

RECEIVED

OCT 06 2000

WATER RESOURCES
WESTERN REGION

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
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BOISE, IDAHO 83701

TELEPHONE
208-343-5454

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208-384-5844

ANGELA D. SCHAEER

E-mail: ads@elamburke.com

October 5, 2000

Kay Walker
Sr. Water Resource Agent
Adjudication Bureau
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED

OCT 11 2000

Department of Water Resources

Re: Swan Ranch Water Rights

Dear Kay:

I am sending along with this letter a map which I believe depicts the location of the spring which you have indicated the Asletts should claim for the Swan Ranch in the Snake River Basin Adjudication. I made this determination by comparing the attached with the map which you provided to us during our meetings with you and Nick Spencer.

After you have reviewed the attached map, would you please contact me and let me know whether this is the correct spring. As soon as I receive that information from you, and confirm with my clients that the information which I have included on a draft Motion to File Late Notice of Claim is correct, we will be filing that Motion and the Notice of Claim. Thank you very much for your assistance in this matter.

Very truly yours,

ELAM & BURKE
A Professional Association



Angela D. Schaer

ADS:dap

G:\Dap\WPDATA\3524 Circle A\Swan Ranch\002-Walker ltr re maps.wpd

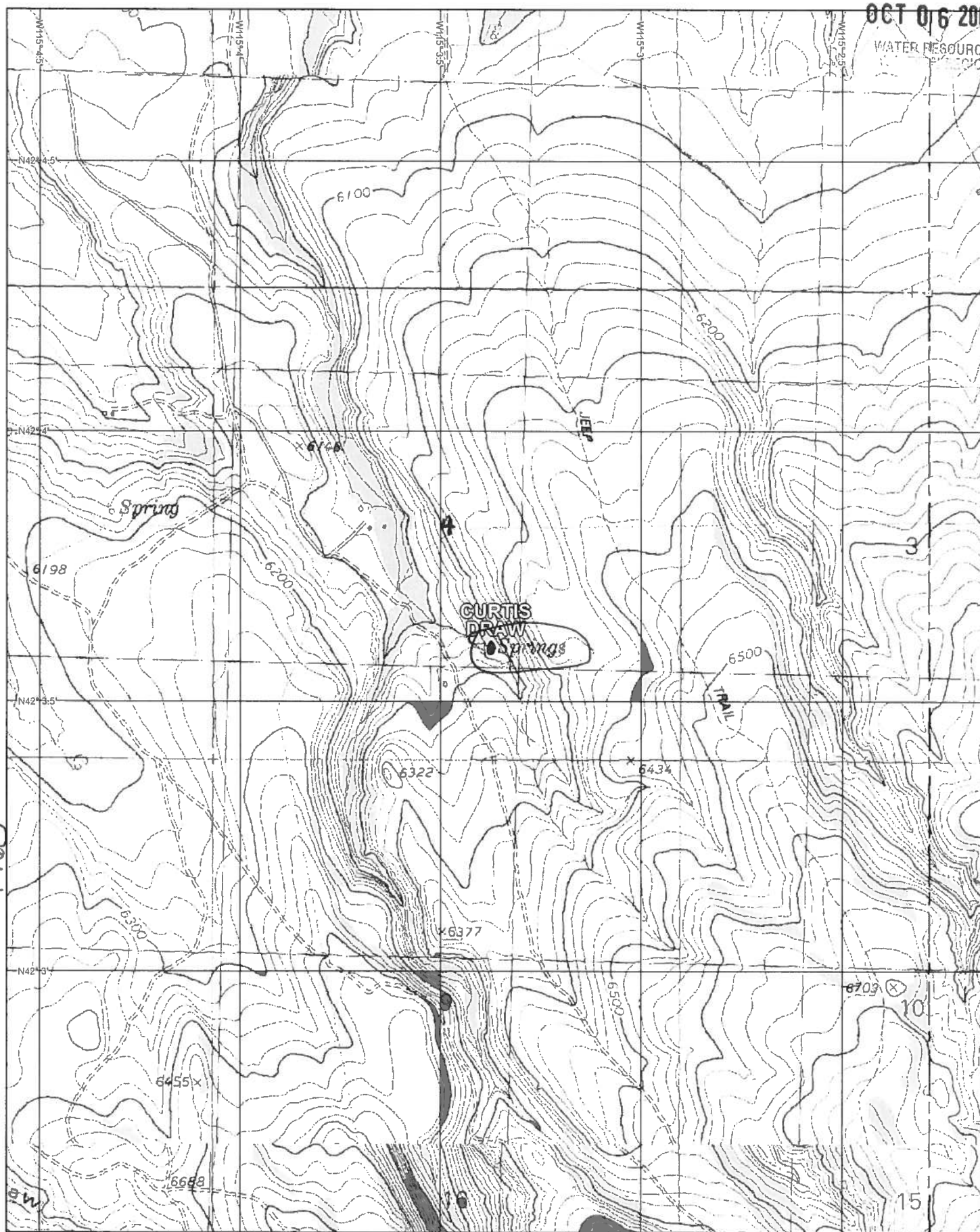
cc: Steve Aslett, Sr.

10-12-2000
left voice mail -
location correct -
recommended
using "springs"
since more than
1 - kw

RECEIVED

OCT 06 2000

WATER RESOURCES



TR 129

Stage: DECREED

Misc: Water District Number: 51A Field Inspection Flag: C
Presumption Flag:

AJ0749NP
No. R51-00134

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 07/25/98
PAGE: 2

Comments: Date: 05/28/1998 User-ID: KWALKER Subject: COPIED FROM REMARKS

THIS CLAIM IS BASED ON A COMBINATION OF TWO DECREED RIGHTS
51-00134 & 51-00141 FROM TWO DIFFERENT DECREES. 51-00134 WAS
DECREED IN GRANDVIEW IRR. DIST. VS. BRUNEAU BUCKAROO CO-OP
DITCH CO. ON 02/14/1925.

Audit: 07/25/98 KWALKER

AJ0749NP
No. R51-00134

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
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DATE: 07/25/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SWAN LAND & LIVESTOCK COMPANY HOUSE CREEK RANCH ROGERSON ID 83302 (208) 857-2235	08/25/1908	IRRIGATION	04-01 10-31	2.30 CFS	
TOTAL DIVERSION:					2.30 CFS	

Water Source: DEADWOOD CREEK Tributary to: CLOVER CREEK Stage: DECREED

Point(s) of Diversion: T16S R12E S04 NWSESW OMYHEE County
Point(s) of Re-diversion: T15S R12E S32 SENESEW OMYHEE County

Place of use Legal Description for: IRRIGATION												
			NE		NW			SW			SE	
T	R	S	NE	SE	NE	NW	SW	SE	NE	NW	SE	
15S	12E	29	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	
15S	12E	32	lt	Ac	lt	Ac	lt	Ac	lt	Ac	lt	
16S	12E	5	08	18	.1	15	12	16	22	11	12	

DATE: 07/25/98
PAGE: 1

Stage: DECREED

SE

led Date:

E 14
due 2/5/02 442 +
51-00135
should not
exceed 240.2

AJ0749NP
No. R51-00134

IDAHO DEPARTMENT OF WATER RESOURCES
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DITCH CO. ON 02/14/1925.

Audit: 07/25/98 KWALKER

1987 NAPP PHOTO

**CLAIM(S): 51-00134,
51-00135 & 51-02442**

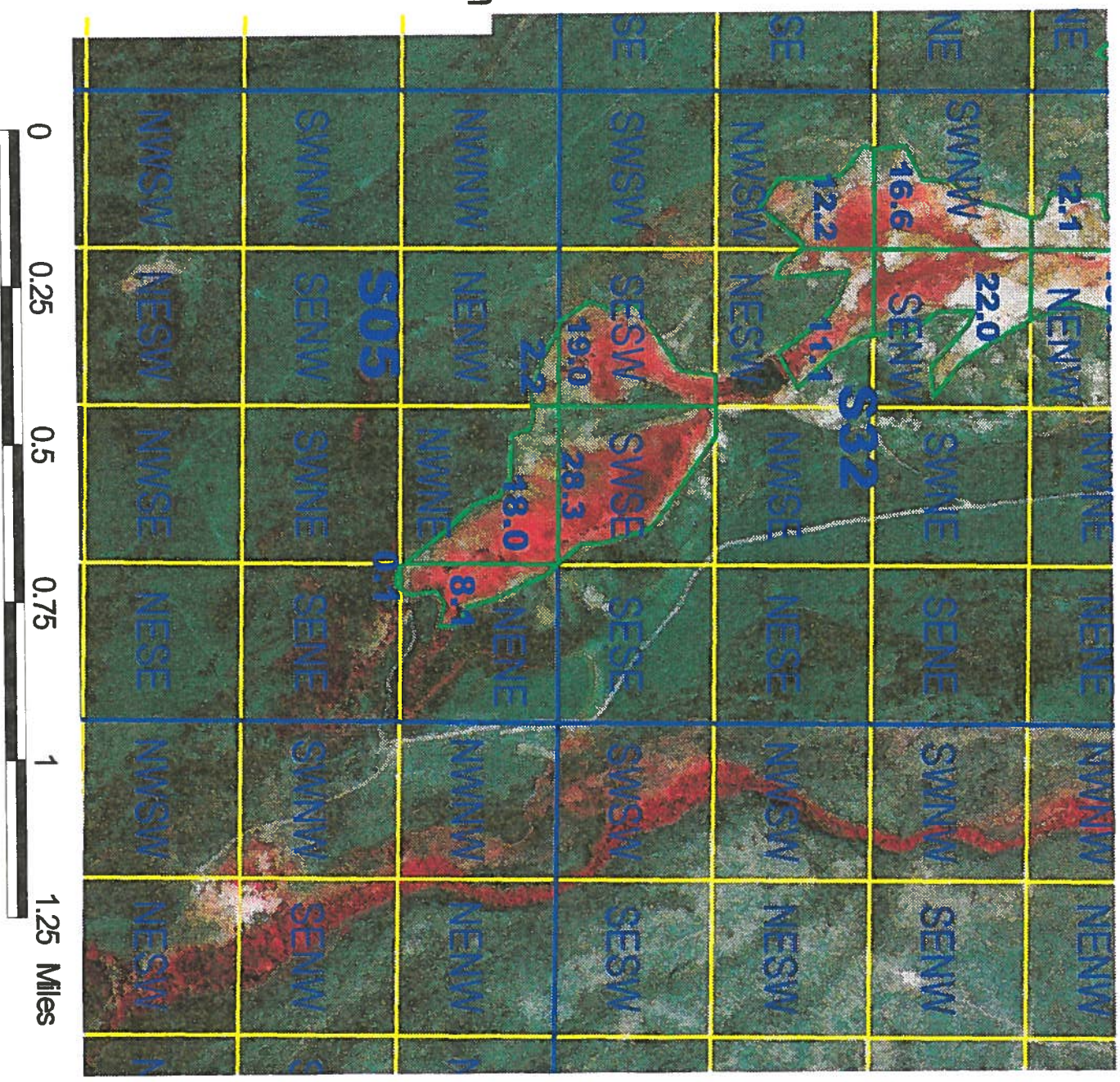
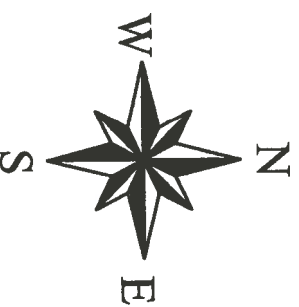
Prepared by: KAY WALKER

PAGE 2 OF 2

Point(s) of Diversion

Section Lines

☐ 1/4 1/4's



IDAHO DEPT OF WATER RESOURCES

1987 NAPP PHOTO

T15S & 16S, R12E

CLAIM(S): 51-00134,

51-00135 & 51-02442

Owner(s): SWAN

Prepared by: KAY WALKER

Date: July 25, 1998

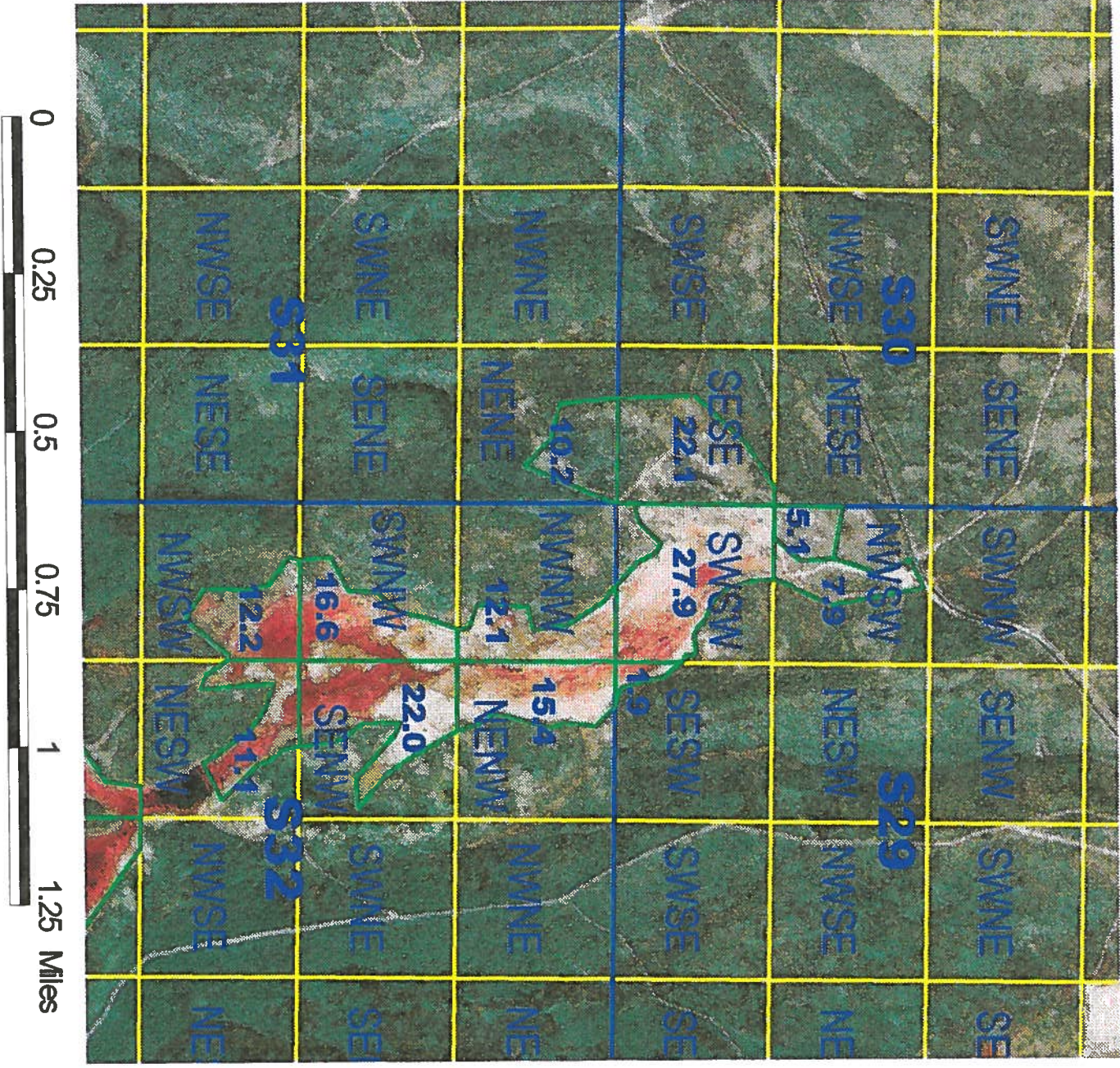
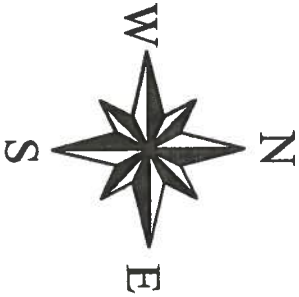
PAGE 1 OF 2

