

Roger D. Ling, ISB No. 1018
 Michael P. Tribe, ISB No. 6816
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 Attorneys at Law
 615 H Street
 P. O. Box 396
 Rupert, Idaho 83350
 Telephone (208) 436-4717
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Attorneys for Objector,
 William A. Poulton

RECEIVED
 2003
 DEPARTMENT OF
 WATER RESOURCES

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. 45-00167A

Case No. 39576)

AFFIDAVIT OF MICHAEL P. TRIBE

STATE OF IDAHO)
) ss.
 County of Minidoka)

Michael P. Tribe, being first duly sworn on oath, deposes and states:

1. That I am one of the attorneys representing William A. Poulton in the above-referenced subcase, and make the following affidavit upon my personal knowledge of the facts and circumstances set forth below.

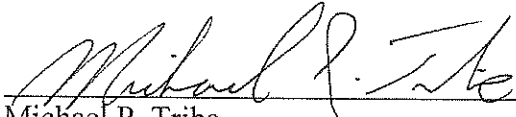
2. Attached hereto as Exhibit A is a true and correct copy of the Supplemental Director's Report Regarding Subcase No. 45-167A.

AFFIDAVIT OF MICHAEL P. TRIBE

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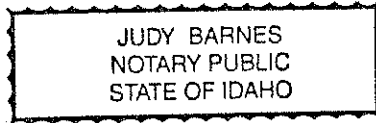
3. Attached hereto as Exhibit B is a true and correct copy of the Burley Highway District Permission for Entry Onto Real Property and attached map.

FURTHER THIS AFFIANT SAITH NAUGHT.


Michael P. Tribe

SUBSCRIBED AND SWORN to before me this 1st day of May, 2006.

(SEAL)



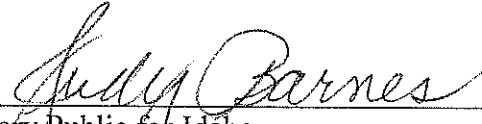

Notary Public for Idaho
Residing at: Rupert, Idaho
My Commission expires: 02/12/2011

EXHIBIT A

**SUPPLEMENTAL DIRECTOR'S REPORT
REGARDING SUBCASE NO. 45-167A**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Karl J. Dreher, Director
Donald V. Shaff, Adjudication Bureau Chief

April 14, 2006

EXHIBIT "A"

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, and Special Master Dolan's January 3, 2006 *Order Requesting Preparation of Rule 706 Report*, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") submits this Supplemental Director's Report ("Report") regarding subcase number 45-167A; setting forth the basis for the Department's recommendation for that water right. The Report was prepared under the supervision of Karl J. Dreher, Director, and Donald V. Shaff, Adjudication Bureau Chief.

The following Department employee has knowledge of the information contained in the Report: Jeanie Robertson, Senior Water Resource Agent, Southern Region Office in Twin Falls ("Agent Robertson").

II. SUMMARY OF THE ISSUE

At issue is the Department's recommendation for water right no. 45-167A, a decreed surface water right from Willow Creek in Basin 45. In its Basin 45 Director's Report for Irrigation and Other Uses, filed with the SRBA District Court on September 7, 2004, the Department recommended water right no. 45-167A to its current owner, Leah Rose. William A. Poulton, represented by Roger D. Ling, objected to the Department's recommendation, stating that the "water right should not exist" because it "has been abandoned for over 5 years . . . and has been forfeited pursuant to I.C.S. 42-222(2)."

III. BACKGROUND

The water right at issue, 45-167A, is a split of a right that was originally decreed by the Cassia County District Court on March 17, 1908 in *Thompson et al. v. Poulton et al.*, (Cassia County, March 17, 1908). Attached hereto as Attachment A is a true and correct copy of the

Poulton decree. In *Poulton*, the court decreed water right nos. 45-166, 45-167, 45-168, and 45-169 to Thomas Poulton, William Poulton, Hugh M. Moon, and the Oakley State Bank, respectively, for the use of water from Willow Creek. The land associated with water right no. 45-167 was described as follows: "The west half of the southeast quarter, and the southeast quarter of the southeast quarter and the southwest quarter of the northeast quarter of section nine (9), township 12 south range 23 east of the Boise Meridian" *Id.* The quantity of water decreed for the "irrigation" of the place of use was "one fourth (1/4) of the flow of the waters of said Willow Creek and the tributaries thereto." *Id.* The priority date assigned to water right no. 45-167 was November 23, 1881.

On August 23, 1988, John and Margaret Koyle filed a claim to water right no. 45-167A for 0.04 cfs from Willow Creek for the year-round irrigation of 1.9 acres in the SESE of Section 9, Township 12 South, Range 23 East. Attached hereto as Attachment B is a true and correct copy of the original claim. The claimed priority was November 23, 1881. The claimed point of diversion was in the SESESE of Section 9, Township 12 South, Range 23 East. It was also claimed that water was delivered by means of headgate, pipe, and ditch. A remark stated that the claim was originally part of decreed right no. 45-167. A map attached to the original claim diagramed the point of diversion, place of use, and channel of Willow Creek.

On May 8, 1989, the Koyles sold the above-mentioned property to Clark and Tina Harmon. Ownership was changed by the Department, and the claim stamped "Amended." The only amendment to the claim, however, was the substitution of owners from the Koyles to the Harmons.

On August 14, 1998, the Harmons sold the above-mentioned property to Leah Rose. Change of ownership was not documented with the Department until August 3, 2004. Therefore,

all correspondence concerning the Department's recommendation was sent, received, and ultimately approved by the Harmons.¹ While the Department's recommendation differs slightly from the original claim, the change of ownership was processed before the Department filed its Basin 45 Director's Report for Irrigation and Other Uses; thus, Leah Rose appears as the owner in the Department's recommendation.²

On January 3, 2005, the Department received an objection to water right no. 45-167A from Roger D. Ling, on behalf of his client, William A. Poulton. According to the objection, water right no. 45-167A "should not exist" because the "water right has been abandoned for over 5 years . . . and has been forfeited pursuant to I.C.S. 42-222(2)." No other objections to water right no. 45-167A have been received by the Department.

The basis for the Department's recommendation will be discussed below.

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¹ The Preliminary Director's Report was sent to the Harmons in March 2004. On May 3, 2004, the Department received the Harmons' Notice of Error card, which stated that they agreed with the recommendation.

² In February 2004, Agent Robertson solicited ownership from Rose because the Cassia County tax layer listed her as the new owner.

