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67-14656

AGREEMENT

This Agreement was entered into by Monroe Creek Irrigation District (hereafter "Monroe District"), The Mann Creek Irrigation District (hereafter "Mann District") Claud and Evelyn Gann, husband and wife, (hereafter "the Ganns") and the Idaho State Department of Water Resources (hereafter the "Department").

The Monroe District is situated in the Monroe Creek drainage, which creek is a tributary to the Weiser River, and then into the Snake River. See the map designated as Exhibit A which is attached hereto and hereby incorporated by reference herein. The Monroe Creek drainage is the watershed immediately to the west of the Mann Creek drainage (see Exhibit A), the waters of which are also utilized by the Monroe District. The Mann District is located in the Mann Creek drainage. See Exhibit A.

Historically, the waters of Mann Creek have been utilized by the Monroe District by means of the Lolley Ditch which diverts a portion of the Mann Creek waters south into the Barton Reservoir. See Exhibit A. The Barton Reservoir provides off-stream storage for the waters of both Mann Creek and Monroe Creek. The capacity of the Barton Reservoir is approximately one thousand acre feet. Similarly, the waters of Monroe Creek are diverted by means of a diversion ditch referred to as the Verbeck Ditch which takes the waters in a southeasterly direction into the afore-referenced Lolley Ditch, which in turn carries **MICROFILMED** the Barton Reservoir. See Exhibit A.

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In 1967 the Mann Creek Reservoir (also known as Spangler

Reservoir) was constructed for the storage of the waters of Mann Creek. Since the Lolley Ditch is downstream of the Mann Creek Reservoir, the Lolley Ditch also re-diverts the water which is released from storage from the Mann Creek Reservoir. See Exhibit A.

The natural flows of Monroe Creek and Mann Creek are not sufficient to supply the irrigation requirements of some crops throughout the irrigation season. The natural flows must be supplemented with stored waters or other more reliable sources to furnish irrigation water throughout the irrigation season; hence, the construction and utilization of the Mann Creek and Barton Reservoirs.

The Ganns own the following described real property located in Washington County, Idaho, to wit:

Township 11 North, Range 5 West of the Boise Meridian:
Section 2: S $\frac{1}{2}$ NE $\frac{1}{4}$, Lots 3 and 4: SE $\frac{1}{4}$ NW $\frac{1}{4}$;

Township 12 North, Range 5 West of the Boise Meridian
Section 35: All that part of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ lying southerly of the right of way of the North and South Highway; the East 20 rods of the W $\frac{1}{2}$ SW $\frac{1}{4}$; and E $\frac{1}{2}$ SW $\frac{1}{4}$;

Township 12 North, Range 5 West of the Boise Meridian:
Section 34: SE $\frac{1}{4}$
Section 35: The West 60 rods of the W $\frac{1}{2}$ SW $\frac{1}{4}$

The Ganns are presently, as of the date of this Agreement, irrigating parts of the following described property, which is also located in Washington County, and which is part of the above described property. Said irrigated property is in the following tracts designated as Parcels 1, 2 and 3:

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Parcel 1: The E½ of the SE¼ of Section 34,
T12N. R5W, 8.M.

Parcel 2: West 60 rods of W½ of SW¼ of Section 35,
T12N, R5W, 8.M.

Parcel 3: East 20 rods of W½ of SW¼ of Section 35,
T12N, R5W, 8.M.

Parcels 1, 2 and 3 are depicted in Exhibit B attached hereto and hereby incorporated by reference herein. The map attached as Exhibit C and hereby incorporated herein provides additional orientation as to the Ganns' lands in relation to the afore-referenced ditches, reservoirs and Monroe District. The Ganns' property is not within the boundaries of the either Mann District or Monroe District. See Exhibit A. The Ganns' property is located immediately down-ditch of the point of discharge of the Verbeck Ditch into the Lolley Ditch. See Exhibit A. Moreover, the Ganns' three parcels contain the following amount of irrigated acreage as measured by the Department on October 1, 1984: Parcel 1--18 acres; Parcel 2--35 acres; Parcel 3--1 acre; totalling 54 acres.

