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

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 22-00628A

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
FEB 10 2010
By
Clerk
Deputy Clerk

NAME AND ADDRESS: IDAHO RANCH SUBDIVISION LLC
PO BOX 362
VICTOR, ID 83455

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 6.00 CFS

RIGHT NOS. 22-628A AND 22-13781 ARE LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 6.0 CFS.

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION: T06N R43E S33 SESESE Within Teton County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-15 TO 10-31	6.00 CFS

PLACE OF USE: Irrigation

			Within Teton County
T06N R43E	S29	SWSW 28.0	SESW 22.0
	S32	NENW 35.0	NWNW 37.0
		NESE 5.1	
	S33	NWNW 5.2	SWNW 36.0
		SENW 3.4	NESW 34.0
		NWSW 31.0	SESW 18.0
		NWSE 18.0	SWSE 40.0
		SESE 3.1	

315.8 Acres Total

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 122 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON. RIGHT NOS. 22-628A AND 22-13781 ARE LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 315.8 ACRES 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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

IDAHO DEPARTMENT OF WATER RESOURCES

AMENDED RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

This Rec. is correct as long as 22-13781 is approved by court. TR 10-3-07

RIGHT NUMBER: 22-628A

NAME AND ADDRESS: IDAHO RANCH SUBDIVISION LLC
PO BOX 362
VICTOR ID 83455

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 6.000 CFS

Right Nos. 22-628A and 22-13781 are limited to a total combined diversion rate of 6.0 cfs.

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION:

T06N R43E S33 SESESE Within TETON County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	6.000 CFS

PLACE OF USE: IRRIGATION in MADISON County and TETON County

T06N R43E S29	SWSW	28.00	T06N R43E S29	SESW	22.00
T06N R43E S32	NENW	35.00	T06N R43E S32	NWNW	37.00
T06N R43E S32	NESE	5.10	T06N R43E S33	NWNW	5.20
T06N R43E S33	SWNW	36.00	T06N R43E S33	SENW	3.40
T06N R43E S33	NESW	34.00	T06N R43E S33	NWSW	31.00
T06N R43E S33	SESW	18.00	T06N R43E S33	NWSE	18.00
T06N R43E S33	SWSE	40.00	T06N R43E S33	SESE	3.10

315.8 ACRES TOTAL

This right is limited to the irrigation of 122 acres within the place of use described above in a single irrigation season.

Right Nos. 22-628A and 22-13781 are limited to the irrigation of a combined total of 315.8 acres 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

Right No. 22-13781 is an enlargement of this right pursuant to Section 42-1426, Idaho Code.

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

09/14/2007

IDAHO DEPARTMENT OF WATER RESOURCES

PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-628A

NAME AND ADDRESS: IDAHO RANCH SUBDIVISION LLC
PO BOX 362
VICTOR ID 83455

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 6.000 CFS

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION:

T06N R43E S33 SESESE Within TETON County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	6.000 CFS

PLACE OF USE: IRRIGATION in MADISON County

T06N R43E S29	SWSW	28.00	T06N R43E S29	SESW	22.00
T06N R43E S32	NENW	35.00	T06N R43E S32	NWNW	37.00

122 ACRES TOTAL

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

This Rec is partially done, waiting for New claim for combined use limits. TG 9-14-07

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G WASDEN

September 24, 2007

Gordon S. Thatcher
Thatcher Law Office, PLLC
116 S. Center
P.O. Box 216
Rexburg, ID 83440

Sent Via Facsimile to 359-5888

RE: SRBA Subcase No. 22-628A (Browning)

Dear Mr. Thatcher:

The purpose of this letter is to follow up with you concerning the above-referenced subcase. As you are aware, Special Master Bilyeu agreed to extend the deadline for the filing of the Amended Director's Report. Trent Galbraith has the majority of the amended recommendation completed; however, as was discussed earlier, it will be necessary to receive the Motion to File Late Claim for the land that was irrigated after 1975 that is not included in the decreed place of use. Mr. Galbraith needs the late claim to properly recommend the combined use limits.

Mr. Galbraith will be leaving the Idaho Department of Water Resources on October 10, 2007. Because Mr. Galbraith has a great deal of knowledge about your client's water rights, I would suggest contacting him at your earliest opportunity so that he can work with you and assist in preparing the late claim.

As you are aware, there is a telephonic status conference set for this subcase on October 17, 2007. Perhaps expediting the preparation of the late claim, and taking advantage of Mr. Galbraith's understanding of the water rights, may resolve the majority of the issues by that time.

If you should have any questions or comments, please do not hesitate to contact me at 287-4810.

Sincerely,

Andrea L. Courtney

cc: Trent Galbraith

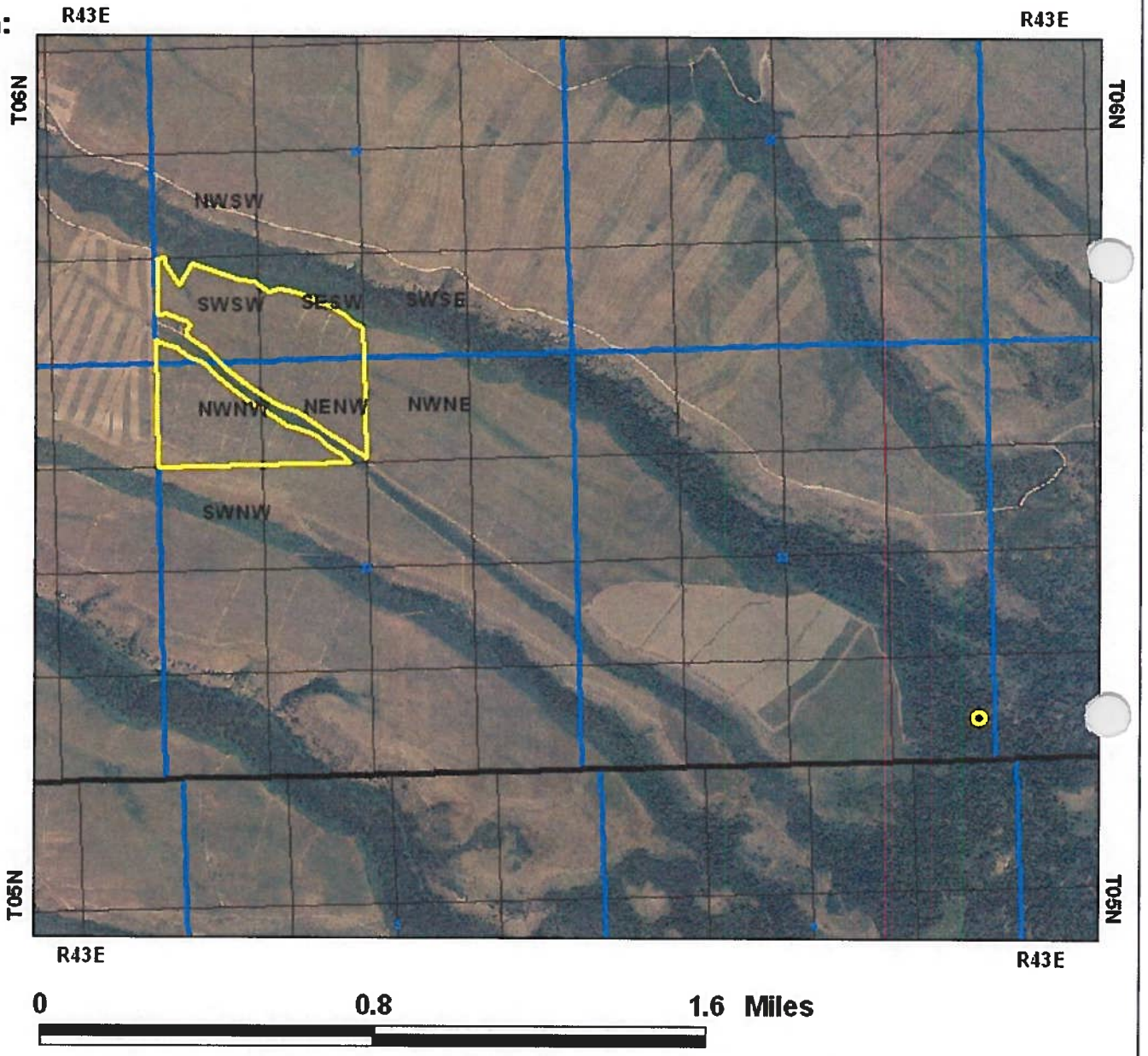
Natural Resources Division - Water Resources Section
P.O. Box 83720 Boise Idaho 83720-0098
Telephone: (208) 287-4801; Legal FAX: (208) 287-6700

Idaho Department of Water Resources

SRBA Recommendation:

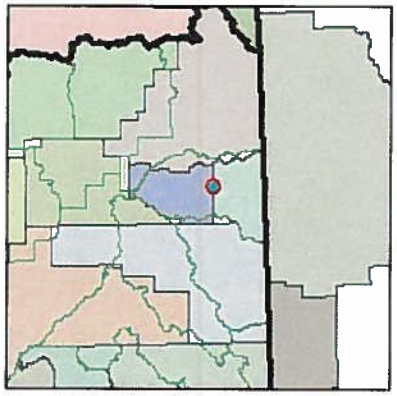
22-628A

(Irrigation)



Legend

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



Madison, Teton Counties
IDWR Basin 22

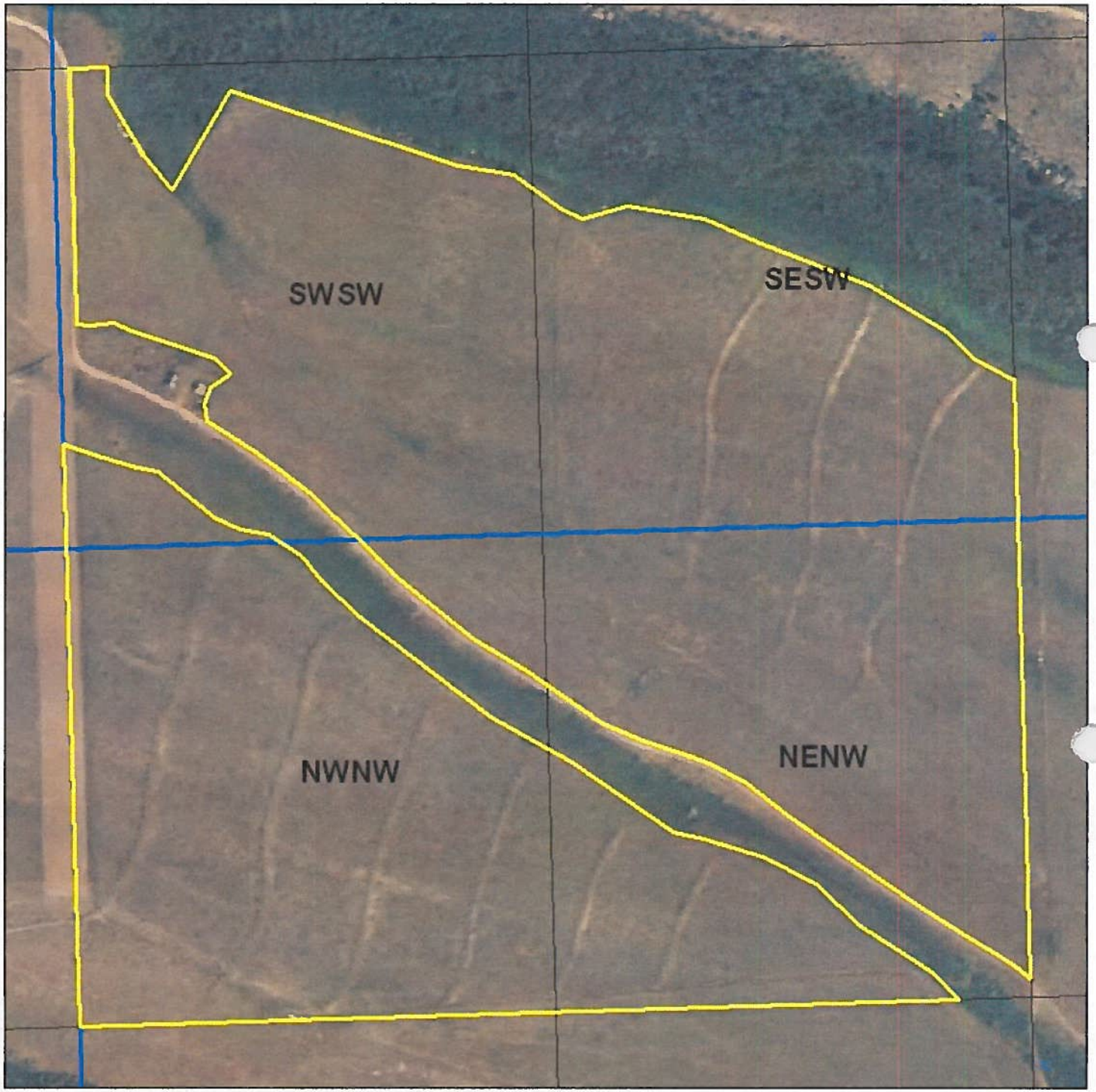
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Prepared by T. Galbraith
On Friday, September 14, 2007
2004 Aerial Photography

22-628A







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

In Re SRBA	)	**Subcase** A22-00628A
	)	
	)	**AFFIDAVIT OF**
Case 39576	)	**GROVER BROWNING**
	)	
	)	
	)	
	)	

STATE OF IDAHO,)
ss
County of Madison.)

1. My name is **GROVER BROWNING,** I am an adult and competent to testify.

2. I am a Co-Trustee of the **GROVER BROWNING MARITAL TRUST** and a Co-Trustee of the **ORSENA C. BROWNING FAMILY TRUST,** (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST,** dated March 26, 2001).

3. I make this Affidavit to supplement my sworn statement which is part of Amended Notice of Claim to a Water Right Acquired under State Law, dated February 5, 2007, under the above designated case.

4. Attached to the Amended Notice of Claim as Exhibit "C" was Soil Conservation Map of Tract 89. Parcel 2 and Parcel 3 which I rounded to 126 acres was irrigated by me by sprinkler irrigation commencing in the year 1975. Parcel 3 was south of the road. There was a culvert under the road and a pond north of the road to facilitate sprinkler irrigation. That property was put in the USCRP program in 1987 and the CRP contract ends this year. Prior to sprinkler irrigating, fifteen acres from Parcel 3 were irrigated by surface irrigation for more than 60 years. There were ten acres north of the road in Parcel 2 that were surface irrigated for more than 60 years.

Received Time Aug. 29. 12:25PM

5. Attached to the Amended Notice of Claim as Exhibit "E" was Soil Conservation Map of Tract 90. As included in ¶ 14 of the Amended Notice of Claim 160 acres identified as Parcel 1, Parcel 2, Parcel 3, Parcel 4, Parcel 8, Parcel 5, Parcel 6 and Parcel 7 have been irrigated. I clarify that I commenced sprinkler irrigation of the 160 acres in 1975. That property was put in the USCRP program in 1987 and continued for 10 years. Prior to sprinkler irrigation, there was surface irrigation of Parcel 8 of about 8.8 acres for more than 60 years. I clarify that there has been no irrigation of Parcel 9, south of the road. I further clarify that the acres in SE¼SE¼ of Sec. 33 in Teton County should be 17 rather than 18.4 as shown on the schedule and the total from Teton County should be 152 rather than 153.4.

6. Since I started sprinkler irrigating in 1975, I am the only one who has used the waters of Pony Creek for irrigation, and I am the only one who has done any work on the diversion and ditch from Pony Creek.

Dated this 29th day of August, 2007.

Grover Browning

SUBSCRIBED AND SWORN to before me this 29th day of August, 2007.

Notary Public for Idaho
Residing at Rigby
My Commission Expires: 7/27/2013

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Received Time Aug. 29. 12:25PM

8-29-07 Affidavit will be sent.

- Thatcher called with Grover Browning on the line with him.

- He stated the following:

1. Sprinkler System went in in 1975

2. Prior to 1975 15 acres of land labeled "South of Road" - by culvert that went under Road. was irrigated and 10 acres North of the Road

3. Since 1975 it was all irrigated until 1987 when it went into CRP.

4. Prior to 1975 land that was irrigated by flood was only 8.8 acres labled as Tract 8 on Thatchers Exhibit EEE.

5. After 1975 all drained land was irrigated until 1987 when it went into CRP. It was in CRP until 1997

6. This is the last year for CRP contract for land labled "South of Road" and that just North of it which is North of the Road.

Form 42-248/42-1409(6) 12/2006

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case IDWR will produce new water right number(s) for the split(s).

Water Right No(s).	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
Reviewed OK					
22-6284 OK per Kent missing corner					

2. The following **REQUIRED** information must be submitted with this form:

   A. The appropriate **FILING FEE.** See instructions for fee amounts.

   B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION.**

   C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
   PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion, and place of use of your water right(s) and/or adjudication claim(s) (these are on file with the county Planning and Zoning or Recorder's Office).

   OR

   D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The AERIAL PHOTO should be submitted in place of the PLAT OF PROPERTY or SURVEY MAP.

3. Name and Address of Former Owner/Claimant(s): ORSENA C. BROWNING FAMILY TRUST & GROVER BROWNING MARITAL TRUST

   7 N. 2700 E., Teton, ID 83451

4. New Owner/Claimant(s): IDAHO RANCH SUBDIVISION LLC
   Name Connector (Check one): [ ] and, [ ] or, [ ] and/or

   New Mailing Address: c/o Harley Wilcox, P. O. Box 362

   City, State and ZIP Code: Victor, ID 83455

   New Telephone Number: (208) 787-4554

RECEIVED
AUG 27 2007
Department of Water Resources
Eastern Region

Received Time Aug. 27. 3:33PM

Form 42-248/42-1409(6) 12/2006

5. Date you acquired the property March 20, 2007

6. **If the change in ownership affects the entire water right for each water right or adjudication claim number listed in line 1, then skip this line and go to line 7.** If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (you may copy this page, if necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
(If the right will not be split, skip this area and proceed to line 7)

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Water Right and/or Adjudication Claim Number		
Irrigation		
Stock		
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number		
Irrigation		
Stock		
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number		
Irrigation		
Stock		
Domestic		
Other		
Totals		

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

IDAHO RANCH SUBDIVISION, LLC

7. **Signature(s) of New Owner(s) or Claimant(s)** _____ Manager
by: Harley Wilcox (title if applicable)

(title if applicable)

IT IS IMPORTANT TO FILE THIS COMPLETED FORM AT THE APPROPRIATE IDWR OFFICE, WITH PAYMENT OF THE FILING FEE AND THE OWNERSHIP DOCUMENT(S), AS REFERRED TO IN LINE 2.

For IDWR Office Use Only:
Received by _____ Date _____ Receipt Amt. _____
Receipted by _____ Date _____ Receipt No. _____
Processed by _____AJ Date _____ WR _____ Date _____

Received Time Aug. 27. 3:33PM

Instrument # 336849
REXBURG, MADISON, IDAHO
2007-03-27 02:00:00 No. of Pages: 3
Recorded for : ALLIANCE TITLE AND ESCROW
MARILYN R. RASMUSSEN Fee: 9.00
Ex-Officio Recorder Deputy

30406162350

WARRANTY DEED

FOR VALUE RECEIVED, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantors"), do hereby grant, bargain, sell, warrant and convey unto, **IDAHO RANCH SUBDIVISION LLC**, an Idaho Limited Liability Company, c/o Harley Wilcox, 285 Cedron Unit 2, P. O. Box 362, Victor, Idaho 83455, ("Grantee"), the following described real property in Madison County and Teton County, Idaho, to-wit:

Instrument # 186177
TETON COUNTY, IDAHO
2007-03-27 04:28:00 No. of Pages: 3
Recorded for : ALLIANCE TITLE & ESCROW
MARY LOU HANSEN Fee: 9.00
Ex-Officio Recorder Deputy
Index to: DEED OF TRUST

TRACT ONE: *(Madison County)*

W½ of Sec. 29 and N½NW¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., Madison County, Idaho. No water rights

TRACT TWO: *(Madison County and Teton County)*

Part of SE¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., in Madison County, Idaho, and part of W½SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, described as follows:

Commencing at a point (which is at a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33 (which is the Southeast Corner of Sec. 32) and running thence Northwesterly in a straight line (generally along the fence line in Dry Gulch Canyon), to a point 165 feet South of the Northwest Corner of the SE¼ of Sec. 32; thence North 165 feet; thence East 2640 feet to the Northeast corner of the SE¼ of Sec. 32 (which is the Northwest Corner of the SW¼ of Sec. 33); thence East 1320 feet; thence South 2640 feet; thence West 462 feet to the point of beginning.

TRACT THREE: *(Teton County)*

SW¼NW¼, E½SW¼, W½SE¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho.

TRACT FOUR: *(Teton County)*

Part of Lot 4, Sec. 4, Twp. 5 N., Rge. 43 E., Boise Mer., Teton County, Idaho, described as follows:

Commencing at a point (which is a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho (Twp. 5 N., R. 43 E., Boise Mer. is offset to the East from Twp. 6 N., R. 43 E., Boise Mer.), and running

No water Rights

EXHIBIT
FF

thence East 462 feet to the point which is the Southeast corner of SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer.; thence South 825 feet, more or less, to a fence at the bottom of Dry Gulch Canyon; thence Northwesterly in a straight line (which is along the fence line) to the point of beginning.

No Water Rights

TOGETHER WITH all water and water rights, ditch and ditch rights, and improvements and appurtenances thereto.

GRANTORS have scheduled for hearing on May 9, 2007, in the Snake River Basin Adjudication of water rights, in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, In Re: SRBA Case No. 39576, Subcase No. 22-00628A, [1] a Motion to File Amended Notice of Claim as to irrigation water rights with a claimed priority date of August 14, 1905, to irrigate 126 acres in Madison County, Idaho for 2.52 cfs and 130 acre feet of water from Pony Creek; and [2] a Motion to file Amended Notice of Claim as to irrigation water rights with a claimed priority date of June 25, 1917, to irrigate 286 acres in Madison County and Teton County, Idaho for 6.0 cfs and 300 acre feet of water from Pony Creek. GRANTORS shall diligently pursue each Amended Notice of Claim but do not warrant that the claims will be fully allowed nor allowed in any specific amounts.

SUBJECT TO all valid easements of record or in existence for roads, utilities, and ditches; applicable zoning and building laws, ordinances, rules and regulations; reservations in United States Patents of record; reservations of record as to oil and gas and other hydrocarbons and minerals; and boundary discrepancies, depending on whether or not the apparent boundary fence along Dry Gulch Canyon is or is not a legally binding boundary fence.

GRANTORS COVENANT AND WARRANT that fee simple title to the above described property is conveyed to Grantee by this Deed free from all encumbrances except those set forth above and except the year 2007 property taxes and assessments.

DATED This 20th day of March, 2007.

Grover Browning

Grover Browning, Co-Trustee of the
Grover Browning Marital Trust

Karen Marie Browning Garvin

Karen Marie Browning Garvin, Co-Trustee
of the Grover Browning Marital Trust

Received Time Aug. 27. 3:33PM

Grover Browning, Co-Trustee of the
Orsena C. Browning Family Trust

Karen Marie Browning Garvin, Co-Trustee
of the Orsena C. Browning Family Trust

Acknowledgment by Co-Trustees

STATE OF IDAHO,)
ss.
County of Madison.)

On this 20th day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, known to me to be the persons whose names are subscribed to the within instrument as the Co-Trustee of the **GROVER BROWNING MARITAL TRUST**, and acknowledged to me that they executed the same as such Co-Trustees.

JANA WILLIAMS NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at
My Commission expires:

Notary Public for the State of Idaho
Residing in Fremont County
Commission Expires 06-21-2011

Acknowledgment by Co-Trustees

STATE OF IDAHO,)
ss.
County of Madison.)

On this 20th day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, known to me to be the persons whose names are subscribed to the within instrument as the Co-Trustee of the **ORSENA C. BROWNING FAMILY TRUST**, and acknowledged to me that they executed the same as such Co-Trustees.

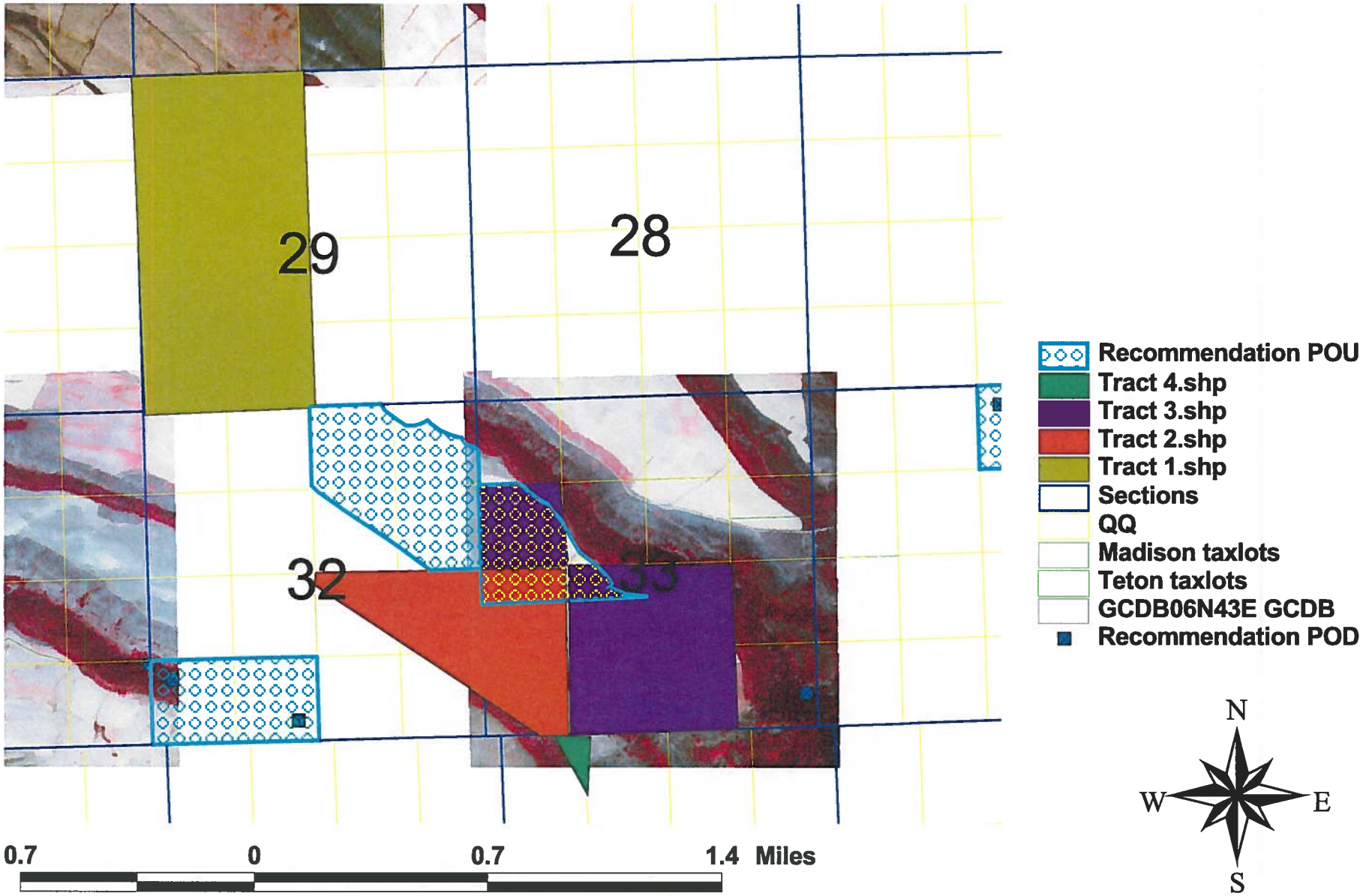
JANA WILLIAMS NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at
My Commission expires:

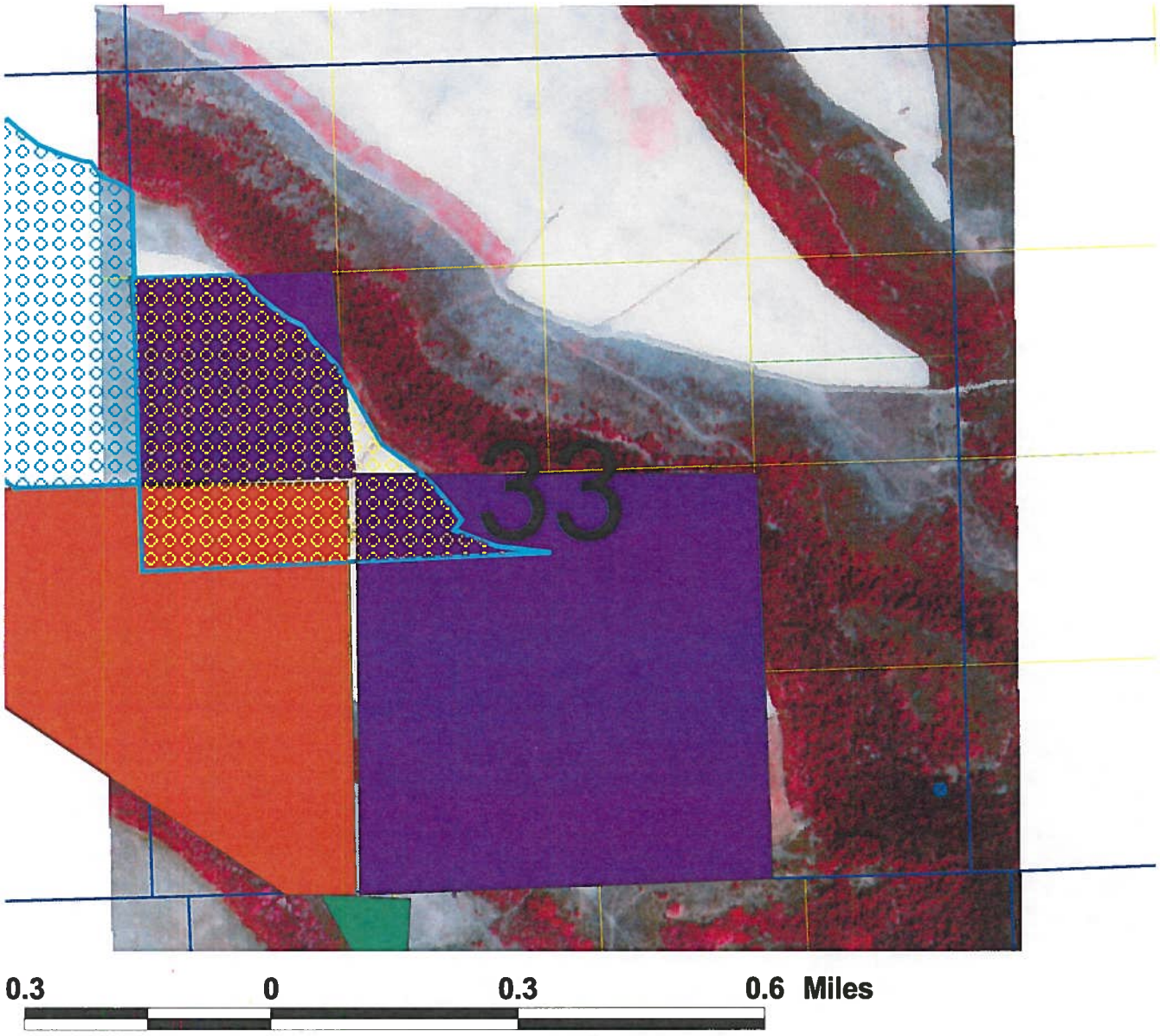
Notary Public for the State of Idaho
Residing in Fremont County
Commission Expires 06-21-2011

Received Time Aug. 27. 3:33PM

Idaho Ranch Subdivision
Water Right # 22-628A



Idaho Ranch Subdivision
Water Right # 22-628A



SRBA
SUBCASE SUMMARY REPORT 22-00628A

Return to SRBA Home Page

SRBA SUBCASE SUMMARY REPORT HTML12
08-28-2007

SUBCASE: 22-00628A FILE#: 00424
CLAIMANT: GROVER BROWNING MARITAL TRUST
7 N 2700 E

TETON ID 83451
STATUS: MOT:LATE/AMEND CLAIM SPECIAL MASTER: BILYEU, BRIGETTE
WATER SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

****** PARTIES INVOLVED ******

GROVER BROWNING MARITAL TR	C ATTY: GORDON S THATCHER
ORSENA C BROWNING FAMILY	C PRO SE
GROVER & ORSENA BROWNING	C PRO SE
GROVER BROWNING	I ATTY: GORDON S THATCHER

****** ROA ENTRIES ******

02-28-2007	MOTION TO FILE AMENDED NOTICE OF CLAIM	MG	05-09-2007	
02-28-2007	AMENDED NOTICE OF CLAIM TO A WATER RIGHT			
02-28-2007	MOTION TO FILE AMENDED NOTICE OF CLAIM	MF	02-28-2007	
02-28-2007	AMENDED NOTICE OF CLAIM TO A WATER RIGHT			
03-06-2007	NOTICE SETTING HEARING	HS	05-09-2007	0200
	MOTION TO FILE AMENDED NOTICE OF CLAIM			
05-09-2007	HEARING HELD	HH	05-09-2007	0200
05-09-2007	MINUTES			
05-09-2007	ORAL ORDER GRANTING MOTION TO AMEND CLAIM			
05-15-2007	ORDER GRANTING MOTION TO FILE AMENDED CLAIM			
	AND SETTING SUBCASE DEADLINES			
05-15-2007	STATUS CONFERENCE/DETERMINATION OF LATE CLAIM	US	05-23-2007	0230
05-15-2007	DEADLINE TO FILE AMENDED DIRECTORS REPORT	ZS	08-30-2007	0445
05-15-2007	DEADLINE TO FILE OBJECTION	ZS	09-28-2007	0445
05-15-2007	DEADLINE TO FILE RESPONSE	ZS	10-12-2007	0445
05-15-2007	STATUS CONFERENCE	US	10-17-2007	1030
05-23-2007	HEARING HELD	HH	05-23-2007	0230
05-23-2007	MINUTES			
05-31-2007	ORDER IDENTIFYING AMENDED CLAIM			
05-31-2007	DEADLINES REMAIN AS PREVIOUSLY SET			
06-06-2007	NOTICE OF CHANGE OF FIRM & ADDRESS -- GORDON			
	THATCHER FOR BROWNING			
06-14-2007	NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDING		06-14-2007	
06-14-2007	AMENDED DIRECTOR'S REPORT			
	CHANGE: SUBSTITUTION OF PARTY			

Return to SRBA Home Page

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Interim Director

June 11, 2007

GROVER BROWNING MARITAL TRUST
ORSENA C BROWNING FAMILY TRUST
GROVER & ORSENA BROWNING LIVING TRUST
7 N 2700 E
TETON, ID 83451

RE: Notice of Change of Water Right Ownership (NCO) for 22-628A and Notice of Completed Administrative Proceeding (NCAP)

Dear Sir/Madam:

On June 8, 2007, the Idaho Department of Water Resources (IDWR) received an NCO changing the right holder for the above referenced water right(s). Based on this NCO, IDWR water right records for the Snake River Basin Adjudication (SRBA) have been updated.

Furthermore, as directed by the SRBA Court, this office mailed a copy of the updated water right record(s) to each party listed on the enclosed NCAP. The intent of this mailing is to ensure each party has a current record of water right(s) as recorded in the SRBA.

Please feel free to contact me if you have any questions concerning this matter.

Respectfully,

Jonie Barg
Office Specialist 2

Enclosure

SCANNED
JUN 12 2007

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

In Re SRBA	)	**Water Rights:** 22-628A
Case No. 39576	)	**NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDING**

IDWR has completed the following Administrative proceeding:

[] Address change

[X] Substitution of Party BROWNING-BROWNING TRUST

[] I.C. § 42-222 transfer

[]	point of diversion	[]	place of use
[]	period of use	[]	nature of use
[]	split of water right	[]	change in ownership

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: June 12, 2007

Ernest Carlson
Signature of IDWR Representative

SCANNED
JUN 12 2007

CERTIFICATE OF MAILING

I certify that on June 13, 2007, I mailed the original and copies of this form to the following persons, postage prepaid by regular mail and addressed as follows:

1. Original to:
   Clerk of the District Court
   Snake River Basin Adjudication
   PO Box 2707
   Twin Falls ID 83303-2707

2. One copy to:
   Claimant/Seller for Substitution of Party or attorney of record:
   Orsena C Browning
   7 N 2700 E
   Teton, ID 83451

3. One copy to:
   Claimant/Purchaser for Substitution of Party, or attorney of record:
   Grover Browning Marital Trust
   Orsena C Browning Family Trust
   Grover & Orsena Browning Living Trust
   7 N 2700 E
   Teton, ID 83451

4. One copy to:
   Each party in the subcase, or attorney of record
   Gordon S Thatcher
   Thatcher Law Office, PLLC
   PO Box 216
   116 S Center St
   Rexburg, ID 83440

5. One copy each to:
   Chief Natural Resources Division
   Office of the Attorney General
   PO Box 44449
   Boise ID 83711-4449

6. One Copy to:
   United States Dept of Justice
   Environment & Natural Resource Div
   550 West Fort Street MSC 033
   Boise ID 83724

Signature of person or attorney mailing the form

SCANNED
JUN 12 2007

RECEIVED 2007 MAY 31 PM 2:37
JUN - 1 2007
DEPARTMENT OF WATER RESOURCES
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA	)	**ORDER IDENTIFYING AMENDED CLAIM**
Case No. 39576	)	**SUBCASE NO.: 22-00628A**

I. PROCEDURAL BACKGROUND

The court issued an ***Order Granting Motion to File Amended Claim and Setting Subcase Deadlines*** for this subcase on May 15, 2007. A hearing was held May 23, 2005 to clarify the ***Order*** because the court realized that the claimant had filed two different *Amended Claims* for water right 22-628A. At the hearing on May 23, 2007 the court identified *Amended Claim #1* as the claim for 286 acres with a 1917 priority date. The court identified *Amended Claim #2* as the claim for 126 acres with a 1905 priority date.

III. FINDINGS

The parties and IDWR discussed the two proposed *Amended Claims.* The claimant agreed that *Amended Claim #1* should go forward. The claimant and IDWR agreed that *Amended Claim* #2 needed to be stricken from this subcase. A late claim will need to be filed for the water right claim marked as *Amended Claim* #2, and that claim will proceed separately.

III. CONCLUSION

Therefore, the court clarifies its previous *Order Granting Motion to File Amended Claim and Setting Subcase Deadlines.* The *Motion* is **granted** as to *Amended Claim #1* with the 286 acres and the 1917 priority date.

The *Motion* is **denied** as to *Amended Claim #2* with the 126 acres and the 1905 priority date. In addition, *Amended Claim #2* is stricken from the record for this subcase.

IT IS ORDERED that the following deadlines shall govern further proceedings:

August 30, 2007	**5:00 pm**	Deadline to file Amended Director's Report
September 28, 2007	**5:00 pm**	Deadline to file Objection
October 12, 2007	**5:00 pm**	Deadline to file Response
October 17, 2007	**10:30 am**	Status Conference **Location**: Snake River Basin Adjudication 253 3rd Ave. North Twin Falls, Idaho 83301

DATED: May 31, 2007.

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

Meeting with Thatcher 8-24-07

- Mr. Thatcher will find out when sprinkler ~~Equipment~~ System went in.
- Thatcher will find out what lands were irrigated by ditch
- Told Mr. Thatcher to find out how land "South of Road" was irrigated. If irrigated ~~by~~ any way before 1967 we can recomend that land.
- Thatcher said land south of road and accross canyon south of pony creek is not being claimed. in Section 33
- Once info is found I will prepare a late claim either B.U. or enlargement depending on the date the sprinklers went in.
- Thatcher getting signatures for C/O for 22-629 ~~+ 22-628~~ & 630 if needed
- He may try to set asside partial decree for 22-629 to increas amount of water

Grover Browning Analysis for Amended Claim 22-628A

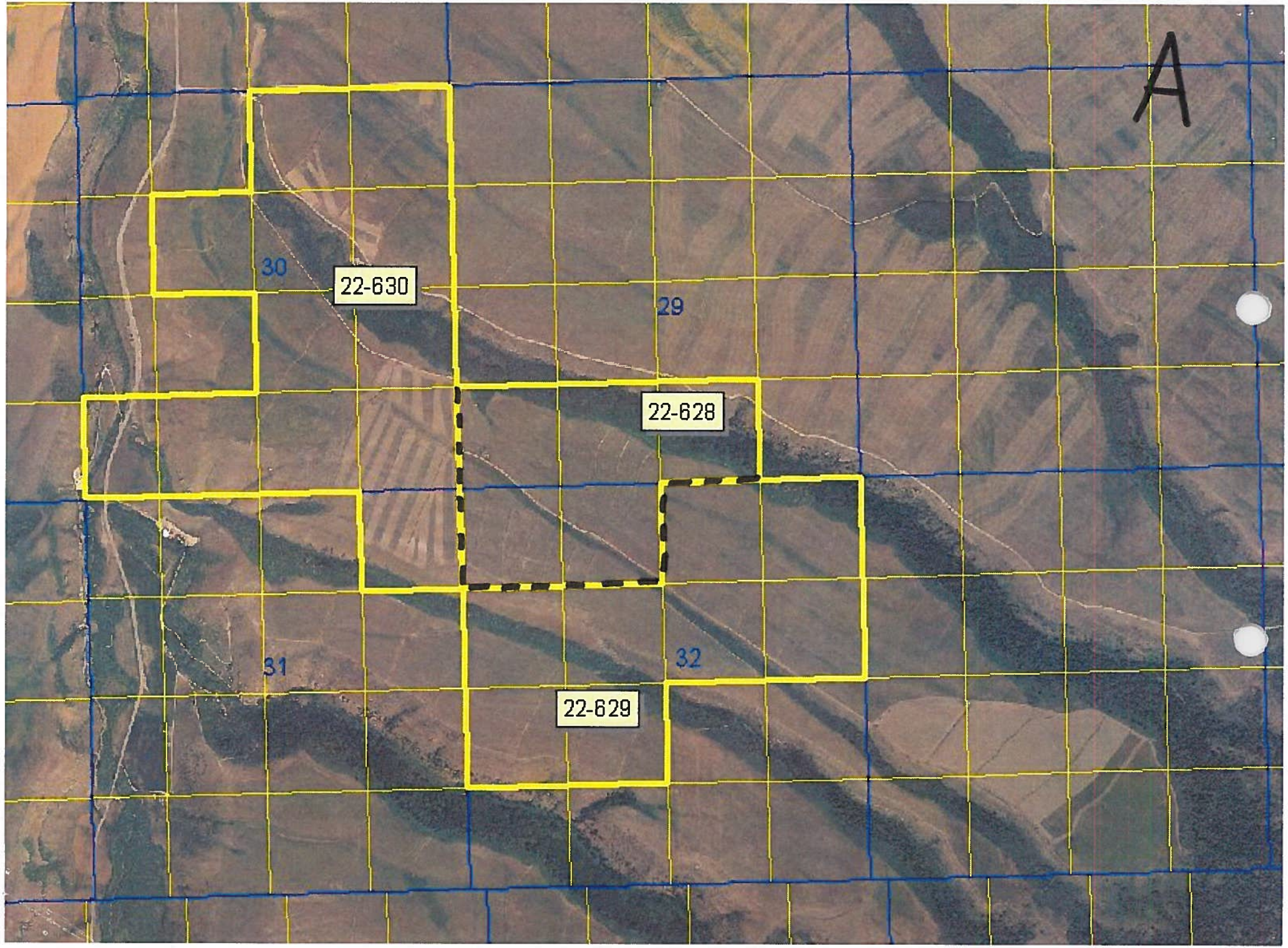
- **Map A** is an illustration of the land owned by the 3 parties involved in the Pony Creek Decree. The ownership is spread throughout section 29, 30, 31, and 32 but does not extend into section 33. The ownership is found in the Amended Complaint and Answer to Amended Complaint for the Pony Creek Decree. Each party's ownership is outlined in yellow and a black dotted line shows the boundary line between the 3. Each party was decreed their water to be used somewhere within their ownership boundary. The actual amount of irrigated acres is unknown.

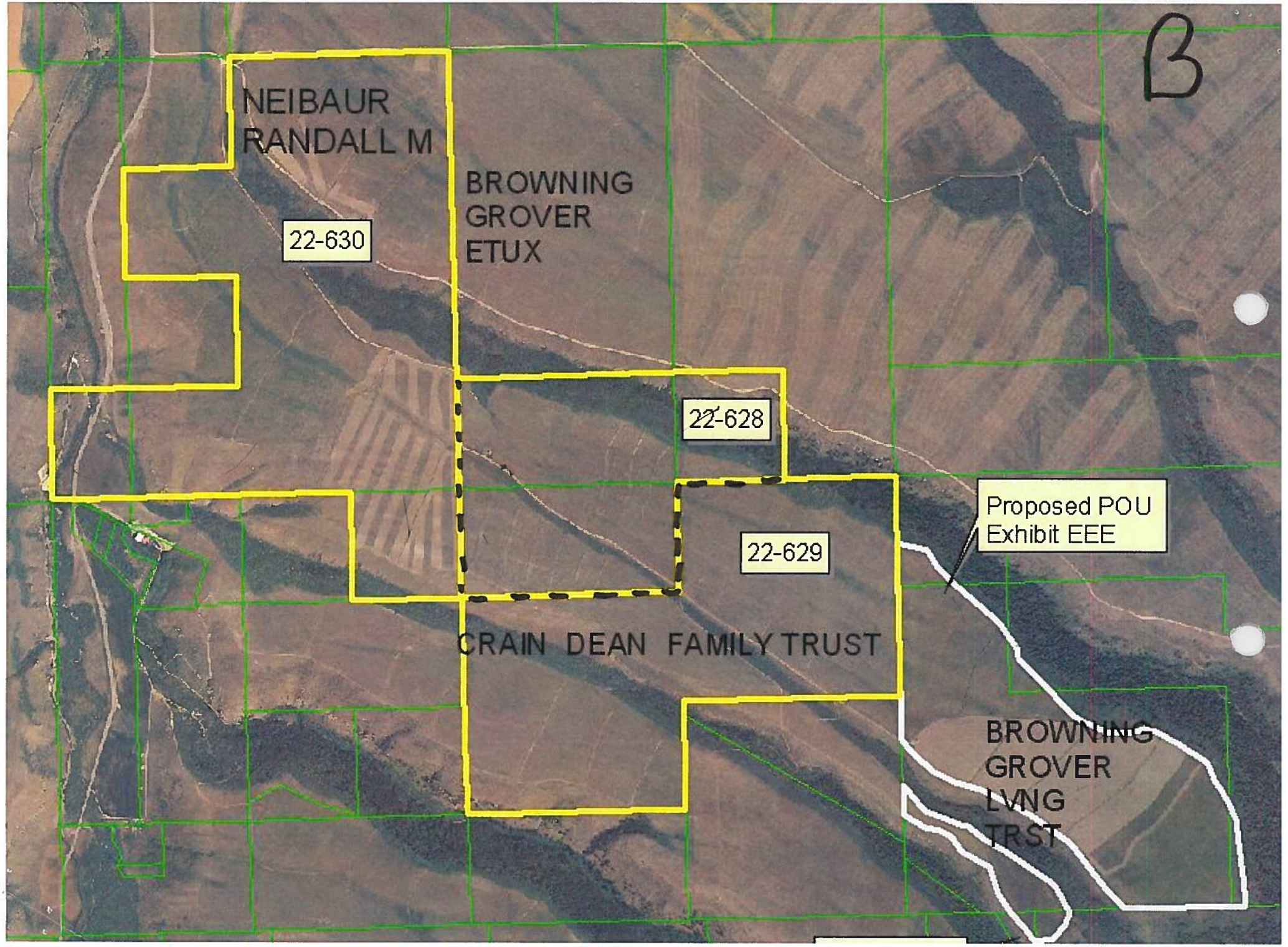
- **Map B** is an illustration that reflects the ownership of the land in this area as it is today according to IDWR tax lot data taken from Madison and Teton Counties. It also illustrates the Soil Conservation Service description of irrigated land in white as is shown is Exhibit EEE in Thatcher's Letter.