IV. DISCUSSION

Water right no. 45-167A was claimed and recommended as follows:

	Claim	Recommendation
Priority	November 23, 1881	November 23, 1881
Source	Willow Creek tributary to Sinks	Willow Creek tributary to Sinks
Quantity	0.04 cfs	0.04 cfs* * combined diversion remark included by Department to ensure that quantity decreed in <i>Poulton</i> was not exceeded
Point of Diversion	T.12S., R.23E., Sec. 9 SESESE	T.12S., R.23E., Sec. 9 SESESE T.12S., R.23E., Sec. 26 SWNESE
Place of Use	T.12S., R.23E., Sec. 9 SESE: 1.9 acres	T.12S., R.23E., Sec. 9 SESE: 1.6 acres
Purpose of Use	Irrigation	Irrigation
Season of Use	1/01-12/31	3/15-11/15
Basis of Claim	Decreed, split from 45-167	Decreed, split from 45-167

Since the claim to water right no. 45-167A stated that it was a split from a right decreed by the court in *Poulton*, Agent Robertson began her claim investigation by reviewing the *Poulton* decree. Agent Robertson found that the land assigned by the court in *Poulton* to water right 45-167, the SESE of Section 9, matched the description of the place of use claimed in 45-167A. Next, Agent Robertson reviewed aerial photography of the place of use from 1962, 1968, 1976, 1987, and 1992 to determine whether the place of use had historically been irrigated. The 1962 and 1968 aerial photographs show a small pond in the area of the claimed place of use along with evidence of irrigation. Attached hereto as Attachment C is a true and correct copy of the 1962 aerial photograph. Attached hereto as Attachment D is a true and correct copy of the 1968 aerial

photograph. Small striations appear in the 1976 aerial photograph, which are indicative of irrigation ditches, along with evidence of irrigation. Attached hereto as Attachment E is a true and correct copy of the 1976 aerial photograph.³ The reddish tint in the claimed place of use in the 1987 NAPP photograph indicates that the claimed place of use had been irrigated as of the commencement of the SRBA. Attached hereto as Attachment F is a true and correct copy of the 1987 aerial photograph. Finally, the 1992 NAPP photograph shows areas of irrigation in the claimed place of use after commencement of the SRBA and filing of the original claim by the Koyles on August 23, 1988. Attached hereto as Attachment G is a true and correct copy of the 1992 NAPP photograph.

NAPP photography from 2004, however, shows that the historic channel of Willow Creek has changed since the aerial photography was taken in 1992, 1987, 1976, 1968, and 1962. Attached hereto as Attachment H is a true and correct copy of the 2004 NAPP photograph. In each of the photographic attachments prepared by Agent Robertson, the claimed point of diversion has been marked with a yellow and black point. In 1992 and earlier, aerial photography demonstrates that Willow Creek entered the claimed place of use in the SESE of Section 9 at the marked point of diversion and continued its flow north along the property line. Sometime between 1992 and 2004, after the Koyles filed their original claim,⁴ the channel of

³ For simplicity, Attachment E is described as an aerial photograph from 1976. Technically, Attachment E is a copy of an aerial photograph of the Kenyon Quadrangle, 7.5 minute series (Orthophotoquad) produced by the United States Department of the Interior Geological Survey in cooperation with the Soil Conservation Service.

⁴ Based on previous decisions by the SRBA District Court, the Department, in making its recommendations, does not consider evidence of non-use that occurs after the filing of a claim. See *Memorandum Decision and Order on Challenge*; and, *Order of Partial Decree* ("Wood v. Trout"), 6 SRBA 13, 13.12 (May 9, 2002) ("[T]he district court ruled as a matter of law that the running of the five-year statutory period had tolled once the claim had been filed until the partial decree had been entered and therefore unless the five-year period accrued prior to the filing of the claim a cause of action for forfeiture did not exist. Once the partial decree is entered the statutory period for non-use begins to run anew."); *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence Issue" ("Fish Facility Volume")*, 3 SRBA 18, 18.25 (December 29, 1999) ("Since forfeiture is a species of adverse possession and prescription, it follows that once a claimant files a claim in the SRBA, for a particular water

Willow Creek changed. *Compare* Attachment H with Attachments C-G. Presently, Willow Creek no longer enters the claimed place of use at the marked point of diversion or flows through the claimed place of use in the SESE of Section 9. *See* Attachment H. Instead, Willow Creek bypasses the SESE of Section 9 as it flows through the SWSW of Section 10 before it reenters its historic channel to the north of the claimed place of use.⁵ *Id.*

Attached to the original claim filed by the Koyles was a diagramed map depicting the points of diversion in the SWNESE of Section 26 and SESESE of Section 9, along with depicted irrigation in the SESE of Section 9. The diagramed map is substantially similar to a diagramed map that was originally filed by Robert and Ruth Moncur on April 1, 1983, with application for transfer no. 2852 for water right no. 45-166. Attached hereto as Attachment I is a true and correct copy of transfer no. 2852. Water right no. 45-166 was originally decreed to Thomas Poulton in the *Poulton* decree. Ruth Moncur, also known as Ruth Koyle, is presumably related to John and Margaret Koyle, original claimants of water right no. 45-167A. Unlike the map associated with the application for transfer, the map attached to the claim depicts irrigation in the SESE of Section 9. Both diagramed maps mimic the historic channel of Willow Creek, as evidenced by aerial photography from 1992 and earlier.

Based on the above, Agent Robertson determined that water had been used for irrigation on the claimed place of use and determined that water right no. 45-167A could be recommended.

right, the forfeiture provisions of I.C. § 42-222(2) are also tolled for purposes of establishing forfeiture, so long as the claimant continues to prosecute the claim to partial decree.”).

⁵ On May 13, 2005, SRBA District Court Judge Melanson issued a partial decree to William A. Poulton for water right no. 45-13666. The partial decree allows the use of 1.20 cfs from Willow Creek with a priority date of March 15, 1980 for the irrigation of 217 acres. The partial decree authorizes multiple points of diversion and places of use. One decreed point of diversion is in the SWSWSW of Section 10. Thirty acres in the SWSW of Section 10 are decreed as a place of use. Water right no. 45-167B, which was recommended by the Department but has yet to be partially decreed by the SRBA District Court, provides for the use of 3.140 cfs from Willow Creek with a priority of November 23, 1881 for the irrigation of 217 acres. The recommendation authorizes multiple points of diversion and places of use. A point of diversion is authorized in the SESESE of Section 9. Thirty acres in the SWSW of Section 10 are recommended as a place of use.

While the claimed place of use was 1.9 acres, Agent Robertson reduced the acreage by 0.03 to reflect historic beneficial use. The claimed quantity, 0.04 cfs, was recommended in order to provide the acreage with approximately one miner's inch of water per acre. See Idaho Code § 42-220. While water right no. 45-167A was claimed as a year-round irrigation right, Agent Robertson limited its season of use to the area's standard irrigation season: March 15 to November 15.

In order to ensure that the amount diverted under water right no. 45-167A, as well as other associated splits, did not exceed the amount decreed by the court in *Poulton*, Agent Robertson included the following combined use limitation:

The amount of water diverted under the following water rights may not exceed 50% or one half of the stream flow of Willow Creek. Combined Right Nos. 45-166A, 45-167A, 45-167B, 45-11928, 45-13421, 45-13623, 45-13631, & 45-13632.

