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DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
NOV 21 2012	
By _____	Clerk
_____	Deputy Clerk

Attorney for J. R. ALLEN/ALLEN RANCH LLP

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

In Re Snake River Basin Adjudication
 Case No. 39576

Subcase No: 65-23481

**AFFIDAVIT OF J.R. ALLEN IN
 SUPPORT OF MOTION TO FILE
 LATE CLAIM**

STATE OF IDAHO)
) ss.
 County of Ada)

COMES NOW, J. R. ALLEN and declares as follows:

1. My name is J.R. Allen. I am over the age of 18 and I make the following statement based on my own personal knowledge.
2. I have previously filed an Affidavit in this matter in support of my motion to file a late claim. A copy of my original affidavit is attached as Exhibit "A".

3. On Thursday, November 15, 2012, I went to the Valley County Sheriff's Office based on a call to my son from the Sheriff's office. The Sheriff's office had informed my son that the Sheriff's office had a report on its previous investigation of my reports that someone had been damaging my irrigation diversion in Rock Creek.

4. I had previously asked the Sheriff's office if they had a report, but the staff person could not find any.

5. On Thursday, I met with Brandy Husky of the Sheriff's office who provided me with a copy of Valley County Sheriff's Office Report #1101898. A copy of the report is attached as Exhibit "B". This is an accurate copy except for the shading on the document which resulted from my highlighting certain lines.

6. Jim Bunce and Sandra Chess have objected to my filing a late claim.

7. The Sheriff's report in the entry for July 8, 2011 confirms that the Sheriff's office had spoken with John Westra of the Department of Water Resources, who confirmed that I had water rights in Rock Creek and could divert at the location which I have claimed and to which Bunce and Chess have objected.

8. The report also documents the Sheriff's office's investigation of the damage done to my diversion and the Sheriff's observation that sufficient water allowed to go down Rock Creek to serve downstream water rights.

9. The Sheriff's office also gave me a CD of pictures the Sheriff's office had taken using a trail camera to photograph my diversion. Attached are the pictures from the Sheriff's office computer attached as Exhibit "C". The report indicates the Sheriff's office confirmed that the woman in the pictures at my diversion is Sandra Chess.

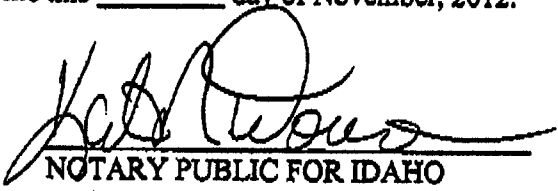
10. I would have provided this Sheriff's report in support of my motion to file a late claim but was unaware that the report had been prepared. I only learned of the report when the Sheriff's office contacted my son.

DATED this 21st day of November, 2012.


J. R. Allen

SUBSCRIBED AND SWORN to before me this 21st day of November, 2012.




NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: 08/08/2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF J. R. ALLEN** was this 21 day of November, 2012 served upon the following individuals and in the corresponding manner:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

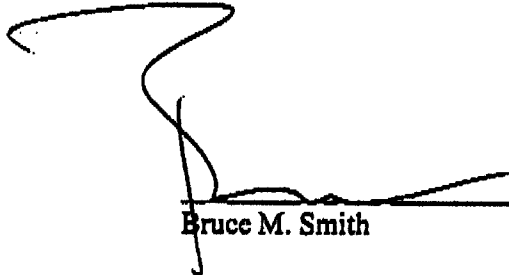
☒ US Mail
☐ Hand Delivered
☐ Faxed
☐ Emailed

Sandra M. Chess
1200 Lizaso Ave
Boise, Idaho 83709

☐ US Mail
☒ Hand Delivered
☐ Faxed
☐ Emailed

James T. (Jim) Bunce
PO Box 890
Cascade, Idaho 83611-0890

☒ US Mail
☐ Hand Delivered
☐ Faxed
☐ Emailed



Bruce M. Smith

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 Facsimile: 208-331-1202
 BRUCE M. SMITH, ISB #3425
bms@msbtlaw.com

Attorney for J. R. ALLEN/ALLEN RANCH LLP

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 LATE CLAIM

STATE OF IDAHO)
) ss.
 County of Ada)

COMES NOW, J. R. ALLEN and declares as follows:

1. My name is J.R. Allen. I am over the age of 18 and I make the following statement based on my own personal knowledge.

2. I am the general partner in Allen Ranch LLP. Through the partnership, I own a ranch in Valley County, Idaho, near Lake Cascade. The ranch is primarily a cattle ranch on which

AFFIDAVIT OF J. R. ALLEN IN SUPPORT OF MOTION TO FILE LATE CLAIM
 Page 1

EXHIBIT "A"

my father and grandfather and I have historically run cattle and now lease grazing rights to other ranchers for grazing.

