

**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. <u>61-12268</u>
	)	(Insert Water Right Number)
	)	
	)	STANDARD FORM 4
Case No. 39576	)	
	)	MOTION TO FILE:
	)	☒ LATE NOTICE OF CLAIM (AMENDED)
	)	☐ 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 State of Idaho, Department of Lands (hereinafter referred to as the "IDL")

My address is 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050

My phone number is: Work (208) 334-0200 Home Not Applicable

I am an attorney representing the IDL

My name is Tyson K. Nelson, Deputy Attorney General

My address is JRW Building, Second Floor, 700 West State Street, P.O. Box 44449, Boise, Idaho 83711-4449

My phone number is (208) 334-2400

MOTION TO FILE 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:

IDL manages the State endowment land identified in the Notice of Claim, attached hereto, for grazing and other uses. IDL's grazing lessees have used Frenchman Springs as a source of water for livestock grazing on the State land for many years. IDL's grazing lessees use Frenchman Springs for in-stream (non-diverted) stockwatering; water is not diverted from the springs to a trough or other containment area. IDL recently concluded that since it has leased the State land for grazing for many years, it would file a *de minimis* stockwater claim established by beneficial use to provide certainty for its continued use of Frenchman Springs for in-stream watering of livestock on the State land.

IDL prepared this Amended Late Notice of Claim pursuant to the direction of the SRBA Court at hearing on February 21, 2012. IDL has corrected the quantity and the instream flow beginning and ending points in the Amended Notice of Claim, attached hereto.

☐ 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 described 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.)

IDL's supporting documentation is included with the Amended Notice of Claim, attached hereto. The Amended Notice of Claim has five attachments: (1) response to section 4.b of the claim form, (2) map of the State land and springs, (3) evidence of priority, (4) photographs of the springs, and (5) grazing lease.

I have attached:

- ☒ A fully completed Notice of Claim (available from IDWR) is attached.
- ☒ A claim filing fee and a late claim fee for those claims other than domestic or stock water use for which a notice of claim was filed. To determine this amount, contact IDWR at (800) 451-4129. IDWR has advised that the claim filing fee for this notice of claim is \$75.00. IDL requests that IDWR initiate an SA-50 Interagency Billing Statement to bill IDL for the fees (see attached letter).

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 Tuesday, March 20, 2012, at 1:30 p.m.
at the SRBA courthouse, 253 Third Avenue, Twin Falls, Idaho.

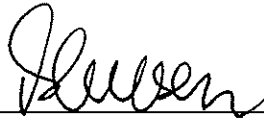
VERIFICATION (Must be completed)

State of Idaho

County of Ada

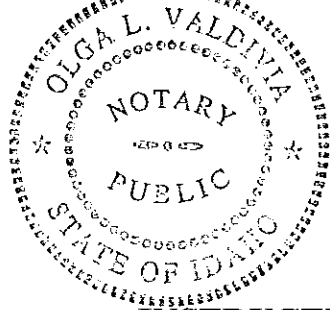
Tyson K. Nelson, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

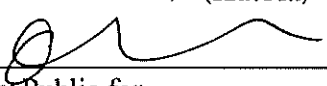
That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined I.C. §§42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the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



Attorney signing in representative capacity

Subscribed and sworn to before me on Feb. 22nd, 2012
(Insert Date)




Notary Public for _____
Residing at: Boise
My Commission expires: 2/8/2018

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I certify that on this 22nd day of February 2012, I caused to be served the original and/or copy of this form on the following persons by the indicated method:

1. Original to:

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (208) 736-2121
☐ Statehouse Mail

2. Copies to

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

- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: (303) 312-7379
☐ Statehouse Mail

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

- ☐ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____
☒ Statehouse Mail

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

Not Applicable

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

(Insert Names/address of parties)



Tyson K. Nelson
Deputy Attorney General

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 61-12268

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) State of Idaho, Department of Lands Phone (208) 334-0200

Mailing Address 300 N. 6th St., Ste. 103, P.O. Box 83720 Boise ID ZIP 83720-0050

Street or Box

City

State

2. Date of Priority (Only one (1) per claim) 08/20/1892
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Frenchman Springs

which is tributary to (b) Rattlesnake Creek

4. a. Location of Point of Diversion is: Township _____, Range _____, Section _____,
_____, 1/4 of _____, 1/4 Govt. Lot _____, BM., County of _____

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates E Spring 115:34:26.37W, 43:12:30.17N; W Spring 115:34:28.26W, 43:12:31.85N

b. If instream flow, beginning point of claimed instream flow is: The response to section 4.b is attached.

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. This claim is for de minimis in-stream (non-diverted) stockwater use.

Two springs flow into two nearly parallel natural channels in the SWNW of Section 36.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Stockwater purposes from 01-01 to 12-31 amount 0.02 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.02 (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.) Stockwater (de minimis): 150 head of cattle.

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	
2S	7E	36							S										

Parcel (PIN) no(s). _____

Total number of acres irrigated _____

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

11. Do you own the property listed above as place of use? Yes (✓) 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 (✓)

13. Remarks: _____

Attachment 2 is Homestead Certificate No. 915 issued to Charles P. Oliver for private land located in T 2S, R 7E, Section 35 (located adjacent to the State land in Section 36). The certificate was issued on August 20, 1892.

IDL claims a priority date of August 20, 1982, based on the certificate and the fact that Mr. Oliver, as the

claimant, would have been required to settle upon and improve the property in Section 35 in order to

obtain title to the land from the United States. Since Frenchman Springs, located in Section 36, flows onto the

land described in the certificate (Section 35), Mr. Oliver probably applied water from Frenchman Springs

to a beneficial use, such as watering stock from the spring.

Last Name Idaho Department of Lands

Identification No. 61-12268

14. Basis of Claim (Check One) Beneficial Use (☒) 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: 5

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) _____ Date: _____

_____ Date: _____

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

Area Manager for the Southwest Supervisory Area of State of Idaho, Department of Lands
Title Organization

that I have signed the foregoing document in the space below as

Area Manager for the Southwest Supervisory Area of State of Idaho, Department of Lands
Title Organization

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

Signature of Authorized Agent Steven T. Taylor Date 2/22/12

Title and Organization Area Manager, State of Idaho, Department of Lands

16. Notice of Appearance:

Notice is hereby given that I, Tyson K. Nelson, Deputy Attorney General, 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 Tyson K. Nelson Date 2/22/2012

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

Last Name Idaho Department of Lands Identification No. 61-12268

Attachment 1

Response to Section 4.b

Amended Notice of Claim

Section 4.b. Beginning and ending points of claimed instream flow:

East Spring:

