

**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 63-5207**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
David R. Tuthill Jr., Director
Donald V. Shaff, Adjudication Bureau Chief

June 19, 2007

I. INTRODUCTION

Special Master Theodore R. Booth of the Snake River Basin Adjudication (“SRBA”) court issued a trial scheduling order on June 11, 2007, requesting the Director of the Idaho Department of Water Resources (“IDWR”) submit a report to the Court detailing IDWR’s basis for its recommendation in subcase no. 63-5207. In response to this request, IDWR submits this Supplemental Director’s Report Regarding Subcase No. 63-5207 in accordance with Idaho Code § 42-1412(4) and Administrative Order 1. This report was prepared under the supervision of David R. Tuthill, Jr., Director, and Don V. Shaff, Adjudication Bureau Chief for IDWR.

The following IDWR employees have knowledge of the information contained in this report: Vicky Music, Senior Water Resource Agent; Jan Shurte, Adjudication Water Rights Supervisor, Western Regional Office; Carter Fritschle, Section Manager, Adjudications Bureau.

II. BACKGROUND

On August 15, 1989, members of the Nordling and Neville family (“Claimants”) originally claimed in the SRBA water right no. 63-5207 based on a statutory claim. *See Claimants’ SRBA Claim*, Exh. 1. On that same day, Claimants also filed overlapping claims on two other rights, nos. 63-3321A and 63-3285A, which were based on licenses from a ground water well. On December 12, 2005, Cartwright Ranch LLC (“Cartwright Ranch”) submitted a Change of Ownership form to IDWR seeking change of ownership for all three rights. On December 16, 2005, IDWR filed its recommendation for water

right 63-5207 with the SRBA District Court.¹ See *IDWR Director's Report*, Exh. 2. On April 20, 2006, Cartwright Ranch filed an objection, contesting the place of use and quantity elements of IDWR's recommendation. See *Cartwright Ranch's Objection*, Exh. 3. No other objections or responses have been filed on subcase no. 63-5207. On June 2, 2006, IDWR filed a Notice of Completed Administrative Proceeding in the SRBA substituting Cartwright Ranch, the new owner, for the Claimants.

III. DISCUSSION

This report first discusses Cartwright Ranch's objection to IDWR's recommendation and then explains the history of water right no. 63-5207. Lastly, this report examines the basis of IDWR's recommendation for the place of use and quantity elements.

A. Cartwright Ranch's Objection.

Cartwright Ranch objects to IDWR's place of use and quantity elements as recommended for subcase no. 63-5207. IDWR's place of use recommendation lists acres for irrigation, stockwater, and both irrigation and stockwater from storage in four sections of Township 4 North, Range 2 East in Ada County. A remark for the place of use specifies this right and the two licensed rights, 63-3285A and 63-3321A, "are limited to the irrigation of a combined total of 55.1 acres in a single irrigation season." Exh. 2, at p. 2. IDWR recommended 1.1 cubic feet per second ("cfs") for irrigation of the 55.1 acres and 0.02 cfs for stockwater for a total diversion rate of 1.12 cfs. *Id.*

¹ Because Cartwright Ranch submitted its Change of Ownership on the eve of IDWR's filing of its Director's Report for Irrigation and Other Rights, Basin 63, Part II, 63-5207 was recommended originally in Claimants' name.

In its objection, Cartwright Ranch states that the right should provide for 5.48 cfs and 254 acres of use. *See Objection*, Exh. 2, at 2. In its reasons supporting its objections, Cartwright Ranch states the proposed change will “make the recommendation consistent with the license.” *Id.*

B. History of water right 63-5207.

Water right 63-5207 is based upon a statutory claim filed on June 30, 1983, by H. William Neville. The only difference between the statutory claim and the SRBA claim is that the latter includes stockwater and irrigation storage uses. *See SRBA Claim*, Exh. 1.

The claimed quantity is 5.08 cfs for the irrigation of 254 acres, 0.40 cfs for stockwater, and .75 acre feet per annum (“afa”) for both stockwater and irrigation storage and for stockwater and irrigation from storage. The claimed source for irrigation is Dry Creek, and the water source for stockwater and stockwater storage is a spring tributary to Dry Creek. The claimed priority date is January 1, 1908. *Id.*

For irrigation, Claimants named as their diversion system a “concrete dam instream to ditches to flood irrig[ation]” from Dry Creek.² There is no dispute that at some point in time Claimants ceased using the diversion dam, located in the SWSE quarter-quarter of Section 4. *See 2005 Field Inspection Report*, Exh. 4, at p. 9. At some point in time after the dam was built, Dry Creek changed course, and the remnants of the dam are no longer on Dry Creek. Indeed, Dry Creek now passes to the southwest of the dam remnants.

² The claimed source for stockwater and stockwater storage is a spring tributary to Dry Creek in Section 9. *See Exh. 1.*

C. Basis for IDWR's Recommendation

In a beneficial use right determination, the burden is on the claimant to put forth sufficient evidence to substantiate the claimed elements of a water right, including beneficial use, and enable the IDWR agent to verify those elements. I.C. § 42-1411(5). The claim for 63-5207 was assigned to Vicky Music for claim investigation and recommendation. She reviewed aerial photography of 63-5207, topographic maps of the area, and the files for the overlapping license rights 63-3285A and 63-3321A to determine the extent of beneficial use. Documents available to IDWR failed to establish the number of acres that were beneficially used. Using the 1987 NAPP photo, Ms. Music concluded that none of the acres claimed for 63-5207 were irrigated in 1987. *1987 NAPP photography*, Exh. 5. Furthermore, the topographic map of the claimed area illustrates that a substantial portion of the acres are not irrigable from the claimed point of diversion. *Topographic Map*, Exh. 6. The contours and lay of the land simply do not support the claimed 254 acres from Dry Creek. *Id.*

Because of the lack of evidence establishing the number of irrigated acres, Ms. Music contacted Claimants seeking additional information. In early 2005 during a telephone conversation with one of the Claimants, Thomas Neville, Ms. Music asked for the Claimant to help identify irrigated acres on the aerial photographs. In response, Mr. Neville was unable to provide any specific information about the use of Dry Creek or the number of acres irrigated, but he did state that his father had been very sick and at sometime in the mid-1980s, irrigation of the property ceased.

Ms. Music then turned to earlier aerial photography for evidence of historical irrigation use, from the years 1964 and 1975, the only earlier aerial photographs available

in the IDWR reference materials. The 1964 aerial revealed activity in the claimed place of use. *1964 Aerial photography*, Exh. 7. The 1964 photo is black and white, however, and the resolution was inadequate for Ms. Music to determine if the activity evident was irrigation or another activity, such as mowing. The photography revealed a stark difference in appearance between the land claimed in Section 5 which was farmed, likely irrigated from the well of the two licensed rights, and the activity seen in Sections 4 and 9.

Ms. Music also reviewed a 1975 U.S. Geological Survey Orthophoto Quadrangle map which failed to substantiate a 254-acre place of use. *1975 aerial photography*, Exh. 8. Indeed, the only apparent cultivation evident in the 1975 photo was in Section 5, that same area which is irrigated by ground water from the well of the two licensed rights.

Ms. Music also considered aerial photography from 1992 and 2003, for reference purposes. The resolution of these later aerials is far superior to the 1964 and 1975 aerials, allowing Ms. Music to gain a better perspective of the place of use, but did not assist Ms. Music in her determination of beneficial use. *See 1992 and 2003 aerial photographs*, Exhs. 9-10.

