

2007 AUG 22 PM 3: 32

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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	)	Subcases 47-7312A (Kaster),
	)	47-7312B (Dickinson) and
Case No. 39576	)	47-7312C (Moffett)
	)	
	)	SPECIAL MASTER REPORT
_____	)	AND RECOMMENDATION

Findings of Fact

Motion to Set Aside

On February 28, 2007, Beverly Fulmore wrote a letter to the SRBA Court requesting that *Partial Decrees* entered in the above three subcases on May 21, 1999, be set aside because of substantial questions concerning rights to a common domestic well to serve a subdivision. Ms. Fulmore wrote that when the Oregon Trail Subdivision was developed in 1975, and the well drilled, all the lots were to have a right to the well. Since then, for various reasons, only certain lots were decreed such rights while other lots were omitted.

Order of Reference

On May 17, 2007, the Presiding Judge entered an *Order of Reference Appointing Terrence Dolan Special Master on Motion to Set Aside Partial Decree* after finding that IDWR's Doug Jones acknowledged there was an error in the manner in which the water right was apportioned to the lots within the subdivision. The Judge then ordered further proceedings "to obtain a draft recommendation from IDWR regarding how the water right or rights should be properly apportioned and to make a recommendation to the Court whether the *Partial Decree(s)* should be set aside and how they should be amended."

Hearing

A hearing on the motion to set aside was held on June 28, 2007. Ms. Fulmore appeared *pro se*, as did Becky Benson and Carl Bontrager – all subdivision lot owners. Nicholas B. Spencer appeared for IDWR, along with Doug Jones, southern region office Water Rights Supervisor.

Mr. Jones reiterated his recommendation that the three *Partial Decrees* be set aside to correct legal description errors, update ownership information, add cross references to related water rights and strike a remark concerning historical beneficial use. Mr. Jones then submitted drafts of how water rights 47-7312A, 47-7312B and 47-7312C should be decreed. His drafts are attached to this *Special Master Report and Recommendation*. No one opposed Ms. Fulmore's motion to set aside.

Conclusions of Law

Ms. Fulmore has shown good cause to set aside the *Partial Decrees* in subcases 47-7312A, 47-7312B and 47-7312C.

Recommendation

THEREFORE, IT IS RECOMMENDED that:

1. The *Partial Decrees* in subcases 47-7312A, 47-7312B and 47-7312C be **set aside**, and
2. *Amended Partial Decrees* be entered as described in Mr. Jones' draft amended partial decrees attached hereto.

DATED August 22, 2007.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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

RIGHT NUMBER: 47-7312A

NAME AND ADDRESS:

BECKY R BENSON
117 TREASURE LN
HAILEY ID 83333

BROWNE FAMILY TRUST
19111 JASPER HILL RD
TRABUCO CANYON CA 92679

CLARA H CNOSSEN
2754 SUN MEADOW DR
TWIN FALLS ID 83301

K C BENSON
117 TREASURE LN
HAILEY ID 83333

LYNN BONTRAGER LLC
PO BOX 2092
KETCHUM ID 83340

SOURCE:

Source:

Tributary:

GROUND WATER

QUANTITY:

0.076 CFS

3.600 AFY

PRIORITY DATE:

11/24/1975

POINT OF DIVERSION:

T09S R14E S4 Lot 3 NWNW
Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

DOMESTIC

01/01 12/31

0.076 CFS

3.60 AFY

Domestic 3 homes

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

PLACE OF USE: DOMESTIC within TWIN FALLS County
T09S R14E S04 Lot 3 NWNW
T09S R14E S04 Lot 4 SENW

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 - License

Property is also known as Lots 2, 3, 4, Blk 1, Oregon Trail Subdivision. RPOB6610010020, RPOB6610010030, RPOB6610010040.
The following rights are diverted through point of diversion described above: 47-7312A, 47-7312B and 47-7312C.
Water is low temperature geothermal water.