Beginning point: T 2S, R 7E, Sec. 36, SWNW, B.M., Elmore County

Ending point: T 2S, R 7E, Sec. 36, SWNW, B.M., Elmore County

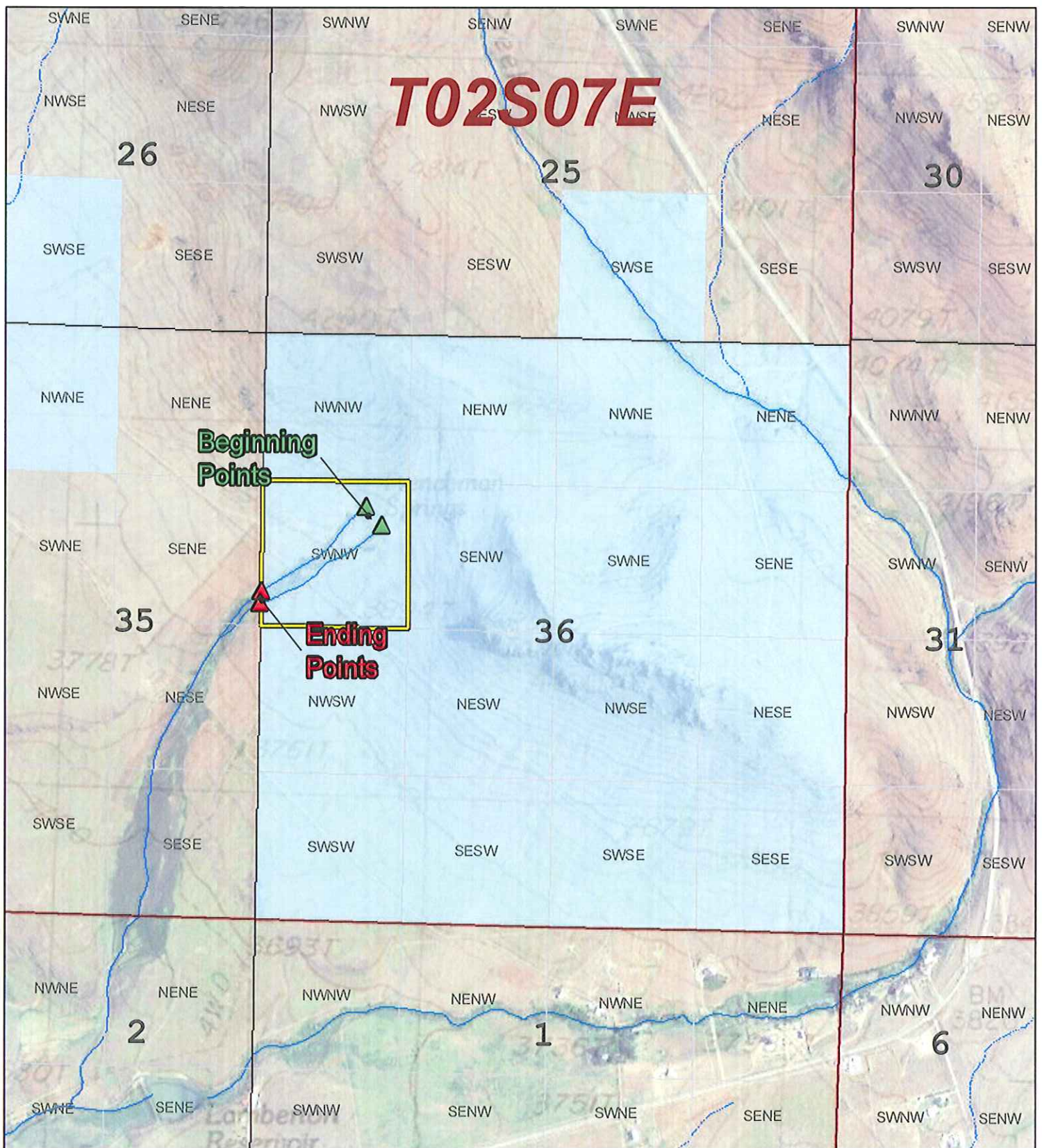
West Spring:

Beginning point: T 2S, R 7E, Sec. 36, SWNW, B.M., Elmore County

Ending point: T 2S, R 7E, Sec. 36, SWNW, B.M., Elmore County

Attachment 2

Map

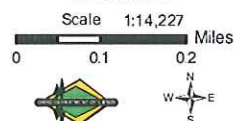


Legend

- Beginning Points
- Ending Points
- POU
- Township
- Sections
- Quarter Quarter
- IDL Endowment Ownership

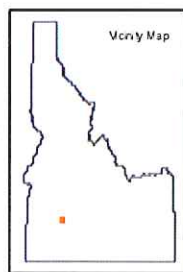
Place of Use and Diversion T02S07E Section 36 SWNW Amended Claim Map 61-12268

02/21/2012



Map Notes

Projection: IDTM 83
 Map Notes and Data Sources:
 DL Ownership current as of map date
 Priority date 8/20/1892
 Place of Use Section 36
 Graze Lease: G600059
 TOPO 24K- Inside Idaho map service as of map date
 NAIP 2011
 Disclaimer:
 This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.



Attachment 3

Evidence of Priority



The United States of America,

To all to whom these Presents shall come, Greeting:

Homestead Certificate No. 915

Application 2887

Whereas, There has been deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Boise City, Idaho, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "The course shall be made to natural Settlers on the Public Domain," and the acts supplemental thereto, the claim of Charles F. Oliver

has been established and duly monumented, in conformity to law, for the South East quarter of the North East quarter, the East half of the South East quarter and the South West quarter of the South East quarter of Section thirty-five in Township four South of Range seven East of Boise Meridian in Idaho containing one hundred and sixty acres

according to the Official Plat of the Survey of said Land, returned to the General Land Office by the Survey General.

Now know ye that there is, therefore, granted by the United States unto the said Charles F. Oliver the tract of Land above described: To have and to hold the said tract of Land with the appurtenances thereto unto the said Charles F. Oliver heirs and assigns forever; subject to any valid and lawful water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and canals and in connection with such water rights as may be conveyed and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a mine or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law, and there is reserved from the lands hereby granted, a right of way forever for all roads constructed by the authority of the United States.

In testimony whereof, J. Harrison Harrison, Secretary of the UNITED STATES OF AMERICA, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the 10th day of August, 1887, in the year of our Lord one thousand eight hundred and eighty two, and of the Independence of the United States three hundred and

By the President, Benjamin Harrison

By E. McFarland, Secy.

