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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
Case No. 39576

Subcase No. 45-00167A

STATE OF IDAHO)

ss.

MEMORANDUM

County of Cassia)

COMES NOW, Leah Rose, being first duly sworn on oath,
writes this following affidavit to attempt to cure defects in my original affidavit.

SUBMITTED this 20th day of July, 2006.



Leah Rose
Pro Se

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
Case No. 39576

Subcase No. 45-00167A

STATE OF IDAHO)

ss.

AFFIDAVIT OF LEAH ROSE

County of Cassia)

COMES NOW, Leah Rose, being first duly sworn on oath,
deposes and states:

1. That I am the sole owner of the property on 994 S 150 E,
Burley, ID; it being my primary residence since August, 1998.

2. That being recommended for Water Right no. 45-167A
on this property, a decreed surface water right from Willow Creek in Basin 45, I
ask that I be granted this water right.

AFFIDAVIT OF LEAH ROSE - 1

3. That the facts contained in the Supplemental Director's Report regarding subcase number 45-167A be the basis for this water right.

4. That in the report, Jeanie Robertson, Senior Water Resource Agent, Southern Region Office in Twin Falls states:

*"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 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 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 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 diagrammed 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 diagrammed map is substantially similar to a diagrammed 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. 45-167-A. Unlike the map associated with the application for transfer, the map attached to the claim depicts irrigation in the SESE of Section 9. Both diagrammed 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.”

5. That Agent Robertson concludes that “the Department’s recommendation for water right no. 45-167A is based on historical evidence of beneficial use and reasonable conclusions. “

6. That in paragraph I of the *Memorandum*, entitled "*Factual Background*," line 21,22 it states that "*Poulton will be injured if Rose is permitted to unlawfully divert water from Willow Creek*" when in fact, Poulton applied for and according to the Idaho Department of Water Resources **Adjudication Recommendation Report 45-13666 V1** was deemed "*recommended as an enlargement of 45-167B for an additional 60 acres not covered by the decree.*" (*Attachment A*). Mr. Poulton also lends some of his water to Poulton affiant Cory King.

7. That the claim that "*Water Right No. 45-00167A has never been lawfully put to beneficial use, and if it was ever lawfully diverted, it has been abandoned or forfeited by nonuse for over five (5) years*" has not been proven by affidavits or otherwise in said *Memorandum*. That the affidavits in the *Memorandum* are anecdotal and do not provide scientific evidence such as that provided in the Supplemental Director's Report Regarding SRBA Subcase No. 45-167-A.

8. That William A. Poulton used said property for maintaining his cattle as stated by Mr. Tribe in behalf of Mr. Poulton in the hearing. Said property did not sit "vacant" (Poulton's *Affidavit of Don W. Green*, par. 10;

Poulton's Affidavit of Florence Poulton Gibson, par. 8;) when not actively used by other owners, and because Mr. Poulton's cattle grazed on the property would show reason to irrigate said property. That after questioning other neighbors, they witnessed Mr. Poulton's cattle on the property during the years after the church discontinued use of the property, but told me that they did not want to be involved in the case because they have had dealings with Mr. Poulton and do not want Mr. Poulton to cause trouble for them.

9. That the affiants supporting William Poulton did not walk the property to inspect the presence of structures to provide irrigation (*Affidavit of Blane K. Rose ;Attachment B,C*) or they would have seen the ditch and the proximity of the ditch to said property and that the ditch bisects said property, nor could they have possibly stood upon the property for an entire five years to witness irrigation when it happened. That the road the affiants traveled by vehicle to view said property was lined with large trees to inhibit close inspection of said property and a curve in the road would take attention from viewing said property carefully (*Affidavit of John Anderson; Attachment D*).

13. That Don Green and Florence Poulton Gibson, affiants of Mr. Poulton, are related to Mr. Poulton.

14. That Sharon K. Harrison, affiant for Mr. Poulton, has an interest downstream of said property. That J. Dennis Koyle, affiant for Mr. Poulton, is related to Sharon K. Harrison.

15. That Mr. Poulton willfully tried to prevent subsequent owner Clark Harman from accessing Willow Creek water which Mr. Harman related to me when I purchased said property and to which Mr. Harman swears in his affidavit (*Affidavit of Clark Harman.*) Mr. Harman also recalled to me that Mr. Poulton allowed irrigation of the property for some time, but later decided not to let Mr. Harman have any water. (*See also Affidavit of Blane K. Rose*) Also, Clark Harman told me later that he offered to sell the water claim to Mr. Poulton to appease the situation, which Mr. Poulton agreed to purchase. Mr. Poulton told me the water claim paper given to me by Clark Harman was worthless, and I had no right to use the water. Yet, he agreed to buy it from Clark Harman. The transaction of the purchase of the water claim to Mr. Poulton did not go through because Mr. Poulton, according to Mr. Harman, never sent the money.

Mr. Harman, being a bishop of the LDS Church at the time, told me he did not want to cause undue problems regarding his relationship with Mr. Poulton (Affidavit of Clark Harman) because of his position and dropped the matter.

16. That I, Leah Rose, being the current owner, was prevented from using Willow Creek after four years of ownership because of the rerouting of Willow Creek away from said property by the Burley Highway District. This rerouting without my permission does not constitute abandonment on my part. That the water I was supposed to enjoy up to the present, as Mr. Poulton has enjoyed this shared water claim, was taken from me. I was not consulted in the process of the rerouting of the Willow Creek stream that flowed on my eastern boundary. Mr. Poulton states that the new location of the streambed is "*in the best interest of all parties*" (Affidavit of William A. Poulton, par. 13) yet I was not part of the decision-making process. That I am especially concerned about ten huge trees that are on the eastern boundary of my property. The trees are dying and are a constant safety concern now because they were dependent upon the Willow Creek water stream that flowed past them.

