

50^a
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: A43-02203
Date Received: 5/26/1989
Receipt No: MO03743
Received By: RB

RECEIVED
MAY 30 1989

**NOTICE OF CLAIM TO A WATER RIGHT
Department of Water Resources ACQUIRED UNDER STATE LAW**

1. Name: TED HIGLEY 208-645-2444
Address: BOX 57
MALTA, ID 83342
2. Date of Priority: MAY 26, 1916
3. Source: COTTONWOOD CREEK Trib. to: RAFT RIVER
4. Point of Diversion:
- | Township | Range | Section | 1/4 of 1/4 of 1/4 | Lot | County |
|----------|-------|---------|-------------------|-----|--------|
| 16S | 23E | 20 | SE NW | | CASSIA |
5. Description of diverting works:
HEADGATE & DITCHES
6. Water is used for the following purposes:
- | Purpose | From | To | C.F.S. | (or) | A.F.A. |
|------------|------|----|--------|------|--------|
| IRRIGATION | | | 0.800 | | |
| DOMESTIC | | | | | |
7. Total Quantity Appropriated is:
0.800 C.F.S. (and/or) A.F.A.
8. Total consumptive use is Acre Feet Per Annum.
9. Non-irrigation uses:
10. Place of Use:
- | Township | Range | Section | 1/4 of 1/4 | Lot | Use | Acres |
|---------------|-------|---------|------------|-----|-----|-------|
| 16S | 23E | 20 | SW NE | | IRR | 32.0 |
| | | | SE NE | | IRR | 8.0 |
| Section Acres | | | | | | 40.0 |

A43-02203

Page 1

Date: 05/26/89

MICROFILMED

MAR 03 1993

10. Place of Use: Continued

Total Acres 40.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: LICENSE
Water Right Number: 12044

16. Signature(s)

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

Number of attachments: 1

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):

T. D. Hickey

Date:

5-26-89

Betty Hickey

Date:

5-26-89

State of Idaho)

County of Cassia)

SS.

Subscribed and sworn (or affirmed) before me this

26th day

of

May

19

89

Anna Baunhoff
Notary Public

Seal

Residing at

Anna Baunhoff, Notary Public
Residing at Boise, Idaho

My Commission Expires

My Commission Expires December 7, 1994



**NOTICE OF ERROR
REPLY**

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

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

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: June 15, 2001

Water right number: 43-2203

TED HIGLEY

2200 RODOCKER LANE BOX 57

MALTA ID 83342

Telephone Number: (208)645-2444

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

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

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

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

DATE: 6-6-01 SIGNATURE: Ted Higley
Please print your name: Ted H. Higley

IDWR Regional Office, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301, 2087363033

11/28/2000

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

RIGHT NUMBER: 43-2203

NAME AND ADDRESS: TED HIGLEY
BOX 57
MALTA, ID 83342

SOURCE: COTTONWOOD CREEK TRIBUTARY: JUNCTION CREEK

QUANTITY: 0.8 CFS

PRIORITY DATE: 05/26/1916

POINT OF DIVERSION:	T16S R23E S18	NESWSE	Within CASSIA County
	T16S R23E S20	SWSWNE	Within CASSIA County
	T16S R23E S20	NWSENW	Within CASSIA County
	T16S R23E S20	SWNESE	Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 10-31	0.80 CFS
STOCKWATER	01-01 12-31	0.02 CFS

PLACE OF USE:

IRRIGATION Within CASSIA County			
T16S R23E S18	SESE	18	T16S R23E S19 NENE 17
T16S R23E S19	SENE	17	T16S R23E S19 NESE 1.2
T16S R23E S20	SWNE	17	T16S R23E S20 NWNW 24
T16S R23E S20	SWNW	40	T16S R23E S20 SENW 38
T16S R23E S20	NESW	40	T16S R23E S20 NWSW 23
T16S R23E S20	SESW	3.2	T16S R23E S20 NESE 16
T16S R23E S20	NWSE	40	T16S R23E S20 SWSE 28
T16S R23E S20	SESE	40	T16S R23E S21 SWSW 28
T16S R23E S28	SWNE	11	T16S R23E S28 NWNW 36
T16S R23E S28	SENE	33	T16S R23E S28 NESW 1.4
T16S R23E S28	NWSE	26	T16S R23E S29 NENE 16
T16S R23E S29	NWNE	0.7	
STOCKWATER Within CASSIA County			
T16S R23E S20	SWNE		T16S R23E S20 SENE

514.5 ACRES TOTAL

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 40 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION
SEASON.

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

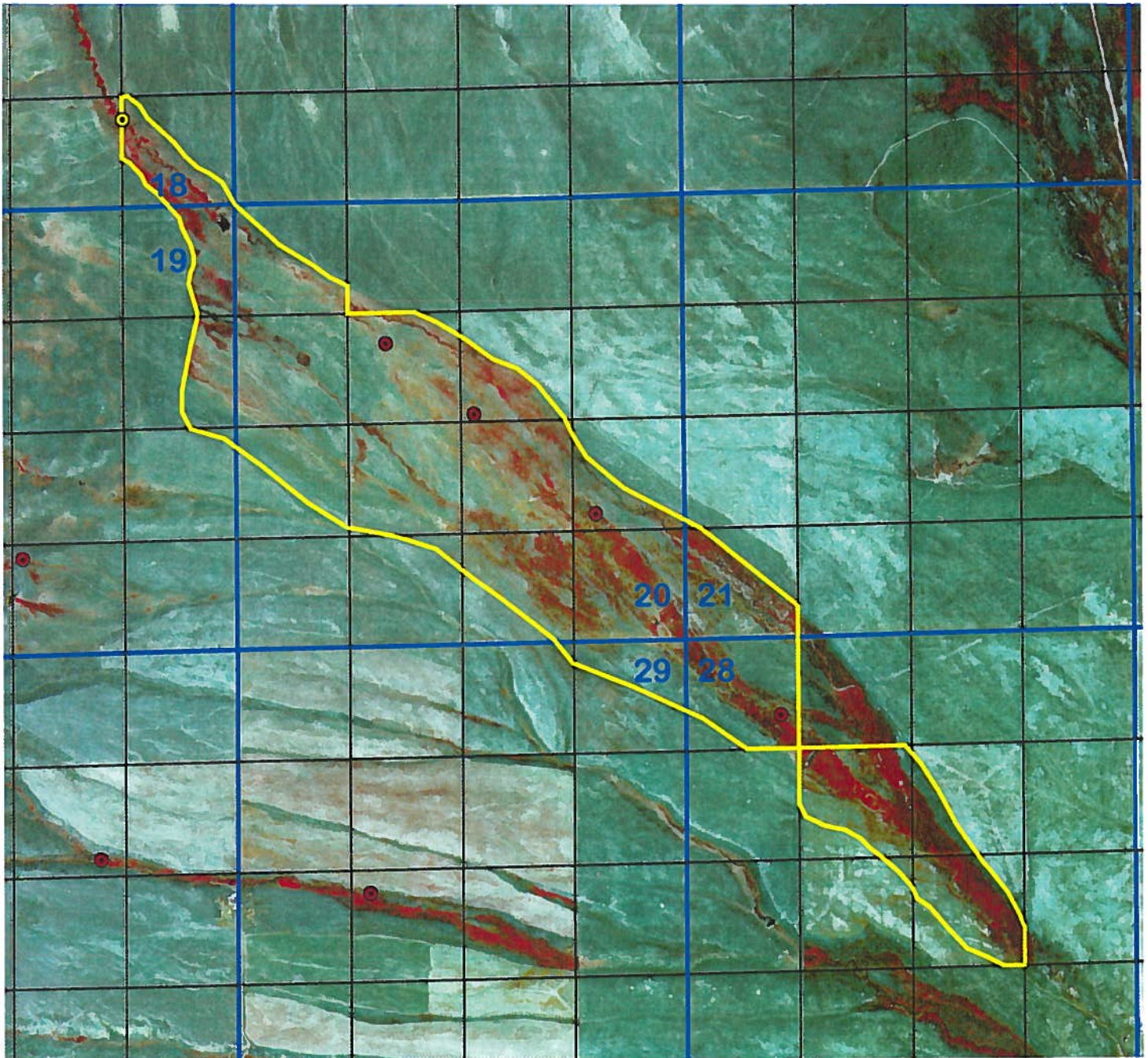
RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
PURSUANT TO SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425,
IDAHO CODE.

Idaho Department of Water Resources

**RIGHT3: 43-2203,
43-2204, 43-4234**

**RECOMMENDED PLACE OF USE
TWP 16S, RNG 23E,
Sec 18, 19, 20, 21, 28, 29
Data entry on November 28, 2000**



-  **RECOMMENDED POINT OF DIVERSION**
-  **RECOMMENDED PLACE OF USE**
-  **SECTION LINES**
-  **QUARTER/QUARTER LINES**



**GIS PLACE OF USE PRESENTATION
1987/1988 NAPP AERIAL PHOTOGRAPHY
DATA ENTRY BY VIKIE HANCOCK**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

02:21:15
05/25/95
33

CLAIM NUMBER: A43-02203

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	TED HIGLEY	05/26/1916	IRRIGATION DOMESTIC	4-1-95-51 00-00 00-00 00-00 00-00	0.80 CFS	
TOTAL DIVERSION:				1-1-95-51	0.80 CFS	

Water Source: COTTONWOOD CREEK
Point(s) of Diversion: T16S R23E S20
Tributary to: RAFT RIVER
Stage: LICENSE
CASSIA County

Place of use Legal Description for: IRRIGATION											
NE			NW			SW			SE		
T	R	S	NE	SE	SW	SE	NE	SE	SW	SE	SUM
16S	23E	20	32	08							40.0
TOTAL ACRES											40.0

Place of use location for DOMESTIC is the same location as described for: IRRIGATION

POU County: CASSIA

Dates: Exam Made Date: 02/26/1985
Verified Date: 02/26/1985
Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

C18
C05
C03

40.4 ac
40.0 ac

RECOMMENDATION NOTES

From: Vikie Hancock

11/28/00

Regarding: 43-2203, 43-2204, 43-4234

The above claims are all for the irrigation of the same 514 acre place of use. The source on all three is Cottonwood Creek, which is tributary to Junction Creek per USGS Cotton Thomas (Utah) Quadrangle map.

43-2203 and -2204 represent licenses appurtenant to old homesteads, or portions of old homesteads, now incorporated into claimant's ranch. The beneficial use claim represents a claim to all the water from Cottonwood Creek, which claimant says the ranch has historically used for irrigation and stockwater since 1897.

Other licenses were also claimed by Mr. Higley, but were found to have never been appurtenant to Mr. Higley's property, past or present. They are: 43-2120A, 43-2208 and 43-2231. The source for 43-2208 (1916) and 43-2231(1918) was Cottonwood Creek in the vicinity of the Higley Ranch, and so evidence that there were uses in the amount of 4.2 cfs contemporary to uses by the ranch in the early 1900's.

Tracts listed in the Keogh homestead patent of 1895 include 250 acres that are irrigated pasture on the ranch today, and would have most likely meant a diversion of approximately 5 cfs in 1897. If it is assumed that all the licensed and beneficial uses were being diverted circa 1918, a total appropriation of 14 cfs would be occurring from a creek that I measured at 12 cfs in the spring of 1999. This is not unreasonable, considering the contour of the valley and the resulting return flow, the locations of the homesteads along the creek and the western history of rotational use during periods of low flow.

GIS calculations find 514 acres irrigated in 1987, all flooded from Cottonwood Creek. One inch per acres would equal 10.28 cfs. Deducting the 4.8 cfs licensed under 43-2203 and -2204 would leave a balance of 5.48 cfs. Since my calculations of historical irrigation can only be speculation, I do not feel that it would be unreasonable to *recommend a 5.48 cfs diversion rate for the irrigation of 274 acres, priority date 1897, for claim 43-4234.*

43-2203 and 43-2204 should be recommended as licensed.

There is no diversion works for stockwater, so a 0.02 instream diversion rate is indicated. Both licenses list "domestic" use, which is interpreted to be stockwater. The place of use for stockwater in beneficial use claim 43-4234, as recommended, includes tracts within the ranch that was not previously licensed for stockwater.

See claim file 43-4234 for additional documents



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 29, 1999

Ted Higley
P.O. Box 57
Malta, Idaho 83342

RE: Snake River Basin Adjudication (SRBA)

Dear Mr. Higley,

I have finally succeeded in having a question answered about your claims, and sending you a copy of the shape file I created that outlines your irrigated acres. What I outlined here totals 513 acres. You originally claimed 1106 acres, so take a look at this and make sure that I didn't miss anything that's being irrigated; as you remember, my notes were getting a little soggy in the rain. If you find errors in the place of use, or in the points of diversion that I marked, please note them on the map and return it to me so I can make corrections.

The question I had on your claims concerns two of the licenses you claimed on Cottonwood Creek, and the license you claimed on South Cottonwood. I believe that you agreed that you claimed License 43-02120A in error, as you don't divert anything from South Cottonwood Creek, and the Buller family has also claimed this license. If you wish to, you can withdraw that claim by signing a simple form, which I can forward to you in the mail.

The question I had about the other two licenses, 43-02208 and 43-02231, concerned whether or not you had any basis for claiming them, as they were never appurtenant to the ranch. The short answer from our legal staff is: not unless you have documentation that conveys an interest in those licenses to you or your predecessor. It looked to me like the land that those water rights were licensed to is no longer being irrigated, and hasn't been for a long time. If I'm correct about that, then those rights may have been forfeited long ago.

This doesn't mean that you don't have a right to the water represented by those licenses. It just means that your right to the water is based on Beneficial Use of the water after, and possibly even during, the time that the license holders were irrigating with their share. One of the licensed tracts is downstream of all but your 160 acres in section 28. The other licensed tract is upstream of the ranch, but part of the water may have been available to the ranch as waste water even during the time the land was being actively irrigated. It does indicate, however, that there was water available to the downstream license holder in 1916.

The question concerning your Beneficial Use claim number A43-04234, is whether you will need to change the priority date on all or part of it, to fit around those off ranch licensed rights that existed in 1916. As far as your claims A43-02203 and A43-02204, based on licenses that were appurtenant to the ranch, those look like valid claims to me as they stand.

I measured 12 cfs in the stream when I was up there on June 2nd. If you divide that amount of water by the 513 acres I calculated, it comes up to 0.023 cfs per acre, just over the Idaho accepted standard of one inch per acre (1 inch equals 0.02 cfs). Your claim A43-04234 is for 22.12 cfs, but it's possible that that figure isn't based upon any measurement of the water, but by the standard of claiming 1 inch per acre, (1106×0.02 cfs comes out to 22.12 cfs). I believe that the 12 cfs is probably an accurate representation of what you are diverting for the ranch.

One more issue that I wanted to discuss with you is the claim for stockwater that William Jones has on your property. The Department talked to Mr. Jones in 1992, and again in 1997, and he believes he has a valid basis to claim a stockwater right in section 18. It is documented in the file that you do not wish him to have a water right on your property. If the Department ends up recommending his right in the Adjudication, you will, of course, have the opportunity to formally object to it. It would be preferable, however, if the two of you came to some agreement before then, and gave us direction on how to handle this claim. Meanwhile, one of our legal staff is going to research similar situations to see how the Department proceeded on those.

I've enclosed the computer photo with the outlined acres, and also profile reports of all the claims I've discussed here, for your convenience. Please get in touch with me, when you get a chance, so I can make any needed corrections in your place of use or diversion points, and we can discuss the priority date on the claim based on beneficial use, as well as the Jones claim. It doesn't look like I'm going to have time to take another tour of your ranch, even though I'd love to see it in the sunshine.

Sincerely,

Vikie Hancock
Water Resource Agent

State of Idaho

License and Certificate of Water Right

Water License No. 12044
 Water District No. 10-B

Amount 0.8
 Priority 5/26/16

THIS IS TO CERTIFY that **David Saunders** of **Moulton, Idaho**, made application for a permit to appropriate the public waters of the State of Idaho, dated **March 30**, 19 **16**, that Permit No. **12044** was issued under said application; that Certificate of Completion of works, with a carrying capacity of **0.8** second feet, was issued thereunder on **May 24**, 19 **17**, showing that said works were completed on the **17th** day of **April**, 19 **17**; and that on the **18th** day of **June**, 19 **17**,

David Saunders of **Moulton, Idaho**, made proof to the satisfaction of the **Commissioner of Reclamation** of Idaho, of a right to the use of the waters of **Cottonwood Creek**, a tributary of **Raft River**, for the purpose of **irrigation and domestic uses**, under Use Permit No. **12044** of the **Commissioner of Reclamation**, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the **Commissioner of Reclamation** of Idaho and entered of record in Volume **5** of Licenses, at page **2470**, on the **18th** day of **October**, 19 **19**;

The right hereby confirmed dates from **May 26**, 19 **16**;

The Point of Diversion is located in the **SE 1/4 NW 1/4 Sec. 20**, Twp. **16 S.**, R. **23 E.**, B. M.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed **0.8** cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
16S.	23 E.	20	SW 1/4 NE 1/4	32	32
			SE 1/4 NE 1/4	8	8
			Total area irrigated		40 acres

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the **Commissioner of Reclamation**, **W. G. Swenson**, affixed at Boise, Idaho, this **18th** day of **October**, 19 **19**.

(SEAL)

W. G. Swenson.

Commissioner of Reclamation.

18 2203

[illegible]

INCHES-1 MILE. DRAW PLAN, IN INK.

12011

REPORT OF ENGINEER

1. State name of applicant and number of permit: David Roundbarn - Permit 12044
2. State source of water supply: Bottom of Creek & unnamed spring
3. Location of point of diversion: Sec. 20, T. 16 S., R. 23 E., B.N.
4. State whether or not the works of diversion are fully completed and in accordance with terms of permit: Works are completed
5. Describe works as they exist, giving dimensions and capacities of same:
No head gate - Cement dam - 14 ft long - 2 ft high, 8 in thick
Ditch - 2 ft bottom, 1 1/2 ft deep. Capacity 3 sec ft
6. State whether or not water has been turned into works of diversion: Yes
entire tract is cultivated
7. Give exact location of lands to be irrigated. Give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation):
SW 1/4 NE 1/4 Sec 20 - 80 acres - 148 - 23 E. B.N.
8. Submit map on enclosed plat, showing location and details of above description.

Remarks:

L. A. Hendricks water 80 acres through this ditch

This examination was made on the 20 day of Sept 1919

(Signed) R. H. Pierce

Examiner.

OVER

12044

NAME