

**SUPPLEMENTAL DIRECTOR'S REPORT
REGARDING SUBCASE NO. 74-15911**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Gary Spackman, Director
Carter Fritschle, Manager, Adjudication Section

October 17, 2014

I. INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, the Director of the Idaho Department of Water Resources (“Department”) submits this Supplemental Director’s Report (“Report”) regarding subcase number 74-15911. This Report was prepared under the supervision of Gary Spackman, Director, and Carter Fritschle, Manager, Adjudication Section. Carter Fritschle has knowledge of the information contained in the Report.

II. SUMMARY OF THE ISSUE

At issue is the Department’s recommendation of disallowed for subcase number 74-15911. The claimants, Vincent & Malinda Tracy (“Tracy”) filed an objection and John Alfred Simpson filed a response. The parties dispute whether the water right should exist. Since a water right with waste water as the source had not been decreed in the Lemhi River Basin Adjudication (“LRBA”) for the claimed place of use, 74-15911 was initially recommended as disallowed because the LRBA determined all existing water rights in the Lemhi River drainage as of April 1, 1972. In the course of reviewing the objection, and new information provided by Tracy, the Department determined there is sufficient evidence to support a recommendation of water right 74-15911. The basis of the recommendation would be an enlargement. Attachment A.

III. DISCUSSION

In the course of preparing the Director’s Report 74-15911, as well as this Report, the Department reviewed the following documents to better understand the use of the waste water, and attached hereto as Attachments B-H:

- B. Warranty Deed, Stokes to Freel, dated August 26, 1986;
- C. Letter to SRBA Court, Re: Motion to set aside partial decrees 74-180B, 74-179C, 74-4006, dated July 21, 2008;

- D. Memorandum Agreement Stipulating to Vacate Trial Setting, subcases 74-179C et al., dated May 19, 2010;
- E. Affidavit of Alvin W. Bailey Sr., dated August 5, 2014;
- F. Affidavit of Robert Stoddard, dated September 19, 2014;
- G. Map of 74-15911 claimed place of use, dated October 1, 2014;
- H. Administrator's Memorandum, dated September 19, 1979;

The documents outline a history of water use on and around Tracy's property.

Establishing Water Use

James Stoddard owned a farm consisting of hundreds of acres that encompasses the claimed place of use for water right 74-15911. Between 1960 and 1962 he constructed a pond to capture waste water coming off of the fields in order to reuse it on his property. Attachment F. Based on aerial photos and maps created for the LRBA the waste water feeding this pond came from water right 74-178B. Attachment G. The location of the pond is indicated in Attachment G by a yellow dot in Township 21N, Range 23E, Section 29, SWNE, the same quarter quarter as Tracy's property and claimed place of use.

Water right 74-178B was decreed in the LRBA to Stoddard and has subsequently been split multiple times. The waste water from the children rights of 74-178B, flowing from what is now the Eagle Valley Ranch, still flows to the location of the pond. According to Robert Stoddard the water in the pond was used to irrigate the property that is presently owned by Tracy and is the claimed place of use for claim 74-15911 ("Tracy POU"). Attachment F. Alvin W. Bailey Sr. indicates that the Tracy POU was irrigated from the pond since at least 1976. Attachment E. Additionally a settlement agreement reached in subcase 74-179C et al. agreed that Tracy could file a claim for waste water which comes from Eagle Valley Ranch. Attachment D.

The Tracy POU is within the place of use decreed for water right numbers 74-179C, 74-180B and 74-4006 which were also decreed in the LRBA to Stoddard. The SRBA court issued

partial decrees for the rights July 9, 2007, to Earl Dean and Betty W. Stokes (“Stokes”). The partial decrees were consistent with the LRBA decrees.

Despite 74-179C, 74-180B and 74-4006 being claimed and partially decreed consistent with the LRBA decrees, in 1986 Stokes sold the property with only waste water. Attachment B. This error was discovered in 2008 and a motion to set aside the partial decrees (“Motion to Set Aside”) for water rights 74-179C, 74-180B and 74-4006 was filed by Boyd Stokes. Attachment C. Amended partial decrees were issued August 5, 2010.