17. That asking for this water right would be beneficial to my acreage and would allow me to water my pasture and maintain a few animals. That I also believe I may continue to fight for my water claim, no matter how small, because it is my right to do so to protect my interest in the water, and provide substantial property value.

18. That Poulton's affiant Boyd Richins did not travel the road by my property until the summer of 1998 when I purchased the property and, four years later, was prevented from using it.

19. That I was told by Land Title and Escrow, my title insurance, that unless there is specific mention of water not being transferred in a deed, that it remains with the property. There is no mention in the chain of title, of a transfer of the water to any other entity during the entire chain of ownership.

20. Mr. Tribe has stated there is "no genuine issue of material fact," In addition to the facts (as well as aerial photos from several different years) contained in the "706" report, I have secured an aerial map taken by the USDA depicting diversion of water onto my property in 1978. (*Attachment H*).

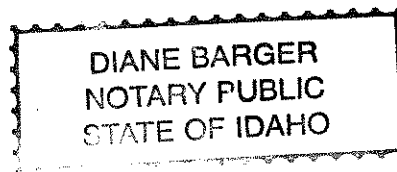
Submitted this 20th of July, 2006.


Leah Rose
Pro Se

STATE OF IDAHO)
 ss.
County of Cassia)

On this 20th day of July, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Leah Rose, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

 Diane Barger
NOTARY PUBLIC FOR IDAHO
Residing at Beale
My Commission Expires 11-7-06

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I served a true and correct copy of the documents contained herein. Also included are the affidavits of: *Blane K. Rose, John Anderson, and Clark Harman*, and all attachments and photos. These were mailed to the following persons by U.S. Mail with correct postage on this 20th day of July, 2006:

CLERK OF THE DISTRICT COURT
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Michael P. Tribe
Ling, Robinson and Walker
615 H Street
P.O. Box 396
Rupert, ID 83350

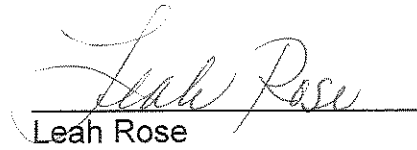
IDWR DOCUMENT DEPOSITORY
P. O. Box 83720
Boise, ID 83720-0098

CHIEF, NATURAL RESOURCES DIVISION
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449


Leah Rose

Attachment A

This is a true and correct copy of the Adjudication Recommendation
Report from the Idaho Department of Water Resources.


Leah Rose

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-13666 V1

WATER RIGHT NUMBER: 45-13666 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WILLIAM A POULTON 977 S 150 E BURLEY, ID 83318 (208)678-0011

Priority Date: 03/15/1980
Basis: Beneficial Use
Status: Active

<u>Source</u>	<u>Tributary</u>
WILLOW CREEK	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	1.200 CFS	
	<u>Total Diversion:</u>	1.200 CFS	

Location of Point(s) of Diversion

WILLOW CREEK	SW1/4SW1/4SW1/4	Sec. 10, Twp 12S, Rge 23E, B.M.
CASSIA County		
WILLOW CREEK	SW1/4NE1/4SE1/4	Sec. 26, Twp 12S, Rge 23E, B.M.
CASSIA County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	23E	9			40.0											40.0	40.0	37.0	157.0
12S	23E	10											30.0	30.0					60.0

Total Acres: 217

Conditions of Approval:

1. C11 THIS WATER RIGHT IS SUBORDINATE TO ALL WATER RIGHTS WITH A PRIORITY DATE EARLIER THAN APRIL 12, 1994, THAT ARE NOT DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE. AS BETWEEN WATER RIGHTS DECREED AS ENLARGEMENTS PURSUANT TO SECTION 42-1426, IDAHO CODE, THE EARLIER PRIORITY RIGHT IS THE SUPERIOR RIGHT.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-13666 V1

1. Quantity 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, 45-166B, 45-167A, 45-167B, 45-11928, 45-13421, 45-13623, 45-13631, & 45-13632.
2. Quantity The amount of water diverted under this water right, 45-167A and 45-167B 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.
3. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 45-167B IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 217 ACRES IN A SINGLE IRRIGATION SEASON.
4. General THIS RIGHT IS BASED UPON AN ENLARGEMENT OF RIGHT NO. 45-167B PURSUANT TO SECTION 42-1426, IDAHO CODE.
5. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 60 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Comments:

1. Jroberts 3/3/2004 Basis of Recommendation

Comment: Recommended as an enlargement of 45-167B for an additional 60 acres not covered by the decree.

Handwritten notes:
- 60 acres
- add.
- 60 ac.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 45-167B V1

WATER RIGHT NUMBER: 45-167B V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WILLIAM A POULTON 977 S 150 E BURLEY, ID 83318 (208)678-0011
Current Owner	MARGARET POULTON 977 S 150 E BURLEY, ID 83318 (208)678-0011
Directors Report Owner	JAMES W POULTON RT 2 BOX 2454 BURLEY, ID 83318 (208)678-5791
Directors Report Owner	LA VORA G POULTON RT 2 BOX 2454 BURLEY, ID 83318 (208)678-5791

Priority Date: 11/23/1881

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
WILLOW CREEK	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	3.140 CFS	
	<u>Total Diversion:</u>	3.140 CFS	

