

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-00539I  
Date Received: 11/23/1988  
Receipt No: S003985  
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: R.L. MITCHELL 415-968-3333  
Address: 10620 BERKSHIRE  
LOS ALTOS, CA 94022

2. Date of Priority: JUN 03, 1884

3. Source: BIG WOOD RIVER, EAST FORK Trib. to: BIG WOOD RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 03N      | 18E   | 3       | SE     | NE     |     |     | BLAINE |

5. Description of diverting works:  
PETERS #17 HEADGATE

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S | (or) | A.F.A. |
|------------|-------|-------|-------|------|--------|
| IRRIGATION | 04/01 | 11/01 | 0.274 |      |        |
| AESTHETIC  | 01/01 | 12/31 | 0.880 |      |        |

7. Total Quantity Appropriated is:  
0.274 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 1.2 Acre Feet Per Annum.

9. Non-irrigation uses:  
AESTHETICS

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use | Acres |
|----------|-------|---------|--------|-----|-----|-----|-------|
| 03N      | 18E   | 3       | NE     | SW  |     | IRR | 1.0   |
|          |       |         | SE     | SW  |     | IRR | 3.4   |

Section Acres 4.4

A37-00539I

Page 1

Date: 11/23/88

RECORDED  
FEB 23 1989

10. Place of Use: Continued

Total Acres 4.4

11. Place of use in counties: BLAINE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:  
NONE

14. Remarks:  
WATER TO TAKEN FROM PETERS DECREEED RIGHT AS A RESULT OF A TRANS.  
OF PORTIONS OF THE PROPERTY TO WHICH THE ENTIRE RIGHT WAS  
APPURTENANT. LOTS: 18, & 19 HYNDMAN PEAK SUBD.  
THIS IS A PORTION OF WR #37-00539E.

15. Basis of Claim: DECREEED  
Case Number:  
Court :  
Decree date: 12/13/1909

S.C FROST

Decree Plaintiff

vs

ALTURAS WATER CO.

Decree Defendant

MICROFILMED  
FEB 23 1993

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: \_\_\_\_\_

**For Organizations:**

I do solemnly swear or affirm that I am \_\_\_\_\_ of  
\_\_\_\_\_, that I have signed the foregoing  
document in the space below as \_\_\_\_\_ of  
\_\_\_\_\_ and that the statements contained in the  
\_\_\_\_\_ foregoing document are true and correct.

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Title and Organization

\_\_\_\_\_  
Date

State of Idaho )  
County of \_\_\_\_\_ ) SS.

Subscribed and sworn (or affirmed) before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Seal

Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_

MICROFILMED

FEB 23 1993

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576  
Ident. Number A37-00539 I  
Date Received \_\_\_\_\_  
Receipt Number 5003985 *src*

NOTICE OF CLAIM  
TO A  
WATER RIGHT  
ACQUIRED UNDER STATE LAW

RECEIVED

OCT 26 1988

Department of Water Resources  
Southern Region Office

Please type or print clearly

1. Name of Claimant (s) R.L. MITCHELL Phone (415) 968-3333  
Mailing Address 10620 BERKSHIRE, LOS ALTOS, CA Zip 94022

2. Date of Priority (Only one (1) per claim) 06-03-1884

3. Source of water supply (a) EAST FORK BIG WOOD RIVER  
which is tributary to (b) BIG WOOD RIVER

4. a. Location of existing point of diversion is: Township 3N Range 18E Section 3,  
1/4 of SE 1/4 of NE 1/4, Govt. Lot, \_\_\_\_\_ B.M., County of BLAINE

Additional points of diversion if any: \_\_\_\_\_

b. If instream flow, beginning point of claimed instream flow is:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4,  
Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

ending point is: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_  
1/4, Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),  
including the dates of any changes or enlargements in use, the dimensions of the diversion works as  
constructed and as enlarged and the depth of each well.

PETERS #17 HEADGATE.

COPY

MICROFILMED

FEB 23 1993

6. Water is claimed for the following purposes:

(both dates are inclusive) (cfs) (acre feet)

For IRRIGATION purposes from 04-01 to 11-01 amount .274 or \_\_\_\_\_

For AESTHETIC purposes from 01-01 to 12-31 amount .88 or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) .274 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is 1.21 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) NONE

10. Description of place of use:

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

| TWP | RNG | SEC | NE 1/4 |       |       |       | NW 1/4 |       |       |       | SW 1/4 |       |       |       | SE 1/4 |       |       |       | 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 |        |
| 3N  | 18E | 3   |        |       |       |       |        |       |       |       | 1.02   |       |       | 3.40  |        |       |       |       | 4.42   |
|     |     |     |        |       |       |       |        |       |       |       | (J)    |       |       | (J)   |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |

Total number of acres irrigated 4.42

11. In which county (ies) are lands listed above as place of use located? BLATNE

12. Do you own the property listed above as place of use? Yes XXXX No \_\_\_\_\_  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

or None (✓)

14. Remarks:

WATER TO BE TAKEN FROM PETERS DECREEED RIGHT AS A RESULT OF A TRANSFER  
OF PORTIONS OF THE PROPERTY TO WHICH THE ENTIRE RIGHT WAS APPURTENANT.

LOTS ARE NOS.: 18 and 19, HYNDMAN PEAK SUBDIVISION. Sec. 3, T. 3N R 18E.

MICROFILMED  
FEB 23 1993

Last Name EL CAMINO Ident No. A37-00539 I

Copies: White -State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use \_\_\_\_\_ Posted Notice \_\_\_\_\_ License \_\_\_\_\_ Permit \_\_\_\_\_  
Decree XXX  
if applicable provide IDWR Water Right Number 37-00539  
Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date 12-13-1909  
Plaintiff vs Defendant S.C. FROST, ET AL. V. ALTURAS WATER CO., ET AL.

16. Signature (s)  
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled  
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not \_\_\_\_\_  
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true  
and correct.

Signature of Claimant (s) Douglas Clement Date \_\_\_\_\_

POWER OF ATTORNEY FOR MITCHELL Date \_\_\_\_\_

For Organizations: I do solemnly swear or affirm that I am \_\_\_\_\_

\_\_\_\_\_ Title  
of \_\_\_\_\_, that I have signed the foregoing  
Organization

document in the space below as \_\_\_\_\_ of \_\_\_\_\_  
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent \_\_\_\_\_

Title and Organization \_\_\_\_\_ Date \_\_\_\_\_

State of Idaho/or \_\_\_\_\_ )  
County of BLAINE ) SS.

Subscribed and sworn (or affirmed) before me this 25 day of OCTOBER 19 88

SEAL

Notary Public Douglas Clement

Residing at SUN VALLEY, IDAHO

My Commission Expires MARCH 23, 1994

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, GARY D. SLETTE will be acting as attorney at law on behalf  
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above  
should be mailed to me at the address listed below.

Signature [Signature]

