



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

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EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

March 23, 2007

Ray Rigby
25 North Second East
Rexburg, ID 83440

Re: Donna T. Fuchs – Water Right 21-13043 and 21-114C

Dear Ray,

After our meeting with Bill Fuchs on March 22, 2007, I have once again reviewed the documents I have in my possession. I would like to portray my thoughts on the subject. I would first like to talk about water right 21-114 and 21-102. Water right 21-114 was decreed to Z. Sundberg for 275 inches (5.5 CFS) to the following lands:

"Lots 1, 2, 3, and 4 in Sec. 7, T. 8 N. R.,
42 B.M. containing 149.85"

Water right 21-102 was decreed to J. R. Silkey for 400 inches (8 CFS) to the following lands:

"S ½ of SE ¼, NE ¼ OF SE ¼, AND Lot 2
of Sec. 12, T. 8 N., R. 41 E. B. M. containing
152.35 acres"

Attachment 1 is an excerpt from the Rexburg Decree describing lands decreed to Z. Sundburg and **Attachment 2** is an excerpt for the Rexburg Decree describing lands decreed to J. R. Silkey. **Attachment 3** is a map of the land decreed to 21-114 and **Attachment 4** is a map of land decreed to 21-102.

21-114 (Z. Sundberg)

On October 7, 1903 Samuel Cantwell sold Lots 1, 2, 3, and 4 of Sec. 7 T. 8 N. R. 42 E. and lot 1 Sec 12 T. 8 N. R. 41 E. to Zach Sundberg. Sundberg was decreed 5.5 CFS of water for all that land except that in section 12. Sundberg then on September 9, 1910 sold that same land to Joseph Seeley. Since the water was not withheld in the deed it was transferred to Seeley when he purchased the land. Seeley sold that land to Edgar Barney on October 18, 1927 except about 4 acres on lot 3 section 12 which was sold to J.R. Silkey. Again that water was not withheld. So at this point Edgar Barney owns about 11

acres of lot 3 section 12 and all of lots 1, 2, 3, and 4 of section 7 and water in the amount of 5.5 CFS decreed to Z. Sundberg in the Rexburg Decree.

On April 10, 1947 Edgar Barney sold Lots 3 and 4 of section 7 with 2 CFS of Sundberg water to Earl Barney. Now Earl has 2 CFS and Edgar has 3.5 CFS of the Sundberg right (21-114) for total of 5.5 CFS as decreed.

On April 14, 1950 transfer # 204 was approved by Edgar Barney to move 4 CFS of Sundberg water to the Farmers Own Canal because there was too much upkeep on the ditch he was using. Earl Barney must have used the same ditch at the time and so also had to maintain it. I believe that Edgar and Earl agreed to the transfer together but the transfer only listed Edgar Barney maybe because the Department of Reclamation still had the full right in the name of Edgar so it was just easier for Edgar to file the transfer rather than going through the change of ownership process.

On April 20, 1956 Lillie Barney Edgar's widow sold lots 1 and 2 of section 7 to W.S. Tanner along with her share of the Sundberg water taking into account Earl was sold 2 CFS when he bought lots 3 and 4. At this point W.S. Tanner has 3.5 CFS on lots 1 and 2 and Earl Barney has 2 CFS on Lots 3 and 4. Earl Barney then sells his portion of the Sundberg water right (2 CFS) as well as lots 3 and 4 to George Nedrow. W.S. Tanner still has his 3.5 and now George Nedrow has the rest of the Sundberg water right, 2 CFS.

On August 20, 1958 George Nedrow was approved transfer # 911 to move 1.2 CFS off of lots 3 and 4 of T. 8 N. R. 42 E. Section 7 to the following:

“parts of SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 4,
NW $\frac{1}{4}$ SE $\frac{1}{4}$, West 13 rods of Lot 2, and S $\frac{1}{2}$ SW $\frac{1}{4}$ section
21; N $\frac{1}{2}$ NE $\frac{1}{4}$ Section 28, all in Township 9 North , Range
42 East, B.M. and SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 6, Township 8 North,
Range 42 East, B.M.”

In Mr. Nedrow's application he states he is leaving 40 inches (.8 CFS) in the Silkey Ditch. After this transfer W.S. Tanner still has 3.5 CFS of the Sundberg right (21-114), and Nedrow has 1.2 CFS in Henry's Fork used on the above stated lands and .8 CFS still in Silkey Ditch and still on lots 3 and 4. This is a total of 5.5 CFS as decreed.