W. P. Roberts

Recorder of the General Land Office

Attachment 4

Photographs

Frenchman Springs Photographs

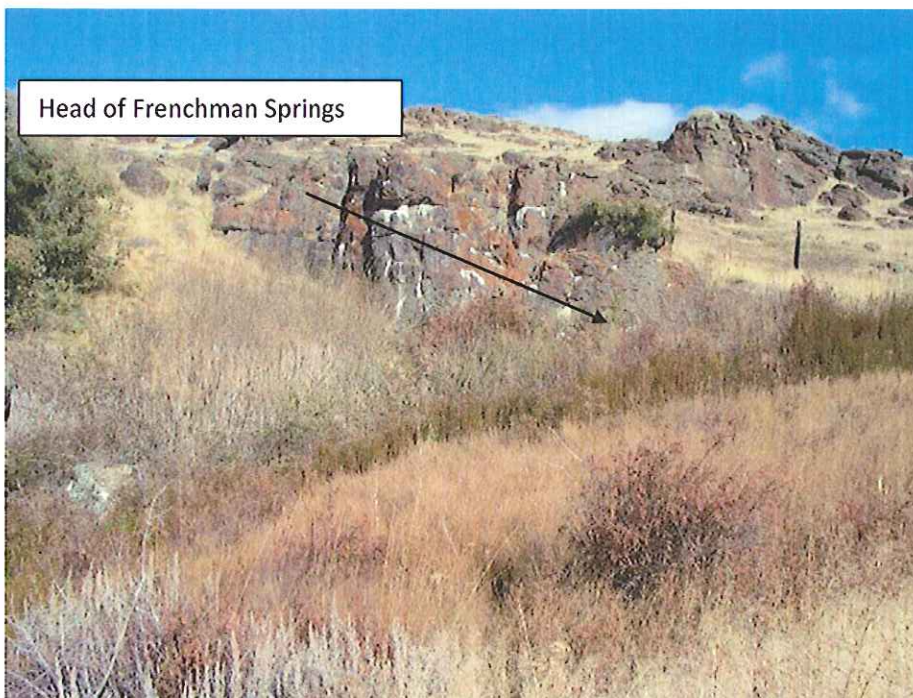
Date Taken: November 7, 2011

By: Dean Johnson, Lands Resource Supervisor, Idaho Department of Lands

Photograph 1



Photograph 2



Frenchman Springs Photographs

Date Taken: November 7, 2011

By: Dean Johnson, Lands Resource Supervisor, Idaho Department of Lands

Photograph 3



Photograph 4

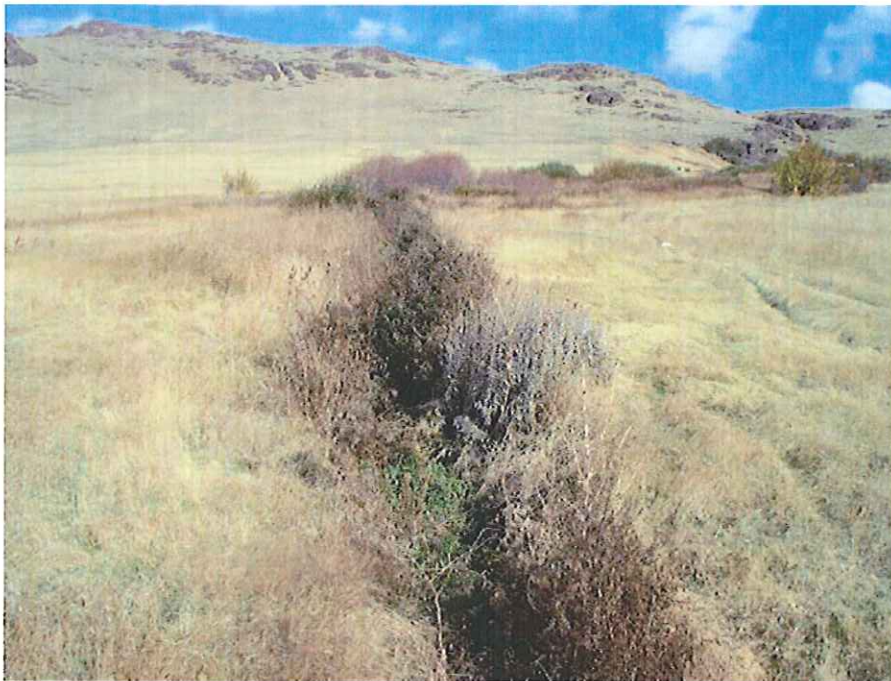


Frenchman Springs Photographs

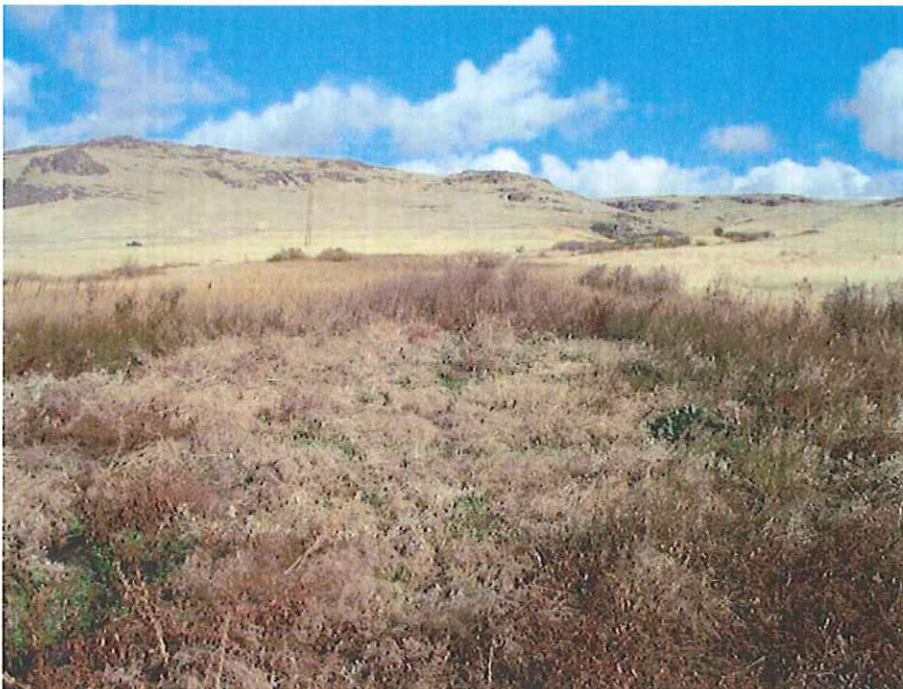
Date Taken: November 7, 2011

By: Dean Johnson, Lands Resource Supervisor, Idaho Department of Lands

Photograph 5



Photograph 6



Attachment 5

Grazing Lease



GRAZING LEASE
No. G600059
STEPHEN H. PERCY

Article 1. Lease Summary

- 1.1 Lessor Name and Address: STATE OF IDAHO
By and through the State Board of Land Commissioners
300 North 6th Street, Suite 103
PO Box 83720
Boise ID 83720-0050
- 1.2 Lessee Name and Address: Stephen H. Percy
11418 Highway 20
Mountain Home, ID 83647
- 1.3 Lease Term: Commencement: January 1, 2011
Expiration: December 31, 2030
- 1.4 Rent: The annual rent payment is due on May 1st of each year.
- GRAZING:**
Number of AUMs by Class for Billing
Cattle 168
- Rent terms are more particularly described in Article 3, Rental Rate and Modification of Rent, of this Lease.
- 1.5 Land Legal Description: **See Attachment B**
The Lessor, in consideration of the rental paid and the covenants, conditions and restrictions hereinafter set forth, in the Lease (including all Attachments), does hereby lease and demise unto the Lessee the lands described in Attachment B for the uses specified herein.
- 1.6 Use of Premises: Grazing
- 1.7 Bond: N/A
- 1.8 Liability Insurance: N/A
- 1.9 Exhibit Index: ATTACHMENT A - SPECIAL PROVISIONS
ATTACHMENT B - LEGAL DESCRIPTION
ATTACHMENT C - SITE MAP(S)

This lease agreement (Lease) is made and entered into by and between the State of Idaho, acting by and through the State Board of Land Commissioners (Lessor) and Stephen H. Percy (Lessee).

LESSOR SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

COUNTERSIGNED: STATE BOARD OF LAND COMMISSIONERS OF THE STATE OF IDAHO

Ben Ysursa
Secretary of the State of Idaho

George B. Bacon
Director Department of Lands



C. L. "Butch" Otter
President of the State Board of Land Commissioners
and Governor of the State of Idaho

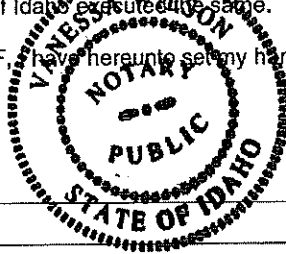
STATE OF IDAHO

(SEAL)

COUNTY OF ADA

On this 17th day of December, in the year 2010, before me, a Notary Public in and for said State, personally appeared C. L. "Butch" Otter, known to me to be the president of the State Board of Land Commissioners of the State of Idaho and the Governor of the state of Idaho; and Ben Ysursa, known to me to be the Secretary of the State of Idaho and George B. Bacon, known to me to be the Director, that executed the within instrument, and acknowledged to me that the State Board of Land Commissioners of the State of Idaho and the State of Idaho executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.



Notary Public for Idaho
Commission expires:

Vanessa Wilson
8-11-2014

LESSEE SIGNATURES

x Stephen H. Percy
(Lessee/Company)

x _____
(Lessee/Company)

x Helena S. Percy
(Lessee/Company)

x _____
(Lessee/Company)

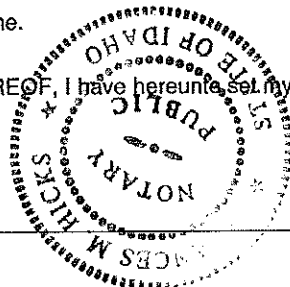
STATE OF Idaho

(SEAL)

COUNTY OF Elmore

On this 6th day of December, in the year 2010, before me, a Notary Public in and for said State, personally appeared Stephen H. Percy and Helena S. Percy known to me to be the lessee or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.



