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(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

November 10, 2010

RECEIVED

NOV 12 2010

DEPARTMENT OF
WATER RESOURCES

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Re: *Indian Creek Ranch Owners Assn - City of Hailey*
Subcase Nos. 37-296C and 37-19740

Dear Clerk:

Enclosed for filing please find duplicate originals of Motion to Amend SF-1 Objections and Memorandum in Support, and Notice of Hearing. A hearing has been set for January 12, 2011 at 11:30 am. Thank you for your assistance.

Sincerely,


RANDALL C. BUDGE

RCB:rr
Enclosures
cc: Service Lists

Randall C. Budge (ISB No. 1949)
Candice M. McHugh (ISB No. 5908)
Thomas J. Budge (ISB No. 7465)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
201 E. Center Street
P.O. Box 1391
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109

Attorneys for Indian Creek Ranch Owners Association, Inc.

RECEIVED

NOV 12 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 No. 39576

Subcase Nos. 37-296C and
37-19740

**MOTION TO AMEND SF-1
OBJECTIONS AND
MEMORANDUM IN SUPPORT
And
NOTICE OF HEARING**

COMES NOW, INDIAN CREEK RANCH OWNERS ASSOCIATION, INC., (hereinafter "Association") through its attorneys of record, and hereby move the Court for leave to file Amended Objections to Water Right Nos. 37-296C and 37-19740, pursuant to Rule 1.a. of SRBA Administrative Order 1 and Rule 15(a) of the Idaho Rules of Civil Procedure, and submit this Memorandum in Support thereof. Copies of the Amended Objections are attached hereto and incorporated by reference. This motion is made on the grounds and for the reasons that the Amended Objections and the aerial maps attached thereto more clearly identify the place of use and define the issues raised in the Amended Director's Report dated September 30, 2010

("ADR"), and the Objections filed thereto by the Association, by the City of Hailey ("Hailey") and by Dana L. Hofstetter ("Hofstetter").

MEMORANDUM IN SUPPORT

Indian Creek arises from springs northeast of Hailey, flows in a southwesterly direction towards the Big Wood River and is the source of supply for the Association's irrigation water rights and the City's municipal water and power generation rights. There are no other claimants or users on Indian Creek. The claims of the Association and Hailey to Indian Creek are subject matter of the ADRs and Objections thereto filed by the Association, Hailey and Hofstetter. These Objections are the subject matter of a mandatory settlement conference scheduled before Special Master Booth on November 19, 2010, in Twin Falls.

The primary issue in dispute pertaining to the Association's claims is the number of irrigated acres. The Association originally claimed a place of use of 235.4 acres. The recent ADRs recommended a place of use of 108.1 acres. Hailey's Objections assert that the Association's irrigated acres should be something less than recommended, while Hofstetter's Objection asserts that the place of use should be the acres originally claimed.

The Association's Objections filed October 21, 2010, did not challenge the recommended 108.1 irrigated acres at the time, believing that this number was accurate. As such, the Association objected only to the source requesting that a remark be added that the Indian Creek water rights be administered separately from the Wood River consistent with the Recommendation for Basin 37, Part 3 General Provisions, which currently provides that Indian Creek is to be administered separately from the Wood River.

As a result of the Objections filed by Hailey and Hofstetter the Association's technical consultants have conducted a more thorough and critical review and analysis of aerial photographs and other information to more accurately determine and verify the number of irrigated acres and have concluded that the correct place of use should be a total of 112.6 irrigated acres, consisting of 77.6 irrigated acres under Water Right No. 37-296C and 109.5 acres under Water Right No. 19740. Accordingly, the Association seeks to amend its Objections recently filed on October 21, 2010, to accurately reflect the place of use as depicted in the aerial photos attached to the proposed Amended Objections. To more clearly define the issues pertaining to the place of use of the Association's water rights for the benefit of the Court and the parties and to facilitate the upcoming settlement conference, this Motion should be granted and the attached Amended Objections filed.

