

RECEIVED

NOV 05 2009

DEPARTMENT OF
WATER RESOURCES

District Court – SRBA

253 3rd Ave. North

P.O.B. 2707

Twin Falls, ID 83303 – 2707

Cert. Mail: 7007 2680 0001 7525 4440

Case No. 39576

Subcase No: 67-11416

Motion to set aside partial decree

Madsen's Plea to the court – for Tuesday, November 10, 2009 at 02:00 PM (MT)

Special Master Theodore R. Booth:

Please accept this as my arguments for above case, especially if I am not able to participate by telephone, please accept our apologies in advance.

The basic of this motion is that on May 22, 2007 by certified mail: 7007 0220 0004 4974 5627 filed by Department of Water Resources June 1, 2007, Chester Madsen stated his case for East fork of the Weiser River and Mill Creek water rights in Late Claim 67 - 14877. We argue that this request should have been also considered in the determination of the Service Area of East Fork/Mill Creek water case 67-11416 adding 7.5 to 23 acres of our tract (Township 16N, Range 1W, SW1/4NE1/4 Sec 10) to the above service area.

We have enclosed the documents to confirm above plus further support of our Motion filed in regard to our late claim 67 – 14877. Please consider this information in Case No. 39576, especially, if we are absent from the Nov. 10th proceedings, please accept our apologies in advance.

Summary

This tract had deeded Mill Creek water (7.5 miner inches in 1906 by Decree of District Court, Third Judicial District of the State of Idaho, Washington County*). Evidence of the diversion point of that water is available on site plus East Fork/Mill Creek water from surrounding irrigation naturally irrigates our land by surface and subsurface flows. It is a natural part of our water rights 67 -14877, 67- 14891, and 67- 4099. These fact were not considered in the in the determination of Service area for case 67-11416 as conducted, in part, by Ken Ward, Council, ID 83612.

*The area know known as Adams County was at that time in Washington County

Certification of Mailing: We certify on Nov. 3, 2009 that this letter and attachments where mailed by certified mail to the following:

District Court – SRBA
253 3rd Ave. North
P.O.B. 2707
Twin Falls, ID 83303 – 2707
Cert. Mail: 7007 2680 0001 7525 4440

East Fork Ditch CO LTD
Council, ID 83612
Cert. Mail: 7007 2680 0001 7525 4150

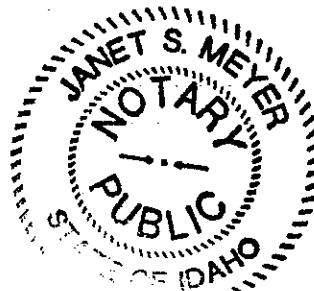
Director of IDWR
Attn: Craig L. Saxton, Water Rights Supervisor
P.O.B. 83720
Boise, ID 83720-0098
Cert. Mail: 7007 2680 0001 7525 4242

Junice E. Madsen 11-03-09
Signature Date

Chester Madsen P.O.T. Junice Madsen 11-03-09
Signature Date
For herself and as Power of Attorney for Chester Madsen

Kevin G. Madsen 11/03/2009
Notary

Janet S. Meyer



etx 8/21/12

RECEIVED

SEP 08 2009

DEPARTMENT OF
WATER RESOURCES

2009 SEP 04 PM 08:11
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

Case No. 39576

) ORDER SETTING HEARING
)
)

) SUBCASE NO: 67-11416

Please be advised that Special Master THEODORE R. BOOTH
has set for hearing the MOTION TO SET ASIDE PARTIAL DECREE.

TUESDAY, NOVEMBER 10, 2009 at 02:00 PM (MT)

SRBA
253 - 3RD AVENUE NORTH
TWIN FALLS, ID

Parties may participate by telephone by dialing the number
225-383-1099 and when prompted entering the code 675342.

IT IS SO ORDERED.

