

McCabe Meeting Agenda
April 7, 2006 – 9:00 a.m.

Jennifer's question:

Becky,

In reviewing this file, meeting with the claimants, and going out for a field exam for this claim, I discovered that part of this claim is in Oregon because the river has meandered so much from the time the state line was drawn. The points of diversion may also be in Oregon. Pete McCabe (claimant) told me that he met with Dave Tuthill and Chris Bromley about this a while back and that Dave was going to try to get them all Idaho water rights. Anyway... I think that this is going to be way over my head without some help. Could we arrange a time to review this so I know what we can do in the recommendation phase?

Thanks,
Jennifer

Background:

Dave & Jennifer

Water right number: 3-4017 with a priority date of June 1, 1920 – statutory claim with three points of diversion in Payette County.

Two of three PODs on the east side of the Snake River, pursuant to tax information, are considered to be in Malheur County.

Interstate Boundary:

Legal – Chris; Technical – Mike C.

Two of the PODs are located on property that did not exist at the time of Oregon (1859) & Idaho (1889) statehood.

Accretion:

Chris

State boundary has been moving – area known as Whitley Bottom. Gradual and slow process called “accretion” when river banks change, thus changing the land border.

Oregon Statutory Requirement(s):

Chris

Per Chris Bromley's research, the determination is that McCabe's diversions are exempt from Oregon statutes.

Memorandum

RECEIVED
JAN 14 2004
Department of Water Resources

To: Susan Hamlin, Deputy Attorney General

CC: Chris Bromley, Deputy Attorney General

From: Peter J McCabe

Date: 01/13/04

Re: Water Right No. 3-4017 -McCabe Brothers

Irrigation:

In the spring of 1944 my parents Peter and Bertha McCabe bought this farm from Harvey and May Hughs .

My father and older brothers were irrigating a lot of this farm by a pump in the Snake River, through a pipeline on the Johaneck property. Part of the pipeline is visible today.

We moved the pump in 1958 or 1959 to its present location in the southwest corner of the property on the Snake River, Which we considered Idaho water rights.

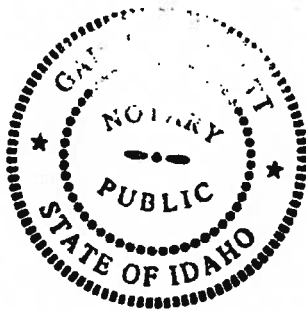
The amount of land irrigated now is approximately 133 acres from this pump.

Peter J McCabe

STATE OF IDAHO)
 : ss
County of Payette)

On this 13th day of January, 2004, before me,
the undersigned, a Notary Public in and for said State, personal-
ly appeared Peter J. McCabe, known to me to be the person
whose name is subscribed to the foregoing instrument, and ac-
knowledged to me that he executed the same.

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



Gail S. Baskett
Notary Public of Idaho
Residing at: Payette
My Comm Expires: 8/1/07



1-9-2004
A note from...
PETER J. McCabe
BEVERLY J MCCABE

Idaho Abstract's

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H.E.A.R.T.S. IN SERVICE

-5-

Map of Survey of Fractional Sec. 5 Twp. 7

North Range 5 West of the Boise Mer. Idaho

: Plat #23601

: Dated, Dec. 1, 1908

: Recorded, Dec. 21, 1908. 10:41 A.M.

: Book 2 of Plats, Page 60

State of Idaho

SS

County of Canyon

I, C.P. Lattig, duly Licensed Land Surveyor of said County and State do hereby certify that I have carefully and correctly surveyed fractional Sec. 5 Twp. 7 N. R. 5 W. 3. E. in Canyon County, Idaho; and that the plat and field notes appearing upon this sheet correctly represent the tract so by me surveyed.

In Witness whereof I have hereunto set my hand at Payette Idaho, this 3rd day of Dec. 1908. C.P. Lattig, Surveyor

(No blk.) (Plat shows lots 1, 2, 3, 4, 5 and Accretion to lots 1, 2, 3, 4, 5) in Sec. 5

FLB 32

- 32 -
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-4-

London & San Francisco Bank Limited
a Corporation

-TO-

O.E. Brainard

Special Warranty Deed. #3580

Dated, June 13, 1904

Recorded, June 22, 1904. 8:48 A.M.

Book 30 of Deeds, Page III

Consideration, \$393.20

Two Witnesses

Property, -Lot 2 in the NE $\frac{1}{4}$ of Section 8 Township 7 North Range 5 West of the Boise Meridian, containing 49.15 acres, reserving a Right of way across said tract of land for the construction of an irrigation canal or flume as may be required for conveying water to other lands in that vicinity.

Signed; London & San Francisco Bank, Limited

By Wm. A. MacRae its Magr. and Atty. in fact.

Acknowledged, June 13, 1904 before Frederick K. Arnold, Notary Public, Multnomah County, Oregon. (SEAL)

FLB 40

-11-

George Funkhouser and Georgia A.
Funkhouser, his wife

-TO-

Charles W. White

Warranty Deed. #56337

Dated, November 13, 1913

Recorded, November 24, 1913. 11:47 AM

Book of Deeds, Page

Consideration, 1000.00

Convey and warrant to Charles W. White the following described real estate situate in Canyon County Idaho to-wit: Lot 2 in the NE $\frac{1}{4}$ of Section 8 Twp. 7 North Range 5 West of the Boise Meridian, containing 49.15 acres of land more or less according to U.S. Survey; Reserving a right of way across said tract of land for an irrigating canal or flume as may be required for conveying water to other lands in that vicinity.

Acknowledged, November 13, 1913, before J. W. Blackburn, Notar Publico, Clarke Co. Washington. (SEAL)

STATE OF IDAHO EXECUTIVE DEPARTMENT

PROCLAMATION

Whereas, it appearing by the certificate of the Board of County Commissioners of Canyon County, Idaho, duly attested by the Clerk of the said Board, that a special election was held on May 21, 1917 in that portion of Canyon County, constituting the proposed new County of Payette as provided in House Bill No. 108 approved Feb. 28th, 1917 and

Whereas, it further appears by the said certificate of the board of County Commissioners of Canyon County, that 66 2/3% of the votes cast at said special election were in favor of the creation of the said County of Payette

Now, therefore, I, M. Alexander, Governor of the State of Idaho, do issue this Proclamation as provided by Section 29 of said House Bill No. 108 approved Feb. 28th, 1917 declaring that at a special election held on May 21, 1917, 66 2/3% of the votes cast were in favor of the creation of the County of Payette, and that said County of Payette, has been and now is a duly created and constituted County of the State of Idaho, effective on the 1st Monday of July, 1917 as provided in said House Bill No. 108, approved Feb. 28th, 1917

Given at Boise, the Capital of the State of Idaho, this 26th day of May, 1917

M. Alexander, Governor, Assistant: W. T. Dougherty, Secretary of State (Great Seal of the State of Idaho)

Filed in the office of the Secretary of State, Boise City, Idaho.

This Abstract No. 2576 is a continuation of the within abstract as to the following described real estate, to-wit: Lot 2, Section 8, Township 7 North of Range 5 West of the Boise Meridian, and Lot 5, Section 5, Township 7 North, of Range 5 West of the Boise Meridian, except the accretion lands belonging to said Lot 5, Subsequent to Nov. 18, 1921 at 5:00 P. M.

1.

E. B. Hammack

SATISFACTION OF MORTGAGE

to

Charles W. White and Emma K. White, his wife

Dated Dec. 22, 1921
Ackl. Dec. 22, 1921
Filed Dec. 23, 1921
Rec. Bk. 2 Rel. page 568

Recites: That E. B. Hammack do hereby certify and declare that a certain mortgage dated Nov. 19, 1913, made and executed by Charles W. White and Emma K. White, his wife, parties of the first part therein, to E. B. Hammack, party of the second part therein, recorded in the office of the County Recorder of Canyon County, State of Idaho, in Book 56 of Mortgages, page 108 on Nov. 24, 1913, together with the debt thereby secured, is fully paid, satisfied and discharged.

Acknowledged by E. B. Hammack, before A. O. Sutton, Notary Public, Payette County, Idaho. SEAL

Charles W. White and Emma K. White, husband and wife

MORTGAGE

to

Guss Davis

Dated Dec. 23, 1921
Ackl. Dec. 23, 1921
Filed Dec. 23, 1921
Rec. Bk. 3 Mtgs. page 582
Cons. \$3500.00 79¢ IESC

Mortgages: Lot 2, Section 8, Township 7 North of Range 5, West of the Boise Meridian and Lot 5, Section 5, Township 7 North of Range 5, West of the Boise Meridian. Together with all water rights thereunto belonging.

Secures the payment of one note of even date herewith for \$3,500.00, due on or before Dec. 23, 1924, with interest at the rate of 10% per annum, payable annually.

Acknowledged by Charles W. White and Emma K. White, husband and wife, before A. O. Sutton, Notary Public, Payette County, Idaho. SEAL

Certificate of Abstracter

STATE OF IDAHO, }
COUNTY OF PAYETTE, } ss.

IT IS HEREBY CERTIFIED, That the foregoing 2 sheets, showing entries numbered from One to 2 inclusive, contain a true and correct abstract of all conveyances or other instruments of writing now on record in the office of the County Recorder in and for said County, which in any way affect the title of the following described real estate subsequent to December 22, 1922, @ 8:00 A.M.

Lot 2, Section 8, Twp. 7 N. R. 5 W. B. M.

Lot, 5, Section 5, Twp. 7 N. R. 5 W. B. M.

Except that part of Lot 5 lying West of the Main channel of the Snake River.

WE FURTHER CERTIFY, That all Taxes levied by Payette County, upon the lands above described as shown by the records of the Treasurer and Tax Collector of Payette County, have been paid up to and including the first half of the year 1929, balance due \$56.25.

WE FURTHER CERTIFY, That there are no judgments or liens of any kind against any of the within named grantees which are liens on the lands described in this certificate, shown by the judgment docket of the District Court in and for Payette County, State of Idaho.

THIS CERTIFICATE is attached to and made a part of Abstract No. 4752 compiled for the use of Freshafer & McClure,

IN WITNESS WHEREOF, Payette County Abstract Company has caused its name to be subscribed hereto and its seal affixed this 2nd day of April 1930, at 5:00 o'clock P. M.

PAYETTE COUNTY ABSTRACT COMPANY,

By Nancy A. Henshaw
Manager.

1.

H. Hughes and May Hughes
his wife,

to

Idaho Power Company, a corporation,

POWER LINE EASEMENT

Dated Apr. 10, 1944
Ackl. Apr. 10, 1944
Rec. June 13, 1947
Rec.Bk. 4 Misc. page 193
Cons. \$1.00 & o.v.c.

Grant and convey to Idaho Power Company, a corporation its licensees, successors and assigns, Grantee, for One Dollar and other valuable considerations, a right of way and easement for the erection and continued operation, maintenance, repair, alteration, inspection, relocation and replacement of the electric transmission, distribution and telephone lines and circuits of the Grantee, attached to a line of poles or other supports, together with guys, stubs, crossarms and other attachments and incidental equipment thereon, and appurtenances, over, on and across the following premises belonging to said Grantor in Payette County, State of Idaho in the location approximately as follows, to-wit:

Lot one & Lot 2 of Section Eight, Township Seven North, Range Five West of
Boise Meridian, also accretion land West of Lot one & 2

Together with all rights of ingress and egress necessary or convenient for the full and complete use, occupation and enjoyment of the easement hereby granted, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the Grantee's use, occupation or enjoyment of this easement and the operation, maintenance and repair of Grantee's electrical system.

Acknowledged by H. Hughes and May Hughes, before W. D. Arms, Notary Public for the State of Idaho, County of Payette, residing at Payette, Idaho. (Seal).

FLB 107



A note from...

Peter D McCabe

to

BEVERLY J MCCABE

This package also
contains some Idaho
Abstracts and Oregon
Abstracts about
water rights.

Peter D McCabe

H.E.A.R.T.S. IN SERVICE

S6661

3077



A note from...

Peter J. McCabe

BEVERLY J MCCABE

Oregon Abstract

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H.E.A.R.T.S. IN SERVICE

S6661

3077

Plan of Lots Dec. 5-7-5-
 as shown on Plat filed Dec 21/90
 Book 2 of Plats page 60.

Lot 4
 45.30 a

Survey of 1868 channel of
 Snake River

Acquisition Co
 59.0 a

Acquisition Co
 Lots 11.9 a

Lot 5
 76.50 a
 48.14 a

720 ft rock

Green Mountain

4
 8
 9

Idaho Abstract & Trust Co.

ABSTRACTS OF TITLE

-21-
 -35-

FLB 33,

No.

ABSTRACT OF TITLE

TO

The North Half of the North East Quarter of Section
Thirty Three in Township Eighteen S. R. 47 E. W. M.
in Malheur County, Oregon.

Continuation of Abstract of Title to Lands Described in Caption Thereto.

No. I

Josiah Carter and Wife,
Jane Carter

GRANTORS.

TO

John Daily.

Character of Instrument.

Deed

Date of Instrument.

July 24, 1888

Date of Record.

Aug, 16, 1888

Book B

of Deeds Page 221.

GRANTEES.

Consideration \$500.00. Are Signatures Sealed? YES

Names of Witnesses Holden T. Husted, Emma F. Clement

Date of Acknowledgement July 24, 1888

Before Whom Acknowledged, and is it regular? J. T. Clement, County Judge, Malheur Co, Oregon.

Granting Words Bargain, sell, Remise, Release and Quitclaim.

Covenant, if any

Description and Remarks:

The North Half of the North East Quarter of Section Thirty Three
in Township Eighteen S. R. 47 E. W. M. in Malheur County, Oregon.

CONTINUATION

of abstract of title to the lands described
in the caption hereof.

No. 20.

Charles W. White and
Emma K. White, his wife,
-to-
Guss Davis,

MORTGAGE.

Dated Dec. 23, 1921,
Ack'd Dec. 23, 1921,
Filed Dec. 24, 1921,
Recorded Book "4" of
Mortgages, pages 489-90.
Consideration \$3500.

Grant, bargain, sell and convey---

The N¹/₂ of NE¹/₄ and the Lot 3, of Section 33,

The Lot 2 of Section 27,

The Lot 8 of Section 28, and

The Lots 1 and 2 of Section 34, all in Township 18 S.R. 47 E.W.M.
in Malheur County, Oregon, together with all water rights thereunto
belonging.

Given to secure a note for \$3500. Dated Dec. 23, 1921, due Dec. 23,
1924, with interest at 10%.

Two witnesses. Signatures sealed. Acknowledged before A.O. Sutton,
Notary Public, Payette County, Idaho, Residing at Payette. Seal.

Cert. of Identity and official capacity of notary by H.G. Gardner
Clerk of the District Court Payette County, Idaho, Seal. Dated Dec. 23, 1921.

Continuation of Abstract of Title to Lands Described in Caption Thereto.

No. .2

United States by the President,
Chester A. Arthur, by M. McKean
Secretary, S. W. Clark Recdr G.L. O.

GRANTORS.

TO

Josiah Carter

Character of Instrument.

Patent

Date of Instrument.

Dec 5, 1884

Date of Record.

Feb 5, 1889

Book .B

of Deeds Page 354

GRANTEES.

Consideration \$

Are Signatures Sealed?

Names of Witnesses

Date of Acknowledgement

Before Whom Acknowledged, and is it regular?

Granting Words

Covenant, if any

Description and Remarks:

Grants The North half of the North East Quarter and the North
half of the North West Quarter of Section Thirty Three in Twp. 18
S. R. 47 E. W. M. in Oregon, containing 155.37, acres.

--Q--

Seal of the General Land Office affixed. Certificate No. 1466,
Act Congress April 24, 1820. General Land Office record Vol. 4 page 105.

FLB 4

CONTINUATION OF
ABSTRACT OF TITLE NO. 3864
as to the lands described on the
caption hereon

No. 26

Esther Davis Athens, formerly
Esther Davis, a married woman,
-to-
Harvey Hughes and May Hughes,
husband and wife

WARRANTY DEED

Dated Dec 29, 1944
Ack'd Dec. 29, 1944
Filed Jan. 2, 1945
Book 62 of Deeds
Page 47
Consideration \$2000.00
I.R.S., \$2.20

Grant, bargain, sell, convey and confirm all of the following described real estate, situate in the County of Malheur, State of Oregon, to-wit:

The N $\frac{1}{2}$ of the NE $\frac{1}{4}$ also designated as Lots 1 and 2 and Lot 3 of Sec. 33; Lot 2 of Sec. 27; Lot 8 of Sec. 28; Lots 1 and 2 of Sec. 34; all being in Twp. 18 S., R. 47 E.W.M.

Covenant: in the quiet and peaceable possession and warrant and forever defend. Lawfully seized in fee simple, and that said property is my sole, separate and individual property.

