

2006 MAR -9 AM 9:24
DISTRICT ATTORNEY - SRBA
TWIN FALLS CO., IDAHO
FILED *M*

In Re SRBA)
)
Case No. 39576)
_____)

A. Subcase 37 - 90C
(Insert water right number)

**STANDARD FORM 1
OBJECTION**

B. NAME AND ADDRESS OF PERSON OBJECTING

Name & Address of Attorney, if any:
J. EVAN ROBERTSON
P.O. Box 1906
TWIN FALLS, ID 83303-1906

Name: BUICH 1995 FAMILY TRUST
Address: P.O. Box 1084
ALAMO, CA 94507-1084

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 0.4 CFS WITH A COMBINED LIMIT (w 37-1223)
OF 2 CFS NOT 1.6 CFS
4. ☐ **Priority Date**
Should be: _____
5. ☒ **Point of Diversion**
Should be: SEE EXHIBIT B
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: COMBINED w/ 37-1223 AT 74.7 AC.
SEE EXHIBIT C
10. ☒ **I object because:**
☐ This water right Should not exist.

☒ This water right was not recommended, but Should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** THE RIGHT HAS
NOT HISTORICALLY BEEN USED AS RECOMMENDED

F.

VERIFICATION (must be completed)

State of IDAHO)
)ss.

County of TWIN FALLS)

MICHAEL L. BUCH, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Michael L. Buch
(Signature of person filing objection)

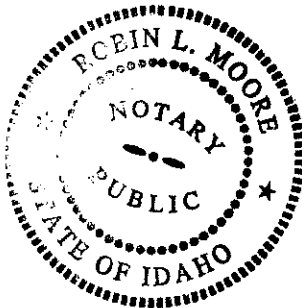
Robert Peterson
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

March 8, 2006
Robert Peterson
Notary Public for

Residing at:

My Commission Expires:



INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on _____, 200__, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: _____
Address: _____

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

Signature of objector or attorney
mailing on Objector's behalf

and/or the defendant is committed to file new power and process-complaint.

Dated this 14th day of October, 1933.

D. H. Sutphen

District Judge.

Filed October 14, 1933.
B. P. Thamm, Clerk District Court,
Blaine County, Idaho.

Delivered

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN. Case #2816

C. F. BRETT and FRANK A. CLARK,

Plaintiffs,

vs.

SEWELL H. CHAPMAN, Watermaster
of Water District No. 11-AB,
Silver Creek and Lower Little
Wood River,

Defendant,

and

JOHN HUNTER, W. H. BAUGH, and
CHARLES MYERS,

Intervenors.

DECREE

File 37-L

This cause came on regularly for trial on the 28th day of November, 1930, before J. L. Downing, Presiding Judge, the plaintiffs appearing by their counsel A. F. James, the defendant Sewell H. Chapman appearing not at all, and the Intervenor

appearing by their attorney Paul S. Haddock, the court having heretofore rendered his Findings of Fact and Conclusions of Law:

NOW THEREFORE, By reason of the premises, and of said Findings of Fact and Conclusions of Law:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1

36-1223 That the plaintiff C. F. Brett be and he is hereby decreed to be the owner of the right to the use of 1.6 cubic feet per second of time of the waters of Silver Creek for the irrigation of the lands hereinafter in this paragraph described, and for domestic purposes thereon, with a date of priority prior to the earliest priority on Silver Creek and Little Wood River as established by the decree in the case of S. C. Frost et al. vs. Alturas Water Company et al, or any other decree, and said water right is hereby made appurtenant to said land, more particularly described as follows:

"The NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 36, Twp. 1 S. R. 20 E. E. M.; that portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 36 lying west of Silver Creek; all that portion of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 36, save and except the five acre tract in the southeast corner thereof belonging to Frank A. Clark situate east of Silver Creek and south of Clark's irrigation ditch; all that portion of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 36, save and except a strip off the east end thereof belonging to Frank A. Clark said strip being 150 foot wide and containing 4.7 acres and save and except another strip off the south end of said tract containing 2.5 acres and being 100 feet wide

South line of said forty and said Clark's irrigation ditch, situate in Blaine County, State of Idaho."