3. My father and my grandfather ran the ranch before me. The family ownership dates to about 1913 when the land was homesteaded.

4. Allen Ranch has water right 65-3111X which was decreed in the Snake River Basin Adjudication for 2.7 cfs for irrigation of 83 acres during the period 4/15-10/15. The Snake River Basin Adjudication decreed right came from a claim filed in the Payette adjudication. The Payette Claim came from rights established under the 1930 Allen v Withers decree. I believe my grandfather helped file the Payette claim. Attached as Exhibit 1 is a copy of the Payette claim from Idaho Department of Water Resources records.

5. The Payette Adjudication claim did not include livestock as a use because, as I understand, livestock use was not required in the Payette adjudication. However livestock watering has always been a use on the ranch since my family started it.

6. The ranch has an upper area on the north end of the ranch that we call the Home Place. There is a ridge between the northern part of the ranch and the southern part.

7. The ranch has always been irrigated since it was homesteaded. As far back as I can remember, the northern part of the ranch, the Home Place, was irrigated from what was known as Little Rock Creek. The southern part of the ranch was irrigated from Rock Creek. Because Rock Creek has greater flows, my grandfather and his friends constructed a diversion and ditch to convey water from Rock Creek to Little Rock Creek. This has always been referred to as the Upper Diversion.

8. The reason water is conveyed in Little Rock Creek through the Upper Diversion is

because physically water from Rock Creek cannot be conveyed to the Home Place from lower reaches of Rock Creek because that would require water to run uphill. The Upper Diversion has been in place since at least 1915 – 1920.

9. In the 1950's, my father sold off some of the ranch and conveyed a portion of the water right to the purchasers.

10. The sold off part of the ranch was subdivided into lots and sold to individual homeowners. In the past few years some of the homeowners have begun to complain about the watering of the livestock and the diversion of water from Rock Creek to Little Rock Creek for irrigation of the Home Place.

11. The watering of livestock and conveyance of water from Rock Creek to Little Rock Creek through the Upper Diversion to irrigate the Home Place has been ongoing and continuous since long before any lots were sold or houses built.

12. Attached as Exhibit 2 is a Court Decree from 1931 that dealt with a dispute that came out of the 1930 Allen v. Withers Decree. This Decree in paragraph 2 references the Upper Diversion as being in existence in 1931. Exhibit 3 is a map from the same case showing the Upper Diversion ditch that conveys water from Rock Creek to Little Rock Creek.

13. Because of the complaints from some of the homeowners about the diversion and use of water, the Idaho Department of Water Resources began looking at the records regarding 65-3111X as well as 65-3111A, which was a split from the original right. Water right 65-3111A is held by the homeowners association for the area that was sold off. The Idaho Department of Water Resources review showed the points of diversion for both rights were incorrect in the Snake River Basin Adjudication records.

14. The Idaho Department of Water Resources has directed that while the points of diversion for those two rights are corrected, that sufficient water be left in Rock Creek to satisfy 65-3111A. This amount is .05 cfs. There is sufficient flow in Rock Creek to allow the late claim as well as fulfill the .05 cfs for 65-3111A. If there is insufficient flow, I have agreed to allow that amount to continue down Rock Creek so that the homeowner's association right is met. The late claim only involves an additional .14 cfs for livestock. Because the ranch was a homestead, watering of livestock occurred year round. That can still occur today

15. The late claim does not seek increased diversion rate, increased areas or an earlier priority date.

16. However the actual historical use of water on the ranch is also different from the period of use as decreed in 65-3111X. Irrigation, depending on any given year, starts as early as March 15 and continues after October 15, sometimes to as late as November 30. I irrigate as early and late as possible in order to get the best pasture and grazing conditions I can. This is the actual historical use for as far back as I can remember and is the basis for the late claim.

