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FEB 26 2009

DEPARTMENT OF
WATER RESOURCES

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)

A. Subcase 73-4080
(Insert water right number)

Case No. 39576)
_____)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: ROBERT W. CHEWNING
Address: 139 PAHSIMEROI RD
ELLIS, IDAHO 83235
Daytime Phone: (208) 876-4291

Name & Address of Attorney, if any:

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

Name: VIRGINIA H. CHEWNING & ROBERT W. CHEWNING
Address: 139 PAHSIMEROI RD
ELLIS, IDAHO 83235

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

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: 3.0 CFS.
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use** T15N R21E S6 NWNW 130 T16N R20E S36 NESE 18
Should be: T16N R20E S36 SESE 4.90 T16N R21E S31 SWSW 31
58.2 ACRES TOTAL
10. ☐ **I object because:**

☐ This water right Should not exist.

☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTIONS(S): SEE EXTRA SHEET
ENCLOSED WITH THIS OBJECTION SUBCASE 73-4080 TITLED
"E. REASONS SUPPORTING OBJECTIONS(S)."

E. REASONS SUPPORTING OBJECTIONS (5):

Before the Idaho Department of Water Resources (IDWR) submitted their recommendation for our claim in 73-4080 to the SRBA Court, we filed a "Notice of Error Reply" with the IDWR on their intended report. We disagreed with their priority date which was corrected. We disagreed with the total acres irrigated which was changed from 48.2 acres to 50.2 acres, but not to the 58 acres which we claim and can submit proof. We disagreed with the quantity of water being 2.02CFS and argued that it should have been a minimum of 2.34 CFS or 2 miner inches per acre. IDWR left the quantity of 2.02 CFS. We also requested a Hubble Analysis of this area because of the sandy & gravel condition of the soil and the soil conservation service representative in Salmon said a minimum of 2 inches per acre would be required for adequate irrigation. See a copy of our "Notice of Error Reply", Attachment one.

When the IDWR made their recommendation on this claim to the SRBA Court, we initially decided not to file an objection on this claim because we already had so many objections to IDWR's recommendations and, this claim was closer than most to meeting our objections, that it was becoming burdensome trying to deal with the IDWR's representative for Basin 73. See Subcases 73-4079; 73-11960; 73-12035; 73-12036.

Subsequently we learned that the ASCS has estimated from soil surveys, and given the relatively long distance that the irrigation ditch P6 (Ellis - Shoupe) covers to our point of irrigation, that the water loss would be 20 to 30%. This loss has caused the other users of the ditch P6 (Ellis - Shoupe) to file for additional irrigation water. Applying this loss to our original claim of 2.34 CFS brings our new claim to 3.0 CFS. See Irrigation Flow Rate Questionnaire Attachment Two.

INSTRUCTIONS FOR MAILING

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

G. CERTIFICATE OF MAILING

I certify that on February 24, 2009, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

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

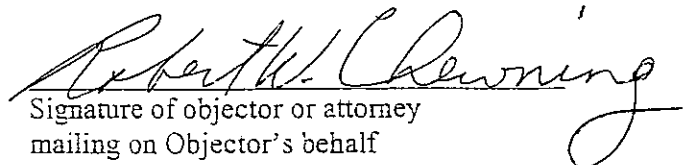
Name: VIRGINIA H. CHEWNING & ROBERT W. CHEWNING
Address: 139 PAHSIMEKOI RD.
ELLIS, IDAHO 83235

3. Copies to:

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

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

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


Signature of objector or attorney
mailing on Objector's behalf

F.

VERIFICATION (must be completed)

State of Idaho)
County of Blaine)ss.