 Place of Use

 Point(s) of Diversion

 Section Lines

 1/4 1/4's



T15S & T16S, R12E



1/4 1/4 Lines

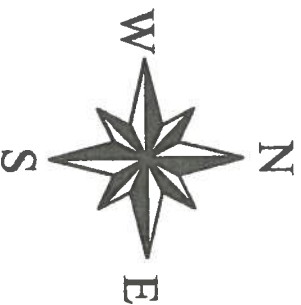
POINT(S) OF DIVERSION

Owner(s): SWAN

Prepared by: KAY WALKER

Date: 6/05/1998

PAGE 1 OF 2



1987 NAPP



T15S & T16S, R12E

Section Lines

PLACE OF USE

1/4 1/4 Lines

POINT(S) OF DIVERSION

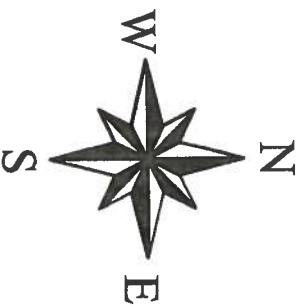
Claim(s): 51-00134 & 51-00135

Owner(s): SWAN

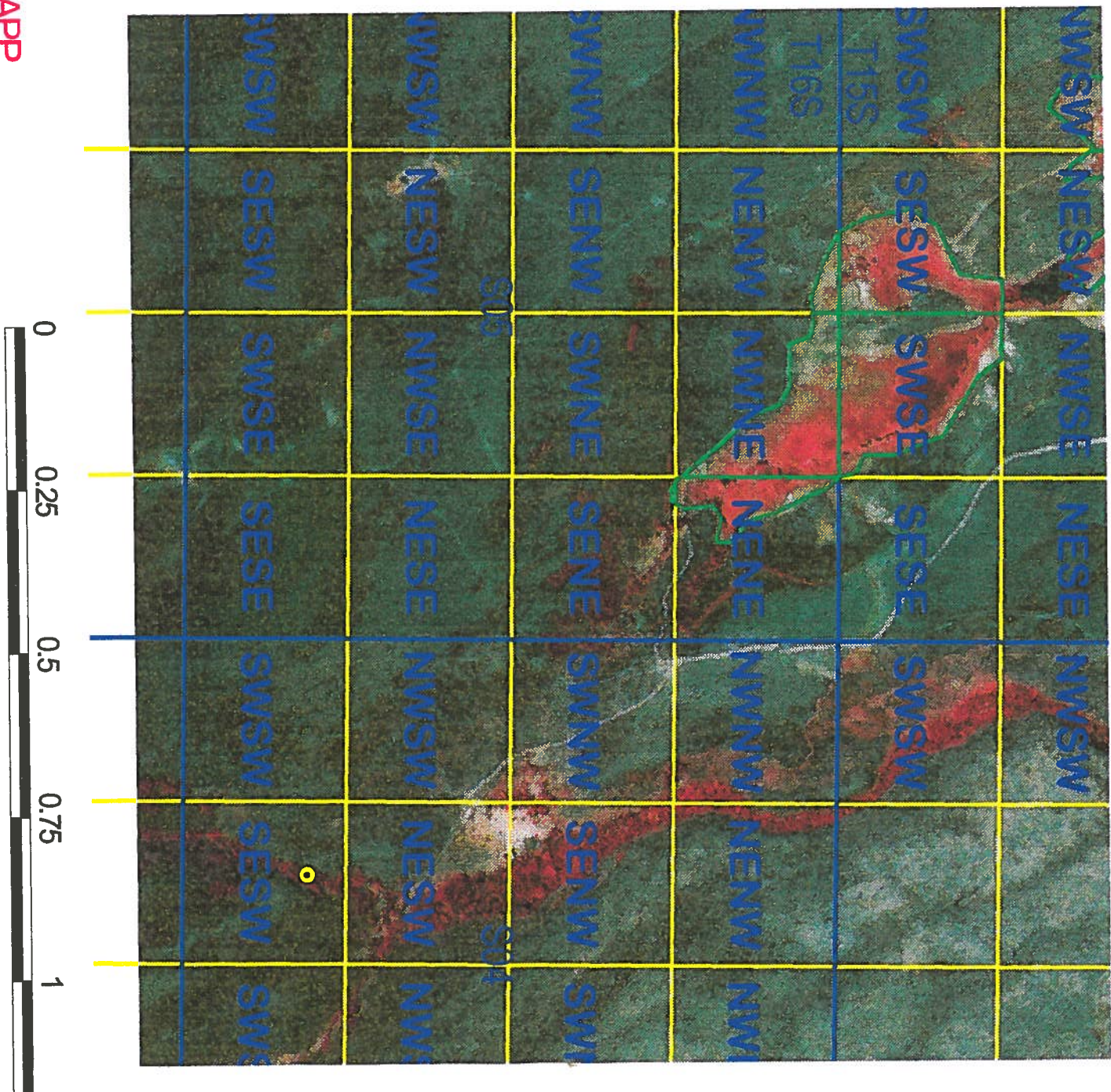
Prepared by: KAY WALKER

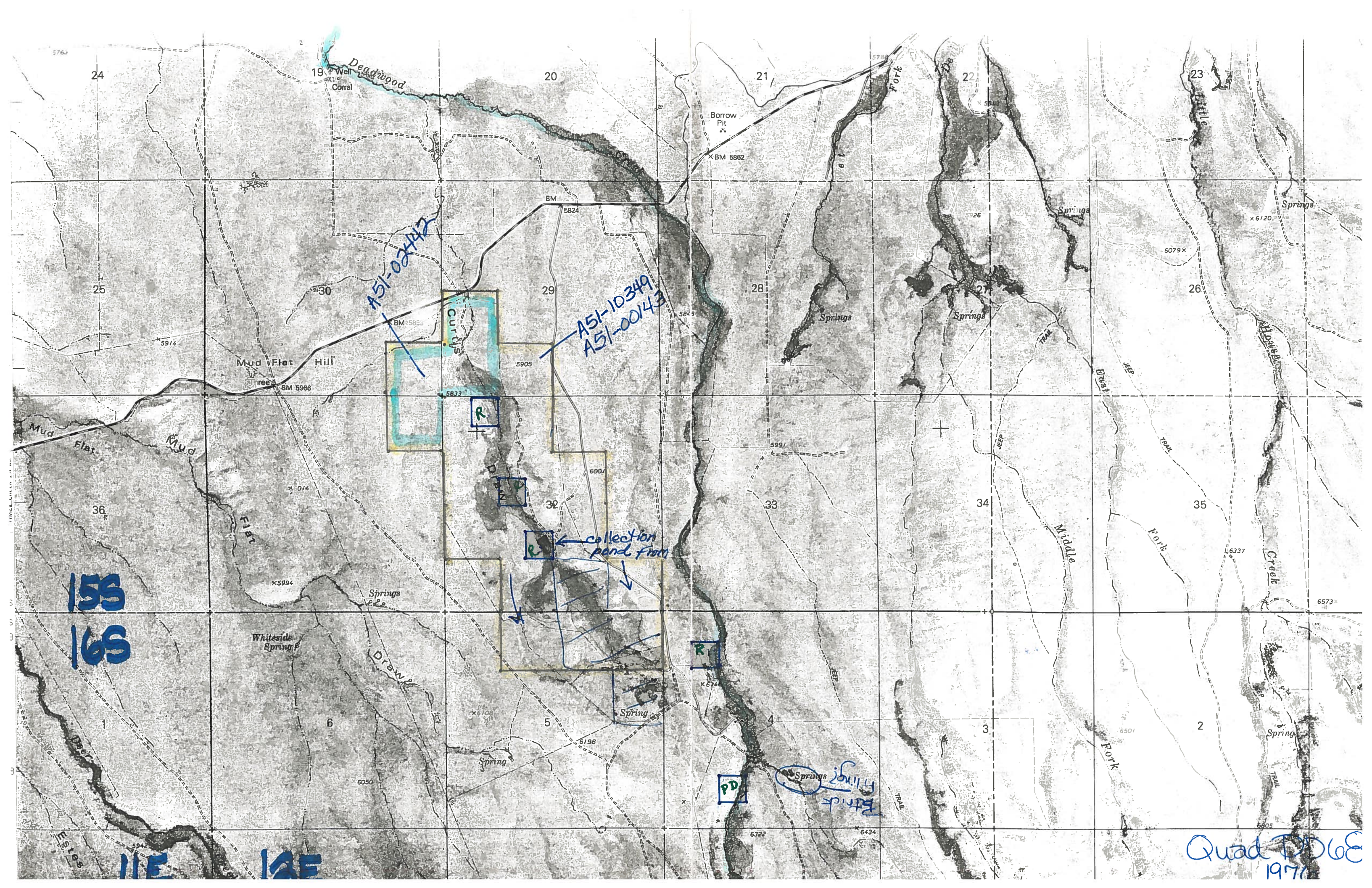
Date: 6/05/1998

PAGE 2 OF 2



1987 NAPP





15S
16S

11E
12E

Quad DD6E
1971

A51-02442

A51-10349
A51-00143

collection pond from

Spring
1971

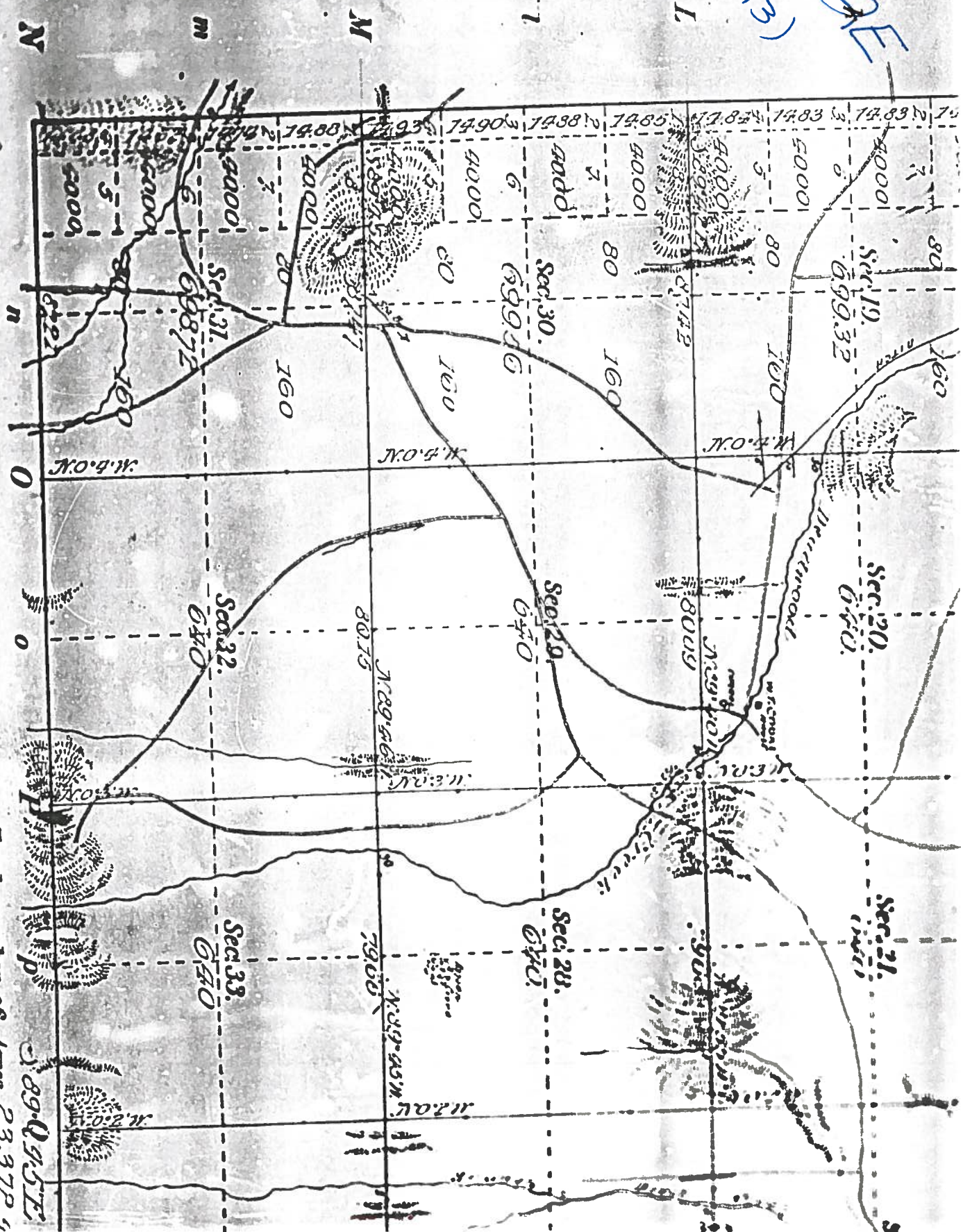
P/D — O — P/D Deadwood Ck.
P/D From Springs — conveyance loss?

N
↓

8-4-87

DD68 NW

155-10E
(1893)



Survey Designated	By Whom Surveyed	Date of Contract	Amount of Survey Acres	When Surveyed	Map Made
Private lines	Frank H. H. H.	September 13, 1891	13 07 21	May 18, 1892	and 1893

Total number of Acres 23,372.4

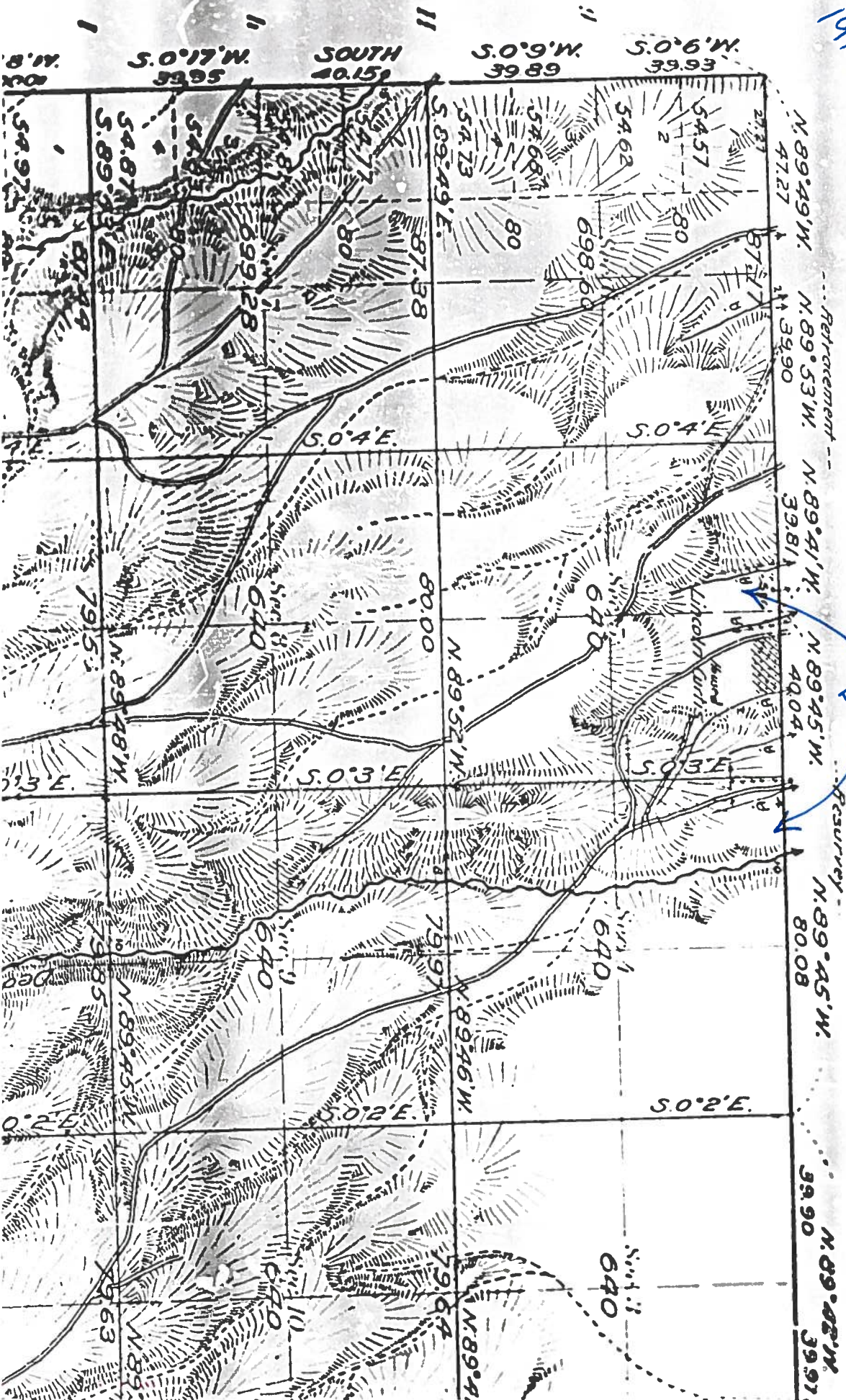
189-045E

tract Township No 16 South, Range No 12 East of 11

1914

NO LOTS

double checked by J. A. S. O. & BLM



AJ0749NP
No. R51-00134

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 06/22/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	SWAN LAND & LIVESTOCK COMPANY HOUSE CREEK RANCH ROGERSON ID 83302 (208) 857-2235	08/25/1908	IRRIGATION	04-01 10-31	2.30 CFS	
					TOTAL DIVERSION:	2.30 CFS

Water Source: DEADWOOD CREEK

Tributary to: CLOVER CREEK

Stage: DECREED

Point(s) of Diversion: T16S R12E S04 NWSESW
Point(s) of Re-diversion: T15S R12E S32 SENESW

Place of use Legal Description for: IRRIGATION

	NE	NW	SW	SE	
T R S	NE NE SENE	NENW NWNW SNNW SENW	NESW NWSW SWSW SESW	NESE NWSE SUSE SESE	SUM
15S 12E 29	: Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac	: Lt Ac Lt Ac Lt Ac	: 37.9
15S 12E 32	: 15	: 12	: 17	: 22	: 28
16S 12E 5	: 08	: .1	: 02	: 11	: 28.3
					TOTAL ACRES 202.2

POU County: OMYHEE

Other Rights: A51-02442, A51-00143, A51-00141

Other Water Rights With Same Point(s) of Diversion with Stage (Includes All Sources):
A51-00130 A51-00134 A51-00135 A51-00141 A51-00143 A51-02442 R51-00135 R51-02442

Other Water Rights Listing Overlapping Place(s) of Use:
A51-00134 A51-00135 A51-00141 A51-00143 A51-02442 A51-10349 R51-00135 R51-00141 R51-00143 R51-02442

Conditions of Approval:
C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
- SECTION 42-1425, IDAHO CODE.

Dates: Exam Made Date: 09/07/1993 Verified Date: 06/22/1998 Objection Filed Date:

Misc: Water District Number: 51A Field Inspection Flag: C
Presumption Flag: C

Comments: Date: 05/28/1998 User-ID: KWALKER Subject: COPIED FROM REMARKS
THIS CLAIM IS BASED ON A COMBINATION OF TWO DECREED RIGHTS

AJ0749NP
No. R51-00134

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 06/22/98
PAGE: 2

Comments: Date: 05/28/1998 User-ID: KWALKER Subject: COPIED FROM REMARKS
51-00134 & 51-00141 FROM TWO DIFFERENT DECREES. 51-00134 WAS
DECREED IN GRANDVIEW IRR. DIST. VS. BRUNEAU BUCKAROO CO-OP
DITCH CO. ON 02/14/1925.

Audit: 06/22/98 KWALKER

DATE: 06/09/98
PAGE: 1

DIVERSION
VOLUME

2.30 CFS

• **Stage: DECREED**

OWYHEE County
OWYHEE County

SE

[illegible]

Other Rights: A51-02442, A51-00143, A51-00141

Conditions of Approval:

- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
- SECTION 42-1425, IDAHO CODE.

Dates: Exam Made Date: 09/07/1993 Verified Date: 06/09/1998 Objection Filed Date:

Misc: Water District Number: 51A Field Inspection Flag: C
Presumption Flag:

WESTERN REGION

CLAIM NUMBERS 51-00134 51-00135 _____

AGENT Ray DATE 6-9-98

TOTAL ACRES FROM RECOMMENDATION _____

GEOGRAPHIC INFO SYSTEM ACRES 203.2

READY FOR DECREE ____ (YES)

SENT FOR DECREE ____ (YES)

RIGHT NO				NE				NW				SW				SE			
	TNS	RNG	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
RECOM																			
GIS																			
RECOM																			
GIS																			

POLYGON CREATED ON 80 4

POLYGON # () () () () _____ UPDATED BY

ATTRIBUTES OF B51-POU.SHP (61) (63) (64) (65) ()

ATTRIBUTES OF B51-POD.SHP (75) (76) () () ()

B51-DBPOU.DBF _____ UPDATED BY

B51-DBPOD.DBF _____ UPDATED BY

updated mother 6/9/98

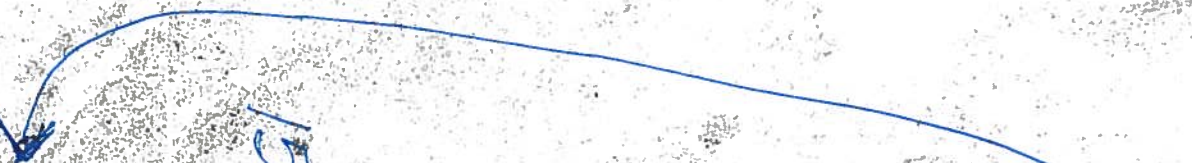
RDH GPSTABLE

Swan (1988)

165 R12E

155

3132
65



3233
54

615
78

54
89

15S-12E

Swan (1988)

30	29
31	32

29	28
32	33

31	32
----	----

32	33
----	----

19|20
30|29

20|21
29|28

T15S - 12E

30|29
31|32

29|28
32|33

**IDAHO DEPARTMENT
OF WATER RESOURCES**

T15S & T16S, R12E

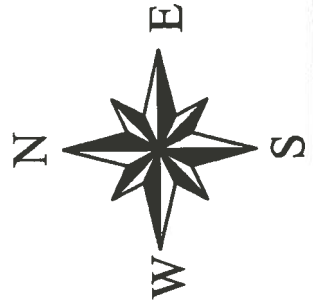
 **Section Lines**

 **PLACE OF USE**

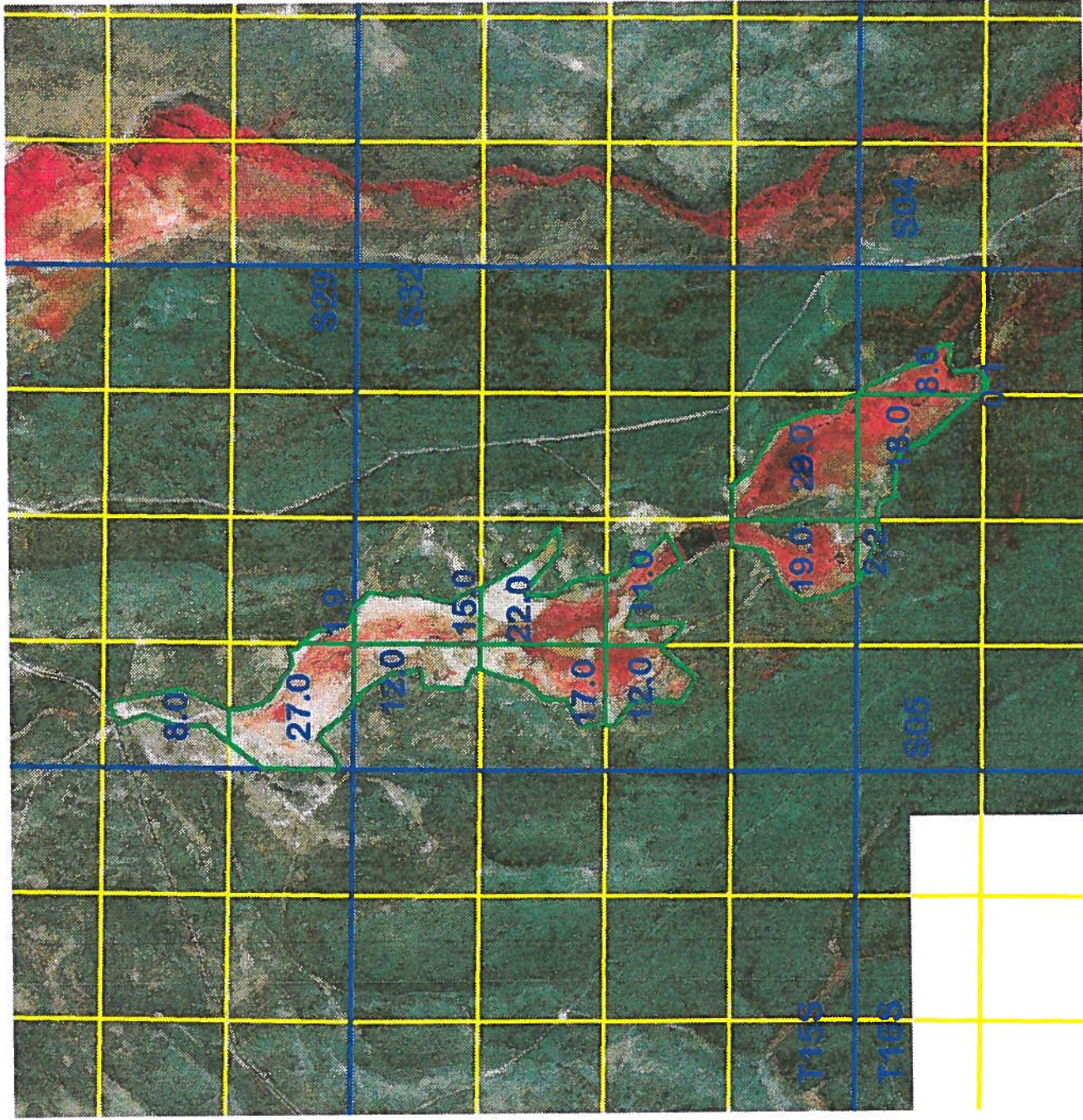
 **1/4 1/4 Lines**

 **POINT(S) OF DIVERSION**

**Claim(s): 51-00134 & 51-00135
Owner(s): SWAN
Prepared by: KAY WALKER
Date: 6/05/1998**



1987 NAPP



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

09:26:46
05/29/98
19
CLAIM NUMBER: A51-00134

OWNER	NAME & ADDRESS	PRIORITY	DATE	WATER USE	USE PERIOD	DIVERSION	DIVERSION
CODE					FROM TO	RATE	VOLUME
C	SWAN LAND & LIVESTOCK COMPANY	08/25/1908	IRRIGATION		04-01 11-01	2.30 CFS	
TOTAL DIVERSION:						2.30 CFS	

Water Source: DEADWOOD CREEK

Tributary to: BROCKMAN RIVER, EAST FORK

Stage: DECREED

Point(s) of Diversion:

T16S R12E S04
T15S R12E S32
#105 R12E S04

WATER USE
CLOVER CREEK
SCHEDULE

SENESM

Point of Diversion
OMYHEE County

DD68
DD18

Place of use Legal Description for: IRRIGATION

NE		NW		SW		SE		SUM	
T	R S	NAME	NAME	NAME	NAME	NAME	NAME	NAME	NAME
15S 12E 31	15	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac
15S 12E 32	15	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac
16S 12E 5	5	Ac	Ac	Ac	Ac	Ac	Ac	Ac	Ac
TOTAL ACRES		15	15	15	15	15	15	15	15

POU County: OMYHEE
Other Rights: A51-02442, A51-00143, A51-00141

Remarks: GEN THIS RIGHT HAS BEEN COMBINED WITH 51-00141 AND CLAIMED AS
A51-10349.
RIGHT 51-00141 WAS SUPERSEDED BY 51-00134, THEREFORE A51-10349
TO BE RECOMMENDED AS 51-00134.

