

RECEIVED

JUL 13 2011

MAUK & BURGOYNE
Attorneys at Law

DEPARTMENT OF
WATER RESOURCES

Telephone: (208) 345-2654
Facsimile: (208) 345-3319
E-mail: maukburgoyne@maukburgoyne.com

515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743

July 12, 2011

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

Re: SRBA Case No. 39576

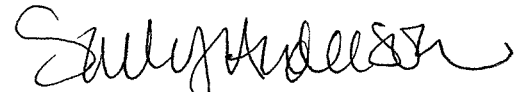
Dear Clerk:

Enclosed for filing please find an original Amended Notice of Claim for the following Subcase Nos: 47-10012, 47-17301 and 47-17302.

Thank you.

Sincerely,

MAUK & BURGOYNE



Sally Anderson,
Assistant to William L. Mauk

/ska

Enclosures

cc: Nicholas Spencer, w/encl. ✓
Michael Creamer, w/encl.
Ken & Jennifer Mulberry, w/encl.

COPY

RECEIVED

JUL 13 2011

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case 39576

) **Subcase Nos. 47-10012, 47-17301 & 47-17302**
)
) (Insert water right number)

) **STANDARD FORM 4**
)
)

) **MOTION TO FILE:**
)

) ☐ **LATE NOTICE OF CLAIM**
)

) ☒ **AMENDED NOTICE OF CLAIM**
_____)

INSTRUCTIONS

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

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

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

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

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

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Ken Mulberry, Jennifer Mulberry & Ken Mulberry Enterprises

My name is William L. Mauk, Mauk & Burgoyne

My address is 515 S. 6th St., P.O. Box 1743, Boise, ID 83701-1743

My phone number is 208/345-2654

MOTION TO FILE A LATE NOTICE OF CLAIM

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

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

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

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

I have attached:

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

Follow these instructions regarding the hearing on this motion.

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

This motion will be heard on _____
(Insert Date and Time)

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

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

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

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

Subcases No. 47-17301 and 47-17302 were split from former Claim NO.

47-10012. By assignment, the Mulberrys are now the owners of both

47-17301 and 47-17302 and these subcases should now be reconsolidated into
47-10012. The original Notice of Claim filed by or on behalf of the prior
owner of 47-10012, Clarence R. Heath, has either been misinterpreted by the
IDWR or IDWR failed to include in the claim all acreage irrigated by waste
water historically. The amended claim seeks water for 71 acres.

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

Affidavits of Clarence R. Heath filed March 15, 1995, and Jerry C. Heath dated March 17, 2011, describing the historical application of waste water on 80 acres for irrigation, 71 acres of which are now owned by the Mulberrys. Assignment of 47-17301 and 47-17302 dated January 30, 2011. Notice of Completed Administrative Proceeding re Subcase No. 47-1202, dated June 29, 2011. Illustrative maps of original Heath property, historical water use and current ownership.

I have attached:

- ☒ An amended Notice of Claim (available from IDWR). Filed June 22, 2011

- ☐ Payment of the following additional fees required by IDWR:

VERIFICATION (Must be completed)

State of Idaho

County of Ada

William L. Mauk, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

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

Signature of person filing motion

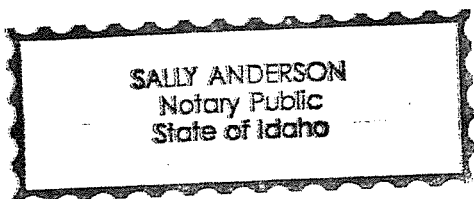
William L. Mauk

Attorney signing in representative capacity

Subscribed and sworn to before me on

July 12, 2011

(Insert Date)



Sally Anderson

Notary Public for Idaho

Residing at: Boise

My Commission expires: 4-24-12

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 1st day of July, 2011, I caused a true and correct copy of the foregoing to be forwarded, by the method indicated below, to the following person(s).

Original Filed:

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

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax

Copies Served:

Director of IDWR
c/o Nicholas B. Spencer
Deputy Attorney General
322 E. Front Street
Boise, ID 83720

