

Paradise Springs

22-405

22-405 was decreed to J. J. Miller in the Rexburg Decree to lands located on SWSE and S1/2SW Sec 30, and NENW of Sec 21 T 4 N 45 E for a total of 160 acres. The source of the decree is 2 CFS from Paradise Springs. The decree stated a priority date of 6/1/1904.

Mike Reid, Don Leroy Miller and Rex Miller are the original claimants for 22-405. Rex Miller has since sold a portion of his land to John Collins, Andrew Richardson and some of his land if not all is now being subdivided. All of the original claimants claim the water has never been used on the decreed POU. Don is J.J. Miller's son. He states as well as the rest of the claimants that J. J. Miller never owned any of the land described in the Rexburg decree, and that the land that the water was intended to be used on is SESW and NESW Sec 19 as well as NENW and SENW Sec 30 in T 4 N 45 E. Paradise Springs' water could never have been used on the land described in the Rexburg Decree because it is up hill and too far away.

Don Miller brought in J. J. Millers Homestead description as well as a Notice Of Water Right. The Homestead Entry for J. J. Miller and the land listed on his Notice of Water right are described as follows: E1/2NW Sec 30 and E1/2SW Sec 19 T 4 N 45 E.

Given this information it is believed that water right 22-405 had always been used on the land described by the claimants. It is also believed that the Rexburg Decree was in error.

Because of this error and the fact that the Rexburg Decree is an indeterminate decree when it comes to exact acreage, memo #57 was used as a guide for these recommendations. Memo #57 states that if the water right was part of an indeterminate decree, then we use the acres irrigated in 1987 as the decreed POU. In 1987 all of the E1/2NW Sec 30 and E1/2SW Sec 19 was irrigated. This information was found by looking at aerial photos of 1987 or by statements from the original claimants including signed statements from Rex Miller and Craig Kunz. Though this is true the claimants state that the NESW of Sec 19 was not irrigated until later (Affidavit supplied).

Rex Miller and Don Miller are brothers and each of them owned part of the land that was homesteaded. Even though the land was not split half and half between Don and Rex, the water right was. This information was obtained by a conversation with Don and a signed statement from Rex. Rex Miller initially had 1 CFS of 22-405 and Don had the same.

Mike Reid bought some land from Don Miller so a portion of Don's 1 CFS goes to him. Because of some issues with well users drying up Paradise Springs, Mike Reid filed a transfer to officially move the water from the decreed POU to the land that it has always been used on. This transfer was lost in the system and by the time it was found it was decided that because the Adjudication recommendations would accomplish the same thing the transfer was trying to accomplish, the transfer would be withdrawn. Rex's 1

CFS was also split. The recommendations for 22-405 have been created based on the above information.

Recommendations

Mike Reid owns 35.6 acres of the Homesteaded land and receives 0.7 CFS and is reflected in the following claim files: 22-13212 (0.5 CFS), 22-13503 (0.2 CFS).

Don Miller owns 9.6 acres and receives 0.3 CFS reflected in claim number 22-13211

Rex Miller at one time irrigated 93.8 acres using water right 22-405 and 22-587. He owns 1.0 CFS of 22-405 and did not claim any additional water from 22-587 although he owned land covered by that right. He sold 7.2 acres and 0.08 CFS to Russel Bourne who then sold it to John Collins. That land was decreed as 22-587 so that is how it was recommended. Rex then split off another piece of his land to Andrew Richardson who then got a right for 0.34 CFS for 31 acres on land decreed to 22-405. Rex was left with 55.6 acres and 0.61 CFS on land covered by both 22-405 and 22-587.

Rex Miller 55.6 acres 0.61 CFS combination of 22-405 and 22-587 reflected in claim number 22-13585.

Andrew Richardson 31 acres 0.34 CFS portion of 22-405 reflected in claim number 22-13586.

John Collins 7.2 acres .08 CFS portion of 22-587 reflected in claim number 22-12714B.

22-13509

Later in time the NESW of Sec 19 started being irrigated by water that came from a ditch along the Western Hillside. There was an affidavit submitted by Chester Miller, one of J. J. Miller's sons. This affidavit went through a lot of history about the water from Paradise springs but the only date that can be pulled from that affidavit was 1960. This is the priority date I gave 22-13509 for the irrigation of the NESW of Sec 19.