On September 22, 1959 George Nedrow was approved transfer # 933 and moved another 20 inches (.4 CFS) to the same lands as did transfer # 911. Mr. Nedrow states in his application that he is leaving 20 inches (.4 CFS) on lots 3 and 4 coming from the Silkey Ditch and now 1.6 CFS coming directly from the Henry's Fork.

After transfer # 933 W.S. Tanner has 3.5 CFS on lots 1 and 2 of Township 8 North Range 42 East Section 7, and George Nedrow has 1.6 CFS coming from Henry's Fork and put upon the lands stated in transfer # 911. Mr. Nedrow also has .4 CFS left on Lots 3 and 4 Township 8 North Range 42 East Section 7 and coming from the Silkey Ditch.

The Water District 01 accounting book for 1976 (**Attachment 5**) shows that in the Farmers Own Canal there is 2.8 CFS of water right 21-114(Sundberg) delivered to W.S.Tanner. In Transfers # 911 and # 933 Mr. Nedrow states in his application that the water being transferred is coming from the Silkey Ditch, and not the Farmers Own Canal. From the information in these transfers and applications it appears that transfer # 204 occurred but that Mr. Nedrow wrote the wrong source on his application when filing transfer # 911. Mr. Nedrow owned water in the Farmers Own Canal and the Silkey Ditch. It is my opinion that transfer # 911 transferred 1.2 CFS from the Farmers Own Canal and transfer # 933 transferred .4 CFS from the Silkey Ditch. That would leave the 2.8 in the Farmers Own Canal as shown in the accounting book.

Lots 3 and 4 of section 7 now have .4 CFS of the water originally decreed to Z. Sundberg (21-114). That land is now owned by RLF LLC.

Recommendations for 21-114 (Z. Sundberg)

21-114C	3.5 CFS	Donna Fuchs
21-10557	1.2 CFS	George Nedrow
21-13013	0.4 CFS	RLF LLC
Un-Reccomended	0.4 CFS	George Nedrow

Total 5.5 CFS

21-102 (J. R. Silkey)

Water right 21-102 was decreed to J. R. Silkey for 400 inches (8 CFS) to the following lands:

“S ½ of SE ¼, NE ¼ OF SE ¼, AND Lot 2
of Sec. 12, T. 8 N., R. 41 E. B. M. containing
152.35 acres” **Attachment 2.**

On September 22, 1961 George Nedrow was approved transfer # 967. This transfer moved 30 inches (.6 CFS) of water off of the SE ¼ and moving it out of the Silkey Ditch to a diversion directly on the Henry’s Fork to irrigate the following lands:

“S ½ NE ¼, SE ¼, N ½ SW ¼, of Section 20;
SE ¼ NE ¼, Section 19; SW ¼ NW ¼,
N ½ SW ¼, SW ¼, SE ¼, Lot 4, in Section 21;
N ½ NE ¼, of Section 28; W ½ N ½ Section 29;
All in Township 9 North, Range 42 E. B. M.”

After transfer # 967 there is 7.4 CFS left on the SE ¼ of Section 12, and .6 CFS is owned by George Nedrow and transferred to the above listed land.

On November 29, 1961 John McCulloch was approved transfer # 973. This transfer moved 1 CFS off of the SE ¼ of Section 12 and moved it to the following lands:

“W ½ E ½ NE ¼, W ½ NE ¼, W1/2 of Lot 1;
NE ¼ NW ¼, of Section 32 Township 9
North, Range 42 E. B. M.”

After Transfer # 973 George Nedrow has .6 CFS and John McCulloch has 1 CFS. That leaves 6.4 CFS on the decreed land (SE ¼ of Section 12, Township 8 North Range 41 East).

Larry Simmons now owns the land decreed to J. R. Silkey. Simmons bought the land from John Seely who sold him an acreage-based portion of the J.R. Silkey right (21-102). His portion based on the amount of acres he bought is 5.8 CFS.

Recommendations for 21-102 (J. R. Silkey)

21-102D	1.0 CFS	John McCulloch
21-10557	0.6 CFS	George Nedrow
21-12865	5.8 CFS	Larry Simmons
21-12864	0.6 CFS	John Seely

Total 8.0 CFS

Conclusions for 21-114 and 21-102

Based on the information in my possession, it is my opinion that the rights as they are recommended are correct (see the above recommendation breakdown), but if Mrs. Fuchs can get a written statement from George Nedrow stating he is not entitled to the “un-recommended” portion of 21-114 (Sundberg) then I will recommend that additional 0.4 CFS for 21-114C. This would bring his total up to 3.9 CFS as claimed under 21-114C.