This conveyance is made subject to 1/6 of State and County taxes or assessments, of whatsoever nature which have been levied or assessed against the above described lands and premises for the year 1936 and all such taxes so levied thereafter.

Two witnesses.

Signatures sealed.

Acknowledged before John H. Norris, Notary Public, Payette County, Idaho.
Notarial seal. Commission expires Dec. 13, 1945.

No. 27

Harvey Hughes and May
Hughes, husband and wife
-to-
Peter Mc Cabe,---

WARRANTY DEED

Dated Nov. 27, 1946
Ack'd Nov. 27, 1946
Filed Dec. 2, 1947
Book 72 of Deeds
Page 193
Consideration \$10.00 & OVC
I.R.S., \$6.60

Grant, bargain, sell, convey and confirm all of the following described real estate, situate in the County of Malheur, State of Oregon, to-wit:

The N $\frac{1}{2}$ of the NE $\frac{1}{4}$, also designated as Lots 1 and 2 and Lot 3 of Section 33; Lot 2 of Section 27; Lot 8 of Section 28; Lots 1 and 2 of Section 34; all being in Township 18 S., Range 47 E.W.M.

Covenant: In the quiet and peaceable possession, Warrant and forever Defend.

Two witnesses.

Signatures sealed.

Acknowledged before Wm. C. Dunbar, Notary Public, Ada County, Idaho, residing at Boise, Idaho. Notarial seal. Commission expires---.

The Idaho-Oregon Boundary between Payette and Malheur Counties

by Sheldon Bluestein
Idaho State Mapping Coordinator
208-334-7750
7/19/94 revision of 1986 work

In 1986, Harold Curt, Payette County Assessor, reported a problem with Idaho State Tax Commission (S.T.C.) code area maps. These maps show the various tax code areas--areas with unique combinations of taxing districts, such as road districts, school districts, mosquito abatement districts, etc. A question arose over whether McPherson Island, in the Snake River near Ontario, Oregon, was in a particular rural fire district. S.T.C. maps for Payette County did not show McPherson Island at all, and thus did not include it in any tax code area.

S.T.C. code area maps are drawn on base maps copied from Idaho State Department of Transportation county maps. (See Figure 1.) In turn, these are based on U.S. Geological Survey (U.S.G.S.) topographic maps. On the U.S.G.S.'s Nyssa 1:24000 topographic map, McPherson Island is shown as part of Oregon, not Idaho.

In contrast, both Malheur and Payette Counties have always considered McPhersons Island as part of Idaho. Malheur County's plat map is Figure 2.

Idaho's 1891 enabling act defined its western boundary as following Oregon's boundary. Oregon's 1859 enabling act defined its eastern boundary as "the middle of the main channel of the Snake River". Thus, to establish the boundary line between the two states, one must determine where the river was in 1859, where it is today, and how and why it moved.

Surveys of the Boundary: General Land Office (G.L.O.) township plats are normally the oldest survey-based maps of Idaho. The 1868 G.L.O. survey plat for Township 7 North Range 5 West, Boise Meridian (Figure 3) shows the present island as an upland area attached to Idaho, part of Section 5. The township was surveyed by Allen M. Thompson, who generally has a good reputation. Thompson's notes say the meandered area had "land level, soil 1st rate, subject to inundation".

The 1874 G.L.O. survey plat for T18N R47E, Willamette Meridian (Figure 4), seems to conform well with the Idaho side. There seems to have been some exaggeration of the river's meanders between 1868 and 1874. Note that the Oregon survey shows much more detail of the river's meanders than does the Idaho survey.

Both sides' G.L.O. surveys are shown on Figure 5, drawn on the USGS Nyssa topographic map. Note that the U.S.G.S. map shows McPhersons Island as Section 27 of the Oregon township. The Idaho survey is also drawn on Figure 6, an aerial photo.

In reviewing the U.S.G.S. topographic map, another problem arises--that of the area south of McPhersons Island, in Whitley Bottom. An area which shows on the map as Sections 33 and 34 of the Oregon township, is on the Idaho side of the river and the boundary line.

Another relevant map is the U.S.G.S.'s 1898 Nampa 1:125000 topographic map, shown as Figure 7. Based on an 1891 survey, it shows McPhersons Island as an island on the Oregon side of the river. Channels divide the Whitley Bottom problem area into two islands--a northern one which seems to be the upland area of Oregon's Sections 33 and 34,

and a southern one which appears to be the upland area of Idaho's Section 8.

The Oregon Short Line Railroad map of 1883 is shown as Figure 8. This stretch marks the railroad's closest approach to the river. What Figure 2 calls "Crow Island" is here shown as "Low Island". While the survey doesn't show any detail of islands, it does show riprap along the river bank just south of Low Island.

A last relevant map is a 1908 survey of McPhersons Island by C.P. Lattig, a Licensed Surveyor. It shows a "Present Main Channel of Snake River" where the U.S.G.S. maps show it; the "Survey of 1868 channel of Snake River"; and a "By-channel". It shows accretion land along the southwest side of McPhersons Island. This survey, Figure 9, was recorded in Canyon County.

Starr Island Visit: Harold Curt stated that deeds for McPhersons Island have always been recorded in Idaho. The Starr family has owned McPhersons Island for three generations, and has always paid taxes in Idaho. Harold and I visited Mr. Starr on December 18, 1986.

Mr. Starr affirmed that he lived in Idaho, and that Oregon considered he lived in Idaho. Malheur County (Oregon) road services end at the causeway entering his island. His children attended school in Malheur County, and had to pay tuition because they were considered Idaho residents. Malheur County plat maps show McPhersons Island as part of Idaho, and the Whitley Bottom land as part of Oregon's Sections 33 and 34--as on the original GLO survey. Malheur County plat maps show land in those sections as cut off from Oregon.

On my visit, I could clearly see a drop in elevation that appears on the U.S.G.S. Nyssa map as the 2155 foot contour, and which is very close to the Idaho G.L.O. survey's meander line. Below that 2155 foot contour, the bottomland appears to be accretion land as shown on the 1908 Lattig survey.

Mr. Starr said that he had once asked an older resident of the area, a Mr. Oris Dearborn, about the river and the island. That individual, whose account Mr. Starr wrote down as Figure 10, said that there were few changes in the river from GLO days to when the Oregon Short Line Railroad was built along the Oregon side of the river (1883). Mr. Dearborn stated that a railroad jetty (perhaps the riprapping shown in the area) cut off a slough running toward Ontario that was an important overflow channel for the river. One flood year around 1900, the river cut off McPhersons Island.

The earliest newspapers for this area did not appear until 1892. I reviewed what I could find (mostly the Caldwell paper), but came up with no mention of major flooding around 1900.

Conclusion: I believe that in 1859, at the time of Oregon statehood, the Snake River substantially followed the course shown in the 1868 and 1874 G.L.O. surveys. I also believe that railroad causeway construction and riprapping changed the river's flood behavior about 1883, and that it avulsively changed course sometime before 1891. I believe that other, accretionary changes have occurred in the river's banks since then.

Based on these beliefs, it is suggested that the state boundary between Oregon and Idaho be changed. This new boundary line could be mapped through procedures outlined in the Manual of Instructions for the Survey of the Public Lands of the United States 1973, page 170 (Figure 11). For mapping purposes, the line could be determined without field surveys. It would look approximately like Figure 12. U.S.G.S. maps, Idaho Transportation Department maps, and S.T.C. code area maps should be changed accordingly.

One last point: the Idaho Bureau of Land Management's state office in Boise now has

on staff their national expert on water boundary surveying. It would be great if we could convince the B.L.M. to have Mark Smirnoff review this information. He's awfully good at poking holes in weak arguments (mine included). It would be even better if we could get Mark to work on this problem and at least come up with a mapping solution.

MEMORANDUM

TO: Adjudication Bureau Staff Adjudication Memo No. 53

FROM: Dave Tuthill

DATE: Amended September 30, 2005

RE: Adjudication Recommendations for Out-of-State Diversions or Places of Use

For an out-of-state diversion with place of use in Idaho, prepare recommendations for all elements of the water right.

For point of diversion use the location where the conveyance system enters Idaho.
To clarify the point of diversion use this condition:

The point of diversion for this water right is in [state], [PLS, including meridian]. The point of diversion shown above is where the conveyance system enters Idaho.

To clarify the priority date use this condition:

The priority date for this water right must be determined by the state of [____]. The listing of this element is for informational purposes only.

To clarify the quantity use this condition:

The quantity for this water right must be determined by the state of [____]. The listing of this element is for informational purposes only.

Notes:

1. Digitize the POD at the location where the conveyance enters the state. This location is useful for spatial queries. Place the actual POD in the SpatialData layer.
2. As the recommendation for an out-of-state diversion is forwarded to the SRBA Court, the format will be changed in the State Office to conform with previous similar submittals.

For an in-state diversion with the place of use out-of-state, prepare recommendations for all elements except place of use. To clarify the place of use, use this condition:

The place of use for this water right is in [state], and includes [x] acres described as [PLS, including meridian].

MEMORANDUM

FROM: Michael Ciscell
TO: SRBA Staff
DATE: November 30, 2004
RE: Omitted Lands

Adjudication Memo No.

The following guidelines are intended to provide a uniform method to deal with locating Places of Use (POU) or Points of Diversion (POD) within Omitted Lands as shown on the BLM's Geographic Coordinate Database (GCDB). The GCDB is a digital representation of the most recent township subdivision surveys done by federal agencies. A part of these surveys includes the location of meander lines along the banks of larger rivers within the state. Most township subdivision surveys of section and $\frac{1}{4}$ $\frac{1}{4}$ section lines end against these meander lines. The area between the meander lines of a river is known as omitted lands. Typically there are no additional lines within the GCDB to indicate the section(s) or QQ section(s) that fall with the omitted lands.

- 1.) For $\frac{1}{4}$ $\frac{1}{4}$ section lines defining an area less than 40 acres outside of the omitted lands, extend the $\frac{1}{4}$ $\frac{1}{4}$ or section lines from the endpoint at the meander line into the omitted lands area to complete a normal $\frac{1}{4}$ $\frac{1}{4}$ section (i.e. 1320' from the last $\frac{1}{4}$ $\frac{1}{4}$ corner). The legal for the area within the omitted lands will include ONLY the $\frac{1}{4}$ $\frac{1}{4}$ description and not any lot or special survey information. If the POU or POD is sufficiently within the omitted lands to require additional $\frac{1}{4}$ $\frac{1}{4}$ section lines to be drawn, these should be drawn to represent a regular $\frac{1}{4}$ $\frac{1}{4}$ section and be labeled in the usual fashion.
- 2.) For $\frac{1}{4}$ $\frac{1}{4}$ section lines defining an area greater than 40 acres outside of the omitted lands, extend the $\frac{1}{4}$ $\frac{1}{4}$ or section lines from the endpoint at the meander line into the omitted lands area to create a normal $\frac{1}{4}$ $\frac{1}{4}$ section (i.e. 1320' from the last intersection with the meander corner). The legal for the area within the omitted lands will include ONLY the $\frac{1}{4}$ $\frac{1}{4}$ description and not any lot or special survey information. If the POU or POD is sufficiently within the omitted lands to require additional $\frac{1}{4}$ $\frac{1}{4}$ section lines to be drawn, these should be drawn to represent a regular $\frac{1}{4}$ $\frac{1}{4}$ section and be labeled in the usual fashion.
- 3.)

Township range QQ is unsurveyed land

Bas	Sequence	SplitS	TextBlock
27	21	D	T02S R37E S10 SESW, S15 NWNW and S16 NENE is unsurveyed, nonfed
27	5	B	The SWNW and SENW Section 12 is unsurveyed, nonfederal, accretion lan
27	10943		T02S R37E S11 NWSW is unsurveyed, nonfederal land.
27	14	C	T02S R37E S10 NESE and S11 NWSW is unsurveyed, nonfederal land.
27	5	A	T02S R37E S12 SWNW is unsurveyed, nonfederal land.
27	14	B	T02S R37E S11 NWSW is unsurveyed, nonfederal land.
27	21	B	T02S R37E S11 NWSW is unsurveyed, nonfederal land.
27	4	Z	T02S R37E S12 SWNW, SENW is unsurveyed, nonfederal land.
27	3	D	T02S R37E S12 NWSW is unsurveyed, nonfederal land.
27	10943		T02S R37E S10 SESW, S15 NWNW and S16 NENE is unsurveyed, nonfed
27	5	B	The SWNW Section 12 is unsurveyed, nonfederal, accretion land.
27	2	B	T02S R37E S12 SWNW, SENW is unsurveyed, nonfederal land.
27	3	E	T02S R37E S12 NWSW is unsurveyed, nonfederal land.

**DRAFT
MEMORANDUM**

To: Susan Hamlin, Deputy Attorney General
From: Chris Bromley, Deputy Attorney General
Re: Water Right No. 3-4017--McCabe Brothers

Date: December 9, 2003

I.

INTRODUCTION

Peter and Paul McCabe approached the Department in late 2002 with a question regarding water right no. 3-4017. Water right no. 3-4017, which has three points of diversion and irrigates real property in Payette County, Idaho, is a statutory claim with a priority date of 1920.¹ While water right no. 3-4017 irrigates property in the state of Idaho, the McCabes stated that the real property upon which two of the three points of diversion are situated--on the east side of the Snake River--are considered by the tax commissions in Payette County and Malheur County, Oregon to be located in the state of Oregon. The McCabes currently seek to determine whether they are entitled to possess an Idaho water right.

II.

DISCUSSION

A. The Department's Policy on Out-of-State Diversions with In-State Places of Use.

On November 26, 1997, Judge Hurlbutt responded to a letter from Tony Olenichak, Water District 1 Deputy Water Master, regarding the SRBA's acceptance of "claims of water rights decreed by Idaho District Courts which have points of diversion outside the state of Idaho,

¹ The McCabes do have Oregon water rights in the Malheur County area, however, none of the Oregon water rights have a 1920 priority date. Therefore, it appears that the McCabes have not sought an Oregon water right for the current right.

specifically in Wyoming.” In his response, which was copied to Director Karl Dreher, Judge Hurlbutt stated: “The SRBA District Court has not been presented with this issue, nor has it issued any opinion on whether or not water rights with points of diversion outside the state of Idaho can be claimed in the SRBA. Therefore, whatever policy IDWR may have adopted about such claims in the SRBA is not based on any decision of this court.”

Following receipt of Judge Hurlbutt’s November 26, 1997 letter, Director Dreher responded, on January 7, 1998:

I have reviewed the Department’s [sic] policy concerning acceptance of claims with points of diversion outside the boundary of the SRBA. *Claims that have points of diversion outside the SRBA boundary and places of use inside the boundary will be accepted by the Department*

There are only two instances where a claim would not be accepted by the Department. First, a claim may not be accepted if the claim form is incomplete. *Idaho Code* § 42-1409 and IDWR Adjudication Rule 60, Sufficiency of Claims, IDAPA 37.03.01.060, outline what information must be included in a claim form. Secondly, a claim would not be accepted if the filing fee was not submitted with the claim. *Idaho Code* § 42-1414 provides that the Department shall not accept a notice of claim unless it is submitted with the proper filing fee.

Unless you or the legislature take action that would necessitate a change in the Department policy, I will make sure that Department personnel understand and implement this policy so that there is no further need for clarification.

Emphasis added.

Director Dreher’s statement has not been revised by the SRBA court or the Idaho legislature since it was issued on January 7, 1998. Therefore, the Department should accept claims that have out-of-state points of diversion with in-state places of use.

B. Must the McCabes Comply with the Oregon Revised Statutes when Diverting Water from Oregon for Use in Idaho?

Until 1971, appropriations of water in the state of Idaho could be made in two ways. *State v. U.S.*, 134 Idaho 106, 111, 996 P.2d 806, 811 (2000). One method, “the statutory

method,” required applying for a permit under provisions of Title 42 of the Idaho Code. *Id.* The second method, “the constitutional method of appropriation,” a water user could make a valid appropriation without a permit, most commonly by diverting the water and putting it to beneficial use. *Id.* Compare with Oregon Revised Statute § 537.140; *Oliver v. Skinner*, 226 P.2d 507 (Or. 1951).

Here, the McCabes state that water right no. 3-4017 has a June 1, 1920 priority date, diverts 4.740 cfs for irrigation, and that its three current points of diversion have been used since 1945. Therefore, by contending that they have diverted water for purposes of irrigation (a beneficial use), the McCabes have alleged the required elements for an Idaho water right. However, in this case, even though the McCabes’ points of diversion are located on the east side of the Snake River, two of the McCabes’ points of diversion may be located in the state of Oregon. If the McCabes’ points of diversion are located in Oregon and benefit lands outside that state, the McCabes must comply with Oregon’s interstate transfer law. Oregon Revised Statute §§ 537.801-860.

