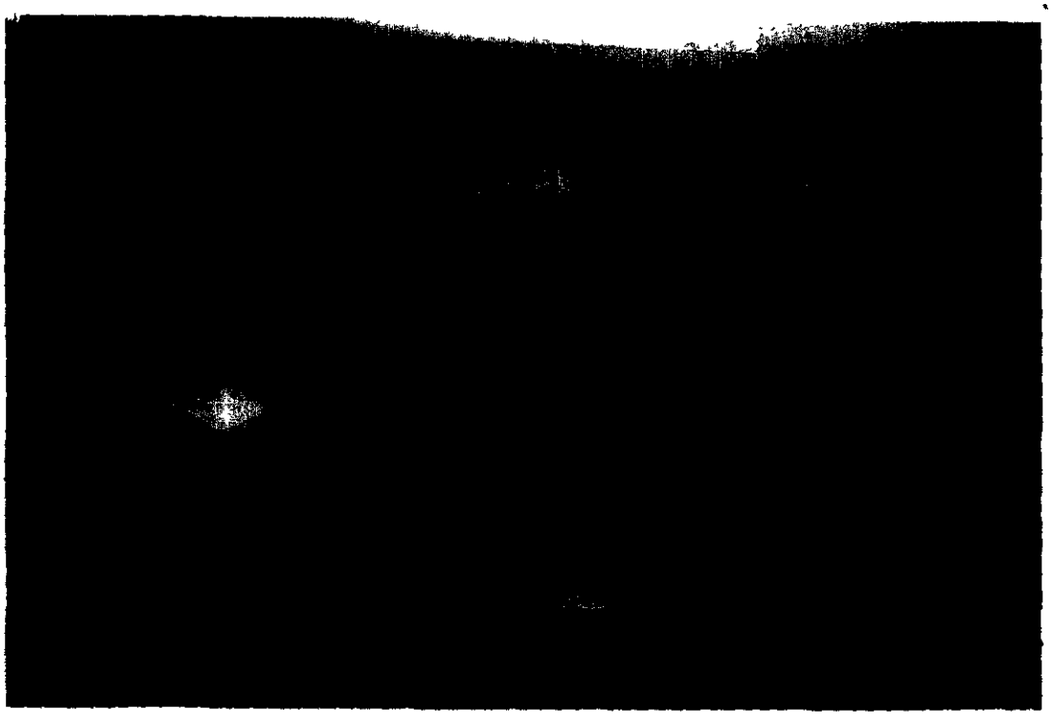
10S 0.2E
S5
Photo taken from dam looking which comes in from the West into Lisbon in NESE "Upper" ditch through sagebrush



10S 0E
S5
Dam in stream

PHOTOGRAPHER AND DATE OF PHOTOS T Minicucci 11/29/1993

FILE NO. A51-02065 T10S R02E S.5



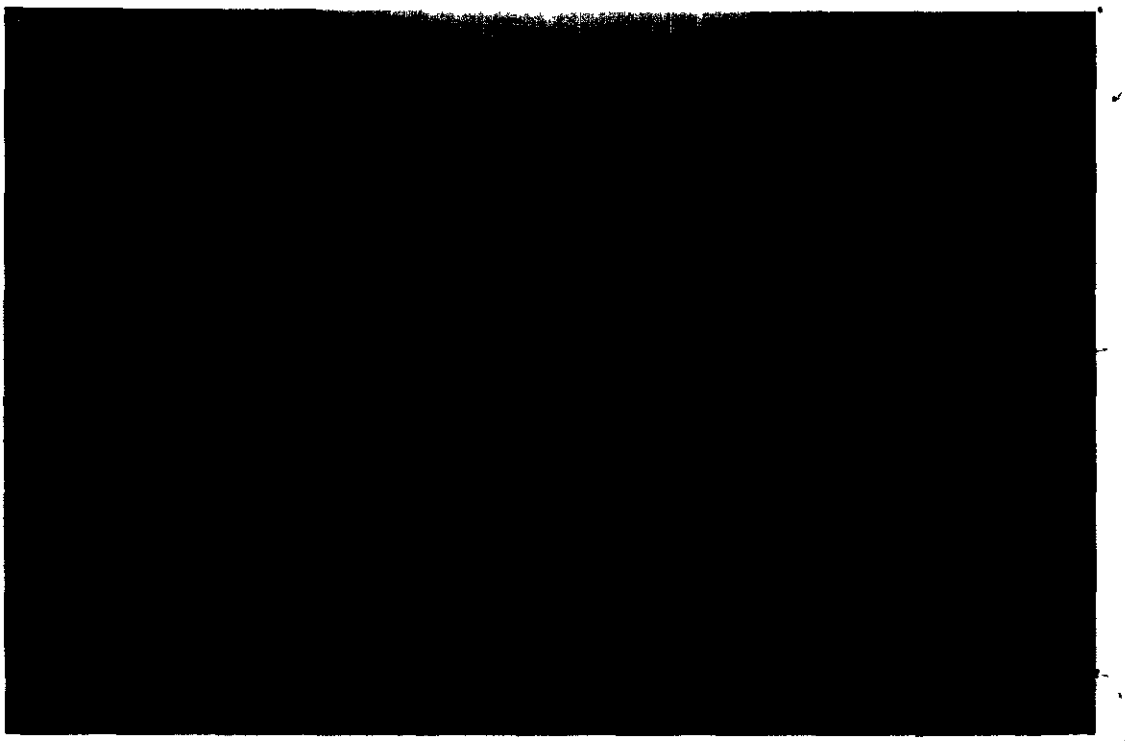
① Recommended point of diversion spring area has been dug out and ditched to the North. Old homestead building in background.



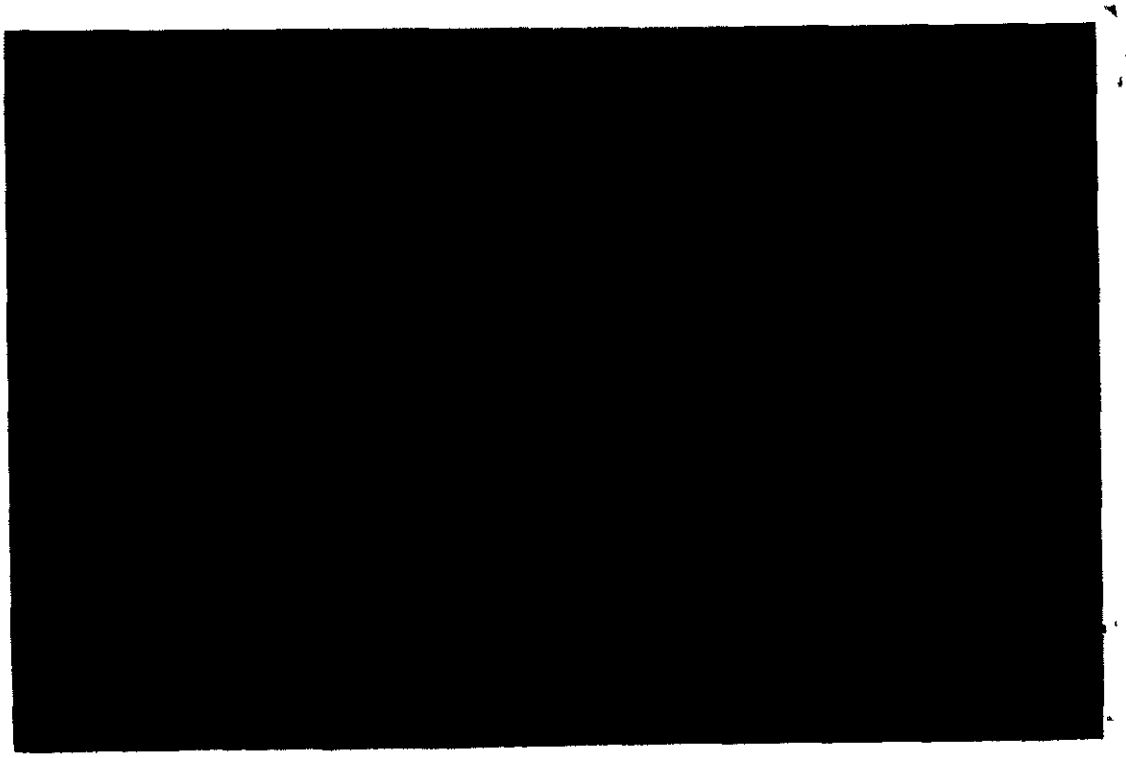
② Ditch leading from spring. Recently maintained

PHOTOGRAPHER AND DATE OF PHOTOS [illegible] 11/29/1993

FILE NO. A51-02065 T10S R02E S. 5



① POU from NORTH end of parcel, looking SOUTH up the drainage. POU is meadow in the middle. Right of the photograph.



② FENCE line between SENE (on left) and NENE (on Right).

No IRRIGATION IN # SENE.

51-C.2C65 photos by M M.

11/29/1992



T10S R02E
35 SESESE
leading around
house to ditch
on east side
of creek



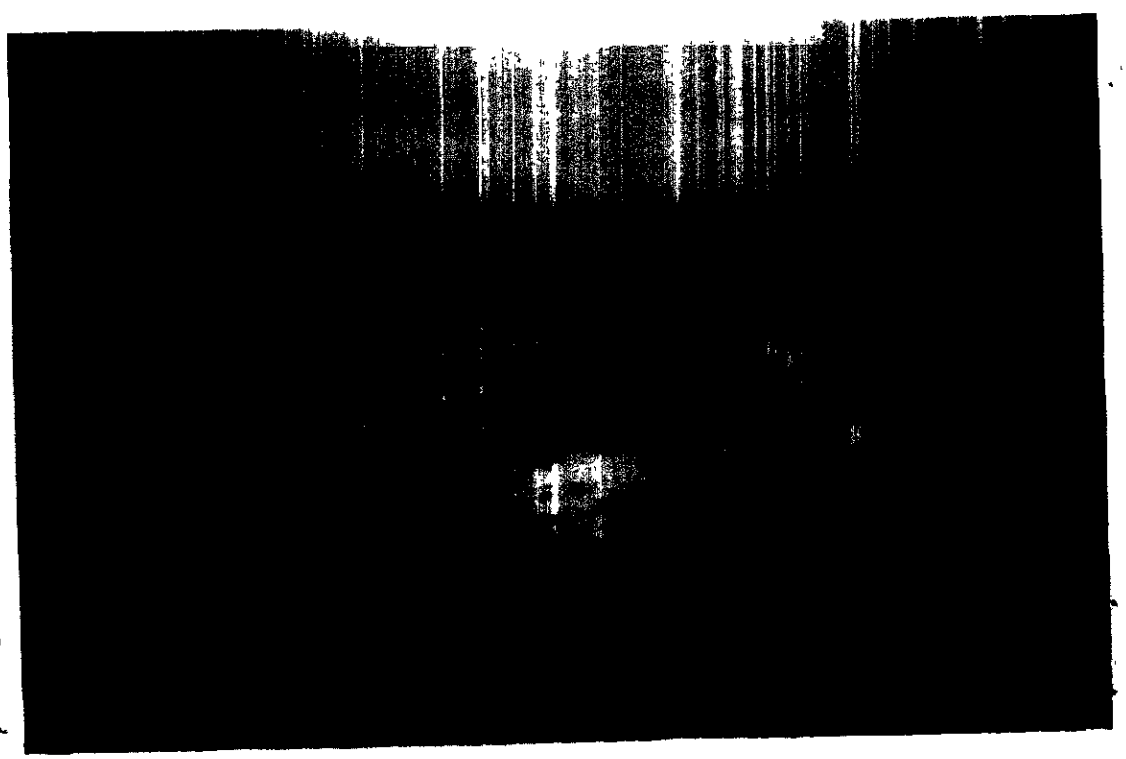
T10S 02E
35 SESWSE
Spring @
bottom of
drainage
leading out
of res

5'-5 .35 photos taken by M.M.

11/29/1993

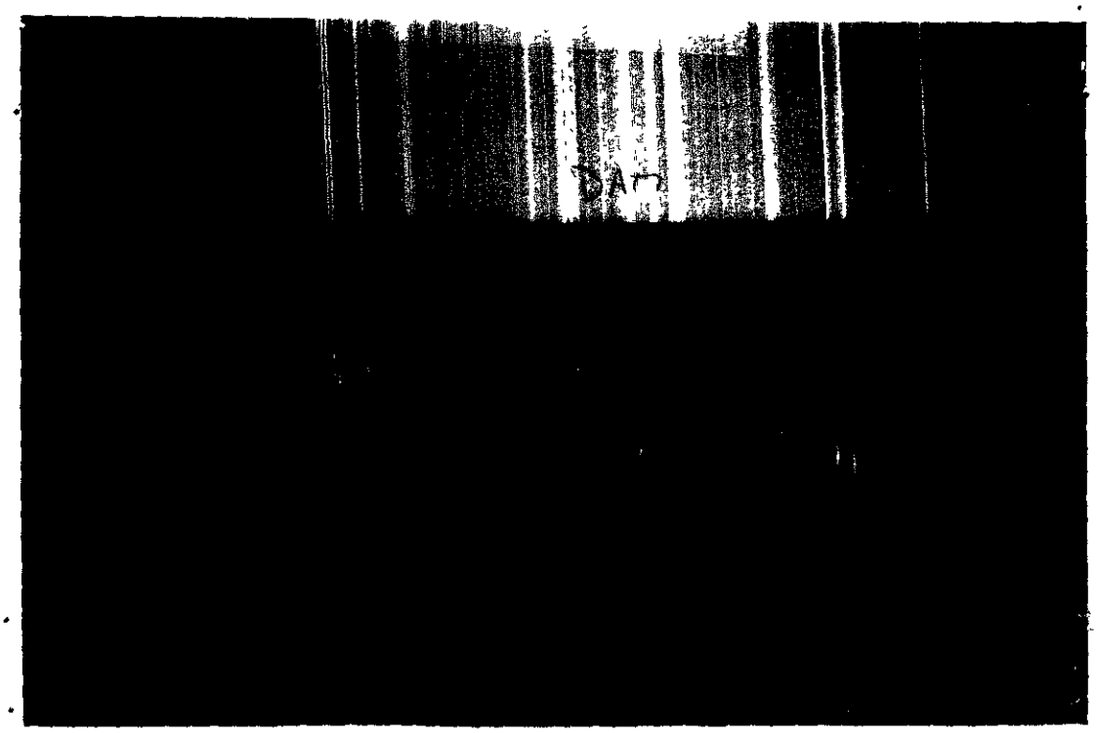


T10S, R02E
35 SESWSE
Spring area
on West
Side of Road



10S 02E
35 SWSE
Drainage /
old ditch?
leading from
Res in NENE
37 past
Spring in
the SESWSE
35 to
the "upper"
ditch (most
Westerly ditch)
Looking West
up toward
the dam

51-[illegible] Photos taken by Y M.
2.X.A-1B Goes in Fk 51-02665

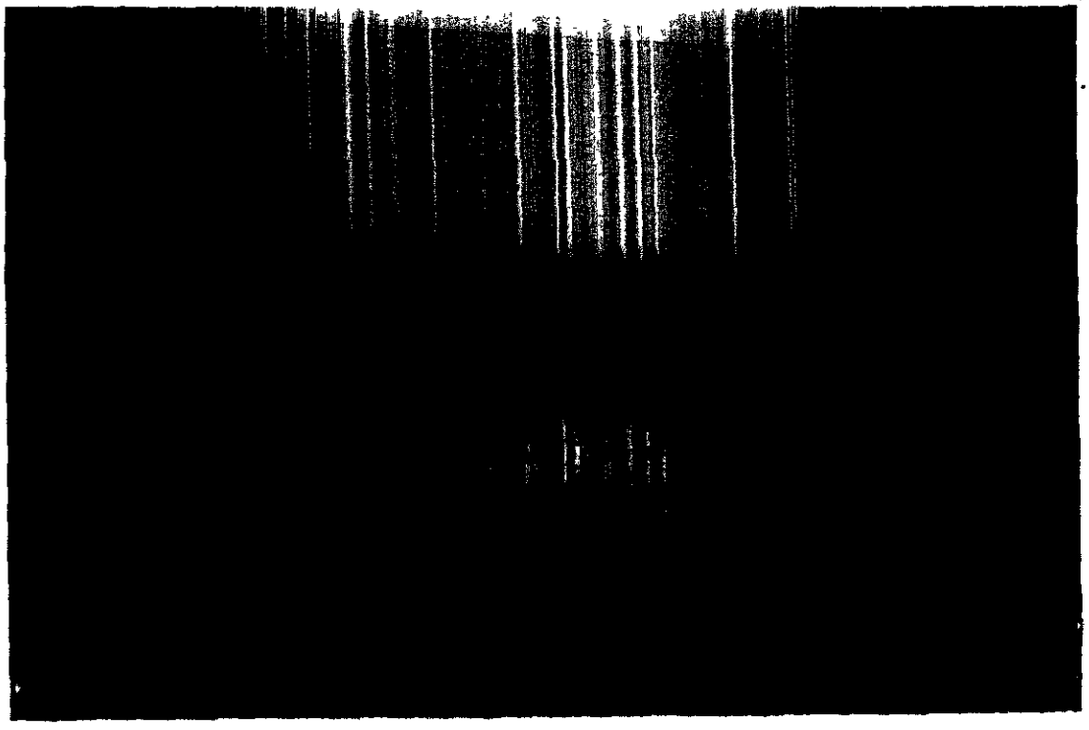


105 0.2E
55 NENE4E
Ditch
leading from
dam newly
maintained
NOBL
founde
POC

51-C22-F Photos taken by MH 11/29/1993



"Upper" ditch (most westerly" from Spring area in SE¼SW¼ Recently maintained Runs N, parallel to drainage through sagebrush.



Dam in Stream

2742

State of Idaho

License and Certificate of Water Right

Water License No. 13961 Amount 0.8 Sec. Ft.

Water District No. 57- A Priority 4-5 -19

THIS IS TO CERTIFY that WILLIAM J. OWENS,

of Brunsau, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated April 5, 19 19; that Permit No. 13961 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1 second feet, was issued thereunder on October 13, 19 19, showing that said works were completed on the 10th day of October, 19 19; and that on the 10th day of October, 19 19,

WILLIAM J. OWENS.

of Bruneau, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of a right to the use of the waters of an Unnamed Spring, a tributary of Jack Creek, for the purpose of Irrigation & Domestic use, under Use Permit No 13961 of the Commissioner of Reclamation, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 5 of Licenses, at page 2742, on the 8th day of December, 1920;

The right hereby confirmed dates from April 5, 19 19;

The Point of Diversion is located

in the SE ¼ NE ¼, Sec. 5, Tp. 10 S., R 2 E., B M.
County of Owyhee

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 0.8 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No Acres Actually Irrigated
10 S.	2 E.	5	SE¼ NE¼	10	15
			NE¼ SE¼	15	15
			SE¼ SE¼	15	10

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

Commissioner of Reclamation

WITNESS the seal and signature of the State Engineer, affixed at Boise, Idaho, this 8th day of December, 19 20

W. G. SWENDSEN.
Commissioner of Reclamation State Engineer.

(SEAL)

51 2065

REPORT OF ENGINEER

This proof is for Beneficial Use In Water District No. 21 A.

1 State name of applicant and number of permit William J. Owens, Permit # 13961

2 State source of water supply Unnamed spring.

3 Location of point of diversion SE¼ SE¼ Sec. 5, T. 10 S. R. 2 E. B.M.

4. Describe works as they exist, giving dimensions and capacities of same

Earth dam, 5' H. 15' L. No H.9.

2 ditches, 1' x 1', Cap. 1 S.F. each.

5. State whether or not water has been turned into works of diversion Yes.

6 Give exact location of lands to be irrigated If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): NE¼ SE¼, SE¼ SE¼, SE¼ NE¼, Sec, 5 T. 10 S. R. 2 E. B.M.

NE¼ SE¼, 15 A. cult, SE¼ SE¼, 10 A. cult. SE¼ NE¼, 15 A. cult.

7 Submit map on enclosed plat, showing location and details of above description

8 How many parties conduct water in this system? One.

9 Give names and amount of each right

10 What large stream would the water here appropriated finally reach? Snake River.

11 Describe the various tributaries en route from point of diversion to the principal drainage stream From land to Unnamed stream, to Meigs Creek, to Brunoau River, to Snake River.

Remarks

This examination was made on the 5 th day of August 1920.

13961

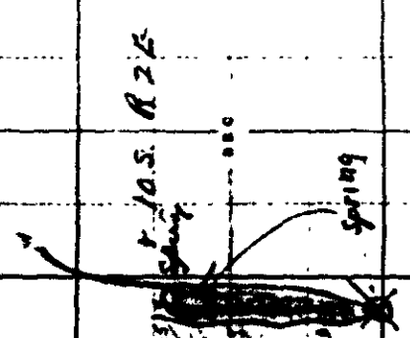
(Signed) L.R.Annett.

Examiner.

OVER

NAME OF APPLICANT: [illegible]

81-02065



SCALE: 2 INCHES=1 MILE. DRAW PLAN IN INK.

13961

51-02252

Form 23

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

REPORT OF ENGINEER

Permit No. R-766

This proof is for Beneficial Use In Water District No.

1. Name of applicant William J. Owens, Riggins, Idaho
2. Source of water supply: Snow and rain drainage tributary to Jack's Creek
3. Location of point of diversion: Is in the ~~NW¼ SW¼~~ NE¼ NE¼ of Section 7
   T. 19 S., R. 2 E., County of Owyhee
4. Describe works as they exist, giving dimensions and capacities of same:
   Dam 110 ft. long x 12' w. x 11' h. Earth dam, concrete outlet & 2 gate on upstream end. 2:1 slope upstream 2:1 down. Spillway over a small saddle. Good riprap. Small low embankment by spillway. Stream channel used for ditch. Small ditch 12' to 18' w. on bottom. No water in reservoir this year.
5. Water is used for: Irrigation and stock water
6. State whether or not water has been turned into works of diversion: yes
7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

~~W½ SW¼, SW¼ SW¼~~ Section 33, Twp. 9 S., Range 2 East, B. M.

W½ SE¼, SE NE¼, S 5, 10 S., 2 E.

This is actually a re-inspection for R-766

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

Remarks:

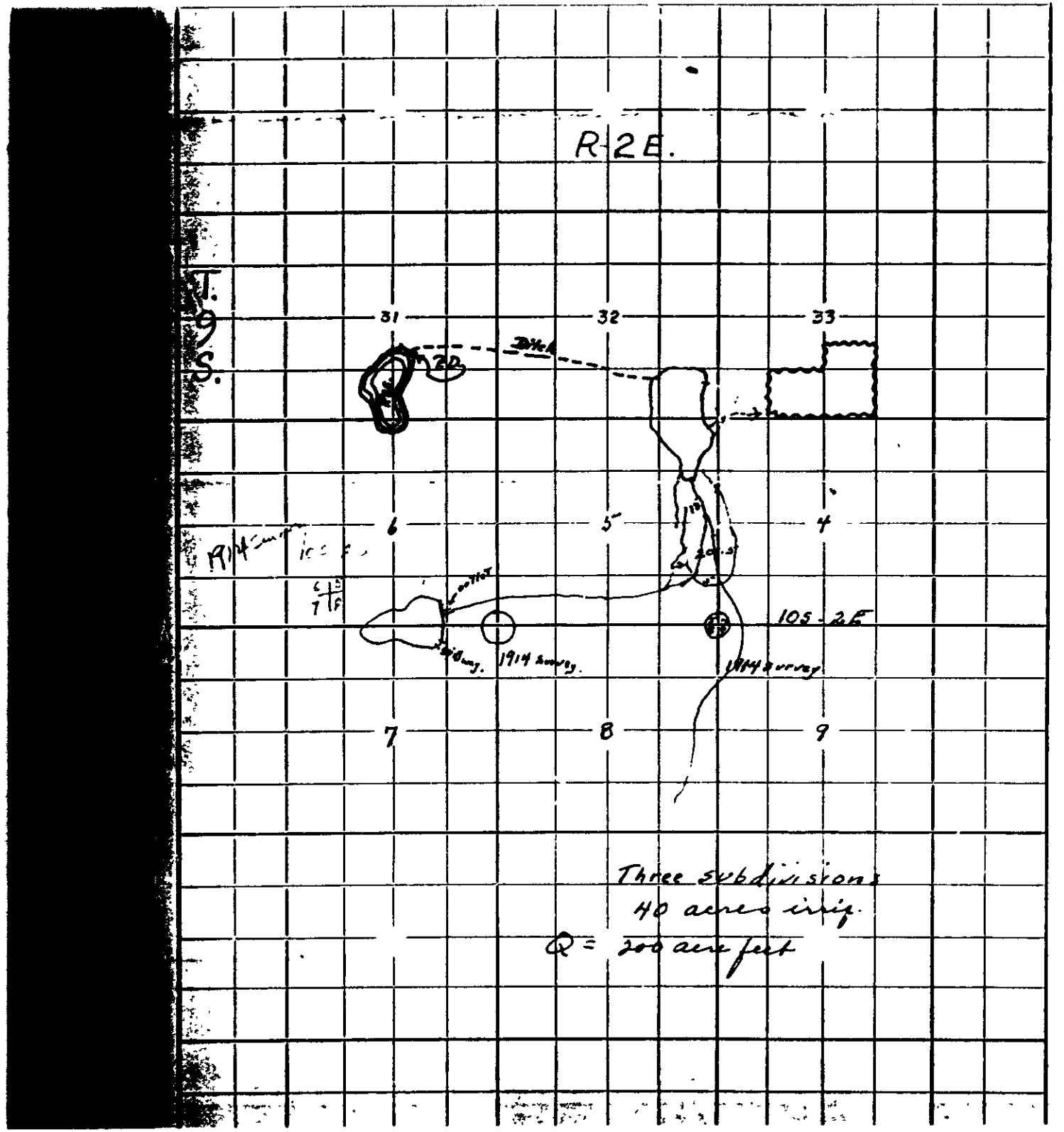
Pasture crops.
Some brome grass.

Estimated capacity = 40 a. area x 6' deep = 240 acre-feet

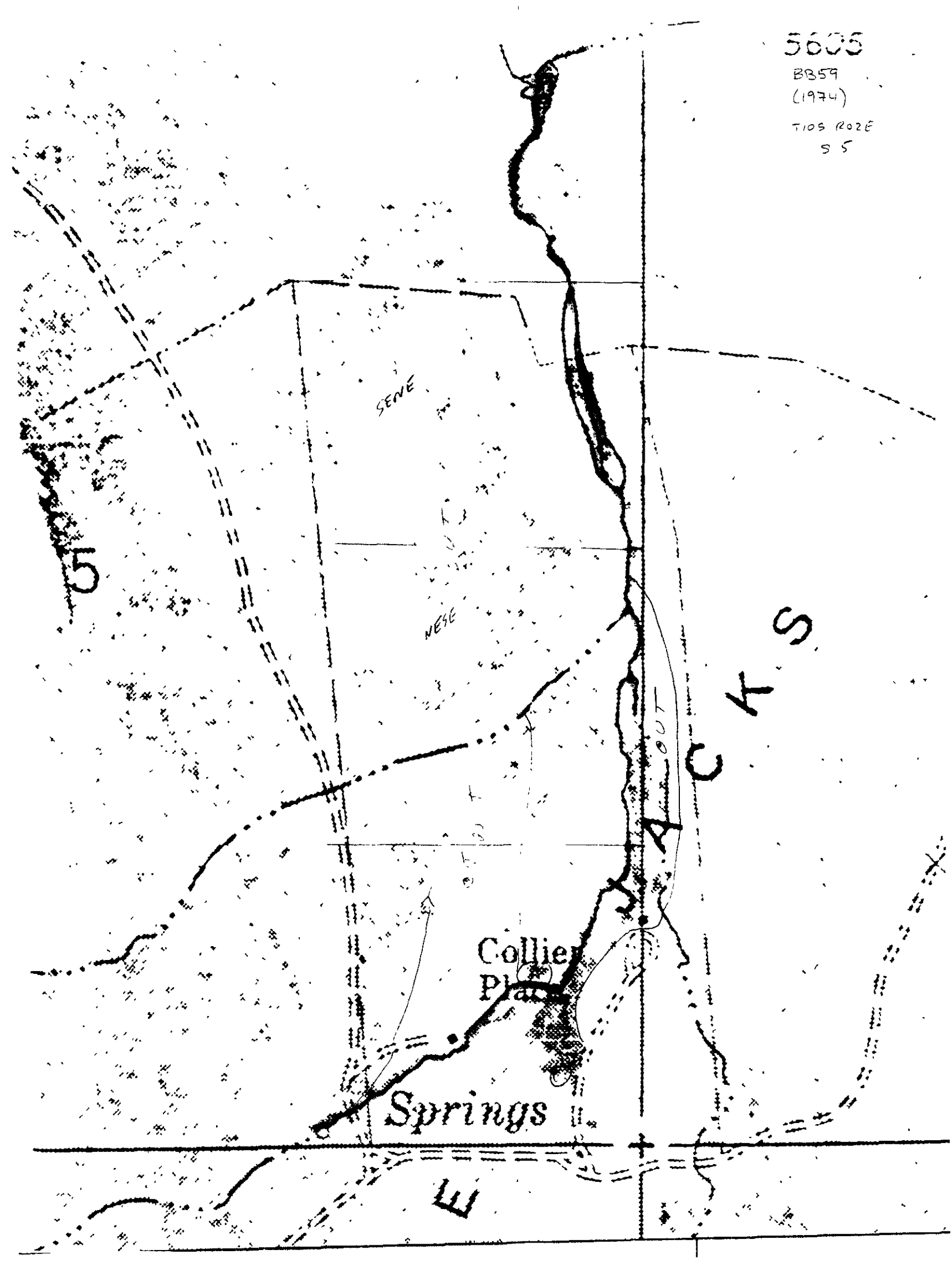
This examination was made on the 16 day of April 19 57

(Signed) E. K. Humphrey

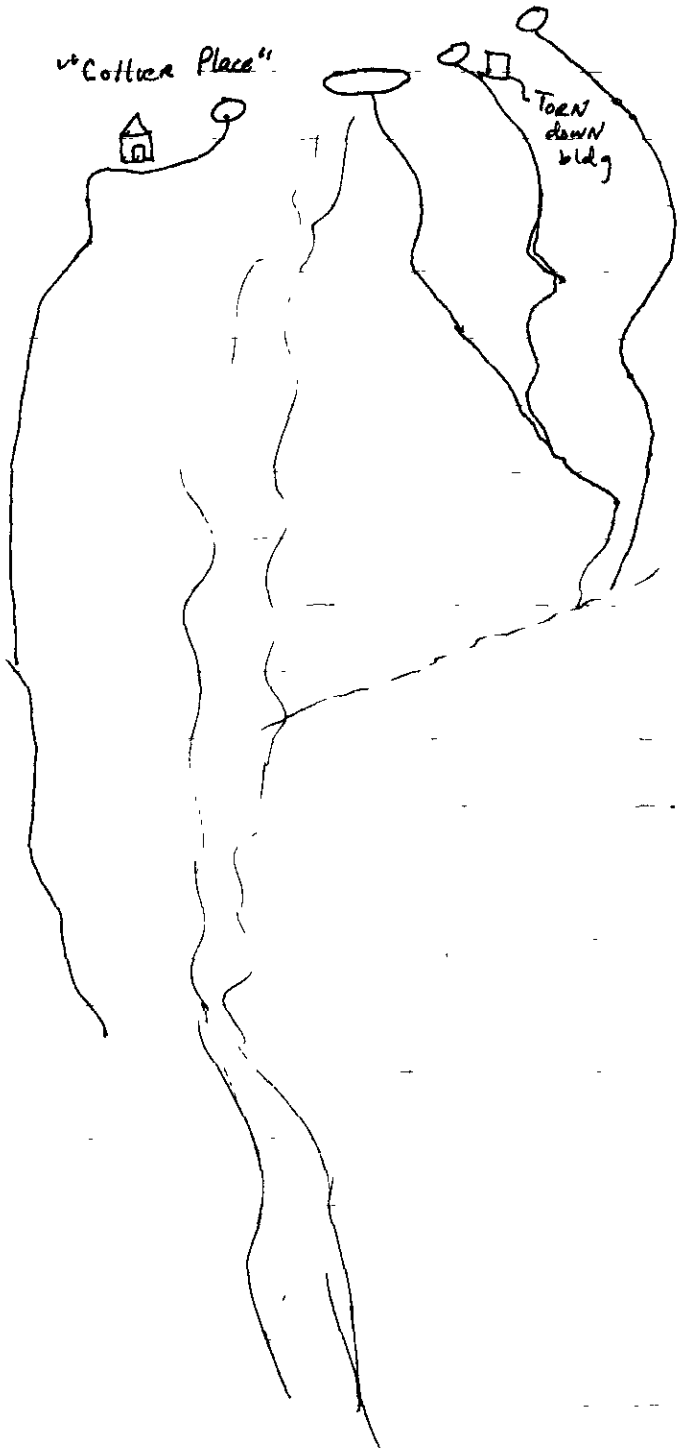
51-02252



1. Name of applicant.. A.
2. Source of water suppl.
3. Location of point of di
T. 10 S., ... R.
4. Describe works as the
Dam = 110 yds. long x /.
upstream end ... T.
Good rip rap ... Sc
Stream ... channe
No water in.
5. Water is used for: ... Ir
6. State whether or not w
7. List legal subdivisions
of acres under cultiva
than irrigation):
~~W½ SE¼, SE¼ SE¼~~ Sect
W½ SE¼ ... S
This is a
(Submit map on
8. What large stream w
Remarks:
Pasture
Some brome
Estimated
This examination was m