ROBERT W. CHEWNING, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

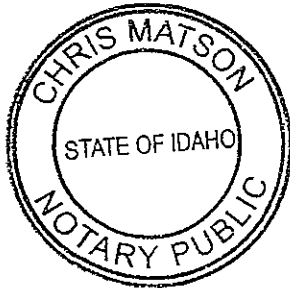
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Robert W. Chewning
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

February 23, 2009



Chris Matson
Notary Public for Idaho
Residing at: Challis
My Commission Expires: 7/28/2011

08/31/2006

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DEPARTMENT OF
WATER RESOURCES

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: September 29, 2006

Water right number: 73-4080

ROBERT W CHEWNING
139 PAHSIMEROI RD
ELLIS ID 83235
Telephone Number: (208)876-4291

VIRGINIA H CHEWNING
139 PAHSIMEROI RD
ELLIS ID 83235
Telephone Number: (208)876-4291

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

- a. We do not agree with the priority date of 04/01/1933.
b. We do not agree with the total acres being irrigated, 48.2 acres
c. we do not agree with the quantity of water being 2.02 CFS.

2. Describe the changes you wish to make in the proposed recommendation:

- a. The priority date should be 1886 or earlier.
b. The acres being irrigated under this claim are 58 plus acres.
c. We want a Hubble Analysis for this area. There should be a minimum of two miner inches per acre or 2.34 CFS total.

3. Give a brief explanation as to why you disagree with these portions:

See attached statement

☐ I AGREE with this proposed recommendation: no changes need to be made.

DATE: 09/26/2006

SIGNATURE:

Robert W. Chewning

Please print your name:

ROBERT W. & VIRGINIA H. CHEWNING

IDWR Regional Office, 322 E Front St
PO Box 83720, Boise, ID 83720-0098, 2082874800

ATTACHMENT I to SUBCASE 73-4080
OBJECTION

08/31/2006

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

RIGHT NUMBER: 73-4080

NAME AND ADDRESS: ROBERT W CHEWNING
139 PAHSIMEROI RD
ELLIS ID 83235

VIRGINIA H CHEWNING
139 PAHSIMEROI RD
ELLIS ID 83235

SOURCE: PAHSIMEROI RIVER

TRIBUTARY: SALMON RIVER

QUANTITY: 2.020 CFS

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

PRIORITY DATE: 04/01/1933

POINT OF DIVERSION:
T15N R21E S8 NWNW Within LEMHI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.020 CFS
IRRIGATION	04/01 10/31	2.000 CFS

PLACE OF USE: IRRIGATION Within LEMHI County

T15N R21E S06 Lot 4 NWNW	1.30	T16N R20E S36	NESE	16.00
T16N R20E S36	SESE	3.90	T16N R21E S31 Lot 2 SWSW	27.00

STOCKWATER same as IRRIGATION

48.2 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for stockwater use 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 - Beneficial Use

STATEMENT FOR NOTICE OF ERROR REPLY ON
WATER RIGHT 73-4080

(3) In 1983 we contracted with John S. McKinney, an attorney in Salmon, to file our original claims for water rights which today are identified as Water Right Numbers 73-4080 and 73-4079. In his attempt to substantiate a valid priority date, he visited and talked to a local rancher, Claus Burstedt, who had been in the Pahsimeroi Valley since 1909 and was living next to and irrigating some of his property from the ditch know today as P-6. Mr. Claus Burstedt told Mr. McKinney that our irrigation took place at least before the turn of the century. (See Attachment 4, copy of a letter dated May 20, 1983 from Mr. McKinney to the Chewnings and Attachment 5, an Affidavit signed by Mr. McKinney affirming the visit and what Burstedt had told him at the time.)

(4) Talking to the local ranchers and inspecting the terrain involved, it would be difficult or impossible to establish an irrigation ditch for the use described in Attachment 1 without it being in the exact location of P-6. Given all the facts above, we strongly believe the priority date should be 1886 or earlier rather than 1933. We also inspected a copy of the Affidavit (Attachment 6) made by Mr. Boise H. Ellis - not Boise Ellis, these are two different men - on the 4th of April 1977. In his statement he talks about the old Weller - Shoup - Ellis ditch. It appears that he is talking about the ditch now know as P-6. We note that the land being irrigated by Weller at that time was specifically described in Attachment 2, was in Lemhi, and was from the ditch now know as P-6.

b. Place of use:

There are 64 plus deeded acres purchased by us in three separate parcels all confirmed by survey associated with this claim. 2.75 acres constitute a dry area adjacent to the Pahsimeroi Road and 3 acres are irrigated by the ditch for which water is claimed under Water Right 73-4079. The remaining 58 plus ares are being and have always been irrigated in their entirety by water from the ditch involved in Water Right 73-4080. We have deeds, tax bills, engineering surveys and other proof of this area.

c. Quantity:

In support of the request for a Hubble Analysis, we have attached a copy of a letter from our attorney dated May 9, 1983, addressing his investigation, along with an engineering firm, of our first claim of water rights on two of the three parcels, totaling 55 acres. Note that due to the sandy conditions they believe we require 2 inches per acre. This was also the opinion of the Soil Conservation Service representative in Salmon. (See Attachment 7) In current discussions with local ranchers, including those who have flood irrigated this property, they all agree that it will and has required at least 2 inches per acre to adequately irrigate these parcels.

**STATEMENT FOR NOTICE OF ERROR REPLY ON
WATER RIGHT 73-4080**

3. a. Priority Date:

(1) We know that in 1886 Boise Ellis, William H. Weller and James M. Shoup filed a claim in the Lemhi Courthouse for 500 inches of water being conveyed by a ditch to their respective ranches for agriculture and other purposes. (See Attachment 1, copy of page 289 from the Water Rights Book A found in the Lemhi Courthouse.) The confusing part was that the claim said that the water was being taken from "Trout Creek", which cannot be identified by name today. However, when William H. Weller sold 40 acres by warranty deed in 1901 he conveyed his 1/3 interest to this water right claim and irrigation ditch. In the deed, he goes on to explain that the reason he is conveying the water right as heretofore belonging to and used upon said Desert Land Claim to said party of the second part said water right consisting of a right to the use of the undivided 1/3 of 500 inches of the waters of Pahsimeroi for the purpose of irrigating said tract of land. (See Attachment 2, copy of a warranty deed, page 463 in Deed Record Book L located in the Lemhi Courthouse.) This establishes that the waters of Trout Creek are also waters of the Pahsimeroi.

(2) We know that Boise Ellis, William H. Weller and James M. Shoup owned and were irrigating ranches/parcels from the ditch claimed in Attachment 1. In fact, the large majority of the ranch/parcel owned by Mr. Weller was being watered with his 1/3 interest in this water and ditch. Some of the parcels they owned at that time, and specifically that owned by Mr. Weller, are currently being irrigated by the ditch known today as P-6, the ditch involved in the water rights claims of:

Robert W. & Virginia H. Chewning	73-4080
David L. & Betty Jeanne Ellis	73-4089
Preston Dixon	73-11971
	73-11969
Mike A. & Betty J. Noonan	73-4040
Patricia K. McCaffrey	73-4012
	73-11972
Philip Bowles	

(See Attachment 2 referenced above and Attachment 3, copy of the U.S. Patent found on pages 584 & 585 in Deed Record Book J located in the Lemhi Courthouse.)

JOHN S. McKINNEY
Attorney at Law ISB #1427
1016 Main Street
Salmon, Idaho 83467
Telephone: (208)756-4287

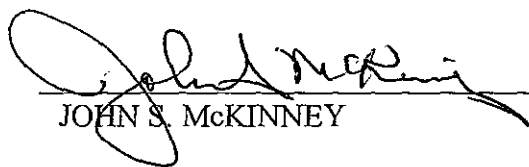
AFFIDAVIT

COMES NOW John S. McKinney, being duly deposed and sworn, states and avers as follows:

I am a resident of Lemhi County and a practicing attorney. I have been licensed in the State of Idaho since 1972. In 1983 I was retained by Mr. And Mrs. Robert W. Chewning to file a claim of water right on property they owned in the Pahsimeroi Valley State of Idaho. In pursuing that filing I spoke with one Claus Burstedt who had lived in the Pahsimerio Valley since 1909. He specifically informed me that he was aware of irrigation in the valley, but more particularly on property owned by Mr. And Mrs. Chewning. He specifically stated that the irrigation had taken place beginning prior to the turn of the century, or prior to the year 1900. He was not specific on the exact date, prior to 1900.

