

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 73-188B V1

WATER RIGHT NUMBER: 73-188B V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CHARLESVIEW LLC 1819 E SOUTHERN AVE #B-10 MESA, AZ 85204
Original Owner	DEBRA L BARNES HC 62 BOX 2190 MAY, ID 83253 (208)876-4483
Original Owner	ABE J BEACH , ID
Original Owner	J W NESBITT , ID
Original Owner	DONALD L BARNES HC 62 BOX 2190 MAY, ID 83253 (208)876-4483
Original Owner	SHIRLEY M WUNSCH PO BOX 406 CHALLIS, ID 83226 (208)879-4732
Original Owner	CHARLES W WUNSCH PO BOX 427 RIGGINGS, ID 83549 (208)628-4130

Priority Date: 05/19/1909

Basis: Decreed

Status: **Disallowed**

<u>Source</u>	<u>Tributary</u>
BEAR CREEK	GOLDBURG CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	2.000 CFS	
	<u>Total Diversion:</u>	2.000 CFS	

Location of Point(s) of Diversion

BEAR CREEK	NE1/4NE1/4	Sec. 22, Twp 12N, Rge 24E, B.M.
CUSTER County		
BEAR CREEK	SW 1/4NW 1/4	Sec. 28, Twp 13N, Rge 23E, B.M.
CUSTER County	(Rediversion)	
BEAR CREEK	NE1/4NE1/4	Sec. 22, Twp 12N, Rge 24E, B.M.
CUSTER County	(Injection)	

Place of Use

IRRIGATION

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IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13N	23E	20	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0	38.0			8.0	40.0	40.0	38.0	40.0	524.0
13N	23E	29	36.0	10.0															46.0

Total Acres: 570

Conditions of Approval:

1. P14 Forfeited/abandoned: This is included for a claim based on a decree or license that is proposed to be disallowed on the basis that the water right no longer exists because forfeiture of the right by nonuse was confirmed and a defense to forfeiture was not confirmed, or because abandonment of the right was confirmed.
2. P04 Forfeited/abandoned due to non-use from April 1, 1984 to October 31, 1989.

Remarks:Comments:

1. JTHOMPSO 12/27/1995 OWNERSHIP CHANGE

Comment: CHANGED OWNERSHIP 12/27/95/JT/HWJ

2. rbrown 3/20/2006 Disallow

Comment: There is no photo evidence of a diversion works or conveyance system delivering Bear Creek water into Goldberg Creek. Don Barnes, the previous claimant, could not explain how Bear Creek was diverted into Goldberg Creek, then conveyed to the Pahsimeroi River. It does not appear this right has been used for a very long time.

Dates and Other Information:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Defendant:

Plaintiff:

Civil Case Number:

Judicial District:

Notice of Error Flag: NONE RECEIVED

State or Federal: S

Owner Name Connector:

Water District Number: 73

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

Element	Last Reviewed Date	Reviewer	Last Verified Date	Verifier	Status
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Contacts	3/20/2006 8:38:10 AM	rbrown	Disallowed
Priority Date	3/20/2006 8:38:28 AM	rbrown	Disallowed
POD	3/20/2006 8:42:32 AM	rbrown	Disallowed
Summary	03/20/2006	rbrown	Disallowed

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
General	3/20/2006 8:38:28 AM	rbrown	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (Yes) 4. Is the basis of claim decree or license? (Yes) 5. Does the decree or license have a Priority Date? (Yes) 6. Did the Claimant claim the decreed or licensed Priority Date ? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required?
Contacts	3/20/2006 8:38:11 AM	rbrown	(No) 1. Do you want to schedule an appointment? Comment for 1: in-office review
POD	3/20/2006 8:42:32 AM	rbrown	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a POD? (No) 5. Can the claimed POD be verified using the water right file? (Yes) 6. Is there evidence that there has been a change in the POD? (Yes) 7. Can the change be verified as an accomplished transfer? (Yes) 9. Does the file contain all the necessary information to verify the POD? (No) 10. Is a POD remark and/or condition required?
POD	3/20/2006 8:44:50 AM	rbrown	Updated shape
POD	3/20/2006 8:45:23 AM	rbrown	Updated PLS
Summary	3/20/2006 10:36:05 AM	rbrown	(Yes) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (Yes) 2. Does any evidence indicate a five year period of continuous nonuse occurred that could result in recommending forfeiture or partial forfeiture? (No) 4. Is any portion of the claim be recommended? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (Yes) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification

date?

IDAHO DEPARTMENT OF WATER RESOURCES

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POD 3/20/2006 9:12:10 AM rbrown Updated shape from PLS

SubCase:

SubCase Number: 73-188B
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date:
Attorney Assigned:
Adjudication Agent: rbrown
Basis of Claim: Decreed
Date Filed: 12/17/2007 Objection Status: Active

Water Supply Bank:

In the Office of the State Engineer of the
State of Idaho.

In the Matter of the application)
of J. W. Nesbitt for Transfer of) DECISION.
Water Right.)

This is a case wherein J. W. Nesbitt, of Goldburg, Idaho, asked for the transfer of a Water Right in Water District No. 19, in Custer county, Idaho, said right being for the use of the waters of Bear creek. Protest against the issuing of a certificate of transfer was made by the holders of other water rights in said district; said application was duly advertised and a hearing had before the State Engineer, at May, Idaho, on the 18th day of September, 1916.

Whereupon, after a full investigation on the ground, and the testimony of witnesses having been taken, and the State Engineer being fully advised in the premises, the following findings are made:

1. That the said J. W. Nesbitt is the owner of the right to the use of $3\frac{1}{2}$ second-feet of the waters of Bear creek, upon the following land, to-wit: NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 23; E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 22, Tp. 12 N., R. 24 E., D.M.
2. That the above described lands are situated on Goldburg creek.
3. That Goldburg creek empties into the Pahsimeroi river at a point near the N.E. Cor. of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 34, Tp. 13 N., R. 25 E., D.M.
4. That the said Bear creek is naturally a tributary of Goldburg creek, but, except in times of unusually high flood water the waters of said Bear creek sink and never appear to run into said Goldburg creek.

this POD
does not match
Bear Cr. on
topo

5. That by diverting the waters of Bear creek by means of a ditch at a point about one-fourth of a mile from the N.E. Cor. of Section 16, Tp. 12 N., R. 24 E., B.M., said waters may be successfully brought over into the drainage area of Goldberg creek and emptied therein.

4 ft 1.5 cfs
behind

6. That 75 inches of water are sufficient to profitably irrigate the said NW4 NW4 Sec. 25, and the E $\frac{1}{2}$ NE $\frac{1}{2}$ and NE4 SE4, Sec. 22, Tp. 12 N., R. 24 E., B.M.

7. That the said J. W. Nesbitt is the owner of the SE4 SE4, Sec. 18; the NE4 NE4, Sec. 19; the W $\frac{1}{2}$ NW4, SE4 NW4 SW4 NE4, N2 SE4, Sec. 20, Tp. 15 N., R. 23 E., B.M.

moved 200 ft
to new pole

8. That the said J. W. Nesbitt proposes to deliver 100 inches of the aforementioned water right into Goldberg creek at a point in the NE4 of NE4, Sec. 22, Tp. 12 N., R. 24 E., B.M., and re-divert the same from the Pahsimeroi river at a point in the SW4 of NW4, Sec. 28, Tp. 13 N., R. 23 E., B.M., and to use the same upon the said lands described in paragraph 7 of these findings.

