

78-4134

Carter,

I think the enclosed  
info will give good direction  
on the Last Chance Spring.

Please look on page 7  
#7.

Thanks,

Ed Osborn

208 - 347 - 2364

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DEC 26 2006

DEPARTMENT OF  
WATER RESOURCES

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JAN 02 2007

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS.

E. I. OSBORN,

PLAINTIFF,

-vs-

L. F. SMITH, LEE HIGHLEY, guardian  
of the person and estate of L. F.  
Smith, and J. K. McREYNOLDS,

DEFENDANTS.

ANSWER

CROSS COMPLAINT.

Comes now L. F. Smith by Lee Highley, his guardian,  
and appearing herein for himself alone and not for his co-de-  
fendants, J. K. McReynolds, and makes this his answer to the  
complaint of Plaintiff filed here and admits, denys and alleges  
as follows, to-wit:-

I.

This answering defendant admits each and every of  
the allegations set forth in paragraphs I, II, III of plaintiff's  
complaint.

II.

Answering paragraph IV of said complaint this answer-  
ing defendant denys that more than thirty years ago or at any  
other time, the immediate grantor of this plaintiff, one Wilson  
A. Williams, or any other person, construct a ditch from said  
creek leading to and upon the Southwest Quarter of the South-  
east Quarter, and the Southeast Quarter of the Southwest Quarter  
of said section 8, and the East one-half of the Northwest Quarter  
of said section 17, or any part or portion of said lands of a  
size sufficient to, and which did divert and carry, or of a size

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sufficient to, or which did divert or carry of the water of said creek, to and upon said lands 150 minors inches, and denys that said amount of water or any other amount has been used each year since the time alleged in said paragraph or during any of said years, or at all, for the irrigation of crops and hay, or crops or hay upon said land and this answering defendant denys that said amount of water when obtainable or when not obtainable from said creek is necessary for the proper irrigation and cultivation of said land mentioned in said paragraph IV.

III.

Answering paragraph V of said complaint this answering defendant denys that at the time said water was so diverted by said Williams as alleged, neither of these defendants or any other person was diverting or claiming or using of the water of said creek and denys that said Williams was the first appropriator of any of the water thereof, and denys that said Williams ever at any time made any appropriation of the water of said creek.

IV.

Answering paragraph VI of said complaint this defendant denys that plaintiff succeeded to all or any of the rights of said Williams by purchase or otherwise in and to said lands and water right, or lands or water right, as set forth in said complaint or otherwise, and denys that said Williams ever at any time had or owned or held any right to the use of water in said creek capable of succession by purchase or otherwise by plaintiff.

Answering paragraph VII of said complaint this answering defendant denies that he has at any time sought to deprive plaintiff of the use of the water of said creek by diverting the same from said creek and by carrying the same by lands owned by this answering defendant, other than by under a claim of right so to do and which claim of right is hereinafter set forth in the cross-complaint of this answering defendant.

And for his answer to the other and further cause of action set forth in plaintiff's complaint, this defendant admits, denies and alleges as follows, to-wit:

1. Answering paragraph II of said further cause of action this answering defendant denies that more than twenty years ago or at any other time, plaintiff constructed a ditch from said Three Mile Creek of a capacity sufficient to carry and which did carry, from said creek to and upon the Southwest Quarter of the Southwest Quarter of said Section 8, and the West one-half of the Northwest Quarter of said Section 17 or at any part of said lands 100 miners inches or any other amount of the water of said creek, and denies that every since the alleged construction of said ditch during each irrigation season or during any one or more of the irrigation seasons of said years, when sufficient water was flowing in said creek, said plaintiff has continued to divert, carry, and use, or to divert or carry or use, for the purpose of irrigating crops on said land or for any other purpose, 100 minors inches of water or any other amount, and denies that said amount of water is necessary for the purpose of irrigating and cultivating said land.

2. Answering paragraph III of said further cause of action this defendant denies that at the time alleged in plaintiff's

complaint as the time of appropriation of water as set forth in plaintiff's first cause of action herein, that this answering defendant was not diverting or claiming or using any of the water of said creek and denys that plaintiff was the first appropriator of the water thereof, and admits that this answering defendant had prior to the time of plaintiff's alleged appropriation and use of the water of said creek as alleged in his further cause of action, made appropriations and use of the water of said creek and as hereinafter set forth in this answering defendant's cross complaint and denys that said appropriation and use by this answering defendant was subsequent to plaintiff's alleged appropriation and use as set forth in his first cause of action.

3. Answering paragraph IV of plaintiff's further cause of action this answering defendant denys that he has at any time sought to deprive the plaintiff of the use of the water of said creek and carry the same away from said creek to the lands of this answering defendant except under a claim of right so to do.

#### CROSS COMPLAINT.

And for a further answer to the complaint of plaintiff and for his cross complaint herein, this answering defendant alleges as follows, to-wit:-

1. That at some time in the present year the above named defendant, L. F. Smith, was by the probate Court of the County of Adams, State of Idaho, declared by it's order, duly made and entered, and incompetent person, and that Lee Highley was thereupon by an order of said Court likewise duly made and entered, appointed the guardian of the person and estate of said L. F. Smith, and that every since said Lee Highley has been and now is the duly appointed qualified and acting guardian of the person and estate of said L. F. Smith.

2. That this answering defendant is the owner and in possession of the following described lots, pieces, or parcel of land lying and being situated in the County of Adams, State of Idaho, to-wit:- the North one-half of the Southwest Quarter and the South one-half of the Northwest Quarter and the Northwest Quarter of the Northwest Quarter of Section 7, and the Southwest Quarter of the Southwest Quarter of Section 6, all in Township 19, North of Range 2 East, B. M., all of which said land is arid in nature and without the artificial application of water thereon will not produce profitable crops and which said lands with the artificial application of water produces large and profitable crops.

3. That Three Mile Creek is a tributary of the Little Salmon River in the County of Adams, State of Idaho, and is one of the natural streams of the State of Idaho, the water of which said stream are subject to appropriation and use by citizens of the United States of America.

4. That during all the times mentioned in this cross complaint this answering defendant was and still is a citizen of the United States of America.

5. That on or about the month of May, 1883, this answering defendant and cross complainant commenced the construction of an irrigation ditch beginning at a point on the North bank of said Three Mile Creek about two hundred yards East of the wagon road along said lands and extending therefrom in a Northwest direction about one-fourth of a mile leading to and upon the lands of this defendant and cross complainant hereinbefore described, which ditch was so constructed two feet wide at the top and bottom and ten inches deep and of such size and proportions as to enable it to carry, and it did carry, throughout its entire course, 150 inches minors measurement, measured under a four inch pressure of water, and which said ditch was fully completed.

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page 5.

pleted on the fifth day of May, 1884; that said ditch was constructed by and at the instance of this answering defendant and cross complainant for the purpose of conveying water from said three Mile Creek to and upon the lands hereinbefore described and for the purpose of acquiring a water right for irrigation purposes and to be used upon said lands, that for the purpose of further acquiring and perfecting said water right for said lands this answering defendant and cross complainant on the 22nd day of June, 1888 posted a notice of appropriation of water under the laws of the State of Idaho, on the north bank of said Three Mile Creek and at the point of commencement of said irrigation ditch hereinbefore described and thereafter, and on the 22nd day of June, 1888, caused a copy of said notice to be recorded in the office of the County Recorder in the County of Washington, State of Idaho, and which said notice was thereafter recorded in Book I of water rights at page 199, records of said office and which notice also appears of record in the office of the County Recorder of the County of Adams, State of Idaho, in Book A of water rights at page 20 thereof, and that at the time of the posting and recording of said notice as aforesaid, said irrigation ditch hereinafter described and described in said notice was fully completed, a copy of which said notice so posted and recorded as aforesaid, is hereto attached, marked Cross Complaint, Exhibit A, and by reference thereto is hereby made a part of this cross complaint.