Prior to the recommendation, on August 25, 2005, an IDWR subcontractor visited the Cartwright Ranch property accompanied by Dave Shaw, who was, at that time, Claimants' consultant. The 2005 field examination could not verify 254 acres irrigated from Dry Creek. *See Field Inspection Report*, Exh. 4. Mr. Shaw also provided a 2000 aerial photograph. The irrigated place of use demonstrated by the 2000 and 2004 aerials is approximately 55 acres in Sections 4 and 5. This served as the basis for IDWR's place

of use recommendation for this right.³ The subcontractor took photographs of the diversion dam and noted that the dam had been abandoned but the year of such abandonment was unknown and the ditches on each side of Dry Creek had washed out. The subcontractor reported that when questioned as to the year the dam was abandoned, Mr. Shaw did not know.

Dry Creek is a contentious source. Cartwright Ranch's beneficial use right is in the middle part of the seniority of users and would affect at least a dozen other water users junior to water right no. 63-5207. Thus, the risk of injury to those other claimants weighed on Ms. Music's determination.

While Cartwright Ranch was able to establish a historical (although now abandoned) point of diversion, evidence on the number of acres irrigated was inconclusive except for 55.1 acres. In other words, Cartwright Ranch provided sufficient evidence of a historical point of diversion but has failed to show the extent of beneficial use beyond the 55.1 recommended acres. Accordingly, IDWR could not recommend the full 254 acres claimed. Based on the topographic map, the above-referenced photographic evidence, the field inspection report, and the significant risk of injury to others on the waterway, Ms. Music recommended a place of use of 55.1 acres and 1.12 cfs. A copy of IDWR's Place of Use Map is attached as Exh. 11.

D. Evidence Obtained after the Recommendation

At the initial hearing on subcase no. 63-5207, Cartwright Ranch's counsel, John Marshall, provided Ms. Music with two aerial photographs, bearing handwritten dates of

³ Ms. Music requested that Cartwright Ranch provide proof that the 55.1 acres were being irrigated from Dry Creek and not just from the overlapping ground water rights. Cartwright Ranch was not able to submit any proof that the irrigation in the photographs was from Dry Creek. Despite this, Ms. Music felt obligated to recommend 55 acres from Dry Creek.

“1981” and “1983.” No other indication of date or source is evident from the photographs. Based on these photographs, Ms. Music was able to re-evaluate the two licensed rights and is now recognizing 122 acres for the two licensed rights. However, it appears that the irrigation taking place in the photographs was from ground water from the two overlapping ground water rights. As such, IDWR does not believe that this is sufficient justification to expand the beneficial use right 63-5207 to any more acres.

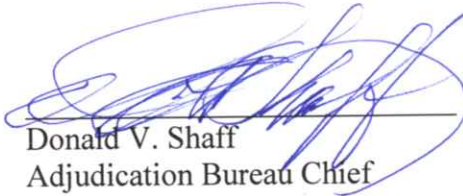
After the recommendation and in response to Cartwright Ranch’s objection, on June 11, 2007, Ms. Music conducted a field examination accompanied by Jan Shurte and Kay Walker, of IDWR’s Western Office, as well as Craig Saxton, IDWR’s Water Rights Supervisor. The field examination revealed no irrigation activity anywhere on the claimed place of use. The claimed place of use in Section 5 was overgrown with grasses. It was not possible to identify a complete delivery system. The claimed place of use in Section 9 showed no signs of irrigation activity. The claimed place of use in Section 4 was covered with well-established sagebrush, indicating a lack of irrigation for a significant time period. From the field examination, Ms. Music could only identify a part of a system that consisted of approximately 100 feet of old ditch bed near the point of diversion. There was no evidence that other points of diversion were established from Dry Creek.

IV. CONCLUSION

Cartwright Ranch has failed to provide IDWR with sufficient evidence to establish 254 acres have been beneficially irrigated from Dry Creek. IDWR’s recommendation of 55.1 total acres for Cartwright Ranch’s place of use was based upon information available at the time of the claim review, topography and the available

photography. Plus, IDWR's recommendation for 1.12 cfs is grounded in the statutory one inch to the acre (55 acres = 1.10 cfs) and the requisite .02 cfs for instream watering stock. Accordingly, IDWR recommends that the Special Master adopt IDWR's recommendation for water right no. 63-5207.

Respectfully submitted this 19th day of June 2007.



Donald V. Shaff
Adjudication Bureau Chief

CERTIFICATE OF SERVICE

I certify that on June 19, 2007, I caused the original and/or copies of this document to be served, including all attachments, to the following persons addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ Overnight Mail
☐ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

John M. Marshall
601 W Bannock St
PO Box 2720
Boise, ID 83701-2720

☐ Overnight Mail
☐ Regular Mail
☒ Hand-Delivered
☐ Facsimile



Signature of person mailing form

EXHIBIT #1

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: A63-05207
Date Received: 5/10/1989
Receipt No: W004485
Received By: _____

RECEIVED
AUG 15 1989

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Department of Water Resources
Western Regional Office

1. Name:	H. WILLIAM NEVILLE	208-344-3188
Address:	820 S. OWYHEE BOISE, ID	83705
AND/OR		
Name:	GLORIA D. NEVILLE	208-344-3188
Address:	820 S. OWYHEE BOISE, ID	83705
AND/OR		
Name:	JAMES L. NEVILLE	
Address:	XXXXXXXXXX, UT	00000-000
AND/OR		
Name:	MARTHLYNN ^{2m872} B. NEVILLE	
Address:	XXXXXXXXXX, UT	00000-000
AND/OR		
Name:	R. DOUGLAS NEVILLE	
Address:	XXXXXXXXXX, ID	00000-00
AND/OR		
Name:	MARGUERITE NEVILLE	
Address:	XXXXXXXXXX, ID	00000-000
AND/OR		
Name:	THOMAS NEVILLE	
Address:	XXXXXXXXXXXXXX, ID	00000-0000
AND/OR		
Name:	FORTUNATA NEVILLE	
Address:	XXXXXXXXXX, ID	00000-0
AND/OR		
Name:	DAVID L. NORDLING	
Address:	XXXXXXXX, ID	00000-00

AND/OR
Name: YOSHIE CAMERON NORDLING
Address: XXXXXXXXXX, ID 00000-00

2. Date of Priority: JAN 01, 1908

3. Source: SPRING Trib. to: DRY CREEK
DRY CREEK BOISE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02E	4	SE	SW			ADA
		9	SW	NW			ADA

Beginning Point of Minimum Instream Flow						
04N	02E	9	SW	NW		ADA

Ending Point of Minimum Instream Flow						
04N	02E	4	NW	SW		ADA

5. Description of diverting works:
CONCRETE DAM INSTREAM TO DITCHES TO FLOOD IRRIG.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	5.080		
IRRIGATION STORAGE	01/01	12/31			0.75
IRRIGATION FROM STORAGE	03/15	11/15			0.75
STOCKWATER	01/01	12/31	0.400		
STOCKWATER STORAGE	01/01	12/31			0.75
STOCKWATER FROM STORAGE	01/01	12/31			0.75

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
S/420 RANGE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02E	4	SW	NW		IRR	10.0
			NE	SW		IRR	5.0
			NW	SW		IRR	20.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	02E	4	NW	SW		STOCK	
			SW	SW		IRR	6.0
			SW	SW		STOCK	