5605
BB59
(1974)
T10S R02E
S 5
SENE
NESE
Springs

7/19/1995



L. Jacks ~~VIA~~ directions (Ed Roy Taylor BLM)

Horse Basin

~~7~~ 7 miles from Brunpeau South on 51 To Shoofly Cut-off (RT)

≈ 1-2 miles

Gravel road on left
Broad Horse Basin Landmark

X L. Jack's once — NOT TWICE

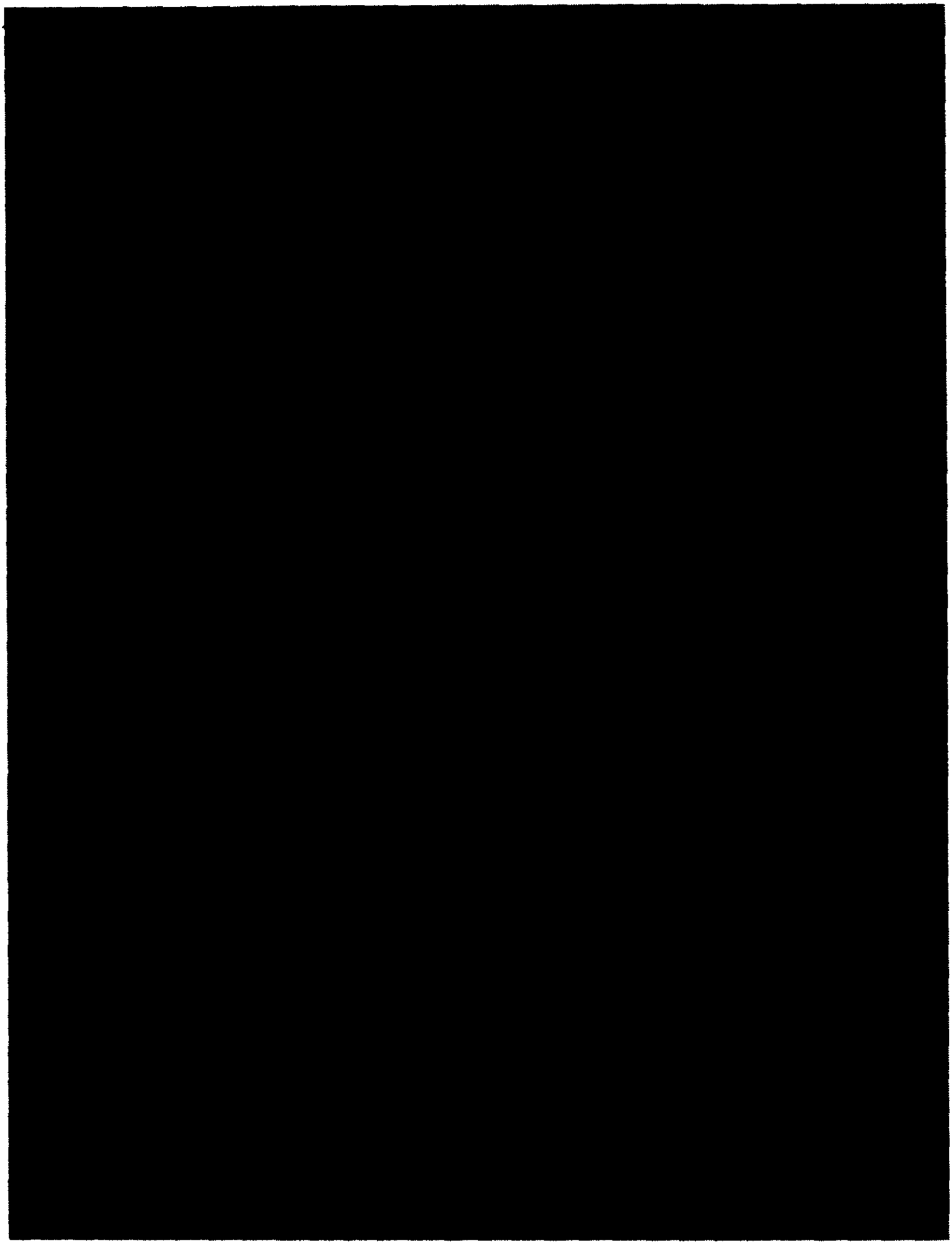
along pipeline on Horse basin
Follow pipeline

Drop X Ridge X cattleguard

(1st maj. int. (& minor)
Y (N) Road - RT TURN

Call Mr. Elroy Taylor about Road conditions
or Alan Tarter


JACKS
32133
BUCK SPRING
5
8



Idaho Dept of Water Resources

T10S, R02E, S05
Claim(s) : 51-02065
Owner(s): John Urquidi
Prepared by: Sue Bock
Date: 5/22/1998

SW Legal Description

Place of Use

Point of Diversion

Section Lines

1/4 1/4 lines

N
W E
S



1987 NAPP Photo

0 0.25 0.5 0.75 1 Miles

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 29, 1998

John Urquidi
HC 85 Box 135
Bruneau, ID 836049703

Dear Mr. Urquidi:

I have reviewed the following claims you filed in Basin 51 and would like to give you the opportunity to look over the recommendations I am making. My hope is that if you have questions, concerns, or would like to provide any additional documentation, that we could address these issues and attempt to resolve them before the Notice of Error process.

Please take a minute to look over the following information and then give me a call before June 20, 1998. I would enjoy the opportunity to sit down and meet with you

Recommendations for your Basin 51 claims.

51-00037 Recommendation: 7 acres of irrigation in Sec 15, SWSW Diversion rate 0.21 cfs irrigation and 0.07 cfs stockwater, total diversion .21 cfs. During a field exam in 1995, it was found that the lands claimed in Sec 16 are owned by Idaho Power and managed by Department of Fish and Game.

51-02008 Recommendation: Disallow. This license should have been decreed during the Bruneau River Decree. No beneficial use was found and we received no response to requests for evidence of use

51-02035 Recommendation: Disallow. Same as above

51-02058A Recommendation: Forfeited/Abandoned. No irrigation was found and affidavits submitted did not indicate any irrigation other than fields located along Sec 5

51-02058B Recommendation: Forfeited/Abandoned. Same as above

51-02065 Recommendation: 30 acres of irrigation in Sec 5, NESE, and the SESE. Diversion rate 0.80 cfs irrigation 0.11 stockwater, total diversion 0.80 cfs **Note, one of the point's of diversion located in the SWSE, is on BLM land.**

51-02201
51-02205 Recommendation: I have not been able to reach you regarding these rights. I am assuming from the field exams, that both of these wells can be used together to serve the lands covered under both rights. Therefore; I have created a permissible place of use for both of the rights. At any one time 177 acres can be irrigated with a total combined diversion rate of 3.27 cfs. This will allow you more freedom when operating these rights, however, if you should sell a piece of the land a portion of each water right would go with the land. These two rights will be left this way unless I hear otherwise.

51-02230 Recommendation: Stockwater Storage 4.0 AFA, Stockwater from Storage 4.0 AFA, total Diversion volume 4.0 AFA. Irrigation was licensed under 51-02058. Instream stockwatering was filed on under 51-10229.

51-02252 Recommendation: Forfeited/Abandoned. Dam has not held water since at least 1972 as evidenced by 4 different dam inspections. During 1993 filed exam you indicated the lands were no longer irrigated.

51-04102 Recommendation: Disallow. No lawful appropriation shown. There was no mention of Springs in the licensing exams and we have received no response to our requests for evidence of priority.

51-10140 Recommendation: Stockwater use at a diversion rate of 0.22 cfs. No evidence of irrigation was found and no evidence of priority submitted.

51-10228 Recommendation: Disallow. No beneficial use found and no evidence of priority submitted.

51-10250 Recommendation: Disallow. No lawful appropriation shown, no response to requests for evidence of priority. These lands are covered under licensed rights, 51-02201 and 51-02205.

Sincerely,

Susan Bock
Senior Water Resources Agent

enclosures: water right profiles and GIS maps.

SB:sb

RECEIVED
JUL 25 1995
WATER RESOURCES
WESTERN REGION

July 25, 1995

Dear Maria:

My name is John Urquidi. I have been ranching since 1986 when I took over the management of the Urquidi's ranches, which includes the Jack's Creek Basin private properties, here after referred to as the Basin Ranch.

I can personally attest that the basin ranch has been irrigated by me from 1988 to present day. It has been difficult because of trespassing cattle from Chet Sellman and Dave Lathinen who control federal range leases and are not authorized to graze in the Urquidi basin area. the continued long term drought has also hindered irrigation.

I do understand both Dave and Chet grazed this area when Chet leased the basin ranch in 1987. It was obvious that the cattle had destroyed much of the meadow by concentrating to many cattle on the only water sources, causing heavy washouts. I know this for Daves unauthorized use was cause sighted by Chet Sellman for terminating the lease.

I was also informed by the BLM that there monitoring showed a 200% over consumption of the available forage (in short they trashed the place to dust'). I was more than pleased to take the ranch back under my control and heal it.

I now understand both Chet and Dave have filed conflicting water claims on water covered by the Urquidis property. I do contest their claims. The Urquidi's water licenses are the basis for Urquidi's Snake River Adjudication claims. Chet and Dave have no basis for their conflicting claims and could not acquire such basis through leases, for neither I or the BLM authorized such activities. The BLM has no provision for authorizing grazing leases to consume water resources located on private property or water presently controlled by private individuals.

It is a conflict of personal interest by Chet and Dave, to contest basin water rights and to estimate spring volumes. It is the BLM's responsibility to file valid claims and petition for conflicting claims or water rights.

I have rock cut out ditches, blasted by Bill Owens family to prove existence of ditches not fresh cut soil ditches. I have maintained these ditches even when the cattle have stomped out several portions of the ditches each year. This has allowed me to utilize all available water.

It is my understanding that surplus water on Urquidis water rights if available could be permitted. But without the continued maintenance of Urquidis diversions and storages there will be no such surplus.

I have told you BLM has interfered with my storage and diversion points, in one case blocking the drainage with a dam above our license storage and diversion points denying us our rightful water. The blockage of the drainage by BLM has reduced and cut spring volumes and natural creek flows.

I continue to protest any BLM or other claims for water above our deeded property, in the vicinity of 10 S.2 E. sec. 4, 9 and 9 S.2 E. ser. 33 and any claiming water leaving the same place. I thank you for your attention in this matter and look forward to our future cooperation.

Sincerely,

John Urquidi

John Urquidi

c.c. Susan Buxton
John Urquidi

RECEIVED
JUL 25 1995
WATER RESOURCES
WESTERN REGION

RECEIVED
JUL 29 1995

July 25, 1995

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Sincerely,

John Urquidi

John Urquidi

c.c. Susan Buxton
John Urquidi

RECEIVED
JUL 25 [illegible]

July 25, 1995

Dear Maria,

I am writing you to request all information available in preliminary or final form on water in the vicinity and relating to our Jack Creek Basin ranch, located in the following legals; 10 S.2 E. sec. 4, 5 and 9 S.2 E.sec. 33. I also write to confirm your assessments and evaluations of the creek as intermittent in nature.

Your telephone request for a third additional tour, evaluation, inspection on August 3. 1995, appears excessive. I have not been informed of your legal basis for so many inspections. I have not even had a detailed written account of what you are evaluating or inspecting. I deny you permission to enter or cross Urquidi's private property until such time as a written account is available. You can arrange meeting either through me or Susan Buxton, my lawyer, at 531 1800, if you have any further questions. Thank you for your cooperation.

Sincerely,

John Urquidi

John Urquidi

c.c. Susan Buxton
John Urquidi

RECEIVED
JUL 31 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 14, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RE: Notices of Claim to a Water Right Nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

As you requested, I am sending a copy of the response from Mr. Chester Sellman and Mr. David Lahtinen to this office's request for information. A copy of their letter is enclosed. Although I wrote to these men separately, they responded together with the same letter.

IDWR staff from this office will be visiting the Little Jack's property on Wednesday, July 19, 1995. Your assistance is welcome; please contact this office at any time before the morning of the 14th to set up a place and time to meet us before going out to the basin.

If you have any questions or need additional information, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Corr. dated July 7, 1995

RECEIVED
JUL 10 1995
WATER RESOURCES
WESTERN REGION

July 7, 1995

Maria Minicucci, Water Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

RE: Springs in Little Jack's Creek Basin

Dear Ms. Minicucci,

In answer to a request for clarification the dams that John Uriquidi put across the creek flows were to provide irrigation for his fields. This was the first time this water has been diverted as long as we can remember, at least 25 years. These dams were put in places where no dam had ever been built before. These springs only flow about 5-10 inches of water during the summer months, which is not enough to irrigate crops, but if left in the creek channel, it would flow through the fence and water cattle. These dams stopped the free flow of this spring water through his fields to outside stock water holes, causing them to be completely dry. There has never been an attempt to irrigate the fields with this water prior to John Uriquidi building the dams in 1991. We always had stock water below his field and now we have none.

We would be glad to accompany you on a tour of this area to clarify any other questions you might have. Your help in this matter would be greatly appreciated.

Sincerely,

Chester W. Sellman

David Lahtinen

Chester W. Sellman
David Lahtinen

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

CHESTER W SELLMAN
HC 85 BOX 169A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Sellman:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water fcr stock use until Mr. Urquidi made some changes?

Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

DAVID LAHTINEN
HC 85 BOX 167A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Lahtinen:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

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Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RESPONSE DATE: JUNE 12, 1995

RE: Notices of claim to a water right nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

Please read this letter carefully. Important information about the above referenced Snake River Basin Adjudication (SRBA) claims is explained, and a response from you is required.

IDWR is finalizing the recommendations to the SRBA court for the above-referenced claims. This office has received a letter from private parties which alleges there has been no irrigation from the springs in Twp. 10S, Rge. 02E, sections 5 and 8, or from Little Jacks Creek in Twp. 09S, Rge 02E, section 33, from 1966 to 1991. The ASCS map from 1988 does not show any irrigation for the lands in Twp. 10S, Rge. 02E, sections 4 and 5, or Twp. 09S, Rge. 02E, section 33.

Under Idaho law, a water right may be forfeited by five years of continuous nonuse. The use of water may be resumed under some circumstances, but the resumption of use after forfeiture will sometimes result in a change in the prioirity date of the water right to the date use was resumed.

Before IDWR may recommend the claims listed above, you must submit one of two types of evidence. First, you may submit evidence showing use of the water during the period referenced above. Such evidence must show use frequent enough to leave no five year period of nonuse. Second, you may provide IDWR with the date of resumption (including month, day, and year) and submit some evidence tending to support that date.

Please submit the requested information by the response date noted at the top of this letter. If no response to this letter is received by IDWR by the Response Date, the referenced claims will be recommended to the court for disallowal on the basis that the rights were forfeited by nonuse.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 10, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RESPONSE DATE: DECEMBER 24, 1993

Dear Mr. Urquidi:

As we discussed during my field visit at Grasmere yesterday, I am sending copies of previous correspondence from IDWR to you. As these letters indicate, it is most important that we receive evidence of the priority dates claimed. I cannot recommend these claims to the Court without evidence of priority. Please attend to these matters as soon as possible, as investigation of these claims will not continue until the necessary documentation of the claimed priority dates is received.

We also discussed your claims for groundwater from artesian wells located in Twp. 7S, Rge. 06E, Sec. 21. In order to investigate the earlier priority date which was claimed on these wells, documentation of the number of acres irrigated in 1914 by the original well is necessary. This documentation may be in the form of a notarized affidavit signed by a person who has personal knowledge of the number and location of the acres irrigated by the original well in 1914, or crop reports from those irrigated acres which indicated the location and number of acres.

Other documentation will assist me in reviewing claims on your property on Little Jack's Creek, and the Grasmere place (Crab Creek and Nanny Creek). Please send some evidence of the continual use of water for irrigation on these lands. Again, this documentation may be in the form of a signed notarized statement from a person with personal knowledge of the irrigation practices on those lands.

As I mentioned yesterday, and in my previous letter, the required documentation must be submitted in a timely manner. Please submit these documents by the response date shown at the top of this letter.

Please contact me if you have any questions or need additional information. My telephone number is listed at the top of this letter.

Sincerely,

Maria Minitucci
Water Agent, Adjudication Bureau

MM/m
Enc.s: Corr. dated 01/18/1993, 10/12/1993, 11/23/1993
"Evidence of Priority" pamphlet

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 12, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RE: SRBA CLAIM NOS. A51-04102 A51-10140 A51-10228 A51-10250

Dear Mr. Urquidi:

We are currently in the process of preparing the above-referenced Notice of Claims for court decree in the Snake River Basin Adjudication. On January 28, 1993, we sent a letter to you requesting evidence of priority for these claims. This evidence was to be submitted by March 15, 1993. As of today, we have not received any information regarding the priority dates claimed.

Evidence of the priority date claimed must be submitted to the Department before we can make a recommendation to the Court. Enclosed is an additional copy of the pamphlet which describes the documents that may be submitted in support of the priority dates that you have claimed.

If we do not receive the requested information by October 22, 1993, these claims will be recommended to be disallowed due to lack of evidence supporting any priority date. Please submit this supporting documentation by October 22, 1993.

We have tried to contact you by telephone in recent weeks, and have left messages on your answering machine. There are some field exams which must be conducted on your SRBA claims, including the above-referenced claims. Although it is not mandatory for you to be present during these field exams, the assistance of a person knowledgeable about your specific water uses help the Department make an accurate recommendation to the court.

Please contact me by October 18, 1993, to schedule these field exams.

I will look forward to hearing from you soon. I will be happy to answer any questions you have regarding your SRBA claims and/or the Department's requirements.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc.

RECEIVED
MAR 02 1992
Department of Water Resources
Western Regional Office

February 27, 1992

Linda Werner, Water Resource Agent
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Dear Linda,

We are writing this letter to protest an action taken by John Uriquidi in August of 1991.

Our cattle are licensed in the Battle Creek Allotment from June 1 through September 30. While they are in this allotment we have always depended on the Jack Creek Basin springs as an important water source for the cattle.

These springs surface on B.L.M. land and on Uriquidi deeded land, T9S, R2E, Sec. 5 & Sec. 8. The water collects into a central channel and travels down through the Uriquidi property; exits onto the B.L.M. where the cattle water and then back into Uriquidi property and fenced B.L.M. land. After the water travels through these fenced lands, T9S, R2E, Sec. 33, it again exits onto B.L.M. land where it becomes a tributary of Cottonwood Creek which is a tributary of Little Jacks Creek, T9S, R2E, Sec. 34.

In August of last year John Uriquidi hired a back hoe and damned this basin springs creek in two places causing the creek to dry up. We then had to move the cattle to alternate water sources, putting them under stress and causing them and their calves to do poorly the remainder of the grazing season.

We can attest to the fact that this was the first time in over twenty five years that this creek flow has been disturbed. The customary use of this water over the last quarter century has been strictly stock water and we would ask that the Water Resource Department act to restore this usage.

Sincerely,

Chester W. Sellman
David Lahtinen

Chester W. Sellman
H.C. 85 Box 169A
Bruneau, Idaho 83604

David Lahtinen
H.C. 85 Box 167A
Bruneau, Idaho 83604

MICROFILMED
AUG 10 1992

FIELD REPORT
Urquidi Property in Little Jack's Creek Basin

On October 29, 1993, I visited the property with Jan Shurte, (IDWR Western Region SRBA water rights supervisor), accompanied by Mr. John Urquidi. We walked the drainage from the area below the dam located in T10S, R02E, section 7, NENE, to the small dam located in T10S, R02E, section 5, NENE.

The diversion from Little Jack's Creek appears to be in the SESWSE of section 5, and is ditched to the north along the west side of the meadow along Little Jack's Creek.

Springs have been developed in the SESE of section 5. There are at least three springs which have been dug out and ditched to the west and east sides of the drainage. The furthest west of these ditches runs through sagebrush and appeared to be newly maintained. The "middle ditch" runs along the west side of the meadow and there is another ditch along the base of the hill on the east side of the drainage. These ditches had water in them and the claimant indicated that they bleed down into the meadow. There were also several dams in the stream itself.

The portion of the drainage in the E½SE¼ appeared to be a meadow that has been enhanced by the water control efforts of the claimant. The lower part of the drainage (E½NE¼) did not show evidence of irrigation and had extensive sagebrush.

We returned to our vehicles and drove to the dam in section 7, NENE. It appeared that the reservoir has not been used to store water in many years. There are extensive shrubs growing in the reservoir area and on the dam itself. Mr. Urquidi indicated that water is no longer diverted from the reservoir. We then drove around to the location of Buckaroo Spring in the center of section 4. It was getting dark by this time and we were unable to see anything other than sagebrush by the side of the road.

I returned to the site on July 19, 1995, accompanied by Ms. Kay Walker (IDWR western region SRBA sr. water agent). Our goal was to take pictures of the lands in sections 4 and 33 since I was unable to get pictures of these areas during our first visit. We drove to the property on the road from the northeast side of the property and viewed the lands in sections 33 and 4. We found no evidence of irrigation and dense sagebrush was growing in both locations. We took pictures of both locations, unaware that there was no film in the camera we were using.

We continued on to section 5, where Mr. Urquidi met us. We were unsure if he would be available for this exam, but he walked the drainage again with us. There was some water in the small reservoir in section 5, NENE, and the damp soils along the margin of the reservoir indicated that more water had been stored in the recent past. We continued along the drainage into the NWNW of section 4 and the south quarter of section 33. A ditch, which appeared to be recently maintained, was evident along the south side of the stream in this area, but there was no evidence of irrigation. I walked around the ridge on the south side to approximately the SWSWSE and saw no evidence of irrigation. We returned to our vehicles and left the property via the road to the west of the meadow in section 5.

Prepared April 9, 1996 by Maria Minicucci, IDWR W. region Sr. Water Agent

MEMORANDUM

SRBA CLAIM NO. A63-02065

****
****

This claim is based on a licensed water right. The license was not subject to the Bruneau River Decree since the right is located in the Jack's Creek drainage which was specifically excluded from the decree.

The license was issued exactly as permitted. The acreage calculations appear to have been estimated, based on the permitted amount.

The point of diversion is shown on the licensing exam as located in the SENE of section 5. Another spring is noted in the SESE of the section, but is crossed out. A field exam conducted 11/29/1993 found two springs located in the SESE and one spring in the SWSE. These springs all appeared to contribute water to the meadows along the creek. It seems odd that the spring in the SENE would be the source for the water right, since the water would have to run against the gradient of the drainage. In addition the springs in the S2SE produce more water than the area in the SENE. It may be that the spring which is the source of the water right has always been the one(s) in the SESE, but since the permit was issued for a spring in the SENE, the examiner recommended that location. There are no intervening appropriators and the hassle of amending the permit may have seemed excessive for a water right located far from any other property owner (See correspondence in license file regarding the difficulty in submitting proof of beneficial use because the owner was in the back country for many months at a time). No date of change is required for the "change" in location of the source because it is not clear that the spring which is the source of this water right has been any other than one of the springs located in the SESE. The point of diversion described on the license appears to be in error.

The recommended spring for this claim is the "middle" spring, located in the SWSESE, on or near the line with the NWSESE. A spring was also found in the SESWSE which follows the natural drainage, then is ditched to the north. This spring is not recommended because: A. it was not licensed; B. the ditch from the spring area runs to the north through sagebrush and does not appear to provide any (irrigation) beneficial use.

Another spring was found in the SESESE. This spring is ditched around the house and to the east side of the drainage. This spring is not recommended because: A. Based on the licensing exam, all licensed acres are on the west side of the creek. These acres on the east side are not licensed from springs although the licensing exam for 51-02252 does show these acres as irrigated from the

reservoir to the west of the property (no longer used). The BLM owns the acres on the east side of the drainage (in section 4).

The recommended spring is ditched to the north until it reaches the unnamed stream in the NESE of section 5. At this point the ditch joins the unnamed stream and flows into the creek. The NAPP confirms that this is the limit of the "irrigation"/sub. on the west side of the drainage. There is a wet area to the north (downstream) in the SENE of section 5, but based on the OQ and NAPP this is an area where the stream is braided.

There is conflicting information about the historical use of water on this land. Correspondence date Feb. 17, 1992, from C.W. Sellman and D. Lahtinen asserted that the use of the water in the creek has been strictly for stock water for the last 25 years. It is unclear if they were referring to water in the creek or the spring(s). A later affidavit dated Aug. 7, 1995, by C.W. Sellman, states that water has always flowed freely through the Urquidi fields and has not been used for irrigation purposes. In a letter dated July 7, 1995, Sellman and Lahtinen explained further that in previous years the springs have flowed into the creek until the time that Mr. Urquidi put the aforementioned dams in the creek. At this time, it appears to me that the protests revolve around the small dams in the creek and not whether or not irrigation has been occurring from the spring sources. Before the dams were put in, the water, both from the creek and from the springs (via ditches?), flowed freely down through the drainage. The dams now impede the flow, and the water dams up on the Urquidi property rather than further downstream in the dam located in the NENW section 5, or continuing downstream. Mr. Urquidi does not have a water right to store water from the creek. Since the creek appears to be a perennial stream, Mr. Urquidi may also be in violation of the Stream Channel Protection Act.

The affidavit of William J. Owens states that ditches and dams were used to irrigate the property for many years. It is unclear if the affidavit is describing dams in the ditches or in the stream.

TO DO:
1. Request date of change from claimant (addl springs) – Another Claim?
2. Evidence of irrigation 1966-1991
   (1987 ASCS - no irr; 1974 OQ - no irr)
3. Review ASCS records from 1970's & 80's
4. Discuss dams w/ G. Gibson, Stream channel protection

↳ SRBA determination of water rights then address dams in stream. TTT 12/30/1996

≈ 10 acres

ADJUDICATION MEMORANDUM

CLAIM NO.: Urquidi's L. Jack's Cr. Basin **SUBJECT:** other claims in Basin

EMPLOYEE: TT Minicucci **DATE:**

08/02/1995 2:55 pm Returned Mr. Urquidi's call. I left a message that we would not be going out to L. Jack's Creek Basin tomorrow and for him to call w/ any questions. At 3:00 Mr. Urquidi called back & left a message that he needed the information on the Jack's Creek Basin area. At 3:10 I left another message that I would send profile reports of all the sections mentioned in his letter (07/25/1995).

08/03/1995 11:45 Mr. Urquidi called about the BLM & private B/U claims filed for stockwater in the L. Jack's Creek Basin. He questions the claimed priority dates and what evidence had been submitted on those claims. Since my knowledge of what the BLM has submitted for evidence of priority is limited, I referred Mr. Urquidi to Roxanne McCarthy of our state office SRBA staff. She has worked more closely w/ the BLM claims and is probably a better source of information. Mr. Urquidi indicated that he wishes his letter of ~~the~~ July 25th as a protest to the B/U stockwater claims filed in L. Jack Creek Basin. As far as his licenses in that area, I told Mr. Urquidi that I needed documentation supporting irrigation from the years 1967 through 1992.

Mr. Urquidi also requested copies of the laws pertaining to the hearings involving complaints that his licenses are no longer valid. I emphasized that no action has yet been taken by IDWR (ie Dave Tuthill) and that should IDWR decide to take action then Mr. Urquidi would be notified and his

Urquidi's L. Jack's Creek Basin claims

8/3 CON'T

options explained to him. Mr. Urquidi Requested copies of the laws governing the procedures that IDWR would be using, which I agreed to send. I again said that no action had been taken and would not be taken until Mr. Tuthill returns to work (08/14/1995). Today I mailed copies of Idaho Code 42-350, 42-351 42-352 and 42-1701A to Mr. Urquidi. He wanted time to prepare information should the department require it.

7/14/1995 3:30 pm

Dave Lahtinen 845-2208

Dams in the creek are holding water back.

No water in reservoir in last 25 years.

* Stockwater & irrigation rights downstream

Main concern is that channel has been dammed + water is no longer flowing in the channel

I said I would discuss w/ DRT for our next step, & call him (Mr. Lahtinen) back early next week.

ADJUDICATION MEMORANDUM

CLAIM NO.: L. Jacks Basin **SUBJECT:** Photographs

EMPLOYEE: TT Minicucci **DATE:** 07/24/1995

3:15 pm : left message on machine that photos taken the 19th did not work out (did not come out) and that we would be heading back out Aug 03. ~~tot~~ Indicated that we would be happy to have him along & that we would be leaving first thing (ie 7 a.m.) the morning of the 3rd.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A51-02058, 02065, 02230, 02252

This form is to be used to document public record information requests regarding any SRBA claim or claims. 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. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent M Minicucci **Date** 05/18/1995

Contact Person(s) John Urquidi

Nature of Contact IDWR CORR of May 17, 1995

Substance of Communication Mr. Urquidi requested copy of letter. He indicated that the authors of the letter had previously leased the property in question from him. Mr. Urquidi will call early Next week to set up an appointment to come into the office. Copy of letter sent to Mr. Urquidi today @ 11:00 a.m.

02/23/1995

John Sullivan 384-3338

Catch Basin on BLM ground. Trespass. BLM property for reservoirs. Upper Reservoir was breached. Lower reservoir has been used to store water but no Right of way exists (on BLM property). BLM has requested that Mr. Urquidi provide evidence that ~~BLM~~ right of way has existed in the past, but he has not done that yet. Requested 2 years ago. BLM does not have info on irrigation - pictures of public land only. In Mr. Sullivan's recollection no water has been used for stockwater & not irrigation.

MEMO TO SRBA CLAIM FILE NO. _____ - _____

CLAIMANT'S NAME: John Vequidi DATE: _____

COUNTY: Owyhee

EMPLOYEE: MMinicucci

11/29/1993 After several busy signals, I left a message on Mr. Vequidi's machine for him to call about an appt. today. He had said that he'd check his machine if he had to go out this morning.

11/29/1993

Mr. Vequidi called back. We agreed to meet at Bruneau Cafe - Stop @ NOON.

02058 02230
02065 02252

MEMO TO SRBA CLAIM FILE NO. A51 - 02065

CLAIMANT'S NAME: John Vegvidi 845-2844 DATE: 11/16/1993

COUNTY: Owyhee

EMPLOYEE: MMinuccucci

9:25 a.m. I called Mr. Vegvidi to reschedule the field exams originally scheduled for today. He called @ approximately 7:30 am to cancel today's appointment, but I was already on the road & was unable to speak with him directly. I left a message on his machine that I would be in the office today, and out the rest of the week. I also said I would check in to get messages, and that I will be available any day next week except Thursday (Thanksgiving Day).

10:30 a.m. ~~After~~ Speaking with my roommate, who took the message from Mr. Vegvidi, she said that he mentioned that I should be able to find the "Grasmere Place" (i.e. Crab Cr) w/no problem. I assume he means he will be unavailable to show that system to me.

11/26/1993 Friday

left message on Mr. Vegvidi's machine for him to call me regarding field exams, specifically L. Jack's property. I said I would be available Mon. 11/29 afternoon.

11/29/1993 8:15 a.m. Mr. Vegvidi called. I had a field exam scheduled w/ Simplot Livestock this morning, & told Mr. Vegvidi I'd like to go out today & would call him back to set up a time (after I spoke with Simplot)

MEMO TO SRBA CLAIM FILE NO. _____

CLAIMANT'S NAME: John Urquidi

DATE: 10/25/1993

COUNTY: Owyhee

EMPLOYEE: M Minicucci

1200 gal/min x 1/448

2.67

Hauling beets until end of next

10S 2E is under litigation w/ BLM Little Jack's Creek

BLM is disputing water use in that area

November

Affects of Well Discharge - - - Bauneau area

has discharge measurements for wells

02201

02205

A51-02065

6-90 STATE OF IDAHO Adjudication Claim No.

DEPARTMENT OF WATER RESOURCES

Staff Analysis Sheet For

SRBA Claim Verification Field Report

A. Prior to Conducting the Exam, the File Contains:

___ Claim Verification Report(CVR)

_✓_ Copy of Adjudication Claim

___ Copies of pertinent files(prev. rts., exams, etc.)

_N/A_ Well Inspection Form (If Needed)

_✓_ Copy of U.S.G.S. Quad map, orthophotoquad, or NAPP photography

_✓_ Check P.D. & P.U. desc. for Govt. Lots(if a lot is found, a copy of the Govt. plat is needed to add the lot onto the R claim file later.

_✓_ Check CVR for P.D. overlap(see page titled Pt. of Div. Review Sheet)

_✓_ Check AJ & WR P/D indexes(to ck. accuracy of CVR overlap ckd. above)

Overlap _X_ yes ___ no If yes: ___ copy of claims & water rights incl?

