

JON C. GOULD (ISB #6709)
RINGERT LAW CHARTERED
455 S. Third Street, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

RECEIVED
JUN 01 2009
DEPARTMENT OF
WATER RESOURCES

Attorneys for Plaintiff

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 63-31194A and 63-31194B
Case No. 39576) AFFIDAVIT OF L. DARWIN MCKAY
_____)

STATE OF IDAHO)
COUNTY OF ADA) ss
)

L. DARWIN MCKAY, being first duly sworn upon his oath, deposes and says that:

1. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

2. I am the president of Turf Company.

3. The Turf Company is a commercial sod provider.

4. I grow sod on property I own and property I lease. I lease approximately eighty percent (80%) of land I use for sod production.

5. Ground water sources are essential for my sod production to provide water free of noxious weeds because they make the crop non-sellable to provide water throughout the sod irrigated season, which is longer than the standard irrigation season, and allow for the transfer of the water right when land leases change.

COPY

6. It is a common practice for me to transfer my water rights such that the water rights are used on lands I lease for turf production.

7. I developed a groundwater right to be assured that the quality of the water would be adequate for more sod farming, water would be available of the long irrigation season sod requires, and I could transfer the place of use of my water right as needed .

8. The surface water delivered by Nampa & Meridian Irrigation District is an inadequate water source for my turf production because it may contain pesticide residue or other sediments that damage turf crops.

9. The turf growing season requires water before Nampa & Meridian Irrigation District water deliveries begin and extends beyond the termination of the water deliveries.

10. I leased farm land I used to grow turf from HCM Investments in 1988.

11. I filed Application for Permit no. 63-10666 with the Idaho Department of Water Administration on or about July 22, 1988 for a water right of 1.42 cfs to irrigate the 71 acres of farm land owned by HCM. The permit was approved on October 6, 1988. A true and accurate copy of approved Application for Permit No. 63-10666 is attached hereto as Exhibit "A".

12. I noted on the application, section 12, that I was a renter, not the owner, of the place of use, the HCM property. Additionally, the Application for Permit states that Nampa & Meridian Irrigation District holds water rights for the same purposes at the place of use.

13. I leased farm land I used to grow turf from TCM Joint Venture from 1989 until the fall of 1999.

14. I filed an amended application for permit in October, 1989 to transfer the place of use to property owned by TCM ("TCM Property"). The Application for Amendment was approved on November 22, 1989. A true and accurate copy of approved Application for Amendment of Permit No.

63-10666 is attached hereto as Exhibit "B".

15. The Application for Amendment states that I am the owner of the water right and that the point of diversion and place of use are owned by a person other than the applicant. Additionally, the Amended Application for Permit states that Nampa & Meridian Irrigation District holds water rights for the same purposes at the place of use.

16. A water right license was issued for water right no. 63-10666 on August 23, 1995.

17. An Amended Water Right License was issued for water right no. 63-10666 on February 1, 2000. The license lists me as the owner of this water. A true and accurate copy of Order Amending the Water Right License is attached hereto as Exhibit "C".

18. My lease of the TCM Property was terminated after the 1999 growing season.

19. My use of water under what is now water right no. 63-31194 on the TCM Property ceased following the 1999 growing season.

20. I removed my pump from well when the lease was terminated and capped the well as required by law.

21. After the TCM lease was terminated, I considered transferring my water right to other lands I might use of turf production, selling portions of the water right, and/or placing the water right in the water bank.

22. On or about March 23, 2000, Jack Miller, General Manager of TCM Joint Venture, informed IDWR that TCM does not object to me transferring my water right to other lands. A true and accurate copy of the signed statement is attached hereto as Exhibit "D".

23. Prior to my leasing the TCM Property, the lessee used surface water to irrigate the land.

24. Richard Murgottio leased the TCM Property for farming purposes during the 2000, 2001 and 2002 growing seasons.

25. Richard Murgottio used surface water delivered by Nampa & Meridian Irrigation District for irrigation of the TCM land during that time.

26. I sold 0.13 cfs of water right no. 63-10666 to the LDS Church. As a result of this transfer water right 63-10666 was split into 10666C in my name and 63-10666D in the name of the LDS Church.

27. I sold 0.064 cfs of water right no. 63-10666C to Developers Diversied Realty, TCFM Associates, and Hermes Associates in March, 2000.

28. I sold 0.02 cfs of water right no. 63-10666C to the LDS Church in April, 2000.

29. Water right no. 63-10666C allowed for the use of 0.69 cfs to irrigate 54.5 acres.

30. Water right no. 63-10666C was then split into water right nos. 63-31194, -31195, and -31196.

31. I file an application to place water right no. 63-31194 in the Idaho Water Supply Bank in September, 2000.

32. TCM never questioned my ownership of water right no. 63-10666 or my right to sell portions of the water right.

33. I never intended on conveying any portion of my water right (no. 63-10666) to TCM or anyone else.

34. I did not share any of the proceeds from the conveyance of portions of water right no. 63-10666 with TCM nor was I obligated to do such.

35. In April, 2000, a portion of the TCM Property was conveyed by TCM to Ada County Highway District. This conveyance did not include any portion of my water right. A true and accurate copy of the deed of conveyance is attached hereto as Exhibit "E".

36. My claim of ownership of my water right (no. 63-10666/no. 63-31194) had never been

questioned prior to Sundance's ownership claim.

37. The conveyance of my water right to TCM or any one else, including Sundance, was never discussed with or communicated to me by anyone including Jack Miller.

38. Michael Ballantyne never discuss the inclusion of my water right with the conveyance of the TCM Property to Sundance with me.

39. I did not review the September 18, 2000 Memorandum from Micheal Ballantyne, Thorton Oliver Keller to Roger Anderson, Sundance Company until I reviewed Sundance's objection to my claim.

40. I did review listing materials prepare in 2002 advertising the Property. A true and accurate copy of the advertizing materials is attached hereto as Exhibit "F".

41. I was a member of the TCM Joint Venture holding a 2.5% interest. When TCM conveyed its Property to the Co-Tanancy, I held a 2.5% interest in the Co-Tenancy.

42. A super majority of greater than 70% of the TCM Joint Venture members could effect a sale of the TCM Property when TCM owned the TCM Property.

43. A super majority of greater than 70% of the Co-Tenants could effect a sale of the TCM Property when the Co-Tenants owned the TCM Property.

44. In January 2003, immediately prior to the transfer of the TCM Property to Sundance, the TCM Joint Venture was terminated and the Co-Tenancy formed.

45. The Co-Tenancy was formed for with tax purposes.

46. I was provided with deeds to be executed as part of the conveyance of the TCM Property by the Co-Tenancy to Sundance.

47. I executed the deeds to release my interest in the property owned by Co-Tenancy.

48. It was not my intention to convey, transfer, assign or relinquish any portion of my water right to Sundance or the Turf Company with the conveyance from the Co-Tenants to Sundance.

49. Consistent with my intent, I did not receive any consideration, payment or compensation from Sundance or any one else for my water right, nor did anyone offer payment for my water right.

Further your affiant sayeth naught.

L. Darwin McKay
L. Darwin McKay

STATE OF IDAHO)
)ss.
County of Ada)

On this 27th day of May, 2009, before me, the undersigned, a notary public in and for said state, personally appeared L. Darwin McKay, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Kimi A. White
Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 01/01/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

Albert P. Barker
Rochelle M. Davis
1010 W. Jefferson, Ste. 102
P.O. Box 2139
Boise, Idaho 83701-2139
Fax: (208) 334-6034

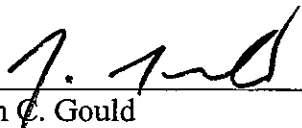
(☒) U.S. mail, postage pre-paid
() Overnight mail
() Hand Delivery
() Facsimile

Richard W. Stover
Eberle, Berlin, Kading, Turnbow,
McKlveen & Jones, Chartered
1111 W. Jefferson St., Ste. 530
Boise, Idaho 83702
Fax: (208) 344-8542

(☒) U.S. mail, postage pre-paid
() Overnight mail
() Hand Delivery
() Facsimile

Director of IDWR
P.O. Box 83720
Boise, Idaho 83720-0098
Fax: (208) 287-6700

(☒) U.S. mail, postage pre-paid
() Overnight mail
() Hand Delivery
() Facsimile



Jon C. Gould

Exhibit A

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

APPROVED

1. Name of applicant L. Darwin McKay Phone 888 3760
Post office address 3220 E. Lake Hazel Rd. Meridian, Id. 83642
2. Source of water supply Groundwater which is a tributary of _____
3. Location of point of diversion is _____ $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Govt. Lot _____
Sec. 21 Township 3N Range 1 East B.M. Ada ~~Ada~~ Meridian County; additional
points of diversion if any: or NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 20, T3N, R1E, or
NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 21, T3N, R1E.
4. Water will be used for the following purposes:
Amount 1.42 cfs for Irrigation purposes from 3/15 to 11/15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 1.42 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Well, pump, sprinkler system

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is 10-12" inches; proposed depth of well is 170' feet.
d. Is ground water with a temperature of greater than 90°F being sought? No
7. Time required for the completion of the works and application of the proposed beneficial use is
1 years (minimum 1 year).

MICROFILMED

DEC 08 1988

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
3N	1 East	21					33	38											71

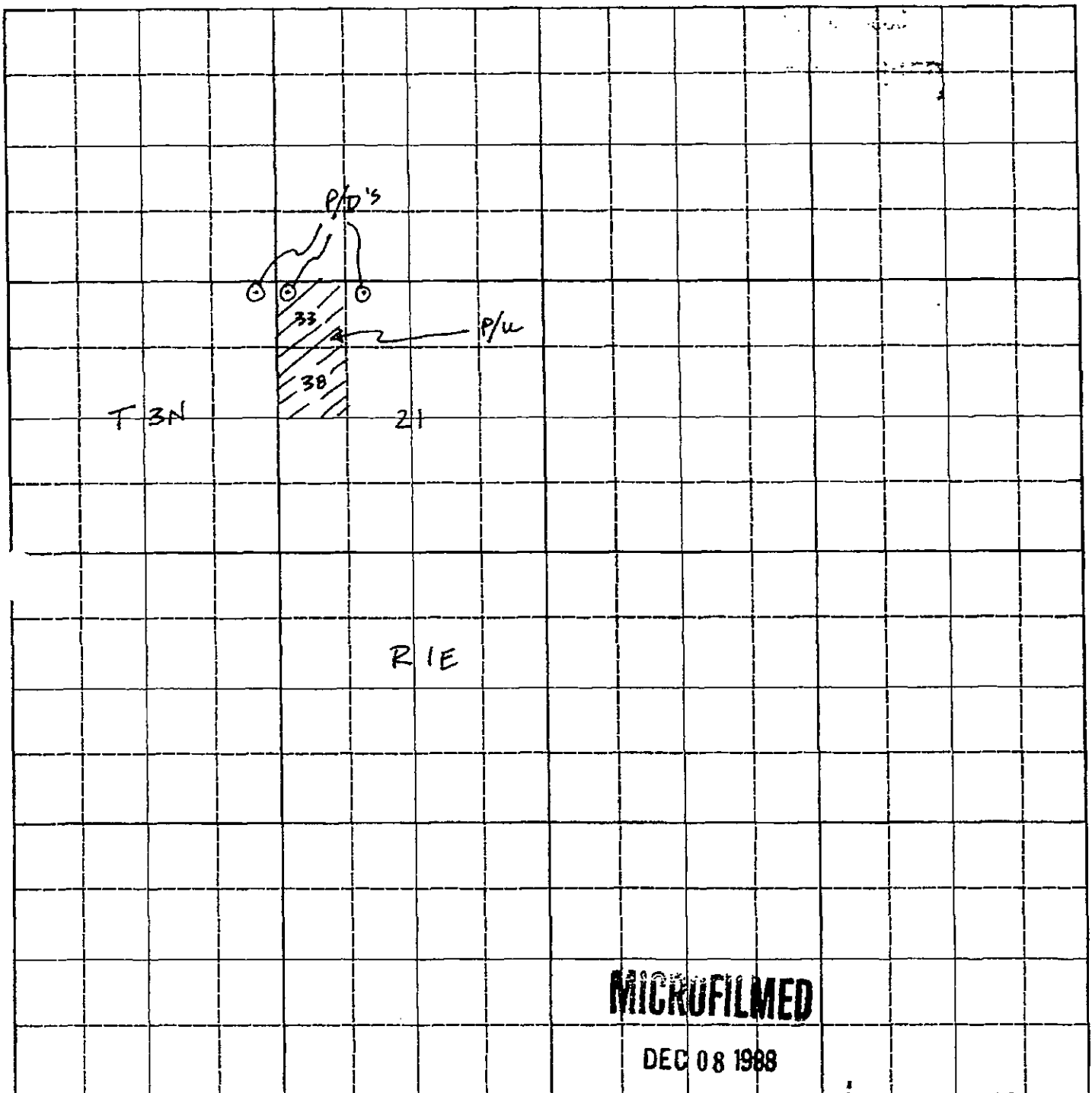
Total number of acres to be irrigated 71

- Describe any other water rights used for the same purposes as described above. Water rights from Nampa Meridian Irrigation Dist Redenbaugh Canal
- Who owns the property at the point of diversion? TCM Investments
 - Who owns the land to be irrigated or place of use? HCM Investments
 - If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. I am a member of TCM Investments I have secured permission from our managing partners
- Remarks: I am a center of the HCM property (since 1982)

Well drilling permit has been issued.

DEC 08 1995

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

L. Dammir McKay
(Applicant)

Proposed Permit 7/22/88
Received by DRT Date July 22, 1988 Time 4:40 PM Preliminary check by JL
Fee \$ 65.00 Received by DRT # W000526 Date 7/22/1988
Publication prepared by GG Date 8/10/88 Published in Idaho Statesman
JP Date 9/1/88
8/18 & 8/25/88

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of
Idaho No. 63-10666, and said application is hereby APPROVED

1. Approval of said application is subject to the following limitations and conditions:

- a. SUBJECT TO ALL PRIOR WATER RIGHTS.
- b. Proof of construction of works and application of water to beneficial use shall be submitted on or before
November 1, 19 89.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.
- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- e. Other:

Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

The issuance of this permit in no way grants any right-of-way or easement across the land of another.

Prior to the diversion of water under this permit a flow measurement port or other device as specified by the Department shall be installed to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department.

Witness my hand this 6th day of October, 1988.

J. Allen Santon
for Director

INDEXED

DEC 08 1988

Exhibit B

STATE OF IDAHO

APPLICATION FOR AMENDMENT OF A PERMIT

To change the point of diversion and/or the place of use.

Comes now L. Darwin McKay Phone 888 - 3760
of (address) 3220 E. Lake Hazel Rd. Meridian Id 83642, and represents to the
Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho
No. 63-10666, and requests that the permit and permit map be changed as follows:

1. Point of diversion: NE 1/4 NW 1/4, Section 21, Township 3N, Range 1E, B.M.,
County of Ada. Other points of diversion: _____

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 1.42 for Irrigation purposes from 3/15 to 11/15 (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

TWP	RGE	SEC	NE1/4				NW1/4				SW1/4				SE1/4				TOTALS
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
<u>3N</u>	<u>1E</u>	<u>21</u>					<u>33</u>			<u>38</u>									<u>71</u>

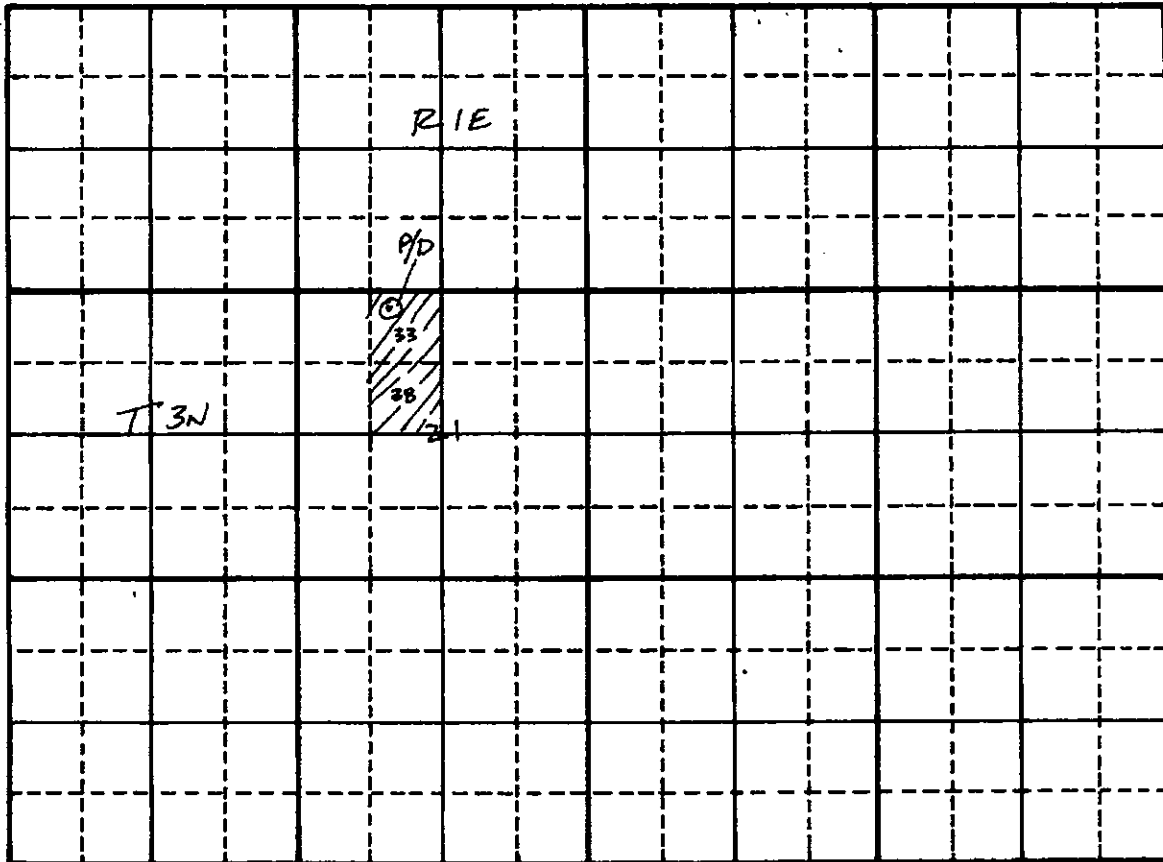
Total number of acres to be irrigated = 71

4. a. Who owns the property at the point of diversion? TCM Joint Venture
b. Who owns the land to be irrigated or the place of use? Same
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Applicant is a member of TCM Investments

NOV 19 1991

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Boise Id, this 6th day of October, 19 89.

L. Dunning McKay
(Signature)

FOR DEPARTMENT USE ONLY

Preliminary check by Dur Fee = \$20.00

Received by Dur Date 10/6/89 # W006174

Publication prepared by GG Date 10-25-89

Published in ID Statesman

Publication dates 11/2 & 11/9/89

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, L. GLEN SAXTON, of the Department of Water Resources hereby
Approve the above Application for Amendment provided the conditions as set forth
in Permit No. 63-10666 are met.

NOV 19 1991

Witness my hand this 22nd day of November, 19 89

L. Glen Saxton
Chief, Water Alloc. Bureau

Exhibit C

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION TO)
CORRECT WATER RIGHT LICENSE)
SUBMITTED BY DARWIN MC KAY)
_____)

**PRELIMINARY ORDER
CORRECTING LICENSE**

This matter having come before the Department of Water Resources (Department) as a result of the filing of a petition to correct a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On January 5, 2000, Darwin Mc Kay (petitioner) filed a petition to correct Water Right License 63-10666 (license) by removing certain approval conditions.
2. On August 23, 1995, the Department issued Water Right License 63-10666 to the petitioner with Approval Conditions 4 and 5 as follows:

The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right.

This right to divert groundwater shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use without approval of the Department.

3. When issued on October 6, 1988, Permit 63-10666 did not have approval conditions requiring the use of surface water in conjunction with the groundwater use developed under the permit.
4. When amended on November 22, 1989, Permit 63-10666 did not have approval conditions requiring the use of surface water in conjunction with the groundwater use developed under the permit.
5. The Department field examiner who verified the water use developed under Permit 63-10666 in 1995 reported, "Other water source is Nampa-Meridian Irrigation District."
6. On January 31, 2000, Nampa & Meridian Irrigation District reported to the Department that it has not delivered water to the place of use for the license since 1989, the first irrigation season after Permit 63-10666 was issued.
7. Water Right 63-10666 was not developed for use in conjunction with surface water.

CONCLUSIONS OF LAW

1. The Department incorrectly applied the information reported by the field examiner about the use of surface water in conjunction with the ground water use developed under Permit 63-10666.
2. The license does not accurately portray the water use developed by the petitioner in accordance with Permit 63-10666.
3. The Department should rescind Approval Conditions 4 and 5 on the license.
4. To make the license consistent with other ground water irrigation rights not supplemental to surface water, the Department should also revise Approval Condition 6 and report a maximum diversion volume for the water right.

ORDER

IT IS HEREBY ORDERED that Water Right License 63-10666 issued by the Department on August 23, 1995, is **CORRECTED** by:

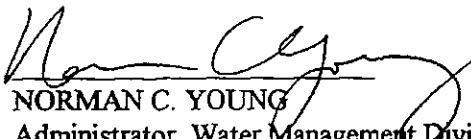
RESCINDING Approval Conditions 4 and 5;

REVISING Approval Condition 6 (Now Approval Condition 4); and

REPORTING a maximum diversion volume of 297.0 acre-feet of water.

An Amended Water Right License shall be prepared to incorporate the corrections hereby ordered.

Dated this 1st day of February, 2000.


NORMAN C. YOUNG
Administrator, Water Management Division

State of Idaho
Department of Water Resources
Water Right License

AMENDED

AMENDED

WATER RIGHT NO. 63-10666

Priority: July 22, 1988

Maximum Diversion Rate: 0.84 CFS

Maximum Diversion Volume: 297.0 AF

This is to certify, that L DARWIN MC KAY
3220 E LAKE HAZEL RD
MERIDIAN ID 83642

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 22, 1988; and has submitted Proof of Beneficial Use on August 21, 1991. An examination indicates that the works have a diversion capacity of 0.840 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	0.84 CFS	297.0 AF

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 21, Township 03N, Range 01E
ADA County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	01E	21	NENW 28	SENW 38		66

Total number of acres irrigated: 66

CONDITIONS OF APPROVAL AND REMARKS

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 15th day of FEBRUARY, 2000.

Acting for KARL J. DREHER, Director

FILED
FEB 03 2000

Exhibit D

Mar. 27. 2000- 3:20PM 3pm
Mar. 17 2000 1:39PM

from CCITT G3 - The Lurr Co.

No. 4614 P. 2/2
page 2
No. 4499 P. 2/2

TO: IDAHO DEPARTMENT OF WATER RESOURCES

TCM JOINT VENTURE (TCM) is the owner of the E $\frac{1}{2}$ NW $\frac{1}{4}$, Section 21, T. 3 N., R. 1 E., B.M., Ada County Idaho, and does not object to an application of L. Darwin McKay to transfer his water right No. 63-1066 to other lands. L. Darwin McKay acquired the water right while leasing the above property from TCM.

DATED this 23 day of march, 2000.



Jack Miller, General Manager,
TCM Joint Venture

MICROFILMED

MAR 29 2001

TRANSFER

ATTACH B

Exhibit E

P-188119 JB/H1

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO
DEED
2000 AP 20 PM 4:55

RECORDED - REQUEST OF
PIONEER TITLE
FEE 152 DEPUTY *Don*
100029927

FOR VALUE RECEIVED, TCM JOINT VENTURE, an Idaho Joint Venture duly organized and existing under the laws of the State of Idaho, Grantor, does hereby grant, bargain, sell and convey unto ADA COUNTY HIGHWAY DISTRICT, his successors and assigns, Grantee, whose current address is:

Ada County Highway District
Attn: Right-of-Way Division
318 East 37th Street
Garden City, Idaho 83714-6499

the real property more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever.

The undersigned does hereby declare, represent and affirm that the Grantors named herein are the sole surviving partners of TCM Joint Venture and shall warrant and defend against any claim to the contrary

IN WITNESS WHEREOF, the said Grantors have hereunto set their hands and seals the day and year first above written.

TCM JOINT VENTURE

By: *Jack E. Miller*
Jack E. Miller

By: *Carol A. Miller*
Carol A. Miller

By: *Christopher J. Kepus by Jack Miller*
Christopher J. Kepus by
Jack Miller, Power of Attorney

By: *Kathleen Kepus by Jack Miller*
Kathleen Kepus by
Jack Miller, Power of Attorney

DEED

By: Alfred W. Sturr by Jack Miller
Alfred W. Sturr by
Jack Miller, Power of Attorney

By: Patricia A. Sturr by Jack Miller
Patricia A. Sturr by
Jack Miller, Power of Attorney

By: Richard Lavender by Jack Miller
Richard Lavender by
Jack Miller, Power of Attorney

By: Barbara Lavender by Jack Miller
Barbara Lavender by
Jack Miller, Power of Attorney
LOYAL A. MEHRHOFF, III, Successor Trustee for the
LOYAL A. & IRENE MEHRHOFF TRUST

By: Loyal A. Mehrhoff, Jr. by Jack Miller
Loyal A. Mehrhoff, Jr., Trustee,
Jack Miller, Power of Attorney

~~By: Loyal A. Mehrhoff, Jr. by Jack Miller
Loyal A. Mehrhoff, Jr., Trustee,
Jack Miller, Power of Attorney~~

By: Fred Nakaji by Jack Miller
Fred Nakaji by
Jack Miller, Power of Attorney

By: Molly Nakaji by Jack Miller
Molly Nakaji by
Jack Miller, Power of Attorney

By: James H. Ballantyne by Jack Miller
James H. Ballantyne by
Jack Miller, Power of Attorney

DEED

By: Mary Ballantyne by Jack Miller
Mary Ballantyne by
Jack Miller, Power of Attorney

By: Bruce R. Pickett by Jack Miller
Bruce R. Pickett by
Jack Miller, Power of Attorney

By: Marjorie Pickett by Jack Miller
Marjorie Pickett by
Jack Miller, Power of Attorney

By: L. Darwin McKay by Jack Miller
L. Darwin McKay by
Jack Miller, Power of Attorney

By: Donna R. McKay by Jack Miller
Donna R. McKay by
Jack Miller, Power of Attorney

By: Fred Del Gadillo, Jr. by Jack Miller
Fred Del Gadillo, Jr. by
Jack Miller, Power of Attorney

By: Fred Del Gadillo, Sr. by Jack Miller
Fred Del Gadillo, Sr. by
Jack Miller, Power of Attorney

By: Diane B. Del Gadillo by Jack Miller
Diane B. Del Gadillo by
Jack Miller, Power of Attorney

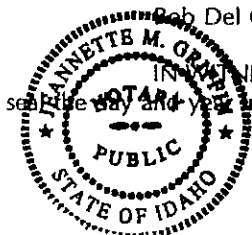
By: Bob Del Gadillo by Jack Miller
Bob Del Gadillo by
Jack Miller, Power of Attorney

DEED

STATE OF IDAHO)
) ss.
County of Ada)

On this 20th day of ~~March~~^{April}, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared JACK E. MILLER, known or identified to me to be the person whose name is subscribed to the within instrument as the attorney in fact pursuant to a Special Power of Attorney, and acknowledged to me that he subscribed the name of each person listed below as principal, and his own name as attorney in fact:

Christopher J. Kepus and Kathleen Kepus
Alfred W. Sturr and Patricia A. Sturr
Richard Lavender and Barbara Lavender
Loyal A. Mehrhoff, Jr. and Peggy Mehrhoff
Fred Nakaji and Molly Nakaji
James H. Ballantyne and Mary Ballantyne
Bruce R. Pickett and Marjorie Pickett
L. Darwin McKay and Donna R. McKay
Fred Del Gadillo, Jr.
Fred Del Gadillo, Sr. and Diane B. Del Gadillo
Bob Del Gadillo

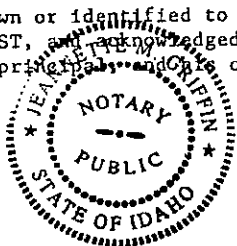


IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jeannette M. Guffin
Notary Public for Idaho
Residing at: Boise, ID
My commission expires: 2-5-2002

STATE OF IDAHO, County of Ada, ss:

On this 20th day of April, 2000, before me, the undersigned, a notary public personally appeared JACK E. MILLER, known or identified to be to be the person whose name is subscribed to the within instrument as the attorney in fact of LOYAL A. MEHRHOFF, III, known or identified to me to be the Successor Trustee of the LOYAL A. AND IRENE MEHRHOFF TRUST, and acknowledged to me that he subscribed the name of LOYAL A. MEHRHOFF thereto as principal, and his own name as attorney in fact.



Notary Public: *Jeannette M. Guffin*
Residing at: BOISE, ID
My Commission Expires: February 5, 2002

DEED

OVERLAND ROAD DETENTION BASIN

BASIN SITE LEGAL DESCRIPTION

A parcel of land located in the East ½ of the Northwest ¼ of Section 21, T. 3 N., R. 1 E., Boise Meridian, Ada County, Idaho, more particularly described as follows;

Commencing at the North ¼ corner of said Section 21, thence S0°10'13"W along the ¼ Section line a distance of 809.05 feet to the Point of Beginning:

Thence continue S0°10'13"W along said ¼ Section line a distance of 301.53 feet; thence N80°32'53"W a distance of 390.95 feet; thence North a distance of 281.98 feet; thence N56°19'57"E a distance of 104.33 feet; thence S71°07'17"E a distance of 316.75 feet to the Point of Beginning, containing 2.89 Acres, more or less.

EXHIBIT "A"

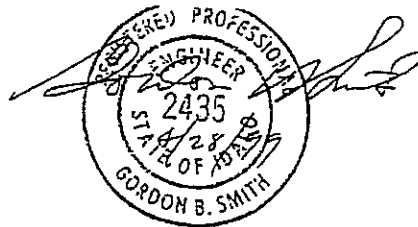


Exhibit F

AVAILABLE

PRIME DEVELOPMENT SITE

VACANT LAND

3905 E. Overland, Meridian

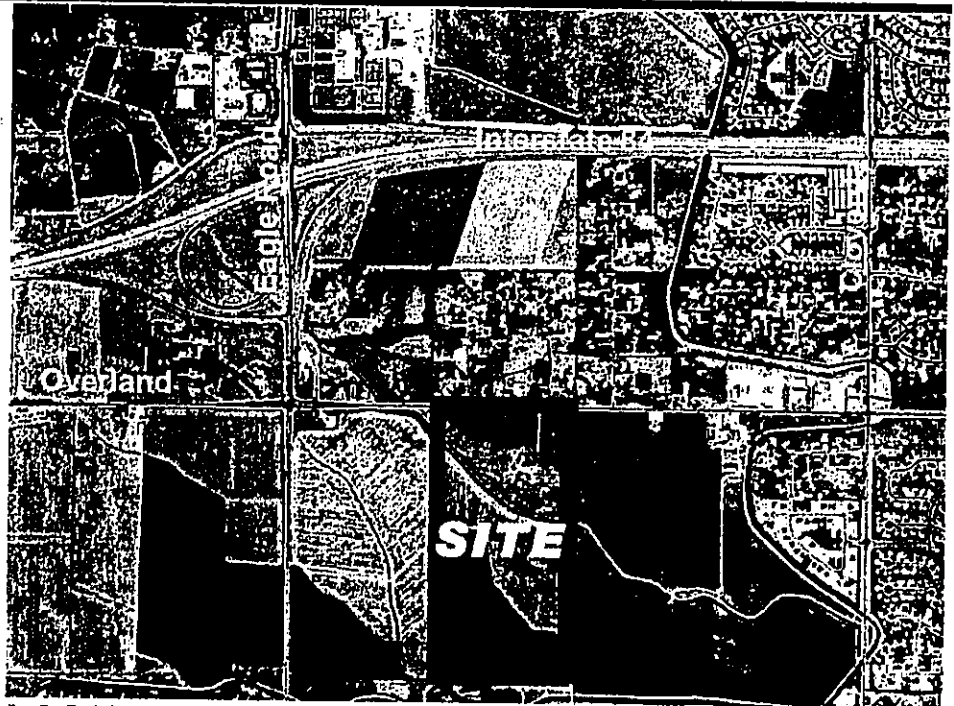
DISTRICT: Southwest Boise

CONTACT: Mike Ballantyne, CCIM

PHONE: (208) 378-4600

FAX: (208) 947-0869

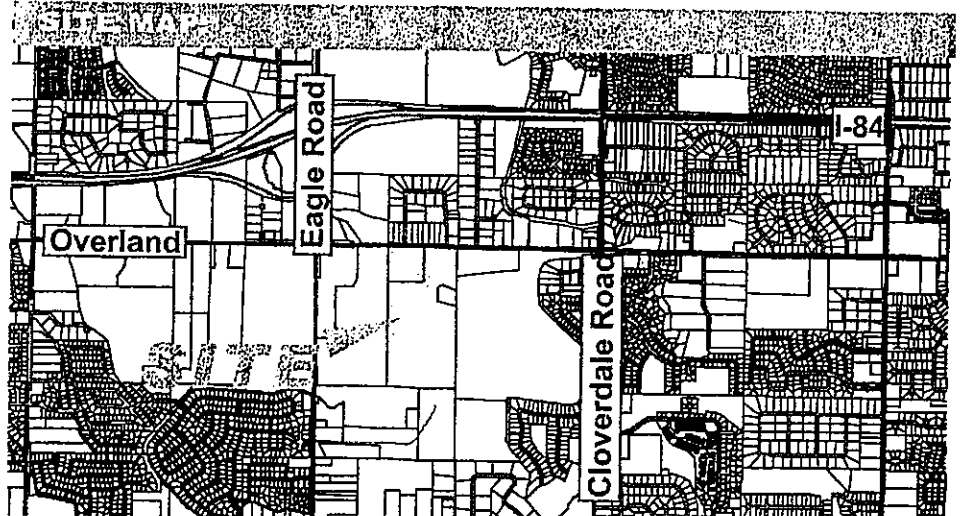
EMAIL: mjb@tokre.com



LISTING COMMENTS

Date Available: Immediately
Offered For: Sale
Appx. Size: +/- 77.268 acres
Submarket: Meridian
Zoning: RT (Rural Transitional)
Utilities: All to site
Sale Price: \$5,700,000

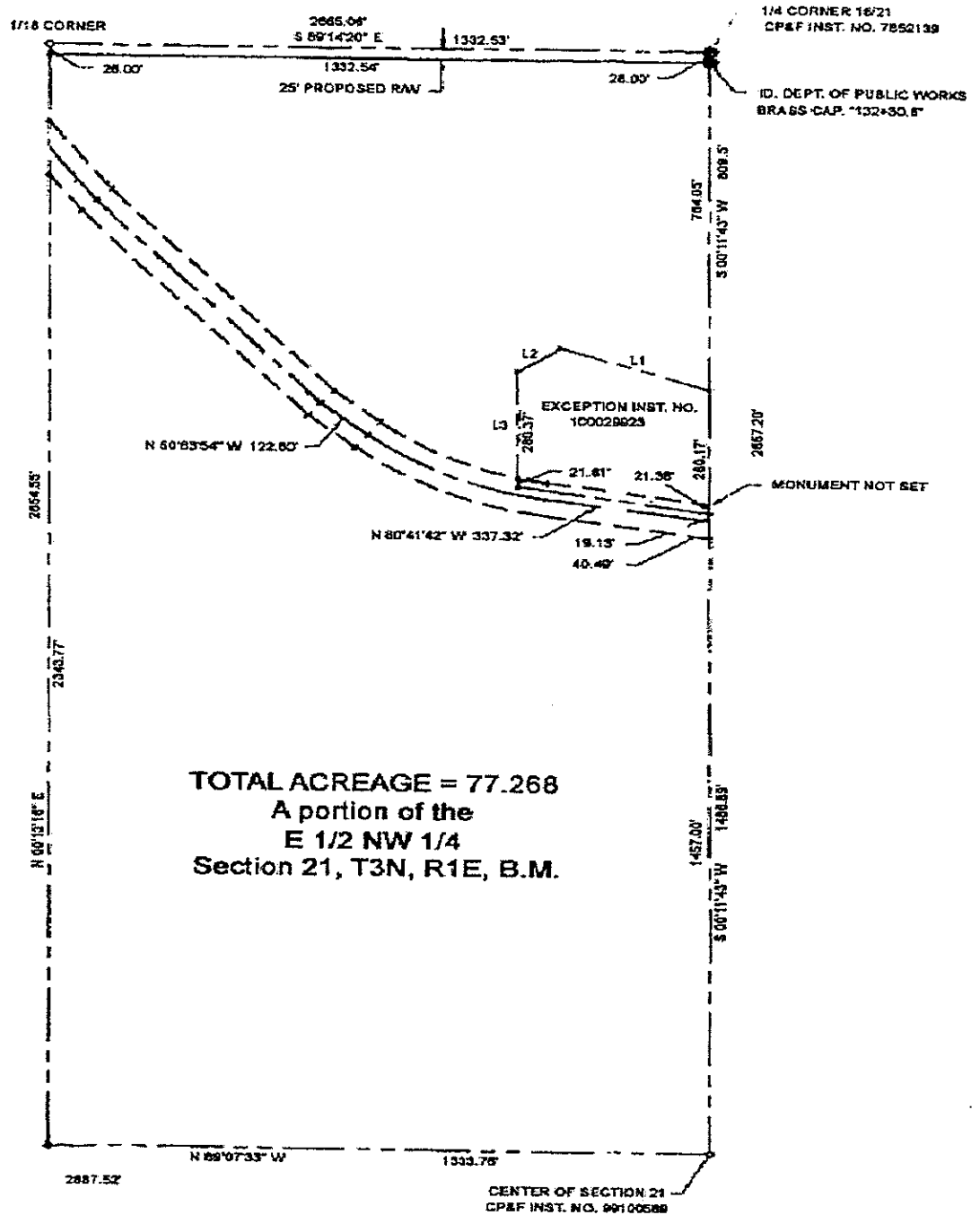
- Over 1300 feet of frontage on Overland Road.
- Central valley location with excellent freeway access.
- New city well adjacent to site. 18" sewer line to site.
- Adjacent to Silverstone Corporate Park.



THORNTON OLIVER KELLER
COMMERCIAL REAL ESTATE

250 South Fifth Street Second Floor
Boise, Idaho 83702
Phone 208.378.4600 Fax 208.947.0869
www.tokre.com

LAND - EAGLE ROAD & OVERLAND ROAD



250 South 5th
Second Floor
CW Moore Plaza
Boise, ID 83702

PH 208.378.4600
FAX 208.947.0869

The information above has been obtained from sources believed reliable. While we do not doubt its accuracy, we have not verified it and make no guarantee, warranty, or representation about it. It is your responsibility to confirm its accuracy and completeness. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the property. The value of this transaction to you depends on other factors which should be evaluated after careful investigation by your advisors.

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