Aerial photography from 1985 to 2006 indicates the possibility of irrigation on the Tracy POU. Mr. Bailey indicates the pond was used to irrigate the Tracy POU until at least 1999. Attachment E. Given an established consistent history of irrigation on the Tracy POU, backed by aerial photography it appears Tracy has an established water right.

Basis of Claim

The use of the pond to capture waste water and irrigate additional acres by Stoddard constitutes a beneficial use enlargement of right 74-178B. This enlargement was supplemental to rights 74-179C, 74-180B and 74-4006. Once use of 74-179C, 74-180B and 74-4006 on the Tracy POU ceased, the waste water right ceased to be supplemental.

Priority Date

Based on the affidavit of Alvin W. Bailey Sr. (Attachment E) and the Motion to Set Aside (Attachment C) it appears use of the LRBA *decreed* rights on the Tracy POU was discontinued in 1976. However, those statements plus the statements made by Robert Stoddard (Attachment F) indicate that irrigation continued from the *waste water* collected by the pond. The separation of the decreed rights from the waste water use establishes the priority date and thus the priority date of 74-15911 is 3/15/1976. Attachment A.

Place of Use

Tracy claimed 5 acres for 74-15911, but after investigation the Department would recommend a place of use of 2.8 acres in Township 21N, Range 23E, Section 29, SWNE and SENW.

Quantity

The quantity of water was established based on the Department's standards for small irrigation rights allocating 1.5 inches per acre. Attachment H. Applying 1.5 inches to the 2.8 acres place of use gets to the 0.09cfs in the Revised Director's Report.

IV. CONCLUSION

The Department's recommendation for subcase number 74-15911 is based on the information presented and reasonable conclusions drawn therein. The Department therefore respectfully requests that the Court recommend the right as described in this Report.

Submitted this 17th day of October, 2014.



Carter Fritschle
Manager, Adjudication Section

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17TH day of October, 2014, I served a true and correct copy of the foregoing by the following method to:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

Chris M. Bromley
McHugh Bromley, PLLC
380 S. 4th St. Ste. 103
Boise, ID 83702

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile

John Alfred Simpson
774 Lemhi Rd
Salmon, ID 83467

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☐ Facsimile


Signature of person mailing the document

ATTACHMENT INDEX

- A. Revised Director's Report, dated October 17, 2014;
- B. Warranty Deed, Stokes to Freel, dated August 26, 1986;
- C. Letter to SRBA Court, Re: Motion to set aside partial decrees 74-180B, 74-179C, 74-4006, dated July 21, 2008;
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IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Attachment A

INDIV.

WARRANTY DEED

For Value Received

EARL DEAN STOKES AND BETTY STOKES, husband and wife

the grantors, do hereby grant, bargain, sell and convey unto

CHARLES DAVID FREEL AND MARGARET GAYLE FREEL, husband and wife

whose current address is

P.O. BOX 1070

SALMON, IDAHO 83467

the grantees, the following described premises, in Lemhi County Idaho, to wit:

Lot 1 of Sunrise Hills Subdivision according to the official plat thereof filed for record in Book 5 of Plats at pages 63 through 65 inclusive, records of Lemhi County, Idaho. . .

*** It is mutually understood and agreed that the only water rights transferred with the above described Real Estate, will be waste water only. Waste water from 900 acres formerly known as the Kaufman ranch.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantee s, that t hey are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever.

Dated: AUGUST 26, 1986

Earl Dean Stokes
EARL DEAN STOKES

Betty Stokes
BETTY STOKES

STATE OF IDAHO, COUNTY OF Lemhi
On this 26th day of Aug. 1986,
before me, a notary public in and for said State, personally
appeared

EARL DEAN STOKES AND
BETTY STOKES

known to me to be the person s whose name s ARE
subscribed to the within instrument, and acknowledged to
me that they have executed the same.

Steven R. Gott
STEVEN R. GOTT Notary Public
Residing at SALMON, Idaho
Comm. Expires 12-14-1991

State of Idaho }
County of Lemhi } ss. No. 182036

This instrument was filed for record at
the request of American Land Title
at 2:55'clock P.M. AUG 28 1986
and duly filed and indexed in the
records of Lemhi County.