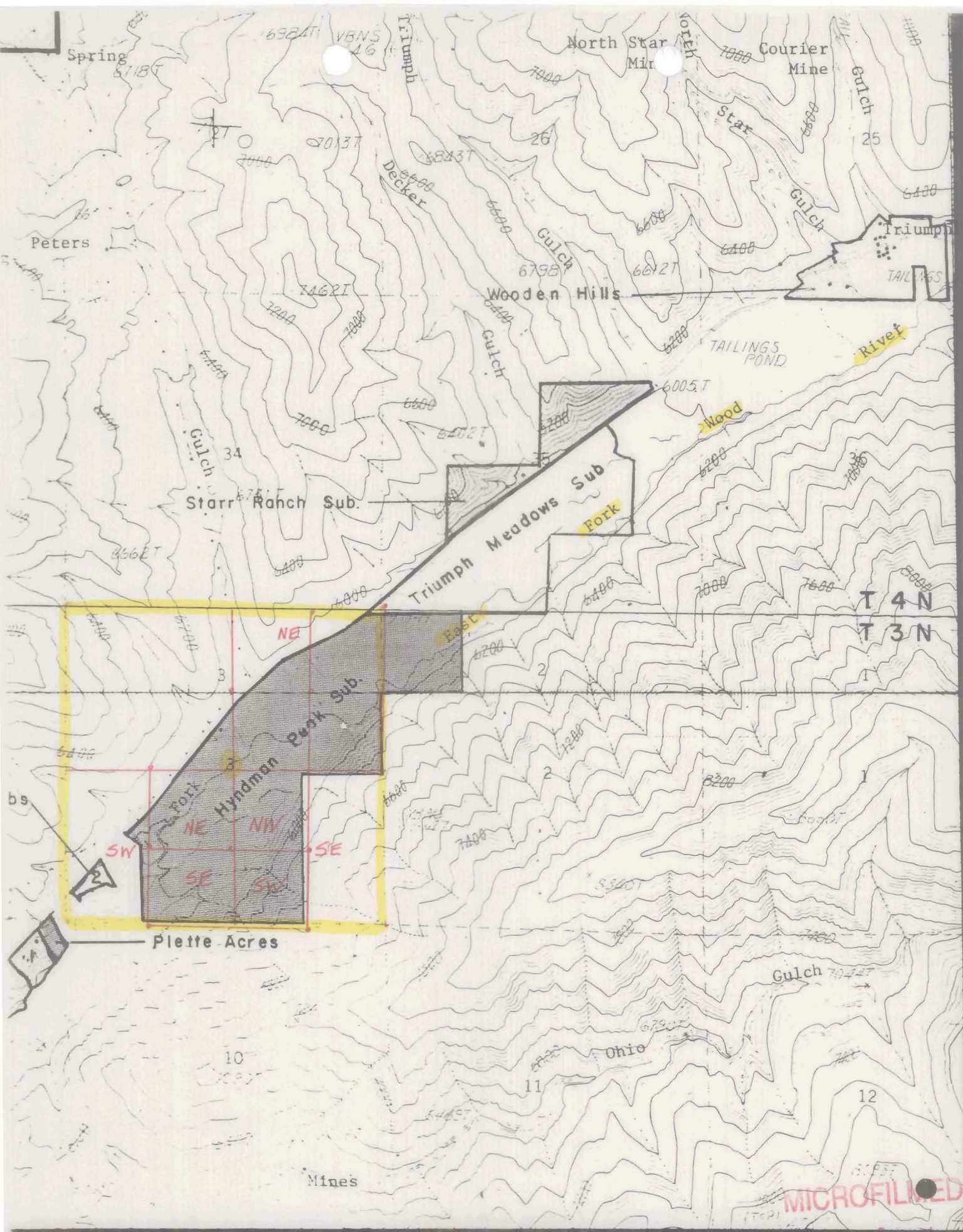
Address P.O. BOX 1906, TWIN FALLS ID 83303-1906

Date 10/26/88

MICROFILMED  
FEB 23 1993

Last Name EL CAMINO Ident. Number A37-00539 I

Copies White-State, Yellow-Claimant



MICROFILMED

R18E

MITCHELL, R.L.

A37-00539 I

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

R.L. Mitchell hereby nominates and appoints Doug Clemens of P.O. Box 300, Ketchum, Idaho, 83340, as attorney-in-fact with full authority to act for and on behalf of him to execute any and all documents required or necessary to facilitate the filing of a water rights claim in the Snake River adjudication in Idaho.

My agent is hereby authorized to sign, deal, and deliver, as my act in deed, those instruments of writing that may be necessary or proper to carry into execution and effect the aforementioned. Further, I hereby declare that each and every application, agreement, receipt, or payment which shall be by my said agent given, made or done for the aforesaid purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by me in my own proper person; and I hereby undertake at all times to ratify whatsoever my said agent shall lawfully do or cause to be done in or concerning the said premises by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 19 day of Oct, 1988.

R.L. Mitchell  
R.L. Mitchell

STATE OF California ss.  
County of San Clara

On this 19<sup>th</sup> day of October, 1988, before me, a Notary Public, in and for said County and State, personally appeared R.L. MITCHELL, known or identified to me to be the individual 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.



Angela M. Ralls  
NOTARY PUBLIC FOR California  
Residing at: 2500 Grant Rd. Mt. View, CA.  
My commission expires: July 17, 1992

FEB 23 1988

A37-00539I

08/03/2005

**NOTICE OF ERROR  
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

**YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:**

Water right number: 37-539I

ROBERT L MITCHELL

10620 BERKSHIRE

LOS ALTOS CA 94022

Telephone Number: (415)968-3333

Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Describe the changes you wish to make in the proposed recommendation:

Give a brief explanation as to why you disagree with these portions:

\_\_\_\_ I AGREE with this proposed recommendation: no changes need to be made.

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

Please print your name: \_\_\_\_\_

IDWR Regional Office,

08/25/2005

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-539I

NAME AND ADDRESS: ROBERT L MITCHELL  
10620 BERKSHIRE  
LOS ALTOS CA 94022

SOURCE: EAST FORK WOOD RIVER

TRIBUTARY: BIG WOOD RIVER

QUANTITY: 0.150 CFS

PRIORITY DATE: 06/03/1884

POINT OF DIVERSION:

T03N R18E S3 SENE Within BLAINE County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 04/15 10/31          | 0.150 CFS       |

PLACE OF USE: IRRIGATION Within BLAINE County

T03N R18E S03          SESW          4.0

4 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

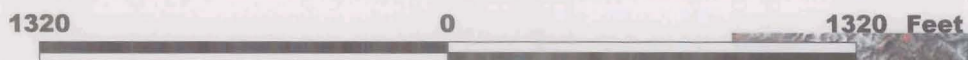
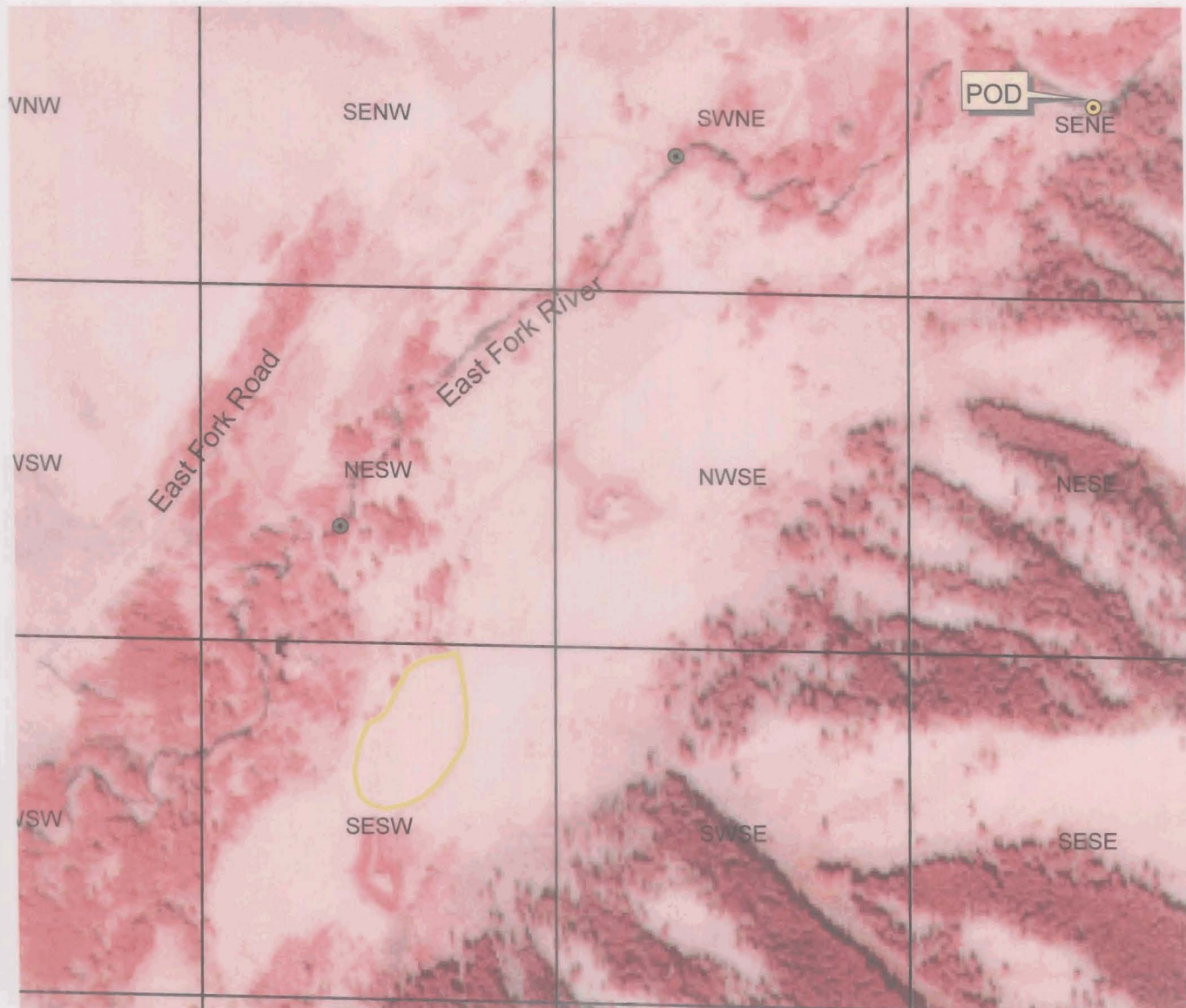
EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is a split from former water right 37-539G