22-4104

According to the claimants in 1969 a pump went in on the east side of the spring and pumped water through a pipe for sprinkler irrigation. This pump besides irrigating all of the Homesteaded land also began irrigating a small piece of land owned by Don Miller in the NWNW of Sec 30. The affidavit provided by Chester Miller supports this beneficial use water right 22-4104. This right was split between Don Miller and Mike Reid.

Recommendations

Mike Reid receives 0.59 CFS reflected in 22-11639.

Don Miller receives 0.14 CFS reflected in 22-11537.

22-587

This water right was decreed in the Rexburg Decree to Caroline Withrick for an "undivided $\frac{1}{4}$ of Paradise Springs" with a priority of 6/1/1904. The land stated in the decree is stated as follows:

"NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 30, T. 4 N., R., 45 E., B. M. also, Homestead not described in pleadings."

The Homestead for Caroline Withrick was found on the BLM website (www.glorerecords.blm.gov) but her name was spelled a little different. The homestead was made by Carolina Wuthrick dated May 20th 1862. The land was listed as follows:

S $\frac{1}{2}$ SE Sec 19 and NWNE Sec 30 of T 4N R 45E

The land listed on the decree and on the Homestead Entry totals 200 acres.

7.2 acres of SWSE Sec 19 T 4N R 45E has been recommended to John Collins. The remainder of SWSE has been recommended to Rex Miller. Duane Kunz claims 1.6 CFS of 22-587. He claims the water has been used on NESW and NWSW Sec 30 T 4N R 45E which is not the decreed POU so it has been disallowed.

22-575

22-575 was decreed in the Rexburg Decree to George Walton for 100 inches (2 CFS) from Paradise Springs with a priority of 6/1/1892. The land it was decreed to is described as follows:

"NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 29, and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 30, T. 4 N. R., 45 E., B. M., Containing 160 Acres."

In transfer number 3555 Gary Zohner Transferred 1 CFS of 22-575 from NWNW Sec 29 and NENE Sec 30 4N 45E to NWSE and SESE Sec 19 4N 45E. Also in the same transfer he moved .7 CFS of 22-180 from NENE Sec 30 4N 45E to the same POU in Sec 19.

After the transfer, the land pertinent to 22-575 is as follows:

NWSW and SESE Sec 19, SWNW and NWSW Sec 29 all in 4N 45E.

Teton Rainbow Ranch at one time prior to 1987 owned SWNW and NWSW Sec 29. They sold that land to Peter Shields and reserved the water as stated in a warrantee deed in 22-13134. Teton Rainbow Ranch then moved the water to SENE and NESE Sec 30. Based on this information the recommendations follow.

Recommendations

Gary Zohner receives 1.0 CFS reflected in claim number 22-575A limited to 80 acres.

Wally Rothgeb receives, as an accomplished change in POU, 0.13 CFS for 8.9 acres reflected in claim number 22-13135.

Teton Rainbow Ranch receives, as an accomplished change in POU, 0.86 CFS for 54 acres reflected in claim number 22-13134.

22-180

22-180 was decreed in the Rexburg Decree to H. C. Bowles for 140 inches (2.8 CFS) from Spring Creek, with a priority of 6-1-1889. The land describe in the decree is as follows:

“SW1/4 of SW1/4 and SW1/4 of SE1/4 of Sec. 29, N1/2 of NE1/4 of Sec. 30, T. 4 N., R. 45 E., B. M., containing 160 acres”.

After transfer 3555 mentioned above the lands to which this water water was pertinent is as follows.

NWSE and SESE Sec 19, SWSW and SWSE Sec 29, and NWNE Sec 30.

Based on that information the recommendations for 22-180 are as follows.

