



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 10, 2001

Triple "J" Ranch
PO Box 201
Hagerman, ID 83332

Michael J Fleming
17826 US Hwy 30
Bliss, ID 83314

RE: Complaint

Gentlemen:

As you know I conducted a field investigation on May 8th of the water uses and other associated matters on Birch Creek in Gooding County as prompted by the May 3rd letter from Cliff Jensen.

The attached memo documents my review. I have discussed this matter with Steve Clelland, SRBA agent, and conclude that:

- The diversion of water to the Fleming pivot appears to be within his rights. Current SRBA draft recommendations should be modified to make this clear. A forced transfer to add a point of diversion for the Fleming rights or issuance of a notice of violation for non-compliance to a water right is pre-mature at this time.

- The matter of release and or storage of ponded water on the Fleming property must be done in a prudent manner. For example, it is strongly recommended that release of water from the pond at the pump should be at a rate that does not cause damaging flooding of property downstream. Likewise, filling of the pond at the pump should be at a rate that does not cause damaging de-watering of the creek below the pond. Ultimately, damage caused as a result of operation of the pond is a civil matter between parties.

I have reviewed the water right permit 37-07559 records and find that a licensing exam has been attempted in the past but postponed due to non-use. Based on the conversation with Mr. Fleming I now understand the fish propagation use likely will not continue in the future. To clear the records of the department I request that the enclosed relinquishment form to Mr. Fleming be signed and returned to this office.

If either party has questions, please feel free to contact this office. If both parties are agreeable to meet together with me to discuss these matters further I will make myself available.

Sincerely,

Allen Merritt, PE
Southern Region Manager

MEMO

FROM: Allen Merritt

DATE: May 8, 2001

TO: Steve Clelland

Files: 37-795, 37-796 and 37-798

SUBJECT: Fleming Rights regards Jensen Complaint

Last Friday I contacted Mike Fleming and Cliff Jensen as a result of the May 3rd letter sent to me by Cliff Jensen. I offered to arbitrate a meeting between Jensen and Fleming but ultimately it was decided that I would do a field visit on 5/8 to look over Mr. Fleming's property. At 10:00 am today I met Mike at his place and I went over the draft recommendations Steve Clelland had completed when doing the Basin 36 reviews which somewhat overlap. He indicated that Steve did not contact him when the initial investigation for the above described rights was done.

I asked him about how he viewed his water rights and he indicated that he has treated his diversions as moving back and forth on a ditch. He indicated that the only change that has been made was the change from 4 wheel-lines and 2 hand-lines to the pivot. He indicated that this was done approximately 6 or 7 years ago. He indicated the same pump that has always been there is the one being used. He indicated the pump was not modified when the pivot was added. I inspected the pump and it appears to be the same one as photographed by Steve.

In reviewing the recommendations I'm not certain why rights 37-795 and 37-796 did not include the pump as a point of diversion. The capacity of the 30 HP pump with estimated TDH of 145 ft. would be in the range of 1.3 cfs which is in the range of the total of all three rights. Further review of these rights will need to be made in Basin 37 since what Steve has done is draft. I recommend that both PD's be recommended for all the rights. A transfer appears premature at this point.

Regarding other issues expressed in Jensen's letter I asked about his operation of his fish facility and the removal of boards. He indicated that he no longer operates a fish facility. (Permit 37-7559 for fish propagation) He indicated due to the poor pricing from the processors, cost of feed, etc it was not worth messing with. He indicated he has not feed fish for several years. He indicated that he probably will not in the future and would just as soon see the creek return to its natural state. He indicated that he does utilize the lower pond as a settling basin for his pump and that he often lowers the boards to dry up the moss build up. Regarding the issue of dust from Jensen's field he indicated that when the wind blows it is a nightmare. He showed me the drifts along side the road and the covering of blow sand on items in the yard. He indicated that it gets in the house and causes much animosity between himself and Jensen.

It appears to me that mostly there are nuisance issues between these two parties and not issues of water rights. The issues of water right diversion points should be determined in the SRBA process.

I recommend that a letter be sent both parties informing them of the results of the investigation. I also propose that Flemming be sent a relinquishment form for permit 37-7559 since a field exam is pending, otherwise the permit should be cancelled.