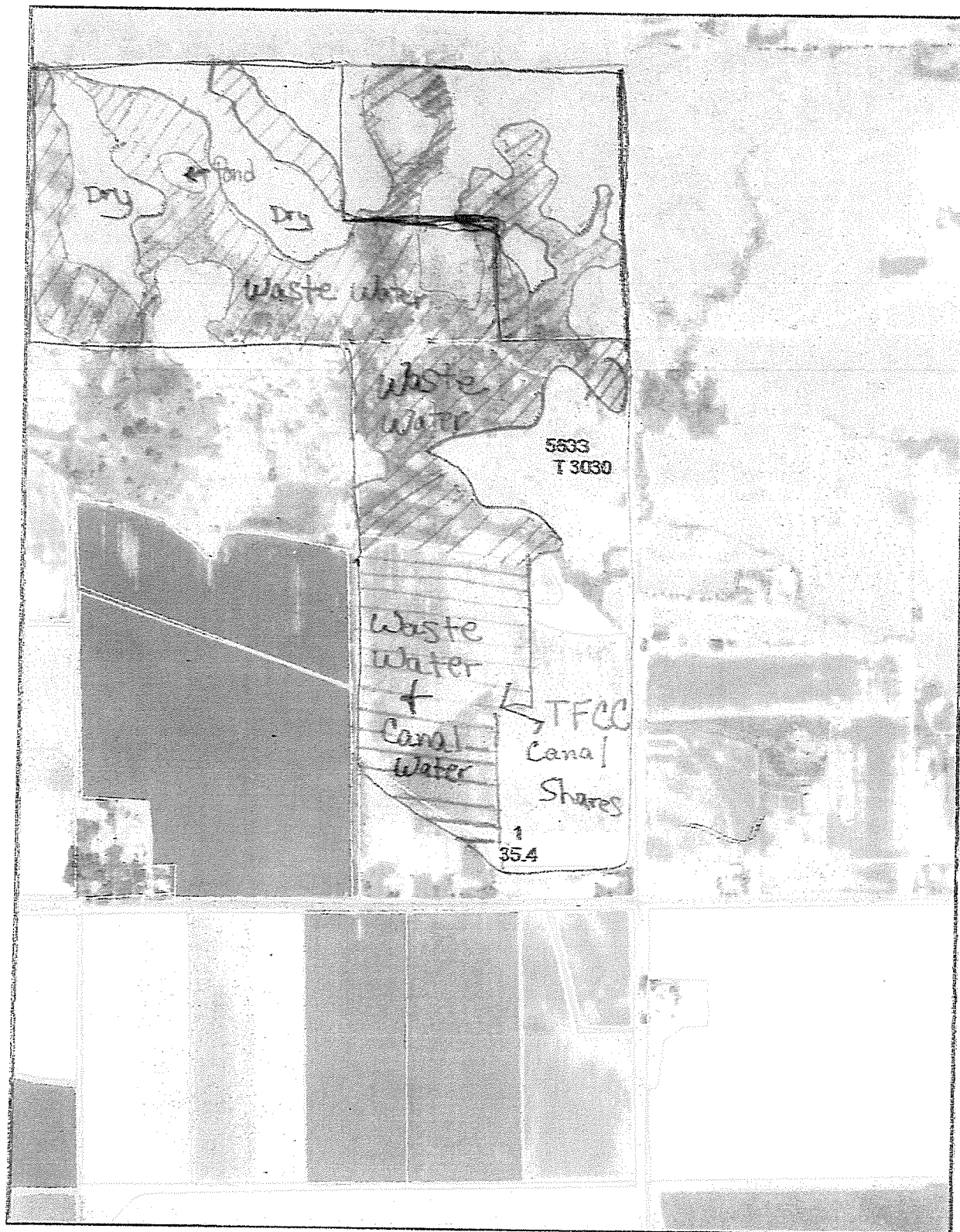
☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax

Kathi L Meyers
Robert & Kathi Meyers
Robert J Meyers
Represented by:
Michael C. Creamer
Givens Pursely LLP
601 W. Bannock St.
P.O. Box 2720
Boise, ID 83701-2720
F: (208) 388-1300

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax

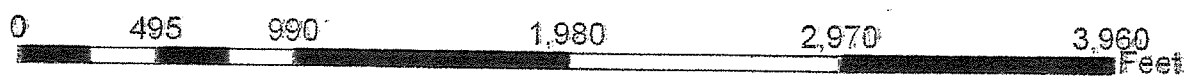


William L. Mauk



Date: June 05, 2006 2004 Photography

1 inch equals 660 feet



JUN 22 2011

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number A47-10012

Date Received: _____

Receipt No: _____

Received By: _____

AMENDED

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly.

1. Name of Claimant(s) Ken Mulberry & Jennifer Mulberry Phone (208) 308-8720Mailing Address P.O. Box 11 Kimberly ID ZIP 83341
Street or Box City State2. Date of Priority (Only one (1) per claim) 03/15/1980
Month Day Year (YYYY)3. Source of water supply (Check one) Ground Water () or Other (X) (a) waste water
which is tributary to (b) streams4. a. Location of Point of Diversion is: Township 10 S, Range 18 E, Section 6,
SE, 1/4 of SE, 1/4 Govt. Lot _____, BM., County of Twin Falls

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

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

Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., 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: _____Standpipe in ditch to 12" buried pipeline. Risers on
pipeline feed water to gravity irrigation of fields
and pasture

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Irrigation purposes from 04/15 to 09/30 amount 2.84 or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 2.84 (cfs) and/or (b) _____ (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) _____

9. 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.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	18E	6				X													10
10S	18E	6			X														18
10S	18E	6													X				23
10S	18E	6															X		20

Parcel (PIN) no(s). _____

Total number of acres irrigated 80.71

10. In which county (ies) are lands listed above as place of use located? Twin Falls

11. Do you own the property listed above as place of use? Yes (X) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

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

or None (X)

13. Remarks: Two of the fields have TFCC shares, but Canal water cannot reach the ground. The pasture has no other water rights. See Affidavit of Jerry C. Heath dated 3/17/2011.

