

RECEIVED
AUG 01 2016

DEPT. OF WATER RESOURCES

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

In Re CSRBA)
Case No. 49576)
_____)
A. Subcase 94-7842
(insert water right number)
**STANDARD FORM 1
OBJECTION**

Please print or type the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Fat Bastard Cattle Co., LLC
Address: P.O. Box 53
Harrison, ID 83833-0053
Daytime Phone: (208) 415-8761

Name & Address of Attorney, if any:
Macomber Law, PLLC (Attn: Greg George)
1900 Northwest Blvd., Ste. 110
Coeur d'Alene, ID 83814

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: John M. Brewster, Sr. (now deceased)
Address: P.O. Box 53
Harrison, ID 83833-0053

D. I object to the following elements or general provision as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☒ **Priority Date**
Should be: 1/1/1906
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☐ **General Provision** ☐ Individual Water Right ☐ All Water Rights
☐ Should not be recommended.

☐ This general provision was not recommended but should be recommended as described below.
Should be: _____

☐ General provision was recommended but should be modified as described below.
Should be: _____

11. ☐ I object because the recommendation contains an accomplished transfer under Idaho Code § 42-1425 resulting in injury to my water right(s) and/or enlargement of the original right.

12. ☐ I object because:

☐ This water right should not exist.

☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** The priority date in the Director's Report differs from the priority date in the Notice of Claim. John Brewster, Sr. was told by Mrs. Gladdis Jacklyn, who grew up on the property, that cattle drank from Swan Lake in 1906. The document titled "Land Patent Details" in the IDWR Backfile for this water right indicates a land patent issue date of 1/12/1911. However, the land described in this document does not constitute all the places of use for this water right. This document is attached as Ex. "B."

INSTRUCTIONS FOR MAILING

You must mail the Objection, to the Clerk of the court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

F. CERTIFICATE OF MAILING

I certify that on July 26, 2016, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to: Clerk of the District Court
Coeur d'Alene-Spokane River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Fat Bastard Cattle Co., LLC

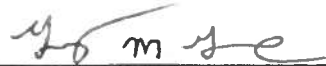
Address: P.O. Box 53
Harrison, ID 83833-0053

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010



Signature of Objector or attorney
mailing on Objector's behalf



Macomber Law, PLLC
Real Property, Real Solutions

Serving Idaho, Montana and Washington

1900 Northwest Boulevard, Suite 110
Coeur d'Alene, Idaho 83814
Post Office Box 102
Coeur d'Alene, Idaho 83816-0102

Local: 208-664-4700
Toll Free: 866-511-1500
Fax: 208-664-9933
www.macomberlaw.com

July 5, 2016

Chad Goodwin
Idaho Department of Water Resources
Northern Regional Office
7600 Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763

Re: Director's Report for Basin 94 water rights

Dear Mr. Goodwin,

I am writing on behalf of Mr. John Brewster Jr. of Harrison, Idaho. Mr. Brewster Jr.'s father had eight (8) Basin 94 water rights which, as you know, are being adjudicated in the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA). There are some remaining issues with IDWR's recommendations for these water rights that my client hopes can be resolved without filing an objection in the CSRBA court.

Before discussing these issues, I believe it is helpful to provide background on the situation. In July of 2015, John Brewster Sr. received IDWR's preliminary recommendations for his Basin 94 water rights. On August 31, 2015, I sent Notices of Error to IDWR on Mr. Brewster Sr.'s behalf contesting the preliminary recommendations for six (6) of his Basin 94 water rights. I sent these Notices of Error on the grounds that IDWR's preliminary recommendations for these water rights did not match the Notices of Claim regarding place of use, points of diversion, purpose of use, source, and priority date.

