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& MOELLER, *Chartered*
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Rexburg, Idaho 83440
Telephone: 208-356-3633

Attorneys for Plaintiff

RECEIVED
MAY 05 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	)	Subcase: 75-14302 & 75-14100
	)	
Case No. 39576	)	DISCLOSURE OF WITNESSES AND
	)	EXHIBITS
_____	)	

Comes now Objector, by and through counsel of record and pursuant to the Trial Schedule Order entered by the above entitled Court Order dated October 8, 2008, following is Objector's "Disclosure of Witnesses" and "Disclosure of Exhibits" which Plaintiff intends to call and use at trial:

List of Witnesses

Objector may call as witnesses at the trial of the above entitled cause the following:

Bill Maxwell
Bud Leslie
Dale Gooby
Greg Bourdon
Josh Miller
Bob Foster from IDWR
Sam Slavin

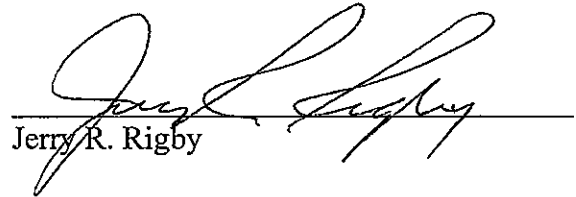
List of Exhibits

1. Arial photographs showing the property taken in the following years: 1968, 1984, 1985, 1986, 1987, 1988, 1999, 1990, 1991, 1992, 1993, 2003, 2004, and 2006 attached as

Exhibit A.

2. Agriculture Irrigation and Livestock Watering System Easement issued by the U.S. Forest Service and dated July 29, 1999 – Including Exhibit A, Easement Description with two maps and Exhibit B, Operation and Maintenance Plan. Attached as Exhibit B.
3. Photographs of Mr. Waite's property taken May 22, 2007, and attached as Exhibit C.
4. Those documents listed on the IDWR website for water right numbers 75-14302 and 75-14100 and available to both parties. A print off of the lists as of May 1, 2009 is attached as Attachment D.

DATED This 1st day of May, 2009.


Jerry R. Rigby

CERTIFICATE OF SERVICE

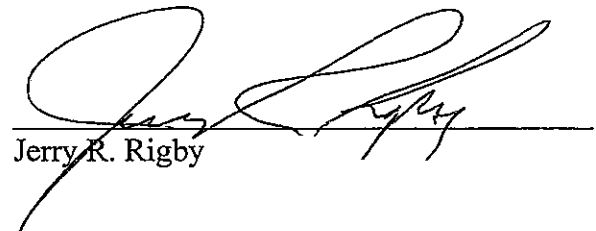
This is to certify that on the 1st day of May, 2009, I served a copy of the foregoing **Disclosure of Witnesses and Exhibits** by depositing a true and correct copy thereof in the United States mail, postage prepaid and addressed to:

Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303-2707

Jeffrey V. Waite
P.O. Box 75
Carmen, ID 83462

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

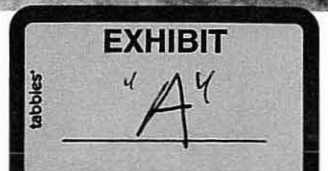
Dan Farley
P.O. Box 13
Carmen, ID 83462


Jerry R. Rigby



Pointer 45°16'16.96" N 113°54'28.36" W elev 3999 ft Streaming 100%

Google™
Eye alt 9336 ft







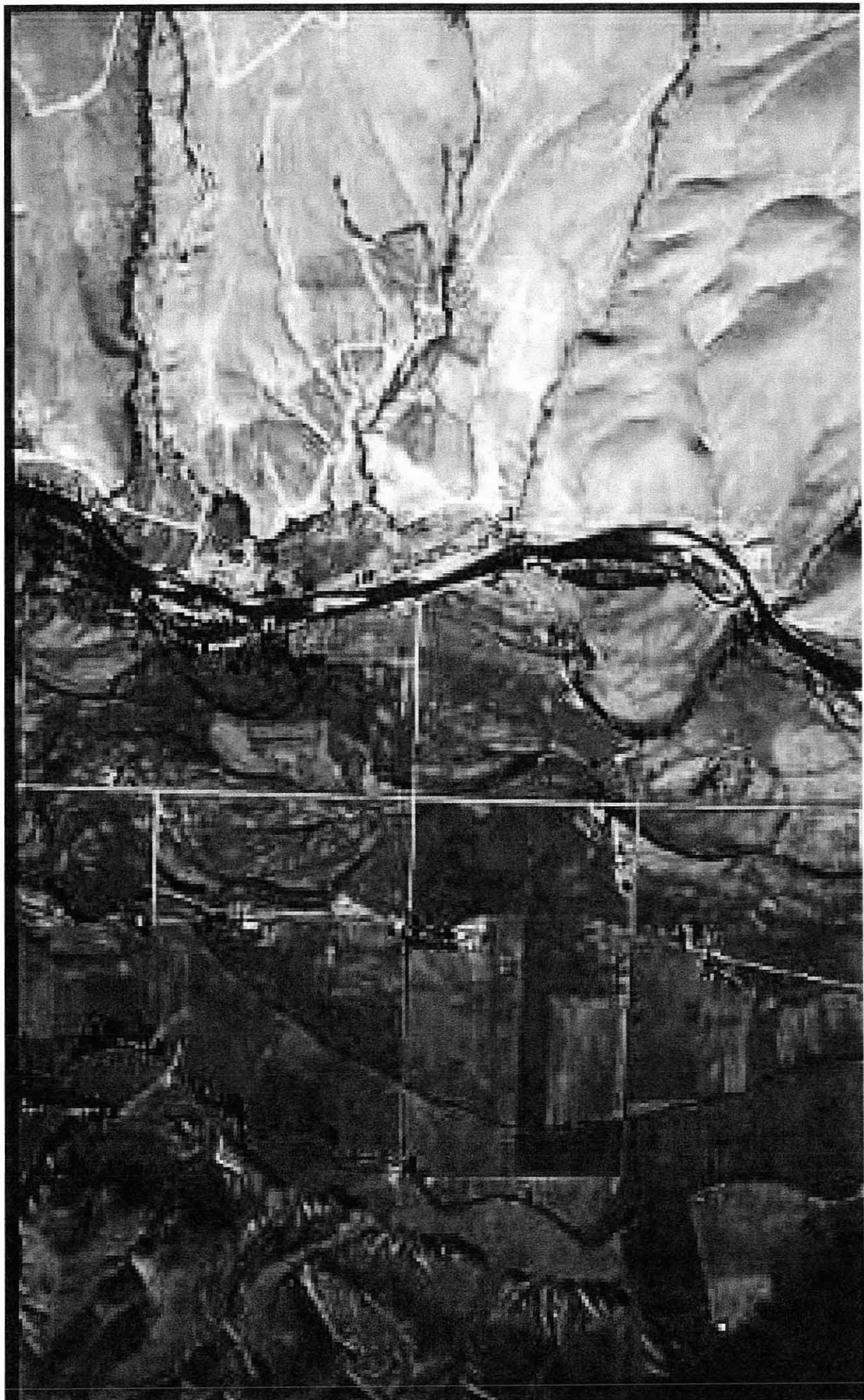








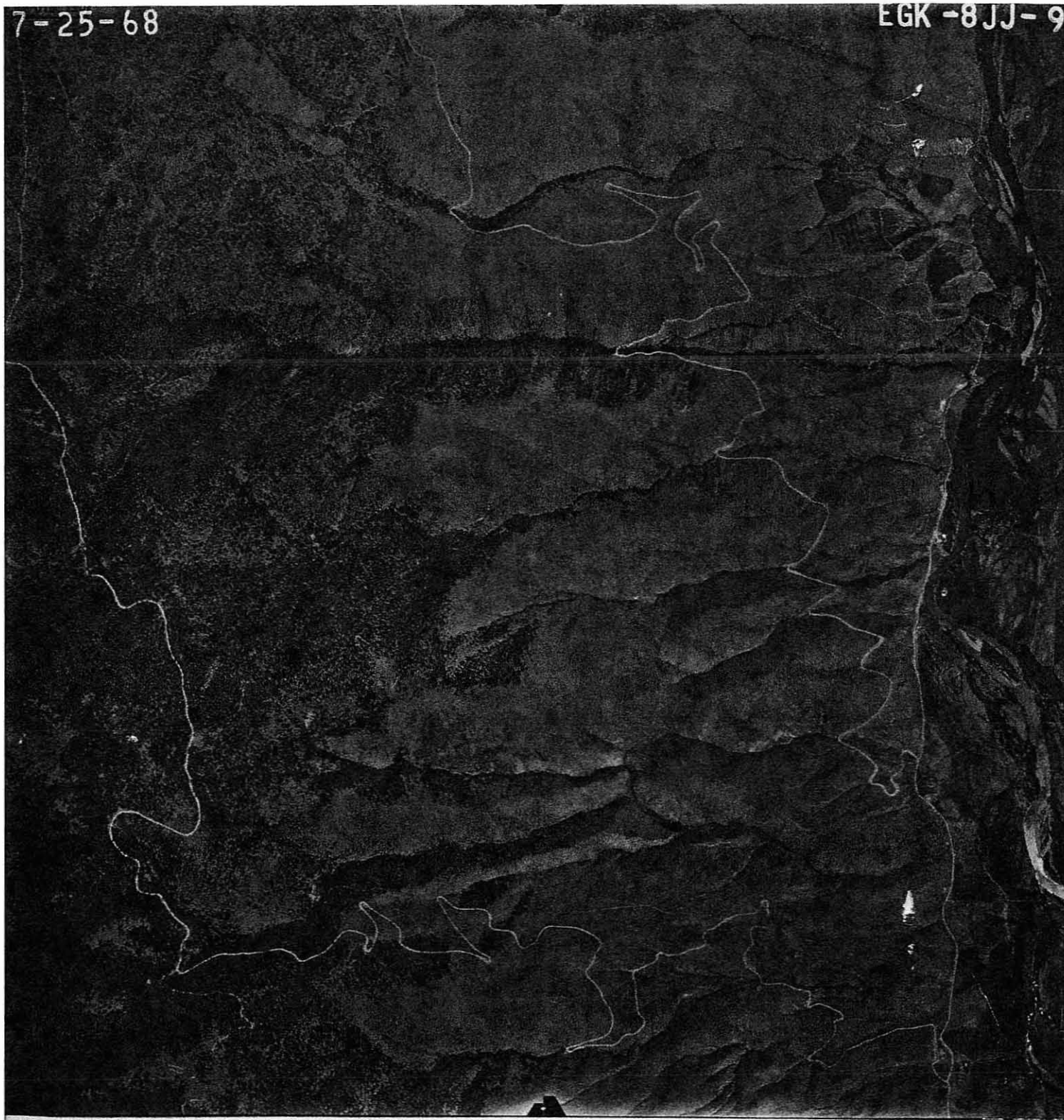






7-25-68

EGK-8JJ-9



Map of the State of Idaho - Microsoft Internet Explorer

File Edit View Favorites Tools Help



Address <http://maps.idwr.idaho.gov/mapall2/viewer.htm>

Favorites

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- Search
- Shopping and Classifieds
- Software Updates
- Travel and Leisure
- What's New and Cool
- Columbia River DART (Data Access...
- Home-made Hydraulic Ram Pump
- [http--id.water.usgs.gov-PDF-wri98...](http://id.water.usgs.gov-PDF-wri98...)
- id.txt
- Idaho Department of Water Resou...
- Idaho NRCS Homepage
- MSN.com
- my.NRCS - Splash
- Personal
- National Water and Climate Center...
- Radio Station Guide
- Surface Water for Idaho_Daily Str...
- The Fisheries Applications Researc...
- United States Department of Agric...
- weather.com - Local Weather Page
- Welcome to Idaho Fish and Game!
- Welcome to the Montana Partners ...
- Western U.S. Precipitation Freque...
- WindowsMedia.com
- StreamStats in Idaho
- Autodesk Subscription Center
- Howstuffworks
- Wholesale Lawn Sprinkler Systems ...