6. That during each and every year since the year 1883, this defendant and cross complainant has conveyed through said irrigation ditch from said Three Mile Creek to and upon his said lands, 150 miners inches of water and has each and every season during said year 1883 actually used said water in the irrigation of his said lands and in the production of valuable crops thereon.

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7. That for the purpose of further protecting his said water right as hereinbefore described, for his said lands and for the purpose of insuring the amount of water flowing in said Three Mile Creek, sufficient to irrigate his said lands, this defendant on or about the year 1883 constructed an irrigation ditch leading from a natural spring located at or about the center of Section Nine, Township Nineteen, North of Range Two West, of Boise-Meridian, in a Westerly direction and at a distance of about three miles to a branch of said Three Mile Creek and carried from said spring and commingled with the natural water of said branch of said Three Mile Creek and of Three Mile Creek, 60 miners inches of water measured under a four inch pressure and which said ditch so constructed was of sufficient size to carry throughout it's entire length, said 60 miners inches of water and that each and every year since the year 1883 this defendant and cross complainant has actually diverted from said spring and emptied into and commingled with the water of said Three Mile Creek, 60 miners inches of water, and has thereafter reclaimed from said Three Mile Creek said 60 miners inches of water at such times as the natural flow of said Three Mile Creek was insufficient to fill the said irrigation ditch of this cross complainant herein first described.

8. That at or about the year 1883, this cross complainant for the purpose of acquiring a further water right for his said lands diverted from said three Mile Creek at or about the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section Seven, Township Nineteen, North of Range Two East of Boise Meridian, 150 miners inches of water measured under a four inch pressure and carried the same through a natural slough leading in

a Northwesterly direction to and upon the lands of this cross complainant and which said natural slough was of a sufficient size to carry through it's entire length said amount of water and upon said lands, and that this cross complainant through said ditch herein first described and through said natural slough has each and every year during the irrigation season of said years since 1883, actually diverted from said Three Mile Creek and carried to and upon his said lands an amount of water sufficient to properly irrigate 200 acres of his said lands and during each and every season since 1883 this cross complainant has actually irrigated from said Three Mile Creek 200 acres of his said lands and that 250 inches measured under a four inch pressure, of water, is necessary for the proper irrigation of his said lands.

9. That the said plaintiff and the said defendant, J. K. McReynolds, has at divers time sought to deprive this cross complainant of the use of said water by diverting the same from said creek and carrying the same to lands owned by them respectively through separate ditches to the great and irreparable injury and damage to this cross complainant, and unless said plaintiff and said defendant, McReynolds, are enjoined by a proper decree of this Court, they and each of them will divert and carry away said water which deprive this cross complainant of the use thereof, thereby greatly injuring him and his said lands in a manner and to an extent impossible of estimation.

10. That this cross complainant has not a plain speedy for adequate remedy at law in the premises.

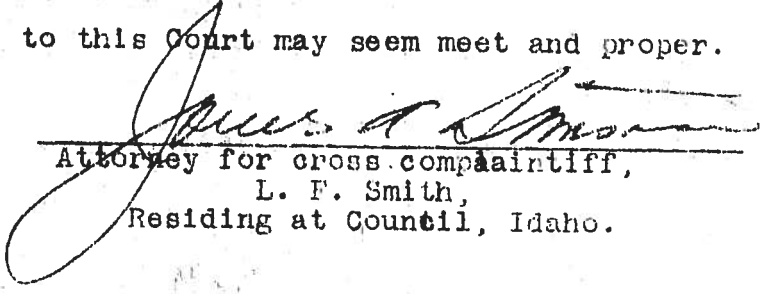
WHEREFORE, this complainant prays that he be adjudged to have a prior and superior right to the use of the water of said creek as against the plaintiff and said defendant, McReynolds, to the extent and amount of 200 inches thereof, miners

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measurement, measured under a four inch pressure and that it be further adjudged that this cross complainant has a right to commingle said water from said spring with the natural flow of said Three Mile Creek and to reclaim the same therefrom, at such times as the natural flow of said Creek is insufficient to give to this cross complainant said amount of water to which he is entitled from the natural flow of said Creek. That the said plaintiff and said defendant, McReynolds, be required to appear and show what, if any, right or title they or either of them have in and to the water of said Three Mile Creek and that it be adjudged that whatever right or title they have or claim, in and to the natural flow of said Creek be adjudged inferior and subsequent in time, to the right of this cross complainant and judgment for his costs herein expended and that said plaintiff and said defendant, McReynolds, and their agents and successors in interest be enjoined and forever restrained from taking, using, or appropriating, any of the water of said Creek, when such taking, use, or appropriation thereof, would reduce the flow of said Creek below 200 miners inches, measured under a four inch pressure, and for such other and further and different relief in the premises as to this Court may seem meet and proper.

  
Attorney for cross complainant,  
L. F. Smith,  
Residing at Council, Idaho.

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JAN 02 2007

12/29/2006

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

RIGHT NUMBER: 78-4134

NAME AND ADDRESS: OSBORN RANCH INC  
PO BOX 209  
NEW MEADOWS ID 83654

SOURCE: LAST CHANCE SPRING  
TRAIL CREEK

TRIBUTARY: TRAIL CREEK  
TRIBUTARY: GOOSE CREEK

Point of injection into and points of redirection from Threemile Creek.

QUANTITY: 1.000 CFS

PRIORITY DATE: 11/30/1919

POINT OF DIVERSION:

T19N R02E S3 NENESE Within ADAMS County  
T19N R02E S3 SESE Within ADAMS County  
T19N R02E S7 NWSE Rediversion Within ADAMS County  
T19N R02E S7 NWSE Rediversion Within ADAMS County  
T19N R02E S7 SESE Rediversion Within ADAMS County  
T19N R02E S7 SESE Rediversion Within ADAMS County  
T19N R02E S8 SESW Rediversion Within ADAMS County  
T19N R02E S8 SESW Rediversion Within ADAMS County  
T19N R02E S8 NESE Rediversion Within ADAMS County  
T19N R02E S9 NWNE Injection Within ADAMS County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 04/01 10/31          | 1.000 CFS       |

PLACE OF USE: IRRIGATION in ADAMS County

|               |      |       |               |      |       |
|---------------|------|-------|---------------|------|-------|
| T19N R02E S07 | NESE | 39.00 | T19N R02E S07 | NWSE | 38.00 |
| T19N R02E S08 | SWSW | 39.00 | T19N R02E S08 | SESW | 39.00 |
| T19N R02E S08 | SWSE | 38.00 | T19N R02E S17 | NENW | 39.00 |
| T19N R02E S17 | NWNW | 39.00 | T19N R02E S17 | SWNW | 37.00 |
| T19N R02E S17 | SESW | 36.00 |               |      |       |

344 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 531 acres in a single irrigation season.  
Combined Right Nos.: 78-234, 78-235, 78-263, 78-265, 78-2024, 78-2057, 78-4066, 78-4134 and 78-4285

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.