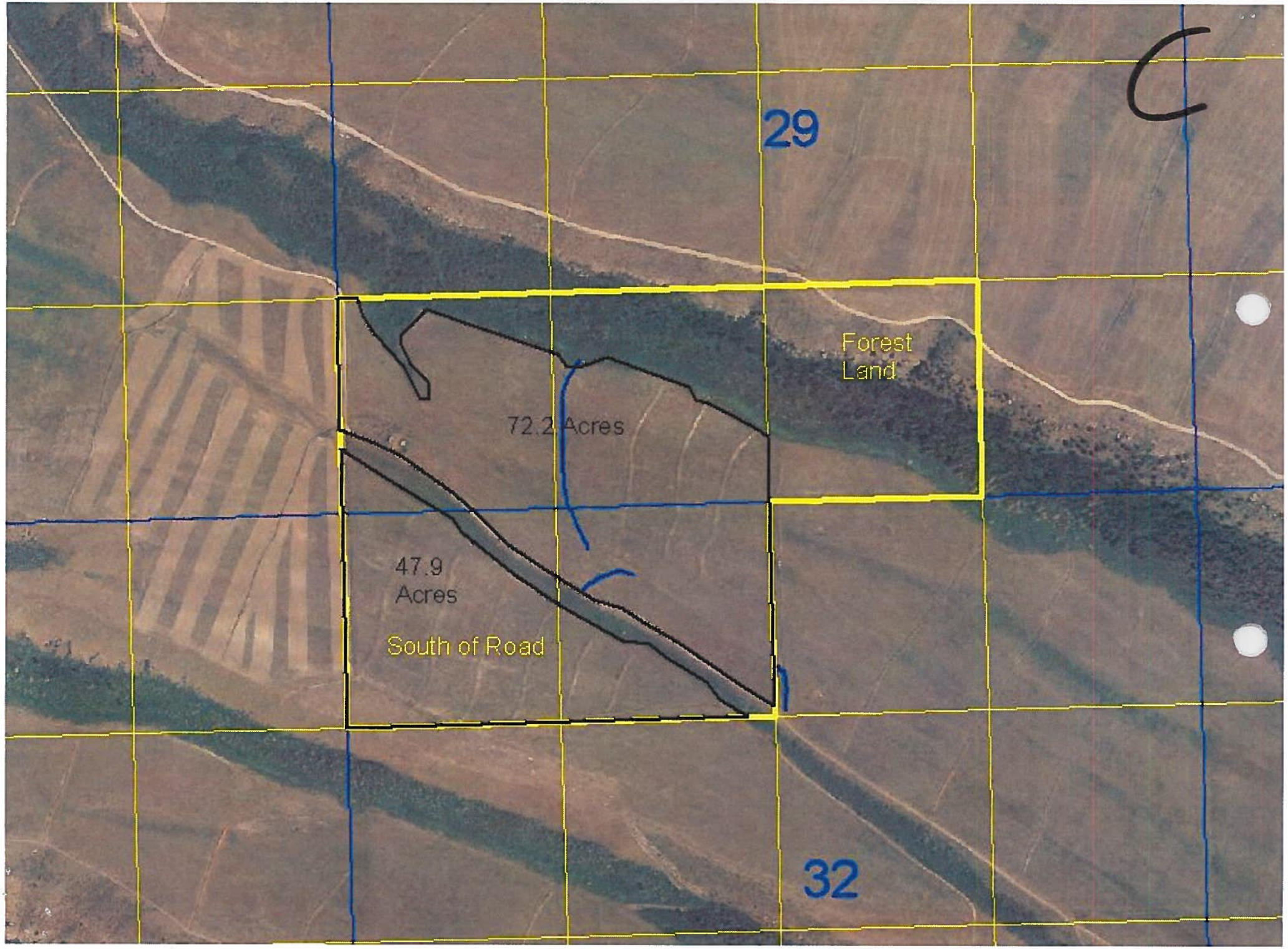
- **Map C** is the land that I interpret as possibly being irrigated from Pony Creek. The land labeled as "South of the Road" seems to be cultivated but as to whether it is has ever been irrigated or not remains unknown. The blue curved lines on the map show some tracks of land that I walked and recorded using a GPS. The north most line is one of the mounds of soul found in many areas of this land. The mounds I assume are for erosion control but that has not been verified. The southern lines are the beginning and ending points of the ditch from Pony creek after it leaves the road. The ditch comes from Pony Creek and then follows the road that cuts through SENE, SWNE, NENW, NWNW section 32 and SWSW of section 29. The ditch then leaves the road in the NWNE and returns back to the road in the NENW of section 32 and ends as the blue lines show. The land labeled "South of the Road" does not seem to have been able to get water from Pony Creek given the fact the ditch ends at the road. This map also shows the Forest Service owning the SWSE of section 29.

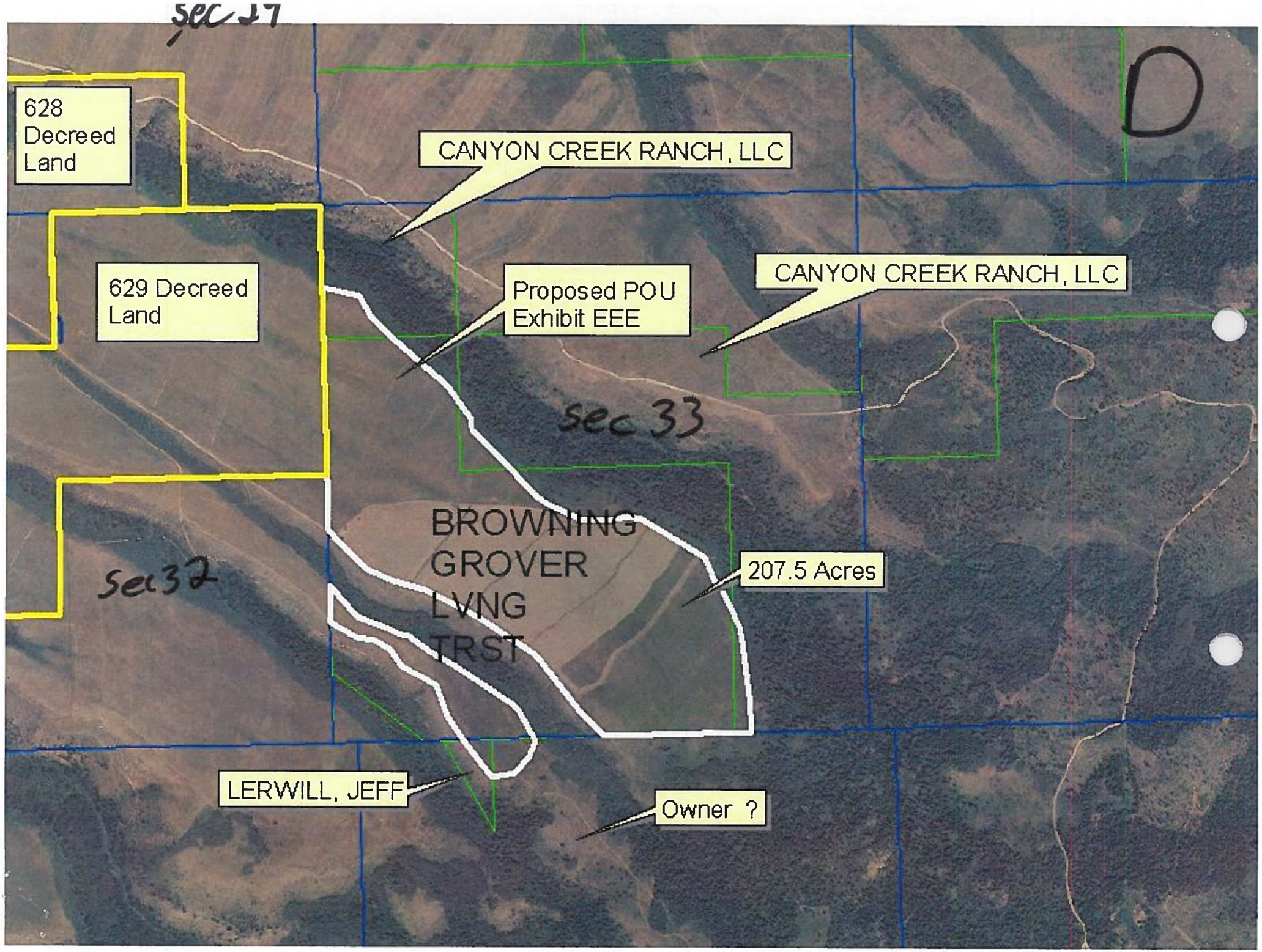
- **Map D** shows the Soil Conservation depiction of cultivated land. And the ownership of that land according to IDWR tax lot data.

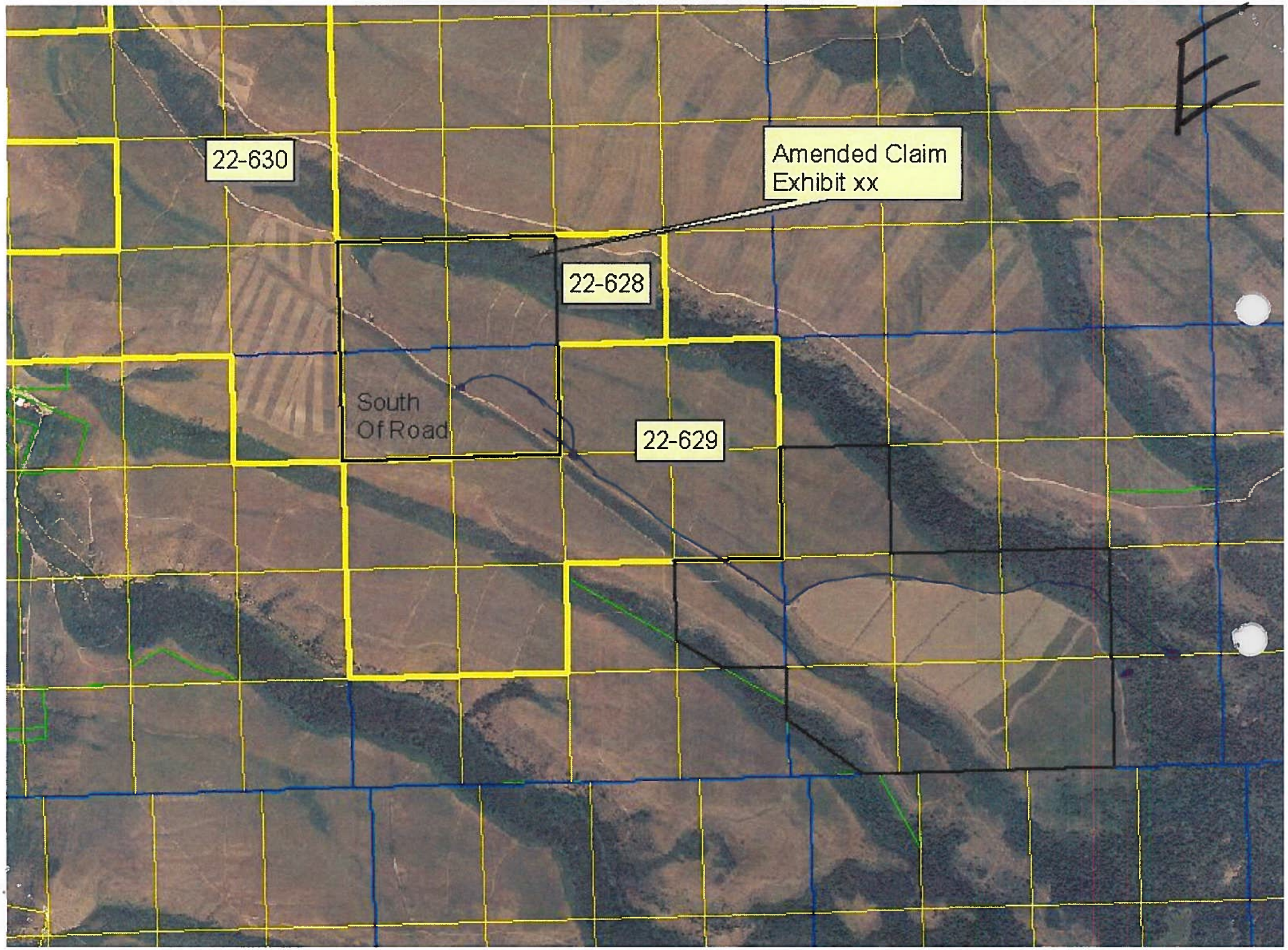
- **Map E** shows the land outlined in the Browning's Amended Claim. Note that only the land shown in the S1/2 SW and N1/2NW is within any decreed place of use. We can give Browning all the water he was decreed to be used upon the land irrigated by Pony Creek in those QQs as of 1987 per Adjudication Memo 57. We must know if that land which is labeled "South of the Road" was irrigated by Pony Creek in 1987. The land outlined in section 32 and the NESE section 31 can not be included in any recommendation associated with the Pony Creek Decree because it is not in any of the decreed place of use. If this land if irrigated from Pony Creek prior to 1987, it could be claimed as an enlargement claim to 22-628 and would be recommended but would not receive any additional water. All water in Pony Creek was decreed in the Pony Creek Decree and therefore there is no other water that could have been appropriated otherwise a regular beneficial use claim could be filed.


A
30
22-630
29
22-628
31
32
22-629


B
NEIBAUR
RANDALL M
22-630
BROWNING
GROVER
ETUX
22-628
22-629
Proposed POU
Exhibit EEE
CRAIN DEAN FAMILY TRUST
BROWNING
GROVER
LVNG
TRST


C
29
Forest
Land
72.2 Acres
47.9
Acres
South of Road
32


sec 27
D
628 Decreed Land
CANYON CREEK RANCH, LLC
629 Decreed Land
Proposed POU Exhibit EEE
CANYON CREEK RANCH, LLC
sec 33
BROWNING GROVER LVNG TRST
207.5 Acres
sec 32
LERWILL, JEFF
Owner ?


22-630
Amended Claim
Exhibit xx
22-628
South
Of Road
22-629

8-9-07 Telecon with Andrea

- From Thatchers memo she believes he is ok with filing a late claim for any acre he doesn't get recomended in 22628A. ie sec 33 acres.

- Each party or their successors should get all water decreed to them unless they are irrigating fewer acres than they were in 1987. If so their could be a partial forfeture.

- Browning should get 6 cfs and he should get what he was irrigating in 1987 as a POU. He will have to prove pony water was/is being used south of road in 1987 and how it was getting there.

- memo said amended claim should show 7 acres in SENE Sec 32 not NENE but I don't think Browning owns that land and if he does it would be recomended under another claim which would be a split from cranes right.

- Settlement conf. possibly Mon 20th Fri 24th or Mon 27th

6-21-07

- Ernie said we need to know how land was irrigated because it was not flood irrigated.

- If land in sec 33 was irrigated prior to 1971 then we can give them a B.V. right for day after decree at 1"/acre limiting it to 6 cfs between it and 628A.
  - If after 1971 an enlargement right may be filed.
  - we need proof of when and how irrigation was accomplished.
  ~~We need tax lot data, FSA maps~~
  - Proof in form of:
    - Tax lot data
      - shows taxed as irrigated ag
    - FSA Photos showing irrigation
    - Affidavits
    - CRP did not require land to be irrigated

THATCHER LAW
OFFICE PLLC.

P. O. Box 216
116 S. Center
Rexburg, Idaho 83440

Phone: 208-359-5885
Fax: 208-359-5888
office@thatcherlawoffice.com

RECEIVED
AUG 20 2007
Department of Water Resources
Eastern Region

August 17, 2007

Trent Galbraith
Eastern Regional Office
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-6105

Andrea L. Courtney
State of Idaho
Natural Resources Division - Water Resources Section
Office of the Attorney General
P. O. Box 83720
Boise, ID 83720-0098

RE: **SRBA Subcase No. 22-628A Browning**

Dear Mr. Galbraith and Ms. Courtney:

This letter confirms that I will be in attendance at the meeting scheduled for August 24 at 10:00 at the IDWR office in Idaho Falls. We believe that Grover Browning is currently visiting his son who lives in Alaska. We are not sure if he will be back in time to attend the meeting.

Anne mentioned two things you had requested in anticipation of the meeting:

1. Proof of irrigation south of the road in Sec. 33. In reviewing this I do not believe that we are claiming any irrigation south of the road. Please refer to our Exhibit "EEE" in the bundle of information I sent you, which is a Soil Conservation Service aerial photo. It was originally attached to our Notice of Amended Claim (Exhibit "XX" in the bundle) as Exhibit "E". We enclose a copy of a topographical map with the Browning property highlighted in yellow. Please refer to Exhibit "EEE" and the remarks under ¶ 14 of the Notice of Amended Claim (Exhibit "XX" in the bundle). As I see it, the property farmed south of the road is shown on Exhibit "EEE" as Parcel 9. As you will see in ¶ 14, Parcel 9 is listed as "none irrigated". We hope this answers your first question.

2. Affidavit of Grover Browning as to total acres irrigated. Please review the same ¶ 14 and also please note that Grover Browning swore to the truth of the facts in our Notice of Amended Claim. We hope this will suffice as his Affidavit.

Please refer to my Legal Memorandum of July 2, 2007, pg. 5, ¶ 3, ftnt. 8. This corrects an error in acres claimed. The acres in SE¼SE¼ of Sec. 33 in Teton County should be 17 rather than 18.4 as shown on the schedule and the total from Teton County should be 152 rather than 153.4. I also explain that I went over the Soil Conservation Maps in detail with Grover Browning to come up with 286 acres total.

We are having signed and should be able to bring with us a "Notice of Change in Water Right Ownership" as to the Idaho Ranch Subdivision LLC and a like form as to the two Crain Trusts.

We also will discuss a proposed "Late Notice of Claim" and a "Motion to File a Late Notice of Claim" to cover any additional acres and additional water for Idaho Ranch that are not approved as to our pending Amended Notice of Claim, Exhibit "XX" to our Legal Memorandum on July 2, 2007. This will have a priority date of May 22, 1954. We hope the entire 286 acres and 6.0 cfs are approved in our pending Amended Notice of Claim, Exhibit "XX" so that the late Notice of Claim is not needed.

We hope that by the time of the meeting there will be an agreement between the Crain Trusts and the Idaho Ranch. We hope these matters and other matters can be resolved at the meeting.

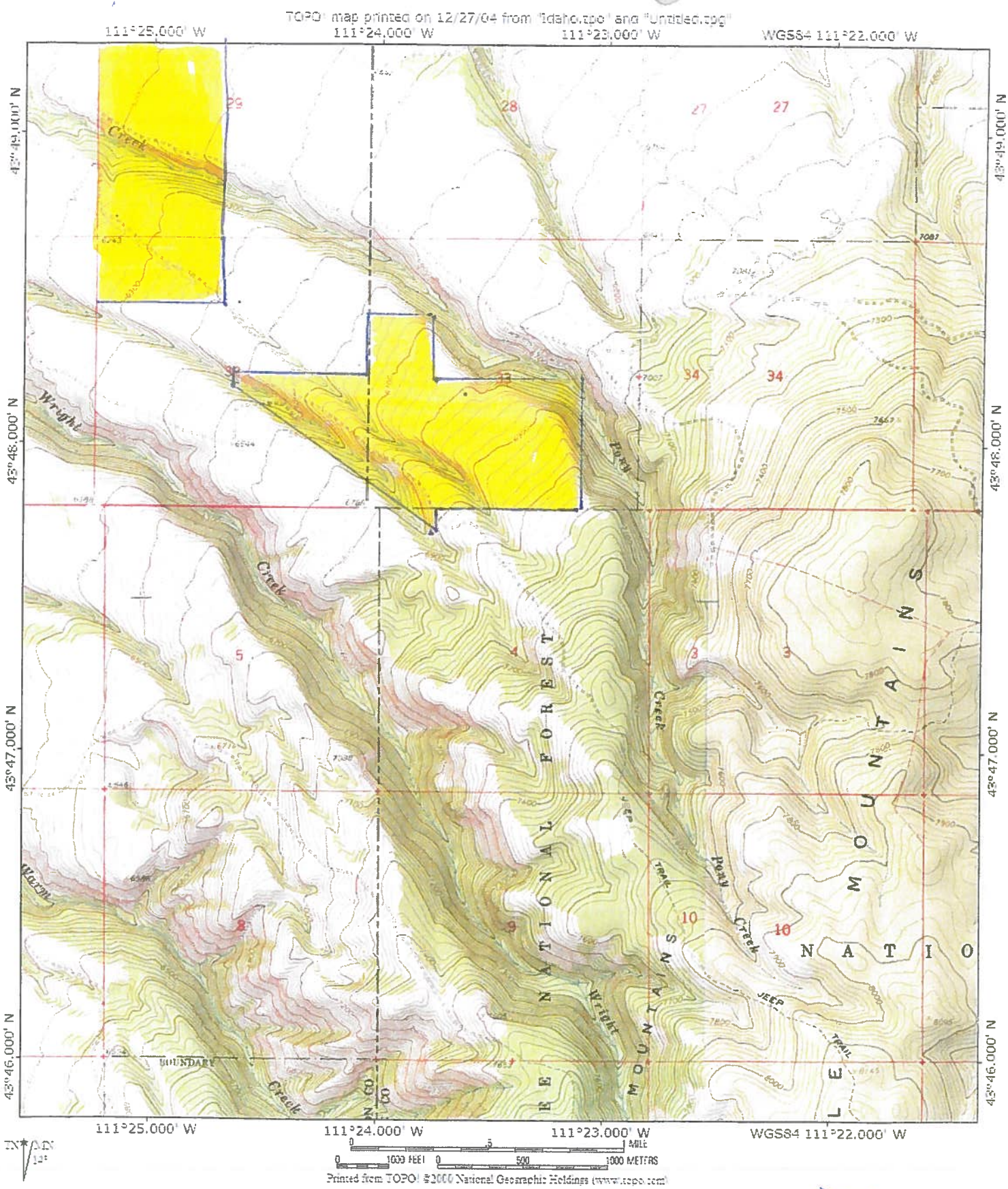
Sincerely,

Gordon S. Thatcher

GST:aw

Enclosure

PC: Harley Wilcox, Grover Browning



No profile exists. Choose 'Build Profile' from the pop-up options menu of a route.

THATCHER LAW
OFFICE PLLC.

P. O. Box 216
116 S. Center
Rexburg, Idaho 83440

Phone: 208-359-5885
Fax: 208-359-5888
office@thatcherlawoffice.com

RECEIVED
JUL 19 2007
Department of Water Resources
Eastern Region

July 18, 2007

Trent Galbraith
Eastern Regional Office
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-6105

RE: SRBA Subcase No. 22-628A Browning

Dear Mr. Galbraith:

I am attorney of record for the Browning Trusts in the above case. As a result of developments in this case and later happenings, I did extensive research on Pony Creek Water Rights. I prepared a "**Legal Memorandum as to Pony Creek Water Rights**," dated July 2, 2007. A copy of which is enclosed. I assembled thirty-four exhibits shown on **Exhibit List**, a copy of which is enclosed and a packet of the Exhibits are also enclosed. These should be helpful in discussing with you Pony Creek Water Rights.

As reported in the Memorandum, the Browning Trusts have now sold the property with the water rights to Idaho Ranch Subdivision, LLC, c/o Harley Wilcox, P. O. Box 362, Victor, Idaho 83455. A copy of the Warranty Deed is Exhibit "FF" to the Memorandum. I will send by separate cover a Transfer of Water Rights form for the transfer. Pursuant to the terms of the Warranty Deed, I will be representing Idaho Ranch Subdivision, LLC in this matter. Because there is a potential conflict with another client, at some point I may need to withdraw as attorney for Idaho Ranch and as attorney for the other clients, who are the Crain Trusts.

In the course of the Browning proceedings I was contacted by the Crain family whom I have represented for many years, as to Water Right Report, No. 22-629, dated June 11, 2007. The real property with water rights were transferred from Dean and Elva Crain to the Dean & Elva Crain Living Trust on October 14, 2003. A copy the Grant Deed from Dean and Elva Crain to the Dean & Elva Crain Living Trust, dated October 14, 2003, is Exhibit "JJ" to the Memorandum. Also included is a Grant Deed, dated August 23, 2004 from the Dean & Elva Crain Living Trust to the Dean Crain Family Trust and the Elva Crain Marital Trust. This is Exhibit "II" to the Memorandum. I will send by separate cover Transfer of Water Right forms for these transfers. I will be representing the Crain Trusts at least for the present.

If an actual conflict develops as to Pony Creek Water Rights between Idaho Ranch and the Crain Trusts that can not be resolved, I will withdraw as attorney for each of them.

Harley Wilcox of Idaho Ranch and the Crain Family are negotiating to see if they can resolve any differences.

I anticipate sending a copy of the Legal Memorandum and Exhibits to the Neibaurs who I understand are the third party involved in Pony Creek Water Rights. They are successors to various Neeley individuals and entities. I would hope that Neibaurs, with an attorney representing them would be involved in negotiations as to Pony Creek Water Rights. I have some indication that other parties may claim that the Neibaur water rights have been abandoned from non-use. If there is a pending report as to the Neibaur water rights, please advise of any deadline for protesting those rights should Idaho Ranch or the Crain Trusts, after investigation may desire to challenge those rights in whole or in part.

As noted under ¶ [4], pg. 9 of the Legal Memorandum, Idaho Ranch may seek through a late-filed claim and as an alternate remedy to irrigate such of the 286 acres that are not approved for inclusion under *Amended Claim #1*, Exhibit "XX" of the Legal Memorandum hereto.

I will be very pleased to meet with you and share any information or insights I may have as to Pony Creek Water Rights.

Sincerely,

Gordon S. Thatcher

GST:aw

Enclosures

PC: Harley Wilcox, Grover Browning, Elva Crain

THATCHER LAW OFFICE, PLLC
LEGAL MEMORANDUM AS TO PONY CREEK WATER RIGHTS
JULY 2, 2007

I am writing to explain my analysis as to Pony Creek water rights. I will first provide some simple and clear answers (after complex analysis) on three basic issues. I will explain in detailed footnotes, with documents as Exhibits, how I reached certainty on those issues. I will then suggest a solution to two uncertain issues. I will discuss why my proposals should be adopted.

THREE REASONABLY CERTAIN CONCLUSIONS

1. Maximum Flow. The maximum flow of Pony Creek is 960 Miner's Inches (19.2 cfs). This diminishes during the summer.[1]

2. Basic Division of Water. Irrigation water rights have been and are fully divided[2] and used among the predecessor owners, continuing down to like rights in the three successor present owners:

A. Neibaurs[3]: 435 Miner's Inches (8.7 cfs). **45.31%** of Flow.

---

[1] This is the judgment in the Decree of May 21, 1954, recorded as Instrument #101512, records of Madison County, Idaho, Exhibit "AA" hereto, specifically ¶ 6, p. 2.

[2] Decree, Exhibit "AA", awarded 435 miner's inches to O. J. Neeley [this is "Oswald" or "Os"] and Myrtle Neeley, his wife; 300 miner's inches to George Browning and Phebe Browning, his wife, [parents of Grover Browning]; and 225 miner's inches to Morris Slaymaker and Thelma Slaymaker, his wife.

[3] Phil G. Neibaur and Kathleen B. Neibaur, his wife, and Randall M. Neibaur and Jeralee P. Neibaur, his wife, acquired the O. J. Neeley land to which the water rights in the Decree were appurtenant (except for SW¼SW¼) from Sharp Brothers, a general partnership consisting of Wayne L. Sharp and Dean S. Sharp, by Contract of Sale, dated May 15, 1997, as evidenced by Notice of Contract of Sale recorded on May 15, 1997, as Instrument #266454, records of Madison County, Idaho. Exhibit "BB" hereto. Sharp Brothers acquired the land from Os and Myrtle Neeley Ranch, Inc., by Corporation Warranty Deed, recorded on November 9, 1979, as Instrument #181409, records of Madison County, Idaho. Exhibit "CC" hereto. Os and Myrtle Neeley Ranch, Inc. acquired the land from Pony Creek Farms, Inc. by Deed recorded on July 4, 1979 as Instrument #179776, records of Madison County, Idaho. Exhibit "DD" hereto. There are numerous interim deeds on various properties involving multiple corporations of the Neeley family, and including Owen Judson "Jud" Neeley, son of Os and Myrtle Neeley, and Darla Neeley, his wife. To avoid burdening the record and adding to the expense, I mention only Warranty Deed from Oswald J. Neeley and Myrtle Neeley, his wife, to O. J. Neeley Ranch, Inc., recorded on March 1, 1966, as Instrument #129365, records of Madison County, Idaho. Exhibit "EE" hereto. This includes, as do the other deeds, the correct E½SW¼ of Sec. 30 rather than the erroneous S½SW¼ of Sec. 30 used in the Decree.

RECEIVED
JUL 19 2007
Department of Water Resources
Eastern Region

B. Idaho Ranch[4]**:** 300 Miner's Inches (6.0 cfs). **31.25%** of Flow.

C. Crain Trusts[5]**:** 225 Miner's Inches (4.5 cfs). **23.44%** of Flow.

3. Modified Divisions by Three Time Stages: There is a Stipulation Agreement between O. J. Neeley Ranch, Inc. and George Browning, whose wife is Phebe Browning, filed with the Water Administration Area Office on May 2, 1974 and with the Department of Water Resources on March 1, 1985. Exhibit "OO" hereto. As shown in the Stipulation Agreement O. J. Neeley Ranch, Inc. then had both the Neeley share and the Slaymaker share from the Decree of May 21, 1954. Exhibit "AA" hereto. Thus the Stipulation Agreement should be binding on all present rights holders in Pony Creek. This Stipulation resolved issues arising from a Neeley Claim to a Water Right, dated April 16, 1973, #22-4003, Exhibit "UU" hereto, and was "on the condition that their [Browning] water rights are not

---

[4] Idaho Ranch Subdivision LLC, acquired the Browning land to which the water rights in the Decree were appurtenant (except for SW¼SE¼ of Sec. 29 which was and is owned by the U.S. Forest Service), from Grover Browning and Karen Marie Browning Garvin, as Co-Trustees of the Grover Browning Marital Trust and as Co-Trustees of the Orsena C. Browning Family Trust, by Warranty Deed recorded on March 27, 2007 as Instrument #335849, records of Madison County, Idaho and recorded on March 27, 2007 as Instrument #186177, records of Teton County, Idaho. Exhibit "FF" hereto. There are several interim deeds reaching from George Browning and Phebe Browning, his wife, to Grover Browning and Orsena Browning his wife, and then to ownership by the Grover Browning Marital Trust and the Orsena C. Browning Family Trust, both coming into being on the death of Orsena C. Browning on March 16, 2003. These are explained in Order and Decree Confirming Ownership and Approving Final Distribution, dated February 20, 2007, Exhibit "GG" hereto, and in Grant Deed recorded on February 26, 2007, as Instrument #335061, records of Madison County, Idaho, and also recorded in Teton County and in Fremont County. Exhibit "HH" hereto.

[5] Elva S. Crain and Dena C. Jeppesen, as Co-Trustees of the Dean Crain Family Trust and as Co-Trustees of the Elva Crain Marital Trust, each coming into existence on the death of Dean Crain on June 25, 2004, are record owners of the Morris Slaymaker land to which the water rights in the Decree were appurtenant. The two Crain Trusts acquired title by Grant Deed from Elva S. Crain, as sole-trustee of the Dean & Elva Crain Living Trust, dated October 14, 2003, recorded on August 24, 2004, as Instrument #314224, records of Madison County, Idaho. Exhibit "II" hereto. Dean Crain and Elva Crain, his wife, had conveyed the land to the Dean & Elva Crain Living Trust, dated October 14, 2003, by Grant Deed recorded on October 20, 2003, as Instrument #307639, records of Madison County, Idaho. Exhibit "JJ" hereto. Dean Crain and Elva Crain acquired the land by Warranty Deed from Walter L. Carter, recorded on March 14, 2003, as Instrument #302210, records of Madison County, Idaho. Exhibit "KK" hereto. Walter L. Carter acquired the land by Warranty Deed from Sharp Brothers, recorded on January 3, 1994, as Instrument #249883, records of Madison County, Idaho. Exhibit "LL" hereto. Wayne L. Sharp and wife and Dean S. Sharp and wife acquired the land by Corporation Warranty Deed from Os and Myrtle Neeley Ranch, Inc., recorded on November 9, 1979 as Instrument #181409, records of Madison County, Idaho, Exhibit "CC" hereto. There are other deeds involving the Sharp family and other deeds involving the Neeley family but to avoid burdening the record and saving expense we only mention the Warranty Deed from Morris L. Slaymaker and Thelma Slaymaker, his wife, to O. J. Neeley and Myrtle Neeley, his wife, dated May 26, 1964 and recorded on November 4, 1974, as Instrument #154121, records of Madison County, Idaho. We could not obtain a legible copy of the Warranty Deed, but recorded right after it was a Warranty Deed, dated November 1, 1974, and recorded on November 4, 1974, as Instrument #154122, from O. J. Neeley and Myrtle Neeley, his wife, to Owen J. Neeley and Darla W. Neeley, his wife. Exhibit "NN"hereto, is in two pages to provide legible terms, which as to NE¼, S½NW¼, N½SW¼ of Sec. 32, and description of water rights, are identical in the two deeds.

lost or injured in any way", ¶ 7, p. 3, and with the further clause "That the parties agree to be bound according to the above referenced decree regardless of whether any rights under the decree are transferred," ¶ 8, p. 3. Based upon the stipulation, binding on the successors of the parties, these terms should be binding on the present owners:

> **A. Early Flow.** Neibaurs have 65.91% of the flow and Crain Trusts have 34.09% of the flow of Pony Creek in the spring season until Idaho Ranch begins to irrigate.
>
> **B. Pro-Rata Distribution.** From the time Idaho Ranch begins to irrigate, the flow of Pony Creek shall be divided as per paragraph 2, above, until the waters of Pony Creek no longer reach Canyon Creek.
>
> **C. Exclusive Idaho Ranch Use.** From the time Pony Creek ceases to reach Canyon Creek, Idaho Ranch shall have full use of Pony Creek for irrigation; however, this is subject to stock water use for Neibaurs and Crain Trusts.

SUGGESTED ANSWERS ON TWO UNSETTLED ISSUES

4. Unified Priority Date of June 25, 1917. The Decree of May 21, 1954, Exhibit "AA" hereto, does not specify a priority date for water rights on Pony Creek, but the inference is that the three water rights have the same priority date. The Amended Complaint, Exhibit "PP" hereto, lacks a priority date. However, the Answer to Amended Complaint, Exhibit "QQ" hereto, alleges in ¶ II, p. 4, that the commencement date for use of the water of Pony Creek was June 25, 1917. It is alleged in ¶ IX at p. 3 that the water users of Pony Creek formed Pony Creek Canal Company to settle former disputes and divide and distribute the waters of Pony Creek. The Articles of Incorporation of Pony Creek Canal Company are dated June 25, 1919, as shown on a true copy certified by the County Recorder, Exhibit "RR" hereto. The Stipulation, Exhibit "SS" hereto, on which the Decree was based, approves of the pleadings which included the Articles of Incorporation attached as Exhibit "A" to the Answer to Amended Complaint, Exhibit "QQ" hereto, ¶ IX, p. 3. The Articles of Incorporation, ¶ 8, p. 3, included 320 shares total, and the division there (with one needed correction) is consistent with the 960 total miner's inches, as shown by the following:

INCORPORATOR	SHARES[6]	MINER'S INCHES	PRESENT OWNER
Ira J. Davis	75	225	Crain Trusts
E.D. Clark and Eli Clark, Jr.	145	435	Neibaurs
J. A. Browning	20	60	Idaho Ranch

[6] Ira Davis should have been 75 shares rather than the 70 shares and E. D. Clark and Eli Clark, Jr. should have been 145 shares rather than the 150 shares shown in Articles of Incorporation, to be consistent with the Decree.

Annie Kearney	80	240	Idaho Ranch
TOTAL	320	960	All Users

There are at least two other priority dates with some argument in their favor. Idaho Ranch is successor to Brownings who have at least an arguable claim to an August 14, 1905 priority date for rights under Water License #1505, Exhibit "TT" hereto. However, that was for only 1.3cfs rather than the 3.2cfs applied for, and Brownings admitted in the Answer to Amended Complaint, Exhibit "QQ" hereto, ¶ 5, p. 2, that the balance of the 3.2 cfs "was put to use over a period of time, although not reduced to license". Neibaurs are successors to Neeleys who have an arguable claim to an August 15, 1900 priority based on a Claim to a Water Right, ID #22 4003, dated April 16, 1973. Exhibit "UU" hereto. The assumed priority date in the Decree should prevail over the earlier date, as should the Neeley acres in the Decree prevail over the asserted 846 acres claimed to be irrigated as per the April 16, 1973 Claim.

5. Amended Claim 628A Should be Approved for 6.0 cfs for 286 Acres from Pony Creek. The following detailed analysis of complex circumstances yields a simple recommendation that Subcase 628A be approved for Idaho Ranch for 6.0 cfs for 286 acres as set forth in the Amended Notice of Claim, Exhibit "XX" hereto, which assumes the correction explained in footnote 8, below. The major thrust of my argument is that the Stipulation Agreement, Exhibit "OO" hereto, modified the Decree, Exhibit "AA" hereto, with the full use of Pony Creek covered, by the special terms therein. From the priority date in the Decree, June 25, 1917, all 286 acres have been continuously irrigated (except for the excused time while in United States Conservation Reserve Contract) by Idaho Ranch and its predecessors.

A. Procedural Status in Snake River Basin Adjudication. As background I will review the current status as to the Browning Trusts claims in the Snake River Adjudication.

[1] On the death of Orsena Browning on March 16, 2003, the Grover & Orsena Browning Living Trust was divided equally between the Grover Browning Marital Trust and the Orsena C. Browning Family Trust. See Grant Deed, Exhibit "HH" hereto and Order and Decree Confirming Ownership and Approving Final Distribution, Exhibit "GG" hereto.

[2] By Notice of Completed Administrative Proceedings, dated June 12, 2007, Exhibit "VV" hereto, the Grover Browning Trust and the Orsena Browning Trust are apparently recognized as the parties in Water Rights Sub-Case 628A, and Gordon S. Thatcher, of Thatcher

Law Office, PLLC, as attorney for the Browning Trusts.[7]

[3] Browning Trusts filed an Amended Notice of Claim, Exhibit "XX" hereto (without attached Exhibits) along with a Motion to File Amended Claim, Exhibit "YY" hereto (without attached Exhibits), on or about March 1, 2007. These claimed 6.0 cfs in Pony Creek to irrigate 50 acres in Sec. 29 and 84 acres in Sec. 32 in Madison County, and 152 acres[8] in Teton County, for the total of 286 acres, with a priority date of June 25, 1917.

[4] By Order Granting Motion to File Amended Claim and Setting Subcase Deadlines, entered May 15, 2007 by the SRBA Court the Motion to File Amended Notice of Claim was granted. Exhibit "ZZ" hereto.

[5] By Order Identifying Amended Claim, entered May 31, 2007 by the SRBA Court, Exhibit "AAA" hereto, the Court dealt with the problem that Browning Trusts had simultaneously filed two Amended Claims, one for 286 acres with a 1917 priority date, which the Court identified as *Amended Claim #1,* and the other for 126 acres with a 1905 priority date, which the Court identified as *Amended Claim #2.* The Court clarified the Order of May 15, 2007 by [a] granting the Motion to file *Amended Claim #1,* and [b] by denying the Motion to file *Amended Claim #2*[9], and ordering that "*Amended Claim #2* is stricken from the record for this subcase", which is Subcase #22-00628A.[10]

---

[7] I assume this was simply to acknowledge "Substitution of Party". Attached was "Recommended Water Rights Acquired Under State Law" which only provided for 1.950 cfs in Pony Creek for 65 acres in Teton County. As shown in this Memorandum there should be 6.0 cfs and a minimum of 160 acres in Madison County, and additional acres in Madison County and Teton County. The Notice acknowledged Gordon S. Thatcher of Thatcher Law Office, PLLC, as current attorney for the Claimants; this apparently recognized the Notice of Change of Firm and Address, dated June 1, 2007, Exhibit "WW" hereto.

[8] The acres in SE¼SW¼ of Sec. 33 in Teton County should be 17 rather than 18.4 as shown on the schedule and the total from Teton County should be 152 rather than 153.4.

[9] See Motion to File Amended Notice of Claim, Exhibit "BBB" hereto, which relates to *Amended Claim #2*, Exhibit "MM" hereto.

[10] *Amended Claim #2,* which has been stricken from the record of this Subcase, is Amended Notice of Claim, Exhibit "MM" hereto, claiming a priority date of August 14, 1905, and seeking 2.52 cfs to irrigate 126 acres in Sec. 29 and Sec. 33, based on Water License No. 1505, Exhibit "TT" hereto. The License was for 1.3 cfs to irrigate 65 acres, while *Amended Claim #2* was to irrigate126 acres with a proportionate increase to 2.52 cfs.

[6] The outcome of the two hearings, resulting in the Order of May 15, 2007, Exhibit "ZZ" hereto, and the Order of May 31, 2007, Exhibit "AAA" hereto, is that I may need to prepare and file a Notice of Claim to a Water Right, seeking any relief that can not be obtained in Subcase # 22-00628A, and file a Motion to File a Late Notice of Claim.

B. The Decree of May 21, 1954, Exhibit "AA" Hereto, Should be Read With the Stipulation Agreement of February 18, 1974, Exhibit "OO" hereto, to Correctly Determine Water Rights in Pony Creek. I received a helpful letter, dated May 24, 2007, from Andrea L. Courtney, of the Office of the Attorney General, State of Idaho, Exhibit "CCC" hereto. This suggests [1] the Decree of May 21, 1954, Exhibit "AA" hereto, may be controlling in resolving issues; and [2] seeking approval to pursue a Late Filed Notice of Claim may be the only recourse to claim additional acres beyond the 200 acres (or 160 acres when deducting the Forest Service 40 acres) listed for Brownings in the Decree. My first reaction is that the Stipulation Agreement, Exhibit "OO" hereto, should modify the Decree, Exhibit "AA" hereto. Deciding this issue requires further analysis. At the end of this analysis I will recommend what course we should follow.

I may recommend as an alternative remedy claiming additional acres and cfs by a Late Filed Claim with a priority date later than June 25, 1917. Or I may pursue *Amended Claim #1*, Exhibit "XX" hereto for the full 286 acres and 6.0 cfs with a June 25, 1917 priority date. The following should assist in arriving at a decision as to which approach should be taken to arrive at a just decision:

[1] The Notice of Claim to a Water Right filed by Grover Browning on August 17, 1988, assigned Subcase #628A, claimed 6.0 cfs for irrigating 65 acres in Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, Exhibit "HHH" hereto. The failure to include other acres was a mistake by Grover and by anyone in IDWR who assisted him. Our *Amended Claim #1,* Exhibit "XX" hereto, seeks to establish rights to irrigate 152 acres in Sec. 33 in Teton County; 50 acres in Sec. 29 and 84 acres in Sec. 32, both in Madison County. We have strong evidence of long-time beneficial use, at least from June 25, 1917, of Pony Creek for irrigation of all of those 286 acres.

[2] An important factor in the handling of the Browning claims is the effect of the Court Decree on May 21, 1954, Exhibit "AA" hereto, in a suit brought by Oswald and Myrtle Neeley against Grover's parents, George and Phebe Browning, and against Morris and Thelma Slaymaker. The Decree was based on a Stipulation by all parties, Exhibit "SS" hereto. This adjudicated all irrigation rights, and stock water rights, as to Pony Creek. The Decree assumed a maximum flow

of 960 inches. This was divided with 435 inches to Neeley, 225 inches to Slaymaker, and 300 inches to Browning.

[3] The Decree, Exhibit "AA" hereto, incorporated by reference allegations in the Amended Complaint, Exhibit "PP" hereto, that acres irrigated by Neeley were from 440 acres of property in Sec. 30 and from 40 acres of property in Sec. 31. From the Claim to a Water Right, dated April 16, 1973, I.D.#22 4003, Exhibit "UU" hereto, by Owen J. Neeley, who is Oswald's and Myrtle's son, "Jud," the acres claimed to be irrigated were 270 acres in Sec. 30 and 40 acres in Sec. 31. The Decree, Exhibit "AA" hereto, awarded 8.7 cfs to Neely. The Claim, by "Jud," Exhibit "UU" hereto, claimed 12 cfs. The Stipulation Agreement, Exhibit "OO" hereto, provided for 660 miner's inches for Neeley, but 225 miner's inches were from Slaymaker so the net amount remained at 435 miner's inches (8.7 cfs) as in the Decree. The acres should be that part of the 480 acres in the Decree that were historically irrigated and should not be more than the 270 acres in Sec.30 and the 40 acres in Sec. 31 as included in Jud's Claim, Exhibit "OO" hereto.[11]

[4] The Decree, Exhibit "AA" hereto, incorporated by reference allegations in the Answer to Amended Complaint, Exhibit "QQ" hereto, that acres irrigated by Slaymaker were from 320 acres in Sec. 32. Water Right Report in Water Right No. 22-629, dated June 11, 2007, Exhibit "DDD" hereto, shows for Crains 1.7 cfs for 118 acres irrigated from the 320 acres. It appears Crains should be entitled to 4.5 cfs (See Paragraph 2 above) and for the total acres of the 320 that have been historically irrigated.[12]

[5] The Decree incorporated by reference allegations in the Answer to Amended Complaint that acres irrigated by Browning were 120 acres in Sec. 29 and 80 acres in Sec. 32; however, it now appears 40 acres in Sec. 29 were Forest Service land. As shown in part C. following, Idaho Ranch should have approval to irrigate 286 acres. The full 300 miner's inches (6.0 cfs) should be confirmed and should not be

---

[11]The "Jud" Claim also asserted 320 acres irrigated in Sec. 19 but these are not properties included in the Decree, and in any event should not alter the division of use of Pony Creek water resolved in the Stipulation Agreement, Exhibit "OO" hereto. The "Jud" Claim, Exhibit "UU" hereto, also asserts 216 acres irrigated in Sec. 32, but these duplicated the Slaymaker acres which at the time "Jud" or a corporation controlled by him owned, but which are now owned by Crain Trusts as ultimate successors to Slaymaker.

[12]The Report also shows 0.2 acre irrigated in W½NW¼ of Sec. 33 in Teton County; this property was not in the Decree. Moreover, the SW¼NW¼ is owned by Idaho Ranch as successor to Browning.

arbitrarily reduced because of reduced acres.

C. Sound Reasons Support Amending Subcase 628A to Approve Idaho Ranch Irrigating 286 Acres from Pony Creek .

[1] There is compelling evidence of long time beneficial use of Pony Creek to irrigate 286 acres owned by predecessor to Idaho Ranch.

[a] Exhibit "EEE" hereto was Exhibit "E" to *Amended Claim #1*. The U.S. Soil Conservation Service "marked up" aerial photo of Tract #90 includes the following acreages which Grover Browning knows have been irrigated for over 60 years and believes they have been irrigated since June 25, 1917.

[1] Parcel 1, 23.1 acres.
[2] Parcel 2, 14.9 acres.
[3] Parcel 3, 13.1 acres.
[4] Parcel 4, 6.5 acres.
[5] Parcel 5, 35.9 acres.
[6] Parcel 6, 3.3 acres.
[7] Parcel 7, 54.8 acres (40 acres not irrigated.)
[8] Parcel 8, 8.8 acres.
[9] Parcel 9, none irrigated.
TOTAL: the 160.4 acres are reconciled as 159.0 acres.

[b] Exhibit "FFF" hereto, was Exhibit "C" to *Amended Claim #2,* Exhibit "MM" hereto. The U.S. Soil Conservation Service "marked up" aerial photo of Tract #89 includes the following acreage which Grover Browning knows have been irrigated for over 60 years and believes they have been irrigated since June 25, 1917.

[1] Parcel 2, 79.5 acres.
[2] Parcel 3, 46.8 acres.
TOTAL: The 126 acres are reconciled to 127.3 acres.

TOTAL: 286 acres.

To correlate the description on the place of use and the plat attached to *Amended Claim #1,* Exhibit "XX" hereto, we note: SCS Tract #90, Exhibit "EEE" hereto, is 152 acres in Sec. 33 and 7 acres in NE¼SE¼ of Sec. 32, for a total of 159 acres. Exhibit "FFF" hereto includes the remaining 77 acres in Sec. 32 and 50 acres in Sec. 29, totaling 127 acres;

127 acres plus 159 acres equals 286 acres total.[13]

[2] The 960 miner's inches (19.2 cfs) of water in Pony Creek is as per the Decree, Exhibit "AA" hereto, "maximum flow." It decreases during the summer. As per the Stipulation Agreement, Exhibit "OO" hereto, it diminishes until Pony Creek water ceases to flow into Canyon Creek (the terminus of Pony Creek). The total flow of Pony Creek is covered by the Decree, Exhibit "AA" hereto, and the Stipulation Agreement, Exhibit "OO" hereto, divide the total flow among Neibaurs, Idaho Ranch and Crain Trusts. (See Clause 2, above). Those three users are all bound by the special use restrictions established by the Stipulation Agreement, Exhibit "OO" hereto (See Part 3, above). All users have the same priority date of June 25, 1917.

