

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A43-10013
Date Received: 2/28/1989
Receipt No: S006400
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ELBERT L. DURFEE 208-824-5566
Address: P.O BOX 187
ALMO, ID 83312

OR
Name: E. BRUCE DURFEE 208-824-5566
Address: P.O BOX 187
ALMO, ID 83312

2. Date of Priority: APR 01, 1951

3. Source: STYNES CREEK Trib. to: ALMO CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
15S	24E	16	SW	NW	NW		CASSIA

5. Description of diverting works:
OPEN DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	1.000		

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

8. Total consumptive use is 200.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
15S	24E	16	NW	SE		IRR	40.0
			SW	SE		IRR	40.0
						Section Acres	80.0
						Total Acres	80.0

11. Place of use in counties: CASSIA

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

13. Other Water Rights Used:
ALMO WATER CO.

14. Remarks:
PORTIONS OF THIS WATER IS FROM WASTE WATER FROM STYNES CREEK
USER'S.

15. Basis of Claim: BENEFICIAL USE

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): E. Bruce Surfer Date: Feb. 28 1987

Date: _____

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 28th day
of February 19 87
Steve O. O.
Notary Public

Seal

Residing at Twin Falls
My Commission Expires Dec 7 1994

CERTIFICATION OF VITAL RECORD

STATE OF IDAHO

IDAHO DEPARTMENT OF HEALTH AND WELFARE
COOPERATIVE CENTER FOR HEALTH STATISTICS

CERTIFICATE OF DEATH

DATE FILED: NOVEMBER 13, 1995

STATE FILE NUMBER: 95-06803

DECEDENT: ELBERT LORENZO DURFEE

DATE OF DEATH: NOV. 06, 1995

PLACE OF DEATH: ALMO, IDAHO

DATE OF BIRTH: FEB. 12, 1906

PLACE OF BIRTH: IDAHO

AGE: 89 YEARS SEX: MALE

VETERAN? NO

MARITAL STATUS: MARRIED

SPOUSE (MAIDEN): GRACE AFTON ROOKER

SOCIAL SECURITY NUMBER: 5-1-2-2-2-2-2-2-2-2

RESIDENCE: ALMO, IDAHO

FATHER: LORENZO DURFEE

FATHERS BIRTHPLACE: UTAH

MOTHER (MAIDEN): ANNA ABBY BRUESCH

MOTHERS BIRTHPLACE: NEW MEXICO

MORTUARY: PAYNE MORTUARY

MORTICIAN: JOSEPH W. LARSEN

BURLEY, IDAHO

DISPOSITION: BURIAL

CERTIFYING CORONER: PAUL B. YOUNG

AUTOPSY: NO

1. CAUSE OF DEATH, UNDERLYING CAUSE LAST:

INTERVAL

METASTATIC CANCER OF THE COLON

5 MONTHS

2. OTHER CONDITIONS CONTRIBUTING TO DEATH BUT UNRELATED TO ABOVE CAUSES:

NONE LISTED

MANNER OF DEATH: NATURAL

I certify that this is a true and correct reproduction or abstract of an official record filed with the IDAHO COOPERATIVE CENTER FOR HEALTH STATISTICS.

NOVEMBER 14, 1995

DATE ISSUED: _____

Jane S. Smith

JANE S. SMITH
State Registrar



RECEIVED
JUN 22 2000
Department of Water Resources
Snake River Region

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

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

1. Water Right No(s): _____
 Adjudication Claim No(s): A43 02552 A43 10014 A43 02560
A43-00148, -00337, -02058, -02200, -02214, -02051
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 claims(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 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
Elbert L. Durfee
Almo ID. 82312
4. New Owner/Claimant(s)
E. Bruce or Kent R. Durfee
 Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
P.O. Box 187 or P.O. Box 175
 City, State and ZIP Code
Almo ID. 82312
 New Telephone Number
(208) 824-5566 824-5536
5. Date you acquired the property

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)

E. Bruce Durfee
Kent R. Durfee

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.

ENTERED ELBERT DURFEE DEPT. OF WATER RESOURCES



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

December 5, 1991

R. KEITH HIGGINSON
Director

A43-10013
ELBERT L. DURFEE
E. BRUCE DURFEE
P.O BOX 187
ALMO

ID 83312

RE: Evidence of Priority

RESPONSE DEADLINE
FEBRUARY 3, 1992

Dear Claimant:

The Notice(s) of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice(s) indicate your water usage is based on "Beneficial Use" or a "Statutory Claim". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed. **The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit.** The Department will soon conduct reviews &/or field exams for the claims in your area. Since the priority date of a beneficial use water right can not be confirmed by field examination, **proof must be provided supporting the priority date you have claimed.**

The Department will not recommend the Notice(s) be decreed by the court as claimed if no evidence of a priority date is submitted.

Please find enclosed a computer printout of your Notice(s) and the pamphlet entitled "Evidence of Priority". The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. I direct your attention to the two sections entitled "What Kind of Evidence is Required" and "Some Examples of Documents Which May Be Evidence of the Priority Date".

Please submit the required evidence supporting the priority date(s) by **February 3, 1992**, referencing all documents with the corresponding Notice number(s). If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

Respectfully submitted,

Allen Merritt, P.E.
Water Rights Supervisor

Enclosures

MICROFILMED
MAR 04 1993

A F F I D A V I T

STATE OF IDAHO)
 :
COUNTY OF CASSIA)

Elbert L. Durfee, being first duly sworn, deposes and says: that he was a resident of Almo, County of Cassia, State of Idaho, during the years from February 12, 1906 to the date of this affidavit. I hereby testify that I began using the water from Stines creek on the West Half Southeast Quarter (W 1/2 SW 1/4) in Section Sixteen (16), Township fifteen (15) South, Range twenty-four (24) East of the Boise Meridian, the first of April 1951, and have used it each spring up to the present date on the same land in the amount of one cubic foot per second.

Elbert L. Durfee
Elbert L. Durfee

January SUBSCRIBED AND SWORN to before me this 2 day of January, 1972.