~~REINSTATED 12/18/1980.~~

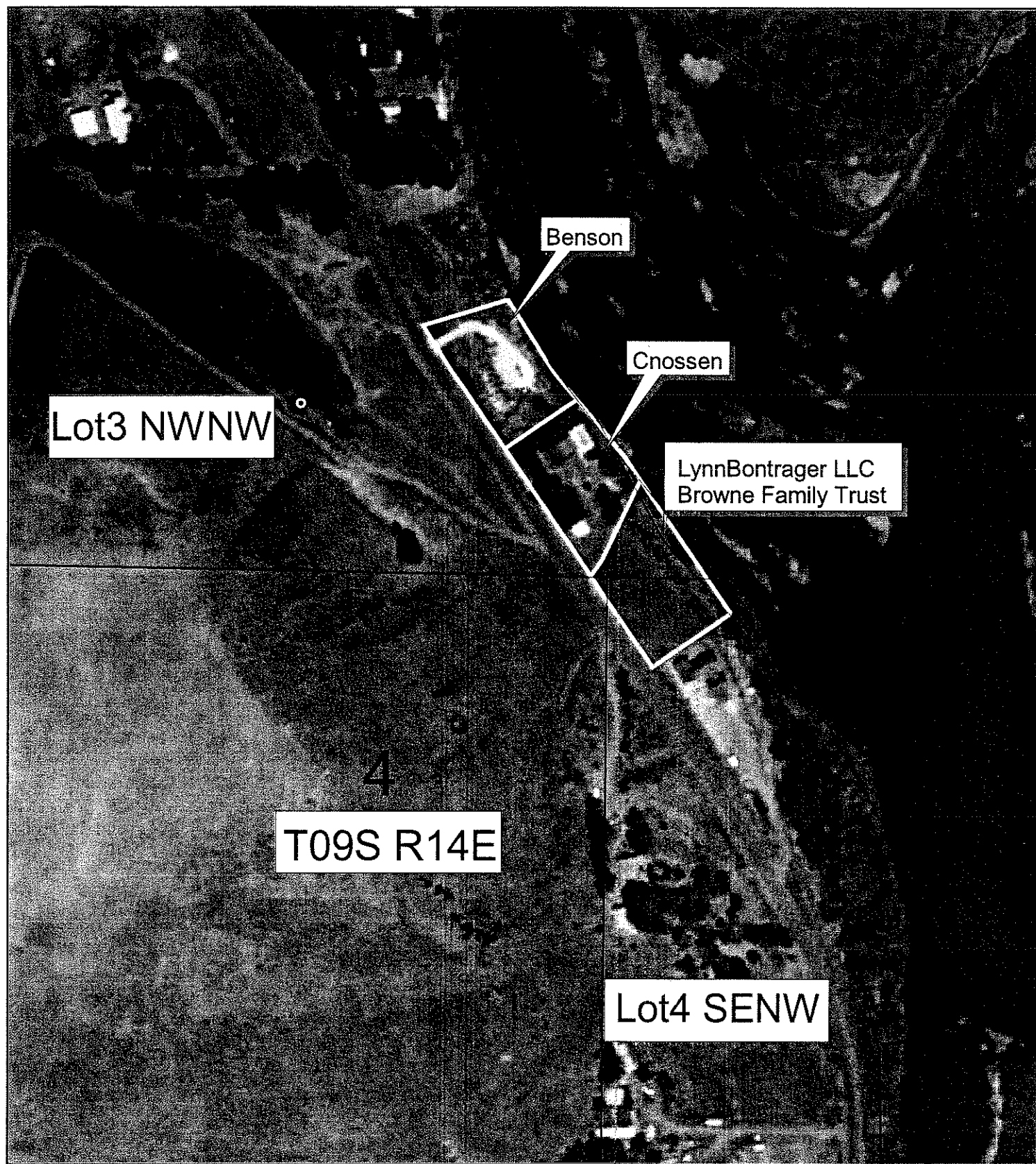
~~30 DAYS PRIOR TO DRILLING OR MODIFICATION OF A WELL, THE PERMIT HOLDER SHALL NOTIFY THE IDWR OF WHO THE DRILLER WILL BE & WHEN DRILLING IS PROPOSED TO COMMENCE. PRIOR TO DRILLING, THE PERMIT HOLDER &/OR DRILLER SHALL SUBMIT TO THE DEPT. A DRILLING PROSPECTUS WHICH INCLUDES PROPOSED CASING & GROUTING PROCEDURES. THE WELL SHALL NOT BE DRILLED WITHOUT APPROVAL OF THE PROSPECTUS. FOR WELLS PRESENTLY BEING CONSTRUCTED OR MODIFIED, THE PERMIT HOLDER SHALL IMMEDIATELY ADVISE THE DEPT. OF THE NAME OF THE DRILLER OR DRILLING FIRM, PROPOSED DATE OF COMPLETION, & SHALL PROVIDE DETAILS OF WELL CONSTRUCTION TO DATE FOR DEPT. REVIEW & APPROVAL PRIOR TO REMOVAL OF THE DRILL RIG FROM THE SITE. PRIOR TO WELL COMPLETION, THE PERMIT HOLDER &/OR DRILLER SHALL REQUEST INSPECTION & APPROVAL OF THE WELL CONSTRUCTION BY THE DEPT. CONSTRUCTION SHALL NOT BE CONSIDERED TO BE COMPLETED UNTIL APPROVED BY THE DEPT. FAILURE TO COMPLY WITH ANY OF THE CONDITIONS IDENTIFIED ABOVE MAY RESULT IN CANCELLATION OF THE PERMIT.~~