[3] If Neibaurs, Idaho Ranch and Crain Trusts are all involved in *Amended Claim #1*, Exhibit "XX" hereto, a final, unified decision, by Stipulation approved by the Court or by Court Decree could settle all issues as to Pony Creek. I intend to recommend to all parties seeking a Stipulated solution. Questions of abandonment can be resolved along with issues of acres to be irrigated.

[4] I will recommend that Idaho Ranch seek through a Late Filed Claim and as an alternate remedy, approval to irrigate such of the 286 acres that are not approved for inclusion under *Amended Claim #1*, Exhibit "XX" hereto, with an appropriate later priority date.

[5] I will seek approval by Crain Trusts and Idaho Ranch to represent both of them in necessary proceedings. I will encourage Neibaurs to consult independent counsel and join in pursuing a stipulated decision.

Gordon S. Thatcher
of THATCHER LAW OFFICE, PLLC

[13]The acreage in SE¼SW¼ of Sec. 33 should be shown on the Plat attached to *Amended Claim #1* as 17 acres rather than 18.4. Acres in Exhibit "EEE" are reconciled down to 159 acres and acres in Exhibit "FFF" are reconciled up to 127. That yields the total claimed as 286 acres. The description of place of use in *Amended Claim #1* should include 7 acres in NE¼SE¼ of Sec. 32, rather than NE¼NE¼ of Sec. 32. The Plat correctly shows 7 acres irrigated in NE¼SE¼ of Sec. 32, in *Amended Claim #1*.

2007 MAY 15 PM 2:13
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

In Re SRBA Case No. 39576	)	**ORDER GRANTING MOTION TO FILE AMENDED CLAIM AND SETTING SUBCASE DEADLINES** **SUBCASE NO.: 22-00628A**

I. PROCEDURAL BACKGROUND

A *Motion to File Amended Notice of Claim* was filed by Grover Browning on February 28, 2007. The *Motion* seeks to amend the notice of claim for this water right by amending the priority date. A hearing was held on the *Motion* on May 9, 2007.

II. STANDARD OF REVIEW

The SRBA Court administrative rules establish that motions to amend claims "shall be freely given when justice so requires." ***SRBA Administrative Order 1 (A01)*** § 4d (2) (k)

III. FINDINGS

Counsel for the claimant explained that the Brownings have evidence relating to an earlier priority and additional acres that would more accurately describe the right. There was no opposition to the *Motion*. Therefore, the *Motion to File Amended Notice of Claim* is **granted**.

IT IS ORDERED that the following deadlines shall govern further proceedings:

May 23, 2007	**2:30 pm**	Status Conference / Determination of Late Claim **Location**: Snake River Basin Adjudication 253 3rd Ave. North Twin Falls, Idaho 83301
August 30, 2007	**5:00 pm**	Deadline to file Amended Director's Report
September 28, 2007	**5:00 pm**	Deadline to file Objection
October 12, 2007	**5:00 pm**	Deadline to file Response

October 17, 2007 **10:30 am** Status Conference
Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

DATED: May 15, 2007

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE AMENDED CLAIM AND SETTING SUBCASE DEADLINES was mailed on May 15, 2007, with sufficient first-class postage to the following:

GROVER BROWNING
Represented by:
GORDON S THATCHER
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

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

ORSENA C BROWNING
7 N 2700 E
TETON, ID 83451
Phone: 208-458-4327

Janet Connell
Deputy Clerk

(1) BB

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

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
MAY - 9 2007
By _____ Clerk
Deputy Clerk

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

CIVIL CASE NUMBER:
Ident Number _____
Date Received _____
Receipt Number _____

AMENDED NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

2007 FEB 26 11:15 AM
FILED - TWIN FALLS CO.
DISTRICT COURT - SRBA
Lodged

Please type or print clearly

1. **Name of Claimant(s): GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST,** and as Co-Trustees of the **ORSENA C. BROWING FAMILY TRUST,** with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST,** dated March 26, 2001, upon the death of Orsena C Browning on March 16, 2003

   Phone: 208-458-4327 **Mailing Address:** 7 N 2700 E , Teton, Idaho **Zip:** 83451

2. **Date of Priority (Only one (1) per claim):** June 25, 1917

3. **Source of water supply (a):** Pony Creek
   which is a tributary to (b): Canyon Creek, tributary to Teton River, tributary to Snake River

4. **a. Location of existing point of diversion is:** Twp 6 N , Rge 43 E., Sec 33, SE¼SE¼SE¼

   Additional points of diversion if any: None

5. **Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, headgates, Etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well:** Dam on Pony Creek, about 2 feet high and 30 feet in width at top and 20 feet in width at bottom, made of wood, stone and earth Headgate about 8 feet wide and 2 feet high Ditch about 3 feet wide at bottom and 4 feet wide at water line Extends at approximate route of red line on Map of Project Originally diverted from ditch at various points on property irrigated More recently diverted from ditch at various points by pumping into sprinkler lines In recent years has been in U.S. Conservation Reserve Contracts Map of project shows in blue ink the acres in each 40, totaling 65 acres in what is now Teton County, as reflected on earlier filings; that listing was in error; shown in red ink are the 286 acres in what is now Madison County and Teton County that for more than sixty years have actually been irrigated Decree of May 21, 1954 called for 6 0 cfs; the pleadings called for 200 acres but the actual 286 acres are as shown under ¶ 10 and on the Map of Project

6 **Water is claimed for the following purposes:**

For Irrigation purposes from April 15 to October 15 amount 6.0 cfs or 300 acre feet

7 **Total quantity claimed (a) 6 0 cfs and/or (b) 300 (acre feet)**

8. **Total consumptive use claimed is 300 acre feet per annum**

9 **Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.): N/A**

10 Description of place of use:
a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
b If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twp	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				Tot
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE ¼	
6N	43E	33							35	3	10	17							65
Total number of acres in error																			65
6N	43E	29											29	21					50
6N	43E	32	7				40	37											84
6N	43E	33							25		25	25	15	18 4		15	30		153.4
Total Number of Acres Actually Irrigated																			286

11 **In which county (ies) are lands listed above as place of use located?** Secs 29 & 32 Madison County, Idaho' Sec 33, Teton County, Idaho

12 **Do you own the property listed as a place of use? Yes** __X__ (Except SE¼NW¼ of Sec. 33) **No** _____

13 **Describe any other water rights used at the same place and for the same purposes as described above.**

Also in claim of same date with priority of August 14, 1905 including some of same land in Madison County **or none ( )**

14 **Remarks:** We attach these Exhibits: "D": Decree of May 21, 1954. "E": SCS Map of Tract 90, which includes the following acreage from these Parcels which Grover Browning verifies have been irrigated for over 60 years: Parcel 1, 23.1 acres; Parcel 2, 14 9 acres; Parcel 3, 13 1 acres; Parcel 4, 6 5 acres; Parcel 8, 8 8 acres; Parcel 5, 35 9 acres; Parcel 6, 3 3 acres; Parcel 7, 54 8 acres (40 acres not irrigated); Parcel 9, none irrigated. TOTAL: 160 acres "C": SCS Map of Tract 89 which includes Parcel 2, 79.5 acres and Parcel 3, 46 8 acres, which Grover Browning verifies are the 126 irrigated acres which when added to the 160 acres from "E" above, yield the total of 286 acres in this Notice of Claim, and have been irrigated for more than 60 years. 7 acres in NE¼NE¼ of Sec. 32 plus 153 4 acres in Sec. 33 equal 160 4 acres. Grover Browning was born May 20, 1925 and is 81 years of age. He has been involved in farming the property for more than 60 years and knows the statements in this Notice of Claim are true. Also the Decree (Exhibit "D") also involved Neeley and Slaymaker with water rights in Pony Creek. Neeley acquired Slaymaker's rights (see Stipulation Agreement of February 18, 1974, Exhibit "F" hereto) Grover Browning verifies that for over 25 years Neeley nor his successors have

present only Grover Browning and Orsena C Browning (and their successor Trusts) have used waters of Pony Creek for irrigation "G" Grant Deed to two Trusts "H" Sketch of Tracts One, Two, and Three in Grant Deed. Tract Four and Tract Five are not involved in Notice of Claim Tract Five is personal residence (not included in this Notice of Water Claim) It is domestic use water.

15 **Basis of Claim (check one)** **Beneficial use** _____ **Posted Notice** _____ **License** _____ **Permit** _____
Decree 9th District, Madison County, May 11, 1954

If applicable provide IDWR Water Right Number _____
Court _____ **Case Number** _____ **Decree Date** _____
Plaintiff vs Defendant : Neeley v. Browning and Slaymaker

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 Basis Adjudication." (b) I/We do _____ **do not** X **wish to receive and pay a small annual fee for monthly copies of the docket sheet.**
Number of attachments We do not add number of attachments

For individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

For Organizations: We do solemnly swear of affirm that we are the Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, and Co-Trustees of the **ORSENA C. BROWING FAMILY TRUST,** with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003, that we have signed the foregoing document in the space below as Co-Trustees of the Trusts and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agents:

Grover Browning
Grover Browning, as Co-Trustee of the
GROVER BROWNING MARITAL TRUST

Karen Marie Browning Garvin
Karen Marie Browning Garvin, as Co-Trustee of the
GROVER BROWNING MARITAL TRUST

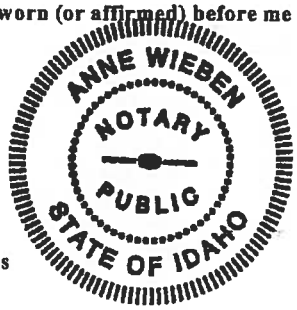
Grover Browning
Grover Browning, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST

Karen Marie Browning Garvin
Karen Marie Browning Garvin, as Co-Trustee of the
ORSENA C BROWNING FAMILY TRUST

Last Name _____ **Ident No.** _____

SIATE OF IDAHO,)
ss
County of Madison)

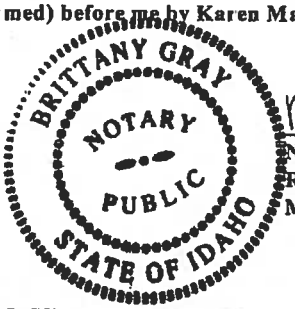
Subscribed and sworn (or affirmed) before me by Grover Browning, this 5 day of ~~January~~ February, 2007.



Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission Expires 7/27/2007

SIATE OF IDAHO,)
ss
County of Bannock)

Subscribed and sworn (or affirmed) before me by Karen Marie Browning Garvin, this 1st day of ~~January~~ February, 2007.



Brittany Gray
Notary Public for Idaho
Residing at Pocatello
My Commission Expires: 1-16-2013

17 Notice of Appearance:

Notice is hereby given that I, GORDON S. THATCHER, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below:

Signature: Gordon S Thatcher

Address: 25 N. 2nd E., P.O. Box 250, Rexburg, Idaho 83440

Date: Feb 5, 2007

Last Name _____ Ident No. _____

STATE OF IDAHO

22-2008

Water License No. 1505

WHEREAS, On the 14th day of August A. D. 1905, James D. Browning of Annis, County of Fremont, State of Idaho, duly made application (No. 2057) to me for a permit to use 3.2 cubic feet per second of the waters of PONY CREEK, County of Fremont, State of Idaho, for irrigation and domestic purposes, and

WHEREAS, On the 25th day of August A. D. 1905, Permit No. 1505 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 25th day of August A. D. 1908, and for the application to beneficial use of said water on or before the 25th day of August A. D. 1910, and,

WHEREAS, On the 22nd day of August A. D. 1908, James D. Browning the holder of said permit duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by my Certificate No. 1505, dated October 5, 1908, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 3.2 cubic feet per second of said water, with date of priority of August 14, 1905, and,

WHEREAS, On the 2nd day of May, A. D. 1913, there was received and filed for record in the office of the State Engineer an assignment whereby James D. Browning transferred to Annie Kearney all his right, title and interest in and to said permit, and,

WHEREAS, On the 2nd day of August A. D. 1913, Annie Kearney the holder of said permit duly made proof of the application to beneficial use of 1.3 cubic feet per second of said water:

SCANNED
JUN 12 2007

EXHIBIT
tabbies B

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to Annie Kearney *of* Canyon Creek *County of* Fremont *State of* Idaho *the holder and owner of said Permit No.* 1505, *a perpetual right, dating from* July 21, 1908, *to the use of* 1.3 cubic feet per second of the waters of Pony Creek,

in the County of Fremont *and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted* at a point in the SE¼ of SE¼ Sec. 33, T. 6 N., R. 43 E. B. M.,

and conducted to and upon 65 acres divided as follows: 3 acres in SW¼ of SW¼, 20 acres in SE¼ of SW¼, Section 29; 30 acres in NW¼ of NW¼ and 12 acres in NE¼ of NW¼, Section 32, all in T. 6 N., R. 43 E. B. M.,

for the purpose of irrigation and domestic use,

subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 15th *day of* November *A. D. Nineteen hundred and* thirteen.

State Engineer.

STATE OF IDAHO

Water License No. 1505

To Annie Kearney

Canyon Creek

Fremont

Source of Supply Pony Creek *County* Fremont *Amt* 1.3 *Sec. Feet*

Point of Diversion – SE¼ SE¼ Sec. 33, T. 6 N., R. 43 E. B. M.

Place of Use SW¼ SW¼, SE¼ SW¼ – 29 NW¼ NW¼, NE¼ NW¼ – 32, T. 6 N., R. 43 E. B. M.

Purpose Irrigation

Date of Priority July 21, 1908

Recorded November 15, 1913

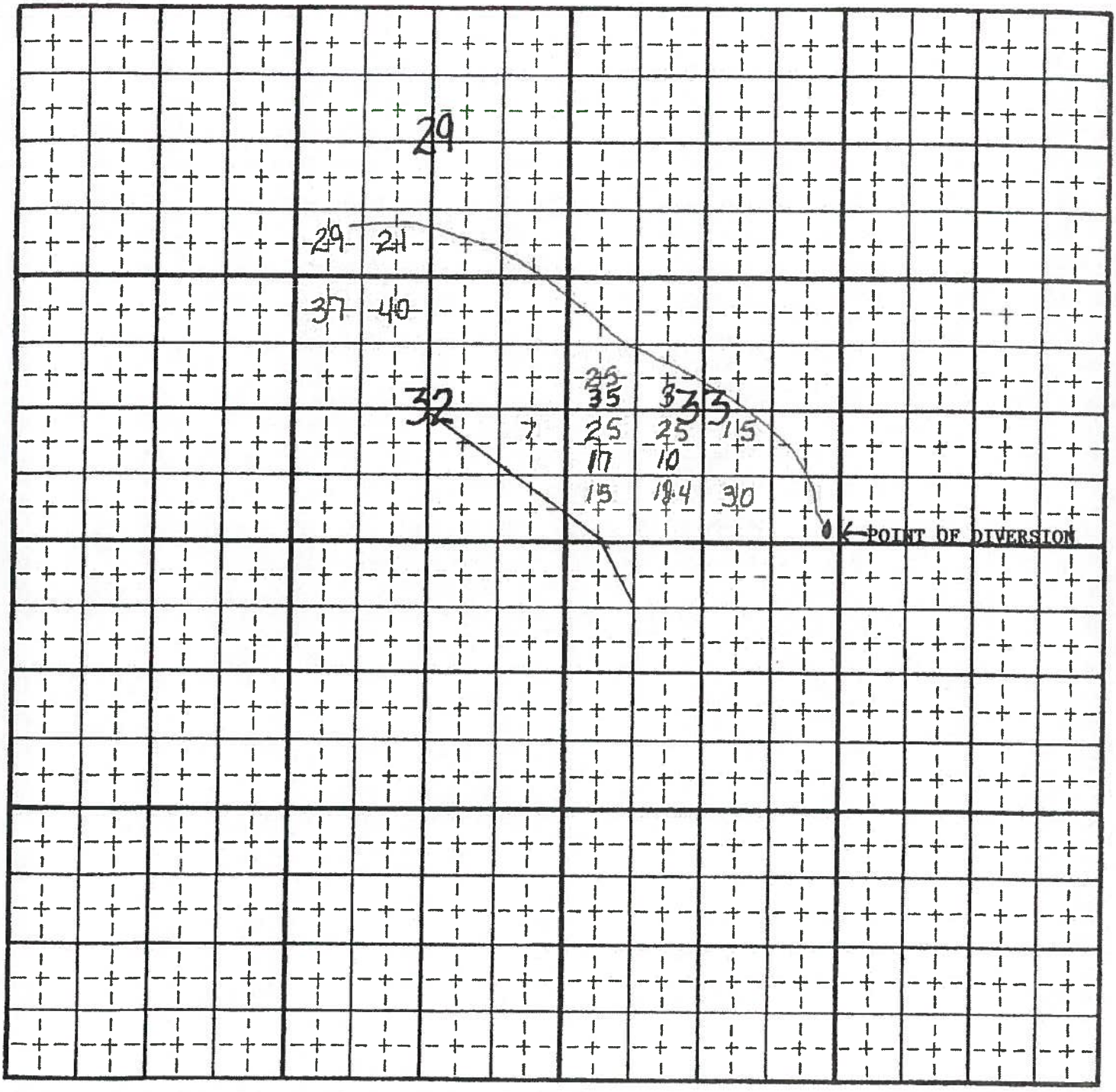
in Book 3 *of* Licenses *Page* 1

SCANNED
JUN 12 2007

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TWP. 6 N., RGE 43 E., BOISE MER.



SCANNED
JUN 12 2007

Last Name _____ Ident No. _____

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

VS:

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

DECREE

The above entitled cause came on regularly to be heard and tri by the Court on the 21st day of May, 1954, the plaintiffs appeari in person and by their attorney, Ray W. Rigby, of Rexburg, Idaho, and the defendants appearing in person and by their attorney, Leonard O. Kingsford, of Rexburg, Idaho, and it appearing to the Court that the parties hereto have stipulated and agreed as to th respective rights and interests in the water rights which are the subject matter of this litigation; and evidence, oral and documen ary, having been offered and introduced and proof being made to t satisfaction of the Court, the Court finds:

1. That said Stipulation is fair, reasonable, proper and acce able;

2. That the plaintiffs are the owners of that certain propert described in Paragraph IV of their Amended Complaint;

3. That the defendants, George Browning and Phebe Browning, h wife, are the owners of that certain property set forth in Paragr IV of the Answer to Amended Complaint;

4. That the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, are the owners of that certain property set forth in Par graph VI of the Answer to Amended Complaint;

5. That for over five years last past, the various parties her to, amongst them, have diverted and used the full flow of the wate of Pony Creek for domestic and agricultural purposes;

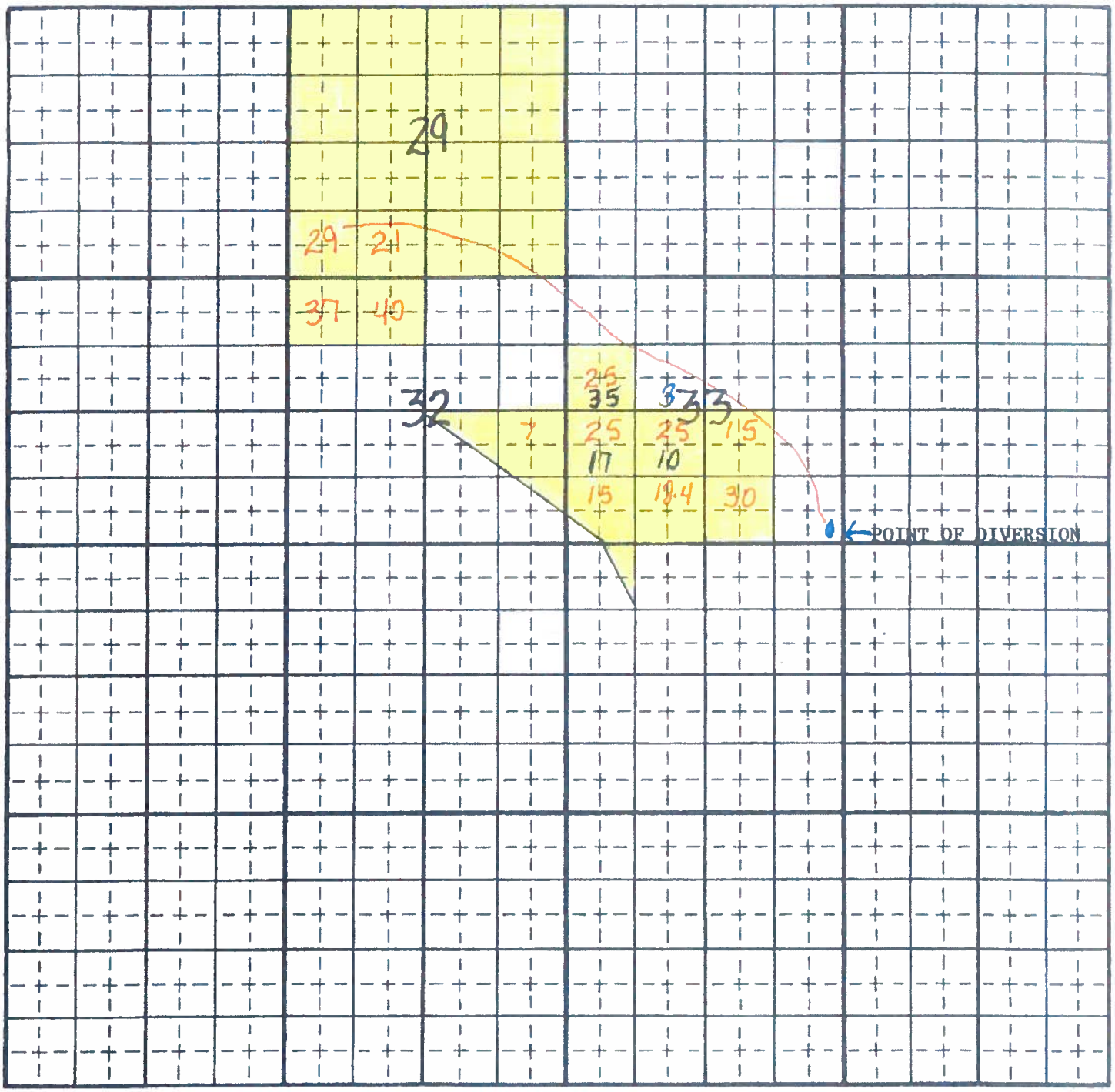
SCANNED
JUN 1 2 2007

EXHIBIT
D

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TWP. 6 N., RGE 43 E., BOISE MER.



Last Name _____ Ident No. _____

6. That the maximum flow so diverted is approximately 960 miners inches of water, and that such flow decreases during the summer months of the years;

7. That said parties are entitled to an interest therein based on 435 (8.1) miners inches to plaintiffs out of such maximum flow of 960 (18.2) inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 300 (6.0) miners inches to defendants, George Browning and Phebe Browning, his wife, out of such maximum flow of 960 inches, such interest to be decrease proportionately to any decrease in the total flow of water at any given time; and on 225 (4.5) miners inches to defendants, Morris Slaymaker and Thelma Slaymaker, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

8. That domestic use of water should have priority over any other use during seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

9. That each of the parties hereto should be liable for expenses of maintenance of the irrigation system used in common by such parties, on the basis of the share of water owned by such party;

10. That each party should bear his own costs herein incurred;

11. That the parties are entitled to the relief prayed for in their Amended Complaint and Answer and Cross Complaint, all filed herein.

NOW, THEREFORE, BY REASON AND VIRTUE OF THE LAW AND THE PREMISES ON MOTION OF COUNSEL FOR THE PARTIES, IT IS HEREBY ORDERED, ADJUDGE AND DECREED:

1. That the Stipulation on file herein is hereby allowed and approved;

2. That for over five years last past, the various parties hereto, amongst them, have diverted and used the full flow of the water of Pony Creek for domestic and agricultural purposes;

3. That the maximum flow so diverted is approximately 960 miner inches of water, and that such flow decreases during the summer months of the year;

SCANNED
JUN 1 2 2007

22-0630 ✓ Trans. #1710

4. That the plaintiffs, O. J. Neeley and Myrtle Neeley be and they are hereby vested with title to 435 8.7 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

5. That the defendants, George Browning and Phebe Browning be and they are hereby vested with title to 300 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

6. That the defendants, Morris Slaymaker and Thelma Slaymaker be and they are hereby vested with title to 225 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

7. That domestic use of water shall have priority over anyother use during the seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

8. That each of the parties hereto shall be liable for expenses of maintenance of the irrigation system used in common by such parties on the basis of the share of water owned by such party;

9. That each party shall bear his own costs herein incurred.

Dated this 21st day of May, 1954.

Henry L. Martin

Judge of the Ninth Judicial District
of the State of Idaho

SCANNED
JUN 12 2007

6. That the maximum flow so diverted is approximately 960 miners inches of water, and that such flow decreases during the summer months of the years;

7. That said parties are entitled to an interest therein based on 435 (8.7) miners inches to plaintiffs out of such maximum flow of 960 (19.2) inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 300 (6.0) miners inches to defendants, George Browning and Phebe Browning, his wife, out of such maximum flow of 960 inches, such interest to be decrease proportionately to any decrease in the total flow of water at any given time; and on 225 (4.5) miners inches to defendants, Morris Slaymaker and Thelma Slaymaker, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

8. That domestic use of water should have priority over any other use during seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

9. That each of the parties hereto should be liable for expenses of maintenance of the irrigation system used in common by such parties, on the basis of the share of water owned by such party;

10. That each party should bear his own costs herein incurred;

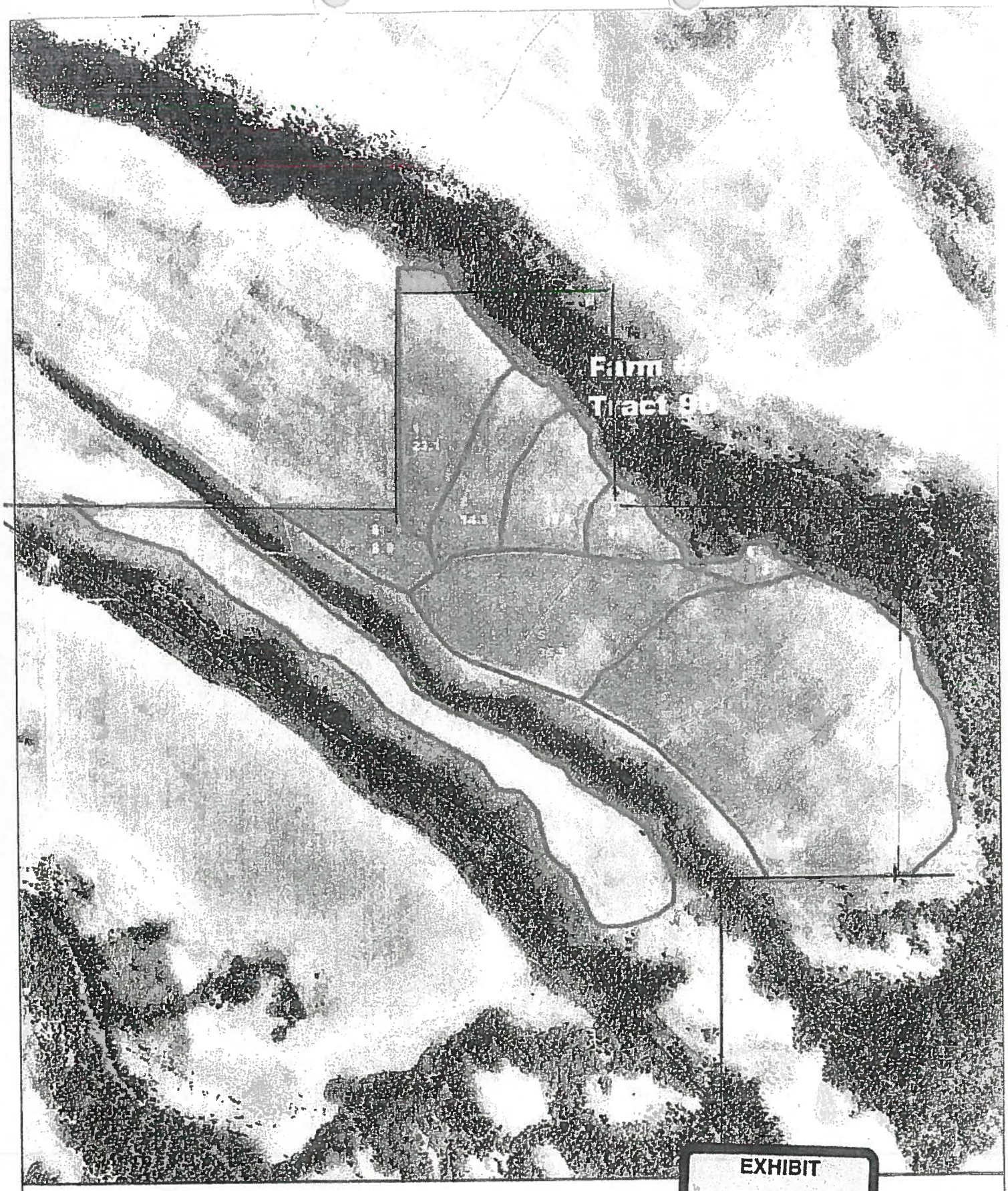
11. That the parties are entitled to the relief prayed for in their Amended Complaint and Answer and Cross Complaint, all filed herein.

NOW, THEREFORE, BY REASON AND VIRTUE OF THE LAW AND THE PREMISES ON MOTION OF COUNSEL FOR THE PARTIES, IT IS HEREBY ORDERED, ADJUDGE AND DECREED:

1. That the Stipulation on file herein is hereby allowed and approved;

2. That for over five years last past, the various parties hereto, amongst them, have diverted and used the full flow of the water of Pony Creek for domestic and agricultural purposes;

3. That the maximum flow so diverted is approximately 960 miner inches of water, and that such flow decreases during the summer months of the year;



Map of Tract 90

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Printed: Feb 3, 2004

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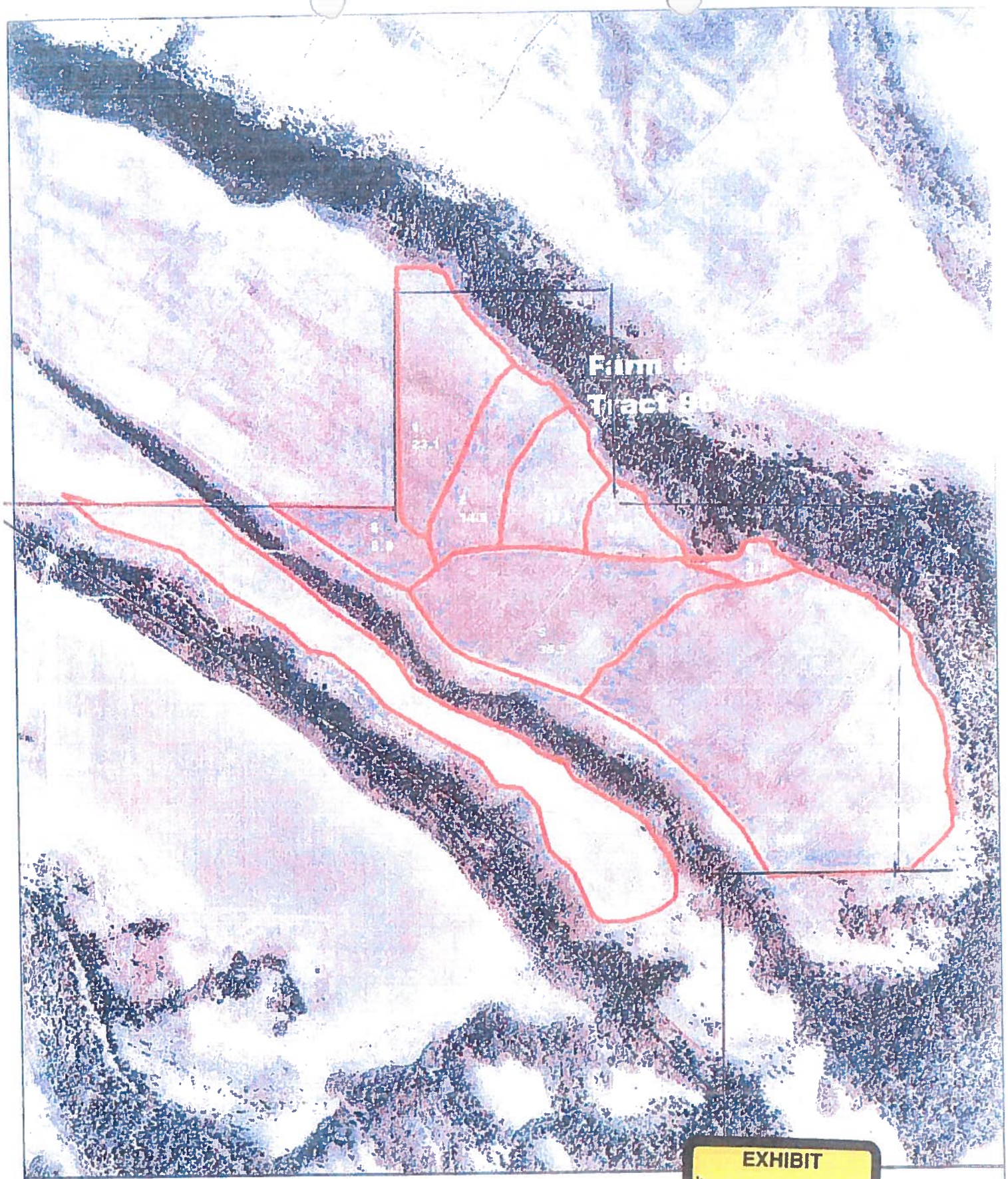
State of [illegible] ss
County [illegible]

Filed [illegible] Request of
Ray Rigby
at 50 [illegible] 9
O[illegible]
de June 1963
an[illegible] Book 66
of Judgments Page 229
K[illegible] County
of Idaho
G I McKinley
Recorder,
Carol Linell
Deputy

Fee None

CERTIFICATE
I HEREBY CERTIFY
[illegible]
DATED [illegible]
ATTEST:
Mad[illegible]
and [illegible]
District Court
BY [illegible]
Deputy

SCANNED
JUN 12 2007



Map of Tract 90

upon plan
from

W. Brent Eames
JOLLEY & EAMES
Attorneys at Law
P. O. Box 306
Rexburg, Idaho 83440

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION FOR

THE STATE OF IDAHO

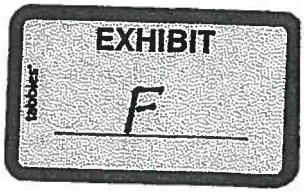
IN THE MATTER OF PROTEST AGAINST)
APPROVAL OF APPLICATION FOR) STIPULATION AGREEMENT
TRANSFER CLAIM TO WATER RIGHT)
#22-4003 IN THE NAME OF O. J.)
NEELEY RANCH, INC.)

The applicant, O. J. NEELEY RANCH, INC., having filed with this department an application to change the point of diversion and place of use of the above claim to a water right, and George H. Browning having filed a protest against approval of said application for the purpose of clarifying the ownership of the waters in Pony Creek;

The parties involved, O. J. Neeley Ranch, Inc., and George Browning and Phebe Browning stipulate and agree to the following:

1. The parties acknowledge and hereby refer to a decree dated May 21, 1954, wherein it was decreed that the maximum flow of Pony Creek was approximately 960 miner's inches of water; that O. J. Neeley and Myrtle Neeley were vested with title to 435 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time. And that George Browning and Phebe Browning, husband and wife, were vested with title to 300 miner's inches of water, such interest to be decreased proportionately with a decrease in the total flow.

SCANNED
JUN 12 2007



And that Morris Slaymaker and Thelma Slaymaker were vested with 225 miner's inches of the waters of Pony Creek, such interest to be decreased proportionately to any decrease in the total flow.

2. That the applicant, O. J. NEELEY RANCH, INC., has purchased all title and interest to the waters of Pony Creek which were vested in O. J. Neeley and Myrtle Neeley, husband and wife, and in Morris Slaymaker and Thelma Slaymaker, husband and wife.

3. That George Browning and Phebe Browning continue to have all right, title and interest in and to 300 miner's inches out of the maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

4. That George Browning and O. J. Neeley Ranch, Inc., have for over five years last past diverted and used the full flow of the waters of Pony Creek for domestic and agricultural purposes.

5. That as between the parties, except as provided in paragraph 6, O. J. Neeley Ranch, Inc., is vested with title to 660 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 11/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time, and that George Browning and Phebe Browning are vested with title to 300 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 5/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

6. That George Browning and Phebe Browning agree to allow O. J. Neeley Ranch, Inc., the use of all the waters of Pony Creek during the spring of each year up until the time that the Brownings begin to irrigate. When the Brownings begin to irrigate then each

SCANNED
JUN 1 2 2007

W. Brent Eames
JOLLEY & EAMES
Attorneys at Law
P. O. Box 306
Rexburg, Idaho 83440

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION FOR

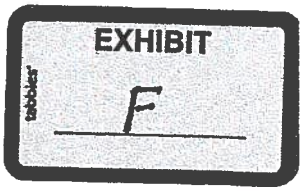
THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST APPROVAL OF APPLICATION FOR TRANSFER CLAIM TO WATER RIGHT #22-4003 IN THE NAME OF O. J. NEELEY RANCH, INC.	STIPULATION AGREEMENT

The applicant, O. J. NEELEY RANCH, INC., having filed with this department an application to change the point of diversion and place of use of the above claim to a water right, and George H. Browning having filed a protest against approval of said application for the purpose of clarifying the ownership of the waters in Pony Creek;

The parties involved, O. J. Neeley Ranch, Inc., and George Browning and Phebe Browning stipulate and agree to the following:

1. The parties acknowledge and hereby refer to a decree dated May 21, 1954, wherein it was decreed that the maximum flow of Pony Creek was approximately 960 miner's inches of water; that O. J. Neeley and Myrtle Neeley were vested with title to 435 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time. And that George Browning and Phebe Browning, husband and wife, were vested with title to 300 miner's inches of water, such interest to be decreased proportionately with a decrease in the total flow.



of the parties shall have the right to use their respective shares as provided in paragraph 5. At that point in time when the waters of Pony Creek no longer reach Canyon Creek, then the Brownings shall have full use of said waters except for what O. J. Neeley Ranch, Inc., needs to water its stock. It is further agreed that O. J. Neeley Ranch, Inc., shall open a roadway to the pointof diversion of said waters for the use by both parties and shall install a dividing gate at the point of diversion in order that the waters may be divided as agreed herein.

7. That George Browning and Phebe Browning withdraw the protest filed against the application of O. J. Neeley Ranch, Inc. for the transfer of water right, No. 22-4003A 22-0610 and waiver further protest on the condition that their water rights are not lost or injured in any way by said transfer.

8. That the parties agree to be bound according to the above referenced decree regardless of whether any rights under the decree are transferred.

Dated this 18th day of February, 1974.

O. J. NEELEY RANCH, INC.

By Owen J. Neeley
Its President

George Browning

Phebe Browning

STATE OF IDAHO,)
SS.
County of Madison.)

On this 18th day of February, 1974, before me, the undersigned, Notary Public in and for said State, personally appeared

SCANNED
JUN 12 2007

OWEN J. NEELEY, known to me to be the President of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

W. Brent Reeves
Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 10/8/74

STATE OF IDAHO,)
SS.
County of Madison.)

On this _____ day of February, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE BROWNING and PHEBE BROWNING, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires:

SCANNED
JUN 12 2007

of the parties shall have the right to use their respective shares as provided in paragraph 5. At that point in time when the waters of Pony Creek no longer reach Canyon Creek, then the Brownings shall have full use of said waters except for what O. J. Neeley Ranch, Inc., needs to water its stock. It is further agreed that O. J. Neeley Ranch, Inc., shall open a roadway to the pointof diversion of said waters for the use by both parties and shall install a dividing gate at the point of diversion in order that the waters may be divided as agreed herein.

7. That George Browning and Phebe Browning withdraw the protest filed against the application of O. J. Neeley Ranch, Inc. for the transfer of water right, No. 22-4003 22-0610 and waiver further protest on the condition that their water rights are not lost or injured in any way by said transfer.

8. That the parties agree to be bound according to the above referenced decree regardless of whether any rights under the decree are transferred.

Dated this 18th day of February, 1974.

O. J. NEELEY RANCH, INC.

By Owen J. Neeley
Its President

George Browning

Phebe Browning

STATE OF IDAHO,)
SS.
County of Madison.)

On this 18th day of February, 1974, before me, the undersigned, Notary Public in and for said State, personally appeared

GRANT DEED

FOR VALUE RECEIVED, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantors"), do hereby grant, bargain, confirm and convey unto **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantees"), each of the two Grantees to receive an undivided one-half (½) interest in and to the following described real property in Madison County, Teton County and Fremont County, Idaho, to-wit:

TRACT ONE: *(Madison County)*

W½ of Sec. 29 and N½NW¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., Madison County, Idaho.

TRACT TWO: *(Madison County and Teton County)*

Part of SE¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., in Madison County, Idaho, and part of W½SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, described as follows:

Commencing at a point (which is at a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33 (which is the Southeast Corner of Sec. 32) and running thence Northwesterly in a straight line (generally along the fence line in Dry Gulch Canyon), to a point 165 feet South of the Northwest Corner of the SE¼ of Sec. 32; thence North 165 feet; thence East 2640 feet to the Northeast corner of the SE¼ of Sec. 32 (which is the Northwest Corner of the SW¼ of Sec. 33); thence East 1320 feet; thence South 2640 feet; thence West 462 feet to the point of beginning.

TRACT THREE: *(Teton County)*

SW¼NW¼, E½SW¼, W½SE¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho.

TRACT FOUR: *(Teton County)*

Part of Lot 4, Sec. 4, Twp. 5 N., Rge. 43 E., Boise Mer., Teton County, Idaho, described as follows:

SCANNED
JUN 12 2007

EXHIBIT
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Commencing at a point (which is a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho (Twp. 5 N., R. 43 E., Boise Mer. is offset to the East from Twp. 6 N., R. 43 E., Boise Mer.), and running thence East 462 feet to the point which is the Southeast corner of SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer.; thence South 825 feet, more or less, to a fence at the bottom of Dry Gulch Canyon; thence Northwesterly in a straight line (which is along the fence line) to the point of beginning.

TRACT FIVE: *(Fremont County)*

Commencing at a point 206.25 feet North of the Southeast Corner of the SE¼ of Sec. 33, Twp. 7 N., Rge. 41 E., Boise Mer., Fremont County, Idaho, and running thence North 206.25 feet; thence West 211.5 feet; thence South 206.25 feet; thence East 211.5 feet, to the point of beginning.

TOGETHER WITH all water and water rights, ditch and ditch rights, and improvements and appurtenances thereto.

SUBJECT TO all valid easements of record or in existence for roads, utilities, and ditches; applicable zoning and building laws, ordinances, rules and regulations; reservations in United States Patents of record; reservations of record as to oil and gas and other hydrocarbons and minerals; and boundary discrepancies, depending on whether or not the apparent boundary fence along Dry Gulch Canyon is or is not a legally binding boundary fence.

THIS GRANT DEED Corrects the legal descriptions in the following identified Grant Deeds: [a] recorded on May 21, 2001 as Instrument #142670 records of Teton County, Idaho; [b] recorded on May 21, 2001 as Instrument #289297 records of Madison County, Idaho; [c] recorded on June 12, 2002 as Instrument #148565 records of Teton County, Idaho; and [d] recorded on June 7, 2002 as Instrument #296274 records of Madison County, Idaho.

DATED This 27th day of January, 2007.

Grover Browning
Grover Browning

Karen Marie Browning Garvin
Karen Marie Browning Garvin

SCANNED
JUN 12 2007

GRANT DEED

FOR VALUE RECEIVED, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantors"), do hereby grant, bargain, confirm and convey unto **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantees"), each of the two Grantees to receive an undivided one-half (½) interest in and to the following described real property in Madison County, Teton County and Fremont County, Idaho, to-wit:

TRACT ONE: *(Madison County)*

W½ of Sec. 29 and N½NW¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., Madison County, Idaho.

TRACT TWO: *(Madison County and Teton County)*

Part of SE¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., in Madison County, Idaho, and part of W½SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, described as follows:

Commencing at a point (which is at a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33 (which is the Southeast Corner of Sec. 32) and running thence Northwesterly in a straight line (generally along the fence line in Dry Gulch Canyon), to a point 165 feet South of the Northwest Corner of the SE¼ of Sec. 32; thence North 165 feet; thence East 2640 feet to the Northeast corner of the SE¼ of Sec. 32 (which is the Northwest Corner of the SW¼ of Sec. 33); thence East 1320 feet; thence South 2640 feet; thence West 462 feet to the point of beginning.

TRACT THREE: *(Teton County)*

SW¼NW¼, E½SW¼, W½SE¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho.

TRACT FOUR: *(Teton County)*

Part of Lot 4, Sec. 4, Twp. 5 N., Rge. 43 E., Boise Mer., Teton County, Idaho, described as follows:



Acknowledgment by Co-Trustee

STATE OF IDAHO,)
ss.
County of Madison.)

On this 5th day of ~~January~~ February, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING**, known to me to be the person whose name is subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that he executed the same as such Co-Trustee.

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission expires: 7/27/2007

Acknowledgment by Co-Trustee

STATE OF IDAHO,)
ss.
County of Bannock.)

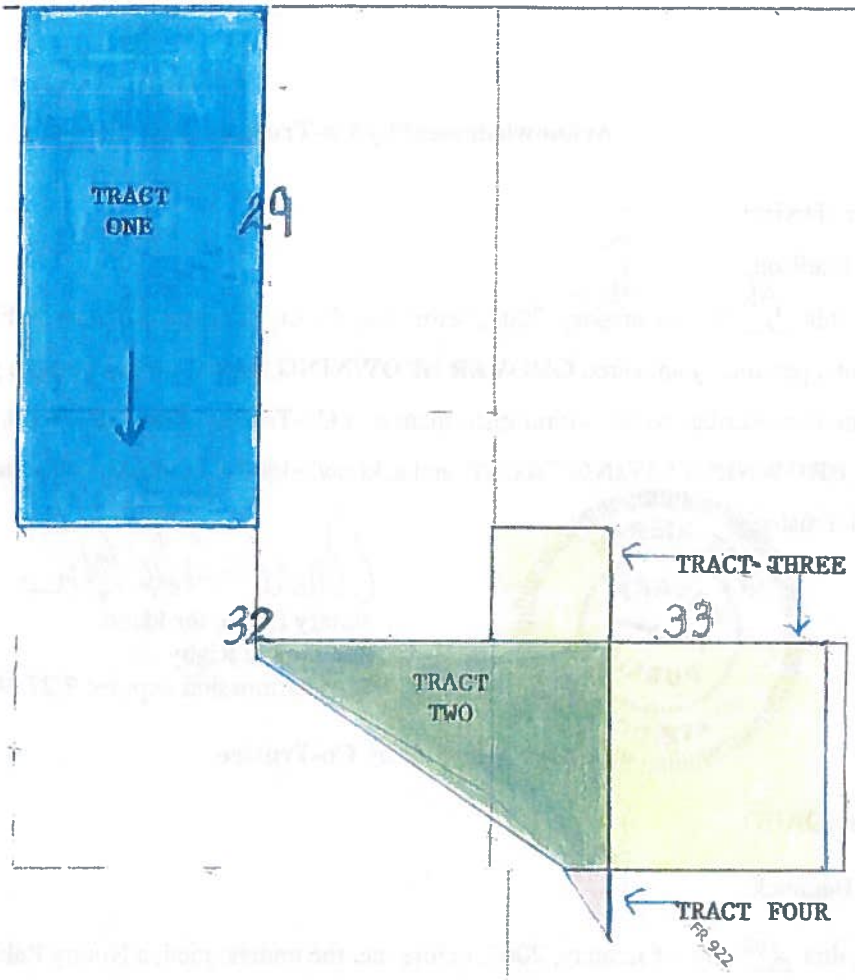
On this 27th day of January, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **KAREN MARIE BROWNING GARVIN**, known to me to be persons whose names are subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that she executed the same as such Co-Trustee.

MELISSA SUMMERS NOTARY PUBLIC STATE OF IDAHO

Melissa Summers
Notary Public for Idaho
Residing at Pocatello Co., Idaho
My Commission expires: 2-7-2011

SCANNED
JUN 12 2007

Twp. 6 N., Rge. 43 E., Boise Mer.