On January 25, 2016, I received a letter from Deputy Attorney General Meghan Carter regarding the Notices of Error. In this letter, Ms. Carter stated IDWR's position is that its recommendations for Mr. Brewster Sr.'s Basin 94 water rights are consistent with the Notices of Claim. In email correspondence with my associate, Greg George, during March 2016, Ms. Carter stated the differences between the Notices of Claim and IDWR preliminary recommendations stemmed from IDWR's use of the Public Land Survey System to locate points of diversion and places of use and IDWR's use of the style found in USGS topographical maps to name water sources.

Mr. Brewster Sr. passed away on April 12, 2016. Since then, I have been working with Mr. Brewster Jr. on his father's Basin 94 water rights. On May 31, 2016, my associate Greg George and I visited the Harrison, Idaho property on which Mr. Brewster Sr.'s Basin 94 water rights are located. This property is owned by Fat Bastard Cattle Company, LLC. We visited and took latitude/longitude measurements of each point on the property where water is diverted to a beneficial use. We discussed the purposes of use at each point with Mr. Brewster Jr. and Doug Hille, the ranch hand on the property.

Letter to IDWR re: Brewster Basin 94 water rights

Ex. "A"

Upon returning from the Harrison property, we used the latitude/longitude measurements to determine the quarter-quarter section for each location we visited where water is diverted to a beneficial use. We then compared the information we gathered to the Notices of Claim and IDWR recommendations to determine whether any of the discrepancies between the claims and the recommendations have a practical impact on the current or projected use of the water rights.

In other words, our aim was to find which of IDWR's recommendations for Mr. Brewster Sr.'s Basin 94 water rights are inconsistent with how the water rights are currently used or are planned to be used in the future. Based on what we found during our visit to the property, I determined there are three inconsistencies between the IDWR recommendations and the current or projected use of these Basin 94 water rights. There is also an issue regarding the priority date for Water Right No. 94-7842. I will discuss each of these issues in turn.

The first issue is the purpose of use for Water Right Nos. 94-7844 and 94-7845. The only purpose of use claimed or recommended by IDWR for these water rights is Stockwater. However, based on the information we recorded during our visit to the Brewster property I believe IDWR should add Wildlife use to the purposes of use for these water rights.

Specifically, one of the points we visited on May 31 is, based on the latitude/longitude, in the Southwest quarter of the Northwest quarter of Section 30, Township 48 North, Range 2 West, Kootenai County, Idaho.¹ Mr. Hille, the ranch hand, informed us water at this point is used for wildlife and cattle. Of Mr. Brewster Sr.'s Basin 94 water rights, only Water Right No. 94-7844 includes this quarter-quarter section as a place of use or point of diversion, as shown in both the Notice of Claim and the IDWR recommendation. It therefore appears strongly Water Right No. 94-7844 should include Wildlife as a purpose of use.

My client believes IDWR should reach the same conclusion regarding Water Right No. 94-7845. Another point on the property we visited May 31 is a spring that runs year-round and goes down toward the residence on the property. I was informed this spring is used for wildlife and cattle. Based on the latitude/longitude, I determined this point is in the Northeast quarter of the Northeast quarter of Section 25. The IDWR recommendation for Water Right No. 94-7845 lists this quarter-quarter section as a place of use and a point of diversion for Stockwater. However, based on the use of the spring in this quarter-quarter section for wildlife in addition to cattle, my client believes Water Right No. 94-7845 should also include Wildlife as a purpose of use.

The second issue is adding Irrigation as a purpose of use for Water Right Nos. 94-7100, 94-7840, 94-7841, 94-7845, and 94-7847. The IDWR recommendation for each of these water rights includes as a place of use the Northwest quarter of the Southeast quarter of Section 25. One of the locations we visited on the property is in this quarter-quarter section. Mr. Hille informed me the water at this location may also be used for irrigation beginning in 2017. None of the five water rights listed above includes Irrigation as a purpose of use. My client therefore wishes to add Irrigation as a purpose of use for each of these water rights. Please advise on how he can do so.