COPY

RECEIVED

MAY 04 2001

Department of Water Resources
Southern Region

May 3, 2001

Idaho Department of Water Resources
Attn: Mr. Allen Merritt
1341 Fillmore, Suite 200
Twin Falls, Idaho 83301-3380

Dear Mr. Merritt:

On May 1, 2001, I met with Mr. Steve Clelland regarding the water rights of my neighbor, Mike Fleming. At that time, I stated to Steve that I was having some serious problems in the way Mike was altering the continual flow of Birch Creek and with his points of diversion. The difficulties began with my plowed field directly west of Fleming, and the dirt blowing over to Mike's home. I have tried to water this ground several times this spring to help the problem. Everytime the wind blows and I don't have my ground wet enough to stop the dirt from blowing, Mike starts pulling the dam boards and then putting them back in all at once.

Steve informed me that because some of Mike's property was in Basin 36, one of the test basins in the Snake River Adjudication, that he had conducted a field exam and determined the irrigated acres, the method of irrigation and among other things the points of diversion on Mike's entire property. This was conducted around March 15, 1991.

After reviewing Steve's information, I stated that Mike no longer used wheel lines but has a 12 tower pivot that irrigates the majority of the 28.6 acre field South of Birch Creek. The pump that supplies the water for the pivot is located at the end of Mike's fish facilities which have not been in production for approximately two years. Steve mentioned that water rights 37-795 and 37-796 could not be used at that point of diversion without applying for a change which has not been done. This being the case, does Mike have enough water at the pump site to irrigate the 28.6 acre field with a 12 tower pivot? This is a real concern of mine for when Mike turns on his pump it decreases the flow affecting my licensed right for fish propagation and power generation. If Mike were to use his appropriate points of diversion, it would not affect my facilities near as much. This practice has been going on for a few years and I have tried to adjust not to cause any problems and be a good neighbor.

My real problem has matured in the last 35 days when Mike is pulling the dam boards at the end of his fish facilities all at once. This allows the water from his fish ponds to come down Birch Creek at a rapid rate, thus trying to flood me out. This is not as much of a problem as when he puts all the boards in all at once and drastically reduces the flow for several minutes. On April 22nd, Mike did this procedure between six to seven times during the afternoon. On April 28th, it was done once at 5:30 in the afternoon. These are just a few of the times and dates Mike has done this. This starves my fish facility from the appropriate water it needs or is licensed for. This has been observed twice by the water master of 36A, Frank Erwin. Mike's practice of doing this has also flushed the fish waste from his ponds down to my facilities.

Once you have had the opportunity to go over the above with Steve, please give me a call and I would appreciate the opportunity to meet with you and answer any questions you may have. This situation needs to be resolved as soon as possible. What we regarded in the past as a lack of respect for others, has now turned into malicious conduct by Mike Fleming.

Thank you in advance for your attention to this matter.

