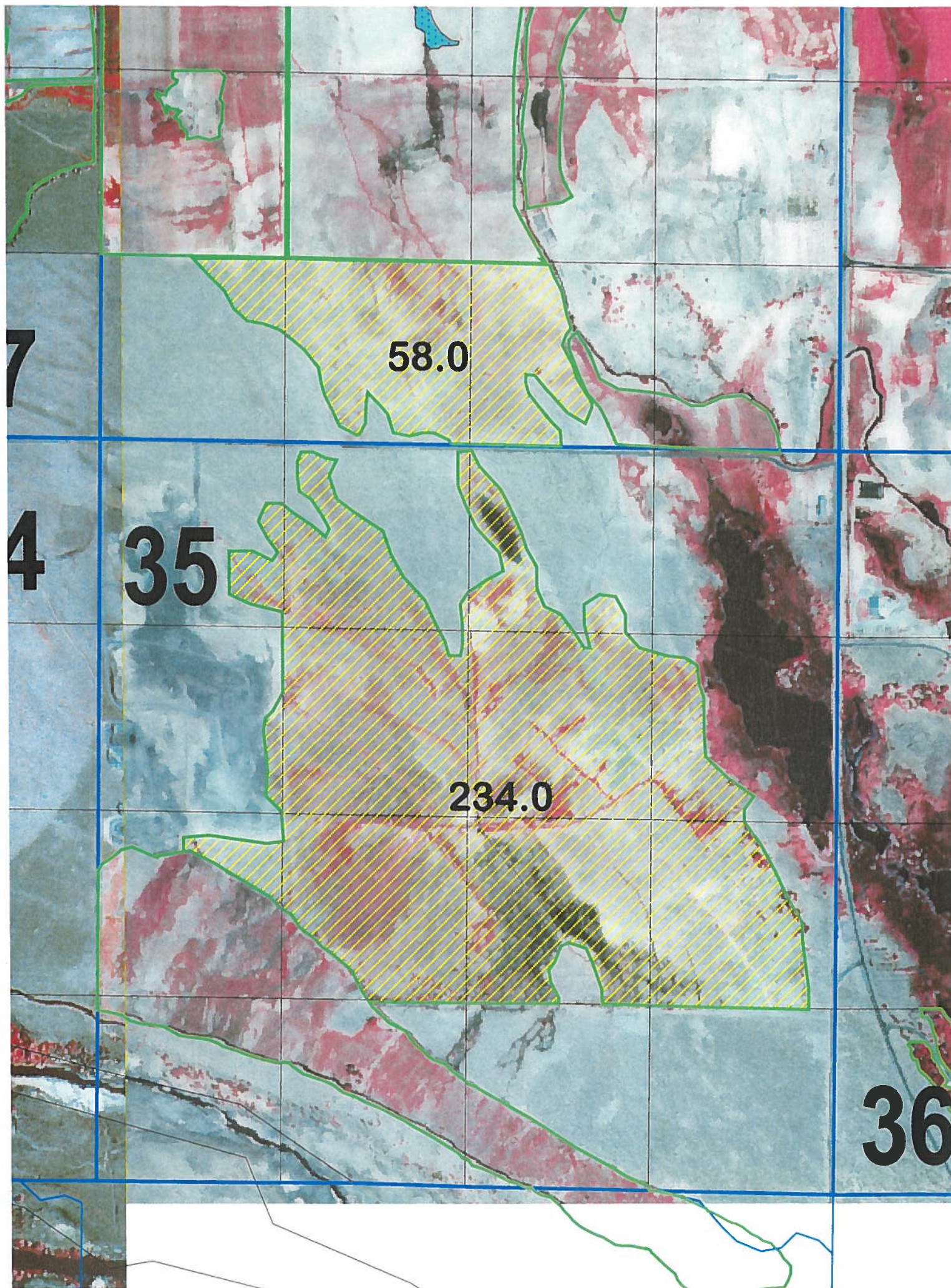
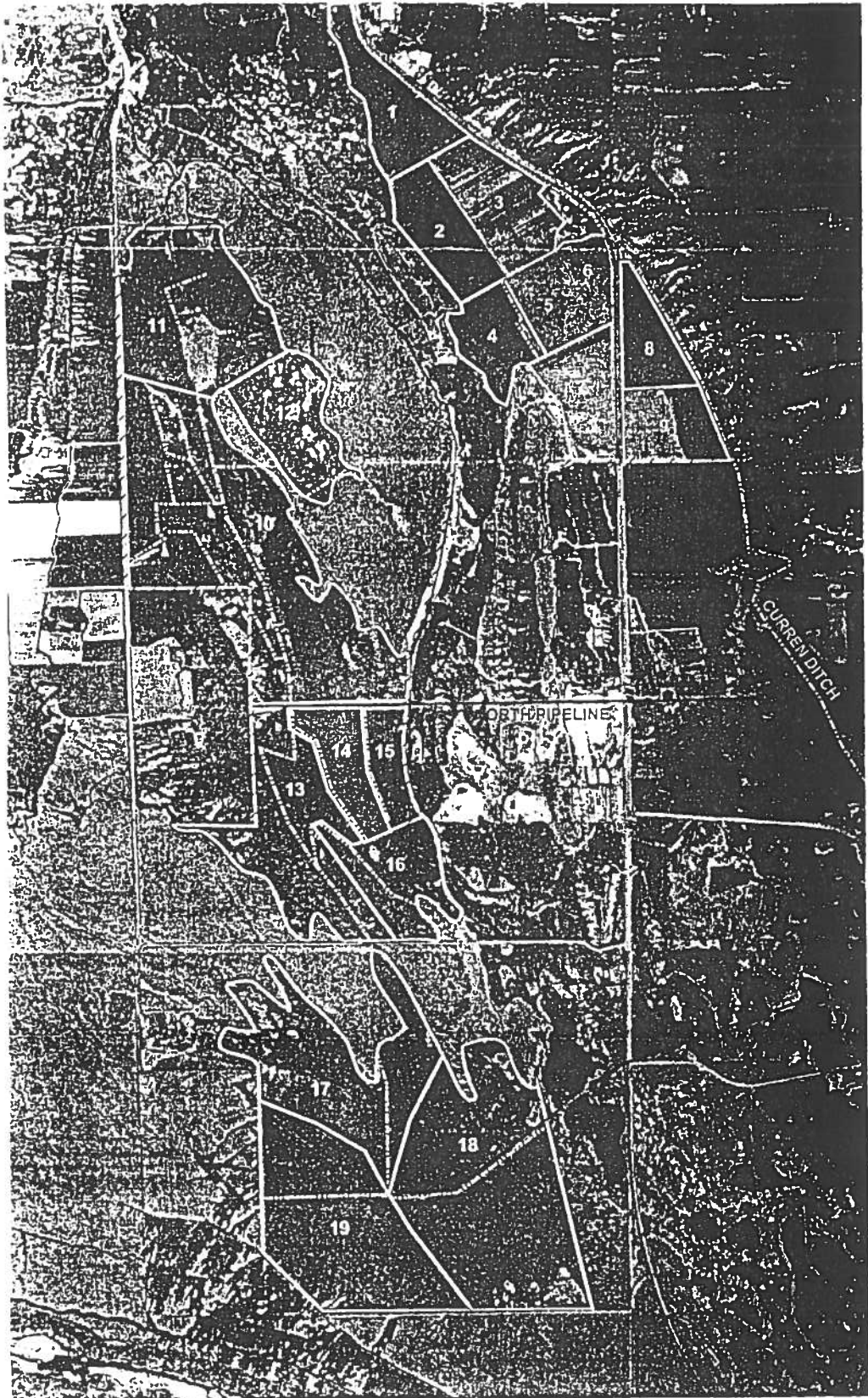