Recommendations

Gary Zohner receives 0.7 CFS for 80 acres reflected in claim number 22-180A

Duane Kunz receives 0.7 for 40 acres reflected in claim number 22-180B

Larell Kunz receives .44 CFS for 25 acres reflected in claim number 22-180D

Report by Trent Galbraith 12-15-06

Claim No. 22-127148

Document Checklist

☐ Copy License/Decree

Hexberg v Teton

☐ Copy Transfer

☐ Copy Licensing Field Exam

☒ Check if Ownership/Address Change is Required

☐ Generate, mail and file "Evidence of Priority" letter

☒ Generate Arcview Map

Found H.E.S. for Carolina Withrick
Dated: May 20 1862
Found at www.glorerecords.blm.gov

Legal Description

S $\frac{1}{2}$ SE	Sec 19	4N 4SE	80
NW NE	30		40

11-24-06

TC

7-5-06

- Because this is an indeterminate decree, memo #57 was used as guidance for Recommending splits of 22-40S.
- The Rexburg decree gives a POV that cannot possibly be irrigated by paradise springs. J.J. Miller never owned the land described and there are no claims for any portion of 22-40S that claim that land.
- In the file is a copy of J.J.'s homestead entry and a Notice of water right stating that the ~~land~~ water was always intended to be used on:
Sec 30: NENW
 SE NW
 T 04 N 45 E
sec 19: SESW
 NFSW
- Given this information it is believed that the rexburg decree is incorrect and the land described above will be used as the original POV.
- Taking into account the sworn statement from Rex Miller, Don Miller and Mike Reid as well as lands irrigated in 1987: Recommendations for 22-40S ~~splits~~ ^{splits} are:
 - Don Miller owns ≈ 9.6 acres and is entitled to .3 cfs
 - Mike Reid owns ≈ 35.6 acres and is entitled to .7 cfs

22-13211
22-13212
22-13503

12-12714A - Rex Miller c 15 66 acres and is entitled to .92 cts

- Combined with a portion of 22-587

12-12714B - Russel Bourne owns 7.2 acres and is entitled to .08 cts

- combined with a portion of 22-587

- 22-4104 is a statutory claim which the claimants believe to be an expansion of 22-405. This claim is prior to May 20th 1971 and can therefore be considered a beneficial use claim.

- This would overlap the 22-405 claims and would be proportionate to what they own of the claimed pool.

- 22-13503 and 22-13212 combined = .7 cts

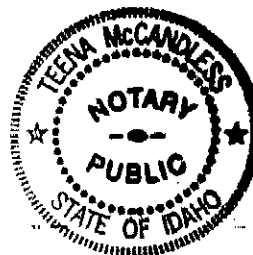
- Talked to Michael Holliday he said to use acreage as of 1987 if irrigated as per memo #57.

The undersigned do hereby affirm that the John J Miller water right, #22-405 decreed for 2 cfs in the Rexburg Decree, was split between the undersigned as claimed in the SRBA, as follows:

Rex Miller owns 1 cfs (split to .92cfs for Rex and .08 cfs to R. Bourne)
Don Miller owns .30 cfs
Mike Reid owns .70 cfs

I hereby swear or affirm this is true.

Rex Miller
Rex Miller



(State Of Idaho)
(Jerome County)

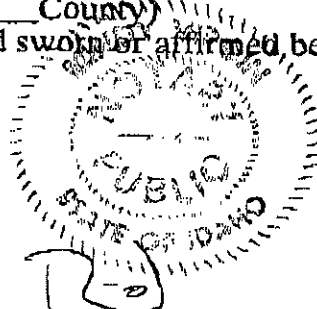
(Subscribed and sworn or affirmed before me this 29th day of JUNE, 2006.)

Teena McCandless
Residing at: Jerome
Commission expires: 1/17/11

Don Miller
Don Miller

(State Of Idaho)
(Madison County)

(Subscribed and sworn or affirmed before me this 15th day of MAY, 2006.)

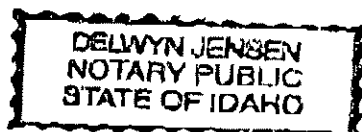


Manuel Virgin
Residing at: Rexburg
Commission expires: 9-20-2006

Mike Reid
Mike Reid

(State Of Idaho)
(Teton County)

(Subscribed and sworn or affirmed before me this 10 day of May, 2006.)