Notary Public:
Commission expires:

Frances M. Hunt
2-10-11

**STATE OF IDAHO
STATE LAND LEASE**

Article 2. Use of Land

- 2.1 **Grazing Use.** The Leased Premises shall be used by Lessee for the purpose of grazing domestic livestock, as specified in this Lease, including all Attachments. No other uses shall be made of the Leased Premises by Lessee without prior written approval of Lessor. At all times Lessee shall practice good husbandry on the Leased Premises.
- 2.2 **Farming Use.** In addition to or in lieu of the use authorized in Article 2.1 of this Lease, the Lessee is authorized to use the number of acres identified on the signature page of this lease for farming purposes. The location and management of said acres shall be designated in the Special Provisions (Attachment A). Said use shall be in accordance with this Lease and all Attachments. No additional use of the Leased Premises for farming purposes shall occur prior to written approval by Lessor. Lessee shall pay to Lessor an additional rental for the identified acres of cropland whether cultivated or not in an amount determined by Lessor pursuant to Lessor's current cropland rental policy, along with the annual base rental payment as set forth in Article 1.4 herein.

Article 3. Rental Rate and Modification of Rent

- 3.1 **Annual Rent Payment.** Lessee agrees to pay to Lessor, in lawful money of the United States, each year's rent for every AUM covered by this Lease, in an amount to be calculated pursuant to Lessor's most current formulas for each applicable use at the time the rental is calculated or recalculated. The rent shall be payable on or before the annual rental payment due date of each successive year. Lessee shall pay the annual rental to Lessor without abatement, offset, or deduction of any kind, unless otherwise authorized by the Lessor through a completed Lease Adjustment form provided by the Lessor. Lessor reserves the right to increase or decrease the annual rent. Lessee will be notified one hundred eighty (180) calendar days in advance of the due date of any increase in rental.
- 3.2 **Late Payment Charge.** If annual rental is not paid in full by the date it is due, Lessor may terminate the Lease upon thirty (30) calendar days written notice to Lessee. In addition, in the event any rent due hereunder is not paid in full when due, Lessee shall pay, in addition to such rent, a late charge in the first calendar month of such delinquency equal to the greater of Twenty-five Dollars (\$25.00) or one percent (1%) of the unpaid rent. For each subsequent calendar month of such delinquency, Lessee shall pay an additional late charge equal to one percent (1%) of the then unpaid rent. The parties acknowledge and agree that the late charge described herein is a reasonable attempt to estimate and to compensate Lessor for higher administration costs associated with administering such late payments and is not intended as a penalty. By assessing this late charge, Lessor does not waive any right to declare a breach and to pursue any right or remedy available to Lessor by reason of such breach, after expiration of any applicable notice or cure period.
- 3.3 **Lien.** The amount of the rent, late charge, and interest shall constitute a lien in favor of the State of Idaho against all of Lessee's improvements and other property on the Leased Premises, including, but not limited to, crops and livestock.

Article 4. Livestock Carrying Capacity

- 4.1 The grazing period, AUM's, and the number of stock shall be determined by Lessor and may be adjusted from time to time after giving Lessee thirty (30) calendar days notice of any such modifications. Lessee shall furnish such information as may be required to assist Lessor in determining the grazing period and number of stock to be grazed.

Article 5. Lease Terms and Special Provisions

- 5.1 **Lease Terms and Special Provisions.** Prior to issuance of this Lease, Lessee and Lessor must agree to written Lease Terms and Special Provisions. The content of the Lease Terms and Special Provisions shall address all activities that may take place under this Lease and include, but not be limited to, consideration of the kind and number of livestock, the season of use, the movement of livestock, the construction of improvements, the vegetation, noxious weed control and other factors identified by Lessor as necessary for inclusion in the Lease Terms and Special Provisions based on the specific characteristics of the Leased Premises and/or of Lessee's

use of the premises. If the Leased Premises is used in conjunction with federal lands, the management provisions prepared for the federal land may be deemed by Lessor, at its discretion, to satisfy the requirements of this article.

- 5.2 **Modification of Lease Terms and Special Provisions.** Lessor may review and modify any Lease Terms or Special Provisions upon changes in conditions, laws, or regulations, provided that Lessor shall give Lessee thirty (30) calendar days notice of any such modifications prior to the effective date thereof. Prior to Lessee instituting any changes, Lessee must submit, in writing, the proposed changes to Lessor for approval. No changes shall occur prior to Lessor's written approval of the amended Lease Terms or Special Provisions. Modifications mutually agreeable to both Lessor and Lessee may be made at any time.
- 5.3 **Compliance Required.** Lessee shall abide by all Lease Terms and Special Provisions. If Lessee fails to abide by all Lease Terms and Special Provisions, Lessee will be deemed in breach of this Lease and the Lease will be subject to cancellation in accordance with Article 19 of this Lease.
- 5.4 **Reimbursement for Non-Standard Administrative Costs.** The Lessee shall reimburse the Lessor for administrative costs incurred to address issues of compliance. Lessor's request for payment to Lessee will include a detailed description of the work completed and actual expense incurred.
- 5.5 **Records to be Retained.** Lessee must keep records showing the numbers and class of livestock on the Leased Premises and the dates put on and removed from the Leased Premises, as well as records relating to the construction of improvements. Lessor may require Lessee to produce these records.
- 5.6 **See Attachment A of this Lease for the Special Provisions in effect as of the date of execution of this Lease.**

Article 6. Subleasing or Assignment

- 6.1 **Written Approval Required.** Lessee shall not sublease or authorize another person to use any part of Lessee's interest under this Lease, or assign this Lease, without the prior written consent of Lessor to be evidenced by Lessor's execution of consent forms provided by Lessor for that purpose. Any request for approval of a sublease or assignment must be in writing, complying with the statutes or rules governing subleasing, and accompanied by a copy of the proposed sublease agreement and the appropriate processing fee. Lessor may withhold consent for any reason. Any attempt by Lessee to sublease Lessee's interest in the Leased Premises or any part of the Leased Premises or to assign this Lease, shall be void unless Lessor has given such prior written consent. No request for Lessor's approval of any assignment or sublease will be considered unless all rent due has been paid in full, and Lessee is in good standing under the terms of the Lease. No sublease will act as a release of Lessee's obligations hereunder unless Lessor executes a separate written release of Lessee. Lessor has no obligation to so release Lessee, and Lessor can withhold such release at Lessor's sole discretion. Any sublease or assignment will be subject to, but not limited to, to the existing Lease Terms and Special Provisions. The sublease cannot go beyond the Lease expiration date.
- 6.2 **Additional Rental Due.** In the event the Leased Premises is subleased in accordance with Article 6.1 for an amount greater than the base rental, Lessee shall in addition to Lessee's annual base rental pay to Lessor an amount equal to one-half (1/2) the difference between Lessee's base rental rate herein established, and the rental rate paid by Sublessee.
- 6.3 **Improvements.** Upon approved sublease or assignment, ownership of any existing Lessee-owned improvements under this Lease must be separately negotiated between Lessee and such Sublessee or Assignee.
- 6.4 **Copies to be Filed.** Copies of all assignments, subleases, pasturage or any other agreement of any kind or nature involving the use of the Leased Premises by another person shall be timely filed with Lessor.