Clelland, Steve

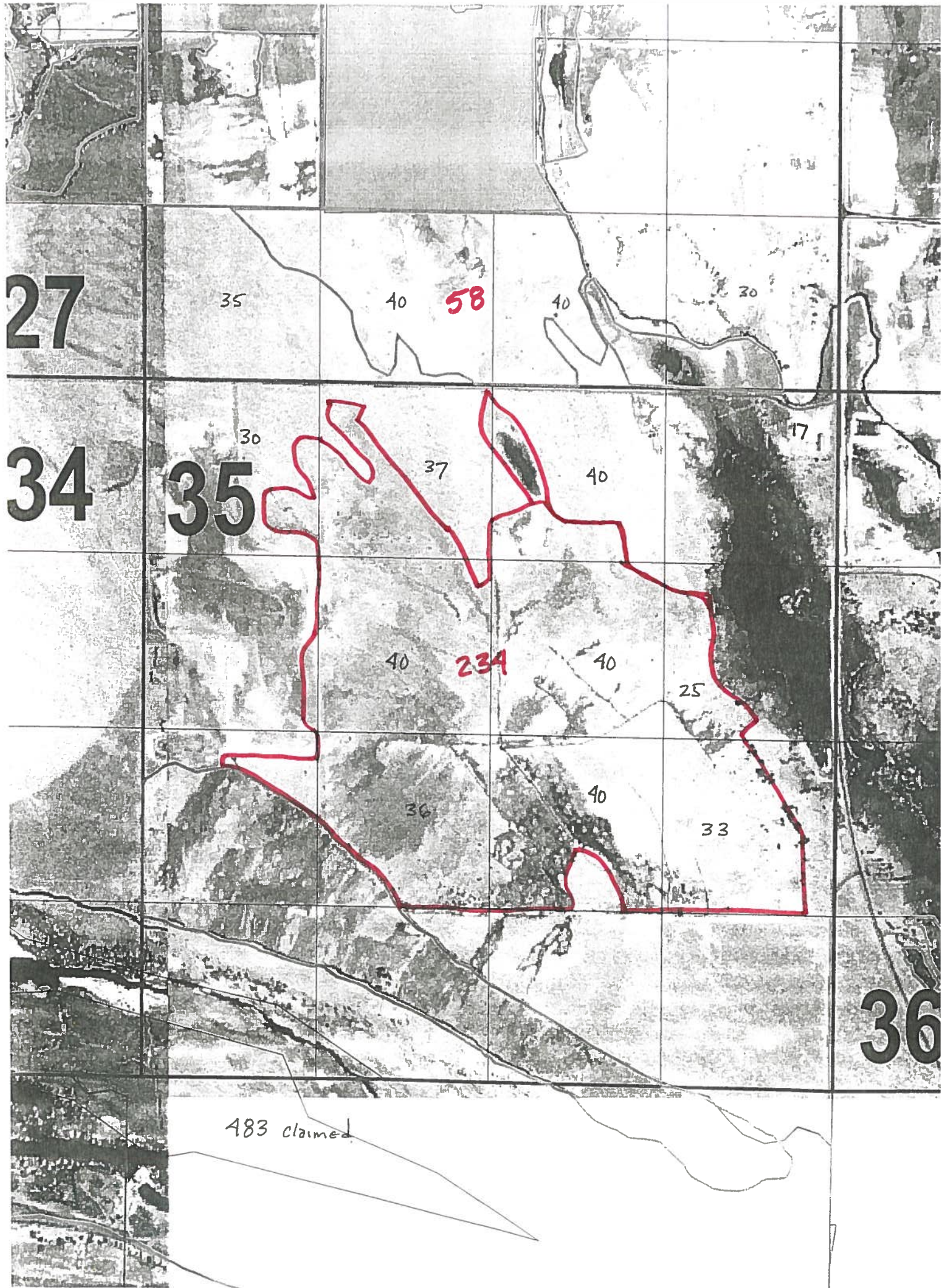
From: Clelland, Steve
Sent: Tuesday, April 13, 1999 2:20 PM
To: Spencer, Nick
Cc: Clelland, Steve; Merritt, Allen; Tuthill, Dave
Subject: Buckeye acres and settlement

Nick,

I Just spoke with John Simpson about the acres and issues... He seemed to agree the acres were close to a resolution (320-350 ac.) and I told him my latest GIS edits show about 320 acres. He thought we were trying to come to an agreeable acreage PLUS a duty of water for the full 20 cfs. I told him you and I had discussed this earlier today and concluded the same. He has been trying to call you to confirm this idea. He will contact Brockway to see how the duty numbers work with the 320 acres and I offered to forward these numbers along with this email to see if our staff can live with the duty of water.

If you get a chance maybe you can give John S. a call...

Steve



- Plot GIS

- Plot of S.35
from
Assessor

7

4

35

Gravel
Pit

58

15

11

?

?