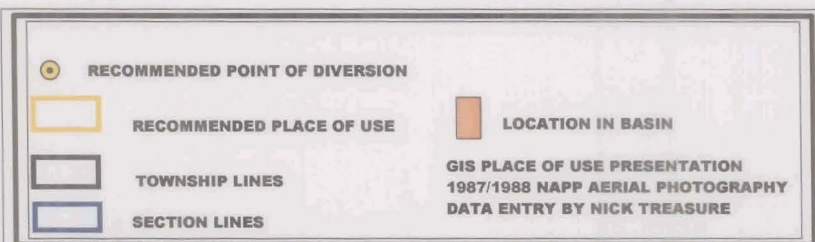
Place of use is located within lots 18 and 19 of Hyndman Peak Subdivision.

Idaho Department of Water Resources

# RECOMMENDED PLACE OF USE FOR 37-539I



**PLACE OF USE**  
TWP 03N, RNG 18E, SEC 03  
Data entry on August 01, 2005



11/21/2006

**NOTICE OF ERROR  
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

**YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: 12/13/2006**

Water right number: 37-539I

ROBERT L MITCHELL  
10620 BERKSHIRE  
LOS ALTOS CA 94022  
Telephone Number: (415)968-3333

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):
  
  
  
2. Describe the changes you wish to make in the proposed recommendation:
  
  
  
3. Give a brief explanation as to why you disagree with these portions:

       I AGREE with this proposed recommendation: no changes need to be made.

DATE:

12/12/06

SIGNATURE:

*R L Mitchell*

Please print your name:

R L Mitchell

IDWR Regional Office, 322 E Front St  
PO Box 83720, Boise, ID 83720-0098, 2082874800

SCANNED  
DEC 21 2006

08/25/2005

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-539I

NAME AND ADDRESS: ROBERT L MITCHELL  
10620 BERKSHIRE  
LOS ALTOS CA 94022

SOURCE: EAST FORK WOOD RIVER

TRIBUTARY: BIG WOOD RIVER

QUANTITY: 0.150 CFS

PRIORITY DATE: 06/03/1884

POINT OF DIVERSION:

T03N R18E S3 SENE Within BLAINE County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 04/15 10/31          | 0.150 CFS       |

PLACE OF USE: IRRIGATION Within BLAINE County

T03N R18E S03 SESW 4.0

4 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

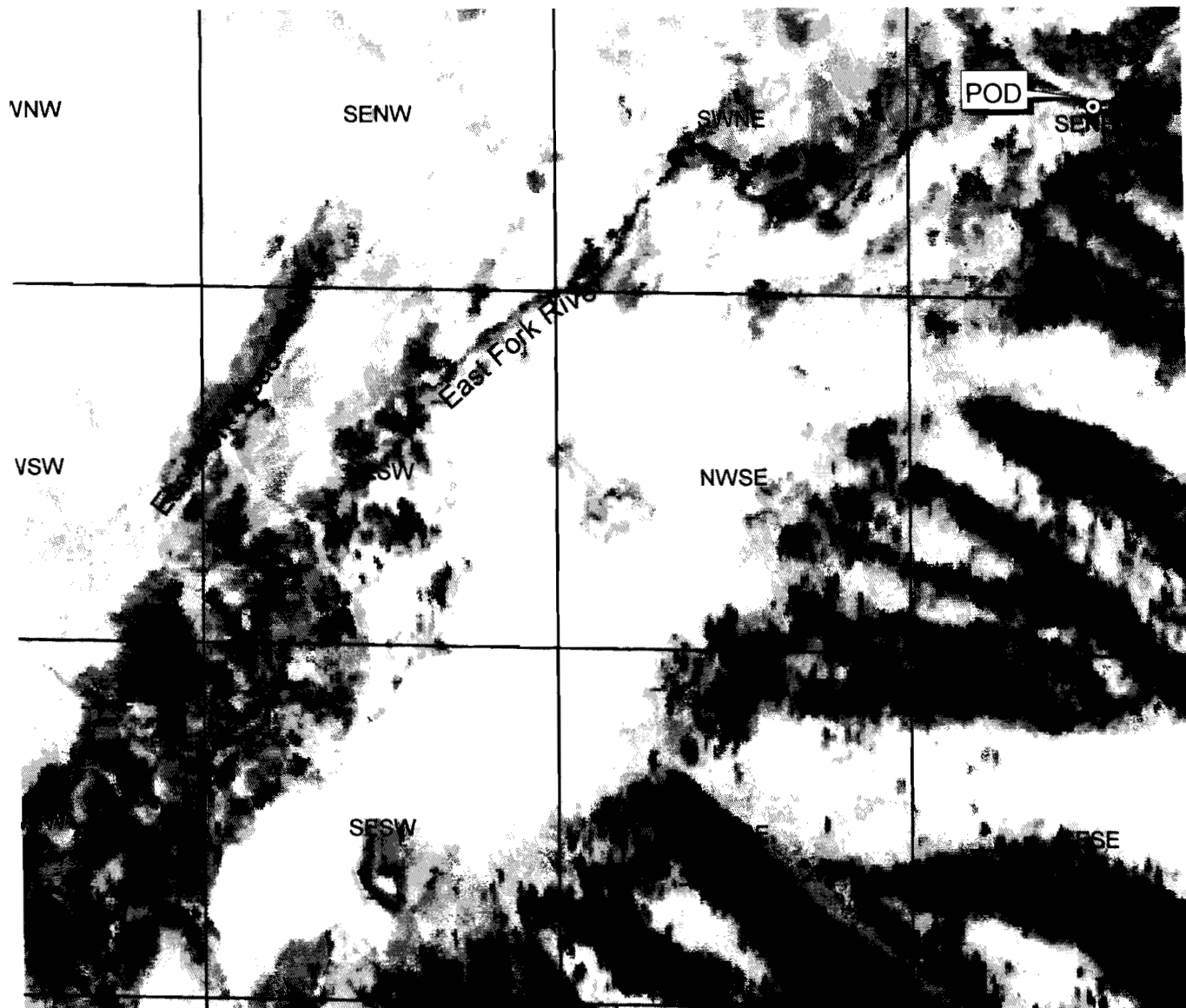
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is a split from former water right 37-539G

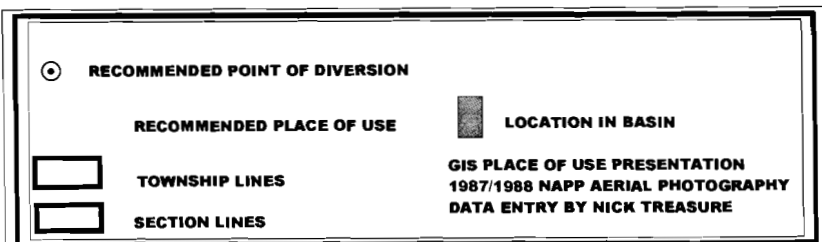
Place of use is located within lots 18 and 19 of Hyndman Peak Subdivision.