A. Amendment of Pleadings to Be Freely Given

Idaho Rule of Civil Procedure 15(a) provides that leave of the court to amend a pleading "shall be *freely given when justice so requires*." (Emphasis added). The SRBA Court acknowledges that "Rule 15(a) establishes a rather lenient standard for amending pleadings." *Order Granting Motion to Amend Objection*, SRBA Subcase 37-154C et. al., p. 4 (October 10, 2008). The burden is on the party opposing the amendment to show why a court should not grant leave to amend a complaint. *Clark v. Olsen*, 110 Idaho 323, 326, 715 P.2d 993, 996 (1986). Although an objection in the SRBA is not a "complaint" in the same way as in other civil cases, the objection does provide the avenue for a third party or claimant to question the Director's recommendation of a water right claim. Once an objection is filed to the Director's Report, that water right becomes a "subcase" and is then "at issue." The purpose of I.R.C.P. 15(a) is "[f]irst to allow the best chance for each claim to be determined on its merits, rather

than on some procedural technicality; and, second, to relegate pleadings to the limited role of providing parties with notice of the nature of the pleader's claim and to the facts that have been called into question. Issue formulation is to be left to the discovery process and pleadings are not to be viewed as carrying the burden of fact revelation or of controlling the trial phase of the action." *Id.* It is within the District Court's discretion to allow a party to amend its complaint, and the rules favor liberal grants of leave to amend a party's complaint. See, *Christensen v. Christensen*, 133 Idaho 866, 871, 993 P.2d 1197, 1202 (1999). In the SRBA, Special Master Bilyeu recently allowed objections to be amended when the amendment related to the elements of the water right because conditions relating to that element may have a valid basis and in fact, allowed an amendment seeking to add a remark relating to water quality, even though quality is not an element of a water right administered by IDWR. *Order Granting Motion to Amend Objections*, SRBA Subcase 37-154C et. al. pp. 8-9 (October 10, 2008). In this case, the Association seeks to amend its objections that relate specifically the place of use element of the water rights. In the SRBA, in an effort to assist the parties in defining the issues and to standardize the practice, the SRBA District Court provides standard forms for objection to the Director's recommendation of a particular water right claim. It would be incredible to believe that because there are "boxes" on the objection form that were not checked, that it would be proper to elevate the standard form over the actual merits of a party's objection. As has often been said and practiced in the SRBA, an objection to one element of a water right puts the entire water right "at issue" because at the very early stages it is difficult to fully determine all the elements that may ultimately need to be revised in order to address a party's objection to the recommendation.

In this case the Association in good faith timely objected to the ADR believing at the time that the recommended place of use of 108.1 acres was accurate. Based upon the Objections by Hailey and Hofstetter, the Association immediately initiated further technical review and based upon 1984 aerial photographs concluded that the place of use should be 4.5 acres greater than recommended, which is the basis and effect of the Association's proposed Amended Objections.

B. SRBA Court Has the Ultimate Authority to Review the Director's Report and Issue the Decree on All Elements of the Water Right, Whether or Not the Water Right, or Specific Element is "Objected" to.

The amended objections further define and clarify the issues and should be allowed, especially considering the fact that even without an objection, the SRBA Court has the authority to review the Director's recommendation of a water right claim and can change the elements of the water right if the Court determines it is necessary. As has been "long accepted" by the Courts of Idaho, "water rights adjudications present unique circumstances, often requiring departure from established rules of procedure." *In Re: SRBA Case No. 39576, State v. United States* 128 Idaho 246, 254, 912 P.2d 614, 622 (1995). Hence, special procedural rules were adopted by the Legislature and the SRBA District Court to govern the proceedings. In that case, one of the questions answered by the Supreme Court was whether or not the "unobjected" to portion of a Director's Report could be decreed without any review of the SRBA District Court. The Supreme Court held that the district court retains the "inherent power to apply law to facts and render a decision" and found that "[s]tripping the district court of the ability to review the contents of the Director's report and apply law to the facts as established in that report is an unconstitutional intrusion into the province of the judicial department." *Id.* at 259, 912 P.2d at 627.

That being the case, it is certainly within the SRBA Court's authority to review other, non-objected to elements in a contested subcase. It also follows, that parties to the subcase can present argument and evidence on other non-objected to elements in a contested subcase in order to fully develop the record before the Court who then can freely review the entire recommendation. Yet, in order to assist the court and parties in these cases and to more clearly refine the objections, the Association has filed its motion for leave to amend the objections, along with amended objections and request that the court allow the amended objections to be filed.