Section Acres 41.0

5	SW	NE	IRR	40.0	0
	SE	NE	IRR	40.0	300
	SW	NW	IRR	7.0	700
	SE	NW	IRR	30.0	700
	NE	SE	IRR	35.0	400
	NW	SE	IRR	15.0	1500
	SE	SE	IRR	6.0	600

Section Acres 173.0

8	NE	NE	STOCK		
9	NW	NW	IRR	10.0	1000
	NW	NW	STOCK		
	SW	NW	IRR	30.0	700
	SW	NW	STOCK		
	SW	NW	STO FS		8200

Section Acres 40.0

Total Acres 254.0

11. Place of use in counties: ADA

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

13. Other Water Rights Used:
63-03321, 63-03285,

14. Remarks:
ORIGINAL STATUTORY CLAIM FAILED TO STATE THE STORAGE USE.

15. Basis of Claim: STATUTORY CLAIM

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: _____

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): Yoshie K. Nordling Date: July 14, '89
David L. Nordling Date: July 14, 1989

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 14th day
of July 19 89
Seal

[Signature]
Notary Public

Residing at Boise
My Commission Expires 9-4-91

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: _____

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): Martha B. Nevill (Date) 8-10-89
James F. Lovell (Date) 8-10-89

State of Idaho :SS.

County of Butte

Subscribed and sworn (or affirmed) before me this 10th day of August, 19 89.



Notary Public for Butte County
Residing at Butte County
My Commission Expires: _____

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: _____

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): R Douglas Neville (Date) 8-2-89

Marguerite Neville (Date) 8-8-89

State of Idaho)
County of Lincoln) :SS.

Subscribed and sworn (or affirmed) before me this 8th day of August, 19 89.

[Signature]
Notary Public for Idaho
Residing at London
My Commission Expires: 8-1-91

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: _____

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): William Smith (Date) 8-14-89
Gloria J. Revell (Date) 8-14-89

State of Idaho)
:SS.
County of Blaine)

Subscribed and sworn (or affirmed) before me this 14th day of Aug, 19 89.

Thomas D. Landridge
Notary Public for Blaine
Residing at Meridian, Id
My Commission Expires: 8-17-1994

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: _____

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): Fortunata P. Neville (Date) 8/15/89
Thomas F. Neville (Date) 8-15-89
By William Smith POA.

State of Idaho)
County of Oda) :SS.

Subscribed and sworn (or affirmed) before me this 15th day of August, 19 89.

Robert L. Walker
Notary Public for Idaho
Residing at Base
My Commission Expires: 7-1-1994

EXHIBIT #2

12/12/2005

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-5207

NAME AND ADDRESS: DAVID L NORDLING
3122 EDSON TERRACE
BOISE ID 83705

GLORIA D NEVILLE
3122 EDSON TERR
BOISE ID 83705

YOSHIE CAMERON NORDLING
3122 EDSON TERRACE
BOISE ID 83705

H WILLIAM NEVILLE
3122 EDSON TERR
BOISE ID 83705

MARGUERITE NEVILLE
3122 EDSON TERR
BOISE ID 83705

THOMAS F NEVILLE
3122 EDSON TERRACE
BOISE ID 83705-2317

R DOUGLAS NEVILLE
3122 EDSON TERR
BOISE ID 83705

FORTUNATA P NEVILLE
3122 EDSON TERRACE
BOISE ID 83705-2317

MARTHLYN B NEVILLE
3122 EDSON TERR
BOISE ID 83705

JAMES L NEVILLE
3122 EDSON TERR
BOISE ID 83705

SOURCE: DRY CREEK
SPRING

TRIBUTARY: BOISE RIVER
TRIBUTARY: DRY CREEK

QUANTITY: 1.120 CFS

The rights listed below are limited to a total combined diversion rate of 1.1 cfs. Combined Right Nos.: 63-3321A, 63-3285A and 63-5207.

PRIORITY DATE: 01/01/1908

POINT OF
DIVERSION:

T04N R02E S4 NWSW End of Stream Flow Within ADA County
T04N R02E S4 SESW Within ADA County
T04N R02E S9 SWNW Begin of Stream Flow Within ADA County
T04N R02E S9 SWNW Begin of Stream Flow Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	01/01 12/31	0.020 CFS
IRRIGATION	03/01 11/15	1.100 CFS
STOCKWATER FROM STORAGE	01/01 12/31	0.020 CFS
IRRIGATION FROM STORAGE	03/01 11/15	0.75 AFY
STOCKWATER STORAGE	01/01 12/31	0.75 AFY
IRRIGATION STORAGE	01/01 12/31	0.75 AFY

PLACE OF USE:

IRRIGATION Within ADA County					
T04N R02E S04	NWSW	11.30	T04N R02E S04	SWSW	1.60
T04N R02E S05	SWNE	17.70	T04N R02E S05	SENE	5.80
T04N R02E S05	NESE	17.00	T04N R02E S05	NWSE	1.70

STOCKWATER Within ADA County

T04N R02E S04	NWSW	T04N R02E S04	SWSW
T04N R02E S08	NENE	T04N R02E S09	NWNW
T04N R02E S09	SWNW		

STOCKWATER FROM STORAGE Within ADA County

T04N R02E S09	SWNW
---------------	------

IRRIGATION FROM STORAGE same as IRRIGATION

55.1 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 55.1 acres in a single irrigation season. Combined Right Nos.: 63-3321A, 63-32835A and 63-5207.

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 quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

Stockwater use is for 250 range cattle.

EXHIBIT #3

**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

A. Subcase 63-5207

(Insert water right number)

**STANDARD FORM 1
OBJECTION**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Cartwright Ranch LLC

Address: c/o Grossman Company Properties

3101 N. Central Ave, Ste. 1390

Phoenix AZ 85012

Daytime Phone: 208-388-1270

Name & Address of Attorney, if any:

John M. Marshall

Givens Pursley LLP

601 W Bannock Street, Boise 83702

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Cartwright Ranch, LLC

c/o Grossman Company Properties

3101 North Central Avenue, Suite 1390

Phoenix, AZ 85012

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 5.48 cfs
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: 254 acres
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): _____

Proposed change will make recommendation consistent with license.

F. VERIFICATION (Must be Completed)

State of IDAHO)
) ss.
County of Ada)

John M. Marshall, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)
[Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: April 20, 2006

Amanda McCurry
Notary Public for Idaho
Residing at: Star, Idaho
My Commission Expires: 4/15/2011



INSTRUCTIONS FOR MAILING

You must mail the objection to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 20, 2006, I mailed the original and copies of this response, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

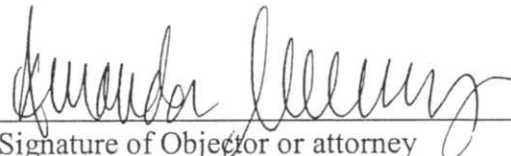
N/A

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

EXHIBIT #4

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid
 - ☐ Well logs (if needed)
 - ☐ Copy of topo or NAPP
 - ☐ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
 - ☐ Check POD & POU overlap, see below – include overlapping right for exam
 - ☐ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) 63-3321A + 63-3285A and 63-5207Owner: H. William Neville, Marilyn R. Neville Phone No. 344-3188
James L. Neville.Current Address: 3122 Edison Terr

- ☐ No change NAME IS THE SAME
- ☐ NEW OWNER _____
- ☐ No change Address
- ☐ NEW ADDRESS _____
- ☐ How long owned property? _____

Accompanied by: David Shaw**PRIORITY DATE**

- ☒ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: Dec. 03, 1962, April 12, 1962

(If priority date, based on your exam, seems questionable, explain below.)