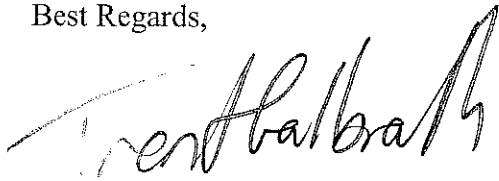
McBee Water

I would now like to address the late claim filed by Donna Fuchs (21-13043) for water referred to as “McBee Water”. In the Silkey Ditch accounting book, it is stated that there is 28.2 CFS and that the Fuchs Ranch has a total of 5.6 of that water. We have no other information to support there is any other personal water delivered to this ranch.

If one was to research who owned the land described in the water location notice filed by S. R. McBee and David Feighner, it is my opinion that you would find that the people that owned the land at the time of the Rexburg Decree were included in the Rexburg Decree and therefore the water would be decreed under their name not McBee. However I have no evidence of this. The only thing I do know is we have no record of this right and if it was not superceded by the Rexburg Decree it seems to be forfeited do to non-use and therefore will be disallowed.

Though these are my conclusions I would be glad to look at any addition documentation you might have. My decision is not set in stone however this will be my recommendation barring any evidence that may change my mind. I look forward to working with you to resolve this issue.

Best Regards,

A handwritten signature in black ink, appearing to read "Trent Galbraith". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Trent Galbraith
Water Agent
Idaho Department of Water Resources
900 N. Skyline Rd. Ste A,
Idaho Falls ID 83402
(208)525-7161

Enclosed: Attachments 1-5

Attachment
I

Stumbaugh, John 4 N., R., 40 E., B. M., containing 160 acres
The SE $\frac{1}{4}$, the NE $\frac{1}{4}$, and the E $\frac{1}{2}$ of SW $\frac{1}{4}$ of
Sec. 13, and E $\frac{1}{2}$ of NW $\frac{1}{4}$, and SW $\frac{1}{4}$ of
NW $\frac{1}{4}$ of Sec. 24, T. 15, N. R., 42 E.,
B. M., containing 520 acres.

Sullivan, Thomas F. W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 4, T. 2 N., R., 38 E.,
B. M., and NE $\frac{1}{4}$ of Sec. 4, T. 2 N., R.,
38 E., B. M., containing 240 acres.

Sullivan, Thomas F.
and Mary A. S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 7, and NW $\frac{1}{4}$, and the W $\frac{1}{2}$
of NE $\frac{1}{4}$ of Sec. 18, T. 14, N. R., 44
E. B. M., containing 320 acres, and the
E $\frac{1}{2}$ of Sec. 13, T. 14, N. R., 43 E., B.
M., containing 320 acres.

Summers, S. J. Part of NW $\frac{1}{4}$ of Sec. 30, T. 4 N., R., 40
E. B. M., containing 148.39 acres.
Also, 6-1/3 acres in SW $\frac{1}{4}$ of Sec. 19, T.
4 N., R., 40 E. B. M.,

Summers, William NE $\frac{1}{4}$ of Sec. 25, T. 4 N., R., 39 E., B. M.,
containing 160 acres.

Sundberg, Z. Lots 1, 2, 3 and 4 in Sec. 7, T. 3 N. R., 42
B. M., containing 149.85 acres.

The Sunny Dell Irrigation Canal Company.

① Beckstrom, Niels N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 7, T. 4 N., R., 40 E., B.
M., containing 80 acres.

② Carlson, Frans E. S $\frac{1}{2}$ of SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 6, T.
4 N. R., 40 E. B. M., containing 120 acres.

③ Christensen,
Niels W $\frac{1}{2}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 8, T. 4 N., R. 40
E., B. M., containing 20 acres.

④ Christensen
Niels C. NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 8, and S $\frac{1}{2}$ of NE $\frac{1}{4}$ of
NW $\frac{1}{4}$ of Sec. 8, T. 4 N. R., 40 E., B. M.
containing 60 acres.

Sheser, William

Shirts, William

Shurtliff, William

Siddoway, James,
and James
Briggs

Siddoway-Briggs
& Co.,

Siddoway
Irrigation &
Manufacturing
Company.