The amount of water diverted under this water right, 45-167B and 45-13666 may not exceed 25% or 1/4 of the stream flow of Willow Creek at the point of diversion described below at any given time.

V. CONCLUSION

The Department's recommendation for water right no. 45-167A is based on historical evidence of beneficial use and reasonable conclusions. Therefore, the Department respectfully requests that this water right, as described in the Director's Report, be recommended to the Snake River Basin Adjudication District Court for partial decree.

Submitted this 14th day of April, 2006



Jeanie Robertson
Senior Water Resources Agent

CERTIFICATE OF SERVICE

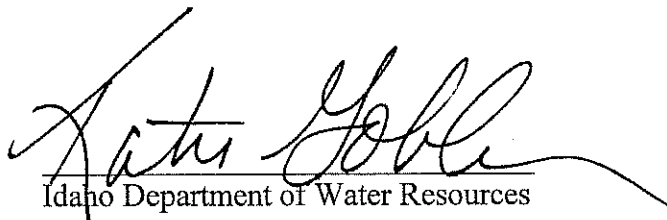
I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by United States mail with the correct postage affixed thereto on this 14th day of April 2006.

Document Served: Supplemental Director's Report Regarding Subcase No.
45-167A

Persons Served: Leah Rose
994 S. 150 E.
Burley, Idaho 83318

William A. Poulton
977 S. 150 E.
Burley, Idaho 83318

Roger Ling and Michael P. Tribe
Ling Robinson & Walker
615 H St.
P.O. Box 396
Rupert, Idaho 83350


Idaho Department of Water Resources

ATTACHMENT

A

Coded 2-18-82

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO IN AND FOR CASSIA COUNTY.

John H. W. Thompson, James M. Thompson,
and Hudson Buttler,
Plaintiffs.

VS.

Thomas Poulton, Hugh M. Moon,
William Poulton, and the Oakley State Bank,
a corporation, substituted for J. H.
Stothard,
Defendants.

Decree.

This cause came on regularly to be heard upon the Plaintiff second
amended complaint, and the answer and cross complaint of the defendant
by mutual consent of the parties herein the cross complaint of the defe-
dants was deemed as denied,

James W. Shields Esq. appearing as counsel for the Plaintiffs and
J. C. Rogers Esq. appearing as counsel for the defendants herein, and the
said cause being tried by the Court, and the finding of fact and the con-
clusions of law, and the decision thereon in writing having been duly re-
ndered by the court, which are now on file in this cause, wherein it is
found adjudged and decreed, that defendants Thomas Poulton, Hugh M. Moon,
William Poulton, and the Oakley State Bank, a corporation, as against all
of the Plaintiffs, John H. W. Thompson, James M. Thompson, and Hudson Buttler
are entitled to the use and enjoyment of the whole and entire flow of
the waters of the alleged Willow Creek, a stream situated in Cassia Cou-
nty, State of Idaho, as prayed for in said defendants cross-complaint, for
their respective tracts of land alleged in their said cross-complaint,
and the said defendants, as to each other are entitled to have use and
enjoy the said flow of said stream in the following proportions to-wit:
The said Thomas Poulton, to have use and enjoy, one fourth of the flow of
said Willow Creek, the said William Poulton, to have use and enjoy one
fourth of the flow of said Creek, and the said Hugh M. Moon, to have use
and enjoy, two sixth of the flow of said Creek, and the Oakley State Bank, 1/6

45-0166

45-0167

45-0168

45-0169

of said Willow Creek; And it is further found, adjudged and decreed, that the Oakley State Bank, a corporation, is the grantee and successor in interest of the said defendant J. H. Stothard.

And it is further ordered, adjudged, and decreed, that the Plaintiffs, John H. W. Thompson, James M. Thompson, and Hudson B. Buttler, have no property right title or interest, in or to the flow of the waters of said stream, or its tributaries, and are without any right therein:

And it is further ordered, adjudged and decreed, that said Plaintiffs, John H. W. Thompson, James M. Thompson, and Hudson B. Buttler, and each of them be, and they and each of them are, hereby perpetually enjoined and restrained, from the use of the flow of said waters or any part thereof, or in any manner obstructing the flow or use by these defendants, of the waters of said stream or the tributaries thereof; *Plaintiffs pay the costs hereof*
Done in open Court this ^{17th} day of March, A. D. 1908.

Edward A. Waeter
District Judge.

Recorded March 18/1908 in
Joseph Haugh
Clerk

Book 7 of Judgments page 190

45-DS

FEB 8 1902

Department of the Interior
Section 2000

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR CASSIA COUNTY.

JOHN E. W. THOMPSON, et al.,
Plaintiffs,

vs.

THOMAS POULTON, et al.,
Defendants.

#A-199

This cause came on regularly to be heard upon the plaintiffs' second amended complaint and the answer and cross-complaint of the defendants and the replication to defendants cross-complaint by mutual consent of the parties herein being deemed as denied; James W. Shields Esq. appearing as counsel for the plaintiffs and J.C. Rogers appearing as counsel for defendants; after hearing the testimony and proofs introduced by plaintiffs and defendants upon the issues raised by the pleadings herein and the arguments of the respective counsel, and the cause having been submitted to the court and the court being fully advised in the premises, finds the following facts:

45-0168 That the defendant, M.M. Moon, his grantors and predecessors in interest, on the 23rd day of November, 1881, and from thence on down to the filing of the complaint in this action, were, have been, and said defendant now is, the owner, in the possession and entitled to the possession of that certain real estate situated in Cassia County, Idaho, and describe as follows, to wit: The west half of the south west quarter of section fifteen (15), the north half of the ^{SW} northeast quarter of section 22 and the east half of the southeast quarter of section sixteen (16) in township 12, south of range 23 east of the Boise Meridian, and of the right to use for the irrigation of the same One Third (1/3)

of the flow of the waters of that certain stream situated in said county and known as Willow Creek and the tributaries

thereto.

45-0167 That the defendant, William Paulton, his grantors and predecessors in interest, on the 23rd day of November, 1881, and from thence down to the filing of the complaint in said action, were, have been, and said defendant now is, the owner, in the possession and entitled to the possession of that certain real estate situated in said Cassia County, Idaho, described as follows, to wit: The west half of the southeast quarter, and the southeast quarter of the southeast quarter and the southwest quarter of the northeast quarter of section nine (9), township 12 south range 23 east of the Boise Meridian, and of the right to use for the irrigation of the same

One Fourth (1/4)

of the flow of the waters of said Willow Creek and the tributaries thereto.