Based on his information, and like filings in the area, the Chewnings have claimed April 1, 1870, as their priority date, and I believe that that is much more accurate than a 1933 filing date. Logic says irrigation took place in the 1800s.

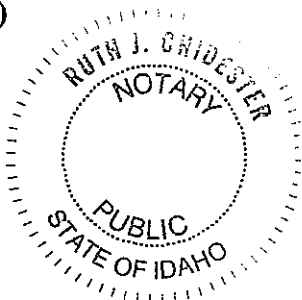
Signed and dated this 25th day of September, 2006.

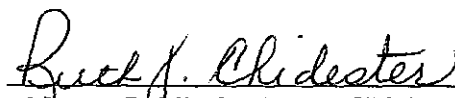

JOHN S. McKINNEY

STATE OF IDAHO)
) ss
County of Lemhi)

SUBSCRIBED and SWORN To before me, a Notary Public, this 25th day of September, 2006.

(SEAL)




Notary Public for State of Idaho
Residing at Salmon, Idaho
My Commission Expires: 3-15-2010



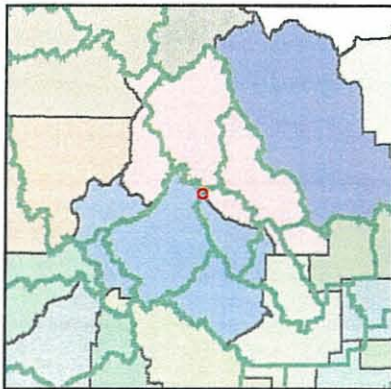
Idaho Department of Water Resources

SRBA Recommendation:

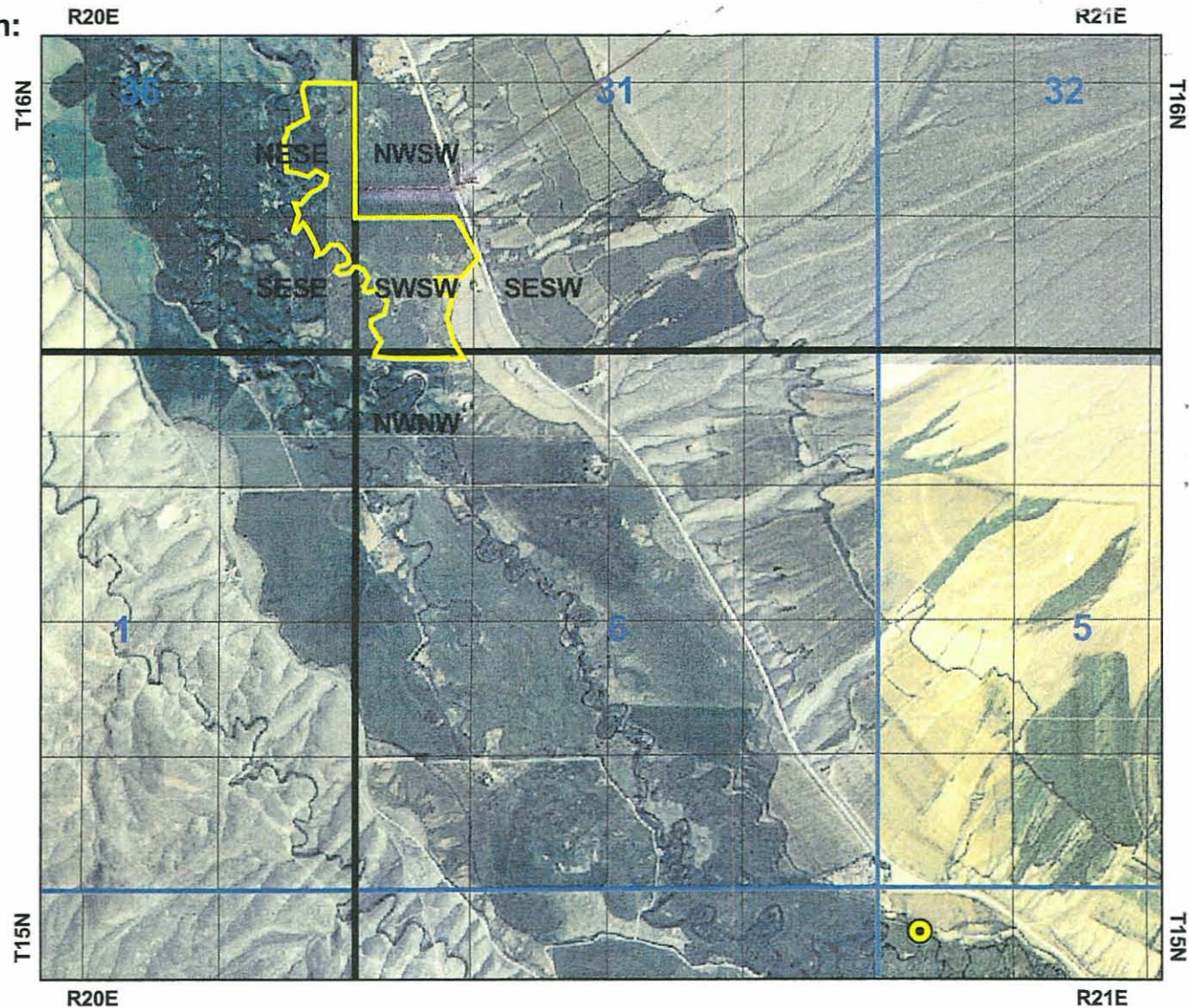
73-4080

Legend

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



Lemhi, Custer Counties
IDWR Basin 73



0 0.7 1.4 Miles

Prepared by R. Brown
On Wednesday, July 12, 2006
1987/88 Aerial Photography

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DEPARTMENT OF
WATER RESOURCES

IRRIGATION FLOW RATE QUESTIONNAIRE

THIS INFORMATION IS REQUIRED FOR ANY ADJUDICATION CLAIM(S) FOR WHICH THE IRRIGATION FLOW RATE CLAIMED IS MORE THAN 0.02 CFS PER ACRE (ONE EXCEPTION IS THAT 0.03 CFS PER ACRE MAY BE ALLOWED FOR IRRIGATION OF UP TO 5 ACRES).

CLAIM NO(S). 73-4080
NAME ROBERT W. & VIRGINIA H. CHEWNING
ADDRESS 139 PAHSIMEROI RD., ELLIS, IDAHO 83235
PHONE (208)876-4291

1. TOTAL IRRIGATED ACRES SHOWN ON CLAIM(S) REFERENCED ABOVE 58.2 ACRES.
2. SHOW THE NUMBER OF ACRES OF CROPS GROWN FOR YOUR IRRIGATION SYSTEM(S) DURING A TYPICAL SEASON

	Border	Furrow	Corrugation	Sprinkler	Contour Ditch	Other
Alfalfa						
Beans						
Field Corn						
Silage						
Spring Grain						
Winter Wheat						
Orchard						
Pasture <u>ALFALFA/GRASS MIX</u>					<u>58.2 Ac</u>	
Potatoes						
Sugar Beets						
Other						

PLEASE COMPLETE ITEMS 3 THROUGH 8 FOR EACH OF THE IRRIGATION SYSTEM TYPES SPECIFIED ABOVE

ATTACHMENT 2 TO SUBCASE 73-4080
OBJECTION

3. BORDER (COMPLETE BELOW BASED ON PEAK USE)

inflow to border (cfs)	border width (feet)	border length (feet)
field slope (%)	set time (hours)	number of borders per set
frequency (days)		

4. FURROW (COMPLETE BELOW BASED ON PEAK USE)

inflow to furrow (gpm)	furrow spacing (inches)	furrow length (feet)
field slope (%)	set time (hours)	number of furrows per set
frequency (days)		

5. CORRUGATION (COMPLETE BELOW BASED ON PEAK USE)

inflow to corr. (gpm)	corr. spacing (inches)	corr. length (feet)
field slope (%)	set time (hours)	number of corrugations per set
frequency (days)		