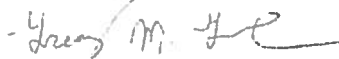
¹ For easier reading in the remainder of this letter, legal descriptions will refer only to the Township, Range, and Section.

The third issue is adding Stockwater as a purpose of use for Water Right Nos. 94-7100. One of the points we visited on the property, between Blue Lake and Swan Lake, is located in the Southwest quarter of the Northwest quarter of Section 25. This quarter-quarter section is listed in the IDWR recommendation for Water Right No. 94-7100 as a place of use for Wildlife Storage. Mr. Brewster Jr. also uses the water in this quarter-quarter section for cattle. Therefore, he would like to have Stockwater added as a purpose of use for Water Right No. 94-7100. Please advise on the process for doing so.

The fourth issue is the priority date for Water Right No. 94-7842. The IDWR recommendation for this water right states the priority date is 1/12/1911, but the Notice of Claim states the priority date is 1/1/1906. The IDWR recommendations for Water Right Nos. 94-7841, 94-7843, 94-7844, and 94-7845 all include a priority date of 1/1/1906. It is uncertain whether the discrepancy in the priority date for Water Right No. 94-7842 will have a practical impact. However, my client would like to resolve the issue so there is no doubt about the priority of this water right. Please let me know how my client can determine the correct priority date for Water Right No. 94-7842.

Please contact me if you have further questions or desire additional information. Upon review of this letter, please let me know when would be a good time to communicate further about the four issues above. Thank you for your assistance.

Sincerely,



Gregory M. George
Attorney at Law

Cc: Client

Land Patent Details						
Accession Nr: 170151 Document Type: Serial Patent State: Idaho Issue Date: 1/12/1911 Canceled: No						
Names On Document			Miscellaneous Information			
☒ DAVIS, WALKER R Military Rank: ---			Land Office:		Coeur D Alene	
			US Reservations:		Yes	
			Mineral Reservations:		No	
			Tribe:		---	
			Militia:		---	
			State In Favor Of:		---	
			Authority:		April 24, 1820: Sale-Cash Entry (3 Stat. 566)	
Document Numbers			Survey Information			
Document Nr: 0851			Total Acres:		55.83	
Misc. Doc. Nr: ---			Survey Date:		---	
BLM Serial Nr: IDCDA 0000851			Geographic Name:		---	
Indian Allot. Nr: ---			Metes/Bounds:		No	
Land Descriptions						
State	Meridian	Twp - Rng	Allquots	Section	Survey #	County
ID	Boise	048N - 002W	Lot/Trct 4	30		Kootenai
REMARKS: LOT 4 OF S-HALF OF SW						
ID	Boise	048N - 002W	Lot/Trct 2	31		Kootenai
REMARKS: LOT 2 OR NORTH HALF OF NW QUARTER						

Ex. "B"