Dated: SEPTEMBER 04, 2009

/S/ THEODORE R. BOOTH
Special Master
Snake River Basin Adjudication

Deputy Clerk

9/04/09 2

7007 28900001 7525 3631

Clerk of the District Court

River Basin Adjudication

253 Third Ave North; PO Box 2707; Twin Falls, ID 83303-2707

A Motion to Set Aside the Partial Decree at the Court

RE: water right number 67-11416 partial decree issued on December 4, 2008

Mill Creek/East Fork Ditch Service Area

East Fork ditch, Weiser River, Council, ID 83612

Grounds: This tract, SW1/4NE1/4 Sec. 10, Township 16N and Range 1W, is naturally is in the service area of but not limited to the East fork and Mill creek water (ditches). Public information was not used even after copies of which were supplied to the Idaho Department of Water Resources, Idaho Water Center, in Boise ID by certified mail #7007 0220 0004 4974 5825 sent on May 23, 2007. This letter was signed by Chester Madsen on May 22, 2007 as witnessed by Kevin Madsen. It stated that the above tract of land "was and naturally is in the service area of but not limited to the East fork of Weiser River, Cottonwood, Grossen, and Mill creek water (ditches). Historically and currently these waters "service" this tract. Waste water and sub irrigation has ... a valued contribution (to) forage production and wetland values (wildlife habitat) of said tract. ... (This tract) had* deeded Mill Creek water (7.5 inches adjudicated in 1906**) – see enclosed deed (Book #F 559). Not including this tract in the service area of the east fork and mill creek water constitutes a take of water rights (from lands) ... historically watered by surface and sub surface follows from the time of ditch (east fork/mill creek ditch) original construction (to said tract) prior to 1906."

Therefore this tract's 7.5 to 23 acres should be added to 67 11416 East Fork Weiser/Mill Creek/Camp Creek/Grossen Creek's 2054 acres, changing it to 2061.5 to 2077 acres respectively.

Sincerely

Kevin G. Madsen 8/21/09

Kevin Madsen for Chester Madsen 2073 N Galena Rd, Council, ID 83612

CC: Idaho Department of Water Resources; 332 E. Front Street; Boise, Id. 83720-0098

*In or about 1933, Mill Creek Water rights from this tract, owned by Lewis E. Winkler, were transferred for use on Council Valley Orchard Tracts (now out-of-production) then owed by John W. Hoover and Ida B. Hoover, however; this tract remained in the service area.

**Decree of the District Court, Third Judicial District of the State of Idaho, Washington County

***the area that is now Adams County was then included in Washington County.

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Clerk of the District Court
River Basin Adjudication
253 Third Ave North
PO Box # 2707
Twin Falls ID 83303

2. Article Number
(Transfer from service label)

7007 2680 0001 7525 3634

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee
X Julie Murphy

B. Received by (Printed Name) C. Date of Delivery
Julie Murphy 8/25/07

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

RECEIVED

14/3

Form 42-1409(10)-1 (Internet)
8/91

JUN - 1 2007

Date Received _____

DEPARTMENT OF
WATER RESOURCES
State of IdahoDepartment of Water Resources
**REQUEST FOR EXTENSION OF TIME
TO FILE ADJUDICATION CLAIM(S)**

Certified Mail

7007 0220 0004

4974 5825

5627

The Idaho Department of Water Resources will consider this form as a request by the claimant for an additional period of time in which to file claim(s) beyond the 90 days allowed by Section 42-1409(10), Idaho Code.

Choster Madsew

(208) 253 4815

Name of Claimant

Phone Number

2073 N Galena Rd . Council ID 83612

Mailing Address

City

State

Zip

Adams Not known

County(s) where place of use is located

Date claim originally due

Mill Creek water and East fork of Weiser River

Identify water right(s) for which extension is requested

see also attached letter

State why an extension of time is requested explaining how a diligent effort has been made to meet the deadline:

I went to hospital Sept 2005 and then
to Weiser Care center on Sept 16, 2005
I do to medical reasons need a
extension to get informed and
develop and file claims.

Claimant requests an extension to August 22, 19 07 2007

Christie Madsew May 22, 19 2007

Signature

Date of request

owner of SW 1/4 NE 1/4 Sec 10 T6R1W

Title

Bonne Meridian

Tavas born 3/22/21

so need more time to process papers

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

The above request for extension of time is hereby [] granted [] denied for the following reasons:

and if granted the filing deadline is extended to _____, 19 _____

Signed this _____ day of _____, 19 _____

Snake River Water Adjudication

Wrong address 5/22/07

Mail to: Idaho Department of Water Resources

1301 N. Orchard St.

Boise, ID 83706

Director or his designated agent

Witnessed by Kevin G. Madsew 5/22/07

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Idaho Dept Water Res
PO Box 183720
Snake Valley Water Agency
83720-0098

2. Article Number

(Transfer from service label)