Location of Point(s) of Diversion

WILLOW CREEK	SE1/4SE1/4SE1/4	Sec. 9, Twp 12S, Rge 23E, B.M.
CASSIA County		
WILLOW CREEK	SW1/4NE1/4SE1/4	Sec. 26, Twp 12S, Rge 23E, B.M.
CASSIA County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	23E	9			40.0											40.0	40.0	37.0	157.0
12S	23E	10											30.0	30.0					60.0

Total Acres: 217

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 45-167B V1

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Remarks:

1. Quantity 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, 45-166B, 45-167A, 45-167B, 45-11928, 45-13421, 45-13623, 45-13631, & 45-13632.
2. Quantity The amount of water diverted under this water right, 45-167A 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.
3. Place of Use - Irrigation USE OF THIS RIGHT WITH RIGHT NO. 45-13666 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 217 ACRES IN A SINGLE IRRIGATION SEASON.
4. Explanatory RIGHT NO. 45-13666 IS AN ENLARGEMENT OF THIS RIGHT PURSUANT TO SECTION 42-1426, IDAHO CODE.
5. Place of Use - Irrigation THIS RIGHT IS LIMITED TO THE IRRIGATION OF 157 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
6. Explanatory THIS RIGHT IS A SPLIT FROM FORMER RIGHT 45-167.

Comments:

1. jroberts 3/3/2004 Basis of Recommendation

Comment: This right is recommended for 157 acres in a 217 ac PPU with 45-13666, an enlargement of 60 acres. Diversion rate was claimed and recommended as 3.14 cfs, or an inch per acre, but 45-167 was for 1/4 of the flow of Willow Creek, so this right and part A, along with the enlargement claim will all be limited to the 1/4 flow. Stockwater was not a part of the decree so will not be recommended under this right and it is subject to the standard SoU in the area, not year-round use. (Needs O/C - letter sent.)

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
Case No. 39576

Subcase No. 45-00167A

AFFIDAVIT OF BLANE K. ROSE

STATE OF IDAHO)
 ss.
County of Cassia)

COMES NOW, Blane K. Rose, being first duly sworn on oath,
deposes and states:

Bill Poulton has been actively preventing our family from using the water from Willow Creek on the subject property. When we first moved into our home in 1998, Mr. Poulton, who never introduced himself, stopped to tell us that the ground we purchased was stolen from his family and should belong to him. He further stated that any water claim we thought we had was wrong—that the claim was not valid and “did not exist.”

During the time I lived there, he would not let us access the water that ran past our home on the east to irrigate our lawn or garden or to irrigate the pasture, since the water did not “belong to us.” The previous owner, Clark Harman, said he had “permission” to use the water from Mr. Poulton for a short time, but after a disagreement, was not “allowed” to take water from the stream anymore. Mr. Harman said the matter was dropped because he didn’t want trouble with Mr. Poulton. I remember Mr. Harman saying he had placed a sump pump in the creek to get water, but found the pump on the side of the ditch later.

In 2002, four years after purchase of the property, the Burley Highway District moved the water that flowed on the east side of the property. They informed Ms. Rose that they would be moving the water off the right-of-way. At that time, Ms. Rose told the main person on the project that she had a paper saying she had a water claim and didn’t want the water to be moved because the ten huge trees along the stream depended on this water. The district made a decision to move the water completely off the subject property after consulting with Mr. Poulton. We never received a permission letter from the district to do the work, as did Mr. Poulton. The culvert and access to the water is on Mr. Poulton’s property. Mr. Poulton states in paragraph 13, line 25,26 of his affidavit, that the decision to move the streambed “*was in the best interest of all*

parties." I wonder how it can be in the Rose's best interest if Ms. Rose was not consulted in the process of the relocation of the streambed?

In the affidavit of Mr. Poulton, he states many points which are convenient for his case. However, I would like to make some comments of my own. Mr. Poulton never makes reference to the point that he had his cattle on the property from the time the church decided not to use it as a facility. I would think if there was feed on this ground and Mr. Poulton felt it was his property, any resourceful livestock owner would not let the feed go to waste but would use it. And, irrigate the ground for that livestock. Mr. Poulton has never explained why the Harmans were not using the water. It was not by their choice. Mr. Poulton would never work with Mr. Harman with the water schedule or to provide a way to permit him access to the water. In paragraph 12 of Bill Poulton's affidavit, it says *"That Leah Rose has never had permission...from the pipe that Cory King and I use."* It seems that Mr. Poulton thinks he is the one who needs to grant permission and determine who does and doesn't get the water.

Mr. Poulton mentions that our driveway that went over the Willow Creek stream would cause the water to clog there. We would ask him on many occasions if we could help him get the debris cleared out, but he would tell us not to mess with it. I understand what he was trying to do now. I believe he was preventing us from using the water in order for us to lose any claim on it. He says that we "failed to clean out the obstructions" and that is totally unfair to say.

We were prevented from using the water for our property since 2002 when the Highway District moved it, and Mr. Poulton has the control of the culvert on his property now, which is right on our north boundary, at the present, and it could be a point of diversion, which Mr. Poulton, in paragraph 8 of his affidavit, states that it is *"10 to 12 feet"* from our property, but it is actually 6' from our north fence line. I just measured it.

Also, Mr. Poulton's ditch goes around the back and follows the boundary of the property and bisects the subject property on the northwest corner. As the ditch goes all the way around next to the west of the property, the ditch has opened up on many occasions through the years and has provided us with much irrigation water. It would have easily been a way to irrigate the land prior to the Harman's home being placed there. The irrigated areas would not have been visible from the road, which is on the east side of the property.

