

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

EXPLANATORY MATERIAL: Beneficial Use

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

RIGHT NUMBER: 22-4077

NAME AND ADDRESS: Verna J Lerwill
250 N 800 W
TETONIA ID 83452

Garry L Lerwill
250 N 800 W
TETONIA ID 83452

SOURCE: DUDE CREEK

TRIBUTARY: HORSESHOE CREEK

QUANTITY: 1.820 CFS

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 06/01/1945

POINT OF
DIVERSION:

T05N R44E S16 SWNWSW Within TETON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	1.820 CFS
STOCKWATER	01/01 12/31	0.020 CFS

PLACE OF USE: IRRIGATION in TETON County

T05N R44E S16	NWNE	37.00	T05N R44E S16	SWNE	13.00
T05N R44E S16	NENW	40.00	T05N R44E S16	NWNW	8.20
T05N R44E S16	SWNW	4.60	T05N R44E S16	SENW	37.00
T05N R44E S16	NESW	23.00			

STOCKWATER same as IRRIGATION

162.8 ACRES TOTAL

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

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

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 - Beneficial Use

Stockwater use is for 75 range cattle.

Amended Director's Report

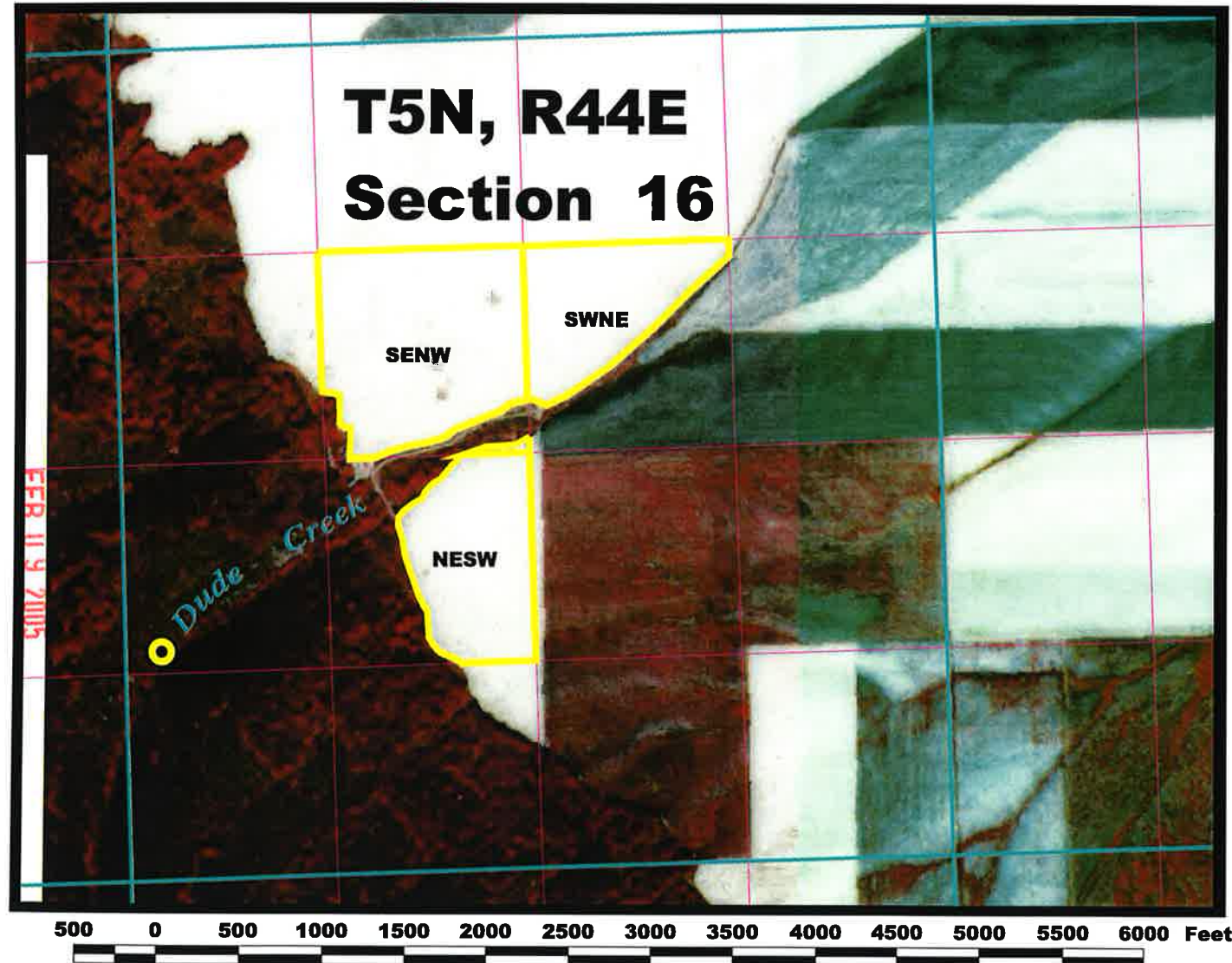
22-4077



State of Idaho

Department of Water Resources

Eastern Region



Water Right(s):
22-04077

Point(s) of Diversion:
T5N, R44E
Sec. 16 SWNWSW

Place of Use: (parts of)
T5N, R44E Sec. 16
SENE, NESW, SWNE

LEGEND

- Point of Diversion
- SESE Place of Use
- Section
- Quarter-Quarter



GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: A. Ruberry
Date: January 2005

DEPARTMENT OF
WATER RESOURCES

STANDARD FORM 1 OBJECTION

Page 1

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

1. ☐ Name and Address
Should be:
2. ☐ Source
Should be:
3. ☒ Quantity
Should be: 5.760 CFS. Irrigation not 0.380 CFS
0.000 CFS Stockwater
4. ☐ Priority Date
Should be:
5. ☐ Point of Diversion
Should be:
6. ☐ Instream Flow Beginning and Ending Point
Should be: _____
7. ☐ Purpose(s) of Use
Should be:
8. ☐ Period of Year
Should be:
9. ☒ Place of Use T05 N R44 E S10 NW NE 40.0 acres
SW NE 40.0 acres
NE NW 40.0 acres
SE NW 40.0 acres