~~THIS WATER RIGHT IS SUBJECT TO FIELD EXAMINATION BY THE DEPT.~~

~~9 LOTS ONLY, BLK 1 & 2, OREGON TRAIL SUBDIVISION. PART OF THIS RIGHT WILL BE ASSIGNED TO PORTIONS OF THE LOTS AFTER FIELD EXAM IS COMPLETED BY THE DEPT. THERE WILL BE A PARTIAL ASSIGNMENT OF PERMIT TO CHARLES "PAT" DICKINSON, OWNER OF LT 5, BLK 1.~~

~~***** 4/28/95, DJ: CLAIM SPLIT INTO: PART A FOR KASTER 0.666 & 7 HOMES, PART B FOR DICKENSON 0.028 & 1 HOME BY ASSIGNMENT OF PERMIT FILED IN 1989, PART C FOR MOFFET 0.026 CFS & 1 HOME BY CHAIN OF TITLE FROM KASTER TO HOWARD TO MOFFETT. KASTERS PART FOR REMAINING LOTS UNDER ORIGINAL PERMIT.~~

47-7312A



-  Section Lines
-  Quarter/Quarter Lines
-  Place of Use
-  Point(s) of Diversion

300 0 300 Feet



GIS PLACE OF USE PRESENTATION
PHOTOGRAPHY: 2004 NAIP
DATA ENTRY: 06/28/2007
DOUGLAS JONES

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

RIGHT NUMBER: 47-7312B

NAME AND ADDRESS:

BEVERLY FULMORE
PO BOX 1363
HAILEY ID 83333

LINDSAY FULMORE
4732 RIVER RD
BUHL ID 83316

SOURCE:

Source:

Tributary:

GROUND WATER

QUANTITY:

0.028 CFS

1.200 AFY

~~THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.~~

PRIORITY DATE:

11/24/1975

POINT OF DIVERSION:

T09S R14E S4 Lot 3 NWNW
Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

DOMESTIC

01/01 12/31

0.028 CFS

1.20 AFY

PLACE OF USE:

DOMESTIC

within TWIN FALLS County

~~T09S R14E S04 Lot 3 NWNW~~

T09S R14E S04 Lot 4 SENW

ACRES TOTAL

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

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.