Wesley F. Brown Anderson
Deputy Assessor

1-31-96

MICROFILMED
MAR 04 1993

05/09/2001

**NOTICE OF ERROR
REPLY**

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

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

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

Water right number: 43-10013

E BRUCE DURFEE

PO BOX 187

ALMO ID 83312

Telephone Number: (208)824-5566

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

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

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

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

DATE:

6-8-01

SIGNATURE:

E. Bruce Durfee

Please print your name:

E. Bruce Durfee

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

11/17/2000

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

RIGHT NUMBER: 43-10013

NAME AND ADDRESS: E BRUCE DURFEE
PO BOX 187
ALMO, ID 83312

SOURCE: STINES CREEK TRIBUTARY: ALMO CREEK

QUANTITY: 0.5 CFS

PRIORITY DATE: 04/30/1970

POINT OF DIVERSION: T15S R24E S16 SENENW Within CASSIA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04-01 10-31	0.50 CFS

PLACE OF USE:

<u>IRRIGATION Within CASSIA County</u>				
T15S R24E S16	NWSE	40	T15S R24E S16	SWSE 40
80 ACRES TOTAL				

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

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

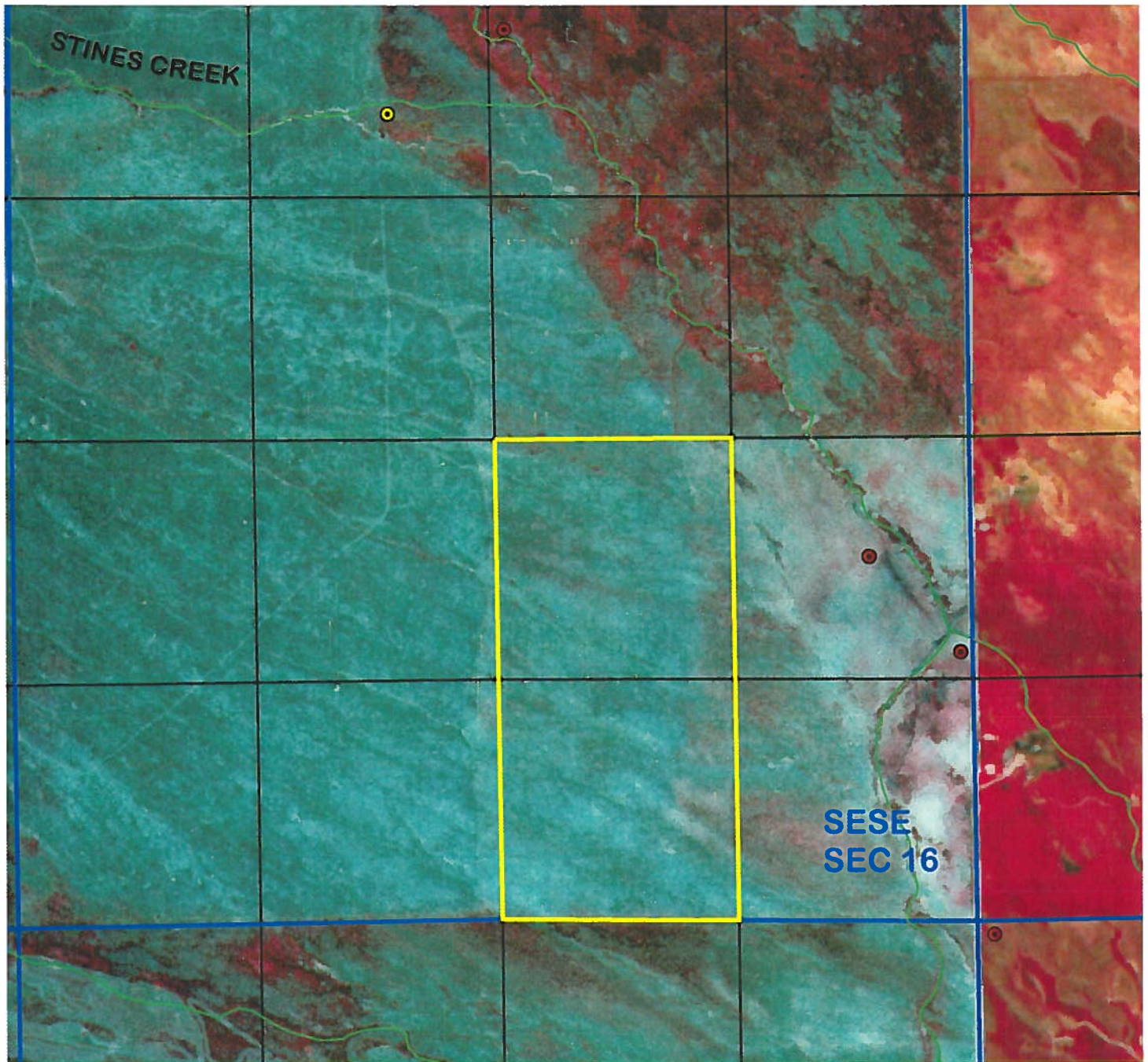
THIS RIGHT IS SUBJECT TO REGULATION BY THE WATERMASTER OF
WATER DISTRICT 43D.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

USE OF THIS RIGHT IS COMBINED WITH WATER FROM ALMO WATER
COMPANY.

RIGHT: 43-10013

RECOMMENDED PLACE OF USE
TWP 15S, RNG 24E, SEC 16
Data entry on July 3, 2000



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



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

RECOMMENDATION NOTES

From: Vikie Hancock

11/17/00

Regarding: Claim 43-10013

There is some controversy about the claimant's right to the use of Stines Creek. It is apparent that the conveyance works that I documented can also be used to convey the water of Almo Creek onto this property. It should be noted that this property is within the claimed boundary of Almo Water Company, however it was not included in the original late-1800 decrees or the 1918 license, but only the statutory claim filed in 1983. The diversion works that I observed were clearly set up to intercept any water flowing in Stines Creek at the time of my visit.

Stines creek was dry at the time of the field exam in August. The capacity of the ditch that conveyed water across the top of the 80 acre POU was estimated to be not more than .5 cfs. It had not been cleaned in some time (see photos in file). I am adjusting my recommended diversion rate to .5 cfs.

This right cannot be recommended with the claimed priority date of 1951. A court decision in 1970, Almo Water Company - v - Ivan Darrington, clearly listed all the users of Stines Creek at that time, and claimant's predecessor was not among them. See file for copy of decree.

Due to the separate administration of this creek and the adjustment of priority date and diversion rate proposed by my recommendation, I believe that this claim can be recommended. See file for injury analysis.

May 25, 2000

10:30 am

Almo School, Almo Idaho

MEETING WITH MEMBERS OF ALMO WATER COMPANY

Members in attendance: David May, Bud Ward, Ted Tracy, William Tracy, Larry Henson, Brent Jones, Gary Jones, Ivan Darrington, Bruce Durfee, Cordell Sheridan, and AWC President Doug Ward. I exchanged pleasantries with Neil Durfee and watermaster Curtis Durfee outside the building, but neither attended the meeting.

The meeting was called to order by Doug Ward and I was introduced. I had previously met all but David May and Bud Ward in the course of investigating individual water right claims in the Adjudication.

I began with a brief history of the Almo Water Company, as I had come to understand it from my research. I passed around copies of the Almo Creek portion of the Jobe Adams Decree, the 1918 license and 1983 statutory claim and showed my copy of the Deed signed by the original founders of AWC conveying their individual water rights to the company.