Dates: Exam Made Date: 9/7/1993 Verified Date:
Misc: Water District Number: 51A Field Inspection Flag: A
Presumption Flag:
Objection Filed Date:

No govt lots in Sec. 29, 32, 15S, 12E
No govt lots in Sec 4 & 5, 16S, 12E
add: C05
double checked by Paula at S.O. & BLM

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: 51-00134

09:11:02
05/29/98

LAST: NOH FIRST: HARRY W.
ADDRESS: STATE: ID ZIP: 00
CITY: XX
PHONE NUMBER: 208-000-0000

OWNER CODE: 0

LAST: SWAN LAND & LIVESTOCK COMPANY FIRST:
ADDRESS: HOUSE CREEK RANCH
CITY: ROGERSON STATE: ID ZIP: 83302
PHONE NUMBER: 208-857-2235

OWNER CODE: C

FIELD EXAM REQUIRED? DATABASE FIELD EXAMINER
VERIFICATION REQUIRED DUE TO REMARKS? Y () N ()

CLAIM REMARKS: GEN THIS RIGHT HAS BEEN COMBINED WITH 51-00141 AND CLAIMED AS
51-10349.
RIGHT 51-00141 WAS SUPERSEDED BY 51-00134, THEREFORE 51-10349
TO BE RECOMMENDED AS 51-00134.

CONTACT PERSON: _____

PHONE NUMBER: (____) ____-____

DATE OF FIELD EXAM: 9/7/93

APPOINTMENT MADE: Y(☒) N(☐)

TIME: ____:____ A(☐) P(☐)

ACCOMPANIED BY: George Swan

PHONE NUMBER: (____) ____-____

RELATIONSHIP TO CLAIMANT: _____

DIRECTIONS TO PROPERTY / NOTES:

See attached -

FIELD EXAM
TELEPHONE CONVERSATION MEMO

I.D. NUMBER A51-00130, 00131, 10348

NAME OF CONTACT Bill Swan (Leads Drown property)

PHONE NO. 857-2211 ADJ. AGENT _____

DATE SET FOR EXAM Sept 7--

LOCATION Mo to Rogerson - Turn west at Rogerson & go 25 mi to House cr. ranch. Big sign, meadows, mail box & flag (Mo to Twin, then out Hwy 93 towards Rogerson). 7 or 8 mi out of Rogerson will ^{cross} ~~east~~ ^a ~~the~~ ^a ~~Swad~~ dam

Diverting at full rates? _____

Type of measuring devices? _____

Places to make measurements? _____

Type of system? (pipeline, ditches) Ditches

How many laterals are used? _____

Length and size of mainline? _____

Size of Motor used for each P/D? _____

Estimate of depth to water? _____

Pressure at well? _____

Pressure at sprinkler head? _____

COMMENTS Also has springs for stock

Also has House cr. → B 47

Will do Drown rights @ some time.

A. AJ CLAIM: # A51-00134 PRIORITY DATE: 08-25-1908 STAGE: D

B. WR RECORD: # 51-00134 PRIORITY DATE: 08-25-1908 STAGE: D

C. CAN THE PRIORITY DATE CLAIMED BE CONFIRMED BY A DECREE OR LICENSE?

D. HAS THERE BEEN A LATER COURT DECREE OF THE WATER RIGHT(S) FROM THIS WATER SOURCE?

E. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE? (IF YES, DESCRIBE BELOW)

F. IF THIS CLAIM IS BASED ON A PERMIT, WHERE IS THE PERMIT IN THE LICENSING PROCESS?

PROOF OF BENEFICIAL USE SUBMITTED

FIELD EXAM COMPLETED

FIELD EXAM SENT TO STATE OFFICE

LICENSE ISSUED

* IF THE PERMIT WILL NOT BE LICENSED PRIOR TO THE DIRECTOR'S REPORT, USE CONDITION CODE A01 AND RECOMMEND AS PERMITTED.

G. IF THIS CLAIM IS BASED ON BENEFICIAL USE, IS ADDITIONAL EVIDENCE OF THE PRIORITY DATE REQUIRED?

* FOR CLAIMS BASED ON BENEFICIAL USE, DESCRIBE THE EVIDENCE OF PRIORITY SUBMITTED, INCLUDING THE ANALYSIS OF THE EVIDENCE.

H. IS THE STAGE OF THE CLAIM CODED CORRECTLY?

NOTES: *Recommend decreed priority date.*

Y() N()

Y() N()

Y() N()

N/A() Y() N()

N/A() Y() N()

N/A() Y() N()

N/A() Y() N()

Y() N()

RECOMMENDED PRIORITY DATE:

08-25-1908

REVIEWED BY *AW*

DATE *10/2/98*

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
~~A51-00134~~	~~15S~~	~~12E~~	~~32~~	~~NE~~	~~NW~~	~~NW~~	~~R~~	~~OMYHEE~~		
~~A51-00134~~	~~15S~~	~~12E~~	~~32~~	~~SW~~	~~SE~~	~~NW~~	~~R~~	~~OMYHEE~~		
~~A51-00134~~	~~15S~~	~~12E~~	~~32~~	~~SE~~	~~NE~~	~~SW~~	~~R~~	~~OMYHEE~~		
~~A51-00134~~	~~16S~~	~~12E~~	~~4~~	~~SW~~	~~NW~~	~~NW~~	~~R~~	~~OMYHEE~~		
~~A51-00134~~	~~16S~~	~~12E~~	~~4~~	~~NW~~	~~SE~~	~~SW~~	~~R~~	~~OMYHEE~~		

OTHER AJ CLAIMS WITH SAME AJ POD

WR RECORDS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX

51-02442

A51-00130
A51-00135
A51-00141
A51-00143
A51-02442

SOURCE: DEADWOOD CREEK ✓

TRIB: Clower Creek
~~BRUNEAU RIVER, EAST FORK~~

B. WR POINT OF DIVERSION AND SOURCE:

5100134 THERE IS NO POD ASSOCIATED WITH THIS WATER RIGHT NUMBER

SOURCE: DEADWOOD CREEK

TRIB: BRUNEAU RIVER, EAST FORK

C. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A(✓) Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA? N/A() Y() N(✓)

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM? Y(✓) N()

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y(✓) N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE? Y(✓) N()

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM? Y() N(✓)

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM 9-7-93) Y() N()

AJ FIELD EXAM (DATE OF FIELD EXAM 9-7-93) NAME OF EXAMINER Thy Hallock Y(✓) N()

OTHER (DESCRIBE IN NOTES BELOW)

A. ROOT WATER RIGHT NUMBERS:

A51-00141
A51-00134
R51-00134

B. POU LISTING											
TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
15S	12E	29	NW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 5.0	-	/		8
			NW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 5.0	-	/		
			NW	SW		SWAN LAND & LIVESTOCK COMPANY A51-02442	/ 5.0	51-02442	/	5.0	
			NW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00141	/ 5.0	-	/		
			NW	SW		SWAN LAND & LIVESTOCK COMPANY R51-00134	/ 8.0	-	/		
			NW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00135	/ 5.0	-	/		
15S	12E	29	SW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 25.0	-	/		27
			SW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00141	/ 25.0	-	/		
			SW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 25.0	-	/		
			SW	SW		SWAN LAND & LIVESTOCK COMPANY A51-02442	/ 25.0	51-02442	/	25.0	
			SW	SW		SWAN LAND & LIVESTOCK COMPANY R51-00134	/ 27.0	-	/		
			SW	SW		SWAN LAND & LIVESTOCK COMPANY A51-00135	/ 25.0	-	/		
15S	12E	29	SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 2.0	-	/		1.9
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00141	/ 2.0	-	/		
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 2.0	-	/		
			SE	SW		SWAN LAND & LIVESTOCK COMPANY R51-00134	/ 1.9	-	/		
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00135	/ 2.0	-	/		
15S	12E	30	SE	SE		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 20.0	-	/		0
			SE	SE		SWAN LAND & LIVESTOCK COMPANY A51-00141	/ 20.0	-	/		
			SE	SE		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 20.0	-	/		
			SE	SE		SWAN LAND & LIVESTOCK COMPANY A51-02442	/ 20.0	51-02442	/	20.0	
			SE	SE		SWAN LAND & LIVESTOCK COMPANY A51-00135	/ 20.0	-	/		
			SE	SE		AMERICA ACTING THROUGH, UNITED 51-124168	/	-	/		
15S	12E	31	NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 15.0	-	/		0
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 15.0	-	/		
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-02442	/ 15.0	51-02442	/	15.0	
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00135	/ 15.0	-	/		
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00141	/ 15.0	-	/		
15S	12E	32	SW	NE		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 1.0	-	/		0
			SW	NE		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 1.0	-	/		
			SW	NE		SWAN LAND & LIVESTOCK COMPANY A51-00141	/ 1.0	-	/		
			SW	NE		SWAN LAND & LIVESTOCK COMPANY A51-00135	/ 1.0	-	/		
			SW	NE		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 1.0	-	/		
15S	12E	32	NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00134	/ 16.0	-	/		20.0
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00143	/ 16.0	-	/		

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	HR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
15S	12E	32	NE	NW		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 14.0	-	-	/		12
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 16.0	-	-	/		
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 16.0	-	-	/		
15S	12E	32	NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00134 / 30.0	51-00134	/	40.0		17
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00143 / 30.0	-	-	/		
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 30.0	51-00141	/	10.0		
15S	12E	32	NW	NW		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 12.0	-	-	/		18
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 30.0	-	-	/		
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 30.0	51-02010	/	10.0		
15S	12E	32	NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00134 / 14.0	51-00134	/	40.0		24
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00143 / 14.0	-	-	/		
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 14.0	51-00141	/	10.0		
15S	12E	32	NW	NW		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 17.0	-	-	/		13
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 14.0	-	-	/		
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 14.0	51-02010	/	10.0		
15S	12E	32	NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00134 / 30.0	-	-	/		18
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00143 / 30.0	51-00143	/	10.0		
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 30.0	-	-	/		
15S	12E	32	NE	NW		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 18.0	-	-	/		13
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 30.0	-	-	/		
			NE	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 30.0	-	-	/		
15S	12E	32	NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00134 / 7.0	-	-	/		18
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00143 / 7.0	-	-	/		
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 7.0	-	-	/		
15S	12E	32	NW	NW		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 13.0	-	-	/		28
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 7.0	-	-	/		
			NW	NW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 7.0	-	-	/		
15S	12E	32	SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00134 / 22.0	-	-	/		18
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00143 / 22.0	51-00143	/	20.0		
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 22.0	-	-	/		
15S	12E	32	SE	SW		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 18.0	-	-	/		0
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 22.0	-	-	/		
			SE	SW		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 22.0	-	-	/		
15S	12E	32	NW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00134 / 14.0	-	-	/		28
			NW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00143 / 14.0	-	-	/		
			NW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 14.0	-	-	/		
15S	12E	32	NW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 14.0	-	-	/		28
			NW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 14.0	-	-	/		
			NW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 14.0	-	-	/		

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	MR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
15S	12E	32	SE	SE	1	SWAN LAND & LIVESTOCK COMPANY A51-00143 / 39.0	-	-	/		
			SW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00141 / 39.0	51-00141	/	35.0		
			SW	SE		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 28.0	-	/			
			SW	SE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 39.0	-	/			
16S	12E	5	SE	SE		CURTIS, LINCOLN	51-02010	/	35.0		
			SE	SE							
			SE	SE							
			SE	SE							
16S	12E	5	NE	NE	1	SWAN LAND & LIVESTOCK COMPANY A51-00134 / 21.0	-	/	15.0		
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 21.0	51-00135	/	40.0		
			NE	NE	1	SWAN LAND & LIVESTOCK COMPANY A51-00143 / 21.0	-	/			
			NE	NE	1	SWAN LAND & LIVESTOCK COMPANY A51-00141 / 21.0	51-00141	/	20.0		
16S	12E	5	NE	NE	1	SWAN LAND & LIVESTOCK COMPANY R51-00134 / 7.0	51-00134	/	40.0		
			NE	NE		CURTIS, LINCOLN	51-02010	/	20.0		
			NE	NE							
			NE	NE							
16S	12E	5	NE	NE	2	SWAN LAND & LIVESTOCK COMPANY A51-00134 / 15.0	-	/	20.0		
			NE	NE		AMERICA ACTING THROUGH, UNITEDA51-12415 / 15.0	51-00135	/	40.0		
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 15.0	-	/			
			NE	NE	2	SWAN LAND & LIVESTOCK COMPANY A51-00143 / 15.0	51-00141	/	20.0		
16S	12E	5	NE	NE	2	SWAN LAND & LIVESTOCK COMPANY A51-00141 / 15.0	51-00134	/	40.0		
			NE	NE		SWAN LAND & LIVESTOCK COMPANY R51-00134 / 19.0	51-02010	/	20.0		
			NE	NE		CURTIS, LINCOLN					
			NE	NE							
16S	12E	5	NE	NE	3	SWAN LAND & LIVESTOCK COMPANY A51-00134 / 4.0	-	/	6.0		
			NE	NE		SWAN LAND & LIVESTOCK COMPANY A51-00135 / 4.0	-	/			
			NE	NE	3	SWAN LAND & LIVESTOCK COMPANY A51-00143 / 4.0	-	/			
			NE	NE	3	SWAN LAND & LIVESTOCK COMPANY A51-00141 / 4.0	-	/			
16S	12E	5	NE	NE	3	SWAN LAND & LIVESTOCK COMPANY R51-00134 / 2.2	-	/			
			NE	NE							
			NE	NE							
			NE	NE							

ADDITIONAL POU FOUND

16S 12E 5 SENE

0.1

TOTAL ACRES

A51-00134

323.00

120.00

240.00

POU COUNTY: OMYHIEE

209.2

2.2

19

7

0

C. IS WATER USAGE FOUND IN TRACTS OTHER THAN THOSE CLAIMED?

Y() N()

* IF YES, ARE THESE TRACTS LISTED ABOVE (), OR ARE THEY LISTED ON AN ATTACHED SHEET ()

LIST OF ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A51-00134	DEADWOOD CREEK	SWAN LAND & LIVESTOCK COMPANY	2.300	0.007		
R51-00134	DEADWOOD CREEK	SWAN LAND & LIVESTOCK COMPANY	2.300	0.010		
A51-00135	DEADWOOD CREEK	SWAN LAND & LIVESTOCK COMPANY	1.900	0.005		
A51-00141	DEADWOOD CREEK	SWAN LAND & LIVESTOCK COMPANY	2.300	0.007		
A51-00143	DEADWOOD CREEK	SWAN LAND & LIVESTOCK COMPANY	0.800	0.002		
A51-02442	CURTIS DRAW	SWAN LAND & LIVESTOCK COMPANY	1.300	0.020		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
51-124168	STOCKWATER	AMERICA ACTING THROUGH, UNITED	FROM 01-01 TO 12-31	0.020 CFS	
A51-12415	STOCKWATER	AMERICA ACTING THROUGH, UNITED	FROM 01-01 TO 12-31	0.240 CFS	
A51-12415	WILDLIFE	AMERICA ACTING THROUGH, UNITED	FROM 01-01 TO 12-31	0.020 CFS	

D. ARE OTHER WATER RIGHTS USED FOR THE SAME PURPOSE?

Y() N()

* IF YES, COMPLETE OVERLAP REVIEW:

OTHER RIGHTS LISTED IN CLAIM: A51-02442, A51-00143, A51-00141

E. IS THE CLAIMED POU THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POU, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

F. CAN THE CLAIMED POU BE VERIFIED USING THE WATER RIGHT FILE AND AVAILABLE AERIAL PHOTOS?

N/A() Y() N()

G. SHOULD THE CLAIMED POU BE VERIFIED BY FIELD EXAM?

Y() N()

H. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THIS RIGHT?

Y() N()

CHECK DOCUMENTS USED TO VERIFY POB: ☒ ORTHOPHOTOQUAD, IDMR NO. DD68; () TOPOGRAPHIC QUAD, IDMR NO. _____;

☒ NAPP, IDMR NO. DD68 NW; ☒ ASCS PHOTO; () OTHER _____

NOTES:

Claimants are located at the Curtis Blau gas irrigation. Also are located located in SWNWSE, Sec. 4, T16S, R13E but have not filed on them as of this date.

RECOMMENDATIONS:

TOTAL ACRES: 209.2 N/A ()

REVIEWED BY: FW DATE: 6/2/98

A. AJ CLAIMED USES:

PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
A51-00134 IRRIGATION	FROM 04-01 TO 11-01	2.300 CFS	
TOTAL DIVERSION RATE/VOLUME		2.300 CFS	

B. WR RECORDED USES:

PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
51-00134 IRRIGATION	FROM TO	2.300 CFS	
51-00134 STOCKWATER	FROM TO		
51-00134 DOMESTIC	FROM TO		
TOTAL DIVERSION RATE/VOLUME		2.300 CFS	

C. DOES THE CLAIMED PURPOSE OF USE CORRECTLY DESCRIBE THE WATER USE?

Y() N()

D. IS THE CLAIMED PURPOSE OF USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y() N()

* IF NO, AND IF THE ACTUAL WATER USE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN PURPOSE OF USE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

E. SHOULD THE CLAIMED PURPOSE OF USE BE VERIFIED BY FIELD EXAM?

Y() N()

F. DOES THE CLAIMED PERIOD OF USE CONFORM TO IDWR STANDARDS?

Y() N()

G. SHOULD THE PERIOD OF USE BE RECOMMENDED TO IDWR STANDARDS?

Y() N()

* IF THE RECOMMENDED PERIOD OF USE IS DIFFERENT THAN IDWR STANDARDS, EXPLAIN IN NOTES BELOW.

H. IS THE CLAIMED DIVERSION RATE FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y() N()

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION RATE FOR EACH USE WAS DETERMINED.

I. SHOULD THE CLAIMED DIVERSION RATE FOR EACH USE BE VERIFIED BY FIELD EXAM?

N/A() Y() N()

J. IS THE CLAIMED DIVERSION VOLUME FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y() N()

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION VOLUME FOR EACH USE WAS DETERMINED.

K. SHOULD THE CLAIMED DIVERSION VOLUME FOR EACH USE BE VERIFIED BY FIELD EXAM?

N/A() Y() N()

NOTES:

Claimants filed on 51-00134 & 51-00141 as combined claim. Originally assigned A51-00141 then number changed to A51-10349.

During investigation, I found 51-00141 had been superseded by 51-00134 - that's all, I left A51-10349 into A51-00134 & A51-00141. Also had claimant file on A51-00135 during field visit on 9/7/93.

A51-00141 to be recommended as ~~51~~51-00134.

Solicited claim on springs from claimants after field visit & research of old records at IDNR. See correspondence of 9/3/93 & 5/29/98. No claim as of this date.

AJ CLAIM TOTAL DIVERSION RATE: 2.300 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 2.300 CFS

A. IS THE CLAIMED TOTAL DIVERSION RATE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A () Y (✓) N ()
B. CAN THE CLAIMED TOTAL DIVERSION RATE BE VERIFIED USING THE WATER RIGHT FILE? N/A () Y (✓) N ()

* ALL CLAIMS BASED ON BENEFICIAL USE (INCLUDING POSTED NOTICES AND STATUTORY CLAIMS) REQUIRE A FLOW MEASUREMENT.

C. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THE DIVERSION RATE? Y () N (✓)

* IF AN AMOUNT SMALLER THAN THE ORIGINAL DIVERSION RATE IS CLAIMED AND A FIELD EXAM IS NOT REQUIRED, EXPLAIN IN NOTES.