.5

1.3

1.3

234

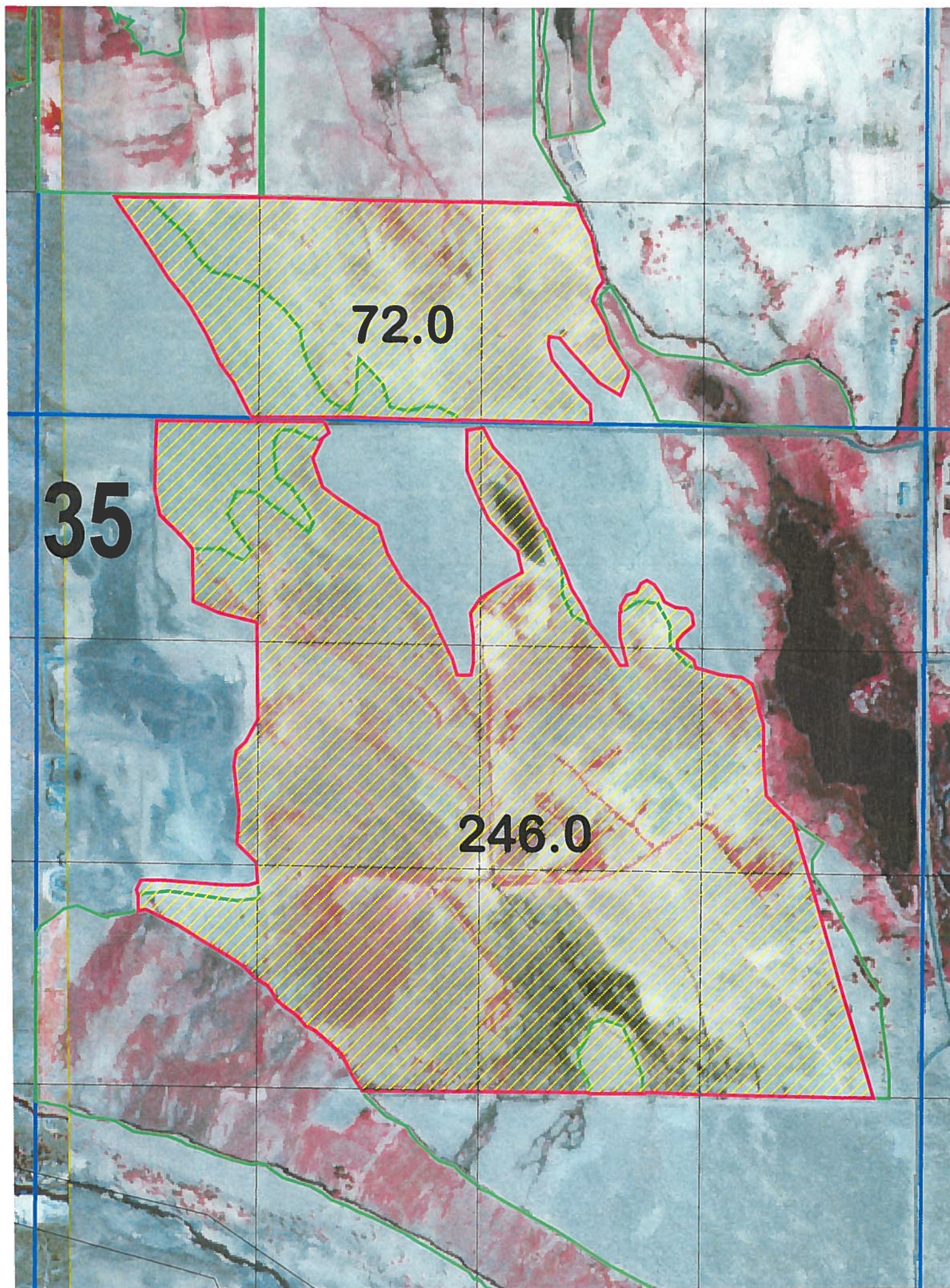
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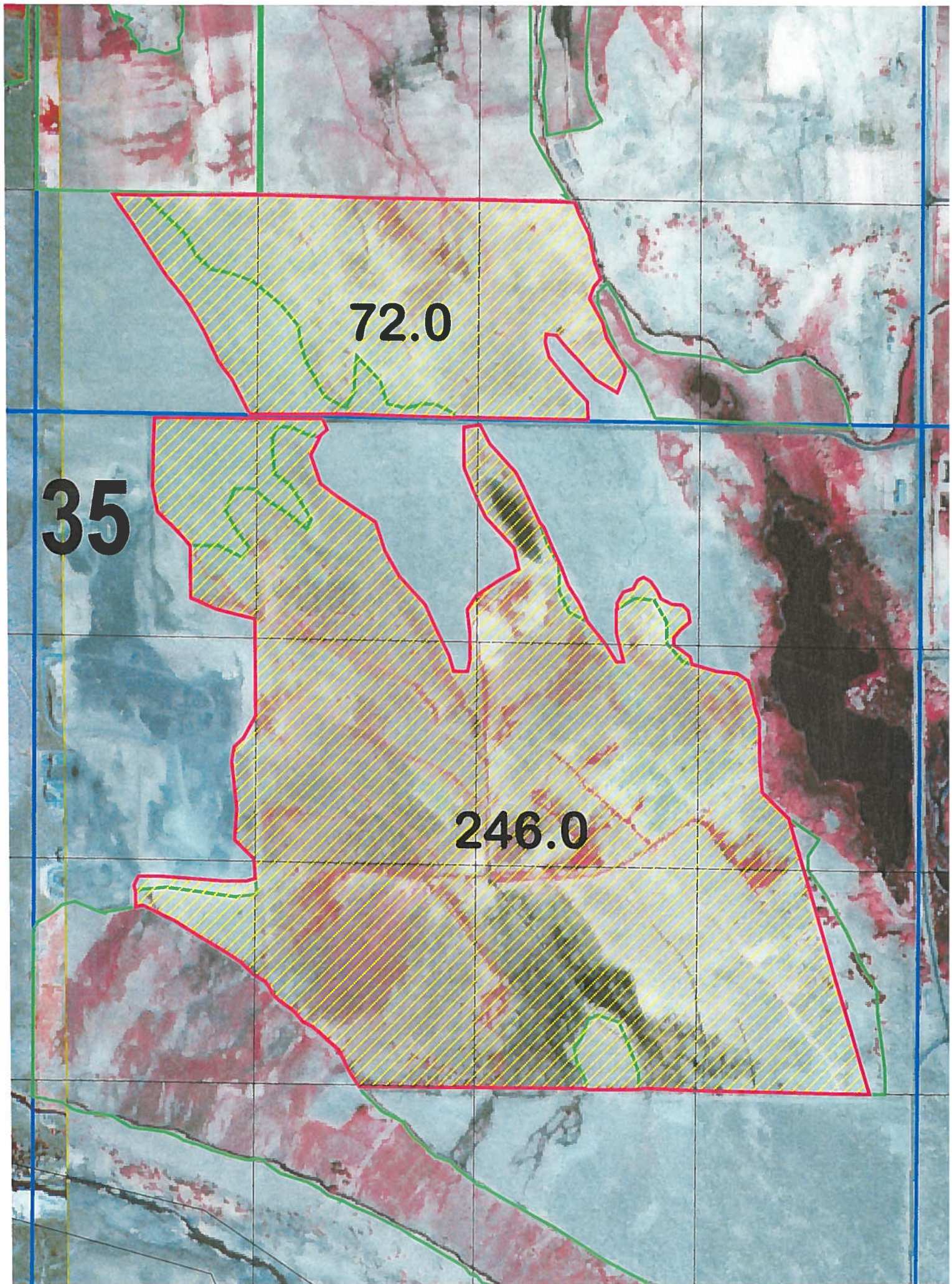
(-5.1)