I presented an overlay showing the original decreed acres, the acres licensed under a 1918 priority date and the acres claimed by statutory claim in 1983. I explained that the priority date on the stat claim - 1918 - was not reasonable since those acres were not included in the Jobe Adams. I said that the priority date of the water represented by the stat claim would necessarily have to be sometime after 1928, and I explained the lack of substantiation of either acres or diversion rate on a statutory claim. There was no further discussion in regard to providing proof of priority. It was noted that if 1" per acre were allowed, the total cfs claimed in the adjudication would actually allow for more acres irrigated within the boundary of the company. Some members then pointed out areas on the GIS layout presentation that they felt could be included in the irrigated acres. There were also areas marked irrigated that some present agreed were not irrigated and should be deleted. I encouraged anyone who felt he saw errors in the boundary or areas marked as irrigated to point them out, and made notes on the GIS layout accordingly.

The first specific issue discussed was the claim filed by Curt Durfee on decree number 43-00374. AWC also filed on this claim. Those present said that it had always been known that -00374 was a duplicate of decree -00387, and that only the number of shares represented by -00387 had ever been delivered to the property. I said that if it was a duplicate, then only -00387 was valid and

that no one should get the diversion rate represented by -00374. Those present agreed.

The next issue discussed was in regard to the springs that Curt Durfee filed a claim upon (A43-10076). Some of those in AWC feel that the springs are tributary to Almo Creek and so belong to Almo Water Company per the language in the original deed dated in 1907. It was stated that, as long as the water from the springs flooded through Durfee's fields and into Almo Creek it had at least been available to users in the company, but when he started pumping out of the pond, there was some objection to that. We discussed the fact that one of the springs was right next to Almo Creek and that it's not known if the springs even existed prior to the extensive irrigation, or if they did why they weren't mentioned in any of the decrees. It was noted that none of the decrees were consistent about what they included and what they left out. I told those at the meeting that if I recommended Curt's claims to the springs, they could file an objection in the SRBA court and present evidence to the judge that the claims weren't valid because of the deed, or for any other reason. I pointed out that there were adjudication filings on other springs within the AWC boundaries.

There were some questions about the stat claim by Bruce Durfee on Stines Creek (43-10013). I read aloud the section in the 1970 AWC vs Darrington decision that stated that there were no other users on Stines Creek except the parties named in the lawsuit. Since Bruce Durfee's father was not listed as a user in 1970, I questioned the 1951 priority date he claimed. Bruce stated that they were users in 1970 and fielded some questions from those present about the ditch used. It became apparent that the ditch used could also convey water from Almo Creek and at one time had, but Durfee said that he didn't use his Almo water on the marginal lands up there at all anymore. The members dropped the subject at this point, and so did I.

I brought up the Matthews license 43-02586 claimed in the adjudication by the Conservation Fund, and gave Doug Ward a copy of the agreement that was entered into by Matthews as a result of the AWC protest to their license. I mentioned that this agreement also discusses the Belnap decree 43-00373, which also seemed to be a duplicate right. Doug indicated that he would look into ownership of the license, and asked me to send a copy of the 1907 AWC Deed, also.

After the meeting I met with Ted Tracy to discuss the J.E. Tracy claims and also with Brent Jones.

Vikie Hancock
Sr. Water Resource Agent

From LIC EXAM 43-02584 showing water
 AVAILABLE IN STINES CREEK FROM SEEPS & SPRINGS
 BELOW UPPER DIVERSIONS STATE OF IDAHO CLAIMANTS POINT OF
 DIVERSION IS ON DEPARTMENT OF RECLAMATION WHAT WAS ONCE
 MATTHEWS PROPERTY. BOISE IDAHO

REPORT OF ENGINEER

Permit No. R-1025

This proof is for Beneficial Use & Completion of Work In Water District No. 7
 1. Name of applicant H. P. Matthews & Sons, c/o Ennis B. Matthews, Oakley, Idaho
 2. Source of water supply: Almo and Stynes Creek
 3. Location of point of diversion: Is in the SE 1/4, SW 1/4, Sec. 9; NW 1/4, Sec. 16;
NE 1/4, Sec. 17 of Section 7
T. 15 S., R. 2 E., E. 1/2 County of Cassia
 4. Describe works as they exist, giving dimensions and capacities of same: The diversion works
consist of concrete check dam and head gate combinations 2' to 12' wide
and 2' high, 2 openings in each, one side for creek channel
and the other to the irrigation ditch. These works are now
used in the regular irrigation system.

5. Water is used for ground storage, during winter months for winter irrigation
 6. State whether or not water has been turned into works of diversion yes.
 7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number
 of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other
 than irrigation):

SE 1/4, E 1/2, Sec. 8; SW 1/4, SW 1/4, S 1/2, Sec. 9; N 1/2, SW 1/4, SE 1/4, Sec. 16,
T. 15 S., R. 2 E., E. 1/2

(This water is spread over alluvium ground consisting of a shallow
top soil with coarse gravel and large stones underneath, through
existing ditches, very permeable.)

Mr. Matthews stated he would not divert any of Stynes or Almo Cr.
 until January 1st.

8. What is the estimated flow in the Stynes Creek at the point of diversion? 0.7 cfs.
 Remarks: Flowing through Matthews ditch up from seepage and springs
below Taylor's diversion, making a total of 0.7 cfs. for Stynes Cr.

Taylor was cleaning and repairing his ditch at time of inspection.

The estimated flow in Almo Creek at Matthews upper diversion is 1.2 cfs.
the flow is estimated to be 1.2 cfs. for Almo Cr. The flow is estimated to be 1.2 cfs. for Almo Cr.
the flow is estimated to be 1.2 cfs. for Almo Cr. The flow is estimated to be 1.2 cfs. for Almo Cr.

The examination was made on 10/10/1917 by W. H. Taylor

DOCKET

5105

INDEX

43-A-1

RECEIVED

JUL 7 1970

Department of Water Administration

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

ALMO WATER COMPANY, an Idaho
corporation, et al,

Plaintiffs,

vs.

IVAN DARRINGTON, Watermaster of
Water District 8-E, et al,

Defendants.

Civil No. 8968

D E C R E E

WHEREAS, On the 8th day of July, 1969, the plaintiffs, Almo Water Company, et al, duly filed their complaint in equity in the above-entitled Court, which cause was entitled Almo Water Company, an Idaho corporation, William W. Bruesch and Virginia Bruesch, husband and wife, Zenith Taylor and Colleen Taylor, husband and wife, Neil Durfee, a bachelor, Ivan Darrington and Barbara Darrington, husband and wife, and Arthur Taylor, plaintiffs, vs. Ivan Darrington, as WaterMaster of Water District 8-E, Owen Jones, Richard Jones and Norma Jones, husband and wife, Louis Eames, R. Keith Higginson, State Reclamation Engineer, Glen Jones and Doris Jones, husband and wife, Arley Cahoon and Edna Cahoon, husband and wife, defendants, and

WHEREAS, Thereafter due and regular service of the summons was made upon all parties mentioned in said complaint by personal service thereon as shown by the records and file in said action, and

WHEREAS, The above entitled cause came on for hearing before the Honorable Sherman J. Bellwood, Judge of the above-entitled District Court, sitting at Burley, Cassia County, Idaho, within said district, the plaintiffs being represented by A. H. Neilson, John Coleman, and Robert C. Paine and the defendants being represented by Lawrence H. Duffin, except that defendant R. Keith Higginson, was represented by William D. Collins, Assistant Attorney General, who did not appear at said trial. The evidence in said cause was duly submitted and a transcript of the oral evidence was taken and the exhibits offered by the various parties were duly transmitted to the Court

AB-1006

1 for consideration, and the Court having taken said cause, under advisement,
2 and being fully advised in the premises, did on the 18th day of March, 1970,
3 file its decision in writing directing the entry of a decree in accordance with
4 the views expressed therein.