Silkey, J. R.

Simmons, A. H.

Simmons,
Charles C.

Simmons, Inez
and A. H.

Simmons, John

SE $\frac{1}{4}$ of NE $\frac{1}{4}$, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of SEC. 23,
and SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of
Sec. 24, T. 6 N., R., 44 E.B.M.,
Lot 3, and SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 4, T. 3 N.,
R. 45 E., B. M.
E $\frac{1}{2}$ of SW $\frac{1}{4}$ and Lots 1 and 2 of Sec. 31, t
2 N. R., 44 E., B. M., Also, Lot 4 of
Sec. 5, and Lots 1, 2 and 3 of Sec.
6, T. 1 N. R., 44 E., B. M.,
containing 156 acres.

(See Briggs, James, and James Siddoway.)

(a partnership composed of James Siddoway
and James Briggs. (See Briggs, James, and
James Siddoway.)

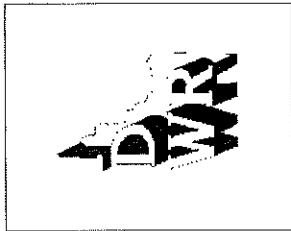
Lands of stockholders of said company, the
description of said lands and the
names of said stockholders not being
given in the pleadings of said company.
S $\frac{1}{2}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, and Lot 2 of Sec.
12, T. 8 N., R., 41 E. B. M.,
containing 152.25 acres.

NE $\frac{1}{4}$ of Sec. 26, T. 13, N. R., 43 E. B.
M., containing 160 acres.

SE $\frac{1}{4}$ of Sec. 26, T. 13, N., R. 43 E. B.
M., containing 160 acres.

N $\frac{1}{2}$ of NE $\frac{1}{4}$, and N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 35, T
13 N., R., 43 E., B. M., containing
160 acres.

S $\frac{1}{2}$ of SE $\frac{1}{4}$, and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 25, T.
6 N., R., 45 E., B. M., containing
160 acres.