17. Sandra Chess and Jim Bunce, two homeowners, have objected to my motion to file a late claim. I had my attorney check Idaho Department of Water Resources water right records and both Ms. Chess and Mr. Bunce have groundwater rights. Neither has a water right in Rock Creek or Little Rock Creek. Their main objections appear to be based on their preference for the aesthetics of water in Rock Creek and their objection to my watering of livestock. I believe both Ms. Chess and Mr. Bunce both bought their lots and/or built their homes after the use of water by the ranch had been in existence since at least the 1920's. Since they have groundwater rights, not rights in rock Creek or Little Rock Creek I do not understand how they can be injured by allowing my late

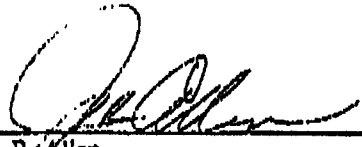
claim to be filed. Even if the late claim were recommended and decreed, they would not be injured. Their water rights from the Idaho Department of Water Resources records are attached as Exhibit 4.

18. Attached as Exhibit 5 is a letter from Dave Tuthill at Department of Water Resources explaining that livestock rights were not included in the Payette adjudication.

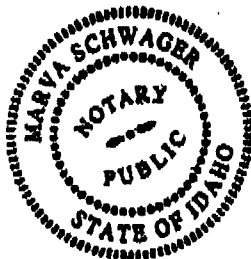
19. Attached as Exhibits 5 and 6 are letters from Pat Healey and Clayton Simpson, people who have worked on the irrigation ditches on the ranch over many years. These letters describe maintenance work done on the Upper Diversion that conveys water from Rock Creek to Little Rock Creek to irrigate the Home Place.

Further your affiant sayeth not.

DATED this 4th day of September, 2012.


J. R. Allen

SUBSCRIBED AND SWORN to before me this 4th day of September, 2012.




NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My Commission Expires: June 19, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF J. R. Allen was this ____ day of September, 2012 served upon the following individuals and in the corresponding manner:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705-5082

____ US Mail
☒ Hand Delivered
____ Faxed
____ Emailed

Sandra M. Chess
1200 Lizaso Ave
Boise, Idaho 83709

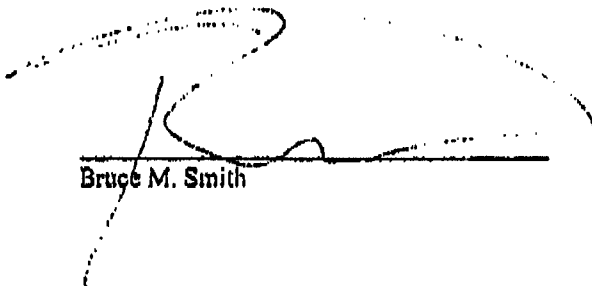
____ US Mail
☒ Hand Delivered
____ Faxed
____ Emailed

James T. (Jim) Bunoe
PO Box 890
Cascade, Idaho 83611-0890

☒ US Mail
____ Hand Delivered
____ Faxed
____ Emailed

Allen Ranch, LLP
C/O J.R. Allen
2624 S. Inglenook Pl
Meridian, ID 83642

____ US Mail
☒ Hand Delivered
____ Faxed
____ Emailed



Bruce M. Smith

EXHIBIT I

AFFIDAVIT OF J. R. ALLEN IN SUPPORT OF MOTION TO FILE LATE CLAIM

EXHIBIT "A"

Valley County Sheriff's Office
Report # 1101898

On 06-19-11 I was advised by dispatch that John Allen was having problems with someone destroying his diversion dam and diverting water from his canal. I was advised that on 06-10-11 Cpl. Copperi had taken photos of the area due to it being damaged again.

I arrived on scene and met with John Allen and his ranch hand Aaron Holmick. They showed me the area that was destroyed and where the water had been diverted. Due to being close to Forest Service land Officer Harvey with the Forest Service also came up to the area. I photographed the area and then cleared.

I was advised by Officer Harvey that this was not Forest Service property, but that it belonged to a property management company and was managed by Dwight Jividen.

On 07-08-11 I spoke with John Westra the regional Manager of State of Idaho Department of Water Resources and he stated that Allen had water rights to this creek and the location that he was diverting water at. Westra stated that the water rights were being challenged by homeowners in the area. Westra stated that he had documentation showing that Allen had water rights to this creek and the right to divert water at this location. GPS coordinates were attached.

On 07-15-11 I spoke with Bruce Smith, Allen's lawyer, and discussed what paper work had been filed and I advised him of what the Sheriff's Office was doing.

On 07-17-11 I spoke with Jividen and advised him that Allen had water rights to the creek and he was advised it would result in criminal charges if he or anyone else interfered with the diversion dam. I also spoke to Jim a resident in the area that was extremely rude on the phone and he was advised of the same information.