9. That a loss in transportation of said waters occurs between the points where they are emptied into Goldberg creek and where they are diverted from Pahsimeroi river, amounting to approximately 10 per cent.

Now, Therefore, it is the judgment of this office that the said transfer be allowed, subject to the following conditions, to-wit:

(a) That the said J. W. Nesbitt shall never be permitted to divert from the Pahsimeroi river more than ninety per cent of the water emptied into Goldberg creek at any time, on account of this transfer, nor more than ninety inches in any event.

(b) That no matter how much water may be diverted from said Bear creek, and conveyed by ditches or other means into Godlborg creek, the said J. W. Nesbitt shall only receive credit for the remainder after deducting 75 inches.

(c) That the said J. W. Nesbitt shall, at alltimes, maintain devices to determine the quantity of water passing the various points, where it it necessary to so do, to the satisfaction of the watermaster of said Water District No.19; and the said watermaster shall not be bound to deliver to the said J. W. Nesbit any water under and by virtue of this transfer unless all the conditions stated herein are complied with.

Witness my hand and the seal of my office at Boise, Idaho, this 9th day of December, 1916.



State Engineer.

File 73-K 73-0188

S T A T E O F I D A H O

-----OFFICE OF STATE ENGINEER-----

CERTIFICATE NO. 196, AUTHORIZING TRANSFER OF WATER RIGHT.

WATER DISTRICT NO. 19.

Permission is hereby granted J. W. Nesbitt, of Goldburg, County of Custer and State of Idaho, to transfer the use of one hundred (100) inches of the waters of Bear Creek, in Water District No. 19, County of Custer, State of Idaho, from the lands upon which it is now used, i. e., the NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 23; E $\frac{1}{2}$ of NE $\frac{1}{4}$ and NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 22, Township 12 North, Range 24 East of the Boise Meridian, to the following described lands, to-wit: the SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 18, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 19; W $\frac{1}{2}$ of NW $\frac{1}{4}$, SE $\frac{1}{4}$ of NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and N $\frac{1}{2}$ of SE $\frac{1}{4}$, Sec. 20; Township 13 North, Range 23 East of the Boise Meridian; said water to be diverted at a point about one-fourth of a mile from the N. E. corner of Sec. 16, Township 13 North, Range 23 East of the Boise Meridian:

This Certificate of Transfer is issued subject to the following conditions, to-wit:

(a) That the said J. W. Nesbitt shall never be permitted to divert from the Pahsimeroi river more than ninety per cent of the water emptied into Goldburg Creek at any time, on account of this transfer, nor more than ninety inches in any event.

(b) That no matter how much water may be diverted from said Bear Creek and conveyed by ditches or other means into Goldburg Creek, the said J. W. Nesbitt shall only receive credit for the remainder after deducting 75 inches.

(c) That the said J. W. Nesbitt shall, at all times, maintain devices to determine the quantity of water passing the various points where it is necessary to so do, to the satisfaction of the watermaster of said Water District No. 19; and the said watermaster shall not be bound to deliver to the said J. W. Nesbitt any water under and by virtue of this transfer unless all the conditions stated herein are complied with.

The water right appurtenant to the above described lands was adjudged by decree, dated June 6th, 1909, of George F. Hansbrough, Judge of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Custer, in the case entitled "Lorenzo Falls, et al, plaintiffs, vs. Uriah Wells, et al, defendants."

WITNESS, My hand and the seal of my office at Boise, Idaho, this 1st day of February, A. D. 1917.

J. H. Smith,
State Engineer.

(SEAL)



State of Idaho
Engineering Department
Boise

OFFICE OF THE STATE ENGINEER OF THE
STATE OF IDAHO.

In the Matter of the Application of
J. W. Nesbit, of Goldburg,)
Camber County, Idaho, for a) HEARING.
Transfer of Water Right.)

This cause came on regularly to be heard, at May, Idaho, before the State Engineer, on the 18th day of Sept. 1916, at 2 o'clock P. M., of said day, whereupon the following proceedings were had.

Mr. J. W. Nesbit testified as follows:

Q. Where do you reside?

A. Goldburg, Idaho.

Q. Handing you exhibit A State what it is?

A. It is an application for the transfer of water made by me.

Q. You are the owner of the land described as ---

A. Yes, Sir.

Q. You have a water right for that land?

A. Yes, a decreed right according to the application.

Q. Are you now using this water on the lands so described?

A. Yes.

Q. How much of this land is being actually irrigated?

A. About one hundred thirty acres.

Q. Have you irrigated 130 acres every year?

A. No.

Q. How many acres did you irrigate in 1916?

A. 25 or 30.

1915. About the same.

1914. Practically all the 130 acres.

Q. When did you purchase this land?

A. In August 1914, or thereabout.

Q. How much water is actually needed to produce a profitable crop on this land?

A. About one-half inch per acre will be enough for the 130 acres.

Q. How many acres does your 175 inch right apply to.

A. 160 acres.

Q. Why do desire to abandon the use of 100 inches of water from this land?

A. I can use it to better advantage on the lands to which I desire to make the transfer.

Q. Have there ever been used on the lands where it is now appurtenant, all of the 175 inches of water?

A. Yes, and more, too.

Q. What is the character of the land?

A. Gravelly formation, some of it; some is marshy.

Q. Is there any portion of the land you include in the 130 acres that is marshy?

A. None to speak of.

Q. Is the rest of the land not included in the 130 acres of such character as to require irrigation ~~fixtures~~ to make it profitable.

A. No.

Q. And You consider 1/2 inch per acre sufficient for the 130 acres?

A. Yes.

Q. If this water is abandoned from where it is now used, how will it reach the lands to where you propose to transfer it?

Q. It runs through my present ditch from Bear Creek and into Goldburg Creek, thence down Goldburg Creek about 13 miles, into the Pahsimeroi River, and about 1 mile in the latter stream and is then taken out in a ditch.

Q. How many parties take water out of the streams on the route this water will travel in going to its new place of use?

A. I know of only three.

Q. If The water of Bear Creek was not diverted from the channel into any ditch, would it run into Goldburg Creek?

A. Only in extreme high water and then only certain years. In normal periods of high water it would not.

Q. How much land do you own where you propose to use this water?

A. 320 acres under a desert land filing.

Q. Have you any other water right for any of this last named land

A. I have a permit for 320 inches,

Q. Will any other right be injured by this transfer. to your knowledge?

A. Not to my knowledge.

Subscribed and sworn to before me, at May, Idaho, this 18th day of Sept. 1916,

Fred H. Wilkie
Deputy State Engineer.