12/29/2006

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

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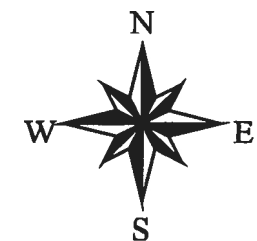
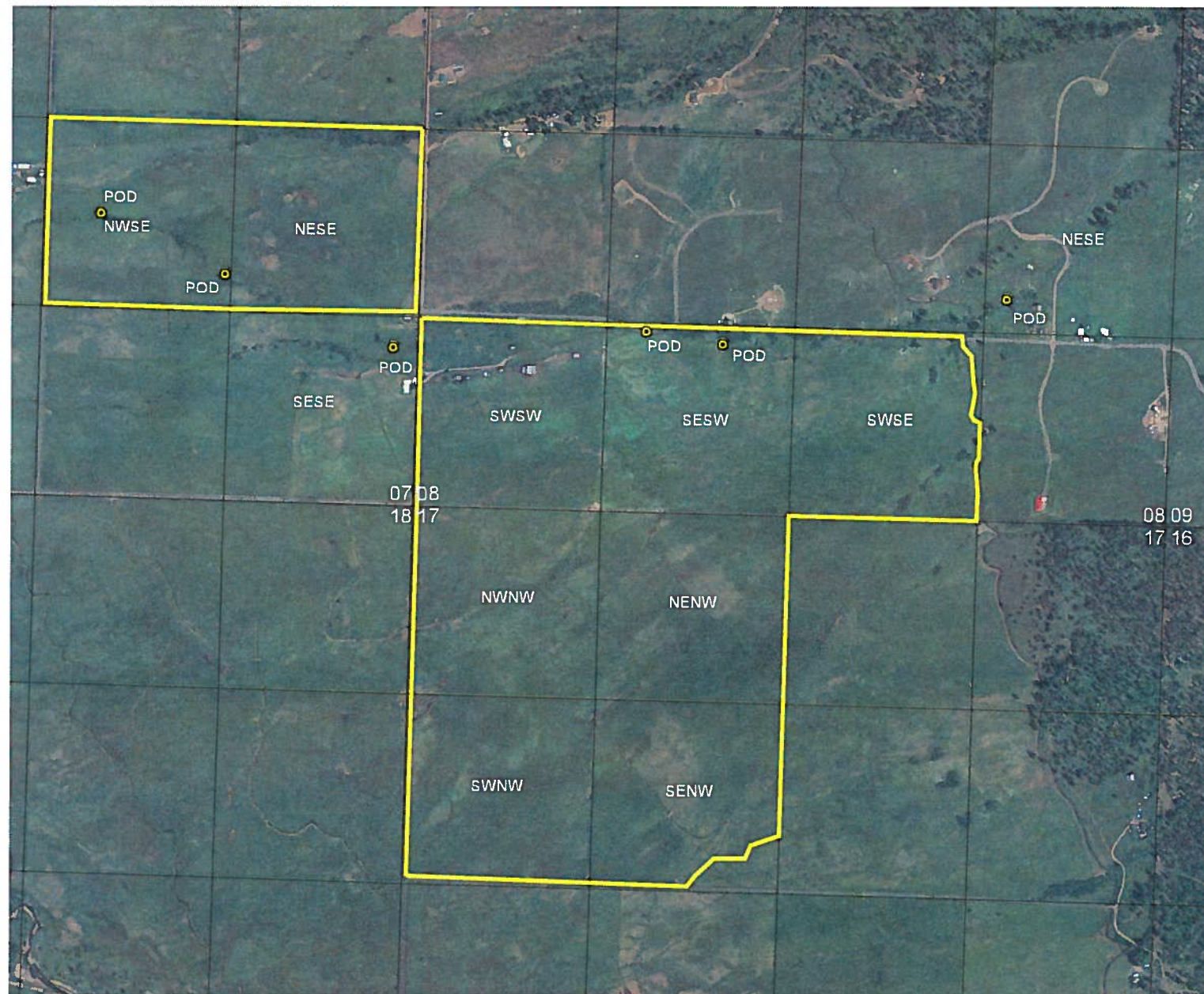
EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Use of this right is combined with water from Goose Lake Reservoir Company.

Use of this right is combined with water from Granite Twin Lakes Water Users.

Use of this right is combined with water from Brundage Water Users Association.

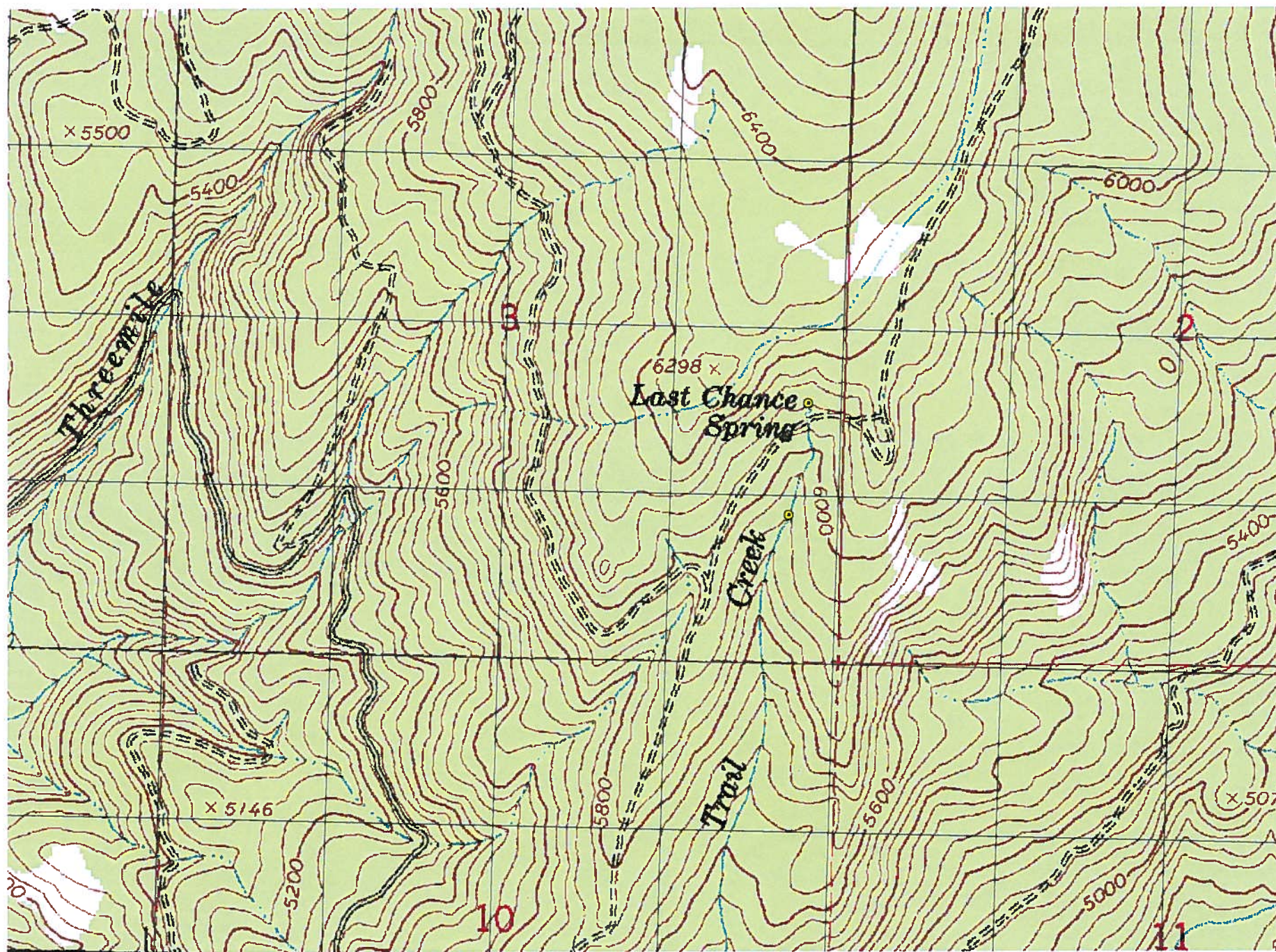
**T19N R02E  
S07 S08 & S17**



1000 0 1000 2000 3000 4000 Feet

Map prepared by: Carter Fritschle  
Date prepared: 07/13/05  
2004 Photography  
Idaho Department of Water Resources

