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JUN 18 2010

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

Case 39576

) Subcase 63-33392
)
)
) STANDARD FORM 4
)
) MOTION TO FILE:
) ☒ LATE NOTICE OF CLAIM
) ☐ AMENDED NOTICE OF CLAIM
)

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☐ I have read *SRBA Administrative Order 1, Rules of Procedure* (amended Sept. 30, 1996).

My name is MASON CREEK DITCH COMPANY

My address is C/O RICHARD BICANDI

1905 MASON, CALDWELL, ID 83605

My phone number is: Work _____ Home 208-459-0428

I am an attorney representing MASON CREEK DITCH COMPANY

My name is ALBERT P. BARKER

My address is BARKER, ROSHOLT & SIMPSON, LLP

P.O. BOX 2139, BOISE, IDAHO 83701-2139

My phone number is 208-336-0700

MOTION TO FILE A LATE NOTICE OF CLAIM

A Motion to File a Late Notice of Claim will require a hearing before the Presiding Judge.

☒ I did not file a Notice of claim to the use of water in the SRBA because:

The board of directors did not think that this wastewater claim was necessary, until after the SRBA process began. When objections were filed by Pioneer Irrigation District against other water rights owned by the claimant, the decision was made to file for all water to which the claimant is entitled, including wastewater claims. The Five Mile Creek/Drain diversion was overlooked when the Mason Creek wastewater claim was filed.

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☒ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

Attached is excerpt from the watermaster records – water distribution book (1976) describing the diversion from Five Mile Creek/Drain.
Also attached are photos of the POD

I have attached:

- ☒ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have also enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$_____.
- ☒ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ 100.00*.

***Claimant is attaching a flat fee of \$50.00 and a late fee of \$50.00, pursuant to the provisions of Idaho Code §42-1414. Claimant has already filed fees for all of the irrigated lands included in its shape file. This claim does not include any new or previously unclaimed land in the place of use.**

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on September 21, 2010 at 1:30 p.m.
(Insert Date and Time)

at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A Motion to File an Amended Notice of Claim may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☐ I must amend my Notice of Claim to the use of water in the SRBA because:

- ☐ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

I have attached:

- ☐ An Amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (must be completed)

State of IDAHO

County of Ada

Albert P. Barker, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion

Albert P. Barker

Attorney signing in representative capacity

Subscribed and sworn to before me on June 17, 2010
(Insert Date)



Suzanne Estes
Notary Public for Idaho
Residing at: Boise
My Commission expires: June 1, 2012

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on June 17, 2010, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment and Natural Resource Div.
550 West Fort Street, MSC 033
Boise, ID 83724

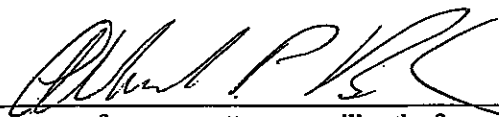
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

Jon C. Gould
Ringert Law
455 S. Third
P. O. Box 2773
Boise, ID 83701-2773

Scott Campbell/Andrew Waldera
Moffatt Thomas
101 S. Capitol Blvd., 10th Floor
P. O. Box 829
Boise, ID 83701-0829

3. If you are filing an amended Notice of Claim in a Subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that Subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing the form

Eagle Drain: Eagle Drain enters Boise River on the North Channel of Eagle Island at the town of Eagle. It drains the area below the Farmers Union and Dry Creek Canals from Boise to Eagle. Discharge ranges from 60 cfs in the summer to 15 cfs in the winter.

Five Mile Creek: Sometimes called Fifteenmile Creek, Five Mile Creek enters Boise River from the south near Middleton and acts as a drain for the area below the Boise Project Main Canal and between the City of Boise and Mason Creek Drain. It receives return flows and spills from the Main, Ridenbaught, and Phyllis Canals. Five Mile Creek is a major source of irrigation water for the Caldwell Highline Canal, the last of a series of major canals which cross this drain. ~~Just prior to entering the river, a diversion of about 17 cfs is made by a small canal. Discharge to the river~~ varies from 140 cfs in the summer to less than 40 cfs in the winter. However, because of the great reuse of water from the drain, flows are quite variable.

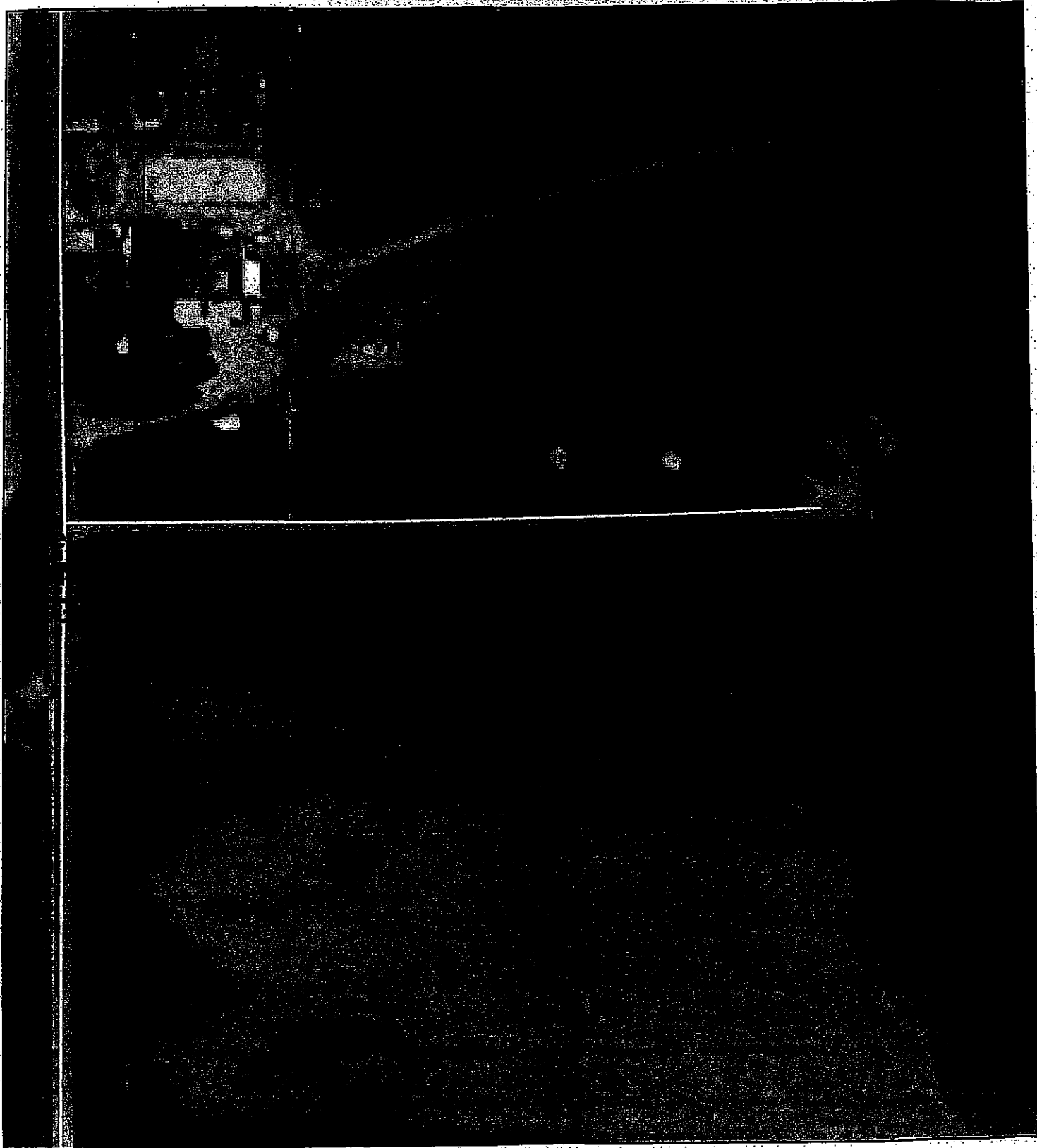
Mason Creek: Mason Creek drains land served by the same canals as Five Mile Creek and also provides irrigation water to the Caldwell Highline Canal. Between the Boise Project Main Canal and the Ridenbaugh Canal, Mason Creek acts as a lateral from the former canal and empties into the latter. It begins to function as a drain below the Ridenbaugh Canal. Near the river, Mason Creek branches into two channels which reach the river at approximately the same location near Caldwell. These channels are called Mason Creek and Mason Drain. The combined discharge of the two channels varies from 200 cfs in the summer to 60 cfs in the winter.

Indian Creek: Indian Creek and two tributary drains, the Wilson and Elijah, drain the area below the Ridenbaugh Canal between Mason Creek and Lake Lowell. Similar to Mason Creek, Indian Creek begins to act as a drain below the Ridenbaugh Canal. Above that point Indian Creek functions as a portion of the Boise Project Main Canal and all return flows or surface runoff is diverted to Lake Lowell via the Main Canal.

There are many artesian wells and springs which discharge to Indian Creek in the vicinity of Nampa. Indian Creek discharges to Boise River below Caldwell, but during the irrigation season much of the flow is diverted before it reaches Boise River. The largest diversions from the system are the Notus Canal which diverts flow from the Wilson and Elijah Drains to the north side of Boise River, and the Riverside Canal which diverts flow from Indian Creek below Caldwell. Discharge to Boise River is highly variable, ranging from 250 cfs at the end of the irrigation season to less than 100 cfs when canals are diverting water from the creek.

North and South Middleton: The two forks of the Middleton Drain drain the area below the Middleton Canal between Eagle and Middleton. The drain discharges to Boise River at Middleton. Discharge varies from 200 cfs in the summer to 50 cfs in the winter.

Willow Creek: Willow Creek also discharges to Boise River at Middleton. It collects return flows from the area irrigated by the lower end of the Middleton Canal and by the last few miles of the "C" Line East



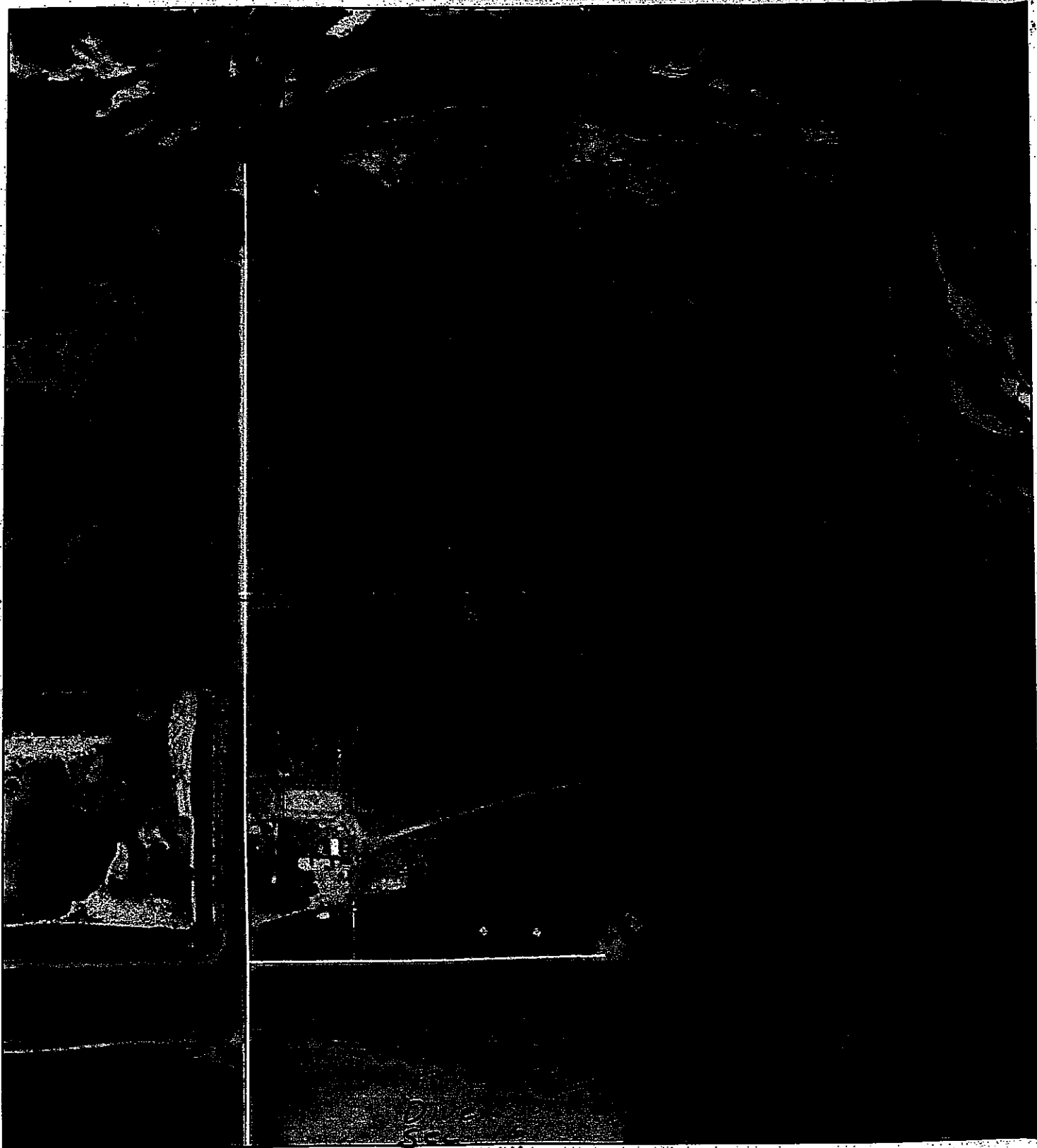
Canyon County, ID

1:1,865



Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area. Refer to your original dermination (CPA-026 and attached maps) for exact wetland boundaries and determinations, or contact NRCS.

June 16, 2010



TWN 4N
RNG 2W
SW-SW

Canyon County, ID

1:3,981



Disclaimer: Wetland identifiers do not represent the size, shape or specific determination of the area.
Refer to your original dermination (CPA-026 and attached maps) for exact wetland
boundaries and determinations, or contact NRCS.

June 16, 2010