According to Oregon law, when water from “one of the river basins within this state, as defined by Water Resources Department Map No. 0.2, dated 1987[,]” is transported outside that basin’s boundaries,² O.R.S. § 537.801(a), the claimant must file an application for transfer with the Oregon Water Resources Commission, O.R.S. § 537.805. *See also* Idaho Code §§ 42-401(2) (“Any person . . . intending to withdraw water from any surface or underground water source in the state of Idaho and transport it for use outside the state . . . shall file with the department of water resources an application for a permit to do so . . .”). However, Oregon law provides

² The Snake River near the McCabes’ points of diversion is deemed by the 1987 Water Resources Department Map to be within Basin 10.

various exceptions to the general rule that a claimant must obtain a transfer permit before diverting water out-of-state:

ORS 537.801 to 537.860 shall also apply to the waters located within the boundaries of this state of any river, stream, lake or other body of water serving as part of the common boundary of this state and any other state and over which this state has concurrent jurisdiction, *except that said sections shall not apply to the diversion, impoundment or appropriation of waters for the development of hydroelectric energy, flood control, irrigation or other uses in waters forming a boundary of the state in cases where such waters are not to be diverted from the drainage basin wherein such waters are located.*

O.R.S. § 537.820 (emphasis added). *See also* I.C. § 42-401(1) (“The state of Idaho also recognizes that under appropriate conditions the out-of-state transportation and use of its public waters is not in conflict with the public welfare of its citizens or the conservation of its waters.”).

Additionally, Oregon Revised Statutes §§ 537.801-860 “*shall not affect any valid prior appropriation or water right existing on May 12, 1951.*” O.R.S. § 537.860 (emphasis added).

In this case, the McCabes claim to have been diverting water for beneficial use from their current points of diversion on the east side of the Snake River since 1945. If the McCabes can prove that they have been diverting water from Oregon to Idaho before 1951, they will possess a vested right and O.R.S. §§ 537.801-860 will not apply. O.R.S. § 537.860. Furthermore, because the McCabes divert water for irrigation purposes from a body of water that forms an interstate boundary, and do not apply that water to land outside the Snake River drainage basin, it also appears that O.R.S. §§ 537.801-860 will not apply. O.R.S. § 537.820. Therefore, even though the McCabes’ points of diversion are within the state of Oregon, the McCabes should not have to obtain an Oregon transfer permit to use water in the state Idaho.

C. Are the McCabes’ Points of Diversion Located in Oregon or Idaho?

A review of the maps on file with the Department indicate that the two points of diversion on the east side of the Snake River for water right no. 3-4017 are located on real property that did not exist at the time of Oregon or Idaho statehood--1859 and 1889,

respectively. A review of the maps also demonstrates that the Snake River, at the border of Payette and Malheur counties, known as “Whitley Bottom,” has been moving since Oregon and Idaho statehood. A result of the movement of the river channel has been the creation of an alluvial on the east side of the Snake River on which the McCabes’ points of diversion are presently located.

In 1892, the United States Supreme Court was asked to determine whether land along the Missouri River belonged to Nebraska or Iowa. *Nebraska v. Iowa*, 143 U.S. 359 (1892). According to the facts, “Iowa was admitted into the Union in 1846, and its western boundary, as defined by the act of admission, was the middle of the main channel of the Missouri river.” *Id.* at 359. When Nebraska became a state in 1867, “its eastern boundary was likewise the middle of the channel of the Missouri river.” *Id.* Between 1851 and 1877, the Missouri River “above Omaha, Nebraska, which had pursued a course in the nature of an ox-bow, *suddenly cut through the neck of the bow and made for itself a new channel.*” *Id.* (emphasis added). Following that sudden event, the state of Nebraska petitioned the Court to declare the interstate boundary as the course of the new channel. The state of Iowa answered by stating that the boundary should be defined as the Missouri River’s historic channel.

In reaching its conclusion that the sudden shift of the Missouri River rendered the boundary between Nebraska and Iowa as the Missouri’s historic channel, the Court examined the doctrines of accretion and avulsion. According to the Court,

It is settled law that when grants of land border on running water, and the banks are changed by that gradual process known as “accretion,” the riparian owner’s boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possession may vary.

....

It is equally well settled that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, "avulsion."

....

Accretion, no matter to which side it adds ground, leaves the boundary still the center of the channel. Avulsion has no effect on boundary, but leaves it in the center of the old channel.

....

One country may, in process of time, lose a little of its territory, and the other gain a little, but the territorial relations cannot be reversed by such imperceptible mutations in the course of the river. The general aspect of things remains unchanged. And the convenience of allowing the river to retain its previous function, notwithstanding such insensible changes in its course, or in either of its banks, outweighs the inconveniences, even to the injured party, involved in a detriment, which, happening gradually, is inappreciable in the successive moments of its progression.

....

The result of these authorities puts it beyond doubt that accretion on an ordinary river would leave the boundary between the two states the varying center of the channel, and that avulsion would establish a fixed boundary, to-wit, the center of the abandoned channel.

....

The doctrine of the English cases is that accretion is an addition to land coterminous with the water, which is formed so slowly that its progress cannot be perceived, and does not admit of the view that, in order to be accretion, the formation must be one not discernible by comparison at two distant points in time. . . . The test as to what is gradual and imperceptible in the sense of the rule is that, though the witness may see from time to time that progress has been made, they could not perceive it while the process was going on.

....

Our conclusions are that, notwithstanding the rapidity of the changes of the course of the channel, and the washing from one side and onto the other, the law of accretion controls on the Missouri river as elsewhere; and that not only in respect to the rights of individual landowners, but also in respect to the boundary

lines between states. The boundary, therefore, between Iowa and Nebraska is a varying line, so far as affected by these changes of diminution and accretion in the mere washing of the waters of the stream.

It appears, however, from the testimony, that in 1877 the river above Omaha, which has pursued a course in the nature of an ox-bow, suddenly cut through the neck of the bow and made for itself a new channel. This does not come within the law of accretion, but that of avulsion. By this selection of a new channel the boundary was not changed, and it remained, as it was prior to the avulsion, the center line of the old channel; and that, unless the waters of the river returned to their former bed, became a fixed and unvarying boundary, no matter what might be the changes of the river in its new channel.

Id. at 360-70 (emphasis added). See also *Mississippi v. Arkansas*, 415 U.S. 289 (1974) (doctrines of accretion and avulsion examined to determine the boundary between the states of Mississippi and Arkansas on the Mississippi River); *Arkansas v. Tennessee*, 397 U.S. 88 (1970) (doctrines of accretion and avulsion examined to determine the boundary between the states of Arkansas and Tennessee on the Mississippi River).

While the United States Supreme Court has historically applied the doctrines of accretion and avulsion to determine interstate boundaries on rivers, the Court in *Ohio v. Kentucky*, 444 U.S. 335 (1980) stated that neither doctrine applied on the Ohio River between Kentucky and Ohio, based upon a reading of the Virginia Cession of 1784. There, the state of Ohio alleged that its boundary with Kentucky should be “the low water mark on the northerly side of the Ohio River in the year 1792.” *Id.* at 336. However, the state of Kentucky stated that “the boundary line is the current low-water mark on the northerly side of the Ohio River.” *Id.*

According to the Court, in 1784 the state of Virginia ceded land “northwest of the river Ohio” to the United States. *Id.* at 337. Therefore, unlike the Missouri River between the states of Nebraska and Iowa, or the Mississippi River between the states of Arkansas and Mississippi, the boundary between Ohio and Kentucky was not based upon the middle channel of the Ohio River. Instead, the boundary between Ohio and Kentucky was “the northerly edge, with originally Virginia and later Kentucky entitled to the river’s expanse.” *Id.* at 338. Based upon

the Virginia Cession of 1784, the Court held that the boundary between Kentucky and Ohio was the 1792 low water mark on the northerly side of the Ohio River.

Here, Oregon became a state in 1859. According to Article XVI of Oregon's Constitution, it defined its boundaries "as provided by section 1 of the Act of Congress of February 1859, admitting the State of Oregon into the Union of the United States" The Act of Congress admitting Oregon into the Union defined part of its eastern boundary as the middle of the main channel of the Snake River:

In order that the boundaries of the state may be known and established, it is hereby ordained and declared that the State of Oregon shall be bounded as follows, to wit: Beginning one marine league at sea, due west from the point where the forty-second parallel of north latitude intersects the same, thence northerly, at the same distance from the line of the coast lying west and opposite the state, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia River; thence easterly, to and up the middle channel of said river, and, where it is divided by islands, up the middle and widest channel thereof, to a point near Fort Walla Walla, where the forty-sixth parallel of north latitude crosses said river, *thence east, on said parallel, to the middle of the main channel of the Shoshone or Snake River; thence up the middle of the main channel of said river, to the mouth of the Owyhee River; thence due south, to the parallel of latitude forty-two degrees north;* thence west, along said parallel, to the place of beginning, including jurisdiction in civil and criminal cases upon the Columbia River and Snake River, concurrently with states and territories of which those rivers form a boundary in common with this state.

Emphasis added. *Compare with Nebraska*, 143 U.S. at 359.

Thirty-one years later, on July 3, 1890, Idaho was admitted to the Union. In Article XVII of Idaho's Constitution, Idaho described its common western boundary with the state of Oregon as the border described by Oregon:

Section 1. NAME AND BOUNDARIES OF STATE. The name of this state is Idaho, and its boundaries are as follows: Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the channel of the Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river thence south along that degree of longitude to the forty-second degree of north latitude; *thence west along that*

parallel to the eastern boundary of the state of Oregon; thence north along that boundary to the place of beginning.

Emphasis added. *Compare with Nebraska*, 143 U.S. at 359.

In this case, Oregon and Idaho's common interstate boundary is the middle channel of the Snake River, to the mouth of the Owyhee, then due south to the forty-second parallel. Thus, the description of Oregon and Idaho's common border that is bounded by the Snake River is similar to Nebraska and Iowa's, which defined their common boundary as the middle of the main channel of the Missouri River. *Nebraska*, 143 U.S. 359. As a result, unlike in *Ohio*, 444 U.S. 335, the doctrines of accretion and avulsion apply to Idaho and Oregon's interstate border created by the Snake River.

The maps and photographs on file with the Department indicate that the area of land on the east side of the Snake River upon which the McCabes' points of diversion are located did not exist at the time of Oregon or Idaho statehood. The information on file further indicates that the land was not created by a "sudden and rapid change of channel." *Nebraska*, 143 U.S. at 361. Instead, the land was created over many years by a "gradual and imperceptible" deposit of alluvium that could not be perceived "while the process was going on." *Id.* at 368.

Despite the natural movements of the Snake River channel, the Payette and Malheur county tax commissions have seemingly applied the doctrine of avulsion by defining the interstate boundary as the center of the Snake River as it existed at the time of statehood. If the Snake River near Malheur and Payette counties suddenly shifted, Payette and Malheur counties would be correct to deem the interstate boundary as the middle of the historic channel of the Snake River. However, the information on file with the Department indicates that the land on which the McCabes are presently diverting water was created by a slow and gradual process. Because the land on which the McCabes' points of diversion are located was created through

accretion, rather than avulsion, the land should be deemed part of the state of Idaho, *Nebraska*, 143 U.S. 359, and the McCabes points of diversion should be in Idaho, not Oregon.

III.

CONCLUSION

It appears that the Department may review the McCabes' request for an Idaho water right without engaging in an examination of the interstate boundary between Oregon and Idaho. While the general rule in Oregon states that a water user must obtain permission before diverting water out-of-state, the McCabes have been diverting water for irrigation within the Snake River basin prior to 1951. Therefore, the McCabes diversions should be exempt from O.R.S. §§ 537.801-860. The conclusion that the Department may review the McCabes' claim for a water right, even if their points of diversion are located in Oregon, is consistent with Director Dreher's January 7, 1998 letter to Judge Hurlbutt.

Idaho Dept. of Water Resources
322 E. Front St. Boise, ID
May 25, 2006

To: 3-4017 Claim File
From: Jennifer Dean
Subject: Evidence of Priority

On March 22, 2006, I went out to the McCabe property for a field exam. During the exam Pete told me that when they first purchased the property they irrigated using a pump that was south of their property on the Johanek place. He showed me a portion of the pipeline that remains visible today. He told me that in 1958 they moved the POD to its current location that is at the SW corner of their property. He also said that it was at that time that all of the fields between the pump and the homestead were leveled and put into production.

When asked to supply evidence of priority, Pete McCabe told me that he had previously submitted a memo to the department to validate their priority date. The memo is addressed to Susan Hamlin and Chris Bromley, dated January 13, 2004. This memo describes the change to their POD. It does not mention that additional fields were developed at this time. I have attached a copy of this memo.

Also supporting the change of the point of diversion in 1958 are two maps in the claim file submitted to Western Regional Office by Roxanne Brown. These maps indicate that Idaho Power Company verified that a new pumping plant was developed in 1958, however there is no specific date.

Based upon the additional information obtained in conversation with Pete McCabe, I will recommend a priority date at the start of the season in 1959. This seems to be the likely date when all of the claimed fields were developed and the water was applied to beneficial use.

Memorandum

RECEIVED
JAN 14 2004
Department of Water Resources

To: Susan Hamlin, Deputy Attorney General

CC: Chris Bromley, Deputy Attorney General

From: Peter J McCabe

Date: 01/13/04

Re: Water Right No. 3-4017 -McCabe Brothers

Irrigation:

In the spring of 1944 my parents Peter and Bertha McCabe bought this farm from Harvey and May Hughs.

My father and older brothers were irrigating a lot of this farm by a pump in the Snake River, through a pipeline on the Johaneck property. Part of the pipeline is visible today.

We moved the pump in 1958 or 1959 to its present location in the southwest corner of the property on the Snake River, Which we considered Idaho water rights.

The amount of land irrigated now is approximately 133 acres from this pump.

Peter J McCabe

Idaho Dept. of Water Resources
322 E. Front St. Boise, ID
May 19, 2006

To: 3-4017 Claim File
From: Jennifer Dean
Subject: Draft Memo on Unsurveyed Lands

At various places along the Snake River (and other rivers) the most recent federal land survey (as represented by the BLM's Geographic Coordinate Database, GCDB) stops at river meander lines. Since the time of the survey, the river has changed course in several places, which created land that is not represented in the survey data. This land is known as omitted lands.

This recommendation for this claim consists of 231 acres. Of those acres, 189 are on omitted lands. In order to create a meaningful description of the place of use, I copied $\frac{1}{4}$ $\frac{1}{4}$ section lines and overlaid them on the omitted lands, carefully lining them up with the existing GCDB $\frac{1}{4}$ $\frac{1}{4}$ section lines. In so doing, there were a couple of the theoretical $\frac{1}{4}$ $\frac{1}{4}$ section lines that were divided by existing lots as well as existing lots that were divided by the theoretical $\frac{1}{4}$ $\frac{1}{4}$ section lines. In these instances I used ArcView to calculate the acres for the smallest division.

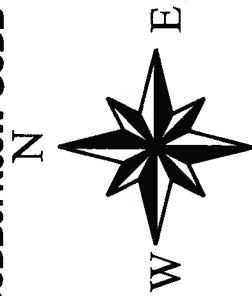
For example, I recommended 7 acres in T07N, R05W, S08 **SWNE** Lot 2. I also recommended an additional 25 acres in T07N, R05W, S08 **SENE** Lot 2. Additionally, there were 32 acres recommended as unsurveyed land in T07N, R05W, S08 **SWNE**. Dividing the acres in the recommendation in this way allows both the acres for each lot and the acres for each theoretical $\frac{1}{4}$ $\frac{1}{4}$ to be calculated by simple addition. According to the example, there are a total of 32 acres in T07N, R05W, S08 **Lot 2**. There are also a total of 39 acres in T07N, R05W, S08 **SWNE**. This method also keeps the government lot as part of the recommendation, which provides a more accurate legal description.

One other thing that is important to note regarding this claim is that some of the ground could also be represented according to Oregon GCDB. Since the time of the original survey, the river has changed its course. This has left ground that was originally part of Oregon (and represented in Oregon GCDB) on the east side of the Snake River. With no public information that explains a sudden change in the river course (avulsion), we were left to assume that the change along the river at this location took place gradually (accretion). Based on case law related to changes in state boundaries along a river, any changes based on accretion allow the state boundary to move with the change in the main channel of the river. Therefore, the determination was made for these claims that because they are along the east side of the Snake River they will be represented according to extended Idaho GCDB.