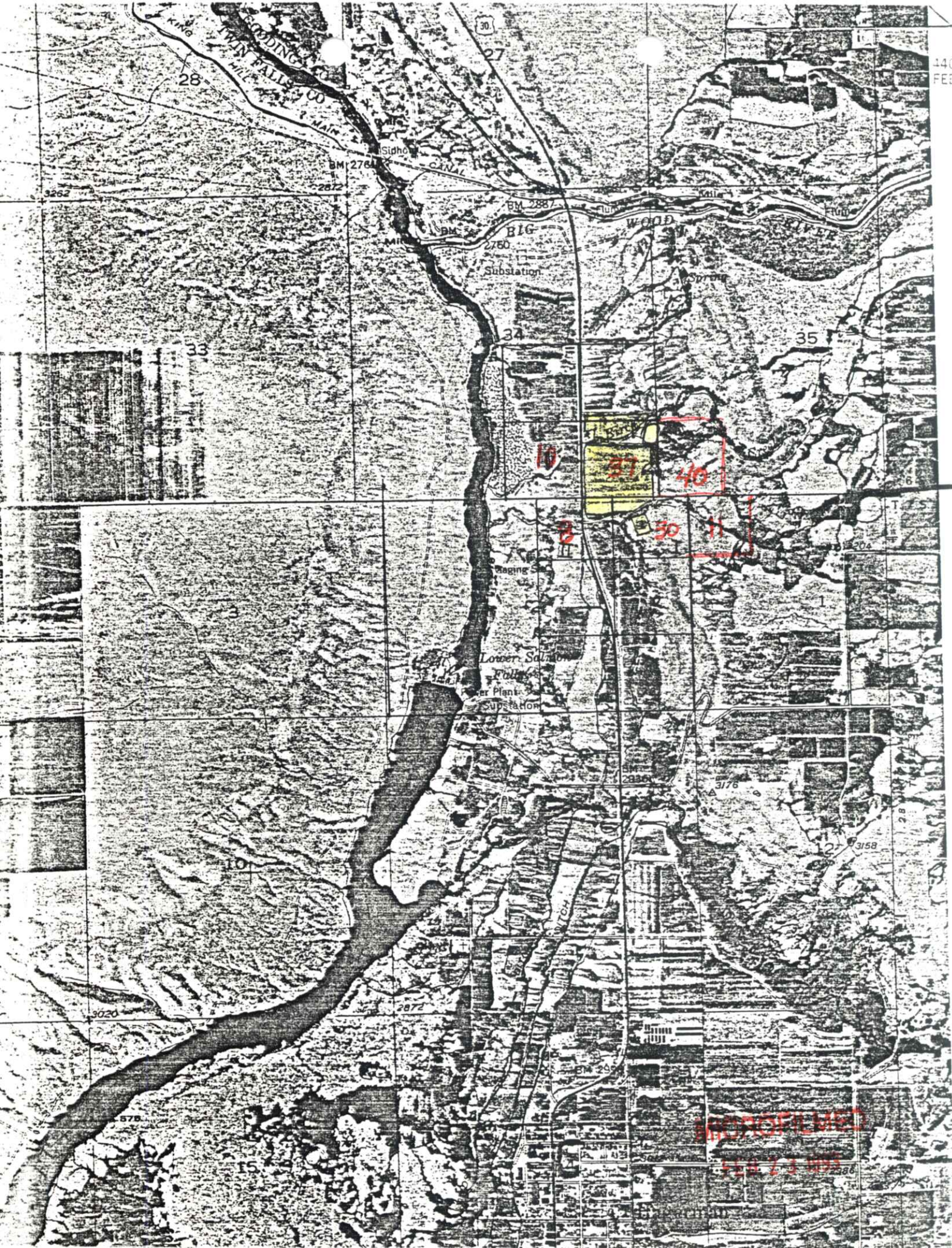
Sincerely,


Clifton E. Jensen

Not 202/124
The 1st of March

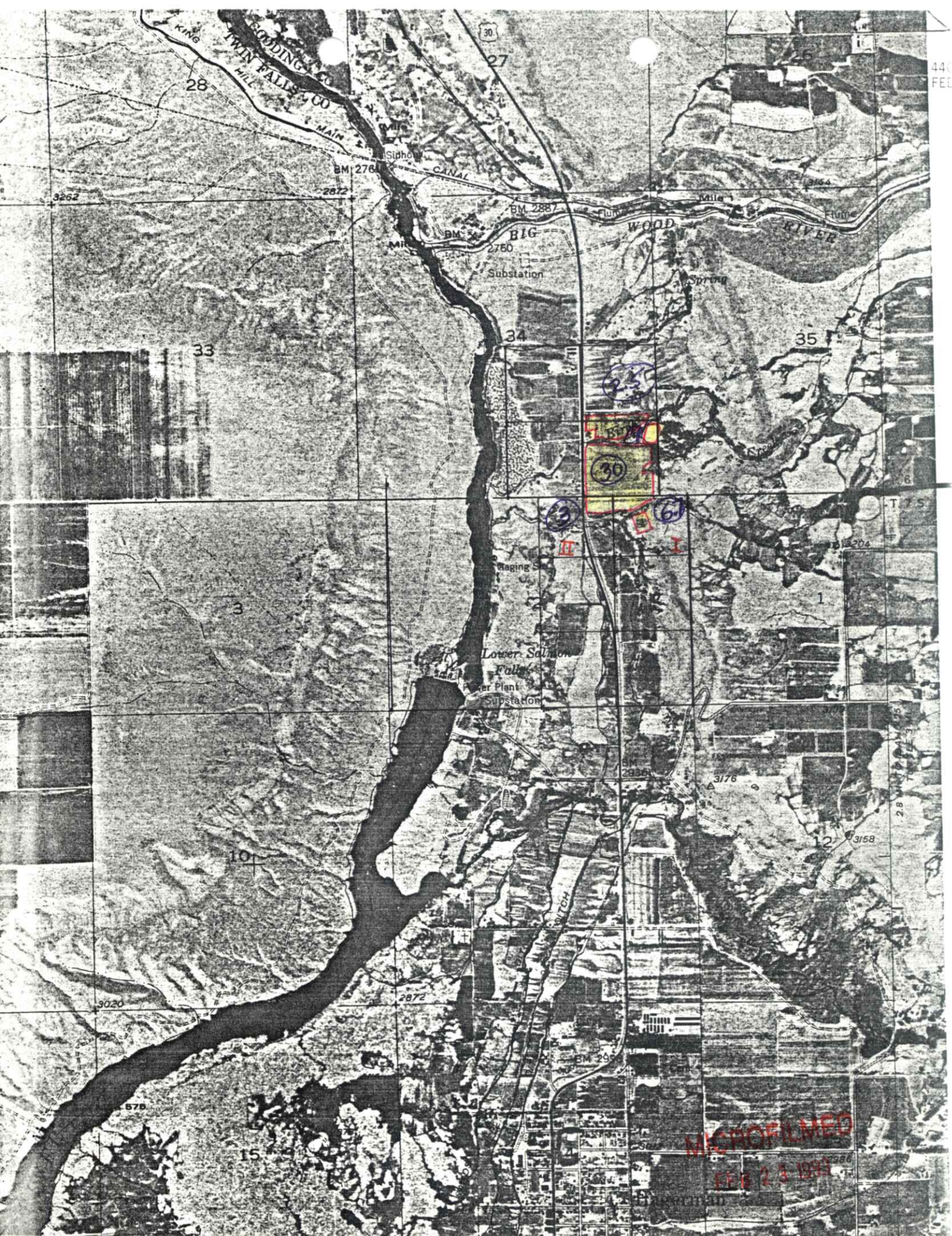
Mike
Fleming, 837-6453

837-6116



440
FEE

MICROFILMED
FEB 23 1995



440
FEE

MICROFILMED
FEB 23 1984

CLAIMED
RTS.

A-795

A-796 (same)

A-798

A-3155 same

A-3157 same

Show
ownership?
on 10 Acres.

Estimated acres
Based on
- ASCS figures
confirmed w/
NAPP
photo

BIRCH
CREEK

BASIN
37

C35
BASIN
36
(5170)

ASCS TOTAL ACRES =

42.3

C315
(6490)

C36
(5960)

MICROFILMED

FEB 23 1981

Decker Rts.

-795
-796 (same)
-798
-3156
-3157

Estimated acres
Based on
- ASCS figures
confirmed w/
NAPP
photo

BIRCH
CREEK

BASIN
37

C35
BASIN
36
(5170)