NE SW 40.0 acres
Should be: Total 170 ac
10. ☐ Other Conditions of Approval
Should be:
11. ☐ I object because:
 - ☐ This water right Should not exist.
 - ☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): - the water rights purchased with property.
- General Adjudication of rights to the use of water from the Snake River Basin Water System. Case # 139576
Ident # 1 A02-04077
Date received 9/21/1988

F.

VERIFICATION (must be completed)

STATE OF IDAHO,)

ss

County of Teton)

Verna J. Lervick duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objections, know its contents and believe that the statements are true to the best of my knowledge.

Verna J. Lervick
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn before me on: June 20, 2007



Shannon Sommer
Notary Public for Idaho
Residing at: Rexbury, Idaho
My Commission Expires: 4-28-09

INSTRUCTIONS FOR MAILING

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

G. CERTIFICATE OF MAILING

I certify that on June 26, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

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

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

Name: GARRY L. AND VERONICA J. LEROUX
Address: 250 N 800 WEST
TERRELLA ID 83402

3. Copies to:
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

Veronica J. Leroux
Signator of objector or attorney
mailing on Objector's behalf

September 15, 2008

Idaho Department of Water Resources
Mr. Michael Holliday
900 N. Skyline Dr., Suite A.
Idaho Falls, Idaho 83402

Dear Mr. Holliday;

Re: water right # 22-4077 V1
Dude Creek

Please find enclosed:

- Affidavit from Garry Lerwill, current owner
- Map showing irrigation practice from 1941 – 1961 or 62
- Map showing irrigation practice from 1961
- Letter from Kay Fullmer and Earl Bainbridge history
- 1954 Pictures of Bainbridge digging ponds
- Letter from Murel Kay
- Copy of Claim to Water Right
- Copy of published Notice of Claims to Water Rights

We believe that we are showing the history of use of Dude Creek water since 1941 up to present time.