Article 7. Leasehold Mortgage

- 7.1 **Lessee shall not mortgage, pledge or otherwise dispose of Lessee's interest in the Lease, or any portion thereof, without prior written consent of Lessor. Lessee shall use mortgage or deed of trust forms provided by Lessor, and shall submit completed forms and appropriate fee to Lessor for review and approval. The term of a mortgage agreement shall not exceed the Lease term. Lessor may accept or reject a leasehold mortgage at its discretion.**

Article 8. Environmental, Safety and Sanitary Requirements

- 8.1 No Hazardous Materials. Lessee shall neither commit nor permit the use, placement, transport or disposal of any hazardous waste, including, but not limited to, petroleum products, such as oil, gasoline, or any other substance that is or is suspected to be a hazardous substance or material on the Leased Premises except the customary use associated with weed and pest control, machinery, equipment and vehicles. Lessee shall be responsible, and shall pay all costs for the removal or other appropriate remedial action regarding any hazardous waste, substances, or materials which Lessee may have caused to be introduced on the land. Any such remediation or removal or storage must be conducted in accordance with applicable federal, state, or local law, regulation, rule or ordinance and Lessee shall immediately, upon the introduction of any hazardous waste, substances or materials onto the Leased Premises, contact the Idaho Department of Environmental Quality (DEQ) and enter into a consent order for remediation with DEQ, provided however, Lessee shall not forestall commencing any necessary remediation while negotiating the terms of any consent order with DEQ, unless Lessee is so authorized in writing by Lessor. In event of introduction of any hazardous waste, substances or materials, Lessor may also require Lessee to enter into consent orders or other agreements with any other relevant agency. Lessee shall indemnify, defend and hold Lessor harmless from all costs, expenses, damages or fines relating to pollution and hazardous materials including, without limiting the generality of the foregoing, attorney fees and costs of defense or of enforcement of Lessor's rights hereunder. The amount of any costs incurred by Lessor due to Lessee's violation of this provision shall constitute a lien in favor of the State of Idaho against all of the Lessee's improvements and other property on the Leased Premises including, but not limited to, crops and livestock.
- 8.2 Fire and Safety Regulations. Lessee shall comply with all applicable federal, state and local laws, rules, regulations and ordinances for fire protection and prevention. Lessee agrees to keep the land free from fire hazards as determined by Lessor. Lessee is prohibited from burning garbage or household trash and any burning on the land, including the burning of wood, weeds or other debris, but excepting campfires necessary for the use under this Lease, requires the prior written permission of Lessor. Any burning must comply with applicable federal, state or local law, regulation, rule or ordinance.
- 8.3 Sanitary Requirements. Concerning activities authorized under this Lease, Lessee shall at all times keep the land in a clean and sanitary condition, free of trash, garbage and litter so the land is maintained in the same or better condition as when this Lease was issued. Lessee shall not dispose of sewage except in conformity with applicable federal, state, and local law, rules and regulations pertinent to Lessee's use and shall dispose of sewage on the Leased Premises only if specifically authorized by Lessor. The Lessee shall not store trash on the Leased Premises nor transport trash, garbage, litter or debris onto the Leased Premises. Lessee shall dispose of all trash, garbage and carcasses in conformity with all legal requirements. Lessee is responsible for all costs associated with sewage, garbage and litter disposal.

Article 9. No Warranty of Suitability - Quiet Enjoyment - Public Use

- 9.1 No Warranty. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the land or concerning the suitability of the land for the uses intended by Lessee. Lessee acknowledges that it has accepted the land in an AS IS CONDITION, accepting any and all known or unknown faults therein.
- 9.2 Quiet Enjoyment. Lessor agrees that Lessee, upon payment of the rent and performing the terms of this Lease, may quietly have, hold and enjoy the land, for the purposes and uses allowed hereunder, during the term hereof. Lessee acknowledges that the Lease is non-exclusive, and Lessor retains the right to use of the land, or to grant rights to others for use of the land, to the extent any such use does not materially interfere with Lessee's purpose and uses allowed hereunder, unless otherwise provided for in this Lease.
- 9.3 Public Use. Lessee must allow the general public the right to use the Leased Premises for any lawful use available to the public for lands owned by the State of Idaho. However, nothing in this Lease authorizes or purports to authorize trespass on private lands to reach state-owned lands. Public use of State lands shall not be restricted without prior written approval of Lessor. This Lease is not an exclusive control lease as described under Idaho Code § 36-1603(b).

Article 10. Water Right and Water Use

- 10.1 Pre-Existing Water Rights. The Lessor may have authorized the use of the Leased Premises in the past for grazing purposes. In addition, the Lessor and its authorized agents may have made improvements to springs and other water sources in the past to aid in the grazing use of the Leased Premises. Such use may have created a beneficial use water right in accordance with state law. Since the filing of a notice of claim for such beneficial use of water was not mandatory for *de minimis* stockwatering purposes in certain water right adjudications, most of these beneficial use water rights are not of record with any other agency of the State of Idaho. The grazing of livestock on the Leased Premises and the use of any and all water sources on the Leased Premises by Lessee's livestock shall be by and for the maintenance of any existing water rights that the Lessor may possess on the Leased Premises. Lessee shall be entitled to use the water on the Leased Premises, but only for the use allowed in this Lease. Such use of any water rights by Lessee shall be in conformance with Idaho water law.
- 10.2 Future Water Rights and Water Use Generally. The establishment of any new water rights during the term of this Lease shall be by and for Lessor and no claim thereto shall be made by Lessee. Such water rights shall attach to and become appurtenant to the Leased Premises, and the Lessor shall be the owner thereof. The use of any water rights by the Lessee shall be in conformance with Idaho water law. Lessee must receive the prior written consent of Lessor or its authorized agent, and the prior written consent of any department or agency of the State of Idaho having jurisdiction to regulate water rights or water use in and for the State of Idaho for any of the following:
- A. To drill and use a water well,
 - B. To develop and use any source of water,
 - C. To cause any water to be conveyed off the Leased Premises,
 - D. To bring water onto the Leased Premises.
- 10.3 Water Systems. If water is supplied to the land by a water system operated by the State of Idaho, the use of such system and the supply of water provided thereby may be curtailed or terminated upon thirty (30) calendar days written notice of Lessee from Lessor or its authorized agent. Neither Lessor nor its agents and employees nor any entity of the State of Idaho shall be liable in any manner for damage or inconvenience to the Lessee by reason of failure or, damage to, or termination or curtailment of the operation of any water system or source supplying water to the land.
- 10.4 No Right of Access to Water Rights Upon Expiration or Termination of Lease. Upon Expiration or Termination of this Lease, the Lessee shall have no right to access any point of diversion or any place of use of any water right on the Leased Premises without the prior written consent of the Lessor.

Article 11. Noxious Weeds

- 11.1 The Lessee shall cooperate with Lessor or any other agency authorized to undertake programs for control or eradication of noxious weeds. Lessee shall take measures to control noxious weeds on the Leased Premises in accordance with Title 22, Chapter 24, Idaho Code, except those resulting from activities beyond the Lessee's control. Costs for control of noxious weeds on the Leased Premises shall be the responsibility of the lessee, unless otherwise provided for in the Special Provisions included in Attachment A.
- 11.2 The Lessee shall ensure that prior to moving onto the Leased Premises that all equipment is free of noxious weeds and their seeds as defined by the Idaho Department of Agriculture and local Coordinated Weed Management Area. Cleaning of contaminated equipment and vehicles shall not take place on any state endowment land.
- 11.3 All straw and forage used for livestock feed, with the exception of that grown on the Leased Premises or on Lessee's immediately adjacent land, must be certified in accordance with the Idaho Department of Agriculture Forage and Straw Certification Rules (IDAPA 02.06.31) and must be certified as Idaho State Noxious Weed Free.