4

Twp. 5 N., Rge. 43 E., Boise Mer.

FR 922

RADIO RELAY RD

SCANNED

JUN 12 2007

EXHIBIT

H

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www.delorme.com

Acknowledgment by Co-Trustee

STATE OF IDAHO,)
ss.
County of Madison.)

On this 5th day of ~~January~~ February, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING**, known to me to be the person whose name is subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that he executed the same as such Co-Trustee.

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission expires: 7/27/2007

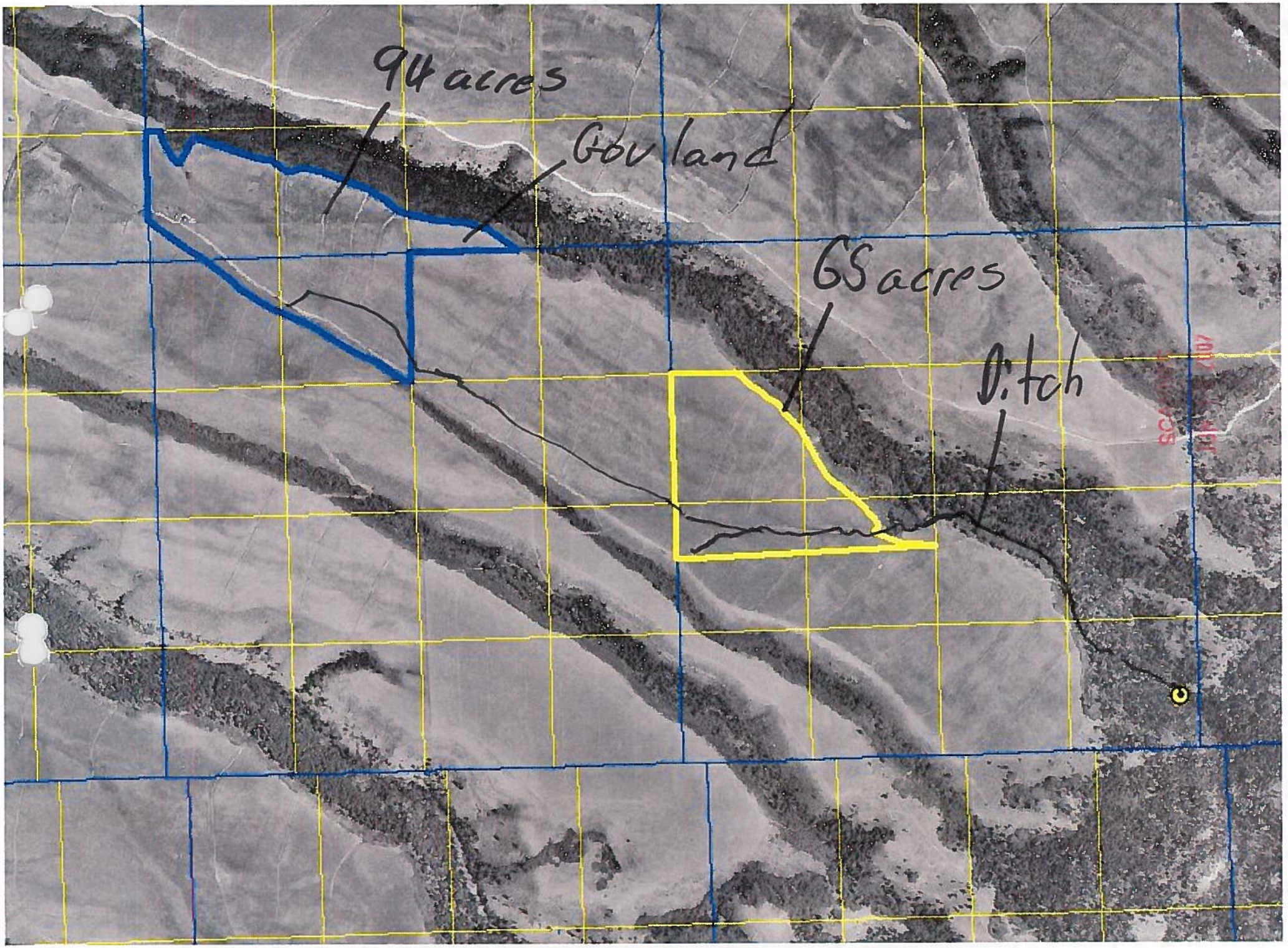
Acknowledgment by Co-Trustee

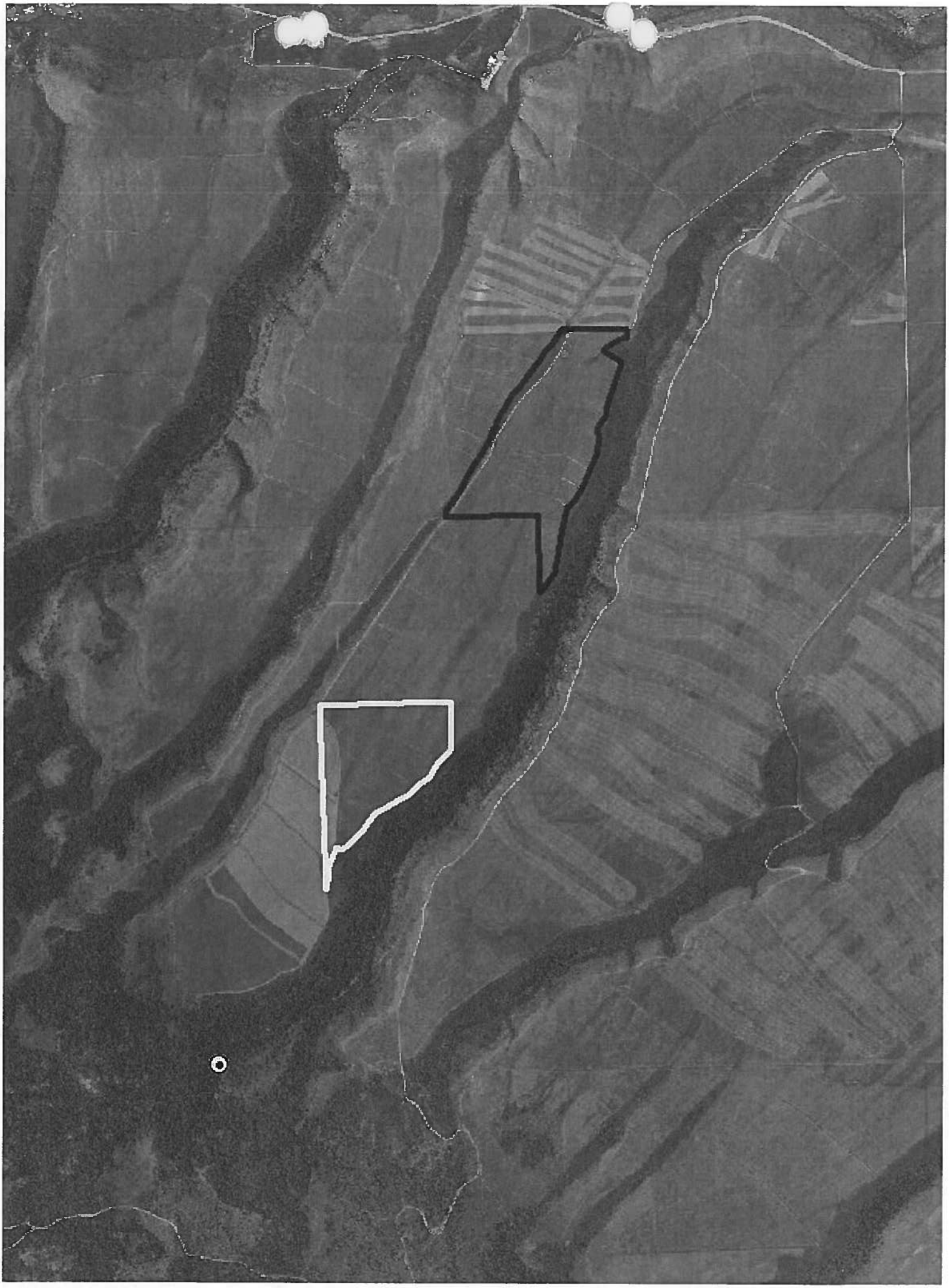
STATE OF IDAHO,)
ss.
County of Bannock.)

On this 27th day of January, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **KAREN MARIE BROWNING GARVIN**, known to me to be persons whose names are subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that she executed the same as such Co-Trustee.

MELISSA SUMMERS NOTARY PUBLIC STATE OF IDAHO

Melissa Summers
Notary Public for Idaho
Residing at Pocatello Co. Idaho
My Commission expires: 2-7-2011


94 acres
Gov land
65 acres
Ditch




Green Canyon Road
Bridge

5-21-07

Diversion found by following ditch
water still being diverted
but sinks in ditch.

wpt 004
005 pond
006 end ditch

SCANNED
JUN 12 2007


Green Canyon Road
Bridge

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resource

Receipt No: E001381

Date: 08/17/88
Time: 16:06:21

Received
From: BROWNING, GROVER

Type of Payment	Program Acct	Amount
ADJUDICATION FEE	0410162 9337 6490	$140.00
	Total	$140.00

CHECK 939

WR/NO: A22-10988 A22-00628A

Idaho Department of Water Resources

Region: Eastern

Signature: Keith C. Wilson

SCANNED
JUN 12 2007

EXHIBIT
I

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: A22-00628A
Date Received: 8/17/1988
Receipt No: E001381
Received By: KCW

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: GROVER BROWNING 208-458-4327
   Address: HC 60 BOX 1167
   TETON, ID 83451
   OR
   Name: ORSENA C. BROWNING 208-458-4327
   Address: HC 60 BOX 1167
   TETON, ID 83451

A22-00628A

2. Date of Priority: SEP 07, 1906

3. Source: PONY CREEK Trib. to: CANYON CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
06N	43E	33	SE SE SE		TETON

5. Description of diverting works:
   DIVERSION DAM TO DITCH FOR IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	6.000		

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

8. Total consumptive use is 130.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

EXHIBIT J

OCT 28 1992

SCANNED
JUN 12 2007

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resource

Receipt No: E001381

Date: 08/17/88
Time: 16:06:21

Received
From: BROWNING, GROVER

Type of Payment	Program Acct	Amount
ADJUDICATION FEE	0410162 9337 6490	$140.00
	Total	$140.00

CHECK 939

WR/NO: A22-10988 A22-00628A

Idaho Department of Water Resources

Region: Eastern Signature: Keith C. Wilson

EXHIBIT
I

10. Place of Use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
06N	43E	33	SW	NW		IRR	35.0
			SE	NW		IRR	3.0
			NE	SW		IRR	10.0
			NW	SW		IRR	17.0
					Section Acres		65.0
					Total Acres		65.0

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:
NONE

14. Remarks:

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 5/21/1954

O.J. NEELEY
Decree Plaintiff

vs

GEORGE BROWNING
Decree Defendant

SCANNED
JUN 1 2 2007

OCT 2 8

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: _____

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): Shawn Browning Date: 8-17-88

_____ Date: _____

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this 17th day of Aug. 19 88

Colleen Gray
Notary Public

Seal

Residing at Idaho Falls

My Commission Expires 5/29/1991

SCANNED
JUN 12 2007

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
06N	43E	33	SW	NW		IRR	35.0
			SE	NW		IRR	3.0
			NE	SW		IRR	10.0
			NW	SW		IRR	17.0
					Section Acres		65.0
					Total Acres		65.0

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:
NONE

14. Remarks:

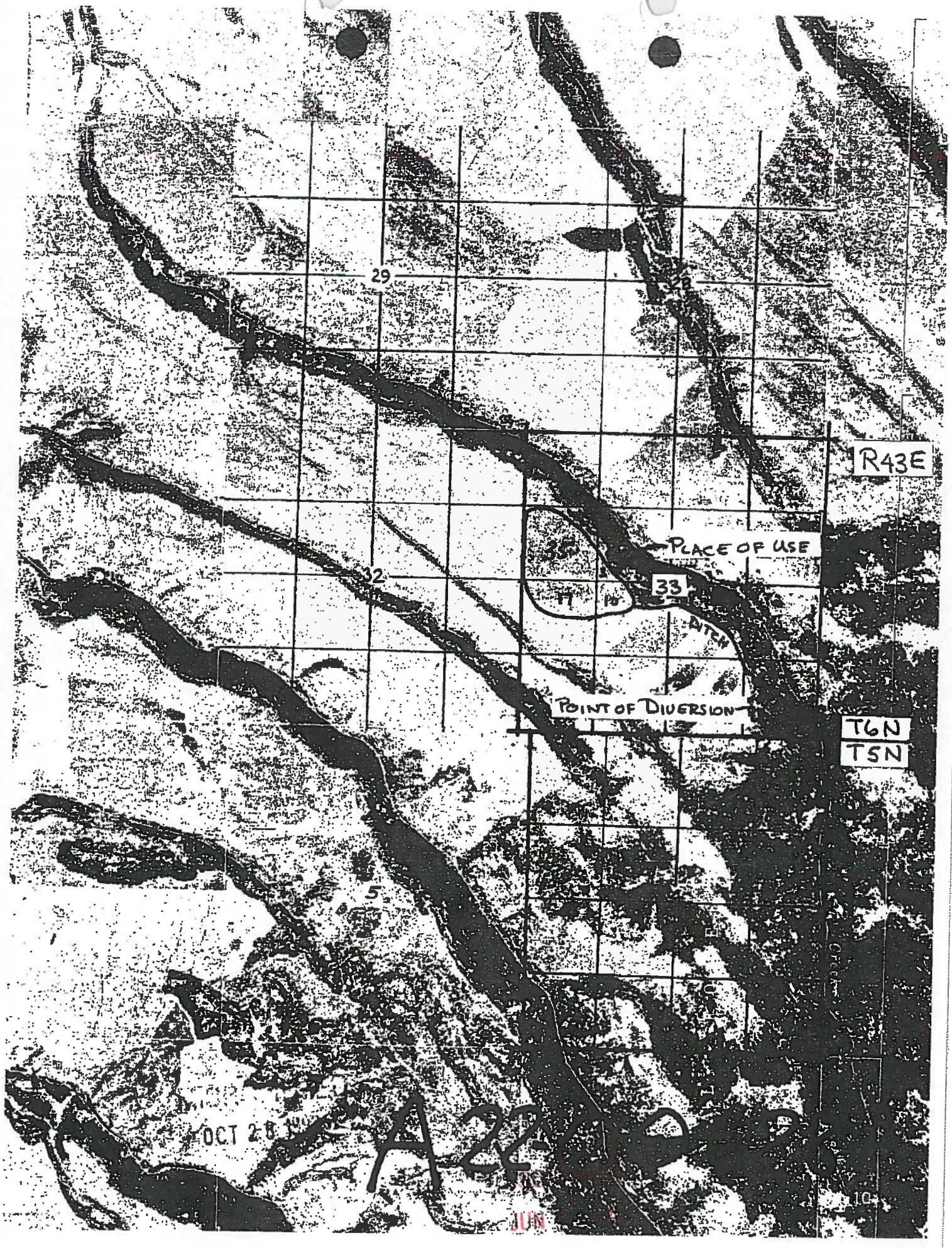
15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 5/21/1954

O.J. NEELEY
Decree Plaintiff

vs

GEORGE BROWNING
Decree Defendant

OCT 28

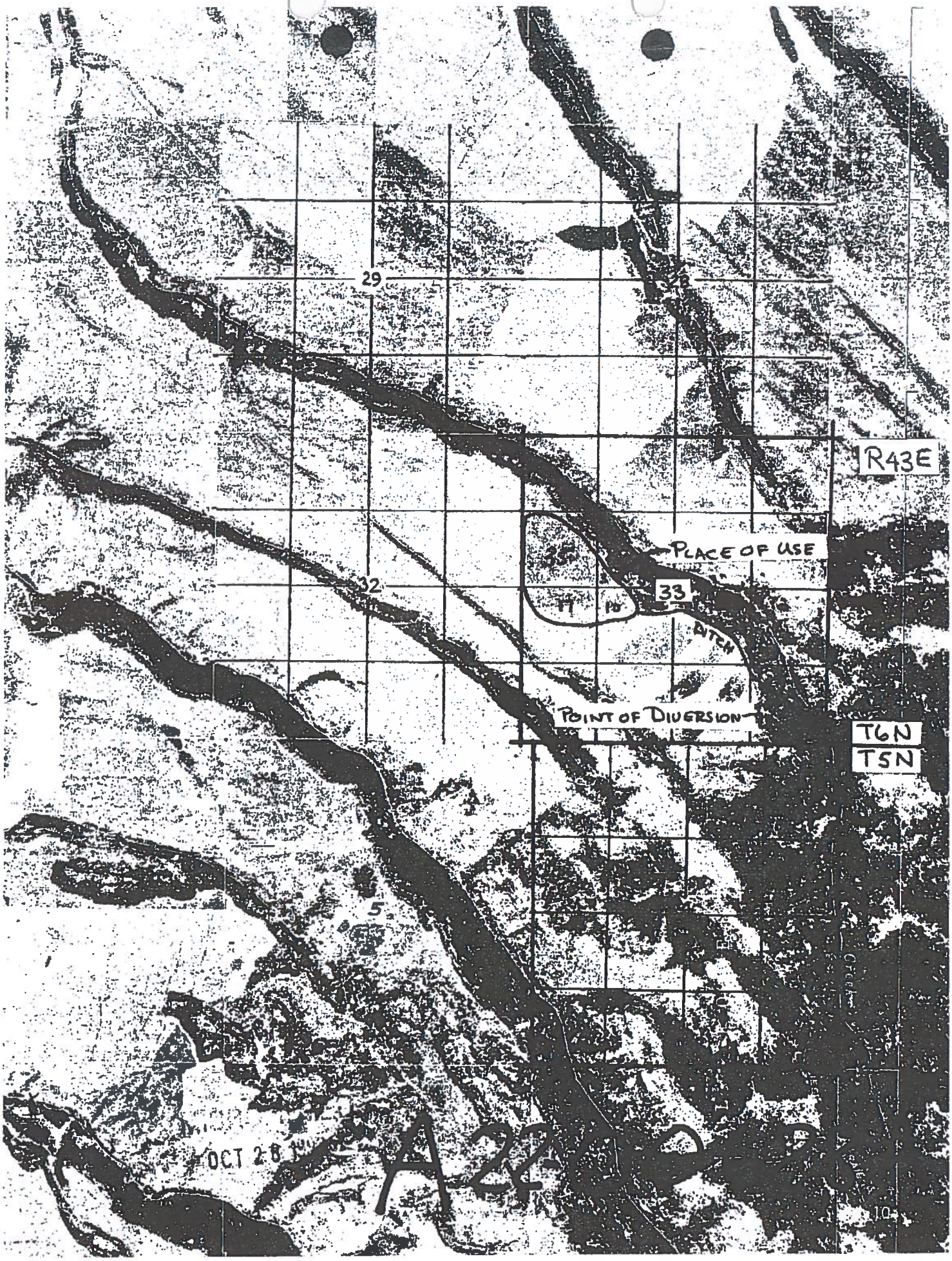

29
28
R43E
PLACE OF USE
32
33
11
10
DITCH
POINT OF DIVERSION
T6N
T5N
5
OCT 28
A22-0
JUN

Log for claim 22-00628A Spatial Dynamics BTD 7/26/01

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
06n43e	33	SWNW	35	35	
06n43e	33	SENW	3	3	
06n43e	33	NESW	10	9.4	
06n43e	33	NWSW	17	16	
Totals:			65	63.4	

SPATIAL DYNAMICS

SCANNED
JUN 1 2 2007


29
32
33
R43E
T6N
T5N
PLACE OF USE
POINT OF DIVERSION
DITCH
5
OCT 28
A22-0

09/25/2006

NOTICE OF ERROR

REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 22-628A

GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352
Telephone Number: (208)886-2142

ORSENA C BROWNING
7 N 2700 E
TETON ID 83451
Telephone Number: (208)458-4327

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

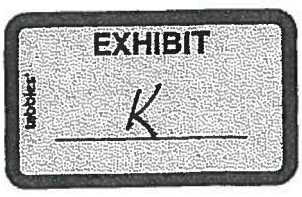
____ **I AGREE with this proposed recommendation: no changes need to be made.**

DATE: _____ **SIGNATURE:** _____

Please print your name: _____

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161

SCANNED
JUN 12 2007



09/25/2006

IDAHO DEPARTMENT OF WATER RESOURCES

PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-628A

NAME AND ADDRESS: GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352

ORSENA C BROWNING
7 N 2700 E
TETON ID 83451

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 1.950 CFS

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION:
T06N R43E S33 SESESE Within TETON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	1.950 CFS

PLACE OF USE: IRRIGATION Within TETON County

T06N R43E S33	SWNW	36.00	T06N R43E S33	SENW	3.00
T06N R43E S33	NESW	9.00	T06N R43E S33	NWSW	17.00

65 ACRES TOTAL

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

SCANNED
JUN 12 2007

09/25/2006

NOTICE OF ERROR

REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 22-628A

GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352
Telephone Number: (208)886-2142

ORSENA C BROWNING
7 N 2700 E
TETON ID 83451
Telephone Number: (208)458-4327

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

2. Describe the changes you wish to make in the proposed recommendation:

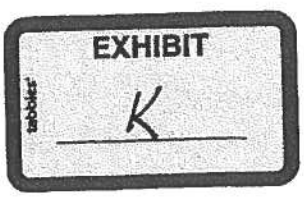
3. Give a brief explanation as to why you disagree with these portions:

____ **I AGREE with this proposed recommendation: no changes need to be made.**

DATE: _____ **SIGNATURE:** _____

Please print your name: _____

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161



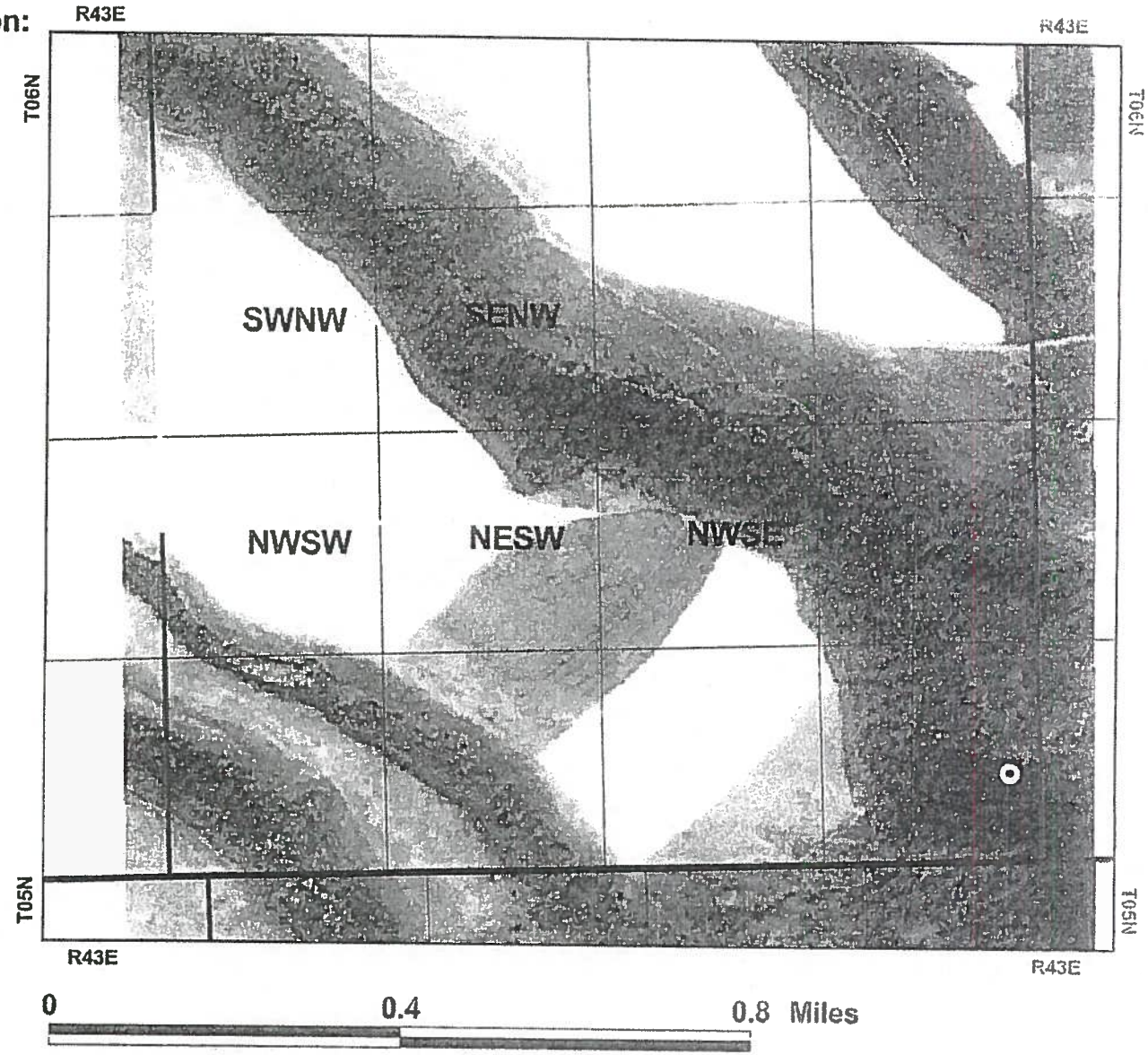
Idaho Department of Water Resources

SRBA Recommendation:

22-628A

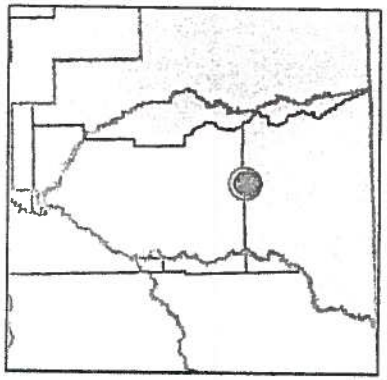
(Irrigation)

JUN 2 2 2007
SCANNED



Legend

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



Teton County
IDWR Basin 22

N

Prepared by T. Galbraith
On Monday, September 25, 2006
1987/88 Aerial Photography

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718
PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us
EASTERN REGION

JAMES E. RISCH
Governor
KARL J. DREHER
Director

October 4, 2006

Ray Rigby
25 N 2 East
Rexburg ID 83440

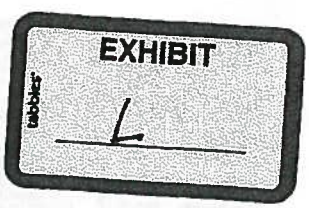
Dear Ray,

This is all of the information we have on the Neeley V. Browning decree. I have made my recommendation to Grover Browning water right (number 22-628A) based on this information. It seems to me that Mr. Browning needs to amend his claim to include more acreage. From the Compliant I was able to determine that at the time of the decree Mr. George browning owned a total of 200 acres. I don't see how Grover Browning is entitled to more than that unless there was an enlargement that occurred in which case a new claim needs to be filed to account for those acres. Looking at the 1987 aerial photography it does seem like he is entitled to about 200 acres but that is just at first inspection. If there is anything else I can do for you let me know.

Best regards,

Trent Galbraith
Water Agent
Adjudication Bureau

SCANNED
JUN 1 2 2007

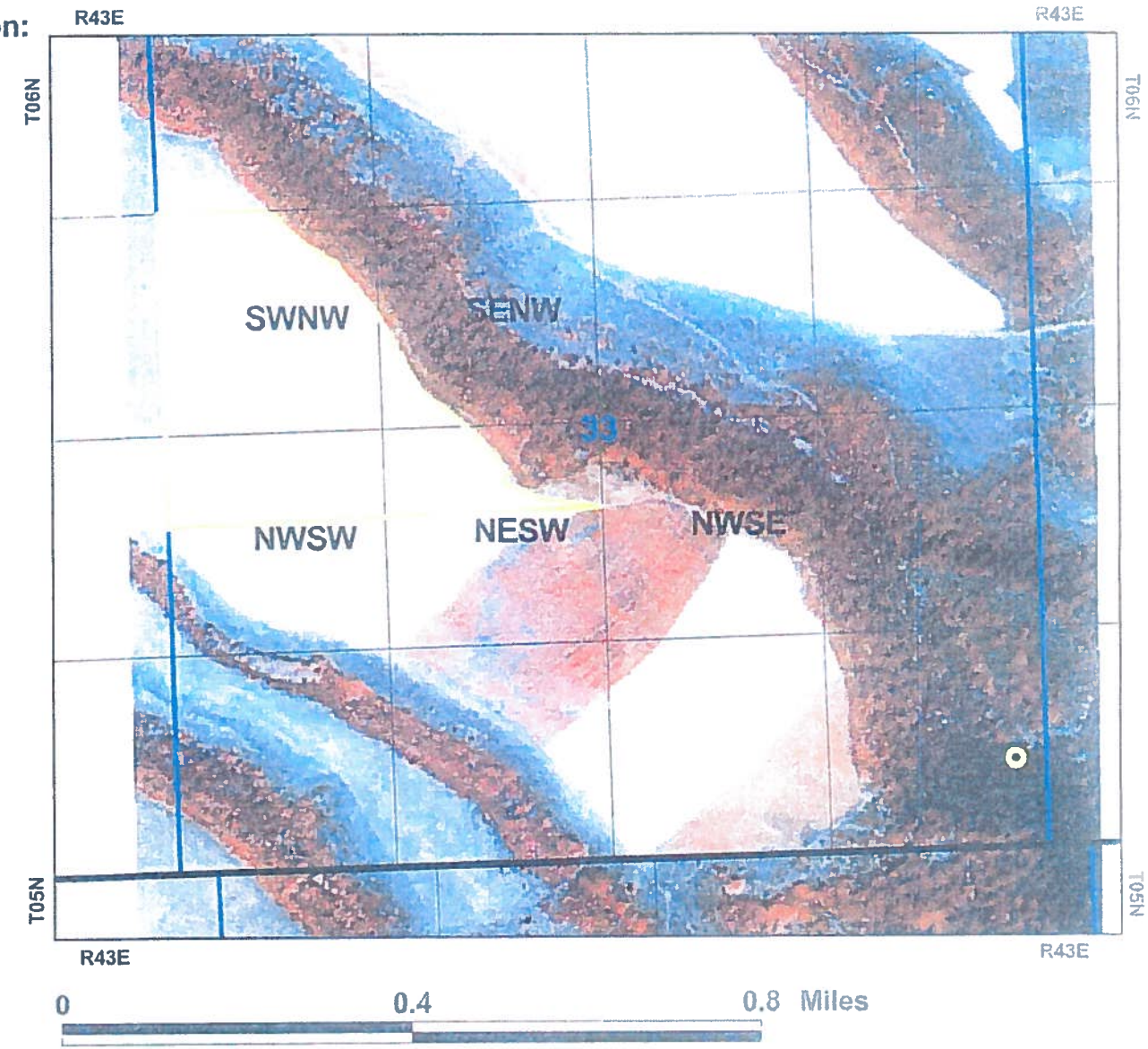


Idaho Department of Water Resources

SRBA Recommendation:

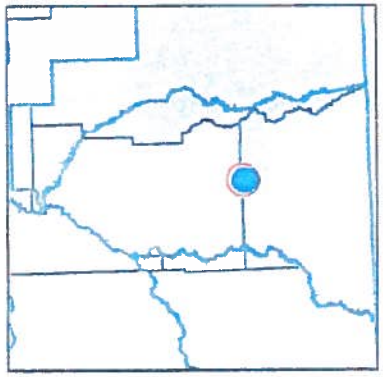
22-628A

(Irrigation)



Legend

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



Teton County
IDWR Basin 22

N

Prepared by T. Galbraith
On Monday, September 25, 2006
1987/88 Aerial Photography

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

FILED 5/21 1954
at 4:15 P.M.
E. T. McKinlay Clerk
By Marjorie Moore Deputy

ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT.

Come now the defendants above named, and in answer to Plaintiffs' complaint on file herein, admit, deny and allege as follows:

I.

Defendants admit all allegations contained in Paragraphs I, II, III and IV of plaintiffs' complaint on file herein.

II.

Defendants deny each and every allegation in Paragraphs V and VI of plaintiffs' complaint well pleaded, except as hereinafter set forth.

III.

Defendants allege that Pony Creek is an intermittent stream, having a substantial flow of water during the spring and early summer of each year, but that such flow is substantially reduced, or that it ceases, in later parts of the summer and the autumn of each year; that the parties hereto, amongst them, have made full use of all available waters of said Pony Creek for many years, and that a fair and equitable distribution thereof has heretofore been made of such waters; but that plaintiffs' share of said waters will equal the sum of 435 miners inches of said waters only during periods of high water.

IV.

That defendants George Browning and Phebe Browning, his wife, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29, township 6 North, Range 43 East of the Boise Meridian; and the North Half of the Northwest Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

160 acres
200

Govt land

1

EXHIBIT M

SCANNED
JUN 12 2007

V.

That James D. Browning, a predecessor in title of said George Browning and Phebe Browning, his wife, filed upon 3.2 second feet of the waters of Pony Creek, of which sum, proof was made on 1.3 second feet, and license issued to one Anne Kearney, assignee of said James D. Browning, and also a predecessor of said defendants, in title; said License being No. 1505, issued by the State of Idaho to said Anne Kearney; that the balance of the water so filed on by said James D. Browning was put to use over a period of time, although not reduced to license.

VI.

That Morris Slaymaker and Thelma Slaymaker, his wife, the other above named defendants, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

> The South Half of the Northwest Quarter, the North Half of the Southwest Quarter, and the Northeast Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

VII. 320 acres

That License No. 2264 for 2.5 second feet of the Waters of Pony Creek was issued by the State of Idaho to Dora Weaver, the assignee of John Weaver, for use on 125 acres in the Northeast Quarter of Section 32, aforesaid; that additional water was put to use from time to time thereafter upon additional land by said Dora Weaver and by said John Weaver, who are predecessors in title of the said Morris Slaymaker and Thelma Slaymaker, defendants.

VIII.

That one Charles H. Cazier filed on 8 second feet of the waters of Pony Creek for use on the unsurveyed South Half of the Southwest Quarter of Section 19; the West Half of Section 30; Township 6 North, Range 43 East of the Boise Meridian, now in Madison County, State of Idaho; that such filing was never reduced to license; that some part thereof, was, however, usefully applied to the irrigation of parts of said land; that a portion thereof was deeded to James A. Browning, by Quit Claim Deed dated May 31st, 1912, and recorded May 19th, 1915, in Book 17 of Deeds, at Page 320, under recorder's instrument No. 5044, records of Madison County, State of Idaho; that said James A. Browning was a predecessor in title of the defendants, George Browning and Phebe Browning, his wife; and that the plaintiffs may properly claim under the balance of said filing, insofar as actually used by them and their predecessors in title.

SCANNED

JUN 12 2007

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SIAYMAKER and THELMA SIAYMAKER, his wife,

Defendants.

FILED 5/21 1954
at 4:15 P.M.
N. J. McKinlay Clerk
By Marjorie Mann Deputy

ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT.

Come now the defendants above named, and in answer to Plaintiffs' complaint on file herein, admit, deny and allege as follows:

I.

Defendants admit all allegations contained in Paragraphs I, II, III and IV of plaintiffs' complaint on file herein.

II.

Defendants deny each and every allegation in Paragraphs V and VI of plaintiffs' complaint well pleaded, except as hereinafter set forth.

III.

Defendants allege that Pony Creek is an intermittent stream, having a substantial flow of water during the spring and early summer of each year, but that such flow is substantially reduced, or that it ceases, in later parts of the summer and the autumn of each year; that the parties hereto, amongst them, have made full use of all available waters of said Pony Creek for many years, and that a fair and equitable distribution thereof has heretofore been made of such waters; but that plaintiffs' share of said waters will equal the sum of 435 miners inches of said waters only during periods of high water.

IV.

That defendants George Browning and Phebe Browning, his wife, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29, township 6 North, Range 43 East of the Boise Meridian; and the North Half of the Northwest Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

160 acres
200

Govt land

1

EXHIBIT
M

IX.

That water disputes having heretofore arisen in connection with the said waters of Pony Creek, the predecessors in title of the present owners of the lands watered thereby, did, in June, 1917, form a corporation, to-wit, PONY CREEK CANAL COMPANY, to deliver said water to the various users for irrigation and domestic purposes, and did thereby, in settlement of all former disputes, make a fair and equitable division of said waters of Pony Creek, as set out in the Articles of Incorporation of said Corporation, which are filed in the records of Madison County, State of Idaho, under recorder's instrument No. 15216, a certified copy of which are hereto attached, as Exhibit "A", and which are hereby incorporated and made a part hereof, by reference, as fully as if though herein set forth in full.

X.

That plaintiffs, O. J. NEELEY and MYRTLE NEELEY, his wife, are the successors in interest to Ira J. Davis, and to one-half the holdings of E. D. Clark and Eli Clark, Jr.; that defendants, MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife, are the successors in interest to one-half the holdings of E. D. Clark and Eli Clark, Jr.; and that defendants, GEORGE BROWNING and PHEBE BROWNING, his wife, are successors in interest to J. A. BROWNING and to Annie Kearney; all as mentioned and shown in the aforesaid Articles of Incorporation.

XI.

That the diversionary works used by the parties hereto, when in proper repair, are capable of carrying approximately 960 miners inches of water; that when such full stream of water is being diverted and used, the said plaintiffs would be entitled to the sum of 435 miners inches of water; the defendants, George Browning and Phebe Browning, his wife, would be entitled to the sum of 300 inches of water; and the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, would be entitled to the sum of 225 inches of water; but that when the flow of water is reduced, each party is entitled to his pro rata share, on the same basis as aforesaid, without right in any party, and especially without right in the plaintiffs, to demand any given flow of water in inches; but only to demand a pro rata share of such water as may be available at any given time.

AND FOR CROSS COMPLAINT, Defendants and Cross-complainants complain of the Plaintiffs and Cross-defendants, and for cause of action allege:

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JUN 12 2007

I.

Defendants and Cross-complainants hereby re-plead Paragraphs I to XI of their Answer, inclusive, and by reference, hereby make same a part of this Cross-Complaint.

Pony Creek C.C.

II.

Defendants allege that for over 36 years, to-wit, since June 25th, 1917, they or their predecessors in title have owned, used, and enjoyed the uninterrupted use of their respective pro rata shares of the waters of Pony Creek, a tributary to Snake River, in Madison County, Idaho, for irrigation and domestic purposes, on the foregoing described premises, said pro rata share being determined on the basis of the contribution of their predecessors to PONY CREEK CANAL COMPANY, as set forth in Exhibit "A", hereunto attached, as above set forth..

WHEREFORE, Defendants pray judgment that the adverse claims of Plaintiff, as set forth in Plaintiff's complaint herein filed, be determined by this Court; that it be adjudged and decreed that Defendants are the prior owners of their respective pro rata shares of the waters of Pony Creek, and that Plaintiffs have no right, title or interest whatsoever therein or thereon superior to the right, title and interest of Defendants in and to their respective shares as above set forth.

That title to said respective shares of water be quieted in the Defendants as against the Plaintiffs, and all persons claiming under them; and that the usual decree foreclosing all adverse claims against these defendants be entered.

Defendants further pray for such other or further or different relief as to this Honorable Court may seem just and equitable, and for costs of this suit; and that Plaintiffs' complaint being fully answered, the plaintiffs may take nothing thereunder.

Dated this 20th day of May, 1954.

Leonard O. Kingsford

LEONARD O. KINGSFORD, Attorney for the Defendants. Residence and Post Office Address: Rexburg, Idaho.

4

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JUN 12 2007

IX.

That water disputes having heretofore arisen in connection with the said waters of Pony Creek, the predecessors in title of the present owners of the lands watered thereby, did, in June, 1917, form a corporation, to-wit, PONY CREEK CANAL COMPANY, to deliver said water to the various users for irrigation and domestic purposes, and did thereby, in settlement of all former disputes, make a fair and equitable division of said waters of Pony Creek, as set out in the Articles of Incorporation of said Corporation, which are filed in the records of Madison County, State of Idaho, under recorder's instrument No. 15216, a certified copy of which are hereto attached, as Exhibit "A", and which are hereby incorporated and made a part hereof, by reference, as fully as if though herein set forth in full.

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That plaintiffs, O. J. NEELEY and MYRTLE NEELEY, his wife, are the successors in interest to Ira J. Davis, and to one-half the holdings of E. D. Clark and Eli Clark, Jr.; that defendants, MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife, are the successors in interest to one-half the holdings of E. D. Clark and Eli Clark, Jr.; and that defendants, GEORGE BROWNING and PHEBE BROWNING, his wife, are successors in interest to J. A. BROWNING and to Annie Kearney; all as mentioned and shown in the aforesaid Articles of Incorporation.

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That the diversionary works used by the parties hereto, when in proper repair, are capable of carrying approximately 960 miners inches of water; that when such full stream of water is being diverted and used, the said plaintiffs would be entitled to the sum of 435 miners inches of water; the defendants, George Browning and Phebe Browning, his wife, would be entitled to the sum of 300 inches of water; and the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, would be entitled to the sum of 225 inches of water; but that when the flow of water is reduced, each party is entitled to his pro rata share, on the same basis as aforesaid, without right in any party, and especially without right in the plaintiffs, to demand any given flow of water in inches; but only to demand a pro rata share of such water as may be available at any given time.

AND FOR CROSS COMPLAINT, Defendants and Cross-complainants complain of the Plaintiffs and Cross-defendants, and for cause of action allege:

STATE OF IDAHO)
: ss.
County of Madison)

George Browning and Morris Slaymaker being first duly sworn, depose and say, each for himself, and not one for the other:

That he is one of the parties defendant in the above and foregoing entitled cause; that he has read the foregoing answer and cross complaint, and knows the contents thereof; and the same is true as he verily believes.

Geo. F. Browning

Morris Slaymaker

Subscribed and sworn to before me this 21st day of May, 1954.

Leonard O. Kingsford

NOTARY PUBLIC for Idaho, residing at Rexburg, Idaho. My commission expires: August 11th, 1957.

I hereby acknowledge service of a copy of this ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT, this 21st day of May, 1954.

Ray W. Rigby

RAY W. RIGBY, Attorney for the Plaintiffs and Cross-Defendants.

SCANNED
JUN 12 2007

Gordon S. Thatcher
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, *Chartered*
25 North Second East
P.O. Box 250
Rexburg, Idaho 83440
Phone: 208 356-3633
FAX: 208 356-0768
Idaho State Bar No. 880

Attorneys for Co-Trustees

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE, SAME HAVING BEEN FILED _____
ATTEST _____ 20___
ABBIE MACE CLERK OF THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT IN AND FOR FREMONT COUNTY, IDAHO.
BY _____ DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

IN THE MATTER OF A TRUST:	)	Case No. CV-01-169
	)	
GROVER & ORSENA BROWNING LIVING TRUST	)	ORDER AND DECREE CONFIRMING OWNERSHIP AND APPROVING FINAL DISTRIBUTION
	)	
	)	
	)	
	)	

This matter came on to be heard this day on the verified Petition by Co-Trustees for Declaration of Ownership and Final Distribution under Idaho Code § 15-7-103 and § 15-7-201, by **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001.

It appears and the Court finds and concludes:

1. Attached to the Petition as Exhibit "A" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #142670, records of Teton County, Idaho. There were two inadvertent errors in the Grant Deed: [a] a call was left out of the exception so the description did not close and the distance South should have been less than 858 feet, which was the distance East on the missing last call; and [b] it was wrongly assumed in the last description that the beginning point was 858 feet East of the

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JUN 12 2007

EXHIBIT
N

DISTRICT COURT JUDICIAL COURT FREMONT COUNTY, IDAHO

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE, SAME HAVING BEEN FILED 7-20-07
ATTEST Abbie Mace 20 07
ABBIE MACE CLERK OF THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT IN AND FOR FREMONT COUNTY, IDAHO.
_____ DEPUTY

STATE OF IDAHO)
: ss.
County of Madison)

George Browning and Morris Slaymaker being first duly sworn, depose and say, each for himself, and not one for the other:

That he is one of the parties defendant in the above and foregoing entitled cause; that he has read the foregoing answer and cross complaint, and knows the contents thereof; and the same is true as he verily believes.

Geo. H. Browning

Morris Slaymaker

Subscribed and sworn to before me this 21st day of May, 1954.

Leonard O. Kingsford

NOTARY PUBLIC for Idaho, residing at Rexburg, Idaho. My commission expires: August 11th, 1957.

I hereby acknowledge service of a copy of this ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT, this 21st day of May, 1954.

Ray W. Rigby

RAY W. RIGBY, Attorney for the Plaintiffs and Cross-Defendants.

Northwest Corner of Lot 4, but it should have measured from the Southwest corner of Sec. 33, which was offset to the East and thus should be a lesser distance when measured from Lot 4.

2. Attached to the Petition as Exhibit "B" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #289297, records of Madison County, Idaho. The legal description in Tract One was in error in the call of "South 1782 feet" because the distance is greater; this springs from the erroneous 858 feet measurement in Exhibit "A", ¶ 1, above, which was too long, with 858 feet being deducted from 2640 feet to yield the erroneous 1782 feet.

3. Attached to the Petition as Exhibit "C" was Grant Deed, dated May 24, 2002, from the four children of Grover Browning and Orsena C. Browning to the Trust, recorded on June 12, 2002, records of Teton County, Idaho as Instrument No. 148565. This had the same errors for the same reasons as Exhibit "A", ¶ 1, above.

4. Attached to the Petition as Exhibit "D" was Grant Deed dated May 24, 2002, from the four children of Grover Browning and Orsena C. Browning to the Trust, recorded on June 7, 2002, as Instrument #296274, records of Madison County, Idaho. This had the same error for the same reason as Exhibit "B", ¶ 2, above.

5. One other parcel of real estate, the residence of Grover Browning and Orsena C. Browning is in Fremont County, and was conveyed to the Trust by Grant Deed, dated May 18, 2001, and recorded on May 21, 2001, as Instrument #468679, records of Fremont County, Idaho, a copy of which was attached to the Petition as Exhibit "E". The property description was correct.

6. Orsena C. Browning died on March 16, 2003, at Madison Memorial Hospital, Rexburg, Idaho. Under the Trust that brought into being the **GROVER BROWNING MARITAL TRUST** and the **ORSENA C. BROWNING FAMILY TRUST**. Under the terms of the Trust the assets of the Trust are to be equally divided between those two new Trusts, which are governed by the Articles of Trust of the Grover & Orsena Browning Living Trust, dated March 26, 2001.

7. Because of the death of Orsena C. Browning on March 16, 2003, and based upon the Articles of Trust, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**,

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JUN 12 2007

became Co-Trustees of the Trust and of the two new Trusts identified in ¶ 6 above, and ever since have been and are now serving as Co-Trustees of the three Trusts.

8. A Registration of Trust for the **GROVER BROWNING MARITAL TRUST** was filed in this Court on the 5th day of February, 2007, as Case No. CV-07-79. A Registration of Trust for the **ORSENA C. BROWNING FAMILY TRUST** was filed in this Court on the 5th day of February, 2007, as Case No. CV-07-78.

9. All of the real property of the Trust shall be conveyed by the Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, in equal, undivided shares to the Trustees of the **GROVER BROWNING MARITAL TRUST** and to the Trustees of the **ORSENA C. BROWNING FAMILY TRUST**. The property should be conveyed by one Grant Deed (a copy of which was attached to the Petition as Exhibit "F") to be recorded in Fremont County, Madison County, and Teton County. The Grant Deed shall recite that it corrects the legal descriptions in the four Grant Deeds, Exhibits "A" (¶ 1), "B" (¶ 2), "C" (¶ 3), and "D" (¶ 4).

10. The new Grant Deed will properly correct the inadvertent errors in descriptions and will be in harmony with and not in conflict with adjoining owners. The Petitioners believe that the apparent boundary fence along Dry Gulch Canyon is a legally established boundary fence; but if it is not, the "straight line calls" with the included distances in the corrected descriptions should provide certainty. Attached to the Petition as Exhibit "G" was a sketch of Tract One (highlighted in blue), Tract Two (highlighted in green), Tract Three (highlighted in yellow) and Tract Four (highlighted in pink).

11. The only interested parties in this matter are Petitioners and the other three children of Grover Browning and Orsena C. Browning, whose names and addresses are as follows:

Kirk Lynn Browning 6603 Brickhouse Avenue Las Vegas, NV 89122	**Lillian Elaine B. Pitman** 524 River Road Bliss, ID 83314	**Bart Grover Browning** 24842 Big River Road Eagle River, Alaska 99577

Consents in writing by all of the beneficiaries of the Trust to the granting of the Order requested in this Petition are on file herein.

