

MAY 31 2006

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Attorneys for Objector/Claimant,
 Ben D. Jernberg and Idaho Properties, LLC

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA)

Subcase No. 31-11845

Case No. 39576)

**AFFIDAVIT OF BRYCE A. CONTOR
IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

STATE OF IDAHO)

) ss.
 County of Bonneville)

Bryce A. Contor, being first duly sworn on oath, deposes and states:

1. That your affiant is an adult resident of Iona, Idaho, and makes this Affidavit on his own personal knowledge, and is competent to testify to the matters stated herein.

2. That your affiant is a private consultant with Water Resources Field Services LLC of Iona, Idaho.

3. That attached as Exhibit "A" is a true correct copy of your affiant's curriculum vitae, and by reference made a part hereof.

AFFIDAVIT BRYCE A. CONTOR

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2
3 4. That attached as Exhibit "B" is a true correct copy of your affiant's
4 Analysis of Place of Use for Adjudication Recommendation 31-11845 and by reference
5 made a part hereof.

6 5. That attached as Exhibit "C" is a true correct copy of a map created
7 by your affiant. That such map was created after consulting with Ben Jernberg and
8 meeting with Joe Llamas and Omar Llamas to discuss what acreage has been
9 historically irrigated on Mr. Jernberg's Mud Lake Ranch. I sketched the ditches and
10 flow directions based on aerial photos, Jernberg's sketches and questions asked of the
11 Llamases.
12

13 6. That in 2003, this affiant performed an analysis of the equivalent
14 beneficial use represented by the application of water to 663 acres of uncultivated
15 pasture identified in condition two of Ben Jernberg's decreed Water Right No. 31-7311.
16

17 7. That in 2004, this affiant measured the discharge of the two
18 Jernberg wells and confirmed that the historical pumping capacity was still in place and
19 in use. That such discharge was approximately 13.45 cfs for the West well and 5.83 for
20 the East well. In addition to measuring the discharge of these two wells, this affiant
21 has personally walked the place of use for Water Right No. 31-11845 (formerly a
22 portion of Water Right No. 31-7311) and I am therefore familiar with the area.
23

24 8. That such measurement was done prior to the reported failure of
25 one of the pumps and repeated after the reported repair or replacement of the pump.
26 The post-repair measurement confirmed that the capacity had been restored

27 9. That the 1986 Idaho Department of Water Resources (IDWR) field
28

1
2
3 exam correctly represented the irrigation in place at the time of the commencement of
4 the Snake River Basin Adjudication on Jernberg's ranch land because the 1986 IDWR
5 field exam was based on actual field inspection while irrigation was occurring.

6 10. That the 1986 field exam found a similar number of acres to my
7 analysis of 1987 aerial photos and found similar pumping rates to my 2004
8 measurements. The IDWR examiner found that a total of 1124 acres were being used
9 for irrigation in his 1986 field exam.

10 11. That this affiant found 1100 acres were being irrigated in my photo-
11 analysis of Mr. Jernberg's ranch. The photo-analysis of Mr. Jernberg's ranch was made
12 using a 1987 photograph. Your affiant has found nothing that would contradict IDWR's
13 1986 finding that Mr. Jernberg was irrigating 1124 acres.

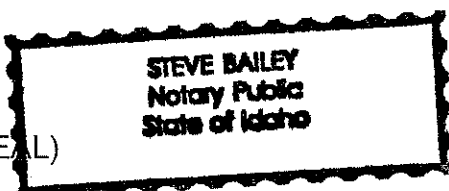
14 12. That using analysis of 2004 aerial photos is not an adequate
15 representation of conditions at the commencement of the SRBA, and that the 1986 field
16 exam is an adequate representation of water use.

17
18
19 FURTHER THIS AFFIANT SAITH NAUGHT.