Thank you for helping us with this appeal. If there is anything more we might submit, please tell us.

Sincerely,



Garry and Verna Lerwill
(208) 456-2579

RECEIVED
SEP 17 2008

Department of Water Resources
Eastern Region

August 28, 2008

Idaho Department of Water Resources
Mr. Michael Holliday
Idaho Falls, Idaho

Dear Mr. Holliday

Re: water right # 22-4077 V1

I was eight years old in 1951 and would go with my dad, Harold Lerwill, as he was taking care of his farm. Being neighbors and friends, he and Earl Bainbridge, who was farming Sec. 16, T5N, R44 EBM worked together.

Water was moved in ditches from Dude Creek to livestock and for irrigation until Earl ran some small pipe from the point of diversion, a spring in Dude Creek Canyon, around the side of the canyon for domestic, garden and livestock use and also to fill ponds to irrigate from. We would also fill ponds along Dude creek to hold water for use on the fields. We used a Diamond T, four cylinder gas engine to pump the water. It was moved from one pond to another and also along the ditch. My dad had an International crawler tractor we used to make storage places to back up the water into. Some ponds were used from year to year and some were just made where and when we needed the water. We would run 2 – 4 hand lines, and would water acres depending what was planted that year. They were mostly ¼ mile lines with 32 or 33 birds and 11/64 nozzles. Sometimes we would add extra pipe if we had the pressure. We watered potatoes, barley, wheat and some hay, depending on rotation.

We worked with this holding and pumping plan until about 1962, when an underground pipe line was put in the bottom of the canyon along Dude Creek beginning at the spring. We then used portable mainline to the fields so we would have more use of more acres. Later an underground mainline was also put in. During both periods of irrigation, about 188 acres were irrigated

In 1971, my wife and I purchased the Bainbridge property, except the portion which was sold to S.M. and Nancy Osgood. We bought the Osgood portion May 15, 1990.

I have grown up working on and farming this Sec 16, T5N, and R44EBM and in fact, we now live there in the mouth of Dude Creek Canyon on the old Bainbridge homestead