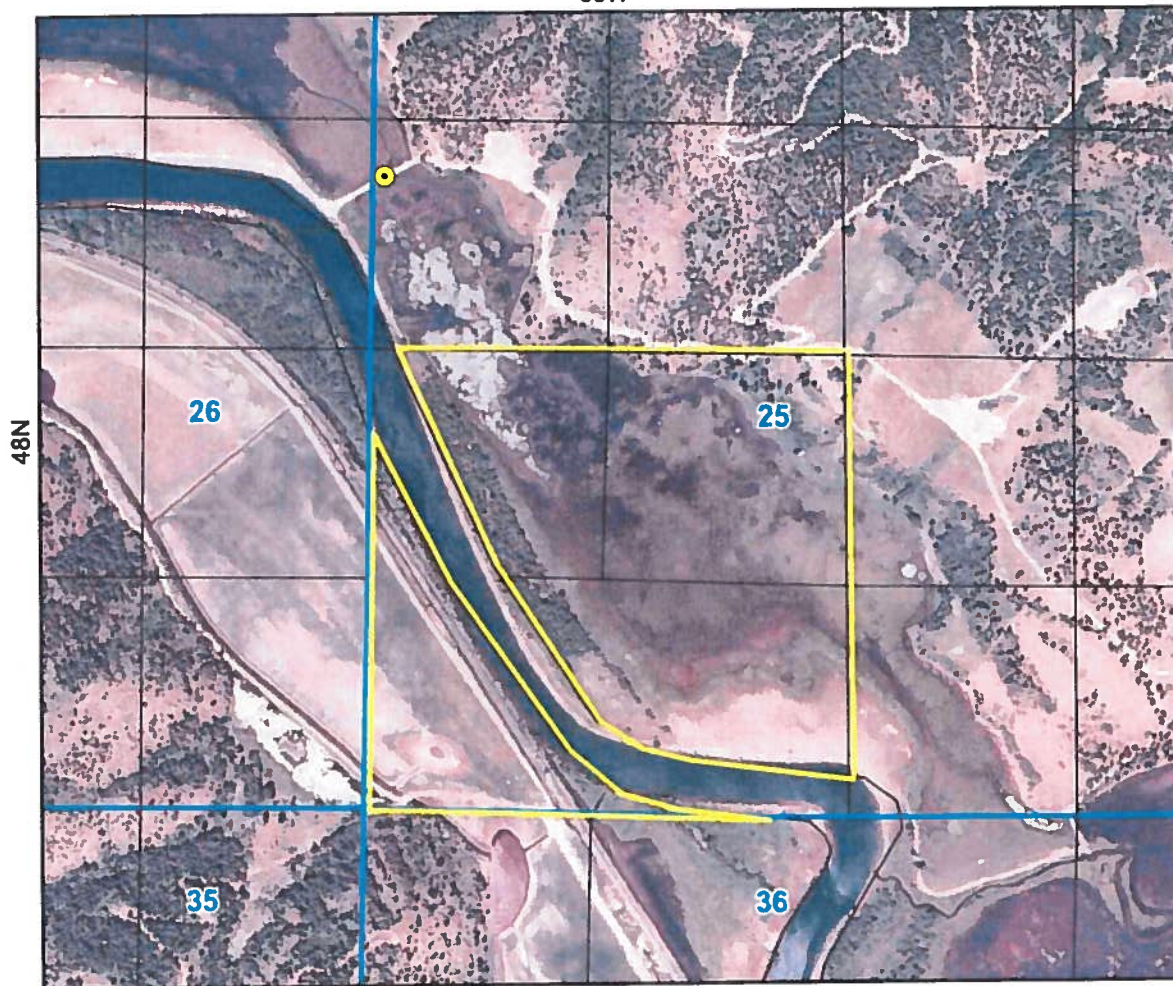
State of Idaho
Department of Water Resources

Water Right
94-7100

WILDLIFE STORAGE

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

03W



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

0 0.125 0.25 0.5 Miles

Ex. "C"



State of Idaho
Department of Water Resources

Adjudication Recommendation
94-7840

DOMESTIC

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.035 0.07 0.14 Miles

Ex. "D"