T19N  
R02E



2000

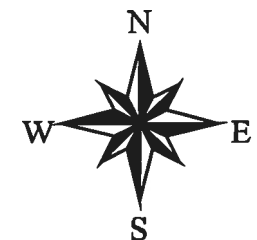
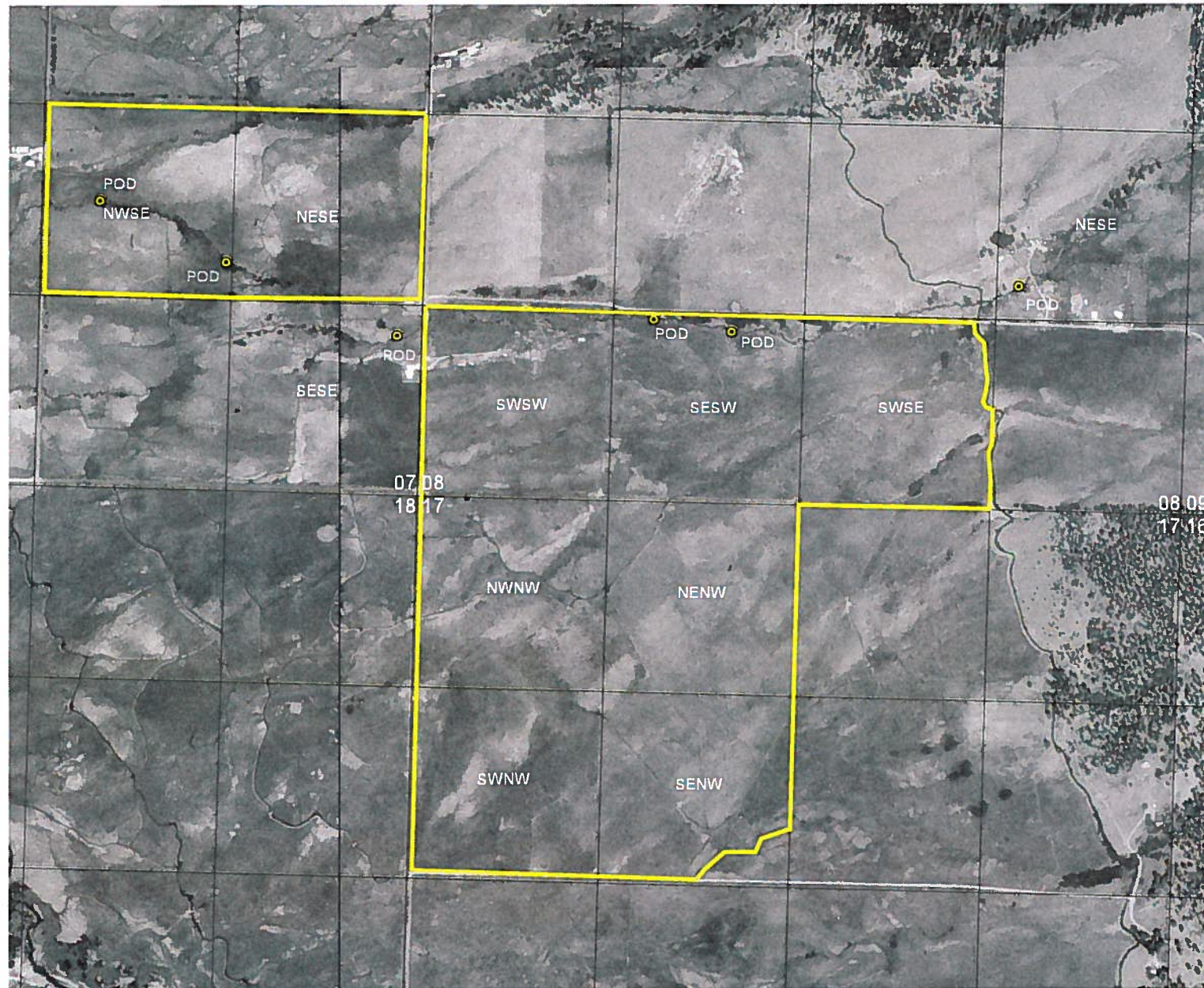
0