Delwyn Jensen
Residing at: Driggs
Commission expires: 1/22/09

~~22-405~~

- All claimants of 22-405 and its splits claim the decreed pov is incorrect. There is no way paradise creek to go up hill to irrigate the land. This is true. The land is uphill and could not be irrigated from decreed source. Claimants claim that JJ Miller filled a claim with fremont county in 1901 (No copy found in files) stating Miller intended to use water on E $\frac{1}{2}$ NW Sec 30 and E $\frac{1}{2}$ SW sec 19 4N 4S E. Diverted at the NENW of sec 30. With the water diverted there all of The E $\frac{1}{2}$ of SW se 19 could not be irrigated. It is possible some of it was irrigated by running a ditch along the hillside but there is no evidence of a ditch.

22-405

Transfers
Pending

- 13212
- 13211
- 12714A
- 12714B
- 4141

Parts of 22-405. It is my opinion 22-405 should go away recommended as 22-13212.

22-11537
- 11639

} 1969 "Enlargement" parent rights 22-4104
I believe these should actually be

Beneficial Use claims due to the fact they are prior to 1971. This is if they used extra water! Claimants should get some % of enlargement as they did of 22-405. TG 4-4-06

4-6-06

22-12714A + 22-12714B are for $\frac{1}{2}$ of 22-405^{decree} which is lcs. 22-4104 is for an enlargement only which has been split into 22-11639 (Michael Reid) and 22-11537 (Don Miller). 22-405^{claim} is a duplicate of 22-13212 which is in the name of Michael Reid. The other part of 22-405^{decree} is 22-13211 which is also in the name of Michael Reid but according to Reid should be in the name of Don Miller. Don agrees.

22-4141 is a duplicate of 22-13211.

22-13211 was amended to reflect Dons portion and land. TR

22-13503 is the additional .2 cbs of 22-405^{decree} that is for the irrigation of Reids 35.6 acres. Needs a COS as with all of other 22-405 splits.

as of 4-6-06 a transfer for 22-13212 is in process and Jennifer has 22-13503. Claims for Reid cannot be recommended until transfer is complete. TR

~~Be sure to recommend the~~

- Called Don LERoy Miller and he said he would go through his files and get back to me. He couldn't answer any questions without his files in front of him. Wanted to ask him about 22-11537 Evidence. Maybe a meeting would be beneficial to look at his files and try to sort out 22-405 splits as well. 4-4-06 L
- LERoy & Michael Reid came in 4-6-05.

Water Right No(s). A 22-12714 B

GPS File # - 22127144

GPS Data - 2726521 } same P.O.D
1386916 } 95
A22-127144

GPS DATA:

Existing - A0009862 _____ on power panel
Tag # A0016340 Location: on pump

Diversion Data:

Source: Paradise Springs Trib to: Teton River

MOTOR

Make: Century Electric Model: _____ Hp: 20
SN: NA

PUMP

Make: NA Model: _____ Disch: _____
SN: _____

NOTES:

Pan now owned by Susan C. Aldern Trust c/o Susan Aldern at
495 S. 450 W. Veta ID 83455. Phone # 208-354-0044.
I gave Susan a change of ownership form on 4-21-06. Gary Zehrer farms
property. He states that upper ditch from top of Miller Pond ran East to
Susan Aldern's pond & ditch entered on NE into his (Gary's) property.