45-0166 That the defendant, Thomas Pounton, his grantors and predecessors in interest, on the 23rd day of November, 1881, and from thence on down to the filing of the complaint in this action, were, have been, and the said defendant now is, the owner, in the possession and entitled to the possession of that certain real estate situated in Cassia County, Idaho, described as follows, to wit: The northeast quarter of the southeast, and the east half of the northeast quarter of section ^{9*} ~~nineteen (19)~~ and the southeast quarter of the southeast quarter of section four (4) in township 12 south of range 23 east of Boise Meridian, and of the right to the use for the irrigation of the same of

One Fourth (1/4)

the flow of the waters of Willow Creek aforesaid and the tributaries thereto. *Error confirmed by Cassia Co. Abstract Co. 2-18-1982 g

45-0169 The court further finds that the defendant J.H. Stothard, since the filing of the said complaint in said action, sold and conveyed his interest in the lands then owned by him and hereinafter described, and the water right appurtenant thereto to Oakley State Bank, a corporation organized and existing under the laws of the ² state of Idaho and doing a banking business in the town of Oakly in said County, which is entitled to be substituted in place of the said J.H. Stothard in said action and entitled to the judgment and decree of this court in the place and instead of said Stothard. That on the 23rd day of November, 1881, the said Oakley State

Bank, its grantors and predecessors in interest, were, have been and said bank now is, the owner, in the possession and entitled to the possession of that certain real estate situated in Cassia County, Idaho, described as follows, to wit; the south half of the northwest quarter and the west half of the northeast quarter of section twenty-two (22), township 12, south of range 23 east, Boise Meridian, and of the right to the use for the irrigation of the same of one sixth (1/6) of the flow of the waters of that certain stream situated in said county and known as Willow Creek and the tributaries thereto.

The court further finds that said defendants herein, from the date of their appropriations beneficially used the said respective amounts of water upon their respective tracts of land herein above described for the irrigation thereof and that said were arid in character and were valueless without said water and that their said use upon said lands had been, was, and is continuous from the dates of appropriation down to the present time.

That their appropriations of said amounts of said water comprise the entire and whole flow of the waters of said Willow Creek; ~~that said stream flowed about _____ inches under a four inch pressure,~~ and that the whole thereof was necessary to the proper irrigation of their said lands.

The court further finds that the plaintiffs, John H.W. Thompson, ~~James~~ M. Thompson and Hudson Butler are the owners of the tracts of land set forth and described in their amended complaint in this action; finds that the plaintiffs constructed ditches from said Willow Creek to and upon their respective tracts of land for the purpose of diverting water therefrom for the irrigation of said lands. That prior to the construction of said ditches they had been admonished by the defendants and put upon their guard that the waters of said stream and the whole thereof had been appropriated and used by ~~xxxxxxx~~ defendants for a long period of time prior to the construction of said ditches and that there was no free and independent and unappropriated water in said stream.

Dated this 17th day of March 1908.

Edward A. Walker
District Judge.

A s C O N C L U S I O N S O F L A W, from the foregoing Findings
of Fact the court finds that the defendants are entitled to the decree of
this court awarding to them the entire flow of the waters of said stream
and that said plaintiffs are not entitled to any portion thereof and the
said ~~plaintiffs~~ ^{defendants} are entitled to their costs and disbursements in said
action expended.

Dated this ____ day of March, A.D. 1908.

Recd at the 18th day
of March 1908 in Book # page 188
J. S. Stoughton
Und2

District Judge.

ATTACHMENT B

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A45-00167A
Date Received: 8/23/1988
Receipt No: S001657
Received By: EW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JOHN H. KOYLE 208-934-4060
Address: 1774S 1500E
GOODING, ID 83330

AND/OR

Name: MARGARET H. KOYLE 208-934-4060
Address: 1774S 1500E
GOODING, ID 83330

2. Date of Priority: NOV 23, 1881

3. Source: WILLOW CREEK Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
12S	23E	9	SE	SE	SE		CASSIA

5. Description of diverting works:
HEADGATE, PIPE, & DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	01/01	12/31	0.040		

7. Total Quantity Appropriated is:
0.040 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
12S	23E	9	SE	SE		IRR	1.9
Section Acres							1.9
Total Acres							1.9

11. Place of use in counties: CASSIA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
SEE REMARKS

14. Remarks:
PORTION OF 45-0167 DECREE.

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date:

Decree Plaintiff

vs

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): John H. Kyle Date: 8-23-88
Date: _____

State of Idaho)
County of TF) SS.

Subscribed and sworn (or affirmed) before me this 23rd day
of August 19 88 Low White
Notary Public