2000

4000 Feet



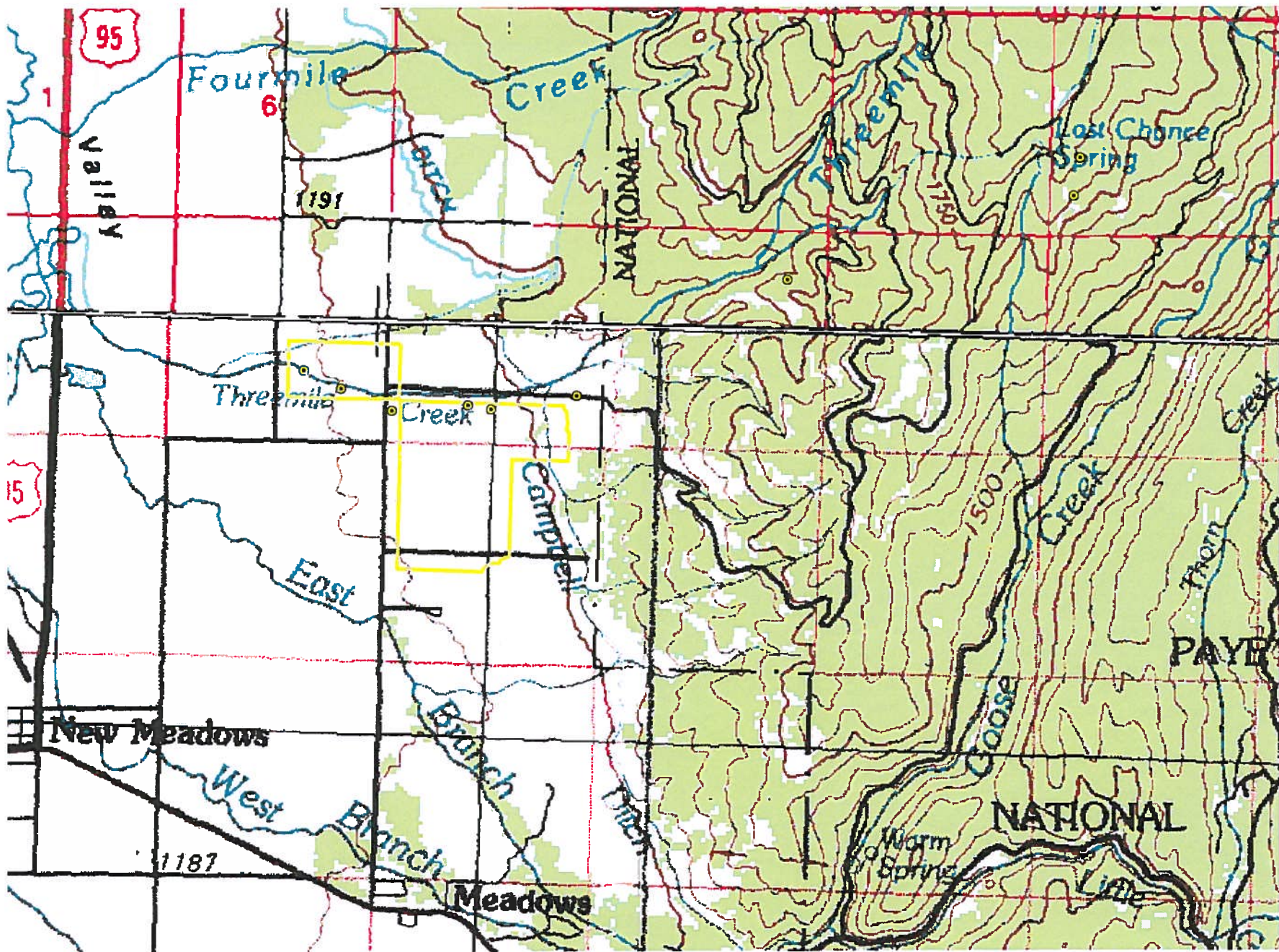
**T19N R02E  
S07 S08 & S17**



1000 0 1000 2000 3000 4000 Feet

Map prepared by: Carter Fritschle  
Date prepared: 07/13/05  
Digital Orthophotoquad - 1992 Photography  
Idaho Department of Water Resources

T19N  
R02E



6000

0

6000

12000 Feet



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS.

E. I. OSBORN,

PLAINTIFF,

-VS-

L. F. SMITH, LEE HIGHLEY, guardian  
of the person and estate of L. F.  
Smith, and J. K. McREYNOLDS,

DEFENDANTS.

**ANSWER**

CROSS COMPLAINT.

Comes now L. F. Smith by Lee Highley, his guardian, and appearing herein for himself alone and not for his co-defendants, J. K. McReynolds, and makes this his answer to the complaint of Plaintiff filed here and admits, denys and alleges as follows, to-wit:-

I.

This answering defendant admits each and every of the allegations set forth in paragraphs I, II, III of plaintiff's complaint.

II.

Answering paragraph IV of said complaint this answering defendant denys that more than thirty years ago or at any other time, the immediate grantor of this plaintiff, one Wilson A. Williams, or any other person, construct a ditch from said creek leading to and upon the Southwest Quarter of the Southeast Quarter, and the Southeast Quarter of the Southwest Quarter of said section 8, and the East one-half of the Northwest Quarter of said section 17, or any part or portion of said lands of a size sufficient to, and which did divert and carry, or of a size

X

sufficient to, or which did divert or carry of the water of said creek, to and upon said lands 160 minors inches, and denys that said amount of water or any other amount has been used each year since the time alleged in said paragraph or during any of said years, or at all, for the irrigation of crops and hay, or crops or hay upon said land and this answering defendant denys that said amount of water when obtainable or when not obtainable from said creek is necessary for the proper irrigation and cultivation of said land mentioned in said paragraph IV.

### III.

Answering paragraph V of said complaint this answering defendant denys that at the time said water was so diverted by said Williams as alleged, neither of these defendants or any other person was diverting or claiming or using of the water of said creek and denys that said Williams was the first appropriator of any of the water thereof, and denys that said Williams ever at any time made any appropriation of the water of said creek.

### IV.

Answering paragraph VI of said complaint this defendant denys that plaintiff succeeded to all or any of the rights of said Williams by purchase or otherwise in and to said lands and water right, or lands or water right, as set forth in said complaint or otherwise, and denys that said Williams ever at any time had or owned or held any right to the use of water in said creek capable of succession by purchase or otherwise by plaintiff.

Answering paragraph VII of said complaint this answering defendant denies that he has at any time sought to deprive plaintiff of the use of the water of said creek by diverting the same from said creek and by carrying the same by lands owned by this answering defendant, other than by under a claim of right so to do and which claim of right is hereinafter set forth in the cross-complaint of this answering defendant.

And for his answer to the other and further cause of action set forth in plaintiff's complaint, this defendant admits, denies and alleges as follows, to-wit:

1. Answering paragraph II of said further cause of action this answering defendant denies that more than twenty years ago or at any other time, plaintiff constructed a ditch from said Three Mile Creek of a capacity sufficient to carry and which did carry, from said creek to and upon the Southwest Quarter of the Southwest Quarter of said Section 8, and the West one-half of the Northwest Quarter of said Section 17 or at any part of said lands 100 miners inches or any other amount of the water of said creek, and denies that every since the alleged construction of said ditch during each irrigation season or during any one or more of the irrigation seasons of said years, when sufficient water was flowing in said creek, said plaintiff has continued to divert, carry, and use, or to divert or carry or use, for the purpose of irrigating crops on said land or for any other purpose, 100 minors inches of water or any other amount, and denies that said amount of water is necessary for the purpose of irrigating and cultivating said land.

2, Answering paragraph III of said further cause of action this defendant denies that at the time alleged in plaintiff's

complaint as the time of appropriation of water as set forth in plaintiff's first cause of action herein, that this answering defendant was not diverting or claiming or using any of the water of said creek and denys that plaintiff was the first appropriator of the water thereof, and admits that this answering defendant had prior to the time of plaintiff's alleged appropriation and use of the water of said creek as alleged in his further cause of action, made appropriations and use of the water of said creek and as hereinafter set forth in this answering defendant's cross complaint and denys that said appropriation and use by this answering defendant was subsequent to plaintiff's alleged appropriation and use as set forth in his first cause of action.

3. Answering paragraph IV of plaintiff's further cause of action this answering defendant denys that he has at any time sought to deprive the plaintiff of the use of the water of said creek and carry the same away from said creek to the lands of this answering defendant except under a claim of right so to do.

#### CROSS COMPLAINT.

And for a further answer to the complaint of plaintiff and for his cross complaint herein, this answering defendant alleges as follows, to-wit:-

1. That at some time in the present year the above named defendant, L. F. Smith, was by the probate Court of the County of Adams, State of Idaho, declared by it's order, duly made and entered, and in-competent person, and that Lee Highley was there-upon by an order of said Court likewise duly made and entered, appointed the guardian of the person and estate of said L. F. Smith, and that every since said Lee Highley has been and now is the duly appointed qualified and acting guardian of the person and estate of said L. F. Smith.

2. That this answering defendant is the owner and in possession of the following described lots, pieces, or parcel of land lying and being situated in the County of Adams, State of Idaho, to-wit:- the North one-half of the Southwest Quarter and the South one-half of the Northwest Quarter and the Northwest Quarter of the Northwest Quarter of Section 7, and the Southwest Quarter of the Southwest Quarter of Section 6, all in Township 19, North of Range 2 East, B. M., all of which said land is arid in nature and without the artificial application of water thereon will not produce profitable crops and which said lands with the artificial application of water produces large and profitable crops.

3. That Three Mile Creek is a tributary of the Little Salmon River in the County of Adams, State of Idaho, and is one of the natural streams of the State of Idaho, the water of which said stream are subject to appropriation and use by citizens of the United States of America.