The water rights of the Monroe Irrigation District as to the Monroe and Mann Creek waters are derived from the following adjudications: Monroe Creek has been adjudicated by the litigation entitled Monroe Creek Irrigation District vs. Don Dickerson, et al, Washington County Case No. 6836 (commonly referred to as the "Monroe Creek Decree"). As a result of this adjudication, the Monroe District through its predecessor, the Monroe Irrigation Company, was decreed water rights Number 67-0724 and 67-2032.

The waters of Mann Creek have been adjudicated by means of two supplementary adjudications, the first entitled Thomas Shannon, et al vs. Thomas M. Higgenbotham, et al, Washington County Case No. 238, Book 3 (commonly referred to as the "Shannon Decree"); and the second litigation entitled E. V. Jefferson, et al vs. Thomas M. Higgenbotham, et al, Washington County Case No. 1238 (commonly referred to as the "Mann Creek Decree"). By virtue of these adjudications, the Monroe District acquired a formal water right as to a portion of the waters in that creek. As a result of the Mann Creek adjudications, the Mann District was decreed specific rights in the waters of Mann Creek.

By virtue of the Monroe Creek Decree, the Ganns were decreed water right Number 67-0722 which allowed for a 1.36 cubic feet per second. Neither the afore-described land owned by the Ganns nor prior owners were named in either of the Mann Creek adjudications.

A predecessor of the Ganns started diverting water for irrigation from the Lolley Ditch on parcels 1, 2 and 3 for the 1942 irrigation season and perhaps as early as the 1937 irrigation season. Such irrigation continued until the fall of the 1970 irrigation season, one year prior to the first storage of Mann Creek water in Spangler Reservoir. Any Mann or Monroe Creek water diverted by this predecessor from the Lolley Ditch was supplemental to the use of Monroe Creek water under the Ganns' right number 67-0722 as subsequently decreed in the Monroe Creek Decree. Since 1972, the Ganns have irrigated the afore-described

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acreage. A maximum rate of flow of 0.02 cubic feet per second per acre of irrigated land at the field is reasonably required for the flood irrigation of land on the Ganns' property. Since 1972 the irrigation method on the Ganns' property has been sprinklers. The maximum rate of flow measured by the Department on October 1, 1984, was 0.79 cubic feet per second (39.5 miner' inches) or 0.0146 cubic feet per second per acre for 54 acres of irrigated land.

The water rights on the Mann Creek and Monroe Creek are subject to regulation by the water master of Water District No. 67 of the State of Idaho.

In conjunction with the building of the Spangler Reservoir by the U.S. Bureau of Reclamation (hereafter the "Bureau"), the Bureau holds State water right license No. R-696/67-2386 with a priority date of December 14, 1940 for the year-round storage of 10,000 acre feet of the waters of Mann Creek in the Spangler Reservoir for purposes of irrigation. The Bureau also holds state water right license No. R-1182/67-2389 with a priority date of January 30, 1964 for the purpose of the year-round storage of 5,000 acre feet of the waters of Mann Creek in the Spangler Reservoir for purposes of irrigation.

The Monroe District entered into Contract No. 14-06-100-5204 with the Bureau on December 28, 1964, for the use of 1,600 acre feet of storage water from the Spangler Reservoir on lands within the Monroe District service area. The Bureau delivers the contract storage water to the Monroe District through the Lolley

Ditch. Since the Lolley Ditch was of insufficient capacity to deliver Monroe District's prior water rights and the water purchased from the Bureau, the Bureau enlarged the Lolley Ditch. The Bureau completed the Lolley Ditch enlargement in May of 1967.

The Mann District entered into contract No. 14-06-100-5203 with the Bureau on January 18, 1965, for the use of storage water from Spangler Reservoir on lands within the Mann District service area.

The Bureau began storing water in Spangler Reservoir in March of 1967. The Reservoir was filled by June 15, 1967. The Bureau delivered its first water to the Monroe District during March of 1967.

The Ganns have no contract or agreement with the Bureau for use of storage water from the Spangler Reservoir. Moreover, the Ganns have no contract or agreement with either the Monroe District or the Mann District for use of storage water from the Spangler Reservoir.

In 1982, the Monroe District filed suit against the Ganns, seeking to enjoin the Ganns from taking the Irrigation District's storage water from the Lolley Ditch as that water was conveyed through the Lolley Ditch to the Barton Reservoir. The Ganns, in turn, counterclaimed against the Monroe District claiming a right to take that water on theories of adverse possession and/or an ancient water right acquired by one of Ganns' predecessors as to the waters of Mann Creek. The Ganns also complained against and joined in the same lawsuit the water master of Water District No.