Alberta W. Hendrick
Ex-Officio Recorder
Barbara J. Langford Deputy
Pages 2/00 pd

Furnished by the AMERICAN LAND TITLE CO., Boise, Idaho

RECEIVED

JUL 24 2008

DEPARTMENT OF
WATER RESOURCES

646 Lemhi Road
Salmon, ID 83467
(208) 756-3923

July 21, 2008

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

Re: Motion to set aside partial decrees
74-180 B, 74-179 C, 74-4006

Dear Clerk of the District court,

Last week you received a Standard Form 1 Objections for three new water rights from water district 74-C. It is our understanding that we should have sent you a motion to set aside partial decrees for water right 74-180 B, 74- 179 C, and 74-4006.

We have several reasons for the motion:

1. This acreage has not been irrigated since 1976.
2. There is a Warranty Deed between Earl Dean Stokes and Charles David Freel stating, "It is mutually and agreed that the only water rights transferred with the above described real estate, will be waste water only. Waste water from the 900 acres formerly known as the Kaufman Ranch".

Thank you for your help.

Sincerely,



Boyd Stokes - Chairman of water district 74-C

Slavin Law Office, Chfd.
 Milton A. (Jock) Slavin, Esq., ISBN 1517
 M. Chace Slavin, Esq., ISBN 6805
 116 North Center Street
 Salmon, Idaho 83467
 Telephone: (208) 756-2030

Attorneys for Vincent and Malinda Tracy

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

	)	Subcases:
	)	74-179C (Stokes)
	)	74-179D (Eagle Valley Ranch)
In Re SRBA	)	74-180B:
	)	74-15890 (Stokes)
	)	74-15891 (Eagle Valley Ranch)
	)	74-4006 (Stokes)
Case No. 39576	)	74-15520 (Stokes)
	)	74-15521 (Eagle Valley Ranch)
	)	
	)	MEMORANDUM AGREEMENT
	)	STIPULATING TO VACATE TRIAL
	)	SETTING

COMES NOW, the above parties and agree as follows:

1. That the Trial set for May 21, 2010 in the above referenced matter is to be vacated;
and
2. That Vincent and Malinda Tracy will proceed to file a claim for waste water, which comes from the Eagle Valley Ranch and will flume the waste water across the canal used by the District 74-C water users; and

MEMORANDUM AGREEMENT TO VACATE TRIAL SETTING - PAGE 1

3. That the District 74-C water users agree not to object to the waste water claim to be filed by the Tracys; and
4. That Tracys agree not to disturb the embankment of the canal. The Water District 74-C users consent and agree that the Tracys may install a flume across the canal providing that it will not disrupt the flow of water in the canal and will not disturb or degrade the banks of the District 74-C canal; and
5. Tracys will and do hereby withdraw their objection to the Amended Director's Report.

Dated this 14th day of May, 2010.

Vincent Tracy by Malinda Tracy 5-19 2010
VINCENT TRACY

Malinda Tracy 5-19 2010
MALINDA TRACY

Boyd Stokes 5/19/2010 2010
BOYD STOKES, President, Water District 74-C

E. Dale Jolley 5/19 2010
E. DALE JOLLEY

Earl Dean Stokes 5-19-2010 2010
EARL DEAN STOKES

Eagle Valley Ranch by Mike Kossler 5-19-2010 2010
EAGLE VALLEY RANCH, by MIKE KOSSLER

**CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION**

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the person(s) named below, at the address set out below his/her name, by mailing a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid.

WATER DISTRICT 74-C
C/O BOYD STOKES
646 LEMHI ROAD
SALMON, ID 83467
Phone: 208-756-3923

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

EARL DEAN STOKES
BETTY W. STOKES
19 N BARRACKS LANE
SALMON, ID 83467

EAGLE VALLEY RANCH LLC
446 BOHANNON CREEK ROAD
SALMON, ID 83467

EAGLE VALLEY RANCH LLC
6 STEWART RD
SHORT HILLS, NJ 07078

VINCENT & MALINDA TRACY
3 PRAIRIE ROAD
SALMON, ID 83467

DATED this 14 May 2010.


MILTON A. SLAVIN

CIVMISC\TRACY,V&M.MOA.VACATE\1909-09

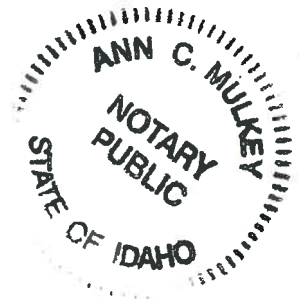
August 5th, 2014

To whom this may concern! Alvin W. Bailey Sr. worked for the Swahlen Ranch from 1976 to to June 1999. Which is now known as Eagle Valley Ranch. I know that the property where Vince Tracy now live's and all the ground around him was irrigated. We irrigated it out of the pond for hay ground.

Alvin W. Bailey Sr.



Notary Public State of Idaho
Ann C Mulkey
Expiration date 6.23.2016



Chris M. Bromley, ISB # 6530
Candice M. McHugh, ISB # 5908
McHugh Bromley, PLLC
380 S. 4th St., Ste. 103
Boise, ID 83702
(208) 287-0991
(208) 287-0864 (facsimile)

Attorneys for Malinda and Vincent Tracy

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

In Re SRBA

Case No. 39576

Subcase Nos. 74-15911

**AFFIDAVIT OF ROBERT
STODDARD**

STATE OF IDAHO)
) ss.
County of Lemhi)

ROBERT STODDARD, being first duly sworn upon oath, deposes and says:

1. I am over the age of eighteen and state the following based upon my own personal knowledge.
2. I was born in 1950 in Salmon, Idaho.
3. My father is James F. Stoddard. My father owned hundreds of acres that he farmed and ranched. I grew up on the ranch. Much of the property, as I understand it, is now owned by Eagle Valley Ranch.

AFFIDAVIT OF ROBERT STODDARD

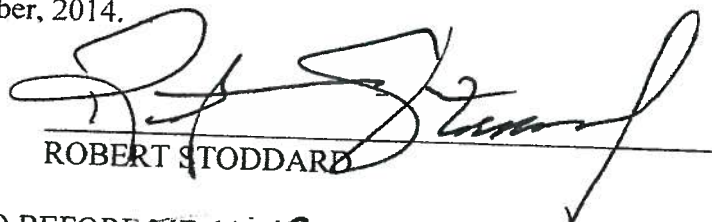
4. My father was a real irrigator. He knew how to get as much out of his water as possible by reusing it.

5. One way he came up with to reuse water was to build a pond on the property that is above where Malinda and Vincent Tracy presently live.

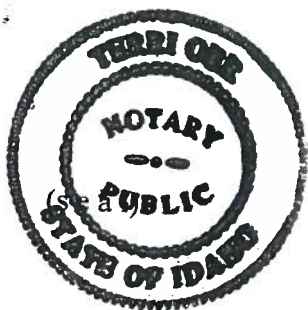
6. When I was 10 to 12 years old, I remember watching my father build the pond with a bulldozer. This would have been sometime between 1960 to 1962. One thing I remember about my father building the pond was watching him get the bulldozer stuck. The pond was designed to capture waste water coming off the fields, in order to reuse it on other land. As I recall, the earthen dam was approximately 8 – 12 feet high, and approximately 6 – 8 feet wide. The width of the pond was approximately 50 feet. The pond was approximately 10 feet deep.

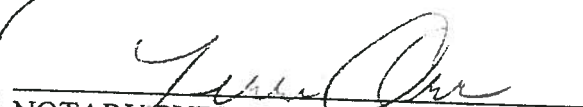
7. There were two parcels of land that the waste water from the pond was designed to irrigate. One parcel was called the "seed plot" and the other was called "the 17 acres," which was located below the pond. The property that Malinda and Vincent Tracy presently own is located on "the 17 acres." Water was diverted out of the pond by a ditch, then across the Jolly Ditch through a culvert, to "the 17 acres." We grew hay and potatoes on "the 17 acres." I remember raking hay when I was 14 or 15 years old.

DATED this ____ day of September, 2014.

