

RECEIVED

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DEPARTMENT OF
WATER RESOURCES

09/07/2006

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: See cover letter.

Water right number: 47-4177E

BRUCE L WALDEN
2660 DALTON LANE
BOISE, ID 83704
Telephone Number: (208) 794-5192

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Mr. Walden disagrees with both the quantity and the place of use elements contained within the Preliminary Recommendation.

2. Describe the changes you wish to make in the proposed recommendation:

Mr. Walden's property consists of six (6) acres which has been historically irrigated as livestock pasture. The place of use element needs to reflect the full six (6) acre place of use, and the quantity element needs to reflect the full six (6) acre's worth of water (0.12 cfs) necessary to irrigate the parcel.

3. Give a brief explanation as to why you disagree with these portions:

Please see attached.

_____ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 11/17/06

SIGNATURE: _____

Please print your name: Andrew J. Waldera
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
P.O. Box 829
Boise, ID 83701-0829

Counsel of record for Bruce L. Walden

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, 2087363033

In support of Mr. Walden's assertions that water right no. 47-4177E be recommended for 0.12 cfs as opposed to the current preliminary recommendation of 0.05 cfs, and that the place of use should encompass his entire six (6) acre property, he submits the affidavits of Bruce Walden, Marjory Chessmore, and Shawna Sonner. Further, Mr. Walden relies upon and incorporates by reference herein the affidavits of Nellie Wilson, Lillian Fairchild, Vernon Fairchild, George Zimmers, Billy Coombes, Doris Couch, Acel Fairchild, D.L. Pyle, and Wesley Fairchild which are already on file with the Department as a result of Melissa Smalley's August 18, 1980 claim to water right no. 47-4177.

As the Department is aware, Melissa Smalley's application (Notice of Claim) underlying water right no. 47-4177 claimed 1.0 cfs for the irrigation of 50 acres of land lying within the NE 1/4 of the SE 1/4 (20 acres) and the NW 1/4 of the SE 1/4 (30 acres) of Section 9, Township 9 South, Range 14 East, Buhl, Idaho. The application, which serves as an affidavit in and of itself, clearly illustrated that the place of use for water right no. 47-4177 included the entire six (6) acre parcel now owned by Bruce Walden (located in the NE 1/4 of the SE 1/4). Each of the affidavits submitted by Ms. Smalley in support of her application confirmed, by competent evidence, Ms. Smalley's use of the 1.0 cfs to irrigate the entire 50 acre parcel described, which now includes the six (6) acre parcel now owned by Mr. Walden. Ms. Smalley's application, coupled with the nine (9) affidavits submitted in support, establish the historic irrigation of the entire Walden parcel, irrigation requiring 0.12 cfs of water to accomplish.

In order to provide the Department with more evidence regarding the historic irrigation of the Walden parcel in particular, Mr. Walden secured the affidavits of Marjory Chessmore and Shawna Sonner, in addition to his own affidavit, submitted herewith. As the Department can see from these affidavits, particularly the affidavits of Ms. Chessmore and Ms. Sonner, irrigation of the Walden parcel was ongoing from the 1960s through the mid 1990s. The irrigation was primarily undertaken by Delbert Harms, husband of Melissa Smalley, brother of Marjory Chessmore, and uncle of both Bruce Walden and Shawna Sonner. Mr. Harms would flood irrigate the Walden parcel from the ditch and headgate located on the southwest corner of the property in order to support the Walden parcel's use as livestock pasture and as a garden. Mr. Harms continued this pattern of irrigation until his death in 1994. Later, Ms. Chessmore, with the aid of her son Bruce Walden and neighbor Max Fairchild, flood irrigated the Walden parcel during irrigation season 2000 after installing a new length of irrigation pipe along the southern boundary of the parcel and repairing the headgate serving the parcel.

Unfortunately, Ms. Chessmore's irrigation of the Walden parcel during irrigation season 2000 drew the protest of neighboring landowner Tim Smalley, who acquired the neighboring parcel of land after the death of Delbert Harms. On August 8, 2001, Mr. Smalley filed a Petition for Injunctive Relief seeking to enjoin Ms. Chessmore's diversion of water right no. 47-4177E. Ms. Chessmore and Mr. Smalley stipulated to the interim administration of water right no. 47-4177E. By operation of the stipulation, both Ms. Chessmore and Mr. Walden agreed not to divert water right no. 47-4177E until the Director's Report for Basin 47 issues; therefore, the water right has been thusly administrated since irrigation season 2002 to date.