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67 and the Mann District. In so doing, the Ganns requested a supplemental adjudication, under Idaho Code §42-1405, of their rights to the use of waters of Mann Creek and Monroe Creek. In conjunction with that suit, the director of the Department filed a Report in the Nature of Proposed Findings of Water Rights a copy of which is attached hereto for reference. Following extensive negotiations, however, the parties to that lawsuit have reached a settlement, the terms of which are memorialized by this Agreement.

The Ganns agree to forego, and hereby waive, any and all claims of water rights of whatsoever nature against the Monroe District and Mann District and against the waters of Monroe Creek and Mann Creek not previously adjudicated to the property owned by the Ganns as that property is specifically described herein, and grant judgment to said Water Districts in the afore-referenced litigation.

In addition, the Ganns shall pay to the Monroe District FIFTEEN THOUSAND DOLLARS (\$15,000.00) as follows: FIVE THOUSAND DOLLARS (\$5,000.00) down upon the execution of this Agreement, receipt of which is hereby acknowledged by the Monroe District: FIVE THOUSAND DOLLARS (\$5,000.00) on or before July 15, 1987: and the remaining balance of FIVE THOUSAND DOLLARS (\$5,000.00) on or before December 1, 1987. The balance shall not accrue interest.

In exchange, the water districts hereby acknowledge a flood water right corresponding to the Ganns' property as described

herein in Mann Creek water dating after the most recent adjudication of Mann Creek as described herein. Department records reveal that the Bureau storage water rights and one other irrigation right (Permit 67-2393) are the only water rights established on Mann Creek since that adjudication. The amount of the flood water right shall be limited to the 54 acres referenced herein in an amount of water per acre corresponding to the practice in the area and attributable to that of the Monroe District's acres. The full description of the Gann's water right is set forth in Exhibit D, attached hereto and incorporated herein by this reference.

The Monroe District shall annex the Gann property previously described on Page 2 of this Agreement pursuant to the statutory procedures set forth in Idaho Code §42-3218. For purposes of annexation, it must be noted that said Gann property exists in close proximity to the Monroe District and is contiguous to the Barton Reservoir and Lolley feeder ditch as owned and utilized by the Monroe District as afore-described. By virtue of its proximity and contiguity to the Monroe District and Barton Reservoir, the Gann property is legally contiguous to the Monroe District boundaries for annexation purposes. Provided, however, the said annexation shall not entitle the Ganns or their property as afore-described to the same water rights presently enjoyed by the Monroe District. Rather, in conjunction with the annexation, the Monroe District shall make available to the Ganns a portion of its 1,600 acre feet of Mann Creek Reser-

voir stored water allocated to them annually pursuant to the afore-referenced contract with the Bureau. What allows Monroe Creek District to make the annexation and this grant is the fact that in an average water year the Monroe District does not utilize all of its 1,600 acre feet of stored water, leaving a balance undrawn behind the Mann Creek Reservoir Dam. The grant to the Ganns pertains to a portion of that excess storage water existing in an average year. The grant, as made possible by the annexation, does not correspond to any portion of storage water actually utilized by the Monroe District in a given year. However, in years of water shortage, which have been experienced since the construction of the dam, no such excess exists. Therefore, the grant to the Ganns shall be inferior, secondary and subject to the existing adjudicated and storage water rights and water usage of the Monroe District. All existing rights, whether adjudicated, storage or otherwise, enjoyed by the Monroe District and all water usage presently applied by the users of the Monroe District shall be superior to the grant to the Ganns. If there is storage water in excess of that presently needed for the irrigating of lands presently irrigated within the Monroe District, the Ganns may benefit to the extent of the grant provided for herein. However, if there is insufficient water in any given year or at any given time to meet the complete needs and rights of the Monroe District as they presently exist, the Ganns shall shut off completely or reduce in favor of the rights of Monroe Creek as they presently exist.

The presently existing rights of Monroe Creek, whether adjudicated, storage or otherwise as above-referenced, shall hereafter be referred to as "Primary Rights". That storage water in excess of the Primary Rights, as utilized by the Ganns pursuant to the grant provided herein or by other members of the Monroe District as hereinafter referenced, shall hereafter be referred to as "Secondary Rights".

The grant to the Ganns and its foundational distinction between the superior, Primary Rights of the Monroe District as they presently exist and the inferior, Secondary Rights of the Ganns corresponding to this grant shall be further achieved as follows:

For purposes of this Agreement and the grant to the Ganns, and in any given year, the period of "flood water" shall be deemed to be that period of time after the water begins flowing over the glory hole at the Mann Creek Dam, at which point in time the Mann Creek Reservoir shall be deemed filled. During such flood water period, any water in the Lolley Ditch shall be deemed flood water. Once the water ceases flowing over the glory hole at the dam, the flood water period is deemed to end and usage of the "storage water" is deemed to begin. During the storage water use period, all water flowing through the Lolley Ditch, from which the Ganns would take, shall be deemed storage water. Provided, however, if in any given year there is insufficient water to fill the dam with enough water to satisfy the present rights of the Monroe District, neither flood water nor storage

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water shall be deemed to exist and the Ganns shall be entitled to no water beyond their Monroe Creek adjudicated water as previously referenced.

The Gann grant shall correspond and be limited to the 54 acres previously referenced herein, with the corresponding amount of water per acre to be measured and supplied in conformity with the current practices of the Monroe District. The Ganns shall be responsible for the construction and maintenance of a measuring device at the point they take water from the Lolley Ditch for purposes of monitoring by the Monroe District. Moreover, the Ganns shall be assessed on an acreage basis for the grant in an amount and in a way identical to the assessment for Primary Right acres and all other Secondary Rights shall be assessed in the same manner.

The satisfaction of Primary Rights and the extent and availability of Secondary Rights, in any given year and at any given time shall be determined by the board of directors of Monroe District by means of measurement and monitoring presently available with regard to the Mann Creek water storage and the Monroe District storage system and as otherwise reasonable and acceptable in the area. If there is insufficient water storage in any given year or at any given time to satisfy the Primary Rights in their entirety, as determined by the Monroe Creek District Board, the Ganns and any other Secondary Right users shall shut off completely and immediately as directed by the Monroe Creek District Board, which direction shall be in writing.

Secondary water rights above and beyond that granted to the Ganns hereby, shall not exceed the average of the last three years carry-over storage less a reasonable cushion of 200 acre feet, and shall be made available for acquisition by the present members of Monroe Creek District, excluding the Ganns. The date of priority of secondary water rights shall be the date of acquisition. Subsequent secondary water users shall be determined and approved by the Monroe Creek Irrigation District Board. Provided further, that the Monroe Creek Irrigation District Board will limit grants to secondary water right users in such a manner that there will be adequate water for both Primary Rights and Secondary Rights in order of priority in a normal year of precipitation. The amount of cushion retained by the District, as above-referenced, may be altered or amended by the District Board at any regular meeting called for that purpose.

In connection with real property owned by Ganns, and particularly with respect to Parcels 1, 2 and 3 above set forth, the Department of Transportation of the State of Idaho is relocating U.S. Highway 95. The relocation of U.S. Highway 95 as presently proposed will pass through and bisect Parcel 1, 2 and 3 involved in this Agreement. The number of acres that will be involved in the highway relocation is unknown. With respect to the possible condemnation of the Gann property for the relocation of U.S. Highway 95 and as it applies to Parcels 1, 2 and 3, it is agreed by the Monroe Creek Irrigation District that the Ganns may change the place of application of water as presently being

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utilized to a like number of acres to be determined by Ganns out of their other real property herein described, in the event of such condemnation.

Each party agrees to bear its own costs and attorney fees incurred in the afore-referenced litigation; provided, however, the attorney fee incurred by the Mann District shall be paid by the Monroe District out of the Gann proceeds referenced herein. Moreover, the costs and attorney fees incurred in the drafting and finalization of this Agreement shall be handled in the same fashion.

DATED this 13th day of April, 1987.