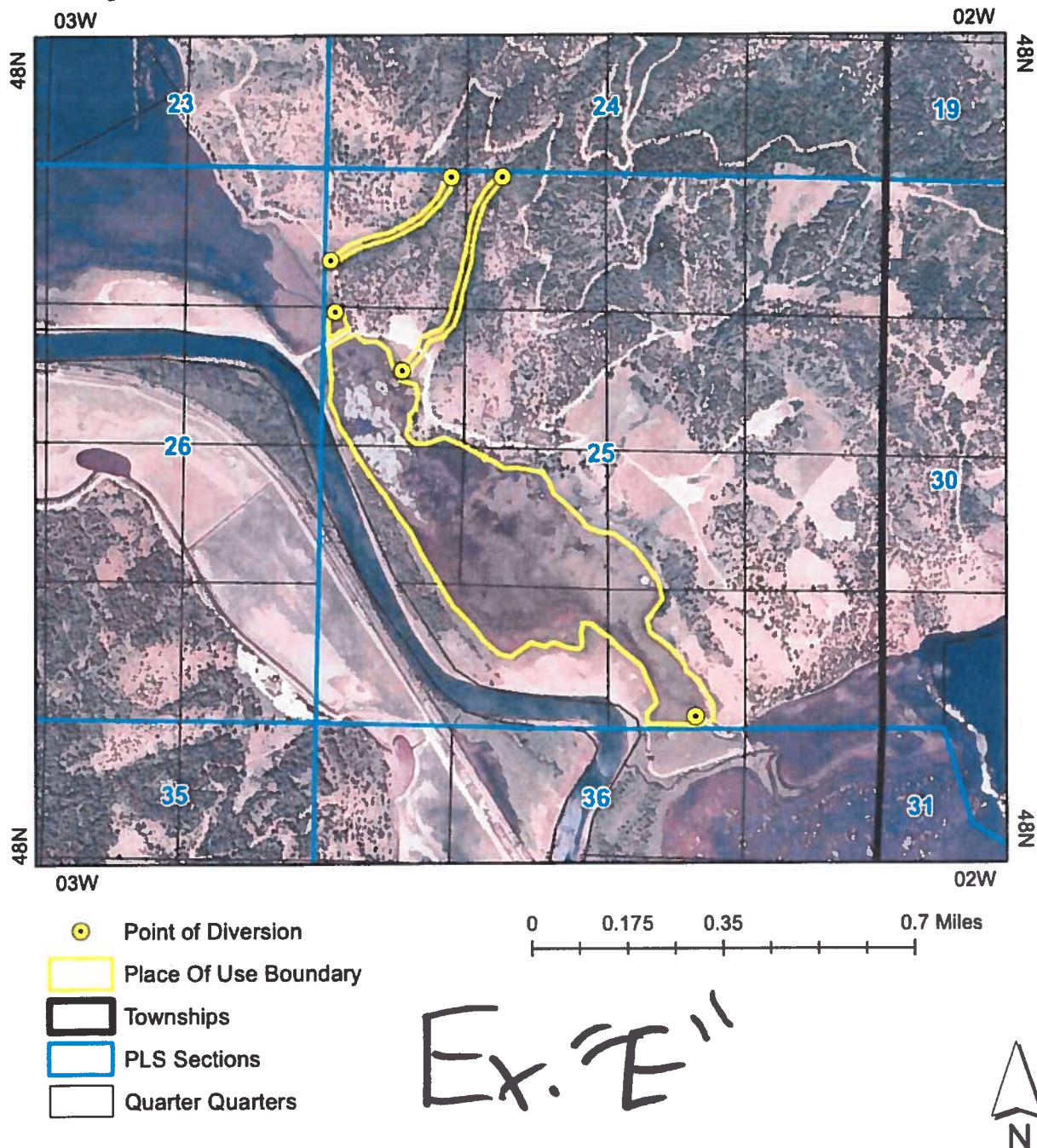


State of Idaho
Department of Water Resources

Adjudication Recommendation 94-7841

STOCKWATER

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

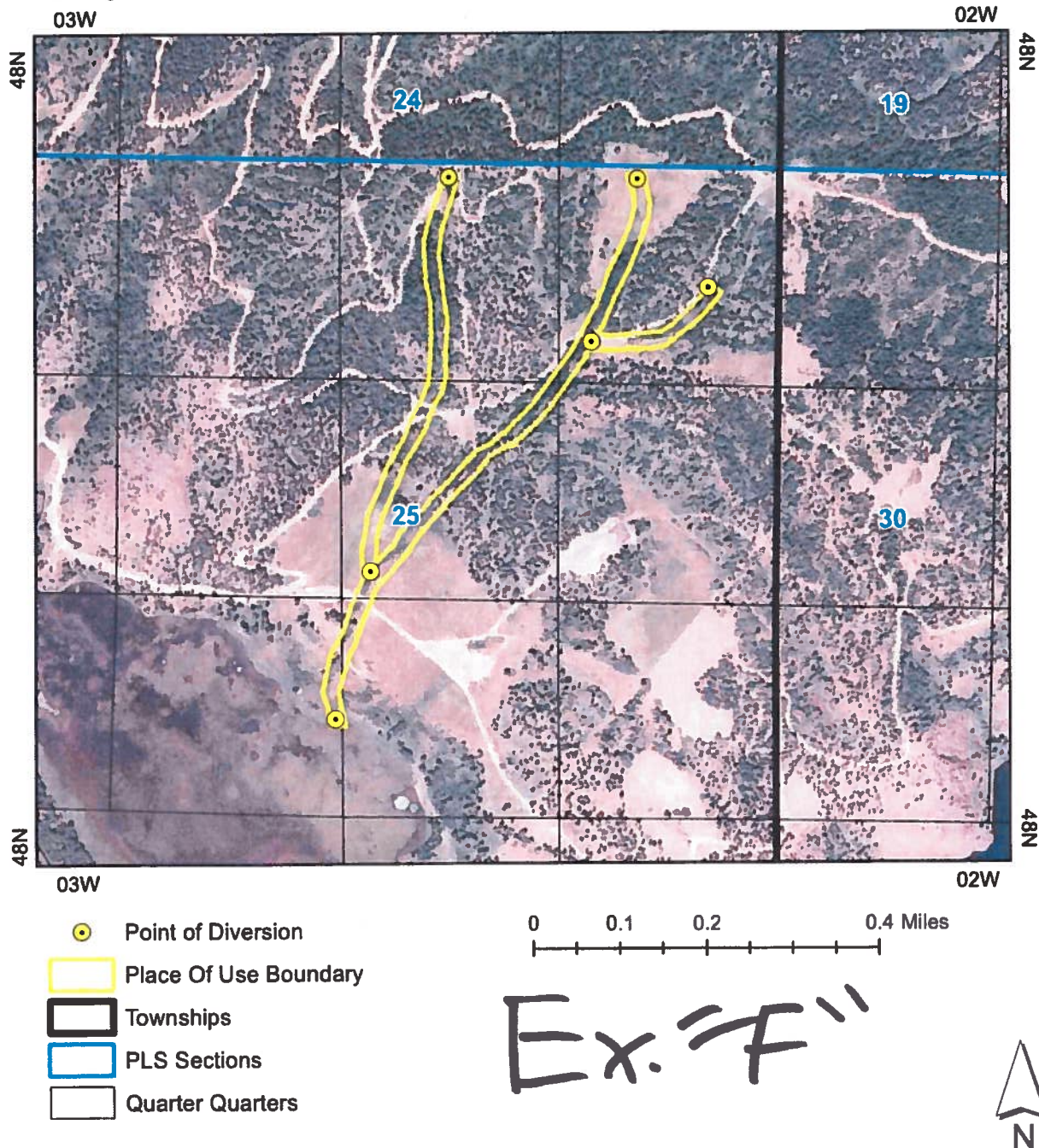


State of Idaho
Department of Water Resources

Adjudication Recommendation
94-7845

STOCKWATER

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



State of Idaho
Department of Water Resources

Adjudication Recommendation
94-7847

FIRE PROTECTION STORAGE

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.035 0.07 0.14 Miles

Ex. "G"