There is also a large ditch on the southwest corner of the property near the irrigation ditch that runs from Mr. Poulton's property under the fence and into the subject property's pasture. Clark Harman mentioned he would have accessed the water from that ditch because it was quite easy to get the water into the subject pasture that way. In fact, I was later told the highway district considered an option to move the Willow Creek stream to the south of the property for an easy way for the subject property to access it. But, since Mr. Poulton told them we did not have a valid water claim, they decided against it.

AFFIDAVIT OF BLANE K. ROSE

One last statement. In paragraph 14, Bill Poulton declares that he has "never seen any person intentionally irrigate the place of use...." yet in his own affidavit he states that there was indeed "*irrigation of a lawn*" but in his words he says it was "*watered with a pump from a personal well.*" I ask Mr. Poulton to prove whether or not the water came from this "personal well" or not. Or if the sprinkler watering the lawn Boyd Richins stated he saw on the property (in paragraph 6 of the affidavit of Boyd Richins) was drawing water from Willow Creek or not. I would like Mr. Poulton to show the proof that there *wasn't* Willow Creek water diverted onto the Rose property.

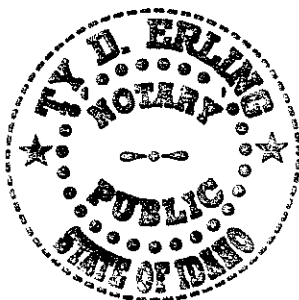
DATED this 10th day of May, 2006.

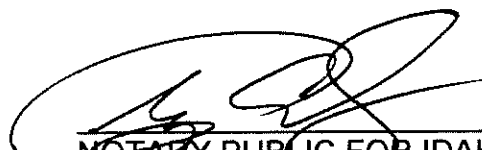

Blane K. Rose

STATE OF IDAHO)
 ss.
County of Cassia)

On this 12th day of May, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Blane K. Rose, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



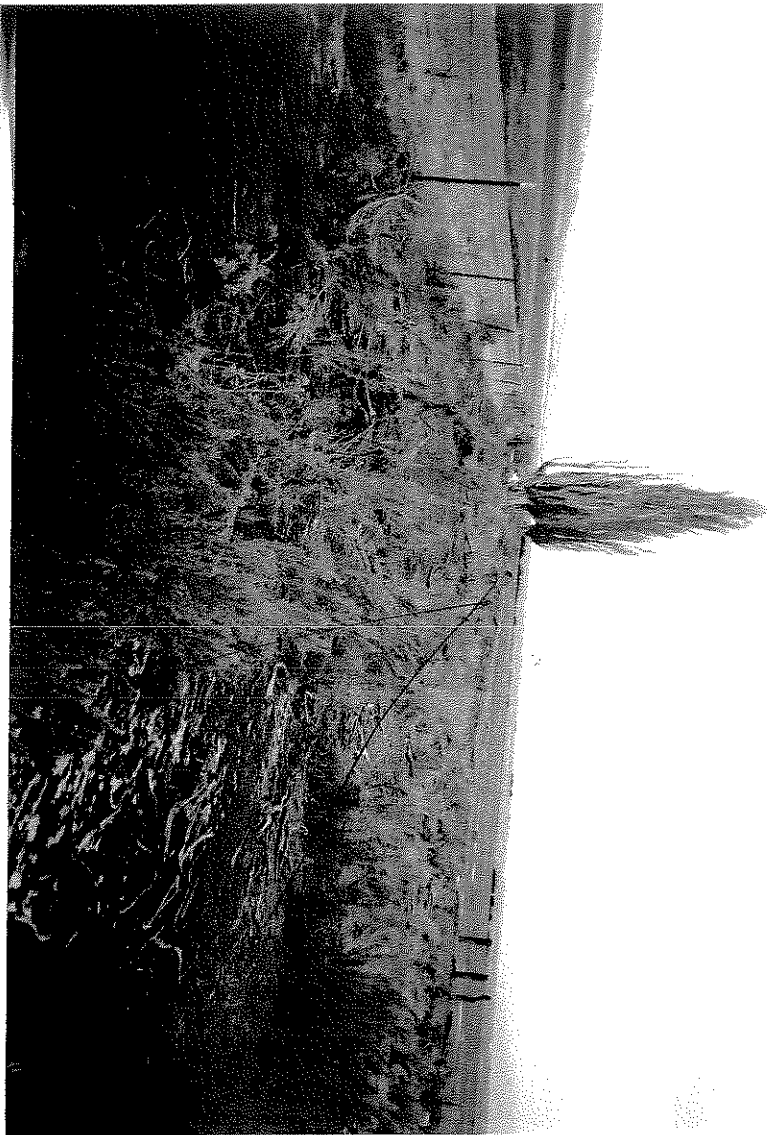

NOTARY PUBLIC FOR IDAHO
Residing at: CASSIA COUNTY
My Commission Expires: 11/14/11

AFFIDAVIT OF BLANE K. ROSE

Attachment B

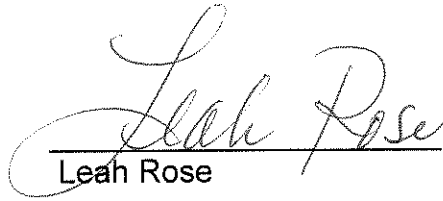
I, Leah Rose, verify that this is a true and correct copy of the photo I took of the ditch that ran into the subject property pasture.


Leah Rose



Attachment C

I, Leah Rose, certify that this is a true and correct aerial photo taken of the subject property after the completion of the diversion of Willow Creek in 2002 from the subject property. It also depicts Mr. Poulton's ditch running along the northern border of the property and bisecting the property on the northwest corner. It is a satellite photo taken from the National Aerial Photography Program by the U.S.D.A. Natural Resources Conservation Service office in Burley, ID.



