

07/07/2009

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

RIGHT NUMBER: 73-4099

NAME AND ADDRESS: KENNY MADSEN
PO BOX 25
ELLIS ID 83235

GARY MADSEN
48 OUTFITTER LN
MAY ID 83253

SOURCE: MEADOW CREEK

TRIBUTARY: PAHSIMEROI RIVER

QUANTITY: 1.630 CFS

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 04/01/1961

POINT OF DIVERSION:

T13N R21E S13 SENE Within CUSTER County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.030 CFS
IRRIGATION	04/01 10/31	1.600 CFS

PLACE OF USE: IRRIGATION in CUSTER County

T13N R22E S18 NENW 16.00 T13N R22E S18 Lot 1 NWNW 24.00

STOCKWATER same as IRRIGATION

40 ACRES TOTAL

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.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

July 1, 2009

GARY MADSEN
48 OUTFITTER LN
MAY ID 83253

RE: Preliminary Recommendation for Snake River Basin Adjudication (SRBA) claim 73-4099

Dear Mr. Madsen,

I received the results of Bob Foster's field exam and have put together a preliminary recommendation for your review. I wanted you to take a look and then if everything looks ok, let me know and we can officially route the appropriate paperwork with the new recommendation for signature.

There are a couple of things I want to explain about the recommendation:

I cannot remove Kenny Madsen from the claim without documentation showing that he has no interest in the property. Generally a copy of the death certificate or warranty deed showing you are sole owner of the property will be sufficient. If you can send me that documentation, I can remove Kenny Madsen from the claim.

The recommended point of diversion is located on BLM ground. The BLM located the point of diversion with a GPS in 2007. That point was very close to the line between the NENE and the SENE of section 13. In the end it did fall in the SENE of section 13 and that is how the location of the point of diversion is described.

The priority date recommended was based on the 1961 air photo you provided. The recommended priority date is the first day of the irrigation season in 1961.

Please take a look at the recommendation and let me know if you are in agreement with the recommendation or if you have any questions.

Craig L. Saxton
Water Right Supervisor
Adjudication Bureau
(208) 287-4916
craig.saxton@idwr.idaho.gov

Enclosure(s): Preliminary Recommendation 73-4099

Idaho Department of Water Resources



Adjudication Recommendation
73-4099
(IRRIGATION)