State of Idaho
Department of Water Resources

Adjudication Recommendation
94-7847

STOCKWATER

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources

Adjudication Recommendation 94-7847

STOCKWATER FROM STORAGE

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.035 0.07 0.14 Miles

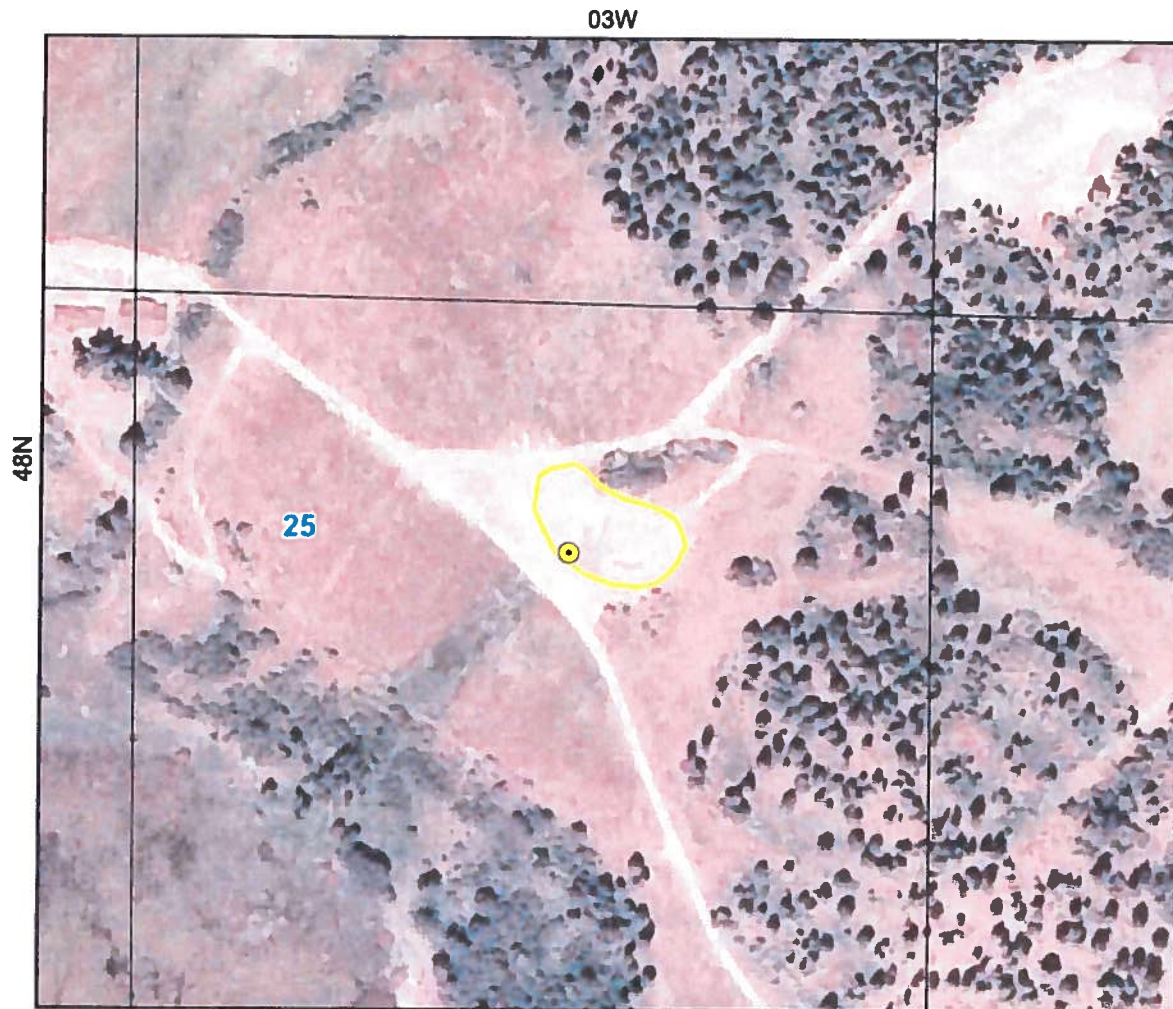


State of Idaho
Department of Water Resources

Adjudication Recommendation 94-7847

STOCKWATER STORAGE

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.035 0.07 0.14 Miles