Mr. L. G. Downey testified as follows:

Q. What is your name,
L. G. Downey.

Q. Where do you reside, M

A. At May, That is my post office.

Q. how long have you resided where you now do.

A. About one and one-half years.

Q. What office, if any do you hold?

A. Watermaster of District, No. 19, of the State of Idaho.

Q. Are you acquainted with J. W. Nesbit.

A. Yes.

Q. how long have you known him.

A. About one and one-half years.

Q. Are you familiar with the land he now owns near the head of
Goldburg creek.

A. Yes.

Q. Is it in your district?

A. Yes.

Q. Have you ever delivered any water to that land?

A. Yes.

Q. ~~Now you know that he has used water on that land?~~

A. Yes.

Q. How much water has he used?

A. The entire flow of the creek.

Q. What creek do you mean?

A. Bear Creek.

Q. How does he get the water from Bear Creek to the land?

A. Through an open ditch?

Q. Does Bear Creek empty into Goldburg?

A. Yes.

Q. Does your water record for district 19 show delivery of water to
Mr, Nesbit for this land?

A. Yes.

Q. How would the water reach the lands to where he proposes to
transfer it?

A. Through Goldburg creek.

Q. How far would it have to run before being taken out again?

A. I would judge about ten miles.

Q. What do you know about the condition of losses of water in the ch
channel of Goldburg creek?

A. I do not know much about it.

Q. Do you think all of the 100 inches of water would reach the lower
place of use?

A. No, Q. How much do you think would? A. About 90 inches.

Q. How many diversions for other rights take water out along where this water would have to run?

A. About three, I think.

Q. In your opinion, would any other rights on Goldburg, Bear, creek or the Pahsimeroi river be injured if this transfer is granted?

A. No.

Q.

L. G. Downey

Subscribed and sworn to before me, at May, Idaho, this 18th day of September, 1916.

Thos. H. Wheeler

Deputy State Engineer.

Mr. Harry Bates testified as follows:

My name is Harry Bates.

I reside at Goldburg, Idaho,

Q. How long have you lived there.

A. Over 12 years.

Q. Do you know J. W. Nesbit?

A. Yes.

Q. Are you familiar with the land he owns near the head of Goldburg Creek?

A. Yes.

Did you know of his making application for a transfer of the water he has heretofore been using on this land?

A. Yes.

Q. Where does that water come from?

A. What is known as Bear creek.

Q. Where is Bear creek, and to what stream is it tributary?

A. It is a small stream north of and running toward Goldburg Creek?

Q. Does it run into Goldburg creek?

A. In times of very high water it might, but not at any ordinary stage of water flow.

Q. Then Mr. Nesbit takes the water from Bear creek by a ditch over to toward Goldburg creek to his land?

A. Yes.

Q. Do you know where he proposes to transfer this water to?

A. I know about where the ranch is.

Q. How far is it.

A. I would judge it would be about ten or twelve miles.

Q. Describe how it would get there?

A. It would go through a ditch from Bear creek into Goldburg creek and ~~from~~ thence into Pahsimeroi river, ~~and~~

Q. Do you live near the lands where the water is now used?

A. I join ranches with Mr. Nesbit's ranch.

Q. What is the character of the land?

A. Gravelly bar land. A good deal of wild grass grows there. Some of it is marshy.

Q. Have you ever seen any one irrigating that land, any of it?

A. Yes,

Q. How many acres?

A. I could not say.

Q. Do you know about how much water has been applied to this land?

A. There has been various amounts used. I do not know the amount.

Does all the water from Bear Creek come over to the lands in question?

A. It is all brought over in ditches, part of it in my own ditch. What becomes of any amounts of this water that is not used by yourself and Mr. Nesbit?

A. It is all used by myself and Mr. Nesbit.

Q. When ~~you are~~ either of you are not using it, what becomes of it?

A. I always shut mine off and it is allowed to run in the Bear Creek channel.

Q. Does Mr. Nesbit do the same?

A. I do not know.

Q. How much water per acre is required to irrigate the lands where this water is now used?

A. Some of it would require an inch to the acre, some not more than half an inch and some would require none.

Q. Do you know how many rights divert water between where it is now used and the place where it is proposed to use it?

A. I do not.

Q. What loss takes place in the 12 miles this water has to travel?

A. I have no idea.

Q. Do you think it would all get down? A. I would think it would.

Q. Do you think any one would be injured if this transfer is made?

A. I think not. I do not see how there could be.

Subscribed and sworn to before me at *May*, Idaho, this 18th day of Sept. 1916.

Harry Bates

Fred H. Wilkie

Deputy State Engineer.

Comes now Mr, Charles A. Warren, and enters protest against the granting of a transfer of water right by the State Engineer, to J. W. Nesbit, ~~and xxxxxx~~ on the ground that,

1st-- That there is not enough water in Bear Creek to justify the change.

2 --That the lands where the water is now used is partly swamp land and does not require irrigation.

3-- That other rights will be injured by the transfer.

Q. What is your, name, and place of residence?

A. Chas, A. Warren, Goldburg. Idaho.

Q. How long have you lived there?

A. Three years.

Q. Are you acquainted with Mr. J. . Nesbit.

A. Yes.

Q. How long have you known him?

A. About three years.

Q. Are you familiar with the lands known as the ^{Beech} Bates ranch near the head of Goldburg creek ?

A. Yes.

What is the character of that land?

A. A portion is wild grass, swampy land, a portion is Gravelly, or bar land.

Q. Does this land require irrigation to make it profitable to raise crops on.

A. I would not think so. If it was he would not want to change the water.

Q. State what you know about how water has been used on this land?

A. Water last summer was used on the bar land, a little was, I think no more was needed. A statement made by Mr. Nesbit as to the reason he was changing this water was because he did not need it on the ranch. That he was changing 100 inches and leaving 75 inches to remain on the ranch.

Q. Do you know to whom this statement was made?

A. To Elmer D. Reese.

Q. Did you ever see any one irrigating there?

A. Yes. Last summer.

Q. Who was there irrigating.

A. J. W. Nesbit.

Q. Are you interested in any water right ~~xxxxxxx~~ in the Pahsimeroi or its tributaries?

A. Yes,

Q. Where do you divert it?

A. From ~~the~~ Pahsimeroi below the mouth of Goldburg creek. Near where Mr. Nesbit may take it out if it is transferred.

Q. Would your rights be injured if he is allowed to make the transfer asked for?

A. Yes.

Q. In what way would it injure you?

A. Because he would be taking water that belonged to me.

Q. How do make that out?

A. If he should divert more water than he put in it would be taking my water.

Q. If he should divert no more water than he turned in at the upper place would it injure you?

A. No.

- Q. ~~Now when the water is turned into the Gold-~~ Do you think he could not turn into Gold-
burg creek as much as 100 inches?
A. Only for a very short period of the year, and leave the 75 inches
at the upper place.
Q. Why do think he could turn in 100 inches?
A. Because it is not in Bear Creek except for a very short period
each year.
Q. About how much water does Bear creek run?
A. In May 80, ~~150~~, 150, July 80 to 90, August, 60, Sept. 50.
Q. Then you think there is not much more water in Bear Creek to
make sure of supplying the 75 inches to be retained?
A. Yes.
Q. What loss is there in the channels between the present place of u
use and where he proposes to use it?
A. About one per cent per mile.
Q. How far is it between the two points of diversion?
A. About eight or ten miles.
Q. Then you estimate a loss of ten per cent in the creek and river
between the two points?
A. I do.

Cross examination by Mr. Nesbit.

- Q. Why do you think tha Beech kland does not need water?
A. Because part of it is swamp. He needs water on this high bar.
Q. Are you positive you saw J. W. Nesbit irrigating on that land
in 1916, or was it 1915.
A. Tha water was running on the bar, but I saw no person there,
except J. W. Nesbit. He was at the ranch.
Q. How would I be taking water that belonged to you when you had
no water in the river?
A. I have water in the river.
Q Do you have water for your right at all times of the year?
A. No.

Redirect examination.

~~Q. If this 100 inches of water was left to run, or be used as it has
been in the past, do you get any benefit from it?~~
A.

- Q. Then your contention is that Mr. Nesbit should never be allowed
to divert at the lower point more water than he turned in at the
upper point, less a reasonable amount for seepage or other loss?
A. Yes.
Q. And you take this stand because you think there is not enough
water from Bear creek to supply him 75 inches to be retained at
the upper place and get 100 for the transfer?
A. I do.

Subscribed and sworn to before me at May, Idaho, this 18th
day of September, 1916,

Charles A. Warren
Fred A. Wilkie
Deputy State Engineer.

Mr. V. Maelzer testified as follows:

Q. Where do you reside?

A. May, Idaho.

Q. Do you have a water right in The Pahsimeroi or any tributary thereof?

A. Yes.

Q. Where do you take the water out?

A. At a point near the mouth of Big Creek.

Q. Below where Mr. Nesbit diverts water?

A. Yes.

Q. Are you familiar with the fact that Mr. Nesbit has made application to transfer water from Bear Creek to his home place on the Pahsimeroi?

A. Yes.

Do you have any objections to such transfer?

A. Yes; if he is allowed to divert 100 inches at the lower point and does not turn enough in above to make it up, allowing for losses, it would injure me and other rights.

Q. If he takes out no more than is turned in above would you be injured?

A. No.

Q. What is the loss in the channels of Goldburg creek and the Pahsimeroi river between where the water is to be turned in and where Mr. Nesbit would divert it again?

A. I would say about ten per cent.

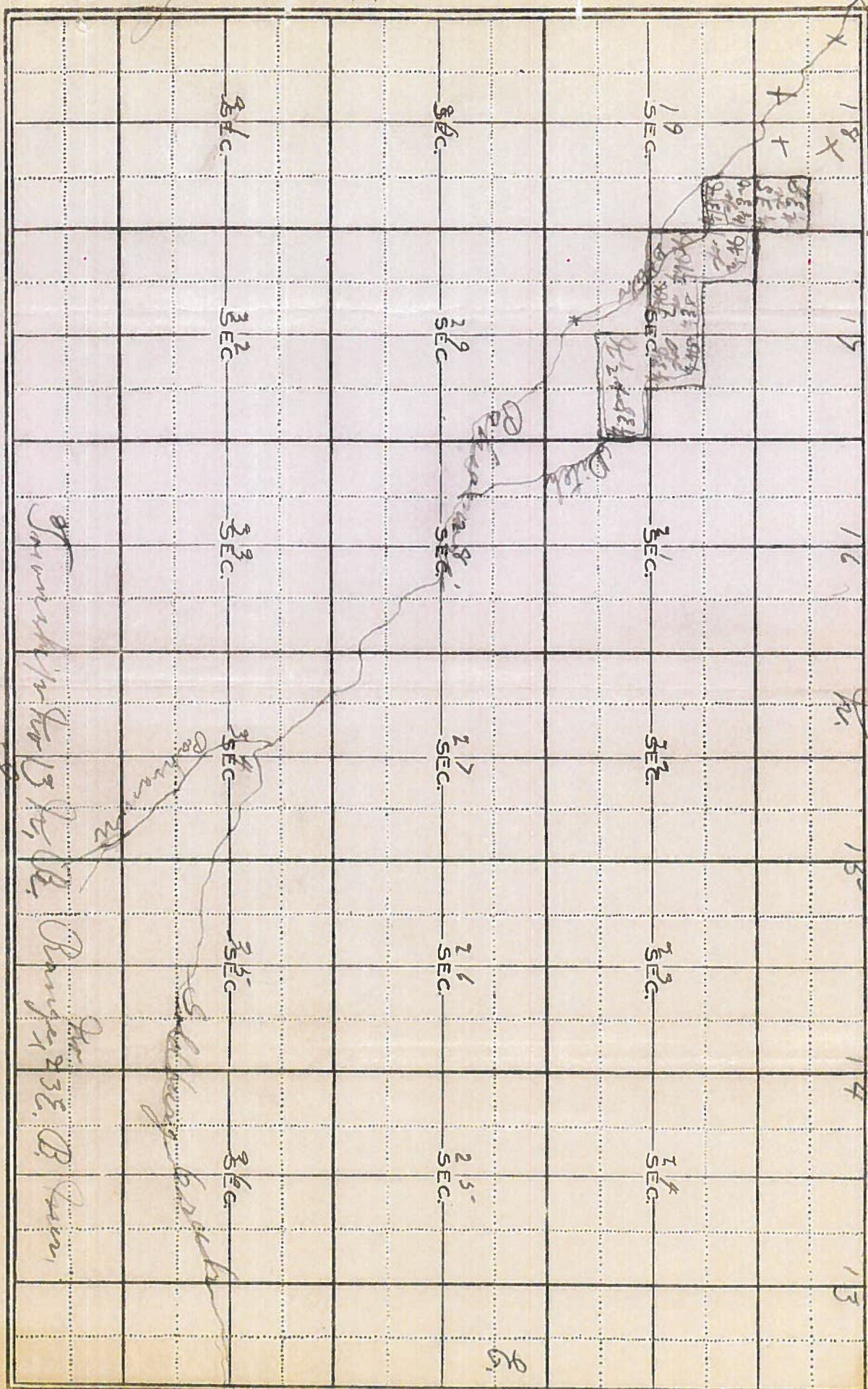
V. Maelzer.

Subscribed and sworn to before me, at May, Idaho, this 18th day of September, 1916.

Fred A. Wilkie
Deputy State Engineer.

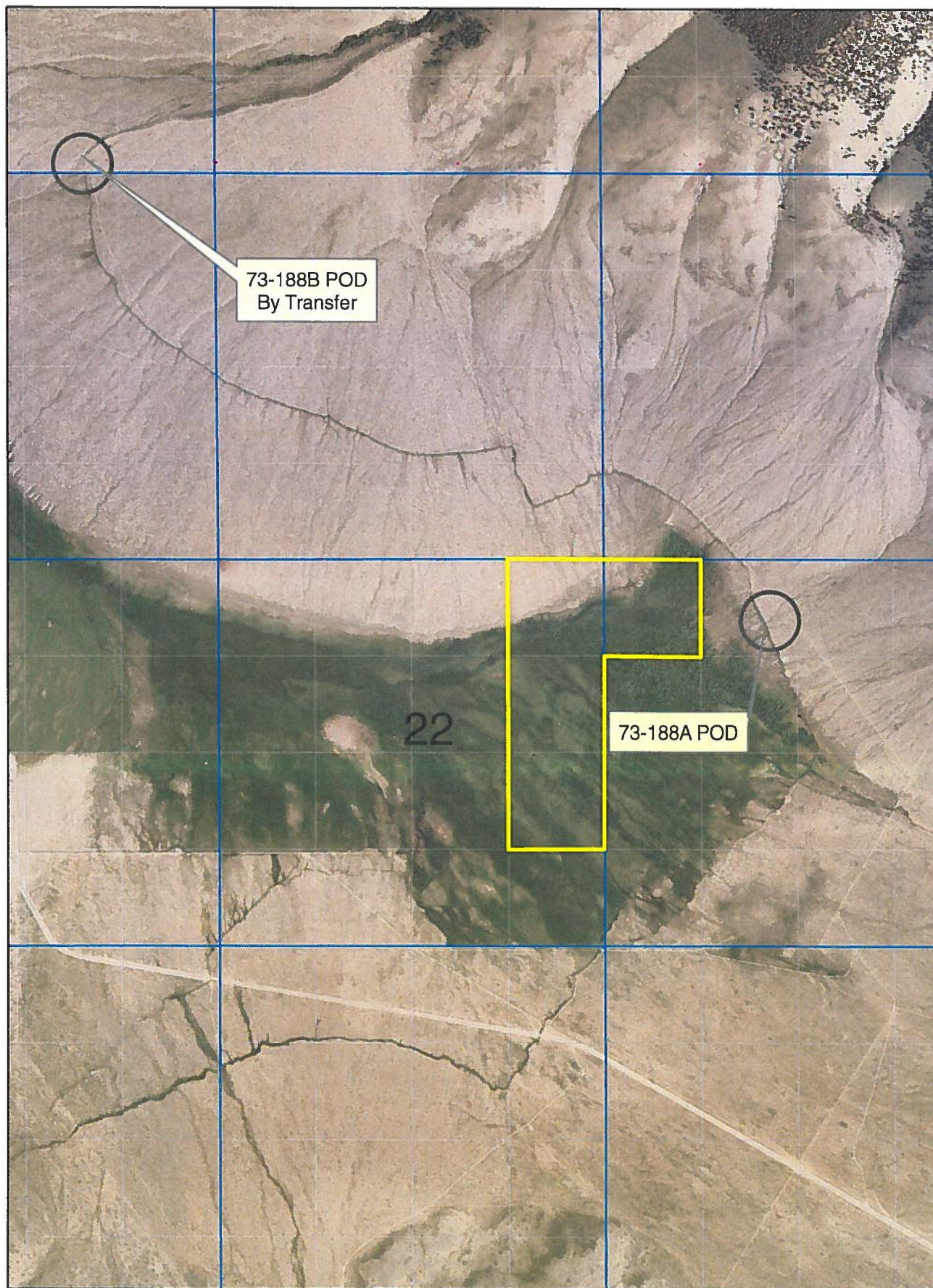
Name of Applicant

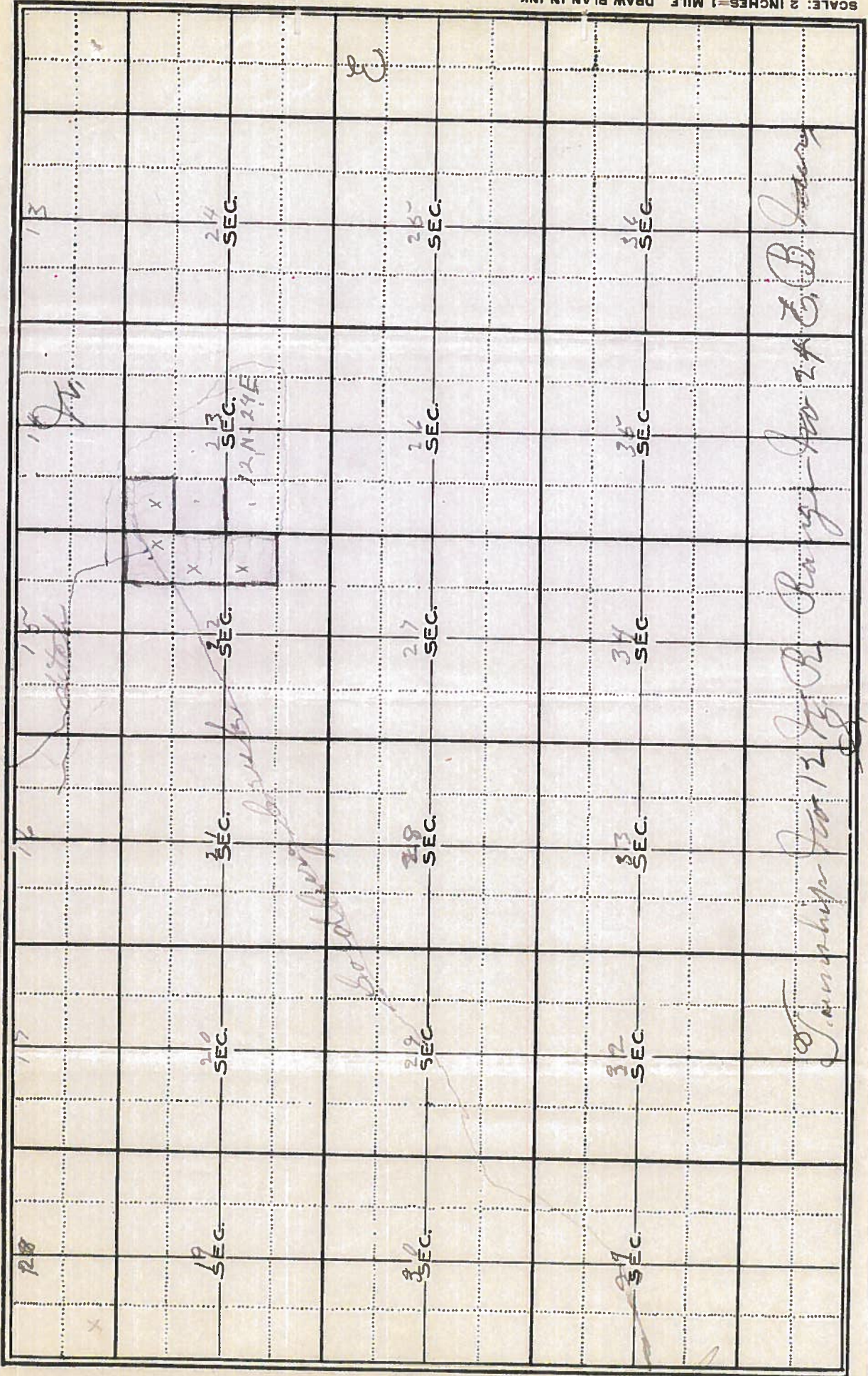
J. H. Luskitt



SCALE: 2 INCHES=1 MILE DRAW PLAN IN INK.

Decreed POU for 73-188





WA

Name of Applicant

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 73-188B

WATER RIGHT NUMBER: 73-188B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	J W NESBITT
	, ID
Original Owner	ABE J BEACH
	, ID

Priority Date: 05/19/1909

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BEAR CREEK	GOLDBURG CREEK
DITCH CREEK	GOLDBURG CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	2.000 CFS	
	<u>Total Diversion:</u>	2.000 CFS	

Location of Point(s) of Diversion

BEAR CREEK	SW1/4SE1/4	Sec. 9,	Twp 12N,	Rge 24E, B.M.
CUSTER County				
DITCH CREEK	SW1/4SE1/4	Sec. 9,	Twp 12N,	Rge 24E, B.M.
CUSTER County				

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13N	23E	18																X	
13N	23E	19	X																
13N	23E	20			X			X	X	X					X	X			

Conditions of Approval:

1. TRANS. 196 CHANGED P/D AND P/U FOR PORTION OF 73-0188.
WATER DIVERTED FROM DITCH CR. IS DISCHARGED INTO GOLDBERG CR.
GOLDBURG CR. EMPTIES INTO THE PAHSIMEROI RIVER WATER IS REDIVERTED FROM
PAHSIMEROI RIVER IN THE SWNW SEC.28 T13N R23E.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 73-188B

PAHSIMEROI RIVER IN THE SWNW SEC.28 T13N R23E.

NO MORE THAN 90% OF THE WATER EMPTIED INTO GOLDBURG CR. MAY BE REDIVERTED FROM PAHSIMEROI RIVER, NEVER TO EXCEED 1.80 CFS.

NO MATTER HOW MUCH WATER IS DELIVERED INTO GOLDBURG CR., THE RIGHT HOLDER SHALL ONLY RECEIVE CREDIT FOR THE REMAINDER AFTER DEDUCTING 1.50 CFS.

THE RIGHT HOLDER MUST MAINTAIN MEASURING DEVICES AT THE NECESSARY LOCATIONS. THE DIVERSION OF WATER UNDER THIS TRANSFER IS SUBJECT TO CONTROL BY THE WATERMASTER OF W.D. 73.

Remarks:Comments:Dates and Other Information:

Licensed Date:

Decreed Date: 4/1/1910

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal:

Owner Name Connector:

Water District Number: 73

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Decree Defendant: Uriah Wells, et al

Decree Plaintiff: Lorenzo Falls, et al

Civil Case Number:

Judicial District: Sixth District

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

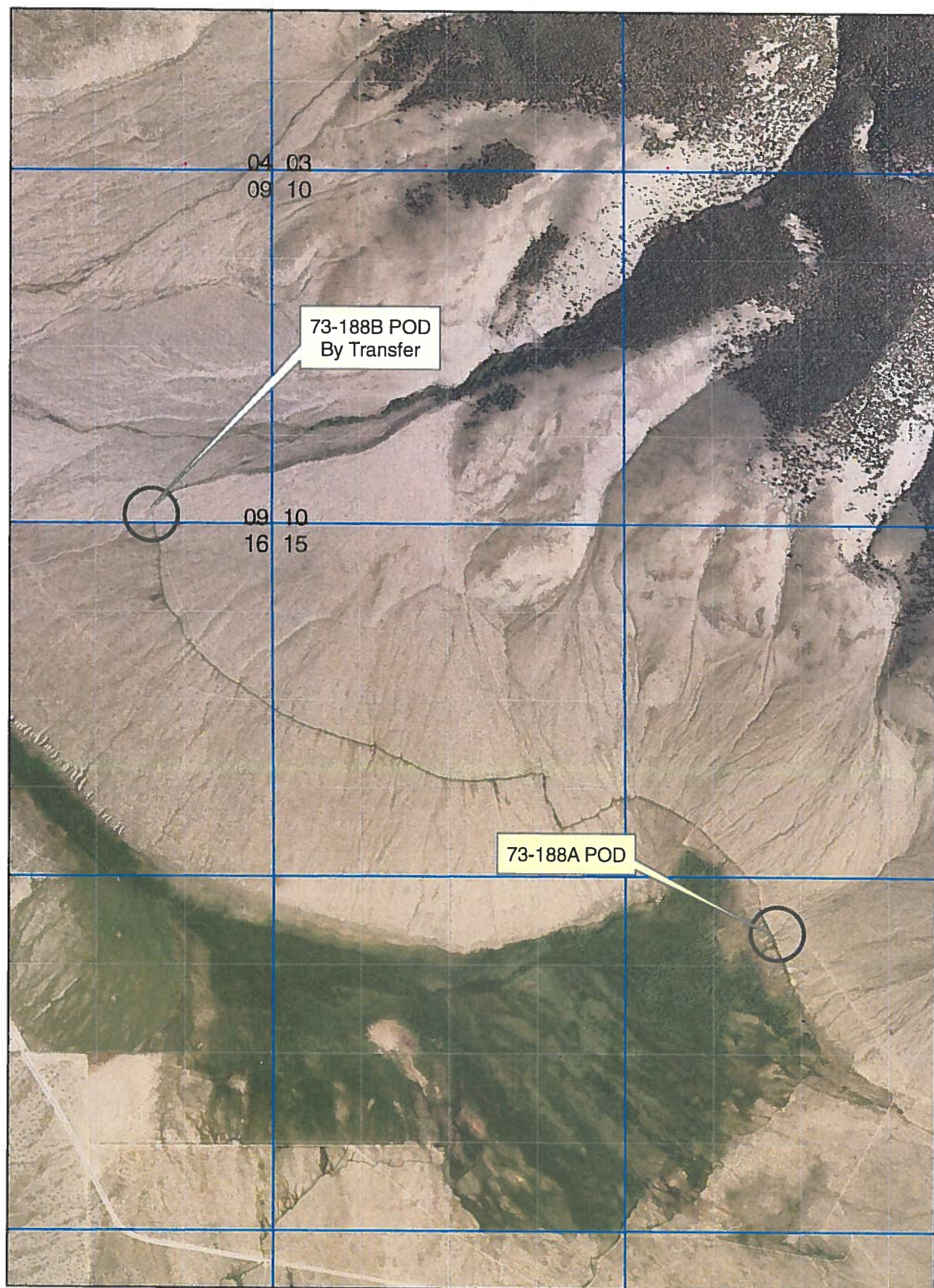
<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
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Verification Log:

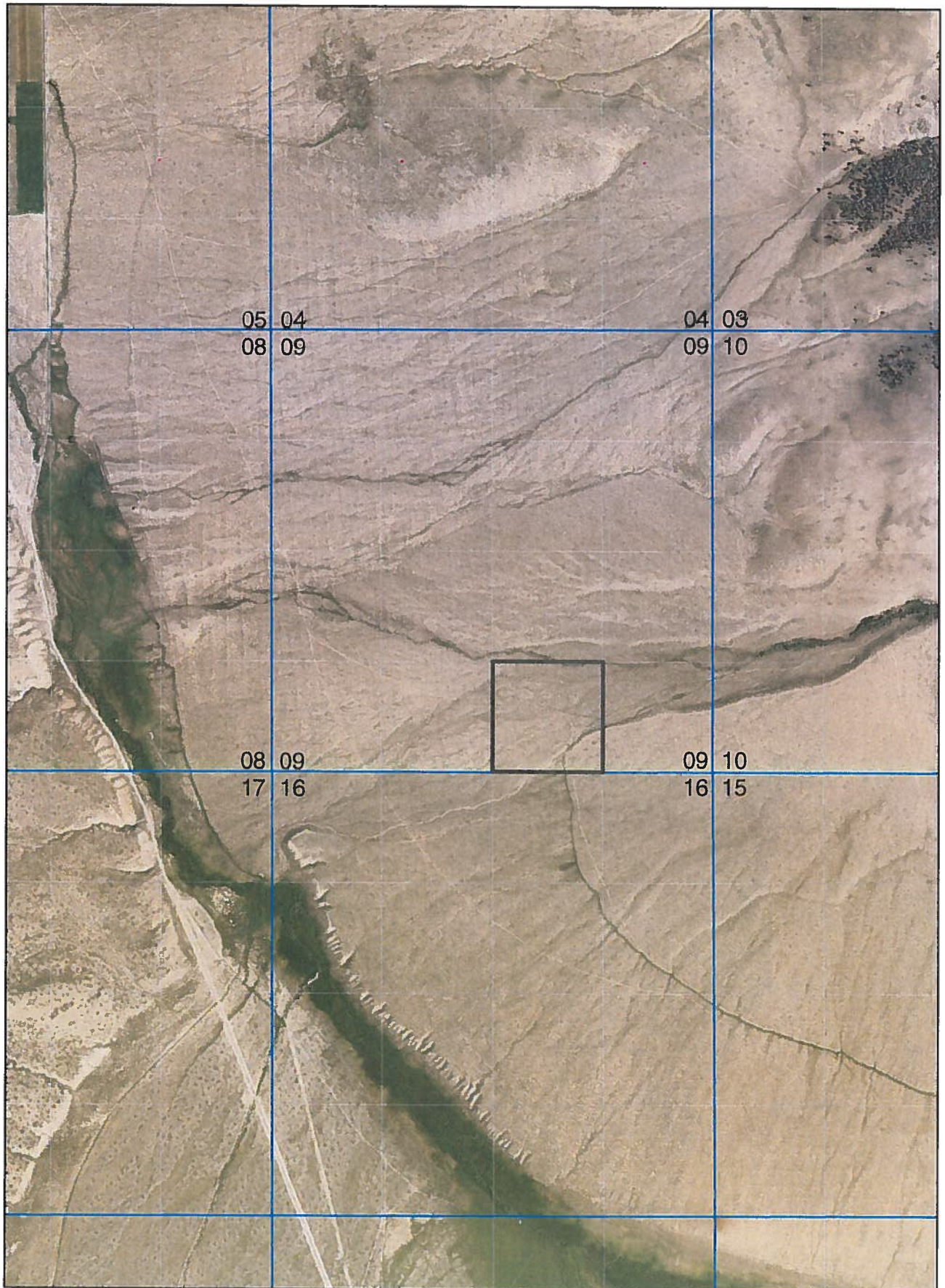
<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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Water Supply Bank:

T12N R24E S09 SWSE
Transferred POD for 73-188B



T12N R24E S09 SWSE
Transferred POD for 73-188B



Notice of Proposed Transfer of Water Right.

Notice is hereby given that J W McMillitt
 of Goldburg Idaho has applied to the State Engineer of the State of Idaho

for a certificate authorizing him to transfer the use of one hundred inches (100)
 of the water of Bear Creek

from the land upon which it is now used, i. e., N $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec 23, T24N $\frac{1}{2}$ of
N $\frac{1}{2}$ and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sbk 22, T24N 12, N Range
24, E 13M.

to the following described tract: SE $\frac{1}{4}$ of SE $\frac{1}{4}$ Sec 18, NE $\frac{1}{4}$ of NE $\frac{1}{4}$ Sec 19,
W $\frac{1}{2}$ of NW $\frac{1}{4}$ and SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and S $\frac{1}{4}$ of NE $\frac{1}{4}$ and N $\frac{1}{2}$
of SE $\frac{1}{4}$ Section 20, Township 13, North, Range 23,
E 13, M.

And that at M. on the _____ day of _____ A. D. 1946,
 at _____, at _____

before _____, the Water Commissioner of Division No. _____

or his authorized agent, the opportunity will be given to any and all persons to appear and present for his
 consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

Full details of the proposed transfer may be obtained from _____
_____, Watermaster of said stream.

STATE ENGINEER

RECEIVED

DEC 19 2007

DEPARTMENT OF
WATER RESOURCES

RECEIVED - SRBA
FIFTH JUDICIAL DISTRICT
TWIN FALLS, IDAHO
DEC 17 PM 2 04

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

In Re SRBA

A. Subcase 73-188B

Case No. 39576

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Charlesview LLC
Address: 1819 E. Southern Ave #B-10
Mesa, AZ 85204

Daytime Phone: (208) 880-8544

Name & Address of Attorney, if any:

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

Name: Charlesview LLC
Address: 1819 E. Southern Ave. #B-10
Mesa, AZ 85204

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

1. ☐ Name and Address
Should be: _____
2. ☒ Source
Should be: Bear Creek, Ditch Creek
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: As per historical use, April 1st to November 1st or otherwise consistent with all other irrigation users in the Basin.
9. ☒ Place of Use
Should be: 754 acres consistent with combined rights 73-187A, 188A, 188B, 2038 and 10047. Please refer to attached map
10. 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): Refer to Limited Power of Attorney on File with IDWR. This right was forfeited/abandoned due to non use and has historically been used at the above reference place of use.

F. VERIFICATION (Must be completed)

State of Idaho)
County of Ada)ss.

Brett Macneil, duly sworn, upon oath, deposes and says:

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

[Signature]

Subscribed and sworn to before me on: 12/17/07



[Signature]
Notary Public for Sartin & Spade Co.

Residing at: Nampa

My Commission Expires: 8/12/2011

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

I certify that on 12/17, 2006, 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:

Name: Charlesview LLC
Address: 1819 E. Southern Ave. #B-10
Mesa, AZ 85204

3. Copies to:

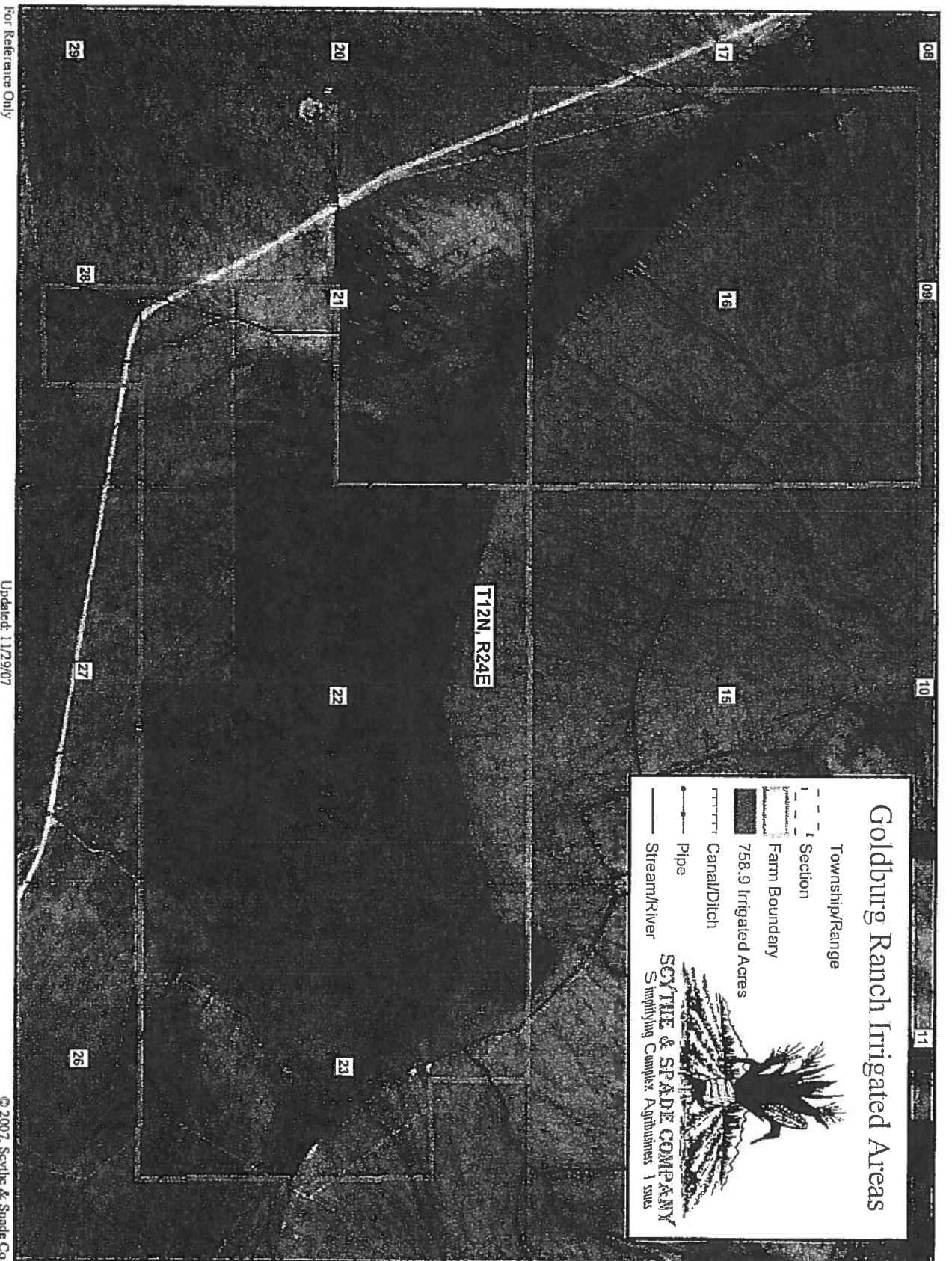
IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

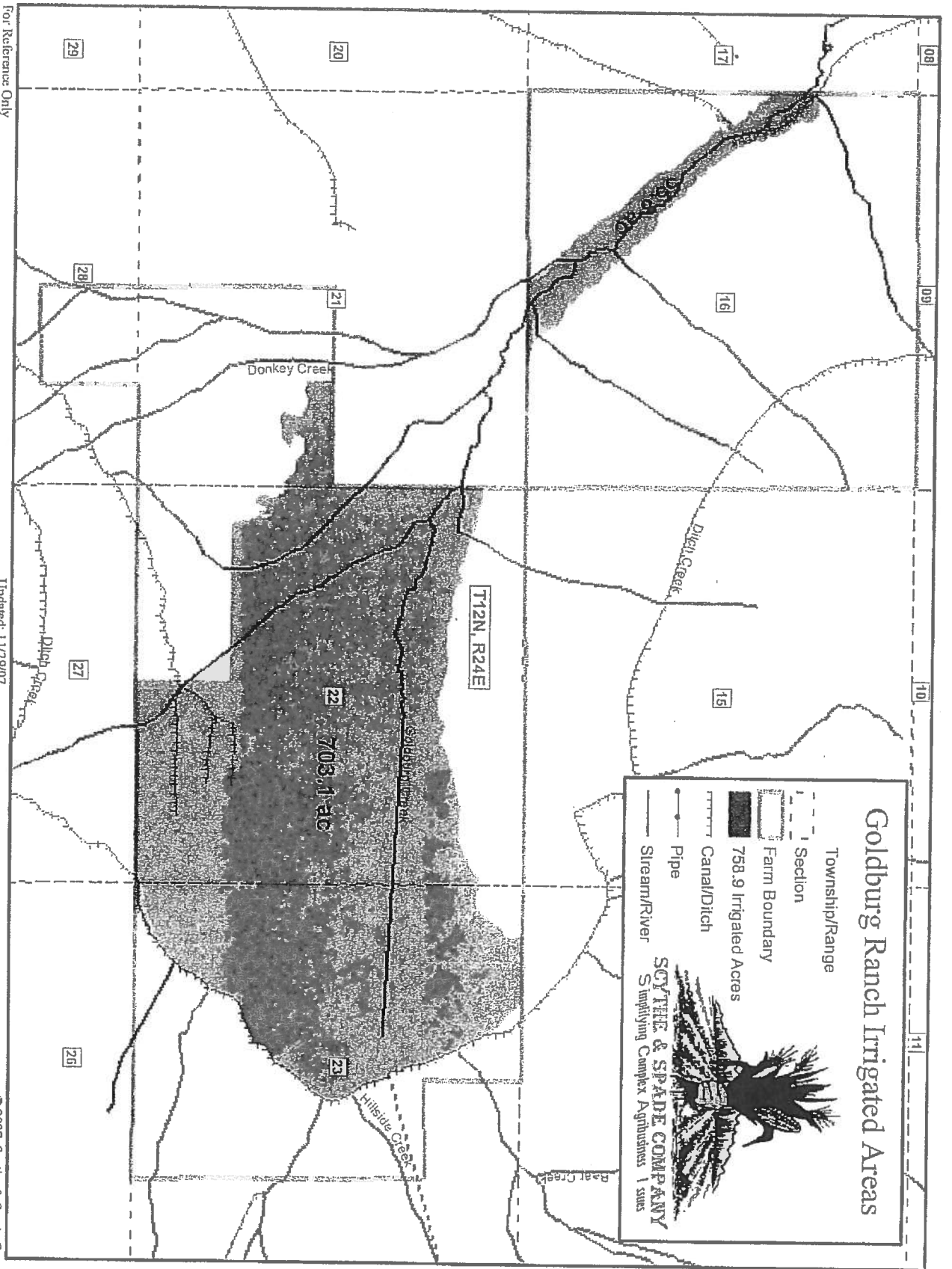
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

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



Signature of Objector or attorney





Goldburg Ranch Irrigated Areas

Township/Range
 Section
 Farm Boundary
 758.9 Irrigated Acres
 Canal/Ditch
 Pipe
 Stream/River

SCYTHE & SPADE COMPANY
 Supplying Complex Agribusiness 1 since

For Reference Only

Updated: 11/29/07

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