20
21 
22 Bryce A. Contor

23 SUBSCRIBED AND SWORN to before me this 26 day of April, 2006.

24
25
26 (SEAL)

27 
28

29 
30 Notary Public for Idaho
31 Residing at: IDAHO FALLS
32 My Commission expires: 1-8-07

EXHIBIT A

RESUME

Bryce A. Contor
P.O. Box 94, Iona Idaho, 83427
(208) 681 9100

Experience

- | | |
|----------------|--|
| 2004 - Current | Research Hydrologist, Idaho Water Resources Research Institute, University of Idaho, Idaho Falls, Idaho. Position includes serving as a principle investigator on a ground water banking project in cooperation with U.S. Bureau of Reclamation and as a principle investigator on an evapotranspiration study with the USGS Water Institutes 104b program. |
| 2003 - Current | Owner, Water Resources Field Services LLC. Services include water-right field mapping, GIS and GPS mapping, and contract adjudication claims field inspections. |
| 2001 - 2004 | Senior Scientific Aide, Idaho Water Resources Research Institute, University of Idaho, Idaho Falls. Position included primary responsibility for development of a water budget for the Eastern Snake Plain Aquifer in support of a regional modeling effort. This included heavy utilization of ESRI GIS products and minor Visual Basic computer programming. |
| 1999 - 2001 | Senior Water Resource Agent, Idaho Department of Water Resources, Idaho Falls, Idaho. Duties entailed evaluation of water-right claims and making water-right recommendations in the Snake River Basin Adjudication. |
| 1997 - 1999 | Water Resource Agent, North Water Measurement District, Idaho Falls, Idaho. The primary duty was the measurement of water discharge and power consumption of irrigation wells for estimation of ground water withdrawal volumes. Secondary duties related to data reporting and the development and testing of alternate methods for determining withdrawal volumes. |
| 1996 | Technician, Idaho Department of Water Resources, Boise, Idaho. Measurement of water discharge and power consumption, and calibration of measuring devices, for |

irrigation and commercial wells.

1980 - 1995 Employed in production agriculture in Oregon and Idaho

Education

2005 M.S., Hydrology, University of Idaho, Moscow ID

1996 One-year certificate, Water Resource Management, College of Southern Idaho, Twin Falls ID

1994 B.S., Agricultural Economics, Brigham Young University, Provo, UT

1980 Specialized Associate, Farm Crops Production, Ricks College, Rexburg ID

Publications

2004 *Ground Water Right Transfers In the Snake River Plain, Idaho*, in The Water Report, December 15, 2004. Co-author with Garly S. Johnson, Robert L. Harris and Donna M. Cosgrove.

2002 - 2004 Eastern Snake Plain Aquifer Model Enhancement Project technical reports. These may be viewed at <http://www.if.uidaho.edu/~johnson/ifiwrri/projects.html>

1997 PSI Method for Determining Annual Pumpage Volume of Diversions in the North Water Measurement District. Unpublished report to Idaho Department of Water Resources.

1992 When to Plow Alfalfa: A Present-value Approach. Hay and Forage Grower Magazine, March 1992.

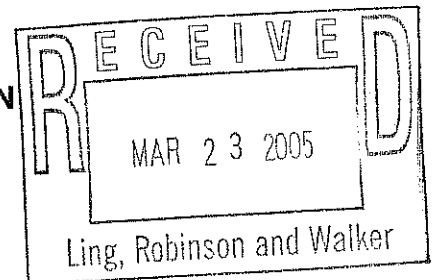
EXHIBIT B

Water Resources Field Services

P.O. Box 94
Iona, ID 83427
208-681-9100

**ANALYSIS OF PLACE OF USE
FOR ADJUDICATION RECOMMENDATION
A31-11845 (Jernberg)**

March 22, 2005



BACKGROUND

In 2003, I performed an analysis of the "equivalent beneficial use" represented by the application of water to "663 acres of uncultivated pasture" identified in condition/remark two of water right 31-7311, which has since been renumbered A31-11845. Last year I measured the discharge of the Jernberg wells, prior to the failure of one of the pumps, and confirmed that the historical pumping capacity was still in place and in use.

