



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

January 22, 2016

**Arthur Macomber
Macomber Law, PLLC
1900 Northwest Blvd., Ste. 110
Coeur d'Alene, ID 83814**

RE: Brewster Notices of Error (94-7100, 94-7840, 94-7841, 94-7842, 94-7843, 94-7844, 94-7845, and 94-7847)

Dear Mr. Macomber:

On July 31, 2015 you submitted eight Notice of Error Replies (NOE) on behalf of Mr. John Brewster concerning water right claims 94-7100, 94-7840, 94-7841, 94-7842, 94-7843, 94-7844, 94-7845, and 94-7847. In all of the NOEs you requested that Idaho Department of Water Resources (IDWR) change its recommendation concerning the rights.

In general, the NOEs focused on the recommendations not matching the claims. IDWR believes that the recommendations are accurate and commensurate with the claims. IDWR made changes to claimed elements to be consistent with the IDWR and legal standards as discussed below. Despite the difference between recommendations and claims, the recommendations accurately reflect what was claimed.

The sources in the recommendations do not match the sources in the claims because IDWR uses a standard naming process in coordination with the style found in United States Geological Survey topographical maps.

Concerning the points of the diversion, there was no description of diversion works provided in the claims. Submitted maps indicate instream water use. Instream stockwater use requires identification of two points of diversion, a beginning point and an ending point. If these uses are not instream, IDWR must have a description of the diversion works along with a map identifying their locations in order to change the recommendations. Another issue you raised

concerning points of diversion is that descriptions do not match those found in the claim. IDWR uses Public Land Survey standards to describe locations and the changes reflect those standards.

You also had concerns about quantity in your NOEs. Idaho Code §42-1401A(11) defines stockwatering use as the sole use of water for livestock, not to exceed 13,000 gallons per day. Because of this limitation, IDWR included the standard condition limiting the use. In addition, instream stockwater uses are limited to 0.02 cubic feet per second in order to stay within the 13,000 gallons per day limitation.

The NOE for claim 94-7847 had an issue independent of the other claims. The claim listed recreation storage as a use, which was not included in the recommendation. This use requires proof of priority date and IDWR has not received such evidence.

The NOE for claim 94-7100 also had an issue independent from the other claims, concerning purpose of use. There were five uses claimed, and our preliminary recommendation only included wildlife storage. There are now three recommended uses for the claim; stockwater storage, stockwater from storage, and wildlife storage. The other two listed uses on the claim, stockwater and wildlife from storage, are not necessary to describe the use and were not included. Enclosed you will find an updated recommendation for your review. You will notice the amount for wildlife storage has been reduced to accommodate the accomplished change in purpose, pursuant to Idaho Code §42-1425, adding stockwater from storage and stockwater storage.

Additionally, there is an issue with the fees for claim 94-7100. The total fees for all of the claims totaled \$264.00, of which only \$254.00 has been paid. A variable fee amount of \$10.00 for wildlife storage on claim 94-7100 has not been paid. This amount must be paid before IDWR can recommend the claim with wildlife storage as a purpose of use and the stockwater purposes of use will be limited to 5.4 AF.

Please contact me with any questions or concerns that you may have meghan.carter@idwr.idaho.gov or (208) 287-4810.

Sincerely,



Meghan Carter
Deputy Attorney General

Encl.

09/18/2015

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

RIGHT NUMBER: 94-7100
NAME AND ADDRESS: JOHN M BREWSTER
PO BOX 53
HARRISON ID 83833-0053
SOURCE: SPRING TRIBUTARY: COEUR D ALENE RIVER
UNNAMED STREAM TRIBUTARY: COEUR D ALENE RIVER
QUANTITY: 95.000 AFY
The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.
PRIORITY DATE: 04/29/1977
POINT OF DIVERSION:
T48N R03W S25 SWNW Lot 1 Within KOOTENAI County
T48N R03W S25 SWNW Lot 1 Within KOOTENAI County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER STORAGE	01/01 12/31	5.40 AFY
STOCKWATER FROM STORAGE	01/01 12/31	5.40 AFY
WILDLIFE STORAGE	01/01 12/31	89.60 AFY

PLACE OF USE: WILDLIFE STORAGE in KOOTENAI County

T48N R03W S25 Lot 1 SWNW	T48N R03W S25	NESW
T48N R03W S25 Lot 2 NWSW	T48N R03W S25 Lot 3 SWSW	
T48N R03W S25 Lot 3 SESW	T48N R03W S25	NWSE
T48N R03W S25 Lot 4 SWSE	T48N R03W S36 Lot 1 NWNE	

STOCKWATER FROM STORAGE same as WILDLIFE STORAGE

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.

