

Contract No. 3-07-14-LA433

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION
MINIDOKA IRRIGATION PROJECT - IDAHO

Posted
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LEASE OF LAND FOR AGRICULTURAL OR GRAZING PURPOSES

THIS LEASE, made this 1ST day of MARCH, 2003, in pursuance of the act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, hereinafter styled the United States, represented by the officer executing this lease, and **David Schwendiman**, 15000 East Highway 33, Newdale, Idaho 83436, hereinafter styled the Lessee.

2. WITNESSETH, that in consideration of the rents and covenants herein specified, it is hereby mutually agreed by the parties hereto as follows:

3. Description of land leased - Subject to the conditions hereinafter set forth, the United States does hereby lease to the Lessee, for **agricultural** purposes, the following-described premises in the State of Idaho, to wit:

Township 7 North, Range 42 East, Boise Meridian

Section 22 * Parcel No. TD-13 T-13 (93.0 acres - irrigated)

west of a line which is parallel
and 1,361 feet west of the east
section line

Section 21 Parcel No. TD-13 T-2 (60.0 acres - irrigated)
east of TD-9 T-2

* Parcel under Cooperative Agreement No. 2-07-10-LO504, dated December 4, 1981
(see attached map - 153.0 acres irrigated agricultural)

TETON DIVISION

containing 153.0 acres (**irrigated**), more or less, with privileges and appurtenances, subject, however, to the exceptions and reservations set out in the next succeeding article.

4. Exceptions and reservations - There are excepted and reserved from the lease of the premises described in article 3, the following:

- (a) All lands to which other rights have lawfully attached before the date of this lease.
- (b) The right to remove from said lands any or all timber, both standing and down.

(c) The right to take from said lands material for the construction of irrigation works, and to construct, operate, and maintain such works thereon.

(d) The right to prospect and carry on developments for oil, gas, coal, and other minerals, on said lands, under the act of October 2, 1917 (40 Stat. 297), the act of February 25, 1920 (41 Stat. 437), and the act of October 21, 1976 (90 Stat. 2757).

(e) A right-of-way along all section lines, or other practicable routes when locations on section lines are not feasible, freely to give ingress to, passage over, and egress from all of said lands.

(f) A right-of-way for any facilities constructed by or for the United States and the right of the United States to grant easements, licenses, or rights-of-way affecting the leased premises.

(g) The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, and to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. Reclamation will make every reasonable effort to keep damage to a minimum.

(h) The Lessee will comply with County, State, and Federal health, sanitation, and pollution standards and/or regulations.

(i) There is reserved to the United States and the District, their successors and assigns, the prior right to use any of the right-of-way wherein described to construct, operate, and maintain all structures and facilities, including, but not limited to canals, wasteways, laterals, ditches, roadways, electrical transmission lines, communication structures generally, substations, switchyards, powerplants, fish screens, fish ladders and other appurtenant irrigation and power structures and facilities, without any payment made by the United States, or their successors for such rights.

5. Term of lease -- The lease of the premises described shall be for the period from March 1, 2003, to February 28, 2004, inclusive, unless sooner terminated as hereinafter provided.

6. Extension of lease term -- The Lessee has an option to extend the term of the lease as defined in the preceding article, for successive additional periods of one year each, but in no event beyond February 28, 2008, if such Lessee shall at the time of the exercise of the option have paid all previous rentals due and if such option is exercised in the following manner by the observance of the following conditions:

(a) Such option must be first exercised not later than 30 days prior to the termination of the lease as defined in article 5, and if extended, not later than 30 days prior to the termination of each extension thereof.

(b) Such option must be exercised by payment in advance to the United States at least 30 days prior to the termination of the lease of the rental for the period for which the term is by exercise of such option to be extended, accompanied by a notice that the lessee desire to exercise such option. Such notice and such payment must be actually received by the United States at least 30 days prior to such lease termination.

7. Rental charges -- The Lessee shall pay to the United States rental charges for the premises described as follows: The sum of \$7,719.95 (lease amount for '2003 season plus \$200.00 administrative fee) on the date hereof for the period ending February 28, 2004, and the sum of \$7,519.95 on account of each extension of this lease.