Sincerely,



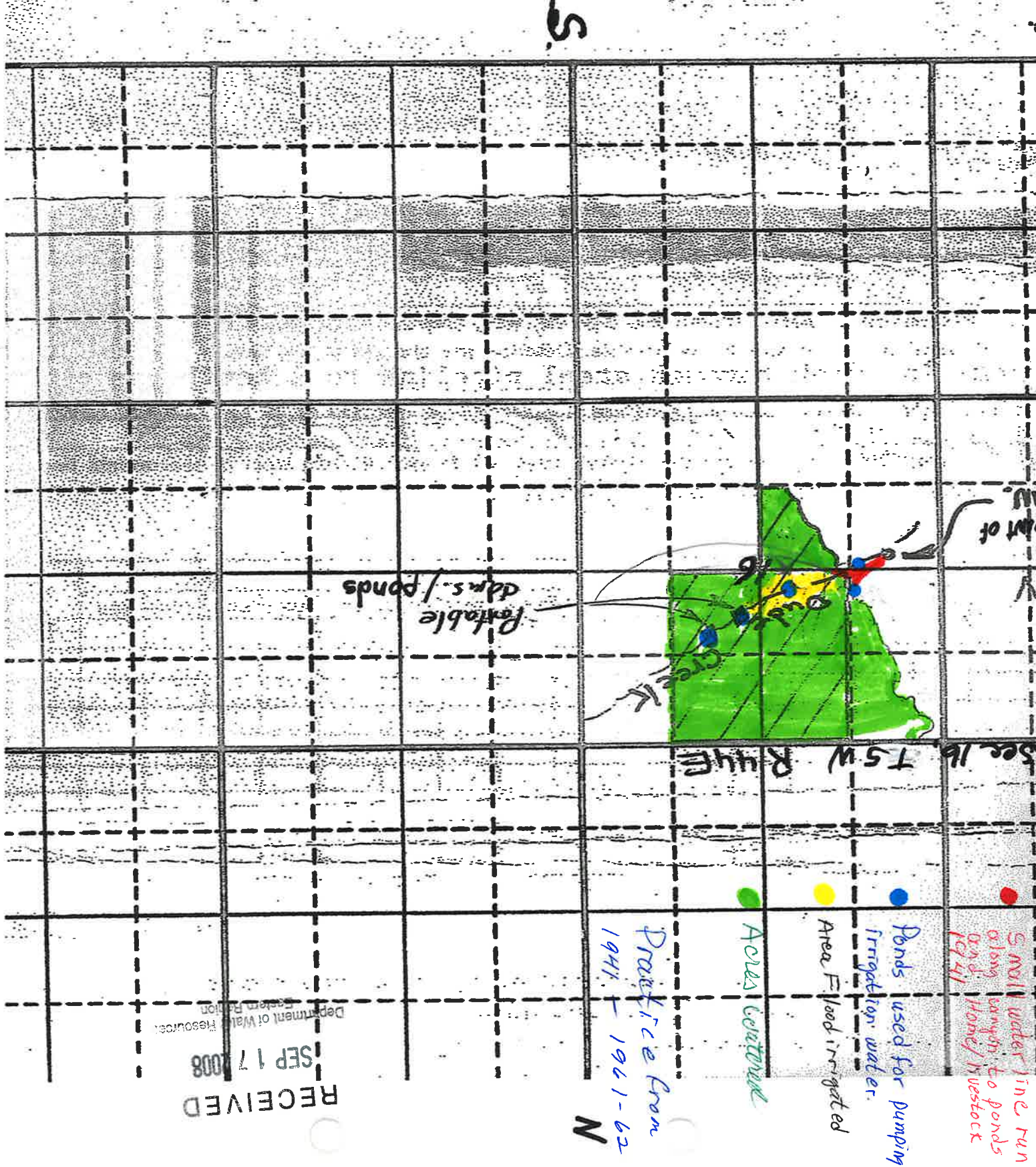
Garry Lerwill

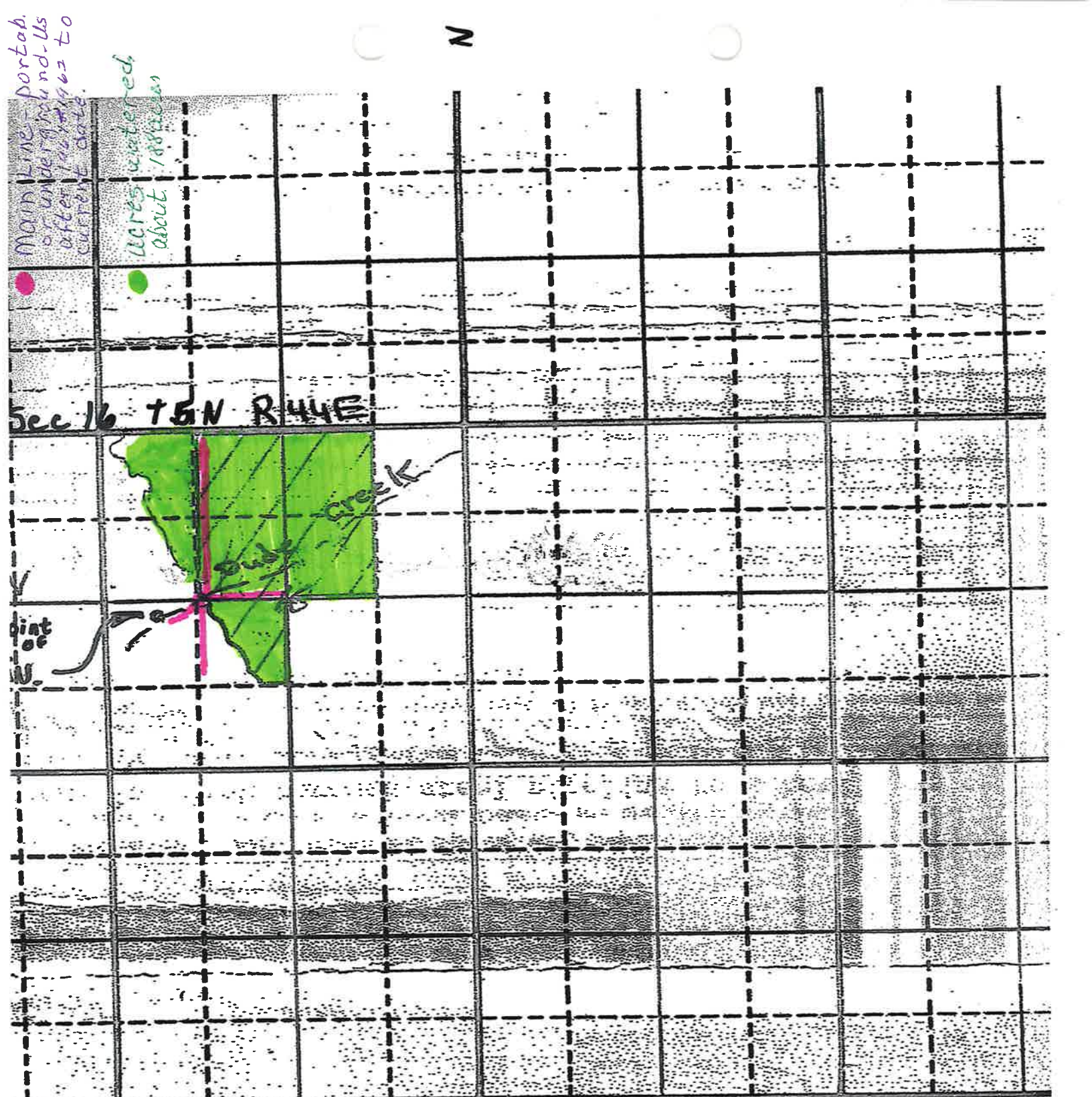
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SEP 17 2008

Department of Water Resources
Eastern Region

show the location of the point of diversion and the place of use of the water by 40-acre sub-
and range of the public land survey system.





show the location of the point of diversion and the place of use of the water by 40-acre subunit and range of the public land survey system.

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Department of Water Resources
Eastern Region

Ronnie & Kay Fullmer
530 W 575 N
Tetonia, Idaho 83452
208 456 2559
Fax 208 456 2559 (call first)
Kojak@teontel.com

September 9, 2008

To whom ever this may concern,

This letter is to address the history of the water that flows from Dude Creek to Garry & Verna Lerwill's land .

Earl Bainbridge lived at the mouth of Dude Creek from the age of 12. After he married Juanita Umphrey they owned, lived & farmed the acreage that Garry & Verna now own.

Enclosed is the history of the water use through the years. Earl & Juanita has a history written that was the source of the information.

Hopefully this information will be of use.

Kay Fullmer : Daughter of Earl & Juanita

Kay Fullmer

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Department of Water Resources
Eastern Region

(taken from history of Earl Bainbridge by Kay Bainbridge Fullmer, his daughter)

WATER SYSTEM FROM SPRING IN DUDE.

1941: Earl said he was going to pipe from the spring up in Dude canyon. The spring runs year around. He would pipe it down the hillside to a cistern up midway of the hill. It was about ½ mile down to the house. Earl took pipes that were inside of an old boiler engine. Heat them in a forge so they would expand and then hit them with a sledge (SWEDGE) and they would slip one into another. This worked well to make a continuous pipe to pack water from the spring down to the cistern to the house.

They had started digging the trench for the pipe in summer of 1940. Pete and Earl started digging the cistern for the water to fill April 5, 1940. When the cistern was dug it was poured with cement and a wooden lid was put on it. The cistern was surely not fun to clean out. Every once in a while it would be cleaned and different debris would be found in it. Leaves, mice and etc.