Field Exam Date: 4-21-06 Agent: H. C. Jones

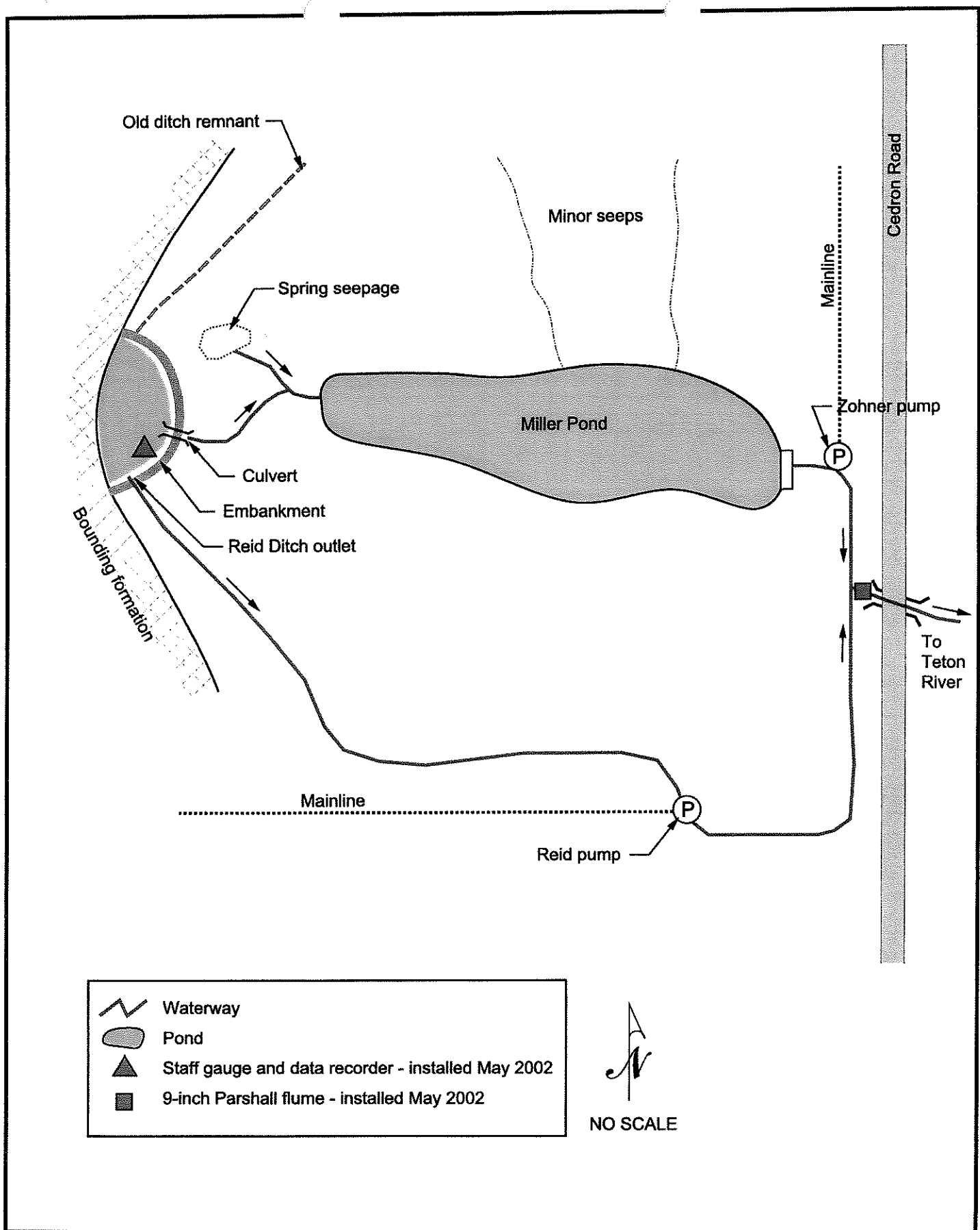
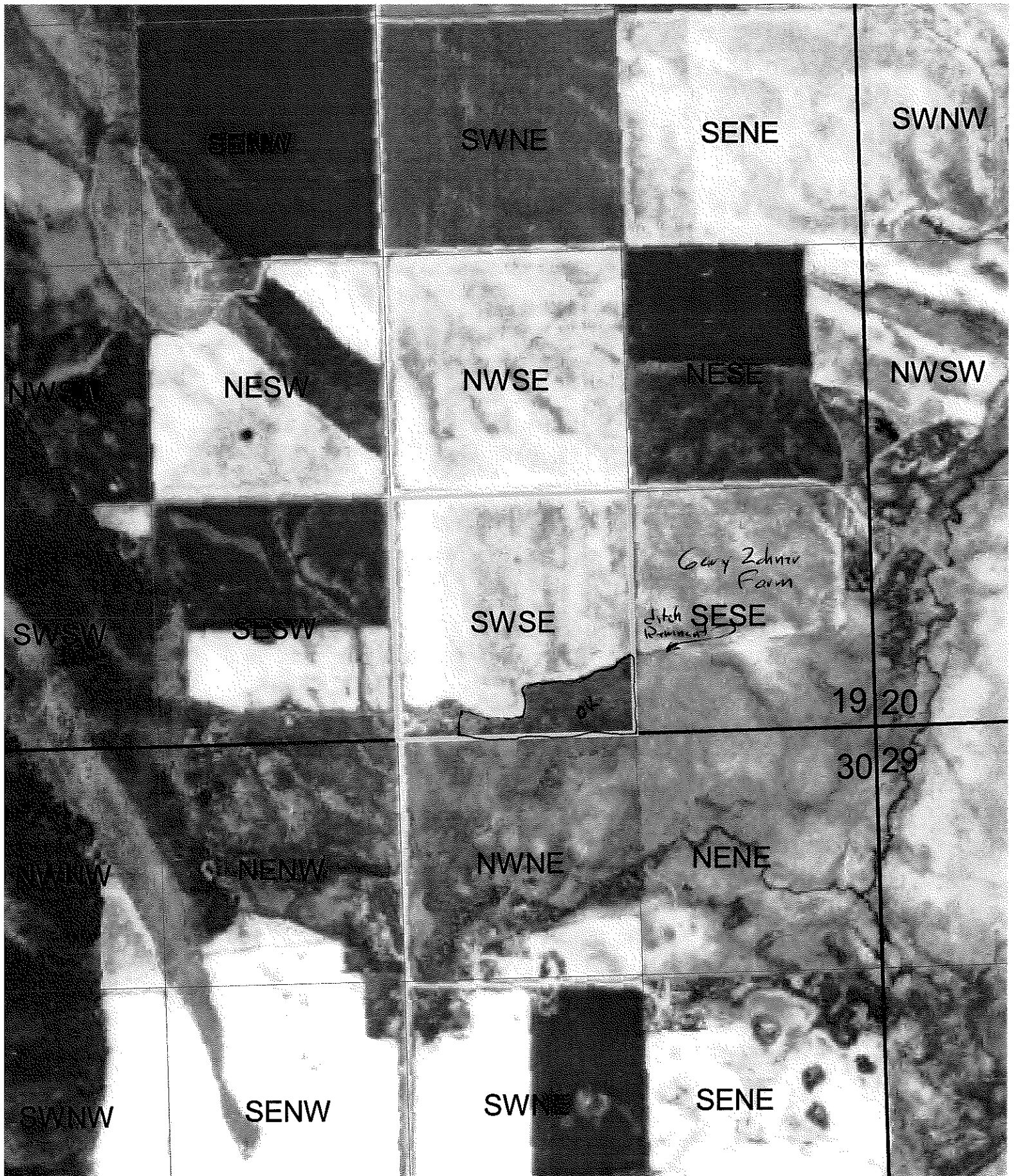