Leah Rose

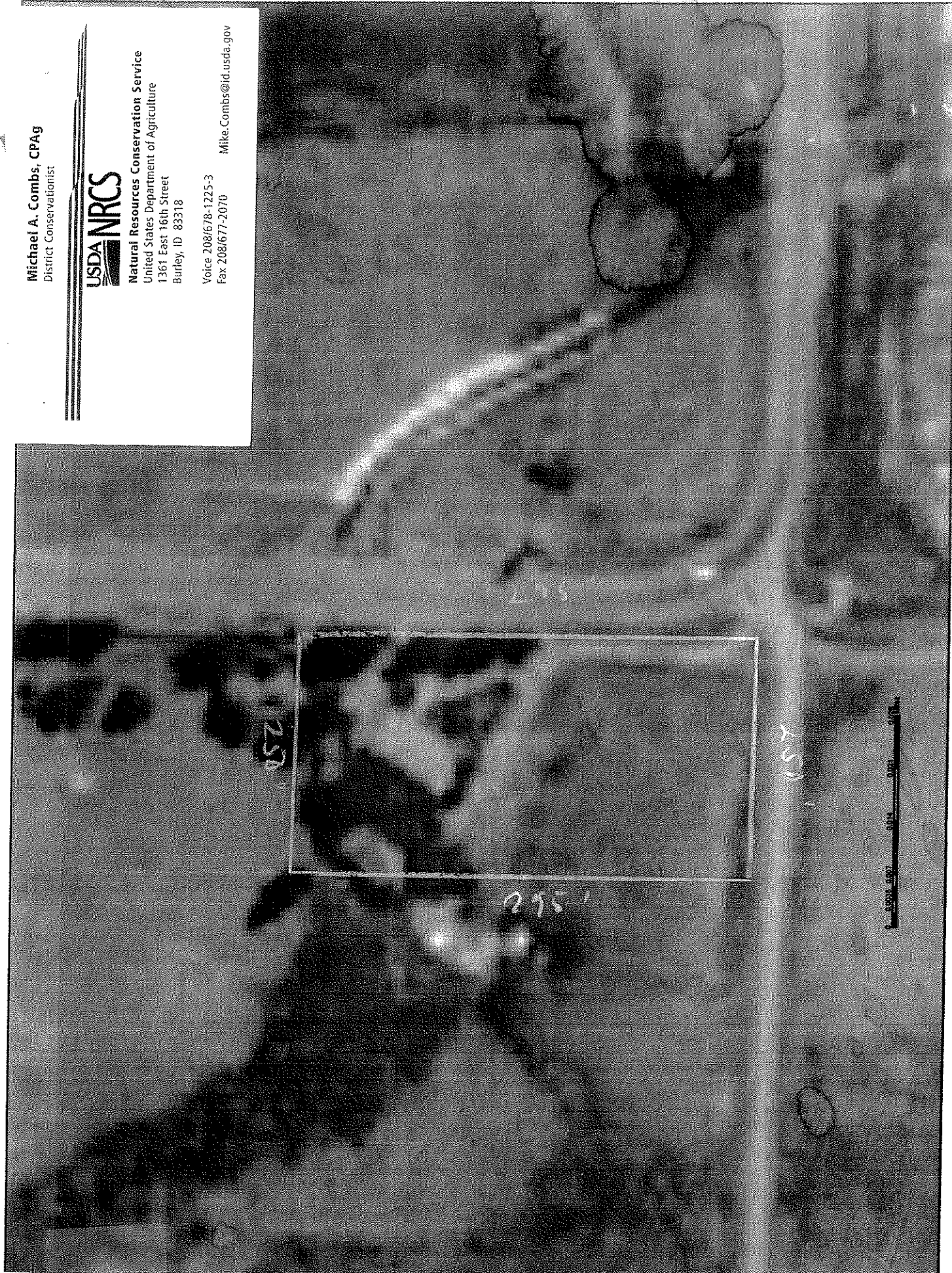
Michael A. Combs, CPAG
District Conservationist



Natural Resources Conservation Service
United States Department of Agriculture
1361 East 16th Street
Burley, ID 83318

Voice 208/678-1225-3
Fax 208/677-2070

Mike.Combs@id.usda.gov



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
Case No. 39576

Subcase No. 45-00167A

AFFIDAVIT OF JOHN ANDERSON

STATE OF IDAHO)
 ss.
County of Cassia)

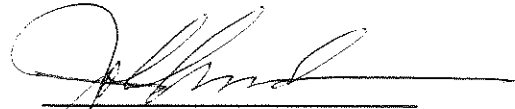
COMES NOW, John Anderson, being first duly sworn on oath,
deposes and states:

My family bought many acres of property around the Willow Creek area in 1971, and we farmed the property. I built my residence on 1054 S 175 E in 1976 and have passed the property on 994 S 150 E since 1971 at least 3 times a week and after residing permanently here, traveled back and forth at least daily. I saw Poulton's cattle feed on the Rose acreage all the time during the years prior to the Harman's purchasing the property (which purchase occurred around 1987 or 1988.) I know the cattle belong to the Poultons because they are the only people who run cows in this area.

It is hard to notice whether irrigation water is on the property or not because of the large trees that are in front of the Rose property as you drive by, and at the end of the property the road takes a sharp, banked corner that should take your attention to the opposite way of the property as you go around the corner and then the road continues toward the east—the property being on the west behind you.

The Poultons have said the water that Ms. Rose is asking for amounts to only about a "cup" of water and they are upset she is fighting for this small amount. However, we believe it is her right to fight for her water, no matter how small that amount may be. If they believe this small amount would hurt them, consider how it has and would affect Ms. Rose to not have any share of this water claim and to not have been able to use it thus far as was her right, continuously, to the present, as the Poultons have used the water.