On 08-14-11 I drove up to the diversion dam and photographed it. Nothing had been tampered with or moved since the last time I was there.

On 08-25-11 Cpl. Copperi and I met with Allen Jr. and Sr. at the Sheriff's Office and they advised that someone had interfered with the diversion dam again. Allen Jr. stated that he photographed it and then replaced the dam, because there was no water making it down there canal to the north pastures. Allen's use this water to irrigate their cattle field along the west side of Cascade Reservoir.

I photographed the creek and diversion dam. Later that day Cpl. Copperi and I returned to the area and placed a trail camera facing the diversion dam. I also spoke to Allen again and advised him of the problems we were facing and he stated that they had advised all the owners that have called that Allen has water rights and the right to divert water at that location. Westra stated that Allen only has to allow enough water to travel down stream to fill a 2" poly pipe, which provides water for some residence. He stated that Allen had the right to the rest of the water in the creek.

At this point and every other time I have responded to this location Allen has been allowing far more water than required to travel down stream. There is a steady stream of water flowing even beyond the point of the 2" poly pipe (this is after it has been filled.)

While investigating this I found a 4" light blue pipe (down stream from the 2" poly pipe intake) had been placed in the creek. This pipe was diverting water to a private residence, owned by Ford, and was being used to fill a pond he had created. Westra stated that he had sent a letter to Ford requiring him to stop taking water and to remove the pipe from the creek. Ford had placed logs and other sticks in the creek to rest his pipe on. I advised Ford over the phone that I had been requested by the State of Idaho Department of Water Resources to advise him he needed to remove the pipe from the stream or he would be charged criminally for wrongful diversion of water.

On 09-23-2011 I returned to the diversion dam site and collected the camera that I had placed. I downloaded the pictures from the camera and on those pictures was a female standing in the creek next to the diversion dam. The female was taking pictures of the diversion dam, but did not appear to damage it.

EXHIBIT "B"

Valley County Sheriff's Office
Report # 1101898

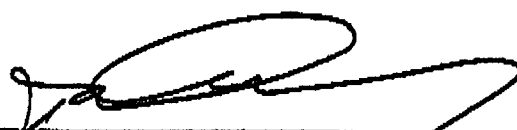
This appeared to be the same female that Allen is suspecting of damaging and /or removing the diversion dam, according to his description of her. Positive identification will try to be made using the photograph.

No further damage has been reported to the diversion dam at this time. A copy of this report will be filed until further reports are made or more information is made available.

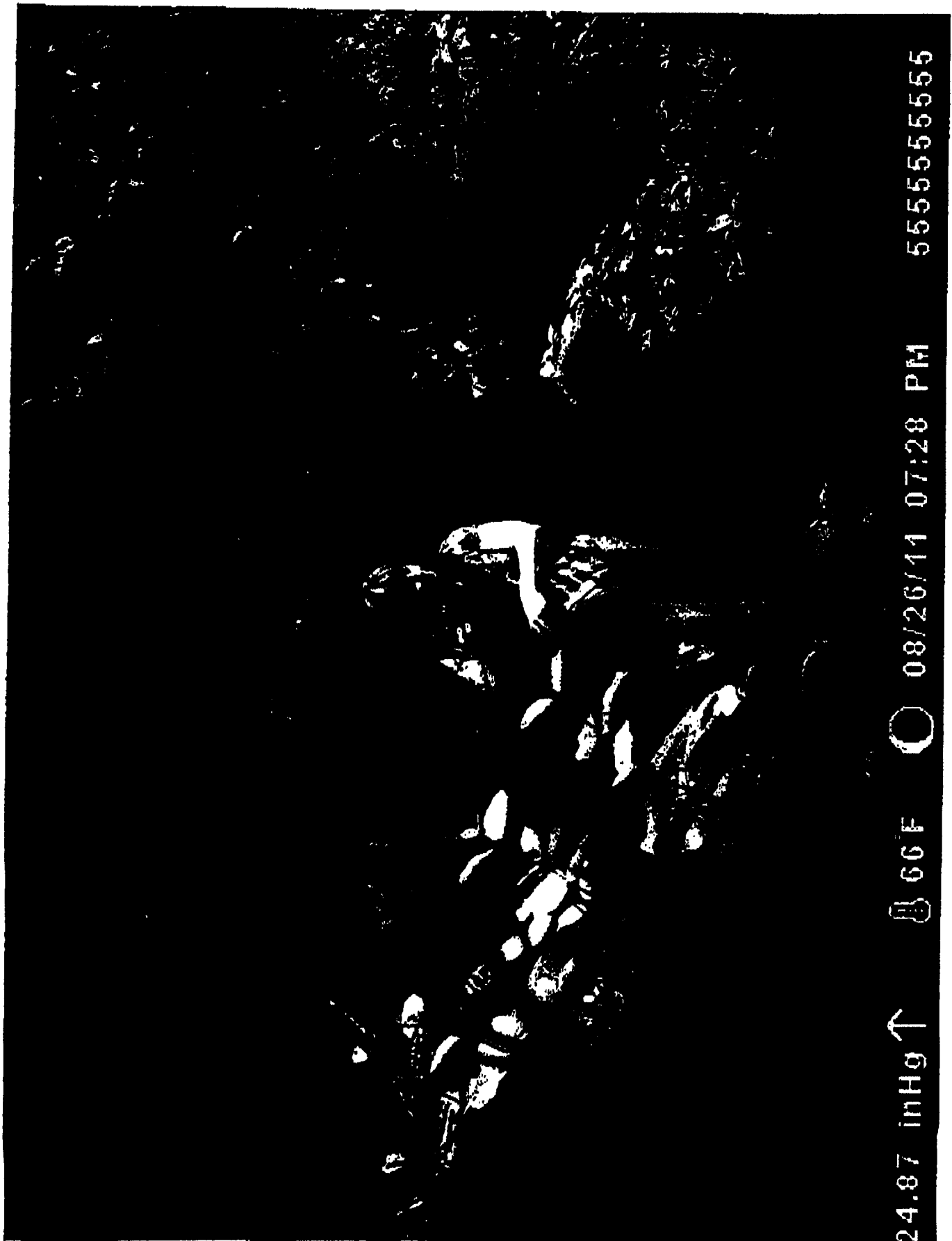
The female on the video was identified as Sandra Chess by her driver's license photo provided by dispatch.