8. Repairs -- The Lessee shall, at his own cost and expense, keep in a state of good repair such fences and ditches as may be located on the leased premises.

9. All grain stubble will be left standing in the field over the winter -- no burning of stubble is allowed.

10. Miscellaneous conditions -- In the use of the leased premises the Lessee shall faithfully observe the following conditions, and each of them:

(a) Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the use authorization.

(b) The Lessee shall conduct his grazing and agricultural operations in such a manner as not to interfere in any manner with the utilization or management of adjacent lands owned or operated by persons other than the lessee and agrees to construct, without cost to the United States, such fences and cattle guards as may be necessary to insure compliance with this condition. No fence, with or without gates, shall be constructed upon or across the right-of-way of any canal or lateral operated or controlled by the United States. Fences constructed by the Lessee may be removed by him at any time during the term of the lease. All fences remaining on the leased premises for a period of 30 days after expiration or termination of the Lessee's lease rights will, at the option of the Contracting Officer, become the property of the United States.

(c) No waste shall be committed.

(d) The Lessee shall release and relinquish any and all claims which he at any time may have or claim to have against the United States, its officers, agents and employees on account of injury to or loss of animals pastured or loss of or damage to growing crops pursuant to the lease which may be caused or claimed in whole or in part by the existence or condition of reservoirs or other irrigation and flood control works or by any cause whatsoever.

(e) All straw and manure produced by operations on the leased premises shall be distributed on the premises. The Lessee hereby agrees to make such distribution and agrees also to remove or to permit the removal of the same from the leased premises.

(f) The Lessee shall guard against excessive use and waste of water which might result in erosion or other damage to the leased premises or to adjacent lands and shall keep the leased premises reasonably free from all noxious weeds.

(g) The Lessee shall keep all lands leased for agricultural purposes under crop during each growing season in order that the cultivated land will be subjected to a minimum amount of wind erosion. Sound crop rotation practices applicable within the area in which the lease premises are located shall be followed to prevent depletion of the soil. Such crop rotation practices shall in any event require the growing of legume, grass, or grain crops on the cultivated land at least 2 out of every 5 years. **Subsequent to the harvesting of crops in the last year of the lease term, or the last year for which the lease term is extended, the Lessee, if requested by the officer of the United States executing this lease, or his duly appointed representative, shall, without cost to the United States, furnish the seed and plant the entire cultivated portion of the leased premises to a permanent vegetative cover.** Reclamation would work with NRCS to develop seed mixes and application rates. Subsequent action would be in accordance with the general practices in planting said seed mix, and to the satisfaction of the aforementioned officer of the United States.

(h) The Lessee shall not plow, disk, or otherwise cultivate or disturb any lands leased for grazing purposes without first obtaining the written approval of such action from the Contracting Officer.

(i) Hunting and fishing by the public will not be restricted by the Lessee.

(j) The parties agree that the delivery of irrigation water pursuant to this contract is subject to the acreage and ownership limitation and pricing provisions of Reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (Public Law 97-293).

(k) The contractor further agrees to abide by final rules and regulations promulgated by the Secretary of the Interior covering the enforcement and administration of said limitations and provisions of Reclamation law as amended and supplemented by the reclamation Reform Act of 1982, including the payment of full costs as provided therein.

(l) Annually, following the irrigation season, a crop census will be requested. The Lessee agrees to complete and return the crop reporting information to Reclamation.

11. Water Rights – The United States does not have a water supply for the agricultural lands covered under this lease. When irrigation occurs, the Lessee is required to have a legal right to irrigate these lands.

(a) The Lessee agrees to release the United States from any responsibility or obligation for providing now, or after termination of this lease, a water supply of any kind, pressure or particular water quality. Further, the Lessee agrees to release the United States from any future liability or obligation due to injury, damage or loss of Lessee's water rights, whether leased or owned, from the future termination of this lease. The Lessee will not receive any vested right, title, or interest in the lands or water rights owned by the United States. Nor shall the United States receive any vested right, title, or interest in the Lessee's water right.