Approved by

MONROE CREEK IRRIGATION DISTRICT

Larry C. Walker
Larry C. Walker,
Attorney for the District

By George L. Chandler
George L. Chandler, Chairman

Approved by

Wm. F. Gigney, Jr.
Wm. F. Gigney, Jr.
Attorney for Ganns

Claud Gann
Claud Gann

Evelyn Gann
Evelyn Gann

Approved by

Idaho State Department of
Water Resources

MAP III. AREA OF CONCERN

EXHIBIT "A"

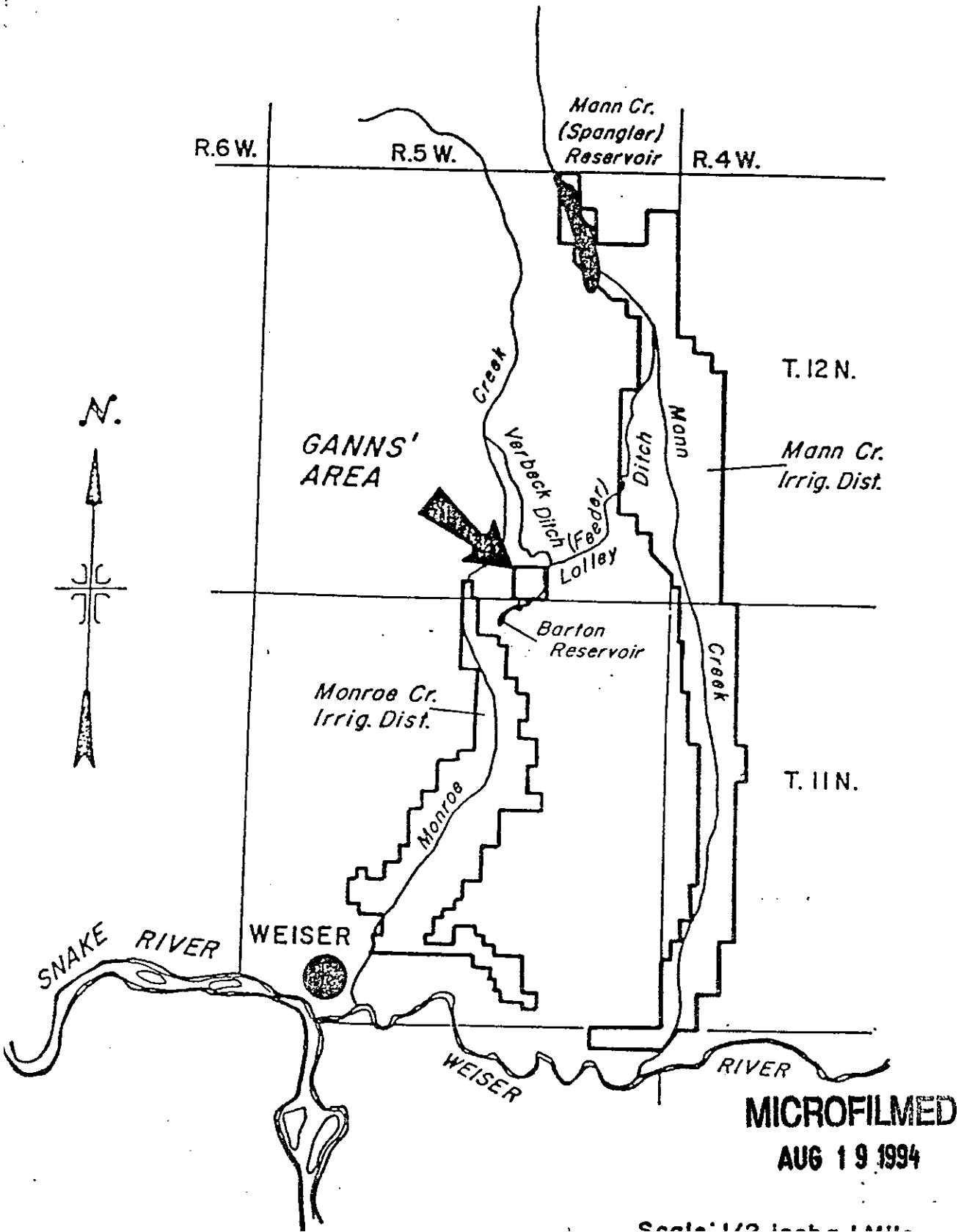
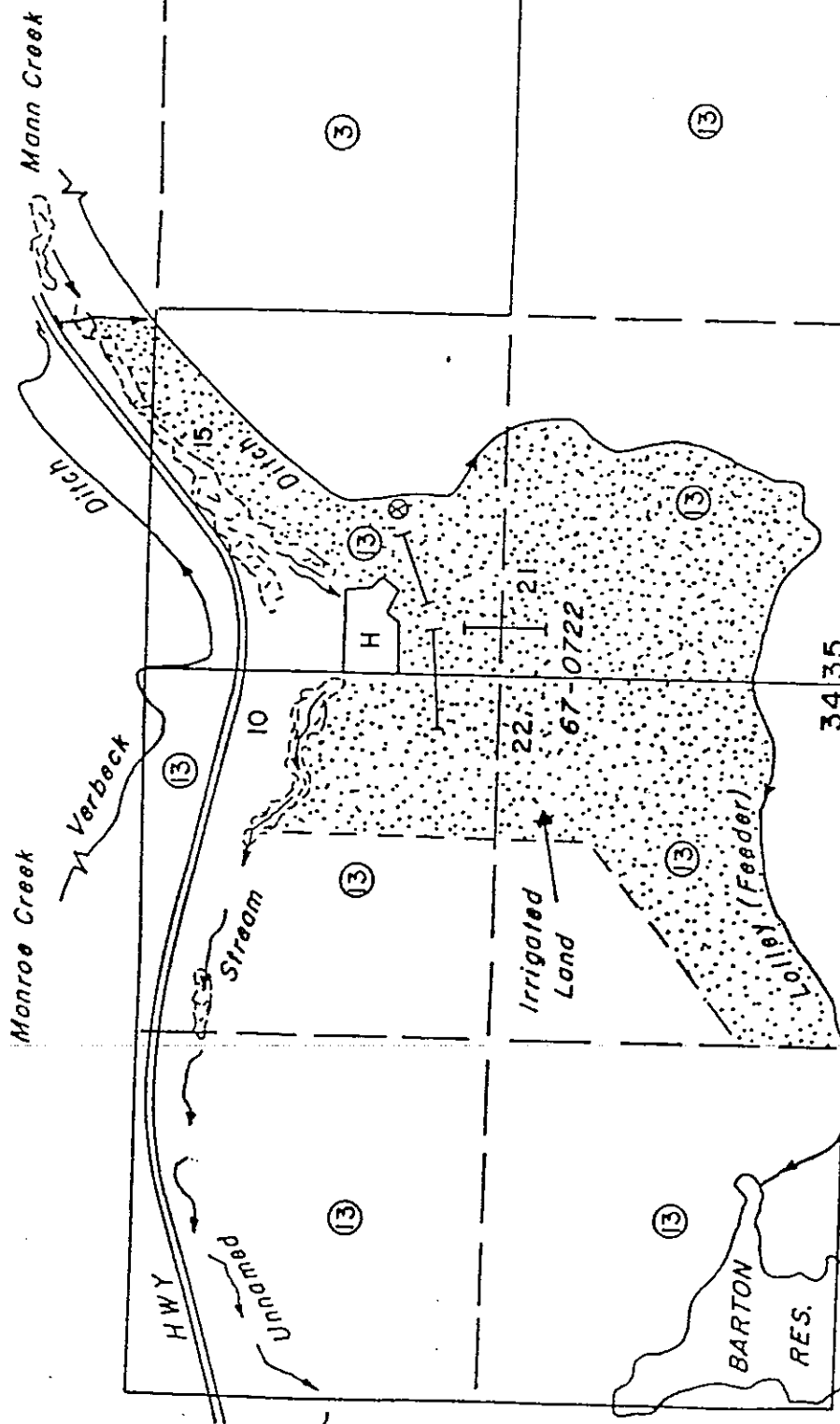