Type of Overlap? ___ Add acres or uses to existing system

___ Increase rate of flow or volume

___ Other: A51-02252 - point of re-diversion

_✓_ Check CVR for P.U. overlaps(see page titled Pl. of Use Review Sheet)

___ Check AJ & WR P/U indexes(to ck. accuracy of CVR overlap ckd. above)

Overlap _X_ yes ___ no If yes: _✓_ copy of claims & water rights incl?

Type of Overlap? ___ Increase rate of flow or volume

___ Add P/D's

___ Increase number of acres within tracts

_X_ Different source for same acres (A51) 02252

___ Other: ~~(A)51-02252~~ -

_✓_ Appointment Letter Sent? 10/12/1993 MM (initial & date)

_✓_ Appointment Made and Telephone Conversation Memo Attached

B. After Conducting the Exam, the File Contains:

___ Fully Completed and Signed CVR Form

___ Photographs of Point(s) of Diversion and Place of Use

___ Completed map outlining Point(s) of Diversion and Place of Use

C. Review and Processing:

Claim No. submitted for weekly exam completed prog. report? ___ Yes ___ No

Exam completed date data entered on claim _____ (initial & date)

Claim Verification Report completed _____ (initial & date)

Was CVR spot-checked by Supervisor? ___ Yes ___ No _____ (initial & date)

R claim file created _____ (initial & date)

Recommendations entered on R claim file _____ (initial & date)

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

T. Robert Tindall **being first duly sworn, deposes and says:** I leased the Urquidi property, known as Jack's Creek Basin, in 1985 & 1986. I can testify that the water was not dammed off and was allowed to remain in the creek channel through the Urquidi property onto B.L.M. land. The water was used to water livestock, not for irrigation purposes. I feel this water has now been dammed off just for storage, not for irrigation, just so the other permittees could not use it as stock water.

T. Robert Tindall
(Signature)

Subscribed and sworn to before me this day 7th **of** August, **19**95.

SEAL

Dyal Compton
(Notary Public)

Residing at Burns, Or.

My Commission Expires 1/12/98.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

I Frank Davis being first duly sworn, deposes and says: I have been on and around Jack's Creek Basin since 1962. Had I leased from 1977 to 1985 and have never seen any irrigating being done. I haven't been on the propity for the past 3 yrs.

Frank Davis
(Signature)

Subscribed and sworn to before me this day 28th of July, 1995.

SEAL

Donald L Hedges
(Notary Public)

Residing at Bruneau Id Box 170 83604

My Commission Expires May 2nd 2000.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

David Lahtinen being first duly sworn, deposes and says: Havening been Cattle in the Vacinity of Jacks Creek for over thirty years & helped the owned brothers before that & havening leased the property for several years before it was sold to Hyndman. The

There has never been dames put in the springs or Creek and the water has always flowed to the out side water holes which he has dried up with the new dams he's put in.

No one had irrigated their ground for over 30 years. some of these dames were put in Solely to dry up water to outside Cattle. This is a tributary of Jacks Creek of which we hold the first water rights. therefore we request that these dams & water right be terminated.

David Lahtinen
(Signature)

Subscribed and sworn to before me this day 9th of August, 1995.

SEAL

Donald L Hodges
(Notary Public)

Residing at Bruneau Idaho.

My Commission Expires May 2-6 2000.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

Chester W. Sellman **being first duly sworn, deposes and says:** I have ran cattle in the Little Jack's Creek Basin area since September of 1968. My dad grazed cattle in the area for many years before me. I also leased the John Urquidi property from April 1, 1987-February 1990. There was never any dams in the creeks on the Urquidi property at any time during the last 30 years that I have been operating in this area until August 1991 which prompted me to send Linda Warner at Idaho Department of Water Resources a protest letter. This was the first time the creek flow had been disturbed. The water has always flowed freely through the Urquidi field and has not been used for irrigation purposes. The water has previously been used only for livestock water.

Chester W. Sellman
(Signature)

Subscribed and sworn to before me this day 2nd **of** August, **19**95.

SEAL

David Campbell
(Notary Public)

Residing at Rupert, Id.

My Commission Expires 1/15/98.

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

LEASE OF BASE PROPERTY

For consideration received I, John Urquidi, (Lessor) agree to lease the following described lands and associated grazing priviledges to Chester W. Sellman (lessee) for a period of two years beginning April 1, 1987 and ending April 1, 1989.

All range improvements associated with this lease will be the responsibility of Chester W Sellman (lessee) as far as maintenance is concerned.

Leased lands offered as base property:

Owens Place - (648 acres, 364 AUMs active preference).

- SE¼ SW¼, SW¼ SE¼, NW¼ SE¼, Section 33 T9S, R2E.
- NE¼, N½ SE¼, E½ NW¼, NW¼NW¼, NE¼ SW¼, Section 4, T10S, R2E.
- E½ SE¼, SE¼NE¼, Section 5, T10S, R2E.

LESSOR: John Urquidi Date 3/16/87

LESSEE: Chester W. Sellman Date 3/16/87

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

Lease of Base Property

For considerations recieved I John Urquidi (lessor) agree to lease the following described Lands an associated grazing rights to Chester Sellmen (lessee) for a period of one year beginning March 1, 1989 and ending February 28, 1990.

Lessor shall not assign the Lessee's interest in this lease to a third Party nor sublet any of the leased assets to anyone. Lessee also covenants and warrants to Lessor that he will not enter into any agreement with any third party to sell assign or change the scope of the associated grazing right incumbent on leased Lands with a consultation and written aproval of lessor.

Lessor shall at all reasonable times have the right to come upon the leased Lands for the purpose of inspecting Lessor's property, making repairs or capital improvements.

Maintenance of All improvements on leased property and associated range will be the responsibility of lessee for term of lease.

Leased Lands

Owens Place - (649 acres 364 AUMs active preference)
- SE¼SW¼, SW¼SE¼, NW¼SE¼ sec 33 T9S R2E
- NE¼, N½SE¼, E½NW¼, NW¼NW¼, NE¼SW¼ sec. 4 T10S R2E
- E½SE¼, SE¼NE¼ sec. 5 T10S R2E

Lessor:

I Chester Sellman agree to Pay John Urquidi
$ 1900 on, or before April 1, 1989 and $1800.00
at the end of the graying season for lease
of Base Property.

See attachment for terms;

Lessor:
Lessee:

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AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

_____ being first duly sworn, deposes and says:_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(Signature)

Subscribed and sworn to before me this day _____ of _____, 19____.

SEAL

_____

(Notary Public)

Residing at _____.

My Commission Expires _____.

WESTERN REGION

CLAIM NUMBERS 51-0.2065 _____ _____ _____ _____ _____

AGENT SB DATE 6/9/98

TOTAL ACRES FROM RECOMMENDATION _____

GEOGRAPHIC INFO SYSTEM ACRES 30

READY FOR DECREE ____ (YES) SENT FOR DECREE ____ (YES)

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM																			
GIS																			
RECOM																			
GIS																			

POLYGON CREATED ON 80__

POLYGON # ( )( )( )( ) _____ UPDATED BY

ATTRIBUTES OF B51-POU.SHP (74)( )( )( )( )

ATTRIBUTES OF B51-POD.SHP (71)(72)(73)(74)( )

B51-DBPOU.DBF _____ UPDATED BY

B51-DBPOD.DBF _____ UPDATED BY

Edited in notebook

RDH GPSTABLE

In the [illegible] of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 09 1995
WATER RESOURCES
WESTERN REGION

T. Robert Tindall **being first duly sworn, deposes and says:** I leased the Urquidi property, known as Jack's Creek Basin, in 1985 & 1986. I can testify that the water was not dammed off and was allowed to remain in the creek channel through the Urquidi property onto B.L.M. land. The water was used to water livestock, not for irrigation purposes. I feel this water has now been dammed off just for storage, not for irrigation, just so the other permittees could not use it as stock water.

Copies

T. Robert Tindall
(Signature)

Subscribed and sworn to before me this day 7th **of** August, **19** 95.

SEAL

[illegible]
(Notary Public)

Residing at [illegible].

My Commission Expires 1/13/01.

In the ... Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

I Frank Davis being first duly sworn, deposes and says: I have known and ... Jacobi Creek Basin since 1963 Hwy ... from 1977 to 1985 and know ... any irrigat... being done ... I have ... on the property for the past ... years.

Frank Davis
(Signature)

Subscribed and sworn to before me this day 28th of July, 1995.

SEAL

Donald L Hedges
(Notary Public)

Residing at Bruneau ID Box 170 83604

My Commission Expires May 2nd 2000.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

David Lattimer being first duly sworn, deposes and says: Havering been Cattle in the Vacinity of Jacks Creek for over thirty years & helped the owned brothers before that & having leased the property for several years before it was sold to Reynolds. The

There had never been dams put in the springs or Creek and the water had always flowed to the out side water holes which he had dried up with the new dams he's put in.

No one had irrigated this ground for over 30 years. some of these dams were put in Solely to dry up water to outside Cattle. This is a tributary of Jacks Creek of which we hold the first water rights. therefore we request that these dams & water rights be terminated.

David Lattimer
(Signature)

Subscribed and sworn to before me this day 9th of August, 1995.

SEAL

Donald L Harlan
(Notary Public)

Residing at Bruneau Idaho.

My Commission Expires May 2-6 2000.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

Chester W. Sellman **being first duly sworn, deposes and says:** I have ran cattle in the Little Jack's Creek Basin area since September of 1968. My dad grazed cattle in the area for many years before me. I also leased the John Urquidi property from April 1, 1987-February 1990. There was never any dams in the creeks on the Urquidi property at any time during the last 30 years that I have been operating in this area until August 1991 which prompted me to send Linda Warner at Idaho Department of Water Resources a protest letter. This was the first time the creek flow had been disturbed. The water has always flowed freely through the Urquidi field and has not been used for irrigation purposes. The water has previously been used only for livestock water.

Chester W. Sellman
(Signature)

Subscribed and sworn to before me this day 2nd **of** August, **19**95.

SEAL

David Campbell
(Notary Public)

Residing at Payette, Id.

My Commission Expires 1/15/96.

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 14, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RE: Notices of Claim to a Water Right Nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

As you requested, I am sending a copy of the response from Mr. Chester Sellman and Mr. David Lahtinen to this office's request for information. A copy of their letter is enclosed. Although I wrote to these men separately, they responded together with the same letter.

IDWR staff from this office will be visiting the Little Jack's property on Wednesday, July 19, 1995. Your assistance is welcome; please contact this office at any time before the morning of the 14th to set up a place and time to meet us before going out to the basin.

If you have any questions or need additional information, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Corr. dated July 7, 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

DAVID LAHTINEN
HC 85 BOX 167A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Lahtinen:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water for stock use until Mr. Urquidi made some changes?

Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

CHESTER W SELLMAN
HC 85 BOX 169A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Sellman:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water for stock use until Mr. Urquidi made some changes?

Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region. 2735 Airport Way, Boise. Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RESPONSE DATE: JUNE 12, 1995

RE: Notices of claim to a water right nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

Please read this letter carefully. Important information about the above referenced Snake River Basin Adjudication (SRBA) claims is explained, and a response from you is required.

IDWR is finalizing the recommendations to the SRBA court for the above-referenced claims. This office has received a letter from private parties which alleges there has been no irrigation from the springs in Twp. 10S, Rge. 02E, sections 5 and 8, or from Little Jacks Creek in Twp. 09S, Rge 02E, section 33, from 1966 to 1991. The ASCS map from 1988 does not show any irrigation for the lands in Twp. 10S, Rge. 02E, sections 4 and 5, or Twp. 09S, Rge. 02E, section 33.

Under Idaho law, a water right may be forfeited by five years of continuous nonuse. The use of water may be resumed under some circumstances, but the resumption of use after forfeiture will sometimes result in a change in the prioirity date of the water right to the date use was resumed.

Before IDWR may recommend the claims listed above, you must submit one of two types of evidence. First, you may submit evidence showing use of the water during the period referenced above. Such evidence must show use frequent enough to leave no five year period of nonuse. Second, you may provide IDWR with the date of resumption (including month, day, and year) and submit some evidence tending to support that date.

Please submit the requested information by the response date noted at the top of this letter. If no response to this letter is received by IDWR by the Response Date, the referenced claims will be recommended to the court for disallowal on the basis that the rights were forfeited by nonuse.

If you have any questions or need additional information, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc: Profile reports for A51-02058, A51-02065, A51-02230, A51-02252

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 10, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RESPONSE DATE: DECEMBER 24, 1993

Dear Mr. Urquidi:

As we discussed during my field visit at Grasmere yesterday, I am sending copies of previous correspondence from IDWR to you. As these letters indicate, it is most important that we receive evidence of the priority dates claimed. I cannot recommend these claims to the Court without evidence of priority. Please attend to these matters as soon as possible, as investigation of these claims will not continue until the necessary documentation of the claimed priority dates is received.

We also discussed your claims for groundwater from artesian wells located in Twp. 7S, Rge. 06E, Sec. 21. In order to investigate the earlier priority date which was claimed on these wells, documentation of the number of acres irrigated in 1914 by the original well is necessary. This documentation may be in the form of a notarized affidavit signed by a person who has personal knowledge of the number and location of the acres irrigated by the original well in 1914, or crop reports from those irrigated acres which indicated the location and number of acres.

Other documentation will assist me in reviewing claims on your property on Little Jack's Creek, and the Grasmere place (Crab Creek and Nanny Creek). Please send some evidence of the continual use of water for irrigation on these lands. Again, this documentation may be in the form of a signed notarized statement from a person with personal knowledge of the irrigation practices on those lands.

As I mentioned yesterday, and in my previous letter, the required documentation must be submitted in a timely manner. Please submit these documents by the response date shown at the top of this letter.

Please contact me if you have any questions or need additional information. My telephone number is listed at the top of this letter.

Sincerely,

Maria Minitucci
Water Agent, Adjudication Bureau

MM/m
Enc.s: Corr. dated 01/18/1993, 10/12/1993, 11/23/1993
"Evidence of Priority" pamphlet

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 12, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RE: SRBA CLAIM NOS. A51-04102 A51-10140 A51-10228 A51-10250

Dear Mr. Urquidi:

We are currently in the process of preparing the above-referenced Notice of Claims for court decree in the Snake River Basin Adjudication. On January 28, 1993, we sent a letter to you requesting evidence of priority for these claims. This evidence was to be submitted by March 15, 1993. As of today, we have not received any information regarding the priority dates claimed.

Evidence of the priority date claimed must be submitted to the Department before we can make a recommendation to the Court. Enclosed is an additional copy of the pamphlet which describes the documents that may be submitted in support of the priority dates that you have claimed.

If we do not receive the requested information by October 22, 1993, these claims will be recommended to be disallowed due to lack of evidence supporting any priority date. Please submit this supporting documentation by October 22, 1993.

We have tried to contact you by telephone in recent weeks, and have left messages on your answering machine. There are some field exams which must be conducted on your SRBA claims, including the above-referenced claims. Although it is not mandatory for you to be present during these field exams, the assistance of a person knowledgeable about your specific water uses help the Department make an accurate recommendation to the court.

Please contact me by October 18, 1993, to schedule these field exams.

I will look forward to hearing from you soon. I will be happy to answer any questions you have regarding your SRBA claims and/or the Department's requirements.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc.

RECEIVED
MAR 02 1992
Department of Water Resources
Western Regional Office

February 27, 1992

Linda Werner, Water Resource Agent
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Dear Linda,

We are writing this letter to protest an action taken by John Uriquidi in August of 1991.

Our cattle are licensed in the Battle Creek Allotment from June 1 through September 30. While they are in this allotment we have always depended on the Jack Creek Basin springs as an important water source for the cattle.

These springs surface on B.L.M. land and on Uriquidi deeded land, T9S, R2E, Sec. 5 & Sec. 8. The water collects into a central channel and travels down through the Uriquidi property; exits onto the B.L.M. where the cattle water and then back into Uriquidi property and fenced B.L.M. land. After the water travels through these fenced lands, T9S, R2E, Sec. 33, it again exits onto B.L.M. land where it becomes a tributary of Cottonwood Creek which is a tributary of Little Jacks Creek, T9S, R2E, Sec. 34.

In August of last year John Uriquidi hired a back hoe and damned this basin springs creek in two places causing the creek to dry up. We then had to move the cattle to alternate water sources, putting them under stress and causing them and their calves to do poorly the remainder of the grazing season.

We can attest to the fact that this was the first time in over twenty five years that this creek flow has been disturbed. The customary use of this water over the last quarter century has been strictly stock water and we would ask that the Water Resource Department act to restore this usage.

Sincerely,

Chester W. Sellman
David Lahtinen

Chester W. Sellman
H.C. 85 Box 169A
Bruneau, Idaho 83604

David Lahtinen
H.C. 85 Box 167A
Bruneau, Idaho 83604

MICROFILMED
AUG 10 1992

RECEIVED
JUL 10 1995
WATER RESOURCES
WESTERN REGION

July 7, 1995

Maria Minicucci, Water Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

RE: Springs in Little Jack's Creek Basin

Dear Ms. Minicucci,

In answer to a request for clarification the dams that John Uriquidi put across the creek flows were to provide irrigation for his fields. This was the first time this water has been diverted as long as we can remember, at least 25 years. These dams were put in places where no dam had ever been built before. These springs only flow about 5-10 inches of water during the summer months, which is not enough to irrigate crops, but if left in the creek channel, it would flow through the fence and water cattle. These dams stopped the free flow of this spring water through his fields to outside stock water holes, causing them to be completely dry. There has never been an attempt to irrigate the fields with this water prior to John Uriquidi building the dams in 1991. We always had stock water below his field and now we have none.

We would be glad to accompany you on a tour of this area to clarify any other questions you might have. Your help in this matter would be greatly appreciated.

Sincerely,

Chester W. Sellman

David Lahtinen

Chester W. Sellman
David Lahtinen

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 14, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RE: Notices of Claim to a Water Right Nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

As you requested, I am sending a copy of the response from Mr. Chester Sellman and Mr. David Lahtinen to this office's request for information. A copy of their letter is enclosed. Although I wrote to these men separately, they responded together with the same letter.

IDWR staff from this office will be visiting the Little Jack's property on Wednesday, July 19, 1995. Your assistance is welcome; please contact this office at any time before the morning of the 14th to set up a place and time to meet us before going out to the basin.

If you have any questions or need additional information, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Corr. dated July 7, 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

DAVID LAHTINEN
HC 85 BOX 167A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Lahtinen:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water for stock use until Mr. Urquidi made some changes?

Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

CHESTER W SELLMAN
HC 85 BOX 169A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Sellman:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water for stock use until Mr. Urquidi made some changes?

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Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RESPONSE DATE: JUNE 12, 1995

RE: Notices of claim to a water right nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

Please read this letter carefully. Important information about the above referenced Snake River Basin Adjudication (SRBA) claims is explained, and a response from you is required.

IDWR is finalizing the recommendations to the SRBA court for the above-referenced claims. This office has received a letter from private parties which alleges there has been no irrigation from the springs in Twp. 10S, Rge. 02E, sections 5 and 8, or from Little Jacks Creek in Twp. 09S, Rge 02E, section 33, from 1966 to 1991. The ASCS map from 1988 does not show any irrigation for the lands in Twp. 10S, Rge. 02E, sections 4 and 5, or Twp. 09S, Rge. 02E, section 33.

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Sincerely,

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Water Agent, Adjudication Bureau

MM/m
Enc: Profile reports for A51-02058, A51-02065, A51-02230, A51-02252

State of Idaho
DEPARTMENT OF WATER RESOURCES

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FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 10, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RESPONSE DATE: DECEMBER 24, 1993

Dear Mr. Urquidi:

As we discussed during my field visit at Grasmere yesterday, I am sending copies of previous correspondence from IDWR to you. As these letters indicate, it is most important that we receive evidence of the priority dates claimed. I cannot recommend these claims to the Court without evidence of priority. Please attend to these matters as soon as possible, as investigation of these claims will not continue until the necessary documentation of the claimed priority dates is received.

We also discussed your claims for groundwater from artesian wells located in Twp. 7S, Rge. 06E, Sec. 21. In order to investigate the earlier priority date which was claimed on these wells, documentation of the number of acres irrigated in 1914 by the original well is necessary. This documentation may be in the form of a notarized affidavit signed by a person who has personal knowledge of the number and location of the acres irrigated by the original well in 1914, or crop reports from those irrigated acres which indicated the location and number of acres.

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As I mentioned yesterday, and in my previous letter, the required documentation must be submitted in a timely manner. Please submit these documents by the response date shown at the top of this letter.

Please contact me if you have any questions or need additional information. My telephone number is listed at the top of this letter.

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Maria Minitucci
Water Agent, Adjudication Bureau

MM/m
Enc.s: Corr. dated 01/18/1993, 10/12/1993, 11/23/1993
"Evidence of Priority" pamphlet

State of Idaho
DEPARTMENT OF WATER RESOURCES

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FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 12, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RE: SRBA CLAIM NOS. A51-04102 A51-10140 A51-10228 A51-10250

Dear Mr. Urquidi:

We are currently in the process of preparing the above-referenced Notice of Claims for court decree in the Snake River Basin Adjudication. On January 28, 1993, we sent a letter to you requesting evidence of priority for these claims. This evidence was to be submitted by March 15, 1993. As of today, we have not received any information regarding the priority dates claimed.

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Please contact me by October 18, 1993, to schedule these field exams.

I will look forward to hearing from you soon. I will be happy to answer any questions you have regarding your SRBA claims and/or the Department's requirements.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc.

RECEIVED
JUL 25 1995
WATER RESOURCES
WESTERN REGION

July 25, 1995

Dear Maria:

My name is John Urquidi. I have been ranching since 1986 when I took over the management of the Urquidi's ranches, which includes the Jack's Creek Basin private properties, here after referred to as the Basin Ranch.

I can personally attest that the basin ranch has been irrigated by me from 1988 to present day. It has been difficult because of trespassing cattle from Chet Sellman and Dave Lathinen who control federal range leases and are not authorized to graze in the Urquidi basin area. the continued long term drought has also hindered irrigation.

I do understand both Dave and Chet grazed this area when Chet leased the basin ranch in 1987. It was obvious that the cattle had destroyed much of the meadow by concentrating to many cattle on the only water sources, causing heavy washouts. I know this for Daves unauthorized use was cause sighted by Chet Sellman for terminating the lease.

I was also informed by the BLM that there monitoring showed a 200% over consumption of the available forage (in short they trashed the place to dust'). I was more than pleased to take the ranch back under my control and heal it.

I now understand both Chet and Dave have filed conflicting water claims on water covered by the Urquidis property. I do contest their claims. The Urquidi's water licenses are the basis for Urquidi's Snake River Adjudication claims. Chet and Dave have no basis for their conflicting claims and could not acquire such basis through leases, for neither I or the BLM authorized such activities. The BLM has no provision for authorizing grazing leases to consume water resources located on private property or water flowing controlled by private individuals.

It is a conflict of personal interest by Chet and Dave. to contest basin water rights and to estimate spring volumes. It is the BLM's responsibility to file valid claims and petition for conflicting claims or water rights.

I have ref[illegible]ut out ditches, blasted by Bill Owens family to prove [illegible]istence of ditches not fresh cut soil ditches. I have maintained these ditches even when the cattle have tromped out several portions of the ditches each year. This has allowed me to utilize all available water.

It is my understanding that surplus water or Urquidis water rights if ava[illegible]ble could be permitted. But without the continued maintenance of Urquidis diversions and storages there will be no such surplus.

I have told you BLM has interfered with my storage and diversion points, in one case blocking the drainage with a dam above our license storage and diversion points denying us our rightful water. The blockage of the drainage by BLM has reduced and cut spring volumes and natural creek flows.

I continue to protest any BLM or other claims for water above our deeded property, in the vicinity of 10 S.2 E. sec. 4, 5 and 9 S.2 E. sec. 33 and any claiming water leaving the same place. I thank you for your attention in this matter and look forward to our future cooperation.

Sincerely,

John Urquidi

c.c. Susan Buxton
John Urquidi

RECEIVED
JUL 25 1995
WATER RESOURCES
REGION

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 17, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RESPONSE DATE: JUNE 12, 1995

RE: Notices of claim to a water right nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

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Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc: Profile reports for A51-02058, A51-02065, A51-02230, A51-02252

State of Idaho
DEPARTMENT OF WATER RESOURCES

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FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 10, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RESPONSE DATE: DECEMBER 24, 1993

Dear Mr. Urquidi:

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Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc.s: Corr. dated 01/18/1993, 10/12/1993, 11/23/1993
"Evidence of Priority" pamphlet

State of Idaho
DEPARTMENT OF WATER RESOURCES

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CECIL D. ANDRUS
GOVERNOR

R KEITH HIGGINSON
DIRECTOR

October 12, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RE: SRBA CLAIM NOS. A51-04102 A51-10140 A51-10228 A51-10250

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I will look forward to hearing from you soon. I will be happy to answer any questions you have regarding your SRBA claims and/or the Department's requirements.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc.

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JOHN URQUIDI HC 85 BOX 135 BRUNEAU ID 83604 (208) 845-2844	03/15/1930	STOCKWATER	01-01	12-31	0.14 CFS	
				TOTAL DIVERSION:		0.14 CFS	

Water Source: UNNAMED STREAM
LITTLE JACKS CREEK

Tributary to: LITTLE JACKS CREEK
BRUNEAU RIVER

Stage: BENEFICIAL USE

Point(s) of Beginning Stream Reach: T10S R02E S04 NWSE OWYHEE County
S05 NENE OWYHEE County
Point(s) of Ending Stream Reach: T09S R02E S34 SWNW OWYHEE County

Place of use Legal Description for: STOCKWATER

			NE						NW						SW						SE					
			NENE		NWNE		SWNE		SENE		NENW		NWNW		SWNW		SENW		NESW		NWSW		SWSW		SESW	
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
09S	02E	33																					S		S	
09S	02E	34													S											
10S	02E	4		S			S		S			S														
10S	02E	5		S																						

			SE					
			NESE		NWSE		SWSE		SESE	
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
09S	02E	33	S		S		S			
09S	02E	34								
10S	02E	4			S					
10S	02E	5								

POU County: OWYHEE

Non-Irrigation Uses: STOCKWATER, 500 RANGE

Other Rights: NONE

Other Water Rights Listing Overlapping Place(s) of use:
A51-02058

Remarks: ALLOTMENT NO. 0802, BATTLE CREEK

Dates: Exam Made Date: Verified Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Comments: Date: 10/02/1992 User-ID: SMITH Subject: COPIED FROM REMARKS
THE P.O.U. IS OWNED IN PART BY CLAIMANT AND BY BLM. P.O.U.
AUTHORIZATION FROM BLM BY LEASE.
THE P.O.U. IS THE SAME AS THE P.O.D..

Audit: 10/02/92 SMITH

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	JOHN URQUIDI HC 85 BOX 135 BRUNEAU ID 83604 (208) 845-2844	03/15/1930	STOCKWATER	01-01	12-31	0.14 CFS	
				TOTAL DIVERSION:		0.14 CFS	

Water Source: UNNAMED STREAM
LITTLE JACKS CREEK

Tributary to: LITTLE JACKS CREEK
BRUNEAU RIVER

Stage: BENEFICIAL USE

Point(s) of Beginning Stream Reach: T10S R02E S04 NWSE OWYHEE County
S05 NENE OWYHEE County
Point(s) of Ending Stream Reach: T09S R02E S34 SWNW OWYHEE County

Place of use Legal Description for: STOCKWATER

			NE								NW								SW								SE							
			NENE		NWNE		SWNE		SENE		NENW		NWNW		SWNW		SENW		NESW		NWSW		SWSW		SESW		NESE		NWSE		SWSE		SESE	
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
09S	02E	33																					S		S		S		S					
09S	02E	34													S																			
10S	02E	4		S			S		S			S																S						
10S	02E	5		S																														

POU County: OWYHEE

Non-Irrigation Uses: S/UP TO 500 HEAD RANGE

Other Rights: NONE

Other Water Rights Listing Overlapping Place(s) of use:
A51-02058

Remarks: THE P.O.U. IS OWNED IN PART BY CLAIMANT AND BY BLM. P.O.U. AUTHORIZATION FROM BLM BY LEASE.
THE P.O.U. IS THE SAME AS THE P.O.D..

Dates: Exam Made Date: Verified Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 03/13/89 ROUSH 10/24/89 REFUNDML

July 25, 1995

Dear Maria,

I am writing you to request all information available in preliminary or final form on water in the vicinity and relating to our Jack Creek Basin ranch, located in the following legals; 10 S.2 E. sec. 4, 5 and 9 S.2 E.sec. 33. I also write to confirm your assessments and evaluations of the creek as intermittent in nature.

Your telephone request for a third additional tour, evaluation, inspection on August 3. 1995, appears excessive. I have not been informed of your legal basis for so many inspections. I have not even had a detailed written account of what you are evaluating or inspecting. I deny you permission to enter or cross Urquidi's private property until such time as a written account is available. You can arrange meeting either through me or Susan Buxton, my lawyer, at 331-1800, if you have any further questions. Thank you for your cooperation.

Sincerely,

John Urquidi

John Urquidi

c.c. Susan Buxton
John Urquidi

RECEIVED
JUL 25 1995
WATER RESOURCES
NORTHWEST REGION

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

David Lahtinen being first duly sworn, deposes and says: Having run Cattle in the Vacinity of Jacks Creek for over Thirty years & helped the owner brothers before that & having leased the property for several years before it was sold to Reynolds. The

There has never been dams put in the springs or Creek and the water has always flowed to the out side water holes which is has dried up with the new dams he's put in.

No one has irrigated this ground for over 30 years. None of these dams were put in Solely to dry up water to outside Cattle. This is a tributary of Jacks Creek of which we hold the first water rights. therefore we request that these dams & water rights be terminated.

David Lahtinen
(Signature)

Subscribed and sworn to before me this day 9th of August, 1995.

SEAL

Donald L Hodson
(Notary Public)

Residing at Bruneau Idaho.

My Commission Expires May 2-6 2000.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 09 1995
WATER RESOURCES
WESTERN REGION

T. Robert Tindall **being first duly sworn, deposes and says:** I leased the Urquidi property, known as Jack's Creek Basin, in 1985 & 1986. I can testify that the water was not dammed off and was allowed to remain in the creek channel through the Urquidi property onto B.L.M. land. The water was used to water livestock, not for irrigation purposes. I feel this water has now been dammed off just for storage, not for irrigation, just so the other permittees could not use it as stock water.

T. Robert Tindall
(Signature)

Subscribed and sworn to before me this day 7th **of** August, **19** 95.

SEAL

Boyd Campbell
(Notary Public)

Residing at Burns, OR.

My Commission Expires 1/13/98.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

Chester W. Sellman **being first duly sworn, deposes and says:** I have ran cattle in the Little Jack's Creek Basin area since September of 1968. My dad grazed cattle in the area for many years before me. I also leased the John Urquidi property from April 1, 1987-February 1990. There was never any dams in the creeks on the Urquidi property at any time during the last 30 years that I have been operating in this area until August 1991 which prompted me to send Linda Warner at Idaho Department of Water Resources a protest letter. This was the first time the creek flow had been disturbed. The water has always flowed freely through the Urquidi field and has not been used for irrigation purposes. The water has previously been used only for livestock water.

Chester W. Sellman
(Signature)

Subscribed and sworn to before me this day 2th **of** August, 19 95.

SEAL

(Notary Public)

Residing at Ramey Id.

My Commission Expires 1/13/01.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 09 1995
WATER RESOURCES
WESTERN REGION

I Frank Davis being first duly sworn, deposes and says: I have lived and ranched in Jacks Creek Basin since 1963 with the exception from 1977 to 1985 and have never had any water rights beside those I have filed on the property for the past 32 years.

Frank Davis
(Signature)

Subscribed and sworn to before me this day 28th of July, 1995.

SEAL

Donald L Hedges
(Notary Public)

Residing at Bruneau ID Box 170 83604

My Commission Expires May 2nd 2000.

RECEIVED
JUL 10 1995
WATER RESOURCES
WESTERN REGION

July 7, 1995

Maria Minicucci, Water Agent
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

RE: Springs in Little Jack's Creek Basin

Dear Ms. Minicucci,

In answer to a request for clarification the dams that John Uriquidi put across the creek flows were to provide irrigation for his fields. This was the first time this water has been diverted as long as we can remember, at least 25 years. These dams were put in places where no dam had ever been built before. These springs only flow about 5-10 inches of water during the summer months, which is not enough to irrigate crops, but if left in the creek channel, it would flow through the fence and water cattle. These dams stopped the free flow of this spring water through his fields to outside stock water holes, causing them to be completely dry. There has never been an attempt to irrigate the fields with this water prior to John Uriquidi building the dams in 1991. We always had stock water below his field and now we have none.

We would be glad to accompany you on a tour of this area to clarify any other questions you might have. Your help in this matter would be greatly appreciated.

Sincerely,

Chester W. Sellman

David Lahtinen

Chester W. Sellman
David Lahtinen

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region. 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 14, 1995

JOHN URQUIDI
HC 85 BOX 135
BRUNEAU ID 83604

RE: Notices of Claim to a Water Right Nos: A51-02058, A51-02065
A51-02230, A51-02252

Dear Mr. Urquidi:

As you requested, I am sending a copy of the response from Mr. Chester Sellman and Mr. David Lahtinen to this office's request for information. A copy of their letter is enclosed. Although I wrote to these men separately, they responded together with the same letter.