In 2005, the Office of the Attorney General notified Mr. Jernberg that IDWR had identified 183 acres where "water appears to have been applied to the uncultivated acreage using 2004 imagery." It appears that IDWR proposes to use this analysis to represent the equivalent irrigation for the application of water to 663 acres authorized by license 31-7311.

Because one of the pumps failed early in 2004, and because 2004 was a drought year with reduced well yields, Mr. Jernberg believes that a 2004 aerial photograph is inadequate to represent the historical practice authorized under license 31-7311 and claimed in the adjudication. This preliminary report is prepared at his request and attempts to answer the following questions:

1. Did the 1986 IDWR field exam correctly represent the irrigation in place at the time of the commencement of the Adjudication?
2. Did the 1997 license correctly represent the application of water that was in place at the time of the commencement?
3. Did IDWR's analysis of 2004 aerial photos correctly represent the irrigation that was occurring in 2004?
4. Are the 2004 aerial photos representative of the irrigation that was in place at the time of the commencement of the Adjudication?

To answer these questions I have reviewed the licensing exam and documents in the license file, 1987 aerial photographs, Water Measurement District records, my 2003 analysis, and a 2004 aerial photo from Inside Idaho Internet site (my copy of IDWR's photo analysis was illegible). I also

contacted USDA Farm Service Agency but was told that no records were available describing irrigated pasturelands.

LICENSE EXAM REPORT (1986)

A memo dated 22 August 1986 from IDWR field examiner John Arambari, obtained from license file 31-7311, states

"Two distinctly different irrigation uses were found. One use was for the irrigation of a grain crop; the other being irrigated for the enhancement of natural vegetation used as cattle pasture..."

The examiner found a total of 1124 acres for these two uses. In a 1994 memo in the licensing file, this is partitioned to 461 acres of crop irrigation and 663 acres of "natural pasture."

JERNBERG RESPONSES TO IDWR INQUIRIES (1989, 1995)

As part of the licensing process, IDWR requested historical water use information from Jernberg. IDWR did not ask about irrigated acreage, so Jernberg only responded with pumping data. The May 2003 analysis shows that the pumping reported by Jernberg is adequate to support the acreage found by the IDWR field examiner.

AERIAL PHOTO 1987

Based on a 1987 aerial photograph downloaded from IDWR's Internet site, I found approximately 545 acres of irrigated crop land, 318 acres of "robust" irrigated pasture, and 235 acres of "marginal" irrigated pasture, for a total of 1,098 acres. This analysis is illustrated in Figure 1 and Figure 2.