09/07/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 47-4177E

NAME AND ADDRESS: BRUCE L WALDEN
2660 DALTON LN
BOISE ID 83704

SOURCE: UNNAMED STREAM

TRIBUTARY: DEEP CREEK

QUANTITY: 0.050 CFS

PRIORITY DATE: 12/31/1930

POINT OF DIVERSION:

T09S R14E S9 SENWSW Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	0.050 CFS

PLACE OF USE: IRRIGATION Within TWIN FALLS County

T09S R14E S09 NESE 1.70

1.7 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

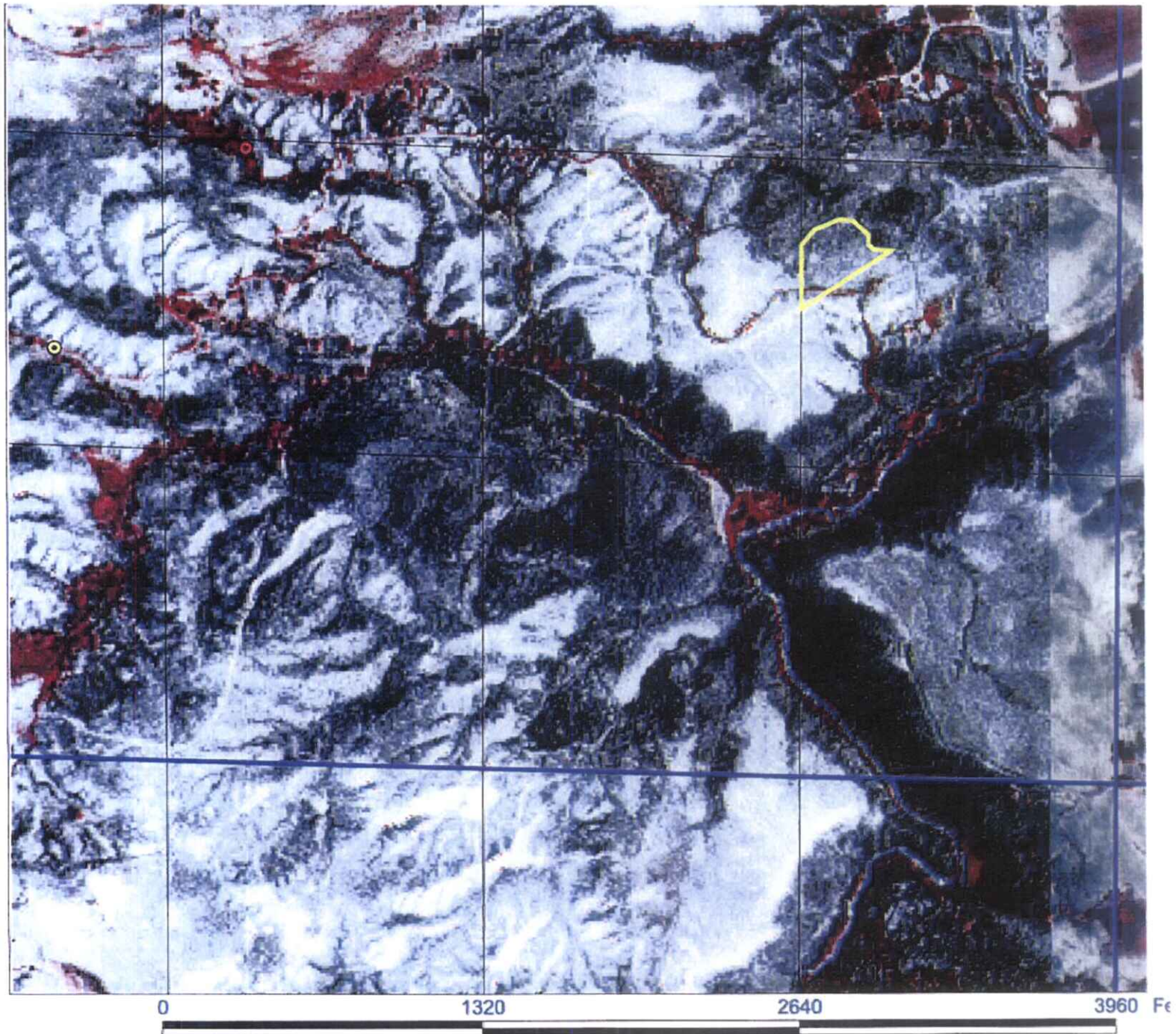
THE SOURCE OF THIS RIGHT IS WASTE WATER ORIGINALLY DIVERTED BY TWIN FALLS CANAL COMPANY.

THIS RIGHT REMAINS SUBJECT TO THE RIGHT OF THE ORIGINAL APPROPRIATOR, IN GOOD FAITH AND IN COMPLIANCE WITH STATE LAWS GOVERNING CHANGES IN USE AND/OR EXPANSION OF WATER RIGHTS, TO CEASE WASTING WATER, TO CHANGE THE PLACE OR MANNER OF WASTING IT, OR TO RECAPTURE IT.

Idaho Department of Water Resources

RIGHT: 47-4177E

RECOMMENDED PLACE OF USE
TWP 09S, RNG 14E, SEC 09, NWSE
PREPARED MARCH 30, 2005



- ⊙ RECOMMENDED POINT OF DIVERSION
- RECOMMENDED PLACE OF USE
- SECTION LINES
- QUARTER SECTION LINES



GIS PLACE OF USE PRESENTATION
1987 NAPP AERIAL PHOTOGRAPHY

PREPARED BY VIKIE HANCOCK