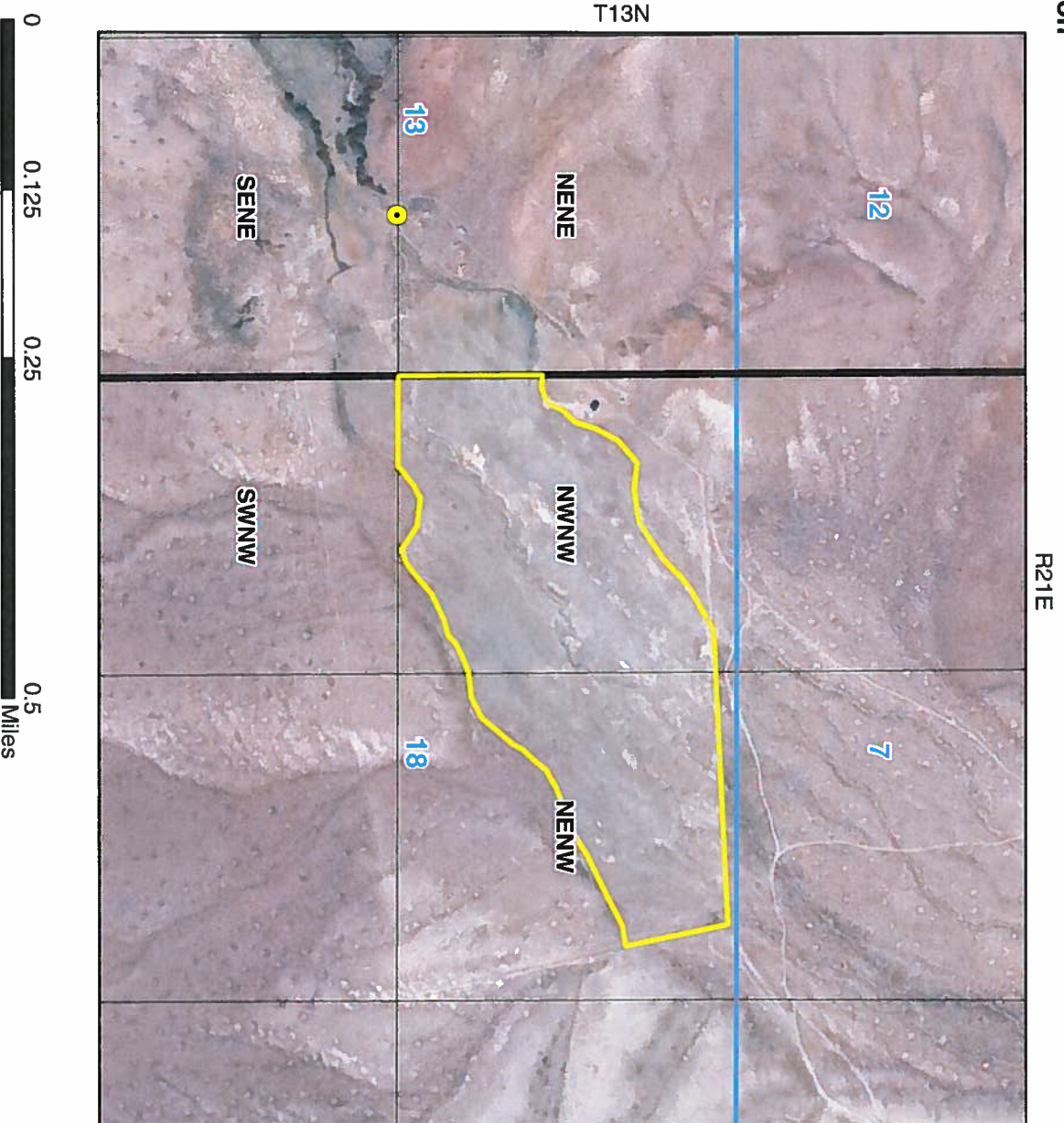
Legend

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



Custer County
IDWR Basin 73

Prepared by Craig Saxton
On July 07, 2009
2004 Aerial Photography





73-4099 measurement site North ditch 6/9/05 p

SESE
12

SWSW

SESW **7**

SWSE

NESE

13N21E

WNW

N Ditch

13N22E

NEIW

Reddy Creek

13

SWSE

SENE

SWNW

SEIW

SWSE

WNW

NESE

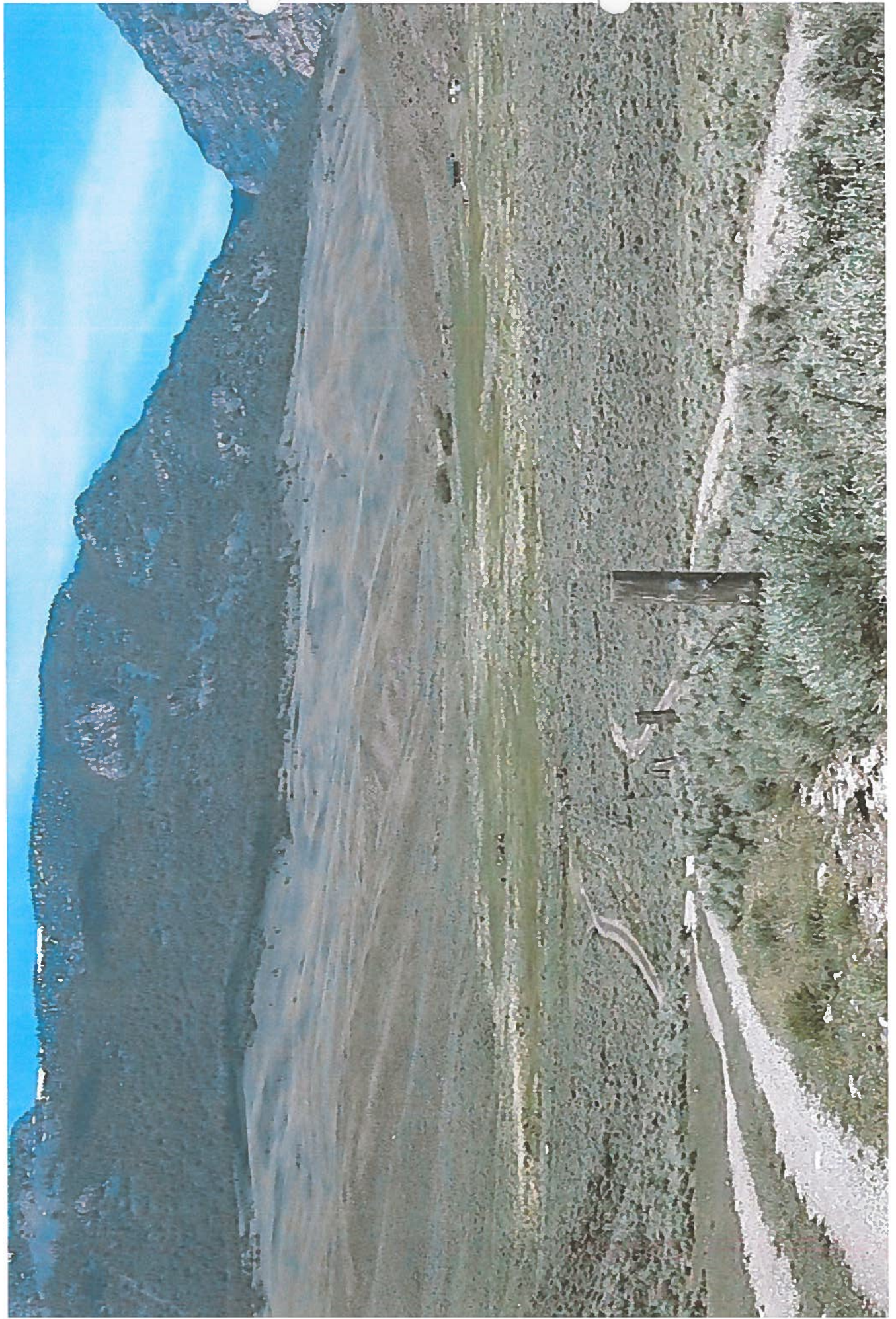
WNW

NEIW

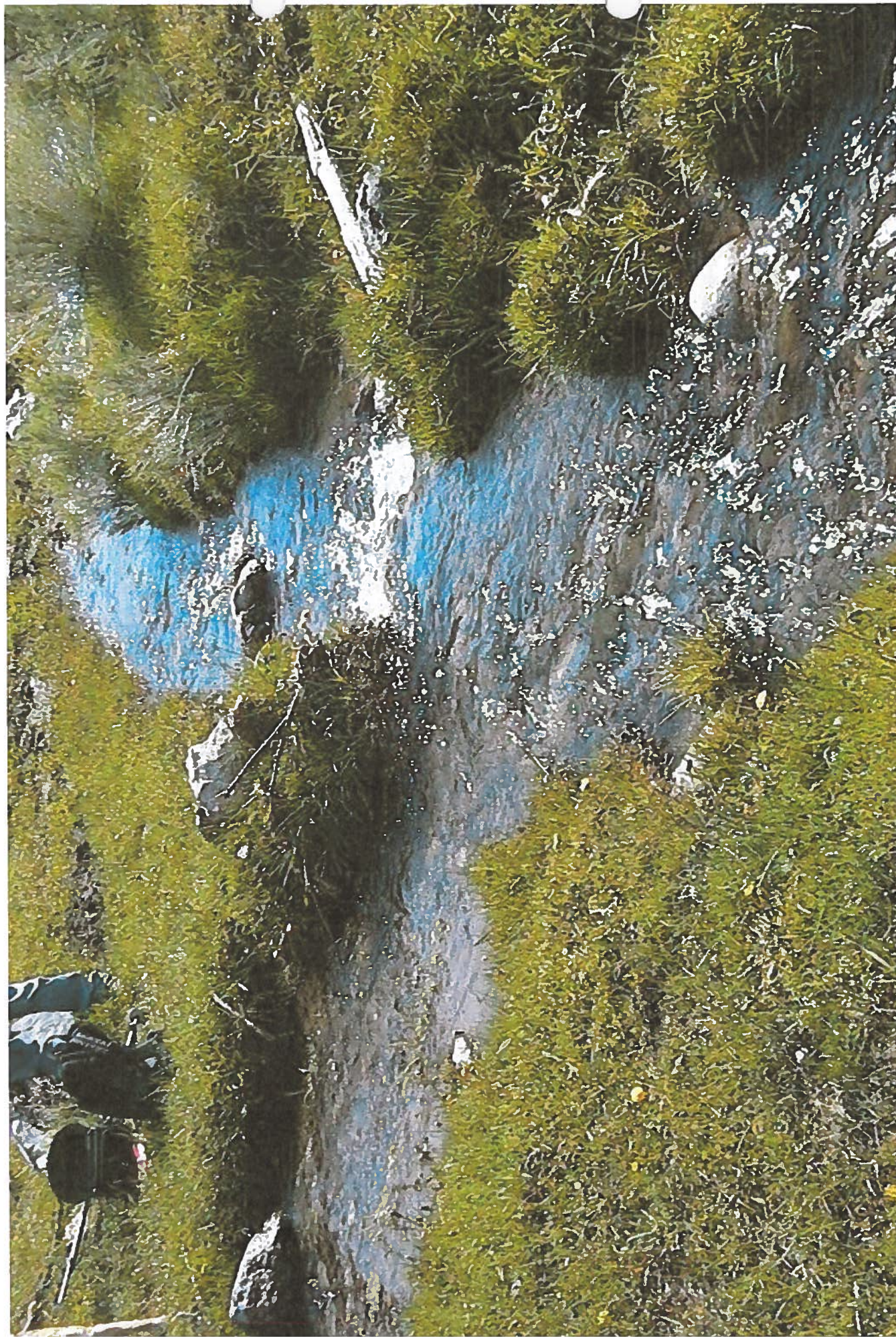
WNW

Top of Reddy Creek

5-2-2001

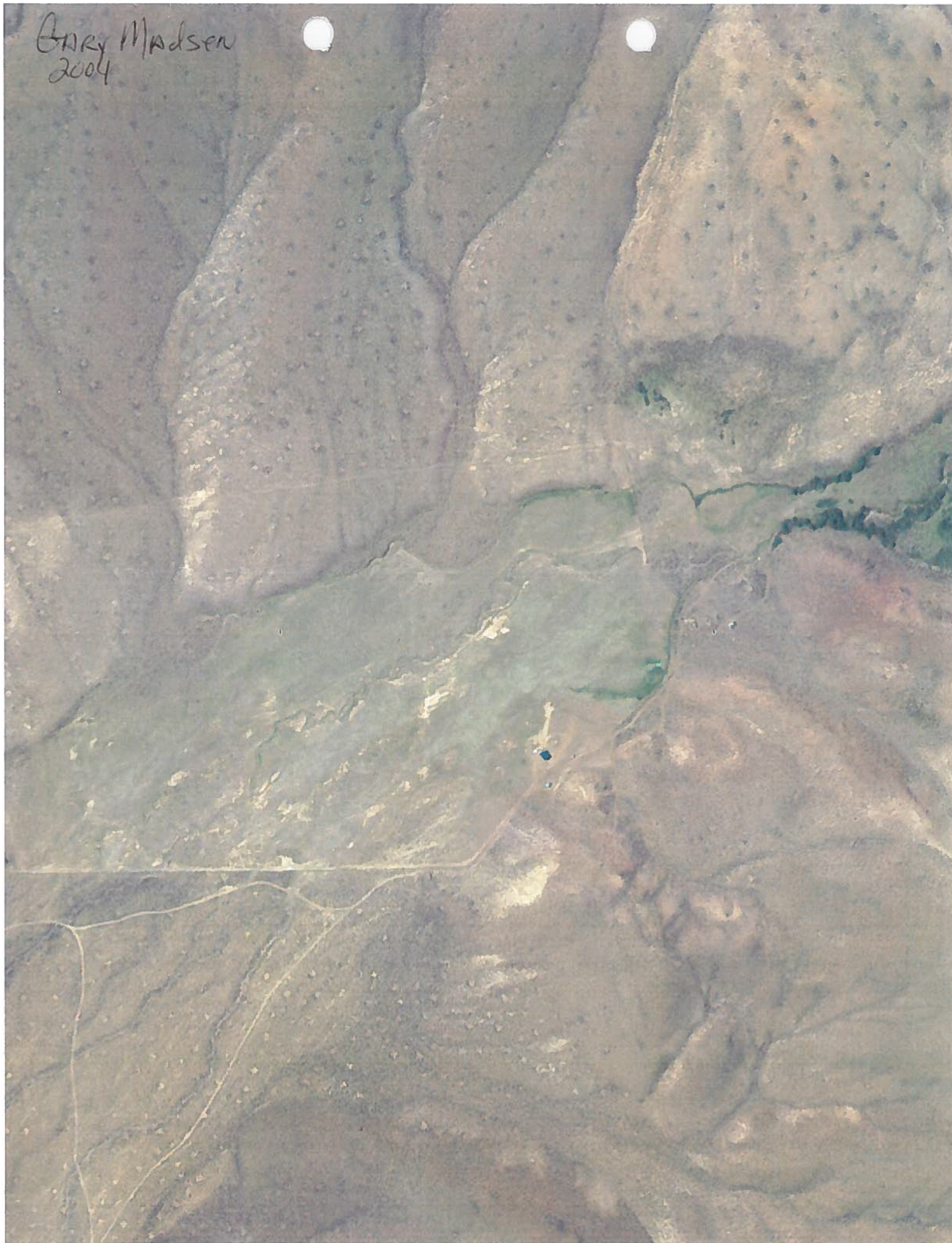


73-4099 POU taken Looking west 6/9/05



73-4099 P00 6/9/05

Gary Madsen
2004





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

March 11, 2009

GARY MADSEN
48 OUTFITTER LN
MAY ID 83253

RE: Objection to Snake River Basin Adjudication (SRBA) claim 73-4099
Request for Evidence of Priority

Dear Mr. Madsen,

I have been asked to review the claim file for 73-4099 and see what we can do to address the objection you filed to the disallowed recommendation for 73-4099. I see it has been 2 years since you filed your objection. It is my hope to work with you to gather what is needed to try to resolve your objection

From my review it looks like the agent recommending the claim at the time was missing some information. Specifically, she was missing evidence supporting the priority date claimed. Once evidence of priority is submitted, the department can work with you to set up a time where we can conduct a field exam and verify beneficial use of the water. My hope would be to conduct a field exam this summer.

Priority Date Discussion:

Your claim is based on beneficial use, rather than on a previous decree or license where elements of the water right have been previously determined. Because of this, in order to recommend your claim, IDWR needs to verify all elements of the claim including the priority date. You claimed a priority date of April 16, 1902 so you need to submit evidence supporting that the beneficial use of water commenced on, or as close to, 1902 as you can get.