2

37-1224 That the plaintiff Frank A. Clark be and he is hereby decreed to be the owner of the right to the use of 1.6 cubic feet per second of time of the waters of Silver Creek for the irrigation of the lands hereinafter in this paragraph described, and for domestic purposes thereon, with a date of priority prior to the earliest priority on Silver Creek and Little Wood River as established by the decree in the case of S. C. Frost et al. vs. Returns Water Company et al., or any other decree, and said water right is hereby made appurtenant to said land, more particularly described as follows:

"Lot 1 and all that part of Lots 2 and 3 and the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, all in Sec. 1, Twp. 2 S. R. 20 E. E. M.; lying north and east of Silver Creek; all that portion of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec. 36, Twp. 1 S. R. 20 E. E. M. lying east of Silver Creek; the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 36, Twp. 1 S. R. 20 E. E. M.; a strip of land 150 feet wide extending north and south off the east end of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sec. 36 containing 4.7 acres; a strip of land extending east and west off the south end of the said NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Sec. 36, lying between the south boundary line of said forty and the irrigation ditch belonging to Frank A. Clark containing 6.5 acres; a tract of land in the northeast corner of the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Sec. 36 lying south of the said Frank A. Clark irrigation ditch and east of said Silver Creek containing 5 acres, situate in Blaine County, Idaho."

॥

Given under my hand this 28 day of December, 1932.

Jay L. Downing

Presiding District Judge.

STATE OF IDAHO,
Lincoln County.

I, Venetta Albert, the duly elected, qualified, and acting Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Lincoln, do hereby certify that the above and foregoing is a true, complete and correct copy of Decree in the case of C. F. Erett and Frank A. Clark, plaintiffs, vs. Sewell H. Chapman, Watermaster of Water District No. 11-AB, Silver Creek and Lower Little Wood River, defendant, and John Hunter, W. H. Baughn, and Charles Myers, Interveners, the original of which Decree is on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 27th day of January, 1937.

100

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

EXHIBIT A – Priority Date

According to the Frost Decree 37-90C has a priority date of 06/30/1895. According to the Brett Decree (see attached) 37-1223 and 37-1224 has a priority date that is “prior to the earliest priority on Silver Creek and Little Wood River as established by the Frost Decree.” Prior to the decree both of these rights were split; however, only 37-1223 is now applicable to the Ranch. The rights were also decreed as “being absolute, independent, perpetual rights and independent of and prior to all other rights on Silver Creek and Little Wood River.”

At the time of the adjudication the prior owner of the ranch claimed the rights as being perpetual rights and did not specify a priority date. However, the owner of water right 37-1224 claimed the right as being prior to all other rights on Silver Creek and the Little Wood River (~01/01/1800) as stated in the decree. The recommendation states that the right now has a priority date of 12/28/1932. This date is the date of the Brett Decree and not the date in which this right was put to beneficial use. Therefore, we are proposing that the right should have a priority date of 01/01/1800 which would then make the right prior to all other rights on Silver Creek and Little Wood River, as stated in the Brett Decree.

EXHIBIT B – Point of Diversions

When the claims for water rights 37-90C and 37-1223 were filed the claims did not base the rights on what was physically occurring at the property.

The Point of Diversions for the Claims:

- WR 37-1223 claimed the following POD's

SILVER CREEK SWNW Sec. 36 Township 01S Range 20E BLAINE County

- POD for “Little Creek” Diversion

SILVER CREEK SENW Sec. 36 Township 01S Range 20E BLAINE County

- POD for just south of highway to eastern portion of the property

SILVER CREEK Rediversion NESW Sec. 36 Township 01S Range 20E BLAINE County

- Rediversion of Silver Creek

- WR 37-90C claimed the following POD's

SILVER CREEK NESW Sec. 36 Township 01S Range 20E BLAINE County

- Rediversion of Silver Creek??

SILVER CREEK NWSW Sec. 36 Township 01S Range 20E BLAINE County

- Rediversion of “Little Creek” (at house or southern field) or possible diversion of Silver Creek for pond??

However, it seems that the IDWR agent changed the proposed point of diversions to locations that will not physically be able to irrigate the property.

Recommendations:

- Both WR 37-1223 & 37-90C was recommended with the following POD's

SILVER CREEK NWSW Sec. 36 Township 01S Range 20E BLAINE County

- POD for "Little Creek" diversion (house diversion?): what can this diversion irrigate??
If it is considered a diversion for Little Creek from Silver Creek it is in the wrong location since Silver Creek is not in this quarter.