C. There is No Prejudice to the Parties Because There is Ample Time to Respond and There Are No Pending Deadlines

The ADRs were only recently filed on September 30, 2010, with October 22, 2010 the deadline for filing Objections. The deadline to file Responses to Objections is November 19, 2010, the same day a mandatory settlement conference is scheduled, with the trial not scheduled to begin until July 14, 2011. Thus, there is no prejudice to the parties nor any concerns about due process to other parties. Given the fact that one of the major goals of the SRBA Court is to properly consider and decree water rights within the Snake River Basin, allowing these amended objections will allow the parties to fully understand and litigate the Association's place of use issues. Allowing the Amended Objections is in keeping with the SRBA Court's purpose as well with the interests of justice, will allows the parties to litigate the merits of these water right claims and does not improperly limit the SRBA's authority to consider all elements of the water right claims.

CONCLUSION

When one considers I.R.C.P. 15(a)'s standard that amendments to pleadings should be freely given, with the SRBA's confirmed authority to review all portions of a Director's Report, MOTION TO AMEND SF-1 OBJECTIONS AND MEMORANDUM IN SUPPORT - Page 6

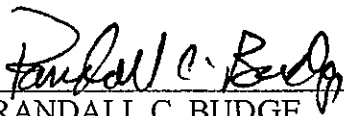
including "unobjected" to recommendations and elements, the Association's Motion for Leave to File Amended Objections should be granted and the Amended Objections attached hereto should be filed with the Court.

NOTICE SETTING HEARING

Oral argument is requested and this Motion is set for hearing on January 12, 2011, at 11:30 a.m. or as soon thereafter as counsel may be heard at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. The parties may participate by telephone by dialing 1-215-446-0193 and entering 926509# when prompted.

DATED this 10th day of November, 2010.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
RANDALL C. BUDGE

INSTRUCTIONS FOR MAILING

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

G. CERTIFICATE OF MAILING

I certify that on November 10, 2010, I mailed the original and copies of this response, including all attachments, to the following persons:

1. **Original to:**

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

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

Name: Indian Creek Ranch Owners Assn – *courtesy copy*
Address: PO Box 3411
Hailey, ID 83333

3. Copies to:

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

Craig Hobdey
Hobdey & Hobdey
PO Box 176
Gooding, ID 83330

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

Albert P. Barker
Barker Rosholt & Simpson
PO Box 2139
Boise, ID 83701-2139

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Dana L. Hofstetter
Hofstetter Law Office LLC
608 West Franklin St.
Boise, ID 83702

Courtesy copies to:

Patrick D. Brown
Hutchinson & Brown LLP
PO Box 2707
Twin Falls, ID 83303-0207



Signature of Objector or attorney
mailing on Objector's behalf

**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**

A. Subcase 37-296C

(Insert water right number)

**AMENDED
STANDARD FORM 1
OBJECTION TO AMENDED
DIRECTOR'S REPORT**

Please **print or type** the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Indian Creek Ranch Owners Assn Inc.

Address: PO Box 3411
Hailey, ID 8333-3411

Daytime Phone: (208) 788-9887

Name & Address of Attorney, if any:

Randall C. Budge
Thomas J. Budge
Candice M. McHugh
Racine Olson Nye Budge & Bailey, Chtd
201 E. Center Street
P.O. Box 1391
Pocatello, ID 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109

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

Name: same as objector

Address: same as objector

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

1. ☐ **Name and Address**
Should be:
2. ☒ **Source**
Should be: **See remarks below at E.**
3. ☐ **Quantity**
Should be:
4. ☐ **Priority Date**
Should be:
5. ☐ **Point(s) of Diversion**
Should be:
6. ☐ **Instream Flow Description**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☒ **Place of Use**
Should be: 77.6 acres as identified upon the attached aerial photos.
10. **I object because:**
☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.
11. ☒ **Other Provisions. See remarks below at E.**

E. REASONS SUPPORTING OBJECTIONS.

Objection D.2. Source:

In the event IDWR changes its recommendation for Basin 37, Part 3 General Provisions, which currently provides that Indian Creek is to be administered separately from the

Wood River, then claimants/objectors request that a remark be added in the “other provisions” that this water right and/or Indian Creek is administered separately from the Wood River.

Objection D.9. Place of Use:

Based on further technical review and evaluation of LANDSAT imagery, Claimant has identified a total of 112.6 irrigated acres consisting of 77.6 acres under Water Right No. 37-296C and 35 acres under Water Right No. 37-19740.