On August 23, 2004, IDWR received a packet you sent in response to a letter requesting evidence of priority. Unfortunately, the information you submitted was not sufficient to support the claimed priority date (copy of packet enclosed). For your convenience I am enclosing a pamphlet that discusses priority date and what evidence that can be used to support your claimed priority date.

With that said, I see the original statutory claim filed by Dean Wheeler in 1984 (enclosed) states under Item 8:

*"This claim is based on county records to support my and my predecessors use.
Recorded in Book B of Water, Page 276. Pahsimeroi Precinct of Lemhi Co."*

I would suggest locating the information recorded in **Book B of Water, Page 276**, if possible.

Often times, affidavits from people with first hand knowledge describing the historic water use on your property can be used to support historic use even if it you can't go clear back to 1902. Historic air photos obtained from the FSA showing air photos or tax records showing the ground assessed as irrigated land can also be used as evidence of priority as well.

IDWR anticipates that the SRBA court will schedule initial hearing for the basin 73 objections to be held sometime in the fall of 2009. Since it has been two years since you filed your objection, I am reluctant to ask you to rush to get back to me with this information. But the reality is, if it interests you to try to resolve this before initial hearings, the sooner you can get me that information, the better. Please mail any information supporting your claim to my attention.

Please feel free to contact me at (208) 287-4916 if you have any questions.

Sincerely,



Craig L. Saxton
Water Right Supervisor
Adjudication Bureau

Enclosure(s): SRBA claim 73-4099
1984 Statutory claim 73-4099
Objection to 73-4099
Evidence of Priority information submitted to IDWR August 23, 2004
Evidence of Priority pamphlet

COMMUNICATION MEMORADUM

IDWR Employee: Danielle Favreau

Date: 2-5-07

Claim No(s): 73-4099

Contact: Anne Madsen? A friend/relative of Gary Madsen who is a real estate agent contacted IDWR via the 1-800 number. Later, Gary Madsen came to the phone.

Details:

I was forwarded a phone call from a representative of Gary Madsen regarding water right number 73-4099. The right as been disallowed in the SRBA due to no evidence of beneficial use. The representative wanted to know why the right was disallowed. I looked at the file both electronically and hard copy looking for a more complete explanation. The best that I could determine was that there was no evidence on the imagery that there was any irrigation. The representative insists that the area has been watered since further back than 1987 and could present pictures of the area. I answered that the next step was to file an objection. The paperwork for filing an objection was not included in the information the representative had so I insured her that I would mail a copy of the information to a provided address. Gary Madsen than entered and was put on the phone. He mentioned that he waters the area especially in the spring but due to an earthquake and drought, the creek is often dry. I explained that he would need to file an objection and that I was mailing the paperwork to him. I also said that I would bring the matter to the attention of a senior agent and if there was any more information, I would call.

Standard Form 1 with instructions was mailed to:

Gary Madsen
48 Outfitter Lane
May, ID 83253

10/11/2006

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

RIGHT NUMBER: 73-4099
NAME AND ADDRESS: KENNY MADSEN
PO BOX 25
ELLIS ID 83235

GARY MADSEN
PO BOX 25
ELLIS ID 83235

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

No beneficial use found.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

No beneficial use found: This is included for a claim based on beneficial use that is proposed to be disallowed because beneficial use of water was not confirmed by IDWRs field examination or by other evidence submitted by the claimant.



Idaho Department of Water Resources

SRBA Recommendation:

73-4099

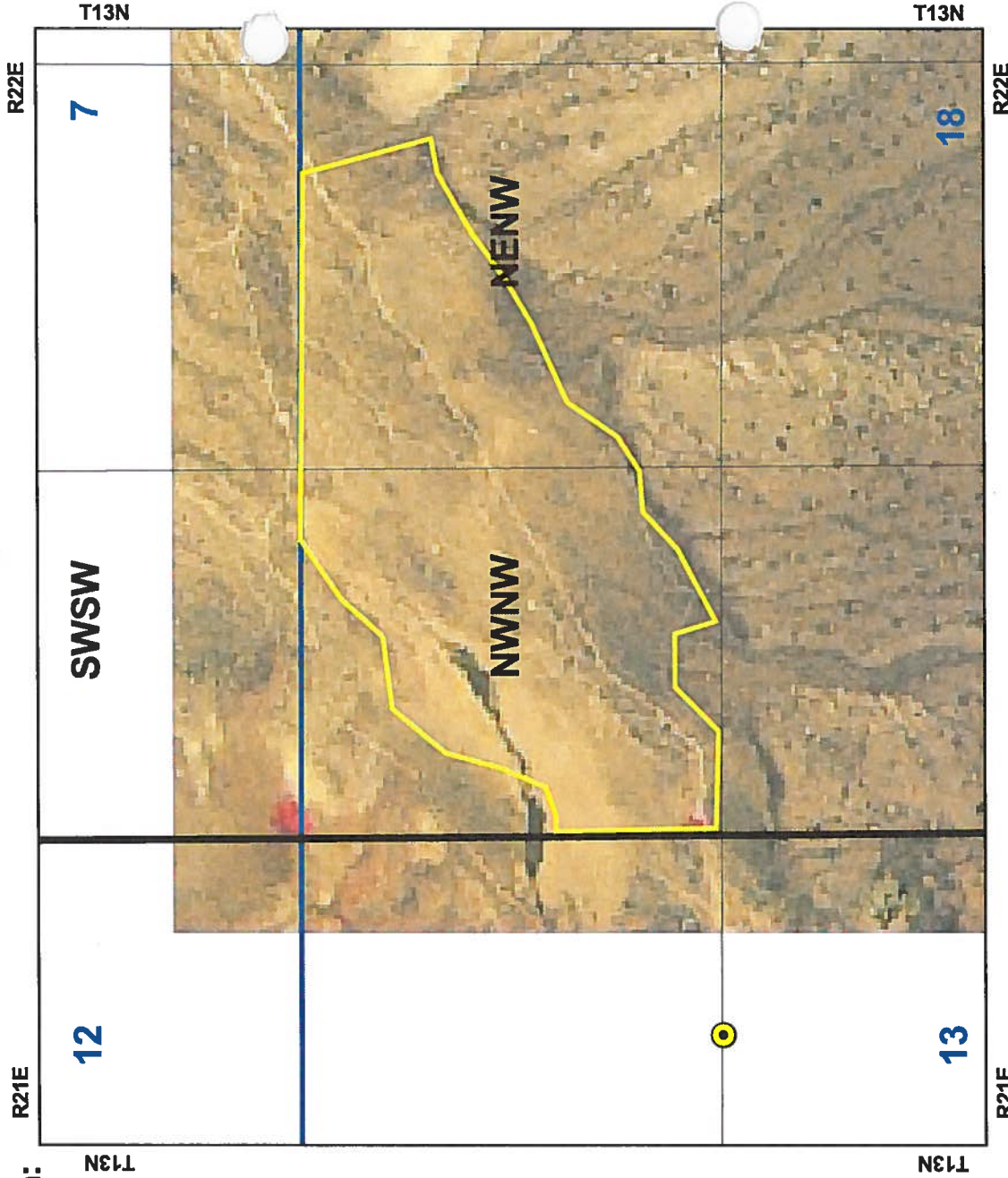
(Irrigation)

Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Custer County
IDWR Basin 73



0 0.2 0.4 Miles

Prepared by D. Favreau
On Wednesday, September 20, 2006
1987/88 Aerial Photography

**4-4 OUTFITTERS
GARY L. MADSEN**

P.O. BOX 25
ELLIS, IDAHO 83235

RECEIVED

AUG 23 2004

**DEPARTMENT OF
WATER RESOURCES**

August 18, 2004

Dear Roxanne Brown,

Please find enclosed information as you requested concerning water rights at Meadow Creek in the Pahsimeroi Valley.

Sincerely,

Gary Madsen



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

RECEIVED

AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

July 26, 2004

73-4099
GARY MADSEN
KENNY MADSEN
PO BOX 25
ELLIS ID 83235

RESPONSE DEADLINE
AUGUST 27, 2004

Re: Evidence of Priority Date

Dear Claimant:

The Notice of Claim to a Water Right (claim) identified with the number shown above your name has been filed in the Snake River Basin Adjudication (SRBA). The claim indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." Water rights of this type are established by the historic use of water, dating back to when water was first used for the purpose claimed. The date of first use, known as the priority date, has not been confirmed. **Proof must be provided by the claimant supporting the priority date claimed and the historic use of the water.**

Enclosed you will find a computer printout of your claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

PLEASE NOTE: If no evidence is submitted, IDWR will recommend the SRBA Court decree the claim be disallowed. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement should be in the form of a notarized affidavit.

Please submit the required evidence supporting the priority date and the historic use by the date shown above, referencing all documents with the corresponding claim number. Send the documents in the enclosed envelope to assure it arrives at the correct location. If you have questions not covered by this letter or the enclosed pamphlet, please contact this office. Our toll free number is 1-800-451-4129 and ask for me or Danni Smith.

If you no longer own the property to which the claim is appurtenant, please forward this correspondence to the present owner, or return it to Idaho Department of Water Resources (IDWR). If you have received this correspondence from the previous owner of the property, it is recommended that you file a Change of Ownership form with IDWR in order to receive future mailings and to participate in the adjudication.

Sincerely,

Roxanne Brown
Sr. Water Resource Agent

Enclosures

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 73-4099

RECEIVED

AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

WATER RIGHT NUMBER: 73-4099

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	KENNY MADSEN - <i>Deceased</i> PO BOX 25 ELLIS, ID 83235 (208)876-4487
Original Owner	DEAN WHEELER RT 7 BOX 389 BLACKFOOT, ID 83221
Current Owner	GARY MADSEN PO BOX 25 ELLIS, ID 83235 (208)876-4487
Original Owner	GERALDINE J WHEELER 767 W 100 N BLACKFOOT, ID 83221 (208)684-4929

*This is a
copy of the
claim.*

Priority Date: 04/16/1902
Basis: Statutory Claim
Status: Active

Source

MEADOW CREEK

Tributary

PAHSIMEROI RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	1/01 to 12/31	0.030 CFS	
IRRIGATION	4/01 to 10/15	2.000 CFS	
	<u>Total Diversion:</u>	2.030 CFS	

Location of Point(s) of Diversion

MEADOW CREEK
CUSTER County

SE1/4NE1/4NE1/4

Sec. 13, Twp 13N, Rge 21E, B.M.

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	22E	18					40.0	36.0											76.0
								L 1											

Total Acres: 76

STOCKWATER same as IRRIGATIONConditions of Approval:Remarks:



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

RECEIVED

AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township _____ Range _____
 Section _____, 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____, BM.
 Lot _____, Block _____, Subdivision/Townsite _____
 If you have additional legal descriptions, please attach separate sheet.

- ☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)
- ☐ Water Right Number(s) Assigned by IDWR: _____
- ☐ Name and Address of Former Owner/Claimant(s)(Seller): _____
- ☐ New Owner/Claimant (Purchaser): _____
- ☐ New Mailing Address: _____
- ☐ New Telephone Number: (____) _____ - _____
- ☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes no
 If yes, then describe the portion of the water right that is now owned/claimed by the new owner:
- _____
- _____
- _____

- ☐ Attach proof of ownership, describe proof attached: _____
(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

- ☐ Signature of New Owner/Claimant(s) _____ Date _____
- ☐ Signature of Former Owner/Claimant(s) _____ Date _____

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:

Initial Review and Data-Entry
 Date: _____ By: _____
 Further Action Needed:

Further Action Taken
 Date: _____ By: _____

Final Review and Data-Entry
 Date: _____ By: _____
 Claim Numbers of Split, if any:

Original to be mailed to Idaho Department of Water Resources
 Copies to Former Owner and New Owner



Robie Real Estate

Residential • Agricultural • Recreational • Commercial
Highway 93 & Main Street • P.O. Box 730
Challis, Idaho 83226
208-879-2211 or 208-879-2270

RECEIVED

AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

Sande K. Hill
Brent Hill

4/5/90

5257161

Legal description for Wheeler Ranch
Lemhi County
T14N R22EBM

Sec 15 S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ less 1 ac S $\frac{1}{2}$ of NW $\frac{1}{4}$ 119ac

Sec 16 S $\frac{1}{2}$ NE $\frac{1}{4}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ 320 ac

Sec 16 NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40 ac

Sec 21 NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40 ac

519 acres in Lemhi County

Custer County

Government Lot 1 NE $\frac{1}{4}$ of NW $\frac{1}{4}$ Sec 18 T13N R22E 76.52 ac

Correct

Erin Robie, Broker - 208-756-4159
Linda Robie, Branch Manager

MLS

RECEIVED
AUG 23 2004

DEPARTMENT OF
WATER RESOURCES

AJ0749NP
No. A73-04099

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

DATE: 01/30/98
PAGE: 1

OWNER CODE NAME & ADDRESS PRIORITY DATE WATER USE USE PERIOD FROM TO DIVERSION RATE DIVERSION VOLUME
C GARY MADSEN 04/16/1902 IRRIGATION 04-01 10-15 2.00 CFS
C KENNY MADSEN STOCKWATER 01-01 12-31 0.03 CFS
BOX 25
ELLIS ID 83235
(208) 876-4487
TOTAL DIVERSION:
CONSUMPTIVE USE: 2.03 CFS 190.00 AFA

Water Source: MEADOW CREEK Tributary to: PAHSINEROI RIVER Stage: STATUTORY CLAIM
Point(s) of Diversion: T13N R21E S13 SENENE CUSTER County

Place of Use Legal Description for: IRRIGATION
NE NW SE
NENE NWNE SWNE SENE : NENE NWNW SWNW SENW : NENE NWSE SWSE :
T R S : Lt Ac Lt Ac Lt Ac : Lt Ac Lt Ac Lt Ac : Lt Ac Lt Ac Lt Ac : SUM
13N 22E 18 : : 40 01-36 : : : : : : :
TOTAL ACRES : 76.0

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

POU County: CUSTER

Non-Irrigation Uses: S/240 CATTLE

Other Rights: NONE

Dates: Exam Made Date:

Verified Date:

Objection Filed Date:

Misc: Water District Number:

Field Inspection Flag:
Presumption Flag:

7-1



State of Idaho
DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - FAX: (208) 525-7177

EASTERN REGION

RECEIVED

AUG 23 2004

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

DEPARTMENT OF
WATER RESOURCES

FEBRUARY 23, 1994

GARY AND KENNY MADSEN
BOX 25
ELLIS ID 83235

RE: CHANGE IN OWNERSHIP FOR A73-00049, -00155A, -10061,
AND -04099

Dear CLaimants:

The request for Change in Ownership concerning your Notice(s) of Claim in the above reference has been processed and the Notice(s) modified to reflect you as the new owner.

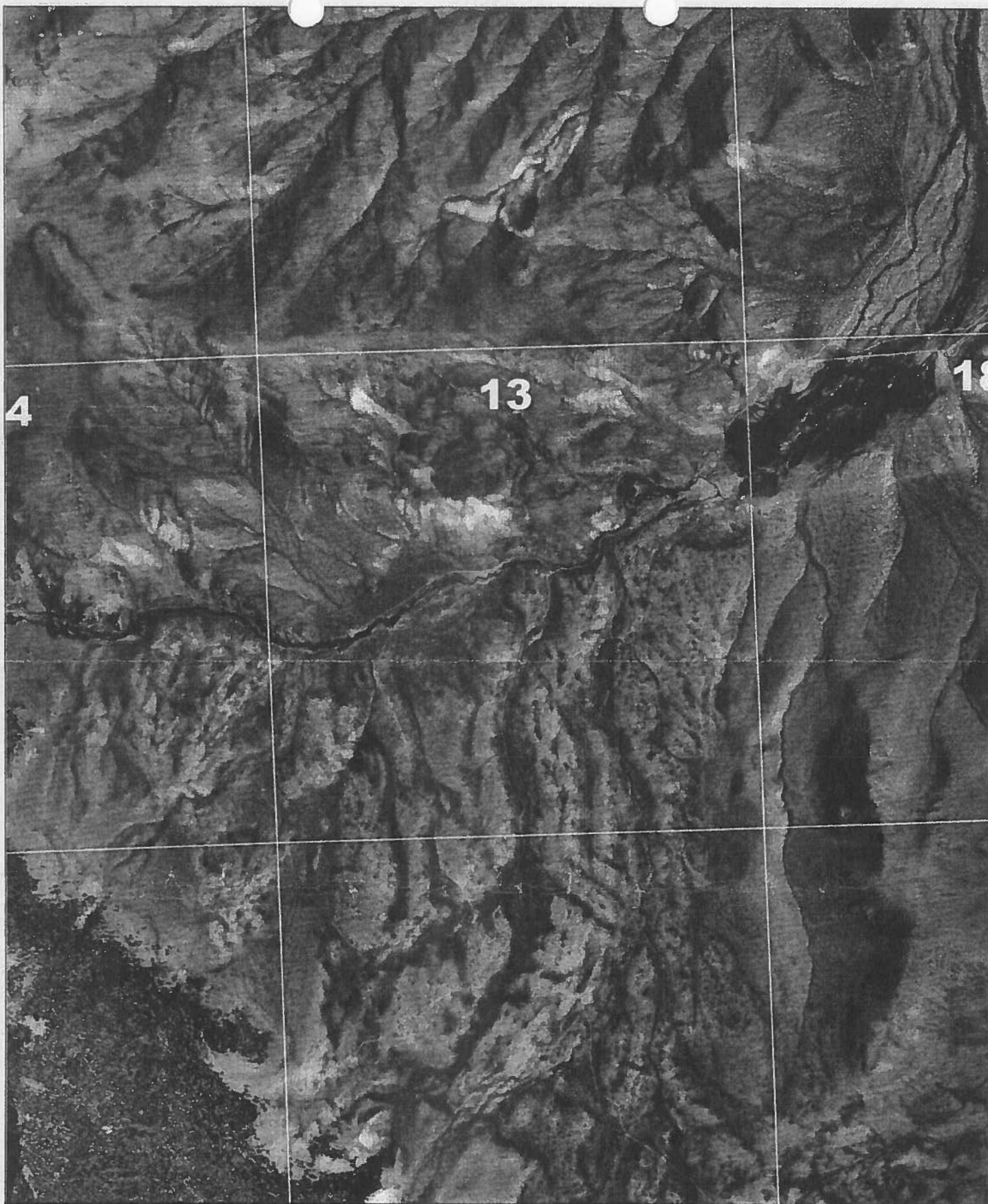
Enclosed are typed Notices with your name shown as the current owner. Review the forms and if there are other corrections or questions, feel free to contact this office.

If there are no questions or corrections, please keep these Notices for your records.

Respectfully submitted,

Jo Thompson
Secretary, Adjudications

Enclosure: Notice(s) of Claim



Map of Section 13, T13N, R21E Custer County Idaho

P133_a_id_utm11.shp

0.1 0 0.1 0.2 0.3 0.4 Miles



Map Printed: Aug 16, 2004