

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 39576

Subcase

67-14877

(Insert water right number)

STANDARD FORM 4

MOTION TO FILE:

☒ LATE NOTICE OF CLAIM

☐ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is Chester L. Madsen, Kevin Andrew Madsen, or
~~and~~ Eunice E. Madsen

My address is 2073 N. Galena Road
Council, ID 83612

My phone number is: Work _____ Home 208 253 4815

I am an attorney representing NA

My name is _____

My address is _____

My phone number is _____

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☒ I did not file a Notice of claim to the use of water in the SRBA because:

Medical reasons - Chester Madsen was hospitalized
Sept 11, 2005 and then transferred to the
Wesley Rehabilitation and Care Center on Sept 16, 2005.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☐ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

I have attached:

- ☒ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☒ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 250.00.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on _____
(Insert Date and Time)
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of water in the SRBA because:

- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

I have attached:

- ☐ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of Idaho

County of Adams

Chester L. Madsen,
Eunice E. Madsen, or
Kevin A. Madsen

(Insert name of person filing form)

, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Kevin A. Madsen

Eunice E. Madsen

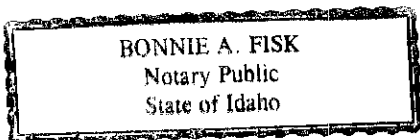
Signature of person filing motion

Chester L. Madsen
by Eunice E. Madsen POA
Attorney signing in representative capacity

Subscribed and sworn to before me on

June 20th, 2007

(Insert Date)



Bonnie A Fisk

Notary Public for Co. 4 Idaho

Residing at: Council, Idaho

My Commission expires: 11/21/09

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on June 21st, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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. Copies to:

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

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

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

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing the form

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 _____

Date Received _____

Receipt Number _____

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

See Attachment

Please type or print clearly

1. Name of Claimant (s) Chester L. Madsen, Kevin A. Madsen or Eunice E. Madsen Phone (208) 253 4815

Mailing Address 2073 N Galena Road Zip 83612

2. Date of Priority (Only one (1) per claim) Council ID 83612

See Attached

3. Source of water supply (a) _____
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township _____ Range _____ Section _____,
_____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot, _____ B.M., County of _____

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. _____

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) _____ (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
16N	01W	10			23														23
16N	01W	10			2														2

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? _____

12. Do you own the property listed above as place of use? Yes _____ No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

or None ()

14. Remarks:

Last Name _____ Ident No. _____

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number Sub case 67-14877 Decree Date _____
Plaintiff vs Defendant _____

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

Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Chester J. Madson Bonnie E. Madson

By POA Date 6-20-07

Date 6-20-07

For Organizations: I do solemnly swear or affirm that I am Kevin A. Madson

Title

of _____, that I have signed the foregoing

Organization

document in the space below as _____

Title

of _____

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

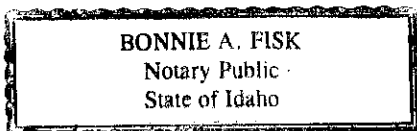
Title and Organization _____

Date _____

State of Idaho/or _____)
County of Adams) SS.

Subscribed and sworn (or affirmed) before me this 20th day of June 10 2007

SEAL



Notary Public Bonnie A Fisk

Residing at Council, Idaho

My Commission Expires 11/21/09

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name

MADSEN

Ident. Number _____

Chester Leo Madsen, Kevin Andrew Madsen, or Eunice E. Madsen
2073 N. Galena Road
Council, ID 83612
Message phone: (208) 253-4815

Idaho Department of Water Resources
The Idaho Water Center
Attn. East Fork of Weiser River and Mill Creek ditch Adjudication (Snake River Water)
Sub case: 67-14877 Late File/Claim form
322. E. Front Street
Boise, Idaho 83720-0098

June 20, 2007

The tract comprising the Township 16 North, Range 1 West SW1/4 of NE1/4 Sec. 10, of the Boise Meridian, here after referred to as this tract/said tract. Partly covered by Water Right number: 67-11491. However the Preliminary Recommendation of Water Rights (Water Right number: 67-11491) dated 11/14/2006 is in error. It only lists it as a Grossen Creek water right – whereas the water right includes Cottonwood water ((Grossen creek and north fork cottonwood – vial the north lateral of Sorenson Rhinehart Ditch). It also lists a use period from 3/15 to 11/15. Generally what occurs is water from Grossen creek only is used from 3/15 to first part of May and then water is turned in from the Sorenson Rhinehart Ditch which supplements Grossen creek. These combined waters seldom lasts much past 8/15 except in high snow pack year without waste waters from Mill Creek and East fork of the Weiser River. More than 18 acres historically (at least since irrigated by the Madsen family starting in 1960) have been irrigated and are currently irrigated say around 23 to 25 acres see enclosed maps.

Not having this tract in the official service area of but not limited to the East fork of Weiser River, Cottonwood, Grossen, and Mill creek water (ditches) will be considered a take. Historically and currently these waters “service” this tract. Waste water and sub irrigation has been a valued contribution to this tract in the form of but not limit to: stockwater, forage/crop production, domestic use, fish production, aesthetics, wildlife, ground water recharge, and wetland values. East fork water, Mill creek water, Grossen creek, and Cottonwood water co-mingled on this property and were used by the Madsen Family since 1960. Furthermore, ditch and other water from “upstream” areas cannot be naturally excluded from SW1/4NE1/4 Sec. 10, Township 16 North, and Range 1 West of the Boise Meridian under current irrigation practices due to surface and subsurface flows. Therefore, non use or a shift in use, impounding, diversion (by pumping, converting from unimproved ditch to, but not limited to, pipe and or improved cement or plastic coated ditch, tilling, etc) of surface and subsurface water “upstream” of said tract results in a take of water, surface and/or subsurface, from this tract and a take in terms of but not limited to historical forage value, wildlife habitat, aesthetics, fish production, ground water recharge, and wetlands values. Ditch water has been a major factor to the value of this tract since the early 1900s taking away or drying up surface or subsurface flows is a take.

Therefore a Late File water rights claim 67-14877 is entered. The reason for the late file is due to medical reasons – Chester Madsen was hospitalized September 11, 2005 and then transferred to The Weiser Rehabilitation and Care Center on September 16, 2005. Chester born March 22, 1921 and has owned this tract with Eunice Madsen since October 4, 1954. During the first few years of ownership, Chester tore down the existing house and moved in another house and then he installed head gates, ponds and irrigated said tract starting in the summer of 1960.

This claim is to document the current use pattern of water dating back to the use by the Madsen family starting in the summer of 1961 and have Mill Creek/ East Fork water adjudicated to this tract. Plus more than 18 acres historically have been irrigated and are currently irrigated say around 23 acres see enclosed maps. It is also proposed to reestablish irrigation on about an acre and start irrigation on another 2 acres for a total of 25 acres irrigated.

Claim form for Sub case: 67-14877

Item 1: Chester Leo Madsen, Kevin Andrew Madsen, and Eunice Madsen
2073 N Galena Road; Council, ID 83612
(208) 253-4815

Item 2: We hereby enter one priority date based on the following evidence. This tract had 0.15 CFS of Mill creek water prior to its transfer to Council Valley Orchard tracts in 1933, see Book of Deeds 13 page 510, John W. Hoover and Ida B. Hoover to Lewis E. Winkler attached (these waters were decreed to W.F. Winkler in the Muir Brothers vs. Allison, et al, water adjudication suit, 1921 and originally adjudicated in 1906). Use by the Madsen family started in the summer of 1960 when this tract was serviced by waters from but not limited to the East fork of Weiser River, Cottonwood, Grossen, and Mill creek water. Adjudicating 0.15 CFS of Mill Creek/East Fork water and increasing the irrigated acres to 23 acres would maintain the status quo (since summer of 1961) by allowing historical use of East fork of Weiser River, Cottonwood, Grossen creek, and Mill creek waters even if use patterns changed “upstream”. Priority date of 1961 will be submitted if it is suitable to acquire and hold this water claim.

Item 3: I hereby request the adjudication of 7.5 miners inches (0.15 CFS) or the amount allowable of Mill creek/East fork of Weiser River both from the same ditch and both tributaries of the Weiser River of Adams County which is a tributary of the Snake River and that 23 acres are denoted as irrigatable

Item 4: All following diversions except the **Main Diversion** are from existing ditches not diversions from instream flows, see maps enclosed (Overall map), Master Map of Project and Photo Master Map of Project (at 16 inches equals one mile), plus Expanded Map of Pd1 (proposed diversion 1):

Main Diversion (Grossen creek – the north lateral of Sorenson Rhinehart Ditch):
Township 16N Range 01W Section 11, NE1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of Adams.

Secondary Diversions of Main Diversion (Grossen creek – the north lateral of Sorenson Rhinehart Ditch):

Current diversion 1 (**Cd1**) – established by 1960 it is the primary feed of the tract.