6. SPRINKLER (COMPLETE BELOW BASED ON PEAK USE)

average nozzle flow (gpm)	nozzle spacing (feet)
lateral length (feet)	lateral spacing (feet)
number of laterals per set	set time (hrs.)
frequency (days)	

7. CONTOUR DITCH (COMPLETE BELOW BASED ON PEAK USE)

5 cfs inflow to ditch (cfs)	2-3% field slope (%)
2 @ 1,700' @ 2 @ 1,000' ditch length (feet)	150 - 300' distance between ditches (feet)
24 sets on 4 ditches number of ditches per set	12 hr set time (hours)
6-7 days frequency (days)	

8. OTHER IRRIGATION SYSTEM TYPE (specify)
(COMPLETE BELOW BASED ON PEAK USE)

inflow (cfs)	total area irrigated per set (acres)
field slope (%)	set time (hrs.)
frequency (days)	

9.

CONVEYANCE FROM SOURCE TO FARM

UNLINED DITCH-SPECIFY SOIL TYPE

Gravel / sand / loam9,000'
length (feet)12" to 3' 6"
ave. depth from land surface (inches)72"
ave. top width of water surface (inches)

LINED DITCH-SPECIFY TYPE OF LINING

length (feet)

ave. depth from land surface (inches)

ave. top width of water surface (inches)

PIPELINE

length (feet)

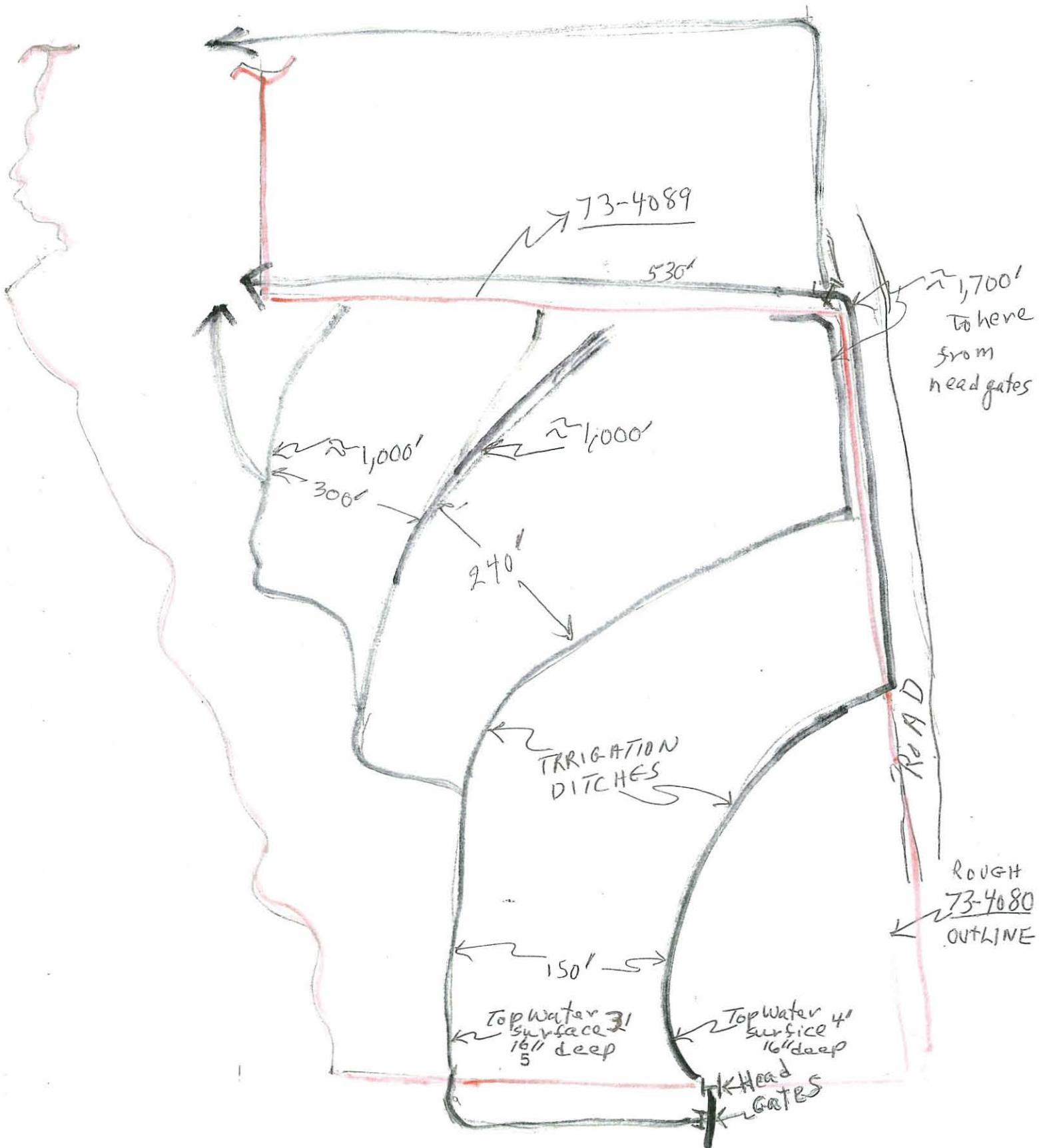
diameter (inches)