~~THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS
NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.~~

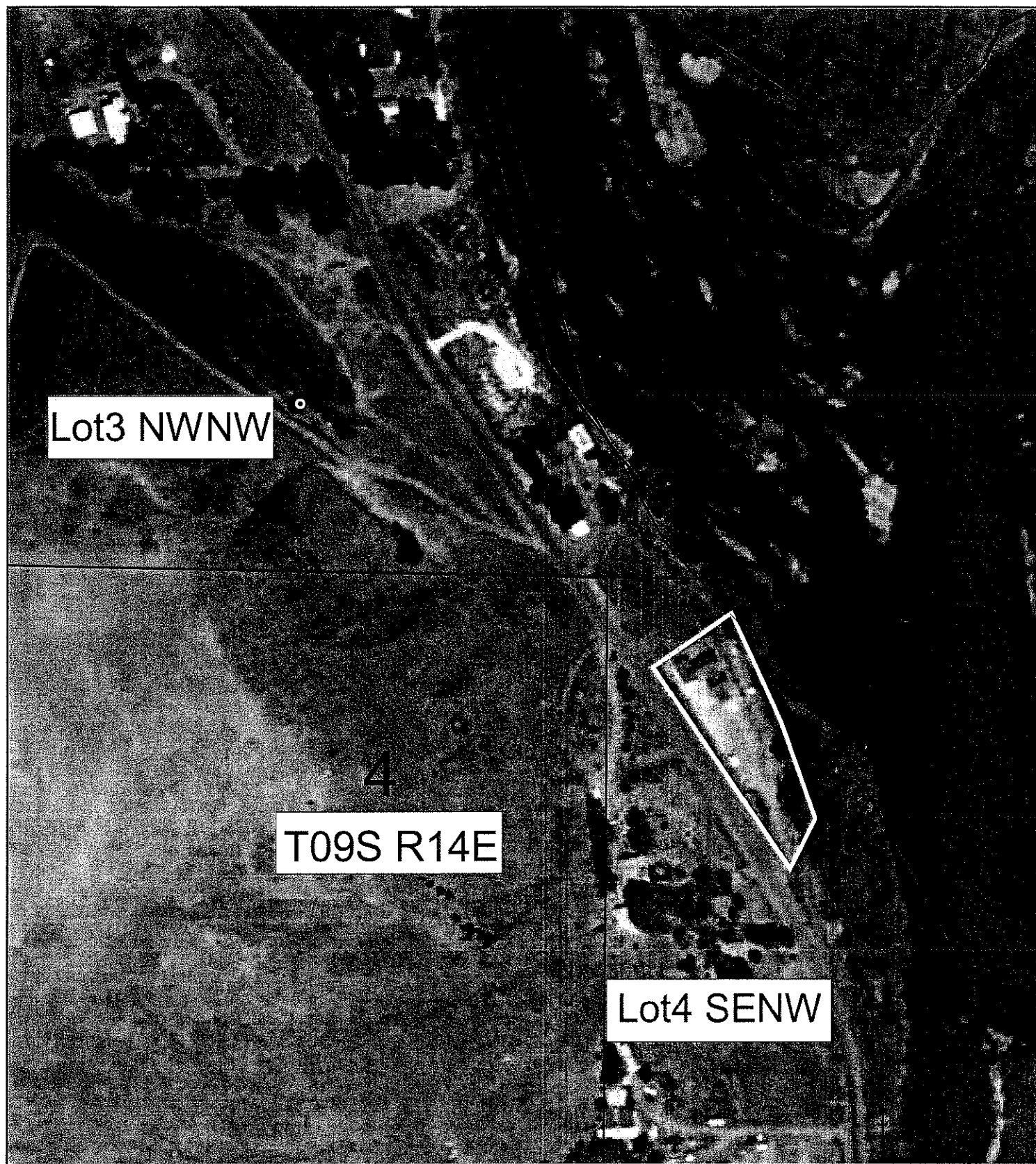
EXPLANATORY MATERIAL: BASIS OF CLAIM - License ~~BASIS OF CLAIM - Decreed~~

Property is also known as Lot 5, Blk 1, Oregon Trail Subdivision. RPOB6610010050.