Article 12. Construction of Improvements

- 12.1 **Permit Required.** Lessee shall not construct or reconstruct, initiate or place improvements or structures of any character (herein referred to as "improvements") on or to the Leased Premises without the prior expressed, and written permission of Lessor. Said permission shall be in the form of a permit issued by Lessor, and shall be required for any improvement or structure on the Leased Premises including, but not limited to, range improvements, buildings or other structures, water developments, fences, vegetation treatment, or the clearing of land. Lessee shall submit project plans to the Lessor. If the project plans are approved and permitted in writing by Lessor, then Lessee shall construct and implement the improvements in full compliance with the approved plans, the permit and all applicable building codes, rules and laws. Permitted improvements shall be the property of Lessee, unless otherwise provided in the permit or approved Lease Terms and Special Provisions. Failure to obtain a written permit prior to construction and implementation of any improvement will be considered a trespass violation and may result in cancellation of the Lease or cause the Lessor to initiate proceedings to recover damages as provided for in IDAPA 20.03.14. Any improvement associated with the uses authorized in this Lease and placed on endowment land prior to January 1, 1970 is considered grandfathered and properly authorized even though there may be no documentation of authorization.
- 12.2 **Condition of Improvements.** At all times during the term of this Lease, Lessee shall keep all improvements in good repair and functional condition to the satisfaction of Lessor. Any and all fences shall be neat, stock-proof, lawful fences and gates.
- 12.3 **Maintenance of Improvements.** Lessee may be required to remove or reconstruct improvements in poor or non-servicable condition. Existing maintenance agreements on lands acquired from the federal government shall remain in effect until amended by the parties involved. If maintenance is not being accomplished, Lessor shall provide a letter to Lessee informing Lessee of the violation of the Lease. If work is not begun within thirty (30) calendar days and completed in a timeframe specified by the Lessor, Lessor may contract repairs and bill Lessee for actual costs incurred.
- 12.4 **Removing Improvements.** Lessee shall not remove, relocate or otherwise alter any improvements without prior written permission from Lessor.
- 12.5 **Cost of Improvements.** Any permitted improvement constructed by or at the request of Lessee, shall be constructed at Lessee's own expense, unless Lessor and Lessee shall have entered into a prior written cost sharing agreement for construction of such improvement.
- 12.6 **Permitted Improvements At Lease Expiration/Termination.** Upon expiration or termination of this Lease for any reason, other than a default by Lessee, and in the event Lessor leases the land to a new lessee, Lessor shall require the new lessee to pay Lessee the then existing value of the permitted improvements in accordance with the then existing statutes and rules. Said value shall be determined through a valuation conducted by Lessor or by Lessee's documented cost of construction if the improvement was authorized after July 1, 2009. Improvement payments shall be first applied towards any rent or other monies due to Lessor before being disbursed to Lessee. Lessor does not hereby agree or become obligated to pay any such value to Lessee, such obligation shall be solely on the subsequent lessee, if any. Any improvement which Lessee is entitled or required to remove upon expiration of the Lease must be removed within six (6) months of the expiration of the Lease, otherwise it is deemed abandoned and title to such abandoned improvement shall vest in the State of Idaho. Provided, however, Lessor may authorize, in writing, prior to the expiration of the six (6) month time period, additional time for removal of improvement(s) by Lessee. Failure of Lessee to remove any such improvement within the extended time period established by Lessor shall constitute an abandonment of Lessee's rights to such improvement.
- 12.7 **Improvements Not Approved.** At any time during the term of the Lease, or upon expiration or termination of this Lease for any reason, Lessor may require, at Lessor's sole discretion, that Lessee remove any improvement placed on the Leased Premises without a prior permit from Lessor. The full cost of such removal, including the restoration of the Leased Premises, shall be solely Lessee's. In the event Lessor does not elect to require such removal, Lessee's failure to secure such permit shall constitute forfeiture. Title to any improvement placed on the Leased Premises without a permit from Lessor shall, at Lessor's option, immediately vest in Lessor without waiver of Lessor's right to require removal of the same by Lessee.

- 12.8 Lessor's Removal of Improvement. Lessor may, at its discretion, remove or have removed the abandoned or non-permitted improvement and Lessee shall be responsible for the full cost of removal and restoration of the Leased Premises. Nothing in this Article shall relieve Lessee from the obligation to remove any improvement as required by Lessor under other terms within this Lease or the permit authorizing the improvement.

Article 13. No Liens

- 13.1 Lessee will not permit or suffer any liens of any kind or nature to be effected on or enforced against the Leased Premises, including, but not limited to, any mechanics' liens or material suppliers' liens for any work done or materials furnished on the Leased Premises at Lessee's instance or request. Lessee shall ensure that full payment is made for any and all materials joined or affixed to the Leased Premises pursuant to this Lease and for any and all persons who perform labor on the land.

Article 14. Sale, Exchange or Reclassification of Leased Premises

- 14.1 Sale. Lessor may sell all or any portion of the Leased Premises during the term of this Lease. Lessor will notify Lessee that the Leased Premises are being considered for sale at the time the proposed sale is scheduled for submission to the Land Board for approval. Lessee will be notified of a scheduled sale at least thirty (30) calendar days prior to sale date. Lessee shall deliver immediate possession of the land sold unto Lessor, or to the person or party as may be specified in writing by Lessor or Lessor's designee, unless the land remains subject to the Lease, or unless Lessee is to be permitted to harvest a growing crop before surrendering possession. When creditable improvements are present, and Lessee delivers possession of the land, Lessor shall value them in accordance with Idaho Code § 58-313, or the then existing applicable statute or rule, and Lessee shall be paid for the improvements by the purchaser on the day of sale. Lessee shall have the rights provided by Article 12.6, and the then existing statutes or rules with respect to compensation for permitted improvements placed upon the Leased Premises by Lessee.
- 14.2 Consent To Land Exchange. Lessee acknowledges that the Leased Premises, or any portion thereof, may be the subject of a future land exchange by Lessor, and Lessee hereby consents to the inclusion of any such land, or portion thereof, in any land exchange deemed necessary or appropriate by Lessor. This consent is given in compliance with Idaho Code § 58-138. In the event Lessor chooses to include the Leased Premises, or any portion thereof, in any proposed land exchange in the future, Lessor shall provide Lessee with at least thirty (30) days written notice from the Director of the Department of Lands. Upon the consummation of the proposed land exchange, that portion of lands included within the exchange shall be deleted from this lease, and Lessee's lease payment obligation for the ensuing year shall be reduced proportionately. Lessee shall be entitled to continue to use the lands included within any such exchange for the balance of the year in which the exchange occurs unless otherwise notified in writing by Lessor, in which event the lease payment for such year shall be prorated.
- 14.3 Change in Use. The Lease may be cancelled in whole or in part upon one hundred eighty (180) calendar days written notice by Lessor if the use of the Leased Premises is to be changed to any other use that is incompatible with the use authorized by this Lease, as designated by Lessor. In the event of early cancellation due to change in land use, Lessee will be entitled to a prorata refund of the premium bid for a conflicted lease.

Article 15. Relationship of the Parties

- 15.1 Lessee is not an officer, employee or agent of Lessor. In no event shall any official, officer, employee or agent of Lessor or of the State of Idaho be in any way personally liable or responsible for any covenant or obligation contained in this Lease, express or implied, nor for any statement, representation or warranty made in connection herewith.

Article 16. Reservations by Lessor

- 16.1 Lessor expressly reserves and excepts the following rights:
- A. To enter upon the Leased Premises, or any portion thereof, during the term of this Lease for any purpose, including, but not limited to, the purpose of inspecting the Leased Premises.

B. All rights not expressly granted to Lessee under this Lease, including, but not limited to, all rights to timber, oil and gas, geothermal rights, mineral rights, easements and rights-of-way, water, and fee title to the Leased Premises, and title to all appurtenances and improvements placed thereon by Lessor.

C. To grant easements and rights-of-way over and across the Leased Premises. Lessor shall coordinate with Lessee before processing any easement applications on the Leased Premises. The grantee of such easement shall, before exercising the same, pay Lessee the reasonable value of any permitted improvements and any growing and immature crops, if crops or improvements are impacted by the easement. Said value shall be determined by Lessor's valuation.