EVIDENCE:

1. DIGITAL PHOTOS
2. DIGITAL PHOTOS TAKEN BY ALLEN
3. DIGITAL PHOTOS FROM TRAIL CAMERA
4. LETTERS FROM STATE OF IDAHO DEPARTMENT OF WATER RESOURCE

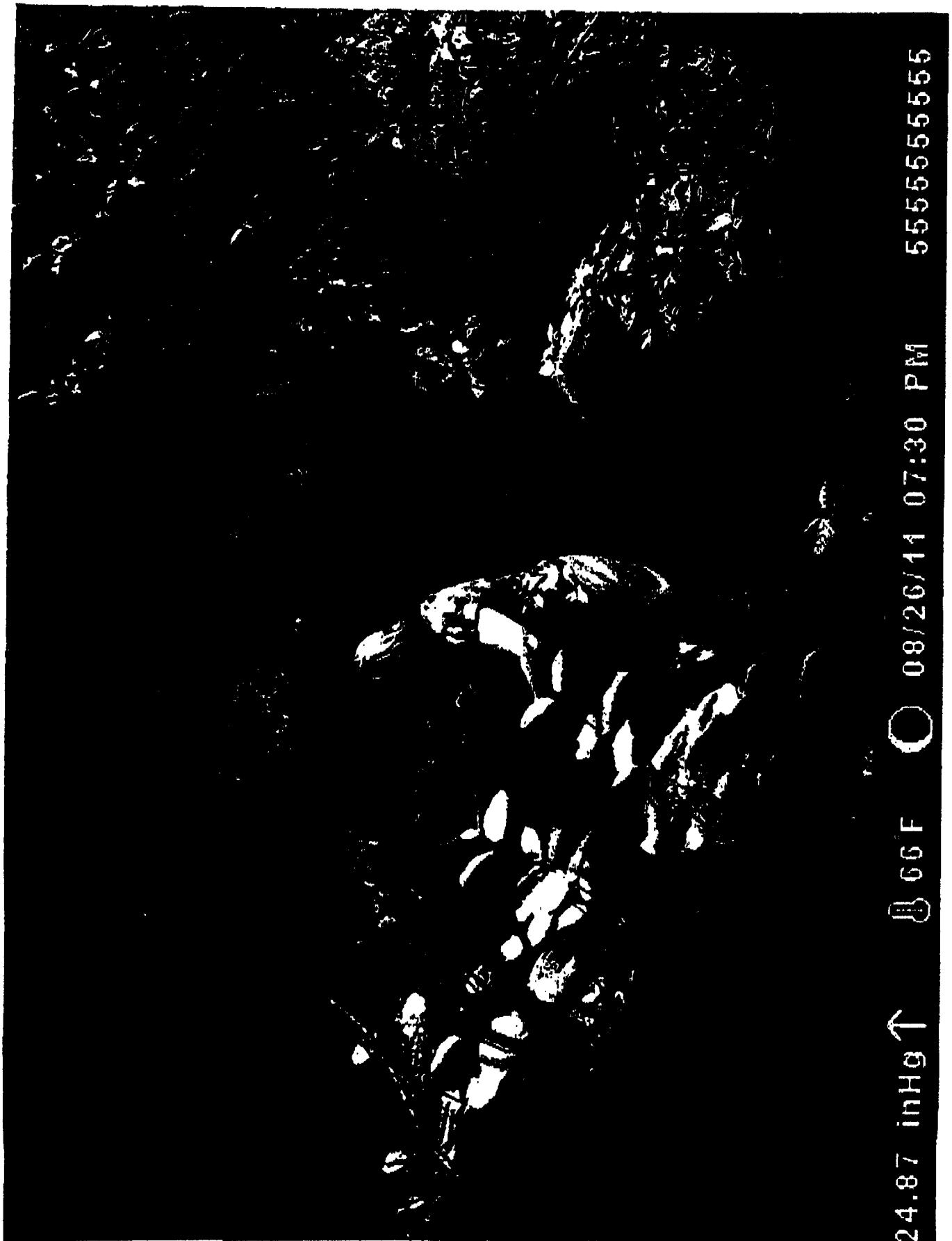