Other:

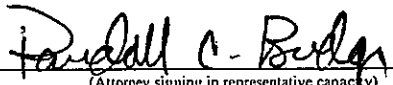
This Amended Objection amends and supersedes Objector’s SF-1 Objection filed 10/21/2010.

F. VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Bannock)

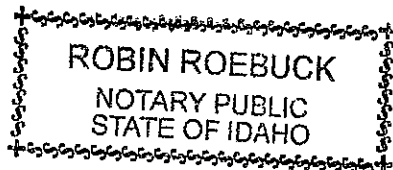
Randall C. Budge _____, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

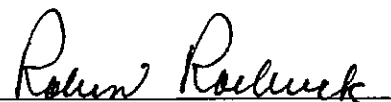
That I am the party/claimant filing this objection as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant responding and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)


(Attorney signing in representative capacity)
Randall C. Budge

Subscribed and sworn to before me on this _____ day of November, 2010.





Notary Public for Idaho
Residing at Pocatello.
My Commission Expires 8/18/2012

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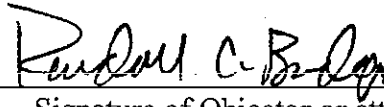
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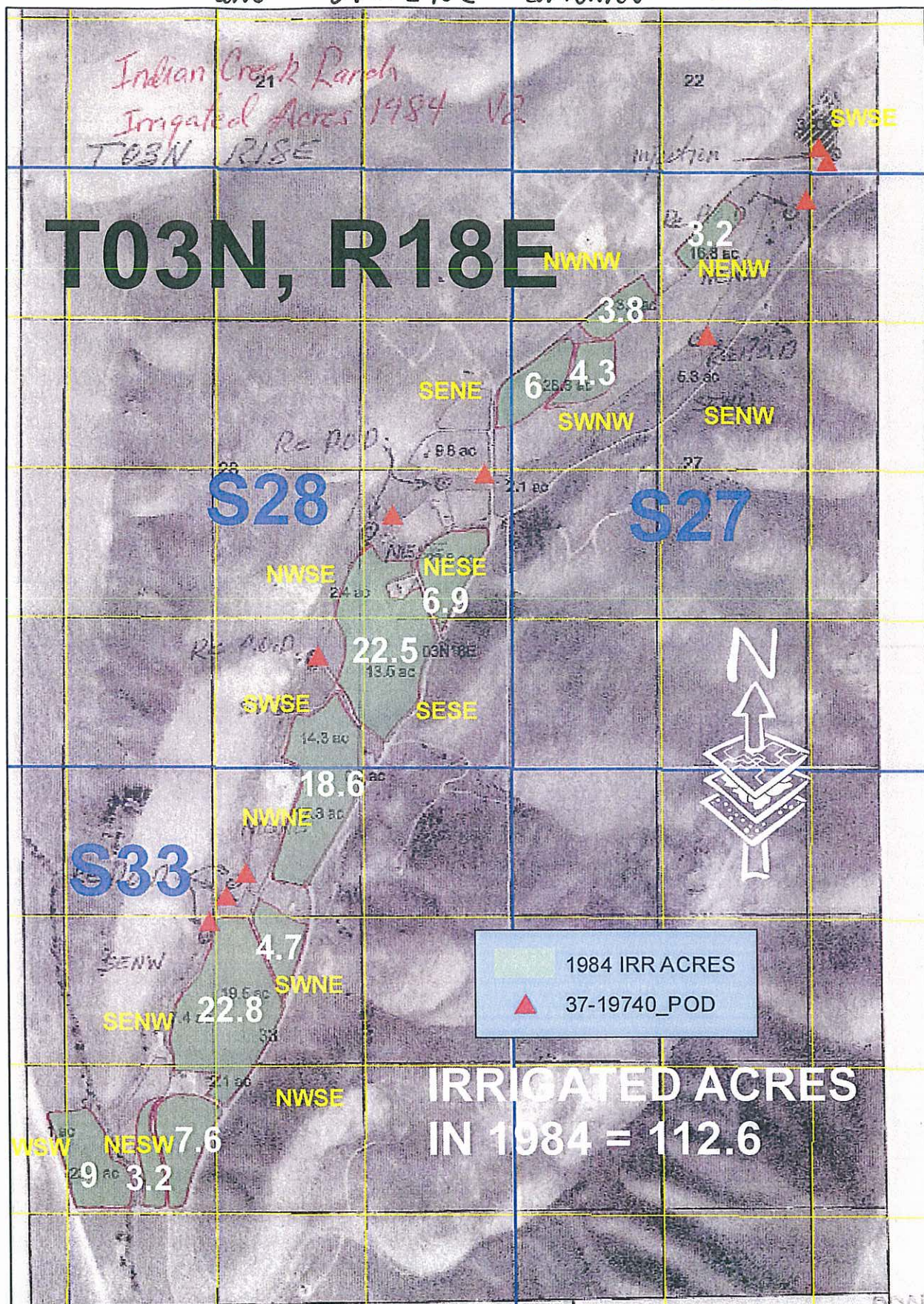
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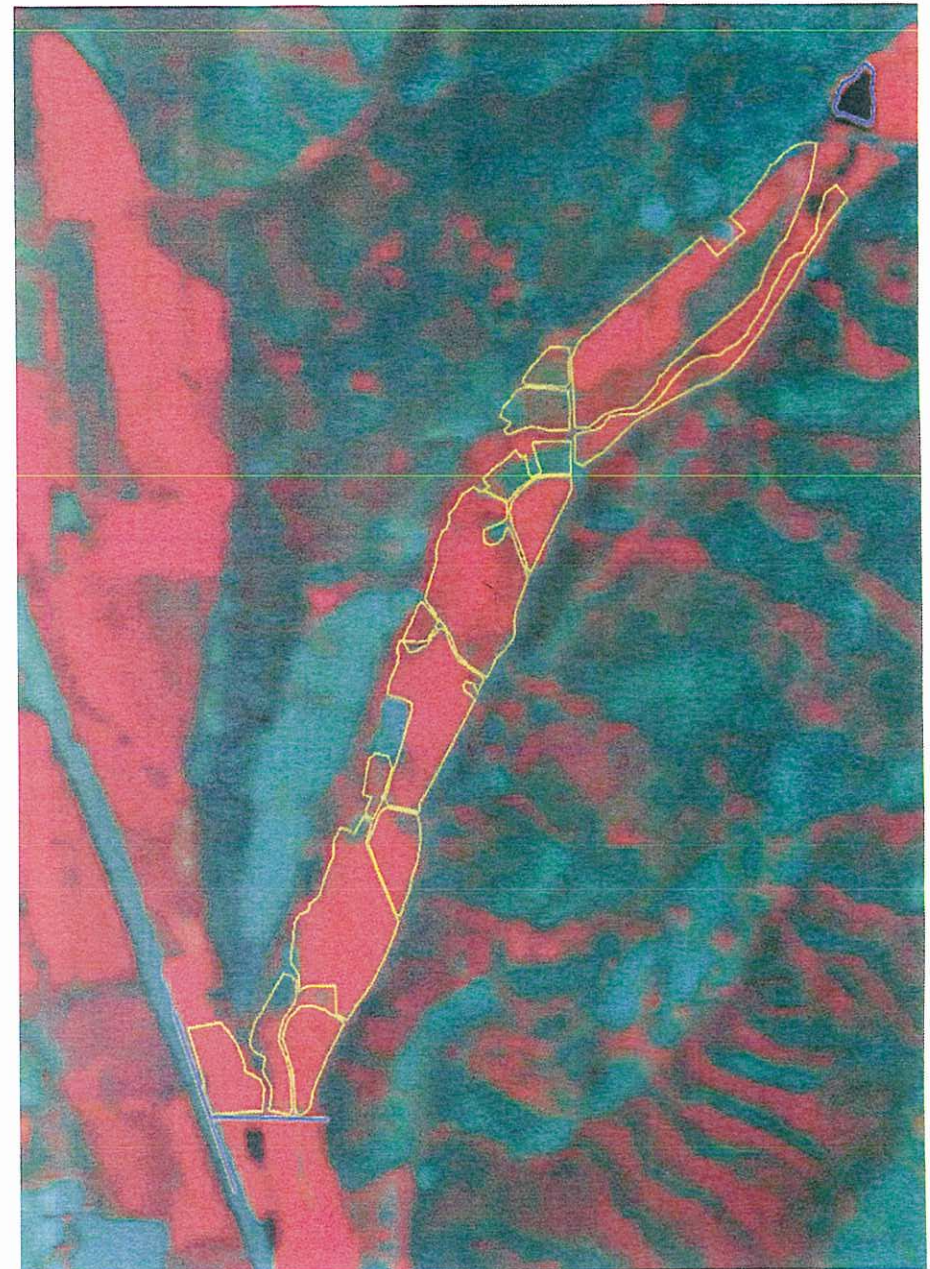
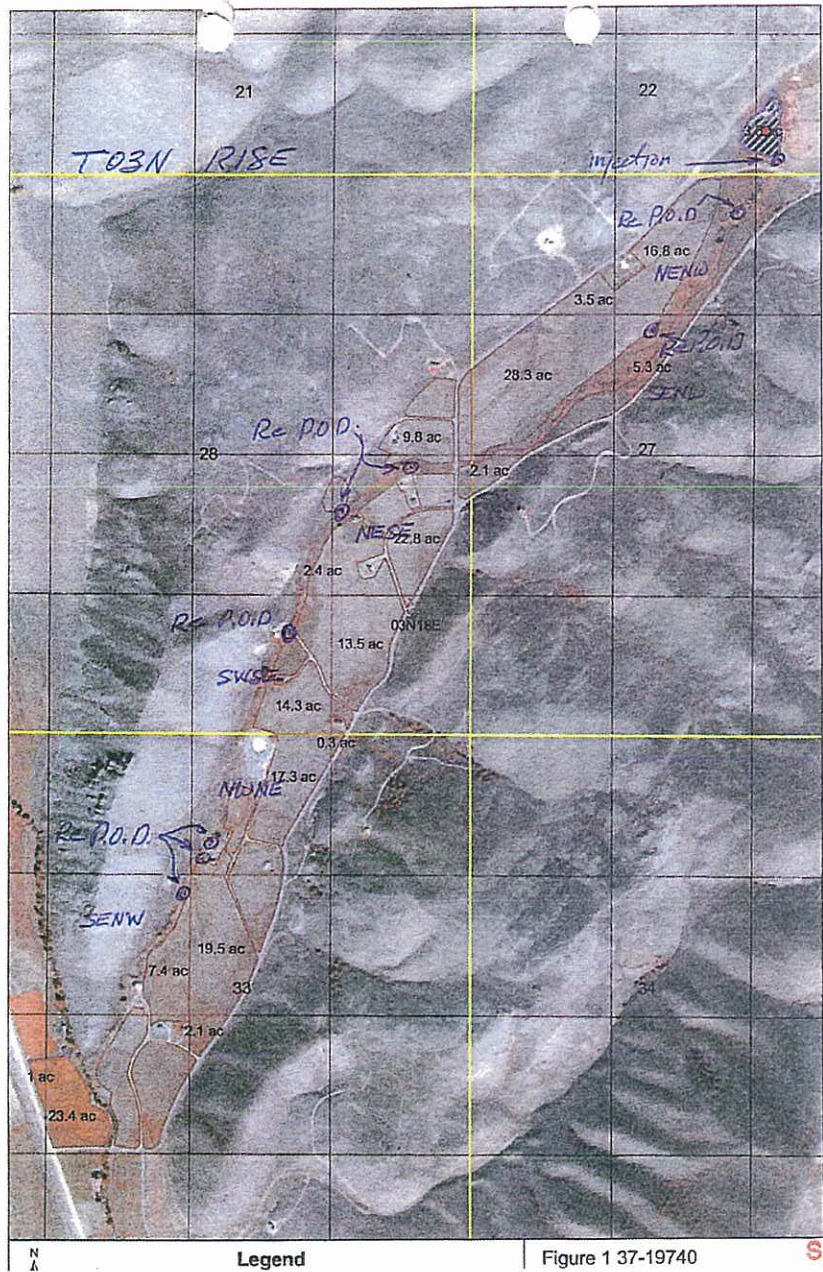
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Twin Falls, ID 83303-0207