IS THIS CONVEYANCE SYSTEM SHARED BY OTHER WATER USERS? YES

IF YES, PLEASE DESCRIBE OR SKETCH THE SYSTEM SHOWING THE NUMBER OF WATER USERS, LOCATION OF HEADGATES, LENGTHS ETC.

This ditch is 9,000ft long and is shared by 6 users.
 User #1 (first out) uses a continuous flow of water while the rest of the users rotate the use of the remaining water. (Aerial photo attached)
 #1 aim 73-4080 is user #5 and also uses run off from user #6.

10. ON-FARM DISTRIBUTION SYSTEM-DRAW A SIMPLE SKETCH OF YOUR ON-FARM WATER DISTRIBUTION SYSTEM. AN AERIAL PHOTO/FARM PLAN WITH THE IRRIGATION SYSTEM SKETCHED ON IT MAY BE USED. THIS SKETCH MUST INCLUDE THE FOLLOWING INFORMATION FOR EACH REACH: LENGTH, TOP WIDTH OF WATER SURFACE, DEPTH FROM LAND SURFACE, SOIL TYPE OR LINING, AND PERCENT OF TOTAL FLOW DURING USE.



11. HAVE YOU CHANGED YOUR IRRIGATION SYSTEM FROM THE ONE HISTORICALLY USED? (FOR EXAMPLE, LAND LEVELING, CHANGING LENGTH OF RUNS, CHANGE FROM FURROW TO SPRINKLER, ETC.)

IF YES, PLEASE DESCRIBE:

NO

12. HAVE YOU HAD ANY IRRIGATION SYSTEM DESIGN/EVALUATIONS OR FARM SOIL SURVEYS COMPLETED BY THE SOIL CONSERVATION SERVICE, PRIVATE CONSULTANTS, OR IRRIGATION EQUIPMENT DEALERS?
IF YES, PLEASE DESCRIBE OR ATTACH COPIES