Cpl. Tom Cimbalik
Valley County Sheriff's Office

#2111
10-20-2011



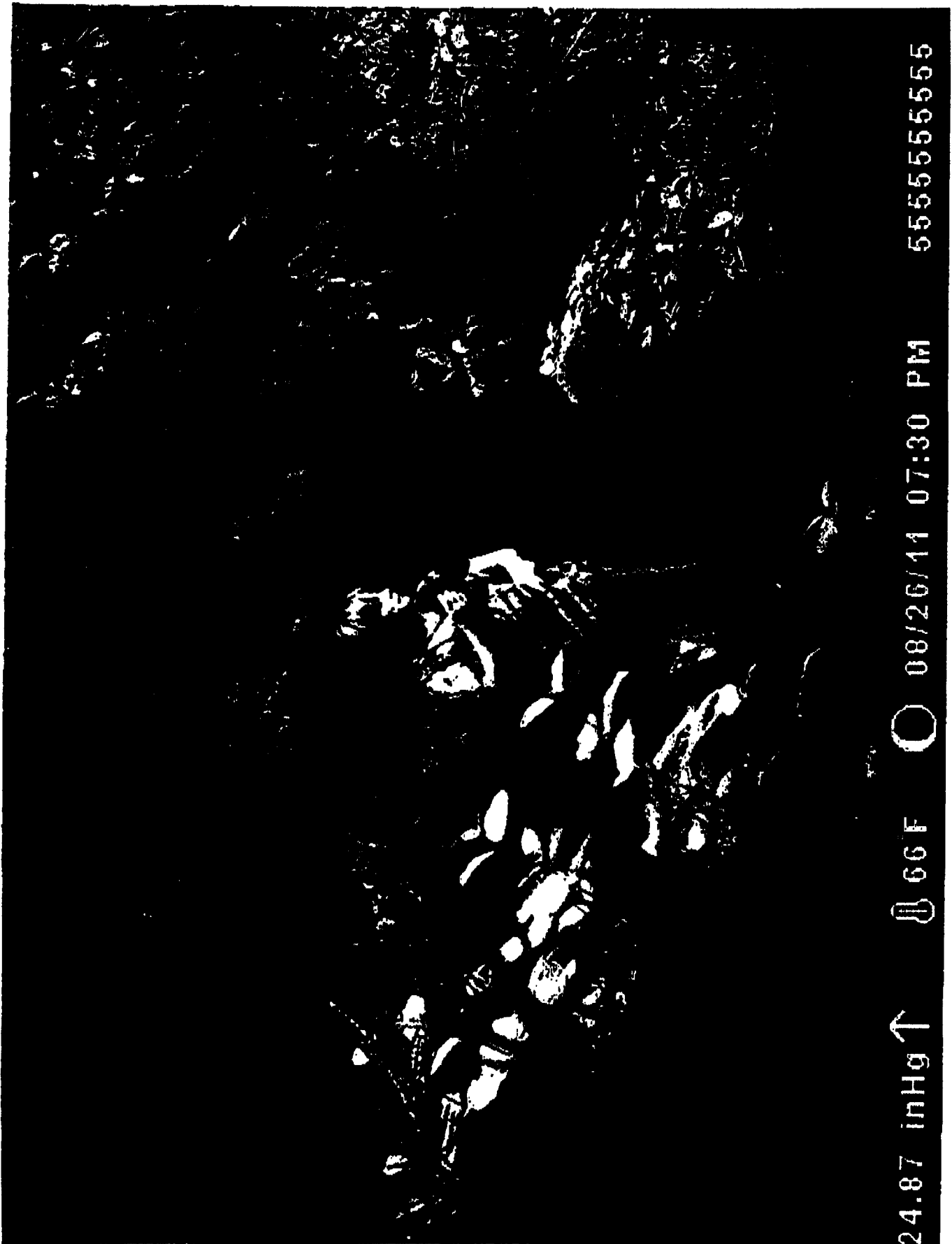
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EXHIBIT "C"



