

06/19/2006

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

RIGHT NUMBER: 22-638

NAME AND ADDRESS: DEAN CRAIN
2627 E 100 N
TETON ID 83451

SOURCE: NORTH FORK TETON RIVER

TRIBUTARY: HENRYS FORK

QUANTITY: 2.200 CFS

PRIORITY DATE: 12/01/1903

POINT OF DIVERSION:

T07N R40E S36 NENWNE Within FREMONT County

PURPOSE AND

PERIOD OF USE:

	<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
	IRRIGATION	04/01 10/31	2.200 CFS
PLACE OF USE:	<u>IRRIGATION Within MADISON County</u>		
	T07N R40E S35 NENE 33.00	T07N R40E S35	NWNE 30.00
	T07N R40E S36 NWNW 35.00		
	98 ACRES TOTAL		

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

SAME PD AS PINCOCK-BYINGTON DITCH

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

06/19/2006

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: 22-638

DEAN CRAIN

2627 E 100 N

TETON ID 83451

Telephone Number: (208) 458-4480

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:

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

DATE: Dec. 11, 06 SIGNATURE: Elva Crain
Please print your name: Elva Crain

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

20



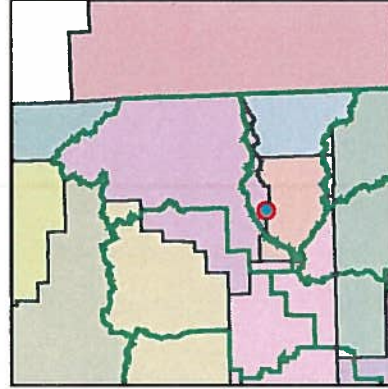
Idaho Department of Water Resources

SRBA Recommendation:

22-638

Legend

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



Fremont, Madison Counties
IDWR Basin 22



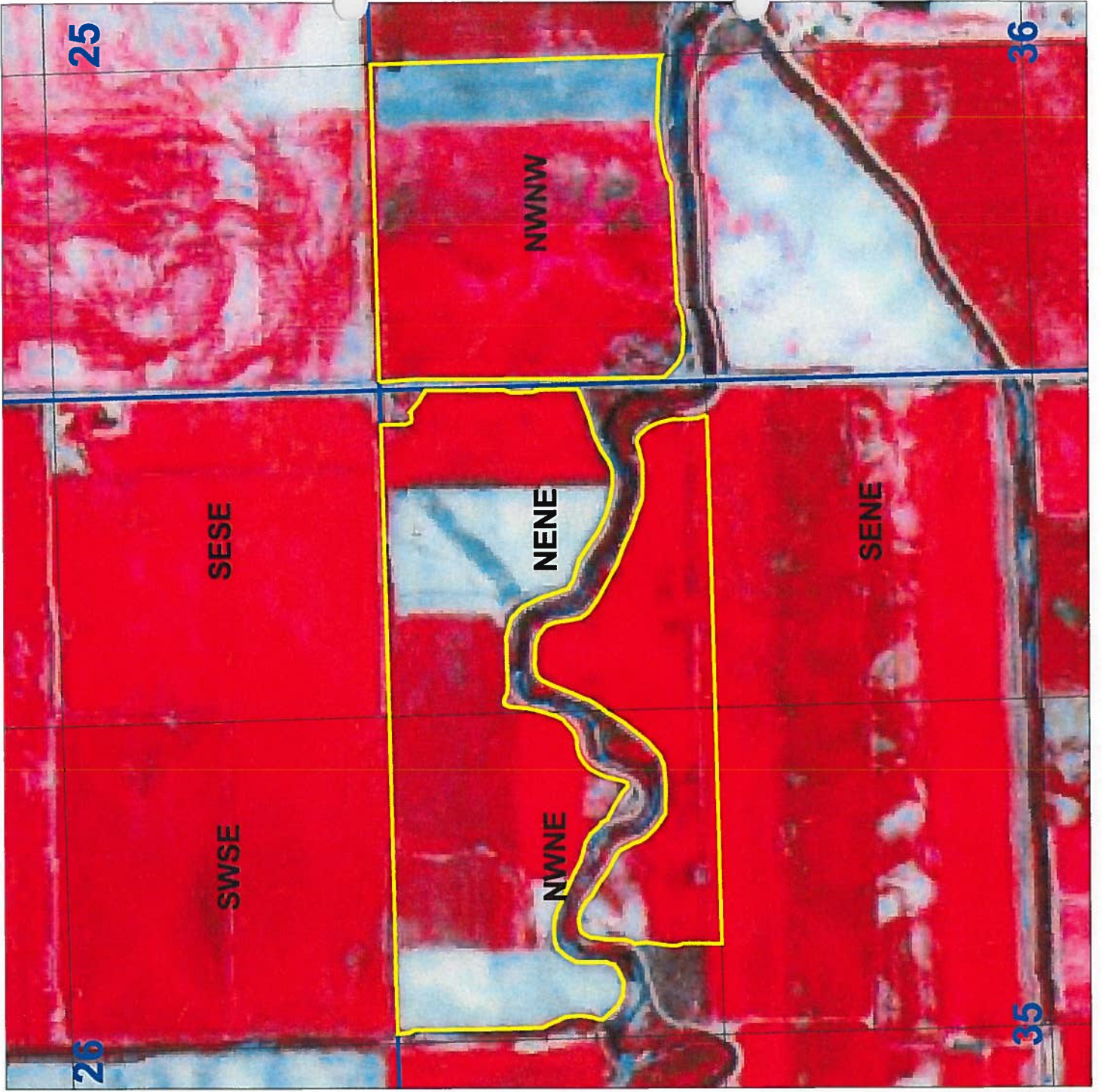
R40E



0 0.5 1 Miles

Prepared by K. Wilson
On Monday, June 19, 2006
1987/88 Aerial Photography

22-638



Water Right No(s). A22-00638

Claimant Dean Grain has passed away but his wife Elva is still the owner of properties. Her mailing address is 2627 E. 100 N. Teton, ID 83451. Phone is still 208-458-4480. Elva's Son, Ray Grain runs the farm. His phone # is 208-458-4486. He can answer any questions about the farms.

GPS data - 2686088
1413220

GPS File # - Pincock

GPS DATA:

Tag # existing
A 0000285 Location: on headgate frame
of Pincock-Bryngton Ditch

Diversion Data:

Source: Teton River Trib to: Henry's Fork

MOTOR Ditch

Make: _____ Model: _____ Hp: _____
SN: _____

PUMP

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

NOTES:

This right is carried through the Pincock-Bryngton Ditch.

Field Exam Date: 5-28-06 Agent: J. L. Jones

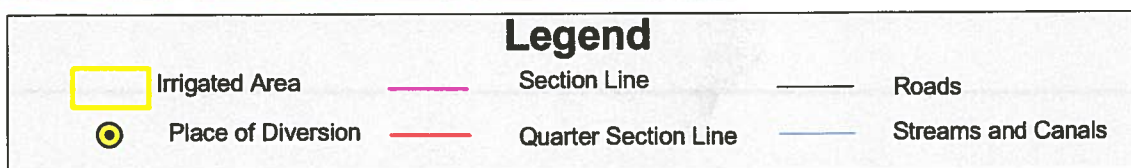
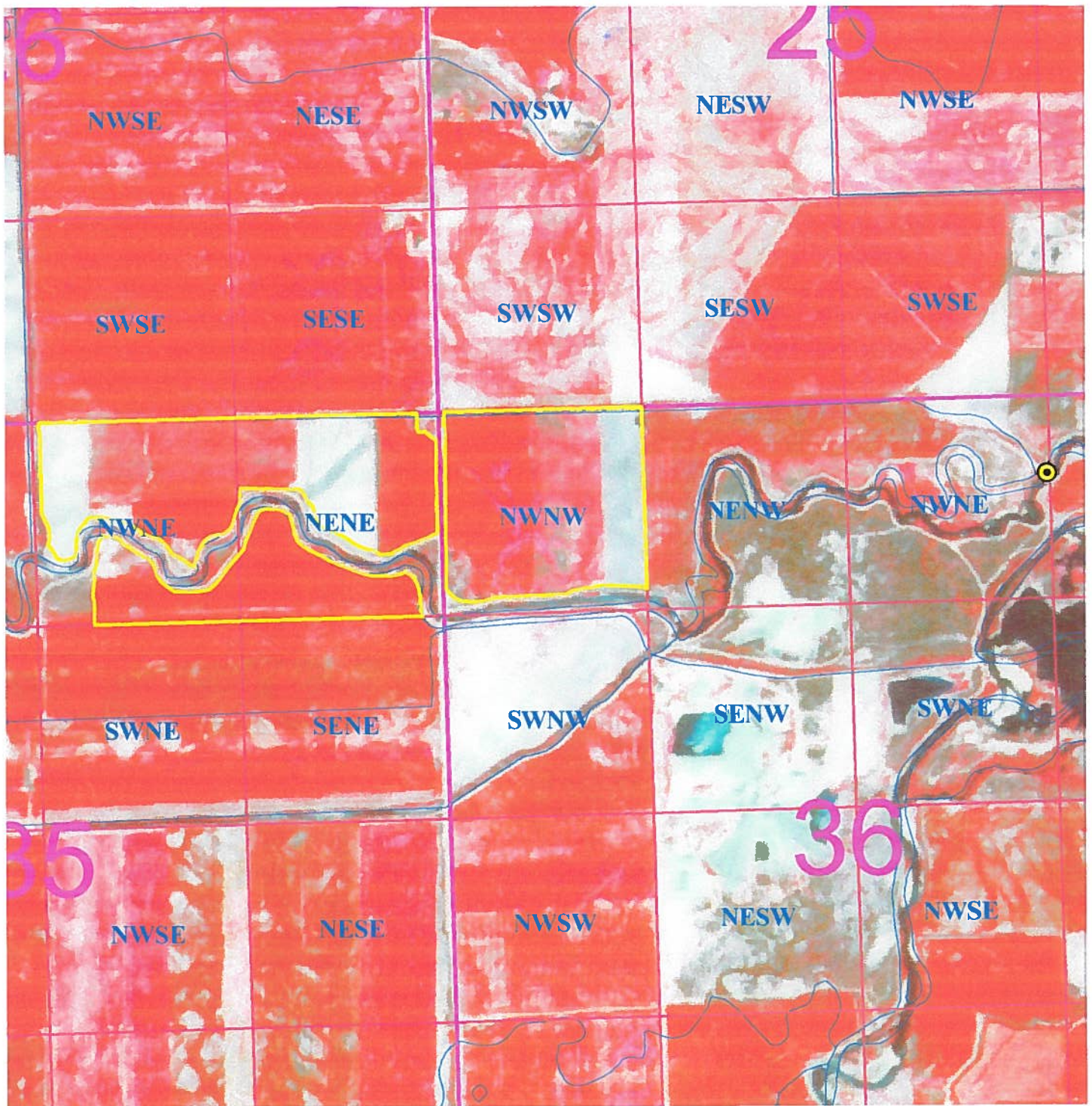
GPS
Tag



A22-00638, Pincock-Byington Headgate

Water Right Claim Number 22-00638
Township , 7N40E

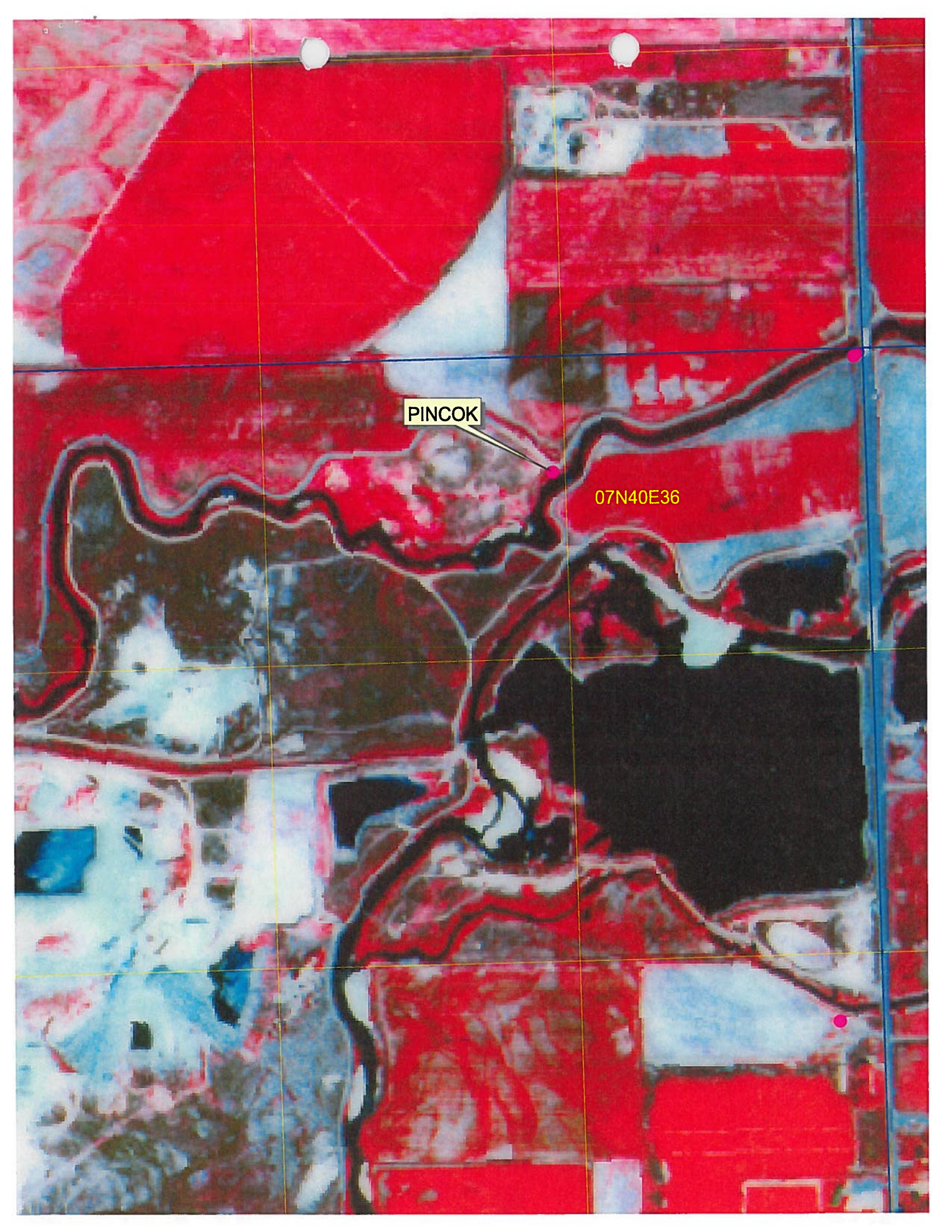
07/26/2001



700 0 700 1400 Feet



SPATIAL
DYNAMICS

An aerial photograph of a river delta, likely the Ganges-Brahmaputra delta, showing a complex network of channels and floodplains. The image is overlaid with a yellow grid. A white label 'PINCOK' with a pointer indicates a specific location on a channel. A yellow label '07N40E36' is placed near the same location. Two white circular punch holes are visible at the top edge. The terrain is color-coded, with red and blue areas representing different land cover types or water levels.

PINCOK

07N40E36

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

FLOYD GARDNER, LELAN ANDERSON,
WILLIAM D. HOLLIEST, DEAN GRAY,
YOSHIMISA UGAKI, ALBERT BIRCH,
DAVID LEROY GARDNER, MARK CLARK,
and EVA B. CUTLER,

Plaintiff,

-VS-

LYNN CRANDALL, Water Master, Water
District No. 36 of the State of Idaho

Defendant.

JUDGMENT

It is hereby ORDERED, ADJUDGED and DECREED That the plaintiffs, be,
and each of them is hereby, awarded priority right to the use of water of
the Snake River and its tributary, the Teton River, in amount and as of
priority date hereinafter indicated for the purpose of irrigation and for
domestic use:

22-0031 FLOYD GARDNER: 160 inches Dec. 1st, 1903.
The NW $\frac{1}{4}$ SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 36, T. 7 N., R. 40 EFM

22-002078 LELAN ANDERSON: 80 inches May 15, 1898
The SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 36, T 7 N., R 40 EFM

22-0632 $\uparrow$ Gary Beddes 104 inches Dec. 1st, 1903
NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec.
1M which is part of Teton River

MEMORANDUM

RECEIVED

FEB 03 1992

Department of Water Resources
Eastern District Office

To: Ernie Carlson
From: L. Glen Saxton *LS*
RE: ATTACHED INFORMATION - 22-00638 - DEAN CRAIN
Date: January 30, 1992

I am forwarding the attached information in order that you may attach it to the adjudication claim which has been filed on this right.

In short, the department denied application for transfer no. 3571 which was filed on this right and the applicant requested a hearing to which he is entitled. Since it appears the right does not exist, a hearing would likely find the same thing which the applicant might ultimately appeal to district court. It does not appear efficient to hold a separate administrative hearing which might end up in district court when the matter is already in district court as a part of the adjudication effort.

Please feel free to contact me if you have questions.

Encl: Several copies

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OCT 28 1992

February 25, 1991

J. D. Hancock
Smith & Hancock
30 South 2nd West
P.O. Box 427
Rexburg, ID 83440

RE: APPLICATION FOR TRANSFER NO. 3571 OF WATER RIGHT NO. 22-0638
IN THE NAME OF DEAN CRAIN

Dear Mr. Hancock:

The department has reviewed the affidavits you submitted to the department on January 28, 1991 in connection with the above referenced matter. The question of ownership of the original place of use of water right 22-0638 now appears to be cleared up. The statements in the affidavits that the water right was not conveyed in the sales transactions, however, are questionable since the general rule is that water rights are included in sales transactions unless specifically withheld. The deeds you have provided do not show that the water right was withheld in the sales agreements.

The department is willing to schedule and conduct a hearing in connection with the denial of the application for transfer, but such a hearing likely is premature and presently would serve no purpose as described below in this letter.

The alleged change in place of use of right 22-0638 for irrigation purposes has not been recorded with the department prior to the filing of the adjudication claim on the right. Section 42-1416A, Idaho Code, however, does provide for changes to water rights under certain conditions even though the change was not previously filed with the department. The alleged change which has been claimed will be ruled upon in the adjudication. If the change as claimed is found to be a valid right by the court, then would be the proper time to file an application for transfer to further change the right as was proposed on transfer 3571.

Please review this matter in view of this letter and advise me if you think a purpose would be served for the department to schedule and conduct a hearing prior to the court's determination of the validity of the pending adjudication claim filed on the water right. Please feel

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free to discuss this matter with me if you wish. My direct phone number is 327-7955 in Boise.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - E. Region
Harold Jones

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MEMORANDUM

TO: GLEN SAXTON

FROM: TIM LUKE *TL*

DATE: February 21, 1991

RE: TRANS. NO. 3571/RT. NO. 22-0638 IN NAME OF DEAN CRAIN

=====

I have reviewed the additional material submitted by the applicant to determine whether it is suitable to rescind or modify the order denying transfer which we issued in September of 1990. While the applicant has further clarified some of his earlier statements or positions, I do not believe that the information is suitable at this time to rescind or modify the order. I have several broad concerns outlined below:

1) Informal transfer of right 22-0638

- The applicant states that the water under this right has not been used on the lands to which the right is appurtenant since the Teton flood but instead the water has been delivered through the Pincock-Byington Ditch for use on different lands owned by the applicant. There are earlier priority decreed rights appurtenant to these latter lands. The department has no record of such a transfer nor does it have any record of the right being delivered after the flood. The applicant however has filed an adjudication claim on 22-0638 which lists the other lands as the place of use and the Pincock-Byington as the point of diversion. Statements by Val Richards, District 01 deputy watermaster, and the District 01 watermaster reports confirm that the right has not been delivered under District 01.

- The applicant has also submitted an affidavit from L.C. Anderson, former Freemont-Madison Irrigation district secretary who states the applicant received permission from the Freemont-Madison Irrigation District to transfer 110 inches under right 22-0638 to the Pincock-Byington Ditch.

I feel that if the state had some record that the right was delivered to the Pincock-Byington ditch other than statements from Crain and Anderson, then the state could at least acknowledge the informal transfer and move forward with the new transfer. Freemont-Madison's consent to an informal transfer should not mean that the informal transfer is legitimate, or that it was even accomplished. Freemont-Madison has no control or jurisdiction over natural flow rights owned by individuals. What other records would Freemont-Madison have to confirm delivery of the right? If Crain has used additional water through the Pincock-Byington, he may have diverted water under other unused rights in the Pincock-Byington

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or he was actually diverting storage water owned by Freemont-Madison. Perhaps Crain is confused and he just thinks he was diverting additional water through the Pincock-Byington under right 22-0638.

Without an actual transfer made through the state or some other request made through the watermaster, and without any record of the right being delivered, I still feel that there is insufficient evidence documenting the use of the right. The department should not at this time modify its conclusion concerning loss and forfeiture of the right due to non-use.

If the applicant can somehow show that the right has been delivered, then he should probably also show the extent of use under the right. I am not sure that we could allow the right to be removed from the land the applicant says it is being used on without requiring the other rights on the same land to be removed. Administrator's memorandum of September 27, 1982 (transfer processing no. 6) provides certain guidelines about transferring supplemental rights. If we do acknowledge that the right was informally transferred to lands having existing rights, then it seems that we would be faced with a potential expansion by allowing removal or transfer of this right.

2) Ownership of the right.

ownership is OK.

- We have numerous times asked the applicant to submit proof of ownership of the land recorded as the place of use and from which the right is being removed, or consent to the transfer from the appropriate owner. The applicant has adequately shown that he does not own the land which is recorded as the place of use and to which the right is appurtenant. The applicant states that the water right was not conveyed with the land when the land was sold. My review of the title deeds do not show that the water right was specifically reserved. In fact, lack of specific language in the deeds reserving the water right along with the normal language in the deeds about the sale of the land 'together with all tenements, hereditament and appurtenances ...' etc. seem to indicate that the water right was conveyed with the sale of the land. ✓

If we are to consider modifying our order, I feel we should still insist on obtaining consent to the transfer from the appropriate owner of land to which the right is recorded as being appurtenant.

3) Change in nature of use.

- If the applicant can satisfy the above concerns, I believe the applicant or successors in interest should provide information about the new use. We do not really have much information about the bass pond and how much water would be used under 22-0638 for the new use. We do not know the size of the pond, type of diversion works for the pond and/or how the pond is to be operated. The transfer application only indicates that there would be no return flow from the pond and that a maintenance flow would be needed only after the pond receives its initial fill.

I think we should require more information about the new use before any approval and conditioning of the transfer.

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Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 3571APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of applicant Dean Crain Phone 458-4480Post Office address HC 60, Box 1199, Teton City, ID 83451

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Change nature of use ☐ Change period of use ☒ Other Change to South Fork
2. Describe the reason for the proposed changes I have adequate water from Pincock-Byington Ditch Co. water to farm my ground. This water will be used in the Teton Bass Pond Inc. for recreational use.

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

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>22-00638</u>	<u>12-01-1903</u>	<u>2.20</u>	<u>Recreation</u>	<u>4-01</u> to <u>12-15</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 2.20 cubic feet per second and/or _____ acre-feet per annum.3. Source of water Teton River, South Fork ✓ tributary to Henrys Fork

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	~~NE~~ SE	36	7N	40E	Fremont	

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	40E	36	R			R													

* As per telegram Mar 23 1989 JMD

Page _____ of _____

Transfer No. _____

PART 1

6. General Information:

a. Description of diversion system Culvert with headgate to Bass Pond

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

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

No effect. Water from Ditch Co. is adequate for this ground.

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

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

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Witness my hand this _____ day of _____, 19 _____.

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

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 22-0638 Decreed to Dean Crain
in case of Floyd Gardner et al vs. Lynn Crandell
dated 4-06-1954 in _____ county of _____
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water Teton River, North Fork tributary to Henry's Fork

4. Date or priority 12-01-1903

5. Water is used for the following purpose:

amount 2.20cfs for Irrig. purposes from Not Listed
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.20 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion: Not listed

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

8. Lands irrigated or place of use:

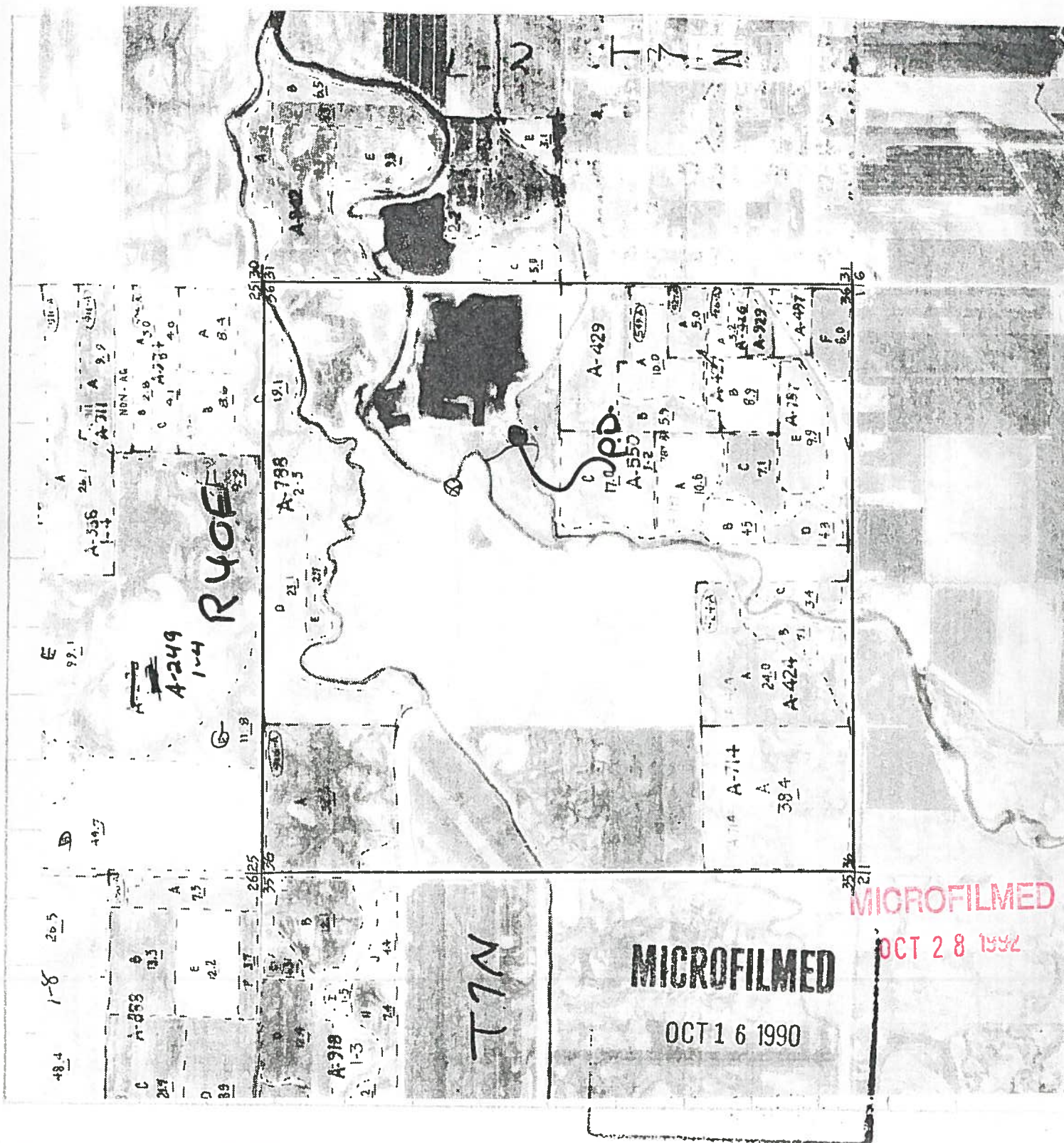
Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
7N	40E	36					A			A									

Total acres _____

9. Describe any other water rights used for the same purpose as described above A22-00454, A22-00455

A22-00458

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



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

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

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	<u>Recreation</u>	<u>2.20 cfs</u>	<u>24/180/year</u>	<u>4-01</u> to <u>12-15</u>
				to _____

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

No return flow: just evaporation + seepage
from pond. When full only maintenance flow needed.

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

N.A.

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

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

x Dean Craiss

(Signature of Applicant)

Subscribed and sworn to before me this 26th day of April, 19 89.

Heaven S. Richman

(Notary Public)

My commission expires 1-31-93

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 1 attachments

Received by HWT Date 5-2-89

Protest filed by Withdrawn
Gremont. Madison

Prelim. check by DMS Fee \$50.00

Receipted by HWT Date 5-2-89 E007082

Published in Herald Chronicle

Copies of protest forwarded by OW

Pub. dates 6-1-8, 89

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☒ approval ☐ denial

WD #1 rec'd. 6-14-89

by RPC

Copy of transfer sent to lien holder _____

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS, IDAHO
Ph. (208) 525-7161

TRANSMITTAL COVER SHEET

OMNIFAX

FAX NO. (208) 525-7177

TO: Glen Saxton

FROM: H.W. Saxton

DOCUMENT DESCRIPTION: Request For Hearing

TOTAL NUMBER OF PAGES (Inc. this page): 3

BILLING ADDRESS: _____

No. of pages _____ Cost/ Page _____ Total Charge _____

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OCT 18 1990

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RECEIVED

OCT 15 1990

Department of Water Resources
Eastern District Office

J. D. Hancock
SMITH & HANCOCK
Attorneys at Law
30 South Second West
P. O. Box 427
Rexburg, ID 83440
(208) 356-5493

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	PETITION CONTESTING ORDER
FOR TRANSFER NO. 3571 OF	)	DENYING TRANSFER AND REQUEST
WATER RIGHT NO. 22-0638 IN	)	FOR HEARING
THE NAME OF DEAN CRAIN.	)	(I.C., § 42-1701A(3))

Dean Crain contests the Order Denying Transfer of water under right No. 22-0638 upon the following grounds:

1. Since 1977, the water in question has been transferred to adjoining ground owned by me and used each year since 1977. No irrigation water was used on my ground near Teton, Idaho, in 1976, due to the Teton Dam Flood.

2. Andy (L.C.) Anderson, the then secretary of the Fremont-Madison Irrigation District and hydrographer for Water District No. 1, made a written notation of the transfer in the irrigation district records and on its map and can verify the water in question was delivered through the Pincock-Byington Ditch to my property and used along with other water to irrigate 110 acres of my land.

3. This transfer was approved in 1977 by the Fremont-Madison Irrigation District. I am president of the Pincock-Byington Ditch. I can personally

PETITION CONTESTING ORDER DENYING
TRANSFER AND REQUEST FOR HEARING

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verify that this water has been put into the Pincock-Byington Ditch and applied to beneficial use on my land for the last thirteen years.

4. The Department of Water Resources has no factual evidence to establish anything to the contrary.

5. I feel the decision of Mr. Saxton is unwarranted, arbitrary, unreasonable and contrary to the actual water usage.

WHEREFORE, I request a formal hearing and petition the Department of Water Resources for a review of its decision which I received on October 1, 1990.

DATED this 15th day of October, 1990.

Dean Crain
Dean Crain
HC 60, Box 1199
Teton, ID 83451

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 1990, I delivered a true copy of the foregoing PETITION CONTESTING ORDER DENYING TRANSFER AND REQUEST FOR HEARING to the State of Idaho Department of Water Resources, 150 Shoup Avenue, Idaho Falls, Idaho, and mailed a copy of the same by express mail to the State of Idaho Department of Water Resources, 1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720.

Dean Crain

PETITION CONTESTING ORDER DENYING
TRANSFER AND REQUEST FOR HEARING



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 3571 OF) ORDER DENYING TRANSFER
WATER RIGHT NO. 22-0638 IN)
THE NAME OF DEAN CRAIN)

This matter having come before the Idaho Department of Water Resources (department) during the review of application for transfer no. 3571 filed pursuant to Section 42-222, Idaho Code, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On May 2, 1989, Dean Crain (applicant) filed an application with the department to transfer 2.20 cfs of water under right no. 22-0638. The application proposed changing the point of diversion, place of use and nature of use of right no. 22-0638.

2. Records of the department for water right no. 22-0638 include a statement from a deputy watermaster of State Water District 01 that the right in question has not been used since 1976 when the ditch was washed out by the Teton Dam flood.

3. On April 4, 1990, the department sent correspondence to the applicant requesting that evidence be submitted to show that right no. 22-0638 had not undergone a period of five consecutive years or more of non-use.

4. On July 24, 1990, the department sent the applicant a

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notice of pending order denying the transfer application since evidence concerning use of the right had not been submitted. The notice allowed the applicant an additional 15 days in which the applicant could submit the requested evidence or show cause why the application should not be denied.

5. On August 8, 1990, the applicant submitted his own affidavit stating that the right had been used on land owned by the applicant but had been transferred to a different point of diversion known as the Pincock-Byington Ditch. Also submitted was a map showing the applicant's land and a listing of rights delivered to the Pincock-Byington Ditch.

6. On August 17, 1990, the department again sent the applicants a notice of pending order denying the transfer since the applicant had not submitted sufficient evidence concerning use of the right.

7. On September 4, 1990, the department received a second affidavit signed by the applicant which stated that water right no. 22-0638 had been delivered through the Pincock-Byington Ditch to irrigate land owned by the applicant. The applicant also submitted certain tax records as proof of ownership of the lands recorded as the place of use under the original right. The legal land description given on the tax records however does not match the legal land description given as the place of use for water right no. 22-0638.

CONCLUSIONS OF LAW

1. Section 42-222(1), Idaho Code provides direction and authority to the department in the review and approval of

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water right transfer applications. The statute states in part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code.... In the event that the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same....

2. Section 42-222(2), Idaho Code also states in part that:

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation....

3. The Idaho State Supreme Court has ruled in *Jenkins v. State, Department of Water Resources*, 103 Idaho 384, 387, that:

[T]he director of the Department of Water Resources has jurisdiction to determine the question of abandonment and forfeiture and such is required as a preliminary step to performance of his statutory duty in determining whether or not the proposed transfer would injure other rights.

4. Information available to the department indicates that the water right proposed to be transferred, water right no. 22-0638, has been lost and forfeited due to non-use for a period of five or more consecutive years. The department has asked the applicant to submit evidence showing that the right has not been lost due to non-use for a period of five or more consecutive years. The applicant has not submitted sufficient evidence to show that the right has not been lost due to non-use.

5. The applicant has further failed to demonstrate that he owns the land to which the right is appurtenant, or to secure

OCT 16 1990

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consent to the proposed transfer from the appropriate landowner of record.

6. Approval of the proposed changes would result in injury to other water rights holders who have made beneficial use of the water which has been lost under right no. 22-0638.

7. Application for Transfer No. 3571 of Water Right no. 22-0638 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 3571 of Water Right No. 22-0638 is DENIED.

Dated this 27th day of September, 1990.


L. GLEN SAXTON, Chief
Water Allocation Bureau

MICROFILMED

OCT 16 1990

MICROFILMED

OCT 28 1992

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: A22-00638
Date Received: 4/19/1989
Receipt No: E006927
Received By: HLJ

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: DEAN CRAIN 208-458-4480
Address: HC 60 BOX 1199
TETON CITY, ID 83451

2. Date of Priority: DEC 01, 1903

3. Source: TETON RIVER, NORTH FORK Trib. to: HENRYS FORK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
7N	40E	36	NW NE		Fremont

5. Description of diverting works:
HEAD GATE AND DITCH TO FLOOD IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.200		

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

8. Total consumptive use is 260.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07N	40E	35	NE NE		IRR	34.0
			NW NE		IRR	33.0

Section Acres 67.0



10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
07N	40E	36	NW	NW	IRR	37.0
Section Acres						37.0
Total Acres						104.0

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:
A22-00454, A22-00455 AND A22-00658

14. Remarks:

15. Basis of Claim: DECREED
Water Right Number: 220638
Case Number:
Court :
Decree date:

FLOYD GARDNER, ET. AL.
Decree Plaintiff

vs

LYNN CRANDELL WM.
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 x 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): x Dean Crain Date: x 4/19/89

Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 19th day
of April 19 89

Anthony S. Olenchak
Notary Public

Seal

Residing at Idaho Falls
My Commission Expires 9/12/1994

R-40-E