**Land Decreed to Z.
Sundberg in the
Rexburg Decree**

Naip Photography 2004
Created By Trent Galbraith
3-23-2007

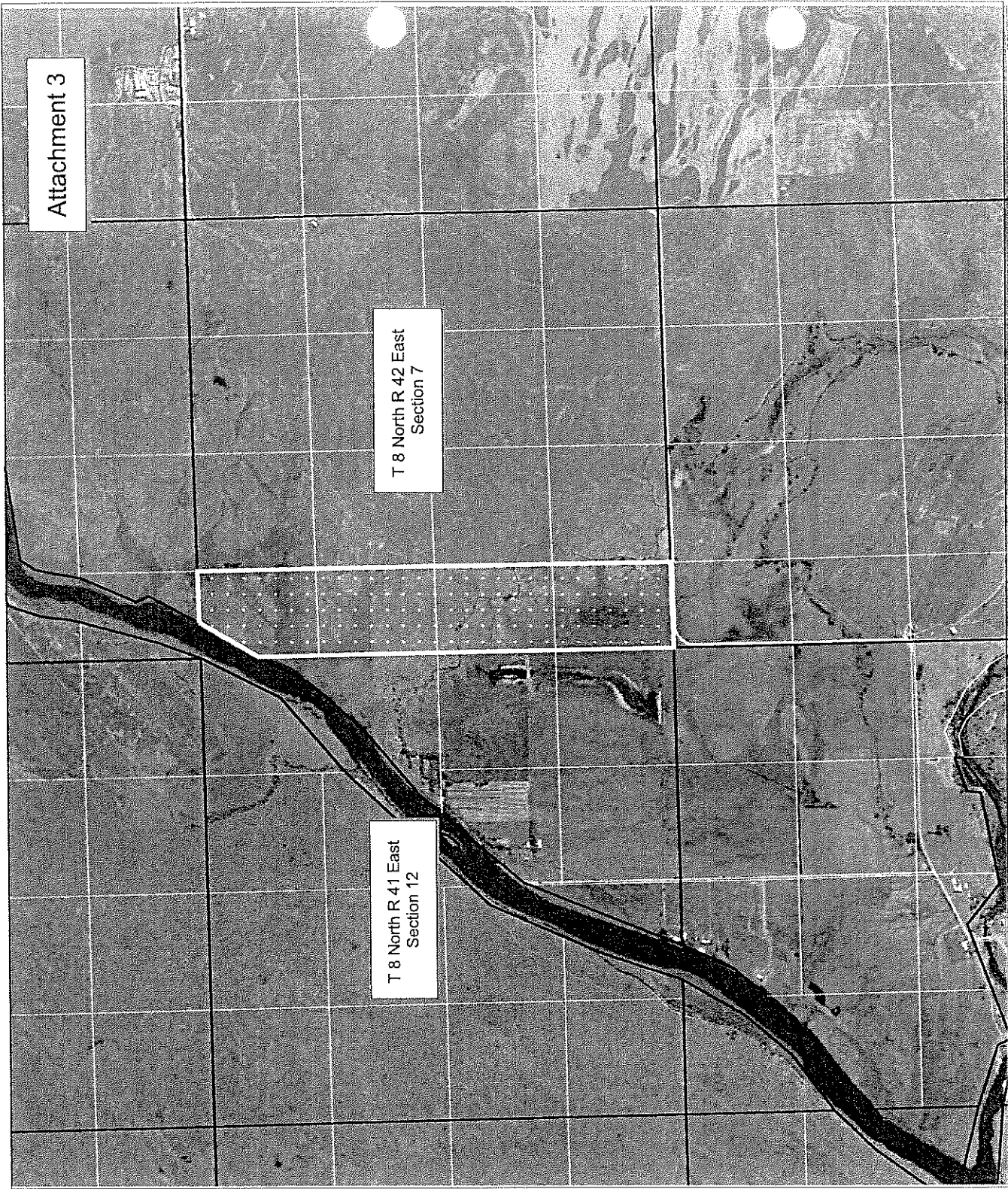
Attachment 3

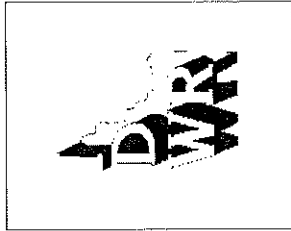
T 8 North R 42 East
Section 7

T 8 North R 41 East
Section 12



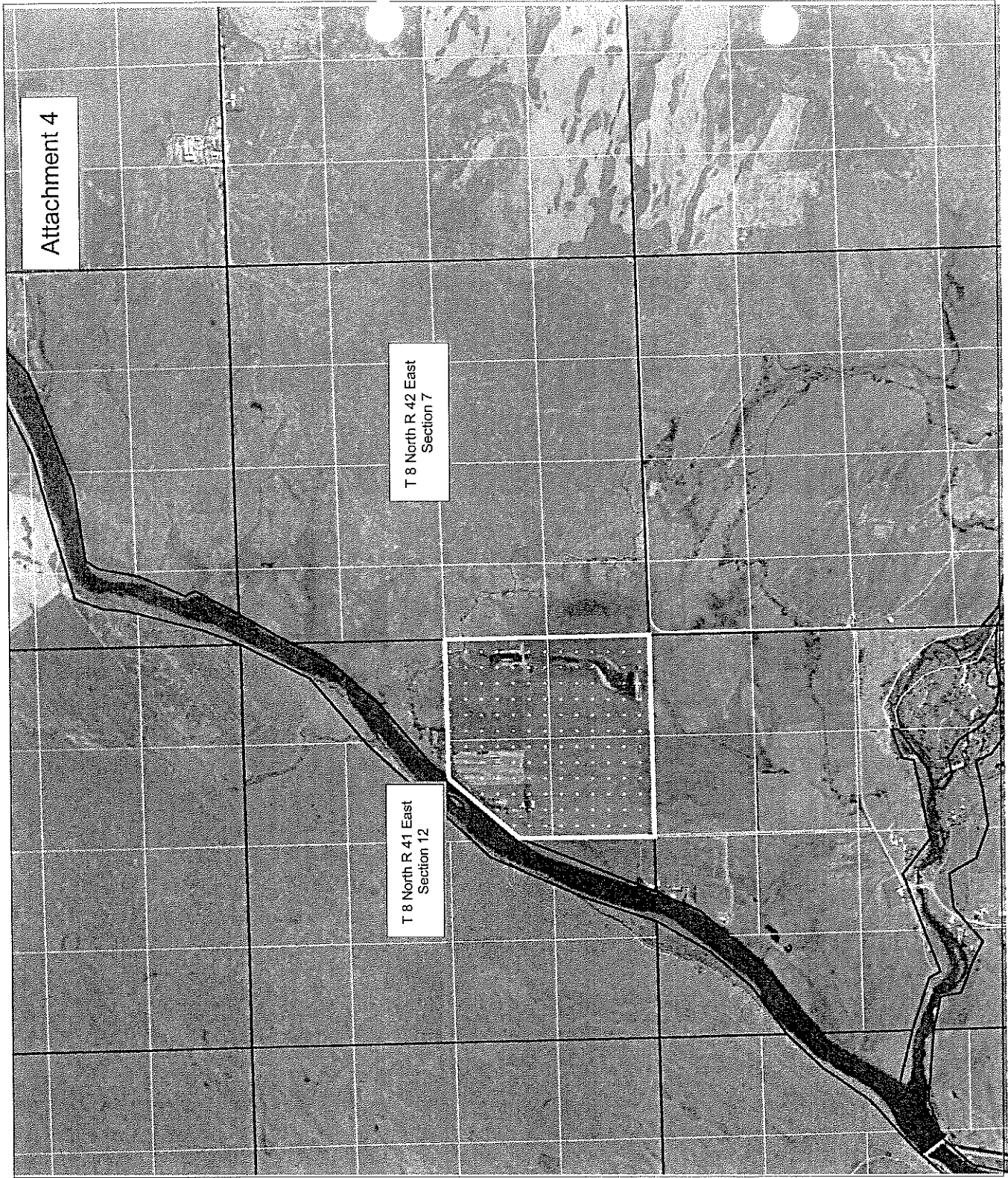
1000 0 1000 2000 3000 Feet





**Land Decreed to
J. R. Silkey in the
Rexburg Decree**

Naip Photography 2004
Created By Trent Galbraith
3-23-2007



Attachment 4

PRINCIPAL WATER RIGHTS HENRYS FORK AND FALLS RIVER

(Listed in downstream order)

Party or Canal	Date	Decreed Amount in Sec.-ft.	Accumulated Total
<u>DIVERSIONS FROM FALLS RIVER</u>			
21-0032 <u>Yellowstone</u> (TR from Marysville)	Nov. 5, 1895	25.0	25.0
21-0140	May 1, 1906 ✓	100	125.00
<u>Harrigfeld</u>	21-0057 Aug. 4, 1900 ✓	60	60
21-0058	May 1, 1906	80	140
Marysville (Orig. decree less TR to Yellowstone)	Nov. 5, 1895	305	*305 (260)
(Less 8.0 cfs to be pumped from Falls Ri. by Potter & Martindale re TR's)			21-0473 & 21-0073A
Farmers Own		1.2	* 1.2 (1.2)
21-0114/133 W.S. Tanner et al (CPD 240, TR 911, 933)	June 1, 1890	2.8	* 2.8 (47.8)