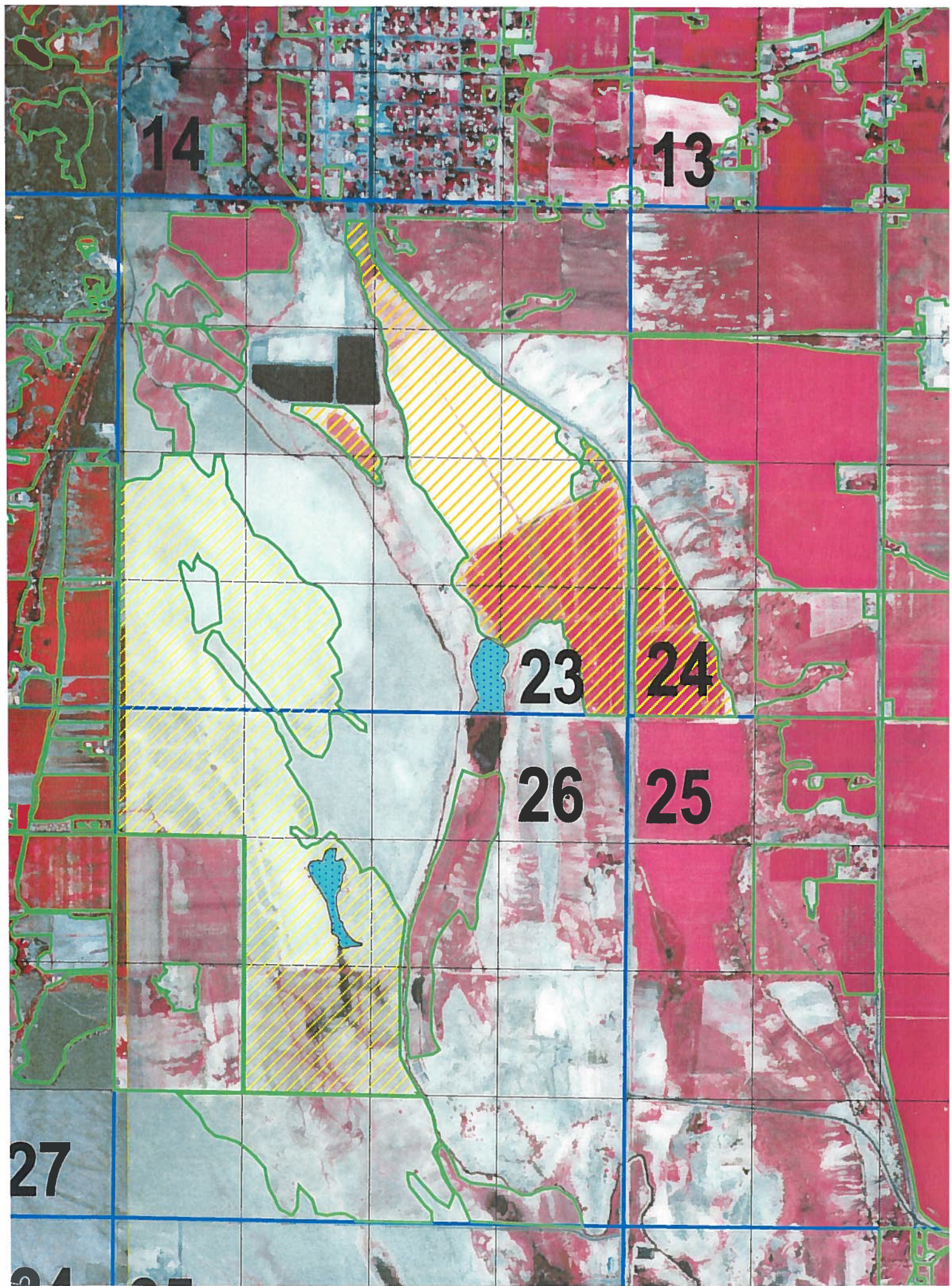
3

36

(TOTAL = 318)







36-00004, 36-00018, 36-00015

Place of Use

Historical Use: all three water rights have historically been used on the subject property at various times as illustrated by historical data previously submitted.

This historical use is further supported by the three Claims for Water Rights filed by the Rosholt Law Firm.

Had the 36-00004 right been adjudicated at the same time as the 36-00018 and 36-00015, this administrative error of "Place of Use" might have been eliminated.

Place of Use is further supported by the following documents:

Agreement for Sale
Transfer Deed
Pasture Lease Agreement

These documents were not discovered prior to the 36-00018 and 36-00015 adjudication, thus the error in "Place of Use" of these two water rights.