A handwritten signature in black ink, reading "Randall C. Bradley", is written over a horizontal line.

Signature of Objector or attorney
mailing on Objector's behalf



1984-06-23



112.6 irrig. acres

**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**

A. Subcase 37-19740

(Insert water right number)

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3. ☐ **Quantity**
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4. ☐ **Priority Date**
Should be:
5. ☐ **Point(s) of Diversion**
Should be:
6. ☐ **Instream Flow Description**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☒ **Place of Use**
Should be: 109.5 acres as identified on the attached aerial photos.
10. **I object because:**
☐ This water right should not exist.
☐ This water right was not recommended, but should be recommended with the elements described above.
11. ☒ **Other Provisions. See remarks below at E.**

E. REASONS SUPPORTING OBJECTIONS:

Objection D.2. Source:

In the event IDWR changes its recommendation for Basin 37, Part 3 General Provisions, which currently provides that Indian Creek is to be administered separately from the Wood River, then claimants/objectors request that a remark be added in the "other

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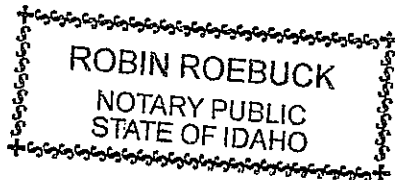
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County of Bannock)

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(Signature of person filing objection)
Randall C. Budge
(Attorney signing in representative capacity)
Randall C. Budge

Subscribed and sworn to before me on this _____ day of November, 2010.



Robin Roebuck
Notary Public for Idaho
Residing at Pocatello.
My Commission Expires 8/18/2012

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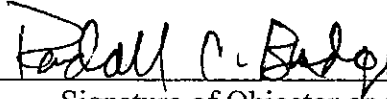
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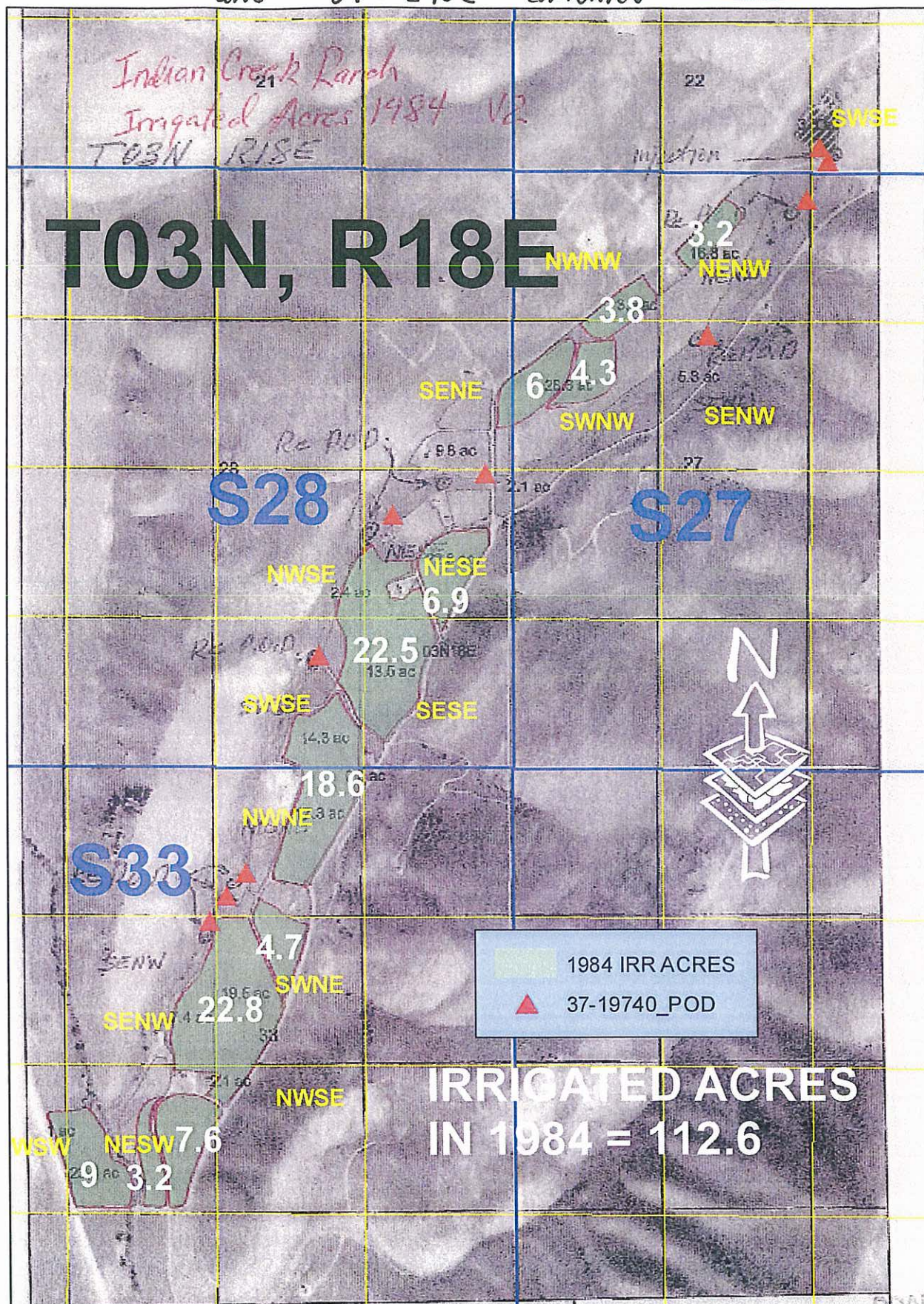
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Boise, ID 83702