7007 0220 0004 4974 5627

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

MAY 31 2007

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Domestic Return Receipt

102595-02-M-1540

Chester Madsen
2073 N. Galena Road
Council, ID 83612
Message phone: (208) 253-4815

certified mail

7007 0220 0004 4974 5825
5627

Idaho Department of Water Resources
The Idaho Water Center
Attn. East Fork of Weiser River and Mill Creek ditch Adjudication (Snake River Water)
322. E. Front Street
Boise, Idaho 83720-0098

May 22, 2007

I hereby request that the adjudication of East fork of the Weiser River (East fork) and Mill Creek (Mill creek) ditch water rights be reviewed. Based on the grounds that testimony and legal evidence that should have been considered was excluded, including but not limited to testimony of the Madsen family, relatives, and living renters and owners of lands serviced historically by East fork, Mill creek, Cotton Wood and other ditches and waters of this area. Furthermore that setting any date as a "cutoff" date, including but not limited to 1961, is arbitrary and capricious.

A hydrological study should be conducted to correct the adjudication of East fork and Mill, cottonwood ditch water and to ascertain if a "take" has occurred, is occurring, or is in the planning stage of occurring regarding water/wetlands on the tract comprising the SW1/4NE1/4 Sec. 10, Township 16 North, Range 1 West of the Boise Meridian, here after referred to as this tract/said tract.

It is argued that this tract was and naturally is in the service area of but not limited to the East fork of Weiser River, Cottonwood, Grossen, and Mill creek water (ditches). Historically and currently these waters "service" this tract. Waste water and sub irrigation has been a valued contribution forage production and wetland values of said tract. Furthermore, this tract has deeded Cottonwood water (18 inches) and had deeded Mill Creek water (7.5 inches adjudicated in 1906) – see enclosed deed (Book #F 559). Not including this tract in the service area of east fork and mill creek water constitutes a take of water rights and wetlands historically watered by surface and subsurface follows from the time of ditch original constructed prior to 1906. Evidence of Mill Creek water diversion onto this property are present and located approximately about 156 feet west or the NE corner of said tract, approximately the current location of a chicken house moved from Shorty Childers place onto my property (I dragged it there in the late 1960s – Kevin Madsen witnessed this).

East fork water, Mill creek water, Grossen creek, and Cottonwood water co-mingled on this property and were used by me, Chester Madsen, to water this tract. Furthermore, ditch and other water from "upstream" areas cannot be naturally excluded from SW1/4NE1/4 Sec. 10, Township 16 North, and Range 1 West of the Boise Meridian due to surface and subsurface flows. Therefore, impounding, diversion (by pumping, converting from unimproved ditch to, but not limited to, pipe and or improved cement or plastic coated ditch, tilling, etc) of surface and subsurface water "upstream" of said tract results in a take of water, surface and/or subsurface, from this tract and a take of historical wetlands. Ditch water has been a major factor to the value of this tract since the early 1900s taking away or drying up surface or subsurface flows is a take.

Sincerely

Chester Madsen

Witnessed by Kevin A. Madsen 5/22/07

This Indenture, made this first day of September in the year of our Lord One Thousand Nine Hundred and Ten, between Alexander Kesler unmarried of Council, County of Washington State of Idaho, the party of the first part, and R. M. Gibson of Council, County of Washington, State of Idaho the party of the second part.

Witnesseth, That the said party of the first part for and in consideration of the sum of Four Thousand Dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged has granted, bargained and sold and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns forever, all the following described real estate situated in Washington County State of Idaho to wit:

Commencing at the north east corner of the South West Quarter of the North East Quarter of Section Ten, Township Sixteen, North, Range One West B. M. running thence west on a straight line to the east line of the Pacific & Idaho ^{Northern} Railway right of way, thence in a southeasterly direction along said line of railway to a point twenty feet north of the south line of above described Quarter, thence east on a straight line to the east line of said Quarter, thence north to the place of beginning, except one acre located along the south line to be donated and deeded for cemetery purposes, containing twenty eight acres more or less, together with all waters, water rights, ditches, dams, flumes and irrigating works of whatever nature used upon, belonging to or in anywise appertaining to said lands, including seven and one half inches of water of the Mill Creek adjudication for use of said lands, by Decree of the District Court of the Third Judicial District of the State of Idaho in and for the County of Washington on or about June 1906.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property as well in law as in equity of the said party of the first part.