D. SHOULD THE CLAIMED DIVERSION RATE BE VERIFIED BY FIELD EXAM? Y () N (✓)

E. MEASUREMENT METHOD NOVE FLOW MEASUREMENT
SEE ATTACHED CALCULATIONS.

F. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES 209.2 x 0.02 CFS/ACRE = 4.18 CFS 1b. CALCULATIONS
(Taken from pou review)

IS A DIVERSION RATE PER ACRE GREATER THAN 0.02 CFS/ACRE CLAIMED? Y () N (✓)
IF YES, IS AN ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y () N ()

2. IRRIGATION DIVERSION VOLUME N/A - surface water
CLAIMED DIVERSION VOLUME = AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =
TOTAL DIVERSION VOLUME _____ AF/A

3. IRRIGATION CONSUMPTIVE USE
CLAIMED CONSUMPTIVE USE = N/A AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =
TOTAL CONSUMPTIVE USE _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION: SEE BELOW () OR SEE ATTACHMENT ()
N/A

RECOMMENDATIONS: CHECK HERE IF RECOMMENDED AS CLAIMED ()

PURPOSE OF USE	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
IRRIGATION	04-01 11-01	DATABASE EXAMINER 2.300	DATABASE EXAMINER	DATABASE EXAMINER 0.0
Irrig	4-15 10-15	2.3	N/A	N/A
TOTAL FOR THIS RIGHT		2.3		

NON-IRRIGATION USES CLAIMED:

NON-IRRIGATION USES RECOMMENDED: CHECK HERE IF RECOMMENDED AS CLAIMED ()

REVIEWED BY: ku

DATE: 10/22/98

FLAG: C

STANDARD CONDITIONS (CODE):

STANDARD REMARKS (CODE):

EXPLANATORY CONDITIONS (CODE):

005

EXPLANATORY REMARKS (CODE):

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____
FORFEIT/ABANDON _____
ADDITIONAL DIV. AMOUNT _____

ACCEPTED
AS CLAIMED ☒ NEEDS
REVIEW ☐

() ()
() ()
() ()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 51-00134

N/A
DATABASE
2.300

EXAMINER

TOTAL DIVERSION RATE OF WR SPLITS

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
A51-10349 ✓	A51-00134 ✓	2.300 ✓	R51-00134	2.300	51-00134	2.300
A51-00141 ✓		2.300 ✓				

TOTAL CFS

4.600

2.300

2.300

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, IS THE WRITTEN REVIEW DESCRIBED BELOW () OR SEE ATTACHMENT ()?

DATABASE
N FIELD
EXAMINER
Y() N()

NOTES:

AUTHENTICATION:

SIGNATURE:

DATE:

NAME OF FIELD EXAMINER:

TITLE:

Paul H. Baker
5/2/98
Paul H. Baker
Sr. Agent

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED) IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION

COPY INCLUDED
IN FILE?

☒ ORTHOPHOTOQUAD

DATE OF PHOTO

1976

IDMR ID NO.

2268

Y() N()

☐ TOPOGRAPHIC

DATE FIELD CHECKED

8-4-87

IDMR ID NO.

2268 NW

Y() N()

☒ MAP

DATE OF PHOTO

1988

IDMR ID NO.

2268 NW

Y() N()

☒ ASCS AERIAL PHOTO

DATE OF PHOTO

1988 Flight - 3 pgs

Y() N()

☐ ASCS COLOR SLIDE

DATE OF PHOTO

Y() N()

☐ BLM OR USFS AERIAL PHOTO

DATE OF PHOTO

Y() N()

☒ TOWNSHIP SURVEY (GOVERNMENT PLAT)

DATE OF SURVEY

1893 (155-12E) 1914 (165-12E)

Y() N()

☐ SCS SOIL SURVEY MAP

DATE ISSUED

Y() N()

☐ SUBDIVISION PLAT MAP

DATE OF MAP

Y() N()

☐ OTHER

DATE

Y() N()

☐ OTHER

DATE

Y() N()

LIST OF ATTACHMENTS (CHECK IF ATTACHED)

IF ATTACHED, SUPPLY APPROPRIATE INFORMATION

NO. OF
PAGES

NOTES

☐ LICENSING FIELD EXAM

DATE OF FIELD EXAM

☐ WATER RIGHT LICENSE

DATE LICENSE SIGNED

☐ IDMR APPROVED TRANSFER

DATE TRANSFER APPROVED

☐ SYSTEM DESCRIPTION

DATE DRAWN

☒ PHOTOGRAPHS

DATE(S) PHOTOS TAKEN

9-7-1993

5

☐ SPLIT RIGHT REVIEW

DATE REVIEW COMPLETED

☐ HUBBLE ANALYSIS

DATE ANALYSIS COMPLETED

☐ CONVEYANCE LOSS ANALYSIS

DATE ANALYSIS COMPLETED

☐ FLOW MEASUREMENT CALCULATIONS

DATE SYSTEM MEASURED

☒ OTHER

DATE

2/14/1995

☐ OTHER

DATE



PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS

9-7-1993

FILE NO(S).

A51-00134



Place of
use (in
background
from road
on east
side of
property.



PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS

9-7-1993

FILE NO(S).

A51-00134



Place of
use photo-
taken from
road on
east side
of property.

Place of
use (in
background)





PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS 9-7-1993

FILE NO(S). A51-00134



Collection
pond
located in
NESW, S32,
T15S, R12E

Place of
use from
road on
east side





PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS 9-7-1993

FILE NO(S). A51-00134



P/D on
Deadwood
Creek -
Rock &
canvas dam
diversion
located in
SESW, S04,
16S, 12E

Holding tank
& culvert
from spring to
collection
pond in
NESW, Sec.
32, 16S, 12E





PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS

9-7-93

FILE NO(S).

A51-001.34



culvert &
holding tank
from spring into
collection
pond

Collection
pond in
NESW, S32,
15S, 12E -
water is
collected here
then back
onto fields -
entire system
is gravity flow



9-7-93 accompanying: George Swan,

Karl Patrick filing?

Spring trk. to Deadwood
for irrigation purposes

Karl Patrick - (1925 → not bound)
bound by the 1915 right
in court now

drought conditions - has
not even put up hay
since 1985 -

✓ picture 1 - old Deadwood CK.

Rock & canvas dam & diversion

Spring diverted ^{out} of the natural channel
into a ditch into a culvert
which discharges in Deadwood
CK. ditch.

picture #2 - spring at pld

one old from Deadwood CK.
into ditch, collection pond
in NESW, Sec. 32, ^{the} back
onto fields

all gravity flow

holding tank & culvert ^(pic) from
collection pond ^(pic)
headgate from collection
pond

conveyance loss on ditch - P/U claim

11-15-93
57-2311

#8 (ditch from spring -
place of Manship)

ditch from Headwood Ck.
to Reservoir - (Cedar Mesa)

X
Dist #48
J
SAMUEL C. DUNN (Sometimes known as Crandall C. Dunn and as Crandall Dunn): S $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 20, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 29, all in Township 15 South, Range 12 East, Boise Meridian, in Owyhee County, Idaho; out of the waters of Deadwood Creek, a tributary of the East Fork of the Bruneau River, a tributary of the Bruneau River; said waters to be diverted at the present point of diversion at or near the land above described: **51-0133** 40 inches as of January 21, 1911.

same amount, same p/u, same priority as 51-0041
X
Dist #48
J
HARRY W. NOH: - W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 32, Township 15 South, Range 12 East, Boise Meridian, E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 5, Township 16 South, Range 12 East, Boise Meridian, in Owyhee County, Idaho; out of the waters of Deadwood Creek, a tributary of the East Fork of the Bruneau River, a tributary of the Bruneau River; said waters to be diverted at the present point of diversion at or near the land above described: **51-0134** 2.3 cfs 115 inches as of August 25, 1908.

X
Dist #48
J
LINCOLN CURTIS: - SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, Township 15 South, Range 12 East, Boise Meridian, and E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 5, Township 16 South, Range 12 East, Boise Meridian in Owyhee County, Idaho; out of the waters of Deadwood Creek, a tributary of the East Fork of the Bruneau River, a tributary of the Bruneau River; said waters to be diverted at the present point of diversion at or near the land above described:

51 0135 95 inches as of August 25, 1908.

X
Dist #48
J
W. R. WALSH: - E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 15, Township 14 South, Range 10 East, Boise Meridian, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 18, Township 14 South of Range 11 East, Boise Meridian, containing 168.75 acres in Owyhee County, Idaho, out of the waters of the East Fork of Bruneau River, a tributary of the Bruneau River; said waters to be diverted at or near the subdivision of land above described:

51 0136 2 cubic feet of water per second of time for the

MEMORANDUM

June 2, 1998

TO: FILES A51-10349, A51-00134 & A51-00141

FROM: KAY WALKER *KW*

RE: COMBINATION/SPLIT

A claim was submitted combining Rts. 51-00134 and 51-00141 on one claim form. This claim was issued No. A51-00141 when originally accepted. Upon review of the claim it was renumbered to A51-10349 in order to be consistent with other filings like this. (When 2 claims combined into one filing, we would normally give the filing a beneficial use number.)

Upon file review I found that Rt. 51-00141 was superseded by Rt. 51-00134 and therefore Rt. 51-00141 was not eligible to be claimed in the SRBA. At this point I split A51-10349 into A51-00134 and A51-00141.

My recommendations are to show 51-00141 as disallowed and recommended as 51-00134. 51-00134 will contain the recommended acreage and when combined with 51-00135 will cover the place of use with a sufficient amount of water.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

FAX (208) 334-2348

May 29, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: Water Use from Spring

Swan Land & Livestock Company
House Creek Ranch
Attn: George Swan
Rogerson, ID 83302

Dear Mr. Swan:

I am in the process of preparing your claims for the preliminary recommendations that will be distributed at the end of July. In reviewing my records, I found that you have not submitted a claim on the spring that is discharged into your Deadman Creek ditch system. If you wish to obtain a water right for use of this spring you need to submit the claim form and filing fee as soon as possible.

I have notes in my files that you called on October 15, 1993, and you indicated that you did want to file a water right on this spring. If you have decided not to file on this spring, please let me know so I can finalize my other recommendations. If you have any questions in regard to this, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kay Walker".

KAY WALKER
Sr. Water Resource Agent
Adjudication Bureau

KW:k



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 13, 1993

RE: Water Use from Spring

Swan Land & Livestock Company
House Creek Ranch
Rogerson, ID 83302

Gentlemen:

I reviewed our old water right records and could not locate a right on the spring which you showed to us during our field examination. Therefore, I have prepared a claim on this spring for your signature. I did not know what date to put in item 2, date of first use of this spring. Please fill in this item on the claim form, sign it in the presence of a notary public and return it to our office, along with a \$50.00 filing fee, at your earliest convenience. I inserted 3.46 cfs on the amount of water claimed since this is what we found the ditch from the spring carries. You will also need to submit some type of evidence to establish the priority date you claim. Enclosed for your information is a brochure entitled "Evidence of Priority" which discusses the type of documentation that is acceptable.

Also enclosed you will find a computer generated copy of Claim No. A51-00135 which you submitted while I was out at your ranch, and Departmental Receipt No. W016707 in the amount of \$50.00.

I have not had any time to review your claims in regard to the conveyance loss in your ditch from Deadwood Creek. This review will come after our field season is finished for the year. I will let you know if I need any additional information.

If I can be of any further assistance to you in regard to your claims, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Kay Walker'.

KAY WALKER
Sr. Water Resource Agent
Adjudication Bureau

KW:k
Enclosures

10-15-93
George Swan called -
will be submitting
claim on spring &
affidavit to support
claim - KW

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Staff Analysis Sheet For
SRBA Claim Verification Field Report

A. Prior to Conducting the Exam, the File Contains

- ☒ Claim Verification Report(CVR)
☒ Profiles Copy of Adjudication Claims
☒ Copies of pertinent files(prev. rts., exams, etc.)
☒ N/A Well Inspection Form (If Needed)
☒ Copy of U.S.G.S. Quad map, orthophotoquad, or NAPP photography
☒ Check P.D. & P.U. desc. for Govt. Lots(if a lot is found, a copy of the Govt. plat is needed to add the lot onto the R claim file later.)
☒ Check CVR for P.D. overlap(see page titled Pt. of Div. Review Sheet)
☐ Check AJ & WR P/D indexes(to ck. accuracy of CVR overlap ckd. above)
Overlap ___yes ___no If yes: ___copy of claims & water rights incl?
Type of Overlap? ___ Add acres or uses to existing system
 ___ Increase rate of flow or volume
 ___ Other: _____
☒ Check CVR for P.U. overlaps(see page titled Pl. of Use Review Sheet)

___ Check AJ & WR P/U indexes(to ck. accuracy of CVR overlap ckd. above)
Overlap ___yes ___no If yes: ___copy of claims & water rights incl?
Type of Overlap? ___ Increase rate of flow or volume
 ___ Add P/D's
 ___ Increase number of acres within tracts
 ___ Different source for same acres
 ___ Other: _____
___ Appointment Letter Sent? _____(initial & date)
☒ Appointment Made and Telephone Conversation Memo Attached

(See Linda for copy)

B. After Conducting the Exam, the File Contains:

- ___ Fully Completed and Signed CVR Form
___ Completed Adjudication Claim Checklist
___ Photographs of Point(s) of Diversion and Place of Use
___ Completed map outlining Point(s) of Diversion and Place of Use



PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS

9-7-1993

FILE NO(S).

A51-00134



Place of
use (in
background
from road
on east
side of
property.



PHOTOGRAPHER: KAY WALKER

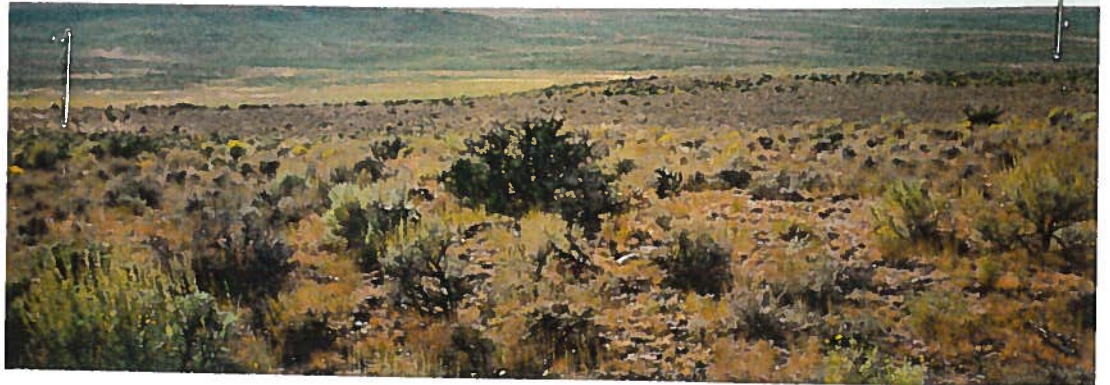
DATE OF PHOTOS 9-7-1993

FILE NO(S) . A51-00134



Place of
use photo-
taken from
road on
east side
of property.

Place of
use (in
background)





PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS 9-7-1993

FILE NO(S). A51-00134



Collection
pond
located in
NESW, S32
T15S, R12E

Place of
use from
road on
east side





PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS

9-7-1993

FILE NO(S).

A51-00134



P/D on
Deadwood
Creek -
Rock &
canvas dam
diversion
located in
SESW, S04,
16S, 12E

Holding tank
& culvert
from spring to
collection
pond in
NESW, Sec.
32, 16S, 12E





PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS

9-7-93

FILE NO(S).

A51-00134



culvert &
holding tank
from spring int
collection
pond

Collection
pond in
NESW, S32,
15S, 12E -
water is
collected here
then back
onto fields -
entire system
is gravity flow



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: A51-00134
Date Received: 1/11/1989
Receipt No: S005870
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: SWAN LAND & LIVESTOCK COMPANY 208-857-2235
Address: HOUSE CREEK RANCH
ROGERSON ID 83302

2. Date of Priority: AUG 25, 1908

3. Source: DEADWOOD CREEK Trib. to: BRUNEAU RIVER, EAST FORK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
15S	12E	32	NE	NW	NW	R	OWYHEE
			SW	SE	NW	R	OWYHEE
			SE	NE	SW	R	OWYHEE
16S	12E	4	SW	NW	NW	4 R	OWYHEE
			NW	SE	SW		OWYHEE

5. Description of diverting works:
EARTH & ROCK CHECK DAM TO EARTHEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.300		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
15S	12E	29	NW	SW		IRR	5.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	12E	29	SW	SW		IRR	25.0
			SE	SW		IRR	2.0
					Section Acres		32.0
		30	SE	SE		IRR	20.0
					Section Acres		20.0
		31	NE	NE		IRR	15.0
					Section Acres		15.0
		32	SW	NE		IRR	1.0
			NE	NW		IRR	16.0
			NW	NW		IRR	30.0
			SW	NW		IRR	14.0
			SE	NW		IRR	31.0
			NE	SW		IRR	30.0
			NW	SW		IRR	7.0
			SE	SW		IRR	22.0
			NW	SE		IRR	14.0
			SW	SE		IRR	39.0
			SE	SE		IRR	12.0
					Section Acres		216.0
16S	12E	5	NE	NE	1	IRR	21.0
			NW	NE	2	IRR	15.0
			NE	NW	3	IRR	4.0
					Section Acres		40.0
					Total Acres		323.0

11. Place of use in counties: OWYHEE

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

13. Other Water Rights Used:

A51-02442, A51-00143, A51-00141

14. Remarks:

THIS RIGHT WAS COMBINED WITH 51-00141 AND CLAIMED AS
A51-10349.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

JEROME N. HELSEY
Decree Plaintiff

WM. TURNER ET. AL.
vs Decree Defendant

16. Signature(s)

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

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am _____ of

Title
_____, that I have signed the foregoing
Organization
document in the space below as _____ of

Title
_____ and that the statements contained in the
Organization
foregoing document are true and correct.

Signature of Authorized Agent

Title and Organization

Date

State of Idaho)
) SS.
County of _____)

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

Changed from A51-00141
to A51-10349

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: A51-10349
Date Received: 1/11/1989
Receipt No: S005870
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: SWAN LAND & LIVESTOCK COMPANY 208-857-2235
Address: HOUSE CREEK RANCH
ROGERSON, ID 83302
2. Date of Priority: AUG 25, 1908
3. Source: DEADWOOD CREEK Trib. to: BRUNEAU RIVER, EAST FORK
4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
15S	12E	32	NE	NW	NW	R	OWYHEE
			SW	SE	NW	R	OWYHEE
			SE	NE	SW	R	OWYHEE
16S	12E	4	SW	NW	NW	4 R	OWYHEE
			NW	SE	SW		OWYHEE
5. Description of diverting works:
EARTH & ROCK CHECK DAM TO EARTHEN DITCH
6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	4.600		
7. Total Quantity Appropriated is:
4.600 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 646.0 Acre Feet Per Annum.
9. Non-irrigation uses:
NONE

~~RECEIVED~~
JAN 11 1992

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	12E	29	NW	SW		IRR	5.0
			SW	SW		IRR	25.0
			SE	SW		IRR	2.0
						Section Acres	32.0
		30	SE	SE		IRR	20.0
							Section Acres
		31	NE	NE		IRR	15.0
							Section Acres
		32	SW	NE		IRR	1.0
			NE	NW		IRR	16.0
			NW	NW		IRR	30.0
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			NE	SW		IRR	30.0
			NW	SW		IRR	7.0
SE	SW			IRR	22.0		
NW	SE			IRR	14.0		
SW	SE			IRR	39.0		
SE	SE			IRR	12.0		
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16S	12E	5	NE	NE	1	IRR	21.0
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							Section Acres
					Total Acres	323.0	

11. Place of use in counties: OWYHEE

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

13. Other Water Rights Used:
A51-02442, A51-00143, A51-00141

14. Remarks:
THIS CLAIM IS BASED ON A COMBINATION OF TWO DECREED RIGHTS
51-00134 & 51-00141 FROM TWO DIFFERENT DECREES. 51-00134 WAS
DECREED IN GRANDVIEW IRR. DIST. VS. BRUNEAU BUCKAROO CO-OP

~~2004 11 15~~
~~11 15 2004~~

14. Remarks: Continued
DITCH CO. ON 02/14/1925.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

JEROME N. HELSEY
Decree Plaintiff

vs

WM. TURNER ET. AL.
Decree Defendant

16. Signature(s)

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

Number of attachments: _____

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): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

~~NOTARY PUBLIC~~
406 1-1392

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: A51-00141

Date Received: 1/11/89

Receipt No: 5005870

Received By: Adm

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ACQUIRED UNDER STATE LAW

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Address: HOUSE CREEK RANCH
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6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	4.600		
7. Total Quantity Appropriated is:
4.600 C.F.S. (and/or) A.F.A.
8. Total consumptive use is 646.0 Acre Feet Per Annum.
9. Non-irrigation uses:
NONE

~~FILED~~
1988

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres		
15S	12E	29	NW	SW		IRR	5.0		
			SW	SW		IRR	25.0		
			SE	SW		IRR	2.0		
					Section Acres			32.0	
		30	SE	SE		IRR	20.0		
			Section Acres			20.0			
			31	NE	NE		IRR	15.0	
		Section Acres			15.0				
		32		SW	NE		IRR	1.0	
			NE	NW		IRR	16.0		
			NW	NW		IRR	30.0		
			SW	NW		IRR	14.0		
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			16S	12E	5	NE	NE	1	IRR
		NW				NE	2	IRR	15.0
		NE				NW	3	IRR	4.0
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DITCH CO. ON 02/14/1925.

A51-00141

Page

2

Date: 11/10/88

NOV 11 1988

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

JEROME N. HELSEY

Decree Plaintiff

WM. TURNER ET. AL.

Decree Defendant

vs

16. Signature(s)

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

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am PRESIDENT of _____ Title

SWAN LAND & LIVESTOCK CO. , that I have signed the foregoing Organization

document in the space below as PRESIDENT of _____ Title

SWAN LAND & LIVESTOCK CO. and that the statements contained in the Organization

foregoing document are true and correct.