SILVER CREEK NWSW Sec. 36 Township 01S Range 20E BLAINE County

- Rediversion of above POD for field to the southwest (correct)

SILVER CREEK NESW Sec. 36 Township 01S Range 20E BLAINE County

- Diversion of Silver Creek: This POD does not go to any irrigated land on the property.

The point of diversions as now recommended would not allow the owner to irrigate the land that is being proposed in the current place of use. Therefore, we are proposing that the point of diversions of both water rights be changed as seen as below.

Proposed Point of Diversions:

SILVER CREEK SWNWNW Sec. 36 Township 01S Range 20E BLAINE County

- POD for land west of railroad easement

SILVER CREEK SESWNW Sec. 36 Township 01S Range 20E BLAINE County

- POD for pumping pond

SILVER CREEK SESWNW Sec. 36 Township 01S Range 20E BLAINE County

- POD for "Little Creek"

SILVER CREEK SWSNW Sec. 36 Township 01S Range 20E BLAINE County

- POD for land to the east

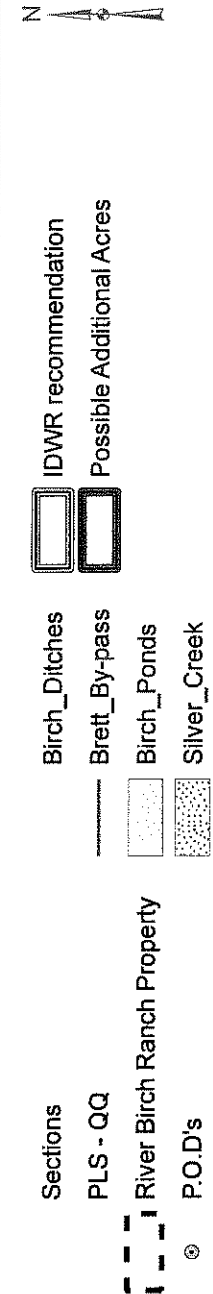
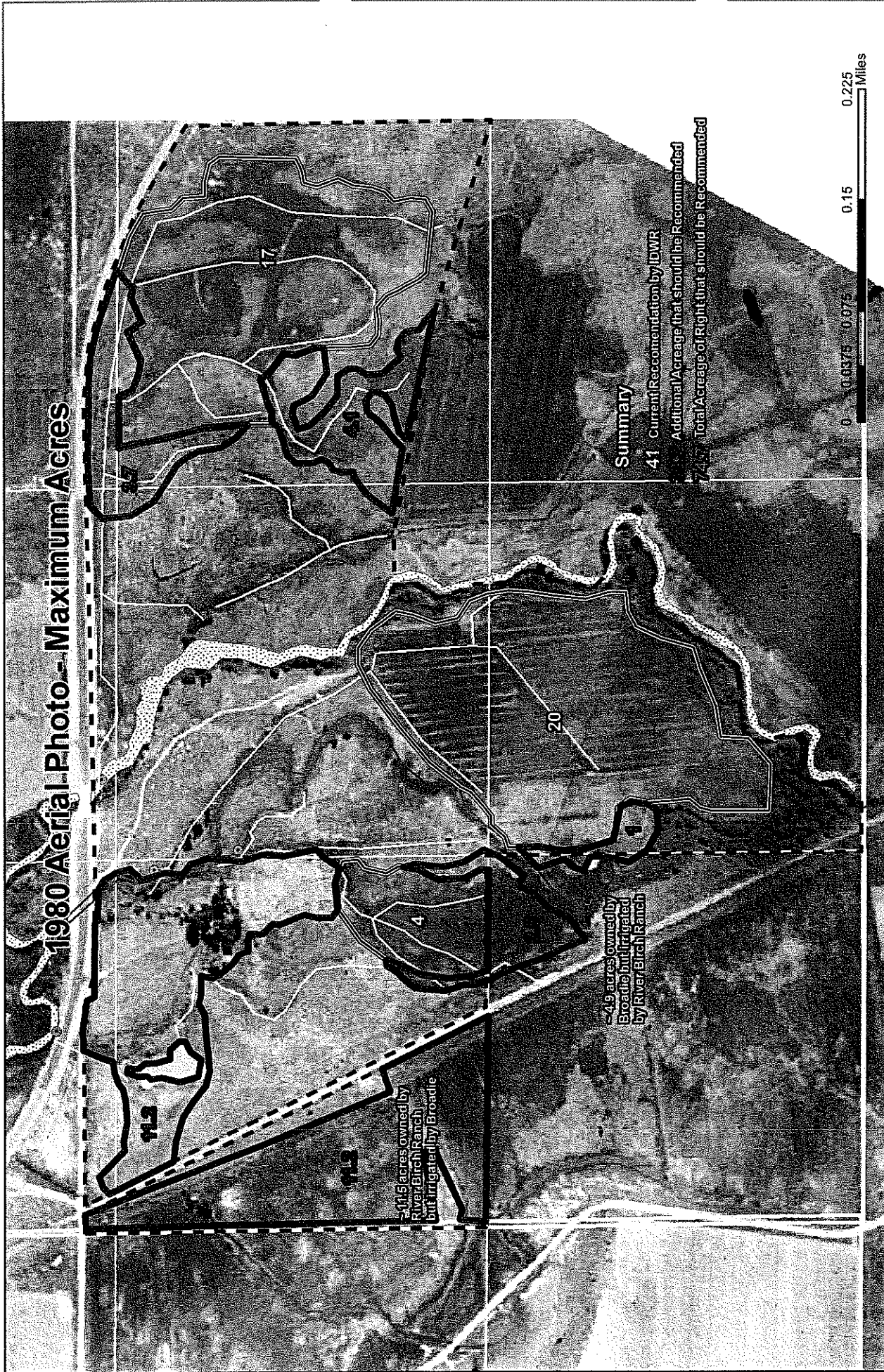
EXHIBIT C – Place of Use

