

Jones, Doug

From: Jones, Doug
Sent: Tuesday, January 25, 2011 2:21 PM
To: 'dana@idahowaterlaw.com'
Cc: Courtney, Andrea
Subject: Myers 37-22162

Dana,

At long last I am getting back to you on this recommendation for Fish Creek water to which your client objected. This correspondence is intended to provide some background as to the basis of the right and affirmative recommendation.

The origin of this right is through an application/permit process for 37-2268. The attached file "37-22162_printout" contains a comment that helps put the evolution of the appropriation in perspective. Basically the permit was approved, developed and proof of completion was submitted. The State Engineer eventually completed a licensing examination (see attached file "37-22162.pdf" – sorry about the low quality of the scan - of the print - of the microfiche). Also attached is a GIS map (37-22162.jpg) showing the same vicinity as the licensing exam to help interpret the license exam particulars; and I believe it documents that the area was and had continued to be irrigated. The permittee was notified that a licensing fee was due, but no response was forthcoming from the permittee. Eventually, nearly 60 years later, the permit was cancelled when IDWR again could not communicate with the original permittee (am I ok to say 'duh' since he was likely dead, moved, or sold the land to someone else?). This appropriation is therefore a beneficial use basis because the permit was cancelled, but use continued. I have not pinned down timelines of the Fish Creek Reservoir appropriation but it was in that same 19-teens time frame. It was my understanding that the Myers and all their predecessors in interest also had Fish Creek shares for the irrigation of the land.

Finally, I interpreted the existence of this beneficial use right as underlying the Fish Creek shares and if the full extent of beneficial use was ongoing using only the shares, then the underlying right is protected from forfeiture by applying provisions of 42-223. In the event that shares are not delivered then water could be delivered under this right in their stead. Note that I have a combined use limit in combination with Fish Creek shares on the recommendation. If Fish Creek Reservoir has information about trading this right to the company for shares then that could certainly be relevant to whether 37-22162 exists or was subsumed into the reservoir right.

Hope this helps. Let me know if you have any questions via email and perhaps we can do a teleconference from the WC. I believe we have a court conference on 2/23 so it would be good to meet minds ahead of time.

Thanks!

Douglas Jones, PE
Technical Engineer 1



37-22162_printout.
docx



37-22162.pdf



37-22162.jpg

Jones, Doug

From: Courtney, Andrea
Sent: Friday, November 19, 2010 3:53 PM
To: Jones, Doug
Cc: Kelly, Vicki
Subject: RE: 37-22162 attachments

Doug~

Your explanation of the history of the right is most helpful (I included it below for easier reference). The engineer's report is definitely hard to read so don't be surprised if Dana stops by one of these days.

These are certainly odd factual circumstances, and that is a quality I trust Dana will appreciate (because most of her cases (representing claimants) somehow have odd circumstances, too). I think I get the gist -- the Dep't recommended the right in the SRBA as B/U because the permit had been cancelled, right? Did they have reservoir shares back in 1916? The objector contends the claimant hasn't used the right in the last 20 years. Do we have access to aerials that show irrigation? If so, those might be good to have ready.

My notes from the Initial Hearing state that we were going to share with Dana your 11/13/2009 comment from the recommendation. The comment is perfectly appropriate to share with her as is.

Approximately when was the Highline put in? I think I am missing the significance of the note about forfeiture. Are you concerned about two different sources? Or an accomplished change in POD requiring a remark?

I'll be tied up in settlement meetings most of Monday (I think with you on Rinker at 10:30), am off on Tuesday, but will be around on Wednesday. We can talk then or that following week.

Andrea

You wrote:

This is partially intended to be a confidential, in-house information sharing.

At some point it was suggested that I provide some background to the objectors. The following discussion and attachments (separate cover) summarize what was found in IDWR records to further the dialogue toward settlement.

The report of the engineer was printed from microfiche and scanned so that it could be attached. The record (available at the SO on microfiche maybe) shows that the permit was developed, proof filed and an Engineers Exam was performed. Because a licensing exam was delayed the pre-paid fees were returned to the permit holder and then after the exam was done a notice of fees due was sent. The permit holder did not submit the fees. In 1975, or thereabouts, the permit was cancelled. A GIS map is also attached to assist in interpreting the location of the engineers map. My interpretation of this information is that although this right might not specifically have been used the land has continued to be irrigated albeit with Fish Creek Reservoir shares and therefore protected from forfeiture.

Would someone please critically review this statement and help me develop these thoughts to a level (up or down) to prepare for dialogue with Dana?

Thank you.

Doug

From: Jones, Doug
Sent: Thursday, November 18, 2010 4:40 PM
To: Courtney, Andrea
Subject: RE: 37-22162 attachments

REPORT OF ENGINEER

1. State name of applicant and number of permit. Byron Chaffee Permit No. 2478
2. State source of water supply. High Creek - 1.5 miles N.
3. Location of point of diversion. Sec. 4, T. 1 S., R. 22 E.

(NW SE Sec 4 T. 1 S. R. 22 E)

4. State whether or not the works of diversion are fully completed and in accordance with terms of permit. Works are complete.

5. Describe works as they exist, giving dimensions and capacities of same:

Height of dam -- 4 feet. Length of dam 80 feet.

Material: earth, stone and timber.

Headgate five feet wide and three and one half feet high.

Ditch top width: five feet, bottom width three feet.

One and one half feet deep.

The grade varies greatly, the minimum probably is about one tenth percent.

Discharge is probably about twelve cubic feet but this would cause washing of the banks.

6. State whether or not water has been turned into work of diversion: Yes.

7. Give exact location of lands to be irrigated. Give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation):

SE 1/4, NE 1/4, NW 1/4, SW 1/4, Sec. 4, T. 1 S., R. 22 E.

T. 1 S., R. 22 E., S.B.E.

8. Submit map on enclosed plat, showing location and details of above description.

Remarks:

This examination was made on the 1st day of July

(Signed)

J. H. Allen

Examiner

(1917)

9188

Proof of Application of Water to Beneficial Use

DEPOSITION OF HOLDER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. John Shaffer, 27 years old, Irish Creek, Blaine Co. Idaho

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. 965 7488 - Aug 9th 1913

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Irish Creek, Blaine Co. Idaho - NW 1/4 of SE 1/4 of Section 4 T. 1 South of Range 22 East 2nd S. 22

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Dam of stone and timber, 75 feet long, 25 feet wide, about 8 feet deep, headgate about 14 x 16 - 10 ft long, ditch about 5 feet wide and 4 feet deep, capacity 400 to 450 inches; called Moore & Evans ditch & Shaffer & Edwards ditch.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have actually been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. For irrigation and domestic use on SE 1/4 NW 1/4, NE 1/4 & NW 1/4, S 1/2 & NW 1/4, Shaffer & Edwards, Section 10; T 1 S, R 22 E. All the subdivisons, all of the subdivisons, or all of the subdivisons have been irrigated by said water.

Ques. 7. If for other than irrigation purposes, state how applied, amount of horse power generated.

Ans.

Ques. 8. What is the amount of water required for the use specified above?

Ans. About one inch to the acre

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans.

Ques. 10. State when, how, in what amount and to what extent the water under the above mentioned permit has been used.

Ans. *None other water diverted*

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. *None other water diverted*

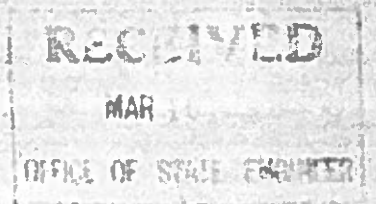
(Sub) *John J. Schaffer*
Register

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in *Butte Co.* County of

1st 1st State of Idaho, on this *6th* day of *March* A. D. 19*15*.

Samuel P. Preschard
Notary Public

9188

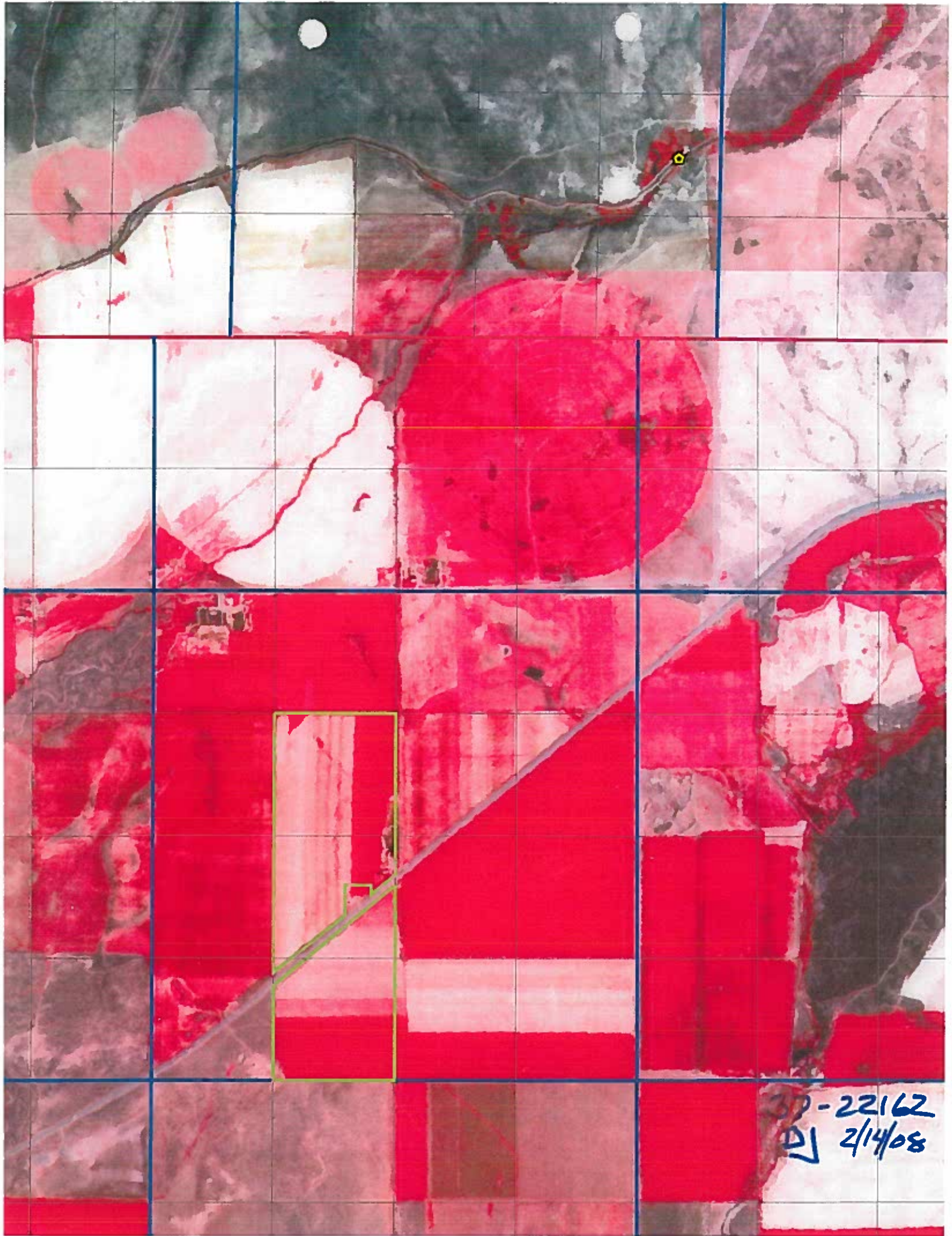


Basin	Sequence	Suffix	Basis	Status	Priority	Date	Rate(cfs)	Volume(ac)	Source	Water Use	Owner(s)	Source Table
37	762		Decreed	Active	6/1/1902		0.4		FISH CREEK EAST FORK	IRRIGATION	SKELTON, FRANCES (Current); SKE	wrAdjRec
37	768	A	Decreed	Active	4/30/1903		0.9		FISH CREEK	IRRIGATION	PARDUE CATTLE COMPANY LLC (C	wrAdjRec
37	12023		Decreed	Active	5/15/1903		1.6		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	767		Decreed	Active	4/30/1904		1		FISH CREEK	IRRIGATION	ELLSWORTH ENTERPRISES (Curre	wrAdjRec
37	12021		Decreed	Active	5/15/1904		0.4		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	782		Decreed	Active	5/18/1904		1.2		WEST FORK FISH CREE	IRRIGATION	HANSEN, LANETA (Current)	wrAdjRec
37	786		Decreed	Active	8/23/1904		1.4		FISH CREEK	IRRIGATION	TELFER INC (Current)	wrAdjRec
37	766		Decreed	Active	4/10/1905		0.8		FISH CREEK WEST FOR	IRRIGATION	BLANCHARD, RICHARD F (Current)	wrAdjRec
37	779		Decreed	Active	4/21/1905		1.06		FISH CREEK WEST FOR	IRRIGATION	BLANCHARD, RICHARD F (Current)	wrAdjRec
37	739		Decreed	Active	8/18/1905		2		FISH CREEK	IRRIGATION	REAY, DELORES (Current); REAY, S	wrAdjRec
37	740		Decreed	Active	8/18/1905		2.4		FISH CREEK	IRRIGATION	PECK, RONALD F (Current); PECK, V	wrAdjRec
37	748		Decreed	Active	8/18/1905		1.6		FISH CREEK	IRRIGATION	KIMBALL, DARLA M (Current); KIMBA	wrAdjRec
37	773		Decreed	Active	8/18/1905		1.6		FISH CREEK	IRRIGATION	WILDE, EDRIC L (Current); WILDE, S	wrAdjRec
37	774	A	Decreed	Active	8/18/1905		1.26		FISH CREEK	IRRIGATION	STYHL, EDITH (Current); STYHL, PH	wrAdjRec
37	774	B	Decreed	Active	8/18/1905		1.34		FISH CREEK	IRRIGATION	STYHL, ELWYN (Current)	wrAdjRec
37	775		Decreed	Active	8/18/1905		2.16		FISH CREEK	IRRIGATION	HAWKES, ANTHONY B (Current); HA	wrAdjRec
37	776		Decreed	Active	8/18/1905		5.8		FISH CREEK	IRRIGATION	PECK, LEON (Current)	wrAdjRec
37	12022		Decreed	Active	8/18/1905		1.6		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	21218		Decreed	Active	8/18/1905		0.9		FISH CREEK	IRRIGATION	RUSH, ALMA E (Current); RUSH, JOE	wrAdjRec
37	21219		Decreed	Active	8/18/1905		0.9		FISH CREEK	IRRIGATION	VILLAVICENCIO, MARLA (Current); V	wrAdjRec
37	741		Decreed	Active	5/15/1906		0.5		FISH CREEK	IRRIGATION	SHAW, T FRANK (Current)	wrAdjRec
37	750		Decreed	Active	6/15/1906		0.8		FISH CREEK	IRRIGATION	TELFER INC (Current)	wrAdjRec
37	751		Decreed	Active	5/1/1907		0.5		FISH CREEK	IRRIGATION	PARDUE CATTLE COMPANY LLC (C	wrAdjRec
37	778		Decreed	Active	6/15/1907		2.2		FISH CREEK	IRRIGATION	BARTON, JOHN K (Current); BARTON	wrAdjRec
37	1178		Decreed	Active	7/25/1907		0.8		FISH CREEK	IRRIGATION	KIMBALL, DARLA M (Current); KIMBA	wrAdjRec
37	754		Decreed	Active	5/15/1908		1		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	747		Decreed	Active	6/1/1908		2.6		FISH CREEK	IRRIGATION	REAY, DELORES (Current); REAY, S	wrAdjRec
37	743	A	Decreed	Active	1/16/1909		1.6		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	743	B	Decreed	Active	1/16/1909		1.6		FISH CREEK	IRRIGATION	SWEAT, CATHERINE L (Current); SW	wrAdjRec
37	757		Decreed	Active	1/16/1909		4		FISH CREEK	IRRIGATION	PARDUE CATTLE COMPANY LLC (C	wrAdjRec
37	1179		Decreed	Active	1/16/1909		4		FISH CREEK	IRRIGATION	KIMBALL, DARLA M (Current); KIMBA	wrAdjRec
37	745		Decreed	Active	5/5/1909		0.4		FISH CREEK	IRRIGATION	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	734		Decreed	Active	4/15/1910		1		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	736		Decreed	Active	5/23/1910		2		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	1181		Decreed	Active	6/10/1910		1.1		FISH CREEK	IRRIGATION	ELLSWORTH ENTERPRISES (Curre	wrAdjRec
37	2195		License	Active	11/13/1910		0.86		FISH CREEK	IRRIGATION	PARDUE, W D (Current)	wrAdjRec
37	746		Decreed	Active	5/30/1911		0.5		FISH CREEK	IRRIGATION	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	1162		Decreed	Active	11/2/1922			14411	FISH CREEK	IRRIGATION	FISH CREEK RESERVOIR CO INC (C	wrAdjRec
37	1163		Decreed	Active	5/1/1923		1.56		FISH CREEK	IRRIGATION	CARNEY, BARBARA J (Current); CAF	wrAdjRec
37	4392		Beneficial	Active	12/31/1926	13	0.8		FISH CREEK	IRRIGATION	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	21127		Beneficial	Active	1/1/1930		0.02		LITTLE FISH CREEK	STOCKWATER	MACLAIC CORP (Current)	wrAdjRec
37	769	A	Decreed	Active	1883-03-03		0.9		FISH CREEK	IRRIGATION	PARDUE CATTLE COMPANY LLC (C	wrAdjRec
37	733		Decreed	Active	1883-03-30		0.23		FISH CREEK	IRRIGATION	ELLSWORTH ENTERPRISES (Curre	wrAdjRec
37	735		Decreed	Active	1883-03-30		0.23		FISH CREEK	IRRIGATION	ELLSWORTH ENTERPRISES (Curre	wrAdjRec

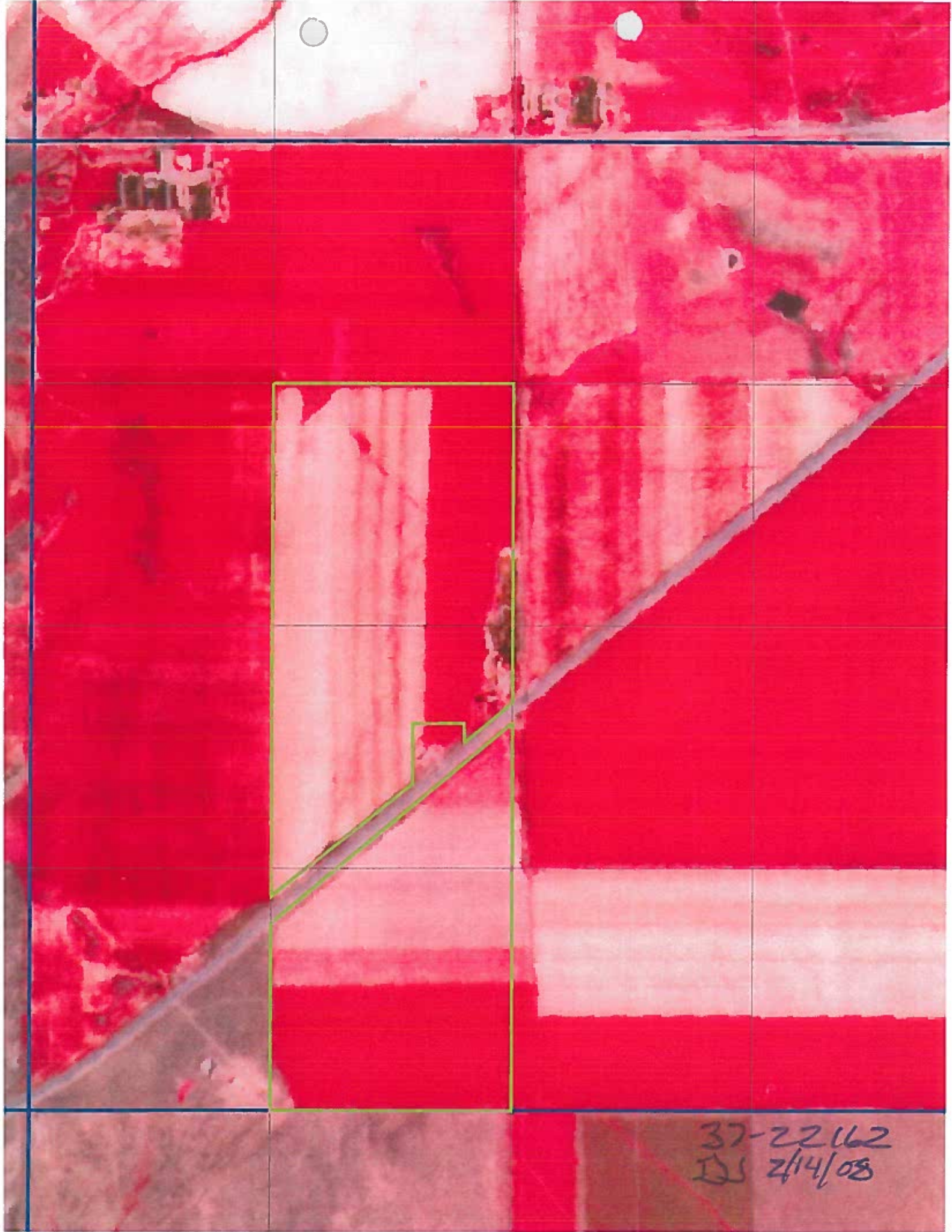
37	737	A	Decreed	Active	1883-03-30	0.7	FISH CREEK	IRRIGATIO	ELLSWORTH ENTERPRISES (Current)	wrAdjRec
37	737	B	Decreed	Active	1883-03-30	0.7	FISH CREEK	IRRIGATIO	MOLYNEUX, C E (Current)	wrAdjRec
37	752		Decreed	Active	1883-03-30	0.23	FISH CREEK	IRRIGATIO	ELLSWORTH ENTERPRISES (Current)	wrAdjRec
37	756		Decreed	Active	1883-03-30	0.23	FISH CREEK	IRRIGATIO	ELLSWORTH ENTERPRISES (Current)	wrAdjRec
37	769		Decreed	Active	1883-03-30	2.3	FISH CREEK	IRRIGATIO	ELLSWORTH ENTERPRISES (Current)	wrAdjRec
37	770	C	Decreed	Active	1883-03-30	2.5	FISH CREEK	IRRIGATIO	ELLSWORTH ENTERPRISES (Current)	wrAdjRec
37	772	A	Decreed	Active	1883-03-30	1.6	FISH CREEK	IRRIGATIO	WHITBY, BEVERLY A (Current); WHI	wrAdjRec
37	780	B	Decreed	Active	1883-03-30	0.8	FISH CREEK	IRRIGATIO	MOLYNEUX, C E (Current)	wrAdjRec
37	10675		Decreed	Active	1883-03-30	1.6	FISH CREEK	IRRIGATIO	PETERSON, RICHARD E (Current); P	wrAdjRec
37	758		Decreed	Active	1884-06-01	2	FISH CREEK EAST FORK	IRRIGATIO	CARNEY, BARBARA J (Current); CAR	wrAdjRec
37	759		Decreed	Active	1884-06-01	0.5	FISH CREEK EAST FORK	IRRIGATIO	SKELTON, FRANCES (Current); SKE	wrAdjRec
37	1214		Decreed	Active	1884-06-01	0.5	FISH CREEK	IRRIGATIO	SKELTON, FRANCES (Current); SKE	wrAdjRec
37	760		Decreed	Active	1885-06-01	0.8	FISH CREEK	IRRIGATIO	CARNEY, BARBARA J (Current); CAR	wrAdjRec
37	761	A	Decreed	Active	1885-06-01	0.25	FISH CREEK EAST FORK	IRRIGATIO	CARNEY, BARBARA J (Current); CAR	wrAdjRec
37	761	B	Decreed	Active	1885-06-01	0.75	FISH CREEK EAST FORK	IRRIGATIO	SKELTON, FRANCES (Current); SKE	wrAdjRec
37	1215		Decreed	Active	1885-06-01	1.6	FISH CREEK	IRRIGATIO	SKELTON, FRANCES (Current); SKE	wrAdjRec
37	22082		Beneficial	Active	1885-07-01	0.02	UNNAMED STREAM, WE	STOCKWA	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	22089		Beneficial	Active	1885-07-01	0.02	FISH CREEK, UNNAMED	STOCKWA	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	22094		Beneficial	Active	1885-07-01	0.02	FISH CREEK, UNNAMED	STOCKWA	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	22095		Beneficial	Active	1885-07-01	0.02	EAST FORK FISH CREEK	STOCKWA	LAVA LAKE LAND & LIVESTOCK LLC	wrAdjRec
37	763		Decreed	Active	1887-06-01	0.8	FISH CREEK	IRRIGATIO	CARNEY, BARBARA J (Current); CAR	wrAdjRec
37	764		Decreed	Active	1890-06-01	0.6	FISH CREEK EAST FORK	IRRIGATIO	CARNEY, BARBARA J (Current); CAR	wrAdjRec
37	771		Decreed	Active	1898-06-01	0.1	FISH CREEK	IRRIGATIO	ELLSWORTH ENTERPRISES (Current)	wrAdjRec
37	777		Decreed	Active	1899-06-30	3.1	FISH CREEK	IRRIGATIO	BARTON, JOHN K (Current); BARTON	wrAdjRec

Evidence of Priority needed
- Most junior in Potlows
Potlows = 5/30/1911
Decree = 12/16/1914
- Fish Cr Reservoir = 11/2/192
- ~~Decree~~ Ft. by Carney = 5/11/1923
- BLD rt by Lava Lake = 12/3/1926

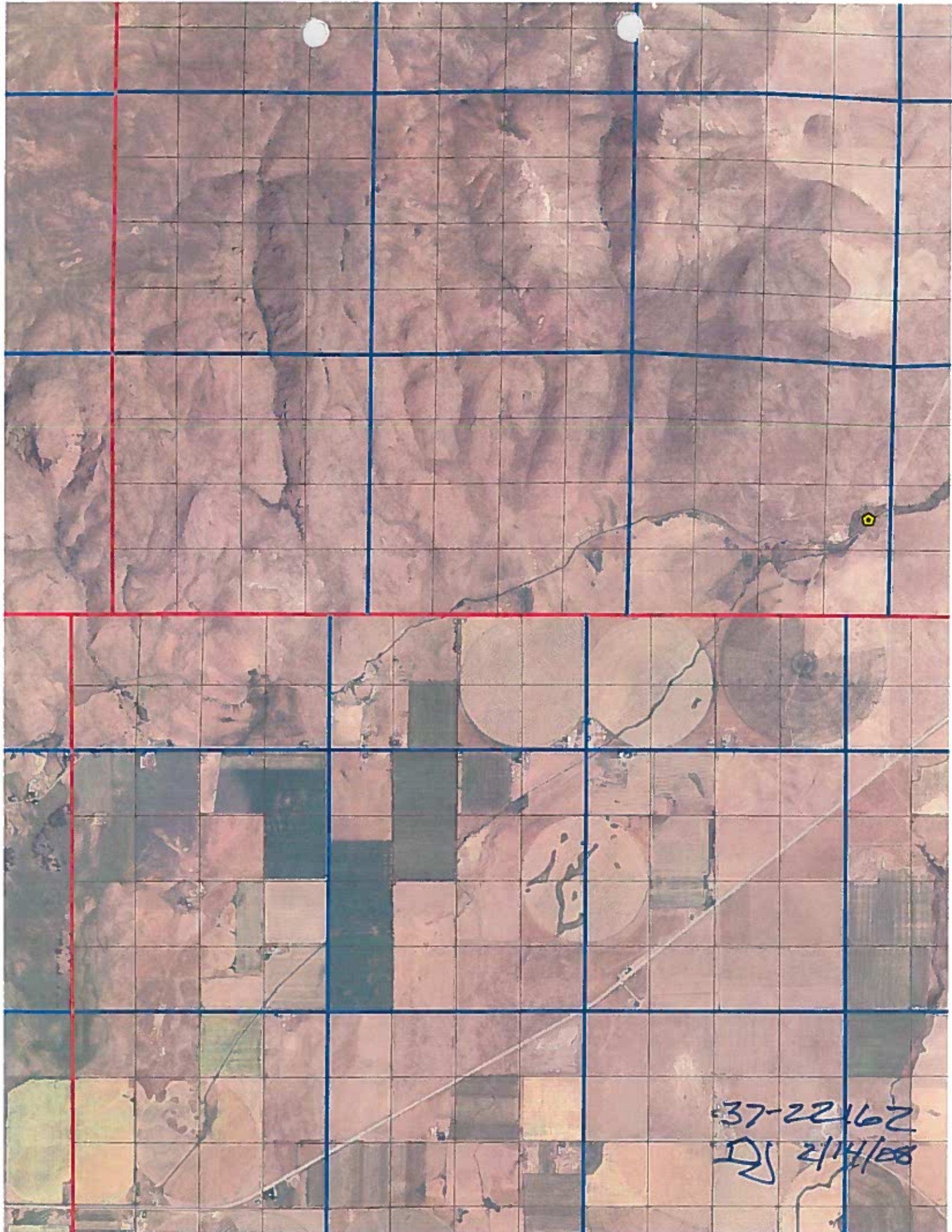
See BLD for 37-268
Proof



3D-22162
DJ 2/14/08



37-22162
IS 2/14/08



37-22162
DJ 2/14/88