**Idaho Department of Water Resources**  
**RECOMMENDED PLACE OF USE FOR**  
**37-539I**



1320 0 1320 Feet

**PLACE OF USE**  
**TWP 03N, RNG 18E, SEC 03**  
**Data entry on August 01, 2005**



## Memo

Nick Treasure

July 18, 2005

Subject: SRBA review and recommendation of Hyndman Peak Subdivision, Blaine County. Claims: 37-20379, 37-20380, 37-539D, 37-539F, 37-539J, 37-539L, 37-539H, 37-539I, 37-539K, 37-539G

A review of the history of Hyndman Peak Subdivision shows a series of approved transfers that have occurred from original water right 37-539. This is a 06/03/1884 decreed right for 3.0 cfs of the East Fork Wood River. Through a series of approved transfers and ownership changes, a consistent 0.06 cfs/acre has occurred in this area. The remaining portion of the parent water right 37-539 is water right 37-539G in which there are 4 claims filed against. (See attached split tree analysis-page 8).

The majority of this subdivision was developed during the 1980's. There are currently 40 lots in the subdivision as well as a 20-acre lot of original owner Rupert House. (See attached tax lot map-page 4). Many individual homeowners chose to quitclaim their water rights over to the Hyndman Peak Subdivision Homeowners Association (claim 37-539G). The remaining homeowners decided to individually claim against the 1884 decree (all remaining claims listed above).

**A field examination occurred on July 6, 2005 by Water Resource Agent Nick Treasure and Basin 37 Water Master Kevin Lakey. The following was found during the course of this field visit through personal observance as well as conversations with various homeowners of the association.**

- There are four Points of Diversions associated with this subdivision:
  1. The original POD to the parent right 37-539 is located in the SENE. This head gate is locally known as the peters #17 head gate. Claimants of this head gate are Robert Mitchell 37-539L and Hyndman Peak Homeowners Association 37-539G.
  2. Transfer 3291 created a POD in the SWSWNE of section 3. This particular POD has no lockable head gate. Claimants of this diversion are Rupert House 37-20379 and Carl Bontrager 37-20380.
  3. Transfer 3280 created a POD in the SWNESW of section 3. This head gate is claimed by Bruce McCaw 37-539F and Thomas Matson 37-539D.
  4. Transfer 3551 created a POD in the NENESW of section 3. The POD is a pump and sprinkler system from East Fork River. The claimant for this diversion is Craig Brandman 37-539J.

- The original Place of Use historically irrigated is depicted on the attached map-*page 5*. Also outlined on the attached map is the ditch system in which we examined and verified with original owner Rupert House before the subdivision existed. The POU outlined in green was irrigated by this irrigation system. Note that the northern areas of the subdivision as well as along the East Fork River are riparian areas and have not historically been irrigated by the 1884 decree.
- The attached map-*page 6* depicts claimants of the 1884 decree by individual owners in association with the historically irrigated ground. Notice the remaining portion of the historic irrigation depicted in green is what the homeowners association wishes to claim.
- There is currently a delivery system through ditches and laterals in which water can be delivered to the claimants listed on *page 6*. However there is no current means of deliverance for the remaining portion for individuals of the Hyndman Peak Homeowners Association though there may have been historically. It appears that a delivery system ended sometime in the late-1980's due to subdivision development.

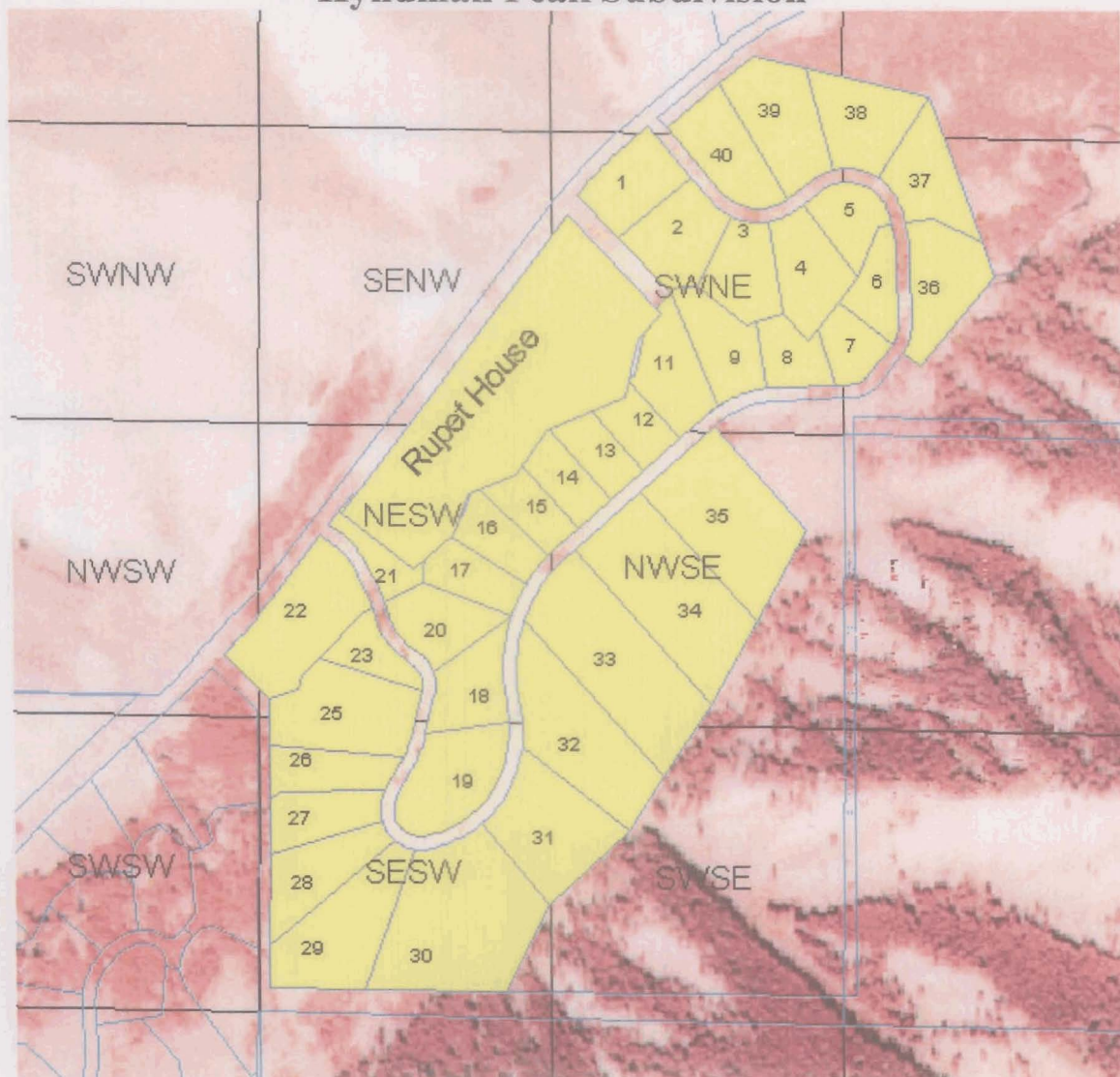
**In addition to the above findings, we also found some issues listed below that need to be addressed by the IDWR. A series of transfers and other measures need to be taken in the following situations:**

- Upon field examination there were found 2 large ponds on lot 34 of the Hyndman subdivision owned by Robert Mitchell. The 2 ponds together measure approximately 0.75 acres. The 2 ponds are situated directly behind the Mitchell residence. The source of water for these ponds is the East Fork River with the POD in the SENE of section 3. A third pond was also found in lot 33 for the same owner. The pond was being dug as we visited the location but did not yet contain water. This pond will receive water through a drain ditch originating from the first two ponds. It does not appear the ponds are being used in conjunction with irrigation. I met with Dr. Mitchell during our visit. He indicated that the first two ponds were built in the early 1990's. It is confirmed that the ponds did not exist in the 1987 Napp Aerial Photography. All three ponds have no transfers filed. (See photos in claim 37-5391)
- During the field visit, we noticed that a large percentage of the lots have sprinkler irrigation on more than the ½ acre allowed under their Domestic wells. Most individual owners are sprinkler irrigating 2-3 acres of pasture, yard and trees from domestic wells. Among the 40 lots in the Hyndman Peak Subdivision, there are two homeowners who have been licensed for groundwater with the purpose of irrigation. The water rights are 37-8567 for Craig Brandman and 37-8421 for Shawn Szombathy. These are the only two owners in the sub-division who are

authorized to irrigate more than a ½ acre in the subdivision. (See photos in 37-539G)

- The Hyndman Peak Homeowner's Association, claim 37-539G, currently has no means of delivery for its members from the claimed POD in the SENE of section 3. The members of the association are spread throughout the subdivision with no organized delivery system. Historically before the subdivision was built, it does appear these lots of the members of the association were irrigated. The subdivision was constructed in the late-1980's. During the construction of the Subdivision, many ditches and laterals were filled in making it impossible to currently irrigated from the claimed POD.