**Idaho Department of
Internet Ma**

Zoom/Pan

Identify

Locate

Capture Screen

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Download

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Map Server Menu

Zoom In

Map: 2507608.08, 1563713.54 -- Image: 519, 158 -- ScaleFactor: 2.388030067192486

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Map of the State of I...

Map of the State of Idaho - Microsoft Internet Explorer

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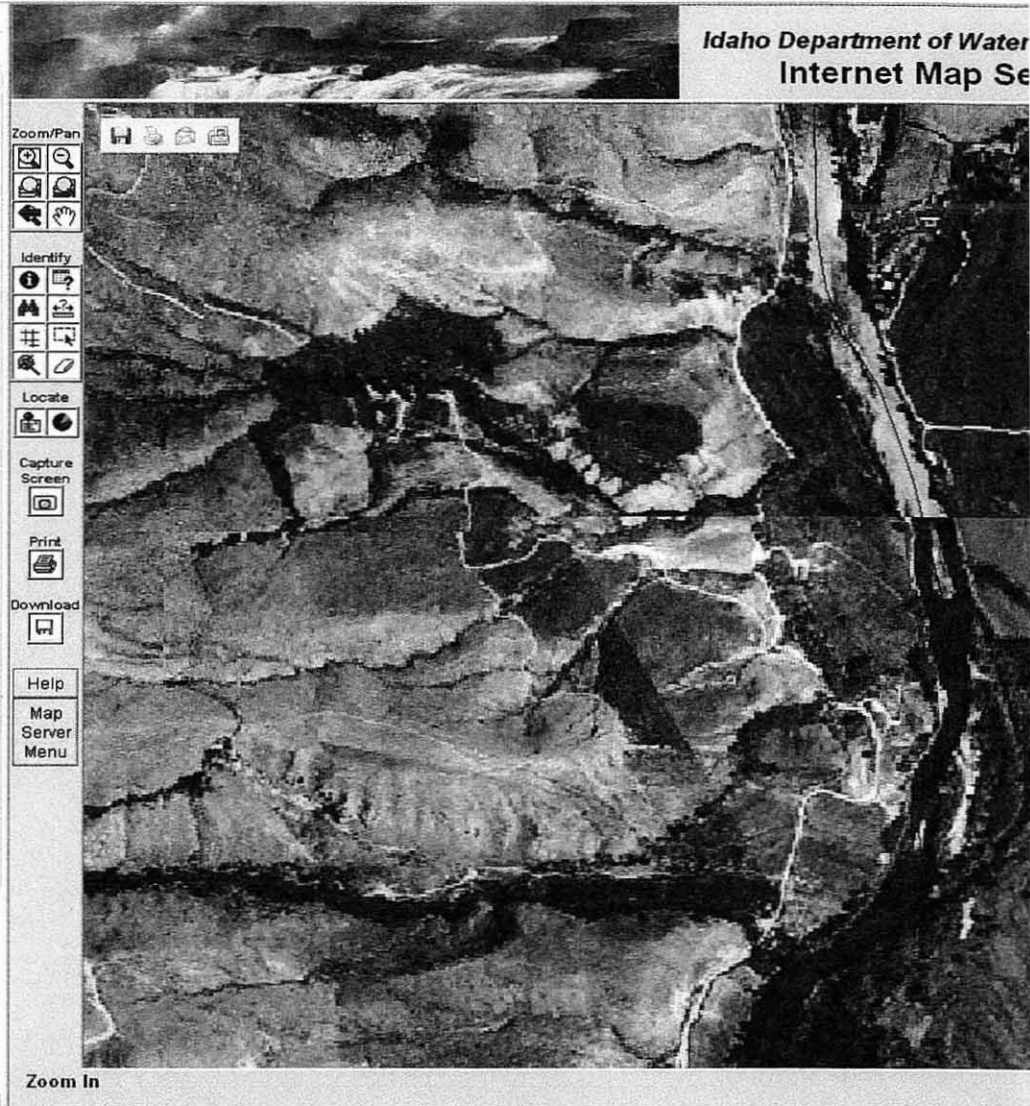


Address <http://maps.idwr.idaho.gov/mapall2/viewer.htm>

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- What's New and Cool
- Columbia River DART (Data Access...
- Home-made Hydraulic Ram Pump
- <http-id.water.usgs.gov-PDF-wri98...>
- id.txt
- Idaho Department of Water Resou...
- Idaho NRCS Homepage
- MSN.com
- my.NRCS - Splash
- Personal
- National Water and Climate Center...
- Radio Station Guide
- Surface Water for Idaho_Daily Str...
- The Fisheries Applications Researc...
- United States Department of Agric...
- weather.com - Local Weather Page
- Welcome to Idaho Fish and Game!
- Welcome to the Montana Partners ...
- Western U.S. Precipitation Freque...
- WindowsMedia.com
- StreamStats in Idaho
- Autodesk Subscription Center
- Howstuffworks
- Wholesale Lawn Sprinkler Systems ...



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Zoom In

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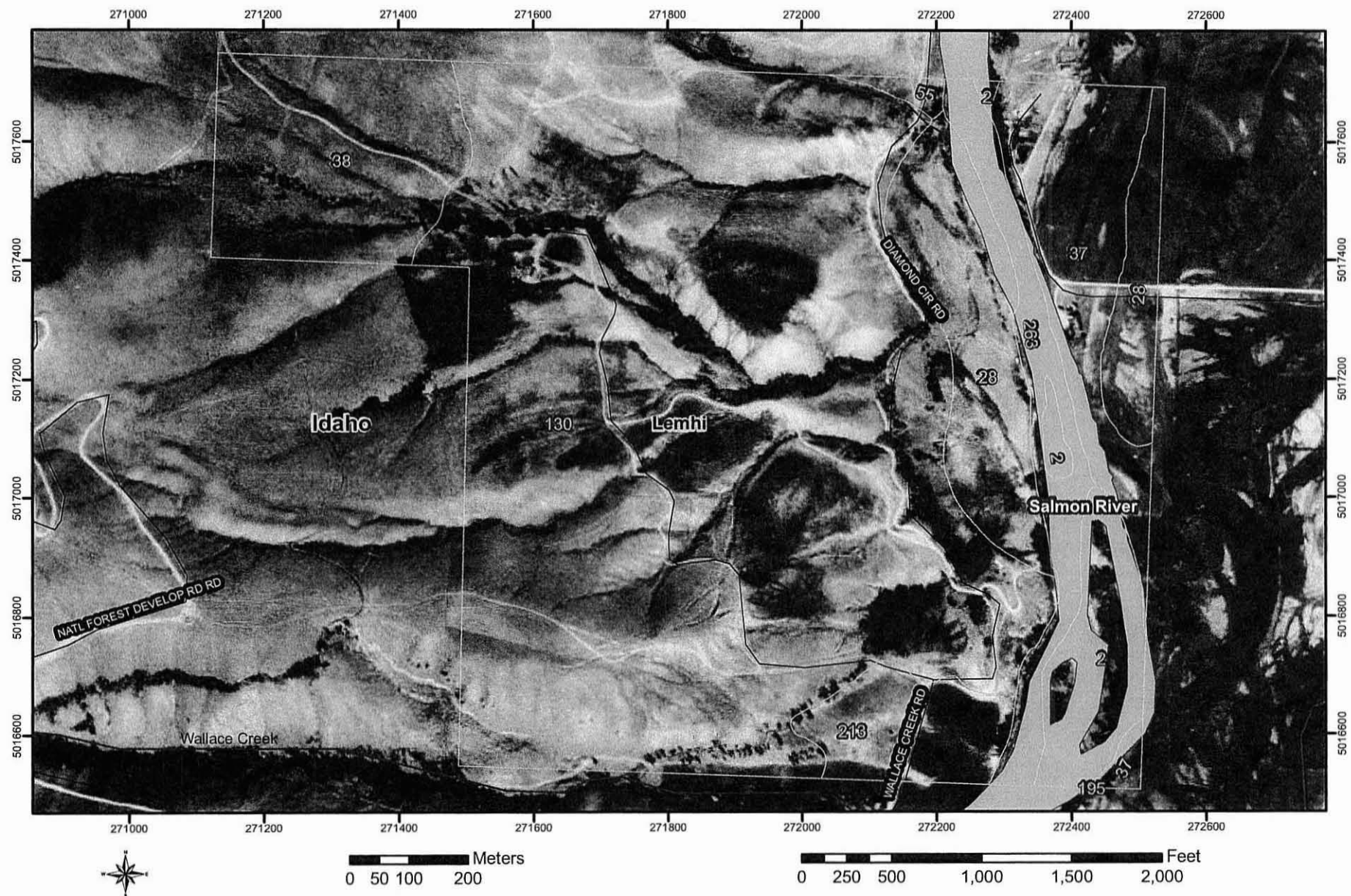
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Map of the State of I...

SOIL SURVEY OF CUSTER-LEMHI AREA, IDAHO, PARTS OF BLAINE, CUSTER, AND LEMHI COUNTIES; SALMON NATIONAL FOREST, IDAHO

1984



SOIL SURVEY OF CUSTER-LEMHI AREA, IDAHO, PARTS OF BLAINE, CUSTER, AND LEMHI COUNTIES; SALMON NATIONAL FOREST, IDAHO

1984

MAP LEGEND

	Soil Map Units
	Cities
	Detailed Counties
	Detailed States
	Interstate Highways
	Roads
	Rails
	Water
	Hydrography
	Oceans
	Escarpment, bedrock
	Escarpment, non-bedrock
	Gulley
	Levee
	Slope
	Blowout
	Borrow Pit
	Clay Spot
	Depression, closed
	Eroded Spot
	Gravel Pit
	Gravelly Spot
	Gulley
	Lava Flow
	Landfill
	Marsh or Swamp
	Miscellaneous Water
	Rock Outcrop
	Saline Spot
	Sandy Spot
	Slide or Slip
	Sinkhole
	Sodic Spot
	Spoil Area
	Stony Spot
	Very Stony Spot
	Perennial Water
	Wet Spot

MAP INFORMATION

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL: <http://websoilsurvey.nrcs.usda.gov>

Coordinate System: UTM Zone 12

Soil Survey Area: Custer-Lemhi Area, Idaho, Parts of Blaine,
Custer, and Lemhi Counties

Spatial Version of Data: 2

Soil Map Compilation Scale: 1:24000

Soil Survey Area: Salmon National Forest, Idaho

Spatial Version of Data: 0

Soil Map Compilation Scale: 1:0

Map comprised of aerial images photographed on these dates:
8/26/1992

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend Summary

Custer-Lemhi Area, Idaho, Parts of Blaine, Custer, and Lemhi Counties

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
2	Aquents-Riverwash complex, nearly level	16.3	3.5
28	Bursteadt-Tohobit complex, 0 to 3 percent slopes	34.6	7.4
37	Cowbone-Tohobit complex, 0 to 3 percent slopes	27.6	5.9
38	Cronks-Challis association, 20 to 50 percent slopes	34.3	7.3
55	Dawtonia-Dacont association, 20 to 50 percent slopes	1.4	0.3
130	Millhi-Lacrol association, 15 to 35 percent slopes	235.4	50.0
195	Smout-Cowbone complex, 0 to 2 percent slopes	0.0	0.0
213	Swahlen-Packham complex, 2 to 8 percent slopes	13.6	2.9
263	Water	15.6	3.3

Salmon National Forest, Idaho

No map data available for this soil survey area.

U.S. DEPARTMENT OF AGRICULTURE Forest Service AGRICULTURE IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT Act of October 21, 1976, Act of October 27, 1986 (Pub. L. 99-545), 36 CFR 251, Subpart B	Holder No.	Issue Date	Expir. Date
	5172-01		0X
	Use Code	Authority	Auth. Type
	916	676	10
	Region/Forest/District		State/County
	04/13/01		16/059
	Cong. Dist.	Latitude	Longitude
	02		

THIS EASEMENT issued this 29 day of July, 1999 by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to a person of the State of Idaho, hereinafter called the Holder.

WHEREAS, the Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P. L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the Salmon-Challis National Forest, in the County of Lemhi, State of Idaho.

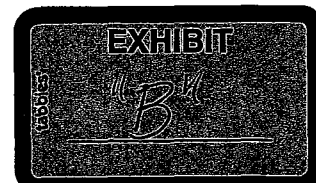
WITNESSETH

WHEREAS, upon acceptance of this easement the Holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

NOW THEREFORE, the United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities of lands shown on the map and specifically described by a centerline description contained in Exhibit A, attached hereto and incorporated herein, as provided by the Holder and hereby accepted by the Authorized Officer.

This easement is issued subject to the following terms, provisions, and conditions applicable to the Holder, its permittees, contractors, assignees, and successors in interest.

1. AUTHORIZED USE. This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.
2. EXTENSIONS or ENLARGEMENTS. This easement does not authorize extensions or enlargements of the water conveyance system.
3. FEES. This easement is issued free of charge.
4. TRANSFERABILITY. This easement is fully transferable provided the water conveyance system facilities are used for agricultural irrigation or livestock watering. Holder shall notify Grantor within sixty (60) days of any address change or change in ownership.
5. TENURE. This easement shall continue for as long as the above described lands and water conveyance system facilities are used, operated, and maintained in accordance with the terms and conditions herein described.



This is
pg 2
of easement

6. OPERATION and MAINTENANCE.

- a. Holder agrees to operate and maintain the facilities and use the authorized easement in accordance with applicable Federal, State, and local laws, regulations, and standards.
- b. Holder shall notify, consult with, and obtain concurrence of the Grantor for operation and maintenance of the authorized facilities.
- c. Holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.
- d. Holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the Grantor.
- e. Holder agrees to operate and maintain the facilities and use the authorized easements in accordance with the operation and maintenance plan contained in Exhibit B, attached hereto and incorporated herein.

7. EMERGENCY REPAIRS.

- a. Except for emergency repairs required to protect the environment, property of the United States, or public health and safety, the Holder may not use materials on National Forest System lands outside the easement prior to obtaining written authorization and paying for the materials to be used. Holder's use of material within the easement is limited to maintenance of the water conveyance system facility.
- b. If the water conveyance system facilities authorized by this Easement are allowed to deteriorate to the point of threatening persons or property, and the Holder, after notification by the Grantor, refuses to perform the repairs and maintenance required to remove the threat to persons or property, Grantor shall have the right to undertake such repair and maintenance and to assess the Holder for the costs of such repair and maintenance, regardless of whether Grantor had required the Holder to furnish a bond or other security.

8. INDEMNIFICATION. Holder shall indemnify the United States against liability for any and all injury, loss, or damage, including fire suppression costs, that the United States may suffer as a result of claims, demands, losses, or judgements caused by the Holder's use or occupancy under this easement.

9. LIABILITY. Holder is liable for and agrees to repair damage to National Forest System lands caused by Holder's negligence, intentional acts, or of failure to comply with the terms and conditions of this easement or of any law or regulation applicable to the National Forests.

10. SITE RESTORATION. Holder shall, upon termination of this easement, stabilize the site as required by the Grantor. If Holder does not stabilize the site, the Holder agrees to pay the costs of such stabilization if undertaken by the Grantor.

11. SPECIAL PROVISIONS.

The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, and assigns.

A. NONEXCLUSIVE USE. The Grantor reserves the right to use or permit others to use the easement area, provided such use does not unreasonably interfere with the rights and privileges hereby authorized.

B. TERMINATION. This easement may be terminated with consent of Holder, or if Holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement expires according to its terms if Holder uses the water conveyance system for any purpose other than agricultural irrigation or livestock watering. Grantor may take action to terminate this easement under 7 CFR 1.130 - 1.151, for noncompliance with applicable statutes and regulations, or the terms and conditions of this easement.

C FOREST SERVICE REPRESENTATIVE. The District Ranger, Salmon/Cobalt Ranger District, is responsible for administering this easement. The Holder should contact the District Ranger regarding any questions concerning the occupancy and use authorized and the provisions of this authorization.

D. WATER RIGHTS/ADJUDICATION. Should, subsequent to the issuance of this easement, an adjudication of the water right or water system authorized by this easement establish the fact that the Holder did not have a valid water right for the use of the water or a water system which meets the requirements of this act, then coincidental with the date of the decree, this easement shall expire on its own terms based upon the failure of the permit holder to meet the requirements of this Act. Upon expiration, all right, title, and interest in and to the subject area shall revert to the United States, or its successors or assigns.

ACCEPTANCE On this 6 day of July, 1999, I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.

Holder

ACKNOWLEDGMENT

STATE OF Idaho

COUNTY OF Lemhi

) ss.

The foregoing instrument was acknowledged before me this 6 day of July, 1999

by Paul M. Shaeffer

Notary Public

My commission expires: 12-8-2003

IN WITNESS WHEREOF, the Secretary of Agriculture by the Regional Forester, Forest Service has executed this Easement pursuant to delegations of authority specified in 7 CFR 2.60 and 36 CFR 251.52 on the day and year written above.

UNITED STATES OF AMERICA

Jack A. Blackwell
Regional Forester
Intermountain Region

2X41 DIT

AGRICULTURAL IRRIGATION AND LIVESTOCK WATERING SYSTEM
EASEMENT DESCRIPTION
WALLACE CREEK DITCHES - PIPELINES

Four strips of land encompassing the prism of the existing ditch or pipeline, or 15 feet each side of the existing ditch or pipeline centerline, whichever is greater, located in the NE-SW 1/4, NW-SE 1/4, SW-NE 1/4, and Lots 1 and 5, Section 1, Township 22 North, Range 21 East, Boise Meridian, Lemhi County, Idaho, and more particularly described as follows:

Ditch 1

Beginning at the southeast corner of Section 1, Township 22 North, Range 21 East, B.M.; thence N.55°34'W., 4200 feet to an irrigation ditch diversion on Wallace Creek, the True Point of Beginning; thence northeasterly 4800 feet along the centerline of the existing ditch to its intersection with an unnamed gulch, the Point of Ending. The northeast corner of Section 1, Township 22 North, Range 21 East, B.M. bears N.38°07'E., 1240 feet from said Point of Ending.

Pipeline 1

Beginning at the northeast corner of Section 1, Township 22 North, Range 21 East, B.M.; thence S.28°00'W., 1390 feet to an irrigation pipeline diversion on Ditch 1, the True Point of Beginning; thence easterly 660 feet along the centerline of the existing pipeline to its intersection with the east boundary of Section 1, the Point of Ending. The northeast corner of Section 1, Township 22 North, Range 21 East, B.M. bears north along the section line 1175 feet from said Point of Ending.

Ditch 2

Beginning at the northeast corner of Section 1, Township 22 North, Range 21 East, B.M.; thence S.26°04'W., 890 feet to an irrigation ditch diversion on an unnamed gulch, the True Point of Beginning; thence northerly 1180 feet along the centerline of the existing ditch to its intersection with the north boundary of Section 1, the Point of Ending. The northeast corner of Section 1, Township 22 North, Range 21 East, B.M. bears east along the section line 320 feet from said Point of Ending.

Pipeline 2

Beginning at the northeast corner of Section 1, Township 22 North, Range 21 East, B.M.; thence S.51°19'W., 345 feet to an irrigation pipeline diversion on Ditch 2, the True Point of Beginning; thence northeasterly 360 feet along the centerline of the existing pipeline to its intersection with the east boundary of Section 1, the Point of Ending. The northeast corner of Section 1, Township 22 North, Range 21 East, B.M. bears north along the section line 12 feet from said Point of Ending.

COUNTY RECORDER CERTIFICATION

INSTRUMENT NUMBER _____
TIME _____ DATE _____
BOOK _____ PAGE _____
RECORDS OF LEMHI COUNTY, STATE OF IDAHO

RECORDER

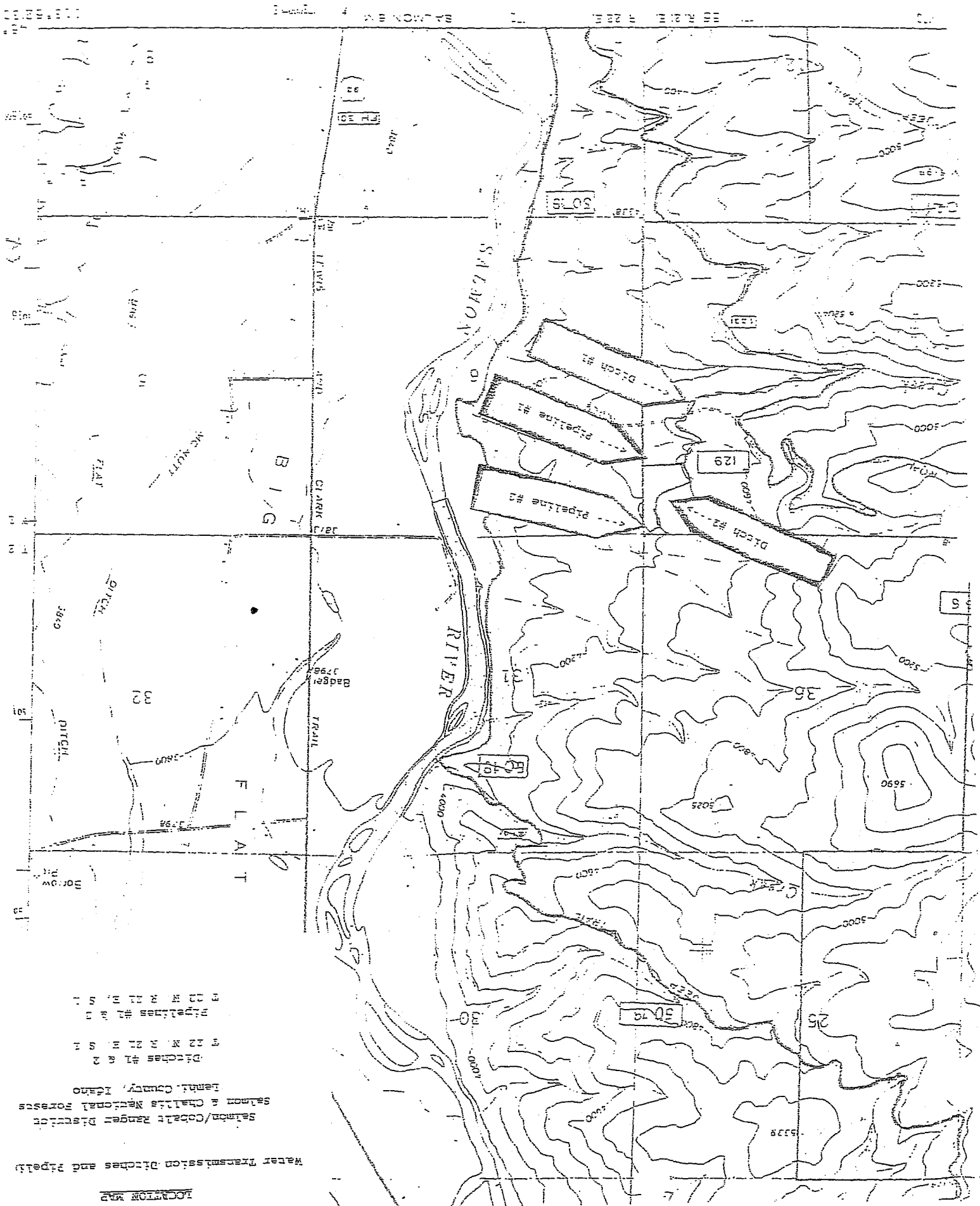
U.S. FOREST SERVICE APPROVAL

James H. Warner 4/9/96
Forest Engineer Date
Chas. E. Brown 4/9/96
Forest Land Surveyor Date

NOTICE

DECLASSIFIED BY: 6032
DATE: 11-11-2013

100



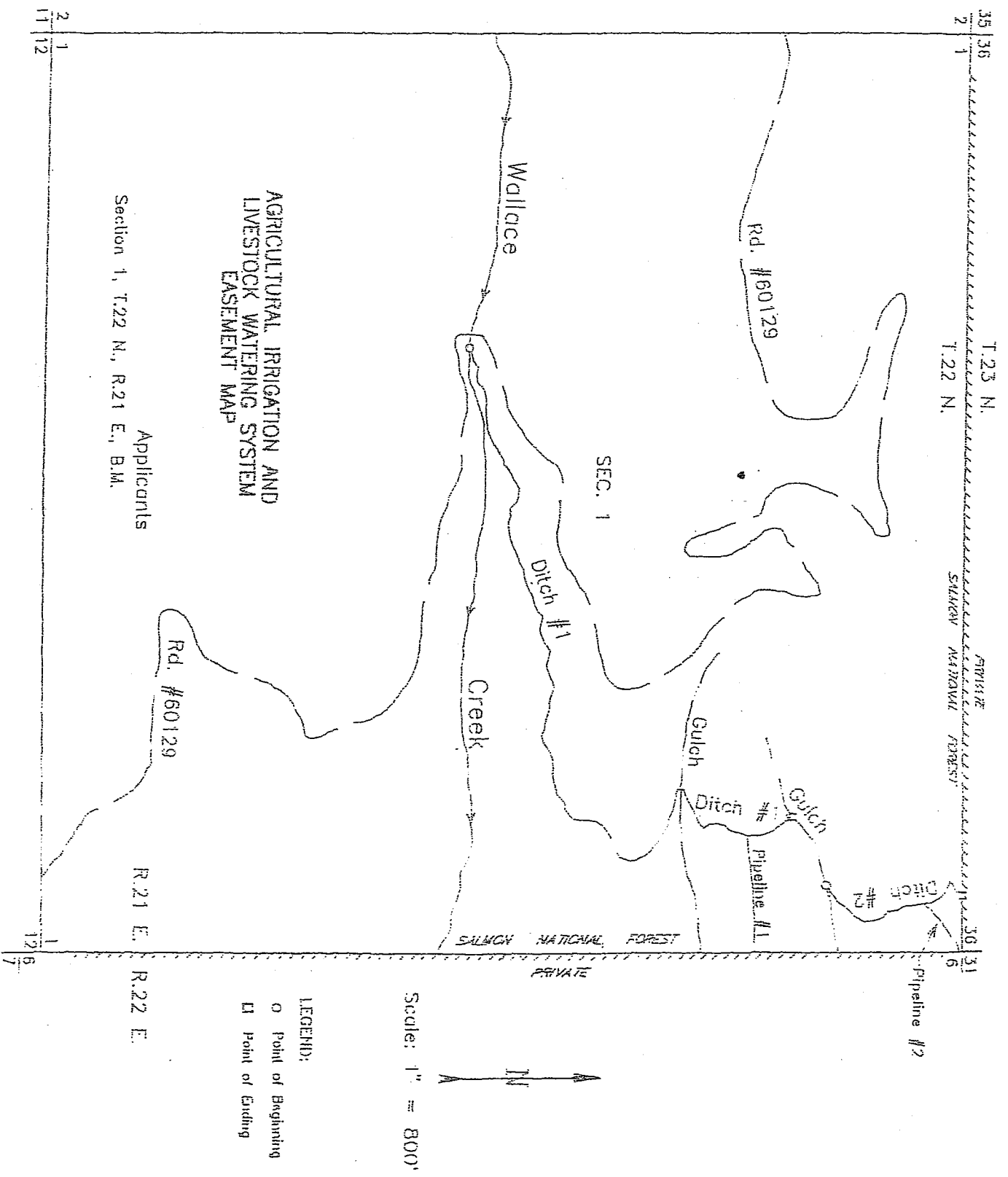


EXHIBIT B

OPERATION AND MAINTENANCE PLAN

FOR

Wallace Creek Irrigation System

Easement Holder:

The easement incorporates this Operation and Maintenance Plan (O & M Plan) and any attachments thereto; and the Holder agrees to operate and maintain the facilities and use the granted land in accordance with the following stipulations:

1. Regulate channel flows so that a freeboard is maintained above the water line.
2. Use only maintenance routes agreed to and to repair all damage resulting from said use.
3. The Holder shall: be responsible for prevention and control of soil erosion and gullying on land covered by the easement and the land adjacent thereto, resulting from operations and maintenance of granted use; maintain channel to prevent downcutting and bank failure; remove all obstructions from the channel; revegetate or otherwise stabilize all ground where the soil has been exposed; be responsible for control of and spread of noxious weeds, as indentified by the US Forest Service and the local County weed list.
4. The Holder shall inspect the facility prior to use each year and make necessary repairs. Work that is considered other than routine maintenance and/or minor repairs shall be discussed in advance with the Forest officer. All repairs shall be acceptable to and completed by the date agreed to by the Holder and the Forest officer.
5. The Holder will contact the Forest officer for approval before proceeding with work that is other than routine operations. Some of these situations are:
 - a. Bringing in and using heavy equipment.
 - b. Using other than approved maintenance routes for access.
 - c. Motorized use in a closed area in an emergency situation.
 - d. Removal of significant amounts of vegetation and silt and deposition of the same, if on National Forest System lands.
 - e. Burning, application of seed mixtures (weed-free seed required), chemical application or other means of vegetation control measures.
 - f. Reconstruction or re-routing of a portion of the ditch (the latter would also entail a new easement).
6. This O & M Plan will be reviewed annually by the Holder and may be amended by mutual agreement when signed and dated by the Holder and the appropriate line officer.

Holder's Signature

Date

District Ranger's Signature

Date



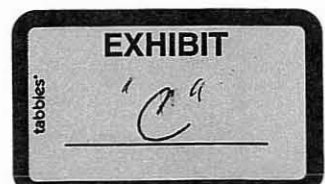
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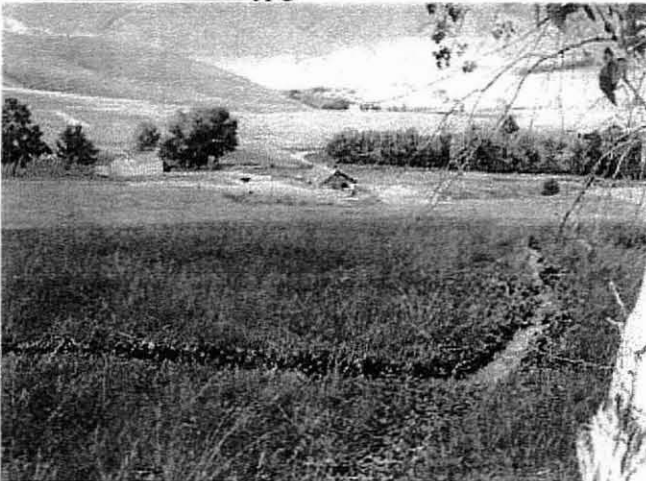




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75-14302

Doc Name	File Type	Water Right Number	Doc Date	Date Received
<u>TRIAL SCHEDULE ORDER</u>	Adobe Acrobat	7514302	10/8/2008	10/9/2008
<u>NOTICE OF WITHDRAWAL OF ATTORNEY</u>	Adobe Acrobat	7514302	8/26/2008	8/28/2008
<u>ORDER VACATING AND RESETTING INITIAL HEARING</u>	Adobe Acrobat	7514302	7/17/2008	7/18/2008
<u>LETTER TO CLAIMANT</u>	Adobe Acrobat	7514302	3/9/2004	
<u>FIELD NOTES</u>	Adobe Acrobat	7514302	6/30/2005	6/30/2005
<u>LETTER TO CLAIMANT-RETURNED MAIL</u>	Adobe Acrobat	7514302	7/10/2006	7/26/2006
<u>LETTER TO CLAIMANT</u>	Adobe Acrobat	7514302	4/1/2004	4/1/2004
<u>MAP</u>	Adobe Acrobat	7514302		
<u>OBJECTION</u>	Adobe Acrobat	7514302	1/30/2007	2/2/2007
<u>NOTICE SETTING SUBCASE(S) FOR INITIAL HEARING</u>	Adobe Acrobat	7514302	7/16/2008	7/17/2008
<u>NOTICE OF CLAIM</u>	Adobe Acrobat	7514302	4/23/1990	4/23/1990
<u>ACKNOWLEDGEMENT LETTER</u>	Adobe Acrobat	7514302	7/14/2006	
<u>ACKNOWLEDGEMENT LETTER</u>	Adobe Acrobat	7514302	3/22/2004	
<u>RESPONSE TO OBJECTION</u>	Adobe Acrobat	7514302	8/16/2007	8/20/2007
<u>RESPONSE TO OBJECTION</u>	Adobe Acrobat	7514302	8/16/2007	8/20/2007
<u>NOTICE OF WITHDRAWAL OF ATTORNEY</u>	Adobe Acrobat	7514302	8/26/2008	8/28/2008
<u>OBJECTION</u>	Adobe Acrobat	7514302	2/8/2007	2/12/2007
<u>NOTICE OF CLAIM</u>	Adobe Acrobat	7514302	4/23/1990	4/23/1990
<u>NOTICE OF CLAIM</u>	Adobe Acrobat	7514302	4/23/1990	4/23/1990
<u>SPLIT HISTORY</u>	Adobe Acrobat	7514302		
<u>CLAIM TO WATER RIGHT</u>	Adobe Acrobat	7514302		
<u>CHANGE OF OWNERSHIP</u>	Adobe Acrobat	7514302		10/17/2003
<u>ACKNOWLEDGEMENT LETTER</u>	Adobe Acrobat	7514302	11/18/1999	
<u>SRBA Court Exhibits</u>	Adobe Acrobat	7514302	4/25/2009	4/27/2009
<u>CHANGE OF OWNERSHIP</u>	Adobe Acrobat	7514302	9/23/1999	9/29/1999



<u>CHANGE OF OWNERSHIP</u>	Adobe Acrobat	7514302	10/17/2003	
<u>LAYOUT</u>	Adobe Acrobat	7514302		
<u>NOTICE OF APPEARANCE</u>	Adobe Acrobat	7514302	10/21/2008	10/27/2008

75-14100

Doc Name	File Type	Water Right Number	Doc Date	Date Received
FIELD NOTES	Adobe Acrobat	7514100		
OBJECTION	Adobe Acrobat	7514100	1/30/2007	2/2/2007
TRIAL SCHEDULE ORDER	Adobe Acrobat	7514100	10/8/2008	10/9/2008
NOTICE OF WITHDRAWAL OF ATTORNEY	Adobe Acrobat	7514100	8/26/2008	8/28/2008
NOTICE OF CLAIM	Adobe Acrobat	7514100	6/13/2003	7/3/2003
NOTICE SETTING SUBCASE(S) FOR INITIAL HEARING	Adobe Acrobat	7514100	7/17/2008	7/18/2008
NOTICE OF CLAIM	Adobe Acrobat	7514100	7/10/2003	7/10/2003
OBJECTION	Adobe Acrobat	7514100	9/25/2007	9/27/2007
NOTICE OF APPEARANCE	Adobe Acrobat	7514100	10/21/2008	10/27/2008
MEMO TO FILE	Adobe Acrobat	7514100		
MAPS	Adobe Acrobat	7514100		
SRBA Court Exhibits	Adobe Acrobat	7514100	4/25/2009	4/27/2009
OBJECTION	Adobe Acrobat	7514100	1/30/2007	2/2/2007