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EXHIBIT "C"



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EXHIBIT "C"



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EXHIBIT "C"

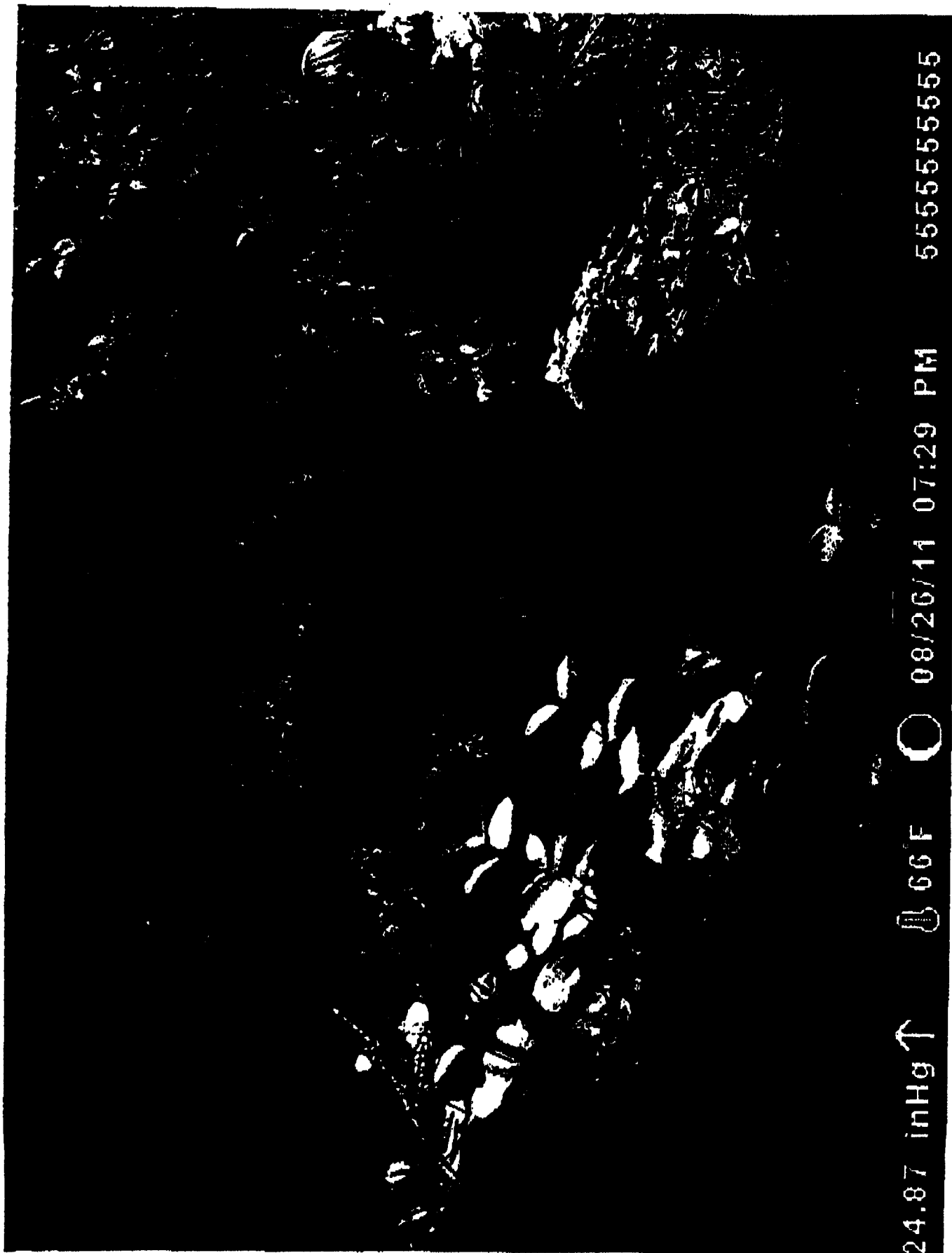
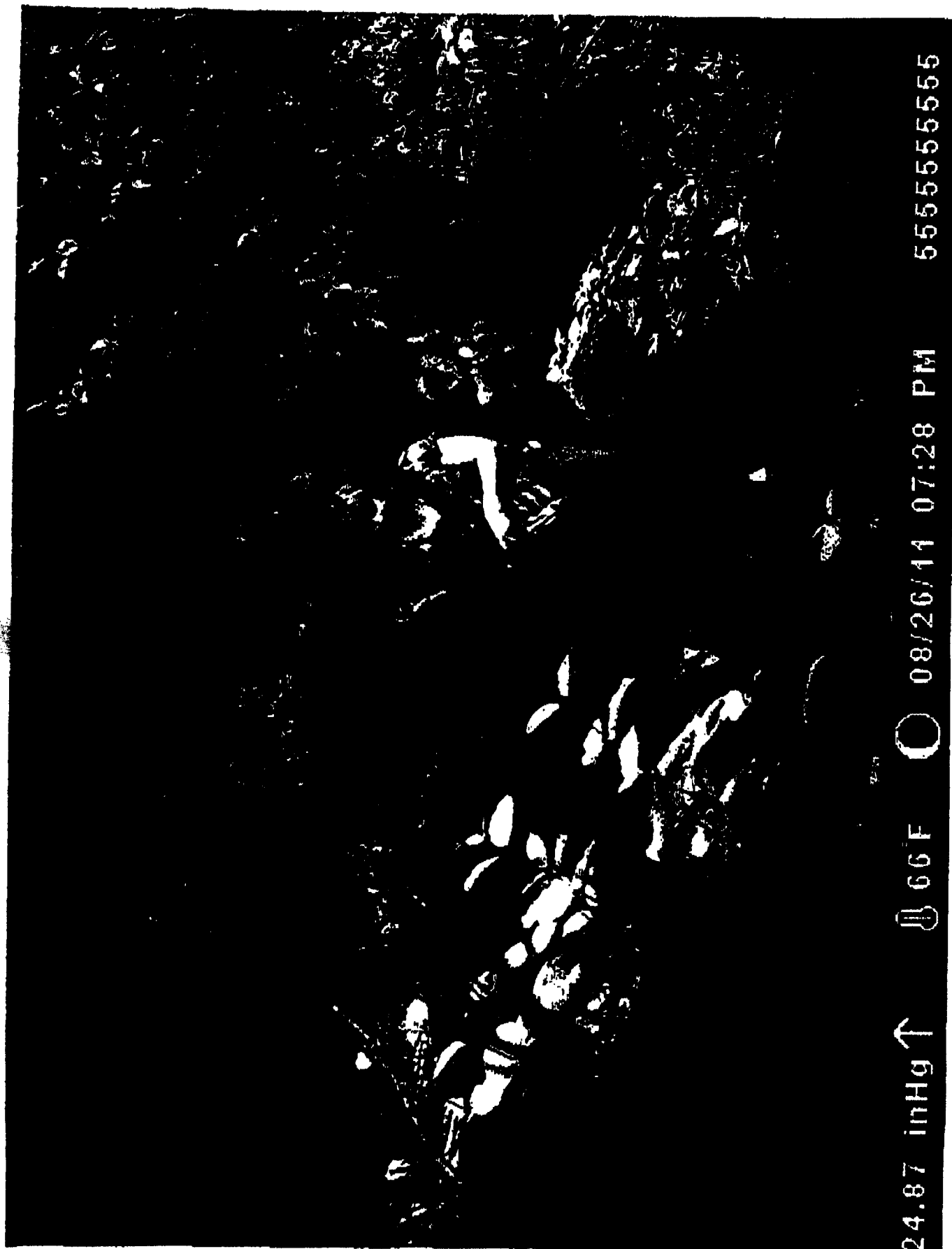


EXHIBIT "C"



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EXHIBIT "C"