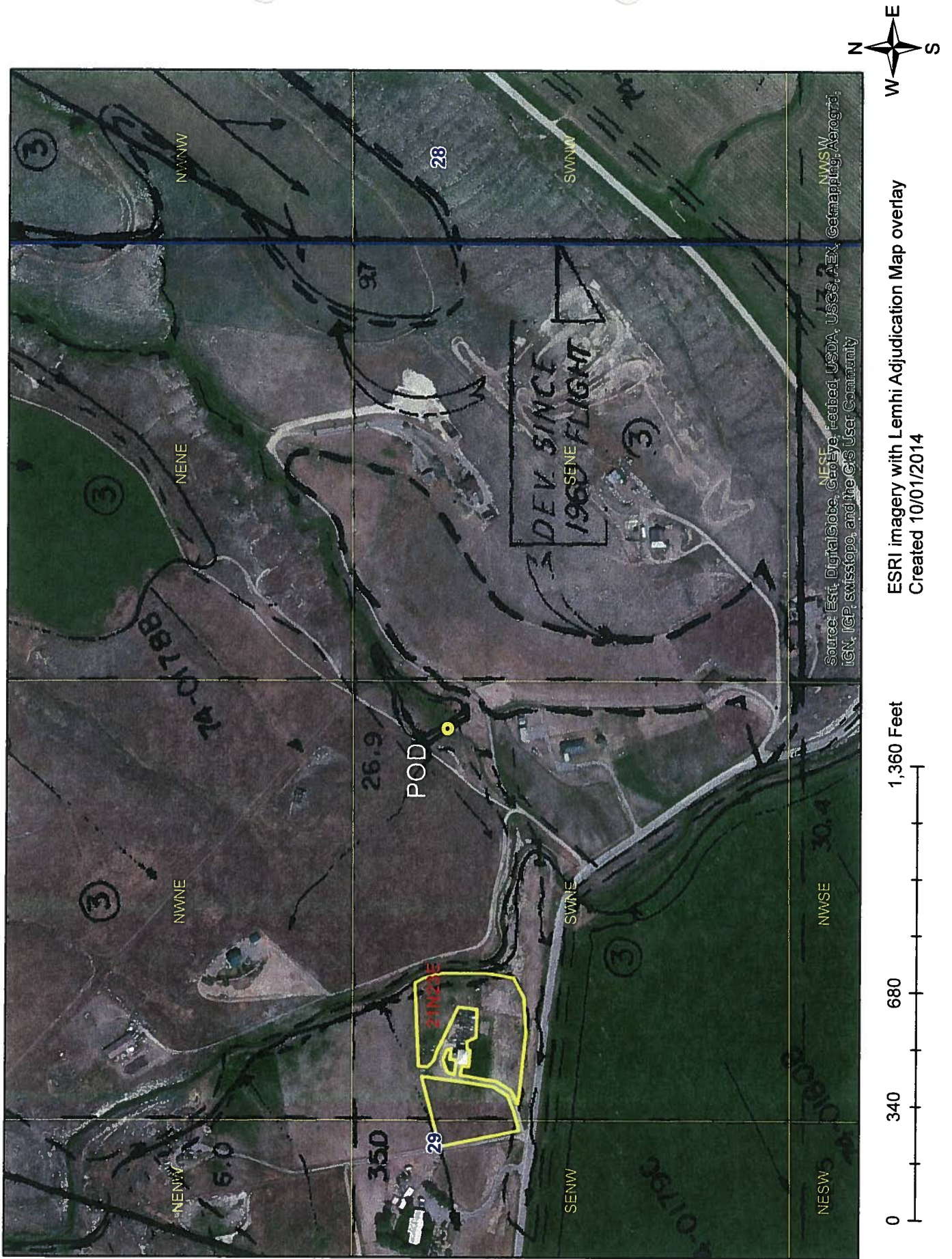

ROBERT STODDARD

SUBSCRIBED AND SWORN TO BEFORE ME this 19 day of September, 2014.




NOTARY PUBLIC for Idaho
Residing at: Salmon, Idaho
My Commission Expires: September 13, 2016

74-15911





17

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

ADMINISTRATOR'S MEMORANDUM

TO: Regional Offices and Water Allocation Section
FROM: Norm Young *NY*
DATE: September 19, 1979
RE: ACCEPTABLE RATES OF IRRIGATION FLOW FOR SMALL ACREAGES

A rate of flow in excess of .02 cfs/acre is often necessary for irrigation of a small acreage, due to restricted system design mechanics and poor economy of scale. To correspond with practical design procedures, the Department will henceforth accept rates of diversion as high as .03 cfs/acre for irrigation of up to five acres without justification that a rate greater than 0.02 cfs is necessary.