Seal

Residing at TF
My Commission Expires 5/95

ATTACHMENT C

Idaho Department of Water Resources
45-167A



RECOMMENDED PLACE OF USE
1962 AERIAL PHOTOGRAPHY
TWP 12S, RNG 23E, SEC. 9

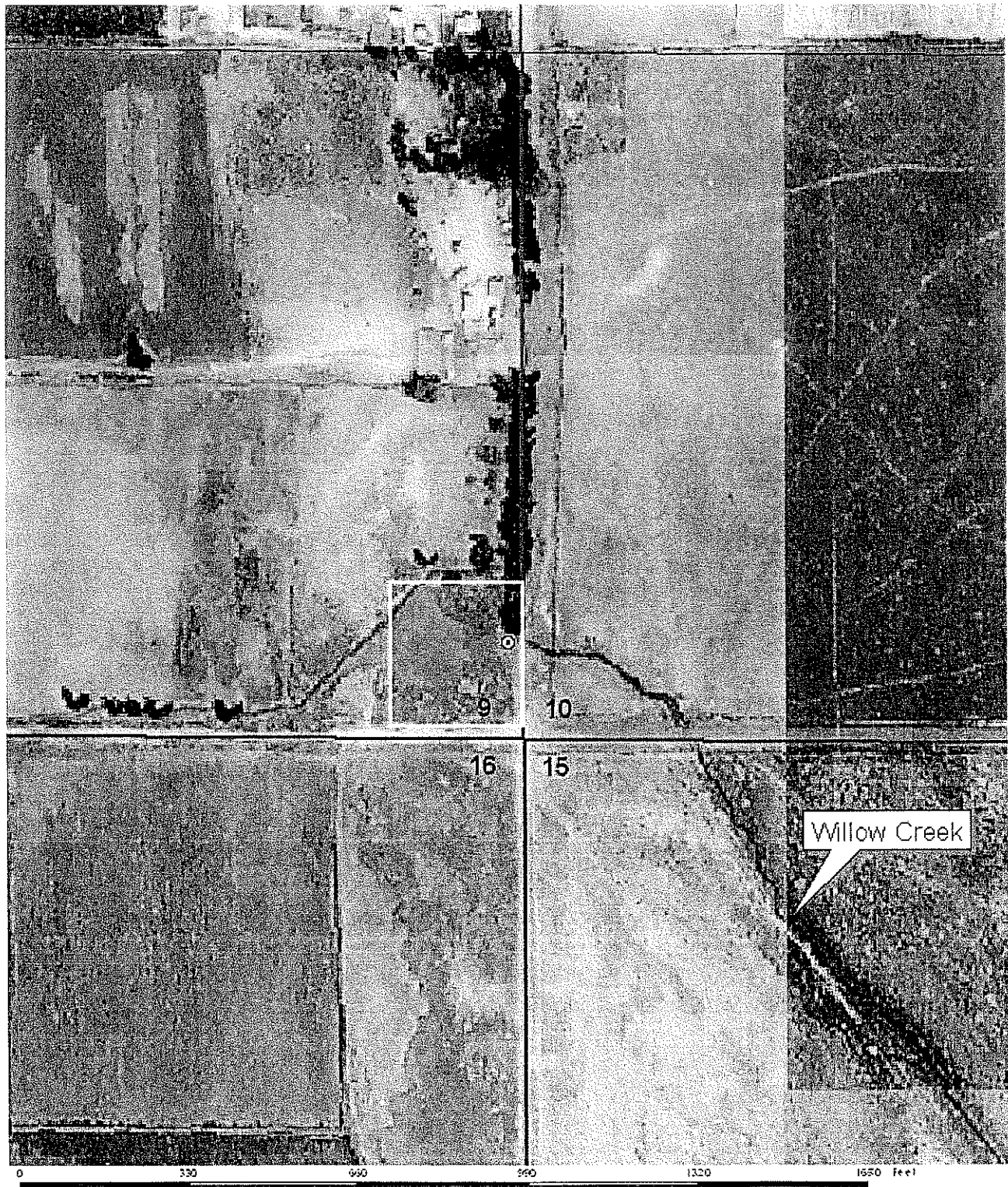


- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines

Gis Place of Use Presentation
DATA entry on April 10, 2006
by Jeanie Robertson

ATTACHMENT D

Idaho Department of Water Resources
45-167A



RECOMMENDED PLACE OF USE
1968 AERIAL PHOTOGRAPHY
TWP 12S, RNG 23E, SEC. 9

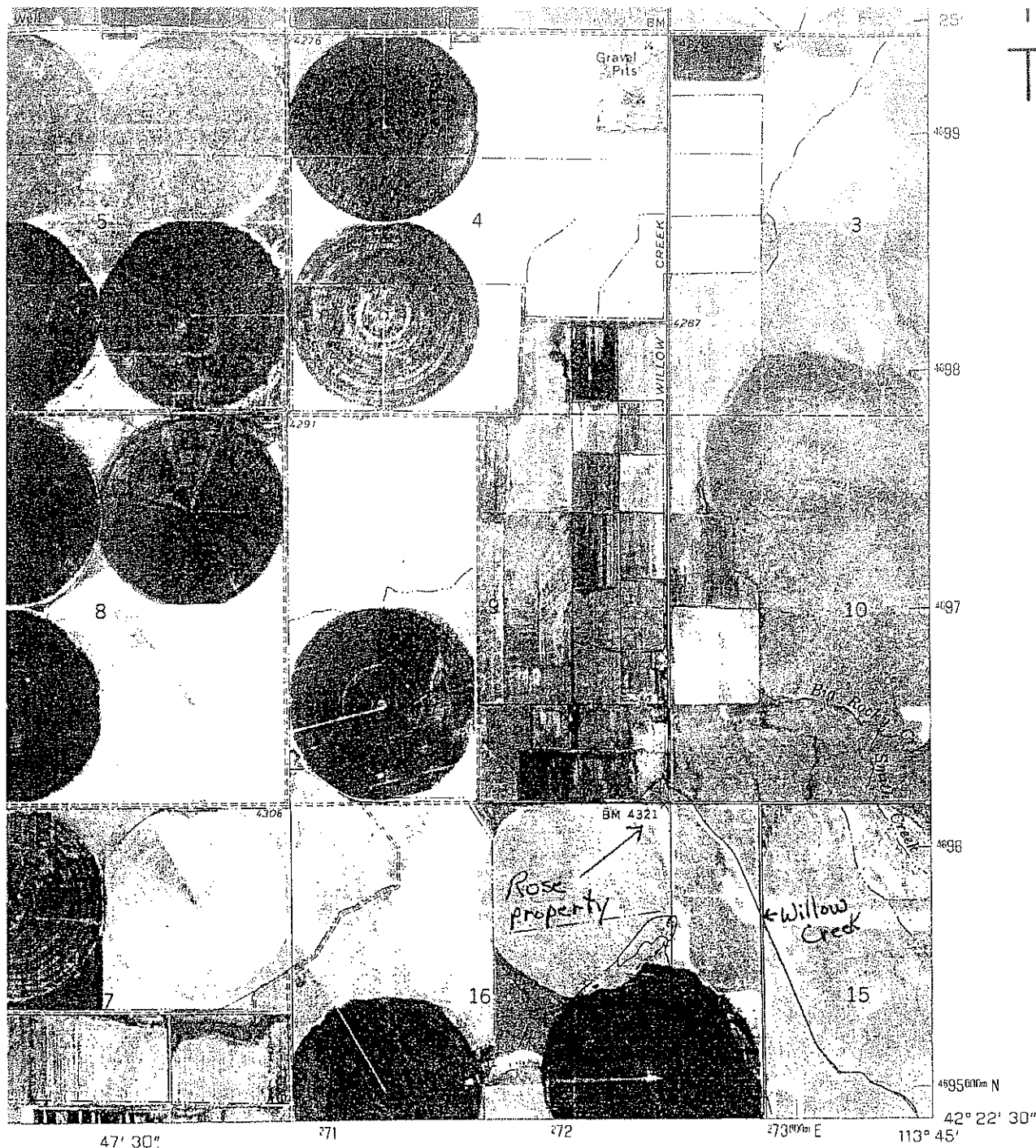
- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines



Gis Place of Use Presentation
DATA entry on April 10, 2006
by Jeanie Robertson

ATTACHMENT E

T12S



1 MILE
000 FEET
ETEP

45-167A (Rose)