5 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:
6

7 I.

8 0010 William W. and Virginia Bruesch, husband and wife, are the owners
9 of all of the waters of Sythe Creek for the irrigation of the following described
10 lands in Cassia County, Idaho: → AKA GRAHAM CREEK (SCC 7/5/69)

11 S 1/2 - NE 1/4, NW 1/4 - NE 1/4, NW 1/4 - NW 1/4 of
12 Section 20; E 1/2 - NW 1/4, W 1/2 - NE 1/4, SE 1/4,
13 NE 1/4, and N 1/2 - SE 1/4 of Section 20; N 1/2 - SW 1/4,
14 NW 1/4 - SE 1/4 of Section 21; all in Township 15 South,
15 Range 24, E., B.M.

16 II.

17 William W. and Virginia Bruesch, husband and wife, Zenith and
18 Colleen Taylor, husband and wife, Arthur Taylor, Ivan and Barbara
19 Darrington, husband and wife, and Neil Durfee are the owners of all of the
20 waters of Stine Creek for the irrigation of the following described lands in
21 Cassia County, Idaho:

22 0011 William W. & Virginia Bruesch: NW 1/4 - NE 1/4, S 1/2 - NE 1/4, N 1/2 - SE 1/4,
23 and SE 1/4 - SE 1/4 of Section 18, all in Township 15 South, Range 24 E.B. M.

24 0012 Zenith & Colleen Taylor: NW 1/4 - SE 1/4, SE 1/4 - SE 1/4 of Section 17; N 1/2 -
25 NE 1/4 of Section 21; N 1/2 - NW 1/4 of Section 21; NE 1/4 - NE 1/4 of Section 20;
26 all in Township 15 South, Range 24 E.B. M.

27 0013 Arthur Taylor; Ivan & Barbara Darrington: W 1/2 - W 1/2 and NE 1/4 - SW 1/4 of
28 Section 17, all in Township 15 South, Range 24 E.B. M.

29 0014 Neil Durfee: S 1/2 - NE 1/4 of Section 21, Township 15 South, Range 24 E.B. M.

30 III.

31 The waters of Stine and Sythe Creeks are not tributary to Almo
32 Creek or any other stream and the defendant watermaster of Water District
33 8-E, and the defendant State Reclamation Engineer, are to be enjoined from
34 interfering with the flow of Sythe and Stine Creeks and from measuring the
35 same.

See Main Source

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IV.

Defendant Louis Eames is the owner of 1.6 cubic feet per second (80 inches) of the waters of Almo Creek, to be diverted from North Almo Creek, for the irrigation of the SW 1/4 of the NW 1/4 of Section 13; SW 1/4 NE 1/4, SE 1/4 NE 1/4, SE 1/4 NW 1/4, of Section 14 all in Township 15 South, Range 24 East, Boise Meridian, in Cassia County, Idaho, with the right to have the same supplemented to the extent of 1.6 cubic feet per second (80 inches) to be diverted from Edwards Creek for the same lands, this right being supplementary and not additional. Priority date is March 17, 1879.

V.

The water master of District 8-E shall fill said Louis Eames water right from the North Fork of Almo Creek through his diversion therefrom, subject, however, to any water-exchange agreements made between the said Louis Eames and others.

Dated this 29th day of April, 1970.

Sherman B. Bell
Judge, District Court.

51021

State of Idaho, County of Cassia, ss.
I hereby certify that this instrument was filed for record at request of *Frank B. Jensen* at *3.00* minutes past *4* o'clock P.M. this *25* day of *May* A.D. 1970 in my office and duly recorded on Film No. *65* as Inst. No. *51021*
Fee *3.00* *Frank B. Jensen*
Ex-Officio Recorder
Archie Black
Deputy

(Return to file)

9 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR
CASSIA COUNTY.

ALMO WATER COMPANY, an Idaho
corporation, et al.,

Plaintiffs,

vs.

IVAN DARRINGTON, Water Master of
Water District 8-E, et al.,
Defendants.

CIVIL NO. 8968

DECISION

This matter came on for trial before the court without a jury on March 3rd, 1970. The trial concluded the following day. Plaintiffs were represented by A. H. Nielson, John Coleman, and Robert C. Paine. Defendants were represented by Lawrence H. Duffin, except that defendant R. Keith Higginson, who did not appear at trial, was represented by William D. Collins, assistant attorney general, who did not appear at trial. If counsel desire, the following may be treated as findings of fact and conclusions of law.

In Cassia County, Idaho, Almo Creek runs south-southeast, Edwards Creek runs south-southeast, Stines Creek runs east-southeast, and Sythe (Scythe) Creek runs east-southeast, all in Township 15 South, Range 24 East, Boise Meridian, and elsewhere. Edwards Creek lies east of Almo Creek. Stines and Sythe Creeks lie west of Almo Creek. In 1879, at a point near the center of the north boundary of Section 9, Almo Creek was caused to divide by a man-made channel which runs between Almo Creek and Edwards Creek. This man-made channel is variously referred to as "North Almo," "North Fork of Almo," and the "Taylor ditch;" and what was the main Almo channel below this diversion is commonly referred to as "South Almo" and "South Fork of Almo."

Water rights on Almo Creek were first adjudicated in this court prior to February 29, 1892. [See Kirk et al. v. Bartholomew et al., 3 Idaho 367, 29 Pac. 40.]

Another adjudication was commenced May 20, 1922; it was entitled Albion-Idaho Land Company vs. Jobe Adams et al. in U.S. District Court at Boise, Idaho. A decree, commonly referred to as the "Jobe Adams

Decree," was signed on October 18, 1928, and filed October 23, 1928, as Decree No. 992. This decree was affirmed by the Circuit Court of Appeals of the Ninth Circuit on October 21, 1930 [39 F. 2d 37]. Motion to amend the decree was filed October 5, 1943, but it failed [58 F.Supp. 579]; however, this motion had nothing to do with any rights involved in the case at hand, and is included for historical reference purposes only.

The Jobe Adams decree adjudicated the following water right, among others: "Helen Edwards 1879 Mar. 17 1.6 s.f. To be diverted from North Almo Creek" for the irrigation of SW 1/4-NW 1/4 of Section 13, and SE 1/4-NW 1/4, S 1/2-NE 1/4 of Section 14, all in Township 15 South, Range 24 E., B.M. Also decreed was a supplemental (not additional) right to 1.6 s.f. from Edwards Creek for the same lands.

