

Craig

02/18/2003

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: April 21, 2003

RECEIVED

Water right number: 29-2034B

CORWIN P. WHITWORTH
493 E JACKSON CREEK RD
INKOM ID 83245
Telephone Number: (208) 775-3563

MAR 24 2003

WATER RESOURCES
WESTERN REGION

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

- ① Irrigated acres should be 36 ac. in SWNE, Sec. 23 + 12 ac. in SENE, Sec. 23 per attached map.
② Quantity should be increased proportionately for additional acres.
③ Source of Jackson Cr. historically "sinks" and was not tributary to Rapid Creek.
2. Describe the changes you wish to make in the proposed recommendation:
④ Right should include stock water for 50 beef cattle + 10 horses.
(See # 1 above)

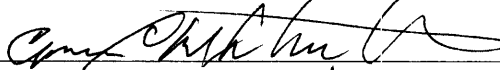
3. Give a brief explanation as to why you disagree with these portions:

- ① ~~The~~ The land described is irrigated by sprinkler-gravity flow system.
② Total acres irrigated = 46 acres.
③ When right was established, Jackson creek never was tributary to Rapid Creek. See attached affidavits.
④ Continuous stock water use.

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

DATE: 3/7/03

SIGNATURE:



Please print your name:

Corwin P. Whitworth

Craig

LAW OFFICES OF

**RACINE, OLSON, NYE, BUDGE &
BAILEY
CHARTERED**

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
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MITCHELL W. BROWN
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SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

BOISE OFFICE

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March 11, 2003

Idaho Department of Water Resources
Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Re: *Corwin Pat Whitworth*
Water Right Nos. 29-311B, 29-298B, 29-2034B

RECEIVED

MAR 24 2003

WATER RESOURCES
WESTERN REGION

To Whom It May Concern:

Enclosed please find Claimant Corwin P. Whitworth's Notice of Error Reply pertaining to Water Right Nos. 29-298B, 29-311B, and 29-2034B.

With respect to numbers 29-298B and 29-311B, the Claimant Mr. Whitworth agrees with the recommendation that the irrigation water right be forfeited by reason of non-use. However, he disagrees that any forfeiture should occur with respect to his stock watering right on the same property. Although this was not separately identified on the original Notice of Claim, these two water rights have been continuously to date to provide stock water for up to 300 head of beef cattle. The period of use is right after the first crop hay is removed, being approximately June 15 each year, through October 31. Mr. Whitworth seeks to amend these claims to assert this stock water right. If it is necessary to file a separate late filed claim on the stock water right, please advise and we'll promptly do so.

Regarding Water Right No. 29-2034B, there are four areas of disagreement:

1. The irrigated acres should be 36 acres in the SW1/4 NE1/4 and 12 acres in the SE1/4 NE1/4 of Section 23, Township 7 South, Range 36 East, B.M., Bannock County. I am enclosing a map reflecting the additional acres, which the claimant requests be included.

March 11, 2003

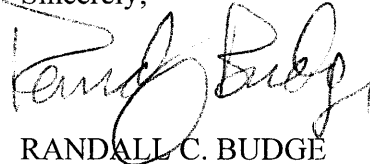
Page 2

This is the hash-marked area, which has always been irrigated from the identified ditch, which runs from the point of diversion in a southwesterly direction to a gravity flow sprinkler system.

2. The quantity of water should be increased proportionately for the additional 48 acres.
3. The source reflects that Jackson Creek is a tributary to Rapid Creek. Presently that is the case. However, it was not the case when this water right was initially established in 1905. At that time Jackson Creek was tributary to sinks and did not flow into Rapid Creek. This is significant, because this right otherwise could be called out by earlier priority rights on Rapid Creek. In support of this assertion are the enclosed sworn statements of Francis M. Whitworth dated March 19, 1991, R. W. Barren, dated March 19, 1991, and Narcisse Sorrell, dated July 2, 1920. At that time, Jackson Creek was commonly known as Indian Creek. This date was based upon Water License No. 1330 issued June 8, 1906, by State Engineer Jason Stevenson, Jr., Bannock County Recorder's Instrument No. 29-2034, copy of which is enclosed. Our copy is hardly legible, but I assume the Department has available a legible copy. It does not appear that any indication is given in this license that Indian Creek (Jackson Creek) was tributary to Rapid Creek.

Thank you for your consideration. If you have any questions, please contact me.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Pat Whitworth (w/encls.)