Township 16N Range 01W Section 10, NW1/4 of NW1/4 of NW1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of Adams.

Current diversion 2 (**Cd2**) - established by 1960 it is the secondary feed of the tract.

East side of County road: Township 16N Range 01W Section 10, NW1/4 of NW1/4 of NW1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of Adams. West side of County Road:

Township **16N** Range **01W** Section **10**, **NE1/4 of NE1/4 of NE1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Current diversion 3 (**Cd3**) - established by 1960 it is the secondary feed of the tract. East side of County road: Township **16N** Range **01W** Section **10**, **NW1/4 of SW1/4 of NW1/4 of SE1/4 of NE1/4** Boise Base Meridian, County of **Adams**. West side of County Road: Township **16N** Range **01W** Section **10**, **NE1/4 of SE1/4 of NE1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Current diversion 4 (**Cd4**) - established by 1960 it is the secondary feed of the tract. East side of County road Township: **16N** Range **01W** Section **10**, **NW1/4 of SW1/4 of SE1/4 of NE1/4** Boise Base Meridian, County of **Adams**. West side of County Road: Township **16N** Range **01W** Section **10**, **NE1/4 of SE1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Reestablishment diversion 1 (**Rd1**) – this diversion was originally established in the early 1960s and was destroyed when the County upgraded the road to a paved surface and added fill in the early 1980s. This diversion was used to irrigate a garden spot about 1 acre. East part of diversion east of County road: Township **16N** Range **01W** Section **10**, **NW1/4 of NW1/4 of SW1/4 of SE1/4 of NE1/4** Boise Base Meridian, County of **Adams**. West side of County Road: Township **16N** Range **01W** Section **10**, **NE1/4 of NE1/4 of SE1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Proposed diversion 3 (**Pd3**) – to irrigate additional two acres a secondary diversion of **Main Diversion (Grossen creek – the north lateral of Sorenson Rhinehart Ditch)**. East side of County road roughly: Township **16N** Range **01W** Section **10**, **NW1/4 of SW1/4 of SW1/4 of SE1/4 of NE1/4** Boise Base Meridian, County of **Adams**. West side of County Road: Township **16N** Range **01W** Section **10**, **NE1/4 of SE1/4 of SE1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Capture of waste water and waste water mixed with adjudicated waters.

Proposed diversion 1 (Pd1) – to supplement and/or replace existing diversions Cd1 and Cd2 as the primary feeds of tract.

Headgate and ditch extension on east side of County road: Township **16N** Range **01W** Section **10**, **NW1/4 of NW1/4 of NW1/4 of SE1/4 of NE1/4** Boise Base Meridian, County of **Adams**. The riser and pipe at the west side of County Road: Township **16N** Range **01W** Section **10**, **NE1/4 of NE1/4 of NE1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**. This would be required to directly use Mill Creek/ East Fork waters on a majority of the tract.

Current diversion 5 (**Cd5**) - established in early 1960s as the feed to a pond for irrigation of the tract. Roughly Township **16N** Range **01W** Section **10**, **NE1/4 of NW1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Proposed diversion 2 (**Pd2**) – to supplement proposed pond will Mill Creek and East fork waste and adjudicated water. Roughly Township **16N** Range **01W** Section **10**, **NE1/4 of NE1/4 of NW1/4 of SW1/4 of NE1/4** Boise Base Meridian, County of **Adams**.

Existing Ponds

60 feet X 114 feet (Upper pond (**UPond**)): Township **16N** Range **01W** Section **10**, NE1/4 of SE1/4 of NE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**.

60 feet X 60 feet (Lower pond (**LPond**)):

Township **16N** Range **01W** Section **10**, NW1/4 of NW1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**.

Original Mill Creek diversion (**OMCd**) – used to take Mill Creek water onto property prior to 1960. Township **16N** Range **01W** Section **10**, NE1/4 of NE1/4 of NE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**.

Proposed Pond

Roughly 2 to 7 acres partially within Township **16N** Range **01W** Section **10**, SW1/4 and SE1/4 of NE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams** an Application of Permit will be filed at a latter date.

Release Points from propose pond 1- 3 - **Rp1** Township **16N** Range **01W** Section **10**, SE1/4 of NE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**. **Rp2** Township **16N** Range **01W** Section **10**, SW1/4 of NE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**. **Rp3** Township **16N** Range **01W** Section **10**, SE1/4 of SE1/4 of NW1/4 of NE1/4 Boise Base Meridian, County of **Adams**.

Item 5:

Main Diversion (Grossen creek – the north lateral of Sorenson Rhinehart Ditch):

Township **16N** Range **01W** Section **11**, NE1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of **Adams**. Primitive diversion no headgate.

Secondary Diversions of Main Diversion (Grossen creek – the north lateral of Sorenson Rhinehart Ditch):

Current diversion 1 (**Cd1**) – established summer of 1960 it is the primary feed of the tract. Condition: poor needs replaced. A large headgate about 12 foot wide and 3 feet deep and 6 inches wide cement structure across main ditch/drainage. This supplies a 140 feeder ditch which extends through neighbors pasture to Cd2. It is frequently damaged by livestock and requires continued maintenance.

Current diversion 2 (**Cd2**) - established by 1960 it is the secondary feed of the tract. Condition: usable by aged.

East side of County road : 5 foot X 3 foot cement headgate that: 1) diverts water into ditch along the east side of County road to downstream diversions and 2) under the County road vial a 10 inch culvert to said tract on west side of County road.

Proposed diversion 3 (**Pd3**) – to irrigate 2 additional acres.

East side of County road would entail a small head gate with trash catcher and an 8 – 10 inch culvert under County road to the West side of County Road.

Capture of waste water and waste water mixed with adjudicated waters.

Proposed diversion 1 (**Pd1**) – to supplement and/or replace existing diversions Cd1 and Cd2 as the primary feeds of tract.

East side of County road: new Headgate approximately 4 foot wide 4 foot high and ditch extension (approximately 30 feet) to existing ditch near Cd2 on east side of County road. If a riser is not established on the west side of County road, a riser would need to be established on the east side of the road connecting to the existing culvert going under the County road to the west side, Cd2 east to west.

West side of County Road: a 8 inch riser off of existing 32 inch culvert and a 8inch pipe extending approximately 97 feet south just west of County road, Cd2 west.

Current diversion 3 (**Cd3**) - established by 1960 it is the secondary feed of the tract.

East side of County road comprises just boards in ditch and a 12 inch culvert under road to West side of County Road. Use of this diversion would continue even it with change of diversion to Pd1 from Cd1.

Current diversion 4 (**Cd4**) - established by 1960 it is the secondary feed of the tract.

East side of County road: no headgate just a 24 inch culvert under the road to

West side of County Road: In 1995 a head gate was installed on the west side of road to utilize 8inch gated pipe, in May of 2007 that head gate was removed and replaced by a small holding pond to utilize 8inch gated pipe. Use of this diversion would continue even with change of diversion to Pd1 from Cd1.

Current diversion 5 (**Cd5**) – unimproved ditch established in early 1960s as the feed to Lower pond for irrigation of the tract. Use of this diversion would continue even it with change of diversion to Pd1 from Cd1.

Upper pond would be used in conjunction with proposed pond as a settlement pond. In the past it has been used for storage and pumped out of to sprinkle irrigate adjoining lands. It was constructed in the summer of 1960. Feed by subsurface flows and flows from Cd3.

Lower pond: Stockwater pond, sprinkler irrigation storage, and pump into proposed pond as needed. In the past it has been used for storage, stockwater, and pumped out of to sprinkle irrigate adjoining lands. It was constructed in the summer of 1960. Feed by subsurface flows and flows from Cd5.

Proposed diversion 2 (**Pd2**) – to supplement proposed pond with a mix of Mill Creek and East fork waste water and adjudicated water.

Reestablishment diversion 1 (**Rd1**) – this diversion was originally established in 1960s and was destroyed when the County upgraded the road to a paved surface and added fill in the early 1980s. This diversion was used to irrigate a garden about 1 acre.

East side of County road: small head gate and 8inch culvert under County road to West side of County Road.

Proposed Pond: construct a 2 to 7 acre pond an Application of Permit will be filed at a latter date.

To supply irrigation water to irrigate 15 - 25 acres from as early as mid July to mid October. Plus provide for other uses such as enhancement of late summer instream flows. Grossen creek/ the north lateral of Sorenson Rhinehart Ditch water alone can dry up in July and generally does by mid August therefore cutting the irrigation season short. By impounding water (adjudicated and waste waters) during flood stages and before and after irrigation season, irrigation of 10 to 25 acres would be possible in even low snowfall years. This pond would also mitigate for the loss of the old Boise Cascade Mill pond and provide late season subsurface and surface flows "downstream" in dry years. The pond would be designed to dispense 20 to 60 acre feet of water to irrigate 15 – 25 acres over 60 to 90 days (starting as early as mid July and going as late as the mid October) based on applying 1.5" of water every 6 days. The pond would not be drawn down to less than 1.5 acres thereby allowing for over-wintering fish needs (15 feet deep in a portion of the pond) and to provide waterfowl resting water even in years of total draw down (total draw down is not an empty pond but a 1.5 acre pond with a 15 feet deep in a portion). The proposed pond could have up to a total active storage of 70 acre feet for other uses including but not limited to waterfowl resting, wildlife, late summer stream enhancement flows, fire protection, ground water recharge, Mitigation for loss of Boise Cascade Mill pond, and hydro power production for on site use (to pump water into pond from Pd2/Cd5).