IDWR staff from this office will be visiting the Little Jack's property on Wednesday, July 19, 1995. Your assistance is welcome; please contact this office at any time before the morning of the 14th to set up a place and time to meet us before going out to the basin.

If you have any questions or need additional information, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Corr. dated July 7, 1995

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

DAVID LAHTINEN
HC 85 BOX 167A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Lahtinen:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water for stock use until Mr. Urquidi made some changes?

Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 20, 1995

CHESTER W SELLMAN
HC 85 BOX 169A
BRUNEAU ID 83604

RE: Springs in Little Jack's Creek Basin

Dear Mr. Sellman:

This letter is a request for clarification of your later dated February 27, 1992, which was sent to Linda Werner of this office. This letter contained allegations that Mr. John Urquidi of Bruneau had disturbed the flow from springs and possibly the creek in August of 1991. A copy of that letter is enclosed.

At this time it is requested that you clarify the information in your letter. It is not clear if the disturbance by Mr. Urquidi was to provide irrigation water to his lands. You indicate in your letter that the creek flow has not been disturbed in twenty-five years - is this an indication that no diversions have occurred in that time period or that there has always been enough water for stock use until Mr. Urquidi made some changes?

Please contact this office, either by letter or telephone, by July 20, 1995, to clarify the 1992 letter. If you have any questions, please do not hesitate to contact this office.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM:m

Enc: Copy of 02/27/1992 letter

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

October 12, 1993

JOHN URQUIDI
HC 85 BOX 136
BRUNEAU ID 83604

RE: SRBA CLAIM NOS. A51-04102 A51-10140 A51-10228 A51-10250

Dear Mr. Urquidi:

We are currently in the process of preparing the above-referenced Notice of Claims for court decree in the Snake River Basin Adjudication. On January 28, 1993, we sent a letter to you requesting evidence of priority for these claims. This evidence was to be submitted by March 15, 1993. As of today, we have not received any information regarding the priority dates claimed.

Evidence of the priority date claimed must be submitted to the Department before we can make a recommendation to the Court. Enclosed is an additional copy of the pamphlet which describes the documents that may be submitted in support of the priority dates that you have claimed.

If we do not receive the requested information by October 22, 1993, these claims will be recommended to be disallowed due to lack of evidence supporting any priority date. Please submit this supporting documentation by October 22, 1993.

We have tried to contact you by telephone in recent weeks, and have left messages on your answering machine. There are some field exams which must be conducted on your SRBA claims, including the above-referenced claims. Although it is not mandatory for you to be present during these field exams, the assistance of a person knowledgeable about your specific water uses help the Department make an accurate recommendation to the court.

Please contact me by October 18, 1993, to schedule these field exams.

I will look forward to hearing from you soon. I will be happy to answer any questions you have regarding your SRBA claims and/or the Department's requirements.

Sincerely,

Maria Minicucci
Water Agent, Adjudication Bureau

MM/m
Enc.

RECEIVED
MAR 02 1992
Department of Water Resources
Western Regional Office

February 27, 1992

Linda Werner, Water Resource Agent
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Dear Linda,

We are writing this letter to protest an action taken by John Uriquidi in August of 1991.

Our cattle are licensed in the Battle Creek Allotment from June 1 through September 30. While they are in this allotment we have always depended on the Jack Creek Basin springs as an important water source for the cattle.

These springs surface on B.L.M. land and on Uriquidi deeded land, T9S, R2E, Sec. 5 & Sec. 8. The water collects into a central channel and travels down through the Uriquidi property; exits onto the B.L.M. where the cattle water and then back into Uriquidi property and fenced B.L.M. land. After the water travels through these fenced lands, T9S, R2E, Sec. 33, it again exits onto B.L.M. land where it becomes a tributary of Cottonwood Creek which is a tributary of Little Jacks Creek, T9S, R2E, Sec. 34.

In August of last year John Uriquidi hired a back hoe and damned this basin springs creek in two places causing the creek to dry up. We then had to move the cattle to alternate water sources, putting them under stress and causing them and their calves to do poorly the remainder of the grazing season.

We can attest to the fact that this was the first time in over twenty five years that this creek flow has been disturbed. The customary use of this water over the last quarter century has been strictly stock water and we would ask that the Water Resource Department act to restore this usage.

Sincerely,

Chester W. Sellman
David Lahtinen

Chester W. Sellman
H.C. 85 Box 169A
Bruneau, Idaho 83604

David Lahtinen
H.C. 85 Box 167A
Bruneau, Idaho 83604

MICROFILMED
AUG 10 1992

✓ Steve _ JAN ✓ MARIA _ Lori _ Cindy _ files

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHT NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	**PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources (department), as a result of allegations from nearby waterusers (complainants) that the above captioned water rights have been forfeited through non-use, the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The department has issued License No. 13961/51-02065 authorizing the diversion of 0.8 cubic feet per second (cfs) of water from an Unnamed Spring tributary of Little Jacks Creek for domestic use and for the irrigation of 40 acres of land located in SE1/4NE1/4 and E1/2SE1/4 Section 5, T10S, R2E, B.M., Owyhee County, Idaho. The point of diversion is located in the SE1/4NE1/4 Section 5, T10S, R2E, B.M. and the priority of use is April 5, 1919.

2. The department has issued License No. 12386/51-02058A authorizing the diversion of 0.6 cfs of water from an Unnamed Stream tributary of Little Jacks Creek for domestic use and for the irrigation of 30 acres in W1/2NE1/4 Section 4, T10S, R2E, B.M. The point of diversion is located in the NE1/4NE1/4 Section 5, T10S, R2E, B.M. and the priority of use is July 28, 1915.

3. The department has issued License No. 12386/51-02058B authorizing the diversion of 0.92 cfs of water from an Unnamed Stream tributary of Little Jacks Creek for domestic use and for the irrigation of 62 acres in W1/2SE1/4 and SESW Section 33, T9S, R2E, B.M. The point of diversion is located in the NE1/4NE1/4 Section 5, T10S, R2E, B.M. and the priority of use is July 28, 1922.

4. The department has issued License No. R150/51-02230 authorizing the diversion of water in an Unnamed Stream tributary to Little Jacks Creek and to store up to 380 Acre Feet (AF) of water in a reservoir located in NE1/4NE1/4 Section 5, T10S, R2E, B.M. (lower reservoir). The use of the water is for the irrigation of land in Section 33, T9S, R2E, B.M. The priority of use is July 15, 1919.

5. The department has issued License No. R766/51-02252 authorizing the diversion of water in an Unnamed Stream tributary

to Jack's Creek and to store up to 200 AF of water in a reservoir located in NE1/4NE1/4 Section 7, T10S, R2E, B.M. (upper reservoir). The use of the water is for the irrigation of 40 acres of land in the SE1/4NE1/4 and E1/2SE1/4 Section 5, T10S, R2E, B.M. The priority of use is August 15, 1946.

6. On February 27, 1992, the department received information from Chester W. Sellman and David Lahtinen (complainants) alleging that water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 had been forfeited through non-use.

7. The department investigated the matter and determined that the appurtenant lands to which the licensed water rights were issued are owned by John C. Urquidi and Harriett Urquidi (Urquidis). In October 1993 and in July 1995, department staff conducted on-site field investigations of the dams, ditches, real property in question, and the water use under the rights alleged to be forfeited.

8. On January 2, 1996, the department issued to the Urquidis an Order to Show Cause why water right Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 should not be found to have been forfeited through non-use.

9. The Urquidis responded to the Order to Show Cause and have generally shown that during certain years they have diverted and used water when available. Among other matters, the Urquidis allege that water use by the Bureau of Land Management (BLM) has affected the Urquidis' ability to utilize their water rights.

10. The affidavit testimony of past water use provided by the Urquidis has not been subject to cross-examination by the complainants or the BLM, and evidence and testimony has not been taken from the complainants or the BLM.

11. Department records show that the complainants and the BLM have filed Snake River Basin Adjudication (SRBA) claims on the same water sources claiming priorities that compete with the Urquidi licensed water rights. The SRBA is an ongoing general adjudication of water rights in the Snake River Basin and is further identified as Civil Case No. 39576 in the District Court of the Fifth Judicial District in and for the County of Twin Falls.

12. Department records show that the upper and lower dams of the Urquidis originally were intended as <u>storage</u> structures but now are in general disrepair and essentially serve as <u>diversion</u> structures for natural flow in Little Jacks Creek and tributaries. The upper dam temporarily impounds approximately 10 to 15 AF of water. The lower dam which washes out each year can temporarily impound approximately 60 AF after the embankment is rebuilt each year.

13. Field examination showed that Urquidis irrigate some of the land shown on the licenses as the place of use but not all of it.

14. Urquidis water stock on their land from water impounded behind the diversion dams, from the creek, and from water diverted from springs and other water sources.

CONCLUSIONS OF LAW

1. On November 19, 1987, the Fifth Judicial District Court in and for the County of Twin Falls issued an order in Civil Case No. 39576 commencing a general adjudication of the rights to the use of water from the Snake River basin pursuant to section 42-1406A, Idaho Code [uncodified]. Claims involving the nature and extent of the water rights at issue in this administrative proceeding are before the Snake River Basin Adjudication District Court pending determination by the court.

2. Chapter 14, title 42, Idaho Code, governing the judicial adjudication of water rights, contains at section 42-1321(4), Idaho Code, a provision retaining administrative jurisdiction in the Director of the Department of Water Resources as follows:

> The director retains jurisdiction of all applications, permits and licenses under chapter 2, 3, 6 or 15, title 42, Idaho Code, to take action authorized by the conditions contained in any permit or license or by applicable law and action on any application for transfer under section 42-222, Idaho Code.

3. Section 42-350, Idaho Code, provides in pertinent part as follows:

> If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully or intentionally failed to comply with any of the conditions in the license, or has wilfully or intentionally failed to comply with the provisions of the law governing the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before the date therein set, ... why the director of the department should not revoke said license; ... .

4. Information presently available to the department shows that use of water by the Urquidis does not fully match the uses authorized by water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252, but does not clearly show that the water

rights have been lost through non-use.

5. A determination regarding the extent of the water use under the Urquidi water right licenses should include consideration of the water right claims and uses of competing water users on the same water source.

6. The ongoing Snake River Basin Adjudication is the more appropriate forum to determine the nature, extent and validity of water rights represented by the Urquidi licenses, and to make similar determinations of the rights of complainants, the BLM, and other potential claimants.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Order to Show Cause issued by the department on January 2, 1996 is **SET ASIDE**; and

IT IS FURTHER HEREBY ORDERED as follows:

1. This Preliminary Order shall not be interpreted to hold that the department has determined that all or part of water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 are valid and have not been forfeited through non-use.

2. This Preliminary Order does not preclude a determination of the nature, extent, and validity of water rights represented by water right License Nos. 51-02065, 51-02058A and B, 51-02230 and 51-02252 in the ongoing Snake River Basin Adjudication.

Dated this 11th day of July, 1996.

L. GLEN SAXTON, Chief
Water Allocation Bureau

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of July, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the following:

Susan E. Buxton
MOORE & MCFADDEN CHARTERED
999 Main St. STE 910
Boise, ID 83702

John Urquidi
HC 85 Box 135
Bruneau, ID 83604-9703

IDWR - Western Region
2735 Airport Way
Boise, ID 83705

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary

CONVERSATION MEMORANDUM

DATE 3/26/96

FILE Arguidi et al

NAME OF PARTY Susan Buxton, Attorney for Arguidis

EMPLOYEE Steve Leifer

RE: ORDER TO SHOW CAUSE - Extension of Time

Atty. called, working on Response for 3/29 deadline. Scope of issues appears to keep growing, is seeking to narrow scope per "Ellen" Requested information.

Needs to discuss with ORT counsel - may need more time to avoid undue confusion in her response.

Will send letter Requesting Extension if possible mtg. with ORT to help in this process.

I told her that can't see a problem with Another Extension if circumstances have ~~been~~ unexpectedly become more confusing.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

March 12, 1996

Susan E. Buxton, Esq.
Moore & McFadden, Chartered
One Capital Center, Suite 910
999 Main Street
Boise, ID 83702

RE: Alleged Forfeiture of Water Rights Nos. 51-02058, 51-02065, 51-02230 and 51-02252

Dear Susan:

The purpose of this letter is to document the Department's response to your request for extension of time dated February 23, 1996, in the above-referenced matter.

As we discussed telephonically, I am allowing an extension of time until March 29, 1996, for the gathering of materials and preparation of a response. For informational purposes I am forwarding copies of your letter and this response to the two complainants in this matter.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

cc: David Lahtinen
Chet Sellman
Maria Minicucci, IDWR

MOORE & McFADDEN, CHARTERED

ATTORNEYS AT LAW

ONE CAPITAL CENTER • SUITE 910
999 MAIN STREET • BOISE, ID 83702
TELEPHONE: (208) 331-1800 • FAX: (208) 331-1202

SUSAN E. BUXTON*
MONA DOBARAN MACK
JOHN J MCFADDEN*†
MICHAEL C. MOORE†
CATHY L. NAUGLE

*Also Admitted in Oregon
† Also Admitted in Washington

RECEIVED

FEB 23 1996

WATER RESOURCES
WESTERN REGION

February 23, 1996

HAND DELIVERED

David R. Tuthill, Jr., P.E.
Manager, Western Region Office
Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Alleged Forfeiture of Water Rights Nos. 51-02058, 51-02065, 51-02230, and 51-02252

Dear Dave:

Since we visited by telephone on January 19, 1996, I have been working with my clients, the Urquidis, with regard to the above-referenced matter. Since that time we have been visiting with a number of people who have knowledge of this area, including Bud Hosford, Jessie Rubelt, the Owens family, the Bureau of Land Management, and others who have knowledge of the area. It has come to my attention that some of these parties have diaries and pictures that would be pertinent for your review of this matter. Mrs. Owens indicated to me that she would need additional time to review her diaries from 1982 to 1993. Along with these pictures and witness statements, there also exist additional leases by some of the complainants and related parties that indicate no forfeiture occurred.

Since we are in the process of working with these parties, some of which are in Nevada and others are in northern Idaho, I need an extension of time to complete these affidavits and get them properly signed as well as to review the diaries and pictures to determine which, if any, are pertinent to this matter. Accordingly, I request an extension of time to Friday, March 29, 1996 to complete our review and submit our response. The volume of information that we have

uncovered, including that from the Bureau of Land Management regarding the grazing rights of the complainants requires more time for me to review its applicability to the forfeiture issues. I appreciate your cooperation and will be happy to answer any questions you may have as to our progress.

Very truly yours,

MOORE & McFADDEN, CHARTERED

Susan E. Buxton

Susan E. Buxton

SEB:de
cc: John Urquidi

January 2, 1996

Distribution: See List in Enclosed Order to Show Cause

RE: Alleged Forfeiture of Water Rights Nos. 51-02058, 51-02065, 51-02230 and 51-02252

Dear Interested Party:

Please find enclosed an Order to Show Cause which requires Mr. John Urquidi to provide information to show why the Department should not find the above-referenced water rights to have been forfeited through non-use for the twenty five years prior to 1991. The Order has been prepared under the provisions of Section 42-350, Idaho Code. For your information I have enclosed a copy of this section of the code, as well as copies of other pertinent documents identified below.

Note that Section 42-350 establishes the review process to be as follows (where "licensee" refers to heirs, successors or assigns of the person to whom the department issued a water right license):

1. Order to Show Cause is served.
2. The licensee responds. Upon request, the licensee is entitled to an administrative hearing before the Department within 21 days of service of the Order, and to judicial review, as provided in Section 42-1701A, Idaho Code.
3. The licensee may waive the right to an administrative hearing and file a complaint in the district court for determination of the validity of the licenses.

Note that the Order provides to Mr. Urquidi a response deadline of February 2, 1996 in this matter. Any recipient of this letter may feel free to contact this office if you have questions about the procedural process in this matter.

Sincerely,

David R. Tuthill, Jr., P. E.
Manager, Western Region Office

Enclosures with all mailings:

a) Order to Show Cause
b) Letters and Affidavits Identified in the Order
c) IDWR Profile Reports for the four water right licenses
d) IDWR Profile Reports for the Snake River Basin Adjudication claims filed on the four licenses
e) Section 42-350, Idaho Code

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	)	ORDER TO SHOW CAUSE

This matter having come before the Western Regional Office of the Department of Water Resources (Department), the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On February 27, 1992, Chester A. Sellman and David Lahtinen sent to the Department a letter which indicated that John Urquidi had, during August of 1991, initiated irrigation diversions from Little Jacks Creek and tributaries that had not been utilized for more than twenty five years. This letter was incorporated in the Snake River Basin Adjudication investigation being conducted by the Department.

2. On December 10, 1993, the Department sent Mr. Urquidi a letter requesting information regarding evidence of continual use of water for irrigation from Little Jacks Creek and other sources.

3. On May 17, 1995, the Department sent Mr. Urquidi a letter requesting additional information on the historic use of water from Little Jacks Creek in Section 33, Twp. 9S, Rge. 2 E, B.M., from 1966 until 1991.

4. The Department received a letter from Mr. Urquidi dated July 25, 1995, in which he indicated that irrigation had occurred in the vicinity of Little Jacks Creek since 1988.

5. The Department has identified the following four licensed water rights which describe irrigation from Little Jacks Creek and tributaries on land owned or utilized by Mr. Urquidi:

a. License No. 51-02058 provides for the irrigation of 62 acres within Section 33, Twp. 9S, Rge. 2 E, B.M., with date of priority of July 28, 1922.

b. License No. 51-02065 provides for the irrigation of 40 acres within Section 5, Twp. 10S, Rge. 2 E, B.M., with date of priority of April 5, 1919.

c. License No. 51-02230 provides for the irrigation of 76 acres within Section 4, Twp 10S, Rge. 2 E, B.M., with date of priority of July 15, 1919.

d. License No. 51-02252 provides for the irrigation of 40 acres within Section 5, Twp 10S, Rge. 2 E, B.M., with date of priority of August 15, 1946.

6. Mr. Sellman and Mr. Lahtinen have provided additional information for the file in this matter, including a letter dated July 7, 1995, and a series of affidavits prepared in July and August, 1995 which provide information to show that the water rights in question were not used for many years. Mr. Sellman and Mr. Lahtinen have called for a determination of a finding of forfeiture of the above-referenced water rights pursuant to Section 42-350, Idaho Code.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in part:

> (2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter.

2. Section 42-350, Idaho Code, provides in part:

> If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully or intentionally failed to comply with any of the conditions in the license, or has wilfully or intentionally failed to comply with the provisions of law governing the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not revoke said license; or (b) an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license or in violation of provisions of the law governing the license.

3. Review and processing of claims in the Snake River Basin Adjudication does not take the place of ongoing water rights

administration and delivery. The Order to Show Cause contemplated in Section 42-350, Idaho Code, is separate and apart from the determination of validity of claims in the adjudication process.

4. There are some cases whereby a water use can be initiated, ripened into a water right, unused for many years and then resumed creating a defense to forfeiture of the water right. However, these cases are limited to situations where the resumed use does not injure other intervening water uses.

5. Based on the information provided to the Department at this time, it is appropriate to issue an Order to Show Cause why water right licenses nos. 51-02058, 51-02065, 51-02230 and 51-02252 should not be found to have become invalid due to forfeiture.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that Mr. John Urquidi, holder of record of licensed water rights nos. 51-02058, 51-02065, 51-02230 and 51-02252 **Show Cause** no later than February 2, 1996, as to why these four water right licenses should not be found to have become invalid due to forfeiture.

Dated this 2ND day of January, 1996.

David R. Tuthill, Jr., P.E
Manager, Western Regional Office

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of January, 1995, I mailed true and correct copies, postage prepaid, of this document to persons listed below:

Sue Taylor
Secretary - Office Coordinator

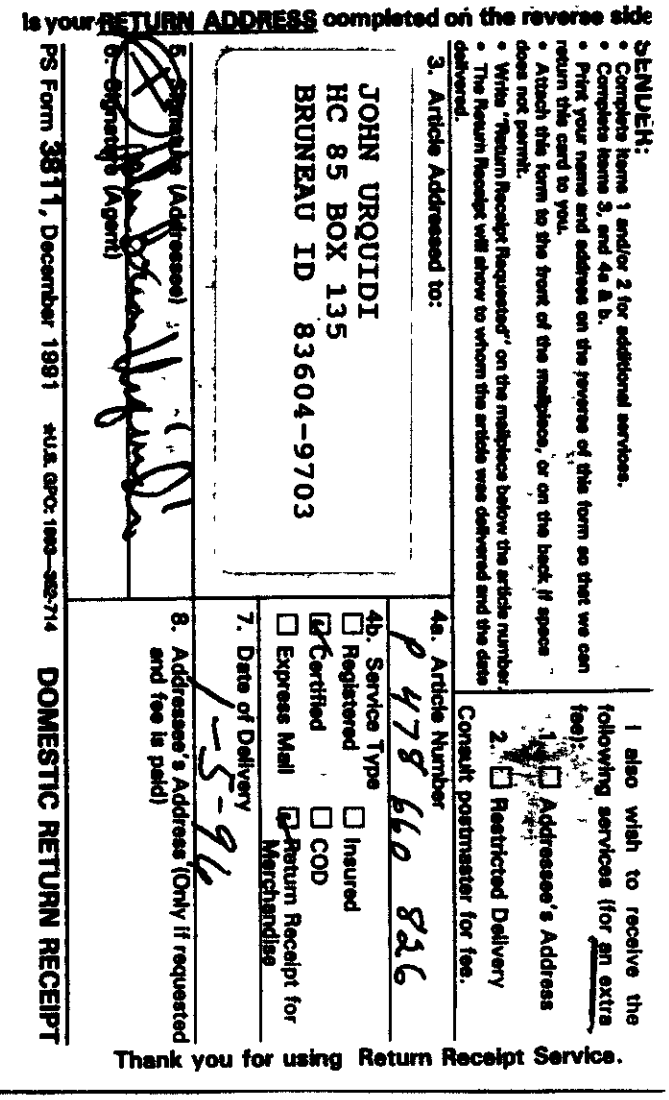
CERTIFIED MAIL

John Urquidi
HC 85 Box 135
Bruneau, ID 83604-9703

NON-CERTIFIED MAIL

David Lahtinen
PO Box 167A
Bruneau, ID 83604

Chester Sellman
HC 85 Box 169A
Bruneau, ID 83604



In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

David Lahtinen **being first duly sworn, deposes and says:** Having been cattle in the Vacinity of Jacks Creek for over thirty years & helped the owner brothers before that & having leased the property for several years before it was sold to Skyline. The

There has never been dams put in the springs or Creek and the water has always flowed to the out side water holes which he has dried up with the new dams he's put in.

No one has irrigated their ground for over 30 years. some of these dams were put in Solely to dry up water to outside Cattle. This is a tributary of Jacks Creek of which we hold the first water rights. therefore we request that these damns & water rights be termenated.

David Lahtinen
(Signature)

Subscribed and sworn to before me this day 9th **of** August, **19**95.

SEAL

Donald L Hodgen
(Notary Public)

Residing at Bruneau Idaho.

My Commission Expires May 2-6 2000.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 09 1995
WATER RESOURCES
WESTERN REGION

T. Robert Tindall **being first duly sworn, deposes and says:** I leased the Urquidi property, known as Jack's Creek Basin, in 1985 & 1986. I can testify that the water was not dammed off and was allowed to remain in the creek channel through the Urquidi property onto B.L.M. land. The water was used to water livestock, not for irrigation purposes. I feel this water has now been dammed off just for storage, not for irrigation, just so the other permittees could not use it as stock water.

T. Robert Tindall
(Signature)

Subscribed and sworn to before me this day 7th **of** August, **19**95.

SEAL

Dyal Campbell
(Notary Public)

Residing at Burns, Or.

My Commission Expires 1/13/98.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

State of Idaho

Chester W. Sellman **being first duly sworn, deposes and says:** I have ran cattle in the Little Jack's Creek Basin area since September of 1968. My dad grazed cattle in the area for many years before me. I also leased the John Urquidi property from April 1, 1987-February 1990. There was never any dams in the creeks on the Urquidi property at any time during the last 30 years that I have been operating in this area until August 1991 which prompted me to send Linda Warner at Idaho Department of Water Resources a protest letter. This was the first time the creek flow had been disturbed. The water has always flowed freely through the Urquidi field and has not been used for irrigation purposes. The water has previously been used only for livestock water.

Chester W. Sellman
(Signature)

Subscribed and sworn to before me this day 2nd **of** August, **19**95.

SEAL

David Campbell
(Notary Public)

Residing at Ramus Id.

My Commission Expires 1/13/98.

In the matter of Little Jack's Creek Basin water within sections 4 & 5, T10S, R02E, and sections 33 & 34, T09S, R02E

AFFIDAVIT

State of Idaho

RECEIVED
AUG 0 9 1995
WATER RESOURCES
WESTERN REGION

I Frank Davis being first duly sworn, deposes and says: I have known and lived in Jacks Creek Basin since 1960 that land from 1977 to 1985 and have seen any irrigating being done. I have used the road by the property for the past 4 yrs.

Frank Davis
(Signature)

Subscribed and sworn to before me this day 28th of July, 1995.

SEAL

Donald L Hedges
(Notary Public)

Residing at Brownlee Id Box 1703 83604

My Commission Expires May 2nd 2000.

July 25, 1995

Dear Maria:

My name is John Urquidi. I have been ranching since 1986 when I took over the management of the Urquidi's ranches, which includes the Jack's Creek Basin private properties, here after referred to as the Basin Ranch.

I can personally attest that the basin ranch has been irrigated by me from 1988 to present day. It has been difficult because of trespassing cattle from Chet Sellman and Dave Lathinen who control federal range leases and are not authorized to graze in the Urquidi basin area. the continued long term drought has also hindered irrigation.

I do understand both Dave and Chet grazed this area when Chet leased the basin ranch in 1987. It was obvious that the cattle had destroyed much of the meadow by concentrating to many cattle on the only water sources, causing heavy washouts. I know this for Daves unauthorized use was cause sighted by Chet Sellman for terminating the lease.

I was also informed by the BLM that there monitoring showed a 200% over consumption of the available forage (in short they trashed the place to dust!). I was more than pleased to take the ranch back under my control and heal it.

I now understand both Chet and Dave have filed conflicting water claims on water covered by the Urquidis property. I do contest their claims. The Urquidi's water licenses are the basis for Urquidi's Snake River Adjudication claims. Chet and Dave have no basis for their conflicting claims and could not acquire such basis through leases, for neither I or the BLM authorized such activities. The BLM has no provision for authorizing grazing leases to consume water resources located on private property or water licensing controlled by private individuals.

It is a conflict of personal interest by Chet and Dave. To contest basin water rights and to estimate spring volumes. It is the BLM's responsibility to file valid claims and petition for conflicting claims or water rights.

I have rock cut out ditches, blasted by Bill Owens family to prove existence of ditches not fresh cut soil ditches. I have maintained these ditches even when the cattle have tromped out several portions of the ditches each year. This has allowed me to utilize all available water.

It is my understanding that surplus water on Urquidis water rights if available could be permitted. But without the continued maintenance of Urquidis diversions and storages there will be no such surplus.

I have told you BLM has interfered with my storage and diversion points, in one case blocking the drainage with a dam above our license storage and diversion points denying us our rightful water. The blockage of the drainage by BLM has reduced and cut spring volumes and natural creek flows.

I continue to protest any BLM or other claims for water above our deeded property, in the vicinity of 10 S.2 E. sec. 4, 5 and 9 S.2 E. sec. 33 and any claiming water leaving the same place. I thank you for your attention in this matter and look forward to our future cooperation.

Sincerely,

John Urquidi

c.c. Susan Buxton
John Urquidi

July 25, 1995

Dear Maria,

I am writing you to request all information available in preliminary or final form on water in the vicinity and relating to our Jack Creek Basin ranch, located in the following legals; 10 S.2 E. sec. 4, 5 and 9 S.2 E.sec. 33. I also write to confirm your assessments and evaluations of the creek as intermittent in nature.

Your telephone request for a third additional tour, evaluation, inspection on August 3. 1995, appears excessive. I have not been informed of your legal basis for so many inspections. I have not even had a detailed written account of what you are evaluating or inspecting. I deny you permission to enter or cross Urquidi's private property until such time as a written account is available. You can arrange meeting either through me or Susan Buxton, my lawyer, at 331-1800, if you have any further questions. Thank you for your cooperation.

Sincerely,

John Urquidi

John Urquidi

c.c. Susan Buxton
John Urquidi

CONVERSATION MEMORAN[illegible]

D 7/24/95

FILE Complaint -

NAME OF PARTY Dave Lahtinen

EMPLOYEE Dave Tuthill

RE: Use of Water in Little Jacks Creek Basin

Mr. Lahtinen visited the office to state that for 30 years+ Water in Little Jacks Creek was undiverted and was used only for stockwater. He stated that the history is approximately as ~~follows:~~ is shown in affidavits that he will provide to this office. He requested that this office take action under Section 42-350 to revoke the license.

COPY

RECEIVED
MAY 3 1 1996
WATER RESOURCES
WESTERN REGION

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	)	AFFIDAVIT OF WILLIAM J. OWENS

STATE OF Oregon)
: ss.
COUNTY OF Malheur)

William J. Owens, being first duly sworn upon oath, deposes and says:

1. That your Affiant's address is P.O. Box 242, Pollock, Idaho 83547.

2. That your Affiant previously owned the real property in the vicinity of Little Jacks Creek In Owyhee County, Idaho, Section 33, T9 R2E; Section 4, T10S, R2E, and Section 5, T10S, R2E, commonly known as the "Basin Property" which we sold to John and Harriett Urquidi in 1966.

3. Your Affiant last visited the property on October 3 and 4, 1993. That in both 1992 and 1993 your Affiant saw water on the Basin property that was irrigating a hay field. That on a trip to the Basin property in 1983 your Affiant observed grass tall enough that it could have been cut.

4. Your Affiant and his wife Irene and other family members made trips to the Basin property ~~regularly~~ over the years since its sale to the Urquidis.

5. That on your Affiant's trip in 1993, your Affiant noted water running in the ditch near the tar paper shack so when your Affiant went across the ditch he had to get out and go back to avoid getting stuck. Your Affiant then shoveled the ditch bed lower so that water would not run out by the house. Water was running back toward the corral and in that area and both ditches on the left side were full of water. Your Affiant wanted to go down to the site where they had a house in the past to see if they could camp there but the ditch was full and it looked like a good place to get stuck so they did not approach it from that side.

6. When your Affiant lived on the property he personally diverted water from the spring onto the hay field for irrigation through the ditches using small earthen dams. That the ditches observed by your Affiant in 1993 were the same ditches that your Affiant worked on the property while he owned it up to 1966 and that those ditches were approximately the same height and width.

7. That during the drought years of the late 1960s, your Affiant went to the Basin property and noticed that the spring was not running water due to drought.

8. That your Affiant placed a reservoir on top above the springs in question and that the reservoir was put in place approximately 1948 or thereabouts for the purpose of irrigation.

9. That your Affiant had personally observed Dave Lathinen irrigate the Basin property in the 1960s when your Affiant leased the Basin property to Mr. Lathinen.

10. That the Sellman cattle did not graze on the Basin property to your Affiant's knowledge or at least did not have permission to graze it. That neither the Sellmans nor David Lathinen nor any other party ever complained about your Affiant irrigating the hay field from the spring source through the ditches and series of small dams.

11. Your Affiant had never observed washes and that the area was more properly described as a meadow which had been irrigated. That your Affiant believes the hay field has been irrigated regularly since his sale to the Urquidis because its condition does not appear to have changed and that your Affiant has regularly visited the Basin property to observe its condition including the 1980s and 1990s.

Further, your Affiant saith not.

DATED this 14TH day of March, 1996.

William J. Owens

SUBSCRIBED AND SWORN to before me this 14TH day of March, 1996.

OFFICIAL SEAL
JAMES S. MOLDER
NOTARY PUBLIC-OREGON
COMMISSION NO. 049640
MY COMMISSION EXPIRES FEB 18, 2000

Notary Public for Oregon
Residing at: 219 N.W. 2nd Ave, Ontario, Or. 97914
My Commission Expires: 2-18-2000

COPY

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	Affidavit of Orville "Bud" Hosford

State of ~~Nevada~~ Idaho OK)
) ss.
County of ~~Elko~~ Elmore OK)

Orville "Bud" Hosford, being first duly sworn upon oath, deposes and says:

1. That your Affiant's address is P.O. Box 506, Owyhee, Nevada 89832.

2. That you Affiant is familiar with the real property owned by John C. and Harriett Urquidi in the vicinity of Little Jacks Creek in Owyhee County, Idaho, Section 33, T9S, R2E; Section 4, T10S, R2E; and Section 5, T10S, R2E, formerly owned by William and Irene Owens and commonly referred to as the Urquidis' "Basin Property".

3. That your Affiant worked for John C. Urquidi at the Basin property with Dan Sabala, now deceased, from 1967 to 1969.

4. That during the time your Affiant was employed by the Urquidis, he both assisted and observed Dan Sabala divert water from the springs in question, and the stream formed by the springs, onto the hay field with a series of small dams and ditches.