D. To issue other leases on the Leased Premises. Such other leases may be for any purpose deemed appropriate by Lessor, including, but not limited to, the exploration and development of oil, gas, geothermal and mineral resources as provided by Title 47, Idaho Code. In the event any such other lease is granted by Lessor, the other lessee shall, before exercising the same, pay Lessee the reasonable value of any permitted improvements and any growing and immature crops, if crops or improvements are impacted by the other lease. Said value shall be determined by Lessor's valuation. If the other lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use.

E. To require that changes be made in the use under this Lease, and/or to the improvements on the Leased Premises, including, but not limited to, the sanitation or other facilities for the protection of public health, safety, preservation of property or water quality.

F. To reserve as Lessor's sole property any and all water appurtenant to Lessor's land or from any source arising thereon and to hold water rights for any beneficial use that may be developed as a result of this Lease, and as further provided in Article 10 herein.

G. Rights of ingress, egress, and access, over and across the Leased Premises for Lessor and its lessees, permittees, contractors, and assigns on existing roads, or on suitable alternative roads provided by Lessee.

H. To change the use of the Leased Premises, in whole or in part, for other uses that will better achieve the objective of Lessor. Upon a change in use this Lease may, at Lessor's discretion, be terminated in whole or as to the affected part. In the event of any such termination due to a change in use, the provisions of Article 12 relating to compensation for permitted improvements shall apply.

I. To sell timber on the Leased Premises or otherwise conduct forest management activities, Lessor reserves the right to restrict or prohibit grazing use on all or portions of the Leased Premises for timber management purposes. Lessee will be given not less than one hundred eighty (180) calendar days written notice of any such restrictions or termination of grazing use, together with a map of the restricted area.

J. To restrict or prohibit grazing on all or any portion thereof of the Leased Premises in response to emergency conditions such as, but not limited to, fires, flooding and drought.

K. To sell all or any portion of the Leased Premises at any time during the term of this Lease, and as further provided in Article 14 herein.

L. To harvest seed from plants on land not under a farming lease. Lessor will coordinate the harvesting activities with Lessee to minimize impacts on livestock operations or farming operations.

M. To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with Lessee prior to action by Lessor.

N. To claim all permanent improvements placed upon the Leased Premises remaining after six (6) months in cases of abandonment by Lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the Lease. No improvements will be disposed of by Lessor until all appeals have been exhausted.

Article 17. Indemnification

- 17.1 Lessee shall indemnify, defend and hold harmless Lessor, the State of Idaho, its officers, agents and employees from and against any liability, claims, actions, damages, costs, expenses or losses, including reasonable attorney's fees and costs caused by or arising out of the performance, acts or omissions of Lessee, Lessee's agents, officers or employees, or persons using the Leased Premises with Lessee's permission, or otherwise arising out of Lessee's use or occupation of the Leased Premises; or arising from the failure of the same to comply with any applicable state, federal, local, law, statute, rule, regulation, act, or provision of this Lease. This duty to indemnify, defend and hold harmless shall encompass any claims which include or allege negligence of Lessor, its agents, officers or employees other than claims which arise solely out of negligence on the part of Lessor, and this duty shall survive the termination or expiration of this Lease.

Article 18. Payment of Taxes, Assessments or Fees - Lien

- 18.1 Unless otherwise provided, Lessee shall pay all water charges, fees, assessments or taxes of whatsoever nature that may be legally levied or assessed against the Leased Premises herein described, or any portion thereof or on any improvements thereto. If the same is not paid, it shall constitute a lien in favor of the State of Idaho against all improvements, livestock or crops growing on the Leased Premises.

Article 19. Lessee's Default

- 19.1 Lessee's Failure to Comply. Lessee's failure to comply with the Lease Terms and Special Provisions shall be a breach giving rise to a basis for termination of the Lease. Lessor shall provide Lessee thirty (30) calendar days written notice of the cancellation and, if applicable, the corrective action required of Lessee. The notice shall specify a reasonable time to make a correction or cure the violation or breach, if such breach is subject to correction or cure. If the corrective action or cure is not taken within the specified time or does not occur, then the Lease shall be automatically terminated on the date specified in the written cancellation notice without any further notice or demand, unless otherwise agreed by Lessor in writing. Lessee shall not, while in default, remove any of the improvements, livestock or crops thereon, whether crops are harvested or not unless directed by Lessor. In addition to the rights and remedies specifically granted to Lessor under this Lease, Lessor shall have such other rights and remedies against Lessee as are available at law or in equity, and Lessor's pursuit of any particular remedy for breach shall not, in and of itself, constitute a waiver or relinquishment of any other compatible claim of Lessor against Lessee.
- 19.2 Lessor's Performance Upon Lessee Default. In the event Lessee fails to perform any act or do anything which Lessee is required to do under the terms of this Lease, Lessor shall have the right, but not the obligation, to perform on behalf of Lessee, any such action. Lessee shall immediately reimburse Lessor for all costs and expenses, including attorney fees, (including fees from the Office of the Attorney General of the State of Idaho), incurred by Lessor in performing any such act or thing. Lessee's obligation to pay costs hereunder shall be deemed to be additional rent fully due and payable on demand from Lessor.

Article 20. Surrender of Land

- 20.1 Lessee shall, at the termination or expiration of this Lease, deliver immediate possession and vacate the Leased Premises, leaving it in the same or better condition than it was in at the time of Lessee's entry on such premises under this agreement, except for reasonable use and wear, acts of God, or damage by causes beyond the control of Lessee, and upon vacating shall leave the demised land free and clear of all rubbish and debris, and with all improvements in good order and condition.

Article 21. Cancellation By Mutual Agreement

- 21.1 Leases may be cancelled by mutual agreement between the Lessor and the Lessee. The Lessor will not unreasonably withhold approval of a request for cancellation by a Lessee.

Article 22. Notices

- 22.1 Notices. Any notice or any demand given under the terms of this Lease shall be deemed given and delivered on the date when personally delivered or if mailed, the date same is deposited in the United States Mail, and mailed by regular or certified mail, postage prepaid and properly addressed to the appropriate party.

- 22.2 Addressees. Until changed by notice in writing, notice, demands, and communications under this Lease shall be addressed to Lessor at:

Idaho State Board of Land Commissioners
300 North 6th Street, Suite 103
PO Box 83720
Boise, Idaho 83720-0050

and to Lessee at the address set forth at the beginning of this Lease. Any notice or correspondence mailed to Lessee at the last identified address shall be deemed effective delivery. It is Lessee's duty to notify Lessor, in writing, of any change in mailing address.

Article 23. Waiver

- 23.1 The waiver by Lessor of any breach of any term, covenant or condition of this Lease shall not be deemed to be a waiver of any past, present or future breach of the same or any other term, covenant or condition of this Lease. The acceptance of rent by Lessor hereunder shall not be construed to be a waiver of any violation of the term(s) of this Lease. No payment by the Lessee of a lesser amount than shall be due according to the terms of this Lease shall be deemed or construed to be other than a part payment on account of the most recent rent due, nor shall any endorsement or statement of any check or letter accompanying any payment be deemed to create an accord and satisfaction.

Article 24. Attorneys' Fees and Costs

- 24.1 In the event Lessor initiates a legal proceeding of any kind instituted under this Lease or to obtain performance of any kind under this Lease, and Lessor prevails, Lessor shall be awarded such additional sums as the court may adjudge for reasonable attorney's fees (including fees from the Office of the Attorney General of the State of Idaho) and to pay all costs and disbursements incurred in such proceeding, including, but not limited to, accountants' fees and fees of appraisers or other experts.