Original Mill Creek diversion (**OMCd**) – used to take Mill Creek water onto property prior to 1960. Approximately 156 feet west of NE corner of the tract.

Item 6: Purpose of use: Stockwater (Livestock forage), agricultural crop production, Domestic Use (Lawns, gardens, personal orchard), wildlife, and ground water recharge. All uses except wildlife and ground water recharge are for irrigate season 3/15 to 11/15. Other uses are from 1/1 to 12/31.

The following is a list of alternatives to consider with Alternative 2 being the preferred Alternative.

Alternative 1: Protection of the status quo – adjudicate 0.360 CFC of Grossen creek/the north lateral of Sorenson Rhinehart Ditch and 0.15 CFC Mill Creek/East Fork water for 18 – 23 irrigated acres. Divert the Mill Creek/East Fork water at Pd1 and Pd2 see Master Map of Project and Photo Master Map of Project, plus Expanded Map of Pd1 (proposed diversion 1) attached.

Pd1 (Proposed diversion 1) is to replace and or supplement diversions Cd1 and Cd2 (current diversion 1 and 2). **Pd1** would be located just east of the NE corner of the tract just a little west of Cd1. Pd1 is proposed to have a riser on the west end of the culver (under the County road) to supply water currently supplied at Cd2 and a head gate just south of the east end of said culvert with a ditch extension to supply water to diversions to the south. Pd1 would allow capture of east fork and mill creek waste water coming from the north down the east side of the county road plus reroute floodwater down the east side of County road instead of flowing over County road when the capacity of culvert is exceeded (a frequent occurrence in major runoff events and results in a major road safety issue). If a riser is not established on the west side of County road, a riser would need to be established on the east side of the road connecting to the existing culvert going under the County road to the west side, Cd2 east to west.

As stated with the **Pd2** some of this water could be release from the proposed pond at **Rp3** by gravity feed for use by adjoining property to the North.

Pd1 would have multiple advantages 1) Eliminate livestock damage to feeder ditch from Cd1 to Cd2 (about 140 feet of ditch in a livestock pasture of a neighbor), 2) Allow easy roadside checks of amounts of water diversion, 3) Provide a safety overflow down the east side of country road instead of water running across County road in high flow events, 4) Allow for the status quo of using East Fork/Mill Creek waters even with changes of use pattern upstream, and 5) Could supply the adjoining property to the north gravity fed water. Water captured at Pd1 could in part be released at Rp3 in like amounts by gravity feed for use of property to the North. Water diverted at Pd2 would held in an adjoining holding pond and pumped into the proposed pond (elevated to proposed pond higher surface level by wind or electric powered pumps (hydro power could be used – hydro electric power could be generated as a byproduct of gravity irrigation (generated by inflow to Upper Pond and outflows at Rd1 and Rd2)).

Alternative 2: All above (Alternative 1) plus reestablishment of diversion removed by county during paving of road (**Rd1**) and addition of a diversion at **Pd3** thereby increasing acreage irrigatable. Part of this area was irrigated as a garden spot noted in green on Photo Master Map of Project, Rd1, Township **16N** Range **01W** Section **10**, NW1/4 of NW1/4 of SW1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of **Adams**. West side of County Road: Township **16N** Range **01W** Section **10**, NE1/4 of NE1/4 of SE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**. The other areas proposed to be serviced by Pd3 (approximately 2 acres - Township **16N** Range **01W** Section **10**, SE1/4 of SE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of **Adams**) were not irrigated in the past but make up for acres removed from agriculture use “upstream”. This area could utilize Grossen Creek//the north lateral of Sorenson Rhinehart Ditch and be included in its Service Area. Increase in irrigated acres from the 18 -23 acres currently irrigated to 25 acres irrigated – basically the majority of the tract would then be irrigatable (the tract is just less than 28 acres).

Item 7: adjudicate 0.360 CFC of Grossen creek/the north lateral of Sorenson Rhinehart Ditch and 0.15 CFC Mill Creek/East Fork water during irrigation season 3/15 – 11/15. Application of Permit will request 15 – 70 acre feet of active storage during the off season 11/16 – 3/14.

Item 8: NA

Item 9: Domestic Use (one household), Stockwater (22-30 head of cattle), fish production (two small farm ponds), Ground Water Recharge (this tract plus Properties to the west (downstream) also benefit - Township **16N** Range **01W** Section **10**, west and east of Old Railroad Grade (Weiser River Trail) SW1/4 of NE1/4 and Township **16N** Range **01W** Section **10**, SE1/4 of NW1/4 all of Boise Base Meridian, County of **Adams**. 80 plus acres.

Irrigation of 23 acres currently expandable to 25.

Item 10: Township 16 North, Range 1 West SW1/4 of NE1/4 Sec. 10, of the Boise Meridian, **Adams** County

Item 11: Adams County

Item 12: Have owned the property since 1954. Current irrigation patterns since 1961.

Item 13: Irrigation 67-11491, and Domestic water well

Item 14: This document and its attachments

Attachments:

- 1) Idaho Department of Water Resources Preliminary Recommendation of Water rights ... 11/14/2006
- 2) Idaho Department of Water Resources SRBA Recommendation: 67-11491 (irrigation)
- 3) Actual current use area
- 4) Master Map of Project : scale 16 inches equals 1 mile
- 5) Photo Master Map of Project : scale 16 inches equals 1 mile
- 6) Large View of Project
- 7) Expanded View of Project
- 8) Water Rights in District No. 41, State of Idaho, January 1, 1919
- 9) Book of Deeds pg 510
- 10) Durable power of Attorney for Financial and Health Care

The whole point is that if the field above (to the east) of this tract are not flood irrigated with unimproved ditches as historically it will result in a take. Even the impounding of water to the east of reduced the springs that feed our Upper Pond. Not being in the service area of Mill Creek/East fork is an artificial situation as since 1960s and before East fork of Weiser River, Cottonwood, Grossen creek, and Mill creek waters are used in the same above (to the east and west) this tract. This tracts ditches capture runoff of surface flows especially in the ditches running east of the county road from Cd2 to Cd3 to Cd4. Plus subsurface flows of waters east (above) of this tract are captured by the Upper Ponds and sub irrigate the western ½ of this tract. Pd1 would just allow for direct capture of newly adjudicated Mill Creek/East fork water versus requiring that the status quo continues and we capture run off from flood irrigation above us. If use patterns change and irrigation methods change (reducing surface and subsurface) runoff to lands to the East and North East of this tract without this tract having additional adjudicated water there will be a take. The additional adjudication only allows for the status quo to continue. There have been and will continue to be changes in land use and irrigation methods above (North East and East of this tract). A property currently flood irrigated as a hay field is zoned Light Commercial if it is taken out of agricultural production and no longer flood irrigated water use and runoff will practically cease therefore without addition adjudicated water to this tract the amount of water in the form of surface and subsurface flows will drastically decrease as we currently use more than the adjudicated 0.360 CFS especially during the spring and early summer. Again the addition of 015 CFS adjudicated waters would not increase the waters used by this tract but maintain the status quo. Plus prior final adjudication the amount of water currently supplied by Mill Creek/East Fork Ditch should be determined – it is argued that most ditches supply more than the current adjudicated water especially during the early irrigation season. For example, Mill Creek/East Fork Ditch just a few feet above our Main **Diversion** (Grossen creek – the north lateral of Sorenson Rhinehart Ditch Township 16N Range 01W Section 11, NE1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of Adams) supplies large quantities of water. The “excess” later in the year helps our adjudicated water travel further by partially sub irrigating the diversion point. Reducing water transported by unimproved ditches above our diversion points would reduce the amount of water that makes it to our tract. Therefore, one cannot just adjudicate water based on paper water rights; one must look at the effect on the Hydrology of the area.