STATE OF IDAHO)
BANNOCK COUNTY)

SS.

Narcisse Sorrell, being first duly sworn, deposes and says: That he has resided in the vicinity of Inkom, Idaho for thirty four years; that he is and has been during all that time familiar with the natural countour and streams of that vicinity, and especially in Township 7 South of Ranges 36 and 37, as shown by the accompanying map; that he knows of his own knowledge that the course of Jackson Creek, as shown on said map is the natural course of said stream, and that said stream is and was a tributary of the Portneuf River, and not a tributary of Rapid Creek. Affiant further says that the Jackson Creek as shown on the accompanying map was sometimes known as Indian Creek.

Narcisse Sorrell

Subscribed and sworn to before me this 2nd day of July, 1920.

Henry Leary
Notary Public, Bannock County,
Idaho, residing at Pocatello,
said county and state.

Inkom, Idaho

March 1991

STATE OF IDAHO

BANNOCK COUNTY

Francis M. Whitworth in this notarized statement says; That he has been acquainted with the area of Inkom Idaho for all of his life, 82 years, and that he is, and has been during that time familiar with most of the natural contour and the streams of that vicinity, including those in Township 7 South, Range 36 and 37. This does include the area shown on the accompanying map.

He states that he knows of his own knowledge that the course of Jackson Creek, as shown on said map is indeed the direction of the stream bed of Jackson Creek.

He also states that during the first nine years of his life he lived within one mile of Jackson Creek, and during this time Jackson Creek was a dry stream bed in its lower area.

He also states that during the early years of his life he was an employee of A.M. Newton. Dr. Newton leased the property where the Jackson Creek stream bed existed from Joe Jackson. During the time of this employment it was his job to level the stream bed and make the area farmable. This task was done with a wooden land leveling device,

Francis M. Whitworth

Subscribed and sworn to before me this 19 day of March, 1991.

Sherry Helmandollar
Notary Public
Inkom Idaho 83245
Residing at:

INKOM, IDAHO

STATE OF IDAHO

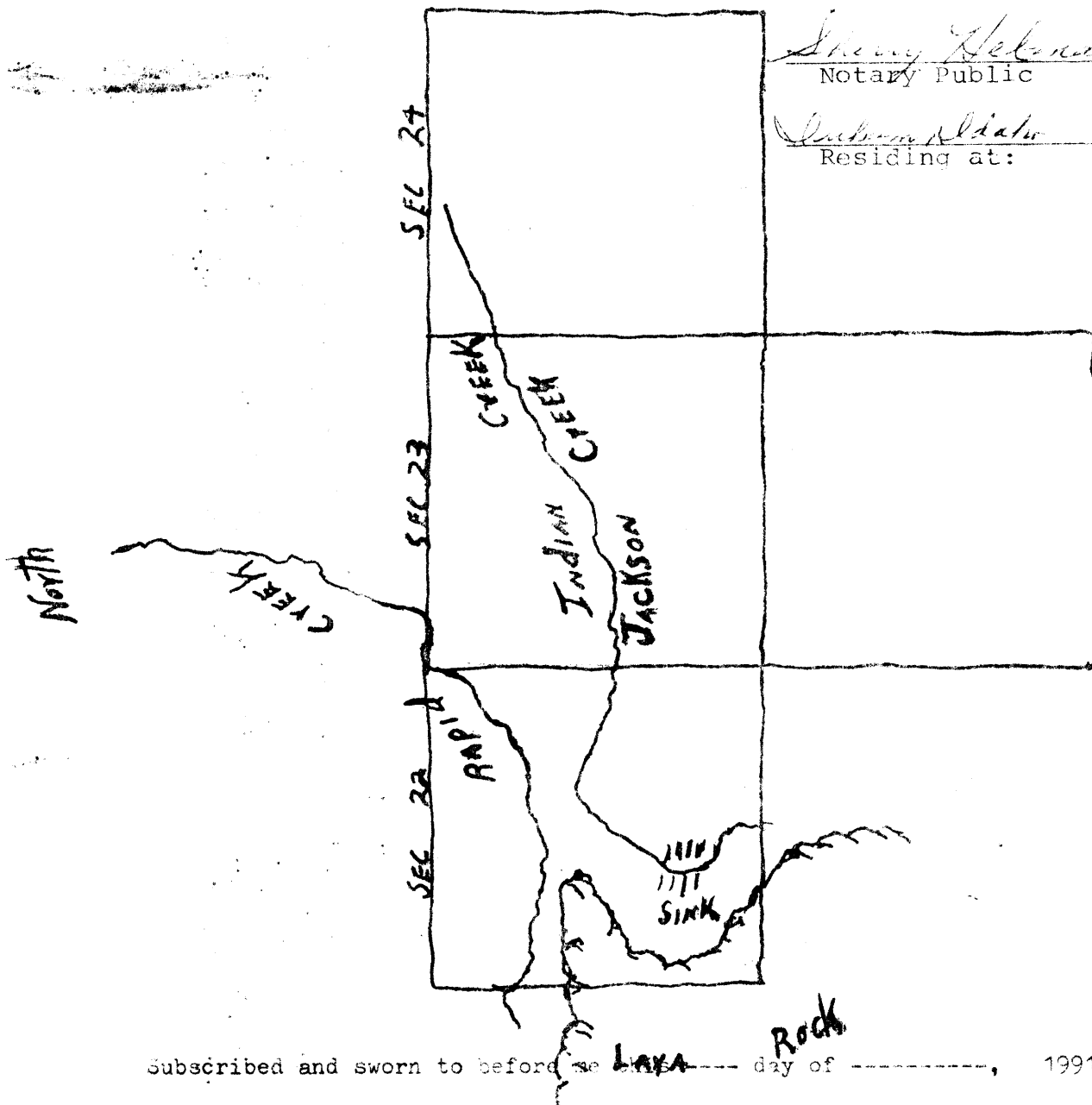
BANNOCK COUNTY

Francis Whitworth states that he knows of his own knowledge that this map clearly indicates the direction of the stream bed of Jackson Creek during his childhood and younger life.

Francis W. Whitworth

Sherry Helander
Notary Public

Durham Idaho
Residing at:



Subscribed and sworn to before me Lava day of Rock, 1991.

Inkom, Idaho
March, 1991

STATE OF IDAHO
BENNETT COUNTY

R.W. Barron in this notarized statement says; That he has been acquainted with the area of Inkom Idaho for ²⁰ of his almost 91 years, and that he is, and has been during the time familiar with most of the natural contour and the streams of that vicinity, including those in Township 7 South Ranges 36 and 37 East. This does include the area shown on the accompanying map.

He states that he knows of his own knowledge that the course of Jackson Creek, as shown on said map was toward the Portneuf River and not to Rapid Creek.

He also states that as a young man he recalls that various farmers would divert Jackson Creek from its natural stream bed into Rapid Creek so that the land on and around the natural stream bed could be farmed.

R.W. Barron

Subscribed and sworn to before me this 19 day of March, 1991.

Sherry Helmsandollar
Notary Public

Inkom, Idaho 83245
Residing at:

STATE OF IDAHO

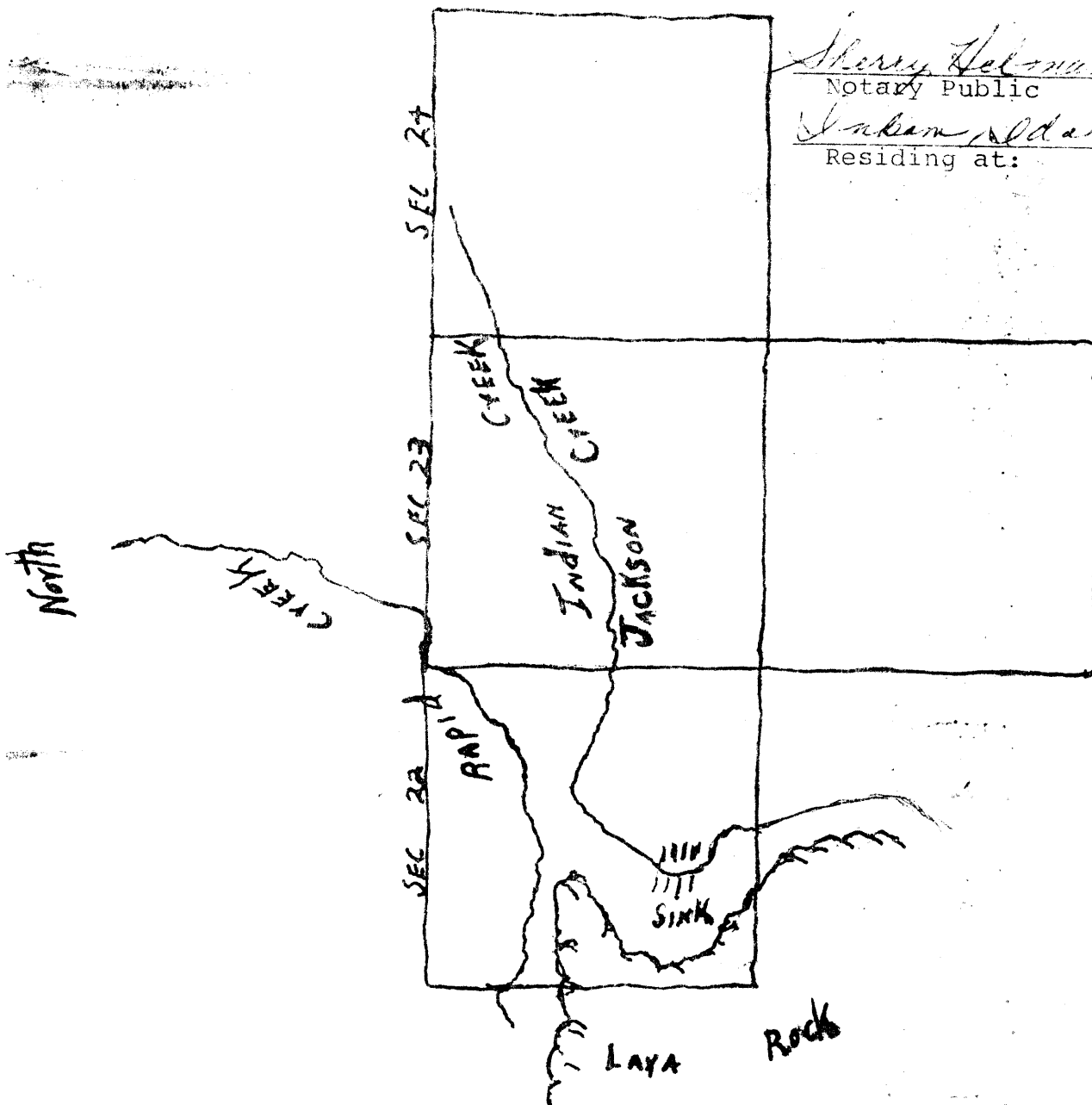
BAINBOCK COUNTY

INCOM. IDAHO

R. W. Barron states of his own knowledge he knows that this map does show the direction of the flow of Jackson Creek during his childhood years.

Subscribed and sworn to this 19 day of March, 1991.

Sherry Helman
Notary Public
Idaho
Residing at:





Total Irrigated Acres: 31.7

● Point(s) of Diversion

□ Place of Use

□ Quarter Quarter Lines

□ Section Lines



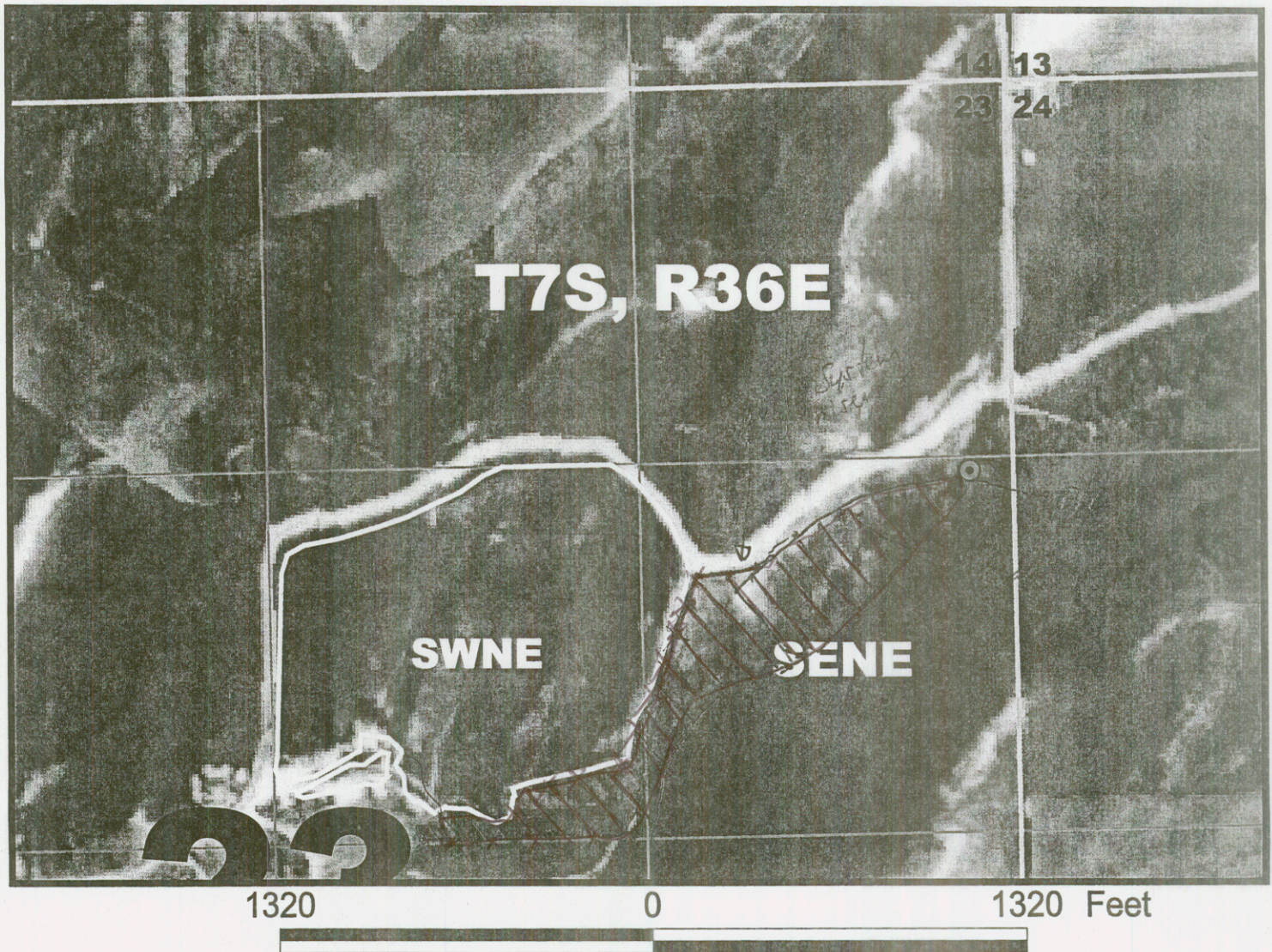
GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: C. Saxton
Date: December 2002



STATE OF IDAHO

Department of Water Resources
Eastern Region

Water Right(s): 29-02034B



Total Irrigated Acres: 31.7

- Point(s) of Diversion
- Place of Use
- Quarter Quarter Lines
- Section Lines



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: C. Saxton
Date: December 2002

02/18/2003

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

RIGHT NUMBER: 29-2034B
NAME AND ADDRESS: CORWIN P WHITWORTH
493 E JACKSON CREEK RD
INKOM ID 83245

✓ SOURCE: JACKSON CREEK

TRIBUTARY: RAPID CREEK

now

QUANTITY: 0.630 CFS
126.80 AFY

(Previously "57m/c/s")

✓ PRIORITY DATE: 08/31/1905

PURSUANT TO A CALL IN TIMES OF SCARCITY, THIS RIGHT IS SENIOR TO WATER RIGHTS DIVERTED FROM RAPID CREEK AND TRIBUTARIES.

✓ POINT OF DIVERSION: T07S R36E S23 NESENE Within BANNOCK County

✓ PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
✓ IRRIGATION	04/01 10/31	0.630 CFS
✓ DOMESTIC	04/01 10/31	126.80 AFY
✓ Domestic use is for lawn and garden.		0.040 CFS

OK - claim
3/15 - 11/15

OK domestic

PLACE OF USE: IRRIGATION Within BANNOCK County
T07S R36E S23 SWNE 30.0 T07S R36E S23 SENE 1.7
→ DOMESTIC same as IRRIGATION
31.7 ACRES TOTAL

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 - License

Acreage Calculation Map

29-02034B



Point of Diversion

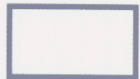
Recommended Irrigated Acres = 46.0



Bannock Co Tax Lot Data



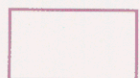
Place of Use



N/A



Section Lines



Quarter Quarter Lines



Prepared By: Craig Saxton
June 2003