To Have and to Hold all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part, and to his heirs and assigns forever. And the said party of the first part and his heirs the said premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against the said party of the first part and his heirs and against all and every person and persons whomsoever lawfully claiming or to claim the same shall and will warrant and by these presents forever defend,

In Witness Whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered

Alexander Kesler (Seal)

In the presence of

J. A. Carr

State of Idaho

County of Washington

ss

On this first day of September in the year 1910 before me J. A. Carr a Notary Public on and for said County, personally appeared Alexander Kesler unmarried known to me to be the person whose name is subscribed to the within instrument 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.

Seal
(J. A. Carr Notary Public)
(Washington County Idaho)

J. A. Carr

Notary Public

Filed for record at request of Carr & Freehafer at 9, o'clock A. M. September 29, 1910.

Frank E. Smith

Recorder

By Harriet Smith

Deputy

Fees \$1.40

(Deeds 28 - 283)

ADAMS COUNTY ABSTRACT CO.
COUNCIL, IDAHO

State of Idaho:

SS

County of Adams:

I, L. I. Burtenshaw, being first duly sworn on my oath doth depose and say, that I reside at Council Adams County Idaho, and have so resided there for more than twenty-five years last past, and that I was well acquainted with ~~Alexander Kessler deceased~~ in his lifetime, and am likewise acquainted with Jennie Harp, otherwise written as Janie Harp, written Jennie Harp, at No. 7 of the annexed abstract of title and as Janie Harp at No. 8 of the said abstract, and that to my certain and positive knowledge, that Jennie Harp as set forth at No. 7 thereof, and Janie Harp set forth at No. 8 thereof, are one and the same person,

Also, I am well acquainted with Rebecca Kesler set forth at No. 9 of the annexed Abstract, and written therein as Rebecca Kessler, and that to my certain and positive knowledge Rebecca Kesler, written and Rebecca Kessler signed are one and the same person, That said Jennie Harp, and sometimes written Janie Harp, and Rebecca Kesler, sometimes written Rebecca Kessler, were each daughters of the said Alexander

Kesler deceased:

and that Betty Dickerson and Elizabeth Dickerson are the daughters of the same person
L. I. Burtenshaw

Subscribed and Sworn to before me this 19th day of October 1927.

Matilda Moser
County Recorder of Adams County Idaho:

Alexander Kesler,
unmarried.

2. to

R. M. Gibson.

WARRANTY DEED.

Dated September 1st, 1910.
Ack'd September 1st, 1910.
Filed September 29, 1910.
Book F Deeds page 559.
Consideration \$4,000.00.

and confirm unto the party or the grant bargain, sell, convey
described real estate situated in Washington County, Idaho, to-wit:

Commencing at the Northeast corner of the Southwest Quarter of the Northeast Quarter of Section Ten, Township Sixteen North of Range One West of the Boise Meridian, running thence West on a straight line to the East line of the Pacific & Idaho Northern Railway right of way, thence in a Southeasterly direction along said line of railway to a point twenty feet North of the South line of above described Quarter, thence East on a straight line to the East side of said Quarter, thence North to the place of beginning, except one acre located along the South line to be donated and deeded for cemetery purposes, containing 28 acres, more or less, together with all water, water rights, ditches, dams, flumes and irrigating works of whatever nature used upon, belonging to or in anywise appertaining to said lands, including seven and one half inches of water of the Mill Creek adjudication for use of said lands, by Decree of the District Court of the Third Judicial District of the State of Idaho, Washington County, on or about June 1906. Covenants of warranty.

One witness. Acknowledged by Alexander Kesler, unmarried,
before J. A. Carr, Notary Public, Washington County, Idaho. Notarial
Seal Affixed.

"Transcribed from Book 28 Deeds page 283 Washington County Records."



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

September 19, 2007

KEVIN MADSEN
CHET MADSEN
EUNICE MADSEN
2073 N GALENA RD
COUNCIL ID 83612

RE: Late claim 67-14877

Dear Mr. Madsen,

Per Judge Melanson's decision to postpone the hearing regarding the motion to file late claim 67-14877, I have reviewed the information packet you submitted with your motion and wanted to get in contact with you about it.

Enclosed is a partially completed claim that included the elements of the water right I believe you were meaning to describe in your claim. In addition, the claim also includes elements of the water right that I interpret to describe your water use.

For example, under Item 3 in your late claim information packet you wrote,

"... or the allowable amount from Mill creek/East fork of Weiser River both in the same ditch..."

However, after reading through the information packet, it sounds like what you are describing is what IDWR would call **waste water** that comes from upstream fields and ditches which are originally irrigated with Mill Creek and East fork Weiser River water. So on the claim I listed the claimed sources as:

- Mill Creek
- East Fork of Weiser River
- Waste Water

So as you look through the claim, you might see things that you did necessarily state were part of your claim.