(b) Should the Lessee sell, convey, transfer, or assign the water right, the places of use on lands of the United States, shall not be conveyed with such water right. Any deed or other instrument reflecting the conveyance, sale, transfer, or assignment of such water right shall state that these places of use are not included in such conveyance. Should the lease and the Lessee fail to take any action to transfer this portion of the water right to other places of use, the parties would consider that portion of the water right abandoned.

12. Pest Control

(a) The Lessee shall not permit the use of any pesticides on Federal lands without prior written approval by Reclamation. The Lessee shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application.

(b) All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.) and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with State requirements and such records shall be furnished to Reclamation not later than five (5) working days after any application of a pesticide.

(c) Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.

(d) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.

(e) The Lessee shall initiate any necessary measures for containment and cleanup of pesticide spills. Spills shall be reported to the Contracting Officer with full details of the actions taken. Reporting may be within a reasonable time period. A reasonable time period means within

twenty-four (24) hours of the spill if it is an emergency, or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(f) Aerial application of pesticides is prohibited without prior written consent by Reclamation's designated representative.

(g) The Lessee agrees to include the provisions contained in paragraphs (a) through (f) of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.

13. Hazardous Materials

(a) The Lessee may not allow contamination or pollution of Federal lands, waters or facilities and for which the Lessee has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

(b) The Lessee shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal lands, waters, or facilities.

(c) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, and the regulations promulgated pursuant to that Act.

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the Lessee shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery with full details of the actions taken to the Contracting Officer. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(e) Violation of any of the provisions of the Article, as determined by the Contracting Officer, may constitute grounds for termination of this contract. Such violations require immediate corrective action by the Lessee and shall make the Lessee liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(f) The Lessee agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.

(g) Reclamation agrees to provide information necessary for the Lessee using reasonable diligence, to comply with the provisions of this Article.

14. Transfer of Lease – Neither this lease nor any interest therein shall be transferred by the Lessee without the written consent of the United States made by the officer executing this lease on behalf of the Government and until payment has been made to the United States to cover the expense of approving such transfer.

15. Termination of Lease – This lease will terminate and all rights of the Lessee hereunder will cease, and the Lessee will quietly deliver to the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:

(a) At the expiration of the term as provided by Articles 5 and 6; or
(b) Without notice, upon default in payment to the United States of any installment of rental charges as provided by Article 7; or

(c) On March 1st, of any year, upon written notice to the Lessee, served 30 days in advance thereof; or

(d) After failure of the Lessee to observe any of the conditions of this lease, and on the tenth day following service of written notice on the Lessee of termination because of failure to observe such condition.

The notices provided by this article will be served by certified mail addressed to the respective post office addresses given in Article 16 (Notices), and the mailing of any such notice properly enclosed, addressed, stamped, and certified, will be considered service. If the termination under Article 15 (c) or Article 15 (d) should be effective at a date prior to the date of the termination of the then current lease or extension, for which prepayment of rental will be been made, an appropriate refund or part of the rental for such then current lease or extension will be made.

If this lease is terminated under Article 15 (d), the United States reserves the right to bar the Lessee from the authorization to use acquired or withdrawn public land on the Minidoka Project for a period of time, as determined by the Area Manager.

16. Notices

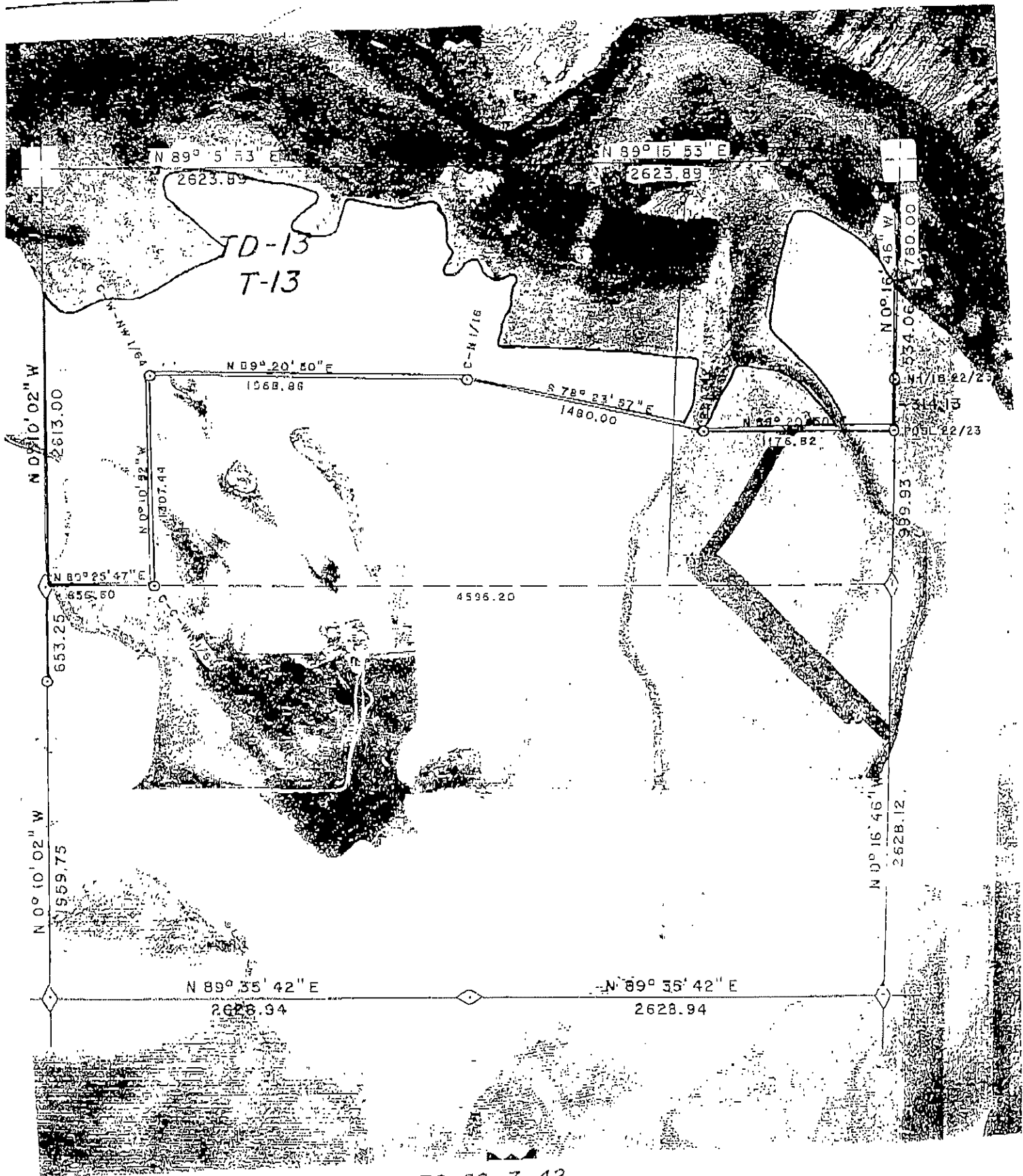
(a) All notices required or desired to be given under this Agreement shall be in writing and may be delivered by personal delivery or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested and addressed as follows:

Area Manager
Snake River Area Office – East
Bureau of Reclamation
1359 Hansen Avenue
Burley, Idaho 83318
(208) 678-0461

(b) Any notice delivered by personal delivery shall be deemed received by the addressee upon actual delivery. Any notice delivered by certified mail shall be deemed received by the addressee on the third business day after deposit. The addresses to which notices are to be delivered may be changed by giving notice of such change in accordance with this paragraph. This paragraph shall apply where notice is required under this lease, and no specific requirements are set forth. Where this lease provides for a specific notice in a different manner, the more specific requirements shall prevail.

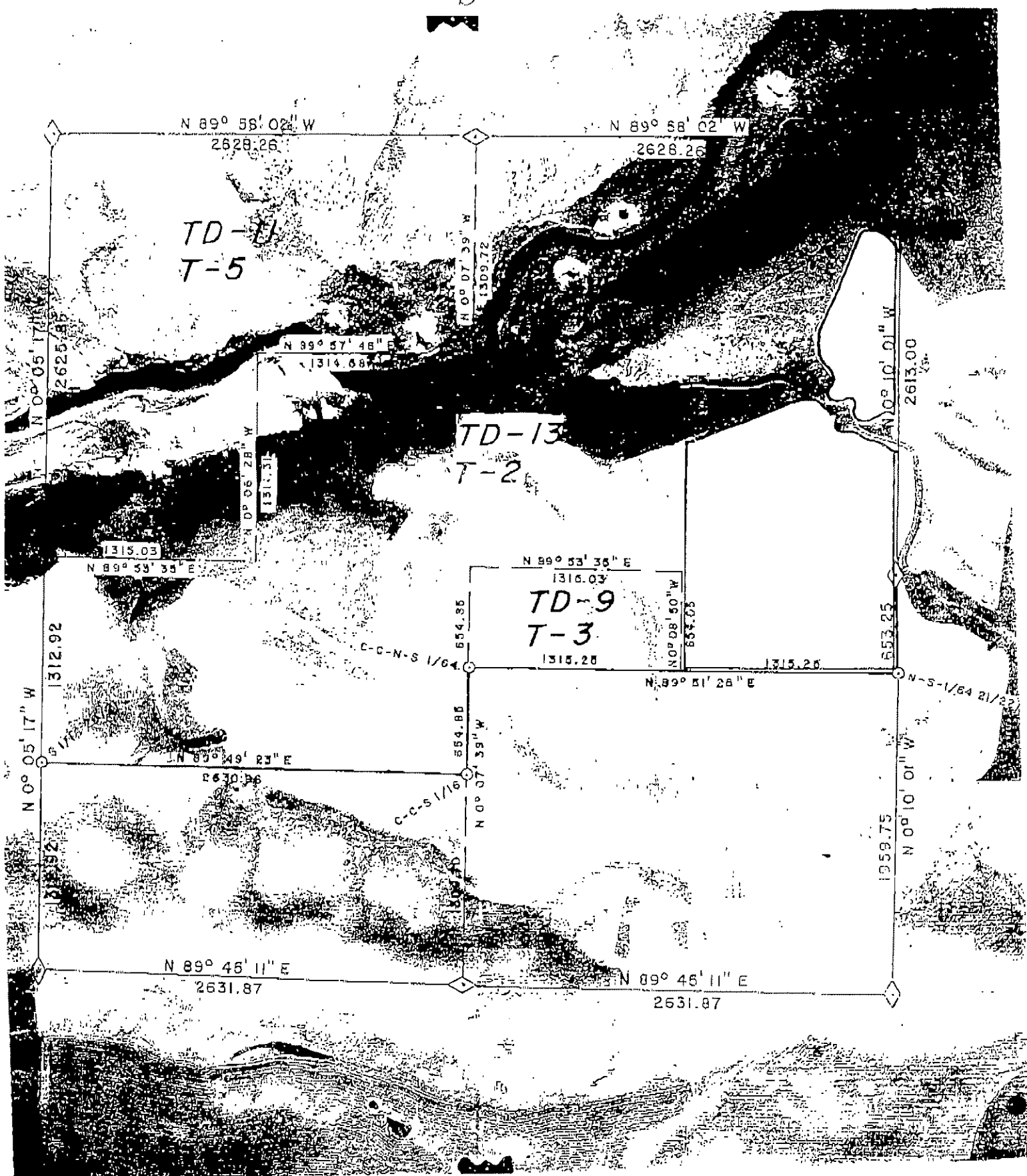
(c) The parties hereby designate the Area Manager and David Schwendiman, as their authorized representatives for this lease. These individuals shall have the authority to take any action allowed or required under this lease, on behalf of their employer. The parties may change their designated representatives at any time by giving notice of such change in accordance with Article 15 (a) above.

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SEC. 22-7-42

Received Time Apr. 28. 3:58PM



SEC. 21-7-42

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