The following rights are diverted through point of diversion described above: 47-7312A, 47-7312B and 47-7312C.

Water is low temperature geothermal water.

47-7312B



-  Section Lines
-  Quarter/Quarter Lines
-  Place of Use
-  Point(s) of Diversion

300 0 300 Feet



GIS PLACE OF USE PRESENTATION
PHOTOGRAPHY: 2004 NAIP
DATA ENTRY: 06/28/2007
DOUGLAS JONES

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

RIGHT NUMBER: 47-7312C

NAME AND ADDRESS:

DONNA SCHARFEN
3226 LINDSAY
BOISE ID 83705

ROGER L SCHARFEN
3226 LINDSAY
BOISE ID 83705

SOURCE:

Source:

Tributary:

GROUND WATER

QUANTITY:

0.026 CFS

1.200 AFY

~~The quantity of water under this right shall not exceed 13,000 gallons per day.~~

PRIORITY DATE:

11/24/1975

POINT OF DIVERSION:

T09S R14E S4 Lot 3 NWNW
Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

DOMESTIC

01/01 12/31

0.026 CFS

1.20 AFY

PLACE OF USE:

DOMESTIC

within TWIN FALLS County

T09S R14E S04 Lot 3 NWNW

ACRES TOTAL

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

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.

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

~~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 - License

Water is low temperature geothermal water.

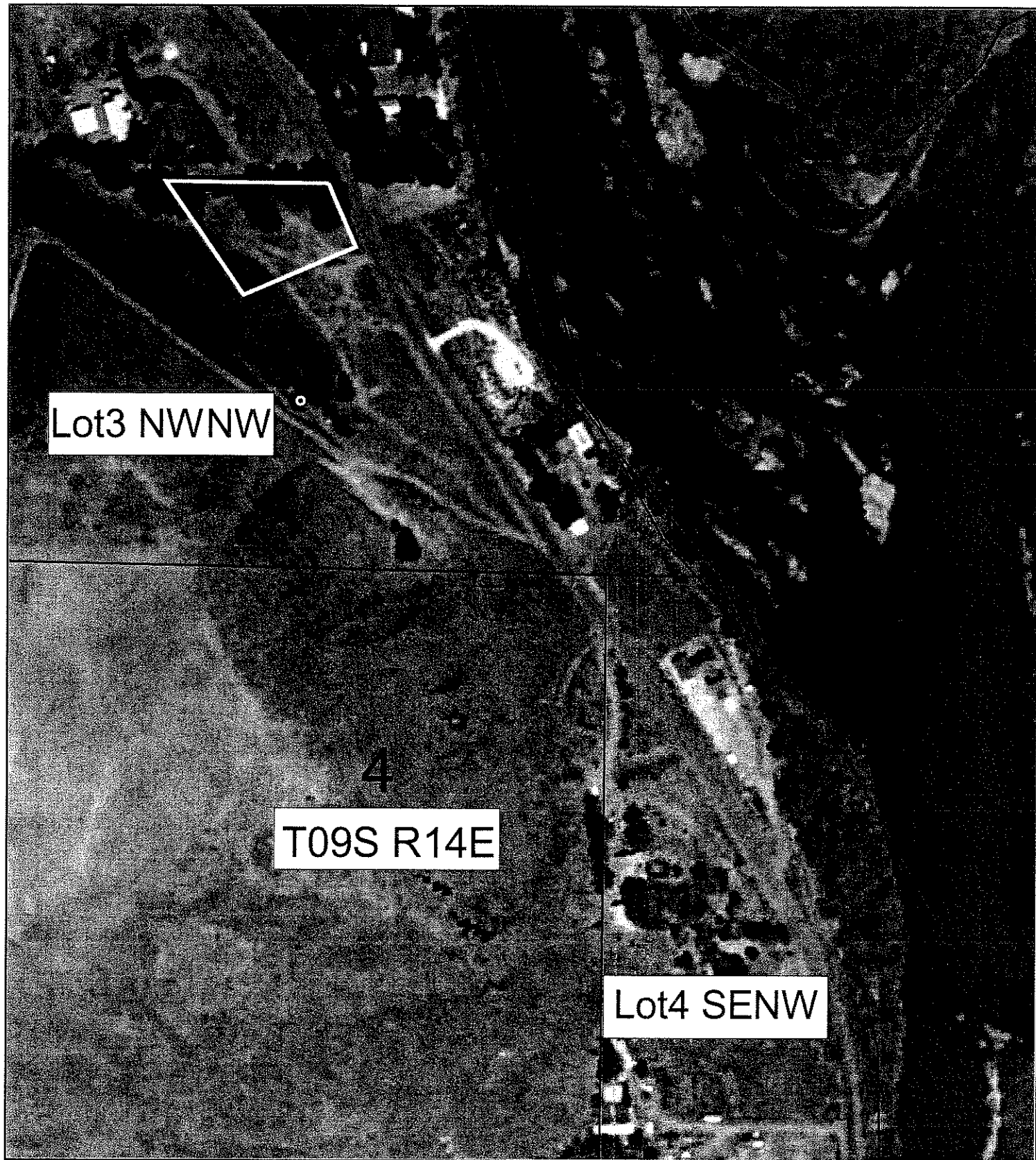
Property is also known as Lot 1, Blk 2, Oregon Trail Subdivision. RPOB6610020010.