5. That the diversions consisted of shoveling dirt dams for use in spreading the water from the springs and stream onto the hay field.

6. That the ditches carried water from the stream onto the hay field. Those ditches averaged in size from one foot deep to one foot wide.

7. That the dirt diversion dams and ditches essentially flood-irrigated the hay field.

8. That your Affiant participated in putting up hay grown on that hay field irrigated from the springs by way of the dirt dams and ditches.

9. That the stream from the springs were often dammed on the Urquidis' Basin property for domestic water supply to the cabin and people as well as the few livestock owned by the Urquidi family grazing on the Basin property.

10. That the ditches nor the stream bed from the springs were washed out.

11. That your Affiant remembers the Basin property being irrigated from May to August and that when haying in August he had to be careful not to get equipment stuck because the ground in the hay field was still being irrigated.

12. That neither the hay field being irrigated was between ten (10) and fifteen (15) acres in size.

13. That your Affiant was partly responsible for maintaining the fences on the Basin property and does not recollect water flowing from the springs down the stream reaching the BLM property.

14. That your Affiant is familiar with Chester W. Sellman and David Lahtinen and remembers seeing them on the road adjacent to

the Urquidis' Basin property and visiting with them in the area during the period your Affiant worked for the Urquidis.

15. That the hay field could be clearly seen by the adjacent road and that it was obviously an irrigated parcel.

16. That your Affiant does not remember observing water from the springs flowing below the Urquidis' Basin property because the water would have to travel approximately three-quarters (3/4) of a mile to reach the BLM property where the Sellman's and Lahtinen's cattle were grazing and that the soil on the property is very clayey and would absorb the water before it reached the fence bordering the BLM and Basin property.

17. That no person, including the Sellmans nor Mr. Lahtinen ever complained about irrigating of the hay field or erecting dirt dams to divert the water from the springs or the stream for irrigation, domestic or any other uses made by the Urquidis.

Further your Affiant saith not.

DATED this 26 day of February, 1996.

Orville Hosford

SUBSCRIBED AND SWORN to before me this 26th day of February, 1996.

Notary Public for ~~Nevada~~
Residing at: MTN HOME, ID
My Commission Expires: MAY 4, 1999

COPY

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	))))))	AFFIDAVIT OF JOHN C. URQUIDI

STATE OF IDAHO)
: ss.
COUNTY OF ADA)

John C. Urquidi, being first duly sworn upon oath, deposes and says:

1. That your Affiant's address is 2006 Curtis Circle, Boise, Idaho 83705

2. That in the fall of 1966 your Affiant purchased 648 acres in Little Jack Creek Basin, also known as Owens Basin, with all improvements, fences, water licenses, and AUMs, from William J. and Irene Owens. In the ensuing years until 1974, Affiant and Mr. Dan Sabal, as well as any other help needed, hauled a Chattin ditcher to the deeded property and cleaned the

ditches, so the meadows would be irrigated by those of us who were available at the time. Most of the irrigation started in early May through the high water, then slowed down to the springs being the main source of water

3. That Mr. Sabal was very diligent in irrigating and all other maintenance on the imrpovements, whether Affiant was there or not. He would use the other help who were on the payroll at the time. These employees included some of the following people: John Lewis, Bud Hosford, Clarence Sporleder, Francis Deforest and a few Native Americans as temporary employees, as needed. In the summers that Bud Hosford worked for Affiant, Bud and your Affiant hauled our swather up to the basin and harvested the meadows, and did any maintenance that was necessary.

4. That in 1975 Mr. Sabal retired, and Affiant then hired Henry Rubelt and his son Jesse to look after the cows, irrigate the meadows, and keep up with the maintenance as needed.

5. That in 1977 Affiant leased the ranch to Frank Davis. Mr. Davis arranged the terms of the lease through FHA. He submitted the lease for your Affiant and Affiant's wife to sign, which was done. A copy of the executed lease is attached as Exhibit "A" to this affidavit. Provisions of the lease required the lessee to maintain all improvements on the property, including a duty to keep all ditches in good repair. In 1985, Frank Davis approached Affiant about subleasing the Owens Basin to Robert Tindall. Affiant agreed, as long as it was operated under the provisions of the original lease. Mr. Tindall then leased from Frank Davis for the years of 1985 and 1986. Following expiration of the 1986 lease term, Affiant was notified that the lease was not to be renewed.

6. Beginning in April of 1987, the property was leased for a period of two years to Chester Sellman. Attached to this affidavit as Exhibit "B" is a copy of a handwritten document entitled "Lease of Base Property" which is not signed. Also attached is Exhibit "C" to this affidavit, which is a typewritten lease signed by John B. Urquidi and Mr. Sellman. Both of these documents were apparently relied upon in issuing the order to show cause in this matter, and both documents specifically mention that the lessee, Mr. Sellman, bore the responsibility of maintaining all improvements upon the property. Thus, Mr. Sellman, who now is providing information to the Idaho Department of Water Resources ("IDWR") to support a finding of forfeiture, was himself responsible for ensuring that the Urquidi's system of diverting and storing water, transmitting that water for livestock use, and applying that water upon wild pasture to increase its yield. In my interpretation of the lease and the understanding of the parties at the time of entering that lease, Mr. Sellman had a duty to prevent the very finding of forfeiture that he is now attempting to provoke IDWR into declaring for his own benefit.

7. In your Affiant's experience in Owyhee County and general and on this particular property in particular since 1966, the unnamed streams in the area are susceptible to fluctuating annual flows, and there are times when little or no water is available. As a general proposition, water in the described area of Owyhee County flows in the intermittent streams from approximately March to early June without some form of diversion allowing storage.

8. In your Affiant's opinion based upon experience in Owyhee County and on the Owens Basin property, the meadow and wild hay pasture located in the E 1/4 of section 5, T.10. S., R.2.E., Boise meridian, either would not exist or would exist at a much lower productive

forage capacity without the irrigation system created by my predecessor's and utilized since I acquired the property in 1966. Based on my personal observation, the condition of the above-described wild pasture has remained largely the same, which I attribute to regular irrigation and sound management practices.

9. At no time prior to the institution of the present forfeiture proceeding has anyone informed your Affiant that water rights appurtenant to the Owens Basin property had been forfeited by non-use. At no time prior to the institution of the present forfeiture proceeding has your Affiant learned that any individual claims a property right in water that is presently licensed to the Urquidi family.

10. That the water in the ditches cannot be seen from the road because of the lower head of water and the height of the meadows, which are tall enough to hide the water. An individual standing on the road leading to the Owens Basin property would not be able to view any ditches in the meadow in section 5, and one would have to trespass upon our private property to enter the meadow to determine whether ditches existed in the meadow, unless such an entrant obtained permission to visit the meadow.

11. That in the early 1980s Mr. Gene Davis spearheaded a dam above Affiant's southwest reservoir in section 7, which kept the reservoir dry, consequently lowering the amount of water flow and length of time for the higher flow of water. Affiant was not notified about the building of the dam, resulting in an infringement of our water licenses.

Further, your affiant sayeth naught.

DATED this 24 day of May, 1996.

John C. Urquidi

SUBSCRIBED AND SWORN to before me this 24 day of May, 1996.

(SEAL)

Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 1-27-2000

IDAHO FARM LEASE

(2-73)

THIS LEASE is entered into this 16th day of January, 19 77,
between John C. Urquidi, landlord, of Bruneau, Idaho (Address)
and Leland Frank Davis, tenant, of Bruneau, Idaho (Address)

A. PROPERTY RIGHTS.—The landlord hereby leases to the tenant, to occupy and use for agricultural and related purposes, the following-described property, hereinafter referred to as the "farm," located in Owyhee County, State of Idaho, and commonly known as the farm.

Clara Ocamica and Harriet Urquidi property in 32-10S-1E: 32, 23, 24, 26, 27, of 12S-1E: 19-12S-5E: 21-7S-6E: 22-7S-6E: 17-10S-1E: 18-10S-1E: 19-10S-1E; Harriet Urquidi property in 15, [illegible] 22 of 6S-5E; John C. Urquidi [illegible] 3-9S-2E; 4-10S-2E: 5-10S-2E

and consisting of 2713 acres, more or less, together with all buildings and improvements thereon and all rights thereto except as specified below:

1. **Reservation of land and buildings.**—The landlord reserves the right to use the following land and buildings for the following purposes:

Clara Ocamica home, outbuildings, and approximately 5 acres

2. **Right of entry.**—The landlord reserves the right of himself, his agents, his employees, or his assigns to enter the farm at any reasonable time for purposes (a) of consultation with the tenant; (b) of making repairs, improvements, and inspections; (c) of developing mineral resources; and (d) after notice of termination of the lease is given, of plowing, seeding, fertilizing and such customary seasonal work, none of which is to interfere with the tenant in carrying out regular farm operations.

3. **No right to sublease.**—The landlord does not convey to the tenant the right to lease or sublet any part of the farm or to assign the lease to any person or persons whomsoever.

4. **Transfer of farm.**—If the landlord should sell or otherwise transfer title to the farm, he will do so subject to the provisions of this lease.

5. **Heirs and successors.**—The terms of this lease shall be binding upon the heirs, executors, administrators, and successors of both landlord and tenant in like manner as upon the original parties. However, in event the lease is for more than one year, the heirs or successors of the tenant shall have the option to give written notice of termination effective at the end of the lease year in which death occurs.

6. **Right to lease.**—The landlord warrants that he has the right to lease the farm, and will defend the tenant's possession against any and all persons whomsoever.

7. **Rent additional land.**—The tenant will not, unless he shall first have obtained written consent of the landlord, farm more than ..... acres of additional land and will not enter into any other business, occupation, or sideline.

8. **Additional agreements regarding property rights:**

B. LAND USE AND LIVESTOCK PRODUCTION

1. **Land use.**—The agreed-upon use of the land is outlined in the following table:

USE OF LAND	ACRES	FIELDS	SEED VARIETY	KIND AND AMOUNT OF FERTILIZER PER ACRE
FOR FAMILY LIVING				
WOODLAND				
FARMSTEAD AND LOTS				
TOTAL		xxxxxxxxx	xxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

2. **Livestock production.**—The tenant on his own may engage in the following production of livestock:

KIND OF LIVESTOCK	MAXIMUM NUMBERS	SPECIAL HEALTH, SANITATION, OR FEEDING PRACTICES

[illegible] gro[illegible] fir[illegible] fr[illegible]

4. Cr[illegible] any [illegible] from se[illegible] and keep wi[illegible] appropriat[illegible] the parties [illegible]

5. Rest[illegible] tenant shall bring [illegible] the [illegible] during [illegible] of the [illegible] parti[illegible]

6. Hom[illegible] use the following [illegible] own[illegible]

7. [illegible] The two parties will buy and will jointly [illegible] property according to the following schedule:

8. Division of property.—At the termination of this lease, all jointly owned property will be divided or disposed of as follows:

C. IMPROVING, CONSERVING, AND MAINTAINING THE FARM.—To improve the farm, conserve its resources, and maintain it in a high state of cultivation, the two parties agree as follows:

1. General maintenance.—The tenant will maintain the farm during his tenancy in as good condition as at the beginning, normal wear and depreciation and damages from causes beyond the tenant's control excepted.

2. Good husbandry.—The tenant will operate the farm in an efficient and husbandlike way, will do the plowing, seeding, cultivating, and harvesting in a manner that will conserve the landlord's property.

3. Cropping practices.—The tenant will *not*, without oral consent of the landlord, (a) plow permanent pasture or meadowland, (b) cut live trees for sale or personal uses, but will take for fuel or use on the farm only dead or unmarketable timber designated by the landlord, (c) allow livestock other than his own on stalkfields or stubblefields, (d) burn or remove cornstalks, corncobs, straw, or other crop residues grown on the farm, (e) pasture new seedings of legumes or grasses in the year they are seeded, and (f) plant legumes on land not known to be thoroughly inoculated without first inoculating the seed.

4. Livestock practices.—In caring for his livestock, the tenant will follow health and sanitation measures and guard against disease.

5. Manure and crop residue.—The tenant will spread the manure, straw, or other crop residues on the farm as soon as practicable on fields agreed upon by the two parties, except as follows:

6. Pasturing.—The tenant will prevent tramping of fields by [illegible] by hogs when injury to the farm will be done.

[illegible] protection.—The tenant will not, with[illegible] landlord, house automobiles, motortrucks, or [illegible] otherwise violate restrictions in the landlord's insurance [illegible] restrictions the landlord shall make known to the ten[illegible]

Replace losses.—The landlord will replace [illegible] as possible the dwelling or any other building [illegible] or damaged by fire, flood, or other cause beyond [illegible] the tenant or make rental adjustments in lieu of [illegible]

Noxious weeds.—The tenant will use diligence to prevent noxious weeds from going to seed on the farm and will destroy the same and will keep the weeds and grass cut or destroyed on the fields, farmstead, roadside, and fence rows. Treatment of weed infestation and cost thereof shall be handled as follows:

11. Ma[illegible] of improvements.—The [illegible] keep the buildings [illegible] and other improvements on the [illegible] in as good repair and condition as they are when he takes possession, and in as good repair and condition as they may be put during the term of the lease, ordinary wear and tear, loss by fire, or un[illegible] depreciation or destruction excepted.

12. Materials and labor.—The landlord will furnish materials and the tenant will perform labor for normal maintenance and repairs, except that skilled labor which the tenant himself is unable to perform satisfactorily will be furnished by the landlord. Additional agreements regarding materials and labor.

13. Purchase of materials.—The tenant may buy, without further authorization, materials for normal maintenance and repairs in a total amount not to exceed $........ within each year, and the landlord will credit or reimburse the tenant for such expenditures, as follows:

14. Add improvements.—The tenant will *not*, without written consent of the landlord, (a) erect or permit to be erected on the farm any nonremovable structure or building, or (b) incur any expense to the landlord for such purpose, or (c) add electrical wiring, plumbing, or heating to any buildings, and, if consent is given, he will make such additions meet standards and requirements of power and insurance companies.

15. Conservation practices.—The tenant will control soil erosion as completely as practicable by stripcropping and contouring, and by filling in or otherwise controlling small washes or ditches that may form.

16. Conservation structures.—The tenant will keep in good repair all terraces, open ditches, and inlets and outlets of tile drains, preserve all established watercourses or ditches including grass waterways when seed and fertilizer are furnished by the landlord, and refrain from any operation or practice that will injure them.

17. Compensation for improvements.—The two parties will carry out new conservation practices and measures and make other improvements, and share contributions and costs necessary for completion of such practices and improvements as set forth below. The tenant will be reimbursed by the landlord when the practice, measure, or improvement is completed, or the tenant will be compensated for its unexhausted value when he leaves the farm, according to the table below:

17. (Continued). Compensation for Improvements Table.

CONSERVATION PRACTICE, MEASURE, OR OTHER IMPROVEMENT	DATE TO BE COMPLETED	ESTIMATED COST (DOLLARS)	PERCENT TO BE FURNISHED BY LANDLORD AND BY TENANT						VALUE TO ACRE OF TENANT'S [illegible] (DOLLARS)	[illegible]
			MATERIALS		LABOR		MACHINERY			
			L	T	L	T	L	T		

18. [illegible] agreements relative to conservation and improve-

19. Review of conservation program.—A new schedule covering conservation practices and improvements will be prepared each year on an appropriate form which will become a part of this lease when signed by the two parties.

20. Preparing or seeding land.—When the tenant leaves the farm, if the total [illegible] prepared or seeded land are greater than [illegible] by the [illegible] of such [illegible]

20 (Continued). Preparing or Seeding Land Table.

PREPARED OR SEEDED	ACRES AT BEGINNING	RATE PER ACRE

21. Removable improvements.—Minor improvements of a temporary or removable nature, not provided for in item 17 of this section, which do not mar the condition or appearance of the farm may be made by the tenant at his own expense. The tenant may at any time this lease is in effect, or within a reasonable time thereafter, remove such improvements, provided he leaves in good condition that part of the farm from which they are removed.

22. Compensation for damages.—When the tenant leaves the farm he will pay the landlord reasonable compensation for any damages to the farm for which the tenant is responsible, except ordinary wear [illegible] and damages beyond the tenant's [illegible]

[illegible] shall be divided between landlord and tenant as provided below, unless

[illegible] LED

[redacted]

[redacted] LEASE

The term of this lease shall be five year(s) [redacted] 16, 1977, to January 16, 19 82, and [redacted] continue in effect from year to year thereafter until [redacted] of termination is given by either party to the other at [redacted] months before expiration of this lease or any renewal.

2. [redacted] agreement.—The tenant agrees that he or his agent will promptly and [redacted] the farm continuously during the term of this lease.

3. Surrender of possession.—The tenant agrees to surrender possession and occupancy of the premises peaceably at the termination of this lease.

4. Review of lease.—A request for general review of the lease may be made at least [redacted] days prior to the final date for giving notice to terminate this lease. Amendments and alterations to this lease shall be made in writing.

5. MISCELLANEOUS PROVISIONS

[redacted] This lease shall not be deemed to [redacted] and neither party shall have [redacted] without written consent, except as [redacted]

[redacted] will be operated between [redacted] as follows:

[redacted]

[redacted] parties have signed this lease on the [redacted] above written.

[redacted]

[redacted] production records of [redacted] which records shall be accessible to [redacted] furnish an annual report to the landlord on or [redacted] date [redacted]. Accounts between [redacted] shall be settled on or about [redacted]

6. Arbitration of differences.—Any [redacted] parties as to their several rights and obligations [redacted] that are not settled by mutual agreement [redacted] shall be submitted for arbitration to a committee of [redacted] persons, one selected by each party hereto, and [redacted] thus selected, and the committee's decision [redacted] both parties.

7. Additional agreements:

[redacted]

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AUG 09 1995
WATER RESOURCES
WESTERN REGION

Lease of Base Property

For considerations recieved I John Liguidi (lessor) agree to lease the following described Lands and associated grazing rights to Chester Sellmon (lessee) for a period of one year beginning March 1, 1989 and ending February 28, 1990.

Lessor shall not assign the Lessee's interest in this lease to a third Party nor sublet any of the leased assets to anyone. Lessee also covenant and warrants to Lessor that he will not enter into any agreement with any third party to sell assign or change the scope of the associated grazing rights incumbent on leased lands with a consultation and written aproval of lessor.

Lessor shall at all reasonable times have the right to come upon the leased Lands for the purpose of inspecting Lessor's property, making repairs or capital improvements.

Maintenance of all improvements on leased property and associated range will be the responsibility of lessee for term of lease.

Leased Lands

Owens River – (649 acres 364 A.U.M.s active preference)
- SE¼SW¼, SW¼SE¼, NW¼SE¼ sec 33 T9S R2E
- NE¼, N½SE¼, E½NW¼, NW¼NW¼, NE¼SW¼ sec. 4 T10S R2E
- E½SE¼, SE¼NE¼ sec. 5 T10S R2E

& Chester Sellman agree to Pay John Ugarte
$ 1500 on, or before April 1, 1999 and $1500 :
at the end of the graging season for lease
of Rose Property.

See attachment for terms;

Lessor:
Lessee:

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LEASE OF BASE PROPERTY

For consideration received I, John Urquidi, (Lessor) agree to lease the following described lands and associated grazing priviledges to Chester W. Sellman (lessee) for a period of two years beginning April 1, 1987 and ending April 1, 1989.

All range improvements associated with this lease will be the responsibility of Chester W Sellman (lessee) as far as maintenance is concerned.

Leased lands offered as base property:

Owens Place - (648 acres, 364 AUMs active preference).

- SE¼ SW¼, SW¼ SE¼, NW¼ SE¼, Section 33 T9S, R2E.
- NE¼, N½ SE¼, E½ NW¼, NW¼NW¼, NE¼ SW¼, Section 4, T10S, R2E.
- E½ SE¼, SE¼NE¼, Section 5, T10S, R2E.

LESSOR: John Urquidi Date 3/16/87

LESSEE: Chester W. Sellman Date 3/16/87

EXHIBIT "C"

COPY

SUSAN E. BUXTON
PAUL A. TURCKE
MOORE & McFADDEN, CHARTERED
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999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	))))))	AFFIDAVIT OF JOHN B. URQUIDI

STATE OF IDAHO)
: ss.
COUNTY OF ADA)

John B. Urquidi, being first duly sworn upon oath, deposes and says:

1. I am the son of John C. Urquidi and Harriett Urquidi. I am a partner in a cattle ranch named J & J Ranches with my father, John C. Urquidi. The property utilized by J & J Ranches in cattle operations includes the E ½ of the SE 1/4 and the SE 1/4 of the NE 1/4 of Section 5 in T.10.S., R.2.E., as well as additional property located in section 4 of T.10.S., R.2.E

and section 33 of T.9.S., R.2.E., Boise-Meridian, located in Owyhee County, Idaho. The described property, totaling approximately 648 acres and hereinafter referred to as the "Owens Basin," is owned in fee by my parents. In the course of the daily business operation of J & J Ranches, I observe and maintain the irrigation structures owned by J & J Ranches. I perform those maintenance duties as an authorized agent of J & J Ranches.

2. I first visited the Owens Basin property in 1988, and have regularly visited the property in my capacity as a partner in J & J Ranches since that time. I presently reside at Bruneau, Idaho, and my address is HC 85 Box 135, Bruneau, ID 83604.

3. The Owens Basin property is serviced by an interconnected system of ditches utilizing intermittent streams and springs which provide water that was historically, and is presently, used for irrigation of wild pasture, stockwater, domestic purposes, and storage for the named uses. Specifically, if one approached the property from the southwest, there is a retention dam along an unnamed intermittent tributary of Little Jacks Creek located in the NE 1/4 of the NE 1/4 of section 7, T.10.S., R.2.E. which creates a reservoir at that location when sufficient water is available. As one follows the drainage downstream to the east, one encounters diversion dams in the SE 1/4 of the SE 1/4 of section 5, T.10.S., R.2.E. In the E ½ of the SE 1/4 there are various natural springs which arise on the Owens Basin property owned in fee by my parents, and several of those springs have been developed to supplement any water that remains following transmission from the reservoir. The water is diverted to the natural stream bed, where a series of earthen diversion structures apply the water to the meadow located on the Owens Basin deeded property in the E ½ of the SE 1/4 of section 5. Attached as Exhibit "A" to this affidavit is a copy

of an engineering report completed on November 30, 1949 compiled and recorded in the course of the official and legally prescribed business of the licensing agency, with a diagram displaying the diversion system described in this paragraph.

4. As one continues to follow the drainage downstream to the north through section 5, one crosses the boundary of the Owens Basin deeded property and re-enters public land. In the NE 1/4 of the NE 1/4 of section 5 is located another reservoir created by a retention dam. In addition to the unnamed intermittent stream described above in paragraph 4, which enters this reservoir from the south, there is another unnamed intermittent tributary of Little Jacks Creek which enters the reservoir from the north. As one follows the latter upstream to the north and west, one approaches a retention dam and reservoir in the SE 1/4 of the SE 1/4 of section 31, T.9.S., R.2.E. Thus, the reservoir located in the NE 1/4 of the NE 1/4 of section 5 is filled and recharged by surface water, intermittent flow and release of storage from the reservoir in section 31, intermittent flow and storage from the reservoir in section 7, and flow from the springs in section 5. Of course, with regard to the water entering from the south which flows through the Owens Basin deeded property in the E 1/4 of section 5, only the water which is not diverted to irrigate the wild pasture in the E 1/4 is available to recharge the reservoir in the NE 1/4 of the NE 1/4 of section 5. The water collected by the reservoir in section 5 drains from the northeast corner of the reservoir, and the streamed continues to the northeast where it re-enters the Owens Basin deeded property in section 33 of T.9.S., R.2.E. This interrelated system of reservoirs and streams is depicted in a later engineering report attached as Exhibit "B" to this affidavit completed on April 16, 1954, and compiled and recorded in the course of the official and legally prescribed

business of the licensing agency, with a diagram displaying the entire diversion system described in paragraphs 3 and 4.

5. Since 1988, I have regularly performed maintenance upon all aspects of the above-described diversion system. The unnamed streams in the area are susceptible to fluctuating annual flows, and there are times when little or no water is available. As a general proposition, water in the described area of Owyhee County flows in the intermittent streams from approximately March until early June and then resumes in late August or early September without some form of diversion allowing storage.

6. On various occasions when I have been performing maintenance on the diversion system described above, I have been threatened with legal action by the United States Department of Interior, Bureau of Land Management ("BLM") personnel for alleged "unauthorized use" of public lands. In other words, the BLM has previously demanded that I cease the very activities that the Idaho Department of Water Resources ("IDWR") now demands proof of from my family. Specifically, in 124 IBLA 353, the BLM prosecuted an action seeking cancellation of a right-of-way for maintenance of J & J ditches and canals, arguing that the water rights that IDWR now asserts were forfeited never existed at all. Attached as Exhibit "C" to this affidavit is a copy of the Administrative Judge in 124 IBLA 353, issued on December 4, 1992. That dispute was eventually resolved, with the BLM taking the position that I am authorized to enter public lands to maintain what BLM refers to as the "upper reservoir" located in section 31, but that no maintenance of the "lower reservoir" in section 5 was allowed. A separate action was initiated with regard to maintenance of a diversion dam located on BLM-managed property in section 5

near the boundary of the Owens Basin deeded property which also proceeded to an administrative hearing and subsequent appeals. Attached as Exhibit "D" to this affidavit is a copy of the Administrative Judge's latest Order issued on March 20, 1996 in case IBLA 93-42. In that matter, the BLM has charged me with trespass and unauthorized construction on public lands for attempting to maintain the wing dam in the SE 1/4 of the SE 1/4 of section 5. Through counsel, I have filed a motion for reconsideration of that order seeking clarification of the Administrative Judge's findings.

7. In addition to discouraging my efforts to maintain diversion structures and maintain the water rights that J & J Ranches holds under Idaho law, the BLM has physically interfered with J & J Ranches' ability to divert and store water in the reservoir located in section 7 described in paragraph 3 above. To be blunt, BLM construct a dam upstream of our reservoir which cuts off our section 7 reservoir's recharge source. I have reviewed records obtained from the BLM concerning claims that the BLM is presently submitting in the on-going Snake River Basin Adjudication ("SRBA").

Attached as Exhibit "E" to this affidavit is a copy of an Application for Permit, stamped "APPROVED," which the BLM submitted to IDWR on October 1, 1981. This Application indicates that BLM sought, and apparently obtained, permission from IDWR to initiate dam-building and accompanying storage in the NW 1/4 of the NE 1/4 of section 7. Review of the attached diagram, as well as my personal experience on the property, indicates that the NW 1/4 of the NE 1/4 of section 7 is upstream from the NE 1/4 of the NE 1/4 of section 7.

Attached as Exhibit "F" to this affidavit is a copy of an Adjudication Claim Profile Report dated 3/27/96, indicating that BLM has filed a claim upon a diversion at the NE 1/4 of the NE 1/4 of section 7 for stockwater and wildlife use, with an alleged priority date of 1874. The NE 1/4, NE 1/4 diversion is, of course, the Urquidi's licensed location. This does not appear an inadvertent error, for the BLM is certainly aware that two potential storage dams exist in the NE 1/4 of section 7. See Exhibit "G" to this affidavit, which is a copy of a letter to IDWR signed by the acting Area Manager dated June 3, 1993 inquiring about SRBA claims in the NE 1/4 of the NE 1/4 as well as the NW 1/4 of the NE 1/4 of section 7.

8. In my experience managing the Owens Basin property and as a permittee utilizing grazing privileges on lands in the surrounding area, the late 1980's and early 1990's were extremely dry years, which greatly impeded the abilities of all cattle operations in the area to locate and store even dependable sources of water. Attached as Exhibit "H" to this affidavit is a copy of a letter transmitted by the Area Manager on January 7, 1993, pursuant to his official duties and in the regular course of the BLM's discharge of duties imposed by law, indicating that the public rangelands continued to suffer significant stress "due to the six consecutive years of drought...." At times during this period, there was no water available for storage in either the section 7 reservoir or the section 5 reservoir.

9. I have obtained and reviewed a claim profile report for filings in the SRBA submitted by David Lahtinen. A copy of the Adjudication Claim report received from IDWR dated August 4, 1992 is attached as Exhibit "I" to this affidavit. Mr. Lahtinen has filed a claim on locations previously described within this affidavit, specifically the NW 1/4 of the SE 1/4 of

section 31 and the NE 1/4 of the NE 1/4 of section 5. I also note that Mr. Lahtinen has filed a claim with both a diversion location and place of use at the NE 1/4 of the SW 1/4 of section 4, which I find interesting since that described location is entirely within the boundaries of the Owens Basin deeded property. Mr. Lahtinen seeks a priority date of 3/31/1882 for all of his filings, which pre-dates creation of several of the reservoirs that now exist at the locations of Mr. Lahtinen's alleged claims. Altogether, Mr. Lahtinen had submitted claims for stockwater use at twenty (20) separate locations in townships 9 and 10 S. in the area of Owyhee County relevant to the present dispute.

10. At the same time that I requested a claims profile report for Mr. Lahtinen, I requested a claims profile report for Chester Sellman. I was informed that no filings were located for Mr. Sellman.

11. Despite the various difficulties and interferences described above, the diversion system originally completed by William Owens in the mid 1900's continues to augment production of cattle and wild pasture on the Owens Basin property. There is a meadow with wild hay in the E 1/4 of section 5 that is irrigated by the commingled waters of the springs and the stream bed transmitted in the stream bed and diverted upon the meadow by our canals and ditches. Based on my experience upon the property and in the vicinity, this meadow either would not exist or would exist at a much lower productive forage capacity without the irrigation efforts of J & J Ranches. When J & J Ranches pastures cattle in the meadow, the cattle consume water from the stream bed and the maintained ditches and springs. This pattern of use has continued without interruption since I visited the property in 1988.

Further, your affiant sayeth naught.

DATED this 24 day of May, 1996.

John B. Urquidi

SUBSCRIBED AND SWORN to before me this 24 day of May, 1996.

Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 1-27-2000

(SEAL)

Form 38

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

PERMIT NO. R-766

REPORT ON PROOF OF Beneficial use

EXHIBIT "A"

Form 22

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

REPORT OF ENGINEER

Permit No. R-766

This proof is for Beneficial use In Water District No.

1. Name of applicant Mrs. Hazel B. Owens, Emmett, Idaho

2. Source of water supply: An unnamed stream, tributary to Jack's Creek

3. Location of outlet: Is in the NE¼ NE¼ of Section 7

T. 10 S. R. 2 E. County of Gem

4. Describe works as they exist, giving dimensions and capacities of same:

Dam 10 ft. high and 300 ft. long. The side slopes are 2:1 and 3:1. Lava rip-rap and a 10 to 12 ft. top width. The outlet control is a vertical screw stem gate. The reservoir area is about 10 acres. The ditches are 2 ft. wide and 1 ft. deep.

5. Water is used for: irrigation and stock water.

6. State whether or not water has been turned into works of diversion: Yes

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

SE¼ NE¼, E½ SE¼ Section 5, Twp. 10 S., Range 2 E., B. M.

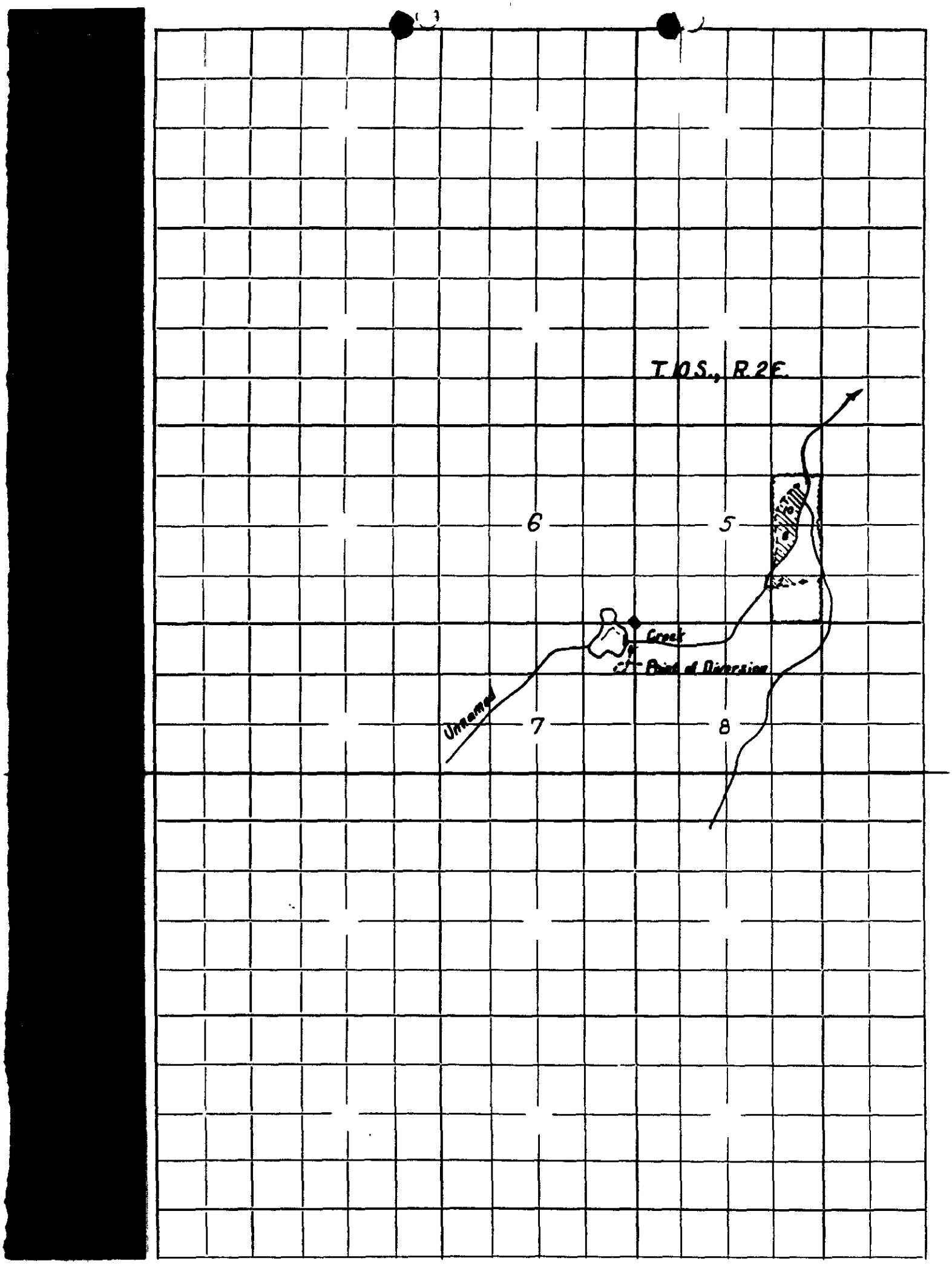
(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach? Intermittant stream

Remarks: At the time of the investigation, the stream was dry.

Estimated quantity used 5 acre feet (approx.)

This examination was made on the 30 day of Nov., 19 49


T.10S., R.2E.
6
5
7
8
Unnamed
Creek
Point of Diversion

Form 38

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE

REPORT OF ENGINEER

PERMIT NO. R-766

REPORT ON PROOF OF Beneficial Use

WILLIAM J. OWENS, Riggins, Idaho

1/40 250 cfs.
C/W 200 cfs

3-410

EXHIBIT "B"

Form 28

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

BOISE, IDAHO

REPORT OF ENGINEER

Permit No. R-766

This proof is for Beneficial Use In Water District No.

1. Name of applicant William J. Owens, Virgins, Idaho
2. Source of water supply: Snow and rain drainage tributary to Jack's Creek
3. Location of point of diversion: Is in the NE NE of Section 7
   T. 1N S. R. 2 E. County of Owyhee
4. Describe works as they exist, giving dimensions and capacities of same:
   Dam = 110 yds long x 12' w. x 11' h. Earth dam. Concrete outlet 8" CI gate on upstream end. 3:1 slope upstream 2:1 down. Spillway over a small saddle. Good riprap small low embankment by spillway.
   Stream channel used for ditch. Small ditch 12" to 18" w. on bottom.
   No water in reservoir this year.
5. Water is used for: Irrigation and stock water
6. State whether or not water has been turned into works of diversion: yes
7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

   ~~W½ SE¼, SE¼ SE¼~~ Section 33, Twp. 9 South, Range 2 East, B. M.

   W½ SE¼, SE NE¼, S 5, T 10 S, R 2 E

   This is actually a re-inspection for R-766

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?

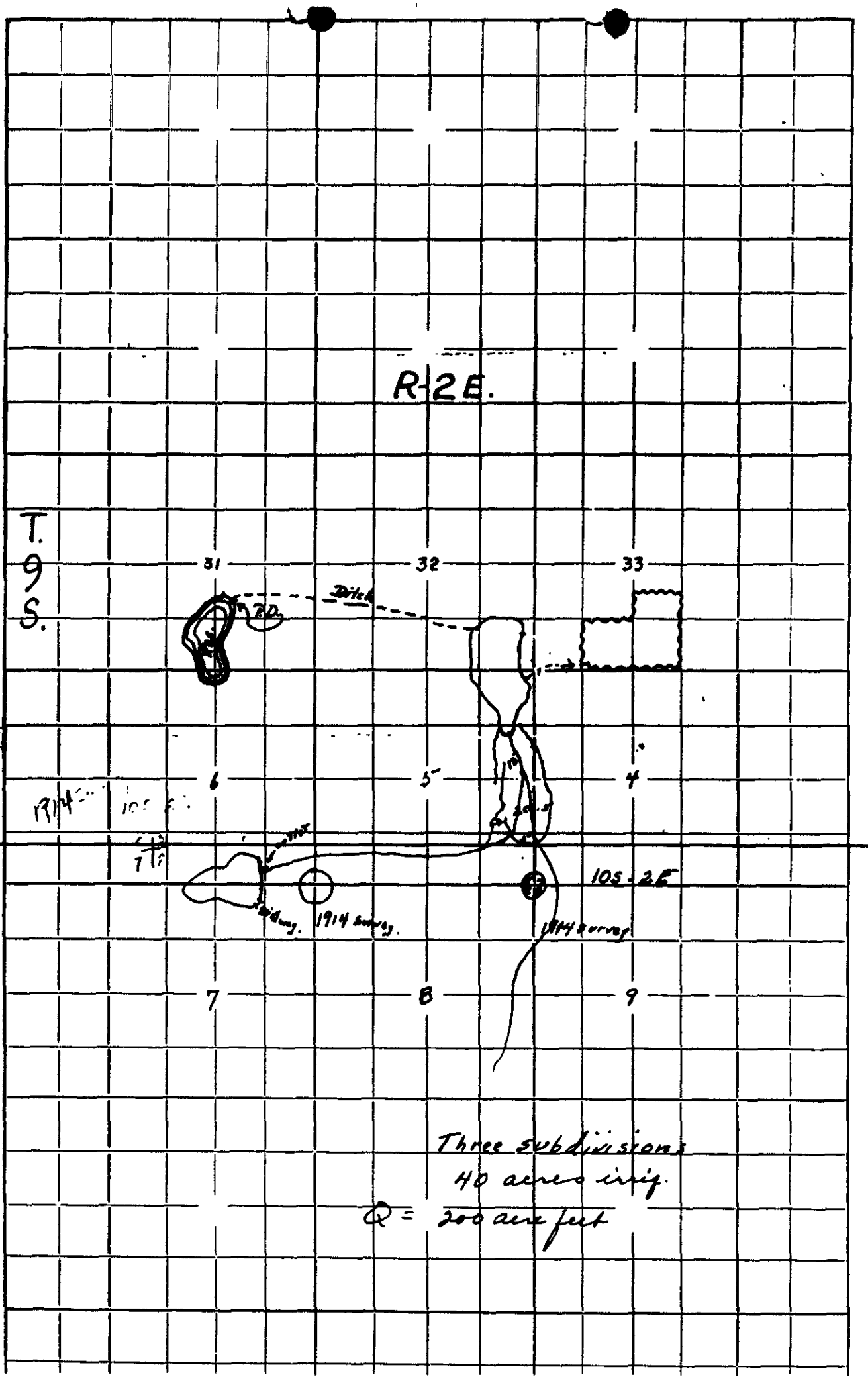
Remarks:

Pasture crops

Some brome grass.

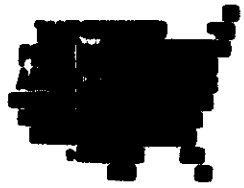
Estimated capacity = 40 a. area x 6' deep = 240 acre feet

16 April 1954


R-2E.
T.
9
S.
31
32
33
6
5
4
7
8
9
Ditch
1914 survey.
1914 survey
10S - 2E
Three subdivisions
40 acres irrig.
Q = 200 acre feet

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203



IN REPLY REFER TO:

...mailed 2,3,93 by A...
BLM sought remand...
remanded to allow acceptance of
Row as built developed

JOHN C. URQUIDI

IBLA 91-150 Decided December 4, 1992

Appeal from a decision of the Boise District Office, Idaho, Bureau of Land Management, cancelling right-of-way IDI-0603.

Decision set aside, case referred to Hearings Division.

1. Act of March 3, 1891--Rights-of-Way: Act of March 3, 1891--Rights-of-Way: Cancellation

   Where a right-of-way grant issued under the Act of Mar. 3, 1891, does not contain provisions expressly mandating the filing of proof of construction of required improvements, failure to file does not, by itself, justify cancellation of the right-of-way.

2. Act of March 3, 1891--Rights-of-Way: Act of March 3, 1891--Rights-of-Way: Cancellation--Rules of Practice: Appeals: Hearings--Rules of Practice: Hearings

   The holder of a right-of-way issued under the Act of Mar. 3, 1891, is entitled to a fact-finding hearing prior to cancellation for failure to construct improvements within 5 years of issuance as required by sec. 20 of that Act, where the case record does not demonstrate that improvements were not timely constructed, and where the right-of-way holder has expressly asserted that construction has been completed. In such hearing, BLM, as the proponent of the invalidity of the right-of-way, has the burden of proving that authorized improvements were not timely constructed.

APPEARANCES: John C. Urquidi, pro se; J. David Brunner, District Manager, Glen E. Cooper, Acting District Manager, Boise District Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

John C. Urquidi has appealed from a December 20, 1990, decision of the Boise District Office, Idaho, Bureau of Land Management (BLM), cancelling canal and reservoir right-of-way IDI-0603.

EXHIBIT "C"

Right-of-way IDI-0603 for an irrigation ditch was originally issued to Hazel B. Owens on May 8, 1954, pursuant to the Act of May 3, 1891, 43 U.S.C. § 946 (1970), under serial number Idaho 0603, for irrigation purposes. 1/ On January 14, 1963, BLM issued a notice requesting from Owens proof of construction of the canal. The record contains nothing indicating that proof of construction had been filed. On the other hand, it contains nothing, such as an inspection or land report, indicating that improvements had not been constructed as of January 1963. BLM's January 14, 1963, notice evinced uncertainty as to the status of construction, in that it offered Owens various options depending on whether the construction was complete, incomplete, or in progress. Owens evidently did not respond to BLM's request for proof of construction.

On December 23, 1968, BLM issued a contest complaint to Owens against right-of-way grant Idaho 0603, specifically alleging that "[t]he canal and reservoir have not been constructed as required by the provisions of section 20 of the Act of March 3, 1891," although nothing in the present record confirms that allegation. BLM requested that it be allowed to offer proof and asked that the right-of-way grant be revoked and canceled in its entirety. No proof was ever made, however, as the complaint was returned to BLM undelivered on December 27, 1968, with a notation that Owens was deceased.

BLM evidently took no further action on the matter until the end of 1989. On November 3, 1989, BLM received a copy of a warranty deed showing that title to the irrigation ditch and associated private land had passed to John C. and Harriett Urquidi from William J. and A. Irene Owens (apparently the heirs of Hazel B. Owens). In an internal memorandum dated February 9, 1990, BLM decided to "attempt to have the new right-of-way holder file the Proof of Construction so that the grant can be perfected and the records updated as to the new holder's name and address." By letter of July 13, 1990, BLM requested Urquidi to furnish proof of construction. BLM enclosed a form for this purpose. The record contains no response. BLM again requested Urquidi to furnish proof of construction on October 26, 1990, when it issued a decision holding the right-of-way for cancellation. Having again received no response, BLM, by its decision of December 20, 1990, canceled the right-of-way.

In his statement of reasons on appeal Urquidi (appellant) contends "that proof of construction was supplied, and construction was completed." He further asserts that BLM's action reduced the value of his property and denied him his water rights.

In its response, BLM initially requests that the appeal be dismissed as untimely filed. BLM also explains that its policy is to conduct a field

1/ The Act of May 3, 1891, has been interpreted as applicable to rights-of-way for pipelines, flumes, or other conduits, if water is conveyed primarily for irrigation or drainage purposes. See, e.g., 43 CFR 244.15(a) (1949); Fred Markle, 6 IBLA 52, 53 n.2 (1972).

examination after proof of construction is received from the right-of-way holder. It notes that, since no proof of construction was ever received, no field examination was conducted, and no decision accepting proof of construction was issued.

As to the timeliness of the appeal, the record shows that appellant received BLM's decision on December 28, 1990. Departmental regulation 43 CFR 4.411(a) provides that "[a] person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service." Thus, his notice of appeal was due to be filed on or before January 28, 1991, the first day BLM's offices were open after the expiration of the 30-day appeal period. The notice of appeal was not received by BLM until Tuesday, January 29, 1991.

However, a grace period is provided by 43 CFR 4.401(a), which states that a delay in filing will be waived if the document is filed no later than 10 days after it was required to be filed and the document was transmitted before the filing deadline. Here, the record establishes both that the notice of appeal was transmitted on January 26, 1991, before the filing deadline, and that it was received within 10 days thereafter. Accordingly, the provisions of 43 CFR 4.401(a) apply, the delay in filing is waived, and the appeal is properly considered timely filed.

Turning to the merits, we note that although the Act of May 3, 1891, was repealed by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, 90 Stat. 2743, 2793, that section expressly provided that nothing in FLPMA should be construed as terminating any valid right-of-way existing on October 21, 1976. The instant right-of-way was so existing and was therefore not affected by FLPMA. See James L. Morrison Sr., 87 IBLA 236, 238 (1985).

Section 20 of the Act of March 3, 1891, 43 U.S.C. § 948 (1970), authorizing the issuance of rights-of-way for ditches and canals, imposed the following proviso:

> Provided, That if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights therein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

That forfeiture proviso was also set out in Departmental regulations in effect at the time of issuance of the right-of-way (43 CFR 244.14(c) (1949)) and throughout the 5-year period following issuance. 43 CFR 244.22(c) (1954) and 43 CFR 2234.3-1(a)(iii) (1969). We have held that section 20 of the Act "requires forfeiture of the grant to the extent the improvements are not completed," and that, under the statute, "no extension of the original grant may be authorized." Fred Markle, 6 IBLA 52 (1972).

[1] We first consider whether the failure to file the proof of construction, by itself, constitutes grounds for cancellation of the right-of-way. In Grindstone Butte Project v. Kleppe, 638 F.2d 100 (9th Cir. 1981), cert. denied, 454 U.S. 965, the court held that entitlement to a right-of-way under the 1891 Act was qualified by the Act of February 15, 1901, ch. 372, 31 Stat. 790 (formerly codified at 43 U.S.C. § 959 (1970)) repealed, section 706(a) of FLPMA, supra, which authorized the Secretary to condition the grant of a right-of-way "upon compliance with reasonable regulations and terms designed to protect the public interest." 638 F.2d at 103. Thus, the Secretary has authority to cancel a right-of-way for violations of the conditions set out in its terms. See James L. Morrison Sr., supra at 243-44 (Grant, A.J., concurring).

The regulations in effect during the time after issuance of the right-of-way state as follows concerning filing proof of construction: "Upon completion of construction, proof thereof should be submitted to [BLM], consisting of a statement and certificate furnished by the holder of the right-of-way." 43 CFR 244.9(a) (1949); 43 CFR 244.15(a) (1954); and 43 CFR 2234.1-4(b)(1) (1969) (emphasis supplied). That language is not mandatory, but merely precatory. 2/ To the contrary, failure to file timely proof of construction is a curable defect. See Grace Belle Wilkerson, 10 IBLA 279 (1973). We find nothing in the grant of the right-of-way itself requiring the filing of such report. Cf. James L. Morrison Sr., supra at 240-41 (emphasizing that section 3 of the right-of-way form used in that case expressly required the "filing of proof of construction within 5 years of the date of grant"). In the absence of a mandatory rule requiring that proof of construction be filed within 5 years of issuance of the right-of-way or a provision in the right-of-way grant expressly so requiring, we decline to affirm BLM's decision cancelling the right-of-way on account of that failure. 3/

[2] The present record does not provide an adequate basis to determine whether this right-of-way may be canceled under the authority of section 20 of the Act of March 3, 1891, quoted above, for failure to timely construct improvements. Although it would seem a simple matter to examine the lands in question to ascertain whether improvements have been constructed, BLM

2/ The right-of-way is expressly made subject to "all future regulations issued" under the Act of Mar. 3, 1891. The proof-of-construction regulation was subsequently redesignated, but retained the significant phrase "should be submitted." 43 CFR 2802.2-2 (1979).

3/ Failure to file proof of construction has been considered in previous cases, but never as the sole ground for cancellation. Thus, although we stated in James L. Morrison Sr., supra at 242 n.7, that failure to file proof of construction was a violation that supported cancellation of the right-of-way, there was other noncompliance presented in that case not shown here, including failure to maintain the right-of-way site as required and to maintain an adequate performance bond. See also Fred Markle, supra at 54. Also, as noted above, the provisions of the right-of-way in Morrison expressly required the filing of proof of construction.

states that it presumed that no construction has occurred, based on the admitted failure both of Owens and, more recently, Urquidi to file proof of construction. However, Urquidi has directly asserted in his statement of reasons that construction has been completed. 4/ In such circumstances, the right-of-way holder is entitled to a fact-finding hearing prior to cancellation, as provided by 43 CFR 4.415. Cf. Fred Markle, supra at 55-56 (ruling that no hearing was required in that case, as there was no dispute that improvements had never been constructed, but observing that the right-of-way holder has a right to a hearing if that fact were disputed).

Accordingly, BLM's decision is set aside and the matter is referred to the Hearings Division to convene a factfinding hearing. BLM, as the proponent of the invalidity of the right-of-way, shall have the burden of proving that the authorized improvements have not been constructed as required by section 20. 5/ The Administrative Law Judge to whom the case is assigned shall issue a decision which, if not appealed, shall be final for the Department.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside, and the case is referred to the Hearings Division as discussed above.

David L. Hughes
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

4/ We note that this dispute could have been avoided if appellant had responded as requested to BLM's repeated requests for confirmation that improvements had been constructed.

5/ BLM should confirm forthwith appellant's statement that construction was completed. It would appear that BLM's decision could be summarily affirmed if, at this late date, no improvements have been constructed. improvements have been constructed.

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
4015 Wilson Boulevard
Arlington, Virginia 22203

MAR 2 1996

IN REPLY REFER TO:

IBLA 93-42 : IDI 29514
:
JOHN B. URQUIDI : Trespass
:
: Affirmed as Modified

ORDER

By letter dated September 29, 1992, the Acting Bruneau Area Manager, Bruneau Area Office, Bureau of Land Management (BLM), informed John B. Urquidi that staff specialists from the Area Office had inspected public lands in the Little Jacks Creek drainage and determined that a dam had been constructed across a tributary to Little Jacks Creek without apparent authorization. He described the dam as being located in the SE¼SW¼SE¼ section 5, T. 10 S., R. 2 E., Boise Meridian, Idaho. The Area Manager continued:

> On September 23, 1992, you spoke to John Sullivan, Realty Specialist for this office, and admitted that you were the person responsible for this unauthorized construction. Pursuant to that admission, I am enclosing a Trespass Notice. This trespass is considered a repeated nonwillful trespass, since you were previously found responsible for the nonwillful trespass of a fence on public lands.
>
> In accordance with 43 CFR 2801.3(b) and (c)(2), I have calculated the trespass rental and administrative charges, which total $434.34. A Bill for Collection in this amount is enclosed.

The Area Manager noted that Urquidi had inquired about submitting a right-of-way application to legitimize the trespass, but he stated that no action on such an application would proceed until full payment of the trespass charges. Urquidi filed a timely appeal of the trespass notice.

The regulations provide at 43 CFR 2801.3(a):

> Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of this part and that has not been authorized, or that is beyond the scope and specific limitations of an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in §2800.0-5.

Further, anyone found to be in violation of 43 CFR 2801.3(a) by the BLM authorized officer must be notified in writing of the trespass and is liable to the United States for reimbursement for all costs incurred by the United States in investigating and terminating the trespass, the rental

ADD - 5 1996

EXHIBIT "D"

value for the lands, and rehabilitating and stabilizing any lands that were harmed by the trespass. 43 CFR 2801.3(b).

On appeal, Urquidi suggests the trespass might best be resolved in a conjunction with another case in which he had challenged a December 20, 1990, decision of the Boise District Office, BLM, cancelling a canal and reservoir right-of-way, IDI-0603, for failure to file proof of construction. The Board set aside that BLM decision and referred the case to the Hearings Division for assignment of an administrative law judge to determine whether the authorized improvements had been constructed as required. John C. Urquidi, 124 IBLA 353 (1992). Thus, Urquidi suggests that the administrative law judge should decide both cases. There is no evidence that the dam in question in this case was constructed in right-of-way IDI-0603. In the absence of any such evidence, we find no relationship between the cases. In addition, by order dated September 3, 1993, the administrative law judge dismissed the appeal involving IDI-0603 because BLM had requested remand to allow acceptance of the right-of-way as fully developed. Urquidi has made no further filing in this case since the issuance of that order to establish that the dam in question in this case is authorized by IDI-0603.

Urquidi argues that BLM's trespass notice "directly reduces my private property value, denying me the water the state of Idaho allows me to divert onto my private property * * *." He states that the dam "probably is on private ground, but if it is not on private ground and is on federal ground the authorization would have already been granted for this is only a wing dam, diverting water into ditches from established an[d] authorized storage dams up stream."

Urquidi has produced no evidence that the dam in question is on private ground. The record shows that it is located on public land. See Unauthorized Use Investigation Report, dated September 9, 1992. The fact that Urquidi may hold a water right from the State of Idaho does not provide authorization for construction of a dam on public land.

Urquidi also states: "I also protest George Farrows nonwillful trespass of a fence on public lands, approximately forty miles away from current trespass [IDI] 29514, that was shown constructed before I was born as not relevant." Presumably, this statement is made to refute the Area Manager's assertion that Urquidi had previously been found responsible for the nonwillful trespass of a fence on public lands and his finding that a repeated nonwillful trespass was justified in this case. The record is completely devoid of any evidence regarding an earlier trespass by Urquidi. Thus, there is not an adequate basis for concluding that the trespass in this case is repeated nonwillful. The trespass may only be considered nonwillful and BLM should adjust the trespass charges accordingly. See 43 CFR 2801.3(c)(1).

In addition, we note that it appears that the last four entries on BLM's trespass log describe charges for processing the appeal in this case for transmission to the Board. BLM Handbook H-9232-1, "Realty Trespass Abatement," which is incorporated as part of the BLM Manual, provides at

Chapter VII, E. Administrative Cost - Liability and Calculation: "Administrative costs and the log cover the period from case file establishment to the point the Bureau no longer controls the resolution action." Chapter V, E. 4. of the same Handbook states that "[w]hen an appeal has been filed, IBLA has exclusive jurisdiction over the matter and BLM can take no action on the case." Because BLM no longer controls resolution of the action when an appeal has been filed, an alleged trespasser should not be responsible for BLM's costs in processing the appeal for transmission to the Board. BLM should adjust the trespass charges in this case accordingly.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

APPEARANCES:

John Urquidi
HC 85 Box 135
Bruneau, ID 83604

cc: Office of the Field Solicitor
U.S. Department of the Interior
Federal Building, U.S. Courthouse
550 West Fort Street, Box 020
Boise, Idaho 83724-0020

APR - 5

Form 202
3/78

Ident. No. 55-7142 renumbered to 51-07199

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT APPROVED

To appropriate the public waters of the State of Idaho

1 Name of applicant Bureau of Land Management Phone 334-1582

Post office address 3948 Development Avenue, Boise, Idaho 83705

2. Source of water supply unnamed stream which is a tributary of sinks

3. Location of point of diversion is NW ¼ of NE ¼ of Section 7 Township 10 S

Range 2 E B.M. Owyhee County, additional points of diversion if any

4. Water will be used for the following purposes:

Amount 1 cfs/ft (cfs or acre-feet per annum) for stockwater storage purposes from 1/1 to 12/31 (both dates inclusive)

Amount 1 af/ft (cfs or acre-feet per annum) for stockwater from storage purposes from 1/1 to 12/31 (both dates inclusive)

Amount 1 af/ft (cfs or acre-feet per annum) for wildlife storage purposes from 1/1 to 12/31 (both dates inclusive)

Amount 1 ac/ft (cfs or acre-feet per annum) for wildlife from storage purposes from 1/1 to 12/31 (both dates inclusive)

5. Total quantity to be appropriated:

a. _____ cubic feet per second and/or b. 1 acre-feet per annum.

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. dams

b. Height of storage dam 8 feet, active reservoir capacity 1 acre-feet; total reservoir capacity 1 acre-feet, materials used in storage dam: earth-fill

Period of year when water will be diverted to storage 1/1 (Month/Day) to 12/31 (Month/Day) inclusive

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years *(minimum 1 year – maximum 5 years).*

8. Description of proposed uses:

a. If water is not for irrigation

(1) Give the place of use of water: NW ¼ of NE ¼ of Section 7 Township 10 S.

Range 2 E. B M

(2) Amount of power to be generated N/A horsepower under _____ feet of head

(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served N/A , or number of families to be supplied with domestic water N/A .

(5) If water is to be used for other purposes describe: _____

RECEIVED
OCT 1 19[illegible]
Department of Water Resources
Western Regional Office

EXHIBIT "E"

b If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

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

Total number of acres to be irrigated _____

c. Describe any other water rights used for the same purposes as described above. _____

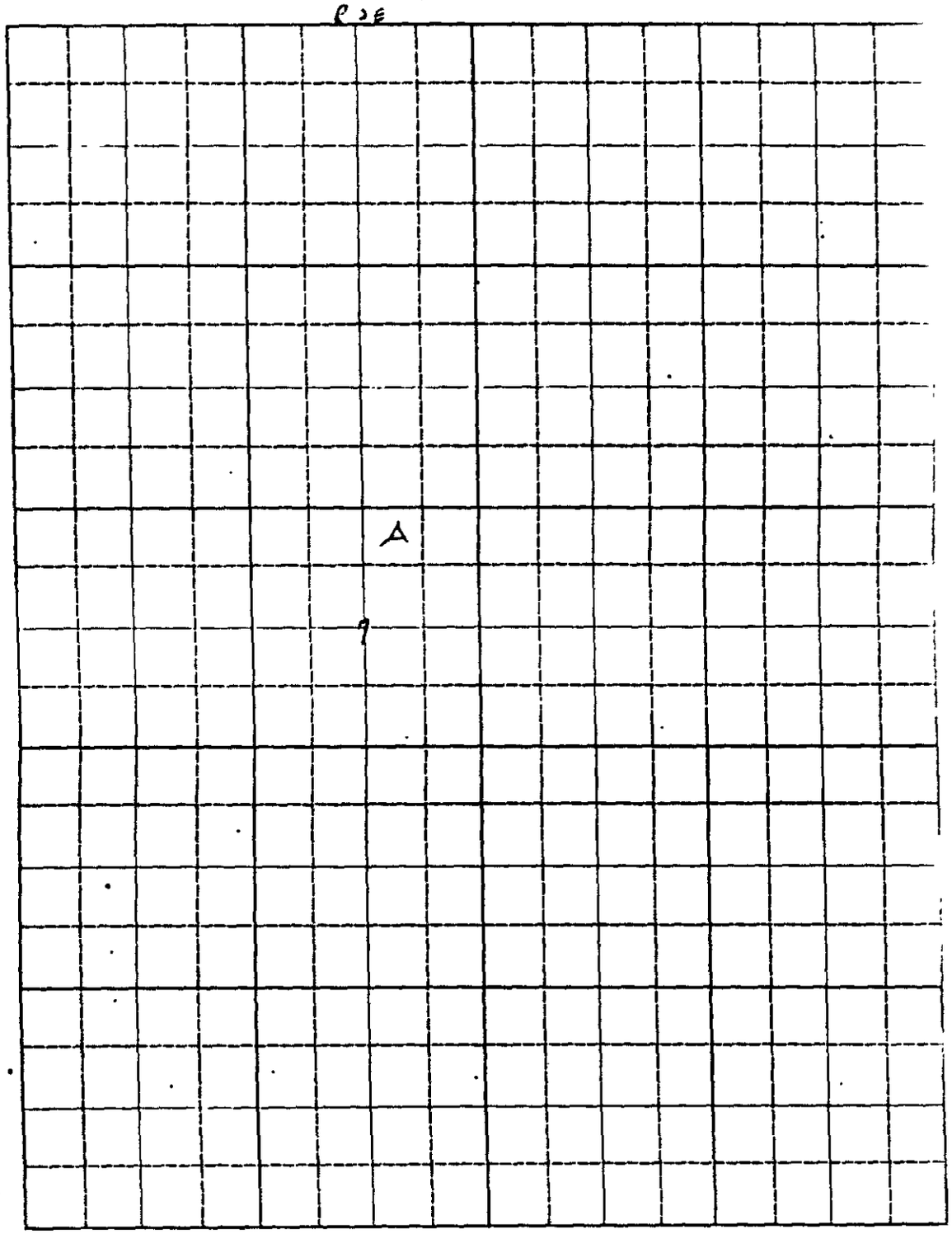
9. a. Who owns the property at the point of diversion BLM

b. Who owns the land to be irrigated or place of use BLM

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing _____

10. Remarks BLM Project Name is Basin Reservoir No. 2 and Project No. is 6229.

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

(Applicant)

Processed Right, 7/30/1981

Received by _____ Date 7-30-81 Time 4:45 a.m.

Preliminary check by _____ Fee $ 30.00

Receipted by _____ Date 7-30-81 #14728

Publication prepared by _____ Date _____

Published in _____

Publication dates _____

Publication approved _____ Date _____

Protests filed by: None

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by DBS

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No 55-7142, and said application is hereby APPROVED.

1 Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before September 1, 19 86.

c The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land

d Other

Witness my hand this 17th day of September, 19 81.

L. Glen Saxton

Chief, Operations Bureau

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	US DEPT OF INTERIOR	01/01/1874	STOCKWATER STORAGE	01-01	12-31	0.53 CFS	
			STOCKWATER FROM STORAGE	01-01	12-31	0.53 CFS	
			WILDLIFE STORAGE	01-01	12-31	0.02 CFS	
			WILDLIFE FROM STORAGE	01-01	12-31	0.02 CFS	
					TOTAL DIVERSION:	0.55 CFS	

Water Source: LITTLE JACKS CREEK Tributary to: JACKS CREEK Stage: BENEFICIAL USE

Point(s) of Diversion: 1 T10S R02E S06 SESE OWYHEE County
S07 NENE OWYHEE County

Place of use Legal Description for: STOCKWATER STORAGE

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
1 10S	02E	7	S															

Place of use Legal Description for: STOCKWATER FROM STORAGE

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
1 10S	02E	7	S															

Place of use Legal Description for: WILDLIFE STORAGE

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
1 10S	02E	7	W															

Place of use Legal Description for: WILDLIFE FROM STORAGE

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
1 10S	02E	7	W															

POU County: OWYHEE

Non-Irrigation Uses: STOCKWATER, 2314 RANGE CATTLE; WILDLIFE VAR. AMT.

Other Rights: NONE

Remarks: GEN BLM RECORD ID = 5101680123
FIRST DATE OF BENEFICIAL USE - 1874

EXHIBIT "F"

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Boise District Office
3948 Development Avenue
Boise, Idaho 83705

IDI-4000
IN REPLY REFER TO

June 3, 1993

Mr. Steve Lester
Idaho Department of Water Resources
2734 Airport Way
Boise, ID 83705

Dear Mr. Lester:

Some contention has occurred between some of our permittees regarding water rights on a number of springs and reservoirs in the head waters area of Little Jack's Creek.

I have listed the legal description below of the waters in question. I would appreciate a complete listing of existing water rights and water right claims submitted under the Snake River Adjudication process for the legal descriptions listed below.

T. 9S, R. 2E Sec. 31 NENE
T. 9S, R. 2E Sec. 31 SWSE
T. 10S, R. 2E Sec. 05 SWSE
T. 10S, R. 2E Sec. 05 NENE
T. 10S, R. 2E Sec. 04 NWSE
T. 10S, R. 2E Sec. 07 NENE
T. 10S, R. 2E Sec. 07 NWNE

Please contact Steve Jirik at 384-3337 if you have any questions. Thank you for your help.

Sincerely,

Fred Schley
Bruneau Acting Area Manager

EXHIBIT "G"

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Boise District Office
3948 Development Avenue
Boise, Idaho 83705

IN REPLY REFER TO

4110

JAN 7 1993

Dear Grazing Permittee:

The 1992 grazing season was an extremely difficult year for operators who grazed livestock on public lands across the western United States and more particularly within the Bruneau Resource Area. Your effort to reduce possible impacts to the rangeland resources is greatly appreciated. Many of you voluntarily took complete non-use or reduced use, as well as contributed significantly to improve livestock distribution through increased riding and water hauling and improved salting practices. I appreciate the time and the sacrifices you have endured to coordinate these efforts with my staff and work out mutually agreeable and beneficial solutions.

Next year is shaping up to be a challenging one as well. Recent weather patterns have given some favorable indications that perhaps this area may experience a "normal" precipitation year, however, there remain many areas that indicate through obvious signs of stress due to the six consecutive years of drought that they will not respond quickly. My staff closely monitored many rangeland areas this past year, and regardless of the amount of moisture and favorable growing conditions we may receive throughout this winter and the coming spring, the majority of these areas will not "bounce back" to their pre-drought condition.

Therefore, I am recommending that grazing management alternatives continue to be considered for your allotment(s) and/or pastures during the 1993 grazing year. I am suggesting that you begin to seriously consider the possibility that continued rest, additional reductions or a change in your season of use may be necessary. Many of you may need to delay your turn-outs by as much as two weeks to two months, depending on conditions. I am making these recommendations based upon the observed poor plant vigor, reduced forage production, loss of desirable perennial plant species, lack of carry over forage (old feed), utilization levels in excess of the allowable use level, establishment of undesirable vegetation, lack of litter and potential soil erosion that have appeared in many areas in the resource area. The Grazing Advisory Board has indicated their support and recognition of the need to continue to address the drought impacts during the upcoming year.

EXHIBIT "H"

I would like to review the available monitoring data and use supervision inspections for last grazing season with you for your allotment(s) prior to the upcoming grazing season that may have been collected by the BLM or yourself. I would like to meet with you to discuss possible steps that could be taken during the 1993 grazing season to protect the resources for the multiple-uses of the public rangelands. As in the past, the BLM remains open to suggestions and voluntary adjustments that are consistent with the achievement of management objectives for the allotment(s). If necessary, an allotment inspection may be conducted prior to turn-out. I would prefer to meet with each of you on an allotment-by-allotment basis as early as possible in order to provide each of us with ample opportunity to assess your individual situations and make contingency plans accordingly, however, some adjustments may be handled by phone.

Please give some serious thought to these meetings and have some options and ideas ready for us to discuss. I would prefer to schedule these meetings a minimum of two weeks before your normally scheduled turn-out date. Please contact Abbie Jossie at (208) 384-3340 or your respective range conservationist to schedule a meeting. Due to the anticipated workload, I request that these meetings take place in the BLM Boise District Office, in order to provide my staff maximum flexibility in scheduling multiple meetings during the day.

I look forward to your continued cooperation in the proper management of the public rangelands. I am certain that if we work together, mutually agreeable options for grazing in 1993 can be implemented.

Sincerely,

Samuel D. Mattice

Acting Area Manager
Bruneau Resource Area

cc: as per attached mailing list

Mail to the permittees for the following allotments:

Center
Big Lake
Northwest
M&L field
West Canyon View
Miller Table
East Canyon View
JP Point
Grasmere Field
N. Grasmere Seeding
S. Grasmere Seeding
Tokum Bambi
N. Sheep Creek Seeding
S. Sheep Creek Seeding
JP Field
Highway Field
Mary's Creek
Trout Creek
Tindall Resv. Field
Bruneau Canyon
Antelope Field
Cat Creek
South JP Seeding
Big Springs
Mud Springs
Chalk Flat
Hammett #4
Hammett #5
Hammett #6
Hot Springs
S. Cold Springs
SE Alkali
SW Alkali
Sugar Bowl
Lower Bennett
N. Cold Springs
Emigrant Crossing
Sunnyside Spring/Fall
Sunnyside Winter
Castle Creek
Battle Creek
Crater Rings
West Slater Flat
Little Canyon

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

Water Right [redacted] Prefix Translation: ADJUDICATION CLAIM Old (D) Number -

Last Name	First Name	Address
*** C - CURRENT OWNER ***		
LANTINEN	BARBARA	1 - P.O. BOX 167A 2 - 3 - City- BRUNEAU State- ID Zip- 83604 Phone - 208-845-2208
LANTINEN	DAVID	1 - P.O. BOX 167A 2 - 3 - City- BRUNEAU State- ID Zip- 83604 Phone - 208-845-2208

Priority Date	Region	Stage	Status
05/31/1882		J - BENEFICIAL USE	

Source	Tributary
UNNAMED STREAMS	SINKS
SPRINGS	SINKS

Basis of claim = domestic use of water

Point of Diversion

Twp	Rng	Sec	Tract	Lot	BFlg	County	Stream Index (Blank if no Index Code)
[redacted]	01E	20	NW SE			(73) OWYHEE	
		22	SW NE			(73) OWYHEE	
			NW SE			(73) OWYHEE	
	[redacted]	13	NW SW			(73) OWYHEE	
		14	NE SE			(73) OWYHEE	
		20	NE NE			(73) OWYHEE	
		29	NW SE			(73) OWYHEE	
		32	NW NW			(73) OWYHEE	
	01W	35	SE SW SE			(73) OWYHEE	
[redacted]	[redacted]	4	NE SW			(73) OWYHEE	
		40	NE NE			(73) OWYHEE	
		6	SE SE			(73) OWYHEE	
		13	NW NW			(73) OWYHEE	
		14	SE NW			(73) OWYHEE	
		15	SE NW			(73) OWYHEE	
		20	NE SW			(73) OWYHEE	
		21	SW NE			(73) OWYHEE	
	03E	3	NW SW			(73) OWYHEE	
		8	NW SE			(73) OWYHEE	
		9	NW SW			(73) OWYHEE	

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
04 - [redacted]		01/01	12/31	0.070	

= .07 cfs about 31 gpm

EXHIBIT "F"

Water right number - A51-10199 Prefix Translation: ADJUDICATION CLAIM

Total Div. Rate	Total Div. Volume	Total Div. Capacity	Total Consumptive Use	KW Usage
0.070			0.0	

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
09S	01E	20	SW SE			04	STOCKWATER	(73) OWYHEE
09S	01E	22	SW NE			04	STOCKWATER	(73) OWYHEE
09S	01E	22	NW SE			04	STOCKWATER	(73) OWYHEE
09S	02E	13	NW SW			04	STOCKWATER	(73) OWYHEE
09S	02E	14	NE SE			04	STOCKWATER	(73) OWYHEE
09S	02E	20	NE NE			04	STOCKWATER	(73) OWYHEE
09S	02E	31	NW SE			04	STOCKWATER	(73) OWYHEE
09S	02E	32	NW NW			04	STOCKWATER	(73) OWYHEE
09S	01W	35	SW SE			04	STOCKWATER	(73) OWYHEE
10S	02E	4	NE SW			04	STOCKWATER	(73) OWYHEE
10S	02E	5	NE NE			04	STOCKWATER	(73) OWYHEE
10S	02E	6	SE SE			04	STOCKWATER	(73) OWYHEE
10S	02E	13	NW NW			04	STOCKWATER	(73) OWYHEE
10S	02E	14	SE NW			04	STOCKWATER	(73) OWYHEE
10S	02E	15	SE NW			04	STOCKWATER	(73) OWYHEE
10S	02E	20	NE SW			04	STOCKWATER	(73) OWYHEE
10S	02E	21	SW NE			04	STOCKWATER	(73) OWYHEE
10S	03E	3	NW SW			04	STOCKWATER	(73) OWYHEE
10S	03E	8	NW SE			04	STOCKWATER	(73) OWYHEE
10S	03E	9	NW SW			04	STOCKWATER	(73) OWYHEE

Diversion Means - EARTHEN DAMS, CATCHMENT PONDS, TANKS

Non-Irrigation Use - S/285 RANGE CATTLE

Other Rights for Same Use - IN-STREAM STOCKWATER

Remarks

BLM LESSEE

Old Water Right Numbers

No Old Water Right Numbers found.

Conditions of Approval

No Conditions of Approval found.

Decree Plaintiff	Decree Defendant	Decree Date
		00/00/0000

Audit Fields - 01/11/89 HARRINGT 01/17/89 HARRINGT 10/24/89 REFUNDNL

Comments

No Comments Found

Water right number - A51-10199 Prefix Translation: ADJUDICATION CLAIM

Adjudication Rights Dates and Flags Area

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 01/11/1989	Last Amended Date	- 01/17/1989	Temporary Right	- P
Proof Due Date	- 00/00/0000	Proof Made Date	- 00/00/0000	Water District	-
Licensed Date	- 00/00/0000	Receipt Number	- C005053	Federal/State Indicator	- S
Claims Tape Error Flg	-	POU Ownership Flag	- N	Presumption Flag	-
Fee Exempt Flag	-	Name Connector	- AND/OR	Notice of Error Flag	-

This is the only adjudication claim for Latitude in the area you are interested in.

None found for Sullivan.

COPY

SUSAN E. BUXTON
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and
Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	))))))	AFFIDAVIT OF IRENE OWENS

STATE OF Oregon)
: ss.
COUNTY OF Malheur)

Irene Owens, being first duly sworn upon oath, deposes and says:

1. Your Affiant's address is Box 242, Pollock, Idaho 83547.

2. That your Affiant and her husband William Owens previously owned the property commonly referred to as the "Basin property" now owned by the Urquidis.

3. That your Affiant has ~~regularly~~ I. O. visited the Basin property since its sale to the Urquidis in 1966, most recently in 1993.

4. That your Affiant has regularly kept a diary from 1982 to present which memorializes some of those occasions where your Affiant visited the Basin property. That your

Affiant has taken pictures of the Basin property and those pictures and excerpts of your Affiant's diary are attached hereto as Exhibit A.

5. That on October 4, 1993 your Affiant took pictures of the Basin property which indicates water irrigating the property.

6. That your Affiant leased the Basin property to Dave Lathinen in the early 1960s and that your Affiant observed Mr. Lathinen irrigating the property during the period of that lease.

7. That your Affiant believes the Basin property has been regularly irrigated since its condition, as observed by her, has not changed over the years.

Further, your Affiant saith not.

DATED this 14th day of March, 1996.

Irene Owens

SUBSCRIBED AND SWORN to before me this 14th day of March, 1996.

OFFICIAL SEAL
JAMES S. MOLDER
NOTARY PUBLIC-OREGON
COMMISSION NO. 049640
MY COMMISSION EXPIRES FEB 18, 2000

Notary Public for Oregon
Residing at: 2119 N.W. 2nd Avenue Ontario, OR 97914
My Commission Expires: 2-18-2000

Oct 12 1992 Mon.

after breakfast Billy went back to the cabin down the canyon to take more pictures. Bill + I gathered up the jeep, took the tent down we had spotted a white tail chipmunk so we gave it an apple core. if we could have stayed there longer, it might have become tame. Billy came back + helped load up. we left there and are headed for the basin but the road is rough lots of boulders some steep it doesn't hurt the pickup it's a real slow bumpy drive. but we finally made it. it is sure beautiful from up on the hill. we could see a camper over at the place where we had the trailer + big room. those buildings are all down, just looks like the roof collapsed. the tar paper is all gone off the house. packrats have invaded it we see lots of water more than usual a small ditch was made above the cabin out toward the outhouse. it had a nice stream in it. we crossed over. Bill fixed it back, after we drove across it.)

Oct 12 continued

we unloaded the jeep. it took us 20 min to get the tent up. I fixed beef + noodles, we had bread + butter Cocoa coffee muffins

EXHIBIT A

Oct 13 Continued

we unloaded the jeeps it took us 20 minutes to get the tent up. I fixed beef + noodle stew had bread + butter Cocoa Coffee muffins then I washed up the things we all went into the tent laying around visiting I got up and saw the most beautiful sun set. I called the guys Billy took a picture of it. I did too. then we gathered wood and made a camp fire. pretty soon Billy could hear a rig coming. he went over + got the pistol (not knowing who it might be) the pickup pulled around by ours. it was Wayne + Adam. we dished up the rest of the noodles for them. we made Cocoa + hot Coffee + sat around the Camp fire. the guys put their bed rolls in with the tent. we could hear them talking away late. our bed is sure Cozy. we have flannel sheets + Pillow Cases. Bill was Cold + didn't become to bed. but it sure didn't take him long to warm up. it's Cooler up at this altitude 6400 ft. but all had a nice warm bedding.

Oct 3 Sun

So pretty bruises and sore. had a hard time last night. we got up to arise. Camp fire it's still cold. the sun isn't up yet. then we started breakfast I fryed bacon ~~or~~ on the portable kitchen stove in the tent. the others were out frying potatoes & eggs. the kids sat around drinking hot Chocolate. we did up the camp chores. then all but Bill & I went for a walk, over to the log house it's a full lot, so we sat in the shade. then we drove over to the house, ~~and~~ ~~we~~ ~~saw~~ ~~the~~ we seen the gang there. Gracie was in the house in the shade. she was real hot & tired. the rest wanted to walk further. but I asked Bill to take Sandy, Gracie Sarah & Amanda back to Camp. we seen Billy coming across the hill. he was going back to Camp to fix a lunch. when he came back with the pickup. Grace, & girls took his pickup back to Camp. Billy got in our pickup & the guys went back to get the girls & Sid. we gals

1993 ~~1st Army Camp~~

Oct 3 Continued ~~Sunday~~

water left in the boat. all the Crowd was sitting around the Camp. I could see Linda ly for pickup. so I hurried the best I could getting up. I'm sure bruised & battered.

we made a nice Camp fire. lots of coffee tea & hot Chocolate. so much fun to just sit around and listen to Bill telling of his days out here.

it sure got cold. we finally went to bed about 930 our bed is real Cozy. my knees are hurting. I sleep on the back side of the bed. I'm not sure I can Crawl over Bill to get out we will see. PS Penguin dive

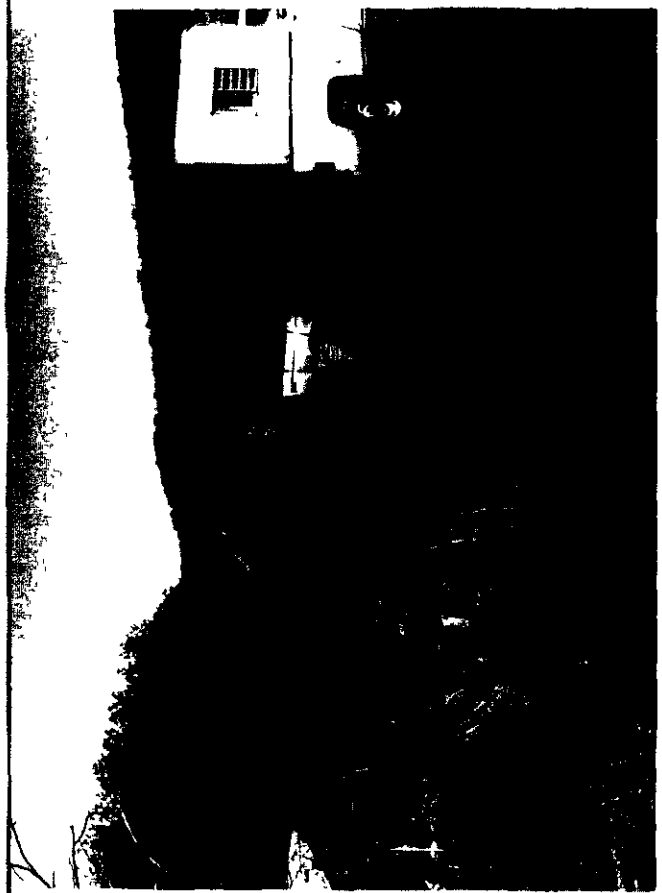
the place looks real good we have a small ditch running full of water. water all over the place. it sure looks great

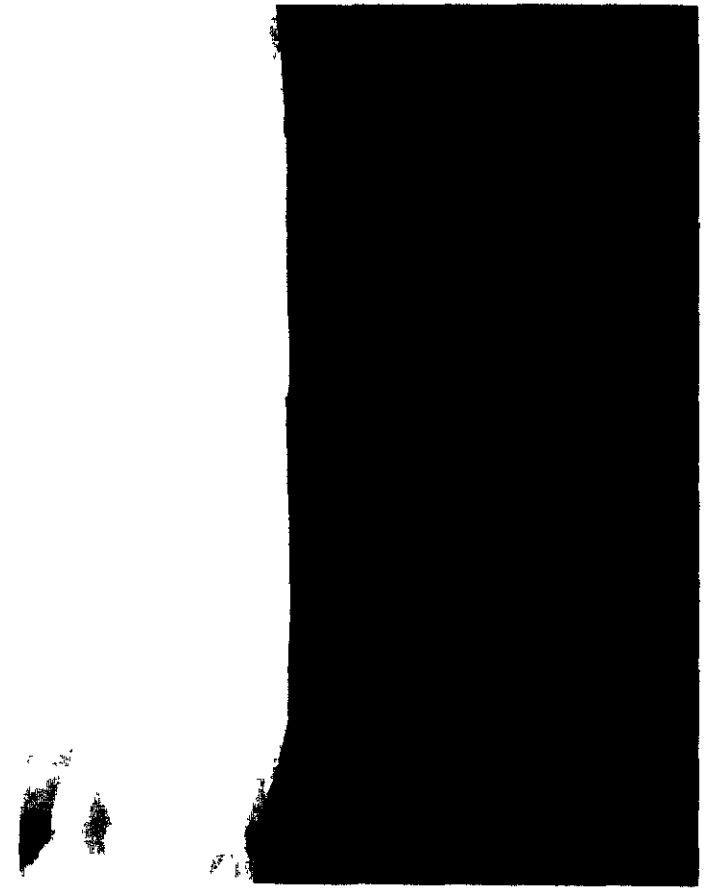


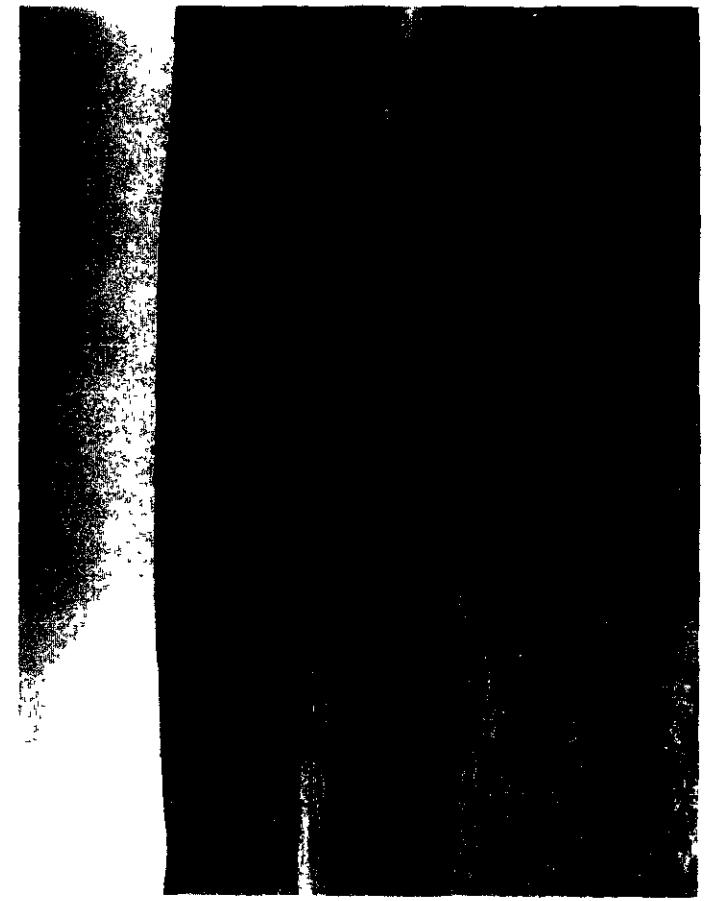






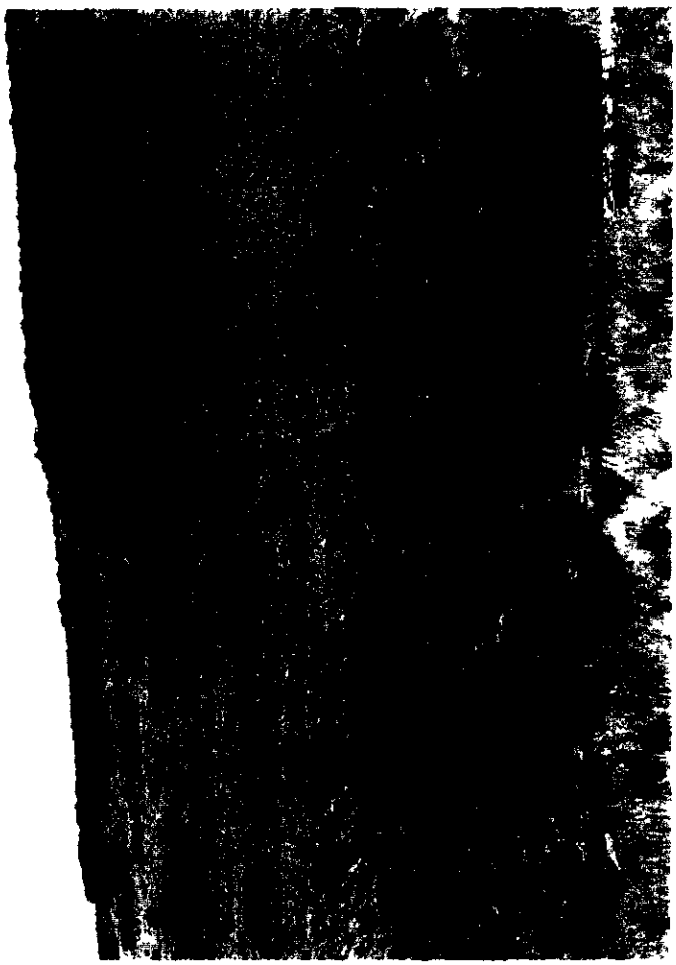


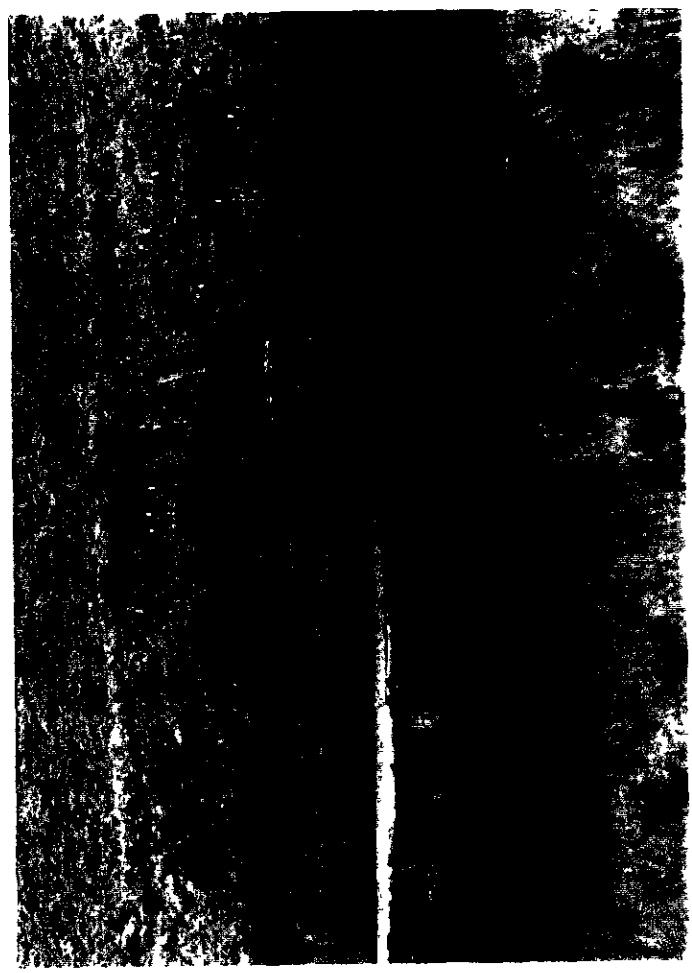


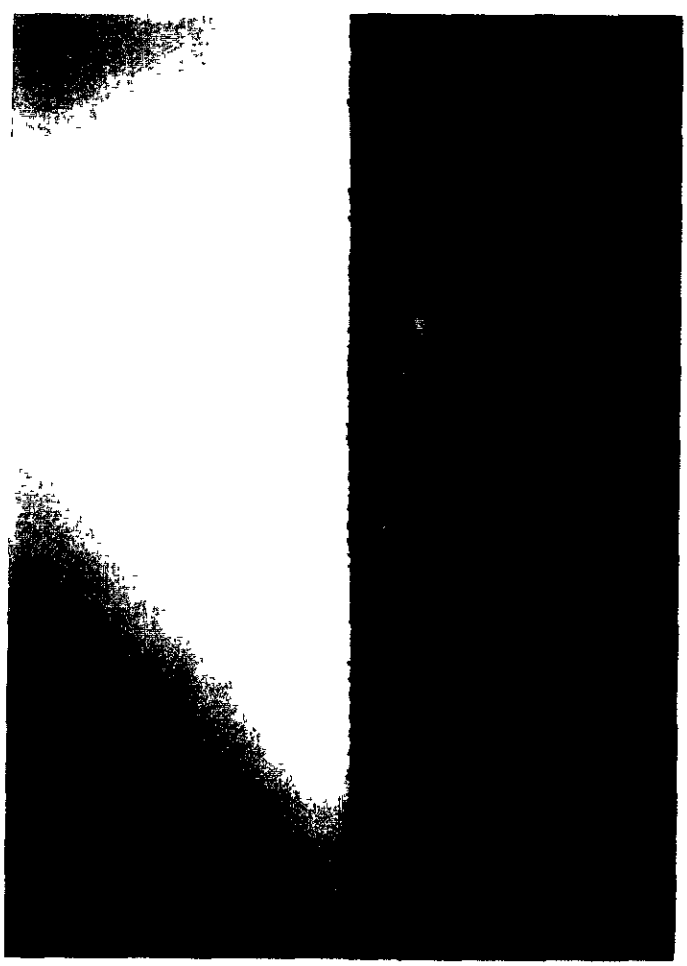


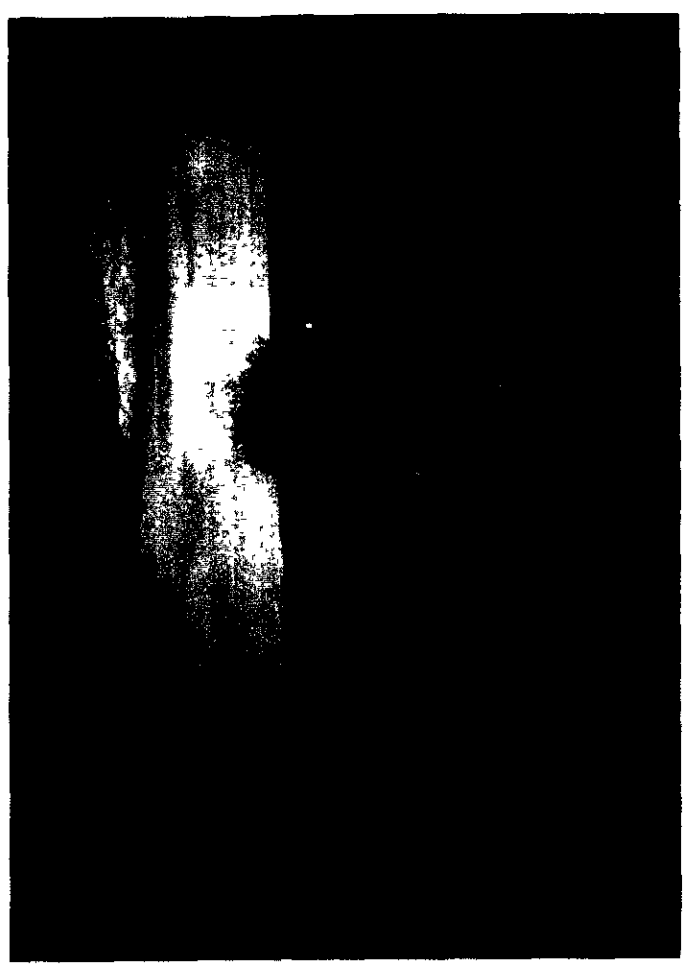












Dar
Maria III
File

RECEIVED
MAY 15 1996
WATER RESOURCES
WESTERN REGION

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 14, 1996

Susan E. Buxton
MOORE & MCFADDEN
Suite 910
999 Main Street
Boise, ID 83702

RE: ALLEGED FORFEITURE OF WATER RIGHT LICENSE NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 - JOHN URQUIDI

Dear Ms. Buxton:

Dave Tuthill of the department's western regional office recently forwarded a file of correspondence and information relative to alleged forfeiture of the above referenced water right licenses which were issued in connection with land now apparently owned or controlled by your client John Urquidi.

I have reviewed the file to determine the next steps in connection with the department's Order to Show Cause dated January 2, 1996. My review of the file shows the following:

- The department originally required a response to the Order to Show Cause by February 2, 1996 which date was later extended to March 29, 1996. To date you have visited with department staff and compiled information but have not yet formally responded to the Order to Show Cause.

- The parties to this matter include only John Urquidi, since Section 42-350, Idaho Code, is written in terms of "licensee". Other potential parties have not sought intervention into the matter.

- The scope of the Order to Show Cause pertains to the four (4) identified water rights and does not include rights of the Bureau of Land Management or of other water users.

- You have not requested an administrative hearing in this matter.

It appears that the next step is for you to respond to the Order to Show Cause by submitting to the department the information and/or evidence that you have compiled. The department will then evaluate the information, will seek any

needed clarification and will issue a Preliminary Order in the matter. The Preliminary Order could either set aside the prior Order to Show Cause or could declare some or all of the water rights in question forfeited through non-use.

Depending on the department's holding in the Preliminary Order, you would have the opportunity to respond by requesting a hearing as authorized by statute and the Rules of Procedure or requesting a hearing as provided in Section 42-350, Idaho Code, and Section 42-1701A, Idaho Code.

Enclosed for your information is a field report prepared on April 9, 1996 by Maria Minicucci, a water resource agent in the department's western regional office.

Please review this letter and advise me soon whether you believe a different procedure is more appropriate, since the department also would like closure of this matter. If you have questions, feel free to contact me or Dave Tuthill in our regional office.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: IDWR - W. Region
[redacted]
John C. Urquidi
John B. Urquidi
Chester Sellman
David Lahtinen

FIELD REPORT
Urquidi Property in Little Jack's Creek Basin

On October 29, 1993, I visited the property with Jan Shurte, (IDWR Western Region SRBA water rights supervisor), accompanied by Mr. John Urquidi. We walked the drainage from the area below the dam located in T10S, R02E, section 7, NENE, to the small dam located in T10S, R02E, section 5, NENE.

The diversion from Little Jack's Creek appears to be in the SESWSE of section 5, and is ditched to the north along the west side of the meadow along Little Jack's Creek.

Springs have been developed in the SESE of section 5. There are at least three springs which have been dug out and ditched to the west and east sides of the drainage. The furthest west of these ditches runs through sagebrush and appeared to be newly maintained. The "middle ditch" runs along the west side of the meadow and there is another ditch along the base of the hill on the east side of the drainage. These ditches had water in them and the claimant indicated that they bleed down into the meadow. There were also several dams in the stream itself.

The portion of the drainage in the E½SE¼ appeared to be a meadow that has been enhanced by the water control efforts of the claimant. The lower part of the drainage (E½NE¼) did not show evidence of irrigation and had extensive sagebrush.

We returned to our vehicles and drove to the dam in section 7, NENE. It appeared that the reservoir has not been used to store water in many years. There are extensive shrubs growing in the reservoir area and on the dam itself. Mr. Urquidi indicated that water is no longer diverted from the reservoir. We then drove around to the location of Buckaroo Spring in the center of section 4. It was getting dark by this time and we were unable to see anything other than sagebrush by the side of the road.

I returned to the site on July 19, 1995, accompanied by Ms. Kay Walker (IDWR western region SRBA sr. water agent). Our goal was to take pictures of the lands in sections 4 and 33 since I was unable to get pictures of these areas during our first visit. We drove to the property on the road from the northeast side of the property and viewed the lands in sections 33 and 4. We found no evidence of irrigation and dense sagebrush was growing in both locations. We took pictures of both locations, unaware that there was no film in the camera we were using.

We continued on to section 5, where Mr. Urquidi met us. We were unsure if he would be available for this exam, but he walked the drainage again with us. There was some water in the small reservoir in section 5, NENE, and the damp soils along the margin of the reservoir indicated that more water had been stored in the recent past. We continued along the drainage into the NWNW of section 4 and the south quarter of section 33. A ditch, which appeared to be recently maintained, was evident along the south side of the stream in this area, but there was no evidence of irrigation. I walked around the ridge on the south side to approximately the SWSWSE and saw no evidence of irrigation. We returned to our vehicles and left the property via the road to the west of the meadow in section 5.

Prepared April 9, 1996 by Maria Minicucci, IDWR W. region Sr. Water Agent

COPY

SUSAN E. BUXTON
PAUL A. TURCKE
MOORE & McFADDEN, CHARTERED
Attorneys at Law
999 Main Street, Suite 910
Boise, Idaho 83702
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

Attorneys For J & J Ranches and John C. and Harriett Urquidi and John B. and Alisa B. Urquidi

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF USE OF WATER UNDER LICENSED WATER RIGHTS NOS. 51-02058, 51-02065, 51-02230 AND 51-02252 IN THE NAME OF JOHN URQUIDI	URQUIDIS' RESPONSE TO ORDER TO SHOW CAUSE

John C. Urquidi and Harriett Urquidi, John B. Urquidi and Alisa Urquidi, and J & J Ranches ("the Urquidis"), through the parties' counsel, Moore & McFadden, Chartered, hereby submit the Urquidis' Response to the Order to Show Cause issued by the Idaho Department of Water Resources dated January 2, 1996 and as requested by the letter dated May 14, 1996.[1] The Urquidis support this response with the Affidavit of John C. Urquidi, the Affidavit of John B. Urquidi, the Affidavit of William J. Owens, the Affidavit of A. Irene Owens, the Affidavit of Orville "Bud" Hosford, and the documents attached to the Order Show Cause that

[1] The Urquidis responded to the Order to Show Cause in a meeting on April 4, 1996 and were not instructed to file a written response until May 14, 1996.

are already part of the record in this matter. The Urquidis submit their response beyond the statutorily-prescribed thirty (30) day response period following negotiation with the Department and within the time for response agreed upon by counsel for the Urquidis and the Department.