KENYON, IDAHO
N4222.5-W11345/7.5

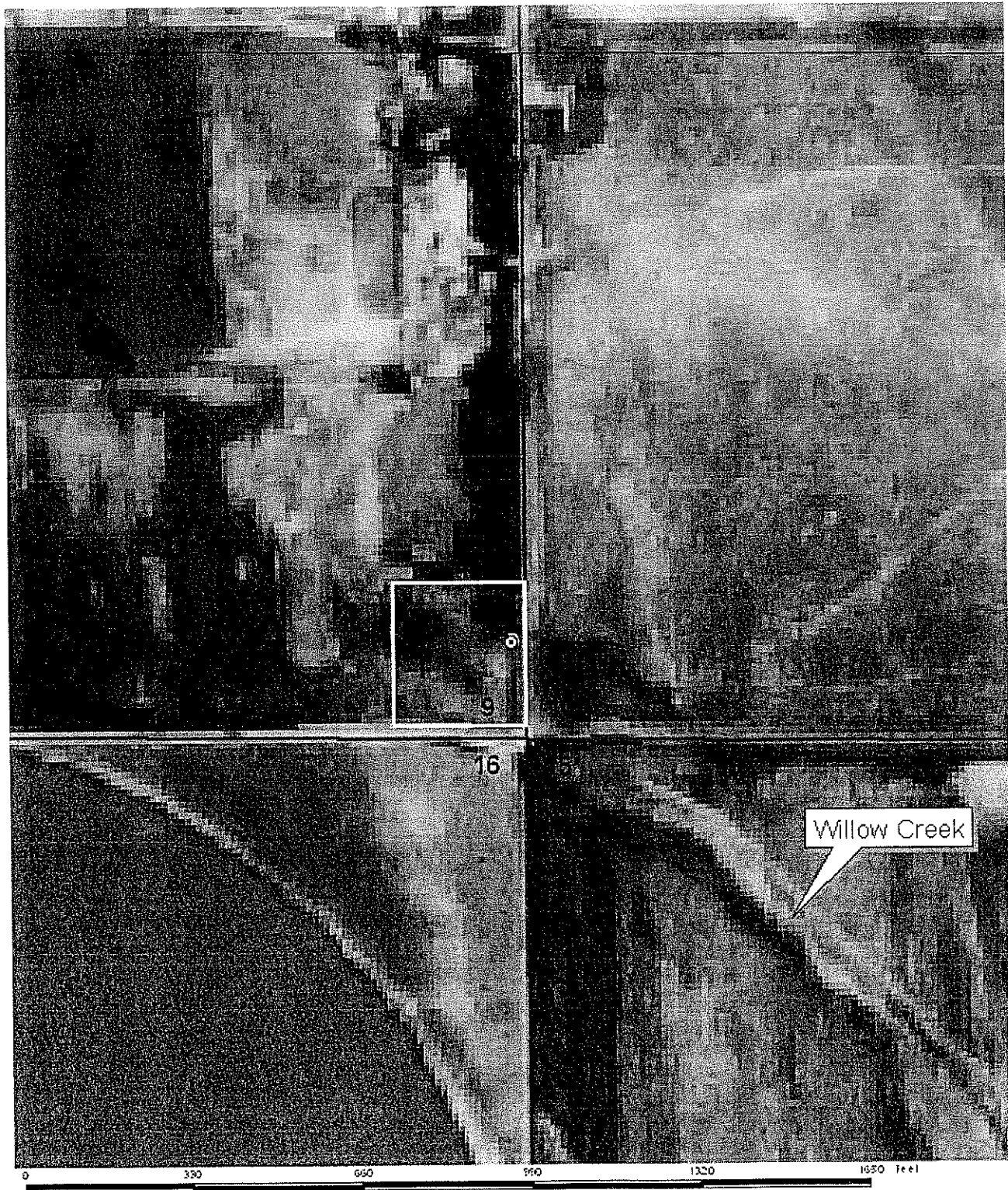
1976

ADVANCE PRINT

Jeanie Robertson 4/10/06

ATTACHMENT F

Idaho Department of Water Resources
45-167A



RECOMMENDED PLACE OF USE
1987 AERIAL PHOTOGRAPHY
TWP 12S, RNG 23E, SEC. 9

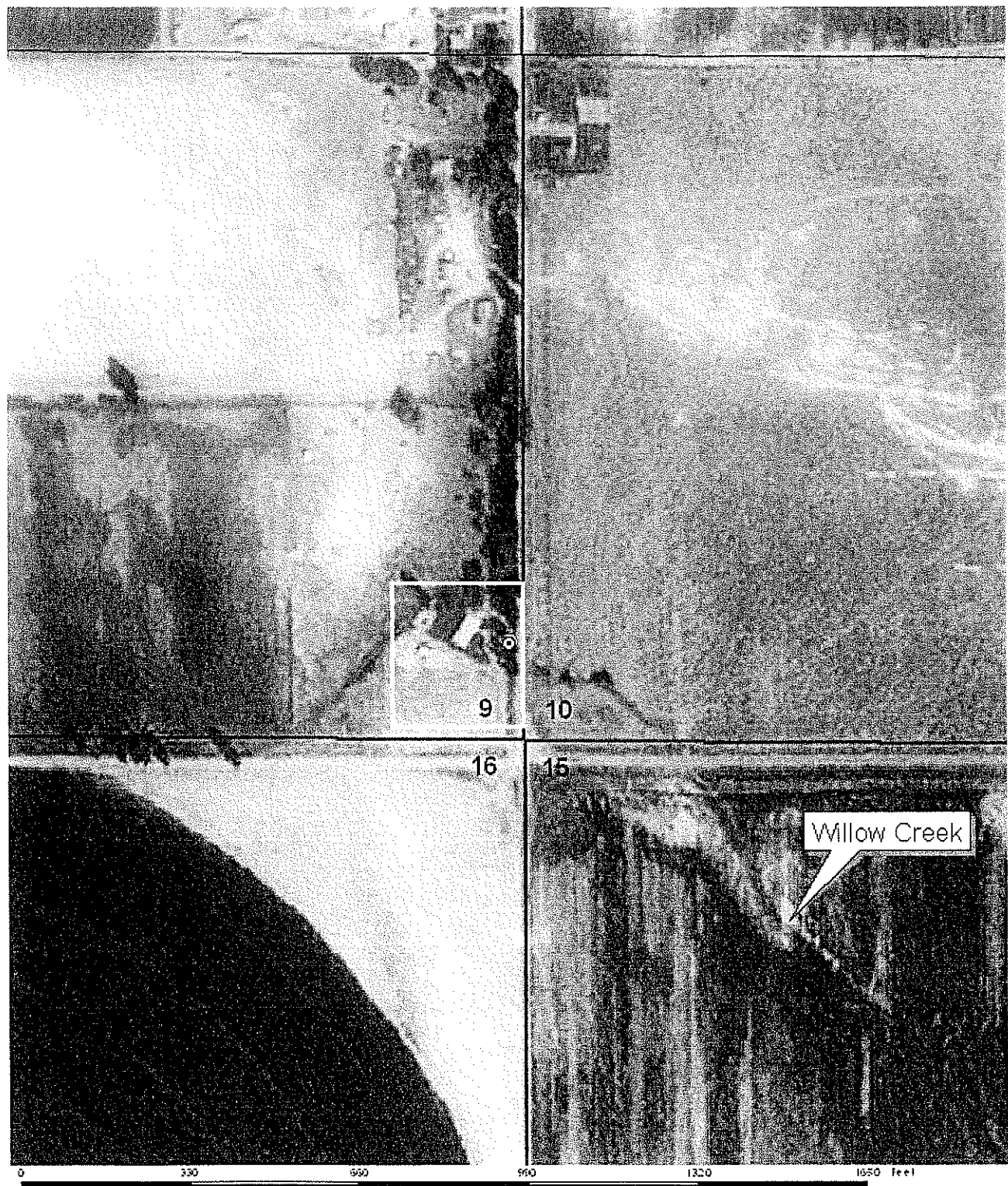
- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines



Gis Place of Use Presentation
DATA entry on April 10, 2006
by Jeanie Robertson

ATTACHMENT G

Idaho Department of Water Resources
45-167A



RECOMMENDED PLACE OF USE
1992 AERIAL PHOTOGRAPHY
TWP 12S, RNG 23E, SEC. 9

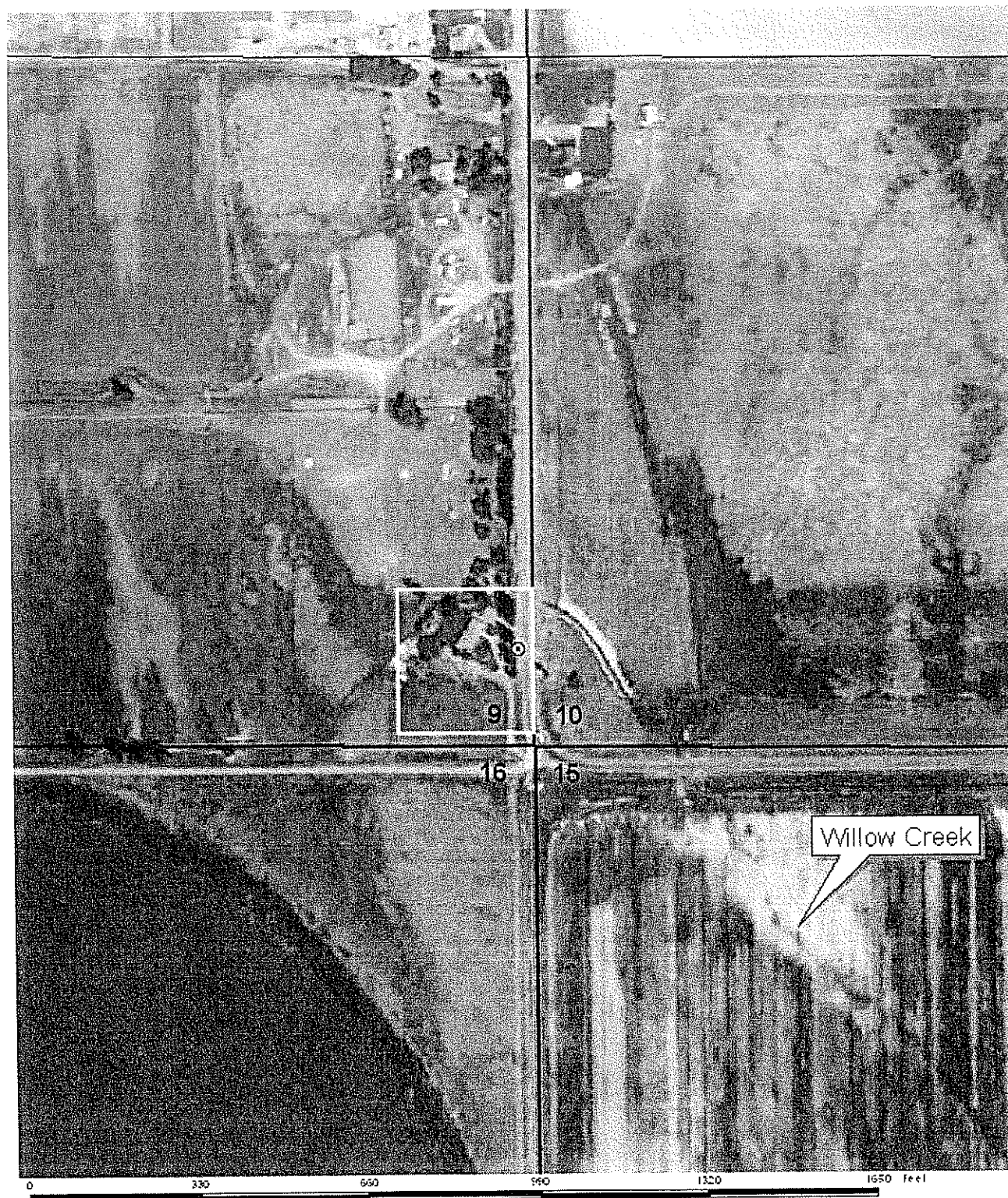
- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines



Gis Place of Use Presentation
DATA entry on April 10, 2006
by Jeanie Robertson

ATTACHMENT H

Idaho Department of Water Resources
45-167A



RECOMMENDED PLACE OF USE
2004 AERIAL PHOTOGRAPHY
TWP 12S, RNG 23E, SEC. 9

- Point of diversion
- Place of use
- Quarter-quarter lines
- Section lines



Gis Place of Use Presentation
DATA entry on April 10, 2006
by Jeanie Robertson

ATTACHMENT I

Transfer No. 2852Water Right No. 45-0166STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

To Change the Point of Diversion and/or the Place of Use

Name of applicant Robert G. Moncur & Ruth Moncur Phone 678-2730Post Office address RT #2 Box 2458 Butlet, ID 83318

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 45-0166 Decreed to Thomas Poulton
(Name)
in case of John H.W. Thompson et al vs Thomas Poulton et al
dated in March 17, 1908 in 4th Ind. Dist county of Cassia
(Name of court)
- b. License No. _____ Issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant

B1 Purchase - Abstract of Title attached3. Source of water Willow Creek tributary to Goose Creek (stream)4. Date of priority 11/23/1891

5. Water is used for the following purposes:

amount 1/4 Flow of Willow Creek for Irrigation purposes from 3/15 to 11/15 *24
~~amount 1/4 Flow of Willow Creek for Stockwater purposes from 4/1 to 12/31 *14~~
 amount _____ for _____ purposes from _____ to Per T/C 4/15/03
 (month/day — both dates inclusive)

6. Total amount of water under right: a. 1/4 Flow of Willow Cr. cubic feet per second
&/or
b. _____ acre feet per annum

* 7. Location of original point of diversion is NW 1/4 1/4 of SE 1/4 1/4 of Section 26
 Township 12S Range 23E, B.M., in Cassia County
 Additional points of diversion, if any _____

8. Lands irrigated or place of use:

*Not Described in Decree

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
12S	23E	4																*	40
		19	40			40									40				120

Total number of acres to be irrigated 1609. Describe any other water rights used for the same purpose as described above NONE

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years

1/11 6/3

D. REMARKS

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 1 day of April, 1983

Robert H. Monney
(Signature of Applicant)