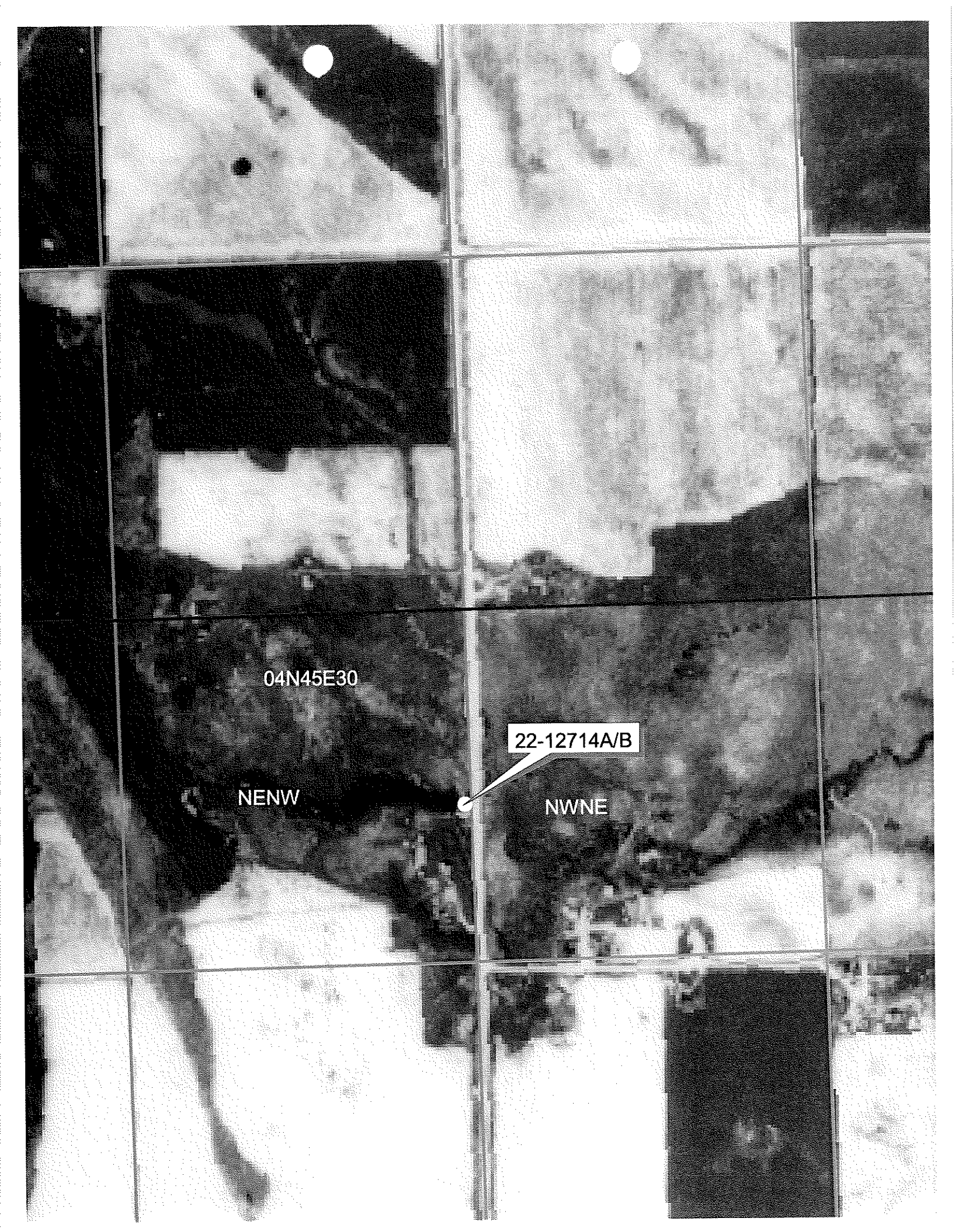


Figure 2. Diagram of the Paradise Spring collection and distribution system.

22-12714B





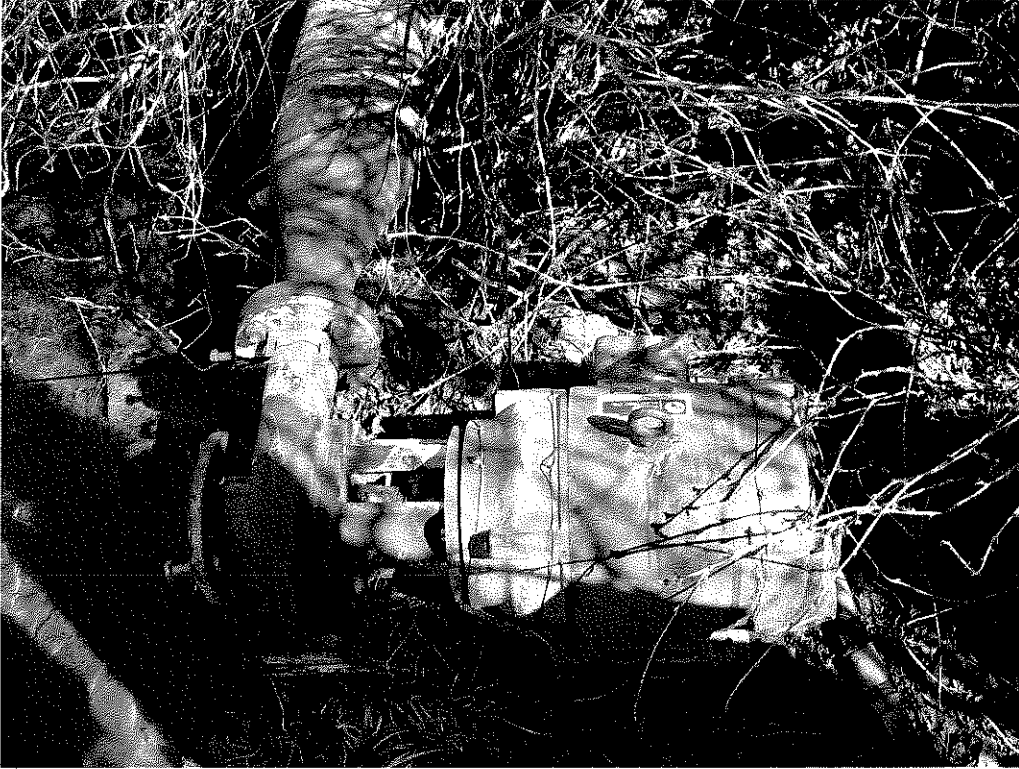
04N45E30

NENW

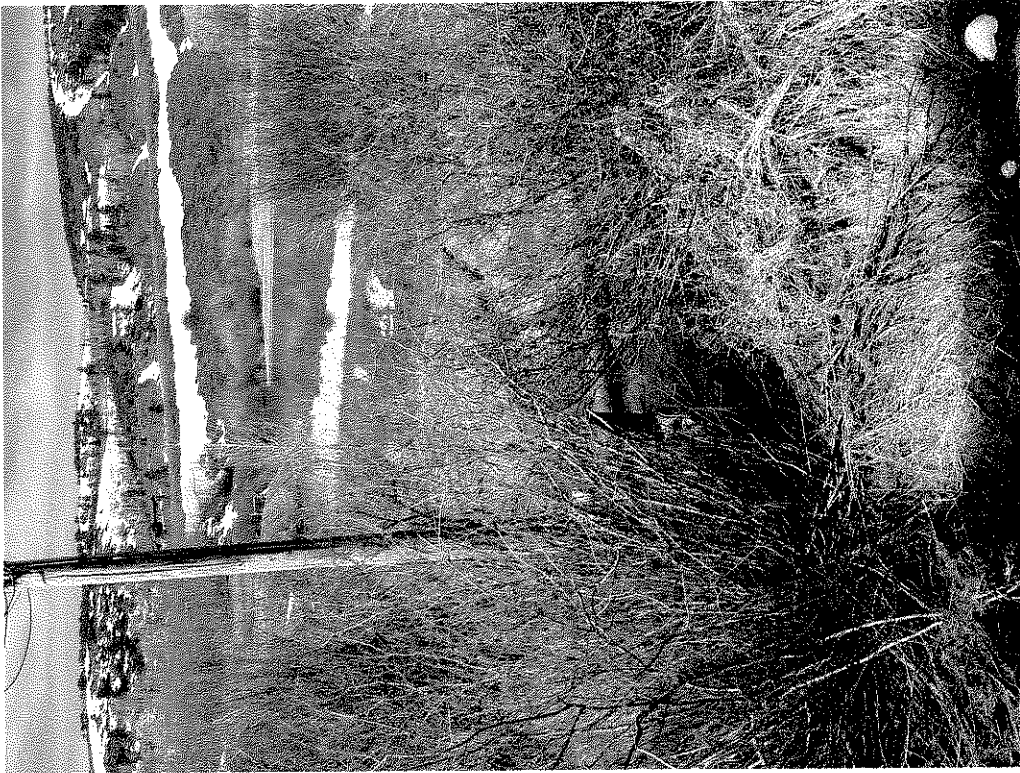
22-12714A/B

NWNE

new
GPS
tag



A22-12714 A+B pad, 20 hp pump



A22-12714 A+B ped, pump, Looking West



POLAR COORDINATE X--COR Y--COR (CHAINS)	BEARING ANGLE DIRECTION	ANGLE			DIST (FT)	CUMULATIVE ACRES
		DEGREES	MINUTES	SECONDS		
40.00	0.00					
60.00	0.11 NE	89.00	40.00	32.00	1319.83	0.11
60.00	6.49 NE	0.00	2.00	5.00	420.61	12.86
59.68	6.63 NW	65.00	57.00	49.00	23.04	13.14
55.16	4.73 SW	67.00	12.00	22.00	323.50	9.83
50.81	4.34 SW	84.00	52.00	42.00	288.17	9.33
50.76	3.31 SW	2.00	54.00	39.00	68.00	8.22
39.99	3.25 SW	89.00	40.00	32.00	710.73	8.18
40.00	-0.00 SE	0.00	6.00	24.00	214.48	8.18