The recommendations for these water rights are only recommending 41 acres as being irrigatable within the ranch. As can be seen from historical aerial photos (see attached) the former owners of this ranch did not utilize the full claim of these rights. However, according to historical aerial photos this ranch has been irrigated for more than 41 acres. Aerial Photos from 1980, 1981, and 1982 show that at least 21 additional acres were irrigated on the ranch. Since these rights were in the adjudication, these 21 acres should not be forfeited and the irrigated acres allowed under these rights should be recommended at what was occurring at the ranch in approximately 1980-1983 (see attached figures).

It should be noted that the Buich's own approximately 11.2 acres of irrigatable land west of the Union Pacific Railroad right-of-way located on the west side of the property. This property formerly was included in the claims of these rights. However, this land was not recommended because the acreage cannot be physically reached by the water diverted from the claimed point of diversions. However, the land was irrigated by these rights via another point of diversion to the north of the property, and is being irrigated by Broadie Land and Livestock, LLP. It also shall be noted that Broadie Land and Livestock, LLP owns 2.6 acres of land east of the Union Pacific Railroad right-of-way that is being irrigated by Buich's rights. However, the historical photos only show that approximately 2.6 acres of this property was being irrigated during 1980-1982. The attached documentation shows that the prior owner and Broadie had an irrigation agreement in place to irrigate each others land. Therefore, the 11.2 acres on the west of the railroad easement and the 2.6 acres to the east of the easement should be allowed to be irrigated by these water rights.