Wildlife: Amphibians and other wildlife also rely on this tract food and shelter. This tract acts as a corridor between the Weiser River and the foothills of the Council Mountains to the East. Deer (Mule Deer and more recently Whitetail Deer) are users of this corridor. Whitetail deer feed on our pasture and fruit trees. This tract also supports Foxes (in 2006 alone 3 litters of fox kits), skunks and raccoon. Birds such as Black Capped Chickadee, Dark eyed Junco, Lark Sparrow, and California quail overwinter on this tract. We have wintered up to 100 California quail on our place. In February Cedar Waxwing, Grosbeak, Downy Woodpeckers, Common Flicker, and Barred and Great Horned Owls appear. March arrivals include Lesser Goldfinch, House Finch, Rufous sided Towhee, and Long-Billed Curlew. April arrivals Killdeer, American Goldfinch, Robin, and Red Wing and Yellow head Blackbirds. May brings Rufus Hummingbird, blue heron, and Common Snipe. Mallard ducks, Red Wing Blackbirds, Long-Billed Curlew, California quail, Common snipe, Killdeer, meadow larks, robins, magpies, and crows are a few of the birds that nest on the tract. Barn owls, Kestrels, Redtail Hawks, and nighthawks use the tract as spring and summer hunting grounds. Horned, and Barr owls use the tract as winter hunting grounds. Amphibians and other wildlife also rely on this tract food and shelter. We have wintered up to 100 California quail on our place. Canada geese, snow geese, and tundra swan migrate over our lands.

Instream flows for Salmon and Steelhead are not affected by this allocation as all runs that historically used these headwaters are now extinct.

Item 15: Beneficial Use Right

Attachments: 14. 1) – 10)

Item 14:

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... 11/14/2006
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14. 1)

11/14/2006

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

RIGHT NUMBER: 67-11491
NAME AND ADDRESS: EUNICE MADSEN
2073 N GALENA RD
COUNCIL ID 83612

CHET MADSEN
2073 N GALENA RD
COUNCIL ID 83612

Grossen Creek and north lateral of Sorenson Rhinehart Ditch (cottonwood water)

SOURCE: GROSSEN CREEK TRIBUTARY: WEISER RIVER
QUANTITY: 0.360 CFS
PRIORITY DATE: 05/10/1918
POINT OF DIVERSION: T16N R01W S11 SENE Within ADAMS County
PURPOSE AND PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	05/15 11/15	0.360 CFS

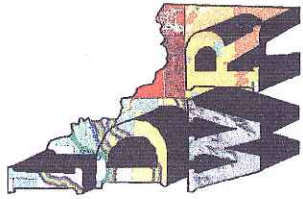
PLACE OF USE: IRRIGATION in ADAMS County
T16N R01W S10 SWNE 16.00
18 ACRES TOTAL

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

14, 2)



Idaho Department of Water Resources

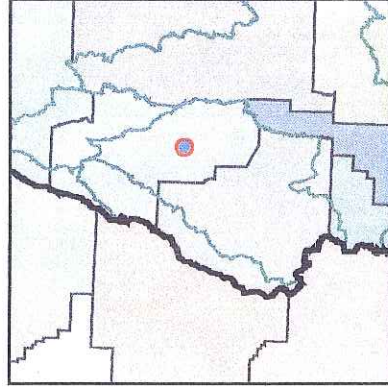
SRBA Recommendation:

67-11491

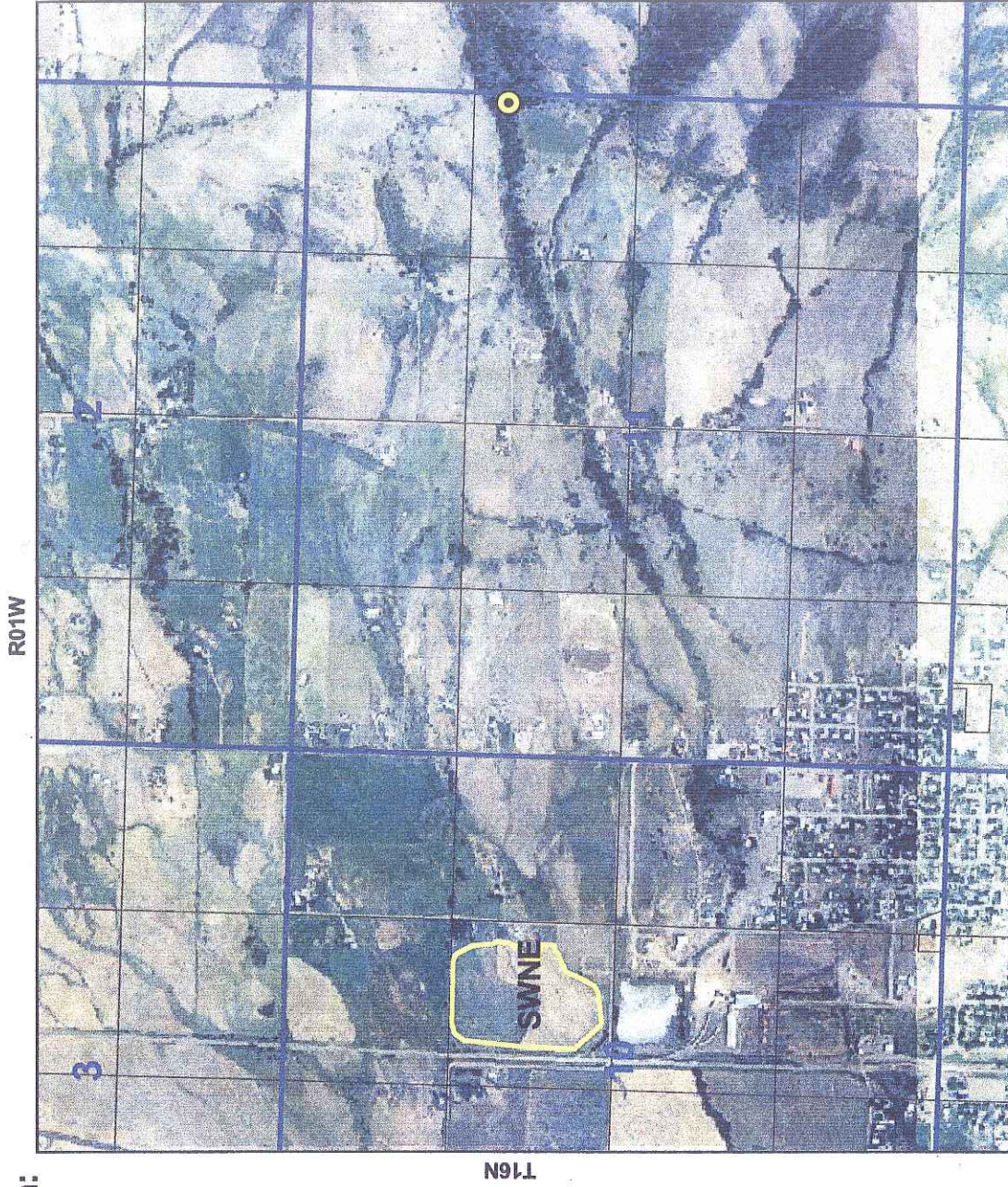
(Irrigation)

Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Adams County
IDWR Basin 67



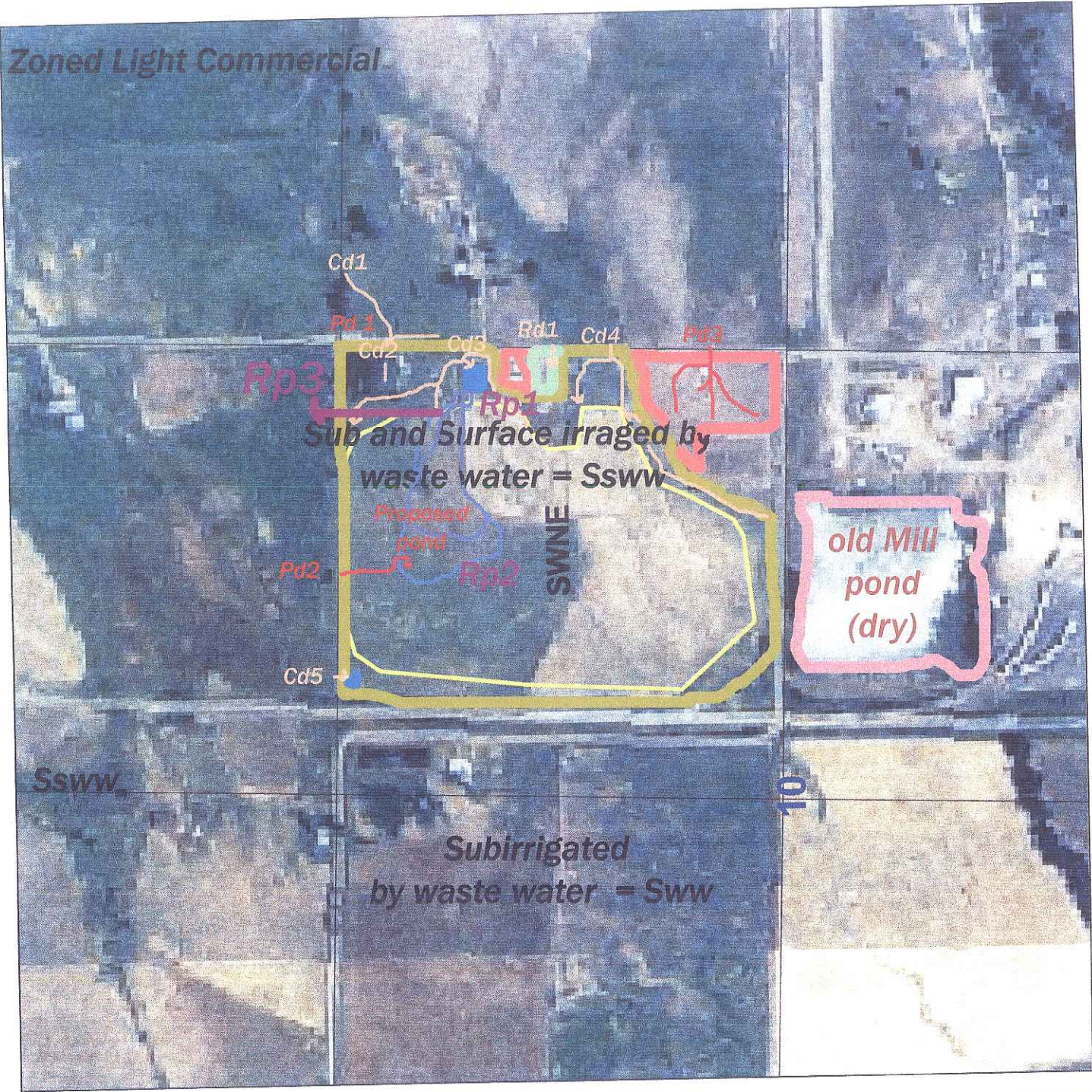
1.2 Miles

0.6

0

Prepared by IDWR State Office
On Wednesday, November 15, 2006
1987/88 Aerial Photography

Zoned Light Commercial



— actual current use area

● existing ponds used for sprinkler irrigation in the past

current diversion points Cd1-5 Proposed diversion points Pd1-3

Proposed pond 2 - 4 acres

Reestablishment of diversion

— Additional acreage

67-11491



67 - 14877



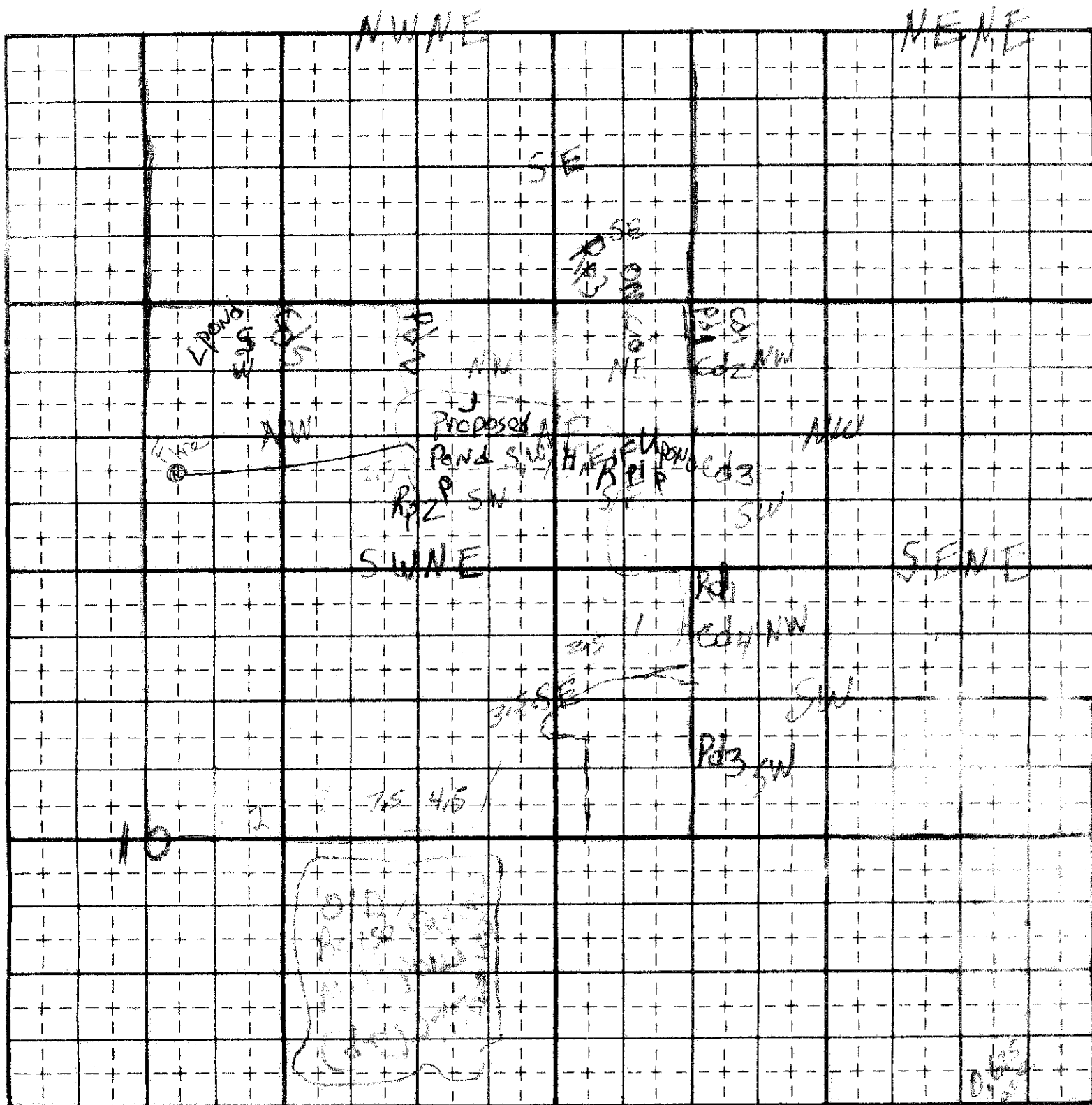
MADSEN H. MAP OF PROJECT

H 4)

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 1/6 inches equals 1 mile

T16N R01W SWNE 30010



Last Name

MADSEN

Ident No.

1N

Photo Master Map of Project

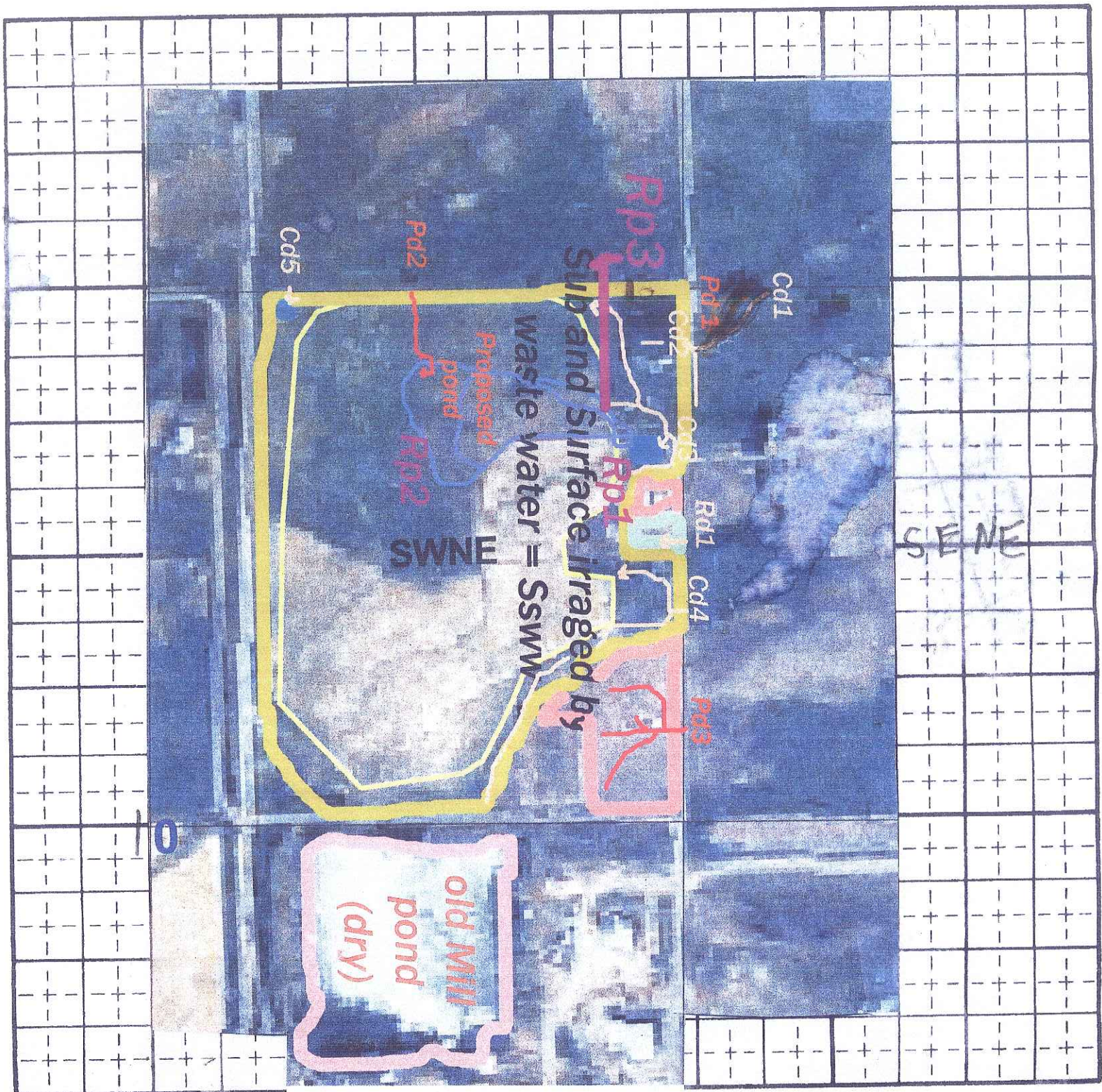
(4 5)