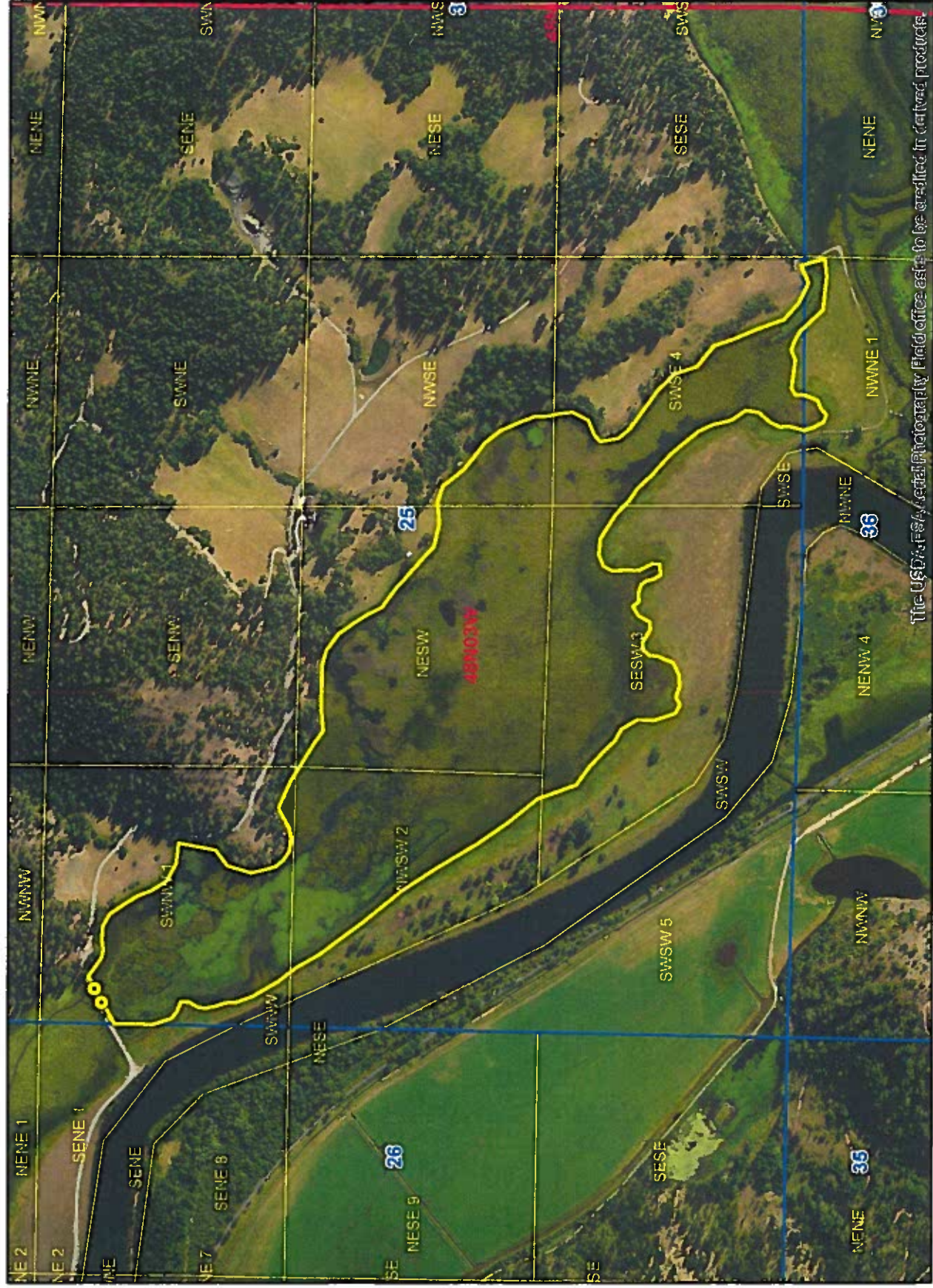
EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

Parcel Nos. 48N03W251200 and 48N03W360900

Stockwater use is for 400 range cattle.

94-7100



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ESRI Aerial Photo