SPRING
WELL

DRY CREEK.
DRY CREEK

Source: DRY CREEK Tributary to Boise River

- ☒ No Change – SAME SOURCE
- ☐ Source found is different than claimed: _____

POINT OF DIVERSION

- ☐ No change
- ☒ POD found is different than claimed: DRY CREEK Diversion Abandoned
- ☐ If different, when did POD change? ?

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

Concrete Structure with a dirt ditch on each side of Dry Creek.
Which is now Abandoned See pictures. 3 & 4. Well with 20 HSP Turbin
Pump to 6" line. Picture # 2

OVERLAP REVIEW

Other water rights with the same point of diversion: _____

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain: _____

WATER USES

- ☐ No change
☐ Different Uses

Use IRRIGATION From 03/15 To 11/15 Amount .64 CFS 143.08 AFA
 Use Stock Water From 01/01 To 12/31 Amount _____ CFS .75 AFA
 Use Storage From 01/01 To 12/31 Amount _____ CFS .75 AFA

Total 5.480**TOTAL VOLUME – Groundwater only**

- ☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA
☐ Changes found, the new total is, Amount _____ CFS _____ AFA
☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

NON-IRRIGATION USES:

- ☒ No change
☐ Changes Exam found: Domestic # of homes _____ Stock # _____
 Types _____ Additional comments: _____

PLACE OF USE:

- ☐ No Change
☐ Changes shown below:

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: NO

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: A 20 HSP TURBINE pump to a 6" main line to Hand Lines & ALSO Wheel Lines. See pictures 1, 2 & 3

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size
GPS 2319810	U.S. MOTOR	20	3262181	turbine	6"
USR, 1392780					

FLOW MEASUREMENTS:

Attach appropriate documents

Old DIVERSION
STRUCTURE

GPS 2320729
USR, 1391866

Estimated beginning
of SPRING

2320349
1391089

NARRATIVE/REMARKS/COMMENTS

The original concrete & steel check structure to a dirt ditch on each side of DRY creek has washed out & the creek has routed around the structure completely. The dirt ditches were approximately 2.5' at bottom & 3.5' across the top. 125 pair of cattle graze the property & water anywhere all along the creek. The pond area directly above the abandoned structure was where the 75 acre ft of storage was claimed. Mr. David Shaw supplied a disk with the acres irrigated & a outline of property. The well appears not to be used in the 2005 season (to date) See pictures (143) Ten Acres has been sold in the SENE Sec. #5 (per Dave)

FLOW CALCULATIONS

Measured Method:

_____ Additional Computation Sheets Attached

VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

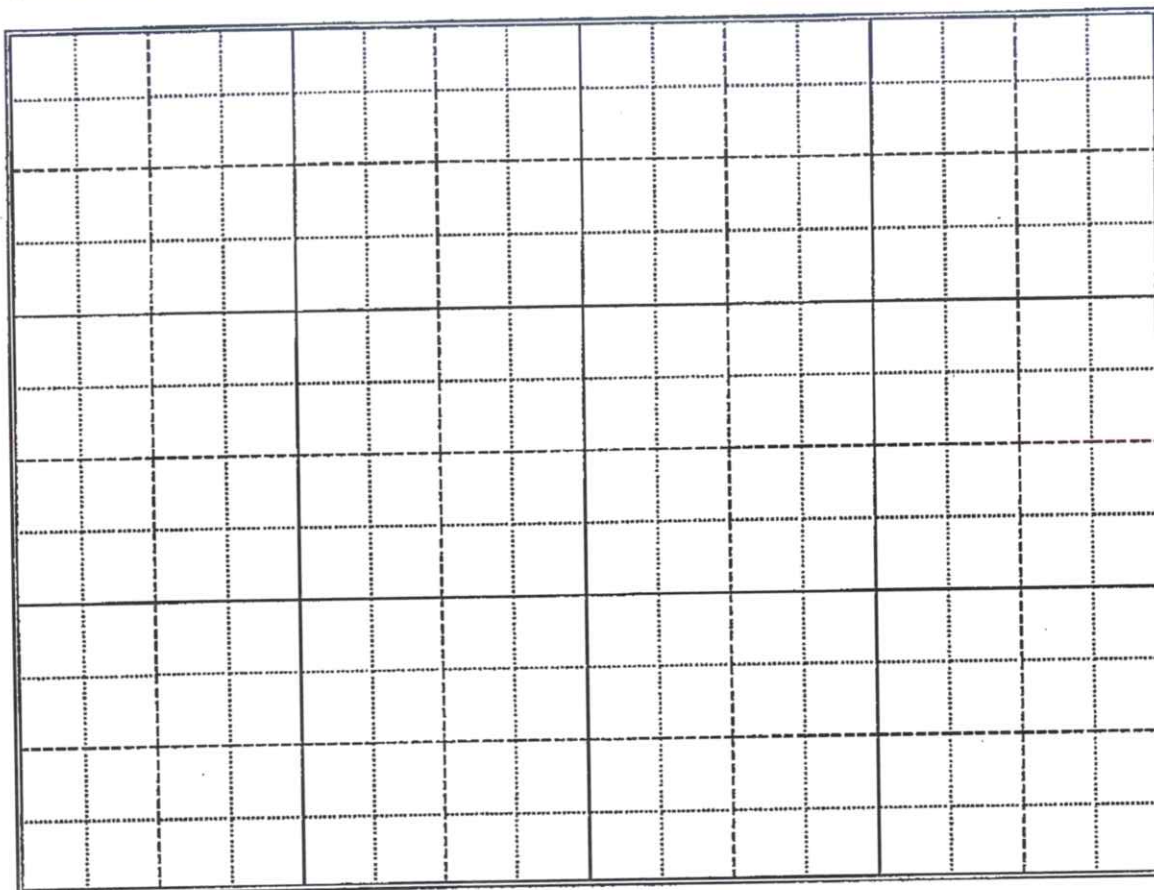
$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) = \underline{\hspace{4cm}}$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 = \underline{\hspace{4cm}}$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} = \underline{\hspace{4cm}}$$

2. Volume Calculations for Other Uses:

Delivery System Diagram: Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable.



Scale: 1" = _____

____ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

____ Aerial Photo Attached (required for irrigation of 10+ acres)

☒ Photo of Diversion and System Attached

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

*Code to correspond with No. on map and aerial photo

FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date

2. Measurements: _____

APPROXIMATE DIVERSION
63-3321A - 63-32851A + 63-5207 (Abandoned)
See Photos.