EXHIBIT B



N.

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LEGEND

- H Homestead
- 67-0722 Water Right Number
- ⊗ Pump & Sprinkler Line
- 22.0 Acres Irrigated Within a Given 40-Acre Tract
- From Listing of Rights in Monroe Cr. Decree.
- ① Land Owner

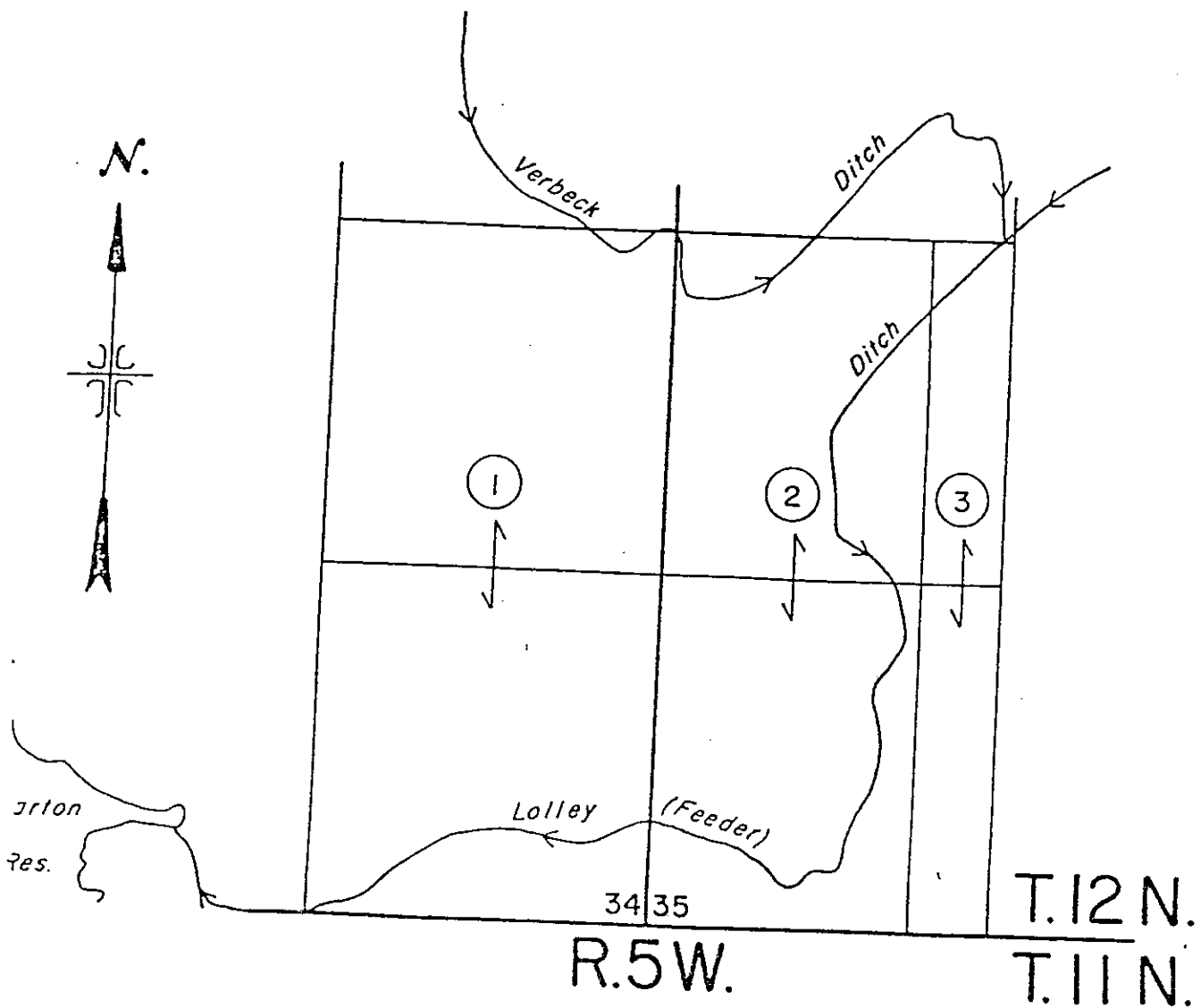
- ③ Clifford Newkirk
- ⑬ Cloud P. Gann
- ⑭ Daisy (Dasch) Peterson

SCALE: 1 inch = 660 ft.

MAP I.

EXHIBIT C

MAP OF PARCELS



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LEGEND

① = PARCEL NO.

EXHIBIT D

LISTING OF WATER RIGHT

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	WATER USE	TRIBUTARY TO:		CON. USE VOL. DIVERSTION	BASIS
				WEISER RIVER			
67-0674	GANN, CLAUD GANN, EVELYN RT. 2, BOX 148 WEISER, IDAHO 83672	03-15-1961	IRRIGATION	03-15	11-15	189.00 AFA 0.79 CFS	BENEFICIAL USE
OTHER RIGHTS: 67-0722							
POINT OF DIVERSTION: T12N R5W S13 N4NE							
PLACE OF USE:							
T12N	R5W	S34	NESE	5		SESE 13	
		S35	SENE	1		NWSV 14	
						SWSV 21	
54 ACRES TOTAL							

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