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale $\frac{1}{6}$ inches equals 1 mile

T16N R01W SWNE Sec 10

67-14877



Last Name

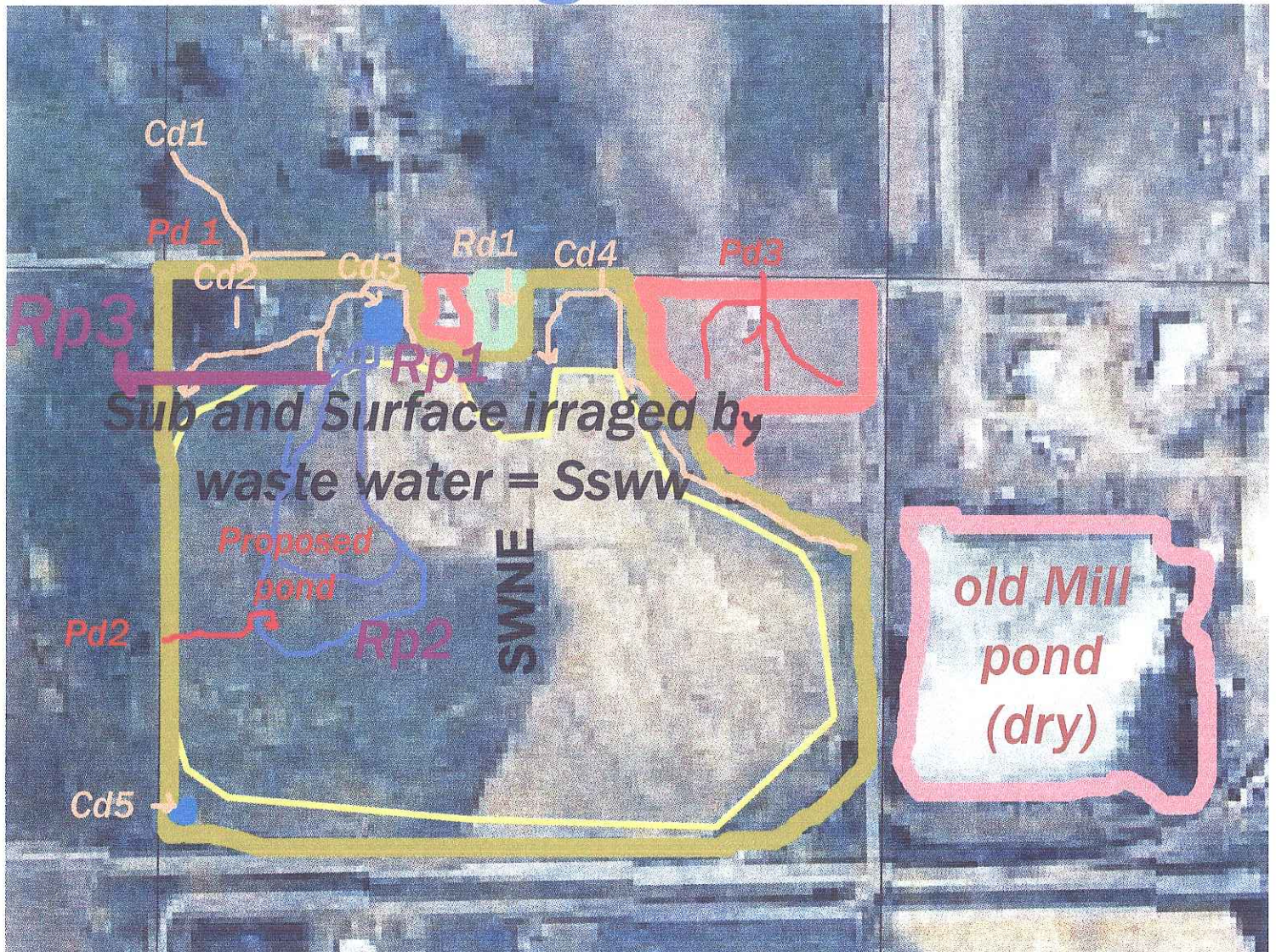
MADSEN

Ident No.



Large view

East! 



 actual current use area

 existing ponds used for sprinkler irrigation in the past

current diversion points Cd1-5 Proposed diversion points Pd1-3

Proposed pond 2 - 4 acres

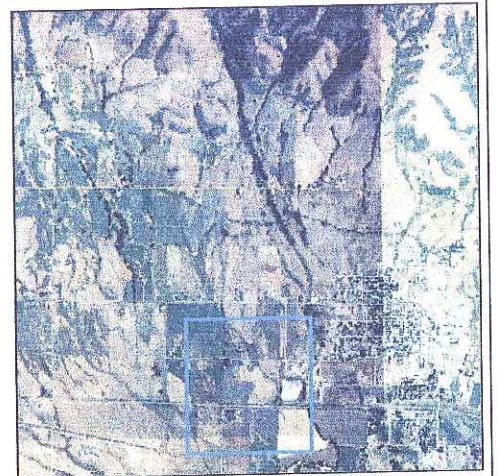
Reestablishment
of diversion

 Additional
acrage

67-11491



67 - 14877



Proposed
diversion 1
(Pd1)
side of
county road

Expanded view

East! ↑

East Township 16N Range 01W Section 10, NW1/4 of NW1/4 of NW1/4 of SE1/4 of NE1/4 Boise Base Meridian, County of Adams.
West Township 16N Range 01W Section 10, NE1/4 of NE1/4 of NE1/4 of SW1/4 of NE1/4 Boise Base Meridian, County of Adams.



— actual current use area

● existing ponds used for sprinkler irrigation in the past

current diversion points Cd1-5 Proposed diversion points Pd1-3

Proposed pond 2 - 7 acres

Reestablishment
of diversion

— Additional
acrage

67-11491

67 - 14877



Cd1 replaced by **Pd1** which would consist of a headgate and extension of ditch on east side of County road and a Riser off or culvert on the west side of County road