18/15

04

Historic
water
use

36-00004

when
36-00018/15
not available

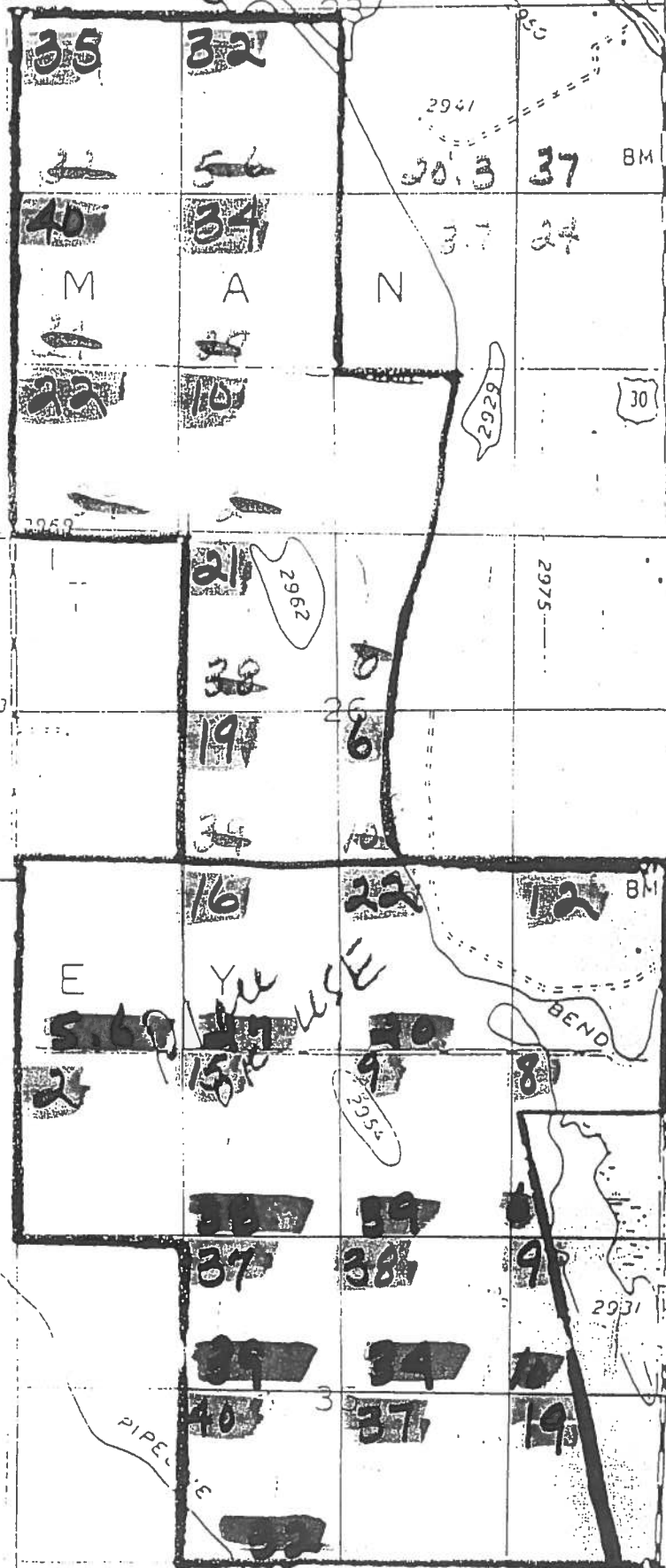
36-00004

→
leased land

partially
Decreed
North Bar =
219 acre

25
Total
Decreed
483 acre
36-00018
36-00015

partially
Decreed
South Bar =
264 acre



Place of use

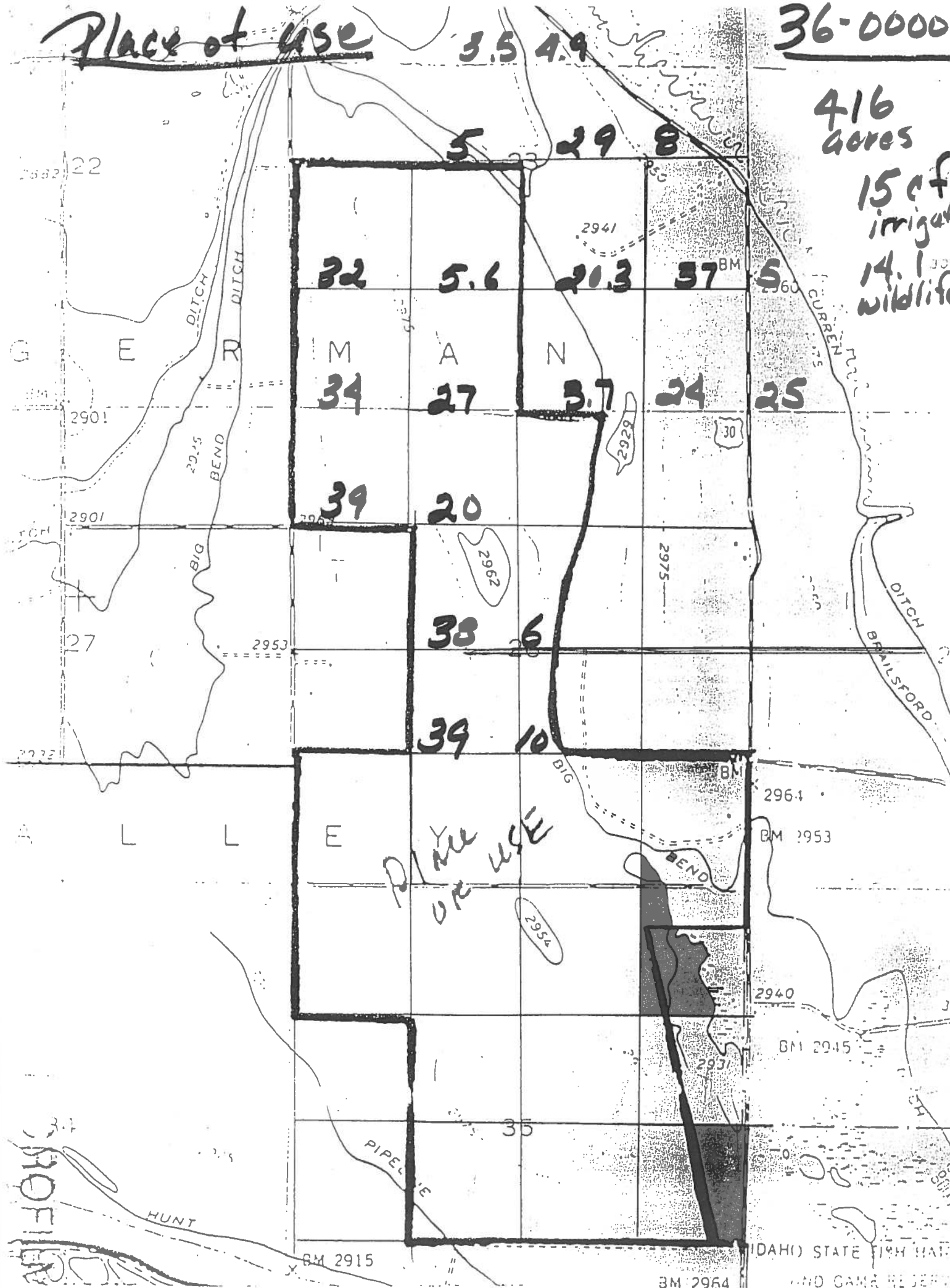
3.5 4.9

36-0000

416
Acres

15 of
irrigated

14.1
wildlife



IDAHO STATE FISH AND GAME DEPARTMENT

483
acres
20 ft
irrigation
36-00018

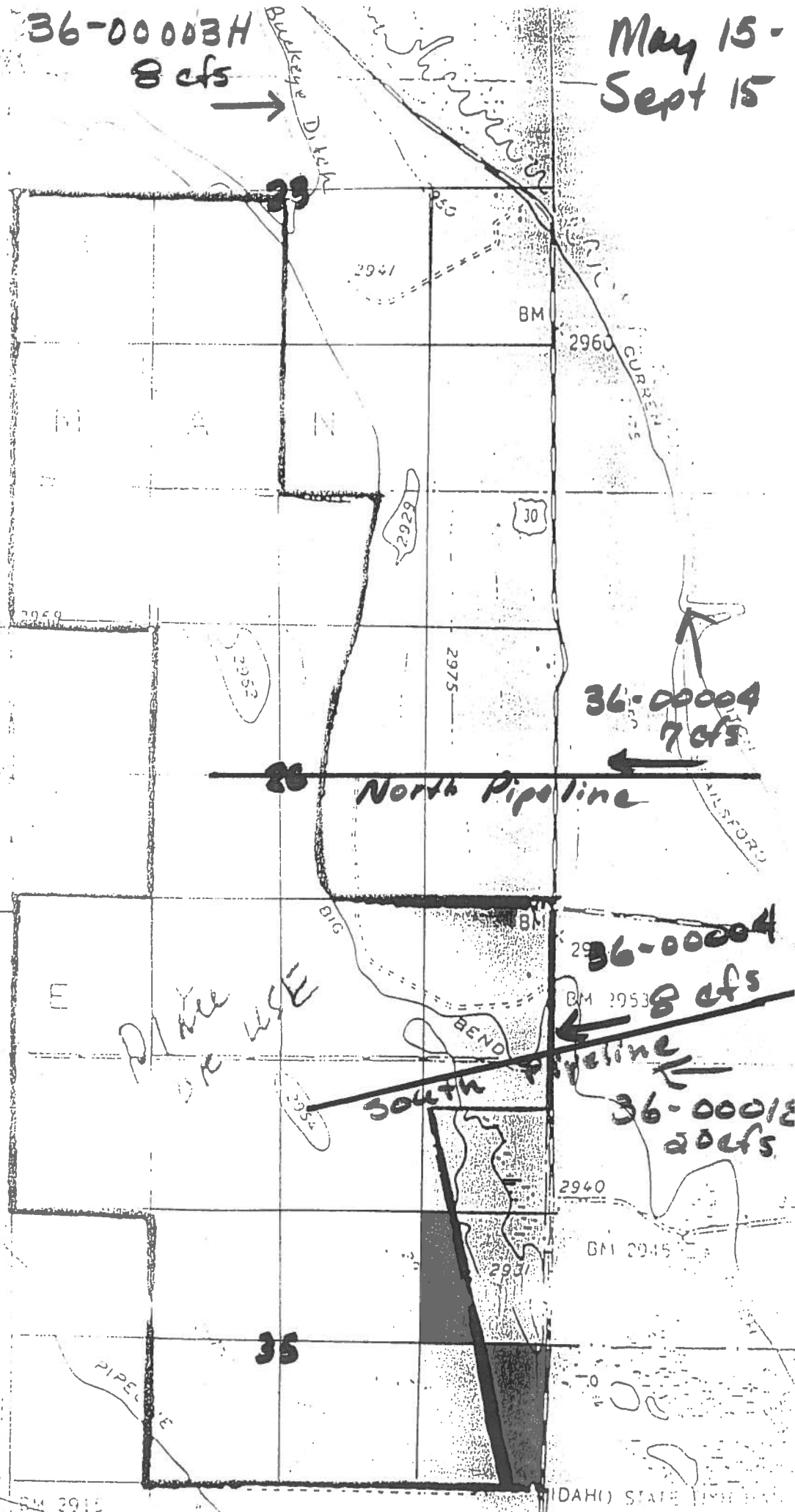
6.5
irrigation
36-00015

[illegible]

Points
of use

36-00003H
8 cfs

May 15 -
Sept 15



MEMORANDUM

TO: Dave Tuthill/Nick Spencer
Via Fax: (208) 327-5400

Via Fax: Steve Clelland/Allen Merritt, IDWR Twin Falls
(208) 736-3037

Via Fax: Charles Brockway, Sr.
(208) 736-8506

Via Fax: John Simpson, Attorney for Buckeye Farms, Inc.
(208) 344-6034

Via Fax: Brian Barsotti, Buckeye Farms, Inc.
(208) 726-2922

FROM: Pam Wascher, Western Legends LC
Via Fax: (208) 837-6641

RE: Transfer of Rights 36-00018/36-00015

DATE: April 12, 1999

I will be delivering to IDWR in Boise this date, the Exhibit Boards referenced herein.

I would like to summarize in writing the meeting of April 9, 1999. Due to schedules and illness, several parties either were absent or had to leave early. After several hours of negotiations, no resolution was reached. The meeting turned into a debate rather than a cohesive plan for effectuating the transfer.

The immediate problem: the Judge has stated that a SF5 must be signed by Wednesday, April 14, 1999.

Discussion was held concerning the criteria for determining this transfer. Chuck Brockway, Sr. inquired as to whether the photos were the sole source of determining irrigated acres. IDWR's response was that unless there were affidavits as to irrigation practices and acres irrigated, the photos would be the information upon which they would base their decision.

There are two factors which IDWR must consider in making their determination as to the Place of Use in this transfer.

1. The criteria in the Idaho Code 42-222, and