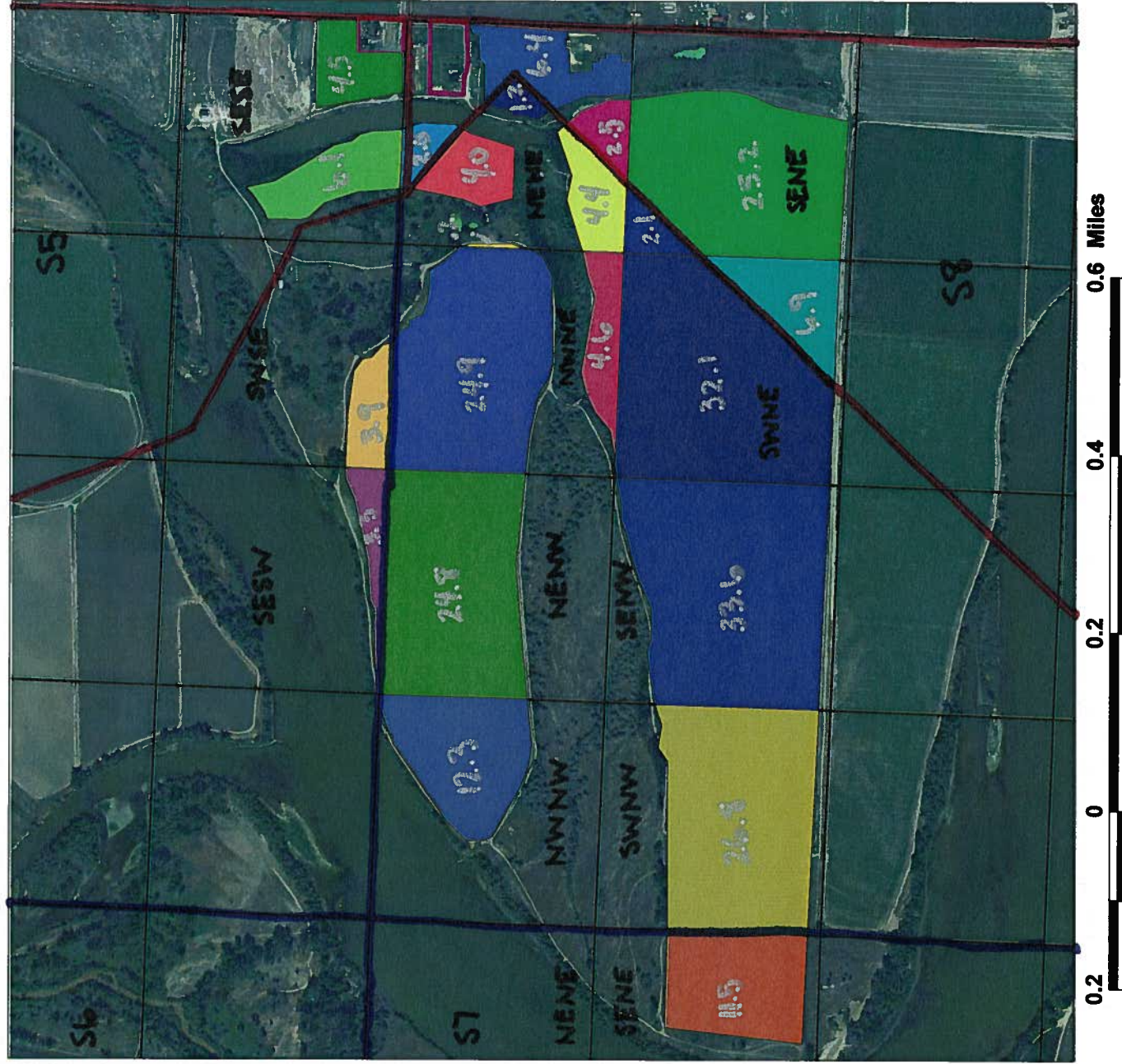
Idaho Department of Water Resources

Claim Number: 3-10218

- Graph180.shp
- Graph179.shp
- Graph178.shp
- Graph177.shp
- Graph176.shp
- Graph175.shp
- Graph174.shp
- Graph173.shp
- Graph172.shp
- Graph171.shp
- Graph170.shp
- Graph169.shp
- Graph168.shp
- Graph167.shp
- Graph166.shp
- Graph165.shp
- Graph164.shp
- Graph163.shp
- Graph162.shp
- Graph161.shp
- Graph160.shp
- Graph159.shp
- 03_10218_mccabe_pou.shp
- 03_04017_extended_qq.shp
- GCDB07N05W GCDB



Legal: T07N, R05W, S5, 7, 8
2004 NAIP Photo



3-04017

Township	Range	Section	QQ	Lot	GIS Acres	Rec Acres	QQ Sum	Claim
07N	05W	5	SESW		3.3	3	3	8
07N	05W	5	SWSE		3.9	4	4	8
07N	05W	5	SESE	5	6.1	6	6	6
07N	05W	7	SENE		11.5	12	12	18
07N	05W	8	NENE	1	4.5	4	13	8
07N	05W	8	NENE		8.6	9		
07N	05W	8	NWNE		29.5	29	29	23
07N	05W	8	SWNE	2	6.9	7	39	37
07N	05W	8	SWNE		32.1	32		
07N	05W	8	SENE	2	25.2	25	27	23
07N	05W	8	SENE		2.1	2		
07N	05W	8	NENW		24.8	25	25	22
07N	05W	8	NWNW		12.3	12	12	14
07N	05W	8	SWNW		26.8	27	27	36
07N	05W	8	SENW		33.6	34	34	34
					231.2	231	231	237



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 25, 2006

PETE MCCABE
5951 WHITLEY DR
FRUITLAND ID 83619

3-4017
Re: Evidence of Priority Date

Dear Pete:

When you came to our office earlier this month to discuss Paul Johanek's claims, you mentioned that when the surveys were done for your property you transferred your lands to the land board until the survey could be completed at which point they conveyed the lands back to you. Could you submit copies of the deeds that were issued at that time so we might have them on file in our office? They will be of some help to our legal staff. Your cooperation in this regard will be greatly appreciated.

You may submit copies of the deeds in the enclosed envelope. Please contact me if you have any questions. If you wish to call, our toll free number is 1-800-451-4129. You may reach me directly at (208) 287-4918.

Sincerely,

Jennifer Dean
Engineer in Training
Adjudication Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 18, 2006

PETE MCCABE
5951 WHITLEY DR
FRUITLAND ID 83619

3-4017
Re: Evidence of Priority Date

Dear Pete:

During our field exam we discussed with you information regarding evidence of priority for claim 3-4017. Based on the information currently on file with the department, the earliest priority date we can recommend is March 1, 1959. This priority date is based on a memo you submitted to the department regarding when you moved your pump to its present location. As you indicated to me at the time of the exam, this was when the entire property that you have claimed was leveled and put into production.

As we discussed when you came to the office with Chuck Johaneck, a priority date is related to when water is put to beneficial use. The earliest priority date that can be recommended for a specific claim is the date when the entire place of use for that claim was put to beneficial use. For a place of use that was developed in stages, the only way to get an earlier priority date than when the last stage was completed is to file a separate claim for the place of use that was developed earlier.

As it stands, we will recommend March 1, 1959 for your priority date. If you disagree with this priority date, you will be required to file a new claim for the acres that were irrigated prior to moving your pump. This claim will need additional proof to support the priority date prior to 1959. Please contact me if you decide that you want to claim a priority date earlier than 1959 for any of your property. If you wish to call, our toll free number is 1-800-451-4129. You may reach me directly at (208) 287-4918.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Dean". The signature is written in a cursive, flowing style.

Jennifer Dean
Engineer in Training
Adjudication Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 8, 2006

PETER J MC CABE
5951 WHITLEY DR
FRUITLAND ID 83619

3-4017 & 3-10218
Re: Field Examination

Dear Claimant(s):

The Notice of Claim to a Water Right (claim) identified with the number shown below your name has been filed in the Snake River Basin Adjudication (SRBA). The claim indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed, and are termed beneficial use rights. The elements of beneficial use rights need to be verified by an examiner for the Idaho Department of Water Resources (IDWR) before the claim can be recommended to the SRBA Court.

The purpose of this letter is to advise you that an agent from IDWR will be conducting field examinations in your area from March 20 through April 7. Accordingly, we request that you provide our agents with access to your water diversion system so that they can conduct a field examination to determine the elements of your water right. I will be attempting to contact you in behalf of the examiner, but it would be best if you could speak with me to set up an appointment at (208) 287-4918.

If it is more convenient for the examiner to meet with another person who is familiar with your diversion system, please call me with contact information for this person or forward this information to them with the instructions to set up an appointment with me.

Because the elements of your claim have not been previously verified by IDWR, your claim may be disallowed if we cannot complete a field examination. Please set up an appointment with me by **March 17, 2006**.

A copy of your water right claim is enclosed. If you have questions, please contact this office. Our toll free number is 1-800-451-4129. You may reach me directly at (208) 287-4918. It will help speed things along if you have your claim numbers, 3-4017 & 3-10218, handy when you call.

Sincerely,

Jennifer Dean
Engineer in Training
Adjudication Bureau

Enclosure

CC: PAUL E MC CABE
5945 WHITLEY DR
FRUITLAND ID 83619

Contacts Data Entry Form

Claim Number: 3-4017: 3-10218

Owner Type	Full Name	Address	City	State	Zip	Phone
Current Owner	PAUL E MC CABE	5945 WHITLEY DR	FRUITLAND	ID	83619	(208)452-3919
Current Owner	PETER J MC CABE	5951 WHITLEY	FRUITLAND	ID	83619	(208)452-4475

Comment for 1: Desk review.

Date of Field Exam: March 22, 2006 Time: 1:00 PMAccompanied By: Pete McCabe Phone Number: 208-452-4475

Relationship to Claimant: _____

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

From Payette → South on 95 - Through Fruitland? over T-84
turn right @ SW 1st Ave
stay left @ Y-in road Whitley Dr.
2 miles to 5951 Whitley Dr.

Ask about
evidence of
priority for
3-4017.Ask about using
evidence of priority
for Simplot.

200 acres
@ 4.87 A/acre.
Share portion w/
McCabe's. Clasen in
pump from slough.

Reviewer: JLDDate: 3/22/06

Period of Use and Quantity Data Entry Form

Claim Number 3-4017

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIGATION	3/15	11/15	4.74	

Overall Diversion Rate 4.74 Overall Diversion Volume

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

Water Right Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIGATION	4/01	11/01	6.02	

Overall Diversion Rate 6.02 Overall Diversion Volume

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume

Overall Diversion Rate _____ Overall Diversion Volume _____

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

Use standard season of use 3/1 - 11/15See attached theoretical calculations based on lift and horse power.sufficient to recommend 1"/acre:231 acres * 0.02 cfs/acre = 4.62 cfsReviewer: JLDDate: 3/22/06

Point of Diversion and Source Data Entry Form

Claim Number **3-4017** 3-102187

3-10197

Claimed Point of Diversion and Source

T07N R05W S7 SENE Within PAYETTE County Source: SNAKE RIVER COLUMBIA RIVER

T07N R05W S8 SWNE Within PAYETTE County Source: SNAKE RIVER COLUMBIA RIVER

T07N R05W S8 NWNWNW Within PAYETTE County Source: SNAKE RIVER COLUMBIA RIVER

☐ Use Claimed POD and Source as Recommended POD and Source

Water Right Point of Diversion and Source

T07N R05W S7 SENE Within PAYETTE County

T07N R05W S8 NWNWNW Within PAYETTE County

Recommended Point of Diversion and Source

Source Information

Source

Tributary To

ALL POD from Snake River

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source

Other rights from this POD? _____

Document how the POD and Source were verified:

1st point - BL57549 20hp 20ft lift 91% efficient Idaho Power Pole#
 IDWR tag A0017605 ^{GPS} 2261488 1422585 10" line 7N5W S8 #5
 2nd point - 12177036 BG47148 20hp 15ft 91% efficiency
 IDWR tag A0017606 ^{GPS} 2261095 1421983 12" line 1PCO# 7N5W S8 #6
 3rd point - permit # C176535 ^{GPS} 2262726 1422453 7.10hp pumps (from
 claimant information) 1PCO# 7N5W S8 #3 (late 1980s Winegar)
 4th point - #38930-14 5hp 12ft lift 1PCO# 7N5W S8 #4
 IDWR tag A0017607 ^{GPS} 2262823 1422597 8" line

Reviewer: JLD

Date: 3/22/06

THEORETICAL HORSEPOWER EQUATION WORKSHEET (cjh 1/92)

Water Right No.: 3-04017, 3-10197, 3-10218
Examiner: Jennifer Dean
Date of Field Exam: 3/22/2006

P/D No.:	Pump 1 3-4017	Pump 2 3-4017	Pump 3 3-10218	Pump 4 3-10197
PUMP HORSEPOWER	81acres	147acres	155acres	172acres
BOOSTER HORSEPOWER	1.62 cfs	2.94 cfs	0.31 cfs	2.54 cfs
PUMPING LEVEL	20	15	12	12
DISCHARGE PRESSURE	0	0	0	0
RATE OF FLOW (cfs)	6.16	8.21	8.73	2.57

The above calculates the formula =
$$Q = \frac{8.8 * (\text{Efficiency}) * \text{hp}}{\text{depth to water} + 2.31 * (\text{psi}) + \text{friction}}$$

Assumptions: %70 efficiency.
No Friction

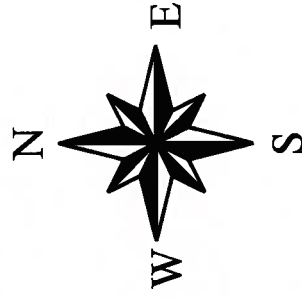
Examiners Notes:

Basin 03 Field Exam Maps

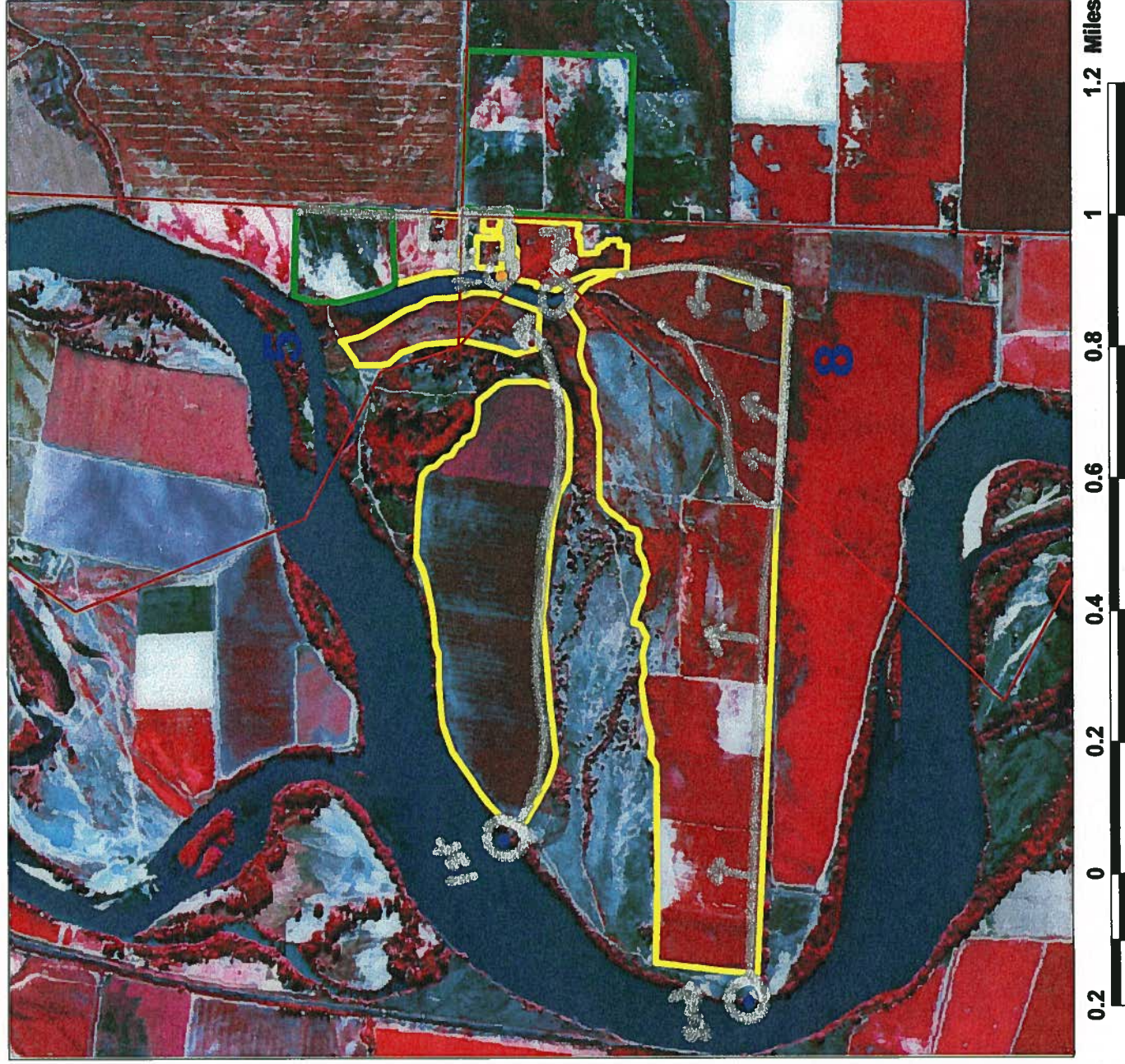
Claim Number:
McCabe Bros.

	Section Lines
	03_4017_pou
	03_4017_pod
	03_10197_pou
	03_10197_pod
	03_10219_pou
	03_10219_pod
	03_10218_pou
	03_10218_pod

Legal: T07N, R05W, S05 & S08



1987 Aerial Photo

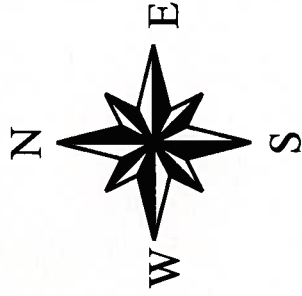


Basin 03 Field Exam Maps

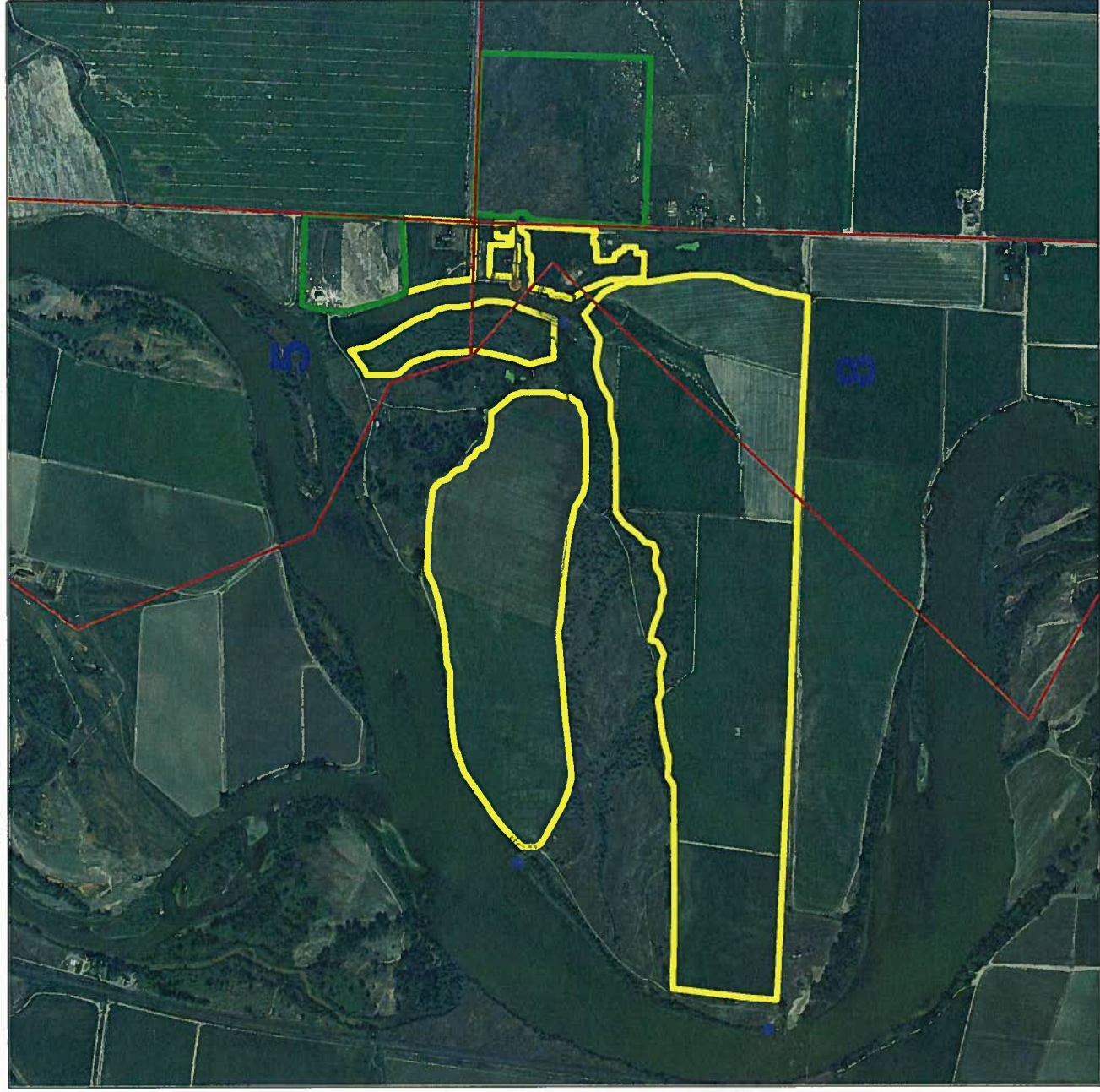
**Claim Number:
03-04003**

Section Lines	
03_4017_pou	
03_4017_pod	•
03_10197_pou	
03_10197_pod	•
03_10219_pou	
03_10219_pod	•
03_10218_pou	
03_10218_pod	•

Legal: T07N, R05W, S05 & S08



2004 NAIP Photo



0.2 0 0.2 0.4 0.6 0.8 1 1.2 Miles

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 3-4017 V1

WATER RIGHT NUMBER: 3-4017 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	PAUL E MC CABE 5945 WHITLEY DR FRUITLAND, ID 83619 (208)452-3919
Current Owner	PETER J MC CABE 5951 WHITLEY FRUITLAND, ID 83619 (208)452-4475

Priority Date: 01/01/1949

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
SNAKE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/01 to 11/15	4.580 CFS	
	<u>Total Diversion:</u>	4.740 CFS	

Location of Point(s) of Diversion

SNAKE RIVER	NW1/4NW1/4NW1/4	Sec. 8,	Twp 07N,	Rge 05W, B.M.
PAYETTE County				
SNAKE RIVER	SE1/4NE1/4	Sec. 7,	Twp 07N,	Rge 05W, B.M.
PAYETTE County				
SNAKE RIVER	SW1/4NE1/4NE1/4	Sec. 8,	Twp 07N,	Rge 05W, B.M.
PAYETTE County				

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	05W	5												5.0			4.0	6.0	15.0
07N	05W	7				13.0													13.0
07N	05W	8	13.0	29.0	37.0	26.0	23.0	13.0	28.0	31.0									200.0

Total Acres: 228

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 3-4017 V1

Conditions of Approval:

1. C18 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.
2. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
3. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.

Remarks:Comments:

1. jwilson 10/3/2005 Priority Date
Comment: Proof of 3/4 property in irrigation 1949 Aerial Photo Payette County. Set 01/01/1949 as priority date. Asking for proof of 1920 priority date from current owners. 10/3/05.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal: S
Owner Name Connector: AND
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
POD	12/8/2003 3:10:33 PM	sking			Active
POD	12/8/2003 4:14:31 PM	sking			Active
Source	12/8/2003 4:15:12 PM	sking			Active
POD	12/8/2003 4:15:51 PM	sking			Active
POU	12/8/2003 4:16:59 PM	sking			Active
Use	12/8/2003 5:09:23 PM	sking			Active
Season	12/8/2003 5:09:39 PM	sking			Active
Quantity	12/8/2003 5:14:52 PM	sking			Active
Contacts	10/3/2005 10:49:30 AM	jwilson			Active

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 3-4017 V1

Contacts	10/3/2005 12:00:24 PM	jwilson	Active
Priority Date	10/3/2005 12:02:10 PM	jwilson	Active
POD	10/3/2005 12:02:39 PM	jwilson	Active
Source	10/3/2005 12:03:25 PM	jwilson	Active
POU	10/3/2005 12:04:10 PM	jwilson	Active
Use	10/3/2005 12:04:41 PM	jwilson	Active
Season	10/3/2005 12:06:46 PM	jwilson	Active
Quantity	10/3/2005 12:11:36 PM	jwilson	Active
Summary		10/03/2005 jwilson	Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Contacts	10/3/2005 12:00:25 PM	jwilson	(No) 1. Do you want to schedule an appointment? Comment for 1: Desk review.
Contacts	10/3/2005 10:49:30 AM	jwilson	(No) 1. Do you want to schedule an appointment? Comment for 1: Desk review.
POD	12/8/2003 3:10:34 PM	sking	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (Yes) 6. Is there evidence that there has been a change in the POD? (Yes) 7. Can the change be verified as an accomplished transfer? (No) 9. Does the file contain all the necessary information to verify the POD? (Yes) 10. Is a POD remark and/or condition required?
POD	12/8/2003 4:11:23 PM	sking	Edited point location
POD	12/8/2003 4:12:03 PM	sking	Edited point location

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 3-4017 V1

General	10/3/2005 12:02:11 PM	jwilson	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (No) 4. Is the basis of claim decree or license? (No) 7. Is the basis of claim a Application or Permit? (No) 8. Is the basis of claim a posted notice? (No) 9. Is the Priority Date of this water use after the date a permit is required for the source and the water use? (No) 12. Does the claim file contain sufficient evidence of Priority Date? (No) 13. Has additional evidence of priority date been submitted? Description for Question 12/13 - Recommended 1/1/1949 as priority date. Aerial photograph Payette County, 1949.
POD	10/3/2005 12:02:40 PM	jwilson	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the POD? (Yes) 9. Does the file contain all the necessary information to verify the POD? (No) 10. Is a POD remark and/or condition required?
Source	10/3/2005 12:03:26 PM	jwilson	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim an Application or Permit? (No) 6. Is the basis of claim a Posted Notice? (No) 7. Is there evidence that there has been a change in the source? (Yes) 10. Does the file contain all the necessary information to verify the source? (No) 11. Is a Source remark and/or condition required? Description for Question 10 - Aerial photo. GCDB.
POD	12/8/2003 4:09:53 PM	sking	Edited point location
POD	12/8/2003 4:14:31 PM	sking	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (Yes) 6. Is there evidence that there has been a change in the POD? (Yes) 7. Can the change be verified as an accomplished transfer? (No) 9. Does the file contain all the necessary information to verify the POD? (Yes) 10. Is a POD remark and/or condition required? Description for Question 6 - PODs likely changed as river accretion occurred. Recommendation based on 1987 imagery and contractors location of PODs.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 3-4017 V1

Source	12/8/2003 4:15:12 PM	sking	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim an Application or Permit? (No) 6. Is the basis of claim a Posted Notice? (No) 7. Is there evidence that there has been a change in the source? (Yes) 10. Does the file contain all the necessary information to verify the source? (No) 11. Is a Source remark and/or condition required? Description for Question 10 - Per claim, Snake River.
POD	12/8/2003 4:15:52 PM	sking	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (Yes) 6. Is there evidence that there has been a change in the POD? (Yes) 7. Can the change be verified as an accomplished transfer? (Yes) 9. Does the file contain all the necessary information to verify the POD? (Yes) 10. Is a POD remark and/or condition required? Description for Question 6 - PODs likely changed as river accretion occurred. Recommendation based on 1987 imagery and contractors location of PODs.
Use	12/8/2003 5:09:23 PM	sking	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Purpose of Use? (Yes) 11. Does the file contain all the necessary information to verify the Water Use? (No) 13. Is a Purpose of Use remark and/or condition required?
POU	10/3/2005 12:04:10 PM	jwilson	(No) 1. Is the basis of this claim a Decree or License? (Yes) 2b. Is the POU required? (No) 3. Is the basis of claim a Application or Permit? (No) 7. Is there evidence that there has been a change in the POU? (Yes) 13. Does the file contain all the necessary information to verify the POU? (No) 14. Is a POU remark and/or condition required? Description for Question 13 - Aerial photo. GCDB.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 3-4017 V1

Season	10/3/2005 12:06:47 PM	jwilson	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (Yes) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required?
Summary	10/3/2005 12:13:19 PM	jwilson	(No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (No) 5. Does this right have any combined use limits with other rights? (No) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (No) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
Use	10/3/2005 12:04:41 PM	jwilson	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Purpose of Use? (Yes) 11. Does the file contain all the necessary information to verify the Water Use? (No) 13. Is a Purpose of Use remark and/or condition required? Description for Question 10,11,12 - Irrigation.
Quantity	10/3/2005 12:11:37 PM	jwilson	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is the basis of claim a posted notice? (No) 7. Is a flow measurement required? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use? (No) 12. Is a Quantity remark or condition required?

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 3-4017 V1

Season	12/8/2003 5:09:39 PM	sking	(No) 1. Is the basis of claim Decree or License? (No) 2. Is the basis of claim a Application or Permit? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (Yes) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required?
POU	12/8/2003 4:17:00 PM	sking	(No) 1. Is the basis of this claim a Decree or License? (Yes) 2b. Is the POU required? (No) 3. Is the basis of claim a Application or Permit? (Yes) 7. Is there evidence that there has been a change in the POU? (Yes) 8. Can the claim be verified as an accomplished transfer? (No) 13. Does the file contain all the necessary information to verify the POU? (Yes) 14. Is a POU remark and/or condition required? Description for Question 8 - Place of use has likely changed as river accretion occurs. Description for Question 13 - as claimed, and per contractor map.
POU	12/8/2003 5:03:22 PM	sking	Edited shape boundary
Quantity	12/8/2003 5:14:53 PM	sking	(No) 1. Is the basis of this claim a Decree or License? (No) 2. Is the basis of this claim a Application or Permit? (No) 6. Is the basis of claim a posted notice? (Yes) 7. Is a flow measurement required? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use? Description for Question 7 - None yet made, pending.

Water Supply Bank:

Idaho Department of Water Resources

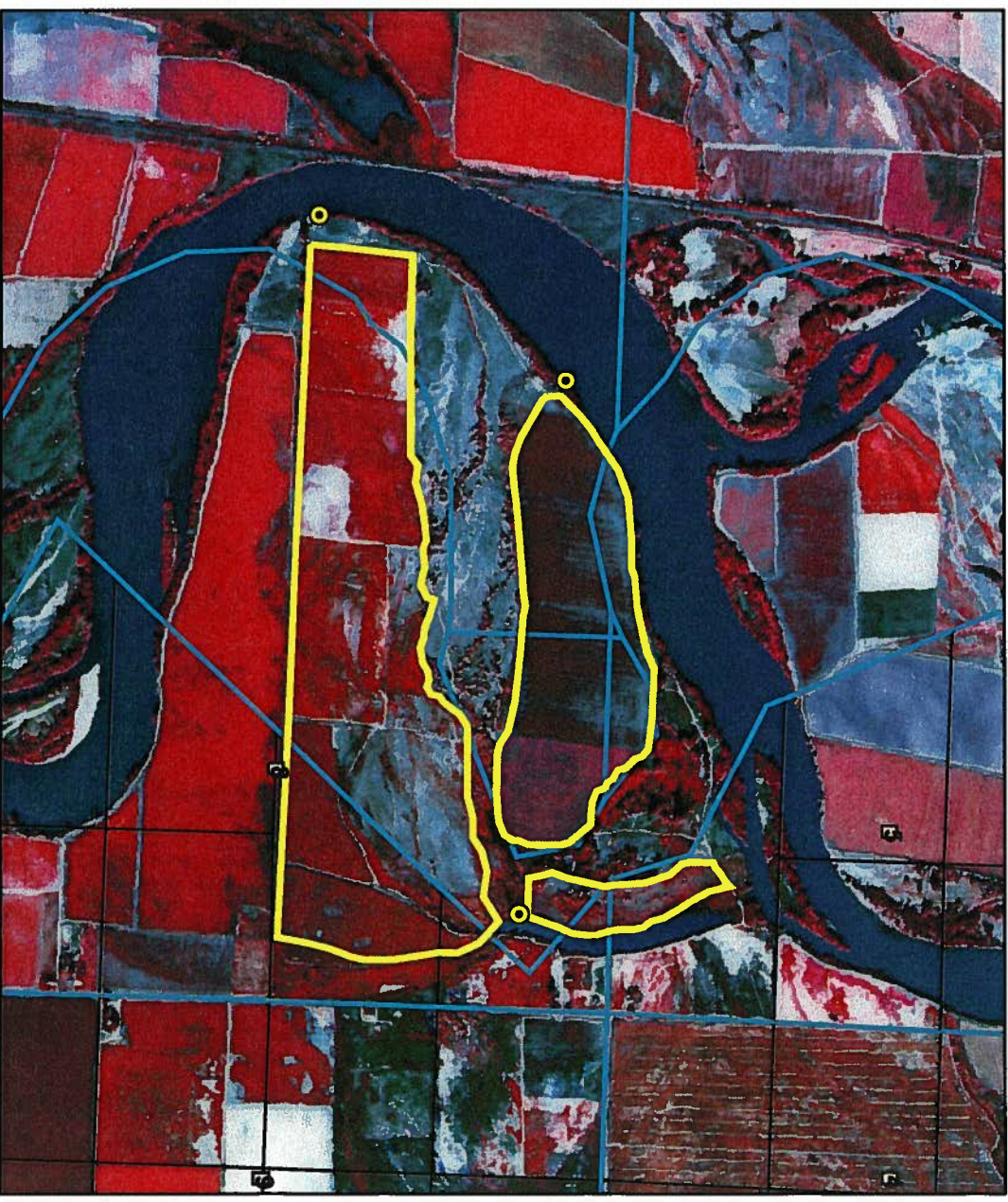
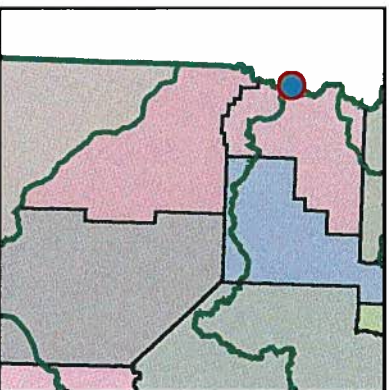


Adjudication Claim Number: **3-4017**

T07N R05W

Legend

-  Point of Diversion
-  Place of Use
-  Sections
-  Quarter Quarter Lines



Prepared by J. Wilson
On Monday, October 3, 2005
1987/88 Aerial Photography

ADDRESS UPDATE 11/1/02 OFFICE VISIT -

* AJ 3-4017
3-4018

WR 65-4639
65-18482 (partial donors)

PER McCabe
PER BASID
Queries, All
Records

Peter/Paul McCabe

Paul - no change

Peter - see attached

~~* possible split to CLAFON recently submitted??
could not find in office visit
Western staff will look into it -~~

~~Peter M. mentioned something c Chris
Bromley forwarding paperwork to Western
Recently.~~

NEVER
mind
the ass!
Recent
Inter
tally

✓ Original - Western AJ
copy - S.O. WR

JZ



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

November 1, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Paul E McCabe
5945 Whitely
Fruitland, ID 83619

Re: Notice of Claim to a Water Right No. 3-4017, 3-4018

Dear Claimant(s):

Enclosed is a copy of the above referenced claim(s), which reflects your change in address.

Please note that the enclosed Notice of Claim to a Water Right is not a determination of your water right. This claim was filed during claims taking in the Snake River Basin Adjudication (SRBA) and has not yet been verified by this Department. Water rights are established and maintained by beneficial use of water for the uses designated on this claim form dating back to the priority date listed. This claim will be investigated, verified and recommended to the SRBA Court for court decree sometime in the near future. You will be notified prior to the beginning of any verification of this water right.

Thank you again for your patience and cooperation. If you have any questions concerning the enclosed claim(s), please feel free to contact this office.

Sincerely,

A handwritten signature in cursive script that reads "Liberty Gagnon".

Liberty Gagnon
Office Specialist 1
Adjudication Section
Western Region Office

LG:lg

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

November 1, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Peter J McCabe
5951 Whitely
Fruitland, ID 83619

Re: Notice of Claim to a Water Right No. 3-4017, 3-4018

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Thank you again for your patience and cooperation. If you have any questions concerning the enclosed claim(s), please feel free to contact this office.

Sincerely,

Liberty Gagnon
Office Specialist 1
Adjudication Section
Western Region Office

LG:lg

Enclosure

MEMORANDUM

To: 3-4017, 3-4018
From: Scott King 
Date: December 9, 2003

Subject: Preliminary investigation

This memo outlines my preliminary investigation into two beneficial use claims identified by the above numbers. Draft preliminary place of use layouts identifying the claimed places of use and points of diversion have been prepared for the purpose of discussion with the claimants and other parties as needed to address larger issues.

These are beneficial use claims that have not been investigated. Before final recommendations can be prepared, the department still requires (1) evidence of priority and (2) field exams documenting flow measurements and investigation of the places of use.

The attached draft preliminary place of use layouts depict the claimed points of diversion and places of use. Total acres resulting from this preliminary work is slightly less than claimed with found acres as:

3-4017 = 229 acres

3-4018 = 67 acres

Also, much of this land is not included in the department's GCDB database of sections, and quarter-quarter sections. For those areas where GCDB layers do not exist, I copied an existing section and moved it over the top of these lands to have something to work with. This is a larger issue that should be coordinated with Michael Ciscell.

Review of Payette county taxlot data indicates that Simplot owns the land in the NWNW of section 9.

Idaho Department of Water Resources
DRAFT - PRELIMINARY
Place of Use Layout
3-4017

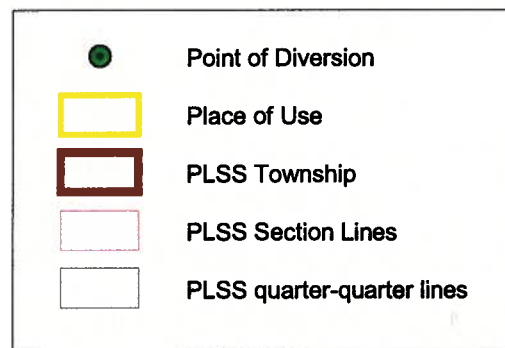


0 0.25 0.5 0.75 1 Miles

Township 7N Range 5W Sections 5, 7, & 8



GIS Place of Use Presentation
 1987 NAPP photography.
 Map prepared by: Scott King
 Date prepared: December 8, 2003



Idaho Department of Water Resources

DRAFT - PRELIMINARY

Place of Use Layout

3-4017

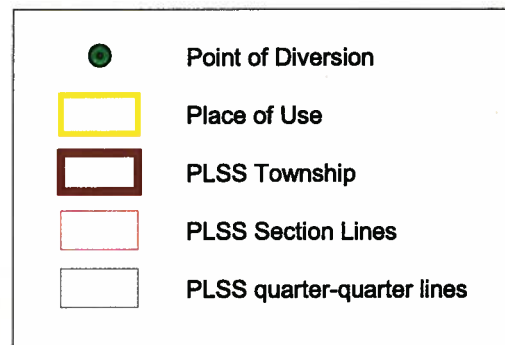


0 0.25 0.5 0.75 1 Miles

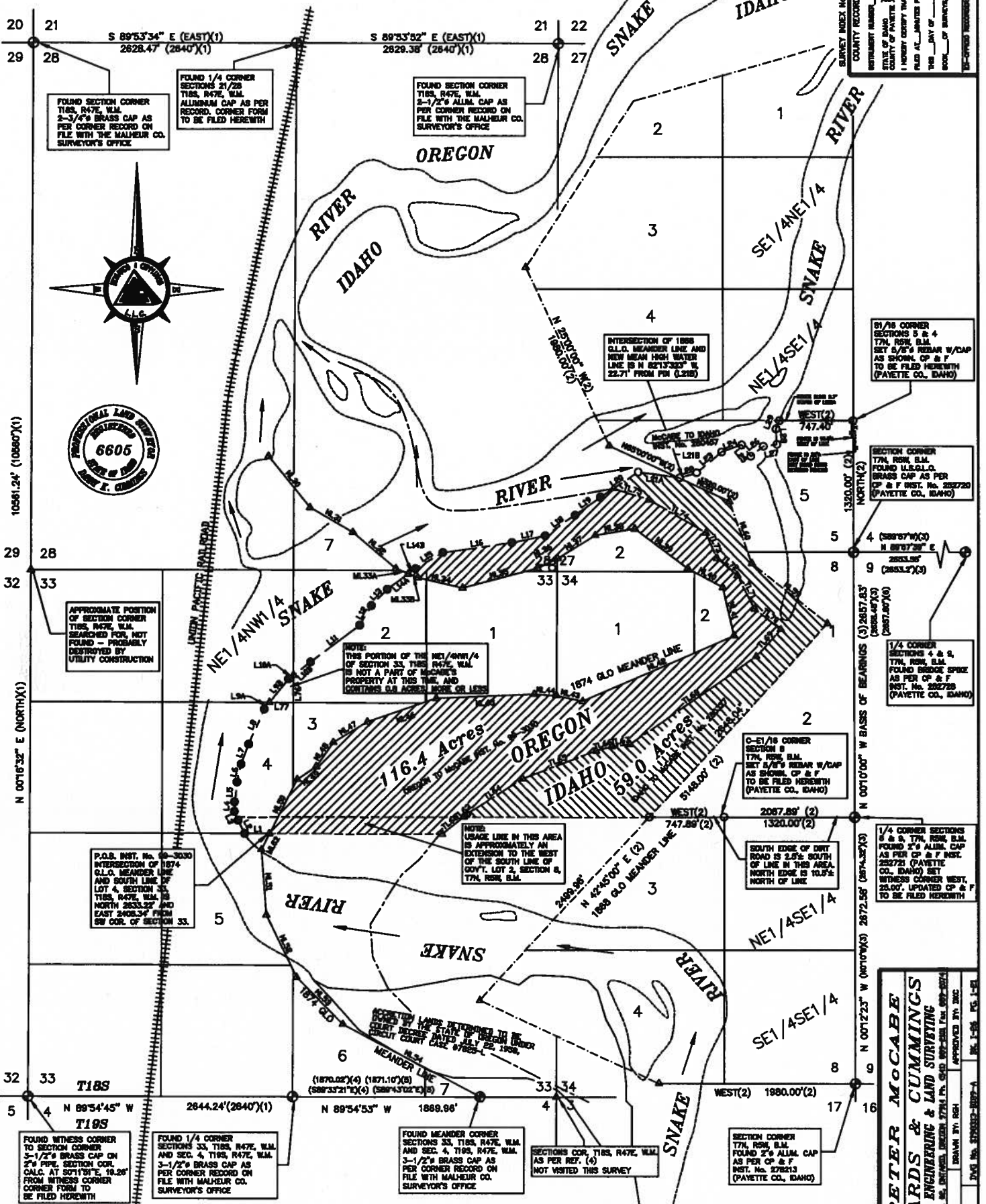
Township 7N Range 5W Sections 5, 7, & 8



GIS Place of Use Presentation
1987 NAPP photography.
Map prepared by: Scott King
Date prepared: December 8, 2003



RECORD OF SURVEY
SECTIONS 28, 27, 33 AND 34, T18S, R47E, W.M., MALHEUR COUNTY, OREGON
AND SECTIONS 5 AND 8, T7N, R5W, B.M., PAYETTE COUNTY, IDAHO
SHEET 1 OF 2



FOR: PETER MOCABE
EDWARDS & CUMMINGS
CIVIL ENGINEERING & LAND SURVEYING
 1501 SE 1ST AVE. MS. 100, IDAHO FALLS, IDAHO 83401
 PHONE: 336-1111 FAX: 336-1112
 DATE: 5/5/99 DRAWN BY: RGH APPROVED BY: INC
 SHEET 1 OF 2 JOB NO. 878882-887-A REV. 1-98 PLS. 1-51

SHEET 2 OF 2

NEW TOTAL = 247.9 ACRES.

NEW TOTAL = 159.46 ACRES

SURVEYOR'S CERTIFICATE

REPRESENTATION OF SAID SURVEY.



NARRATIVE

FOREIGN AND DATA.

RETRACTED ON THE GROUND.

THE SNAKE RIVER

NUMBER	DIRECTION	DISTANCE
TL42	N 30°46'35"E	273.72'
TL39	N 30°46'39"E	352.89'
TL63	N 37°41'7"E	662.19'
TL64	N 59°06'56"E	794.71'
TL65	N 75°08'09"E	1745.38'
TL66	N 75°08'09"E	164.58'
TL67	N 82°47'40"E	175.81'
TL68	N 53°03'23"E	1346.58'
TL69	N 42°49'00"E	386.57'
TL70	N 42°00'00"E	386.57'
TL71	N 27°38'35"E	371.19'
TL72	N 49°46'33"E	866.74'
TL73	N 24°08'55"E	272.84'
TL74	N 59°41'12"E	658.34'
TL75	N 72°00'39"E	358.31'

LEGEND

THE SNAKE RIVER PER (7)

CALCULATED POINT

(DIAHD TO MCCABE)



MEAN HIGH WATER LINE

NUMBER	DIRECTION	DISTANCE
L1	N 89°49'38" V	248.97'
L2	N 85°34'38" V	164.58'
L3	N 83°07'33" V	96.18'
L4	N 86°35'08" E	87.72'
L5	N 04°10'52" E	123.48'
L6	N 12°49'53" E	183.36'
L7	N 20°31'23" E	233.44'
L8	N 24°12'32" E	264.77'
L9A	N 38°48'53" E	382.14'
L9B	N 38°48'53" E	61.55'
L10A	N 52°52'11" E	81.74'
L10B	N 52°52'11" E	614.59'
L11	N 53°04'46" E	614.59'
L12	N 28°17'39" E	228.38'
L13	N 43°44'38" E	225.30'
L14A	N 53°49'04" E	263.48'
L14B	N 53°49'04" E	86.59'
L15	N 57°32'33" E	318.59'
L16	N 81°47'21" E	704.53'
L17	N 78°23'41" E	342.43'
L18	N 55°28'44" E	342.43'
L19	N 54°36'13" E	313.88'
L20A	N 53°46'26" E	431.10'
L20B	N 53°46'26" E	153.54'
L21A	N 55°36'26" E	473.55'
L21B	N 55°36'26" E	375.19'
L22	N 82°13'28" E	22.71'
L23	N 73°51'21" E	174.53'
L24	N 50°56'38" E	327.84'
L25	N 70°22'27" E	82.41'
L26	N 38°49'24" E	147.43'
L27	N 51°36'06" E	164.58'
L28	N 81°39'29" E	133.70'
L29	N 82°38'12" E	153.16'
L30	N 82°38'12" E	92.21'
L31	N 00°01'39" V	47.383'
L32	N 89°44'26" V	228.16'

RECORD MEANDER LINES

NUMBER	DIRECTION	DISTANCE
M.30	S 38°43'00" E	660.00'
M.31	S 59°59'60" E	495.00'
M.32	S 49°30'00" E	487.00'
M.33	S 67°30'00" E	561.60'
M.34	N 77°00'00" E	448.00'
M.35	N 75°15'00" E	788.40'
M.36	S 63°30'00" E	820.44'
M.37	S 58°30'00" V	442.20'
M.38	S 60°30'00" V	386.00'
M.39	S 53°00'00" E	660.00'
M.40	S 62°00'00" E	402.60'
M.41	S 13°00'00" E	495.00'
M.42	S 65°30'00" V	1650.00'
M.43	N 78°00'00" E	884.40'
M.44	S 68°30'00" E	26.40'
M.45	S 67°30'00" E	990.00'
M.46	S 71°00'00" V	756.00'
M.47	S 58°30'00" V	386.00'
M.48	S 35°00'00" V	877.00'
M.49	S 56°00'00" V	831.00'
M.50	S 27°00'00" E	612.07'
M.51	S 04°30'00" E	660.00'
M.52	S 26°00'00" E	653.00'
M.53	S 44°30'00" E	660.00'
M.54	S 62°00'00" E	1151.00'
M.55	S 62°00'00" V	973.50'
M.60	N 20°00'00" V	660.00'
M.61	N 63°00'00" E	573.38'
M.66	N 27°00'00" E	179.93'

REFERENCES

- [illegible]

SURVEY INDEX No. 734-6,8-0-0-0-0

COUNTY RECORDERS CERTIFICATE

STATE OF OHIO 211

I HEREBY CERTIFY THAT THIS STATEMENT WAS

THIS DAY OF _____ 1968, RECORDED IN

100-443887-100

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Journal compilation © 2006 Blackwell Publishing Ltd

**SURVEY
FOR: PETER MOCABE**

CASCHLER & CUMMING
CIVIL ENGINEERING & LAND SURVEYING

206 E. 1st AVE., RT. 101/400L, DULUTH 57704 PA. (540) 697-0101 Fax 697-0102

CHECKED BY DOC.	UNKNOWN BY RFLN	RETRIEVED BY DOC.
DATE: 5/15/98	DOC. NO. 8190313-31873	REVISED

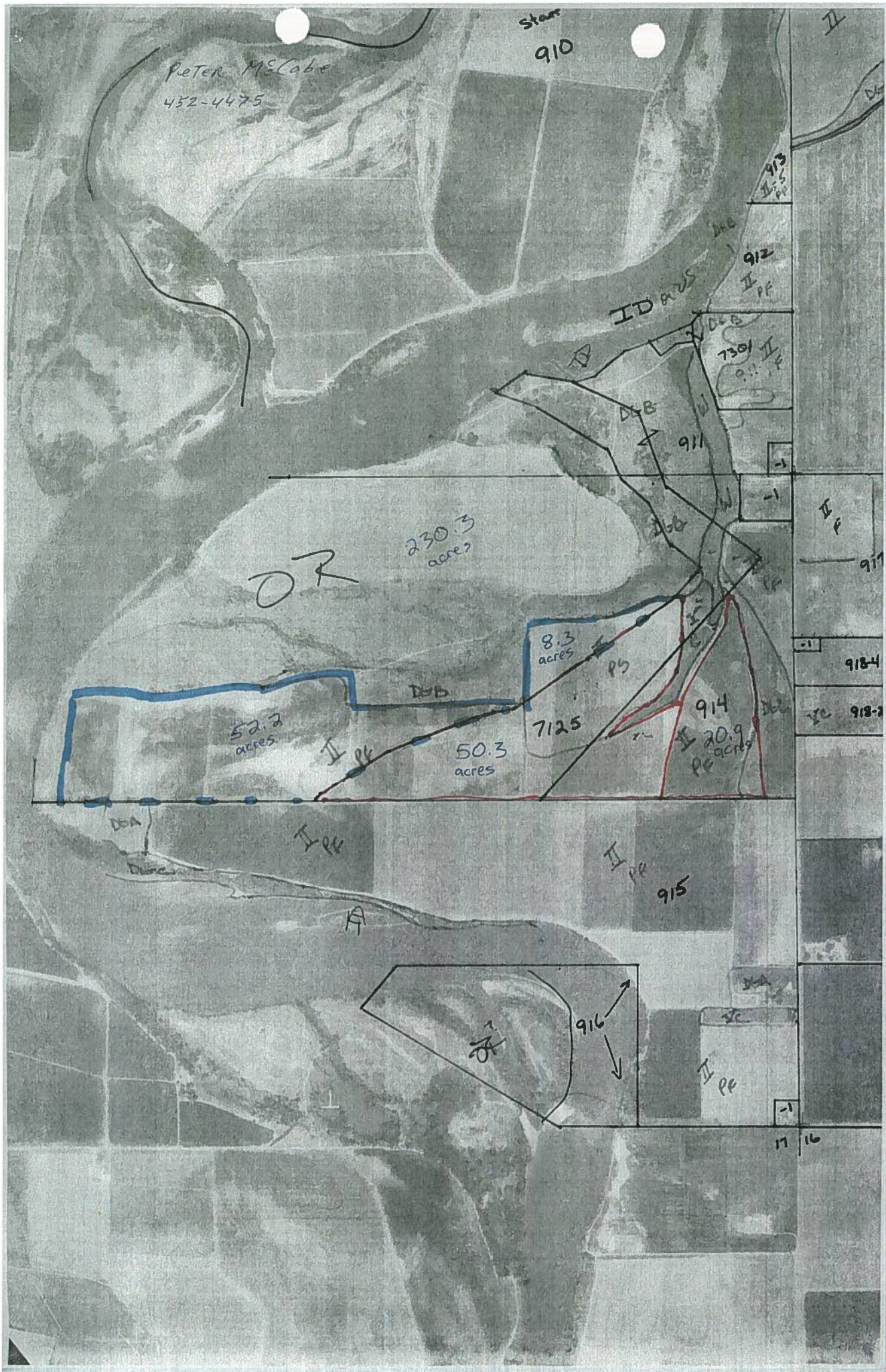
SHEET 2 OF 2	JUD No. ST-20013	MC 1-05 PG 1-21
--------------	------------------	-----------------

FROM Scott King
TO File 3-4017, 3-4018
SUBJECT Aerial photos

DATE 12/9/2003

There are recent aerial photos supplied by McCabe during ~~his~~ their visit w/ Dave, Susan, Chris, and I on this date. I asked for copies as they may help with recommendations.


SIGNATURE



OREGON

IDAHO

720
KME

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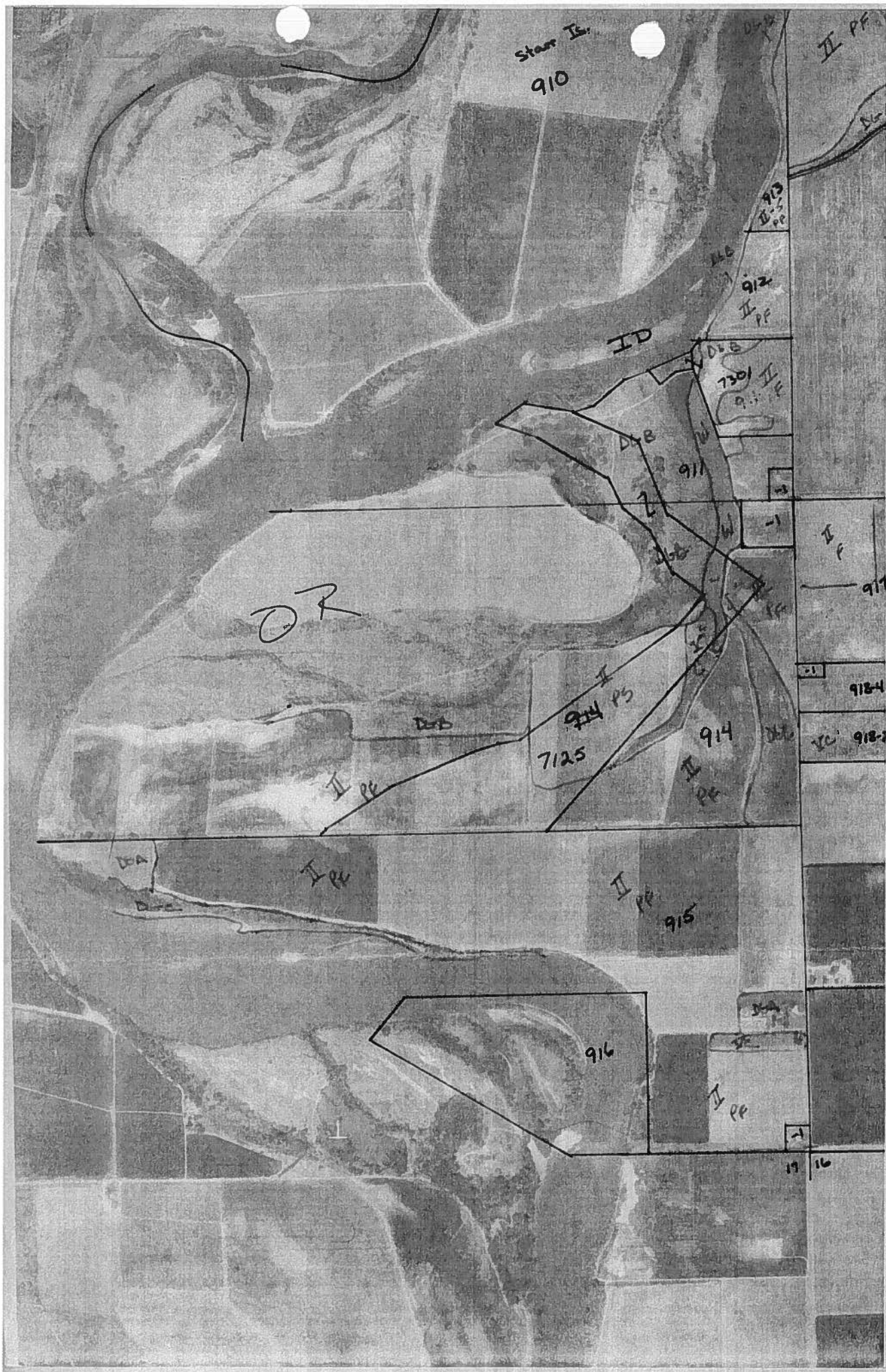
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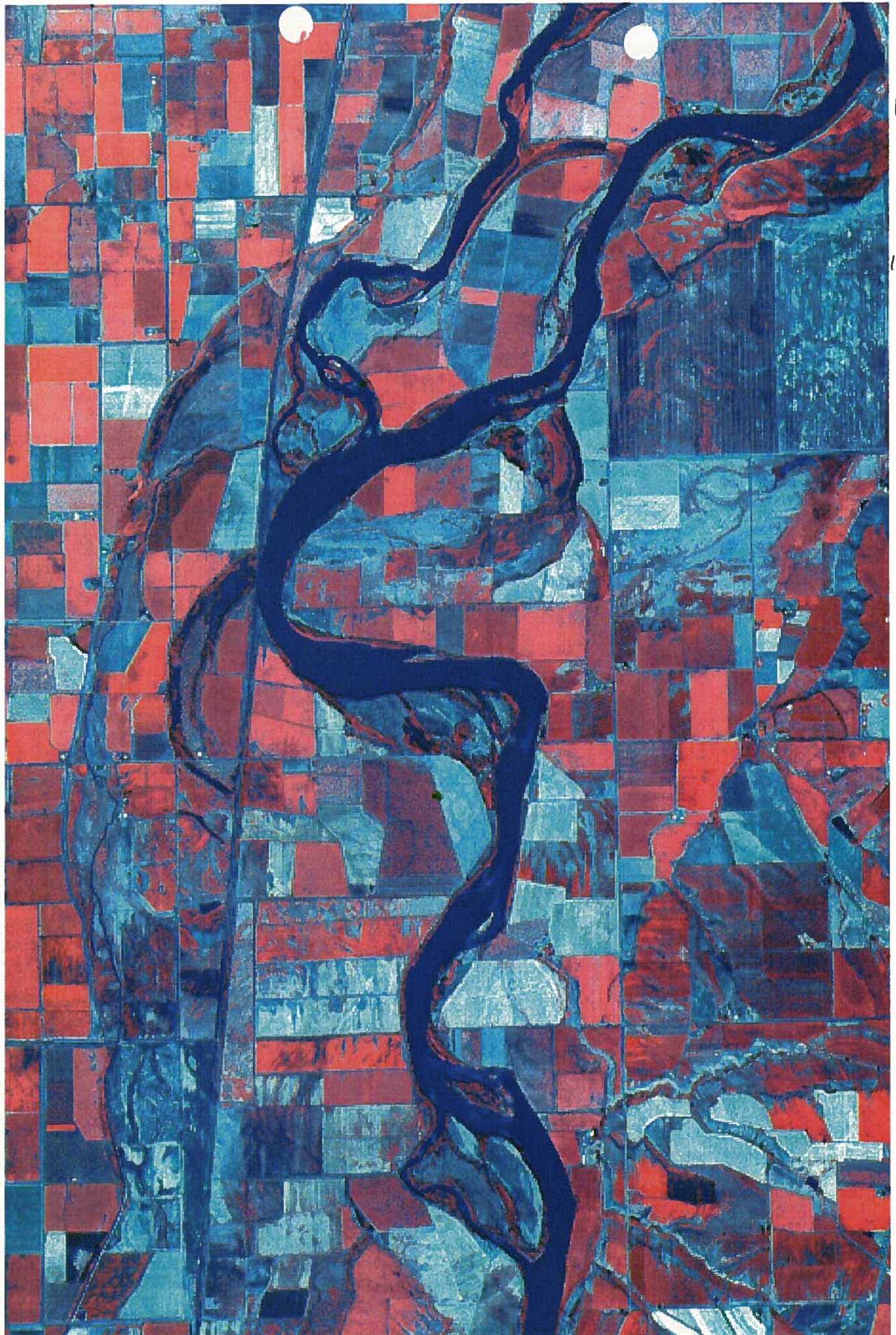


4017, Northern portion
may have an overlapping Oregon
water right.

1975 U2 Photography

75-131-6116





U2
1977

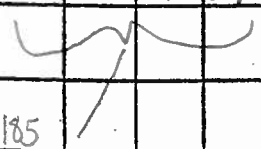
1977-138-
2943

JWR - WESTERN REGION

CONTRACTOR: Karan Waters

CLAIM/ID: 03-04017

Date: 9-18-02

	TNS	RNG	SEC	NE				NW				SW				SE				Sum
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
Claim	7N	5W	5											8				8	6	
GIS																			6.3	
Claim			7				18													18
GIS			?				?													
Claim			8	8	23	37	23	22	14	36	34									197
GIS				4.2	14	7.4	25													
Claim								185	outside meander lines on GCOB											
GIS																				

Number of POD's 3

Total Claimed Acres: 37

Overlapping FOU Claim #'s:

Total GIS Acres: 9

COMMENTS:

There is a major portion of gcdb missing from this claim. I mapped it per claim map & image interpretation. Unable to determine acreage in individual gga.

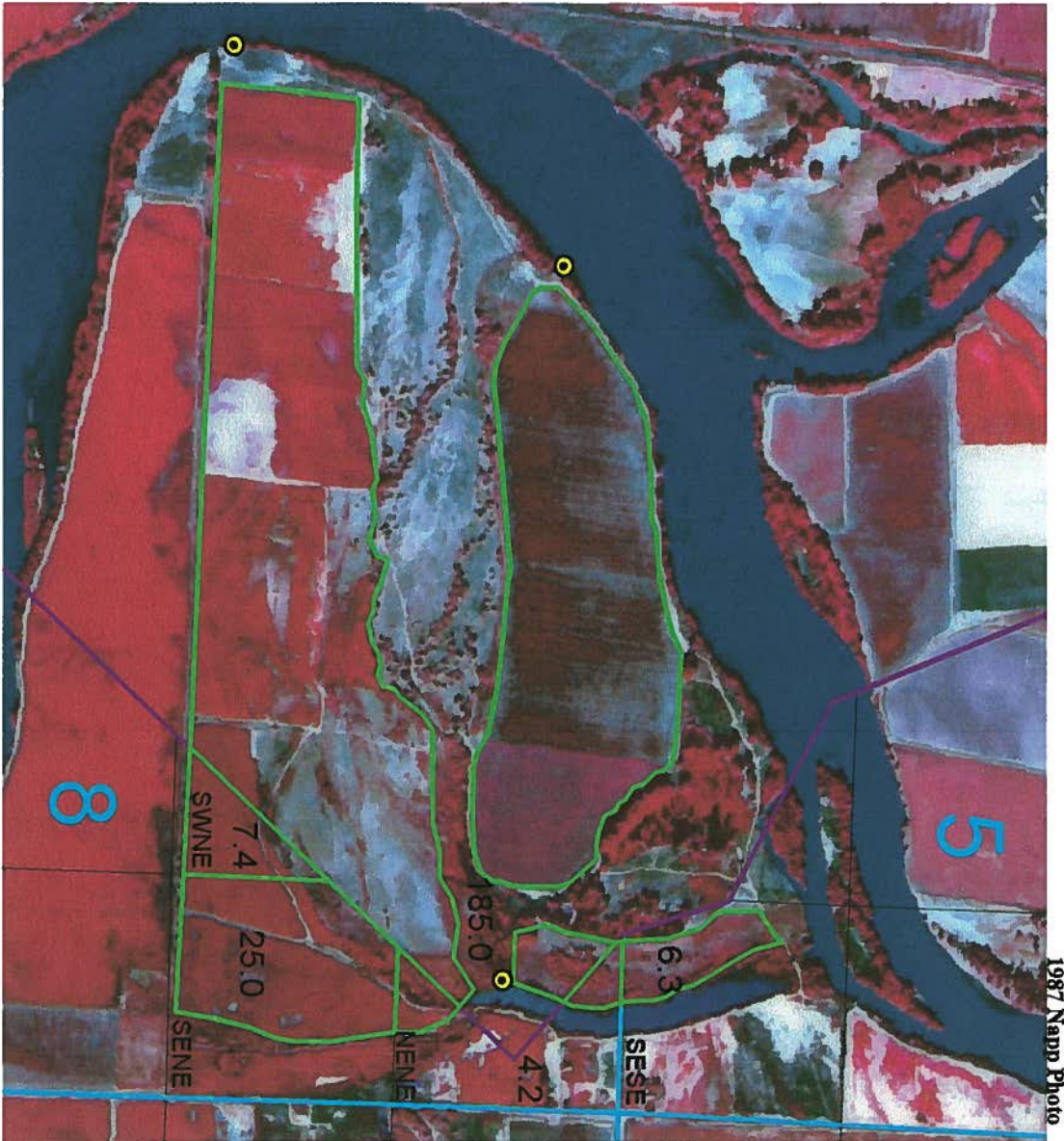
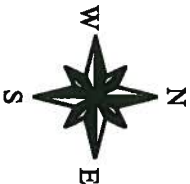
Idaho Department of Water Resources

Claim Number: 03-04017

Legal: T07N, R05W, S05, 08

Reviewed By:

- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines
- Township/Range Lines



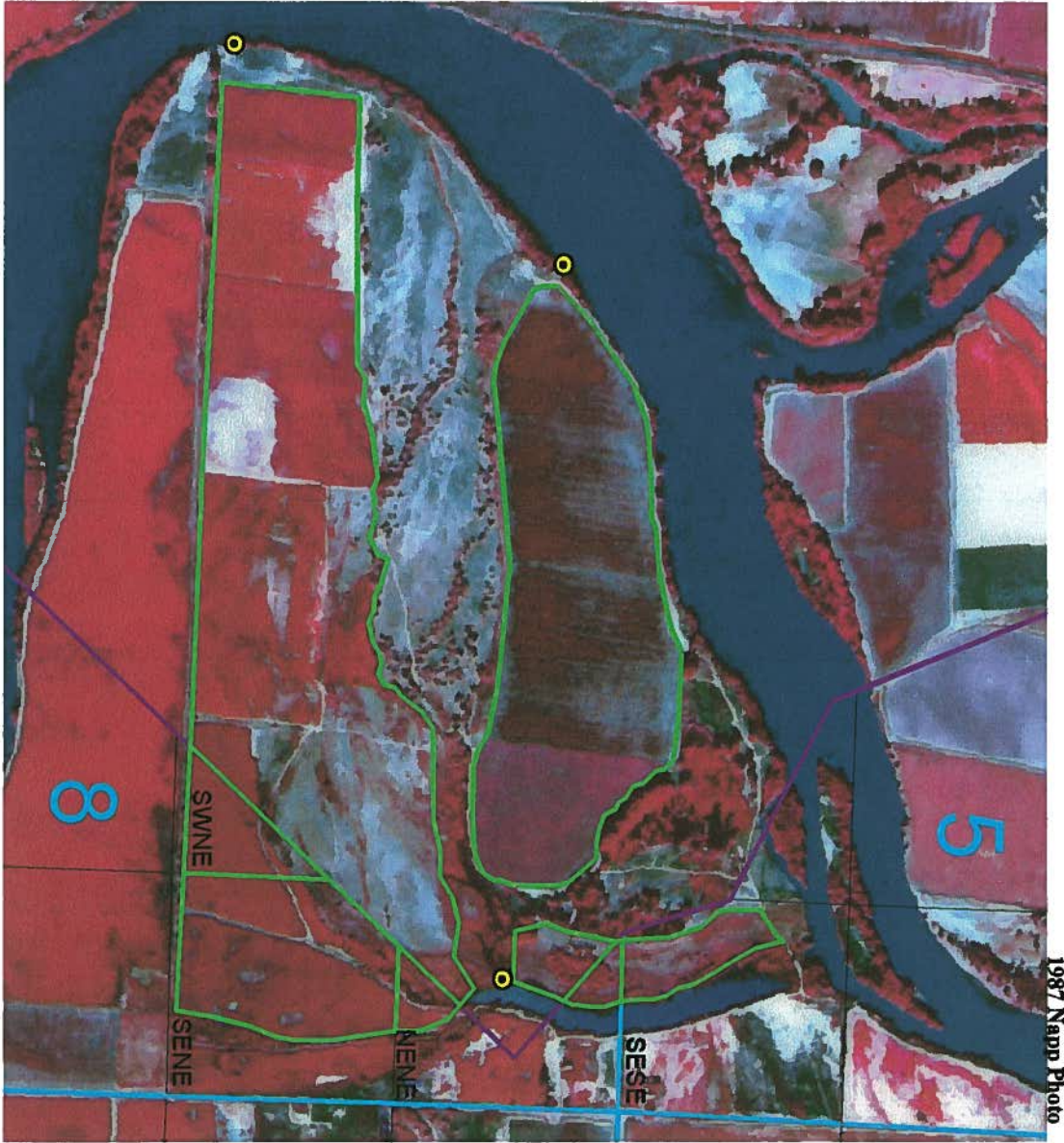
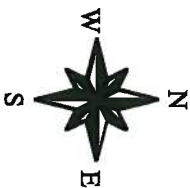
Idaho Department of Water Resources

Claim Number: 03-04017

Legal: T07N, R05W, S05, 08

Reviewed By:

- Point of Diversion
- Place of Use
- Section Lines
- Quarter Quarter Lines
- Township/Range Lines

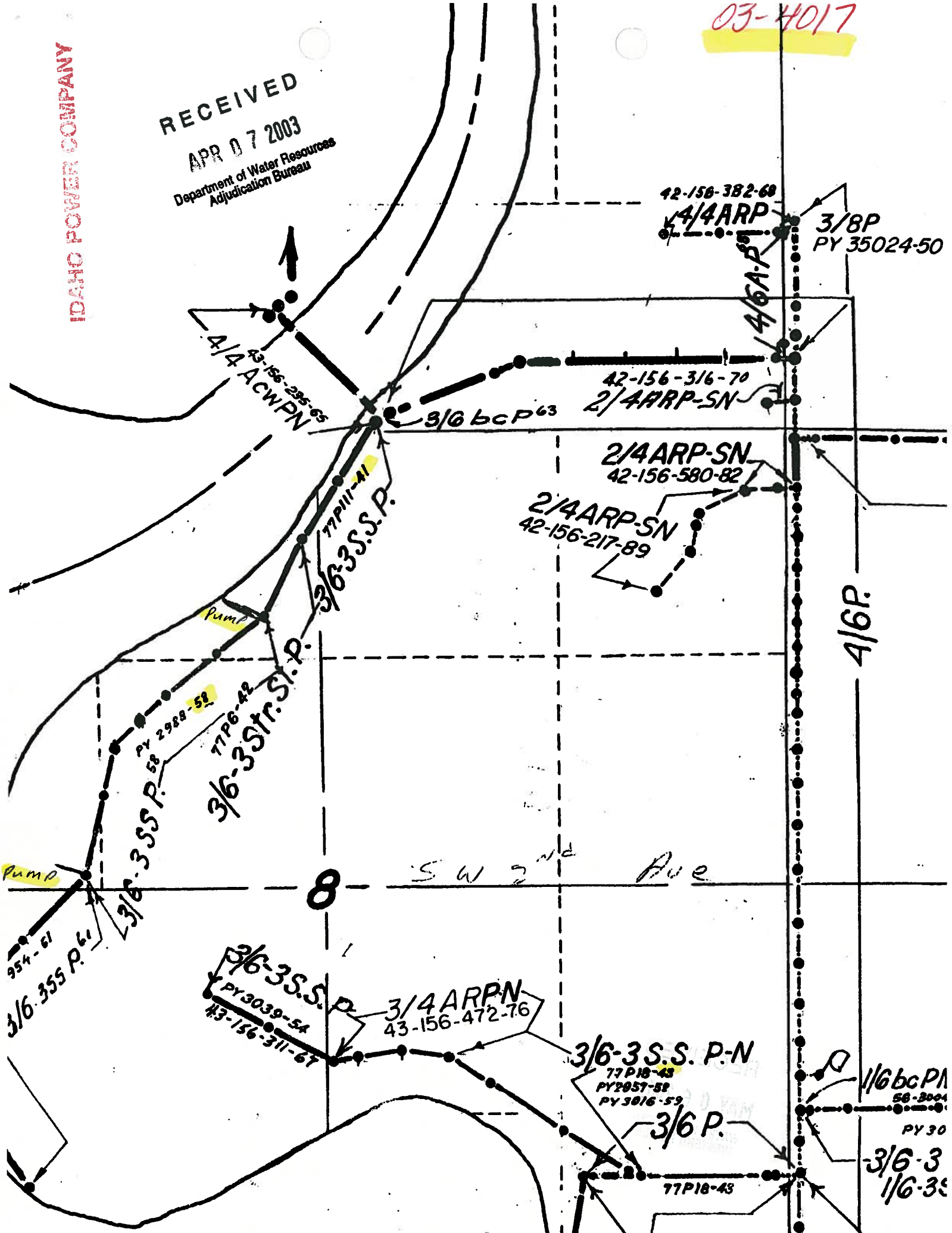


MEMORANDUM

TO: File 03-4017
FROM: Western Region
DATE: May 7, 2003
SUBJECT: Attached maps

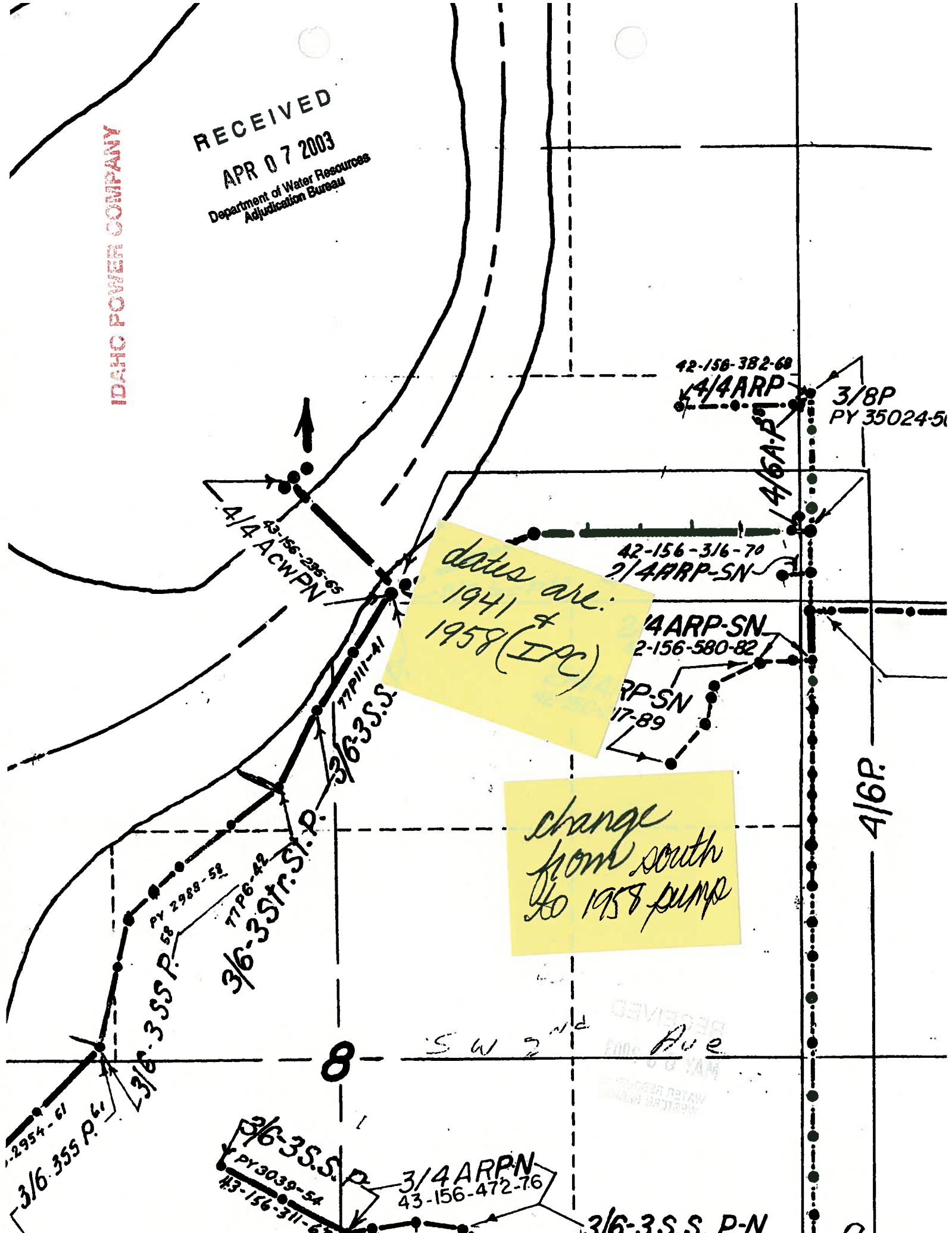
Western Region received the two maps attached from Roxanne Brown at the State Office on May 6, 2003, with attached notes. Doesn't appear to be any necessary changes to the claim at this time. The purpose of these maps is unclear; no memo was attached.

03-4017



IDAHO POWER COMPANY

RECEIVED
APR 07 2003
Department of Water Resources
Adjudication Bureau



dates are:
1941 &
1958 (IPC)

change
from south
to 1958 pump

RECEIVED
APR 07 2003
DEPARTMENT OF WATER RESOURCES
ADJUDICATION BUREAU

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 3-4017
Date Received: 4/11/1990
Receipt No: C016224
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

PAUL E MC CABE Phone: (208)452-3919

5945 WHITLEY DR
FRUITLAND ID USA 83619

PETER J MC CABE Phone: (208)452-4475

5951 WHITLEY
FRUITLAND ID USA 83619

2. Date of Priority: 06/01/1920

3. Source: SNAKE RIVER , SNAKE RIVER , SNAKE RIVER Trib. to: COLUMBIA RIVER ,
COLUMBIA RIVER , COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 Lot	County	Type
07N	05W	8	NW	NW	NW	PAYETTE	
07N	05W	7		SE	NE	PAYETTE	
07N	05W	8	SW	NE	NE	PAYETTE	

5. Description of diverting works:

4 PUMPS INTERCONNECTED, 15, 10HP ON RIVER, 10HP 7.5 BOOSTER S

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	3/15	11/15	4.74	

7. Total Quantity Appropriated is:
4.74 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of	1/4 Lot	Use	Acres
07N	05W	5	SE	SW	IRRIGATION	8
			SW	SE	IRRIGATION	8
			SE	SE	IRRIGATION	6
					Section Acres	22
07N	05W	7	SE	NE	IRRIGATION	18
					Section Acres	18
07N	05W	8	NE	NE	IRRIGATION	8
			NW	NE	IRRIGATION	23
			SW	NE	IRRIGATION	37
			SE	NE	IRRIGATION	23
			NE	NW	IRRIGATION	22
			NW	NW	IRRIGATION	14
			SW	NW	IRRIGATION	36
			SE	NW	IRRIGATION	34
					Section Acres	197
					Total Acres	237

11. Place of use in counties: PAYETTE

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

13. Other Water Rights Used:

14. Remarks:

Change Of address 11/1/04 for Peter McCabe

THESE POINTS OF DIVERSION HAVE BEEN USED SINCE 1945.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CHANGE IN ADDRESS

This form can be used to notify the Department
of a change in address for Department records
(Please print or type)

RECEIVED

NOV 01 2004

**WATER RESOURCES
WESTERN REGION**

[X] Name(s): 3-4017, 3-4018

65-4639, 65-18482

[X] Old Mailing Address: RT 1 Box 1543

FRUITLAND ID. 83619

[X] New Mailing Address: 5951 WHITLEY DRIVE

FRUITLAND, ID. 83619

Telephone Number: (208) 452-4475 PETER

(208) 452-3919 PAUL

[X] Signature(s) Peter D McCabe

(must be signed by all
individuals listed unless
you have authority to sign
on their behalf)

(include your title if on behalf of company or organization)

Date: 11-1-04

When complete, please mail or FAX this form to the IDWR office nearest you:

IDWR Northern Region
1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814-2615
FAX: (208) 769-1454

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082
FAX: (208) 334-2348

IDWR Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718
FAX: (208) 525-7177

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380
FAX: (208) 736-3037

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: A03-04017
Date Received: 4/09/1990
Receipt No: CO16224
Received By: C. Wong

RECEIVED

APR 11 1990

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

Department of Water Resources

1. Name: PAUL E. MC CABE 208-452-3919
Address: 5945 WHITLEY DR.
FRUITLAND, ID 83619
AND/OR
Name: PETER J. MC CABE 208-452-4475
Address: 5951 WHITLEY DR.
FRUITLAND, ID 83619

2. Date of Priority: JUN 01, 1920

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07N	05W	7		SE	NE		PAYETTE
		8	SW	NE	NE		PAYETTE
			NW	NW	NW		PAYETTE

5. Description of diverting works:
4 PUMPS INTERCONNECTED, 15, 10HP ON RIVER, 10HP 7.5 BOOSTER S

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	4.740		

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

8. Total consumptive use is 829.5 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

A03-04017

Page 1

Date: 04/09/90

MICROFILMED

AUG 10 1992

10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
07N	05W	5	SE		SW		IRR	8.0
			SW		SE		IRR	8.0
			SE		SE		IRR	6.0
			Section Acres					22.0
		7	SE		NE		IRR	18.0
			Section Acres					18.0
		8	NE		NE		IRR	8.0
			NW		NE		IRR	23.0
			SW		NE		IRR	37.0
			SE		NE		IRR	23.0
			NE		NW		IRR	22.0
			NW		NW		IRR	14.0
			SW		NW		IRR	36.0
			SE		NW		IRR	34.0
			Section Acres					197.0
			Total Acres					237.0

11. Place of use in counties: PAYETTE

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

13. Other Water Rights Used:
A03-04018.

14. Remarks:
THESE POINTS OF DIVERSION HAVE BEEN USED SINCE 1945.

15. Basis of Claim: STATUTORY CLAIM

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 X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

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): Paul E. McCabe Date: 4-9-1990

Date: _____

State of Idaho)
County of Payette) SS.

Subscribed and sworn (or affirmed) before me this 9 day

of April 19 90

John Dal Laker
Notary Public

Seal

Residing at Boise ID

My Commission Expires 6/3/94



RECORDED

AUG 17 1932