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JUN 12 2007

Northwest Corner of Lot 4, but it should have measured from the Southwest corner of Sec. 33, which was offset to the East and thus should be a lesser distance when measured from Lot 4.

2. Attached to the Petition as Exhibit "B" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #289297, records of Madison County, Idaho. The legal description in Tract One was in error in the call of "South 1782 feet" because the distance is greater; this springs from the erroneous 858 feet measurement in Exhibit "A", ¶ 1, above, which was too long, with 858 feet being deducted from 2640 feet to yield the erroneous 1782 feet.

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5. One other parcel of real estate, the residence of Grover Browning and Orsena C. Browning is in Fremont County, and was conveyed to the Trust by Grant Deed, dated May 18, 2001, and recorded on May 21, 2001, as Instrument #468679, records of Fremont County, Idaho, a copy of which was attached to the Petition as Exhibit "E". The property description was correct.

6. Orsena C. Browning died on March 16, 2003, at Madison Memorial Hospital, Rexburg, Idaho. Under the Trust that brought into being the **GROVER BROWNING MARITAL TRUST** and the **ORSENA C. BROWNING FAMILY TRUST**. Under the terms of the Trust the assets of the Trust are to be equally divided between those two new Trusts, which are governed by the Articles of Trust of the Grover & Orsena Browning Living Trust, dated March 26, 2001.

7. Because of the death of Orsena C. Browning on March 16, 2003, and based upon the Articles of Trust, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**,

Based thereon, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. The Court hereby authorizes and directs Petitioners as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, to convey all real estate of the Trust in equal, undivided shares to Petitioners as the Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, coming into being on March 16, 2003, and to Petitioners as the Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, coming into being on March 16, 2003, according to form of Grant Deed attached to the Petition as Exhibit "F", which the Court adjudges and declares is the correct property descriptions of the real property; and hereby authorizes Petitioners as Co-Trustees to confirm and ratify that all other assets have been and shall be divided and distributed equally between the two new Trusts.

2. The Court hereby accepts the distribution as constituting the final distribution of the assets of the Trust.

Ordered this 20th day of February , 2007.

Keith M. Walker, Magistrate

SCANNED
JUN 12 2007

NOTICE OF ENTRY OF ORDER

Grover Browning
7 N. 2700 E.
Teton, ID 83451

Kirk Lynn Browning
6603 Brickhouse Avenue
Las Vegas, NV 89122

Karen Marie B. Garvin
Route 2, Box 24A8 A
Pocatello, ID 83201

Lillian Elaine B. Pitman
524 River Road
Bliss, ID 83314

Bart Grover Browning
24842 Big River Road
Eagle River, Alaska 99577

Gordon S. Thatcher
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, *Chartered*
Attorneys at Law
P.O. Box 250
25 North Second East
Rexburg, Idaho 83440
Attorneys for Co-Trustees

PLEASE TAKE NOTICE, That on this day an Order was entered in the above referenced matter.

I CERTIFY That on this date a true copy of the Order was mailed to the above named persons at the addresses listed.

DATED this 20 day of February, 2007.

Clerk of the Court

Deputy

SCANNED
JUN 12 2007

Based thereon, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED:

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2. The Court hereby accepts the distribution as constituting the final distribution of the assets of the Trust.

Ordered this 20th day of February , 2007.

Keith M. Walker, Magistrate

06/12/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-628A

NAME AND ADDRESS: GROVER BROWNING MARITAL TRUST
7 N 2700 E
TETON ID 83451

ORSENA C BROWNING FAMILY TRUST
7 N 2700E
TETON ID 83451

GROVER & ORSENA BROWNING LIVING TRUST
7 N 2700E
TETON ID 83451

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 1.950 CFS

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION: T06N R43E S33 SESESE Within TETON County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	1.950 CFS

PLACE OF USE: IRRIGATION in TETON County

T06N R43E S33	SWNW	36.00	T06N R43E S33	SENW	3.00
T06N R43E S33	NESW	9.00	T06N R43E S33	NWSW	17.00

65 ACRES TOTAL

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

SCANNED
JUN 12 2007

Eastern

RECEIVED
JUN 0 8 2007
Department of Water Resources
Eastern Region

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 24, 2007

Gordon S. Thatcher
Thatcher Law Office, PLLC
P.O. Box 216
116 S. Center St.
Rexburg, ID 83440

Re: SRBA subcase no. 22-628A Browning

Dear Mr. Thatcher:

This will confirm our telephone conversation yesterday afternoon following the conclusion of the hearing on two motions to amend claims in the adjudication of the above-referenced subcase. During the call, I explained that Trent Galbraith, the Idaho Department Water of Resources ("IDWR") agent assigned to this subcase, would begin working on an amended director's report for the amended claim which motion was granted. The Court called it Motion No. 1, and it concerns a priority date of 1917 and 286 acres of place of use. The basis of that amended claim is the Neeley-Browning Decree ("Decree"). As we discussed, because the Decree applies to sections 29 and 32 of the property at issue, and not section 33 of your clients' property, IDWR will not recommend water rights for section 33 based on the Decree in the forthcoming amended director's report. To that end, we also discussed an anticipated motion for late claim, specifically the possibility of seeking a beneficial use right for the 65 acres in section 33 which were originally claimed.

The second motion for amended claim, what the Court called Motion No. 2 and which references priority date of 1905 and 126 acres of place of use, is based on License No. 1505, dated November 15, 1913 ("License"). Because the Decree was subsequent to the License and encompasses the "respective rights and interests in the water rights" of the parties to the Decree, the Decree supersedes the License because they both cover the same ground and source. Therefore, Trent will determine any water rights to which your clients are entitled based on the Decree (acres in sections 29 and 32) in the processing of the amended claim and not in a late claim. As I explained, however, IDWR may recommend, in matters like these, a water right as a beneficial use with a priority

Natural Resources Division - Water Resources Section
P.O. Box 83720 Boise, Idaho 83720-0098
Telephone: (208) 287-4801; Legal FAX: (208) 287-6700

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subsequent to the date of entry of the decree. In this subcase, that may mean the earliest priority for the 65 acres in section 33 could be May 22, 1954, the day after the Decree was signed. Trent will consider all evidence you provide as to priority date, though, so he may arrive at an earlier priority date than 1954 based upon evidence submitted. We discussed the above as a sharing of information and not as any promise of water right. It will be up to Trent to determine the elements of any late claim your clients may wish to file.

In addition, we touched on the fees for the above-referenced procedures. Upon receipt of the checks from the SRBA Court, IDWR will determine what additional fee, if any, is owed for the amended claim and will report the same to you. You are welcome to contact Trent if you have additional questions as to the fee for the late claim.

Please contact me immediately if the above summary does not comport with your recollection of our discussion.

Sincerely,

Andrea L Courtney

Andrea L. Courtney

cc: Trent Galbraith

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JUN 12 2007

09/25/2006

OK JC

NOTICE OF ERROR

REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 22-628A

GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352
Telephone Number: (208)886-2142

ORSENA C BROWNING
7 N 2700 E
TETON ID 83451
Telephone Number: (208)458-4327

RECEIVED
OCT 30 2006
Department of Water Resources
Eastern Region

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

I don't have any ownership of This water Right

2. Describe the changes you wish to make in the proposed recommendation:

3. Give a brief explanation as to why you disagree with these portions:

____ **I AGREE with this proposed recommendation: no changes need to be made.**

DATE: _____ **SIGNATURE:** George L Wyant

Please print your name: George L. Wyant

IDWR Regional Office, 900 N Skyline Dr Ste A, Idaho Falls, ID 83402, 2085257161

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JUN 12 2007

ILM5
10/30

9-25-06

- Jeff Iverell is working with Mr. Browning.
- They believe they can claim more than the 65 acres.
- If they amend their claim they could claim up to the 200 acres decreed if Browning still owns this and can prove it is in CRP.
- Jeff & Mr. Brownrey believe they can claim more than that and are working with an attorney.
- They are decreed 200 acres no more than that will be recomended.
- This was explained to Jeff in our concesation today.
- I told Jeff a mailing is going out ~~oct~~ Sept 29th he then has till the 27th of october to send in the VOE forms to Review with any other evidence for an amended claim.

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JUN 12 2007

9-21-06

- Condise said to give them a Priority of 6-25-1917 for 22-630, 22-629, and 22-628.

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JUN 12 2007

- Neeley v. Browning
- Decree does not state a prority date
- 3 rights 22-628, 22-629, 22-630
- 22-630 was transfered and aproved with a 6-15-1900.
- The other 2 rights both claim sept 7. 1906 prority
- Ray is lookng for complaint but does not know about the prority date problem.

8-31-06

- Conference w/Candise
- Candise is lookng for complaint & findings of fact.
- If land list on complaint matches license 22-2017 then it was superceded if not it is not Superceded.
- Complaint may also have info on prority dat.
- we do not need a condition about the decreased flow rate as per ecnie
- Do we need a condition about agreement that neeley gets all water from pony until Browning begins forrigatin

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JUN 12 2007

8-29-06

- After talking with ernie we decided to give 72-608 the same priority date aproved by transfer # 1942. -Browning needs to amend.

- We are allowing for 2 cfs/acres to acomodate any transmission losses and sprinkler irrigation. Field Report stated no water was getting to POU.

- Jeff Lerwill 356-7300 for information.

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JUN 12 2007

Claim No 22628A

Document Checklist

- [x] Copy License/Decree Neeley v Browning
- [ ] Copy Transfer —
- [ ] Copy Licensing Field Exam —
- [ ] Check if Ownership/Address Change is Required —
- [ ] Generate, mail and file "Evidence of Priority" letter —
- [x] Generate Arcview Map

7N 2700E Natx road 2nd house

SCANNED
JUN 12 2007

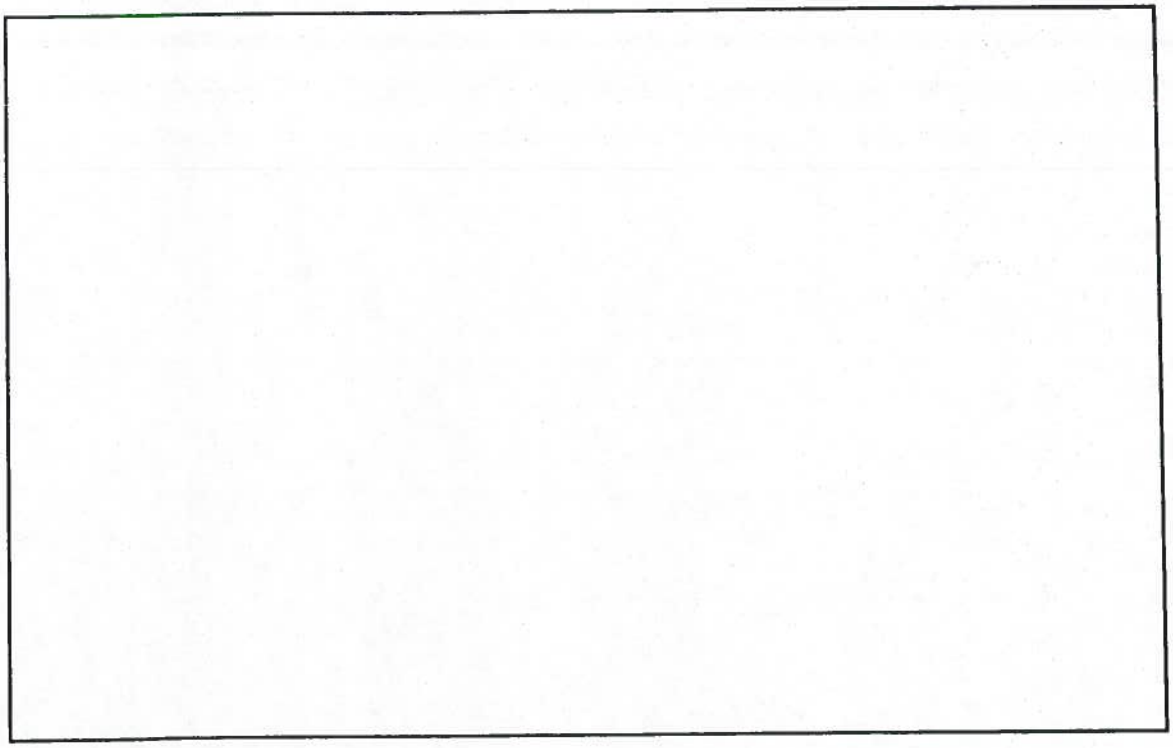
Claim no. _____

Claimant Contact Log

Date	Remarks	Agent initials
6/12 Feb 20	Able to visit w/ G. Browning at his home just west of Newdale. He gave me details of irrigation uses and practices since he has been operating the ground – he is currently in his 80's.	

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JUN 12 2007

Water Right No(s). _____



GPS DATA:

Tag # A0816009 Location: Tag is on a large rock located just north of POD.

Diversion Data:

Source: Pony Creek Trib to: Canyon Creek

MOTOR

Make: _____ Model: _____ Hp: _____

SN: _____

PUMP

Make: _____ Model: _____ Disch: _____

SN: _____

NOTES: Diversion works consists of plastic dam and fallen logs. GPS reading was taken in a clearing 25 yds north of POD so it could get a reading.

Field Exam Date: 6/8/06 Agent: DD

SCANNED
JUN 12 2007

IDWR Field Exam Form

02/26/2004

Point of Diversion and Source Data Entry Form

Claim Number: _____

Water Right Point(s) of diversion and Source.

Water Right Point of Diversion: T ____, R ____, Sec. ____, ____, ____, ____, County: _____

Source: _____ Tributary to : _____

Water Right Point of Diversion: T ____, R ____, Sec. ____, ____, ____, ____, County: _____

Source: _____ Tributary to : _____

Claimed Point(s) of Diversion and Source.

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source	Tributary to

Recommended Point(s) of Diversion and Source.

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source	Tributary to

Other rights from this POD? _____

Transfers Pending or approved: _____

Document how the POD and Source were verified:

6/8/04 POD is located on Pony creek. Diversion works consist of plastic and logs. Approx. 1 cfs was being diverted on the date of exam. Pony creek was running approx. 8 cfs.

Ditch and diversion works are well maintained. Even though the POD is in CRP, water is used for stock water.

6 cfs claimed to irrigate 65 acres is too high.

Reviewer: _____ Date: _____

SCANNED

JUN 12 2007

IDWR Field Exam Form

02/26/2004

Place Of Use Data Entry Form

Claim Number: _____

Claimed Place Of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use

Total acres _____

Recommended Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acre s	Purpose of Use

Total acres _____

Pending or approved Transfers: _____

Overlapping rights: _____

Document how the POU was verified:

6/8/06
DO

Field exam showed that property is currently in CRP. There is a large ditch that runs through the property but it is not carrying any water at this time. There is water being diverted from Pony Creek (approx 1cfs) but it isn't reaching POU.
POU is in CRP and has been for the last 17 years. This property was irrigated with pump and sprinkler pipe, but when the property was put into CRP the pump & the pipe was sold.
There is evidence of holding ponds that were used to store water for pumping.
Acreage claimed is pretty accurate

Reviewer: _____ Date: _____

SCANNED
JUN 12 2007

RECEIVED
SEP 19 2006
DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

FILED
2:47 M

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

AMENDED COMPLAINT

Plaintiffs complain of the Defendants and for cause of action allege:

I

That at all times herein mentioned the Plaintiffs were and now are husband and wife;

II

That at all times herein mentioned the Defendants, George Browning and Phebe Browning, his wife, were, and now are husband and wife;

III

That at all times herein mentioned the Defendants, Morris Slaymaker and Thelma Slaymaker, his wife, were, and now are husband and wife;

IV

Neelex

That at all times herein mentioned the Plaintiffs were, and now are the owners and in possession of the East Half (E½) of Section Thirty (30); the Southeast Quarter of the Northwest Quarter (SE¼NW¼) and the South Half of the Southwest Quarter (S½SW¼) of Section Thirty (30), Township Six (6) North, Range Forty-three (43) East of the Boise Meridian; also, the Northeast Quarter of the Northeast Quarter (NE¼NE¼) of Section Thirty-one (31), Township Six (6) North, Range Forty-three (43), East of the Boise Meridian, lying, being, and situate in Madison County, Idaho;

480 acres

07

V

That for more than five years prior to the commencement of this action the Plaintiffs and their predecessors in interest have owned, used, and enjoyed 435 miners inches of the water of Pony Creek, a tributary to Snake River in Madison County, Idaho, for irrigation and domestic purposes on the above described premises; that during all of the time herein mentioned, said 435 miners inches of the water of said Pony Creek were owned and used by Plaintiffs adverse to all persons and especially the above named Defendants, and Plaintiffs have paid all taxes and assessments levied against said water rights for more than five years last past prior to the commencement of this action;

VI

That the above named Defendants, and each and all of them, claim some right, title, and interest in and to said water or some estate therein adversely to the Plaintiffs, but Plaintiffs allege that none of said Defendants had any right, title or interest, or lend upon said water or any part thereof, and that the claims of the Defendants, if any, are without any right whatsoever.

WHEREFORE, Plaintiffs pray judgment that the Defendants, and each of them, be required to set forth the nature of their several claims of, in or to, or lend upon said 435 miners inches of said water of Pony Creek, as aforesaid, or any part thereof, and that said adverse claims may be determined by this Court; that it be adjudged and decreed that the Plaintiffs are the prior owners of the said water rights and water and in possession thereof, and that none of the Defendants have any right, title, or interest whatsoever therein or thereon superior to the Plaintiffs.

That the title to said water and the use thereof be quieted in the Plaintiffs as against the Defendants, and all persons claiming under them, and that the usual decree foreclosing the Plaintiffs' rights as against the Defendants be entered.

Plaintiffs further pray for such other or further or differ

SCANNED
JUN 12 2007

relief as to the Honorable Court may seem meet and equitable in the premises, and for cost of this suit.

Dated this 20th day of May, 1954.

A. A. Merrill and
Ray W. Rigby
Attorneys for Plaintiffs

By Ray W. Rigby
Ray W. Rigby

STATE OF IDAHO,)
) ss.
County of Madison.)

O. J. Neeley, being first duly sworn, deposes and says: That he is one of the Plaintiffs in the above entitled cause, that he has read the above and foregoing Amended Complaint, knows the contents thereof, and the same is true as he verily believes.

Subscribed and sworn to before me this 20th day of May, 1954.

(Seal)

My commission expires:
January 24, 1955.

Notary Public, residing at
Rexburg, Idaho

I hereby acknowledge service of a copy of this Amended Complaint, this 20th day of May, 1954.

Leonard O. Kingsford
Attorney for the Defendants

SCANNED
JUN 12 2007

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

FILED 5/21 1954
at 4:15 P.M.
E. I. McKinlay Clerk
By Marjorie Mann Deputy

ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT.

Come now the defendants above named, and in answer to Plaintiffs' complaint on file herein, admit, deny and allege as follows:

I.

Defendants admit all allegations contained in Paragraphs I, II, III and IV of plaintiffs' complaint on file herein.

II.

Defendants deny each and every allegation in Paragraphs V and VI of plaintiffs' complaint well pleaded, except as hereinafter set forth.

III.

Defendants allege that Pony Creek is an intermittent stream, having a substantial flow of water during the spring and early summer of each year, but that such flow is substantially reduced, or that it ceases, in later parts of the summer and the autumn of each year; that the parties hereto, amongst them, have made full use of all available waters of said Pony Creek for many years, and that a fair and equitable distribution thereof has heretofore been made of such waters; but that plaintiffs' share of said waters will equal the sum of 435 miners inches of said waters only during periods of high water.

IV.

That defendants George Browning and Phebe Browning, his wife, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29, township 6 North, Range 43 East of the Boise Meridian; and the North Half of the Northwest Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

160 acres
200

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JUN 12 2007

V.

That James D. Browning, a predecessor in title of said George Browning and Phebe Browning, his wife, filed upon 3.2 second feet of the waters of Pony Creek, of which sum, proof was made on 1.3 second feet, and license issued to one Anne Kearney, assignee of said James D. Browning, and also a predecessor of said defendants, in title; said License being No. 1505, issued by the State of Idaho to said Anne Kearney; that the balance of the water so filed on by said James D. Browning was put to use over a period of time, although not reduced to license.

VI.

That Morris Slaymaker and Thelma Slaymaker, his wife, the other above named defendants, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Northwest Quarter, the North Half of the Southwest Quarter, and the Northeast Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

320 acres

VII.

That License No. 2264 for 2.5 second feet of the Waters of Pony Creek was issued by the State of Idaho to Dora Weaver, the assignee of John Weaver, for use on 125 acres in the Northeast Quarter of Section 32, aforesaid; that additional water was put to use from time to time thereafter upon additional land by said Dora Weaver and by said John Weaver, who are predecessors in title of the said Morris Slaymaker and Thelma Slaymaker, defendants.

VIII.

That one Charles H. Cazier filed on 8 second feet of the waters of Pony Creek for use on the unsurveyed South Half of the Southwest Quarter of Section 19; the West Half of Section 30; Township 6 North, Range 43 East of the Boise Meridian, now in Madison County, State of Idaho; that such filing was never reduced to license; that some part thereof, was, however, usefully applied to the irrigation of parts of said land; that a portion thereof was deeded to James A. Browning, by Quit Claim Deed dated May 31st, 1912, and recorded May 19th, 1915, in Book 17 of Deeds, at Page 320, under recorder's instrument No. 5044, records of Madison County, State of Idaho; that said James A. Browning was a predecessor in title of the defendants, George Browning and Phebe Browning, his wife; and that the plaintiffs may properly claim under the balance of said filing, insofar as actually used by them and their predecessors in title.

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JUN 12 2007

IX.

That water disputes having heretofore arisen in connection with the said waters of Pony Creek, the predecessors in title of the present owners of the lands watered thereby, did, in June, 1917, form a corporation, to-wit, PONY CREEK CANAL COMPANY, to deliver said water to the various users for irrigation and domestic purposes, and did thereby, in settlement of all former disputes, make a fair and equitable division of said waters of Pony Creek, as set out in the Articles of Incorporation of said Corporation, which are filed in the records of Madison County, State of Idaho, under recorder's instrument No. 15216, a certified copy of which are hereto attached, as Exhibit "A", and which are hereby incorporated and made a part hereof, by reference, as fully as if though herein set forth in full.

X.

That plaintiffs, O. J. NEELEY and MYRTLE NEELEY, his wife, are the successors in interest to Ira J. Davis, and to one-half the holdings of E. D. Clark and Eli Clark, Jr.; that defendants, MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife, are the successors in interest to one-half the holdings of E. D. Clark and Eli Clark, Jr.; and that defendants, GEORGE BROWNING and PHEBE BROWNING, his wife, are successors in interest to J. A. BROWNING and to Annie Kearney; all as mentioned and shown in the aforesaid Articles of Incorporation.

XI.

That the diversionary works used by the parties hereto, when in proper repair, are capable of carrying approximately 960 miners inches of water; that when such full stream of water is being diverted and used, the said plaintiffs would be entitled to the sum of 435 miners inches of water; the defendants, George Browning and Phebe Browning, his wife, would be entitled to the sum of 300 inches of water; and the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, would be entitled to the sum of 225 inches of water; but that when the flow of water is reduced, each party is entitled to his pro rata share, on the same basis as aforesaid, without right in any party, and especially without right in the plaintiffs, to demand any given flow of water in inches; but only to demand a pro rata share of such water as may be available at any given time.

AND FOR CROSS COMPLAINT, Defendants and Cross-complainants complain of the Plaintiffs and Cross-defendants, and for cause of action allege:

SCANNED
2 2007

I.

Defendants and Cross-complainants hereby re-plead Paragraphs I to XI of their Answer, inclusive, and by reference, hereby make same a part of this Cross-Complaint.

Pony Creek C.C.

II.

Defendants allege that for over 36 years, to-wit, since June 25th, 1917, they or their predecessors in title have owned, used, and enjoyed the uninterrupted use of their respective pro rata shares of the waters of Pony Creek, a tributary to Snake River, in Madison County, Idaho, for irrigation and domestic purposes, on the foregoing described premises, said pro rata share being determined on the basis of the contribution of their predecessors to PONY CREEK CANAL COMPANY, as set forth in Exhibit "A", hereunto attached, as above set forth..

WHEREFORE, Defendants pray judgment that the adverse claims of Plaintiff, as set forth in Plaintiff's complaint herein filed, be determined by this Court; that it be adjudged and decreed that Defendants are the prior owners of their respective pro rata shares of the waters of Pony Creek, and that Plaintiffs have no right, title or interest whatsoever therein or thereon superior to the right, title and interest of Defendants in and to their respective shares as above set forth.

That title to said respective shares of water be quieted in the Defendants as against the Plaintiffs, and all persons claiming under them; and that the usual decree foreclosing all adverse claims against these defendants be entered.

Defendants further pray for such other or further or different relief as to this Honorable Court may seem just and equitable, and for costs of this suit; and that Plaintiffs' complaint being fully answered, the plaintiffs may take nothing thereunder.

Dated this 20th day of May, 1954.

Leonard O. Kingsford

LEONARD O. KINGSFORD, Attorney for the Defendants. Residence and Post Office Address: Rexburg, Idaho.

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JUN 1 2007

STATE OF IDAHO)
: ss.
County of Madison)

George Browning and Morris Slaymaker being first duly sworn, depose and say, each for himself, and not one for the other:

That he is one of the parties defendant in the above and foregoing entitled cause; that he has read the foregoing answer and cross complaint, and knows the contents thereof; and the same is true as he verily believes.

Geo. F. & Browning

Morris Slaymaker

Subscribed and sworn to before me this 21st day of May, 1954.

Leonard O. Kingsford

NOTARY PUBLIC for Idaho, residing at Rexburg, Idaho. My commission expires: August 11th, 1957.

I hereby acknowledge service of a copy of this ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT, this 21st day of May, 1954.

Ray W. Rigby

RAY W. RIGBY, Attorney for the Plaintiffs and Cross-Defendants.

SCANNED
JUN 12 2007

O. J. NEELEY and MYR...
his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

STIPULATION

It is hereby stipulated and agreed by and amongst the parties hereto as follows:

That the plaintiffs are the owners of that certain property described in Paragrpah IV of their amended complaint.

That the defendants, George Browning and Phebe Browning, his wife, are the owners of that certain property set forth in Paragraph IV of the Answer to Amended Complaint.

That the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, are the owners of that certain property set forth in Paragraph VI of the Answer to Amended Compalint.

That for over five years last past, the various parties hereto, amongst them, have diverted and used the full flow of the waters of Pony Creek for domestic and agricultural purposes.

That the maximum flow so diverted is approximately 960 miners inches of water, and that such flow decreases during the summer months of the year.

That said parties are entitled to, and the Court may decree to them, an interest therein based on 435 miners inches to plaintiffs out of such maximun flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 300 miners inches to defendants George Browning and Phebe Browning, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 225 miners inches to defendants Morris Slaymaker and Thelma Slaymaker, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

That domestic use of water shall have priority over any other use during seasons when the total supply of water is inadequate to cover all needs of

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JUN 12 2007

the parties hereto.

That each of the parties hereto shall be liable for expenses of maintenance of the irrigation system used in common by such parties, on the basis of the share of water owned by such party.

That each party shall bear his own costs herein incurred.

That a decree may be prepared, based upon the pleadings as filed herein, and in conformity with those points herein agreed upon, and that this suit may be settled, without trial, upon the bases of such decree, said decree to have been approved by counsel for each side prior to its presentation to the Court for final approval.

Dated this 21st day of May, 1954.

O. J. Kelley

Myrtle Neeley

PLAINTIFFS.

Ray W. Rigby

ATTORNEY FOR PLAINTIFFS.

Leo J. Browning

Paul E. Browning

Morris Slaymaker

Thelma Slaymaker

DEFENDANTS

Leonard C. Fingerhut

ATTORNEY FOR DEFENDANTS.

SCANNED
JUN 12 2007

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION FOR

THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST APPROVAL OF APPLICATION FOR TRANSFER CLAIM TO WATER RIGHT #22-4003 IN THE NAME OF O. J. NEELEY RANCH, INC.	STIPULATION AGREEMENT

The applicant, O. J. NEELEY RANCH, INC., having filed with this department an application to change the point of diversion and place of use of the above claim to a water right, and George H. Browning having filed a protest against approval of said application for the purpose of clarifying the ownership of the waters in Pony Creek;

The parties involved, O. J. Neeley Ranch, Inc., and George Browning and Phebe Browning stipulate and agree to the following:

1. The parties acknowledge and hereby refer to a decree dated May 21, 1954, wherein it was decreed that the maximum flow of Pony Creek was approximately 960 miner's inches of water; that O. J. Neeley and Myrtle Neeley were vested with title to 435 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time. And that George Browning and Phebe Browning, husband and wife, were vested with title to 300 miner's inches of water, such interest to be

To Be Decree

SCANNED JUN 12 2007

And that Morris Slaymaker and Thelma Slaymaker were vested with 225 miner's inches of the waters of Pony Creek, such interest to be decreased proportionately to any decrease in the total flow.

2. That the applicant, O. J. NEELEY RANCH, INC., has purchased all title and interest to the waters of Pony Creek which were vested in O. J. Neeley and Myrtle Neeley, husband and wife, and in Morris Slaymaker and Thelma Slaymaker, husband and wife.

3. That George Browning and Phebe Browning continue to have all right, title and interest in and to 300 miner's inches out of the maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

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JUN 12 2007

4. That George Browning and O. J. Neeley Ranch, Inc., have for over five years last past diverted and used the full flow of the waters of Pony Creek for domestic and agricultural purposes.

5. That as between the parties, except as provided in paragraph 6, O. J. Neeley Ranch, Inc., is vested with title to 660 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 11/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time, and that George Browning and Phebe Browning are vested with title to 300 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 5/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

6. That George Browning and Phebe Browning agree to allow O. J. Neeley Ranch, Inc., the use of all the waters of Pony Creek during the spring of each year up until the time that the Brownings begin to irrigate. Then the Brownings begin to irrigate then each

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JUN 12 2007

of the parties shall have the right to use their respective shares as provided in paragraph 5. At that point in time when the waters of Pony Creek no longer reach Canyon Creek, then the Brownings shall have full use o said waters except for what O. J. Neeley Ranch, Inc., needs to water its stock. It is further agreed that O. J. Neeley Ranch, Inc., shall open a roadway to the pointof diversion of said waters for the use by both parties and shall install a dividing gate at the point of diversion in order that the waters may be divided as agreed herein.

7. That George Browning and Phebe Browning withdraw the protest filed against the application of O. J. Neeley Ranch, Inc. for the transfer of water right, No. 22-4003, 22-0610 and waiver further protest on the condition that their water rights are GHB not lost or injured in any way by said transfer.

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JUN 12 2007

8. That the parties agree to be bound according to the above referenced decree regardless of whether any rights under the decree are transferred.

Dated this 18th day of February, 1974.

O. J. NEELEY RANCH, INC.

By Owin J. Neeley
Its President

Geo E Browning
George Browning

Phebe Browning

STATE OF IDAHO,)
SS.
County of Madison)

On this 18th day of February, 1974, before me, the undersigned, Notary Public in and for said State, personally appeared

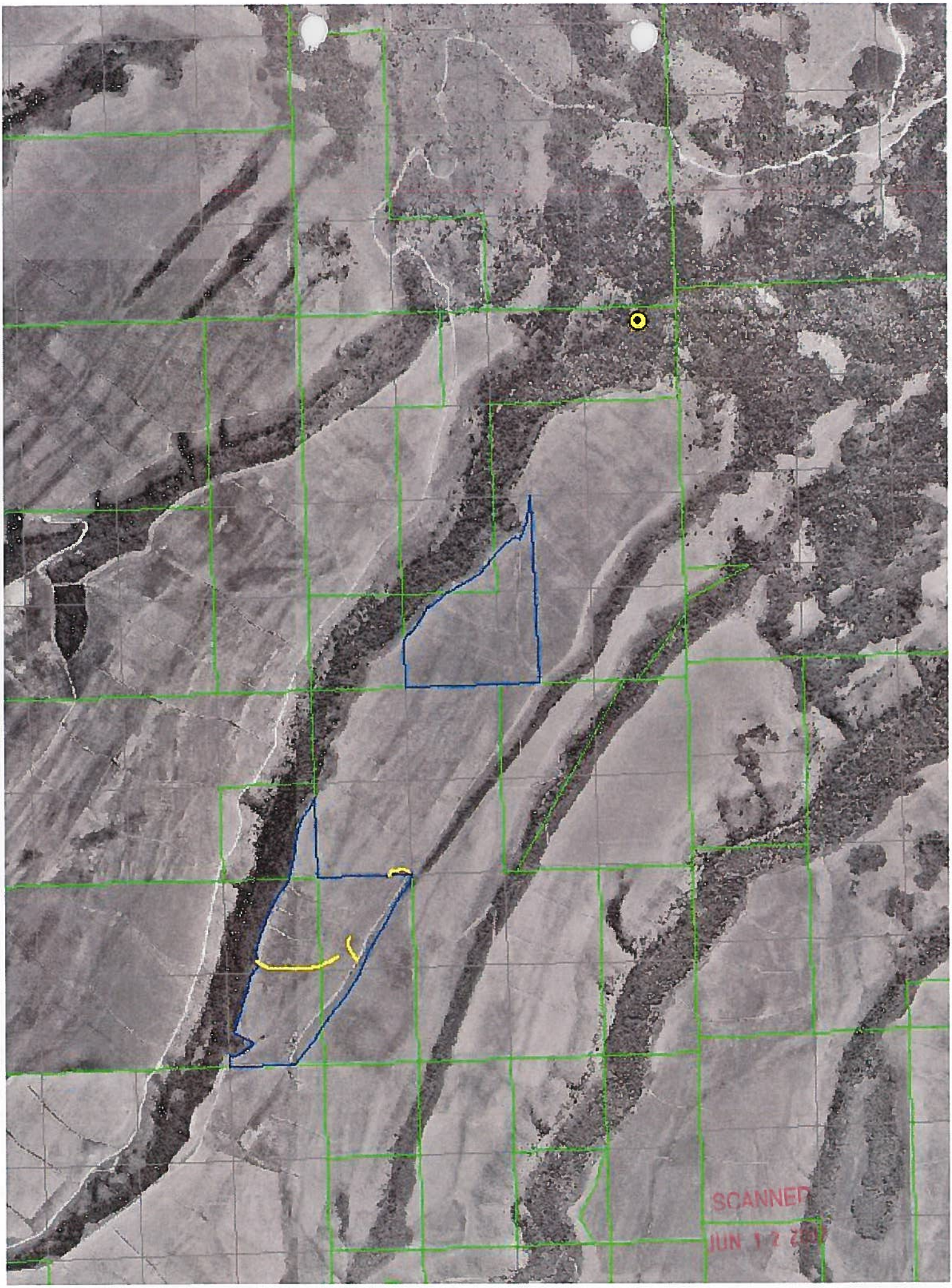
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JUN 12 2007


diversion
dam
Pony
Creek
22
1628A

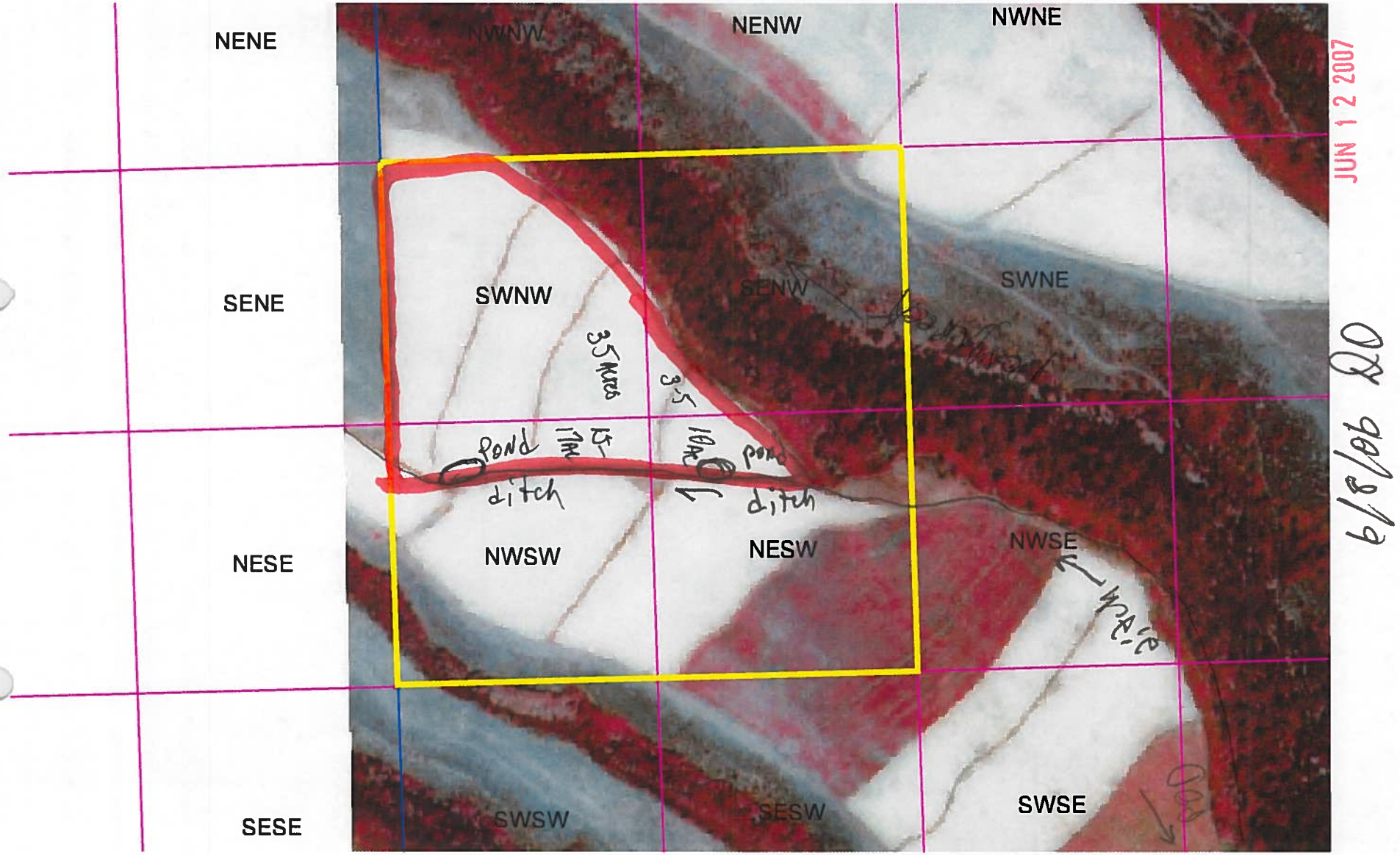
6284
POD
M24P
M24P

Drainage Ditch




SCANNED
JUN 1 7 2021

Township 06N | Range 43E | Section 33



Notes:

N W E S

0.03 0.06 0.09 Miles

Water Right #: 2200628A

Examiner

Date:

Idaho Department of Water Resources

SRBA Recommendation:

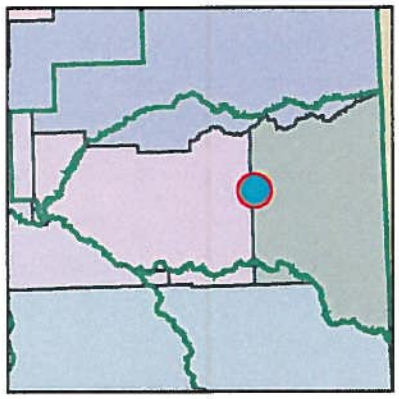
22-628A

(Irrigation)

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JUN 12 2007

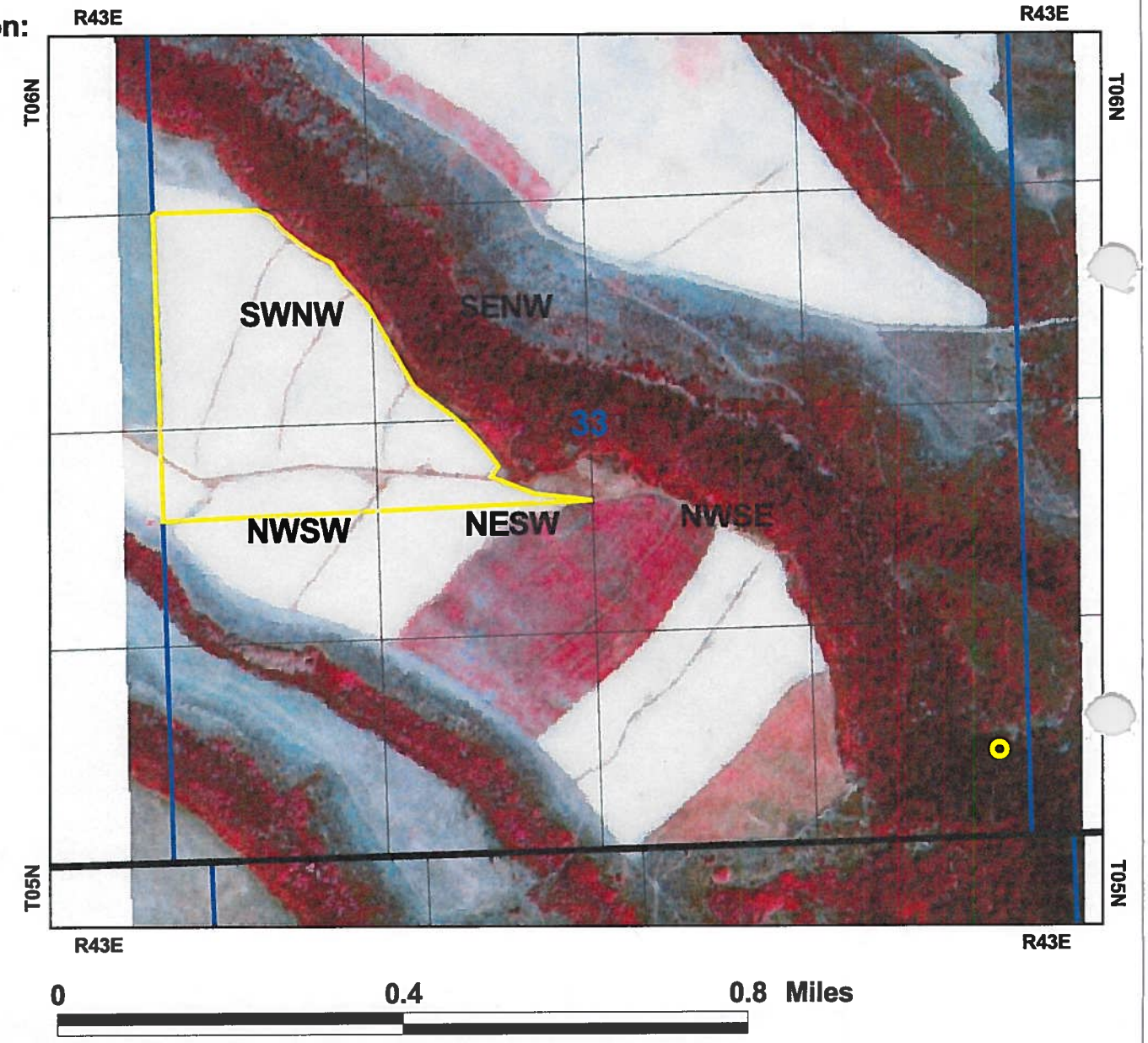
Legend

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



Teton County
IDWR Basin 22

N



Prepared by T. Galbraith
On Monday, September 25, 2006
1987/88 Aerial Photography

Exhibit List
Legal Memorandum as to Pony Creek Water Rights
July 2, 2007

Exhibit Number	Description
AA	DECREE, dated May 21, 1954: O.J. Neeley et. al. v. George Browning et. al.
BB	NOTICE OF CONTRACT OF SALE, dated May 15, 1997, between Sharp Brothers and Neibaurs.
CC	CORPORATION WARRANTY DEED, dated November 8, 1979, from OS and Myrtle Neeley Ranch, Inc. to Wayne, Glenda, Dean and Diane Sharp.
DD	DEED, dated July 13, 1979, from Pony Creek Farms, Inc. to OS and Myrtle Neeley Ranch, Inc.
EE	WARRANTY DEED, dated March 1, 1965, from Oswald and Myrtle Neeley to O.J. Neeley Ranch, Inc.
FF	WARRANTY DEED, dated March 20, 2007 from Grover Browning and Karen Marie Browning Garvin, as Trustees, to Idaho Ranch Subdivision LLC.
GG	ORDER AND DECREE CONFIRMING OWNERSHIP AND APPROVING FINAL DISTRIBUTION, in the Matter of the Grover and Orsena Browning Living Trust, dated February 20, 2007.
HH	GRANT DEED, dated January 27, 2007, from Grover & Orsena Browning Living Trust to Grover Browning Marital Trust and the Orsena Browning Family Trust.
II	GRANT DEED, dated August 23, 2004, from Dean and Elva Crain Living Trust to the Dean Crain Family Trust, and Elva Crain Marital Trust.
JJ	GRANT DEED, dated October 14, 2003, from Dean and Elva Crain to the Dean & Elva Crain Living Trust.
KK	WARRANTY DEED, dated March 11, 2003, from Walter L. Carter to Dean and Elva Crain.
LL	WARRANTY DEED, dated December 31, 1993, from Sharp Brothers to Walter L. Carter.
MM	AMENDED NOTICE OF CLAIM TO A WATER RIGHT, for the Grover Browning Marital Trust and the Grover & Orsena Browning Living Trust, dated February 5, 2007. *Amended Claim No. 2, 1905 Priority, for 126 acres.*

Exhibit Number	Description
NN	WARRANTY DEED, dated November 1, 1974, from O.J. and Myrtle Neeley, to Owen J. and Darla W.Neeley (*two partial, partly illegible copies).*
OO	STIPULATION AGREEMENT in the matter of Protest against Approval of Application for Transfer Claim to Water Right #22-4003 in the name of O.J. Neeley Ranch, Inc., dated April 25, 1974.
PP	AMENDED COMPLAINT in the matter of O.J. and Myrtle Neeley vs. George and Phebe Browning and Morris and Thelma Slaymaker, dated May 20, 1954.
QQ	ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT in the matter of O.J. and Myrtle Neeley vs. George and Phebe Browning and Morris and Thelma Slaymaker, dated May 20, 1954.
RR	ARTICLES OF INCORPORATION OF PONY CREEK CANAL COMPANY, dated June 25, 1919.
SS	STIPULATION, in the matter of O.J. and Myrtle Neeley vs. George and Phebe Browning and Morris and Thelma Slaymaker, dated May 21, 1954.
TT	WATER LICENSE NO. 1505, dated August 14, 1905, issued to James D. Browning.
UU	CLAIM TO A WATER RIGHT, made by Owen "Jud" Neeley, dated April 16, 1973.
VV	NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDING, re: SRBA, case No. 39576, dated June 12, 2007, Sub-case # 22-628A.
WW	NOTICE OF CHANGE OF FIRM AND ADDRESS, FOR GORDON S. THATCHER in Re: SRBA, Case No. 39576, dated June 1, 2007, Sub-case #A22-00628A.
XX	AMENDED NOTICE OF CLAIM TO A WATER RIGHT, for the Grover Browning Marital Trust and the Grover & Orsena Browning Living Trust, dated February 5, 2007. *Amended Claim No. 1, 1917, Priority for 286 acres.*
YY	STANDARD FORM 4, MOTION TO FILE AMENDED NOTICE OF CLAIM, in Re: SRBA Case No. 39576, dated February 26, 2007, *.Amended Claim No. 1, 1917 Priority for 286 acres, Sub-case # A22-00628A.*
ZZ	ORDER GRANTING MOTION TO FILE AMENDED CLAIM AND SETTING SUBCASE DEADLINES, in Re: SRBA, Case No. 39576, dated May 15, 2007, Sub-case # A22-00628A.
AAA	ORDER IDENTIFYING AMENDED CLAIM, in Re: SRBA Case No. 39576, dated May 31, 2007, Sub-case # A22-00628A.

Exhibit Number	Description
BBB	STANDARD FORM 4, MOTION TO FILE AMENDED NOTICE OF CLAIM, in Re: SRBA Case No. 39576, dated February 26, 2007. *Amended Claim No. 2, 1905 Priority, for 126 acres.*
CCC	LETTER FROM ATTORNEY GENERAL, dated May 24, 2007, to Gordon S. Thatcher, in Re: SRBA subcase No. 22-628A Browning
DDD	Water Right Report, Water Right No. 22-629, for Crains, dated June 11, 2007.
EEE	Soil Conservation Service (SCS) aerial photo of cultivated Idaho Ranch Land in SCS Tract #90. Reconciled total of 159 acres.
FFF	Soil Conservation Service (SCS) aerial photo of cultivated Idaho Ranch Land in SCS Tract #89. Reconciled total of 127 acres.
GGG	Plat showing acres owned by Idaho Ranch. Water rights impact only property in Sec. 29, Sec. 32 and Sec. 33, with a reconciled total of 286 acres.
HHH	Notice of Claim to a Water Right, filed August 17, 1988, by Grover Browning., #A22-00628A.

IN THE DIS[illegible]ICT COURT OF THE NINTH JUDICIAL D[illegible]TRICT OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

VS:

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

DECREE

The above entitled cause came on regularly to be heard and tri by the Court on the 21st day of May, 1954, the plaintiffs appeari in person and by their attorney, Ray W. Rigby, of Rexburg, Idaho, and the defendants appearing in person and by their attorney, Leonard O. Kingsford, of Rexburg, Idaho, and it appearing to the Court that the parties hereto have stipulated and agreed as to th respective rights and interests in the water rights which are the subject matter of this litigation; and evidence, oral and documen ary, having been offered and introduced and proof being made to t satisfaction of the Court, the Court finds:

1. That said Stipulation is fair, reasonable, proper and acce able;

2. That the plaintiffs are the owners of that certain propert described in Paragraph IV of their Amended Complaint;

3. That the defendants, George Browning and Phebe Browning, h wife, are the owners of that certain property set forth in Paragr IV of the Answer to Amended Complaint;

4. That the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, are the owners of that certain property set forth in Par graph VI of the Answer to Amended Complaint;

5. That for over five years last past, the various parties her to, amongst them, have diverted and used the full flow of the wate of Pony Creek for domestic and agricultural purposes;

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JUL 19 2007
Department of Water Resources
Eastern Region

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6. That the maximum flow so diverted is approximately 960 miners inches of water, and that such flow decreases during the summer months of the years;

7. That said parties are entitled to an interest therein based on 435 (8.7) miners inches to plaintiffs out of such maximum flow of 960 (19.2) inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 300 (6.0) miners inches to defendants, George Browning and Phebe Browning, his wife, out of such maximum flow of 960 inches, such interest to be decrease proportionately to any decrease in the total flow of water at any given time; and on 225 (4.5) miners inches to defendants, Morris Slaymaker and Thelma Slaymaker, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

8. That domestic use of water should have priority over any other use during seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

9. That each of the parties hereto should be liable for expenses of maintenance of the irrigation system used in common by such parties, on the basis of the share of water owned by such party;

10. That each party should bear his own costs herein incurred;

11. That the parties are entitled to the relief prayed for in their Amended Complaint and Answer and Cross Complaint, all filed herein.

NOW, THEREFORE, BY REASON AND VIRTUE OF THE LAW AND THE PREMISES ON MOTION OF COUNSEL FOR THE PARTIES, IT IS HEREBY ORDERED, ADJUDGE AND DECREED:

1. That the Stipulation on file herein is hereby allowed and approved;

2. That for over five years last past, the various parties here to, amongst them, have diverted and used the full flow of the water of Pony Creek for domestic and agricultural purposes;

3. That the maximum flow so diverted is approximately 960 miner inches of water, and that such flow decreases during the summer months of the year;

4. That the plaintiffs, O. J. Neeley and Myrtle Neeley be and they are hereby vested with title to 435 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

5. That the defendants, George Browning and Phebe Browning be and they are hereby vested with title to 300 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

6. That the defendants, Morris Slaymaker and Thelma Slaymaker be and they are hereby vested with title to 225 miners inches of the waters of Pony Creek, based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time;

7. That domestic use of water shall have priority over anyother use during the seasons when the total supply of water is inadequate to cover all needs of the parties hereto;

8. That each of the parties hereto shall be liable for expenses of maintenance of the irrigation system used in common by such parties on the basis of the share of water owned by such party;

9. That each party shall bear his own costs herein incurred.

Dated this 21st day of May, 1954.

Henry S. Martin

Judge of the Ninth Judicial District
of the State of Idaho

101512

State of [illegible] ss
County [illegible]

Filed at Request of
Ray Rigby
at 50 [illegible] 9 A.M.
On the [illegible] day of
June 1974
and Recorded in Book 66
of Judgments Page 229
Records of [illegible] County
Idaho
at the request of
G. I. McKinley
Recorder,
Carol Linell
Deputy

Fee None

CERTIFICATE
I HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND EXACT
COPY OF DEED OF [illegible]
ON FILE IN MY OFFICE
DATED [illegible] 1974
IN [illegible]
Madison County, Idaho
and Ex-Officio Recorder of the
District Court
BY [illegible]
Deputy

5-11889-N

ALLIANCE TITLE & ESCROW
PO BOX
REXBURG 3440

State of Idaho
County of Madison
I hereby certify
filed MAY 15 1997
at 15.07
recorded 266454
9.00
by BETTY
At the request of

ALLIANCE TITLE & ESCROW

266454

NOTICE OF CONTRACT OF SALE

NOTICE IS HEREBY GIVEN that Sharp Brothers, a general partnership, consisting of Wayne L. Sharp and Dean S. Sharp, as Seller, is selling by written Contract of Sale of this same date to Phil G. Neibaur and Kathleen B. Neibaur, husband and wife, and Randall M. Neibaur and Jeralee P. Neibaur, husband and wife, as Purchasers, the following described real property:

Township 6 North, Range 43 East,
Boise Meridian, Madison County, Idaho:

Section 19: E½SW¼; Lot 3
Section 30: E½; E½SW¼: SE¼NW¼; NE¼NW¼
Section 31: NE¼NE¼

1. The names and addresses of the parties to the Contract of Sale are:

Seller: Sharp Brothers, a general partnership consisting of Wayne L. Sharp and Dean S. Sharp
P.O. Box 96
126 West Third South
Sugar City, Idaho 83448

Purchasers: Phil G. and Kathleen B. Neibaur,
Husband and Wife
2490 South Canyon Creek Road
Newdale, Idaho 83436

Randall M. and Jeralee P. Neibaur,
Husband and Wife
2477 South Canyon Creek Road
Newdale, Idaho 83436

2. The Contract of Sale is payable over a period of twenty (20) years and is payable to Alliance Title & Escrow Corp. of Rexburg, Idaho, as Escrow Holder. Purchasers have possession, but the deed shall not be delivered until the Contract of Sale is fully paid, and Seller retains remedies in the event of default, all of

EXHIBIT
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which are fully set forth in the Contract of Sale and the Escrow Agreement and Instructions.

DATED this 15 day of May, 1997.

SELLER

SHARP BROTHERS,
a General Partnership

By Wayne L. Sharp
Wayne L. Sharp, Partner

By Dean S. Sharp
Dean S. Sharp, Partner

PURCHASERS

Phil G. Neibaur
Phil G. Neibaur

Kathleen B. Neibaur
Kathleen B. Neibaur

Randall M. Neibaur
Randall M. Neibaur

Jeralee Neibaur
Jeralee P. Neibaur

STATE OF IDAHO)
:ss
County of Madison)

On this 15th day of May, in the year 1997, before me Alison Banta, a Notary Public, personally appeared Wayne L. Sharp and Dean S. Sharp, known or identified to me (or proved to me on the oath of _____), to be partners in the partnership of Sharp Brothers and the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that they executed the same in said partnership name.

Alison Banta
Notary Public for Idaho
Residing at: St. Anthony, ID
My Commission Expires: 11-23-99

ALISON BANTA
NOTARY PUBLIC, STATE OF IDAHO
COMMISSION EXPIRES: 11-23-99

266454

STATE OF IDAHO)
:ss
County of Madison)

On this 15th day of May, in the year 1997, before me Alison Banta, a Notary Public in and for said State, personally appeared Phil G. Neibaur and Kathleen B. Neibaur, husband and wife, known or identified to me (or proved to me on the oath of _____), to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Alison Banta
Notary Public for Idaho
Residing at: St. Anthony, Id
My Commission Expires: 11-23-99

ALISON BANTA
NOTARY PUBLIC, STATE OF IDAHO
COMMISSION EXPIRES: 11-23-99

STATE OF IDAHO)
:ss
County of Madison)

On this 15th day of May, in the year 1997, before me Alison Banta, a Notary Public in and for said State, personally appeared Randall M. Neibaur and Jeralee P. Neibaur, known or identified to me (or proved to me on the oath of _____), to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Alison Banta
Notary Public for Idaho
Residing at: St. Anthony, Id
My Commission Expires: 11-23-99

ALISON BANTA
NOTARY PUBLIC, STATE OF IDAHO
COMMISSION EXPIRES: 11-23-99

REXBURG, IDAHO 83440

5-3413

CORPORATION WARRANTY DEED

THIS INDENTURE. Made the day of November 19 79

between

OS and MYRTLE NEELEY RANCH, INC.,

a corporation duly organized and existing under the laws of the State of

and having its principal office in Idaho at in the County of

, Seller, and

WAYNE L. SHARP and GLENDA H. SHARP, husband and wife, and
DEAN S. SHARP and DIANE L. SHARP, husband and wife,

of 450 3rd South
Sugar City , County of Madison , State of

Idaho Buyer,

WITNESSETH, That Seller having been hereunto duly authorized by resolution of its Board of Directors, for and in consideration of the sum of

TEN AND NO/100----------DOLLARS,
and other good and valuable consideration,
lawful money of the United States of America, to it in hand paid by Buyer, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto Buyer, and to their heirs and assigns forever, all the following described real estate situated in , County of Madison , State of Idaho, to-wit:

TOWNSHIP 6 NORTH, RANGE 43 EAST, BOISE MERIDIAN, MADISON COUNTY, IDAHO

Section 30: East Half (E 1/2)
Southeast Quarter of the Northwest Quarter (SE 1/4 NW 1/4)
East Half of the Southwest Quarter (E 1/2 SW 1/4)

Section 31: Northeast Quarter of the Northeast Quarter (NE 1/4 NE 1/4)

Section 32: Northeast Quarter (NE 1/4
South Half of the Northwest Quarter (S 1/2 NW 1/4)
North Half of the Southwest Quarter (N 1/2 SW 1/4)

SUBJECT TO all existing easements and rights of way, covenants, restrictions, reservations, applicable building and zoning ordinances, use regulations and restrictions, and accruing taxes.

TOGETHER With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate right, title and interest in and to the said property, as well in law as in equity, of Seller.

TO HAVE AND TO HOLD, All and singular, the above mentioned and described premises, together with the appurtenances, unto Buyer, and to their heirs and assigns forever.

And the Seller, and its successors, the said premises in the quiet and peaceable possession of the Buyer

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their heirs and assigns against Seller, and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same, shall and will warrant and by these presents forever defend.

IN WITNESS WHEREOF, The Seller has caused its corporate name to be hereto subscribed by its President and its corporate seal to be affixed by its Secretary in pursuance to said resolution the day and year first above written.

(SEAL)

OS AND MYRTLE NEELEY RANCH, INC.

By Oswald J. Neeley
Oswald J. Neeley

Its President

Attest Myrtle M. Neeley
Myrtle M. Neeley

Its Secretary.

Deed

No. 181403

CORPORATION WARRANTY DEED

OS & MYRTLE NEELEY RANCH, INC.

TO

WAYNE L. SHARP & GLENDA H. SHARP, h/w

DEAN S. SHARP & DIANE L. SHARP, h/w

Dated November, 19 79

STATE OF IDAHO
County of Madison } ss.

I hereby certify that this instrument was filed for record at request of Grantee.

Land Title Co.

at 4:40 P minutes past 4

o'clock M., this 9 day

of November, A.D. 19 79

in my office, and duly recorded in Book

of 1 at page

Millie H. Hamm
Ex-Officio Recorder.

By Sandra Hunter Deputy

Fees, $ 4.00

Mail to LAND TITLE CO.

STATE OF IDAHO
County of Madison } ss.

On this 8 day of November 19 79, before me a Notary Public in and for said State, personally appeared OSWALD J. NEELEY and MYRTLE M. NEELEY known to me to be the President and Secretary of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public residing at REXBURG, Idaho

DEED

FOR VALUE RECEIVED, PONY CREEK FARMS, INC.,

a corporation duly organized and existing under the laws of the State of Idaho, grantor, does hereby Grant, Bargain, Sell and Convey unto

OS & MYRTLE NEELEY RANCH, INC., Canyon Creek Station, Teton, Idaho 83451

grantee, the following described real estate, to-wit:

The NE ¼ of Section 7, Township 6 N, R. 43, East Boise Meridian; the SW ¼ of Section 17, Township 6 N, R. 43, East Boise Meridian; the S ½ of Section 18 and the SW¼ of the NW¼, Township 6 N, R. 43, East BOise Meridian; the N½ of Section 19, Township 6 N, R. 43, East Boise Meridian; S½ of the NW¼ of Section 20, Township 6 N, R. 43, East Boise Meridian; E½ and the SE¼ of the NW¼ and the E½ of the SW¼ of Section 30, Township 6 N, R. 43, East Boise Meridian; the NE ¼ of the NE¼ of Section 31, Township 6 N, R. 43, East Boise Meridian; the NE¼ and the S½ of the NW¼ and the N½ of the SW¼, Section 32, Township 6 N, R. 43, East Boise Meridian, located in Madison County, Idaho.

This Warranty Deed is subject to all water rights appertaining to the above described real property.

Also subject to all existing patent reservations, easements, rights-of-way, protective covenants, zoning ordinances, and applicable building codes, laws, and regulations.

TO HAVE AND TO HOLD The said premises, with their appurtenances unto the said Grantee heirs and assigns forever.

IN WITNESS WHEREOF, The Grantor, pursuant to a resolution of its Board of Directors has caused its corporate name to be hereunto subscribed by its President and its corporate seal to be affixed by its Secretary this 13th day of July, 1979

By Owen J. Neeley
PRESIDENT.

ATTEST: Sara A. Neeley
SECRETARY.

STATE OF IDAHO, COUNTY OF

On this 13 day of July, 19 79, before me, a notary public in and for said State, personally appeared Owen J. Neeley and Sara Neeley, known to me to be the President and Secretary of the corporation that executed this instrument or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public
Residing at St. Anthony, Idaho
Comm. Expires 9/20/82

STATE OF IDAHO, COUNTY OF Madison

I hereby certify that this instrument was filed for record at the request of Hooper & Porter

at 50 minutes past 4 o'clock P m., this 26th day of July, 1979, in my office, and duly recorded in Book of Deeds at page 139776.

Neeva H. Barnes
Ex-Officio Recorder

By

Fees $
Mail to: Hooper & Porter

INSTRUMENT No. 179

This Instrument furnished by the AMERICAN LAND TITLE CO.

EXHIBIT
DD

WARRANTY DEED

THIS INDENTURE, made this 1st *day of* March *19* 65, *between* OSWALD J. NEELEY also known as O. J. Neeley and MYRTLE NEELEY, his wife, *of* Newdale, *County of* Madison, *State of* Idaho, *the parties of the first part and* O. J. NEELEY RANCH, INC., a corporation of, *County of* Madison, *State of* Idaho, *the party of the second part,*

WITNESSETH, that the said party of the first part, for and in consideration of the sum of ---Ten--- *Dollars lawful money of the United States of America* and other valuable consideration, *to* them *in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, ha ve granted, bargained, sold, and by these presents do grant bargain, sell and convey and confirm unto the said party of the second part, and to* its/successors *heirs and assigns, forever, all the following described real estate, situated in, County of* Madison, *State of Idaho, to-wit:*

TRACT 1: NE¼ of Sec. 36, Twp. 7 N., R. 42, E., Boise Mer.
TRACT 2: Lots 1, 2, 3, and 4, E½W½ of Sec. 30; Lots 1, 2, 3, and 4, E½W½ of Sec. 31, all in Twp. 7 N., R. 43 E., Boise Mer.
TRACT 3: NE¼ of Sec. 7; SW¼ of Sec. 17; SE¼ of Sec. 18; Lots 1 and 2, E½NW¼, NE¼ of Sec. 19; E½, SE¼NW¼, E½SW¼ of Sec. 30; NE¼NE¼ of Sec. 31, all in Twp. 6 N., R. 43 E., Boise Mer.

Subject to that certain mortgage upon the premises given by parties of the first part as mortgagors to the Federal Land Bank of Spokane as mortgagee on December 17, 1964, in the principal amount of $126,000.00 recorded on December 31, 1964, as Film No. 125775 of the records of Madison County, Idaho. Party of the second part assumes and agrees to pay said mortgage when it is due holding parties of the first part hamless thereunder.



TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof; and all estate, right, title and interest in and to the said property, as well in law as in equity of the said part ies of the first part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part, and to its/successors *heirs and assigns forever. And the said part ies of the first part, and* their *heirs, the said premises in the quiet and peaceable possession of the said party of the second part,* its/successors *heirs and assigns, against the said parties of the first part, and* their *heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever defend.*

IN WITNESS WHEREOF, the said part ies of the first part have hereunto set their *hands and seals the day and year first above written.*

Executed and Delivered in the Presence of

Oswald J. Neeley [SEAL]
Myrtle Neeley

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STATE OF IDAHO,
County of Madison } ss.

On this 1st day of March in the year 1965, before me the undersigned a Notary Public in and for said State, personally appeared OSWALD J. NEELEY and MYRTLE M. NEELEY,

known to me to be the person s whose name s are subscribed to the within instrument, and acknowledged to me that the y executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for the State of Idaho,
Residing at Rexburg, Idaho.

My Commission Expires: 6-28-66

[redacted]

No.

WARRANTY DEED

Oswald J. Neeley et ux

TO

Thurley L. Steele

Dated March 1, 1966

STATE OF IDAHO, } ss.
County of Madison

I hereby certify that this instrument was filed for record at request of Grantee at 2:35 minutes past 4 o'clock P M., this 20 day of June, 1966, in my office, and duly entered in Book 141 of Deeds at page 235.

Fees, $1.50

Ex-Officio Recorder.

By Deputy.

Mail to Grantee

Art Porter Printing - Rexburg

Instrument # 335849
REXBURG, MADISON, IDAHO
2007-03-27 02:00:00 No. of Pages: 3
Recorded for : ALLIANCE TITLE AND ESCROW
MARILYN R. RASMUSSEN Fee: 9.00
Ex-Officio Recorder Deputy

30406162540

186177 MAR27'07 PM 4:28

WARRANTY DEED

FOR VALUE RECEIVED, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST,** (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantors"), do hereby grant, bargain, sell, warrant and convey unto, **IDAHO RANCH SUBDIVISION LLC,** an Idaho Limited Liability Company, c/o Harley Wilcox, 285 Cedron Unit 2, P. O. Box 362, Victor, Idaho 83455, ("Grantee"), the following described real property in Madison County and Teton County, Idaho, to-wit:

Instrument # 186177
TETON COUNTY, IDAHO
2007-03-27 04:28:00 No. of Pages: 3
Recorded for : ALLIANCE TITLE & ESCROW
MARY LOU HANSEN Fee: 9.00
Ex-Officio Recorder Deputy
Index to: DEED OF TRUST

TRACT ONE: *(Madison County)*

W½ of Sec. 29 and N½NW¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., Madison County, Idaho.

TRACT TWO: *(Madison County and Teton County)*

Part of SE¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., in Madison County, Idaho, and part of W½SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, described as follows:

Commencing at a point (which is at a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33 (which is the Southeast Corner of Sec. 32) and running thence Northwesterly in a straight line (generally along the fence line in Dry Gulch Canyon), to a point 165 feet South of the Northwest Corner of the SE¼ of Sec. 32; thence North 165 feet; thence East 2640 feet to the Northeast corner of the SE¼ of Sec. 32 (which is the Northwest Corner of the SW¼ of Sec. 33); thence East 1320 feet; thence South 2640 feet; thence West 462 feet to the point of beginning.

TRACT THREE: *(Teton County)*

SW¼NW¼, E½SW¼, W½SE¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho.

TRACT FOUR: *(Teton County)*

Part of Lot 4, Sec. 4, Twp. 5 N., Rge. 43 E., Boise Mer., Teton County, Idaho, described as follows:

Commencing at a point (which is a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho (Twp. 5 N., R. 43 E., Boise Mer. is offset to the East from Twp. 6 N., R. 43 E., Boise Mer.), and running

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thence East 462 feet to the point which is the Southeast corner of SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer.; thence South 825 feet, more or less, to a fence at the bottom of Dry Gulch Canyon; thence Northwesterly in a straight line (which is along the fence line) to the point of beginning.

TOGETHER WITH all water and water rights, ditch and ditch rights, and improvements and appurtenances thereto.

GRANTORS have scheduled for hearing on May 9, 2007, in the Snake River Basin Adjudication of water rights, in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, In Re: SRBA Case No. 39576, Subcase No. 22-00628A, [1] a Motion to File Amended Notice of Claim as to irrigation water rights with a claimed priority date of August 14, 1905, to irrigate 126 acres in Madison County, Idaho for 2.52 cfs and 130 acre feet of water from Pony Creek; and [2] a Motion to file Amended Notice of Claim as to irrigation water rights with a claimed priority date of June 25, 1917, to irrigate 286 acres in Madison County and Teton County, Idaho for 6.0 cfs and 300 acre feet of water from Pony Creek. GRANTORS shall diligently pursue each Amended Notice of Claim but do not warrant that the claims will be fully allowed nor allowed in any specific amounts.

SUBJECT TO all valid easements of record or in existence for roads, utilities, and ditches; applicable zoning and building laws, ordinances, rules and regulations; reservations in United States Patents of record; reservations of record as to oil and gas and other hydrocarbons and minerals; and boundary discrepancies, depending on whether or not the apparent boundary fence along Dry Gulch Canyon is or is not a legally binding boundary fence.

GRANTORS COVENANT AND WARRANT that fee simple title to the above described property is conveyed to Grantee by this Deed free from all encumbrances except those set forth above and except the year 2007 property taxes and assessments.

DATED This 20th day of March, 2007.

Grover Browning

Grover Browning, Co-Trustee of the
Grover Browning Marital Trust

Karen Marie Browning Garvin

Karen Marie Browning Garvin, Co-Trustee
of the Grover Browning Marital Trust

Grover Browning, Co-Trustee of the
Orsena C. Browning Family Trust

Karen Marie Browning Garvin, Co-Trustee
of the Orsena C. Browning Family Trust

Acknowledgment by Co-Trustees

STATE OF IDAHO,)
ss.
County of Madison.)

On this 20th day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, known to me to be the persons whose names are subscribed to the within instrument as the Co-Trustee of the **GROVER BROWNING MARITAL TRUST**, and acknowledged to me that they executed the same as such Co-Trustees.

JANA WILLIAMS NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at
My Commission expires:

Notary Public for the State of Idaho
Residing in Fremont County
Commission Expires 06-21-2011

Acknowledgment by Co-Trustees

STATE OF IDAHO,)
ss.
County of Madison.)

On this 20th day of March, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**, known to me to be the persons whose names are subscribed to the within instrument as the Co-Trustee of the **ORSENA C. BROWNING FAMILY TRUST**, and acknowledged to me that they executed the same as such Co-Trustees.

JANA WILLIAMS NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at
My Commission expires:

Notary Public for the State of Idaho
Residing in Fremont County
Commission Expires 06-21-2011

Gordon S. Thatcher
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, *Chartered*
25 North Second East
P.O. Box 250
Rexburg, Idaho 83440
Phone: 208 356-3633
FAX: 208 356-0768
Idaho State Bar No. 880

Attorneys for Co-Trustees

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE, SAME HAVING BEEN FILED _____
ATTEST_____ 20___
ABBIE MACE CLERK OF THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT IN AND FOR FREMONT COUNTY, IDAHO.
BY_____ DEPUTY

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF FREMONT

IN THE MATTER OF A TRUST:	)	Case No. CV-01-169
	)	
GROVER & ORSENA BROWNING LIVING TRUST	)	ORDER AND DECREE CONFIRMING OWNERSHIP AND APPROVING FINAL DISTRIBUTION
	)	
	)	
	)	

This matter came on to be heard this day on the verified Petition by Co-Trustees for Declaration of Ownership and Final Distribution under Idaho Code § 15-7-103 and § 15-7-201, by **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001.

It appears and the Court finds and concludes:

1. Attached to the Petition as Exhibit "A" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #142670, records of Teton County, Idaho. There were two inadvertent errors in the Grant Deed: [a] a call was left out of the exception so the description did not close and the distance South should have been less than 858 feet, which was the distance East on the missing last call; and [b] it was wrongly assumed in the last description that the beginning point was 858 feet East of the

SEVENTH JUDICIAL DISTRICT COURT FREMONT COUNTY, IDAHO

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AN
OFFICE, SAME HAVING BE
ATTEST
ABBIE MACE CLERK OF T
THE SEVENTH JUDICIAL D
FREMONT COUNTY, IDAHO

EXHIBIT
GG

Northwest Corner of Lot 4, but it should have measured from the Southwest corner of Sec. 33, which was offset to the East and thus should be a lesser distance when measured from Lot 4.

2. Attached to the Petition as Exhibit "B" was Grant Deed, dated May 18, 2001, from Grover Browning and Orsena C. Browning to the Trust, recorded on May 21, 2001, as Instrument #289297, records of Madison County, Idaho. The legal description in Tract One was in error in the call of "South 1782 feet" because the distance is greater; this springs from the erroneous 858 feet measurement in Exhibit "A", ¶ 1, above, which was too long, with 858 feet being deducted from 2640 feet to yield the erroneous 1782 feet.

3. Attached to the Petition as Exhibit "C" was Grant Deed, dated May 24, 2002, from the four children of Grover Browning and Orsena C. Browning to the Trust, recorded on June 12, 2002, records of Teton County, Idaho as Instrument No. 148565. This had the same errors for the same reasons as Exhibit "A", ¶ 1, above.

4. Attached to the Petition as Exhibit "D" was Grant Deed dated May 24, 2002, from the four children of Grover Browning and Orsena C. Browning to the Trust, recorded on June 7, 2002, as Instrument #296274, records of Madison County, Idaho. This had the same error for the same reason as Exhibit "B", ¶ 2, above.

5. One other parcel of real estate, the residence of Grover Browning and Orsena C. Browning is in Fremont County, and was conveyed to the Trust by Grant Deed, dated May 18, 2001, and recorded on May 21, 2001, as Instrument #468679, records of Fremont County, Idaho, a copy of which was attached to the Petition as Exhibit "E". The property description was correct.

6. Orsena C. Browning died on March 16, 2003, at Madison Memorial Hospital, Rexburg, Idaho. Under the Trust that brought into being the **GROVER BROWNING MARITAL TRUST** and the **ORSENA C. BROWNING FAMILY TRUST**. Under the terms of the Trust the assets of the Trust are to be equally divided between those two new Trusts, which are governed by the Articles of Trust of the Grover & Orsena Browning Living Trust, dated March 26, 2001.

7. Because of the death of Orsena C. Browning on March 16, 2003, and based upon the Articles of Trust, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN**,

became Co-Trustees of the Trust and of the two new Trusts identified in ¶ 6 above, and ever since have been and are now serving as Co-Trustees of the three Trusts.

8. A Registration of Trust for the **GROVER BROWNING MARITAL TRUST** was filed in this Court on the 5th day of February, 2007, as Case No. CV-07-79. A Registration of Trust for the **ORSENA C. BROWNING FAMILY TRUST** was filed in this Court on the 5th day of February, 2007, as Case No. CV-07-78.

9. All of the real property of the Trust shall be conveyed by the Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, in equal, undivided shares to the Trustees of the **GROVER BROWNING MARITAL TRUST** and to the Trustees of the **ORSENA C. BROWNING FAMILY TRUST**. The property should be conveyed by one Grant Deed (a copy of which was attached to the Petition as Exhibit "F") to be recorded in Fremont County, Madison County, and Teton County. The Grant Deed shall recite that it corrects the legal descriptions in the four Grant Deeds, Exhibits "A" (¶ 1), "B" (¶ 2), "C" (¶ 3), and "D" (¶ 4).

10. The new Grant Deed will properly correct the inadvertent errors in descriptions and will be in harmony with and not in conflict with adjoining owners. The Petitioners believe that the apparent boundary fence along Dry Gulch Canyon is a legally established boundary fence; but if it is not, the "straight line calls" with the included distances in the corrected descriptions should provide certainty. Attached to the Petition as Exhibit "G" was a sketch of Tract One (highlighted in blue), Tract Two (highlighted in green), Tract Three (highlighted in yellow) and Tract Four (highlighted in pink).

11. The only interested parties in this matter are Petitioners and the other three children of Grover Browning and Orsena C. Browning, whose names and addresses are as follows:

Kirk Lynn Browning 6603 Brickhouse Avenue Las Vegas, NV 89122	**Lillian Elaine B. Pitman** 524 River Road Bliss, ID 83314	**Bart Grover Browning** 24842 Big River Road Eagle River, Alaska 99577

Consents in writing by all of the beneficiaries of the Trust to the granting of the Order requested in this Petition are on file herein.

Based thereon, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. The Court hereby authorizes and directs Petitioners as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, to convey all real estate of the Trust in equal, undivided shares to Petitioners as the Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, coming into being on March 16, 2003, and to Petitioners as the Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, coming into being on March 16, 2003, according to form of Grant Deed attached to the Petition as Exhibit "F", which the Court adjudges and declares is the correct property descriptions of the real property; and hereby authorizes Petitioners as Co-Trustees to confirm and ratify that all other assets have been and shall be divided and distributed equally between the two new Trusts.

2. The Court hereby accepts the distribution as constituting the final distribution of the assets of the Trust.

Ordered this 20th day of February , 2007.

Keith M. Walker, Magistrate

NOTICE OF ENTRY OF ORDER

Grover Browning
7 N. 2700 E.
Teton, ID 83451

Lillian Elaine B. Pitman
524 River Road
Bliss, ID 83314

Kirk Lynn Browning
6603 Brickhouse Avenue
Las Vegas, NV 89122

Bart Grover Browning
24842 Big River Road
Eagle River, Alaska 99577

Karen Marie B. Garvin
Route 2, Box 24A8 A
Pocatello, ID 83201

Gordon S. Thatcher
of RIGBY, THATCHER, ANDRUS,
RIGBY & MOELLER, *Chartered*
Attorneys at Law
P.O. Box 250
25 North Second East
Rexburg, Idaho 83440
Attorneys for Co-Trustees

PLEASE TAKE NOTICE, That on this day an Order was entered in the above referenced matter.

I CERTIFY That on this date a true copy of the Order was mailed to the above named persons at the addresses listed.

DATED this 20 day of February, 2007.

Clerk of the Court

Deputy

RECEIVED

MAR - 7 2007

TETON CO., ID
CLERK RECORDER

185658

Instrument # 185658
DRIGGS, TETON, IDAHO
2007-03-07 01:11:59 No. of Pages: 3
Recorded for : RIGBY, THATCHER
MARY LOU HANSEN Fee: 9.00
Ex-Officio Recorder Deputy
Index to: DEED, GRANT

GRANT DEED

FOR VALUE RECEIVED, **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantors"), do hereby grant, bargain, confirm and convey unto **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and as Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), c/o Grover Browning, 7 N. 2700 E. Teton, Idaho 83451, ("Grantees"), each of the two Grantees to receive an undivided one-half (½) interest in and to the following described real property in Madison County, Teton County and Fremont County, Idaho, to-wit:

TRACT ONE: *(Madison County)*

W½ of Sec. 29 and N½NW¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., Madison County, Idaho.

TRACT TWO: *(Madison County and Teton County)*

Part of SE¼ of Sec. 32, Twp. 6 N., Rge. 43 E., Boise Mer., in Madison County, Idaho, and part of W½SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., in Teton County, Idaho, described as follows:

Microfilm No. 508504
Day 7 Mar 2007
11:02 O'Clock A M
RENE MACE
FREMONT CO RECORDER
Deputy
Fee of Request of

Commencing at a point (which is at a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33 (which is the Southeast Corner of Sec. 32) and running thence Northwesterly in a straight line (generally along the fence line in Dry Gulch Canyon), to a point 165 feet South of the Northwest Corner of the SE¼ of Sec. 32; thence North 165 feet; thence East 2640 feet to the Northeast corner of the SE¼ of Sec. 32 (which is the Northwest Corner of the SW¼ of Sec. 33); thence East 1320 feet; thence South 2640 feet; thence West 462 feet to the point of beginning.

TRACT THREE: *(Teton County)*

SW¼NW¼, E½SW¼, W½SE¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho.

TRACT FOUR: *(Teton County)*

Part of Lot 4, Sec. 4, Twp. 5 N., Rge. 43 E., Boise Mer., Teton County, Idaho, described as follows:

Instrument # 335061
REXBURG, MADISON, IDAHO
2007-02-26 10:45:00 No. of Pages: 3
Recorded for : RIGBY THATCHER
MARILYN R. RASMUSSEN Fee: 9.
Ex-Officio Recorder Deputy

EXHIBIT
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HH

Commencing at a point (which is a fence at the bottom of Dry Gulch Canyon) 858 feet East of the Southwest corner of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer., Teton County, Idaho (Twp. 5 N., R. 43 E., Boise Mer. is offset to the East from Twp. 6 N., R. 43 E., Boise Mer.), and running thence East 462 feet to the point which is the Southeast corner of SW¼ of Sec. 33, Twp. 6 N., Rge. 43 E., Boise Mer.; thence South 825 feet, more or less, to a fence at the bottom of Dry Gulch Canyon; thence Northwesterly in a straight line (which is along the fence line) to the point of beginning.

TRACT FIVE: *(Fremont County)*

Commencing at a point 206.25 feet North of the Southeast Corner of the SE¼ of Sec. 33, Twp. 7 N., Rge. 41 E., Boise Mer., Fremont County, Idaho, and running thence North 206.25 feet; thence West 211.5 feet; thence South 206.25 feet; thence East 211.5 feet, to the point of beginning.

TOGETHER WITH all water and water rights, ditch and ditch rights, and improvements and appurtenances thereto.

SUBJECT TO all valid easements of record or in existence for roads, utilities, and ditches; applicable zoning and building laws, ordinances, rules and regulations; reservations in United States Patents of record; reservations of record as to oil and gas and other hydrocarbons and minerals; and boundary discrepancies, depending on whether or not the apparent boundary fence along Dry Gulch Canyon is or is not a legally binding boundary fence.

THIS GRANT DEED Corrects the legal descriptions in the following identified Grant Deeds: [a] recorded on May 21, 2001 as Instrument #142670 records of Teton County, Idaho; [b] recorded on May 21, 2001 as Instrument #289297 records of Madison County, Idaho; [c] recorded on June 12, 2002 as Instrument #148565 records of Teton County, Idaho; and [d] recorded on June 7, 2002 as Instrument #296274 records of Madison County, Idaho.

DATED This 27th day of January, 2007.

Grover Browning
Grover Browning

Karen Marie Browning Garvin
Karen Marie Browning Garvin

508504

Acknowledgment by Co-Trustee

STATE OF IDAHO,)
ss.
County of Madison.)

On this 5th day of ~~January~~ February, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **GROVER BROWNING**, known to me to be the person whose name is subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that he executed the same as such Co-Trustee.

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission expires: 7/27/2007

Acknowledgment by Co-Trustee

STATE OF IDAHO,)
ss.
County of Bannock.)

On this 27th day of January, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared **KAREN MARIE BROWNING GARVIN**, known to me to be persons whose names are subscribed to the within instrument as a Co-Trustee of the **GROVER & ORSENA BROWNING LIVING TRUST**, and acknowledged to me that she executed the same as such Co-Trustee.

MELISSA SUMMERS NOTARY PUBLIC STATE OF IDAHO

Melissa Summers
Notary Public for Idaho
Residing at Pocatello, Idaho
My Commission expires: 2-7-2011

185659

GRANT DEED

FOR VALUE RECEIVED, **ELVA S. CRAIN,** Sole-Trustee, under the **DEAN & ELVA CRAIN LIVING TRUST,** dated October 14, 2003, of 2627 E. 100 N., Teton, Idaho, 83451, ("Grantor"), does hereby grant, bargain, confirm, and convey unto, **ELVA CRAIN** and **DENA C. JEPPESEN,** as Co-Trustees under the **DEAN CRAIN FAMILY TRUST**, effective June 25, 2003, and **ELVA CRAIN,** as Sole Trustee under the **ELVA CRAIN MARITAL TRUST,** effective June 25, 2004, ("Grantees"), with each trust coming into existence on the death of Dean Crain on June 25, 2004, as a sub-trust under the DEAN & ELVA CRAIN LIVING TRUST, dated October 14, 2003, each an undivided one-half (1/2) interest in and to the following described real property located in Madison County, State of Idaho, to wit:

Tract One

Commencing at the Northwest corner of Sec. 35, Twp. 7 N., Rge. 40 E., Boise Mer., and running thence South 2 rods, thence East 180 rods, thence South 78 rods, thence East 140 rods, thence North 80 rods, thence West 320 rods to the place of beginning

Containing 72 acres.

Tract Two

Twp. 6 N., Rge. 43 E., Boise Mer.:

Section 31: S½NE¼
Section 32: S½NW¼; N½SW¼; NE¼

Tract Three

Twp. 6 N., Rge. 41 E., Boise Mer.:

Section 4: SW¼

Together with and including all improvements thereon all water and water rights, and all appurtenances and hereditaments thereunto belonging.

Instrument # 314224
REXBURG, MADISON, IDAHO
2004-08-24 09:57:00 No. of Pages: 2
Recorded for : GORDON THATCHER
MARILYN R. RASMUSSEN Fee: 6.00
Ex-Officio Recorder Deputy

EXHIBIT
II

DATED This 23rd day of August, 2004.

Elva Crain

ELVA CRAIN, sole Trustee under the
DEAN & ELVA CRAIN LIVING TRUST
Dated October 14, 2003

Acknowledgment by Trustee

STATE OF IDAHO,)
ss.
County of Madison.)

On this 23rd day of August, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared **ELVA CRAIN**, known to me to be person whose name is subscribed to the within instrument as the Sole Trustee of the **DEAN & ELVA CRAIN LIVING TRUST**, and acknowledged to me that she executed the same as such Trustee.

STATE OF IDAHO ANNE WIEBER NOTARY PUBLIC

Anne Wieber

Notary Public for Idaho
Residing at Rexburg
My Commission expires: 7/27/2007

Ins ent # 307639
REXBURG, MADISON, IDAHO
2003-10-20 11:08:00 No. of Pages: 2
Recorded for : GORDON THATCHER
MARILYN R. RASMUSSEN Fee: 6.00
Ex-Officio Recorder Deputy

GRANT DEED

FOR VALUE RECEIVED, **DEAN CRAIN** and **ELVA CRAIN**, husband and wife, of 2627 E. 100 N., Teton, Idaho, 83451, ("Grantors"), do hereby grant, bargain, confirm, and convey unto **MARION DEAN CRAIN** and **ELVA S. CRAIN,** Trustees, or their successors in trust, under the **DEAN & ELVA CRAIN LIVING TRUST,** dated October 14, 2003, of 2627 E. 100 N., Teton, Idaho, 83451, ("Grantee"), the following described real property located in Madison County, State of Idaho, to wit:

Tract One

Commencing at the Northwest corner of Sec. 35, Twp. 7 N., Rge. 40 E., Boise Mer., and running thence South 2 rods, thence East 180 rods, thence South 78 rods, thence East 140 rods, thence North 80 rods, thence West 320 rods to the place of beginning

Containing 72 acres.

Tract Two

Twp. 6 N., Rge. 43 E., Boise Mer.:

Section 31: S½NE¼
Section 32: S½NW¼; N½SW¼; NE¼

Tract Three

Twp. 6 N., Rge. 41 E., Boise Mer.:

Section 4: SW¼

Together with and including all improvements thereon all water and water rights, and all appurtenances and hereditaments thereunto belonging.

DATED This 14th day of October, 2003.

Dean Crain
DEAN CRAIN

Elva Crain
ELVA CRAIN

EXHIBIT
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JJ

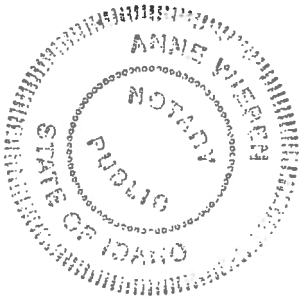
Acknowledgment

STATE OF IDAHO,)

ss.

County of Madison.)

On this 14th day of October, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared **DEAN CRAIN** and **ELVA CRAIN**, husband and wife, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same.



Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission expires: 7/27/2007

WARRANTY DEED

Order No.:3040312649-G

FOR VALUE RECEIVED

Walter L. Carter

the grantor(s), do(es) hereby grant, bargain, sell and convey unto

Dean Crain and Elva Crain, Husband and Wife

whose current address is : 2627 E 100 N Teton, ID 83451

the grantee(s), the following described premises, in Madison County, Idaho, TO WIT:

Tract I: Township 6 North, Range 43 East of the Boise Meridian, Madison County, Idaho.
Section 31: S ½ NE ¼
Section 32: S ½ NW ¼; N ½ SW ¼; NE ¼

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee(s), that (s)he is/are the owner(s) in fee simple of said premises; that they are free from all encumbrances Except: Current Year Taxes, conditions, covenants, restrictions, reservations, easements, rights and rights of way, apparent or of record.

And that (s)he will warrant and defend the same from all lawful claims whatsoever.

Dated: 3/11/2003

Walter L. Carter

State of Idaho }
}ss.
County of Madison }

On this 13th day of March, 2003 before me, a Notary Public in and for said state, personally appeared Walter L. Carter

known or identified to me to be the person(s) whose name(s) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.
IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

Maria Hirschi

Notary Public for the State of Idaho
Residing at: Rexburg
Commission Expires: 3/4/10

MARIA HIRSCHI NOTARY PUBLIC STATE OF IDAHO

Instrument # 302210
REXBURG, MADISON, IDAHO
2003-03-14 09:00:00 No. of Pages: 1
Recorded for : ALLIANCE TITLE AND ESCROW
MARILYN R. RASMUSSEN Fee: 3.00
Ex-Officio Recorder Deputy

EXHIBIT
KK

249883

WARRANTY DEED

Warranty Deed made December 31, 1993, between SHARP BROTHERS, a partnership consisting of Dean S. Sharp of 135 East 200 North, Rexburg, Idaho 83440 and Wayne L. Sharp of 126 West Third South, Sugar City, Idaho 83448, and Ada S. Sharp, an unmarried woman of 45 East 100 North, Rexburg, Idaho 83440 ("Grantors"), and Walter L. Carter, an unmarried man, of P.O. Box 120, Biggs, California 95917 ("Grantee"):

Grantors, for and in consideration of the sum of THREE HUNDRED FIFTEEN THOUSAND DOLLARS ($315,000.00), the receipt of which is hereby acknowledged, have granted, bargained, and sold, and, by this deed, grant, bargain, sell, convey, and confirm to Grantee and Grantee's heirs and assigns forever, all of the following described real property:

Tract 1

Township 6 North, Range 43 East Boise Meridian, Madison County, Idaho:

Section 20: E1/2SE1/4
Section 29: NE1/4; N1/2SE1/4; SE1/4SE1/4
Section 31: S1/2NE1/4
Section 32: S1/2NW1/4; N1/2SW1/4; NE1/4

Subject to: Easements of public record; the effect of and conditions contained in deed recorded in Madison County Records October 28, 1947, in Book 162 of Deeds at page 11, wherein one-half of the oil, gas and other hydrocarbons and minerals are reserved to The Union Central Life Insurance Company, and its successors or assigns and subject further to conditions therein, as to the S1/2NE1/4 of Section 31; the effect of and conditions contained in deed recorded May 16, 1935 in Madison County Records, in Book 127 of Deeds, at page 455, wherein one-half of all oil, gas and other minerals are reserved to The Union Central Life Insurance Company, and subject furtner to conditions therein, as to Section 32; and the right, title and interest of the public in and to that portion of the above property falling within the bounds of roads and highways, dedicated and/or otherwise used by the public, and subject to all easements and restrictions attendant pertinent to said highways.

EXHIBIT
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Tract 2

Township 6 North, Range 43 East Boise Meridian, Teton County, Idaho:

Section 21: N1/2S1/2; SW1/4NE1/4

Subject to: Easements of public record and the right, title and interest of the public in and to that portion of the above property falling within the bounds of roads and highways, dedicated and/or otherwise used by the public, and subject to all easements and restrictions attendant pertinent to said highways.

Together with all and singular the tenements, hereditaments, and appurtenances belonging to the described property or in any manner appertaining to such property; the reversion and reversions, remainder and remainders, rents, issues, and profits of such property; and all estate, right, title, and interest in and to such property, as well in law as in equity.

To have and to hold, all and singular the described property together with the appurtenances to Grantee and Grantee's heirs and assigns forever.

And Grantors and Grantors' heirs shall and will warrant and, by these presents, forever defend the described property in the quiet and peaceable possession of Grantee and Grantee's heirs and assigns against Grantors and Grantors' heirs and against all and every person and persons whomsoever, lawfully claiming the same.

IN WITNESS WHEREOF, Grantors have executed this Warranty Deed.

SHARP BROTHERS, a Partnership

By Dean S. Sharp
Dean S. Sharp, Partner

By Wayne L. Sharp
Wayne L. Sharp, Partner

Ada S Sharp
Ada S. Sharp

State of Idaho)
County of Madison) ss 249883

I hereby certify that the within instrument was filed JAN. 03 1994 19 at 10:20 M., and recorded on Film 249883 Fee 5.00
by BETH B. FIEBIG, Recorder
Deputy
At the request of AMERICAN LAND TITLE CO.

STATE OF IDAHO)
:ss
County of Madison)

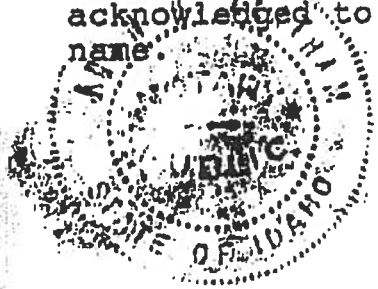
On this 31st day of December, in the year 1993, before me, a Notary Public, personally appeared Dean S. Sharp, known or identified to me to be one of the partners in the partnership of SHARP BROTHERS and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.



Joan K. Leetham
Notary Public for Idaho
Residing at: Lotburg
My Commission Expires: 6/15/97

STATE OF IDAHO)
:ss
County of Madison)

On this 31st day of December, in the year 1993, before me, a Notary Public, personally appeared Wayne L. Sharp, known or identified to me to be one of the partners in the partnership of SHARP BROTHERS and the partner or one of the partners who subscribed said partnership name to the foregoing instrument, and acknowledged to me that he executed the same in said partnership name.



Joan K. Leetham
Notary Public for Idaho
Residing at: Lotburg
My Commission Expires: 6/15/97

STATE OF IDAHO)
:ss
County of Madison)

On this 31st day of December, in the year 1993, before me, a Notary Public, personally appeared Ada S. Sharp, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.



Joan K. Leetham
Notary Public for Idaho
Residing at: Lotburg
My Commission Expires: 6/15/97

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 USE OF WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER:
Ident. Number _____
Date Received _____
Receipt Number _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

Please type or print clearly

1. **Name of Claimant(s): GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, and as Co-Trustees of the **ORSENA C. BROWING FAMILY TRUST,** with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003.

   Phone: 208-458-4327 **Mailing Address:** 7 N. 2700 E., Teton, Idaho **Zip:** 83451

2. **Date of Priority (Only one (1) per claim):** August 14, 1905

3. **Source of water supply (a):** Pony Creek
   which is a tributary to (b): Canyon Creek, tributary to Teton River, tributary to Snake River

4. **a. Location of existing point of diversion is:** Twp. 6 N., Rge. 43 E., Sec. 33, SE¼SE¼SE¼

   Additional points of diversion if any: None

5. **Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, headgates, Etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well:** Dam on Pony Creek, about 2 feet high and 30 feet in width at top and 20 feet in width at bottom, made of wood, stone and earth. Headgate about 8 feet wide and 2 feet high. Ditch about 3 feet wide at bottom and 4 feet wide at water line. Extends at approximate route of red line on Map of Project. Originally diverted from ditch at various points on property irrigated. More recently divert from ditch at various points by pumping into sprinkler lines. In recent years has been in U.S. Conservation Reserve Contracts. Map of project shows in blue ink the acres in each of four 40s, totaling 65 acres in what is now Madison County, approved in the original Water License No. 1505, dated November 15, 1913 for 1.3 cfs, and in red ink shows the 126 acres in what is now Madison County that for more than sixty years have actually been irrigated in the four 40s.

EXHIBIT
tabbies
MM

6. **Water is claimed for the following purposes:**

   For Irrigation purposes from April 15 to October 15 amount 2.52 cfs or 130 acre feet

7. **Total quantity claimed (a)** 2.52 **cfs and/or (b)** 130 **(acre feet)**

8. **Total consumptive use claimed is** 130 **acre feet per annum.**

9. **Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.):** N/A

10. Description of place of use:
    a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
    b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twp	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				Tot.
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	43E	29											3	20					23
6N	43E	32					12	30											42
Total number of acres irrigated for License 1505																			65
6N	43E	29											29	21					50
6N	43E	32					40	37											77
Total number of acres actually irrigated:																			126

11. **In which county (ies) are lands listed above as place of use located?** Madison County, Idaho.

12. **Do you own the property listed as a place of use? Yes** X **No** _____

13. **Describe any other water rights used at the same place and for the same purposes as described above.**

    Also in claim of same date with priority of June 25, 1917 for this an other land in Madison County and Teton County
    or none ( )

14. **Remarks:** We attach these Exhibits: "A": Application for Permit No. 2057. "B": Water License No. 1505. "C": SCS Map of Tract 89 which includes Parcel 2, 79.5 acres and Parcel 3, 46.8 acres, which Grover Browning verifies are the 126 irrigated acres in this Notice of Claim and have been irrigated for more than 60 years. Grover Browning was born May 20, 1925 and is 81 years of age. He has been involved in farming the property for more than 60 years and knows the statements in this Notice of Claim are true. The cfs were increased proportionately from the 1.3 cfs for the 65 acres to 2.52 cfs for the 126 acres. "G" Grant Deed to two Trusts. "H" Sketch of Tracts on Grant Deed. Tracts Two, Three, Four and Five are not involved in this Notice of Claim.

15. **Basis of Claim (check one)** **Beneficial use** _____ **Posted Notice** _____ **License** 1505 **Permit** _____ **Decree** _____

If applicable provide IDWR Water Right Number _____
Court _____ **Case Number** _____ **Decree Date** _____
Plaintiff vs. 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 Basis Adjudication." (b) I/We do _____ **do not** X **wish to receive and pay a small annual fee for monthly copies of the docket sheet.**
Number of attachments We do not add number of attachments

For individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

For Organizations: We do solemnly swear of affirm that we are the Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, and Co-Trustees of the **ORSENA C. BROWING FAMILY TRUST,** with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003, that we have signed the foregoing document in the space below as Co-Trustees of the Trusts and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agents:

Grover Browning
Grover Browning, as Co-Trustee of the
GROVER BROWNING MARITAL TRUST

Karen Marie Browning Garvin
Karen Marie Browning Garvin, as Co-Trustee of the
GROVER BROWNING MARITAL TRUST

Grover Browning
Grover Browning, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST

Karen Marie Browning Garvin
Karen Marie Browning Garvin, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST

STATE OF IDAHO,)
ss
County of Madison.)

Subscribed and sworn (or affirmed) before me by Grover Browning, this 5th **day of** ~~January~~ February, **2007.**

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission Expires 7/27/2007

Last Name _____ **Ident No.** _____

STATE OF IDAHO,)
ss
County of Bannock.)

Subscribed and sworn (or affirmed) before me by Karen Marie Browning Garvin, this 1st **day of** ~~January~~ February, **2007.**

BRITTANY GRAY NOTARY PUBLIC STATE OF IDAHO

Brittany Gray
Notary Public for Idaho
Residing at Pocatello
My Commission Expires: 1-16-2013

17. **Notice of Appearance:**

Notice is hereby given that I, GORDON S. THATCHER, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below:

Signature: Gordon S. Thatcher

Address: 25 N. 2nd E., P. O. Box 250, Rexburg, Idaho 83440

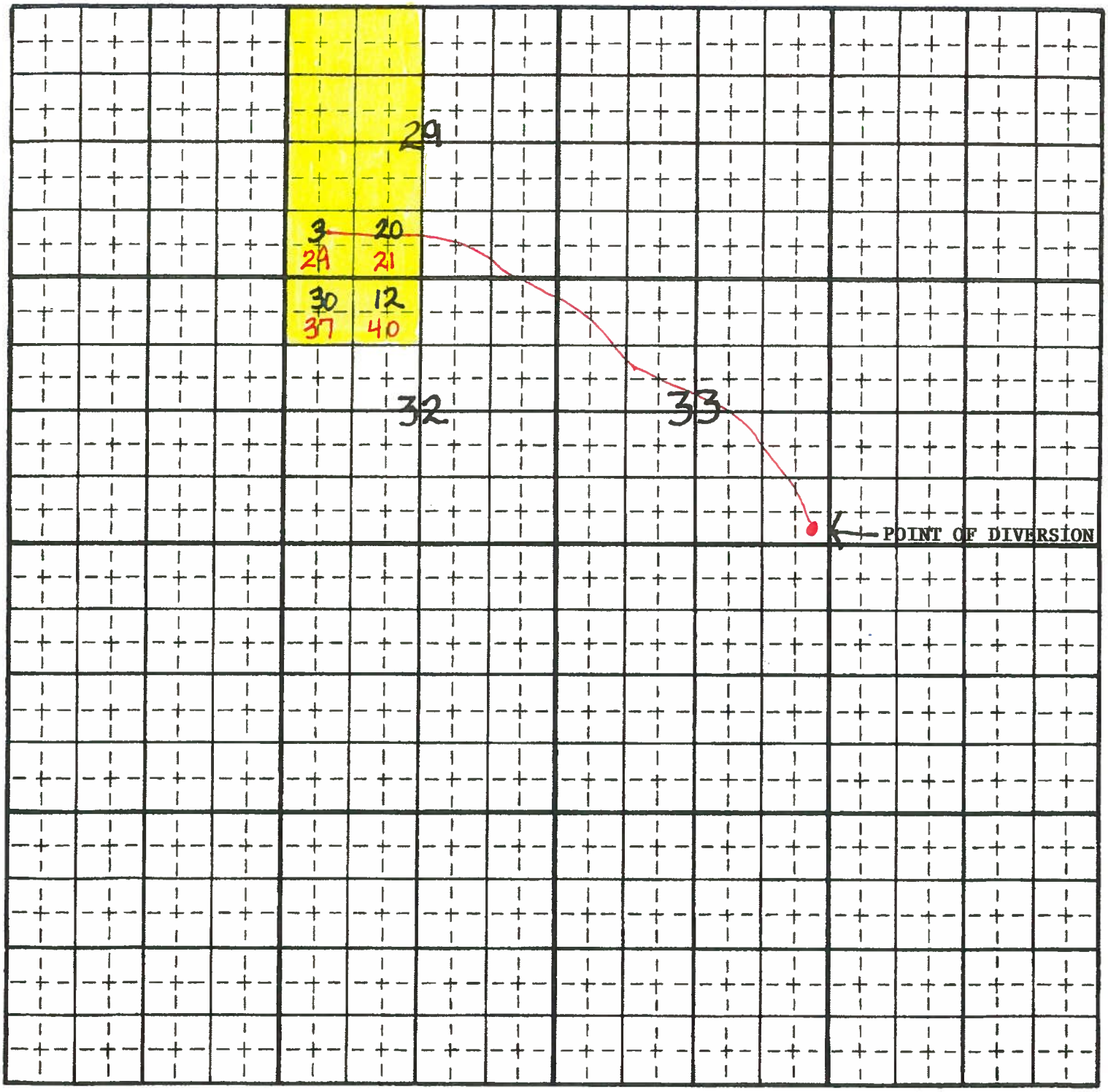
Date: Feb 5, 2007

Last Name _____ **Ident No.** _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TWP. 6 N., RGE. 43 E., BOISE MER.



Last Name _____ Ident No. _____

WARRANTY DEED

For Value Received

O. J. NEELEY and MYRTLE NEELEY, husband and wife

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

OWEN J. NEELEY and DARLA W. NEELEY, husband and wife

whose current address is Star Route, Newdale, Idaho 83436

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

Township 6 North, Range 43 East, Boise Meridian, Madison County, Idaho
Section 18: Lot 2, less that part heretofore deeded to the State of Idaho by deed recorded December 17, 1963, in Book 217 of Deeds at page 79; Lot 3 and Lot 4; E½SW¼
Section 20: S½NW¼
Section 32: NE¼; S½NW¼; N½SW¼

Together with all water rights of every kind and nature thereunto belonging or in anywise appertaining. Also more particularly described as decreed right in Poney Creek with a decree priority of 1900, recorded in Book 58, at page 81 of the records of Madison County, Idaho, and supported by affidavits recorded in Book 128, at pages 272 and 273 of the records of Madison County, Idaho.

#154122
Nov 4, 1974

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 Grantees , that they 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: November 1, 1974

O. J. NEELEY

MYRTLE NEELEY

EXHIBIT
tabbies
NN

WARRANTY DEED

For Value Received

O. J. NEELEY and MYRTLE NEELEY, husband and wife

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

OWEN J. NEELEY and DARLA/NEELEY, husband and wife

Star Route, Newdale, Idaho 83436

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

Township 6 North, Range 42 East, Boise Meridian, Madison County, Idaho
Section 16: Lot 2, less that part heretofore deeded to the State of Idaho by deed recorded December 17, 1962, in Book 217 of Deeds at page 79; Lot 3 and Lot 4; E½SW¼
Section 20: S½NW¼
Section 32: NE¼; S½NW¼, N½SW¼

Together with all water rights of every kind and nature thereunto belonging or in anywise appertaining. Also more particularly described as decreed right in Ponoy Creek with a decree priority of 1900, recorded in Book 5, at page 61 of the records of Madison County, Idaho, and supported by affidavits recorded in Book 120, at pages 270 and 271 of the records of Madison County, Idaho.

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 Grantees, that they 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 November 1, 1974

O. J. NEELEY

MYRTLE NEELEY

STATE OF IDAHO, }
County of Madison, } ss.

O. J. NEELEY and MYRTLE NEELEY, husband and wife

I hereby certify that the within instrument was filed for record
at 11:01 M.
recorded on Film
Fee
Nellie H. Garner
Ex-Officio Recorder
By
Deputy
At the request of

they have executed the same.

Notary Public
Residing at

AMERICAN LAND TITLE CO

W. Brent Eames
JOLLEY & EAMES
Attorneys at Law
P. O. Box 306
Rexburg, Idaho 83440

RECEIVED
MAY 2 1974
WATER ADMINISTRATION
Area Office

RECEIVED
MAR 1 1985
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER ADMINISTRATION FOR

THE STATE OF IDAHO

IN THE MATTER OF PROTEST AGAINST APPROVAL OF APPLICATION FOR TRANSFER CLAIM TO WATER RIGHT #22-4003 IN THE NAME OF O. J. NEELEY RANCH, INC.

STIPULATION AGREEMENT

The applicant, O. J. NEELEY RANCH, INC., having filed with this department an application to change the point of diversion and place of use of the above claim to a water right, and George H. Browning having filed a protest against approval of said application for the purpose of clarifying the ownership of the waters in Pony Creek;

The parties involved, O. J. Neeley Ranch, Inc., and George Browning and Phebe Browning stipulate and agree to the following:

1. The parties acknowledge and hereby refer to a decree dated May 21, 1954, wherein it was decreed that the maximum flow of Pony Creek was approximately 960 miner's inches of water; that O. J. Neeley and Myrtle Neeley were vested with title to 435 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time. And that George Browning and Phebe Browning, husband and wife, were vested with title to 300 miner's inches of water, such interest to be decreased proportionately with a decrease in the total flow.

MICROFILMED

EXHIBIT
tabbies
00

And that Morris Slaymaker and Thelma Slaymaker were vested with 225 miner's inches of the waters of Pony Creek, such interest to be decreased proportionately to any decrease in the total flow.

2. That the applicant, O. J. NEELEY RANCH, INC., has purchased all title and interest to the waters of Pony Creek which were vested in O. J. Neeley and Myrtle Neeley, husband and wife, and in Morris Slaymaker and Thelma Slaymaker, husband and wife.

3. That George Browning and Phebe Browning continue to have all right, title and interest in and to 300 miner's inches out of the maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

4. That George Browning and O. J. Neeley Ranch, Inc., have for over five years last past diverted and used the full flow of the waters of Pony Creek for domestic and agricultural purposes.

5. That as between the parties, except as provided in paragraph 6, O. J. Neeley Ranch, Inc., is vested with title to 660 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 11/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time, and that George Browning and Phebe Browning are vested with title to 300 miner's inches of the waters of Pony Creek based on a maximum flow of 960 inches, or 5/16ths of the flow at any given time, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

6. That George Browning and Phebe Browning agree to allow O. J. Neeley Ranch, Inc., the use of all the waters of Pony Creek during the spring of each year up until the time that the Brownings begin to irrigate. When the Brownings begin to irrigate then each

MICROFILMED

of the parties shall have the right to use their respective shares as provided in paragraph 5. At that point in time when the waters of Pony Creek no longer reach Canyon Creek, then the Brownings shall have full use of said waters except for what O. J. Neeley Ranch, Inc., needs to water its stock. It is further agreed that O. J. Neeley Ranch, Inc., shall open a roadway to the pointof diversion of said waters for the use by both parties and shall install a dividing gate at the point of diversion in order that the waters may be divided as agreed herein.

7. That George Browning and Phebe Browning withdraw the protest filed against the application of O. J. Neeley Ranch, Inc. for the transfer of water right, No. 22-4003, 22-0610 and waiver further protest on the condition that their water rights are GHB not lost or injured in any way by said transfer.

8. That the parties agree to be bound according to the above referenced decree regardless of whether any rights under the decree are transferred.

Dated this 18th day of February, 1974.

O. J. NEELEY RANCH, INC.

By Owen J. Neeley
Its President

Geo F Browning
George Browning

Phebe Browning

STATE OF IDAHO,)
SS.
County of Madison.)

On this 18th day of February, 1974, before me, the undersigned, Notary Public in and for said State, personally appeared

MICROFILMED

OWEN J. NEELEY, known to me to be the President of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

W. Brent Eames
Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 10/8/74

STATE OF IDAHO,)
SS.
County of Madison.)

On this 25th day of ~~February~~ April, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE BROWNING ~~and PHEBE BROWNING~~, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year in this certificate first above written.

W. Brent Eames
Notary Public for Idaho
Residing at Rexburg, Idaho
My Commission Expires: 10/8/74

MICROFILMED

RECEIVED
SEP 19 2006
DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

FILED

AMENDED COMPLAINT

Plaintiffs complain of the Defendants and for cause of action allege:

I

That at all times herein mentioned the Plaintiffs were and are husband and wife;

II

That at all times herein mentioned the Defendants, George Browning and Phebe Browning, his wife, were, and now are husband and wife;

III

That at all times herein mentioned the Defendants, Morris Slaymaker and Thelma Slaymaker, his wife, were, and now are husband and wife;

IV Neelex

That at all times herein mentioned the Plaintiffs were, and now are the owners and in possession of the East Half ($E\frac{1}{2}$) of Section Thirty (30); the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$) and the South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Thirty (30), Township Six (6) North, Range Forty-three (43) East of the Boise Meridian; also, the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of Section Thirty-one (31), Township Six (6) North, Range Forty-three (43), East of the Boise Meridian, lying, being, and situate in Madison County, Idaho;

480 acres

EXHIBIT PP

V

That for more than five years prior to the commencement of this action the Plaintiffs and their predecessors in interest have owned, used, and enjoyed 435 miners inches of the water of Pony Creek, a tributary to Snake River in Madison County, Idaho, for irrigation and domestic purposes on the above described premises; that during all of the time herein mentioned, said 435 miners inches of the water of said Pony Creek were owned and used by Plaintiffs adverse to all persons and especially the above named Defendants, and Plaintiffs have paid all taxes and assessments levied against said water rights for more than five years last past prior to the commencement of this action;

VI

That the above named Defendants, and each and all of them, claim some right, title, and interest in and to said water or some estate therein adversely to the Plaintiffs, but Plaintiffs allege that none of said Defendants had any right, title or interest, or lend upon said water or any part thereof, and that the claims of the Defendants, if any, are without any right whatsoever.

WHEREFORE, Plaintiffs pray judgment that the Defendants, and each of them, be required to set forth the nature of their several claims of, in or to, or lend upon said 435 miners inches of said water of Pony Creek, as aforesaid, or any part thereof, and that said adverse claims may be determined by this Court; that it be adjudged and decreed that the Plaintiffs are the prior owners of the said water rights and water and in possession thereof, and that none of the Defendants have any right, title, or interest whatsoever therein or thereon superior to the Plaintiffs.

That the title to said water and the use thereof be quieted in the Plaintiffs as against the Defendants, and all persons claiming under them, and that the usual decree foreclosing the Plaintiffs' rights as against the Defendants be entered.

Plaintiffs further pray for such other or further or differe

relief as to the Honorable Court may seem meet and equitable in the premises, and for cost of this suit.

Dated this 20th day of May, 1954.

A. A. Merrill and
Ray W. Rigby
Attorneys for Plaintiffs

By Ray W. Rigby
Ray W. Rigby

STATE OF IDAHO,)
) ss.
County of Madison.)

O. J. Neeley, being first duly sworn, deposes and says: That he is one of the Plaintiffs in the above entitled cause, that he has read the above and foregoing Amended Complaint, knows the contents thereof, and the same is true as he verily believes.

Subscribed and sworn to before me this 20th day of May, 1954.
(Seal)

My commission expires:
January 24, 1955.

Notary Public, residing at
Rexburg, Idaho

I hereby acknowledge service of a copy of this Amended Complaint, this 20th day of May, 1954.

Leonard O. Kingsford
Leonard O. Kingsford
Attorney for the Defendants

IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR MADISON COUNTY

O. J. NEELEY and MYRTLE NEELEY, his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

FILED 5/21 1954
at 4:12 P.M.
H. J. McKinley Clerk
By Marjorie Moore Deputy

ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT.

Come now the defendants above named, and in answer to Plaintiffs' complaint on file herein, admit, deny and allege as follows:

I.

Defendants admit all allegations contained in Paragraphs I, II, III and IV of plaintiffs' complaint on file herein.

II.

Defendants deny each and every allegation in Paragraphs V and VI of plaintiffs' complaint well pleaded, except as hereinafter set forth.

III.

Defendants allege that Pony Creek is an intermittent stream, having a substantial flow of water during the spring and early summer of each year, but that such flow is substantially reduced, or that it ceases, in later parts of the summer and the autumn of each year; that the parties hereto, amongst them, have made full use of all available waters of said Pony Creek for many years, and that a fair and equitable distribution thereof has heretofore been made of such waters; but that plaintiffs' share of said waters will equal the sum of 435 miners inches of said waters only during periods of high water.

IV.

That defendants George Browning and Phebe Browning, his wife, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

The South Half of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 29, township 6 North, Range 43 East of the Boise Meridian; and the North Half of the Northwest Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

160 acres
200

Govt land

EXHIBIT QQ

V.

That James D. Browning, a predecessor in title of said George Browning and Phebe Browning, his wife, filed upon 3.2 second feet of the waters of Pony Creek, of which sum, proof was made on 1.3 second feet, and license issued to one Anne Kearney, assignee of said James D. Browning, and also a predecessor of said defendants, in title; said License being No. 1505, issued by the State of Idaho to said Anne Kearney; that the balance of the water so filed on by said James D. Browning was put to use over a period of time, although not reduced to license.

VI.

That Morris Slaymaker and Thelma Slaymaker, his wife, the other above named defendants, now are, and at all times herein mentioned, have been the owners, and in the possession of the following described property, situated in Madison County, State of Idaho, to-wit:

> The South Half of the Northwest Quarter, the North Half of the Southwest Quarter, and the Northeast Quarter of Section 32, Township 6 North, Range 43 East of the Boise Meridian.

VII. 320 acres

That License No. 2264 for 2.5 second feet of the Waters of Pony Creek was issued by the State of Idaho to Dora Weaver, the assignee of John Weaver, for use on 125 acres in the Northeast Quarter of Section 32, aforesaid; that additional water was put to use from time to time thereafter upon additional land by said Dora Weaver and by said John Weaver, who are predecessors in title of the said Morris Slaymaker and Thelma Slaymaker, defendants.

VIII.

That one Charles H. Cazier filed on 8 second feet of the waters of Pony Creek for use on the unsurveyed South Half of the Southwest Quarter of Section 19; the West Half of Section 30; Township 6 North, Range 43 East of the Boise Meridian, now in Madison County, State of Idaho; that such filing was never reduced to license; that some part thereof, was, however, usefully applied to the irrigation of parts of said land; that a portion thereof was deeded to James A. Browning, by Quit Claim Deed dated May 31st, 1912, and recorded May 19th, 1915, in Book 17 of Deeds, at Page 320, under recorder's instrument No. 5044, records of Madison County, State of Idaho; that said James A. Browning was a predecessor in title of the defendants, George Browning and Phebe Browning, his wife; and that the plaintiffs may properly claim under the balance of said filing, insofar as actually used by them and their predecessors in title.

IX.

That water disputes having heretofore arisen in connection with the said waters of Pony Creek, the predecessors in title of the present owners of the lands watered thereby, did, in June, 1917, form a corporation, to-wit, PONY CREEK CANAL COMPANY, to deliver said water to the various users for irrigation and domestic purposes, and did thereby, in settlement of all former disputes, make a fair and equitable division of said waters of Pony Creek, as set out in the Articles of Incorporation of said Corporation, which are filed in the records of Madison County, State of Idaho, under recorder's instrument No. 15216, a certified copy of which are hereto attached, as Exhibit "A", and which are hereby incorporated and made a part hereof, by reference, as fully as if though herein set forth in full.

X.

That plaintiffs, O. J. NEELEY and MYRTLE NEELEY, his wife, are the successors in interest to Ira J. Davis, and to one-half the holdings of E. D. Clark and Eli Clark, Jr.; that defendants, MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife, are the successors in interest to one-half the holdings of E. D. Clark and Eli Clark, Jr.; and that defendants, GEORGE BROWNING and PHEBE BROWNING, his wife, are successors in interest to J. A. BROWNING and to Annie Kearney; all as mentioned and shown in the aforesaid Articles of Incorporation.

XI.

That the diversionary works used by the parties hereto, when in proper repair, are capable of carrying approximately 960 miners inches of water; that when such full stream of water is being diverted and used, the said plaintiffs would be entitled to the sum of 435 miners inches of water; the defendants, George Browning and Phebe Browning, his wife, would be entitled to the sum of 300 inches of water; and the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, would be entitled to the sum of 225 inches of water; but that when the flow of water is reduced, each party is entitled to his pro rata share, on the same basis as aforesaid, without right in any party, and especially without right in the plaintiffs, to demand any given flow of water in inches; but only to demand a pro rata share of such water as may be available at any given time.

AND FOR CROSS COMPLAINT, Defendants and Cross-complainants complain of the Plaintiffs and Cross-defendants, and for cause of action allege:

I.

Defendants and Cross-complainants hereby re-plead Paragraphs I to XI of their Answer, inclusive, and by reference, hereby make same a part of this Cross-Complaint.

Pony Creek C.

II.

Defendants allege that for over 36 years, to-wit, since June 25th, 1917, they or their predecessors in title have owned, used, and enjoyed the uninterrupted use of their respective pro rata shares of the waters of Pony Creek, a tributary to Snake River, in Madison County, Idaho, for irrigation and domestic purposes, on the foregoing described premises, said pro rata share being determined on the basis of the contribution of their predecessors to PONY CREEK CANAL COMPANY, as set forth in Exhibit "A", hereunto attached, as above set forth..

WHEREFORE, Defendants pray judgment that the adverse claims of Plaintiff, as set forth in Plaintiff's complaint herein filed, be determined by this Court; that it be adjudged and decreed that Defendants are the prior owners of their respective pro rata shares of the waters of Pony Creek, and that Plaintiffs have no right, title or interest whatsoever therein or thereon superior to the right, title and interest of Defendants in and to their respective shares as above set forth.

That title to said respective shares of water be quieted in the Defendants as against the Plaintiffs, and all persons claiming under them; and that the usual decree foreclosing all adverse claims against these defendants be entered.

Defendants further pray for such other or further or different relief as to this Honorable Court may seem just and equitable, and for costs of this suit; and that Plaintiffs' complaint being fully answered, the plaintiffs may take nothing thereunder.

Dated this 20th day of May, 1954.

Leonard O. Kingsford

LEONARD O. KINGSFORD, Attorney for the Defendants. Residence and Post Office Address: Rexburg, Idaho.

4

STATE OF IDAHO)
: ss.
County of Madison)

George Browning and Morris Slaymaker being first duly sworn, depose and say, each for himself, and not one for the other:

That he is one of the parties defendant in the above and foregoing entitled cause; that he has read the foregoing answer and cross complaint, and knows the contents thereof; and the same is true as he verily believes.

Geo. X X Browning

Morris Slaymaker

Subscribed and sworn to before me this 21st day of May, 1954.

Leonard O. Kingsford

NOTARY PUBLIC for Idaho, residing at Rexburg, Idaho. My commission expires: August 14th, 1957.

I hereby acknowledge service of a copy of this ANSWER TO AMENDED COMPLAINT AND CROSS COMPLAINT, this 21st day of May, 1954.

Ray W. Rigby

RAY W. RIGBY, Attorney for the Plaintiffs and Cross-Defendants.

5

ARTICLES OF INCORPORATION

of

PONY CREEK CANAL COMPANY.

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming and organizing a corporation, under the laws of the State of Idaho, and we hereby certify:

I

That the name of said corporation shall be

PONY CREEK CANAL COMPANY.

II

That the purpose for which said Corporation is formed are: To purchase, hold, operate and conduct and maintain, for the uses and benefit of its stockholders, only, an irrigation canal and irrigation system, with all necessary works of diversion and distribution, for the application to irrigation and other beneficial uses of the waters of Pony Creek, in Teton and Madison Counties, in the State of Idaho; and to purchase and hold all necessary rights of way and such other real estate and personal property as may be necessary for the successful conduct of the enterprise. The following is a general description of the course of the canal of said corporation, to wit: Beginning at the point of diversion, on Pony Creek, near the center of the South-east Quarter (SE¼ SE¼) of Section Thirty-three (33), Township Six North (6 N)

EXHIBIT

RR

of Range Forty-three (43), East of Boise Meridian, in Teton County, Idaho, and running thence in an irregular course, in a general North-westerly direction across said Section 33, also crossing the North-east portion of Section 32, and the South-west corner of Section 29, and part way across Section 30 in the aforesaid Township and Range in Madison County, Idaho.

III

That said corporation shall be cooperative and non-profit-sharing and non-profit-earning, and its said irrigation system shall be conducted, maintained and operated for the irrigation of the lands of its stockholders, and the supplying of water for their domestic use.

IV

The place where the principal business of said corporation is to be, and shall be transacted, is Rexburg, in Madison County, State of Idaho.

V

That the term for which said corporation shall exist shall be Fifty (50) years, unless sooner dissolved or disincorporated.

VI

That said Corporation shall have a Board of Directors, and the number of its directors shall be three (3), and those appointed for the first year, and their post office addresses are the following:

Ira J. Davis,	Canyon Creek, Idaho.
E. D. Clark,	Canyon Creek, Idaho.
J. A. Browning,	Canyon Creek, Idaho.

VII

That said Corporation shall have a capital

stock, and the amount of its said capital stock shall be Five Thousand ($5000.00) Dollars, divided into five hundred (500) shares of the par value of Ten ($10.00) Dollars each.

VIII

That the amount of the capital stock of said Corporation actually subscribed, and the names of the persons subscribing same, and the amounts subscribed by each are as follows:

NAME	SHARES	VALUE
Ira J. Davis,	Seventy	$700.00
E. D. Clark and Eli Clark, Jr.,	One Hundred fifty	1500.00
J. A. Browning,	Twenty	200.00
Annie Kearney,	Eighty	800.00

IN WITNESS WHEREOF We have hereunto set our hands and seals this 25th day of June, A. D. 1919.

Ira J Davis

E. D. Clark

J. A. Browning

Annie Kearney

Eli Clark Jr

STATE OF IDAHO, }
County of Madison, } SS

I hereby certify that on this

... before me Charles W. Poole,

a Notary Public, in and for the State of Idaho, personally appeared Ira J. Davis, E. D. Clark, J. A. Browning, Annie Kearney and Eli Clark, Jr., known to me to be the persons whose names are subscribed to the within and foregoing instrument, and acknowledged to me that they executed the same, for the uses and purposes therein set forth.

IN WITNESS THEREOF I have hereunto set my hand and affixed my official seal the day and year in this certificate above written.

Charles W. Pugh

Notary Public, for Idaho, Residing at Rexburg, Idaho.

(SEAL)

My Commission Expires the 2nd day of August 1921.

CERTIFICATE OF TRUE COPY—RECORDER.

STATE OF IDAHO }
County of Madison, } ss.

I, S. P. Oldham, County Auditor and Recorder of Madison County, Idaho, do hereby certify that the foregoing is a true and correct copy of the original Articles of Incorporation of Pony Creek Canal Company

now on record in my office

Given under my hand and seal at my office in Rexburg, Idaho, this 27th day of June 1919

Attest: S. P. Oldham
County Recorder.

By Dora Porter
Deputy.

O. J. NEELEY and MYR...
his wife,

Plaintiffs,

vs.

GEORGE BROWNING and PHEBE BROWNING, his wife, and MORRIS SLAYMAKER and THELMA SLAYMAKER, his wife,

Defendants.

STIPULATION

It is hereby stipulated and agreed by and amongst the parties hereto as follows:

That the plaintiffs are the owners of that certain property described in Paragrpah IV of their amended complaint.

That the defendants, George Browning and Phebe Browning, his wife, are the owners of that certain property set forth in Paragraph IV of the Answer to Amended Complaint.

That the defendants, Morris Slaymaker and Thelma Slaymaker, his wife, are the owners of that certain prperty set forth in Paragraph VI of the Answer to Amended Compalint.

That for over five years last past, the various parties hereto, amongst them, have diverted and used the full flow of the waters of Pony Creek for domestic and agricultural purposes.

That the maximum flow so diverted is approximately 960 miners inches of water, and that such flow decreases during the summer months of the year.

That said parties are entitled to, and the Court may decree to them, an interest therein based on 435 miners inches to plaintiffs out of such maximun flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 300 miners inches to defendants George Browning and Phebe Browning, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time; and on 225 miners inches to defendants Morris Slaymaker and Thelma Slaymaker, his wife, out of such maximum flow of 960 inches, such interest to be decreased proportionately to any decrease in the total flow of water at any given time.

That domestic use of water shall have priority over any other use during seasons when the total supply of water is inadequate to cover all nee...

EXHIBIT
tabbies
SS

the parties hereto.

That each of the parties hereto shall be liable for expenses of maintenance of the irrigation system used in common by such parties, on the basis of the share of water owned by such party.

That each party shall bear his own costs herein incurred.

That a decree may be prepared, based upon the pleadings as filed herein, and in conformity with those points herein agreed upon, and that this suit may be settled, without trial, upon the bases of such decree, said decree to have been approved by counsel for each side prior to its presentation to the Court for final approval.

Dated this 21st day of May, 1954.

O. J. Neeley

Myrtle Neeley

PLAINTIFFS.

Ray W. Rigby

ATTORNEY FOR PLAINTIFFS.

Les F. Browning

Doris Browning

Morris Haymaker

Thelma Haymaker

DEFENDANTS

Leonard C. Kingsford

ATTORNEY FOR DEFENDANTS.

STATE OF IDAHO

Water License No. 1505

WHEREAS, On the 14th *day of* August *A. D. 1905,*

James D. Browning

of Annis, *County of* Fremont, *State of* Idaho,

duly made application (No. 2057 *) to me for a permit to use* 3.2 cubic feet per second of the waters of PONY CREEK,

County of Fremont, *State of Idaho for* irrigation and domestic *purposes, and*

WHEREAS, On the 25th *day of* August *A. D. 1905, Permit No.* 1505 *was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the* 25th *day of* August *A. D. 1908, and for the application to beneficial use of said water on or before the* 25th *day of* August *A. D. 1910, and,*

WHEREAS, On the 22nd *day of* August *A. D. 1908,*

James D. Browning

the holder of said permit duly made proof of the completion of adequate works for the diversion of 3.2 *cubic feet per second of said waters, as evidenced by my Certificate No.* 1505, *dated* October 5, 1908, *confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use* 3.2 cubic feet per second of said water,

with date of priority of August 14, 1905, *and,*

WHEREAS, On the 2nd day of May, A. D. 1913, there was received and filed for record in the office of the State Engineer an assignment whereby James D. Browning transferred to Annie Kearney all his right, title and interest in and to said permit, and,

WHEREAS, On the 2nd *day of* August *A. D. 1913,*

Annie Kearney

the holder of said permit duly made proof of the application to beneficial use of 1.3 *cubic feet per second of said water:*

EXHIBIT
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NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to Annie Kearney *of* Canyon Creek, *County of* Fremont *State of* Idaho *the holder and owner of said Permit No.* 1505, *a perpetual right, dating from* July 21, 1908, *to the use of* 1.3 cubic feet per second of the waters of Pony Creek,

in the County of Fremont *and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted* at a point in the SE¼ of SE¼, Sec. 33, T. 6 N., R. 43 E. B. M.

and conducted to and upon 65 acres divided as follows: 3 acres in SW¼ of SW¼, 20 acres in SE¼ of SW¼, Section 29; 30 acres in NW¼ of NW¼ and 12 acres in NE¼ of NW¼, Section 32, all in T. 6 N., R. 43 E. B. M.

for the purpose of irrigation and domestic use,

subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 15th *day of* November *A. D. Nineteen hundred and* thirteen.

State Engineer.

STATE OF IDAHO

Water License No. 1505

To Annie Kearney

Canyon Creek

Fremont

Source of Supply Pony Creek

Fremont *County*

Amt 1.3 *Sec. Feet*

Point of Diversion - SE¼ SE¼ Sec.33,T.6 N.R.43 EBM

Place of Use SW¼SW¼, SE¼SW¼-29 NW¼NW¼&NE¼NW¼-32, T.6 N.R.43 E.B.M.

Purpose Irrigation

Date of Priority July 21,1908

Recorded November 15,1913

in Book 3 Licenses *of* *Page* 4-5

Identification No. 22 4003

Claim No. _____

Map No. _____

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

CLAIM TO A WATER RIGHT

Established by Diversion and Application to Beneficial Use

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

(Please refer to the instructions on the back of this form)

1. Name of claimant OWEN J. NEELEY

   post office address P. O. Box 425, Rexburg, Idaho, 83440

2. The point of diversion is in S.E. ¼ of S.E. ¼ Section 32 Township 6 N

   Range 43 E B.M. located on Poney Creek
   (name of source)

   tributary to Canyon Creek in Madison County.

3. Dates of priority claimed: list the priority for each separate quantity that you claim. Priority dates should be based upon the earliest diversion of the water which has resulted in continued beneficial use since that time. If there has been an interval of five years or greater when the water was not beneficially used for the same purpose as originally appropriated, the priority that you claim should date from the time that the water was again beneficially applied following the period of non-use.

   a. Date of priority claimed:

   August 15, 1900 amount: 12 c.f.s. or _____ acre feet

   _____ amount: _____ c.f.s. or _____ acre feet

   _____ amount: _____ c.f.s. or _____ acre feet

   Total claimed 12 c.f.s. or _____ acre feet.

   b. Explain the purpose for which the water has been used and the time during the year when you have used the right claimed:

   use Irrigation period of use from May 1 to July 31 (both dates inclusive)

   use stock watering period of use from May 1 to August 31 (both dates inclusive)

   use _____ period of use from _____ to _____ (both dates inclusive)

   use _____ period of use from _____ to _____ (both dates inclusive).

4. Description of diverting works: ditch --2½ - 3 mi.

   a. Surface water diversion dam and/or headgate: material is composed of _____

   _____ length is _____ feet; height is 3 x 3 feet;

   width at bottom is _____ feet; with at top is _____ feet; explain any increase in diversion capacity since structure was first buil, giving dates and estimated capacities if known _____

   _____

   _____

   _____

   b. Underground water diverting works: is well flowing or pumped _____; depth of well is

   _____ feet; diameter of well is _____ inches; type of pump is _____

   capacity of pump is _____ g.p.m.; name and address of well driller is _____

   _____

EXHIBIT

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attach well logs if available; has there been any change in pump or motor since well was first completed _____, if so, give dates and explain _____

c. Conveying works: length of ditch to place of use is 2 miles feet; width of ditch at top is 3 feet; width of bottom of ditch is 3 feet; depth of water is 3 feet; grade of ditch per 1000 feet is _____ feet; material through which ditch passes is earth; maximum length of pipe line to first place of use is none feet; diameter of pipe line is _____ inches; type of pipe _____; grade of pipe per 1000 feet is _____. Please explain any changes or increase in size of conveying system since water was first appropriated, giving date and dimensions if possible _____

d. If water is stored: name of reservoir N.A.; total capacity of reservoir is _____ acre feet; active capacity of reservoir is _____ acre feet; year construction commenced _____; year completed _____; date first used _____ period of storage is from _____ to _____; is reservoir drained each year _____; is reservoir on or off stream _____ explain _____

if feeder canal is used give maximum carrying capacity _____ c.f.s.; if reservoir is off stream, describe location of reservoir by 40-acre subdivisions _____

has there been any enlargement of the reservoir since it was first built _____, if so, give dates and describe _____

5 a. Where water is used for irrigation, describe area irrigated by 40-acre subdivisions and give total acres:

TWP	RANGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
6N	43E	32	25	35	40	40			36	40									216
		19	40	40	40	40	40	40	40	40									320
		31						40											40
		30	40	25		25					40			20	35	15	30	40	270

Total number of acres to be irrigated 846

Explain any significant increase in area irrigated since first use, give dates and acreages if known _____

b. Do you get water through a ditch owned by several users? _____ If yes, give the name of the ditch _____. The other users and their respective interests in the ditch are (if known) James D. Browning also uses ditch.

6 Where water is used for stock watering, give number of each kind of stock watered 200 head cattle

7. Where water is used for domestic or municipal purposes give number of families served _____. name of town supplied None

X Where water is used for other purposes not above enumerated, give the nature of use, the extent of use, and any details regarding the initiation of the right or subsequent later expansion. Be as specific as possible, 9. giving dates and quantities. This claim originated by posted notice on June 19, 1900 and August 15, 1900. (See attached Appendix A) The rights were obtained by applicant through the purchase of land with the rights by applicant's father. They were then transferred to the applicant.

9 Remarks please explain any details of your claim which you feel need clarification or additional explanation (See remarks above) There has been continuous use of these waters to applicant's knowledge.

State of Idaho }
County of Madison } ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Owen J. Neeley
Claimant

Sworn to before me this 16th day of April 1973

W. Brent Evans
Notary Public

Residing at Rexburg

My commission expires 10/8/74

For Department Use Only

Received by [illegible]	Date 4-20-73	Exception filed by	Forwarded to claimant by	Date
Printed check by NCF	Date 4-20-73			
Fee received by [illegible]	Date 4-20-73	Fee $ 10.00	CF 7161	
Approved for publication by NCF				
Published in Rexburg Journal	Dates 4-26 5-3-73			

Public Appeal - NCF 5/14/73

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

In Re SRBA	)	**Water Rights:** 22-628A
	)	
Case No. 39576	)	**NOTICE OF COMPLETED ADMINISTRATIVE PROCEEDING**

IDWR has completed the following Administrative proceeding:

[] Address change

[X] Substitution of Party BROWNING-BROWNING TRUST

[] I.C. § 42-222 transfer

[]	point of diversion	[]	place of use
[]	period of use	[]	nature of use
[]	split of water right	[]	change in ownership

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

DATED: June 12, 2007

Ernest Carlson
Signature of IDWR Representative

EXHIBIT
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CERTIFICATE OF MAILING

I certify that on June 13, 2007, I mailed the original and copies of this form to the following persons, postage prepaid by regular mail and addressed as follows:

1. Original to:
   Clerk of the District Court
   Snake River Basin Adjudication
   PO Box 2707
   Twin Falls ID 83303-2707

2. One copy to:
   Claimant/Seller for Substitution of Party or attorney of record:
   Orsena C Browning
   7 N 2700 E
   Teton, ID 83451

3. One copy to:
   Claimant/Purchaser for Substitution of Party, or attorney of record:
   Grover Browning Marital Trust
   Orsena C Browning Family Trust
   Grover & Orsena Browning Living Trust
   7 N 2700 E
   Teton, ID 83451

4. One copy to:
   Each party in the subcase, or attorney of record
   Gordon S Thatcher
   Thatcher Law Office, PLLC
   PO Box 216
   116 S Center St
   Rexburg, ID 83440

5. One copy each to:
   Chief Natural Resources Division
   Office of the Attorney General
   PO Box 44449
   Boise ID 83711-4449

6. One Copy to:
   United States Dept of Justice
   Environment & Natural Resource Div
   550 West Fort Street MSC 033
   Boise ID 83724

Signature of person or attorney mailing the form

06/12/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-628A

NAME AND ADDRESS: GROVER BROWNING MARITAL TRUST
7 N 2700 E
TETON ID 83451

ORSENA C BROWNING FAMILY TRUST
7 N 2700E
TETON ID 83451

GROVER & ORSENA BROWNING LIVING TRUST
7 N 2700E
TETON ID 83451

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 1.950 CFS

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION: T06N R43E S33 SESESE Within TETON County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	1.950 CFS

PLACE OF USE: IRRIGATION in TETON County

T06N R43E S33	SWNW	36.00	T06N R43E S33	SENW	3.00
T06N R43E S33	NESW	9.00	T06N R43E S33	NWSW	17.00

65 ACRES TOTAL

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

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

In Re SRBA	)	**Subcase** A22-00628A
Case 39576	)	**NOTICE OF CHANGE OF FIRM AND ADDRESS**

Notice is hereby given that the new address and location of GORDON S. THATCHER, attorney for **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001), is changed as follows:

My name is: **Gordon S. Thatcher**

My new firm name is: **Thatcher Law Office, PLLC**

My address is **116 S. Center, P. O. Box 216, Rexburg, Idaho 83440**

My phone number is **208-359-5885** Fax: **208-359-5888**

Dated this 1st day of June, 2007.

Gordon S. Thatcher

Gordon S. Thatcher
of Thatcher Law Office, PLLC
Attorney for **GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST** and Co-Trustees of the **ORSENA C. BROWNING FAMILY TRUST**

EXHIBIT
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CERTIFICATE OF MAILING

I certify that on June 5, 2007, I mailed the original and copies of this notice to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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

2. Copies to:

   IDWR Document Depository
   P. O. Box 83720
   Boise, ID 83720-0098

   Chief, Natural Resources Division
   Office of the Attorney General
   State of Idaho
   P. O. Box 44449
   Boise, ID 83711-4449

   United States Department of Justice
   Environment and Natural Resources Division
   550 West Fort Street, MSC 033
   Boise, ID 83724

Gordon S. Thatcher

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 USE OF WATER FROM THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER:
Ident. Number _____
Date Received _____
Receipt Number _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT

ACQUIRED UNDER STATE LAW

Please type or print clearly

1. **Name of Claimant(s): GROVER BROWNING** and **KAREN MARIE BROWNING GARVIN,** as Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, and as Co-Trustees of the **ORSENA C. BROWING FAMILY TRUST,** with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003.

   Phone: 208-458-4327 **Mailing Address:** 7 N. 2700 E., Teton, Idaho **Zip:** 83451

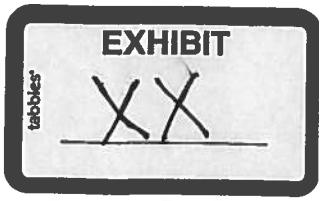
2. **Date of Priority (Only one (1) per claim):** June 25, 1917

3. **Source of water supply (a):** Pony Creek
   which is a tributary to (b): Canyon Creek, tributary to Teton River, tributary to Snake River

4. **a. Location of existing point of diversion is:** Twp. 6 N., Rge. 43 E., Sec. 33, SE¼SE¼SE¼

   Additional points of diversion if any: None

5. **Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, headgates, Etc.) including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well:** Dam on Pony Creek, about 2 feet high and 30 feet in width at top and 20 feet in width at bottom, made of wood, stone and earth. Headgate about 8 feet wide and 2 feet high. Ditch about 3 feet wide at bottom and 4 feet wide at water line. Extends at approximate route of red line on Map of Project. Originally diverted from ditch at various points on property irrigated. More recently diverted from ditch at various points by pumping into sprinkler lines. In recent years has been in U.S. Conservation Reserve Contracts. Map of project shows in blue ink the acres in each 40, totaling 65 acres in what is now Teton County, as reflected on earlier filings; that listing was in error; shown in red ink are the 286 acres in what is now Madison County and Teton County that for more than sixty years have actually been irrigated. Decree of May 21, 1954 called for 6.0 cfs; the pleadings called for 200 acres but the actual 286 acres are as shown under ¶ 10 and on the Map of Project.



6. **Water is claimed for the following purposes:**

   For Irrigation purposes from April 15 to October 15 amount 6.0 cfs or 300 acre feet

7. **Total quantity claimed (a)** 6.0 **cfs and/or (b)** 300 **(acre feet)**

8. **Total consumptive use claimed is** 300 **acre feet per annum.**

9. **Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.):** N/A

10. Description of place of use:
    a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
    b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twp	RNG	SEC	NE ¼				NW ¼				SW ¼				SE ¼				Tot.
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE ¼	
6N	43E	33							35	3	10	17							65
																		Total number of acres in error	65
6N	43E	29											29	21					50
6N	43E	32	7				40	37											84
6N	43E	33							25		25	25	15	18.4		15	30		153.4
																		Total Number of Acres Actually Irrigated	286

11. **In which county (ies) are lands listed above as place of use located?** Secs. 29 & 32 Madison County, Idaho' Sec. 33, Teton County, Idaho

12. **Do you own the property listed as a place of use? Yes** __X__ (Except SE¼NW¼ of Sec. 33) **No** _____

13. **Describe any other water rights used at the same place and for the same purposes as described above.**

    Also in claim of same date with priority of August 14, 1905 including some of same land in Madison County.
    or none (**)**

14. **Remarks:** We attach these Exhibits: "D": Decree of May 21, 1954. "E": SCS Map of Tract 90, which includes the following acreage from these Parcels which Grover Browning verifies have been irrigated for over 60 years: Parcel 1, 23.1 acres; Parcel 2, 14.9 acres; Parcel 3, 13.1 acres; Parcel 4, 6.5 acres; Parcel 8, 8.8 acres; Parcel 5, 35.9 acres; Parcel 6, 3.3 acres; Parcel 7, 54.8 acres (40 acres not irrigated); Parcel 9, none irrigated. TOTAL: 160 acres."C": SCS Map of Tract 89 which includes Parcel 2, 79.5 acres and Parcel 3, 46.8 acres, which Grover Browning verifies are the 126 irrigated acres which when added to the 160 acres from "E" above, yield the total of 286 acres in this Notice of Claim, and have been irrigated for more than 60 years. 7 acres in NE¼NE¼ of Sec. 32 plus 153.4 acres in Sec. 33 equal 160.4 acres. Grover Browning was born May 20, 1925 and is 81 years of age. He has been involved in farming the property for more than 60 years and knows the statements in this Notice of Claim are true. Also the Decree (Exhibit "D") also involved Neeley and Slaymaker with water rights in Pony Creek. Neeley acquired Slaymaker's rights (see Stipulation Agreement of February 18, 1974, Exhibit "F" hereto). Grover Browning verifies that for over 25 years Neeley nor his successors have

present only Grover Browning and Orsena C. Browning (and their successor Trusts) have used waters of Pony Creek for irrigation. "G" Grant Deed to two Trusts. "H" Sketch of Tracts One, Two, and Three in Grant Deed. Tract Four and Tract Five are not involved in Notice of Claim. Tract Five is personal residence (not included in this Notice of Water Claim). It is domestic use water.

15. **Basis of Claim (check one)** **Beneficial use** _____ **Posted Notice** _____ **License** _____ **Permit** _____
Decree 9th District, Madison County, May 11, 1954

If applicable provide IDWR Water Right Number _____
Court _____ **Case Number** _____ **Decree Date** _____
Plaintiff vs. Defendant : Neeley v. Browning and Slaymaker

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 Basis Adjudication." (b) I/We do _____ **do not** X **wish to receive and pay a small annual fee for monthly copies of the docket sheet.**
Number of attachments We do not add number of attachments

For individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

For Organizations: We do solemnly swear of affirm that we are the Co-Trustees of the **GROVER BROWNING MARITAL TRUST**, and Co-Trustees of the **ORSENA C. BROWING FAMILY TRUST**, with each trust coming into being under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001, upon the death of Orsena C. Browning on March 16, 2003, that we have signed the foregoing document in the space below as Co-Trustees of the Trusts and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agents:

Grover Browning
Grover Browning, as Co-Trustee of the
GROVER BROWNING MARITAL TRUST

Karen Marie Browning Garvin
Karen Marie Browning Garvin, as Co-Trustee of the

GROVER BROWNING MARITAL TRUST

Grover Browning
Grover Browning, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST

Karen Marie Browning Garvin
Karen Marie Browning Garvin, as Co-Trustee of the
ORSENA C. BROWNING FAMILY TRUST

Last Name _____ **Ident No.** _____

STATE OF IDAHO,)
ss
County of Madison.)

Subscribed and sworn (or affirmed) before me by Grover Browning, this 5 day of ~~January~~ February, 2007.

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Anne Wieben
Notary Public for Idaho
Residing at Rigby
My Commission Expires 7/27/2007

STATE OF IDAHO,)
ss
County of Bannock.)

Subscribed and sworn (or affirmed) before me by Karen Marie Browning Garvin, this 1st day of ~~January~~ February, 2007.

BRITTANY GRAY NOTARY PUBLIC STATE OF IDAHO

Brittany Gray
Notary Public for Idaho
Residing at Pocatello
My Commission Expires: 1-16-2013

17. Notice of Appearance:

Notice is hereby given that I, GORDON S. THATCHER, will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below:

Signature: Gordon S. Thatcher

Address: 25 N. 2nd E., P. O. Box 250, Rexburg, Idaho 83440

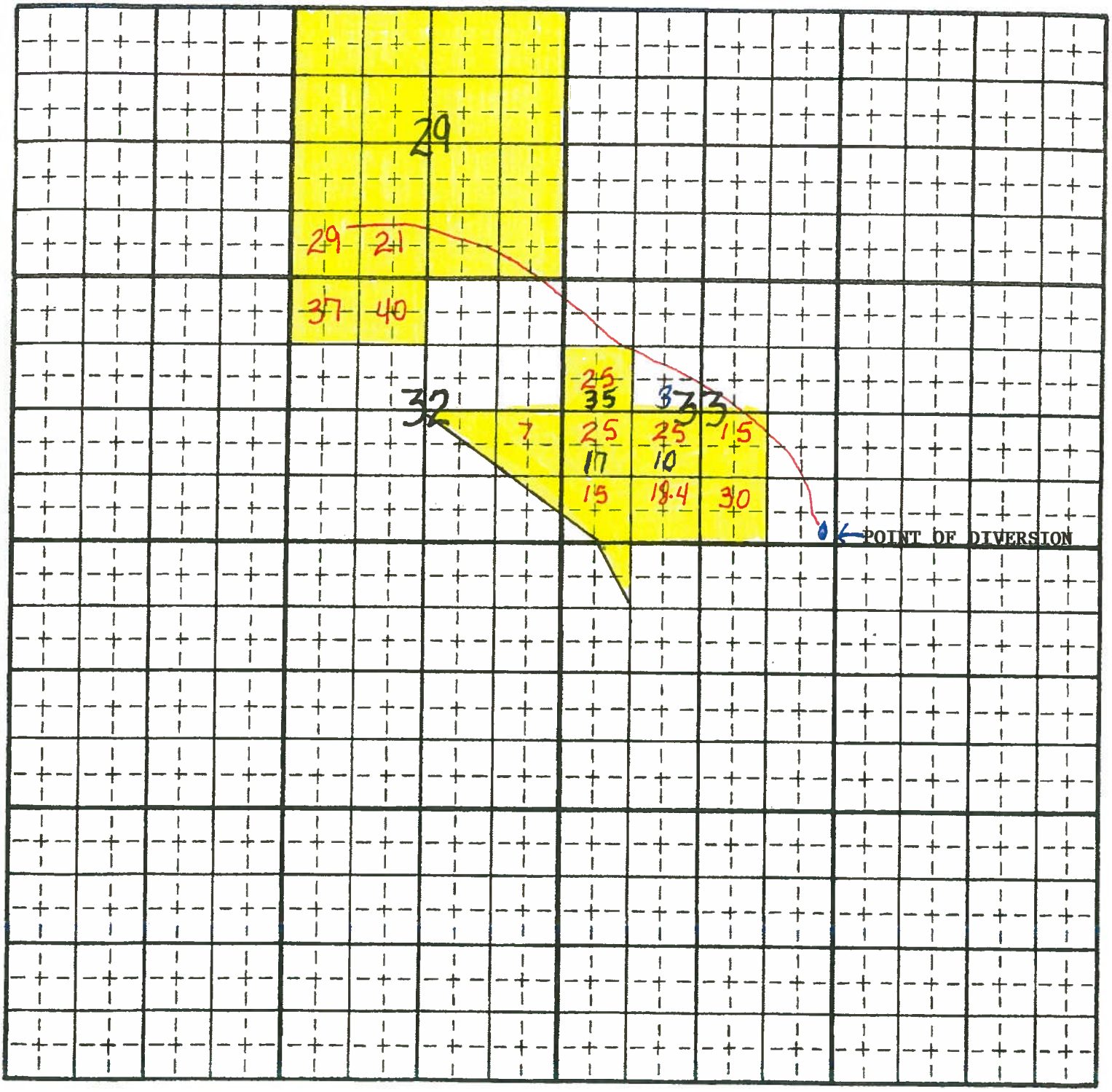
Date: Feb 5, 2007

Last Name _____ Ident No. _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

TWP. 6 N., RGE 43 E., BOISE MER.



Last Name _____ Ident No. _____

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

In Re SRBA	)	**Subcase** A22-00628A
	)	
	)	**STANDARD FORM 4**
Case 39576	)	
	)	**MOTION TO FILE**
	)	☐ **LATE NOTICE OF CLAIM**
	)	☑ **AMENDED NOTICE OF CLAIM**
	)	

☑ I have read ***SRBA Administrative Order 1, Rules of Procedure*** (amended Sept. 30, 1996).

My name is **GROVER BROWNING**, Co-Trustee of the **GROVER BROWNING MARITAL TRUST** and Co-Trustee of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001).

My address is: **7 N. 2700 E., Teton, Idaho 83451**

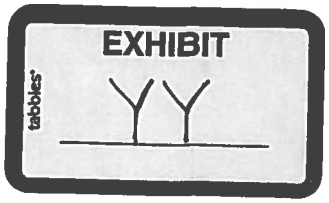
My phone number is: Home: **208-458-4327**

I am an attorney representing **Grover Browning**

My name is **Gordon S. Thatcher**

My address is **25 N. 2nd E., P. O. Box 250, Rexburg, Idaho 83440**

My phone number is **208-356-3633**



MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

☑ I must amend my Notice of Claim to the use of the water in the SRBA because:

This is one of two separate Amended Notice of Claim. Both relate to A22-00628A filed on August 17, 1988. The backing of this claim is Court Decree of May 21, 1954. This needs to be amended to show June 25, 1917 as the priority date. This is based on the allegation at page 4, ¶ II of "Answer to Amended Complaint and Cross Complaint", a copy of which is attached hereto as Exhibit "M". This also needs to be amended to correct the error of 65 acres in Teton County in A22-00628A in Teton County. The Decree listed 200 acres but it was in error in including 40 acres in SW¼SE¼ of Sec. 29, as that was government land. As shown on the Amended Notice of Claim there should have been 134 acres in Madison County and 153.4 acres in Teton County, for a total of 286 acres. 126 acres in Madison County are also in the Motion to Amend Notice of Claim with priority date of August 14, 1905. As shown in this Amended Notice of Claim and the companion Amended Notice of Claim Grover Browning was mistaken, due to the complexity of the whole matter in the original claim in A22-00628A. Claimant's attorney, Gordon S. Thatcher has helped sort out the true facts from many documents, including some over 100 years old, so that the correct claims are made in the two Amended Notices of Claim. The other Amended Notice of Claim has a correct priority date of August 14, 1905.

☑ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

With this proposed Amended Notice of Claim are Exhibit "D", Decree in Neeleys vs. Brownings and Slaymakers; Exhibit "E" which is SCS aerial photo showing the irrigated acres; Exhibit "F" which is a Stipulation Agreement in a water protest matter; Exhibit "G" which is a current Grant Deed to claimants; Exhibit "H" which is a map of four Tracts at issue. Attached hereto are Exhibit "I", Receipt No. E001381 for $140 for monies paid; Exhibit "J", original Notice of Claim # A22-00628A; Exhibit "K", Notice of Error; Exhibit "L", Letter from Trent Galbraith, Water Agent, Adjudication Bureau, IDWR; Exhibit "M", Answer to Amended Complaint and Cross Complaint in water Decree case; and Exhibit "N", "Order and Decree Confirming Ownership and Approving Final Distribution", dated February 20, 2007, concerning the Grover & Orsena Browning Living Trust, confirming corrections to property descriptions of property owned by the Trust, and confirming the property is owned by Claimant two Trusts as per Grant Deed, Exhibit "G".

I have attached:

☑ An Amended Notice of Claim (available from IDWR).

☑ Payment of the following additional fees required by IDWR:

Please see attached explanation.

VERIFICATION

STATE OF IDAHO,)
ss
County of Madison.)

Grover Browning and Gordon S. Thatcher, being each first duly sworn, upon oath, deposes and says:

That Grover Browning is a Co-Trustee for the party/claimant filing this motion for amended claim (as listed on Page 2) and that Gordon S. Thatcher is the attorney for the party/claimant filing this motion for amended claim and that each has read this motion, know its contents, and believe that the statements are true to the best of his knowledge.

Grover Browning

Gordon S. Thatcher

Subscribed and sworn to before me on February 26, 2007.

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Rigby
My Commission Expires: 7/27/2007

Explanation as to Additional Fees

See Exhibit "I" hereto as Receipt from IDWR for $140.00 for Adjudication Fee for A22-00628A and A22-10988, dated August 17, 1988. The latter was for a domestic water claim on other property for 0.04 cfs; we do not know how that was allocated. The former was for 65 acres in Teton County. This proposed Amended Notice of Claim is for 6.0 cfs on 153.4 acres in Teton County and 134 acres in Madison County, for a total of 286 acres, with priority date of June 25, 1917. We have deducted for the 65 acres on the original claim, leaving a balance of 221 acres. Our companion Motion to amend with priority August 14, 1905 included 126 acres that are the same; we have deducted those acres from the 221 acres which leaves 95 acres. Based on $2 per additional acre the fee would be $190.00. Please advise if we are in error and owe something additional.

CERTIFICATE OF MAILING

I certify that on Feb. 27, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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

2. Copies to:

   IDWR Document Depository
   P. O. Box 83720
   Boise, ID 83720-0098

   Chief, Natural Resources Division
   Office of the Attorney General
   State of Idaho
   P. O. Box 44449
   Boise, ID 83711-4449

   United States Department of Justice
   Environment and Natural Resources Division
   550 West Fort Street, MSC 033
   Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or Special Master, you must serve a copy on all parties in that subcase.

Gordon S. Thatcher

2007 MAY 15 PM 2:13
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO

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

In Re SRBA Case No. 39576	)	**ORDER GRANTING MOTION TO FILE AMENDED CLAIM AND SETTING SUBCASE DEADLINES** **SUBCASE NO.: 22-00628A**

I. PROCEDURAL BACKGROUND

A *Motion to File Amended Notice of Claim* was filed by Grover Browning on February 28, 2007. The *Motion* seeks to amend the notice of claim for this water right by amending the priority date. A hearing was held on the *Motion* on May 9, 2007.

II. STANDARD OF REVIEW

The SRBA Court administrative rules establish that motions to amend claims "shall be freely given when justice so requires." ***SRBA Administrative Order 1 (A01)*** § 4d (2) (k)

III. FINDINGS

Counsel for the claimant explained that the Brownings have evidence relating to an earlier priority and additional acres that would more accurately describe the right. There was no opposition to the *Motion*. Therefore, the *Motion to File Amended Notice of Claim* is **granted.**

IT IS ORDERED that the following deadlines shall govern further proceedings:

May 23, 2007	**2:30 pm**	Status Conference / Determination of Late Claim **Location**: Snake River Basin Adjudication 253 3rd Ave. North Twin Falls, Idaho 83301
August 30, 2007	**5:00 pm**	Deadline to file Amended Director's Report
September 28, 2007	~~**5:00 pm**~~	Deadline to file Objection
October 12, 2007	**5:00 pm**	Deadline to file Response

EXHIBIT
tabbies
ZZ

October 17, 2007 **10:30 am** Status Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

DATED: May 15, 2007.

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION TO FILE AMENDED CLAIM AND SETTING SUBCASE DEADLINES was mailed on May 15, 2007, with sufficient first-class postage to the following:

GROVER BROWNING
Represented by:
GORDON S THATCHER
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

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

ORSENA C BROWNING
7 N 2700 E
TETON, ID 83451
Phone: 208-458-4327

Janet Connell
Deputy Clerk

RECEIVED 2007 MAY 31 PM 2:37
JUN - 1 2007
DEPARTMENT OF WATER RESOURCES
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA Case No. 39576	**ORDER IDENTIFYING AMENDED CLAIM** **SUBCASE NO.: 22-00628A**

I. PROCEDURAL BACKGROUND

The court issued an ***Order Granting Motion to File Amended Claim and Setting Subcase Deadlines*** for this subcase on May 15, 2007. A hearing was held May 23, 2005 to clarify the ***Order*** because the court realized that the claimant had filed two different *Amended Claims* for water right 22-628A. At the hearing on May 23, 2007 the court identified *Amended Claim #1* as the claim for 286 acres with a 1917 priority date. The court identified *Amended Claim #2* as the claim for 126 acres with a 1905 priority date.

III. FINDINGS

The parties and IDWR discussed the two proposed *Amended Claims.* The claimant agreed that *Amended Claim #1* should go forward. The claimant and IDWR agreed that *Amended Claim #2* needed to be stricken from this subcase. A late claim will need to be filed for the water right claim marked as *Amended Claim #2*, and that claim will proceed separately.

III. CONCLUSION

Therefore, the court clarifies its previous *Order Granting Motion to File Amended Claim and Setting Subcase Deadlines.* The *Motion* is **granted** as to *Amended Claim #1* with the 286 acres and the 1917 priority date.

The *Motion* is **denied** as to *Amended Claim #2* with the 126 acres and the 1905 priority date. In addition, *Amended Claim #2* is stricken from the record for this subcase.

EXHIBIT
tabbies
AAA

IT IS ORDERED that the following deadlines shall govern further proceedings:

August 30, 2007	**5:00 pm**	Deadline to file Amended Director's Report
September 28, 2007	**5:00 pm**	Deadline to file Objection
October 12, 2007	**5:00 pm**	Deadline to file Response
October 17, 2007	**10:30 am**	Status Conference **Location**: Snake River Basin Adjudication 253 3rd Ave. North Twin Falls, Idaho 83301

DATED: May 31, 2007.

BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER IDENTIFYING AMENDED CLAIM was mailed on May 31, 2007, with sufficient first-clas postage to the following:

GROVER BROWNING
Represented by:
GORDON S THATCHER
25 N 2ND E
PO BOX 250
REXBURG, ID 83440-0250
Phone: 208-356-3633

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

ORSENA C BROWNING
7 N 2700 E
TETON, ID 83451
Phone: 208-458-4327

Deputy Clerk

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

In Re SRBA	)	**Subcase** A22-00628A
	)	
	)	**STANDARD FORM 4**
Case 39576	)	
	)	**MOTION TO FILE**
	)	☐ **LATE NOTICE OF CLAIM**
	)	☑ **AMENDED NOTICE OF CLAIM**
	)	

☑ I have read ***SRBA Administrative Order 1, Rules of Procedure*** (amended Sept. 30, 1996).

My name is **GROVER BROWNING**, Co-Trustee of the **GROVER BROWNING MARITAL TRUST** and Co-Trustee of the **ORSENA C. BROWNING FAMILY TRUST**, (both coming into being on the death of Orsena C. Browning on March 16, 2003, under the **GROVER & ORSENA BROWNING LIVING TRUST**, dated March 26, 2001).

My address is: **7 N. 2700 E., Teton, Idaho 83451**

My phone number is: Home: **208-458-4327**

I am an attorney representing **Grover Browning**

My name is **Gordon S. Thatcher**

My address is **25 N. 2nd E., P. O. Box 250, Rexburg, Idaho 83440**

My phone number is **208-356-3633**

EXHIBIT
tabbies
BBB

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

☑ I must amend my Notice of Claim to the use of the water in the SRBA because:

This is one of two separate Amended Notices of Claim. Both relate to A22-00628A filed on August 17, 1988. The backing of this claim is License #1505 issued on November 15, 1913. This needs to be amended to show August 14, 1905 as the priority date as per the License; and to include the 126 acres in Madison County actually irrigated rather than the erroneous 65 acres in Teton County, Idaho and only the 65 acres in the License in Madison County. As shown in this Amended Notice of Claim and in the companion Notice of Claim, Grover Browning was mistaken, due to the complexity of the whole matter as to what was claimed in A22-00628A. Claimant's attorney, Gordon S. Thatcher, has helped Claimant sort out the facts from many documents including some over 100 years old, so the correct claims are made in the two Amended Notices of Claim. The other Amended Notice of Claim has a correct priority date of June 25, 1917 and is for this land and other land in Madison County and in Teton County.

☑ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

With the Amended Notice of Claim are Exhibit "A", Application for Permit No. 2057; Exhibit "B", Water License No. 1505; Exhibit "C" which is SCS aerial photo showing the irrigated acres; Exhibit "G" which is a current Grant Deed to claimants; and Exhibit "H" which is a map of four Tracts at issue. Attached hereto are Exhibit "I", Receipt No. E001381 for $140 for monies paid; Exhibit "J", original Notice of Claim # A22-00628A; Exhibit "K", Notice of Error; Exhibit "L", Letter from Trent Galbraith, Water Agent, Adjudication Bureau, IDWR; and Exhibit "N", "Order and Decree Confirming Ownership and Approving Final Distribution", dated February 20, 2007, concerning the Grover & Orsena Browning Living Trust, confirming corrections to property descriptions of property owned by the Trust, and confirming the property is owned by Claimant two Trusts as per Grant Deed, Exhibit "G".

I have attached:

☑ An Amended Notice of Claim (available from IDWR).

☐ Payment of the following additional fees required by IDWR:

See Exhibit "I" hereto as Receipt from IDWR for $140.00 for Adjudication Fee for A22-00628A and A22-10988, dated August 17, 1988. The latter was for a domestic water claim on other property for 0.04 cfs; we do no know how that was allocated. The former was for 65 acres in Teton County. This proposed Amended Notice of Claim is for 126 acres all in Madison County with priority of August 14, 1905. ~~So we are enclosing a fee of $252.00 for the total of 126 acres in~~ Madison County. We claim no credit for the $140.00 previously paid.

VERIFICATION

STATE OF IDAHO,)
ss
County of Madison.)

Grover Browning and Gordon S. Thatcher, being each first duly sworn, upon oath, deposes and says:

That Grover Browning is a Co-Trustee for the party/claimant filing this motion for amended claim (as listed on Page 2) and that Gordon S. Thatcher is the attorney for the party/claimant filing this motion for amended claim and that each has read this motion, know its contents, and believe that the statements are true to the best of his knowledge.

Grover Browning

Gordon S. Thatcher

Subscribed and sworn to before me on February 26, 2007.

ANNE WIEBEN NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Rigby
My Commission Expires: 7/27/2007

CERTIFICATE OF MAILING

I certify that on February ~~26~~ 27, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

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

2. Copies to:

   IDWR Document Depository
   P. O. Box 83720
   Boise, ID 83720-0098

   Chief, Natural Resources Division
   Office of the Attorney General
   State of Idaho
   P. O. Box 44449
   Boise, ID 83711-4449

   United States Department of Justice
   Environment and Natural Resources Division
   550 West Fort Street, MSC 033
   Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or Special Master, you must serve a copy on all parties in that subcase.

Gordon S. Thatcher

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

May 24, 2007

Gordon S. Thatcher
Thatcher Law Office, PLLC
P.O. Box 216
116 S. Center St.
Rexburg, ID 83440

Re: SRBA subcase no. 22-628A Browning

Dear Mr. Thatcher:

This will confirm our telephone conversation yesterday afternoon following the conclusion of the hearing on two motions to amend claims in the adjudication of the above-referenced subcase. During the call, I explained that Trent Galbraith, the Idaho Department Water of Resources ("IDWR") agent assigned to this subcase, would begin working on an amended director's report for the amended claim which motion was granted. The Court called it Motion No. 1, and it concerns a priority date of 1917 and 286 acres of place of use. The basis of that amended claim is the Neeley-Browning Decree ("Decree"). As we discussed, because the Decree applies to sections 29 and 32 of the property at issue, and not section 33 of your clients' property, IDWR will not recommend water rights for section 33 based on the Decree in the forthcoming amended director's report. To that end, we also discussed an anticipated motion for late claim, specifically the possibility of seeking a beneficial use right for the 65 acres in section 33 which were originally claimed.

The second motion for amended claim, what the Court called Motion No. 2 and which references priority date of 1905 and 126 acres of place of use, is based on License No. 1505, dated November 15, 1913 ("License"). Because the Decree was subsequent to the License and encompasses the "respective rights and interests in the water rights" of the parties to the Decree, the Decree supersedes the License because they both cover the same ground and source. Therefore, Trent will determine any water rights to which your clients are entitled based on the Decree (acres in sections 29 and 32) in the processing of the amended claim and not in a late claim. As I explained, however, IDWR may recommend, in matters like these, a water right as a beneficial use with a priority

Natural Resources Division - Water Resources Section
P.O. Box 83720 Boise, Idaho 83720-0098
Telephone: (208) 287-4801; Legal FAX: (208) 287-6700

EXHIBIT
tabbies
CCC

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

06/11/2007

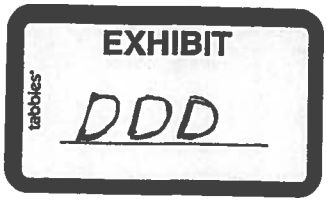
WATER RIGHT NO. 22-629

Owner Type	Name and Address
Current Owner	DEAN CRAIN
Current Owner	ELVA CRAIN 2627 E 100 N TETON, ID 83451 (208)458-4480
Original Owner	CARTER RANCH C/O WALTER CARTER PO BOX 826 ASHTON, ID 83420 (208)652-7234
Original Owner	TRACY CARTER PO BOX 826 ASHTON, ID 83420 (208)652-7234
Original Owner	DORA WEAVER
Original Owner	JOHN WEAVER PO BOX 826 REXBURG, ID 83440

Priority Date: 06/15/1917
Basis: Decreed
Status: Active

Source	Tributary
PONY CREEK	CANYON CREEK

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/15	10/31	1.7 CFS	



STOCKWATER	04/15	10/31	0.04 CFS	
Total Diversion			1.7 CFS	

Location of Point(s) of Diversion:

PONY CREEK	SESESE	Sec. 33	Township 06N	Range 43E	TETON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION MADISON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06N	43E	32		NENE	27		NWNE	39		SWNE	14		SENE	38
		33		NWNW	0.1		SWNW	0.1						

Place of Use Legal Description: STOCKWATER MADISON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06N	43E	32		NENE			NWNE			SWNE			SENE	

Total Acres: 118.2

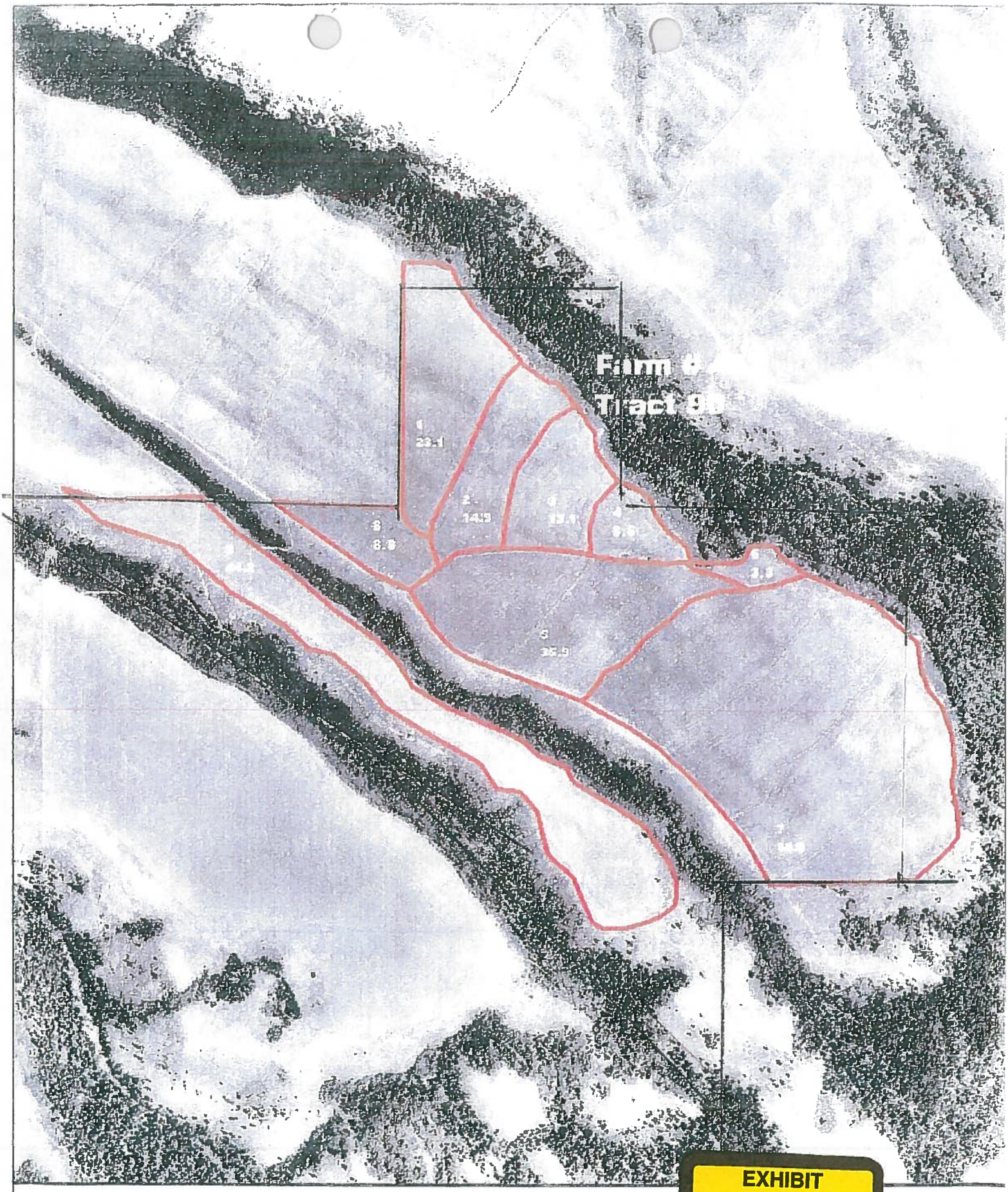
Conditions of Approval:

1.	C18	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.
2.		This right is renumbered from former right 22-2017 .
3.	N08	The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.
4.	N05	The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

Dates:

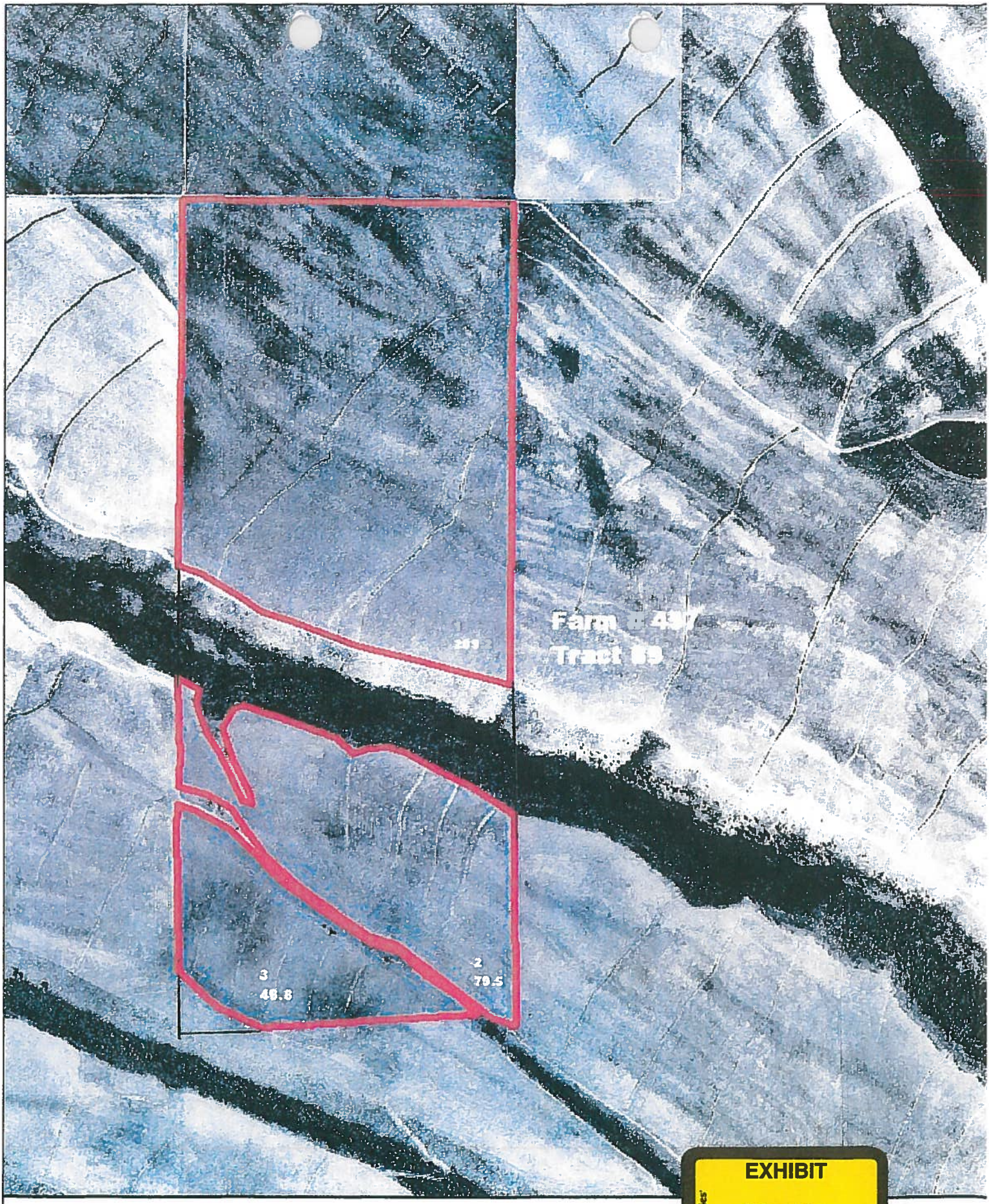
Other Information:
State or Federal: S
Owner Name Connector: OR
Water District Number: 01
Generic Max Rate per Acre:

Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False
Close



Map of Tract 90

Map Printed: Feb 3, 2004



EXHIBIT

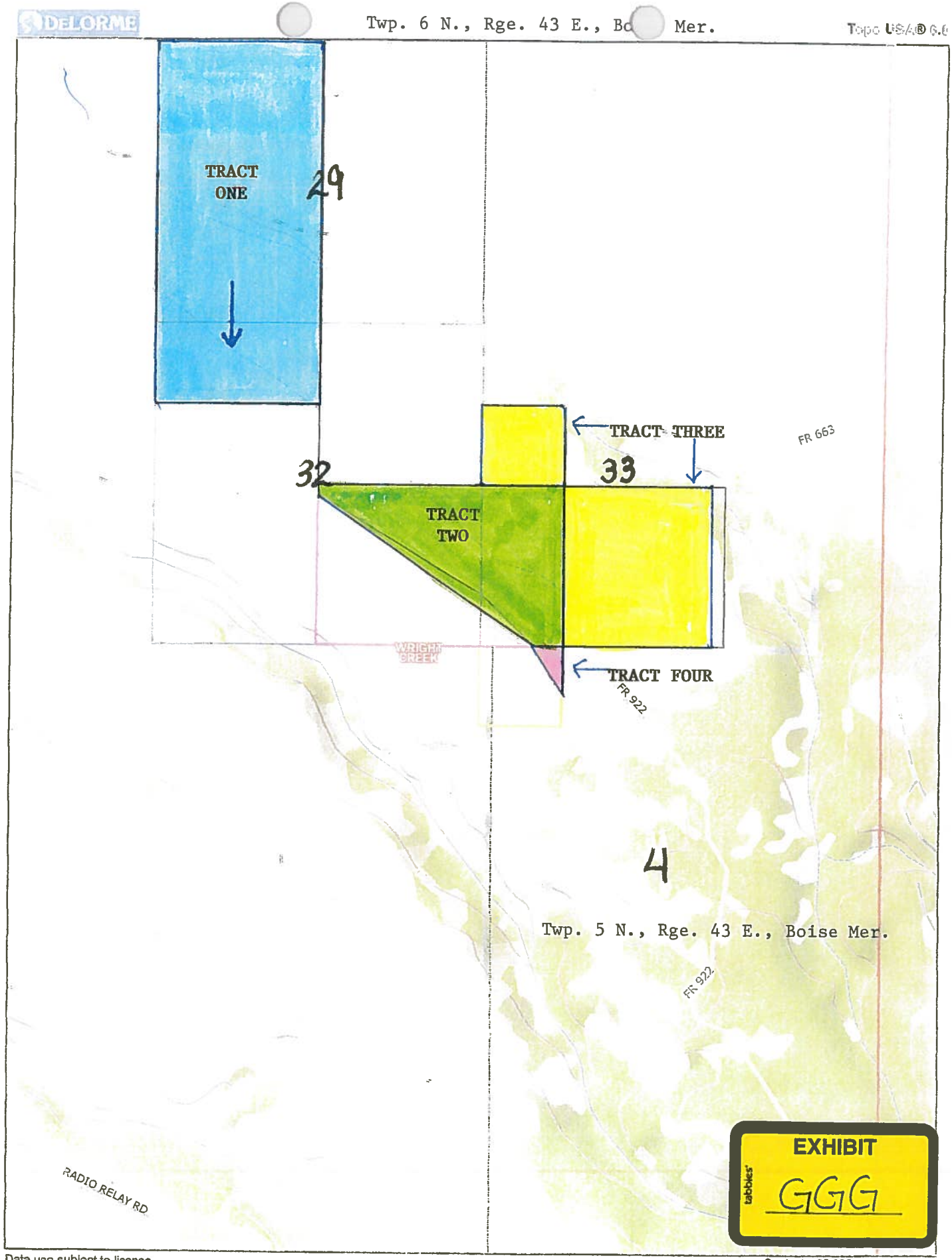
tabbies

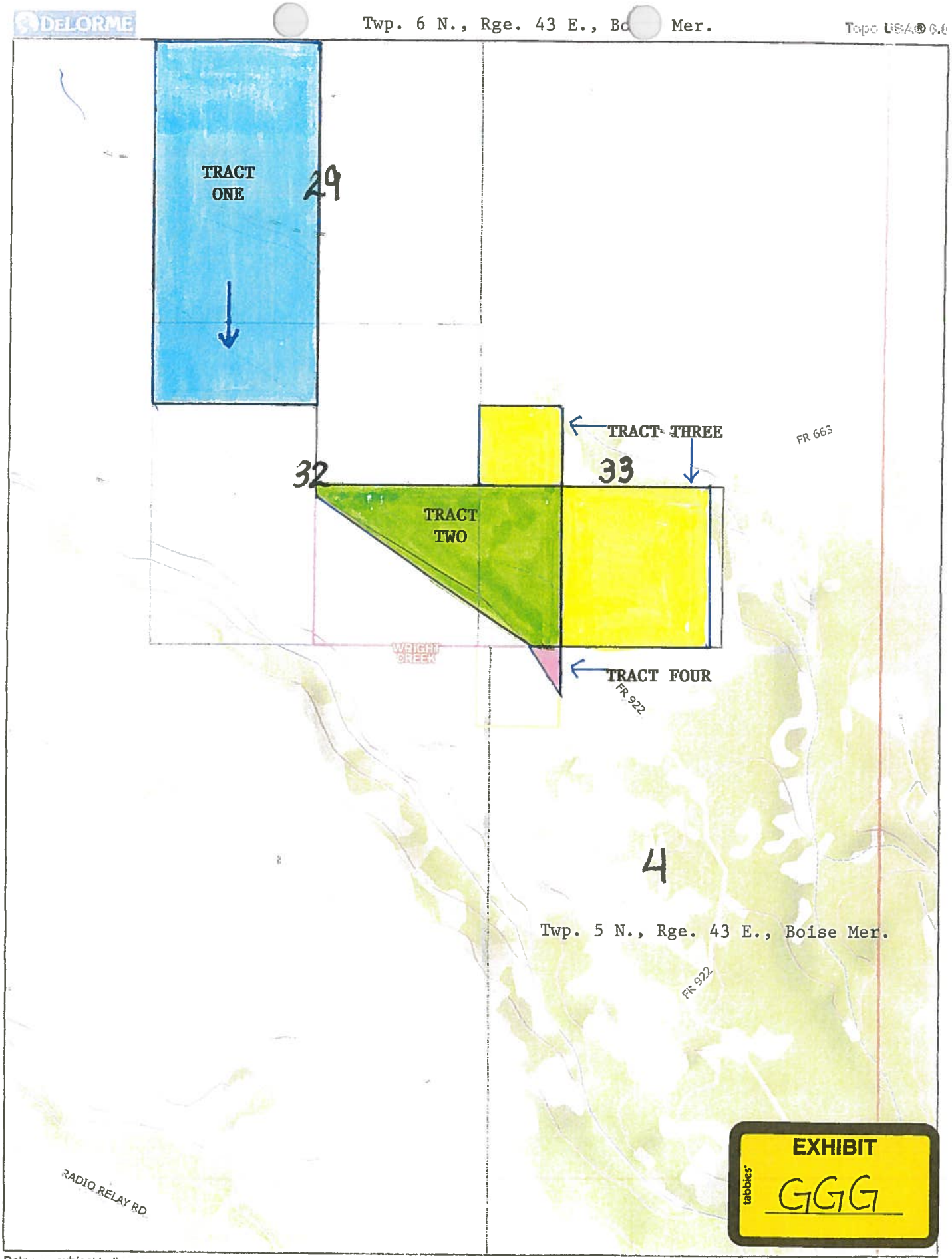
FFF

Map of Tract 89

0.09 0 0.09 0.18 0.27 0.36 Miles

Map Printed: Oct 1, 2003


DeLORME
Twp. 6 N., Rge. 43 E., Bo Mer.
Topo USA® 6.0
TRACT ONE
29
TRACT THREE
FR 663
32
33
TRACT TWO
WRIGHT CREEK
TRACT FOUR
FR 922
4
Twp. 5 N., Rge. 43 E., Boise Mer.
FR 922
RADIO RELAY RD
EXHIBIT
tabbies
GGG
Data use subject to license.
© 2006 DeLorme. Topo USA® 6.0.
www.delorme.com
TN
MN (13.1°E)
Scale 1 : 25,000
1" = 2,083.3 ft
Data Zoom 13-0


DeLORME
Twp. 6 N., Rge. 43 E., Bo Mer.
Topo USA® 6.0
TRACT ONE
29
TRACT THREE
FR 663
32
33
TRACT TWO
WRIGHT CREEK
TRACT FOUR
FR 922
4
Twp. 5 N., Rge. 43 E., Boise Mer.
FR 922
RADIO RELAY RD
EXHIBIT
tabbies
GGG
Data use subject to license.
© 2006 DeLorme. Topo USA® 6.0.
www.delorme.com
TN
MN (13.1°E)
Scale 1 : 25,000
1" = 2,083.3 ft
Data Zoom 13-0

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: A22-00628A
Date Received: 8/17/1988
Receipt No: E001381
Received By: Kaw

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: GROVER BROWNING 208-458-4327
   Address: HC 60 BOX 1167
   TETON, ID 83451
   OR
   Name: ORSENA C. BROWNING 208-458-4327
   Address: HC 60 BOX 1167
   TETON, ID 83451

2. Date of Priority: SEP 07, 1906

3. Source: PONY CREEK Trib. to: CANYON CREEK

4. Point of Diversion:

Township	Range	Section	1/4	of 1/4	of 1/4	Lot	County
06N	43E	33	SE	SE	SE		TETON

5. Description of diverting works:
   DIVERSION DAM TO DITCH FOR IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	6.000		

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

8. Total consumptive use is 130.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

EXHIBIT
tabbies
HHH

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
06N	43E	33	SW	NW		IRR	35.0
			SE	NW		IRR	3.0
			NE	SW		IRR	10.0
			NW	SW		IRR	17.0
						Section Acres	65.0
						Total Acres	65.0

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:
NONE

14. Remarks:

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 5/21/1954

O.J. NEELEY
Decree Plaintiff

vs

GEORGE BROWNING
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: _____

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): Shawn Browning Date: 8-17-88

_____ Date: _____

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this 17th day of Aug. 19 88

Colleen Wray
Notary Public

Seal

Residing at Idaho Falls

My Commission Expires 5/29/1991

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 22-628A
Date Received: 8/17/1988
Receipt No: E001381
Received By:

AMENDED NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

IDAHO RANCH SUBDIVISION LLC Phone: (208)787-4554
PO BOX 362
VICTOR ID USA 83455

2. Date of Priority: 06/25/1917

3. Source: PONY CREEK Trib. to: CANYON CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County	Type
06N	43E	33	SE SE SE		TETON	

5. Description of diverting works:

DIVERSION DAM TO DITCH FOR IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	6	300

7. Total Quantity Appropriated is:
6 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
06N	43E	29	SW SW		IRRIGATION	29
			SE SW		IRRIGATION	21
					Section Acres	50
06N	43E	32	NE NE		IRRIGATION	7
			NE NW		IRRIGATION	40
			NW NW		IRRIGATION	37
					Section Acres	84
06N	43E	33	SW NW		IRRIGATION	25
			NE SW		IRRIGATION	25

NW	SW	IRRIGATION	25
SW	SW	IRRIGATION	15
SE	SW	IRRIGATION	18.4
NW	SE	IRRIGATION	15
SW	SE	IRRIGATION	30
		Section Acres	153.4
		Total Acres	287.4

11. Place of use in counties: TETON

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used:

14. Remarks:
15. Basis of Claim: Decreed

09/25/2006

IDAHO DEPARTMENT OF WATER RESOURCES

PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-628A

NAME AND ADDRESS: GEORGE L WYANT
PO BOX 629
SHOSHONE ID 83352

ORSENA C BROWNING
7 N 2700 E
TETON ID 83451

SOURCE: PONY CREEK TRIBUTARY: CANYON CREEK

QUANTITY: 1.950 CFS

PRIORITY DATE: 06/25/1917

POINT OF DIVERSION:
T06N R43E S33 SESESE Within TETON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/15 10/31	1.950 CFS

PLACE OF USE: IRRIGATION Within TETON County

T06N R43E S33	SWNW	36.00	T06N R43E S33	SENW	3.00
T06N R43E S33	NESW	9.00	T06N R43E S33	NWSW	17.00

65 ACRES TOTAL

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

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: **A22-00628A**
Date Received: 8/17/1988
Receipt No: E001381
Received By: KCW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW



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   Address: HC 60 BOX 1167
   TETON, ID 83451
   OR
   Name: ORSENA C. BROWNING 208-458-4327
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8. Total consumptive use is 130.0 Acre Feet Per Annum.

9. Non-irrigation uses:
   NONE

SCANNED
JUN 12 2007
MICROFILMED
OCT 28 1992

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
06N	43E	33	SW	NW		IRR	35.0
			SE	NW		IRR	3.0
			NE	SW		IRR	10.0
			NW	SW		IRR	17.0
						Section Acres	65.0
						Total Acres	65.0

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:
NONE

14. Remarks:

15. Basis of Claim: DECREED
Case Number:
Court :
Decree date: 5/21/1954

O.J. NEELEY
Decree Plaintiff

vs

GEORGE BROWNING
Decree Defendant

SCANNED JUN 12 2007
MICROFILMED OCT 28 1992

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: _____

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Signature of Claimant(s): Shawn Browning Date: 8-17-88

_____ Date: _____

State of Idaho)
) SS.
County of Bonneville)

Subscribed and sworn (or affirmed) before me this 17th day of Aug. 19 88

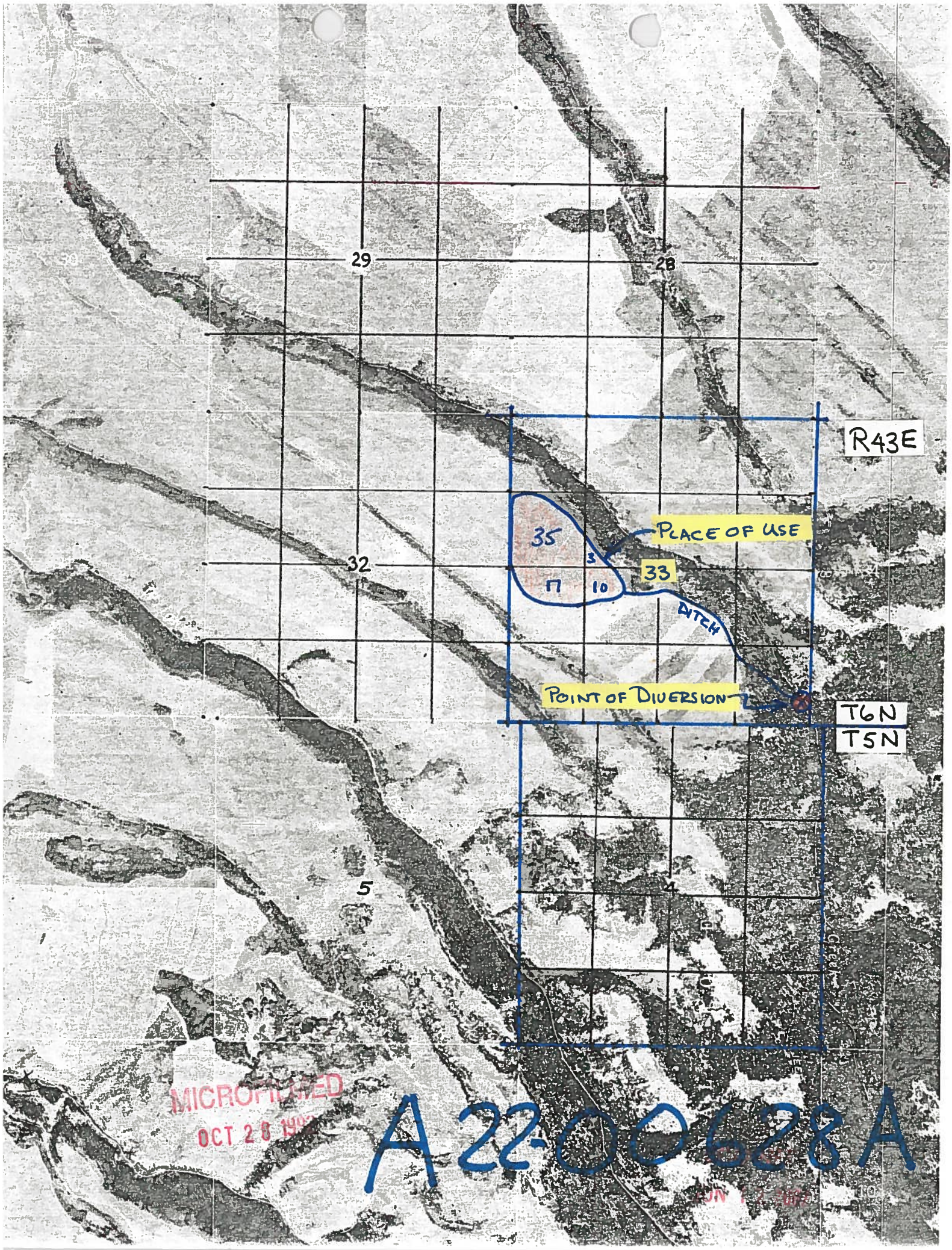
Colleen Wray
Notary Public

Seal

Residing at Idaho Falls

My Commission Expires 5/29/1991

SCANNED MICROFILMED
JUN 12 2007 OCT 28 1992



MICROFILMED
OCT 2 8 19

A22-00628A

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