George F. [Signature]
Signature of Authorized Agent

PRES. SWAN LAND & LIVESTOCK CO.
Title and Organization

1/11/89
Date

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this 11 day

of January 19 89

Kathleen Jones
Notary Public

Seal

Residing at Marion Falls, Idaho

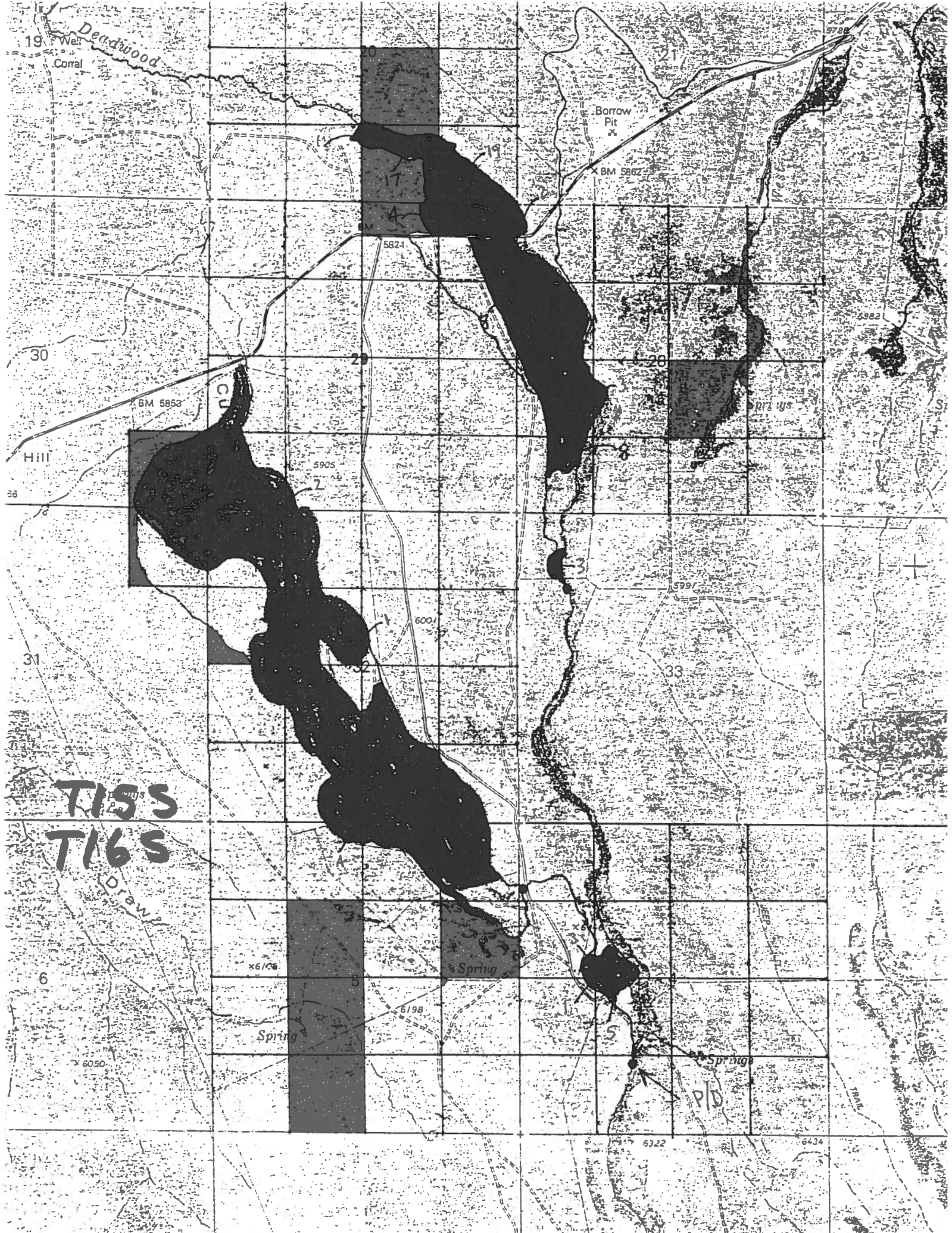
My Commission Expires 6-15-91
Date: 11/10/88

A51-00141

Page

3

1332



T15S
T16S



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

May 29, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: Water Use from Spring

Swan Land & Livestock Company
House Creek Ranch
Attn: George Swan
Rogerson, ID 83302

Dear Mr. Swan:

I am in the process of preparing your claims for the preliminary recommendations that will be distributed at the end of July. In reviewing my records, I found that you have not submitted a claim on the spring that is discharged into your Deadman Creek ditch system. If you wish to obtain a water right for use of this spring you need to submit the claim form and filing fee as soon as possible.

I have notes in my files that you called on October 15, 1993, and you indicated that you did want to file a water right on this spring. If you have decided not to file on this spring, please let me know so I can finalize my other recommendations. If you have any questions in regard to this, please do not hesitate to contact me.

Sincerely,

KAY WALKER
Sr. Water Resource Agent
Adjudication Bureau

KW:k

6-4-98
George Swan called -
will submit claim
on springs. Send
claim forms -
KW



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

September 13, 1993

RE: Water Use from Spring

Swan Land & Livestock Company
House Creek Ranch
Rogerson, ID 83302

Gentlemen:

I reviewed our old water right records and could not locate a right on the spring which you showed to us during our field examination. Therefore, I have prepared a claim on this spring for your signature. I did not know what date to put in item 2, date of first use of this spring. Please fill in this item on the claim form, sign it in the presence of a notary public and return it to our office, along with a \$50.00 filing fee, at your earliest convenience. I inserted 3.46 cfs on the amount of water claimed since this is what we found the ditch from the spring carries. You will also need to submit some type of evidence to establish the priority date you claim. Enclosed for your information is a brochure entitled "Evidence of Priority" which discusses the type of documentation that is acceptable.

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I have not had any time to review your claims in regard to the conveyance loss in your ditch from Deadwood Creek. This review will come after our field season is finished for the year. I will let you know if I need any additional information.

If I can be of any further assistance to you in regard to your claims, please feel free to contact me.

Sincerely,

KAY WALKER
Sr. Water Resource Agent
Adjudication Bureau

KW:k
Enclosures

10-15-93
George Swan called -
will be submitting
claim on spring &
affidavit to support
claim - KW

MANNING EQUATION CHANNEL CAPACITY RESULTS

09-10-1993

File Number:

Claimant: SWAN LAND & LIVESTOCK CO.

Channel measured: DITCH FROM SPRING

Date of measurement: SEPTEMBER 7

Measurement location:

NWSE SEC 04 T16S R12E

Calculation prepared by: KAY WALKER

Comments about the measurement:

The results of the calculation are:

The length of the channel measured is 222 feet.

The upstream and downstream rod readings are 5.06 and 6.04 feet.

The channel cross section is 3.27 ft-sq.

The wetted perimeter is 5.89 feet.

The hydraulic radius is 0.56 feet.

The slope is 0.0044

The roughness coefficient is 0.0632

The flow velocity is 1.058 ft/sec.

The rate of flow is 3.46 cfs.

CROSS SECTION NUMBER 1

For File Number for the DITCH FROM SPRING

Number	Rod Reading	Water Depth	Distance
1	0.00	0.00	0.00
2	0.87	0.87	1.00
3	0.66	0.66	1.70
4	1.10	1.10	2.30
5	0.66	0.66	3.40
6	0.60	0.60	4.30
7	0.00	0.00	5.10

The area for this cross section is 3.27 square feet
and the wetted perimeter is 5.89 feet.

MANNING EQUATION - DATA COLLECTION

Claim Number(s): _____

Name of Claimant(s): Susan

Name of Ditch, Canal, or Stream: Ditch from spring

Date of Measurement: 9-7-93 Data Collected By: _____

Measurement Location: NW 1/4 SE 1/4 Section 4 T 16S R 12E

Cross Section Data

Basis: high water mark (☒) maximum capacity ()

Note: minimum of five depth or rod readings; first and last must be equal or zero

depth or rod reading	distance from initial point	depth or rod reading	distance from initial point
1. <u>0</u>	<u>0</u>	7. <u>0</u>	<u>5.1</u>
2. <u>.87</u>	<u>1.0</u>	8. _____	_____
3. <u>.66</u>	<u>1.7</u>	9. _____	_____
4. <u>1.10</u>	<u>2.3</u>	10. _____	_____
5. <u>.66</u>	<u>3.4</u>	11. _____	_____
6. <u>.6</u>	<u>4.3</u>	12. _____	_____

Slope Data

Basis: high water mark (☒) channel bottom () land surface ()

Level Readings: upstream downstream

upper stadia 5.60 6.60

center 5.06 6.04

lower stadia 4.52 5.46

stadia difference (1.08 + 1.64) x 100 = 222'

channel
length

Note: for elevations, the downstream rod reading must be higher than the upstream rod reading

Comments

Are maps and/or photos attached? yes ()

MANNING'S "n" (roughness coefficient)

BASIC "n" CHANNEL MATERIAL				CHANNEL OBSTRUCTIONS			
earth	.020	✓	(1)	negligible	.000		(1)
rock	.025		(2)	minor	.010		(2)
fine gravel	.024		(3)		.015	✓	(3)
coarse gravel	.028		(4)	appreciable	.020		(4)
					.030		(5)
				severe	.040		(6)
					.050		(7)
					.060		(8)
SURFACE IRREGULARITY				VEGETATION			
smooth	.000		(1)	low	.005		(1)
minor	.005	✓	(2)		.010	✓	(2)
moderate	.010		(3)	medium	.015		(3)
severe	.020		(4)		.020		(4)
					.025		(5)
				high	.030		(6)
					.040		(7)
					.050		(8)
				very high	.060		(9)
					.075		(10)
					.100		(11)
VARIATIONS IN SIZE AND SHAPE OF CROSS-SECTION				DEGREE OF MEANDERING			
gradual	.000		(1)	minor	1.00		(1)
occasional	.005	✓	(2)	appreciable	1.15	✓	(2)
frequent	.010		(3)	severe	1.30		(3)
	.015		(4)				



PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS 9-7-1993

FILE NO(S). Swan



Spring
located
in SWNWSE,
Sec. 4, T16S,
R12E



Ditch
from
spring -

Spring diverted
out of natural
Channel into
a ditch into a
culvert which
discharges into
Deadwood Cr.

ditch system



PHOTOGRAPHER: KAY WALKER

DATE OF PHOTOS 9-17-1993

FILE NO(S). Swan



Ditch
from spring
Point where
mannings
measurements
~~were~~
were taken.
in NESW,
Sec. 4, T16S,
R12E



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

August 4, 2000

KARL J. DREHER
DIRECTOR

Scott C. Campbell
Elam & Burke
P.O. Box 1539
Boise, ID 83701-1539

RE: Snake River Basin Adjudication (SRBA)
Water Rights #51-00134 & 51-00135
Aslett Ranches Partnership

Dear Mr. Campbell:

The Notice of Completed Administrative Proceeding was sent to the Court with your client Aslett Ranches Partnership owning the entire place of use. The amended report was filed without rectifying two points.

You are aware the objection of the United States disputes the place of use for two of the tracts in the place of use. No resolution of this issue has apparently occurred.

Another tract, NWSW of Section 32 was not found in the deed. I have overlooked this defect considering the lay of the irrigated field and no objection to this tract by the United States.

On the latter point I chose not to split the rights between your client and the seller. However, I bring the defect to your attention in light of possible future property transactions or water right matters.

Sincerely,

Donald V. Shaff
Manager, Technical Section
Adjudication Bureau

DVS:ss:region:legal

In Re SRBA
Case No. 39576

51-00134 and 51-00135

Page 1

CERTIFICATE OF MAILING

I certify that on August 8, 2000, I mailed the original and copies of this form, to the following persons, postage prepaid and addressed as follows:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
2. One copy to:
Chief, Natural Resources Division
Office of the Attorney General
P.O. Box 44449
Boise, ID 83711-4449
3. One copy to:
United States Dept. Of Justice
Environment & Natural Resource Div.
550 West Fort Street, MSC 033
Boise, ID 83724
4. One copy to Claimant/Seller, or attorney of record:
Swan Land & Livestock Company
Rogerson, ID 83302
5. One copy to Claimant/Purchaser, or attorney of record:
Scott C. Campbell
Elam & Burke
P.O. Box 1539
Boise, ID 83701



Signature of Person or Attorney Mailing the Form

08/03/2000

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

RIGHT NUMBER: 51-134

NAME AND ADDRESS: ASLETT RANCHES PARTNERSHIP
PO BOX B
TWIN FALLS, ID 833030015

SOURCE: DEADWOOD CREEK TRIBUTARY: CLOVER CREEK

QUANTITY: 2.3 CFS

USE OF THIS RIGHT WITH RIGHT NO. 51-00135 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 4.06 CFS

PRIORITY DATE: 08/25/1908

POINT OF DIVERSION: T15S R12E S32 SENESW Within OWYHEE County
T16S R12E S4 NWSESW Within OWYHEE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	4-01 10-31	2.3 CFS

PLACE OF USE:

IRRIGATION Within OWYHEE County

T15S R12E S29	NWSW	7.9	T15S R12E S29	SWSW	27.9
T15S R12E S29	SESW	1.9	T15S R12E S32	NENW	15.4
T15S R12E S32	NWNW	12.1	T15S R12E S32	SWNW	16.6
T15S R12E S32	SESW	22	T15S R12E S32	NESW	11.1
T15S R12E S32	NWSW	12.2	T15S R12E S32	SESW	19
T15S R12E S32	SWSE	28.3	T16S R12E S5	NENE	8.1
T16S R12E S5	NWNE	18	T16S R12E S5	SENE	0.1
T16S R12E S5	NENW	2.2			
202.8 ACRES TOTAL					

USE OF THIS RIGHT WITH RIGHT NO. 51-00134 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 202.8 ACRES IN A SINGLE IRRIGATION
SEASON

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 240.2 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 51-00135 & 51-02442

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

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF
WATER IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER
WATER RIGHTS IN BASIN 51: WATER RIGHT NO. SOURCE NONE NONE
THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER
IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER
RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE
NONE ALL WATER RIGHTS WITHIN BASIN 51 ARE FROM CONNECTED SOURCES
OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED
CONJUNCTIVELY.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

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

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

08/03/2000

RIGHT NUMBER: 51-135
NAME AND ADDRESS: ASLETT RANCHES PARTNERSHIP
PO BOX B
TWIN FALLS, ID 833030015
SOURCE: DEADWOOD CREEK TRIBUTARY: CLOVER CREEK
QUANTITY: 1.9 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.
USE OF THIS RIGHT WITH RIGHT NO. 51-00134 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 4.06 CFS

PRIORITY DATE: 08/25/1908

POINT OF DIVERSION: T15S R12E S32 SENESW Within OWYHEE County
T16S R12E S4 NWSESW Within OWYHEE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	1-01 12-31	0.09 CFS
IRRIGATION	4-01 10-31	1.9 CFS

PLACE OF USE:

IRRIGATION Within OWYHEE County					
T15S R12E S29	NWSW	7.9	T15S R12E S29	SWSW	27.9
T15S R12E S29	SESW	1.9	T15S R12E S32	NENW	15.4
T15S R12E S32	NWNW	12.1	T15S R12E S32	SWNW	16.6
T15S R12E S32	SESW	22	T15S R12E S32	NESW	11.1
T15S R12E S32	NWSW	12.2	T15S R12E S32	SESW	19
T15S R12E S32	SWSE	28.3	T16S R12E S5	NENE	8.1
T16S R12E S5	NWNE	18	T16S R12E S5	SENE	0.1
T16S R12E S5	NENW	2.2			
202.8 ACRES TOTAL					

USE OF THIS RIGHT WITH RIGHT NO. 51-00134 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 202.8 ACRES IN A SINGLE IRRIGATION
SEASON

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 240.2 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS.: 51-00134 & 51-02442

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

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF
WATER IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER
WATER RIGHTS IN BASIN 51: WATER RIGHT NO. SOURCE NONE NONE
THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER
IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER
RIGHTS IN THE SNAKE RIVER BASIN: WATER RIGHT NO. SOURCE NONE
NONE ALL WATER RIGHTS WITHIN BASIN 51 ARE FROM CONNECTED SOURCES
OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED
CONJUNCTIVELY.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.
STOCKWATER, 400 RANGE CATTLE

RECEIVED

MAY 12 2000

Department of Water Resources

2000 MAY 11 AM 08:35
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA	)	ORDER SETTING STATUS	
	)	CONFERENCE	
Case No. 39576	)		
_____	)	SUBCASE NOS: 51-00134	51-00135

Please be advised that Special Master TERRENCE A. DOLAN
has set a Status Conference in the above subcase(s)
as follows:

WEDNESDAY, AUGUST 02, 2000 at 03:00 PM

SRBA
DISTRICT COURT
253 3RD AVENUE NORTH
TWIN FALLS, ID

Option: Parties may participate by phone if they contact the
clerk at (208) 736-3011 prior to JULY 31, 2000.

IT IS SO ORDERED.

Dated: MAY 11, 2000

/S/ TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

Page 1 5/11/00

Attorneys for Aslett Ranches Partnership

Scott L. Campbell
ELAM & BURKE, P.A.
Key Financial Center, 10th Floor
702 West Idaho
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844

MAIL



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

In Re SRBA	)	Subcase Nos. 51-00134 & 51-00135
	)	
Case No. 39576	)	NOTICE OF APPEARANCE
_____	)	

PLEASE TAKE NOTICE that Scott L. Campbell, a shareholder of the firm of Elam & Burke, P.A., 702 West Idaho, Post Office Box 1539, Boise, Idaho, 83701, hereby enters an appearance as Attorneys of Record for Aslett Ranches Partnership, in the above-referenced subcases.

Respectfully submitted this 10th day of May, 2000.

ELAM & BURKE, P.A.


Scott L. Campbell

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF APPEARANCE was mailed on this 10th day of May, 2000, with sufficient first-class postage to each of the following:

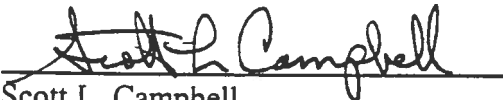
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

The United States Department of Justice
Environment and Natural Resources
Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

Idaho Department of Water Resources
Document Depository
Post Office Box 83720
Boise, Idaho 83720-0098

John R. Coleman
Coleman, Ritchie & Robertson
PO Box 525
Twin Falls, ID 83303

Swan Land & Livestock Company
House Creek Ranch
Rogerson, ID 83302



Scott L. Campbell

ELAM & BURKE
A Professional Association
ATTORNEYS AND COUNSELORS AT LAW
Established in 1928

KEY FINANCIAL CENTER
702 WEST IDAHO
POST OFFICE BOX 1539
BOISE, IDAHO 83701

TELEPHONE
208-343-5454

FACSIMILE
208-384-5844

May 10, 2000

SENT VIA FACSIMILE

Ms. Debbie Lash
Deputy Clerk
Snake River Basin Adjudication
PO Box 2707
Twin Falls, ID 83303

Re: Subcase Nos. 51-00134 and 51-00135

Dear Debbie:

Attached for filing please find Aslett Ranches Partnership's Notice of Appearance in the above-referenced subcases. Via U.S. mail, we are sending a copy of each document to be conformed and returned to this office in the enclosed envelope.

Thank you for your assistance in this matter.

Sincerely,

ELAM & BURKE
A Professional Association



Tiffiny Hudak Miller
Paralegal

:thm G:\Dap\WPDATA\3524\Swan Ranch\Clerk SRBA fax-ltr.wpd

Encl.

cc: Court Certificate of Mailing for
Subcase Nos. 51-00134 & 51-00135

5400134

RECEIVED

MAR 27 2000

RECEIVED

DEC 23 1999

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

RECEIVED

FEB 29 2000

WATER RESOURCES
WESTERN REGION

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

Water Right No(s):

Adjudication Claim No(s):

see attached list

2. The following **REQUIRED** information must be submitted with this form:

A. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**

AND

B. **PLAT OF PROPERTY** or **SURVEY MAP** showing the location of the place of use of the water right(s) or claim(s). (These are usually attached to your deed or on file with the county.)

OR

C. If your water right or adjudication claim is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant

SWAN LAND & LIVESTOCK COMPANYROGERSON, ID 83302

4. New Owner/Claimant(s)

ASLETT RANCHES PARTNERSHIP

New Mailing Address

Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
P O BOX B

City, State and ZIP Code

TWIN FALLS, ID 83303-0015

New Telephone Number

(208) 734-5533

5. Date you acquired the property

12/3/99

6. Did you acquire all of the former owner's property? If you did, skip this item and go to item 7. If you acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). Describe in detail your portion of each water right or adjudication claim in the spaces in the box below **only if the water right(s) or claim(s) need to be split between owners**. If necessary, attach additional pages. If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

Number of acres you irrigate with this water right	Number and type of stock
Diversion rate in CFS	Number of homes you acquired
	Other uses

7. Signature of New Owner(s) or Claimant(s)

[Signature]

Corporations or other organizations must submit a list of directors and/or officers demonstrating authority to sign form.