In 1935 the defendant, Louis Eames, became and now is the successor in interest of Helen Edwards.

The Jobe Adams decree adjudicated the following water right, among others: "William Jones Mary Ann Jones 1880 Apr. 1 7 s.f. To be diverted from Edwards Creek" for the irrigation of E1/2-SW 1/4, SW 1/4-SW 1/4 of Section 13; W 1/2-SE 1/4, W 1/2-NE 1/4, W 1/2 of Section 24; NE 1/4-NE 1/4, S 1/2-NE 1/4, SE 1/4-SE 1/4 of Section 23; all in Township 15 South, Range 24 E., B.M.

The defendants, Richard, Norma and Owen Jones are the successors in interest of William and Mary Ann Jones. They have additional water, 1880 priority, from North Almo Creek.

The defendants, Glen and Doris Jones, Arley and Edna Cahoon, have water rights in North Almo Creek which have a priority inferior to that of defendant Louis Eames. The plaintiff, Almo Water Company, an Idaho corporation, has numerous water rights, 1879 and subsequent, in Almo Creek and its tributaries, including the North Fork of Almo Creek.

The creeks heretofore mentioned now are, and for many years have been in Water District 8-E. Annually a watermaster is elected for District 8-E to perform those duties prescribed by statute, including the deliveries of water to users in accordance with their priorities and adjudicated rights.

North Almo (or North Fork or Taylor Ditch) is an artificial creek, constructed by man. At the division of the main Almo Creek a device has been constructed which will permit the watermaster to permit the main Almo to flow in its natural channel (South Almo), or the watermaster may divert the flow down the North Fork. This diversion may be accomplished at will, subject to availability of water. The North Fork will not transport water to the lands of Louis Eames without a diversion point on the North Fork. Defendant Eames has a ditch from the bank of the North Fork to his lands but it would require some reconstruction or "cleaning" for lack of use. Additionally a cut would be required in the bank and a device constructed to divert the water. If Defendant Eames took his water this way he would be unable to irrigate all the lands he presently irrigates.

Plaintiff, Almo Water Company, has constructed some ditches or "canals" for the purpose of utilizing the waters of the main Almo. One such canal takes off from the main Almo in Section 4 and runs southerly between sections 9 and 10, 16 and 15, and then cuts southeasterly across section 22. Somewhere in the southwest corner of section 10 this canal branches off easterly to Edwards Creek, above the Eames measuring device in Edwards Creek.

Water is turned in and out of the North Fork to satisfy certain of the rights of the defendants Jones, and when the water drops to the point where there is not sufficient to fill these rights, then the North Fork is closed, dry, to fill prior rights on the Almo Creek. When the North Fork is opened to the waters of Almo Creek, the following rights flow:

Ida Cahoon	60 inches	1880
Helen Edwards	80 inches	1879
Jesse Jones	60 inches	1880
William Jones	<u>350 inches</u>	1880.
	550 inches	

During this time there also is sufficient water in Edwards Creek to satisfy the Helen Edwards right of 80 inches, 1879 priority, and Louis Eames draws his water from Edwards Creek.

Since 1935 when Louis Eames succeeded to the Helen Edwards right,

defendant Eames has received his 80 inches of 1879 water from the Jones' 7 s.f. (350 inches) of 1880 Edwards Creek water, and Jones' have received Eames' 80 inches of 1879 Almo Creek water as demonstrated in the preceding paragraph. [There was an exception in 1969 when the 80 inches of Eames' 1879 water was diverted to the canal above mentioned and transported to Edwards Creek and there delivered to the Eames property. The watermaster operated in this manner on orders from the State Reclamation Engineer, a defendant in this action.] Richard Jones and Louis Eames, since 1935, have understood and agreed upon the exchange above referred to. During all that time Eames has actually taken his water from Edwards Creek, by exchange with Jones, except for 1969 when the water was brought to Edwards Creek by the Almo Water Company canal.

Edwards Creek is not connected to Almo Creek except by the company canal above referred to which flows from Almo Creek into Edwards Creek.

Defendant Louis Eames owns 1-1/2 shares in Almo Water Company and by virtue thereof is entitled to and uses some company water.

Water District 8-E has been in existence since prior to 1940 and has had a watermaster every year. The watermaster controls the diversions and deliveries of waters from Almo Creek (including North and South Forks) and Edwards Creek. When Almo Creek falls below 200 inches the watermaster ceases to function and the users rotate the use of the stream. When Edwards Creek falls below 80 inches the watermaster diverts available water from Almo Creek into Edwards Creek to bring it up to 80 inches.

The waters of Almo Creek, Edwards Creek, Stine and Sythe Creeks are necessary for the irrigation of hay grasses and pasture, and for the watering of livestock.

RE: Stine & Sythe Creeks

For more than 60 years William W. Bruesch and Virginia Bruesch, husband and wife, and their predecessors in interest, have used all of the waters of Sythe Creek for the irrigation of the following described lands in Cassia County, Idaho: S 1/2-NE 1/4, NW 1/4-NE 1/4, NW 1/4-NW 1/4 of Section 20; E 1/2-NW 1/4, W 1/2-NE 1/4, SE 1/4, NE 1/4, and N 1/2-SE 1/4 of Section 20; N 1/2-SW 1/4, NW 1/4-SE 1/4 of Section 21; all in Township

15 South, Range 24, E., B. M.

The Jobe Adams decree inferentially, if not specifically, adjudicates Sythe Creek to be a tributary of Almo Creek. The fact of the matter is that Sythe Creek never reaches Almo Creek; it is used up, and has been for said period of years. The users of Sythe Creek have used the same openly, notoriously and by claim of right, and still do. The Jobe Adams decree also adjudicated, on Sythe Creek, the following water right: "Geo. D. Graham, Apr. 30, 1881, 1.5 s.f." as a part of the water rights of the Almo Water Company. The Almo Water Company never has asserted any claim to any of the waters of Sythe Creek. The Watermaster of District U-E has never exercised any control, nor attempted to exercise any control, over the waters of Sythe Creek. The waters of Sythe Creek have never been measured nor included within the computations of water rights of Almo Water Company or any other user.

For more than 60 years William W. Bruesch and Virginia Bruesch, husband and wife, and their predecessors in interest, Zennith Taylor and Colleen Taylor, husband and wife, and their predecessors in interest, Arthur Taylor, Ivan Darrington and Barbara Darrington, husband and wife, and their predecessors in interest, and Neil Durfee and his predecessors in interest, have used all of the waters of Stine Creek for the irrigation of the following described lands in Cassia County, Idaho:

William W. , Virginia Bruesch: NW 1/4-NE 1/4, S 1/2-NE 1/4, N 1/2-SE 1/4, and SE 1/4-SE 1/4 of Section 18, all in Township 15 South, Range 24 E.B.M.