## Hyndman Peak Subdivision

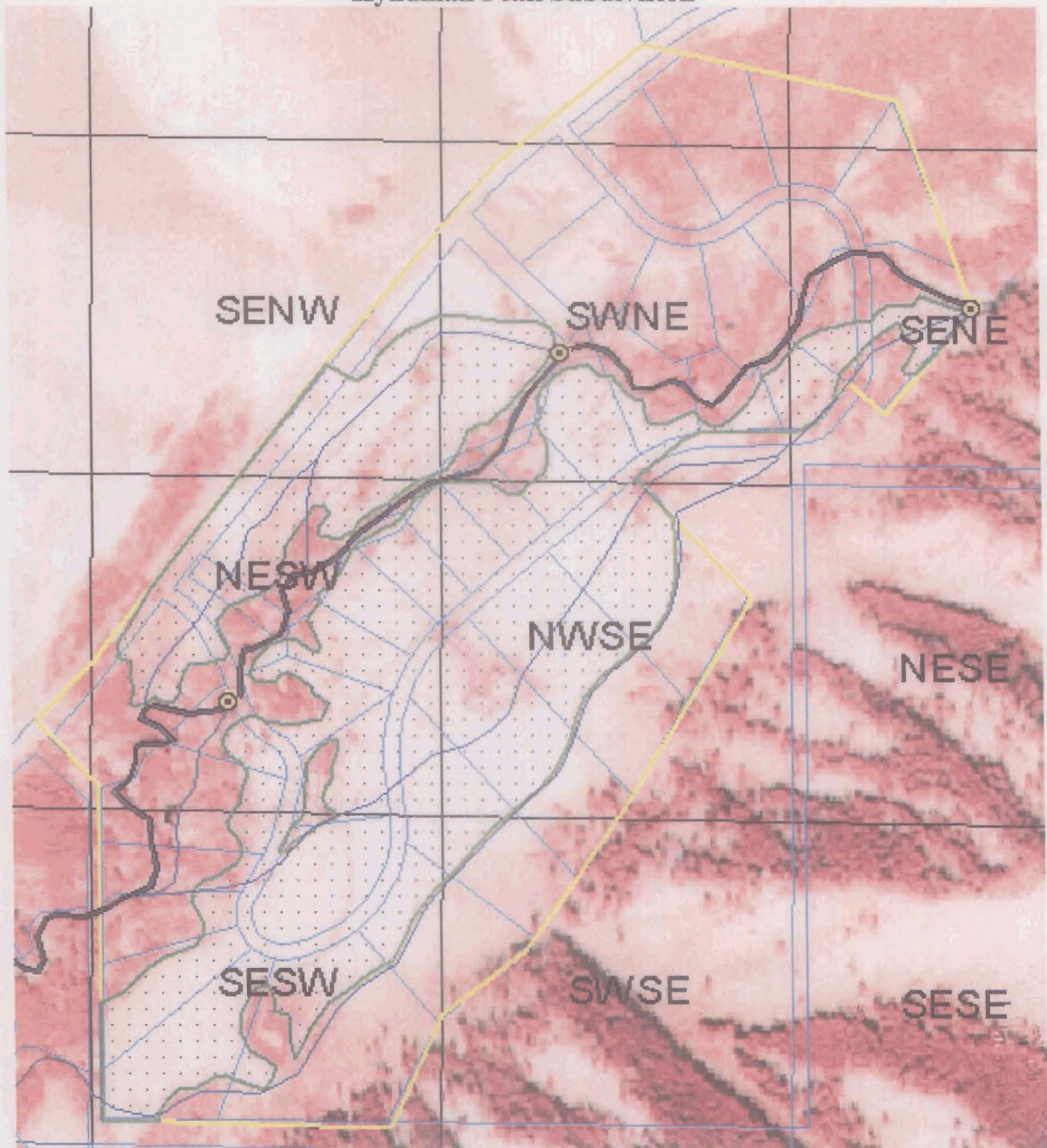


1- Bennett  
 2- Berman  
 3- Danielson  
 4- Kosmos  
 5- Papworth  
 6- Hyndman Peak  
 7- Flammer  
 8- Naeve  
 9- Devens  
 11- Bass  
 12- Bass  
 13- Mitchell  
 14- Brandman

15- Brandman  
 16- Swigert  
 17- Swigert  
 18- El Camino(Mitchell)  
 19- El Camin (Mitchell)  
 20- Exchange LLC  
 21- Bontrager, Lynn  
 22- Bontrager, Carl  
 23- Matson  
 25- Matson  
 26- McCaw  
 27- Porter  
 28- Porter

29- Porter  
 30- Szombathy  
 31- Mitchell  
 32- Mitchell  
 33- Mitchell  
 34- Mitchell  
 35- Mitchell  
 36- Boxall  
 37- Latrobe  
 38- Latrobe  
 39- Chivvis  
 40- Chivvis  
 House, Rupert

# Hyndman Peak Subdivision

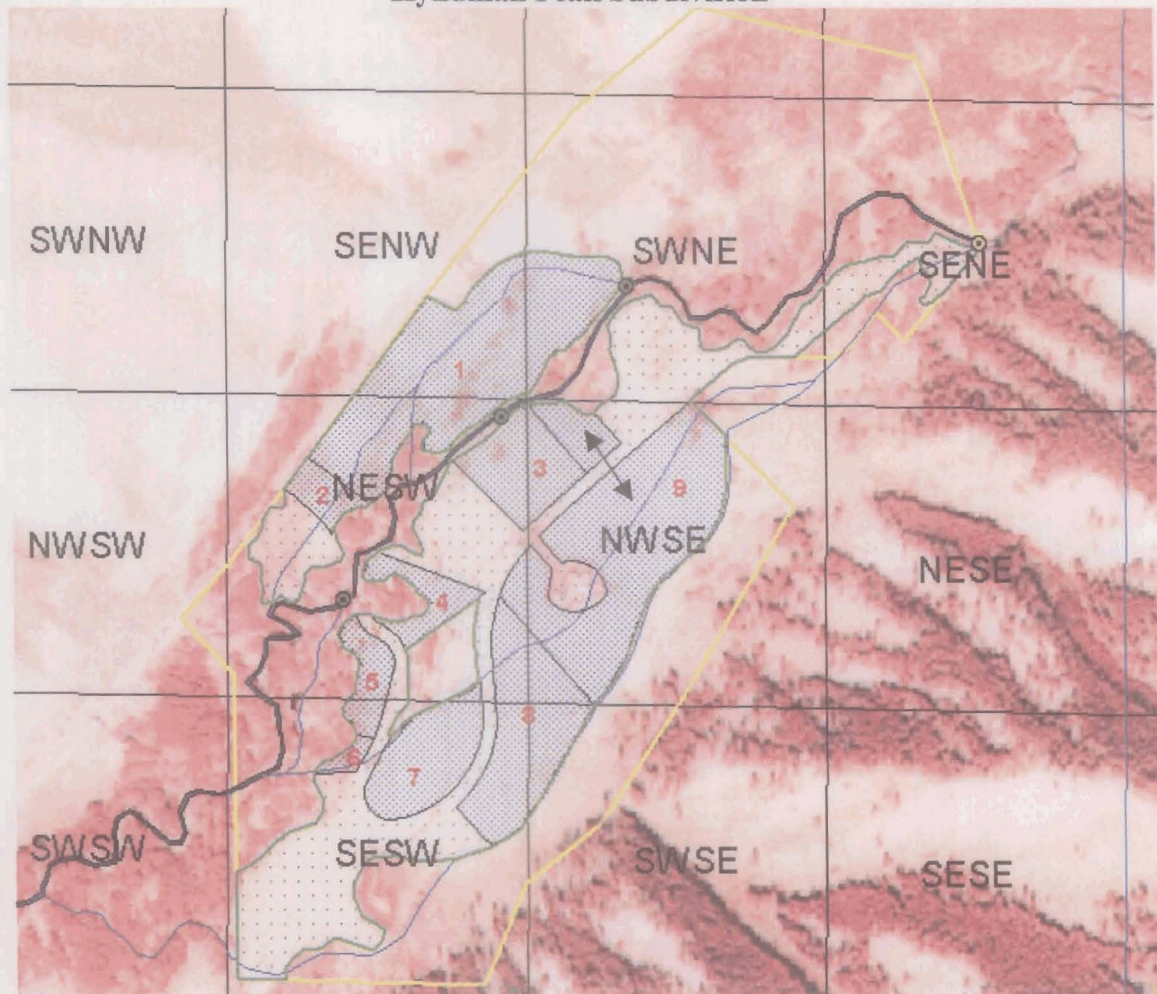


1987 Napp Aerial Photography

-  Historically Irrigated
-  Hyndman Peak Subdivision
-  Blaine County Tax lots

-  East Fork River
-  Delivery System (ditches)