(David Shaw) Photo 2004

(Picture #1)



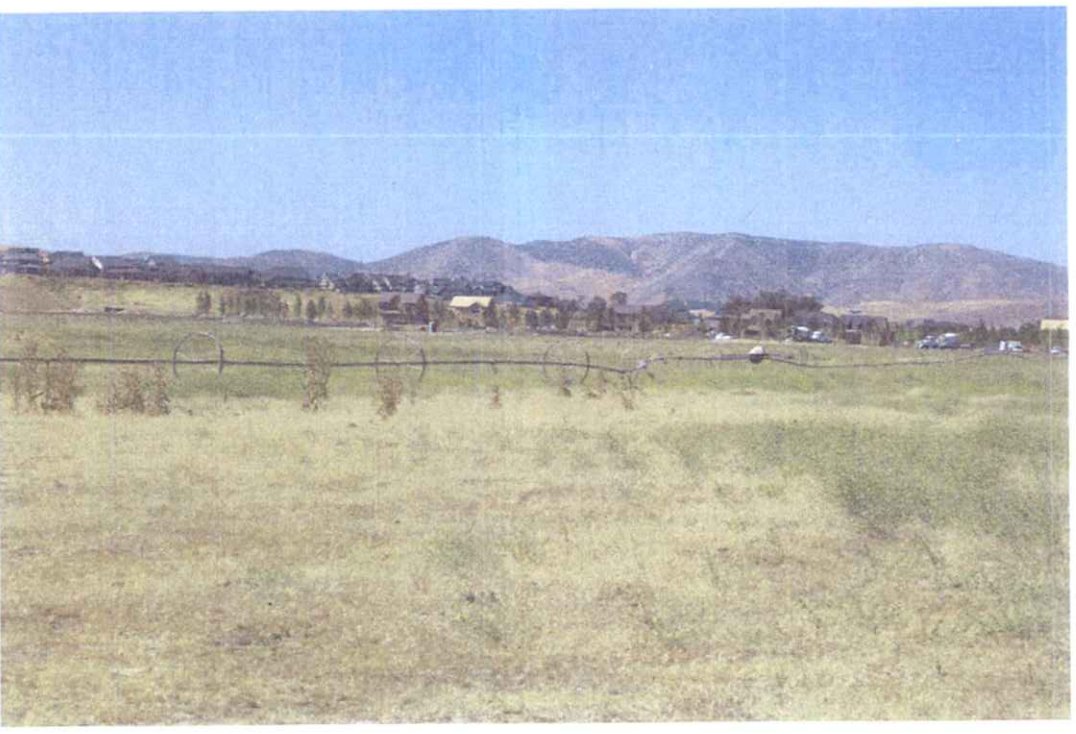
Lines From Pump To Irrigate
East Side of Dry Creek.

(Picture #2)



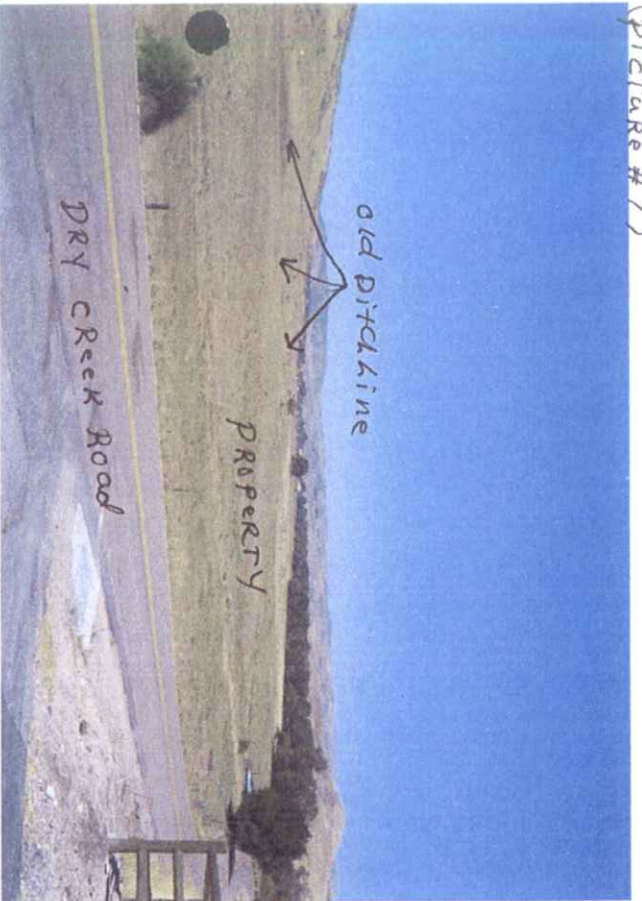
Well + Pump 20 HP.

63-33214 + 63-32854. for well

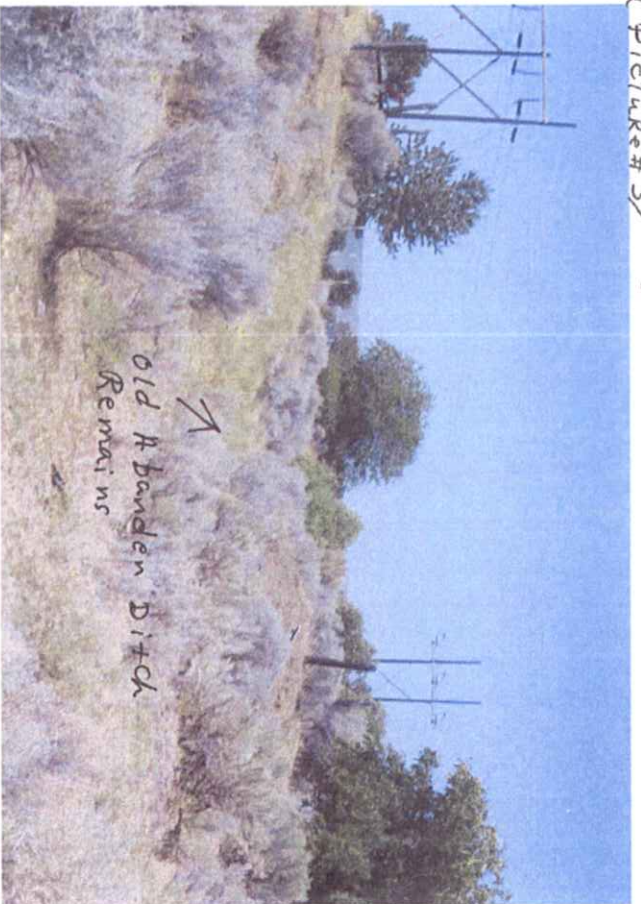


(Picture #3) Wheel Lines to Irrigate
West Side of Dry Creek
From Well

(Picture #1)



(Picture #3) 63-5207



(Picture #2) Appears to be Beginning of Spring.

DRY CREEK DIVERSION (Abandoned)

(Picture #4)