2. The historical information concerning acres irrigated.

Idaho Code 42-222 requires the director of IDWR to examine all the evidence and available information, and specifically issues set out in 42-222 must be addressed.

...the change does not constitute an enlargement in use of the original right.

IC 42-1416B(5)(a) "Expanded use" means an increase in the number of acres irrigated, or other additional use, under a valid ground water right without any increase in the rate of diversion or volume of water diverted."

Dovel v. Dobson, 122 Idaho 59, 831 P.2d 527 (1992) The transfer of water to divert 1.6 cfs of water to three separate fields did not result in an enlargement of the existing right even though consumptive use to one of the fields had been forfeited by nonuse.

The fact that the entire 560 acres has not been consistently irrigated over the 90 plus years should not prohibit the transfer. There has been no forfeiture, and there have been periods of time when the entire water right could not be delivered. Engineering studie proved up the duty of water for 483 acres.

Section 35 and portions of Section 26 have historically irrigated 560 acres. There are numerous documents relative to the Weatherby water (36-00015) and the Curran water (36-00018) substantiating this fact:

EXHIBIT BOARD NO. 1

1. Certificate of Completion of Works (Curran water) dated October 31, 1918, which identifies 520 acres in Section 35 as being the section for place of use of this water.
2. Engineer's Map (1918) showing Section 35 being owned by F. D. Brown showing the portion of Section 35 historically irrigated with the Curran water.
3. Certificate of Completion of Works dated October 31, 1918 issued by Fred A. Wilkie, State Engineer of the State of Idaho showing this Section as being the land to which this water is applied.
4. Deposition of Holder, F. D. Brown, dated March 21, 1918, testifying that the water has been turned into the works and is "running full of water". (Curran water on the 560 acres).