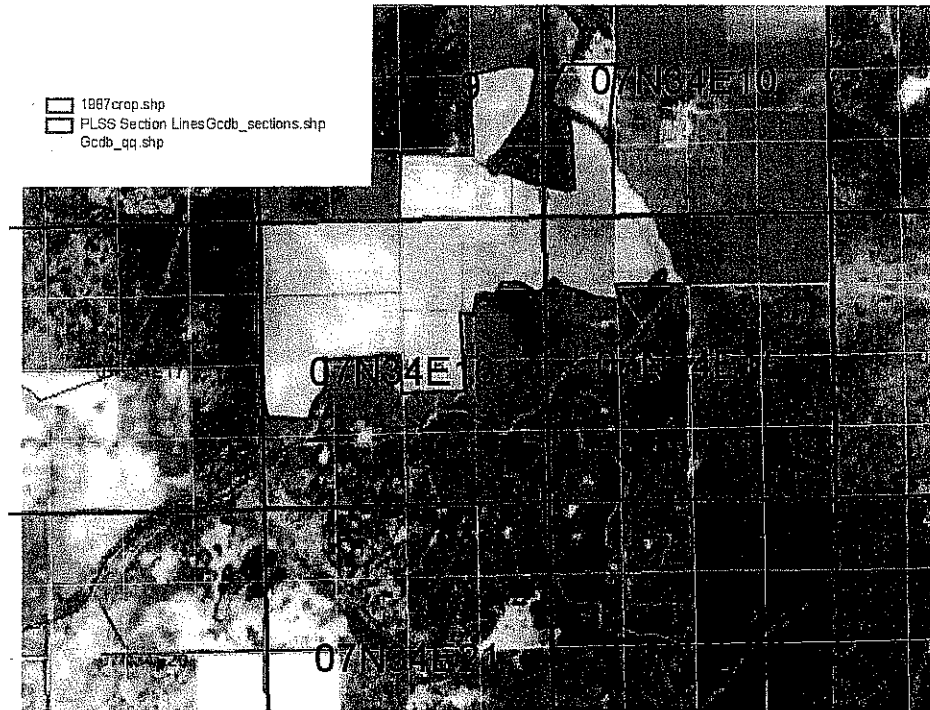


Figure 1. Cropland irrigation, 1987 aerial photograph.

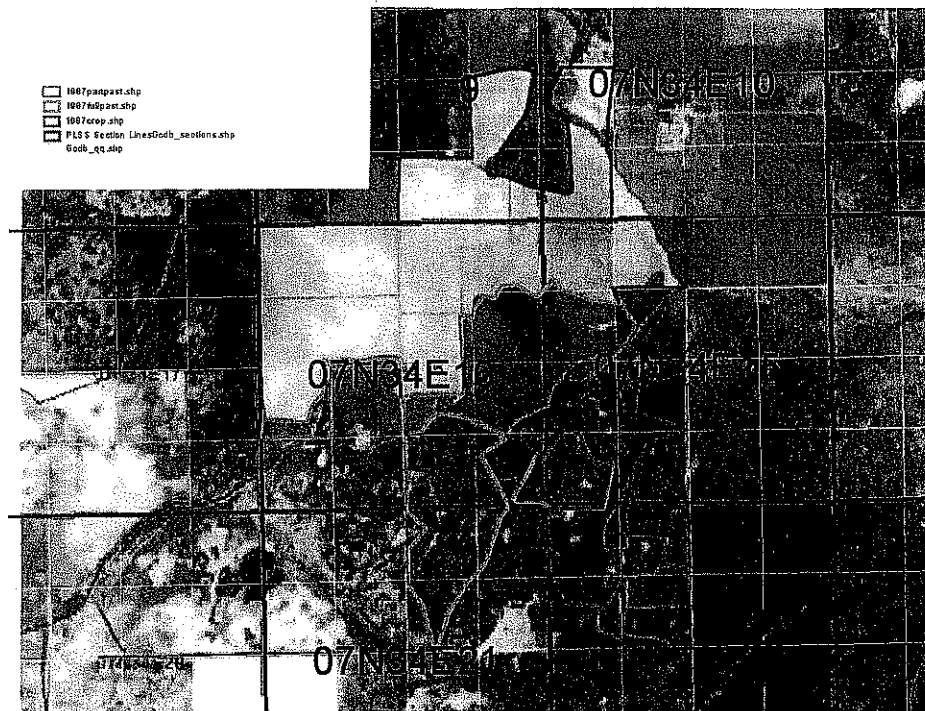


Figure 2. Cropland and pasture irrigation, 1987 aerial photograph.

LICENSE 31-7311 (1997)

The license issued in 1997 authorizes application of water to 1124 acres, 461 acres of irrigated cropland and 663 acres of "uncultivated pasture."

WATER MEASUREMENT DISTRICT DATA (1997/1998)

Water Measurement Districts were not charged with identifying place of use, but the reported volume was found in the May 2003 analysis to be adequate to support the acreage found by the field examiner.

OBSERVATIONS 1997 - 1999

During 1997, 1998 and 1999 I frequently traveled the road that divides the upper and lower place of use, and often observed a strong stream of water in the ditch that serves the south place of use identified as "uncultivated pasture."

AERIAL PHOTOGRAPH (2004)

The faxed copy of the photograph received by Water Resources Field Services was not legible. My analysis of a different 2004 photo indicates that 690 acres of land were irrigated in 2004, as illustrated in Figure 3.