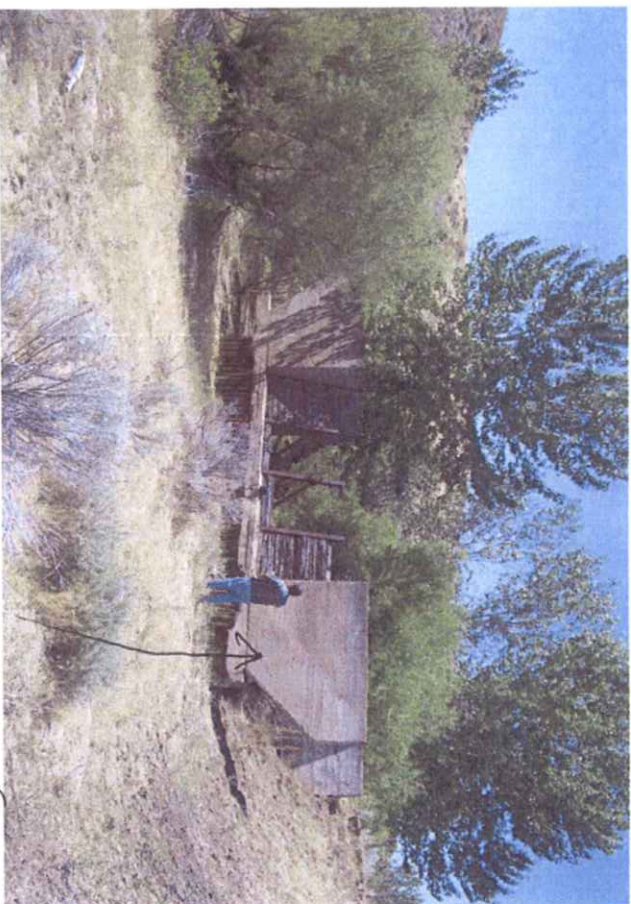


EXHIBIT #5

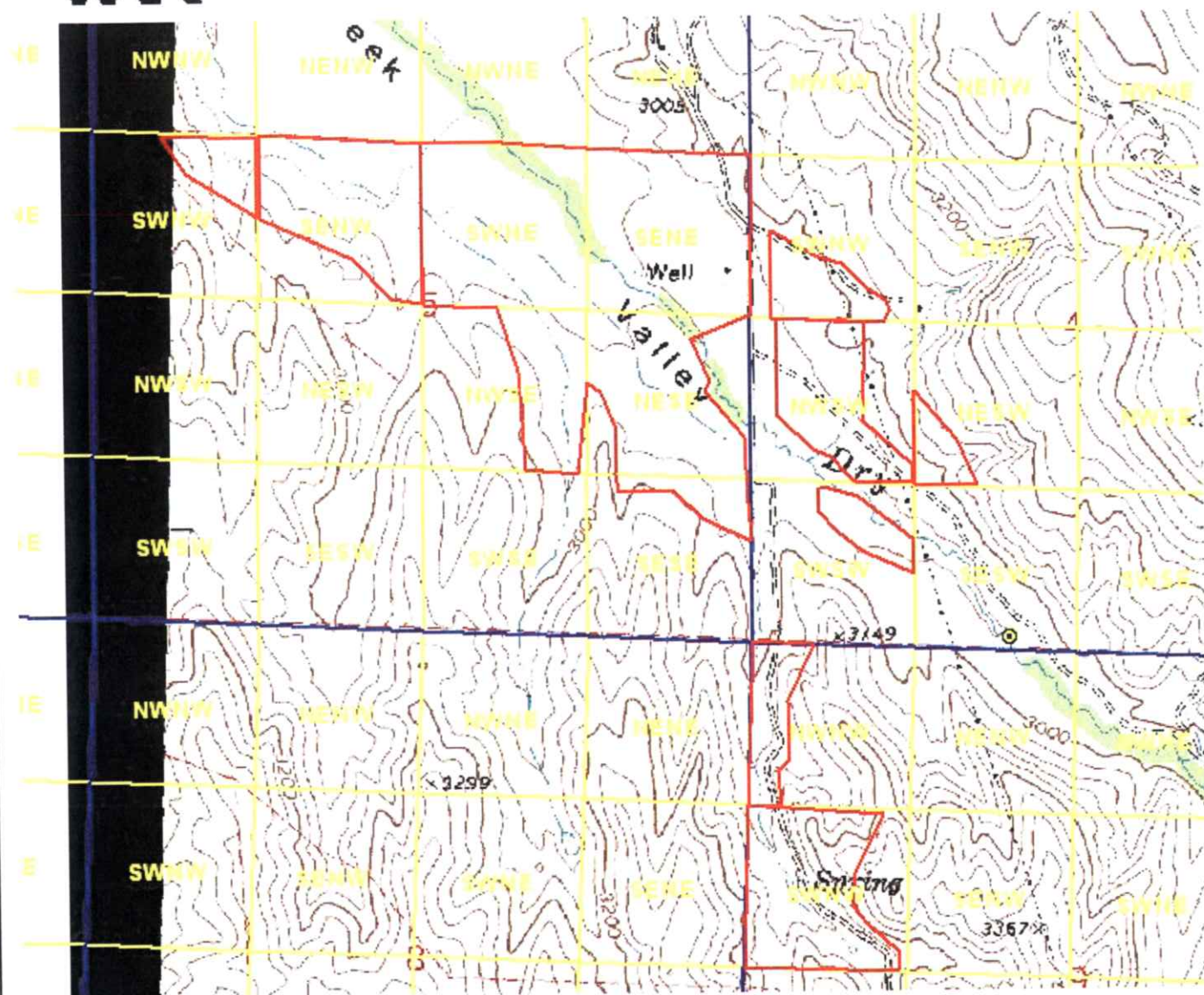


EXHIBIT #6



State of Idaho
Idaho Department of Water Resources
Western Region

T4N, R2E, SECTIONS 4, 5 AND 9
SRBA CLAIM NO. 63-5207



- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines
- Claimed placed of use



GIS Place of Use Illustration
USGS Topographic Quadrangle Map - X9
Prepared By: Vicky Music
Date: June 2007

EXHIBIT #7

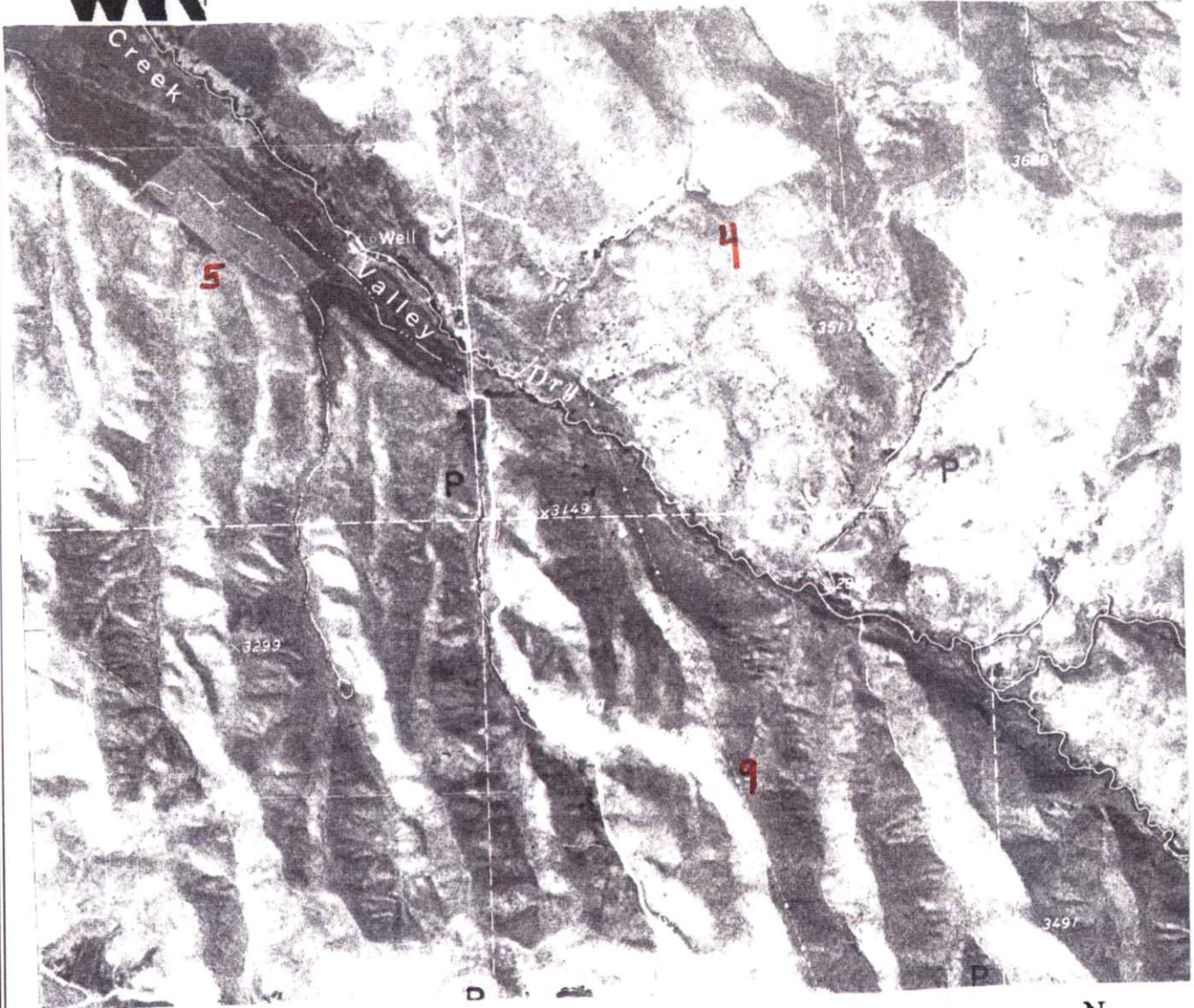
GIS Place of Use Illustration
1964 Aerial Photography
Prepared By: Vicky Music
Date: June 2007

EXHIBIT #8



State of Idaho
Idaho Department of Water Resources
Western Region

T4N, R2E, SECTIONS 4, 5 AND 9
SRBA CLAIM NO. 63-5207



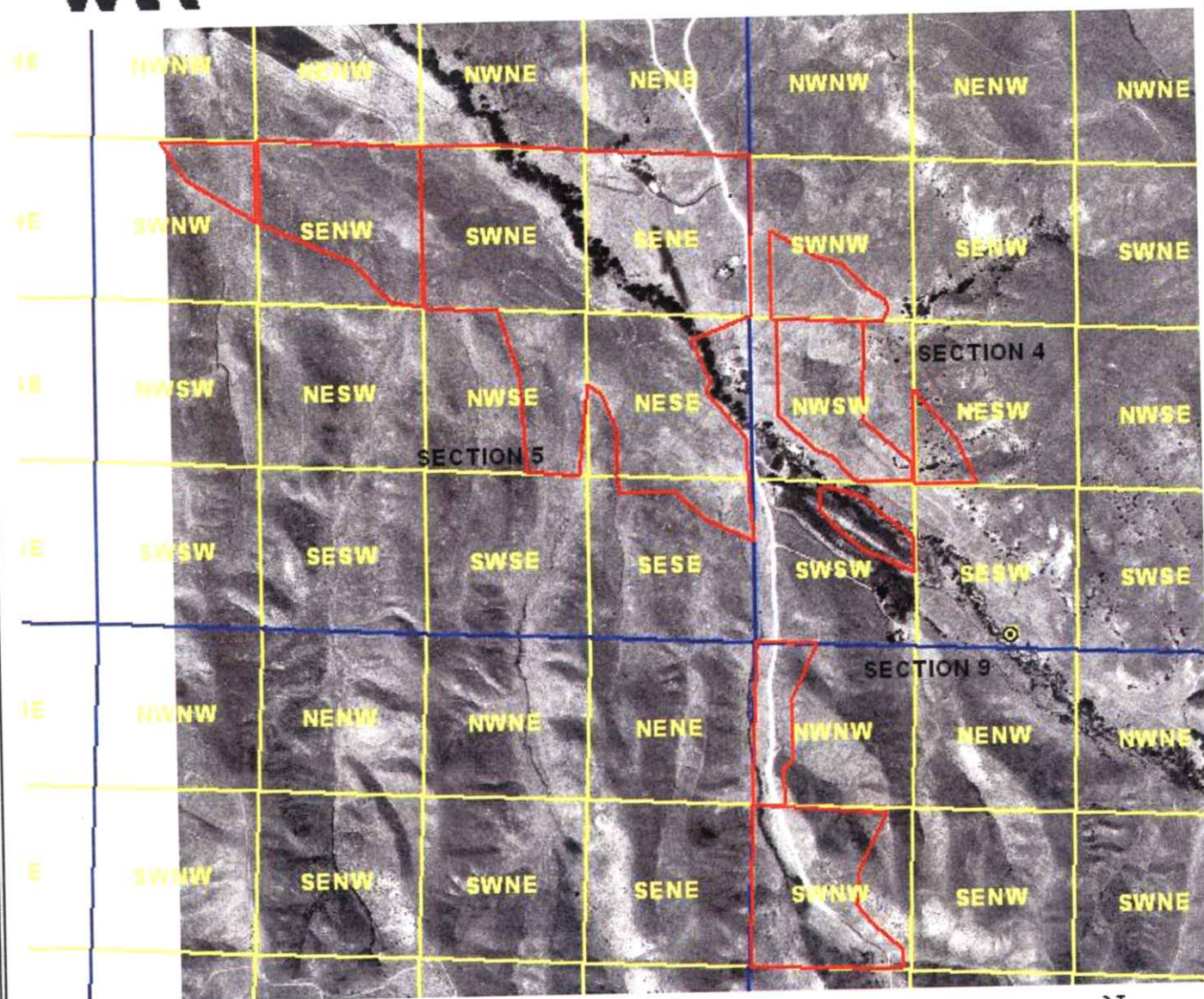
GIS Place of Use Illustration
1975 Orthophoto Quadrangle Map
Prepared By: Vicky Music
Date: June 2007

EXHIBIT #9



State of Idaho
Idaho Department of Water Resources
Western Region

T4N, R2E, SECTIONS 4, 5 AND 9
SRBA CLAIM NO. 63-5207



- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines
- Claimed placed of use

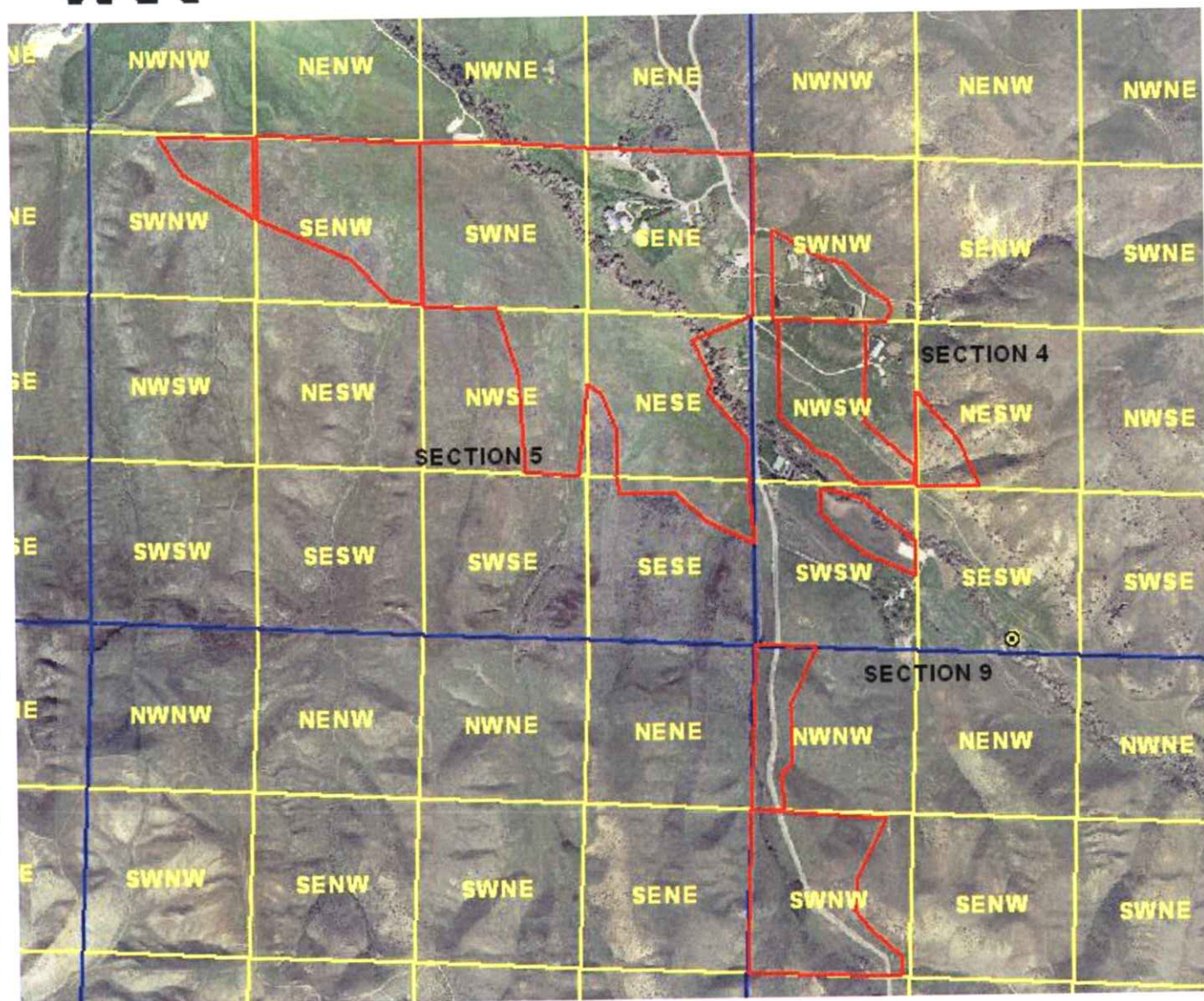
GIS Place of Use Illustration
X9_nw_1992 DOQQ
Prepared By: Vicky Music
Date: June 2007

EXHIBIT #10



State of Idaho
Idaho Department of Water Resources
Western Region

T4N, R2E, SECTIONS 4, 5 AND 9
SRBA CLAIM NO. 63-5207



- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines
- Claimed placed of use



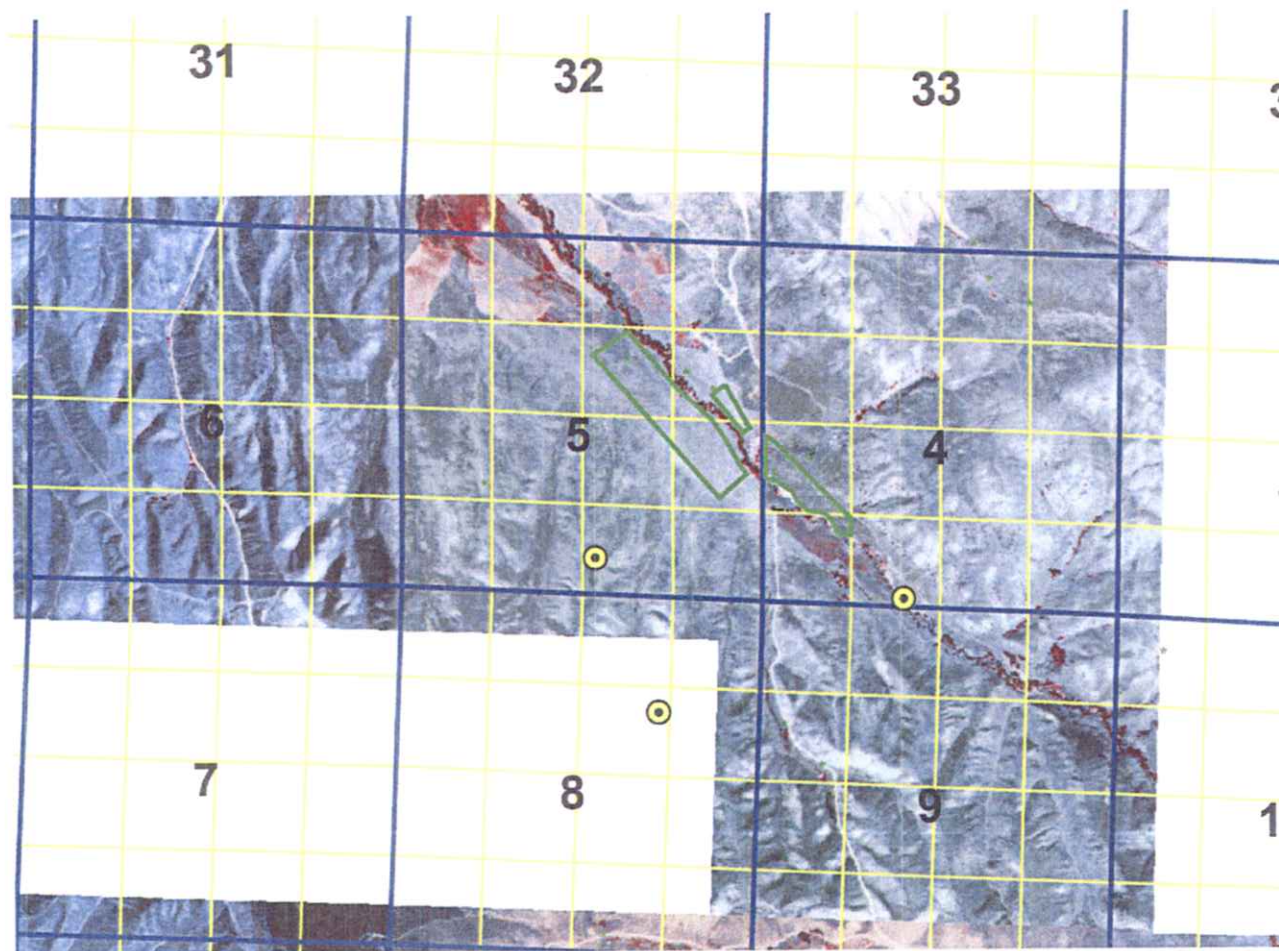
GIS Place of Use Illustration
2003 Aerial Photography
Prepared By: Vicky Music
Date: June 2007

EXHIBIT #11

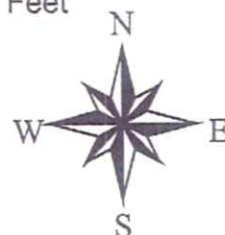


State of Idaho
Idaho Department of Water Resources
Western Region

T4N R2E SECTIONS 4, 5, 8, 9
Water Right (s): 63-5207



1320 0 1320 2640 3960 5280 6600 7920 9240 Feet



-  Point of Diversion
-  Place of Use
-  Section Lines
-  Quarter Quarter Lines

GIS Place of Use Illustration
1987 NAPP Photography
Prepared By: Vicky Music
Date: December 2005