ASCS TOTAL ACRES =

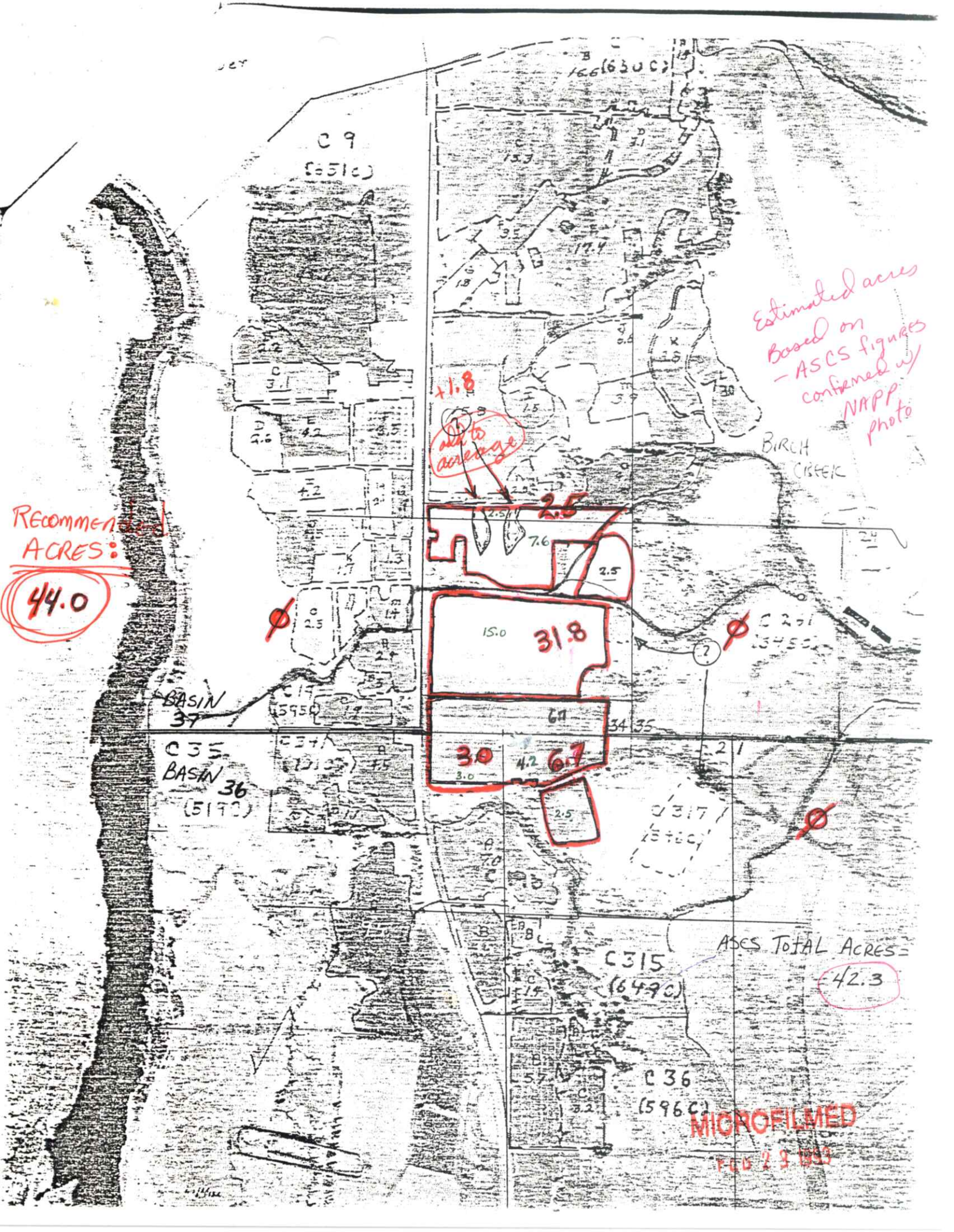
42.3

C315
(6490)

C36
(596)

MICROFILMED

FEB 23 1963



Recommended
ACRES:
44.0

Estimated acres
Based on
- ASCS figures
confirmed w/
NAPP
photo

+1.8
add to
acreage

ASCS TOTAL ACRES =
42.3

MICROFILMED
FEB 23 1993

Field
EXAM MAP Notes

By STEVE CLELLAND
NORMAN BROWN C 9

3-15-91 (5510)

FOR MICHAEL FLEMING

DRAFT
REVIEW

3-21-91

SCC

Spills
into
Pipeline

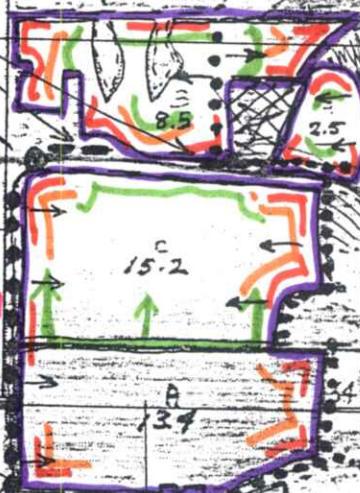
xxx

BIRCH
CREEK

only
Pump
uses
this
POD
Here
30HP

BASIN
37

C 35
BASIN
36
(5172)



Not
Irrigated

ASCS TOTAL ACRES =
42.3

C 315
(6490)

C 36

(596)

MICROFILMED

FEB 23 1993



MAINLINE



DOMSTIC LINE

MICHAEL FLEMING

A37-00795

3-15-91

DOMSTIC
POD
S

MICROFILMED
FEB 23 1993

RECOMMEN
ACRES:

44.0

Estimated acres
Based on
- ASCS figures
confirmed w/
NAPP
photo

BIRCH
CREEK

+1.8
add to
acreage

BASIN
37

C35
BASIN 36
(5190)

2.5 7.6 2.5

15.0 31.8

3.0 4.2 6.7 2.5

6.4

34 35

2.1

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

2.5

ASCS TOTAL ACRES =

42.3

A 37-00795

MICROFILMED

100 23 1981

Field
EXAM MAP Notes

By STEVE CLELLAND
NORMAN BROWN C 9

3-15-91 (5510)

FOR MICHAEL FLEMING

166(6500)

15.3

3.1

17.4

18

15

13

12

11

10

9

8

7

6

5

4

3

2

1

0

0

0

0

0

0

0

0

0

0

0

0

0

0

0

Spring
into
Pipeline

BIRCH
CREEK

Pump
30 HP

POU

BASIN
37

C35
BASIN
36

(5172)

A37-00795

IRRIGATED

2.5

25.1

NOT
IRRIGATED

C315
(6490)

C36
(5960)

ASCS TOTAL ACRES =
42.3

MICROFILMED

FEB 23 1991

Michael Fleming POU/POD
by scc 5/1/01
37-00795, 796,798