5. Deposition of Witness, Nat Owsley, dated March 21, 1918, describing the capacity of the "works" delivering the Curran water to Section 35.

6. Deposition of Witness A. T. Ingalls, dated March 21, 1918, describing the capacity of the "works" delivering the Curran water to Section 35.

EXHIBIT BOARD NO. 2

1. Indenture Agreement dated April 27, 1911, wherein The Buckeye Land Company, Inc. sells to Henry Bryant, thirty-five (35) inches of water to be used and applied on Lots numbered one and two (1 & 2) of Section Thirty-five (35), said water to be delivered from the Buckeye Ditch.

This document shows that water was historically delivered to the corner of Section 35 in question.

2. 1946 aerial photo showing the ditch system to Section 35 from the Buckeye Ditch.

3. 1964 aerial photo showing the ditch system to Section 35 from the Buckeye Ditch.

EXHIBIT BOARD NO. 3

1. 1946 aerial photo showing the irrigated acres reference in board documents.

2. 1918 Engineer Drawing indicating the location of a pipeline running parallel to Highway 30, which delivered water to the NE1/4 of the NE1/4 of Section 35, which was irrigated with the Weatherby water (IDWR determined that this 1/4 section could not have been irrigated by Weatherby water).

3. 1928 Engineer Drawing showing pipelines and the NE1/4 of the NE1/4 of Section 35 being irrigated by the Weatherby water.

4. Proof of Application of Water to Beneficial Use (Weatherby water) Deposition of Witness, Fred J. Vader, dated June 28, 1928, testifying to the acres being used for irrigation in Section 26 and the NE1/4 of the NE1/4 of Section 35.

5. 1911 Decree showing the Weatherby Water being decreed to the Ormsby Land and Livestock Company (then the owner of the Bar S property) in Section 26 and Section 35.

The total acreage referenced in these documents is 560 in Section 35 and the portions of Section 26 in question. These documents show that historically at least "483 acres" (as Decreed in Water Rights 36-00015 and 36-00018) were irrigated.

EXHIBIT BOARD NO. 4

1. 1946 aerial photo with colored arrows showing the North pipeline and the pipeline heading south which irrigated the NE1/4 of the NE1/4 of Section 35.
2. Photos of the pipeline from the North pipeline used to irrigate the NE1/4 of the NE1/4 of Section 35.

EXHIBIT BOARD NO. 5

1. Photos of the ditch system from the "North Bar S" in Section 26 to the South quarter sections.
2. Photos of the old gates and pipeline used to irrigate the south portion of Section 26.

EXHIBIT BOARD NO. 6

A number of documents support the use of 18/15 water on Section 35 and Section 26.

1. 1932 New International Decree.
2. Agreement for Sale of Spring Valley Ranch, Inc.
2. Corporate Warranty Deed.
3. Transfer Deed.

Idaho Code 42-222 further states:

...the change is consistent with the conservation of water resources within the state of Idaho.

Idaho Code 42-1501 references minimum stream flow and the Legislative Purpose. Buckeye Farms, Inc. is complying with this statute by way of allowing a major portion of their water rights to be diverted into Billingsley Creek for five (5) months of each year, and they will use these waters after it has been beneficially used in Billingsley Creek.

... is in the public interest as defined in section 42-203A(5)

- (a) this transfer will not reduce water supply
- (b) water supply is sufficient
- (c) application is made in good faith
- (d) financial resource is not an issue
- (e) this transfer will not conflict with public interest
- (f) this transfer complies with the state's conservation of water resources.

Again, Buckeye's allowing water to flow through Billingsley Creek before their use of their water rights, certainly supports this criteria of ID 42-222 as to public interest.

...significantly affect the agricultural base of the local area

This transfer does not negatively affect the agricultural base.

...The transfer of a right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby.

This criteria does not apply in that this transfer is not to the use of stored water for irrigation purposes.

This transfer is only asking for 483 acres to be placed where historically 560 acres have been irrigated, yet this statute would allow more acres to be irrigated with stored water.

CONCLUSION

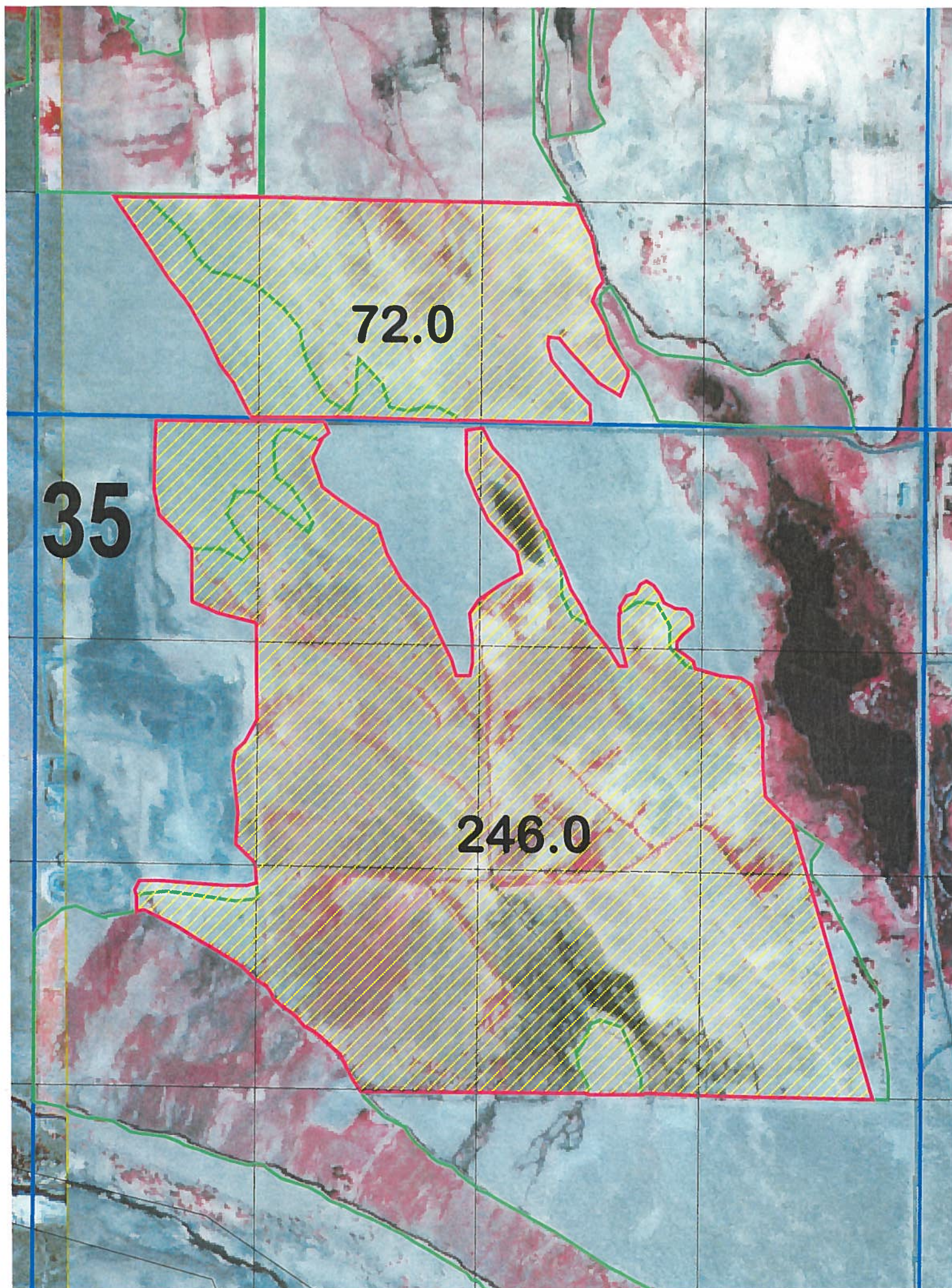
In our prior meeting in Twin Falls with Dave Tuthill, Nick Spencer, et al, the transfer was initially discussed, as well as historical irrigation practices. Issues of the protestants were also discussed. The issues of the protestants have been addressed. Buckeye Farms, Inc. and Western Legends LC (who was originally one of the protestants, and has withdrawn its protest), with the assistance of Chuck Brockway, Sr., is ready,