Zennith & Colleen Taylor: NW 1/4-SE 1/4, SE 1/4-SE 1/4 of Section 17; N 1/2-NE 1/4 of Section 21; N 1/2-NW 1/4 of Section 21; NE 1/4-NE 1/4 of Section 20; all in Township 15 South, Range 24 E.B.M.

Arthur Taylor; Ivan & Barbara Darrington: W 1/2-W 1/2 and NE 1/4-SW 1/4 of Section 17, all in Township 15 South, Range 24 E.B.M.

Neil Durfee: S 1/2-NE 1/4 of Section 21, Township 15 South, Range 24 E.B.M.

The Jobe Adams decree inferentially, if not specifically, adjudicates Stine Creek to be a tributary of Almo Creek. The fact of the matter is that Stine Creek never reaches Almo Creek; it is used up, and has been for said period of years. The users of Stine Creek have used the same

openly, notoriously and by claim of right, and still do. No other user in the Almo Creek system has ever asserted any claim to any of the waters of Stine Creek. The Watermaster of District 8-E has never exercised any control, nor attempted to exercise any control, over the waters of Stine Creek. The waters of Stine Creek have never been measured nor included within the computations of water rights in the Almo Creek system.

The above named users of all of the waters of Stine Creek have their own methods of diversion and distribution which is not apparent to the Court.

The users of Stine and Sythe Creeks many years ago were issued diluted shares in the Almo Water Company. The users of Stine and Sythe Creeks have never participated in the business of Almo Water Company, and have never been assessed for any purposes of the Almo Water Company, except that they have financially participated in some of the litigation in which the Almo Water Company has been involved. Nor do the users of Stine and Sythe Creeks participate in the election of watermasters for District 8-E or the payments for his services. There is no evidence that the predecessor-users of Stine and Sythe Creeks were parties to the litigation which produced the Jobe Adams decree, with the exception of Geo. D. Graham, heretofore mentioned.

CONCLUSIONS

1. Louis Eames is the owner of 1.6 cubic feet per second (80 inches) of the waters of Almo Creek, to be diverted from North Almo Creek, for the irrigation of SW 1/4-NW 1/4 of Section 13; SW 1/4-NE 1/4, SE 1/4-NE 1/4, SE 1/4-NW 1/4, of Section 14; all in Township 15 South, Range 24 E., B.M., in Cassia County, Idaho, with the right to have the same supplemented to the extent of 1.6 cubic feet per second (80 inches) to be diverted from Edwards Creek for the same lands, this right being supplementary and not additional. Priority date is March 17, 1879.

2. The Watermaster of District 8-E should deliver Louis Eames' water through a North Almo Creek diversion facility furnished by Louis Eames, subject, however, to any water-exchange agreements made by the said Louis Eames and others.

3. William W. and Virginia Bruesch, husband and wife, are the owners of all the waters of Sythe Creek for the irrigation of the lands described at the bottom of page 4 and top of page 5 hereof, in Cassia County, Idaho.

4. William W. and Virginia Bruesch, husband and wife, Zennith and Colleen Taylor, husband and wife, Arthur Taylor, Ivan and Barbara Darrington, husband and wife, and Neil Durfee are the owners of all of the waters of Stine Creek for the irrigation of their respective lands described on page 5 hereof, in Cassia County, Idaho.

5. The defendant Watermaster of Water District 8-E, and the defendant State Reclamation Engineer, are to be enjoined from interfering with the flow of Sythe and Stine Creeks and from measuring the same.

6. Judgment and Decree, prepared and submitted by plaintiffs' counsel, should enter accordingly.

Dated March 18th, 1970.

Shannon H. Robinson
Judge, District Court.

cc: A. H. Nielson
John Coleman

Lawrence H. Duffin
William D. Collins

Field Exam Notes

Field Exam Date: 08-26-1999

Claim No: A43-10013

Agent: Vikie Hancock

Claimant Bruce Durfee accompanied me on the Field Exam.

This claim is for a diversion of 1 cfs from Stines Creek. It is based upon Beneficial Use. All the water from Stines Creek is diverted upstream in Section 7, T15S, R24E, by users with earlier priority dates. At the location of the claimant's diversion in Section 16 however, there is again water in the Stines Creek channel in the early spring, and this is the only time that it is available for the claimant's use. Mr. Durfee agreed with my speculation that the water that shows up in the Stines Creek channel is partly the result of runoff from the pastures to the west, and partly the result of additional runoff from the hillside to the north of the channel downstream of the upper diversion. Claimant also captures the runoff from the pastures to the west of him in section 17 and uses that to irrigate his 80 acres..

The diversion works consist of a permanent dam across the Stines Creek channel that diverts any water in the channel to a ditch that runs south roughly along the line separating the W ½ and E ½ of section 16. This ditch lies to the west of the claimant's western fence line, and captures and conveys any runoff water as well as Stines water. The water is then flooded east onto the place of use by means of rock and earth check dams. Claimant states that any water that runs off the place of use ends up in the Hof ditch and thus into the Almo Water Co. system and eventually Almo Creek. The Hof Ditch lies east of the claimant's property, and is part of the AWC conveyance works.

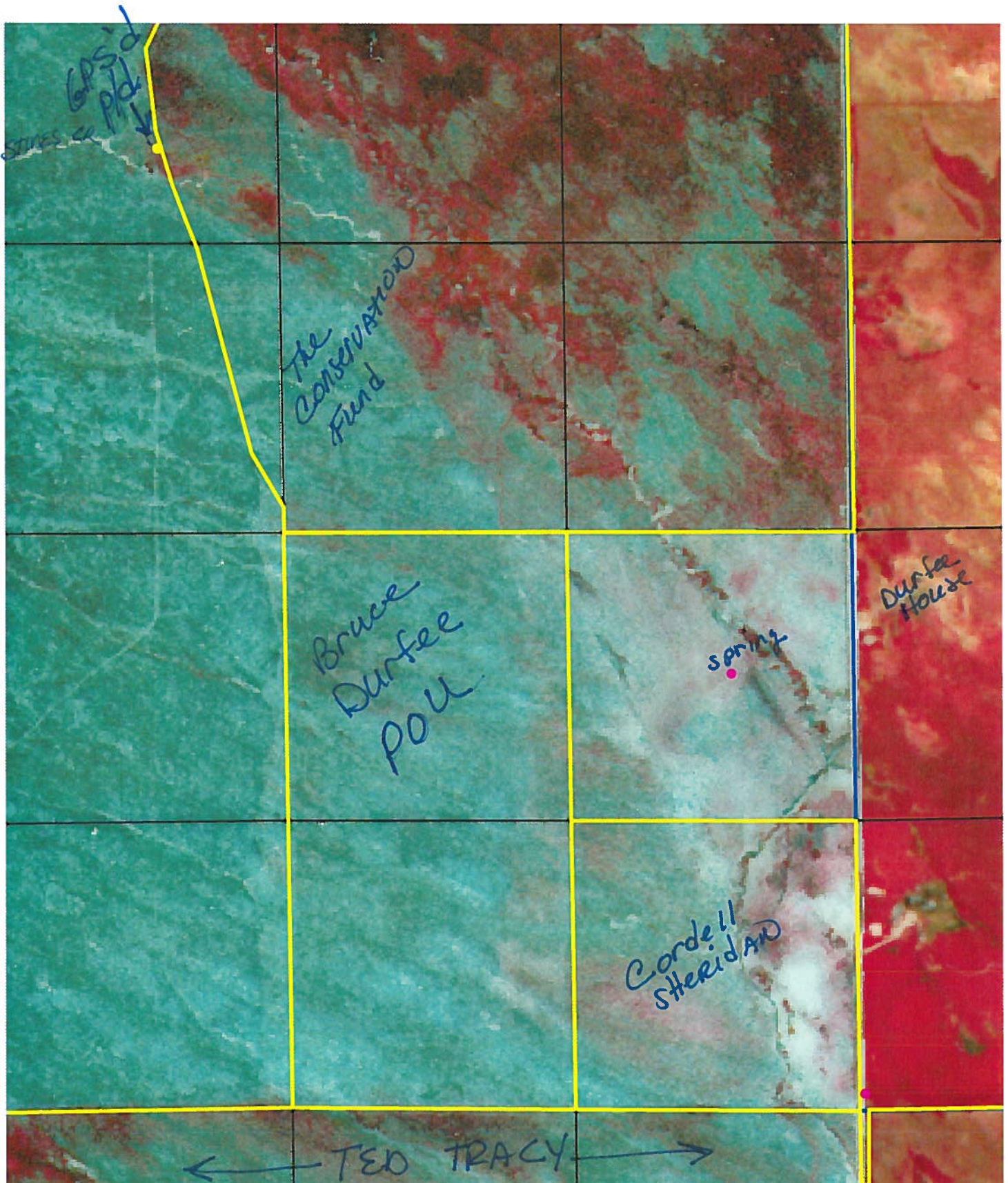
The place of use is used for cattle pasture, and looks marginally irrigated. As claimant explained, he uses whatever water he can capture when it's available to water the pasture in the spring to increase soil moisture and grow more forage for his cattle.

Users upstream on Stines Creek believe that Bruce Durfee should not have filed a right to Stines Creek, but that his right should more accurately be called a wastewater right. Based upon my siting of an actual diversion on the Stines Creek Channel and the conveyance ditch to the claimed POU, I believe that ~~his~~ *a* claim on Stines Creek is correct.

FIELD NOTES

Claim No(s): 43-10013

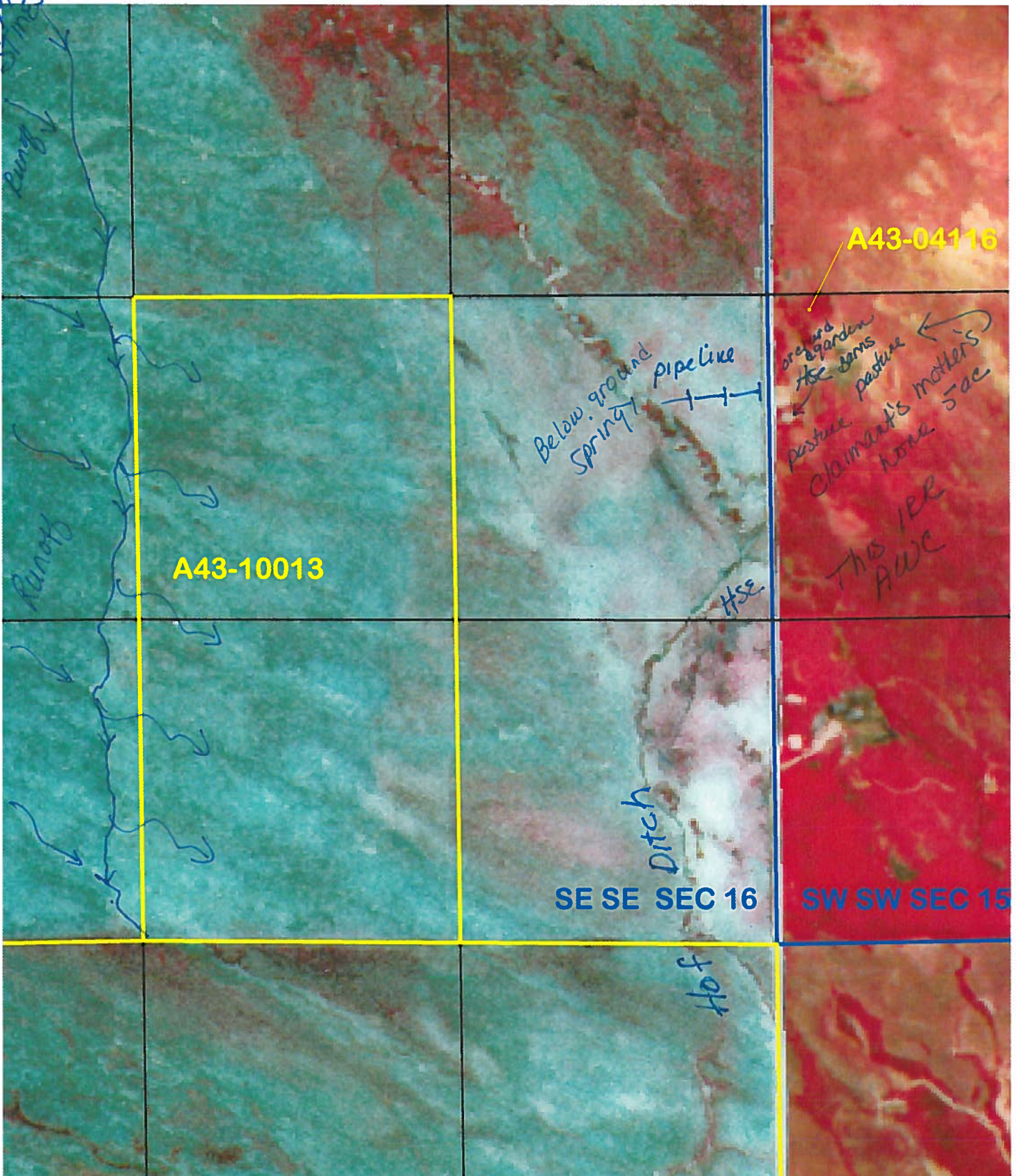
TWP 15S, RNG 24E,
Section 16



FIELD NOTES

CLAIM NO(S): ^{STINES} A43-10013, ^{SPRING} A43-04116

TWP 15S, RNG 24E
SEC 15, 16



V HANCOCK

Date: 8-26-99

1987/1988 NAPP PHOTOGRAPHY

FIELD EXAM NOTES AND PHOTO LOG

Claim Nos: A43-10013 Stines Cr. Date 8-26 1999

Claimant / Area of Concern: Bruce Durkee Page 1 of 1

Roll	Pic #	Description
22	5	Looking South - Ditch across West side of 80 ac, west of fence line ~~and~~
	6	Looking down Stines channel. Diversion straight ahead. Natural channel to ~~Right~~ Lt around bend, but dammed off.
	7	
	8	
	9	Pld again
	10	Place of use from NW corner of 80 ac
	11	
	12	

Audio tape # _____

Notes: Claimant says only gets water from Stines in early spring. Ditch from Stines crosses Conservation Fund property. Says neither he or his father ever had trouble with the Ranch's ~~water~~ landowners until Harman owned property. He refused to let claimant on property to maintain ditch & threatened ~~to~~ to destroy diversion at Stines but never did. & Water from Stines channel mixes with runoff from pastures ~~near~~ west of property as it intersects with claimant's ditch so claimant also utilizes runoff in spring of year. No water was in Stines channel or diversion ditch at time of F. Exam. No measurements taken.