Last Name Malberry

Identification No. _____

14. Basis of Claim (Check One) Beneficial Use (X) Posted Notice () License () Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices 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: 2

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Thomas L. Mulberry Date: 6-22-11

Janet Mulberry Date: 6-22-11

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

_____ of _____,
Title Organization

that I have signed the foregoing 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 _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, William L. Mank, will be acting as attorney at law of 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 _____ Date _____

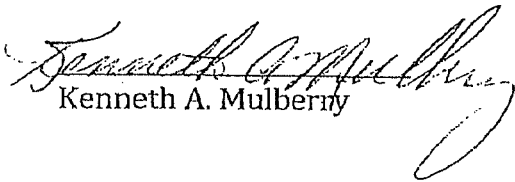
Address 515 So. 6th St., PO Box 1743
Boise, Idaho 83701

Last Name Mulberry Identification No. _____

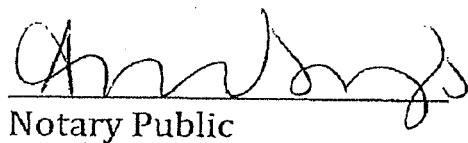
AFFIDAVIT

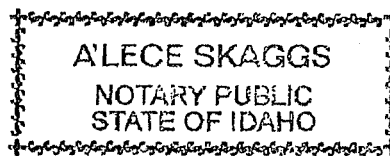
June 22, 2011

I, Kenneth A. Mulberry, affirm that Exhibit A is a USDA map with Jerry Heath's drawing as to how the water has historically been used. I affirm that this is how it is used at present.


Kenneth A. Mulberry

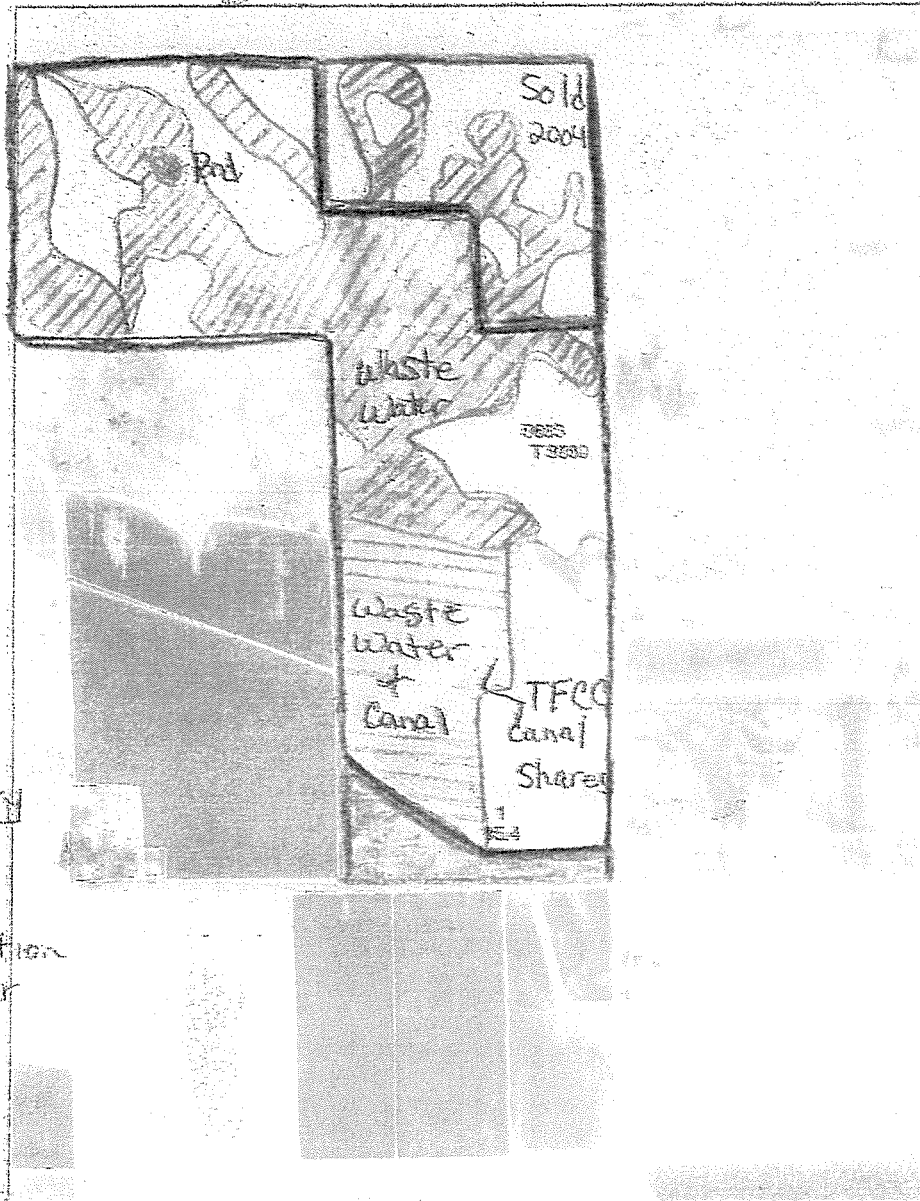
On this day, June 22, 2011, personally appeared before me Kenneth A. Mulberry, to me known to be the person described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her voluntary act and deed, for the uses and purposes therein mentioned.


Notary Public



My Commission Expires: July 25, 2011

James C. Heath



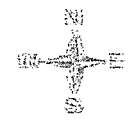
*
Owned
By Kera
malberry

*
Application
of water

*
Sold

*
USDA
owned
by C. Heath

Date: June 05, 2006 2004 Photography
1 inch equals 660 feet



IN THE MATTER OF:
ADJUDICATION CLAIM
A47-10012

State of Idaho
County of Twin Falls

RECEIVED AFFIDAVIT

MAR 15 1995

Department of Water Resources
Southern Region

Clarence R. Heath

being first duly sworn

deposes and says: I started farming in 1930. I have used this water ever since. I bought 120 Acres back of my place, put in a pipeline running through my place and through the farm and I watered 160 acres along the East side of Section 6, Township 10 South, Range 18 East B.M.. I put it into pasture and grazed the 60 head of milk cows and 35 head of young stock that I owned.

There is about one mile of open ditch to get to alot of the ground. The ditch takes a lot of water through sepage by the time you get to the Canyon Rim you lose alot of water. It takes more water on sagebrush ground than ordinary ground.

There is a lot of wast water coming off and on; but it comes in spurts and is not a constant flow. So we tried to spread it accross as much land as possible when it was available.

ASSIGNMENT
(Meyers to Mulberry)

FOR VALUE RECEIVED, Robert Meyers and Kathi Meyers, of 3921 North 3300 East, Twin Falls, Idaho 83301 individually and as husband and wife; (collectively, "Assignors") hereby assign unto Kenneth Mulberry and Jennifer Mulberry, individually and as husband and wife, of 4041 N. 3400 E., Kimberly, Idaho 83341 ("collectively Assignees"), all of Assignors' right, title, and interest in and to all the following rights, entitlements, claims, and interests:

All of Assignors' interests in the water right claims, recommendations, objections and/or responses now pending in the District Court for the Fifth Judicial District of Idaho, in and for the County of Twin Falls, civil case no. 39576 ("SRBA Court") listed on Exhibit A attached hereto.

This Assignment is supplemental to, and shall not abrogate or substitute for any provision contained in that quitclaim deed previously executed by Assignors as Grantor to Assignees as Grantees and recorded as Instrument No. 2010-005933 recorded March 25, 2010 in the records of Twin Falls County, Idaho nor shall this Assignment enlarge or reduce Assignors' and Assignees' respective rights and obligations set forth in the Settlement Agreement and Mutual Release previously executed by them on or about March 25, 2010 (herein "Agreement"). In the event of any conflict between this Assignment and that Agreement, the Agreement shall control.

IN WITNESS WHEREOF, Assignors have caused their name to be subscribed to this Assignment effective this 30th day of January, 2011.



ASSIGNORS

Robert Meyers

Robert Meyers

Kathi Meyers

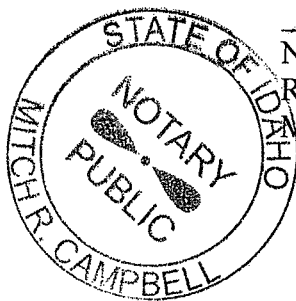
Kathi Meyers

STATE OF IDAHO)
) ss.

County of Two Falls)

On this 30th day of January 2011, before me, a notary public in and for the State of Idaho, personally appeared Robert Meyers and Kathi Meyers, husband and wife, each known or identified to me to be the person who executed the above Assignment, and acknowledged to me that each executed the same on his or her own behalf.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]
NOTARY PUBLIC FOR IDAHO

Residing at: Two Falls

My commission expires: 4-10-15

EXHIBIT A

The SRBA subcases in which Assignors assign their interest and/or position:

47-13607

47-17301

47-17302

JUN 30 2011

RECEIVED

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

Subcase No. 47-17302

Case No. 39576

NOTICE OF COMPLETED
ADMINISTRATIVE PROCEEDING

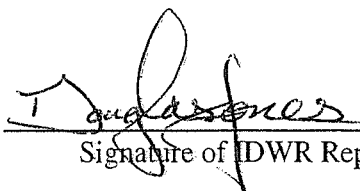
IDWR has completed the following Administrative proceeding: **SUBSTITUTION OF PARTY**

Does the change in "ownership" result in a splitting of the water right claimed? ☐ Yes ☒ No

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

Dated: 6/29/11


Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on 6-29, 2011, I delivered the original and copies of this form, including all attachments, to the following persons, postage prepaid if required and addressed as follows:

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. Copies to:

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

United States Dept Of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724

William Mauk
PO Box 1743
Boise ID 83701

Michael Creamer
Givens Pursley LLP
PO Box 2720
Boise ID 83701-2720



Signature of person or attorney mailing the form

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 47-17302

NAME AND ADDRESS: KEN MULBERRY
4041 N 3400 E
KIMBERLY ID 83341

JENNIFER MULBERRY
4041 N 3400 E
KIMBERLY ID 83341

SOURCE: WASTE WATER

TRIBUTARY: SINKS

QUANTITY: 0.260 CFS

PRIORITY DATE: 03/15/1930

POINT OF
DIVERSION:

T10S R18E S6 SESESE Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15 11/15

0.260 CFS

PLACE OF USE: IRRIGATION in TWIN FALLS County

T10S R18E S06

NESE

4.90

T10S R18E S06

SESE

9.10

14 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.

This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it, or to recapture it.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

This right is a split from former right 47-10012 .

IN THE MATTER OF:

ADJUDICATION CLAIM

A47-10012

State of Idaho

County of Twin Falls

I, Jerry C. Heath, being first duly sworn deposes and says: I am 67 years old and have lived on the farm in the SE of the SE of Section 6, Township 10 South, Range 18E B.M. most of my 67 years. Dad (Clarence R. Heath) started farming in 1930 and farmed this farm until 1986.

Dad added to the original farm 120 more acres located in Section 6, Township 10 South, Range 18 East, more particular described as the NE of the SE, the SE of the NE and the SW of the NE. Waste water was and still is used to water the additional 120. Ditches were made and the water was distributed by gravity irrigation on the ground described above. As the silt settled out of the waste water, deltas were created and a new ditch was extended over the deltas in the following years.

Some waste water supplements the original homestead (SESE) that also has 40 Twin Falls Canal Company Shares. The following is a close breakdown of the application of the water on A47-10012.

See Attached Map See A

Sec. 6 T10S, R18E B.M.

SE of the SE: 20 acres

NE of the SE: 23 acres

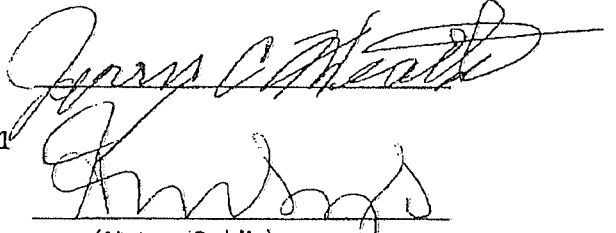
SE of the NE: 19 acres

SW of the NE: 18 acres

Subscribed and sworn to before me this 7th day of March 2011

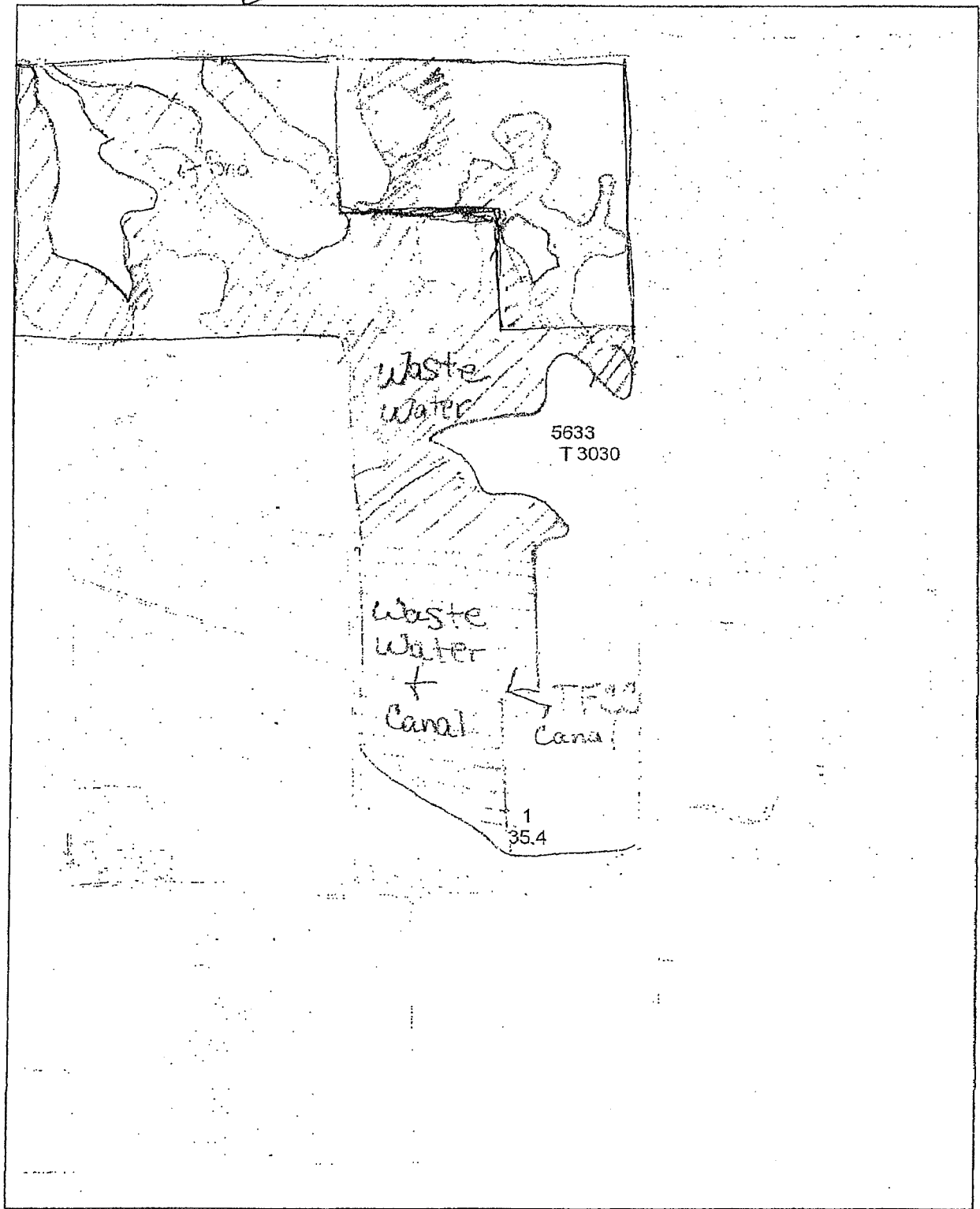
Residing at Twin Falls, ID 83301

My Commission expires July 27, 2011


(Notary Public)

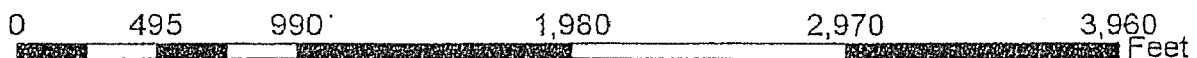
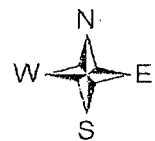
A'LECE SKAGGS
NOTARY PUBLIC
STATE OF IDAHO

James C. Head Exhibit A

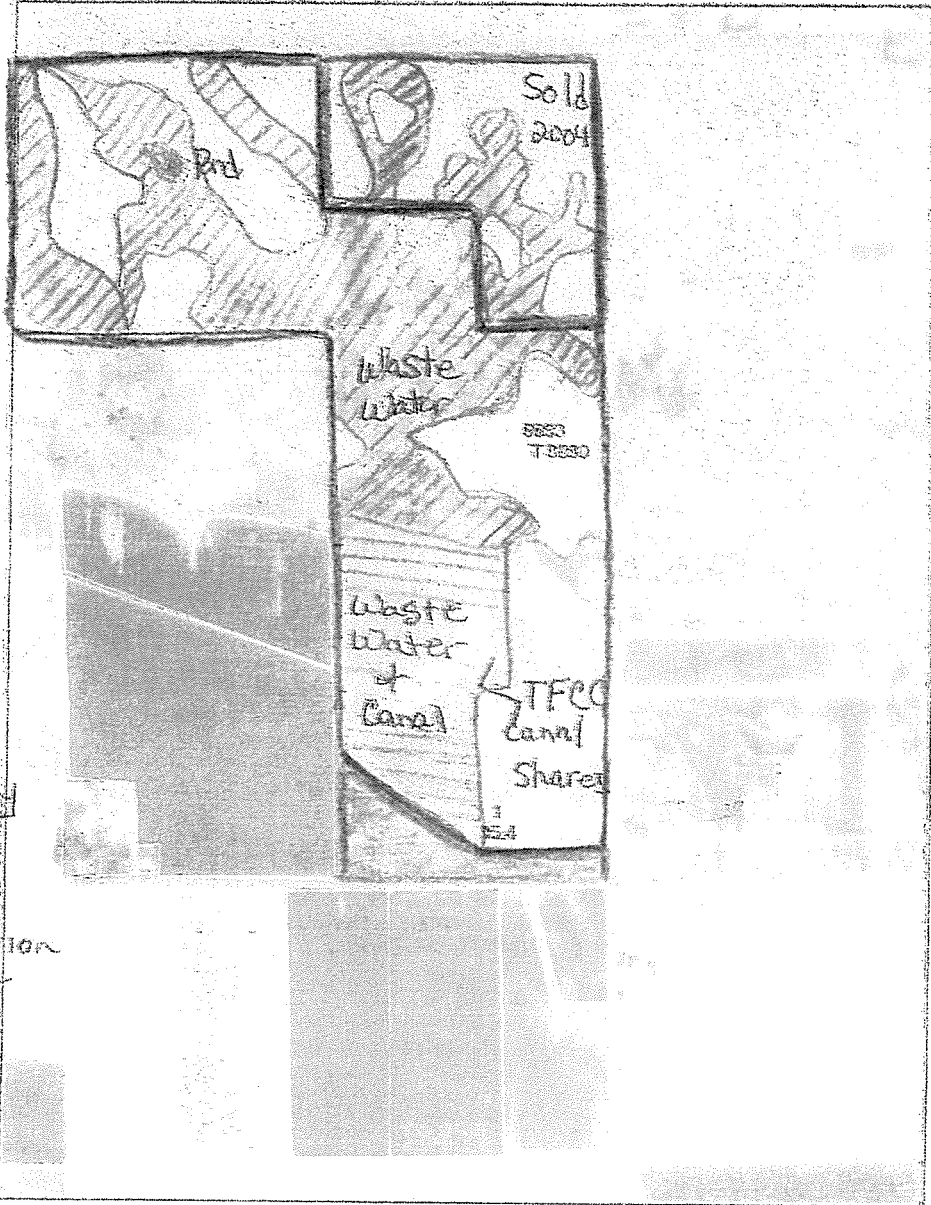


Date: June 05, 2006 2004 Photography

1 inch equals 660 feet



James C. Heath *June 05, 2006*



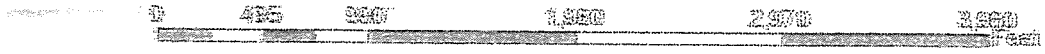
*
Owned
By Kern
Mulberry

*
Application
of water

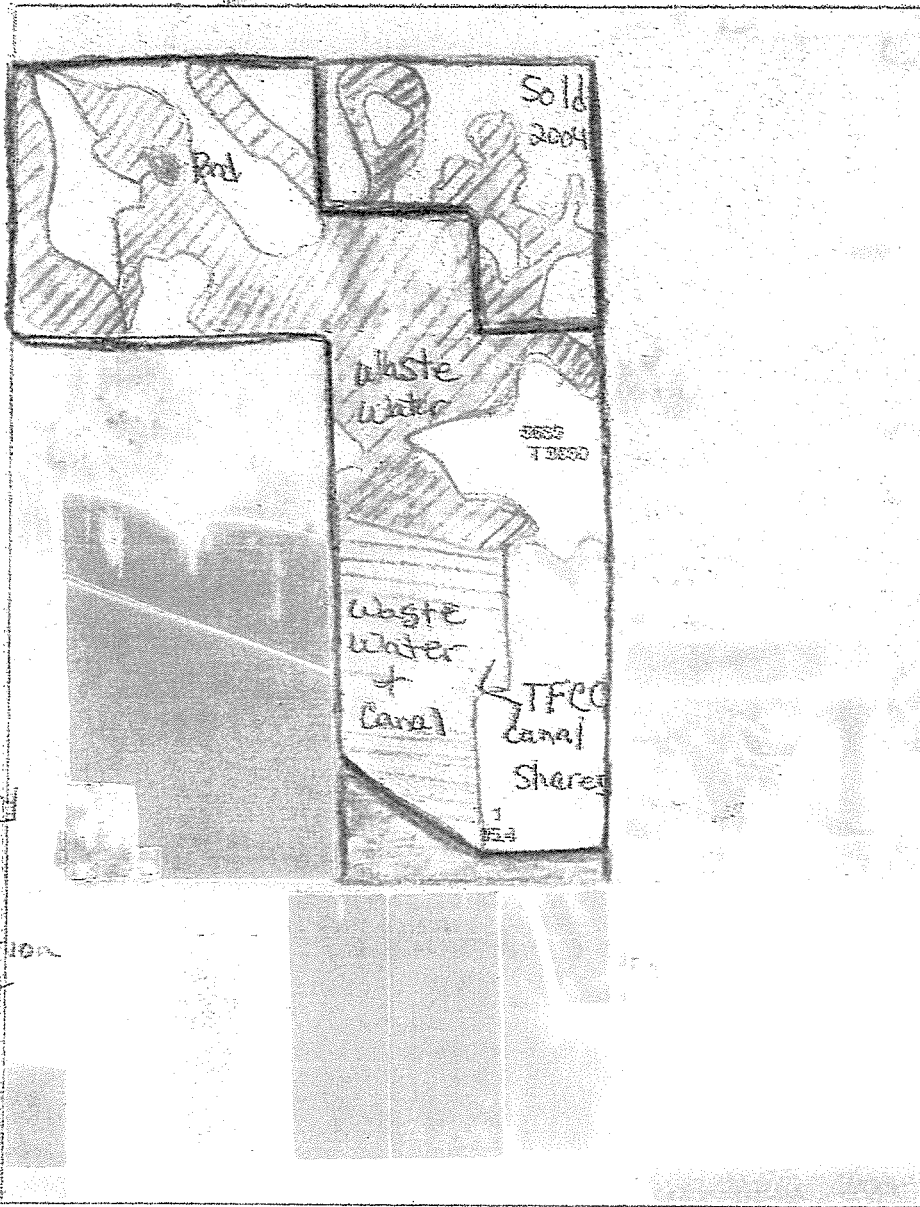
*
Sold

*
USDA
Owned
by C. Heath

Date: June 05, 2006 2004 Photography
1 inch equals 660 feet



Handwritten: Parcel C Photo



*
Owned
By Ken
Mulberry

*
Application
of water

*
Sold

*
USDA
Owned
by C. Heath

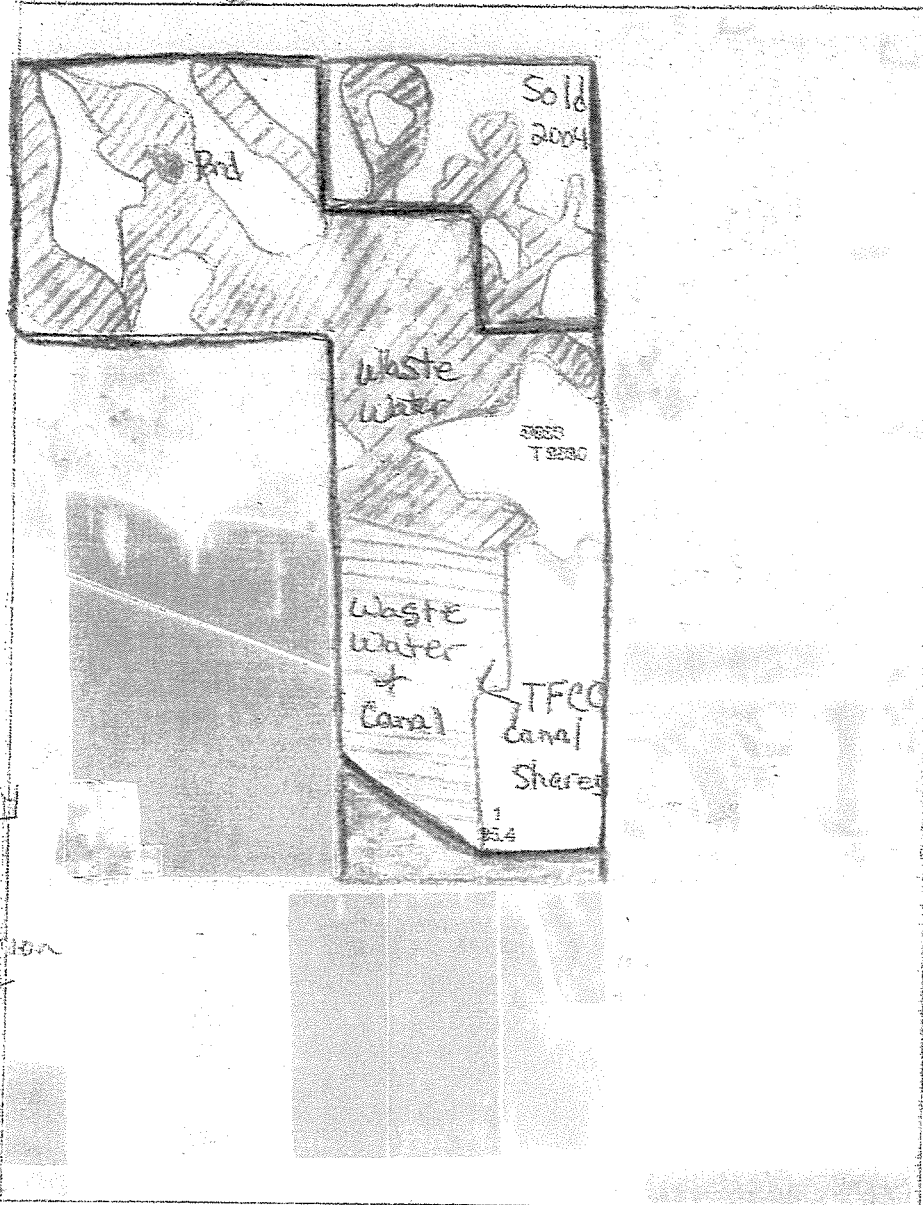
Date: June 05, 2006 2004 Photography

1 inch equals 660 feet



0 495 990 1485 2470 3465 Feet

James C. Heath



*
Owned
By Ken
Mulberry

*
Application
of water

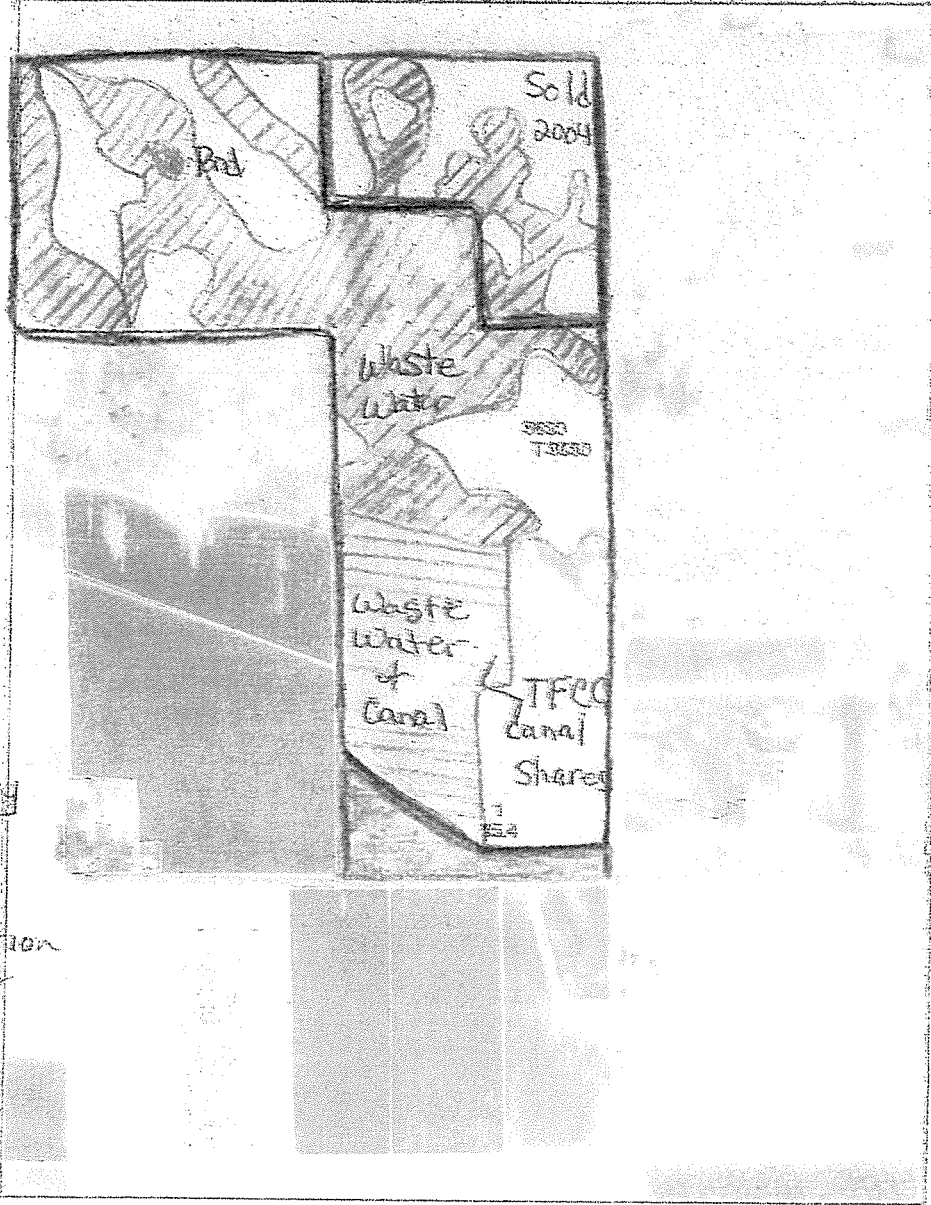
*
Sold

*
USDA
Owned
by C. Heath

Date: June 05, 2006 2004 Photography
1 inch equals 660 feet



Henry C Heath



*
Owned
By Ken
Malberry

*
Application
of water

*
Sold

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USDA
Owned
by C. Heath

Date: June 05, 2009 2004 Photography
1 inch equals 660 feet