WATER RIGHTS IN DISTRICT NO. 41, STATE OF IDAHO, JANUARY 1, 1919

Priority No.	Name of User	Description of Land		Source of Supply	Priority Date.	Priority Inches
1.	Weiser Irrigation District.....	SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$	5	Main Weiser.....	5 1 68	100.00
2.	Andrew M. Reed.....	Lot 3, Lot 4, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$	4	Keithley Creek.....	5 15 71	6.25
3.	Andrew Hutchinson.....	SE $\frac{1}{4}$ NE $\frac{1}{4}$	16	Little Weiser.....	6 1 73	50.00
4.	Fred Anderson.....	SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$	23	Little Weiser.....	6 1 76	38.00
4.	America Lindsay.....	SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$	14	Little Weiser.....	6 1 75	40.50
4.	Cora Hutchinson.....	NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$	36	Little Weiser.....	6 1 75	22.50
5.	Chloe Keithley.....	E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$	35	Keithley Creek.....	5 15 77	27.50
5.	Sarah S. Keithley, Admr.....	NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$	36	Keithley Creek.....	5 15 77	200.00
6.	J. I. Linder.....	E $\frac{1}{2}$ SE $\frac{1}{4}$	10	Keithley Creek.....	6 1 77	37.50
7.	Christian Larsen Estate.....	W $\frac{1}{2}$ NE $\frac{1}{4}$	4	Little Weiser.....	5 1 78	22.00
7.	James L. & Karl Lewis.....	E $\frac{1}{2}$ NE $\frac{1}{4}$ (42 A), NW $\frac{1}{4}$ NE $\frac{1}{4}$ (1 A)	4	Rush Creek.....	5 1 78	25.00
7.	James L. Lewis.....	SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$	3	Rush Creek.....	5 1 78	7.875
7.	R. E. Wilson.....	NW $\frac{1}{4}$ NE $\frac{1}{4}$	1	Rush Creek.....	5 1 78	8.00
7.	Wm. Winkler et al.....	NE $\frac{1}{4}$ SW $\frac{1}{4}$	3	Keithley Creek.....	5 1 78	25.00
8.	C. W. Randleman.....	SW $\frac{1}{4}$ NW $\frac{1}{4}$ (7 $\frac{1}{2}$ A)	2	Mill Creek.....	5 15 79	62.50
8.	Victor L. Hopper.....	SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$	10	Keithley Creek.....	5 15 79	6.50
8.	Allen Seid.....	E $\frac{1}{2}$ SE $\frac{1}{4}$	25	Keithley Creek.....	5 15 79	2.00
9.	Angus R. McDonald.....	Lot 3, Lot 4, E $\frac{1}{2}$ SW $\frac{1}{4}$	31	Keithley Creek.....	6 1 79	47.00
10.	G. E. Steward.....	Lot 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$	30	Pine Creek.....	3 1 80	57.00
11.	Nels Buhl.....	SE $\frac{1}{4}$ NW $\frac{1}{4}$	30	Little Weiser.....	5 1 80	90.00
11.	Thos. J. Stutesman Estate.....	SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ (4 A)	10	Pine Creek.....	5 1 80	38.50
12.	Weiser Mill Ditch.....	W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$	4	Main Weiser.....	9 1 80	450.00
13.	S. N. York.....	NE $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$	3	Little Weiser.....	5 1 81	10.00
13.	J. L. Starr.....	S $\frac{1}{2}$ SW $\frac{1}{4}$	10	Little Weiser.....	5 1 81	22.50
13.	George Vorhees.....	N $\frac{1}{2}$ NW $\frac{1}{4}$	30	Little Weiser.....	5 1 81	35.00
13.	Emma E. Schroyer.....	SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$	10	Little Weiser.....	5 1 81	25.00
13.	W. H. Thomason.....	E $\frac{1}{2}$ SE $\frac{1}{4}$	3	Little Weiser.....	5 1 81	32.00
13.	Frederick M. Watris.....	W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$	2	Little Weiser.....	5 1 81	16.70
14.	O. L. Byers.....	NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$	11	Mill Creek.....	5 1 81	22.00
14.	Mark C. Fuller.....	S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$	35	Little Weiser.....	6 1 81	40.00
14.	Frank Richardson.....	N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$	14	Hornet Creek.....	6 1 81	22.00
14.	A. J. Dufus.....	SW $\frac{1}{4}$ SE $\frac{1}{4}$	8	Hornet Creek.....	6 1 81	22.00
14.	E. E. & Ed Shannon.....	W $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$	9	Hornet Creek.....	6 1 81	32.00
15.	P. H. Schaaf & F. S. Galley.....	SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$	5	Hornet Creek.....	6 1 81	25.00
15.	G. T. Hamil.....	E $\frac{1}{2}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$	35	Mill Creek.....	5 1 82	37.50
15.	Louis Harp.....	S $\frac{1}{2}$ NW $\frac{1}{4}$	23	Fort Hall Creek.....	5 1 82	4.00
16.	Charles T. Reavis.....	E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$	23	Fort Hall Creek.....	5 1 82	6.00
16.		SE $\frac{1}{4}$ SE $\frac{1}{4}$	14	Keithley Creek.....	5 15 82	20.00
16.		W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$	1	Little Weiser.....	5 1 82	15.00
			32			50.00

14.817

H. 9) Book 13 Deeds
pg 510

THIS INDENTURE, Made this 29th day of March in the year of our Lord one thousand nine hundred and Thirty Three, between JOHN W. HOOVER and IDA B. HOOVER, husband and wife, of Council, County of Adams, State of Idaho, the parties of the first part, and LEWIS E. WINKLER, a man now divorced, of Council, County of Adams, State of Idaho, the party of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of THREE HUNDRED AND NO/100 DOLLARS, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all of the following described real estate, situated in the County of Adams, State of Idaho, to-wit:

A tract of land commencing at the Northeast corner of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Ten (10) in Township Sixteen (16) North of Range One (1) West, Boise Meridian and running thence West on a straight line to the east boundary line of the Pacific & Idaho Northern Railway right-of-way through said quarter; thence in a Southeasterly direction along the said East boundary line of said right-of-way to a point Twenty (20) feet North of the South boundary line of said subdivision; thence East on a straight line to the East boundary line of said subdivision; thence North along the East boundary line of said subdivision to the point and place of beginning, EXPRESSLY RESERVING AND EXCEPTING from this conveyance all water and water rights appurtenant to said premises, particularly, all water and water rights from Mill Creek in Adams County, Idaho, heretofore decreed to one W. F. Winkler in the Muir Brothers vS Allison, et al, water adjudication suit, and by such decree made appurtenant to said before described, and other adjoining, lands, and which said water right, or the part thereof appurtenant to the above described premises, has heretofore been transferred for use upon certain of the Council Valley Orchard Tracts owned by the parties of the first part herein.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever, and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their

deed is hereby acknowledged, have granted, bargained and sold unto the said party of the presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all of the following described real estate, situated in the County of Adams, State of Idaho, to-wit:

A tract of land commencing at the Northeast corner of the Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Ten (10) in Township Sixteen (16) North of Range One (1) West, Boise Meridian and running thence West on a straight line to the east boundary line of the Pacific & Idaho Northern Railway right-of-way through said quarter; thence in a Southeasterly direction along the said East boundary line of said right-of-way to a point Twenty (20) feet North of the South boundary line of said subdivision; thence East on a straight line to the East boundary line of said subdivision; thence North along the East boundary line of said subdivision to the point and place of beginning, EXPRESSLY RESERVING AND EXCEPTING from this conveyance all water and water rights appurtenant to said premises, particularly, all water and water rights from Mill Creek in Adams County, Idaho, heretofore decreed to one H. F. Winkler in the Muir Brothers vS Allison, et al, water adjudication suit, and by such decree made appurtenant to said before described, and other adjoining, lands, and which said water right, or the part thereof appurtenant to the above described premises, has heretofore been transferred for use upon certain of the Council Valley Orchard Tracts owned by the parties of the first part herein.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to his heirs and assigns forever, and the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
in presence of _____

John W Hoover (Seal)

Ida B. Hoover (Seal)

STATE OF IDAHO,)
County of Adams) ss.



On this 29th day of March in the year 1933, before me CARL H. SWANSTROM, a Notary Public in and for said State, personally appeared JOHN W. HOOVER and IDA B. HOOVER, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

(NOTARIAL SEAL)

Carl H. Swanstrom
Notary Public for the State of
Idaho, Residing at Council, Idaho.
Recorded at the request of Lewis E. Winkler at 10:45 o'clock A. M., July 26, 1933
Matilda Moser Recorder

Fees \$1.40

DURABLE POWER OF ATTORNEY FOR FINANCIAL AND HEALTH CARE

1. Chester L Madsen ^{GKA} Chester Madsen
(Insert your name and address)

have made, constituted and appointed and by these presents do make, constitute and appoint

Eunice E Madsen,
true and lawful attorney for me and in my name, place and stead, and on my behalf, subject to all provisions of paragraph 14 hereof and to do and execute all or any of the following acts, deeds and things.

In the event my designated attorney-in-fact is deceased or incapacitated, I hereby appoint as substitute Jennifer E. Madsen.

1. TO RECEIVE DEBTS, PAYMENTS AND PROPERTY. To ask, demand, sue for, recover and receive all sums of money, debts, dues, goods, wares, merchandise, chattels, effects and things of whatsoever become due, owing, payable, or belonging to me in or by any right, title, ways or means howsoever, and upon receipt thereof, or of any part thereof, to make, sign execute and deliver such receipts, releases or other discharges for the same respectively as my said attorney-in-fact shall deem advisable.

2. TO SETTLE ACCOUNTS. To settle any account or reckoning whatsoever wherein I now am or at any time hereafter shall be in any way interested or concerned with any person whosoever, and to pay or receive the balance thereof as the case may require.

3. TO SATISFY SECURITY INTERESTS AND MORTGAGES. To receive every sum of money which now is or hereafter shall be due or belonging to me upon the security or by virtue of any security interest or agreement, or mortgage, and on receipt of the full amount secured thereby to execute a good and sufficient release or other discharge or such security interest, or mortgage by deed or otherwise.

4. TO SETTLE, SUBMIT TO ARBITRATION, OR OTHERWISE ADJUST DIFFERENCES. To settle with or make allowances to any person for or in respect to any debt or demand whatsoever which is now or shall at any time hereafter become due and payable to me, or by me, or upon my account, and to take and receive, or to pay and discharge (as the case may be), any composition or dividend thereof or thereupon, and to give or receive releases or other discharges for the whole of such debts or demands, or to settle, compromise, or submit to arbitration every such debt or demand and every other right, matter and thing due to or concerning me as my attorney-in-fact shall think best, and for that purpose to enter into and execute and deliver such bonds of arbitration or other instruments as my attorney-in-fact may deem advisable.