willing and able to obtain the withdrawal of all protests from protestants, having addressed their concerns immediately upon IDWR's approval of this transfer.

IDWR has stated from the inception of the Settlement Negotiations of 36-00004 that the removal of the 36-00015 and 36-00018 rights from the North Bar S must take place prior to the decreeing the 36-00004 right.

- All parties have complied with the requirement of the IDWR. Substantial evidence as to the historical use in Section 35 and Section 26 has been presented.
- IDWR stated that if Buckeye could prove that 483 acres were available in the South Bar S that either an administrative transfer or statutory transfer could take place, based on the fact that had the 04 right been adjudicated at the same time as the 15/18 right, this error in "place of use" would not have occurred.
- Time is of the essence in the conclusion of this matter due to the ruling of the Judge in the 36-00004. All parties to this adjudication have settled their differences, and IDWR needs to uphold their oral commitments in decreeing this 04 water right.
- Photos presented showing irrigated acreage are 5 examples of 1 day in 1 year, out of 90 plus years of irrigation on this property. These photos were presented to support IDWR's resolution to correcting an error in place of use.

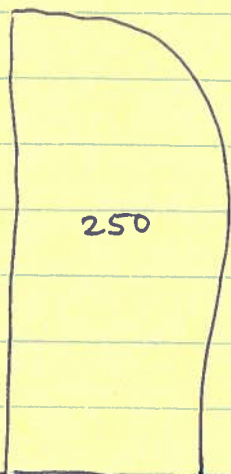
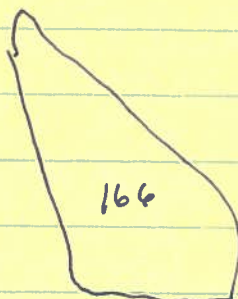
IDWR has a fiduciary duty to complete this transfer based on their oral representations made to Buckeye Farms, Inc. and Western Legends LC., and based on the substantial evidence which more than adequately supports the Idaho Code requirements of this transfer.



Buckeye TRANSFER

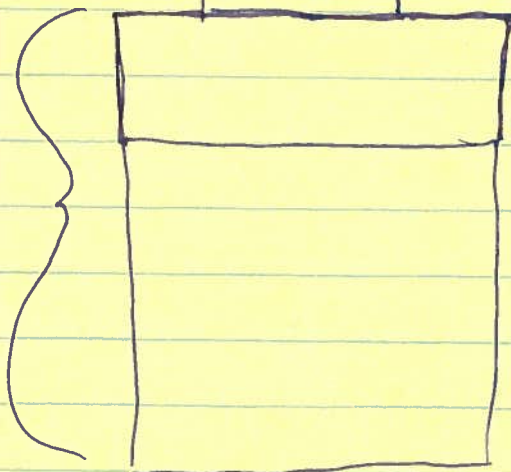
4/25/00

Duty of water - 004
= 0.036 cfs/Ac



36-00004
416 Ac
15 cfs

MAX
GIS
= 318 Ac.



P. Decree: 36-00018

20 cfs / 264 Ac (South)
= ~~(0.076 cfs/Ac)~~
/ 219 Ac (North)
483 Ac

= 0.041 cfs/Ac

W

Clelland, Steve

From: Clelland, Steve
Sent: Tuesday, April 13, 1999 2:20 PM
To: Spencer, Nick
Cc: Clelland, Steve; Merritt, Allen; Tuthill, Dave
Subject: Buckeye acres and settlement

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If you get a chance maybe you can give John S. a call...

Steve

.036 cfs/Ac

$\times 318 \text{ Ac} = 11.45$

8-3-92-

CONVEYANCE LOSS - WORSTELL

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)
1	1600	10.0	2.00	0.40	0.06	31.06	0.0130	0.00	32.80
2	200	10.0	2.00	0.05	20.69	31.00	0.0016	0.30	32.34
3	1700	10.0	2.00	0.43	1.00	10.31	0.0417	0.06	11.60
4	1500	10.0	2.00	0.38	6.25	9.31	0.0407	0.61	10.17
5	6300	3.0	2.00	0.48	3.06	3.06	0.1561	0.77	3.54
6	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	0.00
7	0	0.0	0.00	0.00	0.00	0.00	0.0000	0.00	0.00
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
TOTALS	11300			1.74	31.06			1.74	

36-00042
36-00011A, 36-00044, 36-00018 (0.10 cfs @)
36-000105

CURREN / BAR-S

DITCHES

* THESE RIGHTS SHARE THIS PORTION:

36-00015
36-00189A
36-11142
36-00198A
36-15157
36-00011B
36-00011C
36-00011D
36-00033B
36-00033C
36-00033D
36-00033E

$$0.161 \div 12 = 0.05 \text{ cfs per right}$$

⊗ Some rights will not have their
Conveyance loss identified in Dever.

COPY

REACH = SECTION OF CHANNEL
LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS
AVE WIDTH = AVERAGE TOP WIDTH OF REACH
SEEPAGE = SOIL SEEPAGE RATE OF REACH
WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD
DELIVERY = TOTAL DELIVERIES IN REACH
DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)
LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT
DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY,
REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH
FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH