

06/23/2005

**NOTICE OF ERROR
REPLY**

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 1-229

HELEN MILTON
C/O HENRY SCHODDE
334A S 450 W
HEYBURN ID 83336
Telephone Number: (208)678-7072

HENRY T SCHODDE
334A S 450 W
HEYBURN ID 83336
Telephone Number: (208)678-7072

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

Place of use and number of points of diversion

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

Add 51.8 acres in Lots 2 and 3 of Section 15, and
4.1 acres in Lot 1 of Section 16, as shown by the maps attached hereto.

3. Give a brief explanation as to why you disagree with these portions: The attached Memorandum provides a more detailed explanation. The primary reason for disagreement with the Preliminary Recommendation is that it failed to recognize that water under this water right is also diverted into the Minidoka Irrigation District system and delivered by it to the water right holders, and most of the lands being irrigated through the water delivered by Minidoka Irrigation District was not calculated as a place of use under this right.

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

DATE: Nov. 4, 2005

SIGNATURE: *Lynn Schodde*

Please print your name: Lynn Schodde

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

RECEIVED

NOV 07 2005

Department of Water Resources
Eastern Region

KMJ
11/10/09

06/23/2005

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

RIGHT NUMBER: 1-229

NAME AND ADDRESS: HELEN MILTON
C/O HENRY SCHODDE
334A S 450 W
HEYBURN ID 83336

HENRY T SCHODDE
334A S 450 W
HEYBURN ID 83336

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 2.000 CFS

PRIORITY DATE: 04/01/1895

POINT OF DIVERSION:
T10S R22E S16 NWSE Lot 2 Within MINIDOKA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	2.000 CFS

PLACE OF USE: IRRIGATION Within MINIDOKA County

T10S R22E S15 Lot 3 NWSW	5.6	T10S R22E S16	9.1
T10S R22E S16 Lot 3 NESW	7.1	T10S R22E S16 Lot 4 NWSW	28.0
T10S R22E S16 Lot 1 NESE	11.0	T10S R22E S16 Lot 2 NWSE	4.4
T10S R22E S17	5.7	T10S R22E S17	14.0
T10S R22E S17 NESE	0.5	T10S R22E S17 SWSE	1.5
T10S R22E S17 SESE	4.7	T10S R22E S20	0.8

92.4 ACRES TOTAL

A portion of the place of use lies within lot number 1286, known as the Howard, Lee, and Ernest placer mining claims and embracing a portion of sections sixteen, seventeen, and twenty in township ten (10) south of range twenty-two (22) east of the Boise meridian.

Place of use does not include federal public lands.

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

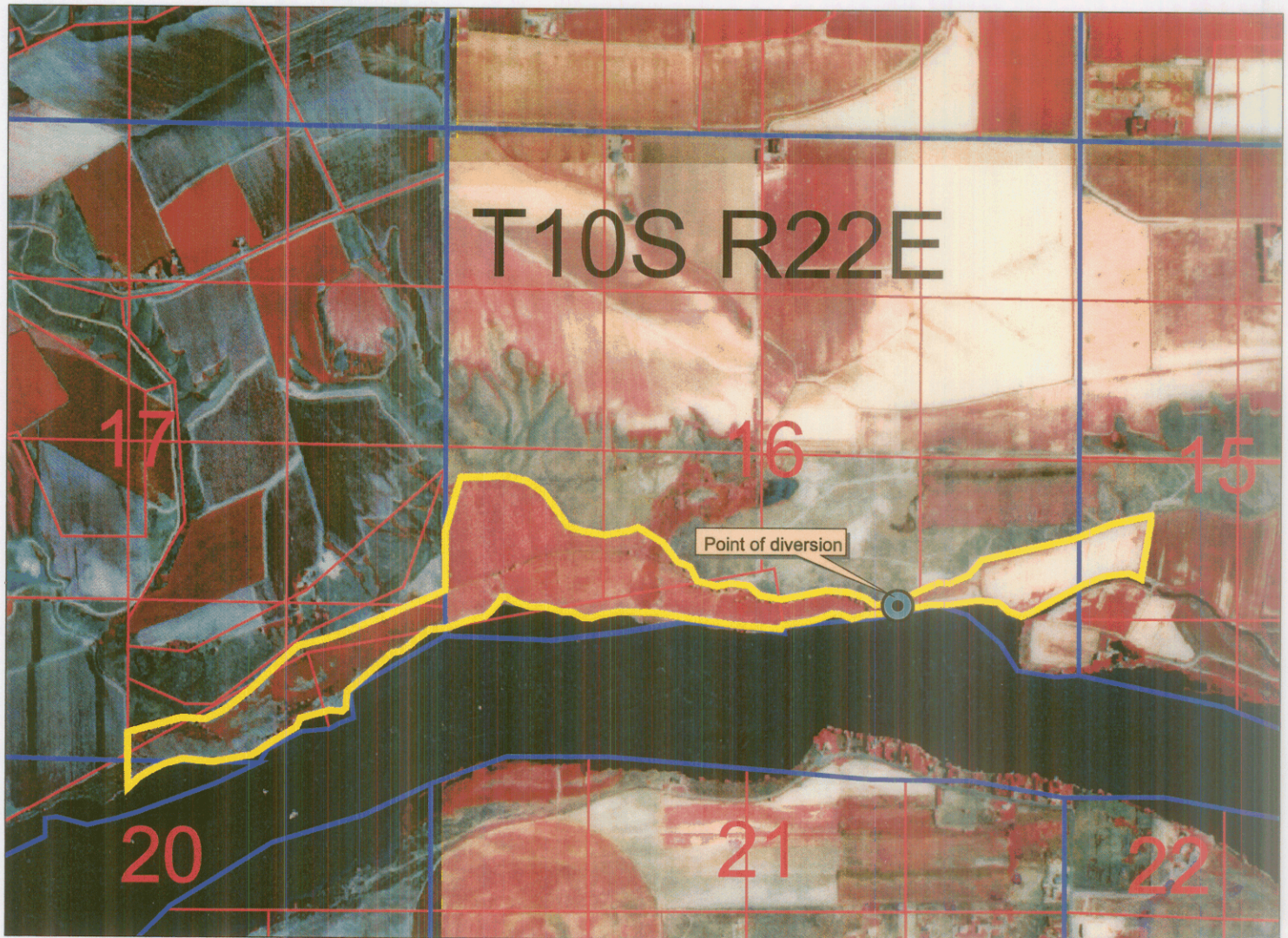
Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

Water is delivered through Schodde Pump.



Department of Water Resources

Claim No.: 01-00229



0 1320 2640 3960 5280 Feet

A scale bar is located below the text, showing increments of 1320 feet from 0 to 5280 feet.

- Point of diversion
- Place of use
- Sections
- QQ



GIS Place of Use Illustration
1987/88 NAPP Photography
Prepared by M. Holliday
Date: June 2005

**MEMORANDUM IN SUPPORT OF
SRBA CLAIM NO. A01-00229**

Claimants: Henry Schodde
Helen Milton

Prepared by: Roger D. Ling, Attorney at Law
P. O. Box 396, Rupert, Idaho 83350

On August, 1913, the Department of Interior, U.S. Reclamation Service, Minidoka Project, Idaho, prepared a survey of irrigable land in the Schodde estate, located in Sections 15, 16, 17 and 20, Township 10 South, Range 22 East of the Boise Meridian. (Map available upon request.) This survey by the Reclamation Service established the following irrigable acres by gravity:

Section 15:

Lot 2: 17.7 acres

Lot 3: 32.8 acres

Section 16:

Lot 1: 16.6 acres

Lot 2: 3.3 acres

Lot 3: 6.6 acres

Lot 4: 7.1 acres

Section 17:

Lot 1: 11.2 acres

Lot 2: 9.2 acres

Section 20:

Lot 4: 9.7 acres within Schodde's boundary and
7.7 acres North of Schodde's boundary

Lot 5: 13.2 acres
21.2 acres North of the Schodde boundary

A plat of the Schodde lands was again prepared by Thos. J. Stephenson C.E. of Burley, Idaho dated September, 1924. This plat established that the Schodde land was divided by a drain ditch constructed by the Reclamation Service in Sections 15 and 16. This plat

establishes the location of the pump from the river from which water was diverted under this water right, and the ditch located across the north portion of the property which was used to irrigate the lands east and west of the pump. A copy of said plat is attached to this Memorandum.

On January 28, 1925, a Decree was entered in the District Court of the Eleventh Judicial District of the State of Idaho, In and For the County of Twin Falls, in the case of Schodde, et al. v. Swendsen, Commissioner of Reclamation, State of Idaho, et al. This judgment decreed to the plaintiffs the water right under this claim for the diversion of 100 inches (2 cubic feet per second) of the natural flow of the waters of the Snake River with a priority of April 1, 1895, for agricultural and other uses. The lands to which said water right was appurtenant were described as Lots 2 and 3 of Section 15, Lots 1 and 2 of Section 16, both in Township 10 South, Range 22 East of the Boise Meridian, containing 161.3 acres, and those certain placer mining claims designated as Lot No. 1286, known as the Howard, Lee & Ernest Placer Mining Claims embracing a portion of Section 16, 17, 19 and 20 in Township 10 South, Range 22 East of the Boise Meridian. The court found that said Lot No. 1286 contained 102.66 acres of land, and the water under this right shall be diverted from the Snake River by means of a pump or pumps located at the water's edge on the north bank of the Snake River at or near the southeast corner of Lot 2 in Section 16, Township 10 South, Range 22 East of the Boise Meridian, or by such other device as plaintiffs, or their successors, shall find proper for said purpose. (Emphasis added.) Finally, the Decree provided that it would be supplemental to and part of the "Foster Decree" which was entered on June 20, 1913.

After the construction of a drain across a portion of the Schodde property by the Reclamation Service prior to 1924, those lands of the Schodde property to which this water right

was appurtenant lying south of the drain received water from the Snake River through the delivery system of Minidoka Irrigation District, as those lands south of the drain could not be irrigated by delivery of the Snake River water to the Schodde lands lying south of the drain through the delivery system of Schodde used to deliver water from the Schodde pump, by gravity. An aerial photo of the lands in question and the location of the Minidoka Irrigation District drain is attached hereto. This map establishes that there are presently 38.9 acres located in Lots 2 and 3 of Section 15 and Lot 1 of Section 16 lying south of that drain that are being irrigated with Snake River water diverted into the Minidoka Irrigation District system as part of the Gravity Division of the Minidoka Project constructed by what is now known as the Bureau of Reclamation. The 1913 survey established that there were at that time 50.5 acres of irrigable lands located south of the location of where the drain is now constructed. 38.9 of these acres are still being irrigated. These acres and other acres north of the drain are now being irrigated with Snake River water delivered by Minidoka Irrigation District under the Schodde right, and the lands receive water from a pump located in the Minidoka Irrigation District drain. The delivery of water from Minidoka Irrigation District under this right, diverted by the irrigation district from the Snake River, and the water pumped by Schoddes from the Snake River, do not violate and have not changed the water right held by Schoddes as decreed by the court. There are approximately 6 acres located north of the drain in Lot 2 in Section 15, approximately 20 in Lot 3 in Section 15 north of the drain, and approximately 7 north of the drain in Lot 1 of Section 16.

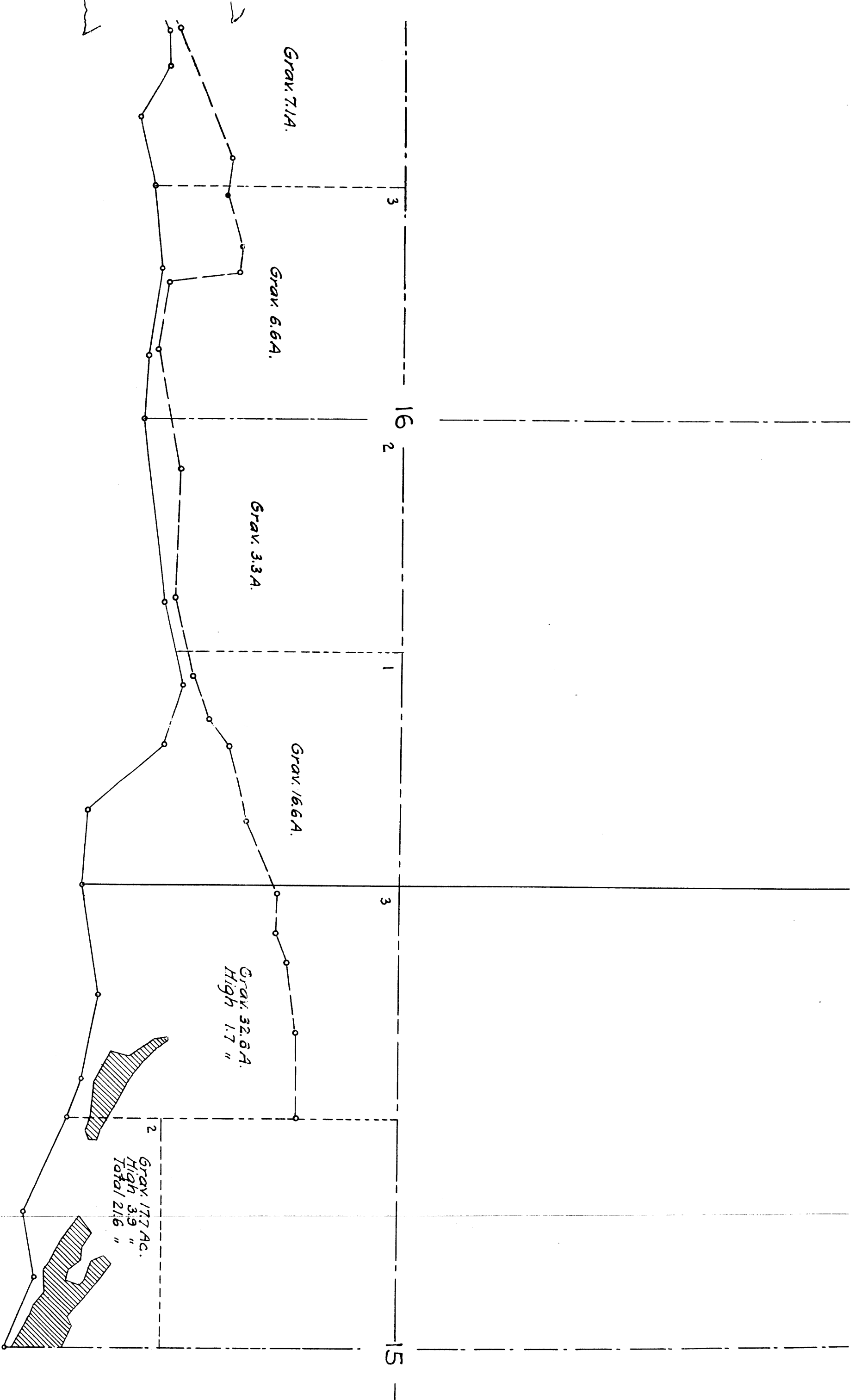
The primary discrepancy in the Preliminary Recommendation of June 23, 2005 is that the above acres located in Lots 2 and 3 of Section 15 were not recognized as being lands to which this water right is appurtenant. A review of the acres in Lots 2 and 3 in Section 15 and Lot 1 in Section 16, as above demonstrated, indicates that there are a total of 71.9 acres being

irrigated north and south of the drain in these lots. Only 49.7 of these lands are included within Minidoka Irrigation District, although the entire 71.9 acres receive water under Minidoka Irrigation District water rights and water under this claim of the Schoddes.

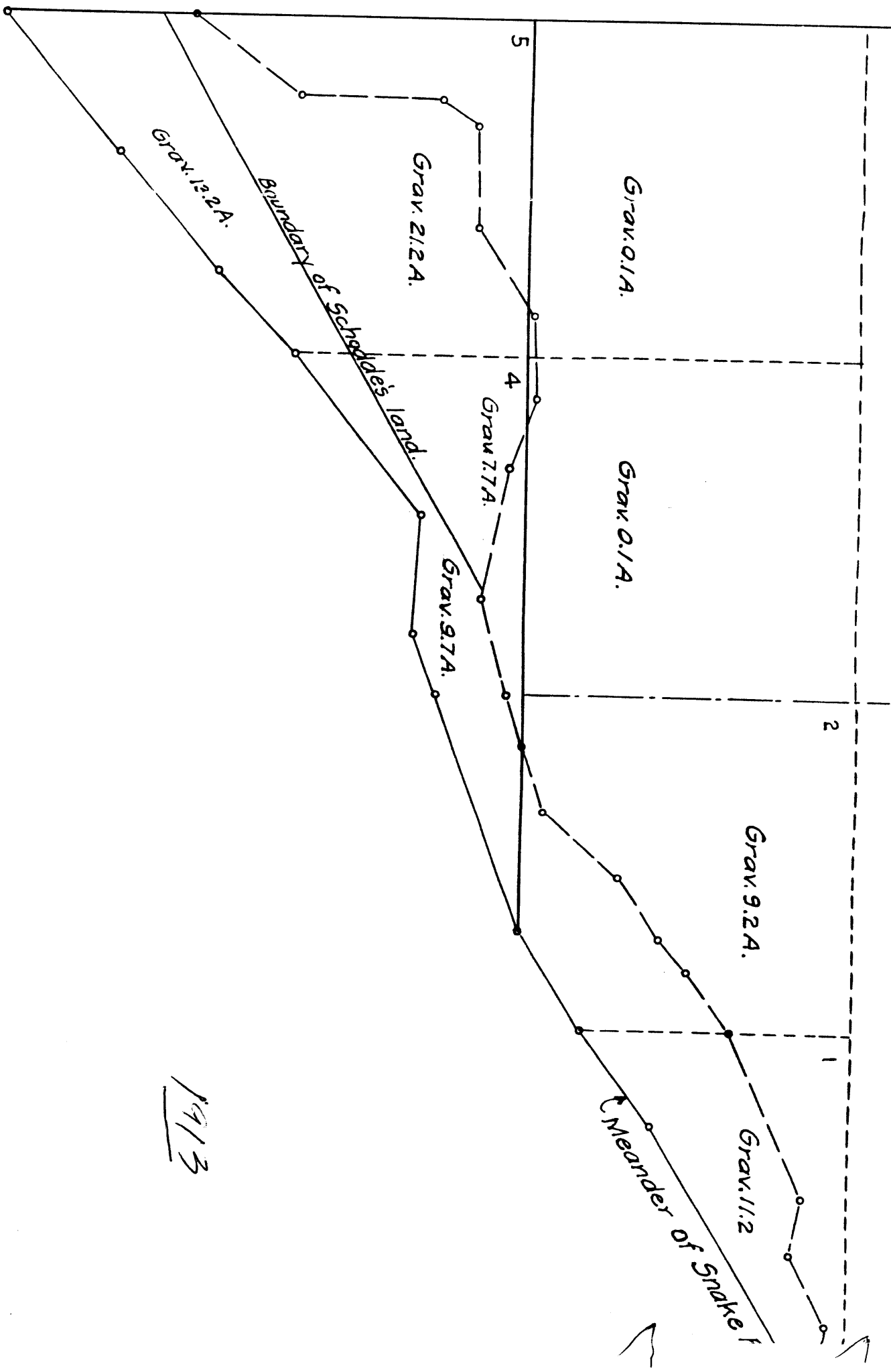
Recognizing that the Minidoka Irrigation District water rights, held by the Bureau of Reclamation for irrigation of some of the Schodde lands, may overlap the lands to which this water right of the Schoddes is appurtenant, it is respectfully submitted that Schoddes should have an additional 51.8 acres of irrigable land to which this water is appurtenant in Lots 2 and 3 of Section 15 and an additional 4.1 acres in Lot 1 of Section 16, for a total place of use of 148.3 acres. The Amended Claim dated June 23, 2005, filed by Lynn Schodde on behalf of the Schoddes should be again amended to identify these additional acres.

Although a portion of the Schodde lands to which this water right was originally appurtenant have been lost as the result of erosion by the Snake River, it is clear that an accomplished place of use has occurred, and this all occurred prior to 1987. Therefore, the fact that different lands may now be irrigated than were originally irrigated does not detract from the number of acres to which this water right is appurtenant. It is also necessary that the Claim be amended to add a point of diversion at Minidoka Dam, where water is delivered from the Snake River to Minidoka Irrigation District, even though most of the water received from Minidoka Irrigation District is now received from one of its drains, which of course is part of the Project water, including the water it delivers for Schoddes.

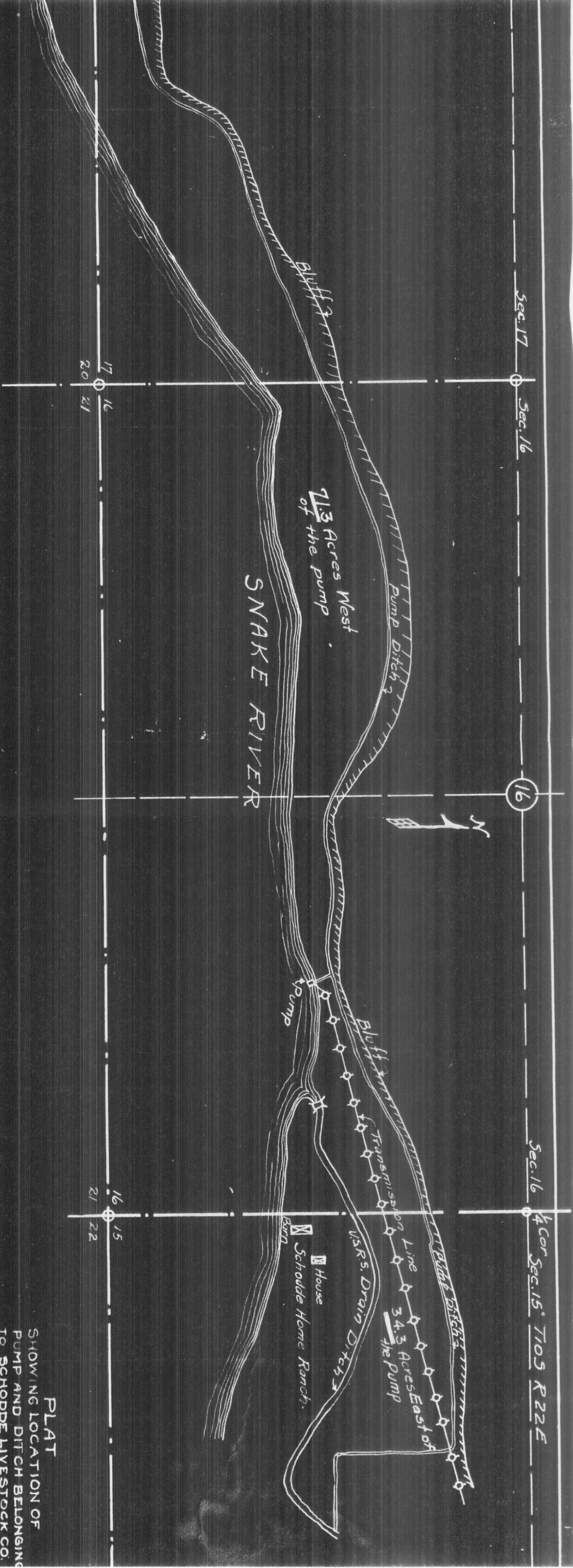
Schadde homestead is Lots 2 and 3, Sec. 15
and Lots 1 and 2, Sec. 16.



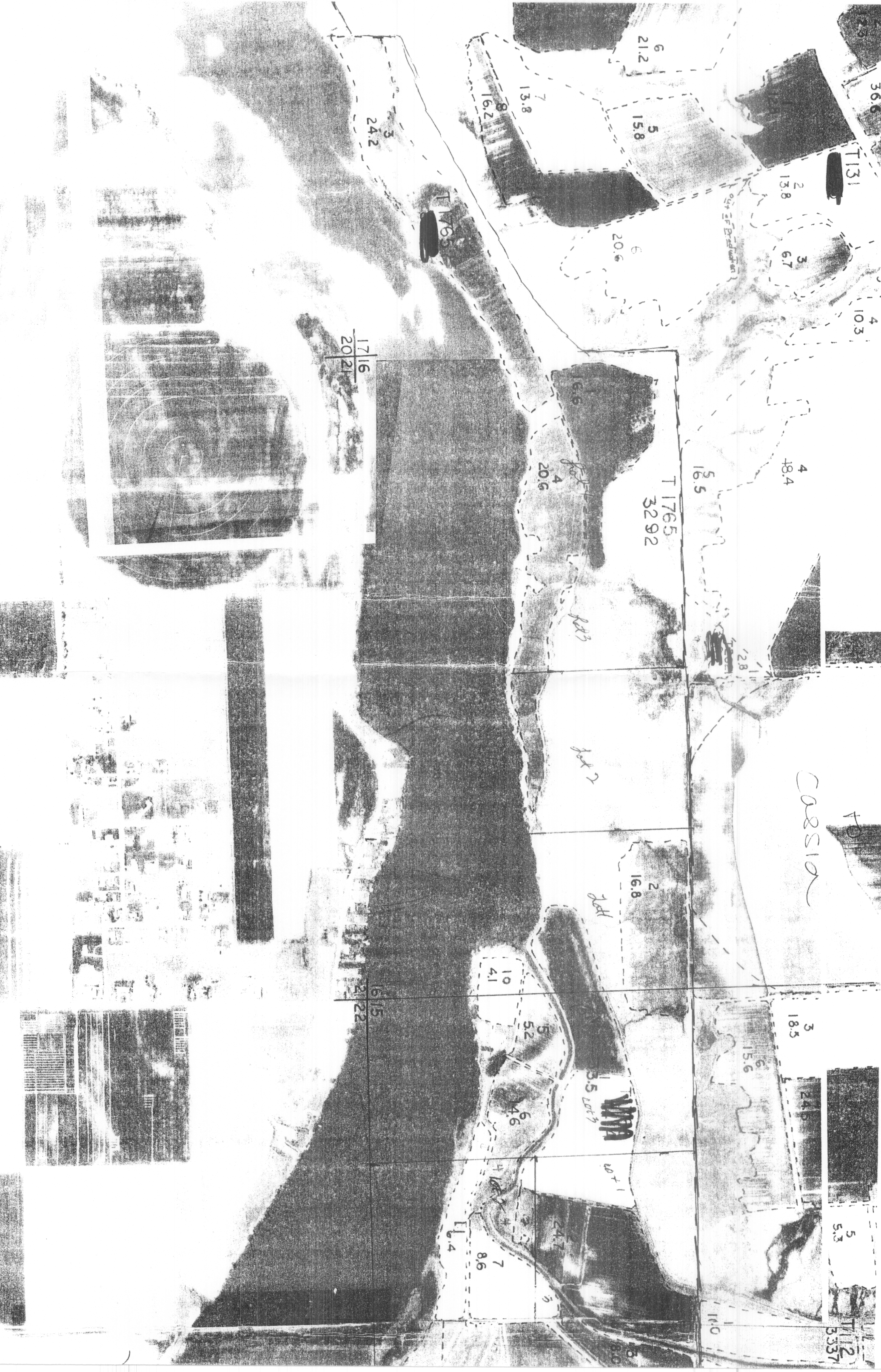
1913



1913



PLAT
SHOWING LOCATION OF
PUMP AND DITCH BELONGING
TO SCHODDE LIVESTOCK CO.
Scale 1 inch = 600 feet
Thos. J. Stephenson C.E.
Burley, Idaho
Sept. 1924.



36.6

T 131

13.8

6.7

10.3

18.4

16.5

T 1765
3292

20.6

16.6

12.8

CASSIA

18.5

15.6

24.6

5.3

T 1765
3292

21.2

15.8

13.8

16.2

24.2

T 1765

17/16
20/21

16.8

10.4

5.2

14.6

16.4

8.6

3.5

WMA

4.7

18.0

16
9
2

NE 1/4
Lot 1

28
MED

28
MED