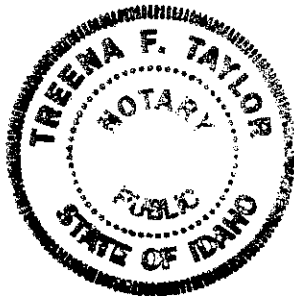
DATED this 17th day of February, 2006.


John Anderson

STATE OF IDAHO)
 ss.
County of Cassia)

On this 12 day of May, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared John Anderson, known or identified to me to be the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



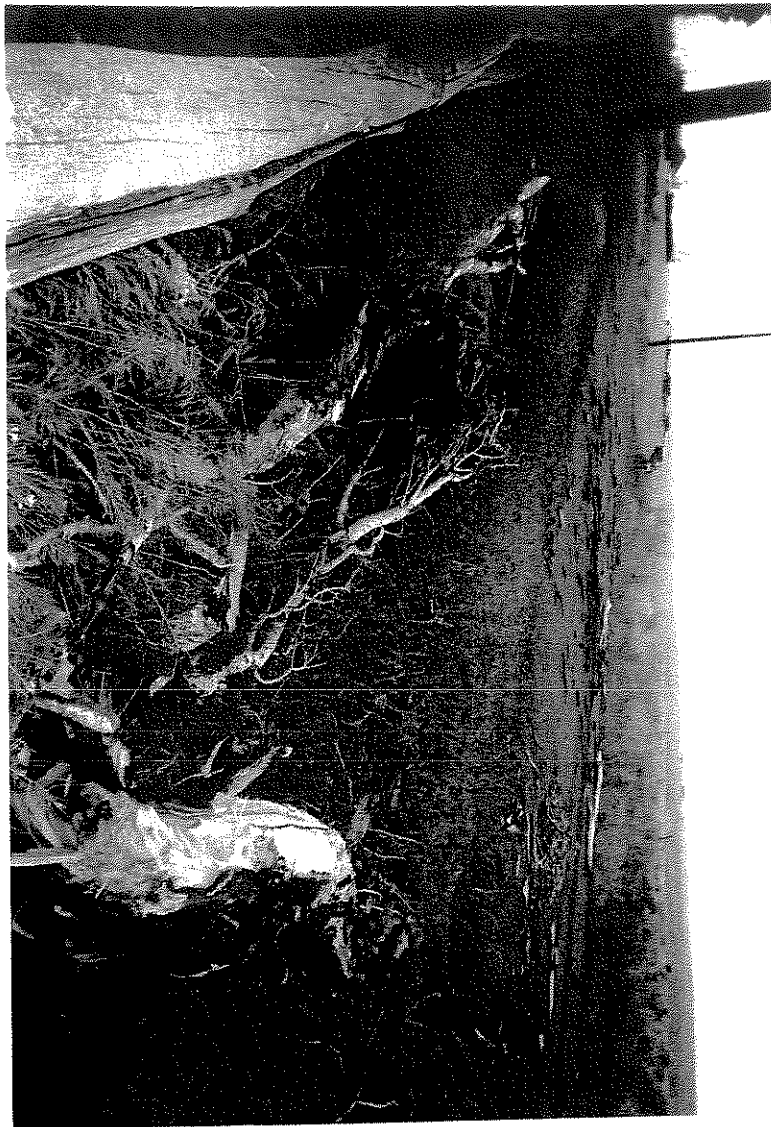

NOTARY PUBLIC FOR IDAHO
Residing at: Cassia
My Commission Expires: 3-2011

AFFIDAVIT OF JOHN ANDERSON

Attachment D

I, Leah Rose, certify that these are true and correct photos taken by myself to depict the large trees that line the east side of the property, obstructing the view to the property from the road.


Leah Rose



994 S 150 E, Burley, ID

— Corner turning away fr. property

In Re SRBA
Case No. 39576

Subcase No. 45-00167A AFFIDAVIT

STATE OF IDAHO)
 ss.
County of Cassia)

COMES NOW, Clark Harman, being first duly sworn on oath,
deposes and states:

To Whom It May Concern:

I have been asked by Leah Rose to write to the best of my memory anything that I had to do with using Willow Creek for a water source at 994 S 150 E, Burley, Idaho.

Between 1990-1999, my family and I lived at 994 S 150 E, Burley, Idaho. Willow Creek flowed through the east of our property. When we purchased the property from John Koyle, he transferred a paper of water right that was filed for this property. I approached Bill Poulton several times during those years about using the water. He did not allow me to use the water during that or any other time. A neighbor approached me to buy the paper of the water right and I declined. I instead offered it to Bill Poulton, for half of the price that I was offered and Bill said to give him some time and he would buy it. This transaction of the purchase never happened. I decided I wasn't going to worry about it because life is too short and it wasn't worth the contention.

I have written this to the best of my memory.

DATED this 22nd day of June, 2005.



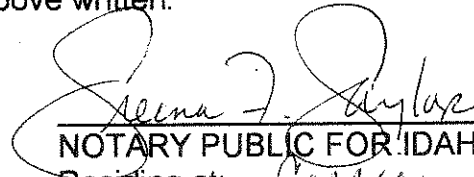

Clark B. Harman

STATE OF IDAHO)
 ss.
County of Cassia)

On this 22 day of February, 2006, before me the undersigned, a Notary Public in and for said State, personally appeared Clark Harman, known or identified to me to be the person whose name is subscribed to

the within and foregoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.