8. For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him or her for all matters related to your claims.

change of 8/03/00 (see 8/03 correspondence)
Data Entry Earlier

51-00134 : objection

51-00135 : "

51-00143 : ✓ - disallowed

51-02442 : ✓ done

A51-10193 WANT

A51-10194 " } decrees

A51-10195 " }

51-10196 : ✓ done

A51-10197 WANT - decreed

RECORDED TO CORRECT LEGAL

RECORDED TO CORRECT SCRIVENER ERROR

12/28/99

FILED-REC-11
99 DE 6 PM 3:11

230604

'42118fc

TitleFact, Inc.

163 Fourth Avenue North

P.O. Box 486

Twin Falls, Idaho 83303

**** SPACE ABOVE FOR RECORDER ****

COPYED
BY: *Cal*

RECEIVED

FEB 09 2000

Department of Water Resources
Southern Region

CORPORATION WARRANTY DEED

FOR VALUE RECEIVED SWAN LAND AND LIVESTOCK COMPANY, a Utah corporation, a corporation duly organized and existing under the laws of the state of Idaho, grantor, does hereby Grant, Bargain, Sell and Convey unto ASLETT RANCHES PARTNERSHIP, Grantee, whose address is: Box B, Twin Falls, Idaho 83303, the following described real estate, situated in Owyhee County, Idaho, to-wit:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and the Grantee's heirs and assigns forever. And the Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that are free from all encumbrances except as described above and that Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its President and its Secretary.

Dated: December 3, 1999

SWAN LAND AND LIVESTOCK COMPANY, a Utah corporation

By: *George H. Swan*

GEORGE H. SWAN, President

BY: *Katherine Swan-Jones*

KATHERINE SWAN-JONES, Secretary

* * * * *

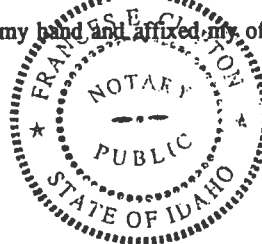
STATE OF IDAHO
County of Twin Falls

On this 3rd day of December, 1999, before me, the undersigned, Notary Public in and for said State, personally appeared GEORGE H. SWAN, known to me to be the President, and KATHERINE SWAN-JONES, known to be the Secretary of the corporation that executed this instrument, or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Francis E. Clifton
Notary Public for Idaho
Residing at: Twin Falls

My Commission expires: 01-20-2004



PO2436

Exhibit "A"

In Township 13 South, Range 10 East, Boise Meridian, Owyhee County, Idaho.

Section 26: ^{W1/2}~~W1/4~~ SE1/4 NE1/4

In Township 13 South, Range 11 East, Boise Meridian, Owyhee County, Idaho.

Section 31: Lots 1, 2 and 3, E1/2 W1/2

In Township 14 South, Range 11 East, Boise Meridian, Owyhee County, Idaho.

Section 2: S1/2

Section 3: W1/2

Section 4: All

Section 5: W1/2

Section 6: Lots 3, 5, 6 and 7, SE1/4 NW1/4, E1/2 SW1/4

Section 8: E1/2 NW1/4, SW1/4, W1/2 SE1/4

Section 10: All

Section 11: S1/2

Section 15: All

Section 17: S1/2 S1/2

Section 20: N1/2 N1/2

Section 21: N1/2

Section 22: N1/2

Section 28: N1/2

~~Section 29: W1/2~~

In Township 15 South, Range 11 East, Boise Meridian, Owyhee County, Idaho.

Section 2: N1/2 SW1/4, SE1/4 SW1/4, SW1/4 SE1/4

CORRECTION

15

In Township ~~15~~ South, Range 12 East, Boise Meridian, Owyhee County, Idaho.

Section 29: W1/2 SW1/4

EXCEPTING LESS the following described parcel:

A strip of land 60 feet wide, 30 feet on either side of the center line of a center line survey, said center line being situate and running as follows:

BEGINNING at the Southwest corner of the Southwest Quarter of the Northwest Quarter, Section 29, Township 15 South, Range 12 East, Boise Meridian, Owyhee County, Idaho; thence

South 0° 04' West a distance of 281.46 feet, to a point being station 236+37.86 of said center line survey, and said point being the REAL POINT OF BEGINNING; thence

230797

FILED - RECORDED
99 DEC 17 PM 4:38

North 69° 10' East a distance of 646.17 feet to a point being station 242+84.03 of said center line survey, the point of commencement of a 14° curve having a delta angle of 57° 28' to the left; thence around said curve for a distance of 101.82 feet to a point being station 243+85.85 of said center line survey.

Section 30: SE1/4 SE1/4

Section 31: NE1/4 NE1/4

Section 32: NW1/4, E1/2 SW1/4, SW1/4 SE1/4

In Township 16 South, Range 12 East, Boise Meridian, Owyhee County, Idaho.

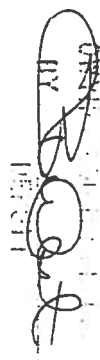
Section 5: N1/2 NE1/4, SE1/4 NE1/4

EXCEPTING from said property described above:

Any right, title, or interest in any minerals, minerals rights or related matters including but not limited to oil, gas, coal and other hydrocarbon, whether or not shown by the public records.



230909



99 DEC 28 PM 4:22

FILED - RECORDED

ACREAGE

Approximately 16,695 total deeded acres

- " 1,000 acres hay and irrigated pasture
- " 200 acres sub-irrigated meadow and creek bottom
- " 15,495 dry grazing

Bureau of Land Management 4,764 AUM's

John Biar (208) 736-2350

Forest Service 1,601 AUM's

Mike McNeil (208) 543-4129

Idaho State Leases 371 AUM's

Private Lease Approximately 1,000 deeded acres - 915 AUM's on BLM.

*Coordinated Resource Management Plan: Allows landowner flexibility in determining numbers and periods of usage on federal and state leases. Has been in effect since 1981. AMP renewed March of 1998 with nine years remaining. Please call for detailed explanation.



*Swan Land & Livestock
Controls the water
source*

WATER

All irrigation is via flood method. Water from House Creek and Deadwood Creek is decreed as follows:

92 miners inches 5/1/1897 A47-00026	100 miners inches 5/1/1893 A47-00038
120 miners inches 5/1/98 A47-00030	45 miners inches 5/1/1893
80 miners inches 5/1/1889 A47-00040	92 miners inches 5/1/1904
70 miners inches 5/1/1909 A47-00041	110 miners inches 5/1/1905
60 miners inches 5/1/1909 A47-00032	175 miners inches 9/1/1915 A47-11491

Stock water is plentiful in the higher forest, BLM and deeded country. It is supplied by numerous creeks, seeps and natural springs. Many springs have been improved and developed to further enhance stock water. Water to the lower BLM desert allotment is primarily provided by a pipeline owned by Swan Land & Livestock along with other area ranchers. Swan Land & Livestock owns 38% of the pipeline and controls the water source. Ownership is based on AUM's.

GENERAL PARTNERSHIP AGREEMENT

1. **Parties.** This Agreement made among the MARVIN ASLETT, LARRY ASLETT, STEVE ASLETT, and STEVE ASLETT, JR. on December 22, 1999.

2. **Name of Business.** The parties form a general partnership which shall transact business under the name of ASLETT RANCHES.

3. **Partnership Business.** The partnership shall engage in the business of cattle ranching and in such other businesses of a similar or related nature as may be determined by the partners.

4. **Place of Business.** The place of business of the partnership shall be located at Rogerson, Idaho or at such other location or locations as the partners may from time to time designate.

5. **Term.** The term of the partnership shall begin on the date of its execution and shall continue until terminated as provided in this agreement.

6. **Capital.** The partners have made unequal contributions to the capital accounts of the partnership. The interest of each member of the partnership in the total shall be controlled by that partner's capital account indicating the proportional share of his investment to the total investment in the partnership. An individual capital account shall be established for each Partner. The initial capital accounts of the Partners shall be equivalent to their respective contributions to the

capital of the partnership. If at any time the partners should unanimously determine that further capital is required in the interests of the partnership, and that the capital of the partnership should be increased, the additional capital shall be contributed by the partners in the same percentages as their then capital accounts.

7. **Salaries and Expenses.** No partner shall receive any salary for services rendered to the partnership except as may be unanimously agreed by the partners. The partners shall have such drawing and expenses accounts as may be agreed upon.

8. **Partnership Profits and Losses.** The net profits of the partnership shall be divided among the Partners, and the net losses of the partnership shall be borne by the Partners, in proportion to their respective capital contributions as set forth in Section 6 of this agreement. For income tax purposes, all gains, losses, credits, and depreciation deductions on partnership property shall be allocated among the Partners in proportion to their capital contributions as provided in Section 6 of this agreement.

9. **Fiscal Year.** The fiscal year of the partnership shall commence on January 1.

10. **Book and Records.** The partnership shall maintain full and accurate books of account, which shall be kept at the office of Circle A Construction, Inc., 240 Highland Avenue, Twin Falls, Idaho 83301. Each Partner shall have access to and the

right to inspect and copy such books and all other partnership records during normal business hours.

11. **Bank Accounts.** The partnership shall maintain such bank accounts as the partners shall determine. Checks shall be drawn for partnership purposes only, and may be signed only by the person or persons designated by the partners. All moneys received by the partnership shall be deposited in such accounts.

12. **Management Duties and Restrictions.** The partners shall have rights in the management of the partnership proportionate to their capital accounts. No partner shall be required to devote any given time to the management of the partnership affairs. of Section 15 of this agreement, to lease such property

13. **Matters Requiring Unanimity.** No partner shall, without the consent of all other partners (which consent shall not be unreasonably withheld), do any of the following:

- a. Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership.
- b. Dispose of the good will of the partnership business.
- c. Do any other act which would make it impossible to carry on the ordinary business of the partnership.
- d. Confess a judgment against the partnership.
- e. Submit a partnership claim or liability to arbitration or reference.
- f. Make, execute or deliver for the partnership any bond, mortgage, deed of trust, guarantee, indemnity bond, surety bond or accommodation paper or accommodation endorsement.

g. Borrow money in the partnership name or use partnership property as collateral.

h. Assign, transfer, pledge, compromise or release any claim of or debt owing to the partnership except upon payment in full.

i. Convey any partnership real property.

j. Pledge or transfer in any manner his or her interest in the partnership except to another partner.

k. Any other act for which unanimity is required under other Sections of this Agreement.

14. **Transferability of Partnership Interests.** Except as otherwise provided in this agreement with respect to withdrawing or decreased partners, the interest of any partner in the partnership, or in the profits, assets, property, receivables, records, files, or clientele of the partnership, should not be sold, assigned, pledged, mortgaged, or transferred in any manner by a partner unless the written consent to do so is first obtained from every other partner.

15. **Partnership Property.** Partnership property, personal and real, shall be acquired, held, and conveyed in the name of the partnership, except that upon the unanimous consent of the partners, partnership property may be acquired, held, or conveyed in the name of any partner or other person as nominee for the partnership. Property acquired, held, or conveyed by a nominee shall be recorded as partnership property in the partnership books and records.

16. **Admission of New or Substituted Partners.** A new partner may be admitted to the partnership only upon the written consent of all existing partners. A substituted partner may be

admitted to the partnership only upon the written consent of two-thirds of the existing partners and only if the substituted partner purchases the partnership interest of a deceased or withdrawing partner. Upon the admission of a new partner, the name and capital contribution of the new partner shall be added to Section 6 of this agreement.

17. **Retirement of a Partner.** Any partner shall have the right to retire from the partnership at the end of any fiscal year. Written notice of intention to retire shall be served upon the other partners at the office of the partnership at least three months before the end of the fiscal year. Thereafter the retiring partner and the surviving partners shall have the same rights and elections as are specified in paragraph 18 with respect to the "Estate" and the surviving partners respectively, in the event of the death of a partner.

18. **Death of a Partner.** Upon the death of a partner, the partnership shall continue in operation and shall be managed by the surviving partners. The operation shall continue at last until the end of the fiscal year or to such other time as is necessary for the surviving partners to wind up the affairs of the partnership.

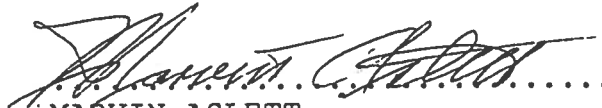
a. The surviving partners may elect to carry on the partnership business and to purchase the decedent's entire interest in the partnership. The value of the interest to be purchased will be agreed upon between the surviving partners and the personal representative of the

deceased partner. If the parties cannot agree upon a value, each shall appoint an appraiser, and the appraisers shall reach a value that will be binding upon the parties. The surviving partners shall give notice of their intent to purchase pursuant to this paragraph within six months of the death of the deceased partner and shall have three years from the date of death. in which to pay the purchase price to the personal representative of the deceased partner.

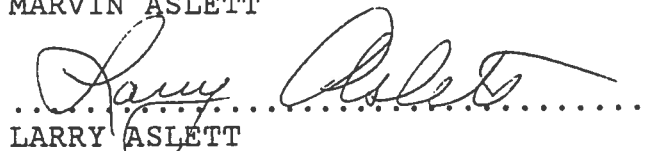
b. If the surviving partners do not elect to purchase the interest of the deceased partner, the partnership shall be terminated and its assets liquidated.

19. **Binding Effect.** This agreement shall bind the Partners, their heirs, personal representatives, and assignees.

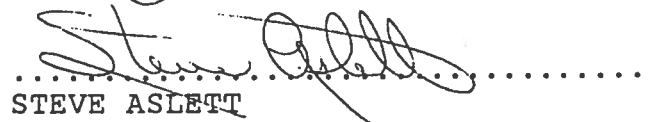
Dated December 22, 1999.


MARVIN ASLETT

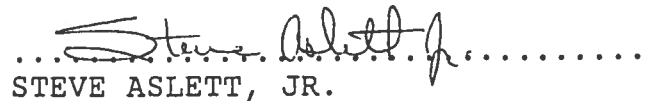
Dated December 22, 1999.


LARRY ASLETT

Dated December 22, 1999.


STEVE ASLETT

Dated December 22, 1999.


STEVE ASLETT, JR.

RECEIVED

APR 01 1999

RECEIVED

Department of Water Resources

APR 06 1999

WATER RESOURCES
WESTERN REGION

1999 MAR 31 PM 4:26

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED

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

In Re SRBA

A Subcase 51-00134

(Insert water right number)

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B

NAME AND ADDRESS OF PERSON OBJECTING

Name: Cedar Mesa Reservoir & Canal Company

Address: P. O. Box 525

Twin Falls, ID 83303-0525

Daytime Phone: _____

Name & Address of Attorney, if any:

Coleman, Ritchie & Robertson

P. O. Box 525

Twin Falls, ID 83303-0525

C

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Swan Land & Livestock Company

Address: House Creek Ranch

Rogerson, ID 83302

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ Name and Address

Should be: _____

2. ☐ Source

Should be: _____

3. ☐ Quantity

Should be: _____

4. ☐ Priority Date

Should be: _____

5. ☐ Point(s) of Diversion

Should be: _____

6. ☐ Instream Flow Description

Should be: _____

7. ☐ Purpose(s) of Use

Should be: _____

8. ☒ Period of Year

Should be: Period of use May 15 to October 1

9. ☐ Place of Use

Should be: _____

11. I object because:

☐ This water right should not exist.

☒ This water right was ~~not~~ recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): The decree in Grandview

Irrigation District establishes an irrigation season for the
above irrigation right of May 15 to October 1.

RECEIVED

APR 01 1999

Department of Water Resources

RECEIVED

APR 06 1999

WATER RESOURCES
WESTERN REGION

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

In Re SRBA

Case No. 39576

A. Subcase 51-00134

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America acting through the Department of Interior,
Bureau of Land Management, Idaho State Office

Address: 1387 South Vinnell Way
Boise, Idaho 83709-1657

Daytime Phone: see below

Name & Address of Attorney, if any:

Larry A. Brown 208 387-0835; R. Lee Leininger, 202 305-0242; Paul F. Holleman, 202 305-0494
United States Department of Justice; Environment and Natural Resource Division; General Litigation Section
550 West Fort Street, MSC 033; Boise, Idaho 83724

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Swan Land & Livestock Company

Address: House Creek Ranch Rogerson, ID. 83302

Name:

Address:

Name:

Address:

Name:

Address:

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: See attached

11. **I object because:**

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

The United States of America, through the Bureau of Land Management, is the owner of the land upon which use is claimed. The claimant's use of Federal land is unauthorized. See attached POU. Claimant's water right should not include this POU.

F.

VERIFICATION (Must be Completed)

State of Idaho)

) ss.

County of Ada)

Fredric W. Price, Water Rights Specialist, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Fredric W. Price
(Signature of person filing objection)

Larry C. Brown
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: _____

Jan. 29, 1999

John W. Thornburgh

Notary Public for Idaho

Residing at: Boise

My Commission Expires: 05-16-2003

INSTRUCTIONS FOR MAILING

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

G.

CERTIFICATE OF MAILING

MAR 31 1999

I certify that on Jan 29, 1999, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

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

2. One copy to the claimant of the water right at the following address:

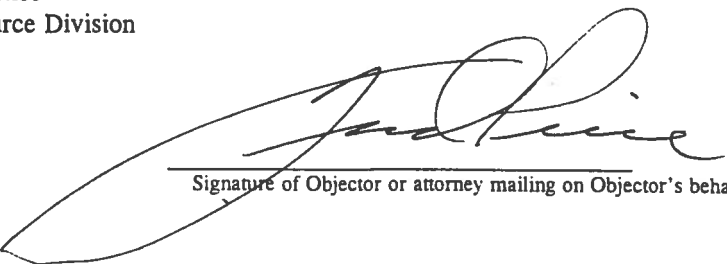
Name: Swan Land & Livestock Company
Address: House Creek Ranch Rogerson, ID. 83302
Name:
Address:
Name:
Address:
Name:
Address:

3. Copies to:

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

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

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



Signature of Objector or attorney mailing on Objector's behalf

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: NOV-20-1999
PAGE: A-291-----
RIGHTS FROM: SOURCE: DEADWOOD CREEK TRIBUTARY: CLOVER CREEK

RIGHT NUMBER: 51-00134

NAME & ADDRESS: SWAN LAND & LIVESTOCK COMPANY
HOUSE CREEK RANCH
ROGERSON ID 83302

SOURCE: DEADWOOD CREEK TRIBUTARY: CLOVER CREEK

QUANTITY: 2.3 CFS

USE OF THIS RIGHT WITH RIGHT NO. 51-00135 IS LIMITED TO A
TOTAL COMBINED DIVERSION RATE OF 4.06 CFS.

PRIORITY DATE: 08/25/1909

POINT OF DIVERSION: T16S R12E S04 NWSESW Within Owyhee County
T15S R12E S32 SENESW (REDIVERSION)PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
IRRIGATION 04-01 10-31 2.3 CFSPLACE OF USE: IRRIGATION Within Owyhee County
T15S R12E S29 NWSW 7.9 SWSW 27.9 SESW 1.9 BLM
S32 NENW 15.4 NWNW 12.1 SWNW 16.6 SENW 11
NESW 11.1 NWSW 12.2 SESW 19 SWSW 23.3
T16S R12E S05 NENE 9.1 NENE 19 SENE 0.1 SENW 11
202.9 ACRES TOTAL NENW 1.3 BLMUSE OF THIS RIGHT WITH RIGHT NO. 51-00134 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 202.9 ACRES IN A SINGLE
IRRIGATION SEASON.USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 240.2 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 51-00135 & 51-02442

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

AJ5856NP

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

DATE: NOV-20-1998
PAGE: A-192

RIGHTS FROM: SOURCE: DEADWOOD CREEK TRIBUTARY: CLOVER CREEK

RIGHT NUMBER: 51-00134 (CONT)

OTHER PROVISIONS: (CONT)

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER
IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER
RIGHTS IN BASIN 51:

WATER RIGHT NO.	SOURCE
NONE	NONE

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER
IN BASIN 51 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER
RIGHTS IN THE SNAKE RIVER BASIN:

WATER RIGHT NO.	SOURCE
NONE	NONE

ALL WATER RIGHTS WITHIN BASIN 51 ARE FROM CONNECTED SOURCES
OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED
CONJUNCTIVELY.

EXPLANATORY MATERIAL: BASIS OF CLAIM - DECREE
RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
SECTION 42-1425, IDAHO CODE.

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 20816

DEVIL CREEK RANCH, INC.,
an Idaho corporation,

Plaintiff-Appellant,

v.

CEDAR MESA RESERVOIR & CANAL
COMPANY, an Idaho corporation,

Defendant-Respondent.

1994 Opinion No. 110

Filed: August 25, 1994

Frederick C. Lyon, Clerk

Appeal from the District Court of the Third Judicial District, State of Idaho,
Owyhee County. Hon. Jim R. Doolittle, District Judge.

Devil Creek Ranch appeals from the district court's orders on remand from the
dismissal of the cause for lack of subject matter jurisdiction. Affirmed in part,
reversed in part.

Rosholt, Robertson & Tucker, Twin Falls, for appellant. Justin R. Seamons
argued.

Coleman, Ritchie & Robertson, Twin Falls, for respondent. John S. Ritchie
argued.

BISTLINE, Justice

BACKGROUND AND PRIOR PROCEEDINGS

This is the second appeal to this Court arising out of a disputed claim to water rights
in Deadwood Creek. In *Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir & Canal Co.*, 123
Idaho 634, 851 P.2d 348 (1993) (*Devil Creek Ranch I*), this Court vacated the summary
judgment granted in favor of Cedar Mesa and remanded the cause for further proceedings.

COPY

The parties now dispute which issues remain in the case and the proper forum for their resolution.