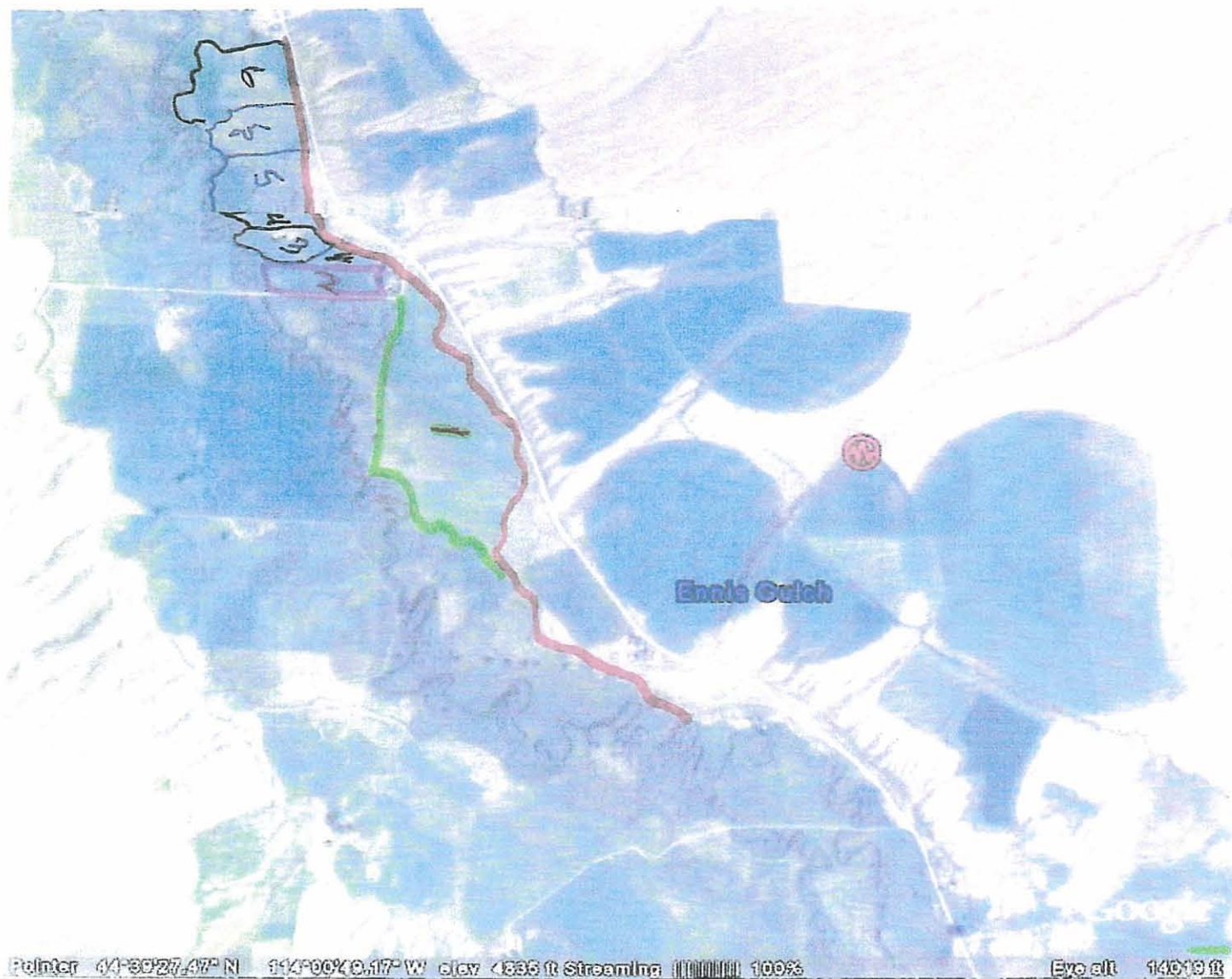
YES - SOIL SURVEY EXISTS - GRAVELLY/
LOAM SOIL - DONE BY ASCS

13. PLEASE INCLUDE ANY FURTHER COMMENTS WHICH WILL AID IN THE EVALUATION OF YOUR WATER REQUIREMENTS.

Subsequently to our initial claim of 2.34 CFS. for these 58.2 acres, we have learned that the ASCS has estimated from soil surveys, and given the relatively long distance that the irrigation ditch P6 (ELLIS-SHOUPPE) covers to our point of irrigation, that the water loss would be 20-30%. This loss has

PLEASE RETURN FORMS TO:
caused the other users of ditch P6 (ELLIS-SHOUPPE) to file for additional irrigation water. Applying this loss to our original claim of 2.34 CFS brings our new claim to 3.0 CFS.

Dept. of Water Resources
Adjudication Bureau
P. O. Box 83720
Boise, ID 83720-0098



- ditch
- user #1
- user #2
- user #3
- user #4
- user #5
- user #6