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Signature of Objector or attorney
mailing on Objector's behalf



1984-06-23

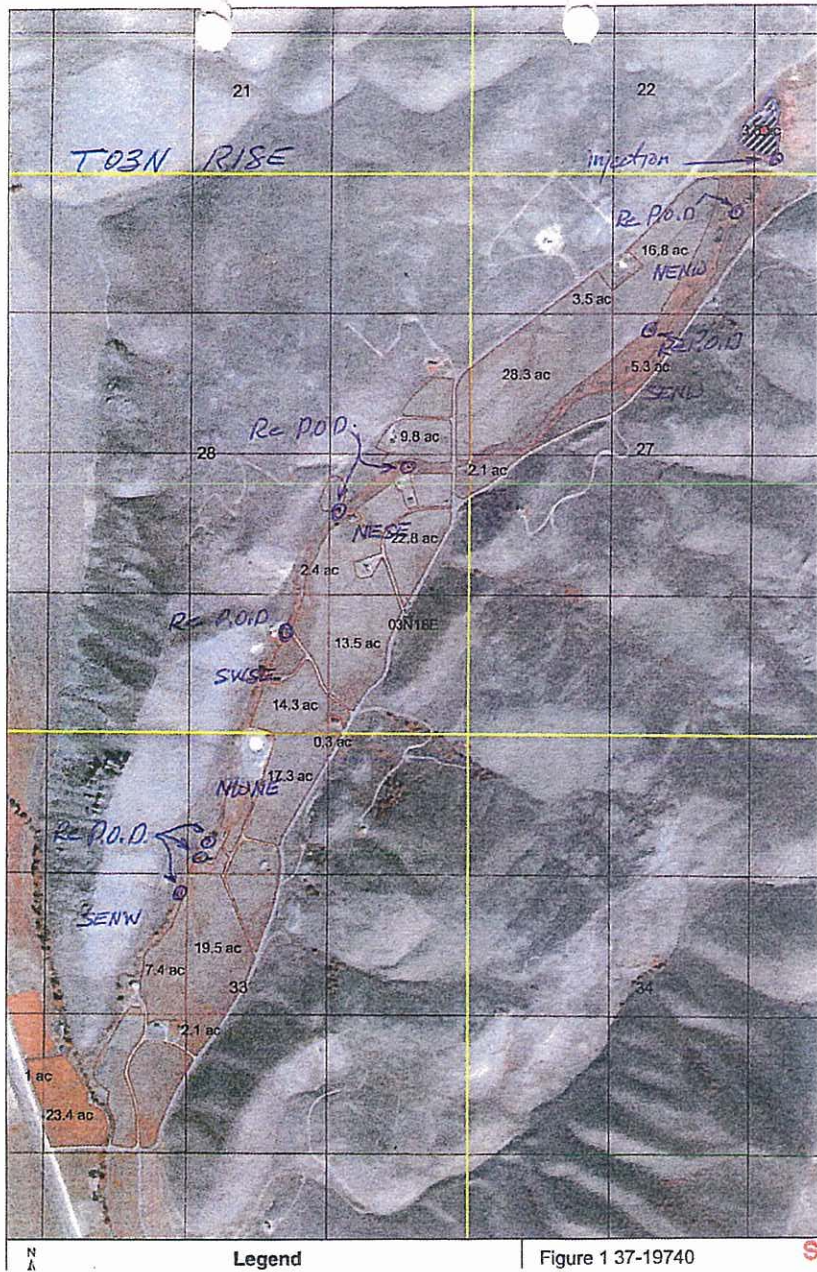


Figure 1 37-19740



112.6 irrig. acres