Although most of the facts relevant to the present dispute are set forth in *Devil Creek Ranch I*, several additional facts are important to this appeal. On August 11, 1915, an Owyhee County district court awarded Devil Creek Ranch's predecessor, Jerome Helsey (Helsey), the right to use three cubic feet of water per second (3 c.f.s.) from Deadwood Creek. The 1915 decree specified that Helsey's right had a priority date of April 19, 1886, that it was the first right upon Deadwood Creek, and that the 3 c.f.s. were to be used for irrigation and domestic purposes "during each irrigation season." The decree did not define the precise dates of the irrigation season. In this appeal, Devil Creek Ranch asserts that the irrigation season on Deadwood Creek traditionally has lasted throughout the entire year, and that Devil Creek Ranch is consequently entitled to use the 3 c.f.s. whenever it can put the water to beneficial use.

In 1925, the Owyhee County district court was authorized, per a stipulation signed by the parties in a separate water rights adjudication, to decree the water rights to the Bruneau River and its tributaries, including Deadwood Creek. The district court subsequently decreed that Idaho Farm Development Company, Cedar Mesa's immediate predecessor, (Idaho Farm Co.) was entitled to impound all the waters of Deadwood Creek "during [the] non-irrigation season," which it deemed to last from October 1 to May 15. Karl Patrick, Helsey's successor and Devil Creek Ranch's immediate predecessor (Patrick), did not sign the stipulation, but nonetheless was included as a party to the 1925 decree. The 1925 decree did not clarify whether Patrick's right to use 3 c.f.s. applied throughout the year or only during a particular irrigation season, but it stated that Idaho Farm Co.'s right to store water during the non-irrigation season "does not interfere with the rights of any of the parties hereto as hereby decreed."

The parties agree that between 1925 and 1991, Cedar Mesa impounded the waters of Deadwood Creek from October 1 to May 15. One or two exceptions occurred during the 1960's, when Cedar Mesa released impounded water before May 15.

Devil Creek Ranch filed a complaint in Owyhee County district court on June 18, 1991, seeking a declaratory judgment that the district court in 1925 had lacked personal

jurisdiction over Patrick, that the 1925 decree was void and unenforceable with respect to Devil Creek Ranch, and that Devil Creek Ranch was entitled to use its decreed water right from Deadwood Creek at any time that it could put the water to beneficial use. Cedar Mesa answered, asserting the affirmative defenses of collateral estoppel and estoppel, and filed a motion to dismiss based on lack of subject matter jurisdiction. The district court took the matter of jurisdiction under advisement, directed Devil Creek Ranch to file a motion for summary judgment, and further directed the parties to brief the issue of estoppel by laches. Devil Creek Ranch filed the summary judgment motion on August 10, 1991. The district court denied Devil Creek Ranch's motion, granted summary judgment in favor of Cedar Mesa on its laches defense, and awarded \$129 in costs to Cedar Mesa.

After Devil Creek Ranch appealed the summary judgment for Cedar Mesa, this Court vacated the judgment and remanded the cause for further proceedings. This Court noted that the defense of laches ordinarily presents issues of fact and that Cedar Mesa had failed to present enough factual evidence to support a finding that it was prejudiced by Devil Creek Ranch's delay in asserting its water rights. *Devil Creek Ranch I*, 123 Idaho at 636-37, 851 P.2d at 350-51. This Court further held that Devil Creek Ranch's action was not barred by res judicata. *Id.*, 123 Idaho at 637, 851 P.2d at 351. Devil Creek Ranch was awarded costs on appeal. The order of remittitur was issued on May 19, 1993.

Devil Creek Ranch, surmising that its motion for summary judgment should now be granted, submitted a proposed order and judgment, a memorandum of costs which listed costs incurred and requested repayment of the \$129, and a motion to reconsider the denial of the motion for summary judgment filed in 1991. The district court (1) declined to enter the proposed order and judgment because *Devil Creek Ranch I* did not direct entry of judgment in favor of Devil Creek Ranch; (2) held that Devil Creek Ranch was not entitled to costs other than costs on appeal; and (3) denied Devil Creek Ranch's motion to reconsider. On August 23, 1993, the district court issued a declaratory judgment establishing that Devil Creek Ranch is not bound by the 1925 decree. The district court then ruled that the remaining issues in the case, namely whether Devil Creek Ranch is entitled to use 3 c.f.s. of water from Deadwood Creek whenever it can put the water to beneficial use, and whether this right is affected by the affirmative defenses of collateral estoppel or laches, are

within the exclusive jurisdiction of the Snake River Basin Adjudication (SRBA).¹

Neither party appeals the declaratory judgment. Devil Creek Ranch appeals the denial of its motions and request for repayment and the dismissal of the action. The gist of Devil Creek Ranch's appeal is that the disposition of *Devil Creek Ranch I* represented a full vindication of Devil Creek Ranch's claimed water rights to Deadwood Creek such that no issues remain unresolved. Alternatively, Devil Creek Ranch argues that if any issues remain, they can be resolved by the district court.

For the reasons set forth below, we hold that the district court correctly found that unresolved issues remain in this case, and that these issues are properly resolved in the SRBA. We reverse the district court's denial of Devil Creek Ranch's request for repayment of costs.

ANALYSIS

I. The District Court Correctly Refused to Enter Devil Creek Ranch's Proposed Order and Judgment and Correctly Denied Devil Creek Ranch's Motion to Reconsider.

Devil Creek Ranch filed a proposed order and judgment in the district court approximately one month after this Court issued its opinion in *Devil Creek Ranch I*. The proposed order and judgment would have conclusively established Devil Creek Ranch's water rights as set forth in the 1915 decree.

Devil Creek Ranch argues that the district court should have entered the proposed order and judgment because *Devil Creek Ranch I* foreclosed Cedar Mesa from presenting further evidence as to the prejudice it will allegedly suffer by the delayed assertion of Devil Creek Ranch's water right. This argument fundamentally misapprehends both the nature

¹ The SRBA district court arose from legislation enacted in 1986 by the Idaho legislature. LC. §§ 42-1401 through 42-1423 (amended 1994). The SRBA district court is located in Twin Falls County, Idaho, and presides over the general adjudication of the waters deemed by the statute to be part of the Snake River Basin. Act of April 12, 1994, ch. 454, H.B. 969 (to be codified at LC. § 42-1406A). Deadwood Creek is a tributary of the east fork of the Bruneau River, which is a tributary of the Bruneau River, which, in turn, is a tributary of the Snake River.

of summary judgment proceedings and this Court's opinion. In *Devil Creek Ranch I*, this Court held that the questions of prejudice and the other elements of a laches defense should be resolved by proper fact-finding proceedings, rather than by summary judgment motions. The district court was therefore correct in refusing to enter Devil Creek Ranch's proposed order and judgment.

For a different reason, we also affirm the order of the district court denying Devil Creek Ranch's motion to reconsider. Pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B), Devil Creek Ranch moved the district court, on June 10, 1993, to reconsider its order denying Devil Creek Ranch's motion for summary judgment and granting summary judgment in favor of Cedar Mesa. The order had been entered on December 13, 1991, and final judgment on the order was entered on January 13, 1992.

Rule 11(a)(2)(B) permits a party to move the trial court to reconsider interlocutory orders not later than fourteen days after entry of a final judgment on the order. Noting the seventeen-month lapse between the entry of final judgment and the filing of the motion to reconsider, Cedar Mesa argues that the motion to reconsider was untimely.

Rule 11(a)(2)(B) motions ordinarily are filed prior to taking an appeal. This Court has never been presented with the situation where, as here, the motion to reconsider was filed after an appeal was issued reversing the final judgment. We agree with Devil Creek Ranch that in this case, no final judgment existed at the time that it filed the Rule 11(a)(2)(B) motion. Reversal of a judgment on appeal entirely rescinds that judgment. *Hutchins v. State*, 100 Idaho 661, 666, 603 P.2d 995, 1000 (1979). The vacating of the final judgment by *Devil Creek Ranch I* had the same effect on the judgment in this case. Because Rule 11(a)(2)(B) allows motions to reconsider to be filed at any time before entry of final judgment, and because there was no final judgment when the motion to reconsider was filed, the motion was timely.

Subsequent to *Devil Creek Ranch I*, the district court was not bound by its prior findings and conclusions and was in a position to modify its prior order as to matters not passed upon by this Court or controlled by the law of the case. See *Hutchins v. State*, 100 Idaho at 665-66, 603 P.2d at 999-1000. Devil Creek Ranch had the opportunity at that

juncture to submit a "full and complete presentation of all available facts." *Coeur d'Alene Mining Co. v. First Nat'l Bank*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990) (quoting *J.I. Case Company v. McDonald*, 76 Idaho 223, 229, 280 P.2d 1070, 1073 (1955)). However, Devil Creek Ranch submitted no supporting affidavits, depositions, or admissions that would bring to the district court's attention new facts bearing on the correctness of the interlocutory order. A party filing a motion to reconsider pursuant to Rule 11(a)(2)(B) carries the burden of bringing to the trial court's attention the new facts. *Id.*; see also *Idaho First Nat'l Bank v. David Steed & Assoc.*, 121 Idaho 356, 361, 825 P.2d 79, 84 (1992) (trial court should have considered affidavit and exhibit submitted by party in support of Rule 11(a)(2)(B) motion). The district court, therefore, had no basis on which to grant Devil Creek Ranch's motion for reconsideration, and the denial of the motion is affirmed. Accordingly, it is unnecessary to address Cedar Mesa's alternative arguments for affirming the district court's order.

II. The District Court Correctly Dismissed the Remainder of This Action.

Devil Creek Ranch contends that the declaratory judgment as to the 1925 decree means that the 1915 decree is conclusive as to the extent and priority of Devil Creek Ranch's water rights, and that the only matter remaining is the distribution of the 3 c.f.s. to Devil Creek Ranch. We hold that issues relating to the extent and priority of Devil Creek Ranch's water rights remain unresolved.

The extent of Devil Creek Ranch's water rights pursuant to the 1915 decree is unclear, since the 1915 decree fails to define the "irrigation season" during which Helsey was entitled to use the water. If, as it claims, Devil Creek Ranch is not bound by the 1925 decree's definition of irrigation season, then the applicable irrigation season is yet to be determined. Devil Creek Ranch alleges, without factual support, that since 1915, the irrigation season on Deadwood Creek has extended throughout the year. Devil Creek Ranch further asserts that the SRBA is engaged in redefining the parameters of the irrigation season on Deadwood Creek. If so, the extent of Devil Creek Ranch's water rights will likewise be redefined.

The second issue requiring resolution is whether Devil Creek Ranch's 1915 right, whatever it is, must be reduced, barred, or otherwise limited by Cedar Mesa's affirmative

defenses of estoppel and/or laches. Cedar Mesa's affirmative defenses put Devil Creek Ranch's claimed rights at issue. This Court has previously held that when owners of water rights who, with full knowledge of all the facts, have long acquiesced in the water rights claimed by another party so that the party had incurred indebtedness on the strength of title to the water, the owners may be estopped by laches from questioning the rights claimed, even if the claimed rights were originally questionable. *Johnson v. Strong Arm Reservoir Irrigation Dist.*, 82 Idaho 478, 486-487, 356 P.2d 67, 72 (1960); *Hillcrest Irrigation Dist. v. Nampa & Meridian Irrigation Dist.*, 57 Idaho 403, 408-409, 66 P.2d 115, 117 (1937). Thus, if Cedar Mesa proves Devil Creek Ranch's full knowledge of the facts, and further proves that Cedar Mesa will be prejudiced by the passage of time between the 1925 decree and the filing of Devil Creek Ranch's declaratory judgment action, Devil Creek Ranch's prior-in-time right might not necessarily result in priority of right.

Devil Creek Ranch argues that these remaining issues should be litigated in the district court. However, the resolution of these issues would require the district court to resolve disputed issues concerning the right to the use of water. Reliance on the theories of laches and estoppel do not change the fact that this case is a private water rights adjudication and that the application of those theories would require the district court to "make findings and assumptions concerning the underlying water rights." See *Walker v. Big Lost River Irrigation Dist.*, 124 Idaho 78, 81, 856 P.2d 868, 871 (1993).

The Idaho legislature intended to prevent private adjudications of claimed water rights to water systems for which a general adjudication has been commenced or completed. *Id.*; I.C. § 42-1404(1) (1986 & Supp. 1994). Because this controversy concerns an adjudication of a right to the use of water in the Snake River Basin, for which a general adjudication has commenced, only the SRBA district court has the subject matter jurisdiction to adjudicate the water rights asserted in this case. Therefore, the district court properly dismissed the remaining issues in this case for lack of subject matter jurisdiction.

III. The District Court Erred by Denying Devil Creek Ranch's Request for Repayment.

After this Court issued *Devil Creek Ranch I*, Devil Creek Ranch, again operating under the assumption that it had fully prevailed, filed a memorandum of costs, pursuant to

I.R.C.P. 54(d)(5), seeking a total of \$744. The memorandum included a request for repayment of the \$129 that Devil Creek Ranch paid to Cedar Mesa after Cedar Mesa was awarded summary judgment. Cedar Mesa agreed to pay Devil Creek Ranch's costs on appeal as ordered on remittitur by this Court, but objected to paying the remainder because "[n]o Order has been entered granting that amount to the plaintiff." The district court agreed with Cedar Mesa, finding that Devil Creek Ranch had not prevailed and thus was not entitled to costs beyond those ordered on remittitur.

This Court's disposition of *Devil Creek Ranch I* changed Cedar Mesa's status such that it was no longer the prevailing party entitled to an award of costs. See *Curtis v. DeAtley*, 104 Idaho 787, 791, 663 P.2d 1089, 1103 (1983). Therefore, the district court erred by not ordering the repayment of the costs awarded to Cedar Mesa. The court correctly denied the remaining costs requested by Devil Creek Ranch, however, because neither party prevailed.

CONCLUSION

The district court's judgment which denied Devil Creek Ranch's proposed order and judgment and motion to reconsider is affirmed. The dismissal of the remaining issues in this cause for lack of subject matter jurisdiction is affirmed. The judgment denying Devil Creek Ranch's request for repayment of the \$129 is reversed.

Costs, but not attorney fees, to Cedar Mesa.

Chief Justice McDEVITT, and Justices JOHNSON, TROUT and SILAK CONCUR.

IN THE SUPREME COURT OF THE STATE OF IDAHO

No. 19824

DEVIL CREEK RANCH, INCORPORATED,)
an Idaho corporation,)

Plaintiff-Appellant,)

v.)

CEDAR MESA RESERVOIR AND CANAL)
COMPANY, an Idaho corporation,)

Defendant-Respondent.)

Boise, January 1993 Term

Filed: April 28, 1993

Frederick C. Lyon, Clerk

Appeal from the District Court of the Third Judicial District of the State of Idaho,
Owyhee County. Hon. Jim R. Doolittle, District Judge.

Appeal from summary judgment. Vacated and remanded.

Rosholt, Robertson & Tucker, Twin Falls, Idaho, attorneys for the appellant.
Justin R. Seamons argued.

Coleman, Ritchie & Robertson, Twin Falls, Idaho, attorneys for respondent.
John S. Ritchie argued.

JOHNSON, J.

This is a water rights case in which the trial court granted summary judgment dismissing a declaratory judgment action on the basis of laches. We conclude that there is no showing of the prejudice necessary for the application of laches. We also conclude there is no basis to uphold the trial court's dismissal of the action on the alternate basis of res judicata. Therefore, we vacate the summary judgment and remand the case to the trial court for further proceedings.

I.

THE BACKGROUND AND PRIOR PROCEEDINGS.

In 1886, Jerome Helsley appropriated three cubic feet of water per second (cfs) for irrigation and domestic use from Deadwood Creek, located in Owyhee County. Deadwood

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Creek is a tributary of the East Fork of the Bruneau River, which is a tributary of the Bruneau River. In 1915, the district court in Owyhee County adjudicated this water right in the name of Helsley's successor, Karl Patrick.

In 1920, the Grand View Irrigation District (the irrigation district) filed an action in district court in Owyhee County (the irrigation district's action) seeking adjudication of its right to divert 150 cfs of water from the Bruneau River with priority as of February 1904. The irrigation district named Patrick as one of the defendants. Patrick was served with the complaint in 1921.

In 1922, the Idaho Farm Development Company (the development company) filed an answer and cross-complaint in the irrigation district's action. The cross-complaint (the development company's action) stated that it applied to the irrigation district and to each and every defendant in the irrigation district's action. The development company's action sought adjudication of the waters of Deadwood Creek and its tributaries and that the rights of the development company to store 6,000 acre feet of water annually from Deadwood Creek, with a priority date of January 29, 1915, and 3,000 acre feet of water annually from Deadwood Creek, with a priority date of November 19, 1915, be declared superior to the rights of the irrigation district and the other defendants in the irrigation district's action. There is nothing in the record of the present case indicating service of the development company's cross-complaint on Patrick or that Patrick filed an answer to the development company's action.

In 1922, a default was entered against Patrick and several other defendants in the irrigation district's action based on their failure to answer the irrigation district's complaint.

In 1925, the irrigation district, the development company, and some other defendants and cross-complainants against whom the district court had not entered default in the irrigation district's action presented a stipulation to the district court authorizing the district court to adjudicate water rights in the Bruneau River, the East Fork of the Bruneau River, Deadwood Creek, and the springs and tributaries of the Bruneau Valley. Although Patrick did not sign the stipulation, the stipulation authorized the district court to enter a decree granting judgment to the parties to the stipulation for the right to use the water of the Bruneau River and its tributaries. The stipulation listed Patrick's water rights with priority as of April 1, 1886.

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The stipulation also provided that the development company might divert and impound in storage water from Deadwood Creek, "at all times and at all seasons of the year when by so doing it does not interfere with any prior rights fixed by this decree." The stipulation also permitted the development company to divert and store water from Deadwood Creek in the amounts alleged in its cross-complaint from October 1 to May 15. The stipulation stated that the exercise of these rights by the development company "during said non-irrigation season does not interfere with the rights of any of the parties hereto."

Based on the stipulation, the district court entered a decree (the 1925 decree) determining that the irrigation district had a water right to 150 cfs in the Bruneau River and that the development company had two annual storage rights to the water from Deadwood Creek. The 1925 decree also provided that the development company could store the water of Deadwood Creek in a reservoir from October 1 to May 15 each year (the non-irrigation season), and that the storage of the water would not interfere with the rights of the other parties. The 1925 decree included a declaration of Patrick's water rights contained in the stipulation and granted the development company the storage rights during the non-irrigation season provided for in the stipulation.

Patrick's current successor is Devil Creek Ranch, Inc. (Devil Creek). The development company's successor is Cedar Mesa Reservoir and Canal Company (Cedar Mesa). Cedar Mesa and its predecessors have continued to store the water during the non-irrigation season since the 1925 decree with one exception. In 1960, Cedar Mesa agreed to allow Patrick and several other water users to divert water two weeks early.

Devil Creek filed this action against Cedar Mesa in January 1991, seeking a declaratory judgment that the 1925 decree was invalid and that Devil Creek was entitled to obtain three cfs of water from Deadwood Creek at any time during the year. Cedar Mesa asserted res judicata, collateral estoppel and estoppel as affirmative defenses and filed a motion to dismiss, arguing that the trial court lacked subject matter jurisdiction and that another action was pending between the same parties for the same cause of action. The trial court ordered Devil Creek to file a summary judgment motion, which it did. Cedar Mesa also requested summary judgment on the grounds of res judicata and estoppel. Before making a decision, the trial court requested briefing on the issue of estoppel by laches. The

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trial court then denied Devil Creek's motion for summary judgment and granted summary judgment in favor of Cedar Mesa on its defense of laches. Devil Creek appealed.

II.

THERE IS NO BASIS TO DETERMINE THE PREJUDICE NECESSARY FOR THE APPLICATION OF LACHES.

Devil Creek asserts that the trial court should not have granted summary judgment dismissing its declaratory judgment action, because Cedar Mesa did not establish the element of prejudice necessary to apply the doctrine of laches. We agree.

In *Huppert v. Wolford*, 91 Idaho 249, 420 P.2d 11 (1966), the Court summarized the nature and elements of laches:

The defense of laches is a creation of equity and is a specie of equitable estoppel. The necessary elements of laches are: (1) defendant's invasion of the plaintiff's rights, (2) delay in ascertaining plaintiff's rights, the plaintiff having had notice and an opportunity to institute a suit, (3) lack of knowledge by defendant that plaintiff would assert [plaintiff's] rights, and (4) injury or prejudice to defendant in event relief is accorded to plaintiff or the suit is held not to be barred.

Id. at 257, 420 P.2d at 19 (citations omitted).

In *Osterloh v. State*, 100 Idaho 702, 604 P.2d 716 (1979), *appeal after remand*, 105 Idaho 50, 665 P.2d 1060 (1983), the Court overturned a summary judgment granted on the basis of laches and cited *Huppert* for the proposition: "Whether or not a party is guilty of laches ordinarily is a question of fact." *Id.* at 703, 604 P.2d at 717. The Court concluded that the defense of laches "ordinarily requires a thorough presentation of all the relevant facts and is a factual determination." *Id.*

In *Bowler v. Board of Trustees*, 101 Idaho 537, 617 P.2d 841 (1980), the Court overturned a summary judgment based on laches and noted: "Laches . . . requires a showing of prejudice to the party asserting it. . . . It would be an unusual case where such a defense as laches could be resolved on summary judgment, raising as it does complex factual issues." *Id.* at 544 n.3, 617 P.2d at 848 n.3.