This is your claim and you can claim anything you want. If you disagree with what I listed on the claim you can change it however you would like. If you don't like something I added then please cross it off and initial next to it. If I missed something, just write it in and initial next to it. Or you can start over on a new form.

Respectfully, this is my response to notes by Craig L. Saxton, 9/20/07, regarding claimed sources:

Sorry to make this so confusing but it is not a straight forth issue as waters are use in conjunction each other, what is percentage of waste water in a ditch varies.

I agree this is actually is a waste water claim for 7.5 inches of waste water. There are several locations we collect waste waters. 5 on **closeup map** and all 6 on **overview map**

First, the Sorenson Rhinehart ditch /Grossen creek functions like East Fork of W/Mill Creek.

In the first case, Grossen creek waters (flood) (1) are used prior to Sorenson Rhinehart ditch being turned on (mainly due to snow in ditch and road to ditch). As weather requires/permits Sorenson Rhinehart ditch is turned on and on the north lateral ran into Grossen creek, they "commingle". The diversion is below the "commingling" point. Grossen creek tends to provide less and less to the percentage of the commingled water as the season progresses but it depends of course on temperature and snowpacks.

In the second case, Mill Creek (flood) waters are used prior to East Fork of the Weiser ditch being turned on (mainly due to snow on road and in ditch). As weather requires/permits East Fork ditch is turned on and East Fork water "commingles" with Mill Creek water.

- 1) Directly east of the county road near Cd3 (just east of the NE edge of our property) is a field of a neighbor that is flood irrigated and waste water is collected in our ditch on the east side of the county road. Plus water runs westward subsurface under the county road at a shallow depth to sub irrigate our property and replenish our upper pond.
 - 2) Waste water and /or Sorenson Rhinehart water is pumped out of ditch on the North East corner of our property to water lawn and garden near Pd1.
 - 3) Waste water comes down the drainage in the SE part of our property, Cd4, and supplements water we divert from Cd1 to go to Cd4.
 - 4) Waste water and/or water we divert from Cd1 are diverted into a pond located on the NW corner of our property Cd5. This use is for stock and irrigation water.
 - 5) Waste water and /or Sorenson Rhinehart water is diverted at Cd1.
- 6) Plus since the South East Fork Ditch runs above or POD at Grossen Creek and actually runs through a pipe over Grossen creek see overview map. Our ditch captures water the seeps from South East Fork of the Weiser Ditch.

Before we divert water at Cd1 it is a combination of North Lateral of Sorenson Rhinehart (cottonwood)/Grossen creek, East Fork/Mill Creek, and waste waters. The percentages change with the year and part of the season.

As below Cd1 both us and the property to the north allow water to go past Cd1 and Pd1 to take out irrigate lands to the west that would not be "waste water".

Our tract had 7.5 miner inches of deeded water right from the early 1900s until March 29, 1933 and it was diverter at location OMDd. Since then we have been using waste waters from flood irrigation and 18 inches from combination of North Lateral of Sorenson Rhinehart /Grossen creek water. To retain the status quo we ask that we be granted waste water rights based on the use of waters since 1961.

Storage upper pond 1.21 A.F., lower pond 0.5 A.F. **Madsen 67-14877**

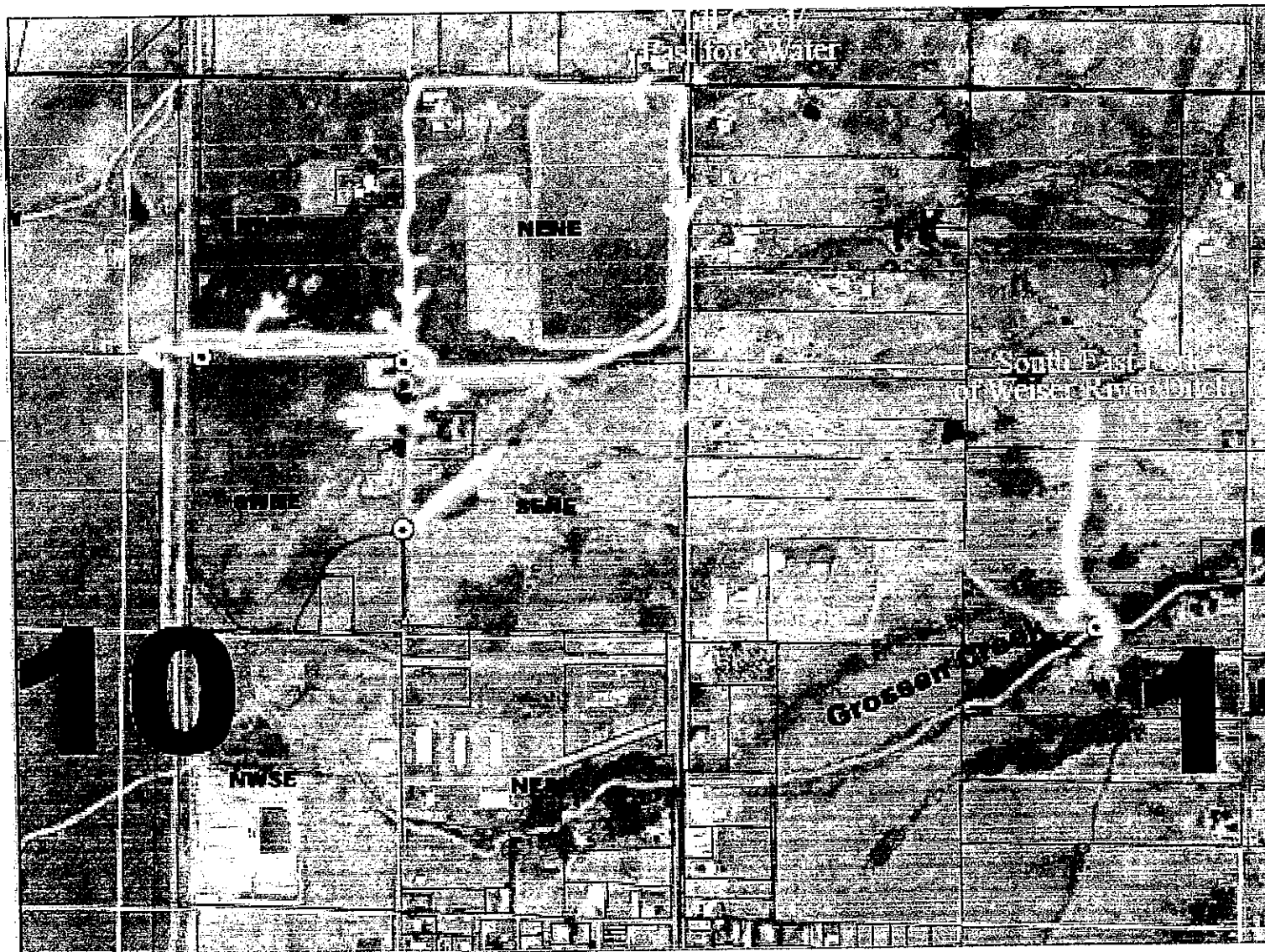


State Of Idaho

Overview Map

67-14877

Madsen



1320

0

1320

2640 Feet



Point of Diversion(s)



Adams County Tax Lot



Existing Place of Use

N/A

6 waste water
Point of diversion



Sections

Quarter Quarter

Irrigated by water pump from waste water ditch

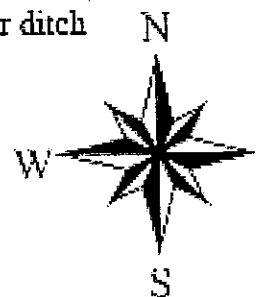
South Branch of East Fork ditch

East Fork/Mill Creek water

Sorenson Rhinehart/Grossen Creek water

Waste Water from combination of sources

Subirrigation Water from flood irrigation



Additions by: Kevin Madsen
Oct. 2007

Prepared by: Craig L. Sax
Date: September 20, 2007



State Of Idaho

closeup
map

67-14877

Madsen

waste water

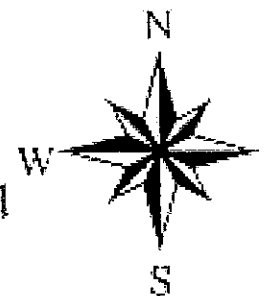


0 1320 Feet

- ⊙ Point of Diversion(s)
- ▭ Adams County Tax Lot
- ▭ Existing Place of Use
- N/A
- ▭ Sections
- Quarter Quarter

Original Mill Creek Diversion
Ammend Locations for
Point of Diversions
Irrigated from waste water and
or deeded water
Ammended by Kevin Madsen

Oct. 2007



Prepared by: Graig L. Saxt
Date: September 20, 2007