(Sundberg)			
21-0094 Lynn Loosli (L. J. Maurer)	June 1, 1892 ✓	0.5	
(Black Springs)			
21-0038 Lynn Loosli (A. P. Crabb)	June 1, 1892 ✓	1.40	4.7
(Black Springs)			
21-0075 Lynn Loosli (L. J. Maurer)	June 1, 1894 ✓	3.00	
(Black Springs)			
21-0115/124 W.S. Tanner et al (Sundberg) (Black Springs CPD 204, 242)	June 1, 1894	0.3	* 8.0 (53.0)
21-0048 Farmers Own	April 1, 1896 ✓	34.0	*42.0 (87.0)
21-0049 Farmers Own	May 1, 1904	12.00	54.0
21-0050 Farmers Own	May 1, 1905	40.00	94.0
01-0338 Farmers Own	April 1, 1939 ✓	12.00	106.00
*Marysville has authorized temporary transfer of 45 sec-ft. to Farmers Own until further notice.			
21-0019/7741 <u>Almy</u> (Earl Potter)	Sept 24, 1900 ✓	3.00	3.00
<u>Enterprise Irrigation District</u>			
(Supp)	21-2000 June 12, 1903 ✓	140.2	140.2
01-0267	Jan. 22, 1916 ✓	30.0	170.2
01-0335	April 1, 1939 ✓	29.0	199.2
21-0022 <u>Bell Pump</u>	Sept 26, 1889 ✓	5.2	5.2
01-0347	April 1, 1939 ✓	6	11.2
21-0046 <u>Fall River</u> (360 cfs after July 1)	June 1, 1889 ✓	460.0	460.0
21-0047	Apr. 1, 1939 ✓	32.0	492.0

Diversion from Falls River continued next page -