In this case, Devil Creek did not challenge the 1925 decree until 1991. For the purpose of the trial court's consideration of the summary judgment on the issue of laches, Devil Creek accepted that for sixty-six years, with the exception of 1960, Cedar Mesa has been allowed to store the water decreed to it during the non-irrigation season.

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The only evidence submitted by Cedar Mesa in support of summary judgment on the issue of laches was an affidavit of its watermaster and an affidavit of a shareholder, director, and officer of the corporation. The affidavit of the watermaster recites the allocation of water by Cedar Mesa to its shareholders during the irrigation seasons for several years, the amount of water stored in Cedar Mesa's reservoir during certain years, and the transportation of excess water in certain years. The affidavit of the shareholder, director, and officer recites the amount of water per acre each year that is adequate for the operation of his farm, the amount of water delivered to Cedar Mesa's shareholders during certain years, and the circumstances concerning the delivery of water by Cedar Mesa to Patrick and others in 1960 during the period from May 1 to May 15.

Cedar Mesa contends that allowing Devil Creek to pursue its declaratory judgment action "would result in great injury and prejudice to Cedar Mesa in that it would greatly limit its right to store water for the benefit of its stockholders under the Decree which has been in operation for sixty-six (66) years."

This is an insufficient basis for summary judgment on the issue of laches. The affidavits offer no evidence that Cedar Mesa or its shareholders have been prejudiced by the delay in Devil Creek's assertion of its rights. The fact that Cedar Mesa and its shareholders have had the advantage of storing the water does not establish prejudice. It only establishes that Cedar Mesa and its shareholders have had the use of water to which they may or may not be entitled. This does not constitute the necessary prejudice for the application of laches.

III.

THE 1925 DECREE DOES NOT BAR DEVIL CREEK'S ACTION UNDER THE DOCTRINE OF RES JUDICATA (CLAIM PRECLUSION).

Cedar Mesa asserts that we can uphold the summary judgment of the trial court on the ground that the 1925 decree bars Devil Creek's action under the doctrine of res judicata (claim preclusion). We disagree.

Although Cedar Mesa did present the issue of res judicata to the trial court as a basis for dismissing Devil Creek's action, the trial court did not address this issue. Nevertheless, res judicata (claim preclusion) would be a basis for us to uphold the trial court's summary judgment, if application of res judicata (claim preclusion) is appropriate. In this case, however, it is not.

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If the claim in question was asserted or could have been asserted in a lawsuit resulting in final judgment, the doctrine of res judicata (claim preclusion) bars the presentation of the claim in a subsequent lawsuit between the same parties or their privies. *Foster v. City of St. Anthony*, ___ Idaho ___, ___, 841 P.2d 413, 418 (1992). The problem with applying res judicata (claim preclusion) in this case, is that Devil Creek's predecessor in interest, Patrick, was not a party to the development company's action. There is no record in this case that Patrick was served with or answered the cross-complaint, nor was he a party to the stipulation. Res judicata (claim preclusion), therefore, does not apply.

IV.

CONCLUSION.

We vacate the summary judgment and remand the case for further proceedings.

We award Devil Creek costs on appeal.

Devil Creek did not request attorney fees on appeal.

McDEVITT, C.J., BISTLINE and TROUT, JJ., REINHARDT, J., Pro Tem.

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findings of the Industrial Commission and its referees, it is not to be, nor should it be, used as a "rubber stamp" to affirm each and every Industrial Commission decision. This is particularly true when the Commission fails to follow applicable Idaho case law. See, e.g., *Hill v. E & L Farms*, 123 Idaho 371, 848 P.2d 429 (1993). And it is even more true when the only evidence is uncontroverted deposition testimony, in which credibility is not an issue.

This Court should vacate the Industrial Commission's order and remand the cause for proceedings consistent with our case law and with the factual reality of Monroe's unfortunate situation.



851 P.2d 348

DEVIL CREEK RANCH, INCORPORATED, an Idaho corporation,
Plaintiff-Appellant,

v.

CEDAR MESA RESERVOIR AND CANAL COMPANY, an Idaho corporation,
Defendant-Respondent.

No. 19824.

Supreme Court of Idaho,
Boise, January 1993 Term.

April 28, 1993.

Water rights holder brought suit seeking declaratory judgment that 1925 water rights decree was invalid. The District Court, Owyhee County, Jim R. Doolittle, J., dismissed action on defendant's motion for summary judgment on basis of laches. Water rights holder appealed. The Supreme Court, Johnson, J., held that: (1) defendant's use of water for 66 years pursuant to decree did not establish prejudice necessary to support finding of laches, and (2) res judicata did not bar action where holder's predecessor had not been party to portion of lawsuit that produced 1925 de-

cree and did not join in stipulation upon which decree was based.

Vacated and remanded.

1. Waters and Water Courses ¶152(11)

Laches did not bar action seeking declaration that 1925 water rights decree was invalid; use of water for 66 years pursuant to terms of decree did not establish prejudice, but only that user had use of water to which it might or might not be entitled.

2. Judgment ¶713(2), 720

If claim in question was asserted or could have been asserted in lawsuit resulting in final judgment, doctrine of res judicata (claim preclusion) bars presentation of claim in subsequent lawsuit between same parties or their privies.

3. Judgment ¶707

Res judicata did not bar action seeking declaration that 1925 water rights decree was invalid where plaintiff's predecessor in interest was not party to portion of action which had resulted in 1925 decree.

Rosholt, Robertson & Tucker, Twin Falls, for plaintiff-appellant. Justin B. Seamons argued.

Coleman, Ritchie & Robertson, Twin Falls, for defendant-respondent. John S. Ritchie argued.

JOHNSON, Justice.

This is a water rights case in which the trial court granted summary judgment dismissing a declaratory judgment action on the basis of laches. We conclude that there is no showing of the prejudice necessary for the application of laches. We also conclude there is no basis to uphold the trial court's dismissal of the action on the alternate basis of res judicata. Therefore we vacate the summary judgment and remand the case to the trial court for further proceedings.

I.

THE BACKGROUND AND PROCEEDINGS

In 1886, Jerome Helsley received three cubic feet of water per acre for irrigation and domestic use. Deadwood Creek, located in Owyhee County, is a tributary of the Bruneau River. The district court in Owyhee County granted this water right in the name of Helsley's successor, Karl Patrick.

In 1920, the Grand View Irrigation District (the irrigation district) filed in district court in Owyhee County an action (the irrigation district's action) seeking declaration of its right to divert 15 cubic feet of water from the Bruneau River with effect from February 1904. The irrigation district named Patrick as one of the defendants. Patrick was served with the summons in 1921.

In 1922, the Idaho Farm Development Company (the development company) filed an answer and cross-complaint in district court in Owyhee County (the development company's action). The development company stated that it applied to the irrigation district and to each and every defendant in the irrigation district's action. The development company's action sought a declaration that the waters of Deadwood Creek and its tributaries and that the rights of the irrigation district to store 6,000 cubic feet of water annually from Deadwood Creek with a priority date of January 1, 1915, be declared invalid. The development company also sought the rights of the irrigation district and other defendants in the irrigation district's action. There is nothing in the present case indicating that the development company's cross-complaint was filed by Patrick or that Patrick filed the development company's action.

In 1922, a default was entered against Patrick and several other defendants in the irrigation district's action by the district court in Owyhee County.

I.

THE BACKGROUND AND PRIOR PROCEEDINGS.

In 1886, Jerome Helsley appropriated three cubic feet of water per second (cfs) for irrigation and domestic use from Deadwood Creek, located in Owyhee County. Deadwood Creek is a tributary of the East Fork of the Bruneau River, which is a tributary of the Bruneau River. In 1915, the district court in Owyhee County adjudicated this water right in the name of Helsley's successor, Karl Patrick.

In 1920, the Grand View Irrigation District (the irrigation district) filed an action in district court in Owyhee County (the irrigation district's action) seeking adjudication of its right to divert 150 cfs of water from the Bruneau River with priority as of February 1904. The irrigation district named Patrick as one of the defendants. Patrick was served with the complaint in 1921.

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In 1922, a default was entered against Patrick and several other defendants in the irrigation district's action based on their

failure to answer the irrigation district's complaint.

In 1925, the irrigation district, the development company, and some other defendants and cross-complainants against whom the district court had not entered default in the irrigation district's action presented a stipulation to the district court authorizing the district court to adjudicate water rights in the Bruneau River, the East Fork of the Bruneau River, Deadwood Creek, and the springs and tributaries of the Bruneau Valley. Although Patrick did not sign the stipulation, the stipulation authorized the district court to enter a decree granting judgment to the parties to the stipulation for the right to use the water of the Bruneau River and its tributaries. The stipulation listed Patrick's water rights with priority as of April 1, 1886.

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Based on the stipulation, the district court entered a decree (the 1925 decree) determining that the irrigation district had a water right to 150 cfs in the Bruneau River and that the development company had two annual storage rights to the water from Deadwood Creek. The 1925 decree also provided that the development company could store the water of Deadwood Creek in a reservoir from October 1 to May 15 each year (the non-irrigation season), and that the storage of the water would not interfere with the rights of the other parties. The 1925 decree included a declaration of Patrick's water rights contained in the stipulation and granted the development company the storage rights during

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Patrick's current successor is Devil Creek Ranch, Inc. (Devil Creek). The development company's successor is Cedar Mesa Reservoir and Canal Company (Cedar Mesa). Cedar Mesa and its predecessors have continued to store the water during the non-irrigation season since the 1925 decree with one exception. In 1960, Cedar Mesa agreed to allow Patrick and several other water users to divert water two weeks early.

Devil Creek filed this action against Cedar Mesa in January 1991, seeking a declaratory judgment that the 1925 decree was invalid and that Devil Creek was entitled to obtain three cfs of water from Deadwood Creek at any time during the year. Cedar Mesa asserted *res judicata*, collateral estoppel and estoppel as affirmative defenses and filed a motion to dismiss, arguing that the trial court lacked subject matter jurisdiction and that another action was pending between the same parties for the same cause of action. The trial court ordered Devil Creek to file a summary judgment motion, which it did. Cedar Mesa also requested summary judgment on the grounds of *res judicata* and estoppel. Before making a decision, the trial court requested briefing on the issue of estoppel by laches. The trial court then denied Devil Creek's motion for summary judgment and granted summary judgment in favor of Cedar Mesa on its defense of laches. Devil Creek appealed.

II.

THERE IS NO BASIS TO DETERMINE THE PREJUDICE NECESSARY FOR THE APPLICATION OF LACHES.

[1] Devil Creek asserts that the trial court should not have granted summary judgment dismissing its declaratory judgment action, because Cedar Mesa did not establish the element of prejudice necessary to apply the doctrine of laches. We agree.

In *Huppert v. Wolford*, 91 Idaho 249, 420 P.2d 11 (1966), the Court summarized the nature and elements of laches:

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In this case, Devil Creek did not challenge the 1925 decree until 1991. For the purpose of the trial court's consideration of the summary judgment on the issue of laches, Devil Creek accepted that for sixty-six years, with the exception of 1960, Cedar Mesa has been allowed to store the water decreed to it during the non-irrigation season.

The only evidence submitted by Cedar Mesa in support of summary judgment on the issue of laches was an affidavit of its

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DEVIL CREEK RANCH v. CEDAR MESA RESERVOIR

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III.

THE 1925 DECREE DOES NOT BAR DEVIL CREEK'S ACTION UNDER THE DOCTRINE OF RES JUDICA- TA (CLAIM PRECLUSION).

Cedar Mesa asserts that we can uphold
the summary judgment of the trial court on
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Although Cedar Mesa did present the
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in this case that Patrick was served with or
answered the cross-complaint, nor was he a
party to the stipulation. Res judicata
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ply.

IV.

CONCLUSION.

We vacate the summary judgment and
remand the case for further proceedings.

We award Devil Creek costs on appeal.

Devil Creek did not request attorney fees
on appeal.

McDEVITT, C.J., BISTLINE and
TROUT, JJ., and REINHARDT, J., Pro
Tem.



*Does this
mean that
if a claimant
was not included
in the decree, they
can now file?
Waiting to knock out
the Decree?*

FILED

A.M. 1:10 P.M.

JAN 14 1992

BARBARA JAYO, CLERK

Deputy Clerk

JOHN R. COLEMAN
COLEMAN, RITCHIE & ROBERTSON
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

DEVIL CREEK RANCH, INCORPORATED
an Idaho corporation,

Case No. 5032

Plaintiff,

vs.

JUDGMENT

CEDAR MESA RESERVOIR AND CANAL
COMPANY, an Idaho corporation,

Defendant.

The Court having entered its Order on Motion for Summary Judgment dated December 13, 1991, and filed December 23, 1991, denying summary judgment to the plaintiff and granting summary judgment to the defendant on its defense of laches.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant shall be entitled to the entry of Judgment in favor of the defendant and against the plaintiff, the plaintiff shall take nothing by its Complaint, and the defendant shall be awarded its costs in the amount of \$_____.

DATED this 13th day of January, 1992.

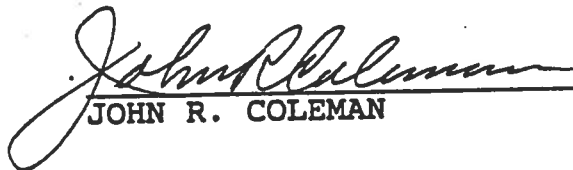
William R. Doster
District Judge

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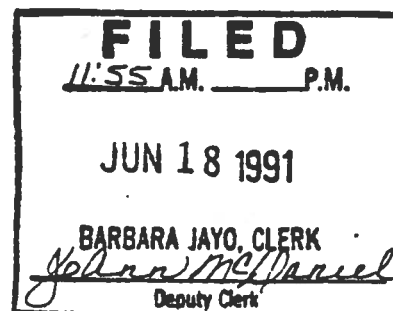
CERTIFICATE OF MAILING

I hereby certify that on the 9th day of January, 1992,
I served the foregoing proposed JUDGMENT by causing to be deposited
a copy thereof in the post office at Twin Falls, Idaho, enclosed in
an envelope with postage prepaid, addressed to the following:

Justin R. Seamons
Rosholt, Robertson & Tucker
Attorneys at Law
PO Box 1906
Twin Falls ID 83303-1906


JOHN R. COLEMAN

Justin R. Seamons
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF OWYHEE

* * * * *

DEVIL CREEK RANCH, INCORPORATED
an Idaho corporation,

Plaintiff,

vs.

CEDAR MESA RESERVOIR AND CANAL
COMPANY, an Idaho corporation,

Defendant.

Case No. 5033

VERIFIED COMPLAINT

* * * * *

Plaintiff Devil Creek Ranch, Inc. alleges the
following cause of action against Defendant Cedar Mesa
Reservoir and Canal Company:

DECLARATORY JUDGMENT

1. Plaintiff Devil Creek Ranch, Inc. is an Idaho corporation.
2. Defendant Cedar Mesa Reservoir and Canal Company is an Idaho corporation.
3. Devil Creek Ranch's predecessor-in-interest, Jerome N. Helsley, obtained a water right, with a priority date

1 of April 1, 1886, to three cubic feet of water per second of
2 time in Deadwood Creek for purposes of irrigation and domestic
3 use on the following described property in Owyhee County,
4 Idaho: The SE1/4 of the SW1/4 and the SW1/4 of the SE1/4 of
5 Section 18; the W1/2 of the NE1/4 and the N1/2 of the SE1/4 of
6 Section 19; and the N1/2 of the SW1/4 of Section 20, Township
7 15 South, Range 12 East of the Boise Meridian.

8 4. The District Court of the Third Judicial District
9 of the State of Idaho, in and for the County of Owyhee,
10 adjudicated the foregoing water right on August 14, 1915. (See
11 Helsley v. Turner, (3rd Jud. District of Idaho Aug. 14, 1915).)

12 5. Mr. Helsley's successor-in-interest was Karl
13 D. Patrick, also known as Carl Patrick.

14 6. On September 10, 1920, Grandview Irrigation
15 District filed a lawsuit to adjudicate its right to 150 cubic
16 feet of water per second of time in the Bruneau River. (A
17 certified copy of the Complaint is attached hereto as Exhibit
18 A.)

19 7. Grandview Irrigation District named Mr. Patrick
20 as a defendant in the foregoing lawsuit.

21 8. Mr. Patrick's current successor-in-interest is
22 Devil Creek Ranch, Inc.

23 9. Mr. Patrick accepted personal service of the
24 Complaint on July 30, 1921. (A certified copy of the
25 Admissions of Service is attached hereto as Exhibit B.)

26 10. Grandview Irrigation District's claim to 150
27 cubic of water per second of time in the Bruneau River did not
28

1 involve or impact Mr. Patrick's water right to three cubic feet
2 of water per second of time in Deadwood Creek (1) because
3 Grandview Irrigation District did not claim an interest in or
4 right to the water in Deadwood Creek, and (2) because
5 Mr. Patrick had a water right in Deadwood Creek only.

6 11. Deadwood Creek is a tributary of the East Fork of
7 the Bruneau River, which, in turn, is a tributary of the
8 Bruneau River.

9 12. On August 28, 1922, the court signed an Order for
10 the Entry of Default against, among others, Mr. Patrick. (A
11 certified copy of the Order is attached hereto as Exhibit C.)

12 13. The Clerk of the Court duly entered a Default
13 against Mr. Patrick on August 30, 1922. (A certified copy of
14 the Default is attached hereto as Exhibit D.)

15 14. On February 14, 1925, several of the Defendants
16 entered into a Stipulation for Decree, including Defendant
17 Idaho Farm Development Company. (A certified copy of the
18 Stipulation is attached hereto as Exhibit E.)

19 15. Idaho Farm Development Company's current
20 successor-in-interest is Cedar Mesa Reservoir and Canal
21 Company.

22 16. The Stipulation authorized the court to
23 adjudicate the signing-parties' water rights in the Bruneau
24 River, the East Fork of the Bruneau River, Deadwood Creek,
25 and/or certain springs and tributaries in the Bruneau Valley.

26 17. Mr. Patrick was not a party to the foregoing
27 Stipulation.
28

1 18. The court heard the above-referenced lawsuit on
2 the same day--that is, February 14, 1925.

3 19. The court entered a Decree on February 16, 1925.
4 (A certified copy of the Decree is attached hereto as Exhibit
5 F.)

6 20. In the Decree, the court ruled that Idaho Farm
7 Development Company had an annual right to 6,000 acre feet of
8 water, with a priority date of January 29, 1915, and an annual
9 right to 3,000 acre feet of water, with a priority date of
10 November 19, 1915, in Deadwood Creek. (Decree, p. 23.)

11 21. The court concluded (1) that Defendant Idaho Farm
12 Development Company could store its water from Deadwood Creek
13 in a reservoir from October 1 to May 15 each year, and (2) that
14 the storage of the water from Deadwood Creek during this
15 "non-irrigation season [would] not interfere with the rights of
16 any of the parties hereto." (Decree, pp. 22-23.)

17 22. Despite the fact that Mr. Patrick was not a party
18 to the above-referenced Stipulation, and despite the fact that
19 Mr. Patrick's water right was prior in time to Idaho Farm
20 Development Company's water rights, the court included
21 Mr. Patrick in the group of "parties" that was subject to Idaho
22 Farm Development Company's annual storage right. (Decree,
23 p. 20.)

24 23. Idaho Farm Development Company thereafter
25 attempted to preclude and stop Mr. Patrick from obtaining his
26 decreed right to three cubic feet of water per second of time
27 before the newly created May 15 irrigation start date.
28

1 24. Today, Idaho Farm Development Company's
2 successor-in-interest, Cedar Mesa Reservoir and Canal Company,
3 continues to attempt to preclude and stop Mr. Patrick's
4 successor-in-interest, Devil Creek Ranch, from obtaining its
5 water from Deadwood Creek before the May 15 irrigation start
6 date.

7 25. Devil Creek Ranch is legally and lawfully
8 entitled to use its water from Deadwood Creek at any time that
9 it can put the water to beneficial use, irrespective of the
10 foregoing May 15 irrigation start date, as the above-referenced
11 Decree is invalid, unenforceable, void, and non-binding with
12 respect to Devil Creek Ranch.

13 26. This court is authorized and empowered to declare
14 the rights, status, and legal relations between Devil Creek
15 Ranch and Cedar Mesa Reservoir and Canal Company in relation to
16 the foregoing Decree pursuant to Idaho Code Section 10-1201 and
17 10-1205.

18 27. Devil Creek Ranch has retained the services of
19 Rosholt, Robertson & Tucker to prosecute this action.

20 28. Devil Creek Ranch is entitled to recover its
21 costs and attorney's fees from Cedar Mesa Reservoir and Canal
22 Company pursuant to Idaho Code Section 10-1210 and/or 12-121,
23 and I.R.C.P. 54. The sum of \$5,000 is a reasonable attorney's
24 fee if the court enters judgment by default.

25 **REQUESTED RELIEF**

26 Devil Creek Ranch requests the following relief
27 against Cedar Mesa Reservoir and Canal Company:
28

1 SUBSCRIBED and SWORN TO before me this 17th day of
2 June, 1991.

3
4 Sherry L. Carr
5 NOTARY PUBLIC FOR IDAHO
6 My commission expires: 3/19/92
7 Residing at: Julia Falls, Id
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