I.

FACTUAL BACKGROUND

In 1966, John C. Urquidi and his wife Harriett Urquidi purchased real property in Owyhee County, Idaho from William J. Owens and A. Irene Owens. The property consisted of approximately 648 acres located in sections 4 and 5 of T.10.S., R.2.E. and section 33 of T.9.S., R.2.E., Boise Meridian (the "Owens Basin"). As is regular practice in Idaho, the transfer expressly included all water rights, ditch rights, and reservoir rights used in connection with the property. No legal proceeding has ever been initiated against the Urquidis to challenge the validity of any of the water rights used in connection with the Owens Basin property.

The present proceeding was initiated by a letter dated February 27, 1992 signed by Chester Sellman and David Lahtinen addressed to the Idaho Department of Water Resources ("the Department"). In that letter, Messrs. Sellman and Lahtinen indicate a desire to "protest" actions taken by John Urquidi regarding the springs in section 5, T.9(sic, 10)S., R.2.E. in August of 1991. The letter indicates that "this was the first time in over twenty five years that this creek flow [from the SE 1/4 of the SE 1/4 of section 5 into the NE 1/4 of the NE 1/4 of section 5]

has been disturbed." The letter does not identify any other action as a target of the signatories' protest. The signatories do not allege that they hold licensed water rights in the relevant area. The signatories do indicate that during the 1991 grazing season it was more difficult for them to locate sufficient water on the public lands where they exercise privileges, but the signatories, in the February 27, 1992 letter as well as later submissions to the Department, do not provide any information that tends to identify the alleged actions of John Urquidi on his deeded property as the sole cause of the dry conditions in the NE 1/4 of the NE 1/4 of section 5 in 1991.

The Department sent letters to and received written submissions from Messrs. Sellman and Lahtinen, John B. Urquidi and John C. Urquidi, and considered two field examination performed by the Department's Senior Water Agent Maria Minicucci in October of 1993 and July of 1995 in determining that the Urquidis be required to show cause why all of the water rights issued to the Urquidis by the Department should not be forfeited due to non-use for the statutory period. The order to show cause does not specify a particular time frame where the alleged non-use has occurred, but asks the Urquidis to provide evidence to rebut a proposed finding that all of the family's water rights in the Owens Basin "have been forfeited through non-use for the twenty five years prior to 1991." The Urquidis submit the present documentation as an initial response to the Department's query and reserve the right to submit

additional evidence in the event a hearing in this matter is required.

The Department has issued water licenses to the Urquidi family describing four water rights that have been used in connection with the Owens Basin property. License number 51-2252 was originally issued to Hazel B. Owens, who assigned her interest to William J. Owens. This right addresses storage for irrigation and stockwater uses, with storage in a reservoir located in the NE 1/4 of the NE 1/4 of section 7, T.10.S., R.2.E., and irrigation use downstream in the E 1/4 of section 5. The priority date for this license is August 15, 1946.

License number 51-2065 was also transferred from Mr. Owens with the sale of the Owens Basin property. The license on file for Mr. Owens indicates this water is applied to the beneficial uses of irrigation and domestic uses, while John Urquidi's filed license also indicates instream stockwater use of this licensed water. The point of diversion and place of use for this right are both in section 5 of T.10.S., R.2.E., with a priority date of April 5, 1919. The place of use for license 51-2065 is identical to the place of use for license 51-2252, and the reservoir addressed by license 51-2252 lies upstream of section 5, within the same drainage as license 51-2065.

License 51-2230 indicates a point of diversion in the NE 1/4 of the NE 1/4 of section 5, just downstream from the location benefitted by the two previously-described water rights. Like the previously-mentioned water rights, the Department displays profiles

for both William Owens and John Urquidi describing this water right. Both profiles provide the same point of diversion, and a priority date of July 15, 1919. The Owens profile does not specify a place of use, but states that the specified use of 51-2230 water is for irrigation and domestic storage. The Urquidi profile lists these purposes, as well instream stockwater and stockwater storage uses. The Urquidi profile indicates a place of use for at least a portion of the irrigation, domestic, and stockwater uses in the NE 1/4 of section 4, T.10.S., R.2.E. on the Owens Basin property.

License 51-2058 indicates the same point of diversion as license 51-2230 listed above, with a priority date of July 29, 1922. If the Hazel Owens profile is read in conjunction with the Urquidi profile for this license, the license allows for water use for irrigation, domestic, stockwater, and instream stockwater uses. The place of use is specified within the SE and SW quarters of section 33, T.9.S., R.2.E.

The Urquidi family has endeavored to maintain accurate records of all of the above-mentioned water rights. As is the case with any type of real property right, the Urquidis must rely heavily upon the public records pertaining to historical rights. These records are (and have been) maintained by the Department and its predecessor agencies. These administrative bodies have required re-licensing of the various water rights during the Urquidi's possession of the Owens Basin property. The Urquidis do not possess complete documentation of every occasion where this re-licensing has occurred, but all of the above-referenced profile

reports compiled by the Department indicate a "licensed date" of June 21, 1979.

While the legal descriptions of the Urquidi's affected water rights are important to the present action, a practical understanding of the mechanics of the system of reservoirs, springs, and ditches serving the Owens Basin property is essential in addressing the issue of forfeiture. The reservoir in the NE 1/4 of the NE 1/4 of section 5 lies on public land managed by the United States Department of Interior, Bureau of Land Management ("BLM"), and this reservoir is a convergence point for the various drainages involved. In other words, all of the water rights described above might eventually result in recharge of the reservoir in section 5. Water enters the reservoir from the south from one portion of the Owens Basin property, and from the north from a different unnamed intermittent stream. The entire region is arid. The passage of water downstream to the reservoir in section 5 and on through the Owens Basin property in section 33 to Little Jacks Creek depends upon the number of cattle utilizing the area, the soil conditions, the annual precipitation, and other factors. William J. Owens developed a system to capture the limited water that might be available, and the Urquidis continue to implement his plan to augment the natural production of the basin.

The historical use of water on the Owens Basin property has continued since the original time of appropriation. William J. Owens provides testimony via affidavit that he originally established a series of diversions to transfer water from the

springs to the "hay field" located in section 5. Mr. Owens, as well as Irene Owens, testify that they have visited the property intermittently since transferring ownership to the Urquidis, and that the location and condition of the ditches has remained the same over the course of their visits. The Owens specify two times, in 1983 and 1993, when such visits occurred and the irrigation system as well as the wild pasture in section 5 were in similar condition as when the Owens transferred to the property to the Urquidis in 1966. Based on over fifty years experience in the area, Mr. Owens opines that the meadow in section 5 "has been irrigated regularly since his sale to the Urquidis because its condition does not appear to have changed." Affidavit of William J. Owens, 3/14/96.

Upon purchasing the Owens Basin property in 1966, John C. Urquidi took possession and cleaned the existing ditches. After this initial maintenance, John C. Urquidi enlisted the help of various agents and employees to ensure the reservoirs and ditches remained operable. While the passage of time makes it difficult to locate all witnesses who could corroborate this history,[2] Orville "Bud" Hosford details the existence and maintenance of the earthen dams and ditches used to irrigate the "hay field" on the Owens Basin property. See Affidavit of Bud Hosford, 2/26/96.

John C. Urquidi entered a series of lease agreements starting in the mid 1970's, and each separate agreement required the lessee

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[2] Mr. Sabal, now deceased, worked for the Urquidis during the period in question.

of the Owens Basin property to maintain the improvements to the property, including ditches and established watercourses. See generally, Affidavit of John C. Urquidi, 5/24/96. Chester Sellman was one of the lessees during this time period, as was Frank Davis, who have both submitted documents alleging facts in support of the very forfeiture that the relevant lease provisions were designed to prevent.

The series of lease agreements ended in the late 1980's, when John B. Urquidi began to manage the property for the Urquidis' own cattle ranching business named J & J Ranches. John B. Urquidi indicates that he has performed regular maintenance of the retention dams, diversion dams, springs, and ditches associated with all of the Urquidis' water rights since 1988. Affidavit of John B. Urquidi, 5/24/96. In fact, while John B. Urquidi has utilized rights of way which pre-date the Federal Lands Policy and Management Act of 1976 and the BLM, the BLM has attempted to characterize those actions as unauthorized use of public lands. Id. While sufficient water has not always been available to apply to the entire Owens Basin property, John B. Urquidi has diligently maintained the system to utilize the available water.

Several factors have interfered with the Urquidis' efforts to apply water to the Owens Basin property. The reservoir located in the NE 1/4 of the NE 1/4 of section 7 has not held water since the early 1980's as a result of the BLM's construction of a reservoir immediately upstream of the Urquidis' reservoir. Gravity dictates that water would no longer reach the Urquidi's dam once the BLM's

dam was completed. The Department received and approved a water license application concerning the BLM activities in section 7.

The cyclical drought that was especially severe in the late 1980's and early 1990's hampered the Urquidis' water control efforts. At this stage in the proceedings, the Urquidis have not compiled extensive documentation specifying the extent of the drought, but common knowledge and information available to the Department indicate that water in Owyhee County was scarce during that time period. See also, Exhibit H to Affidavit of John B. Urquidi, 5/24/96 (explaining six years of consecutive drought prior to 1992 necessitated changes in BLM rangeland management). The region surrounding Owens Basin is a desert to begin with, and drought conditions prevented the Urquidis from applying water to all of their lands during and subsequent to this time period.

The investigation of Senior Water Agent Minicucci corroborates the historical use of water on the Owens Basin property described by the Urquidis. Unlike the twenty-five years of non-use that Messrs. Sellman and Lahtinen allege has occurred in section 5, Ms. Minicucci observes that "[s]prings have been developed in the SESE of section 5[,]" and that the series of dams and ditches, including "dams in the stream itself[,]" have created and maintained "a meadow that has been enhanced by the water control efforts of [John B. Urquidi]." Field Report of Maria Minicucci, 10/29/93. Ms. Minicucci did not indicate whether the reservoir in section 5 contained water in 1993, but she did note that water was being stored in the reservoir at the time of her second visit on July 19,

1995. Assuming, *arguendo*, that the basis for the "protest" which gave rise to the present forfeiture ever existed, there has subsequently been water in the reservoir for use by grazing permittees otherwise authorized to pasture cattle in the NE 1/4 of the NE 1/4 of section 5.

II.

LEGAL PRINCIPLES

Property rights in waters of the State of Idaho are regulated by a complex blend of statutory rules and common law principles. Since approximately 1895, this regulatory scheme has been administered by the Department. See Idaho Code § 42-1701 (1990). The executive and administrative authority granted to the Department and the concomitant responsibility are vested in the Director of the Department. Id. The many statutorily-imposed duties of the Director include the responsibility to make careful measurements of the flows of waters likely to be appropriated within the state, to collect facts and conduct surveys regarding suitable locations for reservoirs upon such waterways, to become familiar with the waterways and irrigable lands of the state, and to "keep full and complete records of all measurements of streams, surveys, examinations or other valuable information ... concerning any of the duties of the department." Idaho Code § 42-1706 (1990).

The Department frequently applies its expertise and consults its voluminous records when responding to applications for permits, certificates, and licenses to appropriate water within Idaho.

Chapter 2 of Title 41 makes the permit and license procedure administered by the Department the exclusive method for acquisition of water rights. Idaho Code § 42-201 (1990). Applicants are required to make sufficient showing to acquire water rights, and the Department must "carefully examine [all evidence in relation to proof of statutory requirements], and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use." Idaho Code § 42-219 (1990). The issuance of a water license has particular legal significance, since "[s]uch license shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right...." Idaho Code § 42-220 (1990) (emphasis added).

As the Department has the responsibility to issue and verify water rights, the Department is occasionally asked to forfeit rights previously granted. While courts have sometimes confused the common law doctrine of abandonment with forfeiture, the latter is governed entirely by statute. According to the Idaho formulation of the forfeiture doctrine:

> [a]ll rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter....

Idaho Code § 42-222(2) (Supp. 1995). Judicial interpretation of this statute reflects an intense disfavor toward declaring forfeiture, since "[f]orfeitures are abhorrent and all intendments are to be indulged against a forfeiture." Application of Boyer, 73 Idaho 152, 159, 248 P.2d 540, 551 (1952); see also, Jenkins v. State, Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982); McAtee v. Faulkner Land & Livestock, Inc., 113 Idaho 393, 744 P.2d 121 (Ct.App. 1987). In evaluating whether forfeiture of a water right has occurred, the finder of fact must determine that clear and convincing proof supports a finding of forfeiture. Jenkins, 103 Idaho at 389, 647 P.2d at 1261; McAtee, 113 Idaho at 396, 744 P.2d at 124. A finding of forfeiture may have drastic impact upon the water user who has relied upon his decreed rights, and Idaho law recognizes that forfeiture is an extreme remedy justified only by extraordinary circumstances.

The forfeiture analysis prescribed by Idaho appellate courts involves a twofold inquiry. The first step consists of a factual inquiry to determine "how, and for how long, the water has been used." Id. "The second question--whether the use to which the water has been put constitutes a 'beneficial use'--is a question of law." Id. Regarding the second issue, Idaho law has long established that diversion of water to increase the production of wild pasture constitutes a beneficial use. Id.; Rudge v. Simmons, 39 Idaho 22, 226 P. 170 (1924); Pyke v. Burnside, 8 Idaho 487, 69 P. 477 (1902). Water consumption by livestock also constitutes a beneficial use, even to the point where such use is included within

the statutory definition of "domestic purpose." Idaho Code § 42-111 (Supp. 1995). While a permit or license is not required for in-stream livestock consumption of water, see Idaho Code § 42-113 (1990), one can certainly protect historical livestock use by either obtaining an in-stream livestock use permit or by perfecting a licensed water right by completing a diversion and applying the affected water to the beneficial use of watering livestock.

Various defenses exist that allow a holder of decreed water rights to successfully refute allegations of forfeiture. When circumstances beyond the water user's control prevent the licensed exercise of the water right, a forfeiture shall not be declared. Jenkins, 103 Idaho at 389, 647 P.2d at 1261. Examples of such circumstances might include wrongful upstream diversion, Welch v. Garrett, 5 Idaho 639, 51 P. 405 (1897), failure of a water administrator to allow the complete volume of licensed flow to reach its user, Almo Water Co. v. Darrington, 95 Idaho 16, 501 P.2d 700 (1972), or drought resulting in the unavailability of the previously-applied flow. These holdings are necessary to insure that a water user can maintain property rights in water despite the wrongful interference of another or the unpredictable acts of nature.

Another defense to forfeiture exists when the licensed right has been resumed after the five year statutory period has run, but prior to the time that any third party asserts a claim to the water in question. Even though the technical elements of forfeiture are met on the first day of the sixth year of non-use, a forfeiture

will not exist and no change in the priority date, location of diversion, place of use, or volume of the water right will occur if the original appropriator resumes use "before any third parties make a claim in the water...." Jenkins, 103 Idaho at 389, 647 P.2d at 1261 (emphasis added); Carrington v. Crandall, 65 Idaho 525, 532, 147 P.2d 1009, 1016 (1944) ("the forfeiture is not effective if...the original owner or appropriator resumed the use...prior to the claim of right by a third party.")(emphasis added). In Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), the court declined to enter a finding of forfeiture, determining that the water at issue "was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited[,]" therefore suggesting that even minimal application of water is sufficient to invoke the resumption doctrine and prevent a declaration of forfeiture.

These principles comport with logic and common sense. The Department should not engage in a forfeiture analysis when there are no other competing or injured claimants to the water in question. Similarly, an administrative nightmare would develop if the Department was required to revise historically recognized priority dates to comport with every established five year period of non-use, when such revision would not benefit any identified downstream junior appropriator. There is little sense in evaluating the technical elements of forfeiture so that forfeiture can be declared on the final day of year five of non-use, if the water is diverted and applied once again by the original

appropriator before any other user acquires legal rights which might be impacted by the forfeiture decision.

Other jurisdictions have extended the resumption doctrine to require that an alleged forfeiture be asserted in a timely manner. The Wyoming Supreme Court, citing Boyer in support, has held that a delay of approximately sixteen years was fatal to a forfeiture action, particularly when the decreed holder of the right in question had performed repairs upon the reservoir used in connection with the water rights subsequent to the date of the supposed forfeiture. Sturgeon v. Brooks, 281 P.2d 675 (Wyo. 1955). The court summarized its position by reasoning:

> when taken in conjunction with the fact that during the time of such recognition and acquiescence, Brooks, the defendant, twice repaired the reservoir at a substantial outlay and put the water stored therein to beneficial use, and in view of the fact that forfeitures are not favored and should be promptly asserted, it is difficult to perceive that Brooks would be dealt with equitably by now holding that his rights were forfeited.

Id. at 685 (emphasis added). It makes little sense, particularly in the context of an order to show cause proceeding where the burden to produce evidence is upon the party defending forfeiture allegations, to allow a lack of evidence due to the passage of time to effect a forfeiture of water rights. If water rights were allegedly forfeited decades ago, the parties who watched the years pass without any formal action should bear the loss, not a decreed water right holder who has continued to act as though he possessed valid water rights.

Idaho does not recognize partial forfeiture of a water right. In a recent development in the ongoing Snake River Basin

Adjudication, the Presiding Judge held that forfeiture can only occur within the boundaries defined by section 42-222(2), and the plain meaning of that statute only allows for forfeiture of "all" of one's water right. In Re SRBA, Memorandum Decision on Basin-Wide Issue 10, Case No. 91-00010, 4/26/96 ("Partial Forfeiture Decision"). When several different rights are at issue, the Partial Forfeiture Decision suggests that independent analyses can occur for each right allowing forfeiture of some rights but not others. However, with regard to each single right, a decision-making body cannot declare that forfeiture of only a portion of the right has occurred, but instead must decline to enter a forfeiture unless clear and convincing evidence establishes forfeiture of the entire amount of the water right at issue. The failure of the Idaho appellate courts to squarely address the partial forfeiture issue provided the genesis of the Presiding Judge's inquiry, and appellate review of the Partial Forfeiture Decision seems a distinct possibility. Given the unique expertise of the Presiding Judge in conducting the SRBA, the Partial Forfeiture Decision establishes sound precedent in Idaho unless altered in the future by the Idaho Supreme Court.

III.

ARGUMENT

A. The State of Idaho is Estopped from Asserting a Forfeiture of Water Rights by Alleging Non-Use Prior to 1979.

The express statutory language of Idaho Code section 42-220 prevents the Department from demanding proof of water use from the

Uriquidis prior to the Department's confirmation of a licensed water right. While one is often prevented from asserting estoppel against governmental entities by either common law principles or explicit statutory language, the Idaho legislature eschews such a restriction in the context of issuance of water licenses. Section 42-220 and related provisions of Chapter 42 place an affirmative duty upon the Department to investigate the necessary prerequisites to an appropriative water right prior to issuing a license for a water right.

All of the profile reports for the four water rights at issue indicate a licensed date of June 21, 1979. According to section 42-220, this determination is binding upon the State. The Department, in correspondence addressed to counsel of record for the Uriquidis dated May 14, 1996, has confirmed that no other person or entity is a party in the present forfeiture action. As the sole complainant, the State of Idaho should be both logically and legally prevented from asserting a forfeiture of water rights that it necessarily certified were fully compliant with statutory requirements at the time of licensure. In order to declare forfeiture, the Department must find, by clear and convincing evidence, that the Urquidis failed to exercise the entirety of a water right when water was available for appropriation for a continuous five-year period subsequent to June 21, 1979.

The Urquidis' interpretation of section 42-220 strikes an appropriate balance in the administration of water rights. The present case exists in a unique procedural context. The placement

of the statutory forfeiture provision as a subsection to the transfer rules is not coincidental, because forfeiture questions often arise when the Department evaluates transfer applications to determine if the proposed transfer will effect an injury to other water users. Other occasions where forfeiture issues arise include quiet title or injunctive relief actions where a plaintiff affirmatively brings an action asserting a superior claim to water that the plaintiff alleges has been forfeited by the license holder. In the present case, the Department has raised the forfeiture issue *sua sponte* at the request of individuals who are not parties to any legal action against the Urquidis and who do not possess adversely affected licensed water rights. The Department is effectively conducting a pre-litigation analysis for Messrs. Sellman and Lahtinen at public expense, with the risk that evidence has disappeared with the passage of time falling upon the Urquidis. Reason and basic principles of equity demand that the State be held to findings it at least implicitly made by confirming the validity of water licenses in 1979. Future parties wishing to properly raise valid issues of forfeiture need not worry; such parties can bring an action in a court of proper jurisdiction or participate in the transfer procedure to protect their established legal rights.

B. <u>The Present Record Fails to Display the Clear and Convincing Proof of Forfeiture that would Allow the Department to Issue a Finding of Forfeiture</u>.

There is no party before the Department who seeks a finding of forfeiture, and the evidence presently before the Department does not approach the clear and convincing quantum of proof required to

uphold a finding of forfeiture. In support of forfeiture, the Department has assertions from Chester Sellman and David Lahtinen stating that dams have never been placed in the main streambed in the SE 1/4 of section 5 and that the water has only been used for stockwater on the Urquidis' deeded portion of the Owens Basin property in section 5. The Sellman and Lahtinen allegations are supported by affidavits from T. Robert Tindall and Frank Davis, both indicating that no irrigation use ever occurred above the reservoir in the NE corner of section 5.

None of these submissions make any mention of the reservoir in section 7 involving the 51-2252 storage right, the 51-2230 storage right or the 51-2058 water right arising from a diversion at the section 5 reservoir. In fact, the Lahtinen/Sellman submissions tend to rebut allegations that the 51-2230 storage rights have been forfeited, since those documents indicate that all users, even those without licenses, have relied on water being present in the reservoir in section 5. In any event, the Lahtinen/Sellman documents refer solely to the lack of historical irrigation in the SE portion of section 5.

Senior Water Agent Minicucci's report does not rescue the incorrect assertions of the non-party complainants, and her report actually supports the finding that irrigation has occurred in section 5. Maria Minicucci specifically states that springs were developed, irrigation structures were located in the ditch, and diversion structures diverted water to the pasture. Idaho law establishes that diversion to wild pasture is a beneficial use, and

Ms. Minicucci concluded that the water control efforts of the Uriquidis had apparently increased the production of forage in section 5. Ms. Minicucci's observations also refute the attempts by the Tindall and Lahtinen affidavits to characterize John B. Urquidi's maintenance efforts as a malicious scheme to "dry up" the section 5 reservoir, since she notes that water was present in the reservoir in July of 1995.

In response to the factually deficient and internally contradictory affidavits mentioned above, the Urquidis provide evidence establishing that use of the water rights has not been forfeited. The Urquidis contend that this evidence need only be presented since 1979, but even if one rejects this position, the evidence submitted by the Urquidis is sufficient to reject any allegation of forfeiture. John C. Urquidi testifies that maintenance of the existing ditches was completed immediately after acquiring the property in 1966. John C. Urquidi describes an uninterrupted time line that extends to the present day in which these water diversion efforts have continued. To the extent that these efforts were interrupted, the interruption would be attributable to lessees who disregarded maintenance duties. As detailed in John C. Urquidi's affidavit, these lessees were Frank Davis, Robert Tindall, and Chester Sellman, who now apparently wish to benefit from any deficiency in their performance as tenants on the Owens Basin property. Even the affidavits of these lessees of the Urquidi property establish that stockwater use of the water available in section 5 has been uninterrupted, which would

constitute an authorized use under the original license granted to the Owens family. See Idaho Code § 42-111 (Supp. 1995) (domestic use includes use by livestock if not in excess of 13,000 gallons per day).

While the Urquidis certainly would suffer by a declaration of forfeiture, William J. Owens will not gain or lose through any outcome to the present proceedings. Mr. Owens' affidavit establishes that development occurred in the SE portion of section 5, that this development existed at the time of transfer to the Urquidis, and that signs of this development remain to the present day. Specifically, the wild pasture that is irrigated by the maintained diversion works and ditches produces a greater forage yield than uncontrolled flow or natural runoff would produce.

While the procedural context of this case is unique, the factual scenario is not. When confronted with similar instances of diversion benefitting wild pasture, Idaho judges have concluded that insufficient evidence exists to justify the extreme finding of forfeiture. The McAtee case presents a direct analogy to the present facts, for the family members defending against allegations of forfeiture "explained that they regularly had built small earthen diversion on Croy Creek with native materials and that these diversions had been functional until they were washed out or trampled by cattle." McAtee, 113 Idaho at 396, 744 P.2d at 124. While the method employed is perhaps not the most efficient method of irrigation, the Department should find, as did the district court in McAtee, that sufficient diligence is demonstrated by the

record to rebut any forfeiture of the Urquidis' water rights applied to section 5.

Portrayed in the light most favorable to a finding of forfeiture, the present record reflects a conflict of the affidavits that can hardly be characterized as supplying clear and convincing evidence of forfeiture. The available evidence suggests that water was applied to supplement wild pasture prior to 1966, and that the condition of the improved pasture has remained unchanged to the present day as a result of the Urquidis' water control efforts. The Department cannot issue a finding of forfeiture on the available evidence, and the likelihood of discovering sufficient evidence in light of the present record is so remote as to justify a revocation of the order to show cause.

C. Any Non-Use of the Urquidis' Licensed Water Rights is Attributable to Factors beyond the Urquidis' Control and such Non-Use Cannot Form the Basis for a Declaration of Forfeiture.

The Urquidis have made every reasonable effort to capture available water at the locations specified by their water licenses, and they have applied the available water to the appropriate beneficial uses. To the extent that the Urquidis have failed to succeed in either of these goals, such failure is attributable to upstream interference by the BLM and the cyclical drought of the late 1980's and early 1990's. With regard to license number 51-2252, the Affidavit of John B. Urquidi and supporting exhibits demonstrate that the BLM constructed a reservoir immediately upstream of the Urquidis' storage facility in the NE 1/4 of the NE

1/4 of section 7 in the early 1980's. This interference would explain Maria Minicucci's observation that the Urquidis' reservoir in section 7 was dry, but would prevent declaration of forfeiture of license 51-2252 since any non-use cannot be attributed to the Urquidis.

With regard to all of the water rights at issue, and particularly with regard to the irrigation rights in the lower portions of the drainage impacting sections 4 and 33, the prevalence of drought in the area has limited the availability of water so as to prevent a declaration of forfeiture. As correspondence from the BLM incorporated within the Affidavit of John B. Urquidi indicates, the impact of this drought was at its zenith in the early 1990's. The porosity and dry condition of the soil below the section 5 reservoir have always made irrigation difficult, and the drought conditions certainly exacerbated this difficulty. In fact, the drought conditions probably provide a better explanation for the "dry" reservoir in section 5 in the late summer and autumn of 1991 than any alleged wrongful diversion by John B. Urquidi. The section 5 reservoir receives recharge from two intermittent streambeds, not just the one flowing through section 5 that was supposedly blocked completely in August of 1991. Further, water has been present in the reservoir following the recovery from the drought in recent years. The existence of such a period of drought casts sufficient doubt upon the factual issues in these proceedings to prevent the Department from declaring that forfeiture has occurred.

D. Resumption of Use Prior to Assertion of Adverse Claims Prevents a Declaration of Forfeiture.

Assuming that one can find a hypothetical continuous five year period since 1979 when the Urquidis have failed to apply the licensed water to the prescribed beneficial uses, no adverse claims to the Urquidis' rights have been asserted before the Department, or any administrative or judicial body, prior to the Urquidis' resumption of use. Idaho law mandates that resumption of even a portion of a water right "before any third parties make a claim in the water" will prevent a finding of forfeiture. Jenkins, 103 Idaho at 389, 647 P.2d at 1261. Even if one defines the "claim" that must be asserted to be a claim of forfeiture, as the Boyer court apparently did, John B. Urquidi testifies that he conducted maintenance of the ditches and fortification of the diversion structures prior to 1992 when the non-party complainants first wrote to the Department.

The non-party complainants do not possess water rights that are injured by any application of the doctrine of resumption in favor of the Urquidis. Since the non-party complainants have presented no evidence substantiating the rights, if any, that they assert to the water at issue, it is difficult to characterize the interest that they claim in the reservoir of section 5.

As permittees utilizing grazing privileges on BLM-managed lands, they do not and cannot ascend to any property right in resources of the United States by virtue of their permittee status. 43 C.F.R. § 4130.2(c)(1995)("Grazing permits or leases convey no right, title, or interest held by the United States in any lands or

resources."). While Idaho law allows instream stockwater use without a license, such use is arguably subject to valid upstream uses, and an operator wishing to protect whatever right they have to insure the availability of water for instream stockwater use should at least obtain a permit as specified in Idaho Code section 42-113. No individual has provided the Department with evidence that documents a water right that was affected at any conceivable time that the Urquidis resumed their use of hypothetically forfeited rights. As an aside that perhaps speaks more to credibility issues than any others, Mr. Lahtinen has filed numerous claims in the SRBA asserting water rights with a priority date of March 31, 1882 in the affected area, including claims on locations that lie within the Owens Basin property that the Urquidis hold in fee simple.[3] Exhibit I to Affidavit of John B. Urquidi, 5/24/96. However, these filings on record as of August 4, 1992 do nothing to address any resumption of use that occurred prior to Mr. Lahtinen's filings.

John B. Urquidi has diligently maintained the Owens Basin property water system since he entered the area in the late 1980's. John B. Urquidi's diligence has carried its own price, since the BLM apparently feels that he should not be allowed to venture beyond the boundaries of the Owens Basin deeded property to maintain state-issued water rights that arise on what is now public land. See Exhibits C and D to Affidavit of John B. Urquidi,

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[3] One cannot acquire a valid water right by trespass.

5/24/96. The Department cannot now determine that the Urquidi family forfeited their water rights at some time in the past when significant time has passed and the Urquidis have expended time and money to continue use of their licensed water rights.

E. The Department Cannot Enter a Finding of Forfeiture without Violating the Proscription Against Partial Forfeitures.

Given the interrelated nature of the Owens Basin property water system, the nature of the Urquidis' use of water on the Owens Basin property, and the intermittent flow of water in the area, the Department cannot issue a finding of forfeiture that is consistent with the Partial Forfeiture Decision. The latest development water right forfeiture law in Idaho holds that the Idaho forfeiture statute only allows forfeiture of all of one's water right. While individual water rights within a framework of rights may still be forfeited even after the Partial Forfeiture Decision, that holding effectively elevates the factual showing necessary far beyond the evidence in the present record.

The water covered by licenses 51-2252 and 51-2065 both flow through the Owens Basin deeded property in section 5. The uncontradicted evidence from affiants on all sides indicates that at least a portion of the water flowing through that area has been utilized by livestock. The documents issued by the Department specify such use as the licensed use of this water. Similarly, the storage use authorized by license 51-2230 is the ultimate result of commingling of water from various origins, including excess water that is not consumed upstream in section 5. At least a portion of

the water addressed by these rights has been applied to licensed uses in the specified locations.

The Department cannot issue a determination that forfeiture has occurred unless it ignores the uninterrupted partial use of water on the Owens Basin property. While the Partial Forfeiture Decision seems destined for review by the Idaho Supreme Court, the present case seems an inappropriate vehicle to carry the partial forfeiture issue to the appellate level. Assuming that the Department feels the evidence establishes complete non-use of one component of the interrelated water rights, the commingled nature of the water within the Urquidis' system prevents adequate identification of the water that is identified as subject to forfeiture. The nature of use and volume of water at issue in this case do not justify the administrative nightmare that a finding of forfeiture will create.

IV.

CONCLUSION

The Urquidis have not forfeited the water rights at issue in this matter. To the contrary, the Urquidis have been battling interference by the BLM and the Department in allowing the BLM to overfile on the Urquidis' water rights. Even if the Urquidis had made a call on the water, the BLM's prosecution of numerous trespass actions (one still pending before the Interior Board of Land Appeals) evidences the Urquidis' consistent attempt to put their licensed water rights to beneficial use. Similar to the BLM's interference, Messrs. Sellman, Lahtinen and Tindall, come to

the Department with unclean hands to strip the Urquidis of their water rights so that their actions, as former lessees of the Urquidis, will inure to their benefit. The Department's own investigation has failed to show, by clear and convincing evidence, that the Urquidis' licensed water rights have been forfeited. Accordingly, this matter should reflect the validity of the Urquidis' water rights in the Director's report to the SRBA, and the order to show cause should be rescinded.

DATED this 28th day of May, 1996.

MOORE & McFADDEN, CHARTERED

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