4. That during all the times mentioned in this cross complaint this answering defendant was and still is a citizen of the United States of America.

5. That on or about the month of May, 1883, this answering defendant and cross complainant commenced the construction of an irrigation ditch beginning at a point on the North bank of said Three Mile Creek about two hundred yards East of the wagon road along said lands and extending therefrom in a Northwest direction about one-fourth of a mile leading to and upon the lands of this defendant and cross complainant hereinbefore described, which ditch was so constructed two feet wide at the top and bottom and ten inches deep and of such size and proportions as to enable it to carry, and it did carry, throughout its entire course, 150 inches minors measurement, measured under a four inch pressure of water, and which said ditch was fully com-

pleted on the fifth day of May, 1884; that said ditch was constructed by and at the instance of this answering defendant and cross complainant for the purpose of conveying water from said three Mile Creek to and upon the lands hereinbefore described and for the purpose of acquiring a water right for irrigation purposes and to be used upon said lands, that for the purpose of further acquiring and perfecting said water right for said lands this answering defendant and cross complainant on the 22nd day of June, 1888 posted a notice of appropriation of water under the laws of the State of Idaho, on the north bank of said Three Mile Creek and at the point of commencement of said irrigation ditch hereinbefore described and thereafter, and on the 22nd day of June, 1888, caused a copy of said notice to be recorded in the office of the County Recorder in the County of Washington, State of Idaho, and which said notice was thereafter recorded in Book I of water rights at page 199, records of said office and which notice also appears of record in the office of the County Recorder of the County of Adams, State of Idaho, in Book A of water rights at page 20 thereof, and that at the time of the posting and recording of said notice as aforesaid, said irrigation ditch herein-after described and described in said notice was fully completed, a copy of which said notice so posted and recorded as aforesaid, is hereto attached, marked Cross Complaint, Exhibit A, and by reference thereto is hereby made a part of this cross complaint.

6. That during each and every year since the year 1883, this defendant and cross complainant has conveyed through said irrigation ditch from said Three Mile Creek to and upon his said lands, 150 miners inches of water and has each and every season during said year 1883 actually used said water in the irrigation of his said lands and in the production of valuable crops thereon.

7. That for the purpose of further protecting his said water right as hereinbefore described, for his said lands and for the purpose of insuring the amount of water flowing in said Three Mile Creek, sufficient to irrigate his said lands, this defendant on or about the year 1883 constructed an irrigation ditch leading from a natural spring located at or about the center of Section Nine, Township Nineteen, North of Range Two West, of Boise-Meridian, in a Westerly direction and a distance of about three miles to a branch of said Three Mile Creek and carried from said spring and commingled with the natural water of said branch of said Three Mile Creek and of Three Mile Creek, 60 miners inches of water measured under a four inch pressure and which said ditch so constructed was of sufficient size to carry throughout it's entire length, said 60 miners inch of water and that each and every year since the year 1883 this defendant and cross complainant has actually diverted from said spring and emptied into and commingled with the water of said Three Mile Creek, 60 miners inches of water, and has thereafter reclaimed from said Three Mile Creek said 60 miners inches of water at such times as the natural flow of said Three Mile Creek was insufficient to fill the said irrigation ditch of this cross complainant herein first described.

8. That at or about the year 1883, this cross complainant for the purpose of acquiring a further water right for his said lands diverted from said three Mile Creek at or about the Northeast Corner of the Southeast Quarter of the Southeast Quarter of Section Seven, Township Nineteen, North of Range Two East of Boise Meridian, 150 miners inches of water measured under a four inch pressure and carried the same through a natural slough leading in

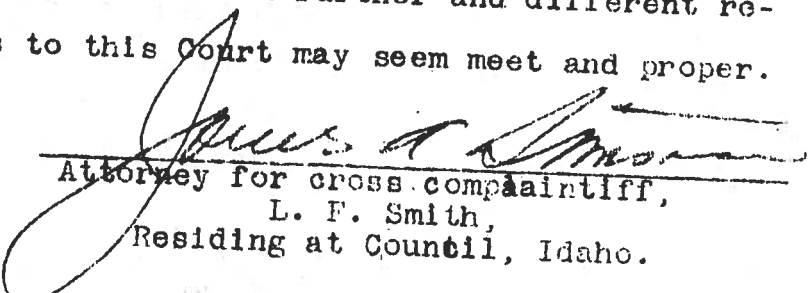
a Northwesterly direction to and upon the lands of this cross complainant and which said natural slough was of a sufficient size to carry through it's entire length said amount of water and upon said lands, and that this cross complainant through said ditch herein first described and through said natural slough has each and every year during the irrigation season of said years since 1883, actually diverted from said Three Mile Creek and carried to and upon his said lands an amount of water sufficient to properly irrigate 200 acres of his said lands and during each and every season since 1883 this cross complainant has actually irrigated from said Three Mile Creek 200 acres of his said lands and that 250 inches measured under a four inch pressure, of water, is necessary for the proper irrigation of his said lands.

9. That the said plaintiff and the said defendant, J. E. McReynolds, has at divers time sought to deprive this cross complainant of the use of said water by diverting the same from said creek and carrying the same to lands owned by them respectively through separate ditches to the great and irreparable injury and damage to this cross complainant, and unless said plaintiff and said defendant, McReynolds, are enjoined by a proper decree of this Court, they and each of them will divert and carry away said water which deprive this cross complainant of the use thereof, thereby greatly injuring him and his said lands in a manner and to an extent impossible of estimation.

10. That this cross complainant has not a plain speedy for adequate remedy at law in the premises.

WHEREFORE, this complainant prays that he be adjudged to have a prior and superior right to the use of the water of said creek as against the plaintiff and said defendant, McReynolds, to the extent and amount of 200 inches thereof, minors

measurement, measured under a four inch pressure and that it be further adjudged that this cross complainant has a right to commingle said water from said spring with the natural flow of said Three Mile Creek and to reclaim the same therefrom, at such times as the natural flow of said Creek is insufficient to give to this cross complainant said amount of water to which he is entitled from the natural flow of said Creek. That the said plaintiff and said defendant, McReynolds, be required to appear and show what, if any, right or title they or either of them have in and to the water of said Three Mile Creek and that it be adjudged that whatever right or title they have or claim, in and to the natural flow of said Creek be adjudged inferior and subsequent in time, to the right of this cross complainant and judgment for his costs herein expended and that said plaintiff and said defendant, McReynolds, and their agents and successors in interest be enjoined and forever restrained from taking, using, or appropriating, any of the water of said Creek, when such taking, use, or appropriation thereof, would reduce the flow of said Creek below 200 miners inches, measured under a four inch pressure, and for such other and further and different relief in the premises as to this Court may seem meet and proper.

  
Attorney for cross complainant,  
L. F. Smith,  
Residing at Council, Idaho.



## 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 [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

August 2, 2005

78-4066  
OSBORN RANCH INC  
C/O WARREN OSBORN  
PO BOX 209  
NEW MEADOWS ID 83654

Re: Field Examination and Evidence of Priority Date

Dear Claimant:

The Notice of Claim to a Water Right (claim) identified with the number shown above your name has been filed in the Snake River Basin Adjudication (SRBA). The claim indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed, and are termed beneficial use rights.

The elements of beneficial use rights need to be verified by an examiner for the Idaho Department of Water Resources (IDWR) before the claim can be recommended to the SRBA Court. The examination of claims in your area will take place during the summer and fall of 2005. An examiner will be contacting you to schedule a time to visit your property to verify your use of the water right claimed.

Also, even though most of the elements of your claim can be verified by the field exam, the date of first use, or priority date can only be verified by documentation of the historic use. If you have not supplied documentation for the priority date and historical beneficial use of the water, please submit your evidence by September 30, 2005. Enclosed you will find a pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

**PLEASE NOTE:** IDWR will recommend the SRBA Court decree the claim disallowed if the priority date and the historic use cannot be documented. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement should be in the form of a notarized affidavit.

If you have questions not covered by this letter or the enclosed pamphlet, please contact me by phone at (208) 287-4917 or send an email to [Carter.Fritschle@idwr.idaho.gov](mailto:Carter.Fritschle@idwr.idaho.gov).

Sincerely,

  
Carter Fritschle  
Water Rights Supervisor  
Adjudication Bureau

Enclosure:  
Evidence of Priority Date pamphlet

Additional claimant(s) and/or claim(s):

78-4134  
OSBORN RANCH INC  
C/O WARREN OSBORN  
PO BOX 209  
NEW MEADOWS ID 83654

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: A78-04134  
Date Received: 5/24/1988 6-3-8  
Receipt No: 1000058  
CA

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: OSBORN RANCH INC. 208-347-2387  
Address: P.O. BOX 209  
NEW MEADOWS, ID 83654

2. Date of Priority: JAN 01, 1883

3. Source: LAST CHANCE SPRING Trib. to: TRAIL CREEK  
TRAIL CREEK GOOSE CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County |
|----------|-------|---------|--------|--------|--------|-----|--------|
| 19N      | 02E   | 3       | NE     | SE     | SE     |     | ADAMS  |
|          |       | 7       | NW     | NE     | SE     | R   | ADAMS  |
|          |       |         | SE     | NE     | SE     | R   | ADAMS  |
|          |       |         | NE     | SE     | SE     | R   | ADAMS  |
|          |       | 8       | NE     | SE     | SW     | R   | ADAMS  |
|          |       |         | NW     | SE     | SW     | R   | ADAMS  |
|          |       |         | SW     | NE     | SE     | R   | ADAMS  |
|          |       | 9       | SE     | NW     | NE     | I   | ADAMS  |

5. Description of diverting works:  
HEADGATE IN TRAIL CREEK INTO GRAVITY DITCH.

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S | (or) | A.F.A. |
|------------|-------|-------|-------|------|--------|
| IRRIGATION | 04/15 | 10/15 | 1.000 |      |        |

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

8. Total consumptive use is 844.0 Acre Feet Per Annum.

9. Non-irrigation uses:

A78-04134

Page 1

Date: 05/27/88

MICROFILMED  
OCT 06 1992

10. Place of Use:

| Township | Range | Section | 1/4           | of | 1/4 | Lot | Use | Acres |
|----------|-------|---------|---------------|----|-----|-----|-----|-------|
| 19N      | 02E   | 7       | NE            |    | SE  |     | IRR | 38.0  |
|          |       |         | NW            |    | SE  |     | IRR | 39.0  |
|          |       |         | Section Acres |    |     |     |     | 77.0  |
|          |       | 8       | SW            |    | SW  |     | IRR | 35.0  |
|          |       |         | SE            |    | SW  |     | IRR | 37.0  |
|          |       |         | SW            |    | SE  |     | IRR | 38.0  |
|          |       |         | Section Acres |    |     |     |     | 110.0 |
|          |       | 17      | NE            |    | NW  |     | IRR | 40.0  |
|          |       |         | NW            |    | NW  |     | IRR | 39.0  |
|          |       |         | SW            |    | NW  |     | IRR | 39.0  |
|          |       |         | SE            |    | NW  |     | IRR | 39.0  |
|          |       |         | Section Acres |    |     |     |     | 157.0 |
|          |       |         | Total Acres   |    |     |     |     | 344.0 |

11. Place of use in counties: ADAMS

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

13. Other Water Rights Used:

GOOSE LAKE, BRUNDAGE RES. 78-0234, 78-0235, 78-2024, 78-4285

14. Remarks:

OTHER WATER RIGHTS: 78-0263, 78-0265, 78-4066, 78-2057, GRANITE TWIN LAKES

15. Basis of Claim: STATUTORY CLAIM

Water Right Number:

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: -3-

For Organizations:

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

Warren Osborn  
Signature of Authorized Agent  
Pres. Osborn Ranch Inc.  
Title and Organization  
6-3-88  
Date

State of Idaho )  
County of Adams ) SS.

Subscribed and sworn (or affirmed) before me this 3rd day  
of June 19 88  
Carter L. Lintable  
Notary Public