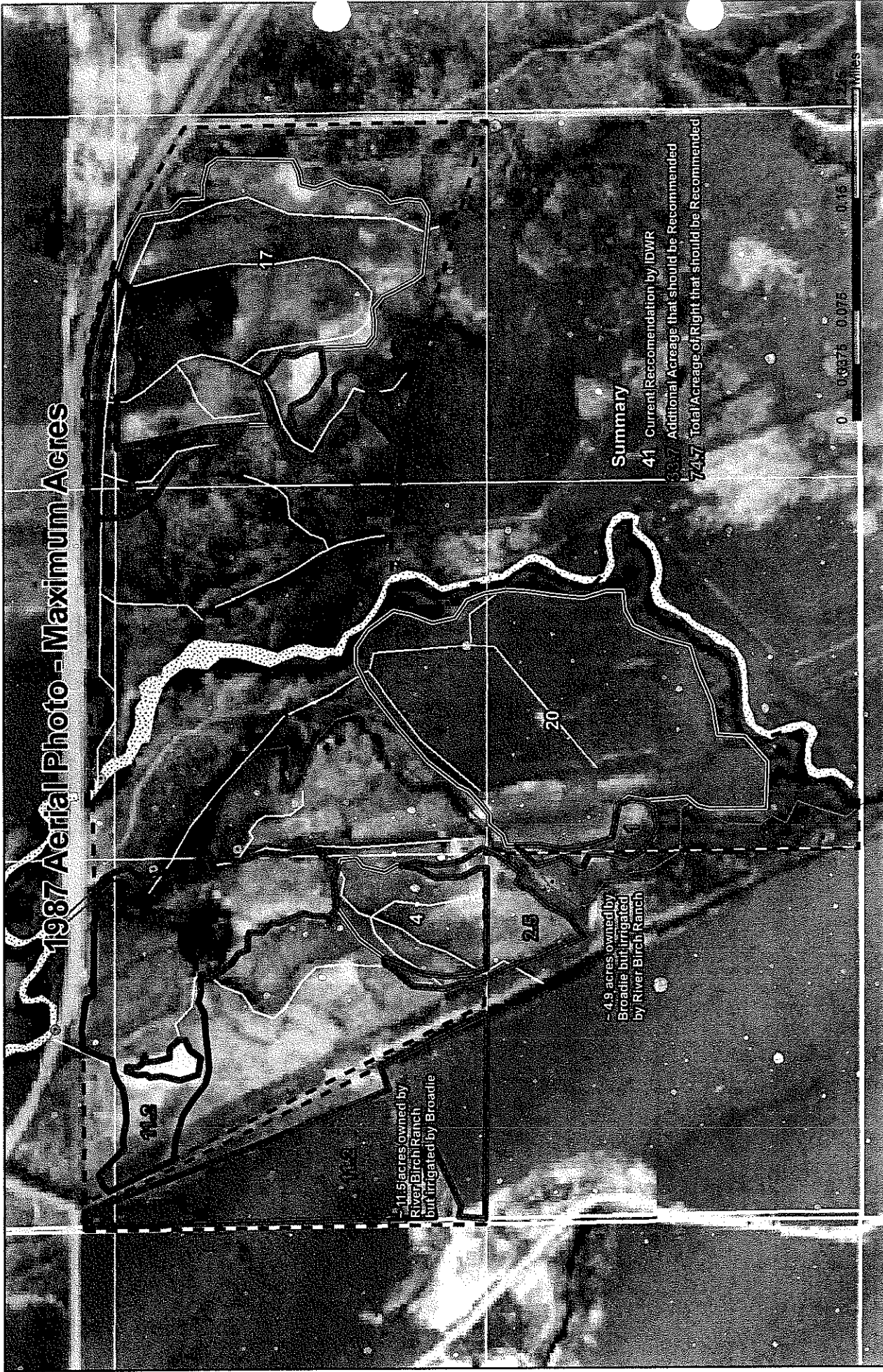
In addition, due to the preexisting ditches that traverse across the property, we know that additional acreage has been irrigated in the past that is not being recommended. However, we have not been able to acquire any aerial photos for the property that demonstrate that the ditches were diverting water for the irrigation of these additional acres during 1987. Therefore, we feel that basing the recommendation on the 1987 aerial photo, as the representative from IDWR did, would constitute in a taking of the additional lands that are shown in the prior year's aerial photos.

Therefore, we are proposing that the water rights reflect the place of use seen in the historical aerial photos and seen in the attached figures.



River Birch Ranch
 Township 01S, Range 20E, Section 36
 Brockway Engineering, PLLC
 ALR 07-29-05 - Revised: DTN 12-08-05

1987 Aerial Photo - Maximum Acres



Summary
 41 Current Recommendation by IDWR
 33.7 Additional Acreage that should be Recommended
 74.7 Total Acreage of Right that should be Recommended

River Birch Ranch
 Township 01S, Range 20E, Section 36
 Brockway Engineering, PLLC
 ALR 07-29-05 - Revised: DTN 12-08-05

- Sections
 - PLS - QQ
 - River Birch Ranch Property
 - P.O.D's
- Birch_Ditches
 - Brett_By-pass (Little Creek)
 - Birch_Ponds
 - Silver_Creek
- IDWR recommendation
 - Possible Additional Acres