5. **TO PROSECUTE AND DEFEND.** To start, prosecute, discontinue, or defend all actions or other legal proceedings touching my estate or any part thereof, or touching any matter in which I or my estate may be in any concerned.

6. **TO MANAGE REAL ESTATE.** To enter into and upon all my real estate, and to let, manage, and improve the same or any part thereof, and to repair or otherwise improve, alter, or reconstruct, and to insure any buildings or structures thereon, and further to contract with others for the management of such real estate and to grant to such others all the powers with respect to such real estate common to real estate management contracts, and granted to my attorney-in-fact herein.

7. **TO GRANT LEASES, RECEIVE RENTS, AND OTHERWISE DEAL WITH TENANTS AND LEASED PROPERTY.** To contract with any persons for leasing for such periods, including periods longer than my life, and without regard to the termination of this power of attorney, at such rents and subject to such conditions as my attorney-in-fact shall see fit, all or any of my real estate, and to let any such person into possession thereof, and to execute all such leases and contracts as shall be necessary or proper in that behalf, and to give notice to quit to any tenant or occupier thereof, and also on non-payment thereof or of any part thereof to take all necessary or proper means and proceedings for terminating the tenancy or occupation of such tenants or occupiers, and for ejecting the tenants or occupiers and recovering the possession thereof.

8. **TO SELL OR EXCHANGE REAL OR PERSONAL ESTATE.** To sell, either at public or private sale, or exchange any part or parts of my real estate or personal property for such consideration, payable immediately or upon such terms as my attorney-in-fact shall think fit, and to execute and deliver good and sufficient deeds, bills of sale, endorsements, assignments, or other instruments for the conveyance or transfer of the same, with such covenants or warranty or otherwise as my attorney-in-fact shall think fit, and to give good and effectual receipts for all or any part of the purchase price or other consideration.

9. **TO DEPOSIT MONEY, WITHDRAW, INVEST, AND OTHERWISE DEAL WITH TANGIBLE PROPERTY.** To deposit any monies in my name, and to withdraw any of such money or any other money to which I am entitled which is now or shall be so deposited, and to use such money the payment of any debts or interest, payable by me, or taxes, assessments, insurance, and expenses due and payable or to become due and payable by me, or taxes, ~~assessments, insurance and expenses due and payable or to become due and payable on account of~~ my real and personal estate, or in or about any of the purposes herein mentioned, or otherwise for my use and benefit, or to invest such money in my name in any stocks, shares, bonds, securities or other property, real or personal, as deemed proper, and to receive and give receipts for any income or dividend arising from such investments or other investments for my use and benefit as my attorney-in-fact may deem proper.

10. TO VOTE AT STOCKHOLDERS MEETINGS, EXECUTE PROXIES, AND OTHERWISE SUBSTITUTE FOR OWNER. To vote at the meetings of stockholders or other meetings of any corporation or company or otherwise to act as my attorney-in-fact or proxy, with power of substitution, in respect of any stocks, shares, bonds, debentures, or other evidences of ownership, or securities, now or hereafter held by me and issued by or on account of said corporation or company and for that purpose to execute any proxies, limited to general, or other instruments.

11. TO MAKE GIFTS OF PROPERTY. To make a gift or gifts to my lineal descendants, their spouses or any qualified charitable organization under I.R.C. 501(c)(3), of real or personal property including life insurance policies, retirement accounts and the power to revoke an revocable trust to make such gifts.

12. TO EXECUTE DEEDS, BILLS, NOTES, AND SIMILAR INSTRUMENTS. For all or any of the purposes herein stated, to enter into and sign, seal, execute, acknowledge, and deliver any contracts, deeds, or other instruments whatsoever, and to draw, accept, make, endorse, discount, or otherwise deal with any bills of exchange, checks, promissory notes, or other commercial or mercantile instruments.

13. TO DO ALL OTHER THINGS NECESSARY IN CONNECTION HEREWITH. To do all other acts, deeds, matters, and things whatsoever in or about my estate, property and affairs, or to concur with persons jointly interested with myself therein doing all acts, deeds, matters and things therein, either particularly or generally described, as full and effectual to all intents and purposes as I could do in my own proper person if personally present, it being my intent to grant to my said attorney-in-fact a general power and not a limited or special power, to act for me and in my behalf limited to the specific acts herein described.

14. POWER OF ATTORNEY EFFECTIVE NOTWITHSTANDING DISABILITY OF PRINCIPAL; CONTINUES IN EFFECT AFTER PRINCIPALS DEATH UNTIL NOTICE. Pursuant to the provisions of the Uniform Durable Power of Attorney Act, Idaho Code " 15-5-501 to 15-5-507, I declare that this power of attorney shall not be affected by my disability or incapacity, and that the authority granted herein shall continue during any period while I am disabled or incapacitated. Further, pursuant to said sections, all such authority shall continue after my death, until notice of such death shall have been received by my attorney-in-fact so that he/she has actual knowledge of the fact that I have died. Any action taken in good faith by my said attorney-in-fact before he/she receives actual knowledge of my death, or, in any event, taken during any period while I am disabled or incapacitated, shall be as valid as if I were alive, competent and not disabled.

15. HEALTH CARE AGENT. I hereby further appoint said person to make health care decisions for me as authorized below. For the purposes of this document, A health care decision means consent, refusal of consent, or withdrawal of consent to any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical condition.

A. GENERAL STATEMENT OF AUTHORITY GRANTED. Subject to any limitations in this document, I hereby grant to my agent full power and authority to make health care decisions for me to the same extent that I could make such decisions for myself if I had the capacity to do so. In exercising this authority, my agent shall make health care decisions that are consistent with my desires as stated in this document or otherwise made known to my agent, including, but not limited to, my desires concerning obtaining or refusing or withdrawing life-prolonging care, treatment services and procedures.

B. INSPECTION AND DISCLOSURE OF INFORMATION RELATING TO MY PHYSICAL OR MENTAL HEALTH. Subject to any limitations in this document, my agent has the power and authority to do all of the following:

- (1) Request, review, and receive any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records.
- (2) Execute on my behalf of any releases or other documents that may be required in order to obtain this information.
- (3) Consent to the disclosure of this information.
- (4) Consent to the donation of any of my organs for medical purposes.

C. SIGNING DOCUMENTS, WAIVERS AND RELEASES. Where necessary to implement the health care decisions that my agent is authorized by this document to make, my agent has the power and authority to execute on my behalf all of the following:

- (1) Documents titled or purporting to be a "Refusal to Permit Treatment" and "Leaving Hospital Against Medical Advice".
- (2) Any necessary waiver or release from liability required by a hospital or physician.

16. HIPPA RELEASE AUTHORITY. My agent shall be treated as I would be with respect to my rights regarding the use and disclosure of my individually identified health and other information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (HIPPA), 42 U.S.C. 1320d and 45 CFR 160 through 164. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy, or other covered health care provider, any insurance company, and the Medical Information Bureau, Inc. or other health care clearing house that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose, and release to my agent, without restriction, all of my individually identifiable information and medical records regarding any past, present, or future medical or mental health condition, including all information relating to the diagnosis of HIV/AIDS, sexually

transmitted diseases, mental illness, and drug or alcohol abuse. The authority given my agent shall supersede any other agreement that I may have made with my health care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

17. PRIOR DESIGNATIONS REVOKED. I hereby revoke any prior power of attorney, whether durable, financial, health care or otherwise.

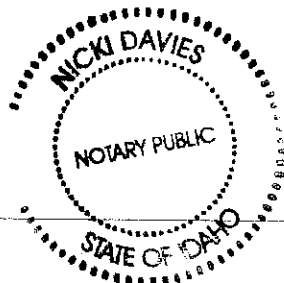
DATED this 31 day of Jan, 2007.

Chester Madsen
Signature

STATE OF IDAHO)
 Washington : ss.
County of Ada)

On the 31st day of January, 2007, before me, the undersigned Notary Public, personally appeared Chester L. MADSEN aka Chester MADSEN known to me to be the person whose name is subscribed to the foregoing instrument, and he/she acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.



Nicki Davies
Notary Public for Idaho
Residing at Weiser, Idaho
Commission Expires: 12/18/09

EUNICE E MADSEN
PH. 208-253-4815
2073 N GALENA RD.
COUNCIL, ID 83612-5238

92-372/1231
153353013623

1454

DATE

June 8-09

PAY TO THE
ORDER OF

(SRBA) Court

\$ 258⁰⁰

Two hundred fifty and 00/100

DOLLARS



Security Features
Deposit on Stop.

usbank.

Five Star Service Guaranteed

usbank.com

MEMO

all bank deposits made by Madsen
Residence

Eunice E Madsen