Seal

Residing at Eagle, Id  
My Commission Expires 3-21-94



P.D.'s = Points of Rediversion R 2E

P.D.'s = Points of Rediversion

1109112  
1109102

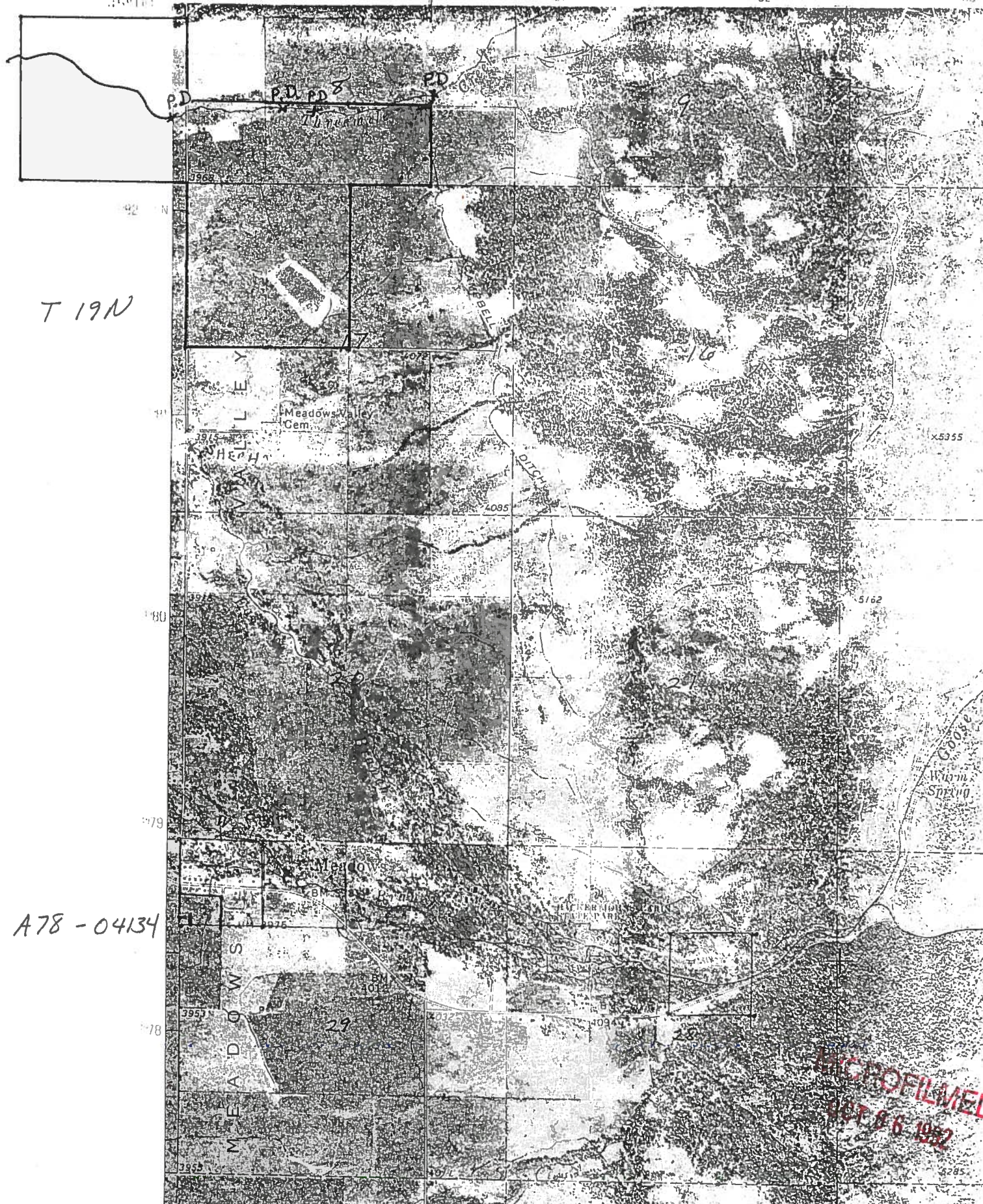
60111-1 E

61

62

11

152



T 19N

A78 - 04134

MICROFILMED  
 OCT 26 1982

R 2 E

NEW MEADOWS QUADRANGLE  
IDAHO  
7.5-MINUTE SERIES (ORTHOPHOTOQUAD)



Contacts Data Entry Form

Claim Number: 78-4134

| Owner Type    | Full Name        | Address                            | City           | State | Zip   | Phone         |
|---------------|------------------|------------------------------------|----------------|-------|-------|---------------|
| Current Owner | OSBORN RANCH INC | C/O WARREN<br>OSBORN<br>PO BOX 209 | NEW<br>MEADOWS | ID    | 83654 | (208)347-2387 |

Date of Field Exam: \_\_\_\_\_ Time: \_\_\_\_\_

Accompanied By: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Relationship to Claimant: \_\_\_\_\_

Directions to Property (if different from above) and/or update owner information:

Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

**Claim Number 78-4134**

**Claimed Basis: Statutory Claim**

### Water Right Basis: Statutory Claim

[illegible]

Date: \_\_\_\_\_

**Point of Diversion and Source Data Entry Form**

Claim Number 78-4134

## Claimed Point of Diversion and Source

T19N R02E S3 NESESE Within ADAMS County  
T19N R02E S7 NWNESE Rediversion Within ADAMS County  
T19N R02E S7 SESESE Rediversion Within ADAMS County  
T19N R02E S7 NESESE Rediversion Within ADAMS County  
T19N R02E S8 NESESW Rediversion Within ADAMS County  
T19N R02E S8 NWSESW Rediversion Within ADAMS County  
T19N R02E S8 SWNESE Rediversion Within ADAMS County  
T19N R02E S9 SENWNE Injection Within ADAMS County

☐ Use Claimed POD and Source as Recommended POD and Source

## Water Right Point of Diversion and Source

T19N R02E S3 NESE Within ADAMS County

## Recommended Point of Diversion and Source

## Source Information

Source

Tributary To

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

| Twp   | Rge   | Sec   | Gov Lot | QQQ of QQ of Q | County | Source |
|-------|-------|-------|---------|----------------|--------|--------|
| _____ | _____ | _____ | _____   | _____          | _____  | _____  |
| _____ | _____ | _____ | _____   | _____          | _____  | _____  |
| _____ | _____ | _____ | _____   | _____          | _____  | _____  |

Other rights from this POD? \_\_\_\_\_

Document how the POD and Source were verified:

|       |
|-------|
| _____ |
| _____ |
| _____ |
| _____ |

Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

## Place Of Use Data Entry Form

Claim Number 78-4134

## Claimed Place Of Use

|               |      |      |               |      |      |
|---------------|------|------|---------------|------|------|
| T19N R02E S07 | NESE | 38.0 | T19N R02E S07 | NWSE | 39.0 |
| T19N R02E S08 | SWSW | 35.0 | T19N R02E S08 | SESW | 37.0 |
| T19N R02E S08 | SWSE | 38.0 | T19N R02E S17 | NENW | 40.0 |
| T19N R02E S17 | NWNW | 39.0 | T19N R02E S17 | SWNW | 39.0 |
| T19N R02E S17 | SENW | 39.0 |               |      |      |

Total Acres 344

☐ Use Claimed POU as Recommended POU

## Water Right Place Of Use

|               |      |      |               |      |      |
|---------------|------|------|---------------|------|------|
| T19N R02E S08 | SWSW | 40.0 | T19N R02E S08 | SESW | 40.0 |
| T19N R02E S08 | SWSE | 40.0 |               |      |      |

Total Acres 120

## Recommended Place of Use

☐ See corrections to claimed POU above

| Twp | Rge | Sec | QQ | Q | County | Lot Num | Acres | Purpose of Use |
|-----|-----|-----|----|---|--------|---------|-------|----------------|
|     |     |     |    |   |        |         |       |                |
|     |     |     |    |   |        |         |       |                |
|     |     |     |    |   |        |         |       |                |
|     |     |     |    |   |        |         |       |                |

Total Acres \_\_\_\_\_

Document how the POU was verified:

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Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

Purpose of Use Data Entry Form

Claim Number 78-4134

Claimed Purpose of Use

|            |                 |                 |            |
|------------|-----------------|-----------------|------------|
| Water Use  | Number of Homes | Number of Stock | Acre Limit |
| IRRIGATION |                 |                 |            |

☐ Use Claimed Purpose of Use as Recommended Purpose of Use

Water Right Purpose of Use

|            |                 |                 |            |
|------------|-----------------|-----------------|------------|
| Water Use  | Number of Homes | Number of Stock | Acre Limit |
| IRRIGATION |                 |                 |            |

Recommended Purpose of Use

| Water Use | Number of Homes | Number of Stock | Acre Limit | Number of Other |
|-----------|-----------------|-----------------|------------|-----------------|
|           |                 |                 |            |                 |
|           |                 |                 |            |                 |
|           |                 |                 |            |                 |

Document how the Purpose of Use was verified:

Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_

**Period of Use and Quantity Data Entry Form**

Claim Number 78-4134

## Claimed Period of Use and Diversion Rate

| Water Use  | Start | End   | Rate | Volume |
|------------|-------|-------|------|--------|
| IRRIGATION | 4/15  | 10/15 | 1    |        |

Overall Diversion Rate 1

Overall Diversion Volume

☐ Use Claimed Period of Use and Quantity as Recommended Period of Use and Quantity

## Water Right Period of Use and Diversion Rate

| Water Use  | Start | End   | Rate | Volume |
|------------|-------|-------|------|--------|
| IRRIGATION | 4/15  | 10/15 | 1    |        |

Overall Diversion Rate 1

Overall Diversion Volume

## Recommended Period of Use and Diversion Rate

| Water Use | Start | End | Rate | Volume |
|-----------|-------|-----|------|--------|
|           |       |     |      |        |
|           |       |     |      |        |
|           |       |     |      |        |

Overall Diversion Rate \_\_\_\_\_

Overall Diversion Volume \_\_\_\_\_

Document how the Period of Use and/or Diversion Rate were verified:

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Reviewer: \_\_\_\_\_

Date: \_\_\_\_\_