The following rights are diverted through point of diversion described above: 47-7312A, 47-7312B and 47-7312C.

~~Parcel No. RPOB6610020010A~~

~~Lot 1, Block 2, Oregon Trail Subdivision~~

47-7312C



-  Section Lines
-  Quarter/Quarter Lines
- Place of Use
-  Point(s) of Diversion



GIS PLACE OF USE PRESENTATION
PHOTOGRAPHY: 2004 NAIP
DATA ENTRY: 06/28/2007
DOUGLAS JONES

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER REPORT AND RECOMMENDATION was mailed on August 22, 2007, with sufficient first-class postage to the following:

CARL BONTRAGER
KATHY LYNN
LYNN-BONTRAGER LLC AN IDAHO
VICKI LYNN BROWN

Represented by:
J DEE MAY
PO BOX 1846
TWIN FALLS, ID 83303
Phone: 208-733-7180

MATHEW BRIDGES
PO BOX 134
BUHL, ID 83316

BROWNE FAMILY TRUST
PO BOX 2092
KETCHUM, ID 83340

ED MOFFETT
JENNIFER MOFFETT
PO BOX 2207
KETCHUM, ID 83340
Phone: 208-726-4016

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

RICHARD KASTER
RT 4
BUHL, ID 83316
Phone: 208-543-6150

K C BENSON
129 TREASURE LANE
HAILEY, ID 83333

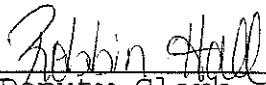
BARRY THIEMAN
PHYLLIS JONES
27 A FOLK DRIVE
LAS VEGAS, NV 89115

CLARA CNOSSEN
2754 SUN MEADOW DRIVE
TWIN FALLS, ID 83301

RODGER & DONNA SCHARFEN
3226 LINDSEY AVE
BOISE, ID 83705

BEVERLY & LINDSAY FULMORE
4732 RIVER ROAD
BUHL, ID 83316

CHARLES P DICKINSON
5219 N CASA BLANCA RD #54
PARADISE VALLEY, AZ 85253
Phone: 602-481-3134


Deputy Clerk