(Vicki Harman)

Roll 22
pic 8



↑ Dam at Stines Creek that diverts all the water in the channel to claimant's pou
SE DE NW GPS File S082621A

Roll 22
pic 6

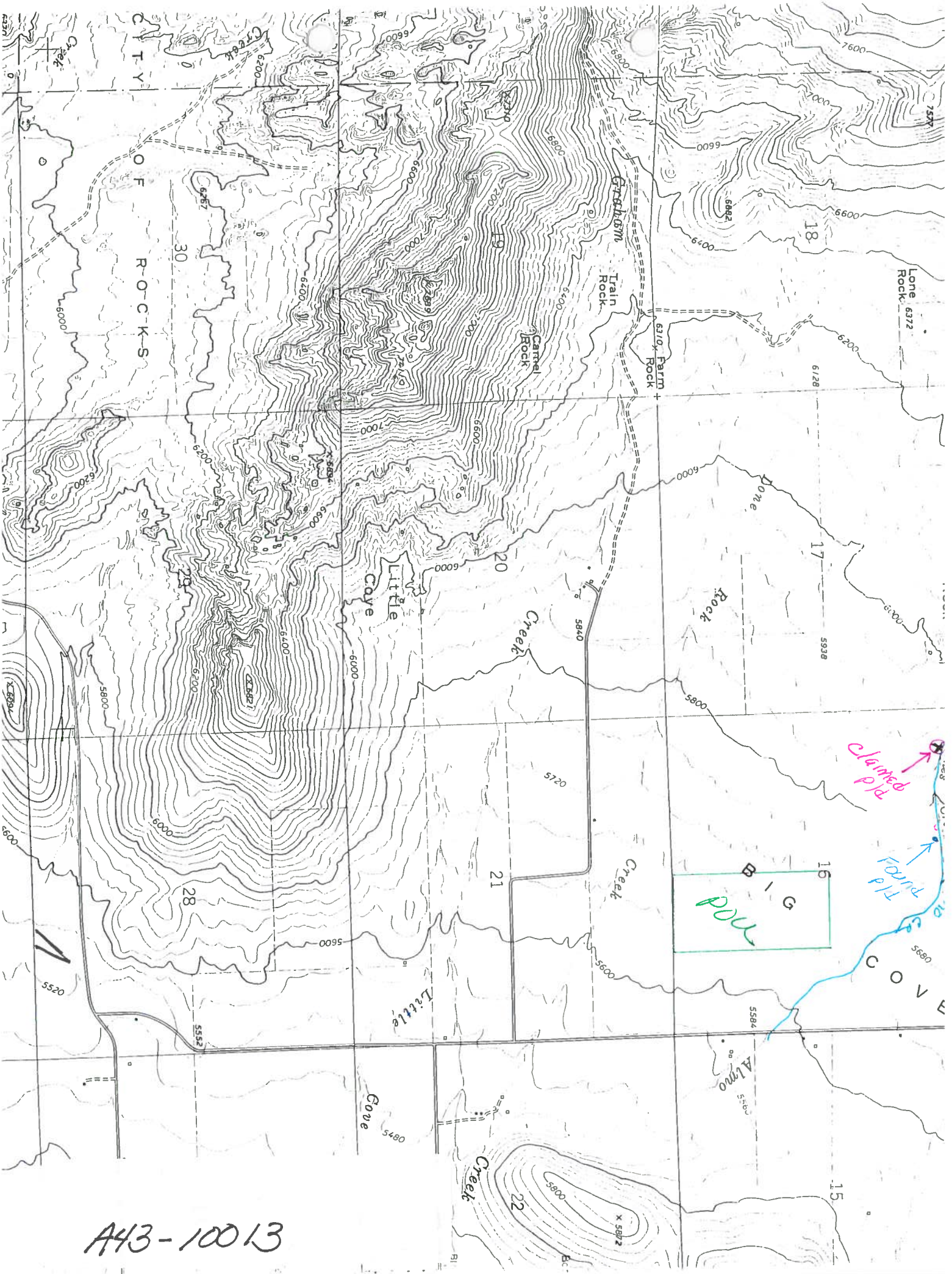


Ditch which runs along west side of Claimant's 80 ac pou.

A43-10013



Place of use



A43-10013

CONVERSATION MEMO

Date:

8-23-99

Regarding:

Bruce Durfee

Customer:

Stines Cr & Spring

From: Vikie Hancock

AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA

Arranged by phone to meet him at
his home 10 am Thursday Aug 26th.
Directions: Turn left 1.8 miles south
of Alma (2nd left). 1st place
approx 2 miles. White Brick house.
Dairy across hollow. Back from Road.
Stackyard.

We will look at his Stines Cr claim
& the spring north of Cordell Sheridan.

Also will discuss the Past River Claims.
to begin to straiten them out.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. STEED HEARING

A43-10013

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Frank Hitchcock

September 8, 1997 1:34pm

NAME:
OLEN WARD-UPPER RAFT RIVER

RE:
RECORDS FOR USAGES RELATED
STEED/REEDSPRINGS-HEARING.

WALK-IN AT 9:20-CW-WANTED ALL USAGES "LICENSES" FOR **BRUCE DUFEE**,
KENT DUFEE, BRENT JONES AND BILL JONES.

DISCUSSED HIS PROTEST RE: STEED USAGES AND FLOWS FROM THE STEED
ACRES.

REVIEWED BASIN 43 SEL/ALPHA CLAIMS RECORDS FOR UPPER RAFT RIVER
CLAIMS ASSIGNED TO FH AND DID AN AJS58 QUERY FOR THE CLAIMS OF THE
NOTED PEOPLE. COLLATED BY NUMBER AND PUT COPIES OF THE NAME LISTS
USED WITH EACH SET.

WARD CALLED BACK AT 11:42 TO CONFIRM THE JONES CLAIMS BEING PULLED.
HE STOPPED IN SHORTLY AFTER NOON TO PICK UP THE PROOFS LEFT FOR HIM
AT THE FRONT DESK.