Article 25. Lessee's Compliance with Applicable Laws and Rules

- 25.1 Full compliance. Lessee shall fully comply with all applicable federal, state, or local statutes, ordinances, rules, regulations and laws now existing or hereafter enacted. This shall include, but not be limited to, all applicable rules and regulations and standards promulgated by the State Board of Land Commissioners or the Idaho Department of Lands, including but not limited to, the rules governing leasing of endowment lands, IDAPA 20.03.14.
- 25.2 No Waste or Nuisance. Lessee shall not use the land in any manner that would constitute loss or waste, nor shall Lessee allow the same to be committed thereon. Lessee shall not do anything which will create a nuisance or a danger to persons or property.

Article 26. Miscellaneous

- 26.1 No Trespass. Lessee shall not use nor allow Lessee's livestock or livestock from adjacent lands to graze or run at large over lands belonging to Lessor not under lease to Lessee or approved within the Lease Terms and Special Provisions.
- 26.2 Appraisals and Valuations. Any appraisal or valuation by Lessor called for in this Lease shall be done by Lessor in accordance with applicable state law and regulations, and the then existing policy of Lessor.
- 26.3 Subject to Existing Leases/Easements. This Lease is expressly subject to any right-of-way, easement, lease or contract, including, but not limited to, any present or future timber sale contract, that are now in force and effect or that may hereafter be granted relating to the Leased Premises.
- 26.4 Timber. This Lease does not authorize Lessee to cut any timber growing on the Leased Premises. Any unauthorized use of such timber by the Lessee or with his knowledge or consent, shall work a forfeiture of this Lease without notice, and said Lessee shall be responsible for damages in the amount of treble the value of the timber used or taken and all other damages. Said timber value to be determined by Lessor.

- 26.5 Modification. This Lease may be modified only by a fully executed Lease Adjustment on a form provided by Lessor.
- 26.6 Binding on Heirs and Successors. This Lease, including the Lease Terms and Special Provisions, shall insure to the benefit and be binding upon the heirs, executors, successors, sublessees, and assigns of the parties.
- 26.7 Lessee's Non-Discrimination. Lessee shall not discriminate against any person because of race, creed, religion, color, sex, national origin or disability.
- 26.8 Paragraph Headings. The paragraph headings, titles and captions used in this Lease are for convenience only and are not part of the Lease.
- 26.9 Entire Agreement. This Lease, including all exhibits attached hereto, contains the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior agreements. The execution of this Lease has not been induced by either party, or any agent of either party, by representations, promises or undertakings not expressed herein and, further, there are no collateral agreements, stipulations, covenants, promises, inducements or undertakings whatsoever between the respective parties concerning this Lease except those which are expressly contained herein.
- 26.10 Governing Law and Forum. This Lease shall be construed in accordance with and governed by the laws of the State of Idaho and the parties consent to the jurisdiction of Idaho State courts located in Ada County in the event of any dispute with respect to this Lease.
- 26.11 Severability. In the event any provision of this Lease shall be held invalid or unenforceable according to law, for any reason whatsoever, then the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.
- 26.12 Counterparts. This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

Special Provisions

Attachment A

This lease contains 1040 acres of state endowment land. A total of 168 AUMs are available annually on this lease.

Section 36 is managed in conjunction with private lands. The lessee will graze up to 60 head from February 10th to February 28th and 150 head from March 1st to March 20th.

Section 5 is in the North Cottonwood pasture managed in conjunction with the BLM lands under the Cottonwood Allotment plan. It is grazed with 200 head for 15 days during the end of May and early June. The north Cottonwood pasture is rested every third year.

Legal Description

Attachment B

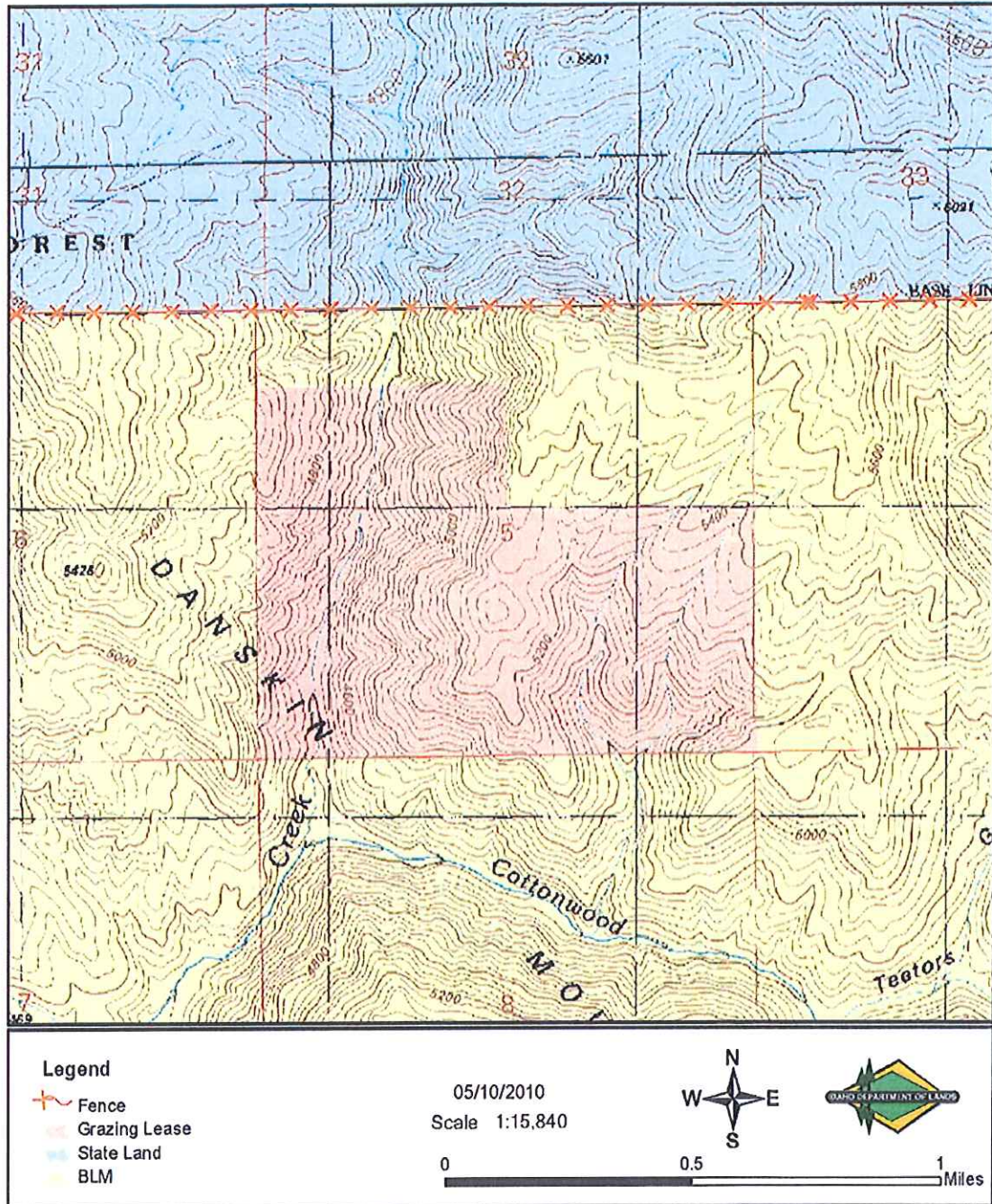
Lease Number	Township, Range, Section	County	Endowment	Legal Description	Grazing Acres	Wasteland Acres	Dryland Acres	Irrigated Acres	AUMS
G600059	01S-07E 05	Elmore	PS	S2NW,S2	400	0	0	0	80
G600059	02S-07E 36	Elmore	PS	ALL	640	0	0	0	88
					1040	0	0	0	168

Site Map
Attachment C

MAP #1

Grazing Lease G600059
T01S R07E Sec 5

Map 1



Site Map
Attachment C

MAP #2

Grazing Lease G600059
T02S R07E Sec 36

Map 2