Figure 1. Apparent 2004 Irrigation within claimed quarter-quarter sections.

FIELD INSPECTION

Today I walked the place of use in the south half of Section 16, and in all of Sections 15, 21 and 22. Photographs and a map of GPS readings will be provided in a follow-up document, when photo processing is complete. In general I found that:

1. The field examiner's finding that cropland was irrigated more intensively than pastureland seems reasonable.

2. All the cropland appears to have been irrigated in 2004. The cropland is all in alfalfa hay, rather than in small grain as it was in 1986.
3. The field examiner's finding of 1124 acres of irrigation and my 1987 photo-analysis finding of about 1100 acres are reasonable. Because the examiner was actually on the ground while irrigation was occurring, I have more confidence in his results than in mine.
4. All of the lands that I identified as "irrigated" in the 2004 image are crop acres. Additional pasture lands in the S1/2 of the NW 1/4 of Section 15 and in the NW 1/4 of the SE 1/4 of Section 16 may also have been irrigated in 2004.
5. Other pasturelands do not appear to have been irrigated in 2004. I could not tell exactly when the pasturelands were most recently irrigated, but it is likely that irrigation has continued well past the commencement of the adjudication, filing claims, and issuing of a water-right license.

CONCLUSIONS

Based on the analysis and inspection described above, I find the following answers to the questions posed at the beginning:

1. Did the 1986 IDWR field exam correctly represent the irrigation in place at the time of the commencement of the Adjudication?

The 1986 field exam found a similar number of acres to my analysis of 1987 aerial photos, found similar pumping rates to my 2004 measurements, and was consistent with field inspection. Nothing was found that would contradict the 1986 IDWR finding of 1124 acres of irrigation. My photo analysis and field inspection found more crop acres and fewer pasture acres than reported by IDWR.

2. Did the 1997 license correctly represent the application of water that was in place at the time of the commencement?

I am not qualified to comment on the wording of the license, but the factual description of application of water to 1124 acres is consistent with my findings. Again, however, I found more crop acres (545 vs. 461 in the 1987 aerial photo, 690 vs. 461 in the 2004 aerial photo) than indicated by the license.

3. Did IDWR's analysis of 2004 aerial photos correctly represent the irrigation that was occurring in 2004?

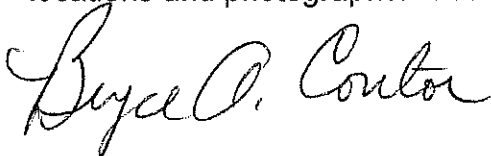
IDWR found about 45 fewer acres of irrigation than I found (about 7% difference). However, IDWR identified 183 acres as "uncultivated land," while my field inspection showed that all the lands that I identified as irrigated are cultivated alfalfa hay. In addition, my field inspection suggested that an additional 80 to 120 acres of pasture may have been irrigated in 2004.

4. Are the 2004 aerial photos representative of the irrigation that was in place at the time of the commencement of the Adjudication?

Because the IDWR field exam and the 1987 aerial photo are within one year of the commencement of the Adjudication, they are likely to be more representative of the water use to be determined in the Adjudication than a photo taken 17 years later. The 1986 IDWR field exam was based on actual field inspection while irrigation was occurring. The 1997 license confirms the water use found in the field exam. Water Measurement District data and Mr. Jernberg's responses to IDWR inquiries confirm pumping volumes consistent with the field examiner's findings. Further, 2004 was an atypical year, due to the drought and due to the failure of one of the pumps.

I conclude that the analysis of 2004 aerial photos is not an adequate representation of conditions at the commencement of the Adjudication, and that the 1986 IDWR field exam is an adequate representation of Adjudication water use.

Please feel free to call if you have questions. I will FAX and overnight express this report and mail a follow-up document with a map of GPS locations and photographs. You may reach me at 208 681 9100.



Bryce A. Contor
Hydrologist

EXHIBIT C

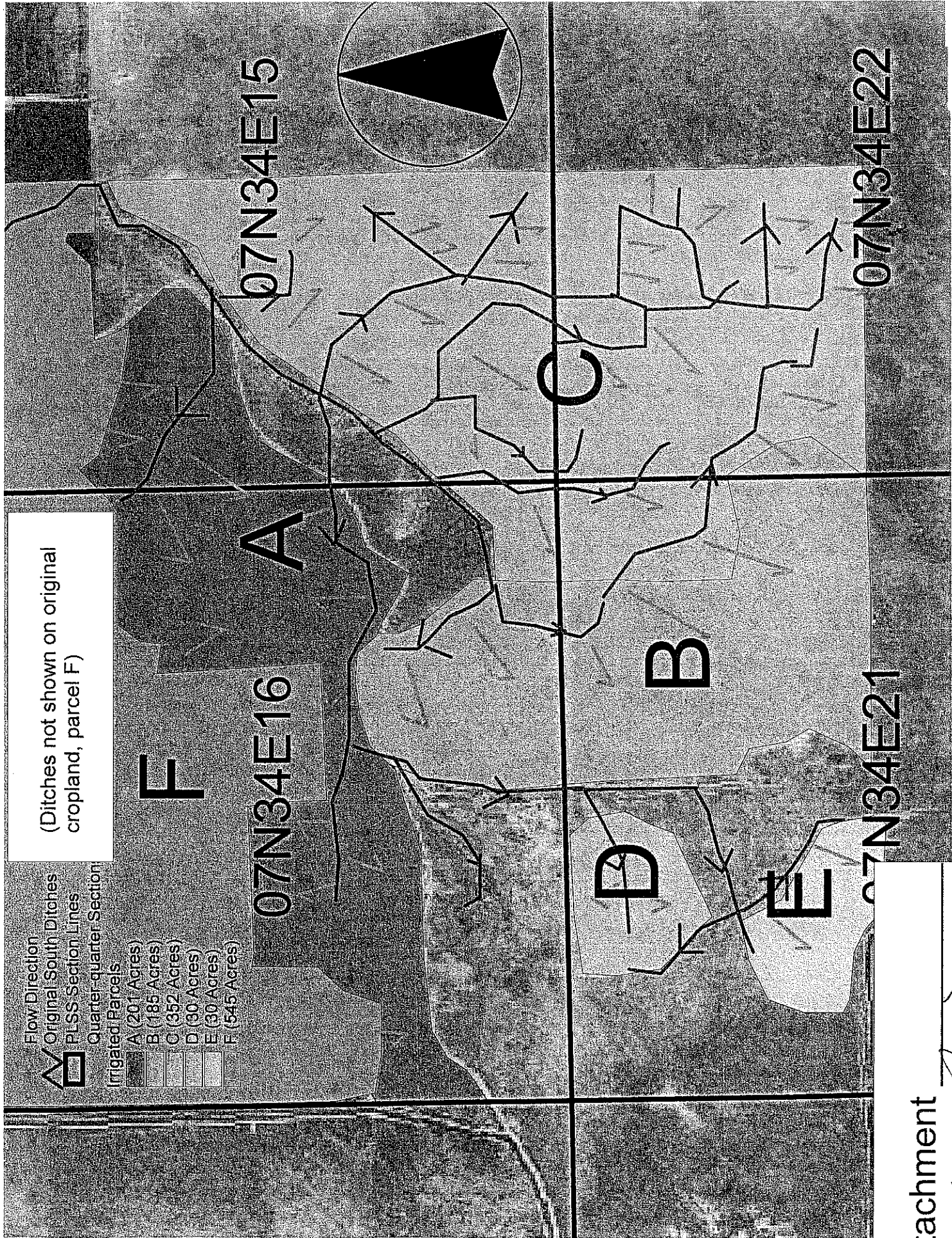


EXHIBIT "C"

Attachment

Signature

[Handwritten Signature]