

05/10/2006

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

RIGHT NUMBER: 22-575A
NAME AND ADDRESS: SHERRY ZOHNER
401 W 475 S
VICTOR ID 83455

GARY ZOHNER
401 W 475 S
VICTOR ID 83455

SOURCE: PARADISE SPRING TRIBUTARY: TETON RIVER
QUANTITY: 1.000 CFS
PRIORITY DATE: 06/01/1892
POINT OF DIVERSION:
T04N R45E S20 SWNWSW Within TETON County
PURPOSE AND
PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/15 10/15	1.000 CFS
PLACE OF USE:	<u>IRRIGATION Within TETON County</u>		
	T04N R45E S19 SENE 40.00	T04N R45E S19 NESE 40.00	
	T04N R45E S19 NWSE 40.00	T04N R45E S19 SESE 40.00	
	T04N R45E S20 SWNW 28.00	T04N R45E S20 NWSW 18.00	
	206 ACRES TOTAL		

The rights listed below are limited to the irrigation of a combined total of 206 acres in a single irrigation season. Combined Right Nos.:22-180A, 22-365, 22-575A, 22-2057

This right is limited to the irrigation of 80 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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 - Decreed

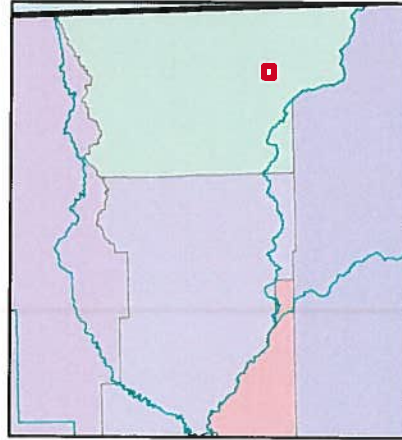


Idaho Department of Water Resources

SRBA Recommendation
22-575A
 (IRRIGATION)

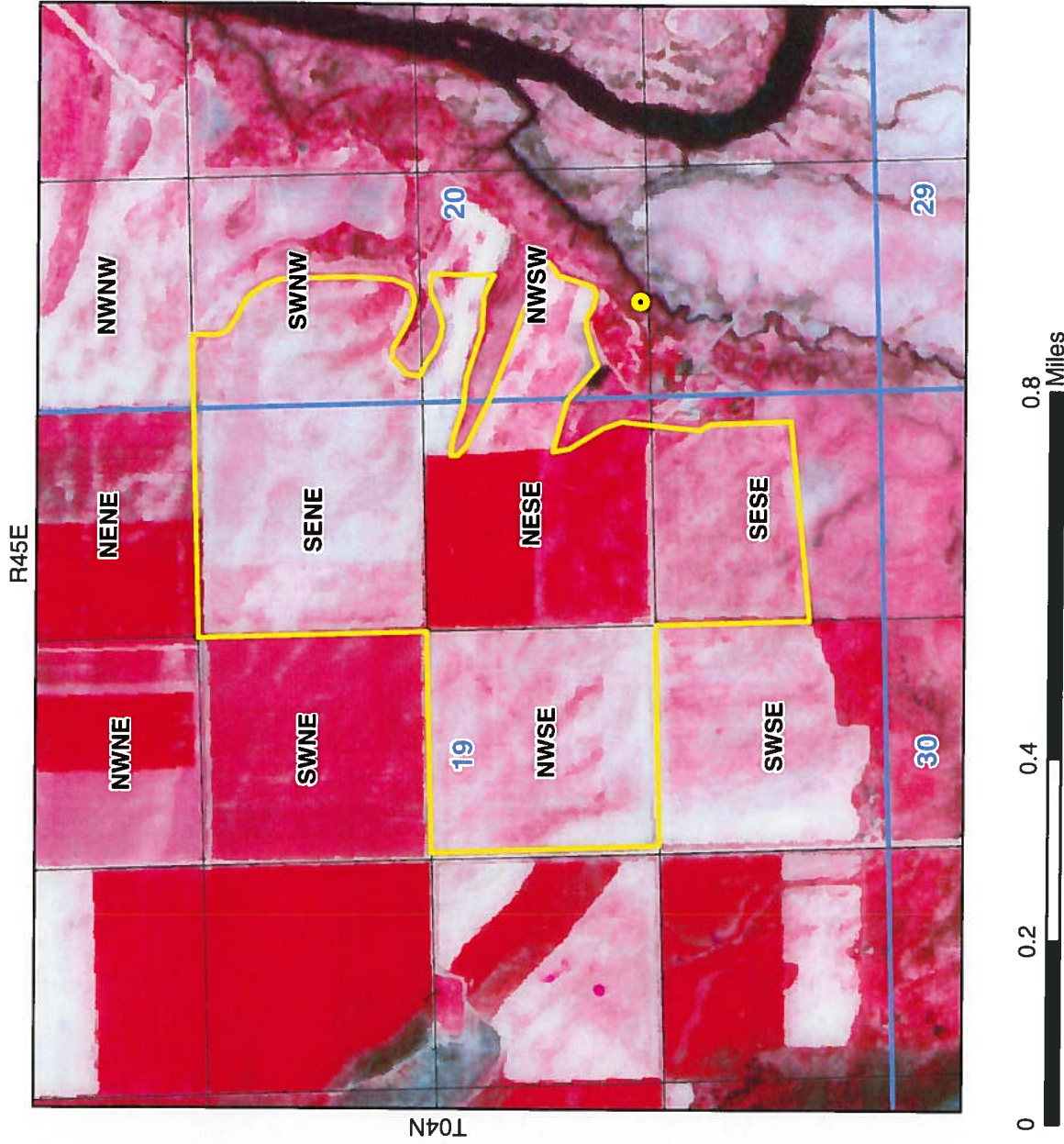
Legend

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



Teton County
IDWR Basin 22

Prepared by Michael Holliday
 On October 23, 2008
 1987/88 Aerial Photography



To: Files 22-575A, 22-365, & 22-2057
From: Michael Holliday
Date: October 22, 2008
Re: Zohner recommendations

The initial hearing for subcase 22-180A was held in Rexburg on August 20, 2008. At the initial hearing Kunz and Zohner agreed that Zohner should not receive any portion of 22-180. Claims 22-575A, 22-365, & 22-2057 are uncontested overlaps with 22-180A. The purpose of this memo is to determine what impact the removal of 22-180A would have on the uncontested rights. SF5s have been prepared for these rights consistent with this memo.

After a closer look, it was determined that several changes needed to be made to the three uncontested overlaps. Transfers 3554 and 3555 included combined quantity limits, a measuring device condition, and a watermaster condition. These conditions were inadvertently left off the recommendations and have been added to the SF5s. The combined acreage condition had to be altered by removing 22-180A from the list of rights. Also the permissible place of use was reduced in size from 206 to 169 acres based on aerial photos and a conversation with Ernie, who had been on site and recognized some land under the original recommendations as unirrigated.

Other changes were made to these recommendations as shown in the individual SF5s. Those changes and the reasoning behind those changes are as follows:

22-575A

- The source name was changed from Paradise Spring to Paradise Creek consistent with transfer 3555 and the USGS quad map.

22-365

- Source condition added to describe the injection into and redirection from Paradise Cr.
- The quantity was changed from 1.98 cfs to 2.52 cfs and the acre limit for this right was changed from 86.5 to 126 acres. Zohner owns 126 acres of the decreed pou, although this was probably not clear to Trent when he originally made the recommendation. The decree is for 280 acres. However, the decree shows "SE1/4 of NE1/4, and NE1/4 of Sec. 19, NW1/4 of SW1/4, and SW1/4 of NW1/4 of Sec. 20..." It would have made more sense if the first description in the land list had said NESE of 19 because you need another QQ in order to get to the total of 280 acres as stated in the decree, and an old homestead map shows that Samuel Kunz, Jr. was the owner of the NESE. Since the decree was for an inch to the acre, the SF5 is for 126 miners inches.

22-2057

- Source condition added to describe the injection into and redirection from Paradise Cr.
- The period of use was corrected to reflect the standard season of use for the area.
- The quantity was changed from 2.13 cfs to 0.86 cfs and the acre limit was changed from 106.5 to 43 acres. The 43 acres is 169 total acres less the 126 acres under 22-365. Quantity is an inch to the acre, consistent with license. This quantity reduction eliminates the need for confusing combined quantity conditions.

Paradise Springs Water Rights, Basin 22, Teton County Idaho

Paradise Springs, located near Driggs Idaho in Basin 22 is the subject of much contention. The recommendations have been reported to the court for all Basin 22 claims as well as these Paradise Springs and those water rights related to Paradise Springs. Objections are now being filed with the court regarding these rights. This report is to document the reasoning behind the recommendations made on the water rights for Paradise Springs and those water rights relating.

Water Right Referenced in This Report

22-180A, 22-180B, 22-180D, 22-575A, 22-11537, 22-11639, 22-12714B, 22-13134, 22-13135, 22-13211, 22-13212, 22-13503, 22-13509, 22-13511, 22-13585, 22-13586.

Water Right 22-405

Water right 22-405 was decreed to J. J. Miller in “Rexburg Irrigation Company et al. vs. Teton Irrigation Canal Company et al.”, commonly known as the Rexburg Decree. Water right 22-405 was decreed to lands located on SWSE and S½ SW Section 30, and NENW of Section 21, Township 4 North, Range 45 East, for a total of 160 acres. The decree entitled Mr. Miller to a total of 2.0 cfs from Paradise Springs. The decree stated a priority date of 6-1-1904.

Mike Reid, Don Leroy Miller and Rex Miller are the original claimants for 22-405. Rex Miller has since sold a portion of his land to John Collins, Andrew Richardson and some of his land if not all is now being subdivided. All of the original claimants claim the water had never been used on the decreed place of use. Don is J.J. Miller’s son. He states along with the rest of the original claimants that J. J. Miller never owned any of the land described in the Rexburg decree, and that the land that the water was intended to be used on is located in the SESW and NESW Section 19 as well as NENW and SENW Section 30, Township 4 North, Range 45 East. After looking at the USGS topographic map, it was found that Paradise Springs’ water could never have been used on the land described in the Rexburg Decree because it is up hill.

Don Miller brought in J. J. Millers Homestead description as well as a Notice Of Water Right submitted by J. J. Miller. The Homestead Entry for J. J. Miller and the land listed on his Notice of Water right are described as follows: E½ NW Section 30 and E½ SW Section 19, Township 4 North, Range 45 East.

Given this information it is believed that water right 22-405 had always been used on the land described by the claimants. It is also believed that the Rexburg Decree was in error.

Because of this error and the fact that the Rexburg Decree is an indeterminate decree in regard to exact acreage, Idaho Department of Water Resources’ “Adjudication Memo #57” was used as a guide for these recommendations. “Adjudication Memo #57” states

that if the water right was part of an indeterminate decree, then the acres irrigated in 1987 will be used as the decreed place of use. In 1987 all of the E½ NW Section 30 and E½ SW Section 19, Township 4 North, Range 45 East was irrigated. This information was found through statements from the original claimants including signed statements from Rex Miller and Craig Kunz and by reviewing the aerial photos taken in 1987/1988 by the National Agriculture Imagery Program (NAIP). Though this is true, the claimants state that the NESW of Section 19 Township 4 North, 45 East was not irrigated until later (Affidavit supplied).

Rex Miller and Don Miller are brothers and each of them owned part of the land that was homesteaded by J. J. Miller. Even though the land was not split half and half between Don and Rex, the water right was. This information was obtained by a conversation with Don and a signed statement from Rex. Rex Miller and Don Miller each received 1.0 cfs of water right 22-405.

Mike Reid bought a portion of land from Don Miller therefore a portion of Don's 1.0 cfs was portrayed to him. Because of a claim that ground water users in the area were drying up Paradise Springs, Mike Reid filed a transfer to officially move the water from the decreed place of use to the land that it has always been used on. This transfer was lost in the system and when it was found it was decided that the Adjudication recommendations would accomplish the change the transfer was trying to accomplish, and the transfer was withdrawn. Rex's 1.0 cfs was also split. The recommendations for 22-405 have been created based on the above information.

Recommendations for 21-405:

- Mike Reid owns 35.6 acres of the Homesteaded land and receives 0.7 cfs and is reflected in the following claim files: 22-13212 (0.5 cfs), 22-13503 (0.2 cfs).
- Don Miller owns 9.6 acres and receives 0.3 cfs reflected in claim number 22-13211
- Rex Miller at one time irrigated 93.8 acres using water right 22-405 and water right 22-587. He owns 1.0 cfs of 22-405 and did not claim any additional water from 22-587 although he owned land covered by that right. He sold 7.2 acres and 0.08 cfs to Russel Bourne who then sold it to John Collins. John Collins' land was decreed as 22-587 and was therefore was recommended as such. Rex then sold another piece of his land to Andrew Richardson who received 0.34 cfs for 31 acres on land decreed as 22-405. Rex was left with 55.6 acres and 0.61 cfs on land covered by both 22-405 and 22-587.
- Rex Miller 55.6 acres and 0.61 cfs. Combination of 22-405 and 22-587 reflected in claim number 22-13585.
- Andrew Richardson 31 acres and 0.34 cfs. Portion of 22-405 reflected in claim number 22-13586.

- John Collins 7.2 acres and 0.08 cfs. Portion of 22-587 reflected in claim number 22-12714B.

Water Right 22-13509

Later in time the NESW of Section 19, Township 4 North, Range 45 East started being irrigated by water that came from a ditch along the Western hillside. There was an affidavit submitted by Chester Miller, one of J. J. Miller's sons. This affidavit went through some history about the water from Paradise springs but the only concrete date that can be taken from that affidavit was 1960. Because of this information the priority date that was given to water right 22-13509 for the irrigation of the NESW of Section 19, Township 4 North, Range 45 East.

Water Right 22-4104

According to the claimants in 1969 a pump went in on the East side of the spring and pumped water through a pipe for sprinkler irrigation. This pump not only irrigated all of the homesteaded land, but also began irrigating a small piece of land owned by Don Miller in the NWNW of Section 30 Township 4 North, Range 45 East. The affidavit provided by Chester Miller supports this beneficial use water right 22-4104. This right was split between Don Miller and Mike Reid.

Recommendations for 22-4104:

- Mike Reid receives 0.59 cfs reflected in claim number 22-11639.
- Don Miller receives 0.14 cfs reflected in claim number 22-11537.

Water Right 22-587

This water right was decreed in the Rexburg Decree to Caroline Withrick for an "undivided $\frac{1}{4}$ of Paradise Springs" with a priority of 6-1-1904. The land in the decree is stated as follows:

"NE1/4SE1/4, and SE1/4 of NE1/4 of Section 30, T. 4 N., R., 45 E., B. M. also, Homestead not described in pleadings."

The Homestead for Caroline Withrick was found on the BLM website (www.glorerecords.blm.gov) but her name was spelled slightly different. The homestead was issued to Carolina Wuthrick dated May 20th 1862. The land was listed as follows:

"S1/2SE Section 19 and NWNE Section 30 of T 4N R 45E"

The land listed on the decree and on the Homestead Entry total 200 acres.

7.2 acres of SWSE Section 19, Township 4 North, Range 45 East has been recommended to John Collins as 22-12714B. The remainder of that quarter-quarter has been recommended to Rex Miller as 22-13585. Duane Kunz claims 1.6 cfs of 22-587 reflected in water right claim number 22-13511. He claims the water has been used on NESW and NWSW Section 30, Township 4 North, Range 45 East, which is not the decreed place of use and no evidence has been submitted suggesting an error in the decree. As a result that claim has been disallowed.

Water Right 22-575

Water right 22-575 was decreed in the Rexburg Decree to George Walton for 100 inches (2 cfs) from Paradise Springs with a priority of 6-1-1892. The land it was decreed to is described as follows:

“NW1/4 of SW1/4 and W1/2 of NW1/4 of Section. 29, and NE1/4 of NE1/4 of Section 30, T. 4 N. R., 45 E., B. M., Containing 160 Acres.”

In water right transfer number 3555 Gary Zohner transferred 1 cfs of water right 22-575 from NWNW Section 29 and NENE Section 30, Township 4 North, Range 45 East to the NWSE and SESE Section 19, Township 4 North, Range 45 East. Also in the same transfer he moved 0.7 cfs of water right 22-180 from the NENE Section 30, Township 4 North, Range 45 East to the same place of use in Section 19.

After transfer # 3555, the land pertinent to 22-575 is as follows:

^ENWSW and SESE Section 19, SWNW and NWSW Section 29 all in Township 4 North, Range 45East.

Teton Rainbow Ranch at one time prior to 1987 owned land located in the SWNW and NWSW Section 29, Township 4 North, Range 45 East. They sold that land to Peter Shields and reserved the water as stated in the warrantee deed located in the claim file for water right 22-13134. Teton Rainbow Ranch then moved the water to SENE and NESE Section 30, Township 4 North, Range 45 East. Based on this information the recommendations follow.

Recommendations for 22-575:

- Gary Zohner receives 1.0 cfs reflected in claim number 22-575A limited to 80 acres.
- Wally Rothgeb receives, as an accomplished change in place of use, 0.13 cfs for 8.9 acres reflected in claim number 22-13135.
- Teton Rainbow Ranch receives, as an accomplished change in place of use, 0.86 cfs for 54 acres reflected in claim number 22-13134.

Water Right 22-180

Water right 22-180 was decreed in the Rexburg Decree to H. C. Bowles for 140 inches (2.8 cfs) from Spring Creek, with a priority of 6-1-1889. The land describe in the decree is as follows:

“SW1/4 of SW1/4 and SW1/4 of SE1/4 of Section. 29, N1/2 of NE1/4 of Section. 30, T. 4 N., R. 45 E., B. M., containing 160 acres”.

After transfer # 3555 mentioned above the lands to which water right 22-180 was pertinent is as follows.

NWSE and SESE Section 19, SWSW and SWSE Section 29, and NWNE Section 30, Township 4 North, Range 45 East.

Though 22-180 was decreed the source of “Spring Creek”, no one knows exactly where Spring Creek is. Some of the local names for Paradise Springs are Sulfur Creek and Spring Creek. In my analysis Paradise Springs, springs up into a pond and when water is high it will flow down and add to the water down stream in what is locally known as Miller Slough or Paradise Creek. Paradise Creek is a gaining reach and water can be found in it even after water is too low for Paradise Springs to feed it. It is possible that at the time of the Rexburg decree, Paradise Springs and Paradise Creek were referred to as separate sources. It is my opinion that the Rexburg Decree decreed rights to Paradise Springs and also Paradise Creek but named it Spring Creek because it was connected to Paradise Springs at times. For lack of other evidence and the fact that for years, it has been accepted that 22-180 is part of Paradise Springs my recommendation is that 22-180 be decreed, at least in part, to Paradise Creek. A transfer was even approved by the Department for this right and no protests were received to my knowledge. The Rexburg Decree did however decree 40 acres of land to this water right on the East side of the River. This is the portion of the right that Duane Kunz is claiming. That is why I recommended Unnamed Stream to this right. Why that land was decreed is unknown to me. It may be an error, or the land on the West side of the river may be in error. It could also be that H. C. Bowles allowed the water to flow into the Teton River and then he took it out upstream in an exchange fashion, otherwise I don’t understand why 80 acres would be decreed right on Paradise Creek and 80 acres decreed ½ mile upstream and 40 acres of it on the East side of the river. It may be that we want to recommend 22-180A and 22-180D as Paradise Creek to differentiate between Paradise Springs and Paradise Creek, and then have a point of injection and a point of re-diversion.

Based on that information the recommendations for 22-180 are as follows.

Recommendations for 22-180:

- Gary Zohner receives 0.7 cfs for 80 acres reflected in claim number 22-180A (Paradise Springs)

- Duane Kunz receives 0.7 for 40 acres reflected in claim number 22-180B (Unnamed Stream)
- Larell Kunz receives 0.44 cfs for 25 acres reflected in claim number 22-180D (Paradise Springs)

Report by Trent Galbraith 12-15-06: Revised 10-1-2007



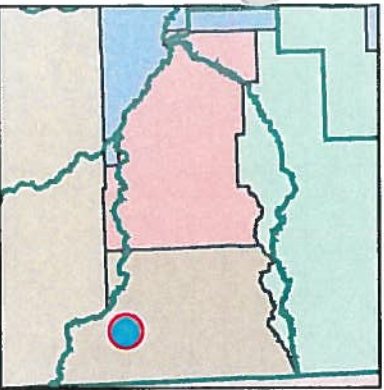
Idaho Department of Water Resources

SRBA Recommendation:

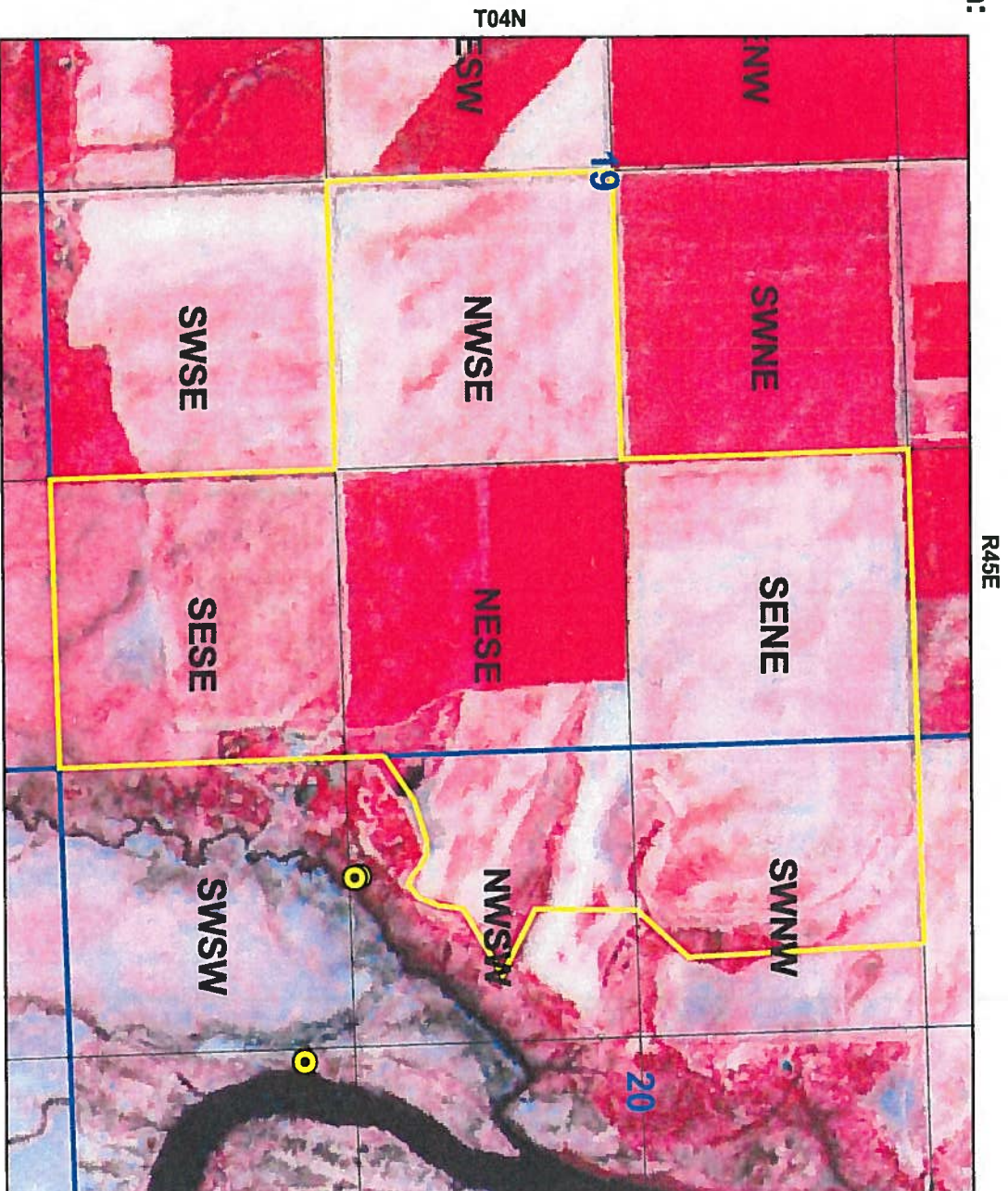
22-180A
22-365
22-575A
22-2057

Legend

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



Teton County
IDWR Basin 22



Prepared by T. Galbraith
On Wednesday, May 10, 2006
1987/88 Aerial Photography



22-180A-3

Looking west

SCANNED
JUN 01 2007

A22-00180A
A 22-00575A

R 45 E
R 44 E

T4N

R 45 E
R 44 E

HOUSE
A22-1541

40

40

30

40

10

40

20

40

SPRING
HEAD

POD

White
Bridge

Creek

Cedron

Creek

CANNED

JUN 5 2007

Water Right No(s). _____

Ident = 22-180A-3

Diversion is pump in paradise spring.

2727480
1387583

GPS DATA:

Tag # none Location: _____

Diversion Data:

Source: paradise spring Trib to: Teton River

MOTOR

Make: Gould Model: _____ Hp: 40
SN: _____

PUMP

Make: _____ Model: _____ Disch: _____
SN: _____

NOTES:

Pump is diversion for 180A and 576A but rediversion
for 365 & 2057.

Field Exam Date: 5-9-06 Agent: Strent Falbrath

SCANNED

JUN 01 2007

5-8-06

- claimant only owns the land that lcts was transfered to in transfer 3558.
- claimant recieves lcts.

TG

SCANNED
JUN 01 2007

Paradise Springs

22-405

22-405 was decreed to J. J. Miller in the Rexburg Decree to lands located on SWSE and S1/2SW Sec 30, and NENW of Sec 21 T 4 N 45 E for a total of 160 acres. The source of the decree is 2 CFS from Paradise Springs. The decree stated a priority date of 6/1/1904.

Mike Reid, Don Leroy Miller and Rex Miller are the original claimants for 22-405. Rex Miller has since sold a portion of his land to John Collins, Andrew Richardson and some of his land if not all is now being subdivided. All of the original claimants claim the water has never been used on the decreed POU. Don is J.J. Miller's son. He states as well as the rest of the claimants that J. J. Miller never owned any of the land described in the Rexburg decree, and that the land that the water was intended to be used on is SESW and NESW Sec 19 as well as NENW and SENW Sec 30 in T 4 N 45 E. Paradise Springs' water could never have been used on the land described in the Rexburg Decree because it is up hill and too far away.

Don Miller brought in J. J. Millers Homestead description as well as a Notice Of Water Right. The Homestead Entry for J. J. Miller and the land listed on his Notice of Water right are described as follows: E1/2NW Sec 30 and E1/2SW Sec 19 T 4 N 45 E.

Given this information it is believed that water right 22-405 had always been used on the land described by the claimants. It is also believed that the Rexburg Decree was in error.

Because of this error and the fact that the Rexburg Decree is and indeterminate decree when it comes to exact acreage, memo #57 was used as a guide for these recommendation. Memo #57 states that if the water right was part of an indeterminate decree, then we use the acres irrigated in 1987 as the decreed POU. In 1987 all of the E1/2NW Sec 30 and E1/2SW Sec 19 was irrigated. This information was found by looking at aerial photos of 1987 or by statements from the original claimants including signed statements from Rex Miller and Craig Kunz. Though this is true the claimants state that the NESW of Sec 19 was not irrigated until later (Affidavit supplied).

Rex Miller and Don Miller are brothers and each of them owned part of the land that was homesteaded. Even though the land was not split half and half between Don and Rex, the water right was. This information was obtained by a conversation with Don and a signed statement from Rex. Rex Miller initially had 1 CFS of 22-405 and Don had the same.

Mike Reid bought some land from Don Miller so a portion of Don's 1 CFS goes to him. Because of some issues with well users drying up Paradise Springs, Mike Reid filed a transfer to officially move the water from the decreed POU to the land that it has always been used on. This transfer was lost in the system and by the time it was found it was decided that because the Adjudication recommendations would accomplish the same thing the transfer was trying to accomplish, the transfer would be withdrawn. Rex's 1

SCANNED

JUN 01 2007

CFS was also split. The recommendations for 22-405 have been created based on the above information.

Recommendations

Mike Reid owns 35.6 acres of the Homesteaded land and receives 0.7 CFS and is reflected in the following claim files: 22-13212 (0.5 CFS), 22-13503 (0.2 CFS).

Don Miller owns 9.6 acres and receives 0.3 CFS reflected in claim number 22-13211

Rex Miller at one time irrigated 93.8 acres using water right 22-405 and 22-587. He owns 1.0 CFS of 22-405 and did not claim any additional water from 22-587 although he owned land covered by that right. He sold 7.2 acres and 0.08 CFS to Russel Bourne who then sold it to John Collins. That land was decreed as 22-587 so that is how it was recommended. Rex Then split off another piece of his land to Andrew Richardson who then got a right for 0.34 CFS for 31 acres on land decreed to 22-405. Rex was left with 55.6 acres and 0.61 CFS on land covered by both 22-405 and 22-587.

Rex Miller 55.6 acres 0.61 CFS combination of 22-405 and 22-587 reflected in claim number 22-13585.

Andrew Richardson 31 acres 0.34 CFS portion of 22-405 reflected in claim number 22-13586.

John Collins 7.2 acrs .08 CFS portion of 22-587 reflected in claim number 22-12714B.

22-13509

Later in time the NESW of Sec 19 started being irrigated by water that came from a ditch along the Western Hillside. There was an affidavit submitted by Chester Miller, one of J. J. Miller's sons. This affidavit went through a lot of history about the water from Paradise springs but the only date that can be pulled from that affidavit was 1960. This is the priority date I gave 22-13509 for the irrigation of the NESW of Sec 19.

22-4104

According to the claimants in 1969 a pump went in on the east side of the spring and pumped water through a pipe for sprinkler irrigation. This pump besides irrigating all of the Homesteaded land also began irrigating a small piece of land owned by Don Miller in the NWNW of Sec 30. The affidavit provided by Chester Miller supports this beneficial use water right 22-4104. This right was split between Don Miller and Mike Reid.

Recommendations

Mike Reid receives 0.59 CFS reflected in 22-11639.

SCANNED

JUN 01 2007

Don Miller receives 0.14 CFS reflected in 22-11537.

22-587

This water right was decreed in the Rexburg Decree to Caroline Withrick for an "undivided ¼ of Paradise Springs" with a priority of 6/1/1904. The land stated in the decree is stated as follows:

"NE1/4SE1/4, and SE1/4 of NE1/4 of Sec 30, T. 4 N., R., 45 E., B. M. also, Homestead not described in pleadings."

The Homestead for Caroline Withrick was found on the BLM website (www.glorerecords.blm.gov) but her name was spelled a little different. The homestead was made by Carolina Wuthrick dated May 20th 1862. The land was listed as follows:

S1/2SE Sec 19 and NWN Sec 30 of T 4N R 45E

The land listed on the decree and on the Homestead Entry totals 200 acres.

7.2 acres of SWSE Sec 19 T 4N R 45E has been recommended to John Collins. The remainder of SWSE has been recommended to Rex Miller. Duane Kunz claims 1.6 CFS of 22-587. He claims the water has been used on NESW and NWSW Sec 30 T 4N R 45E which is not the decreed POU so it has been disallowed.

22-575

22-575 was decreed in the Rexburg Decree to George Walton for 100 inches (2 CFS) from Paradise Springs with a priority of 6/1/1892. The land it was decreed to is described as follows:

"NW1/4 of SW1/4 and W1/2 of NW1/4 of Sec. 29, and NE1/4 of NE1/4 of Sec. 30, T. 4 N. R., 45 E., B. M., Containing 160 Acres."

In transfer number 3555 Gary Zohner Transferred 1 CFS of 22-575 from NWNW Sec 29 and NENE Sec 30 4N 45E to NWSE and SESE Sec 19 4N 45E. Also in the same transfer he moved .7 CFS of 22-180 from NENE Sec 30 4N 45E to the same POU in Sec 19.

After the transfer, the land pertinent to 22-575 is as follows:

NWSW and SESE Sec 19, SWNW and NWSW Sec 29 all in 4N 45E.

Teton Rainbow Ranch at one time prior to 1987 owned SWNW and NWSW Sec 29. They sold that land to Peter Shields and reserved the water as stated in a warrantee deed in 22-13134. Teton Rainbow Ranch then moved the water to SENE and NESE Sec 30. Based on this information the recommendations follow.

SCANNED

JUN 01 2007

Recommendations

Gary Zohner receives 1.0 CFS reflected in claim number 22-575A limited to 80 acres.

Wally Rothgeb receives, as an accomplished change in POU, 0.13 CFS for 8.9 acres reflected in claim number 22-13135.

Teton Rainbow Ranch receives, as an accomplished change in POU, 0.86 CFS for 54 acres reflected in claim number 22-13134.

22-180

22-180 was decreed in the Rexburg Decree to H. C. Bowles for 140 inches (2.8 CFS) from Spring Creek, with a priority of 6-1-1889. The land describe in the decree is as follows:

“SW1/4 of SW1/4 and SW1/4 of SE1/4 of Sec. 29, N1/2 of NE1/4 of Sec. 30, T. 4 N., R. 45 E., B. M., containing 160 acres”.

After transfer 3555 mentioned above the lands to which this water water was pertinent is as follows.

NWSE and SESE Sec 19, SWSW and SWSE Sec 29, and NWNE Sec 30.

Based on that information the recommendations for 22-180 are as follows.

Recommendations

Gary Zohner receives 0.7 CFS for 80 acres reflected in claim number 22-180A

Duane Kunz receives 0.7 for 40 acres reflected in claim number 22-180B

Larell Kunz receives .44 CFS for 25 acres reflected in claim number 22-180D

Report by Trent Galbraith 12-15-06

SCANNED

JUN 01 2007

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 3555

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant Gary or Sherry Zohner Phone 354-2537

Post Office address 401 W. 475 S., Victor, ID 83455

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Moving pump to Miller Slough to pick up these
rights. This same pump will be used on previous transfer for Pine Creek rights
(22-02057 & 22-00365) just filed. This will allow me to pump all my rights from one
pump station.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>22-00180B</u>	<u>6-01-1889</u>	<u>0.70 cfs</u>	<u>Irrig.</u>	<u>4-15</u> to <u>10-15</u>
<u>22-00575B</u>	<u>6-01-1892</u>	<u>1.00 cfs</u>	<u>Irrig.</u>	<u>4-15</u> to <u>10-15</u> /o
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>

2. Total amount of water being transferred 1.70 cfs cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Paradise Creek tributary to Teton River
4. Point(s) of Diversion:

[illegible]

5. Lands irrigated or place of use:

[illegible]

Total acres 30

106

PART 1**6. General Information:**

a. Description of diversion system pump station on Miller Slough to sprinkler lines. Ditch
also brings other rights from Pine Creek source to this same pump station.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

Land is farmed with existing high sub water (pasture).

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 22-0180B/0575B

And said application is hereby APPROVED, subject to the following limitations and conditions:

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL.

AUG 21 1990

Witness my hand this 16th day of August, 19 90

J. Steve Saxton
Chief, Water Alloc. Bureau

PART 3**B. CHANGES IN NATURE OF USE**

1	<u>New Nature of Use</u>	<u>Amount</u> (cfs/ac-ft)	<u>Hours/days/year</u>	<u>Period of Use</u>
				_____ to _____
				_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 19 day of April, 19 89.

(Signature of Applicant)

(Notary Public)

My commission expires 22 Aug 1994.**FOR DEPARTMENT USE ONLY**

Transfer contains _____ pages and _____ attachments

Received by HUJ Date 4-19-89 Protest filed by _____Prelim. check by DMD Fee \$ 50.00Receipted by HUJ Date 4-19-89 # E006938

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☒ approval ☐ denial_____ rec'd. _____ by RDC

Copy of transfer sent to lien holder _____

MICROFILMED

AUG 31 1990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 22-0180 Decreed to H. C. Bowles
in case of Rexburg Irrig. Co. vs. Teton Irrig. Canal Co.
dated 12-16-1910 in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Spring Creek (Paradise Springs) tributary to Teton Creek

4. Date or priority 6-01-1889

5. Water is used for the following purpose:

amount 2.80 cfs for Irrig. purposes from Not listed to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.80 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: Not listed

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
4N	45E	29											A				A		
		30	A	A															

Total acres 160

9. Describe any other water rights used for the same purpose as described above 22-02057

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.70 cfs for Irrig. purposes from 4-15 to 10-15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	30	4N	45E	Teton	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
4N	45E	30	40																40

Total acres 40**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)**

1. amount 2.10 cfs for Irrig. purposes from 4-15 to 10-15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: Not listed

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
4N	45E	29																	
		30		A															

Total acres 120

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 22-0575 Decreed to George Walton
 in case of Rexburg Irrig. Co. vs. Teton Irrig. Canal Co.
 dated 12-16-1910 in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice

☐ Warranty Deed

☐ Other _____

3. Source of water Paradise Springs tributary to _____

4. Date or priority 6-01-1892

5. Water is used for the following purpose:

amount 2.00 cfs for Irrig. purposes from Not listed to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

6. Total amount of water under right 2.00 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: Not listed

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
4N	45E	30	A																
		29					A	A			A								

MICROFILMED
 AUG 31 1990

Total acres 160

9. Describe any other water rights used for the same purpose as described above 22-02057

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 1.0 for Irrig. purposes from 4-15 to 10-15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NE	30	4N	45E	Teton	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
4N	45E	29						40											40
		30	40																40

Total acres 80**C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)**

1. amount 1.00 cfs for Irrig. purposes from 4-15 to 10-15
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion: Not listed

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

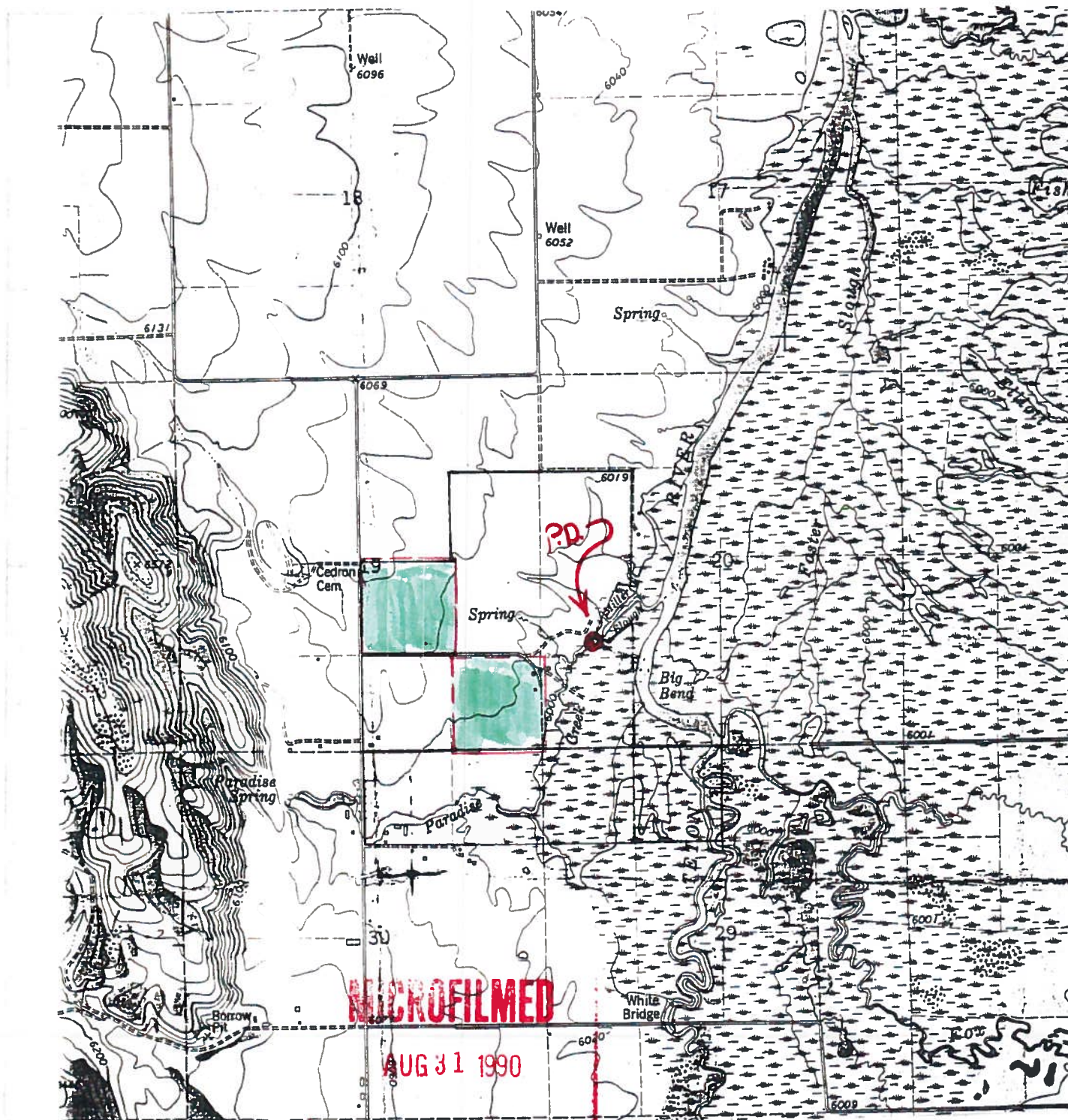
Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
4N	45E	29						A				A							

AUG 31 1980

Total acres 80

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.



SCALE 2 inches equal 1 mile. Draw plan in ink.

CONDITIONS OF APPROVAL
Transfer of Water Right Nos. 22-0180B/0575B

- R43
1. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works.
2. These rights when combined with all other rights shall provide no more than 3.0 afa per acre for the lands above.
- R63
3. Approval of this transfer when combined with all other rights, does not validate a diversion rate of more than .02 cfs per acre.
4. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
- R05
5. Use of water under these rights is subject to control by the watermaster of State Water District No. 01, Snake River.

Dated this 16th day of August, 1990.

J. M. Saylor
Chief, Water Alloc. Bureau

MICROFILMED
AUG 31 1990

#55

~~1-0811~~ 21 0127 ✓
Uden, Ernest W.

U.
75 inches. June 1, 1902. Southwest Fork of
Elk Creek.

~~1-0811~~ 22 0562 ✓

V.
160 inches. June 1, 1896. Fox Creek.

~~1-0811~~ 22 0563 ✓

120 inches. June 1, 1897. Fox Creek.

~~1-0811~~ 22 0564 ✓

100 inches. June 1, 1897. Fox Creek.

~~1-0811~~ 22 0565 ✓

160 inches. June 15, 1897. South Leigh Creek.

~~1-0811~~ 22 0566 ✓

VanLeuven,
William
Victor Townsite.
(To Nahum Curtis,
Davis Cheney and
Edwin Rice,
Trustees.)

320 inches. June 1, 1896. Trail Creek.

~~1-0811~~ 22 0567 ✓

W.
200 inches. Sept. 1, 1891. Teton Creek.

Waddell,
Mrs. L. E.

Wagstaff, A. J.

The Farmers' Friend
Canal Company.

~~1-0811~~ 22 0568 ✓

160 inches. May 25, 1898. Leigh Creek.

~~1-0811~~ 25-0229 ✓

240 inches. July 1, 1886. Myers Creek.

Wakeman, Herman

Parsons Ditch Company.

~~1-0811~~ 21 0128 ✓

80 inches. Oct. 15, 1900. Wall Springs.

~~1-0820~~ 21 0129 ✓

40 inches. Aug. 20, 1901. Tom Creek.

~~1-0821~~ 22 0569 ✓

40 inches. Jan. 18, 1904. North Leigh Creek,
or Spring Creek.

~~1-0821~~ 22 0570 ✓

332 inches. Apr. 1, 1898. Teton River (Stewart
& Walters ditch).
(Joint appropriation
with Mons H. Anderson.)

~~1-0821~~ 22 0571 ✓

168 inches. June 1, 1888. Teton River (Stewart
& Walters ditch).
(Joint appropriation
with Mons H. Anderson.)

~~1-0821~~ 22 0572 ✓

120 inches. June 1, 1896. Darby Creek.

~~1-0821~~ 22 0573 ✓

20 inches. June 1, 1889. Darby Creek. #49

~~1-0821~~ 22 0574 ✓

140 inches. June 1, 1890. Darby Creek. #43

~~1-0821~~ 22 0575 ✓

100 inches. June 1, 1892. Paradise Springs.

~~1-0821~~ 35 0030 ✓

140 inches. May 1, 1888. Boons Creek.

Walters, William

Walton, Dania

Walton, D. O.

Walton, George

Walton, George

Ward, C. G.

Ward, C. G.

Roxana Canal
Company.

Walton, D. O. SE $\frac{1}{4}$ of Sec. 15, T. 4 N. R., 45 E., B. M.,
containing 160 acres.

Walton, George NW $\frac{1}{4}$ of SW $\frac{1}{4}$, and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 29,
and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 30, T. 4 E. R.,
45 E., B. M., containing 160 acres.

Wanless, Sarah A. E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 27, and W $\frac{1}{2}$ of SW $\frac{1}{4}$ of
Sec. 26, T. 4 S., R., 32 E., B. M., con-
taining 160 acres.

Waterman, L. C. S $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 26, and N $\frac{1}{2}$ of NE $\frac{1}{4}$ of
Sec. 35, T. 6 N., R., 45 E., B. M.

Watson, Robert N $\frac{1}{2}$ of SW $\frac{1}{4}$, and S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 17, T.
8 N., R., 42 E., B. M., containing 160 acres.

The Watson Slough Ditch Company, Limited.

Acluff, J. H. NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and Lots 3 and 4 of Sec. 15,
NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 16, and SE $\frac{1}{4}$ of
SE $\frac{1}{4}$ of Sec. 16, T. 3 S., R., 34 E., B. M.

Buck, Joseph SW $\frac{1}{4}$ of Sec. 3, T. 3 S. R., 34 E., B. M., con-
taining 160 acres.

Copeling, H. H. SE $\frac{1}{4}$ of Sec. 3 T., 3 S., R., 34 E., B. M., con-
taining 160 acres.

Crawford, J. B. W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 1, T. 3 S., R., 34 E., B.
M., containing 80 acres.

Davis, M. SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec. 1, and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of
Sec. 12, T. 3 S., R., 34 E., B. M., contain-
ing 80 acres.

Felstead, P. J. E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 9, T. 3 S. R., 34 E., B. M.
containing 80 acres.

Gibson, Ely T260
Anderson, Ross W W $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 11, T. 3 S., R., 34 E., B.
M., containing 80 acres.

Hammond, A. F. SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 16, T. 3 S., R., 34 E., B.
M., containing 40 acres.

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A22-00575A
Date Received: 9/13/1988
Receipt No: _____
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: GARY ZOHNER 208-354-2537
Address: 401 W. 475 S.
RT. 1 BOX 592
VICTOR, ID 83455

OR
Name: SHERRY ZOHNER 208-354-2537
Address: 401 W. 475 S.
RT. 1 BOX 592
VICTOR, ID 83455

2. Date of Priority: JUN 01, 1892

3. Source: PARADISE SPRING Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	45E	30	SW	NE	NE		TETON

5. Description of diverting works:
PUMP IN STREAM, FEED BY SPRING, TO SPRINKLER SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/15	10/15	1.200		

7. Total Quantity Appropriated is:
1.200 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 520.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
04N	45E	19	NE	SE		IRR	40.0
			NW	SE		IRR	40.0
			SE	SE		IRR	40.0
					Section Acres		120.0
		20	NW	SW		IRR	30.0
			SW	SW		IRR	10.0
			Section Acres		40.0		
		29	NW	NW		IRR	40.0
			Section Acres		40.0		
			30	NE	NE		IRR
		NW		NE		IRR	40.0
		Section Acres		60.0			
Total Acres		260.0					

11. Place of use in counties: TETON

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
22-00365,00180,02057

14. Remarks:
RIGHT SPLIT BY OWNERSHIPS

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 12/16/1910

REXBURG IRR. CO. ET AL
Decree Plaintiff

vs

TETON IRR. CANAL CO. ET AL
Decree Defendant

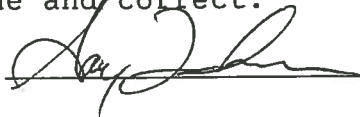
16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Individuals:

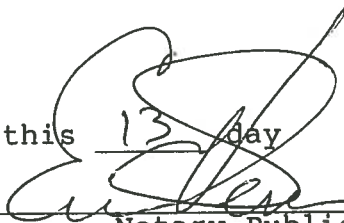
I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):  Date: 9/13/88

Date: _____

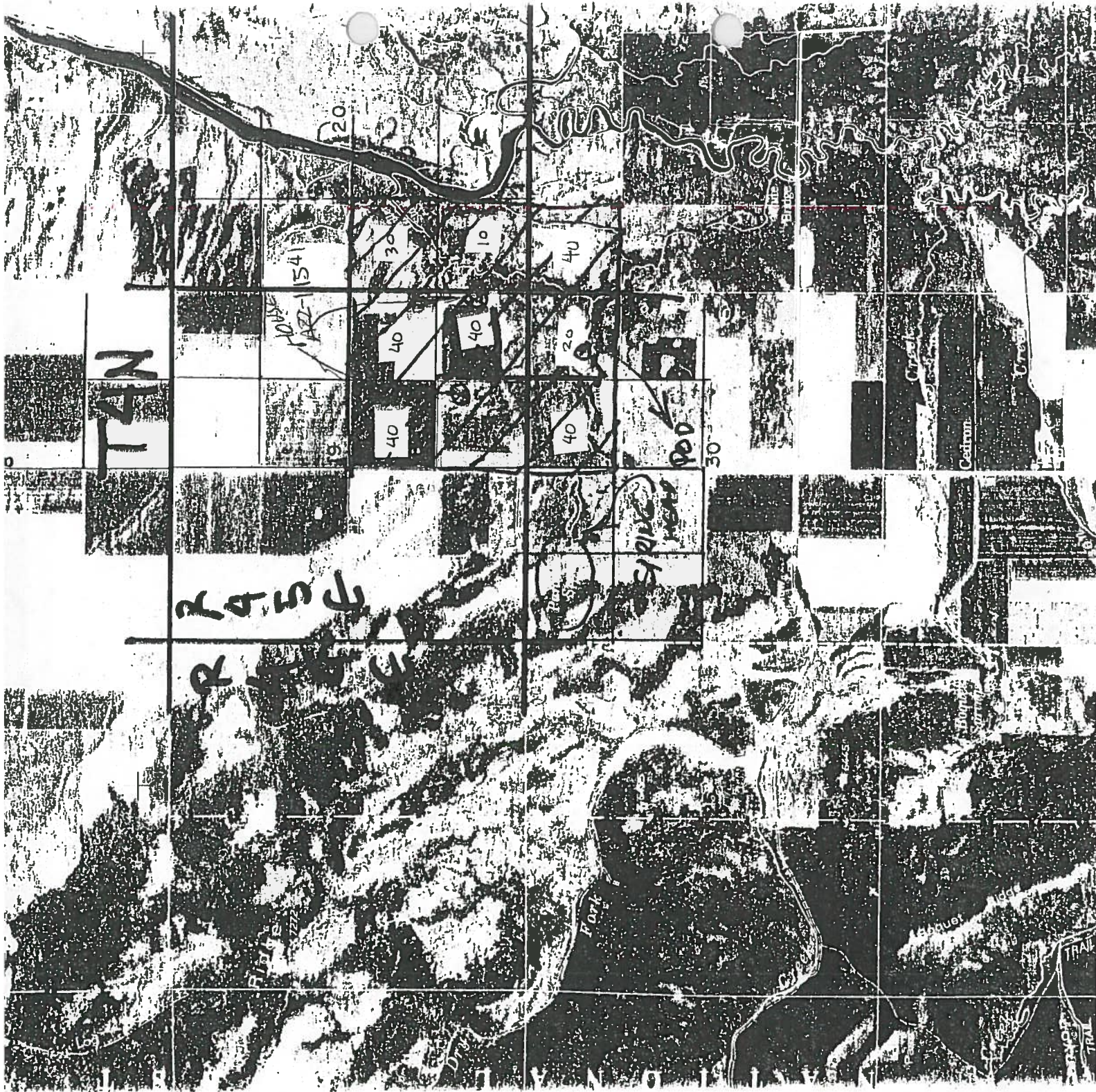
State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 13 day
of Sept 19 88


Notary Public

Seal

Residing at 
My Commission Expires 22 Aug 1994



SCANNED

JUN 01 2007