# Hyndman Peak Subdivision



1987 Napp Arial Photography



## Claimants on June 03, 1884 East River Decree

- |                  |                   |
|------------------|-------------------|
| 1 Rupert House   | 6 Bruce McCaw     |
| 2 Carl Bontrager | 7 Robert Mitchell |
| 3 Craig Brandman | 8 Robert Mitchell |
| 4 Paul Carson    | 9 Robert Mitchell |
| 5 Thomas Matson  |                   |

Note: Hyndman Peak Homeowners Association claims the remaining *historically irrigated* land that is not claimed by the claimants above in the NESW, NWSE, SESW

# Hyndman Peak Subdivision



2004 Aerial Photography



Subdivision Boundary



Blaine County Taxlots

# Notes

07/06/05

Field Exam

Nick Treasure

This Claim is in reference to lots 18 and 19 owned by Dr. Robert Mitchell. A large portion of lot 18 is all Riparian and has never been irrigated. There are 4.4 Acres claimed.

Through field examination and GIS I find 4.4 acres that have been irrigated through a series of ditches and laterals, as shown on attached map.

The POD is in the SENE as claimed.

Also found that a row of various trees w/ a drip line have been planted in lot 19 along the premises of the Road. It appears that the drip line originated from Mitchell's pump system originated from the pond system around the perimeter of his home in lot 34. True perimeter is 1300 ft

(Attached map)

08/01/05

Robert Mitchell visited the office today. The trees surrounding this 4.4 Acres is watered by a drip system from a pump on pond #2 from Claim 37-539 H. Mitchell is currently filing for a Transfer for the ponds

## Hyndman Peak Subdivision



500      0      500      1000      1500      2000      2500 Feet



Twp 03N Rng 18E Secs 3



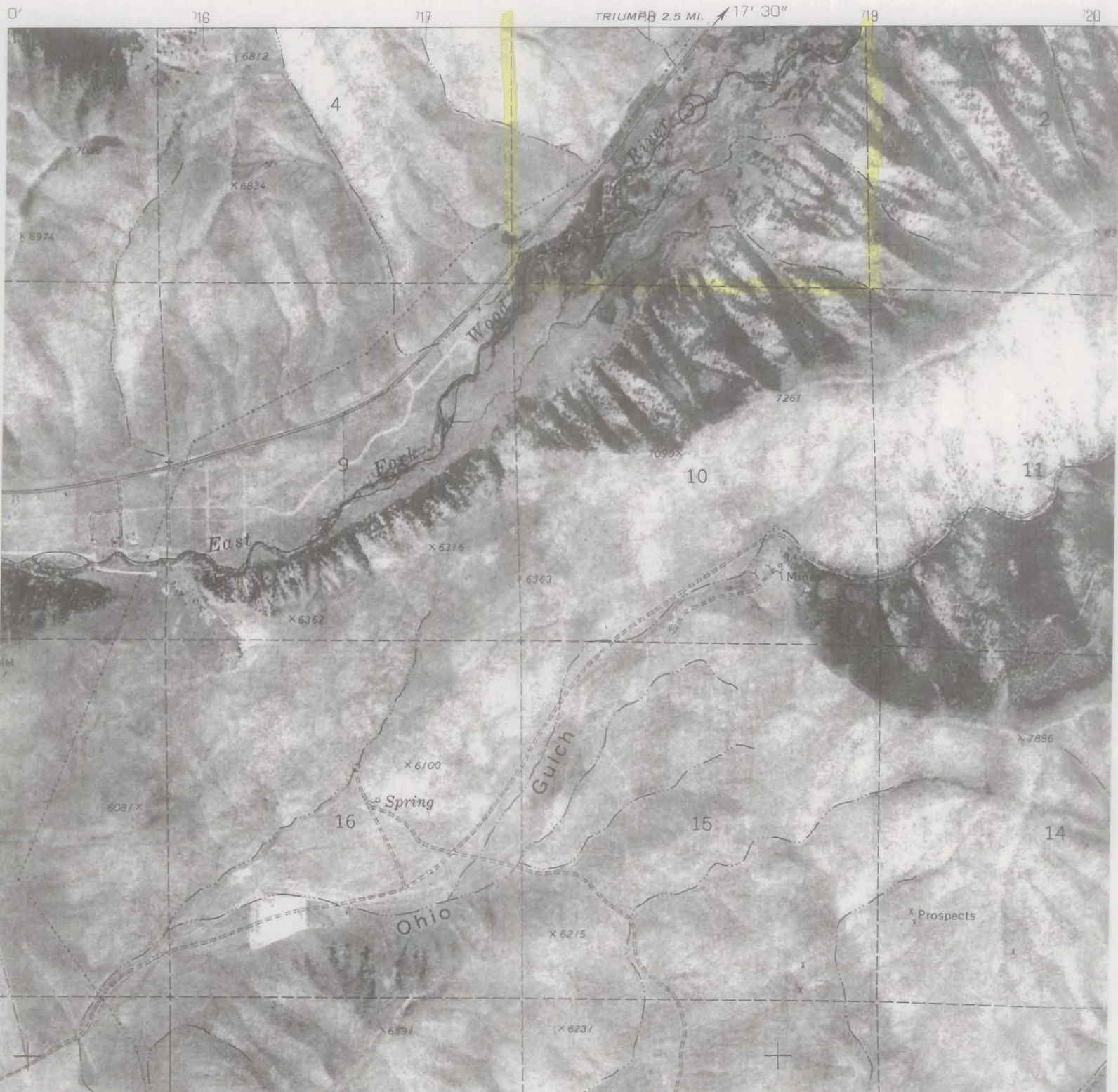
# MILAD GATE LOCATIONS

1974 Department of Water Resources

Hyndman Peak Subdivision



7.5



Found 1.78 Page  
-0116 Coo  
at 1/2 " 2.00  
for 3.00 2.00  
found 1.78  
found 3.00

FEB 23 1961

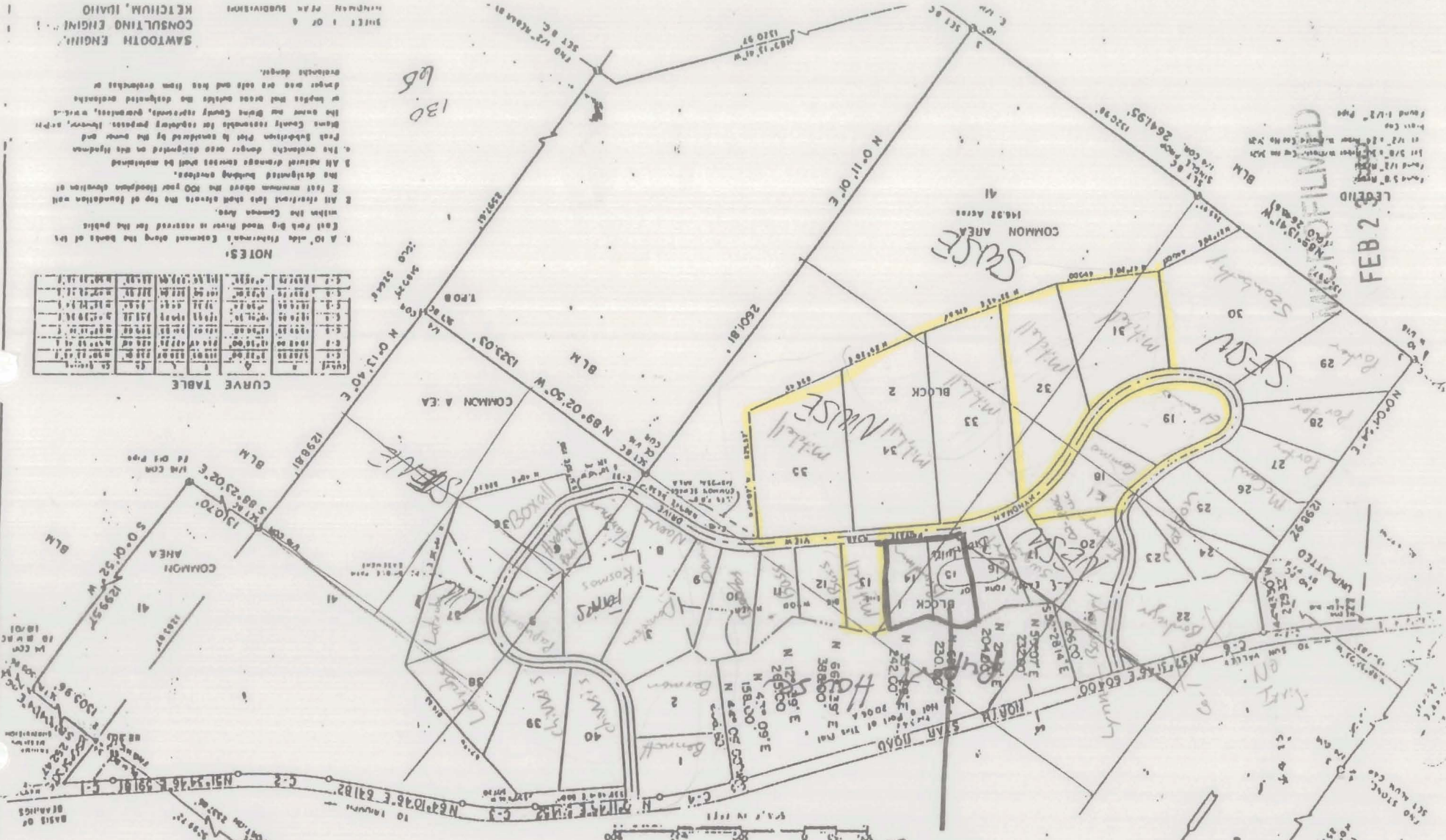
PLACE ON CASE

-LOCATED WITHIN SECTION 3, T.3N. R.18E., B.M.

BLAINE COUNTY, IDAHO

OCTOBER, 1980

PLACE ON CASE

[illegible]

NOTES

1. A 10' wide right-of-way easement along the bank of the

Left for Big Wood River in 1888 for the public  
with the Common Ave.

2 All effluent left there above the top of foundation will  
2 feet minimum above the 100 year floodplain elevation of

The damaged building over,  
3 All material damage caused by the explosion

4. The operative danger was diagnosed on the Hladman Post Substation Plot is considered by the owner and

State Court responsible for judicial business. However, it  
the court no State Court, judicial, judicial, judicial, judicial

we suggest that these results be designed to enhance

1980

SAWTOOTH ENGINEERING CONSULTING ENGINEERS

Richard D. Johnson  
10-10-10

8/3

---

**INTEROFFICE MEMORANDUM**

---

**TO:** TRANSFER FILE NO. 5318  
**FROM:** KELLY K CHRISTENSEN  
**SUBJECT:** ADJUDICATION REVIEW OF TRANSFER  
**DATE:** 02/22/99

37-00539 is over-claimed through the adjudication process however based upon a memo dated October 20, 1995 in transfer file 4671 a significant portion of the base right appears to be forfeited based upon non use. The current allocation rights and related adjudication claims are;

|           |             |            |            |                            |
|-----------|-------------|------------|------------|----------------------------|
| 37-00539B | 0.40        | cfs        | A37-00539B | claimed in full            |
| 37-00539D | 0.41        | cfs        | A37-00539D | claimed in full            |
| 37-00539F | 0.155       | cfs        | A37-00539F | claimed in full            |
| 37-00539H | 0.155       | cfs        | A37-00539J | claimed in full            |
| 37-00539G | <u>1.88</u> | <u>cfs</u> | A37-00539G | (.714 cfs claimed)         |
| total     | 3.00        | cfs        | A37-00539H | (.880 cfs claimed)         |
|           |             |            | A37-00539I | (.274 cfs claimed)         |
|           |             |            | A37-00539K | (.062 cfs claimed)         |
|           |             |            | A37-00539L | <u>(.290 cfs claimed)</u>  |
|           |             |            | total      | <u>3.335 cfs (claimed)</u> |

Adj claim suffixes 'G', 'H', 'I', 'K',  
and 'L' are all apparently against  
the base right 37-00539G.

The place of use prior to transfer is for ground outside the Hyndman Peak Subdivision and two acres are being transferred onto lot 21 of that subdivision. Claim A37-00539G includes lot 21 as a portion of the place of use. Also attached to that claim is a quitclaim deed releasing water rights appurtenant to lot 21 to the Homeowner's association. That Deed was signed by Robert Brennan. As the applicant is asserting that lot 21 is currently dry, this gives weight to the memo indicating

that much of the original place of use is no longer irrigated.

The letter to the file from Water District NO 37 & 37M dated October 18,1995 indicates that the ownership of the place of use covered by this transfer has been one of the few consistently delivered portions of the base right.

I, therefore, am accepting the analysis developed by Corey Skinner as being acceptable for adjudication purposes.

As this transfer will split A37-00539B, I recommend that the suffix assigned to the allocations records recognize the adjudication suffixes already assigned which would allow the adjudication claim split match the allocations assigned suffixes.

See attached split tree for 37-00539.(allocations rights)

February 22, 1999  
Prepared by Kelly K  
Christensen

**37-00539**  
**SPLIT TREE**  
cfs

T-3291

**37-00539A**

2.60 cfs

T-3280

**37-00539C**

2.19 cfs

T-3332

**37-00539E**

2.044 cfs

T-3551

**37-00539G**

1.885 for 30.5 acres  
Lyman Peters

T-4671

**37-00539D**

0.41 for 7 acres  
Joseph Cirillo

AJ claim A37-00539D  
.41 cfs for 7 acres

**37-00539F**

0.146 cfs for 2.36 acres  
Joseph Cirillo

AJ claim A37-00539F  
.15 cfs for 2 acres

**37-00539H**

0.155 cfs for 2.5 acres  
Craig Brandman

AJ claim A37-00539J  
.155 cfs for 2 acres

Transfer 4671  
Recommended for  
disallowal

**37-300539B**

0.40 cfs for 12 ac  
Rupert House

AJ claim A37-00539B  
40 cfs for 12 acres

T-5318

Transfer  
Pending

**37-00539()**

0.33 cfs for 10 acres  
Rupert House

**37-00539()**

0.07 cfs for 2 acres  
Carl Bontrager

FROM: Allen Merritt *AM*

DATE: October 20, 1995

TO: Doug Jones for SRBA files, Transfer #4671 file

SUBJECT: Review and Recommendation of Transfer #4671 and other issues related to 37-00539.

Transfer #4671 is the fifth transfer relating to right 37-00539. The right was originally decreed for 3.0 cfs and made appurtenant to 4 tracts of land (SWNE, NWSE, NESW, SESW in Section 3, Twp.03N, Rge.18E, B.M.). The actual number of acres irrigated was not decreed.

In 9/4/1986 Rupert House filed the first transfer #3291 which split off 0.40 cfs for irrigation of 12 acres. This transfer was approved. In the process Jim Stanton conducted a field review and made a determination that the historical lands irrigated amounted to 57 acres. (See transfer for legal) House split of 15 acres for irrigation of 12 acres. On microfilm there is a aerial photo where Jim has drawn the A and B parts of the right. The photo shows 55.2 acres and a 11.2 acre parcels. The 11.2 acre tract appears to be Rupert House's part. Jim cuts off the southern portion of the 55.2 acre parcel resulting in 42 acres being left for this part. On the transfer in remarks there is a statement that the House portion has been used but the other portion has not been used since 1979. The remaining portion after House takes his was reported to have been sold to Brennan who developed the Hyndman Peak Subdivision.

On 9/22/1986 Joseph Cirillo filed the second transfer #3280 which split off 0.41 cfs to a pump for irrigation of 6.65 acres in Lots 23, 24 and 25 of Block 2 of the Hyndman Peak Subdivision. The transfer was approved. \*\*\*Note that lots 23, 24 & 25 are in both the NESW and SESW of Section 3. The transfer only lists NESW. During the review of this transfer a letter from Reid Newby, watermaster addresses delivery of the Brennan 130" and Spackman concludes there is no evidence of forfeiture for the period of 1980 through 1985.

On 5/19/1987 Joseph Cirillo filed the third transfer #3332 which split off 0.146 cfs to the same pump for transfer #3280 for irrigation of 2.36 acres in lot 26 of Block 2 of the Hyndman Peak Subdivision. The transfer was approved. \*\*\*Note that lot 26 is in the SESW but transfer list P/U in NESW. No possible forfeiture since 1985 at that time.

On 2/1/1989 Craig Brandman filed the fourth transfer #3551 which split off 0.155 cfs to a pump for irrigation of 2.5 acres in lots 14 and 15 of Block 1 of the Hyndman Peak Subdivision. The transfer was approved. No possible forfeiture since 1985 at that time.

On 3/9/92 Richard Porter sent an application for transfer through his attorney Kenneth Arment. Doug Jones returned the application on 8/14/95 to attorney Brian Ballard because the application did

4671

37-00539 K,

not make sense with the record of water rights. On 9/2/1994 a replacement transfer application was filed for Richard Porter by a different attorney, Richard Burleigh. This application is numbered #4671 and subject of this memo. With the new application there were documents filed to attempt to show more acres were irrigated than the department has been tracking as based on Jim Stanton's original estimate.

On 10/17/95 I called the watermaster's office and talked with Norma Peterson. As a result of our conversation she went back into her records and prepared the attached letter describing the delivery of the right back to 1980. In reviewing this letter it appears clear and convincing to me that the portion of the right subject of Transfer #4671 has not been used for 10 years.

Based on this I recommend the transfer be **disallowed**.

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**WATER DISTRICT NO. 37 & 37 M**

P.O. Box T  
Shoshone, Idaho 83352  
(208) 886-2451



LEE R. PETERSON  
Watermaster

RECEIVED  
OCT 18 1995  
Department of Water Resources  
Southern Region

Alan Merritt  
State of Idaho  
Department of Water Resources  
222 Shoshone St. East  
Twin Falls, Idaho 83301

October 18, 1995

Alan:

The following is a list of owners of water right 37-0539 of 150 inches and the use record for that right. By using the past Watermaster's work sheet I was able to go back as far as 1980.

| Year | Owner          | Inches Owned | Used |
|------|----------------|--------------|------|
| 1980 | Robert Brennan | 130.00       | no   |
|      | Rupert House   | 20.00        | no   |
| 1981 | Robert Brennan | 130.00       | yes  |
|      | Rupert House   | 20.00        | yes  |
| 1982 | Robert Brennan | 130.00       | no   |
|      | Rupert House   | 20.00        | yes  |
| 1983 | Robert Brennan | 130.00       | no   |
|      | Rupert House   | 20.00        | yes  |
| 1984 | Robert Brennan | 130.00       | yes  |
|      | Rupert House   | 20.00        | yes  |
| 1985 | Robert Brennan | 130.00       | yes  |
|      | Rupert House   | 20.00        | yes  |
| 1986 | Robert Brennan | 130.00       | no   |
|      | Rupert House   | 20.00        | yes  |
| 1987 | Robert Brennan | 102.20       | no   |
|      | Joseph Cirillo | 27.80        | yes  |
|      | Rupert House   | 20.00        | yes  |
| 1988 | Robert Brennan | 102.20       | no   |
|      | Joseph Cirillo | 27.80        | no   |
|      | Rupert House   | 20.00        | yes  |

Years on how-life

1 1  
2 2  
3 3

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**WATER DISTRICT NO. 37 & 37 M**

P.O. Box T

Shoshone, Idaho 83352

(208) 886-2451



**LEE R. PETERSON**

*Watermaster*

Page 2

|      |                    |       |     |    |    |
|------|--------------------|-------|-----|----|----|
| 1989 | Robert Brennan     | 94.45 | no  | 4  |    |
|      | Joeseeph Cirillo   | 27.80 | yes |    |    |
|      | Dr. Craig Brandman | 7.75  | no  |    | 4  |
|      | Rupert House       | 20.00 | yes |    |    |
| 1990 | Robert Brennan     | 54.01 | no  | 5  |    |
|      | Bruce McCaw        | 27.80 | yes |    |    |
|      | Dr Craig Brandman  | 7.75  | no  |    | 5  |
|      | Robert Mitchell    | 40.44 | no  |    |    |
|      | Rupert House       | 20.00 | yes |    |    |
| 1991 | Robert Brennan     | 54.01 | no  | 6  |    |
|      | Bruce McCaw        | 28.50 | yes |    |    |
|      | Dr Craig Brandman  | 7.75  | no  |    | 6  |
|      | Robert Mitchell    | 40.44 | yes |    |    |
|      | Rupert House       | 20.00 | yes |    |    |
| 1992 | Robert Brennan     | 54.01 | no  | 7  |    |
|      | Bruce Mc Caw       | 27.80 | yes |    |    |
|      | Dr Craig Brandman  | 7.75  | no  |    | 7  |
|      | Robert Mitchell    | 40.44 | yes |    |    |
|      | Rupert House       | 20.00 | yes |    |    |
| 1993 | Robert Brennan     | 54.01 | no  | 8  |    |
|      | Bruce Mc Caw       | 27.80 | yes |    |    |
|      | Dr Craig Brandman  | 7.75  | no  |    | 8  |
|      | Robert Mitchell    | 40.44 | yes |    |    |
|      | Rupert House       | 20.00 | yes |    |    |
| 1994 | Robert Baugh       | 10.85 | no  | 9  |    |
|      | Hyndman Homeowners | 43.16 | no  |    |    |
|      | Bruce Mc Caw       | 27.80 | yes |    |    |
|      | Dr Craig Brandman  | 7.75  | no  |    | 9  |
|      | Robert Mitchell    | 40.44 | yes |    |    |
|      | Rupert House       | 20.00 | yes |    |    |
| 1995 | Robert Baugh       | 10.85 | no  | 10 |    |
|      | Hyndman Homeowners | 43.16 | no  |    |    |
|      | Bruce Mc Caw       | 27.80 | yes |    |    |
|      | Dr Craig Brandman  | 7.75  | no  |    | 10 |
|      | Robert Mitchell    | 40.44 | yes |    |    |
|      | Rupert House       | 20.00 | yes |    |    |

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES



LEE R. PETERSON  
Watermaster

**WATER DISTRICT NO. 37 & 37 M**

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Shoshone, Idaho 83352  
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Page3

In way of explanation for non-use of some portions of this water right. Robert Brennan is a developer, his practice is to buy up land and water rights. As a rule he never uses the water. He then develops the land, sells off parcels and the water right may or may not be used by the new owner. Mr. Brennan has held more water rights in non use situations and has caused much controversy because of this practice.

I hope you find this information useful. If there is anything further we can do to be of help please let us know.

Sincerely,

A handwritten signature in cursive script that reads "Norma Peterson".

Norma Peterson  
Secretary/Treasurer

MEMORANDUM

To: FILE A37-00539G  
FILE A37-00539I

From: HELEN HARRINGTON-THORNTON <sup>HH</sup>T

Date: November 3, 1992

Subject: SPLIT REVIEW

=====

During a m<sup>e</sup>eting with an attorney for some of the claimants in the above referenced parent right, it became apparent that there may have been a duplicate filing for a portion of the place of use described on the splits.

Specifically, apparently a portion of A37-00539I, claimed by Mitchell, is a portion of A37-00539G. Therefore, the review of A37-00539G should include an evaluation to determine if the G portion should be decreased by the amount appurtenant to the I portion.

MICROFILMED  
FEB 23 1993