Loren O. Halus
(Notary Public)

My commission expires Life

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 45-0166
and said application is hereby APPROVED, subject to the following limitations and conditions:

Witness my hand this 29th day of November, 1983

J. Glen Saxton
Chief, Operations Bureau

FOR DEPARTMENT USE ONLY

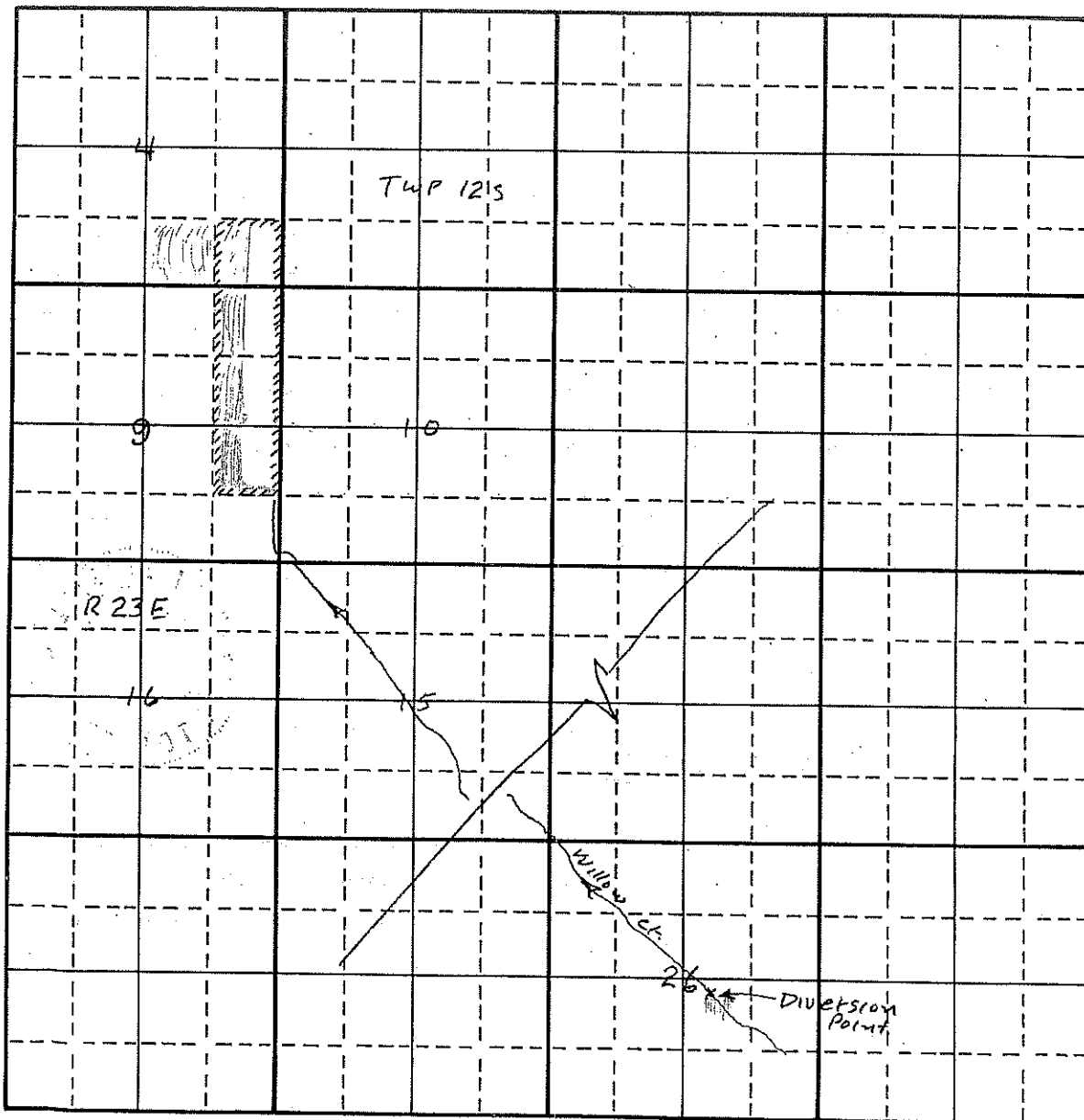
Received by LH Date 4/1/83 Protest filed by Now
Prelim. check by N Fee \$50.00
Receipted by LH Date 4/1/83 #26152
Published in Booth Idaho Press Copies of protest forwarded by _____
Pub. dates June 15 and June 20, 1983 Hearing held by _____ Date _____
Watermaster recommendation requested on N/A Recommended for approval denial
_____ rec'd. _____ by ADM Jm DKT

c. Describe the land or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
12S	23E	4																	
		9	40			40								40					40
														40					120

Total number of acres to be irrigated 160

- Describe any other water rights used for the same purpose as described above. NONE
- Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum

Point of diversion _____ $\frac{1}{4}$ _____ $\frac{1}{4}$, Section _____ Township _____

Range _____, B.M., _____ County

Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information

- a. Amount of water to be diverted $\frac{1}{4}$ Flow of Willow Cr c.f.s. &/or _____ acre feet
- b. Description of diverting works Concrete Division structure in creek
- c. Describe the reasons for the proposed changes To correct an apparent error in the Decree. Documents describing Thomas Poulton's lands & the Answer and Cross Complaint filed in the case show the lands as described in the proposed change

2. Change in point of diversion No Change

Point of diversion NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 26 Township 12S

Range 23 E, B.M., _____ County

Additional points _____

3. Change in place of use

- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
No affect on land now irrigated

EXHIBIT B

Burley Highway District

402 East 10th
Burley, Idaho 83318

208-678-5322

PERMISSION FOR ENTRY ONTO REAL PROPERTY

TO WHOM IT MAY CONCERN:

The undersigned is the owner of certain land located in the SE¼ of Section 9, Range 23 East, Township 12 South, Boise Meridian, all in Cassia County, State of Idaho.

The undersigned does, hereby, give permission to the Burley Highway District, it's agents and employees, to enter into, and upon those properties owned by the undersigned, for the following agreed purposes:

1. Trimming and removal of trees which encroach upon or are a hazard to the using public, along the Burley Highway District road right-of-way.
2. Relocation and construction of the irrigation ditch, presently within the Highway District right-of-way, to a location outside of and to the west of such right-of-way. Such relocation would include placement of a new ditch to the east of the Highway District road right-of-way and road crossings as required.

Permission for entry upon the undersigned's property, for the purposes above-designated, has been previously agreed upon and shall be at the expense of the Burley Highway District, except as may be agreed upon in writing between the undersigned and the District representatives.

A schematic drawing indicating the general contemplated action, is attached hereto, for reference as Exhibit A.

DATED this 22 day of February, 2002.

Bill Poulton
Bill Poulton

Witness:

Barb Bowas

North

150 ~~100~~
East