NOTARY PUBLIC FOR IDAHO
Residing at: Cassia
My Commission Expires: 3-2011

Attachment E

I, Leah Rose, certify that this is a true and correct copy of a United States Department of Agriculture aerial photograph of the subject property that I obtained from the U.S.D.A. aerial photography field office in Salt Lake City. The certification verifies its authenticity. The photo depicts a dried water formation caused by repeated usage of water, as told to me by the agent in the office who obtained the map. Affidavits from their office are difficult because, per telephone conversation to the office, of the policy requiring them to stay out of litigious circumstances, and situations of this nature must be routed through their Denver operations, requiring a lengthy, complicated process.


Leah Rose

Subject
property

N
↑



United States
Department of
Agriculture

Farm
Service
Agency

Aerial
Photography
Field Office

2222 W 2300 S
Salt Lake City UT
84119-2020
801-975-3500
801-975-3532 fax

October 31, 2005

RE: 9900-600401

CERTIFICATION

This is to certify that the attached enlargement was made from aerial film which was secured while photographing:

Cassia County, Idaho

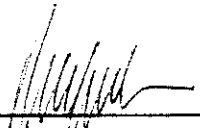
The film is on file in the Aerial Photography Field Office, FSA, USDA, and Salt Lake City, Utah.

ENLARGEMENT

16031-278-27C

DATE

August 21, 1978



Ken Koehler
Management Operations Officer

I, Leah Rose, certify that these are true and correct letter and photos that I obtained from the Burley BLM office depicting water on the subject property researched by Eric Mayes, BLM Natural Resource Specialist in Water Rights.


Leah Rose

To Whom It May Concern:

I have examined BLM aerial photographs to determine if these photographs of the property in question, Township 12 South, Range 23 East, Section 09, show a presence of water in an area of the SESESE quarter-quarter-quarter. The photos are dated 9-12-77, 8-21-78, and 6-25-90.

In all of the examined photos, it appears that a ditch crosses under a road and enters the subject property at a point just south of a building that shows up on the 6-25-90 photo.

Also, a USGS 7 ½ minute topographic map, first printed in 1964, and later photo inspected in 1976 depicts the ditch in the same area as described above. This same USGS map depicts a pond on the same subject property.

National Agricultural Imaging Program (NAIP) imagery from the summer of 2004 seems to indicate that the location of where the ditch crosses under the road has been moved to the north.

Copies of overlays of the USGS map and NAIP imagery are attached.

Sincerely,

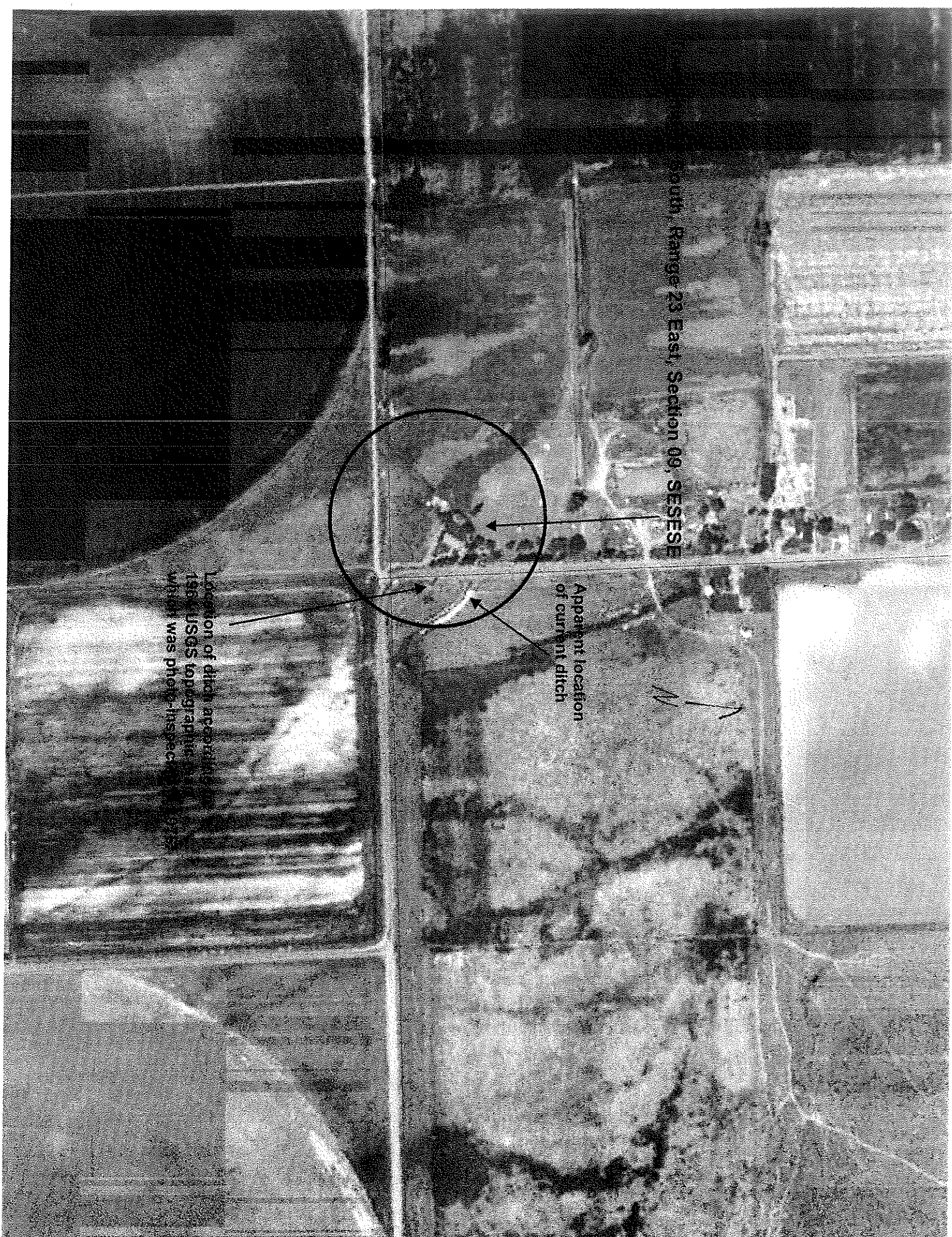
A handwritten signature in cursive script, appearing to read "Eric Mayes".

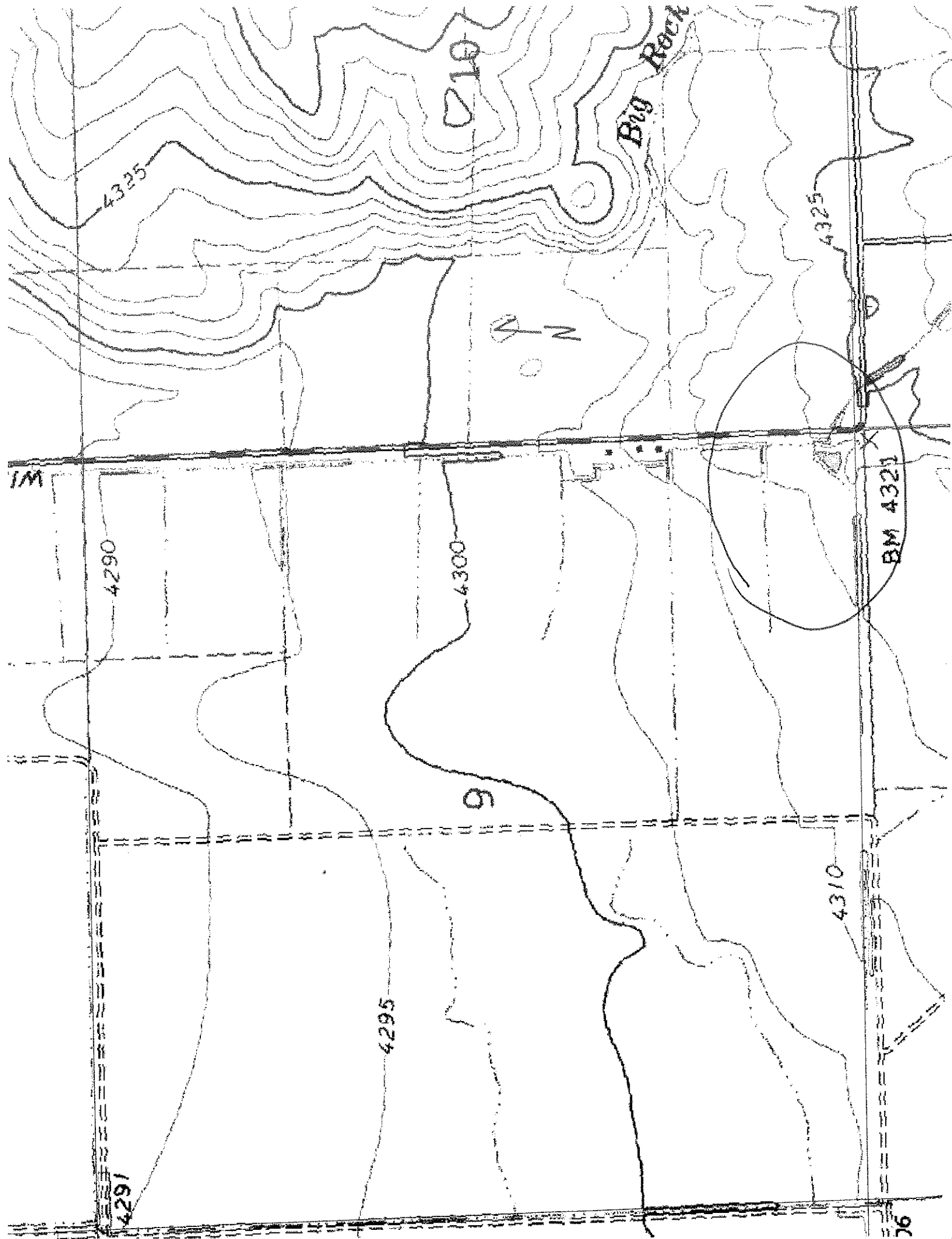
Eric Mayes
BLM Natural Resource Specialist (Water Rights)

South, Range 23 East, Section 09, SESESE

Apparent location
of current ditch

Location of ditch appearing
in 1964 USGS topographic map
which was photo-inspected





4325

4310

Big Rock

4325

N

IM

4290

4300

BM 4321

9

4310

4295

4291

76

100, Range 23 East, Section 09, SESEB

Apparent location
of current ditch

Location of ditch according to
1984 USGS topographic map
which was photo-inspected in 1978

B10

4325

4325

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I served a true and correct copy of the documents contained herein. Also included are the affidavits of: *Blane K. Rose, John Anderson, and Clark Harman*, and all attachments and photos. These were mailed to the following persons by U.S. Mail with correct postage on this 20th day of July, 2006:

CLERK OF THE DISTRICT COURT
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

Michael P. Tribe
Ling, Robinson and Walker
615 H Street
P.O. Box 396
Rupert, ID 83350

IDWR DOCUMENT DEPOSITORY
P. O. Box 83720
Boise, ID 83720-0098

CHIEF, NATURAL RESOURCES DIVISION
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449


Leah Rose