During the winter they started digging the trench for the pipeline again. Earl, Chrissie Mickleson, Violas Bell, four McCracken brothers, Charlie, Leonard, Harold and Henry helped dig and put in the pipeline. In March they started putting the pipeline together.

After working on the pipeline one night, Chrissie, Vilas, Earl, Earl's Dad drank a quart of whiskey. It was hard to tell on Earl but Chrissie and Vilas got to fighting. Afterwards Vilas was upset because he said, "I showed Chrissie how to fight and then he whipped me." After the fight they drank a gallon of whiskey.

It sure looked like its going uphill to the cistern. He was told this could not be done. Nita's dad, Joe Umphrey said, "Mormons are the only people that can make water run uphill."

Summer 1947: Earl had a real bad back and had to stay in Rupert for treatment. Don Hansen was irrigating the potatoes. Arthur Caldwell went to look things over and saw the water was running every which way. He helped Don get lined out on irrigating and he, Harold Lerwill and Authur took care of the crops that summer.

1948: Will came and cut, raked and baled Earl's hay this year, along with numerous other neighbors.

October 4 Earl started digging spuds. He almost filled Henry Nelsons cellar. Lamar hauled loads of Earl's spuds to Rexburg. Earl finished digging spuds on October 14.

In 1954 water reservoirs were made. Earl had a T.D. 9 crawler tractor. With this tractor he made reservoirs to hold the water for irrigation. They were filled from the creek. One was southeast of the old cellar. One was southwest of the house, above the garden spot. Another one was northeast of the shop. When filled with water they were about ten feet deep. The water was pumped out into sprinkler pipes onto the crops.

Earl and Nita drilled a well south of the house on the next hill, between the barn and the old garden spot. At about 60 feet they hit a pretty good little stream, put the pump on and in a couple of pumps

dried it up. There may have been enough for culinary water at that depth. They continued to drill to 530 feet and didn't hit any water so they pulled the drill and sealed the hole off.

In 1961 or 62 Ronnie Fullmer and a couple other workers helped Earl lay a pipe on the bottom south side of Dude Creek to carry water down to irrigate crops so they would not have to use ditches.

They dug a trench that was 3 to 4 feet deep, laid logs across the trench then laid lengths of pipe that they welded one to one another. Where the weld was they poured liquid tar and wrapped it with tar paper to keep it from leaking and rusting. To lower it into the trench, they started at the top end of the trench cutting the logs to lower the pipe into the trench. They then covered the trench with dirt.

When the water was low, beaver dams at the head of Dude creek would be opened up to allow more water to flow into the pipeline.



1954
Judie, Kay, Earl/in white
Dale in tractor



1954
Earl/crawler building the
water ponds for spuds.



Judie, Earl

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Department of Water Resources
Eastern Region



1954
Dale/ crawler building the
Water ponds for spuds.



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 Department of Water / (Boulder)
 Eastern Region

1954
 Dale/ crawler building the
 Water ponds for spuds.



May 24, 2004

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Department of Water Resources
Eastern Region

To Whom It May Concern,

I have personal knowledge of beneficial and stock use of Dude Creek water.
In 1912 and for some years, my parents lived on and used the ground serviced by Dude Creek.

I have been married and have lived on a neighboring farm since before 1945 and have watched Dude Creek water being used for domestic, stock and irrigation use.

Murel Kay
Murel Kay

STATE OF Idaho

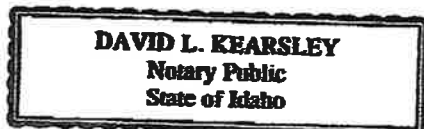
)
SS

COUNTY OF Teton

On this 28th day of May in the year of 2004, before me, a Notary Public in and for said State, personally appeared Murel Kay 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.

David L. Kearsley
Notary Public for The State of Idaho

Residing at: Driggs, Idaho
My commission expires: 5-23-2009



81

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Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
CLAIM TO A WATER RIGHT



The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Star Route, Tetonia, Idaho 83452 Telephone No. 456-2579
(Mailing Address) (Zip Code)

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) June 1, 1945

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Dude Creek tributary to Teton River

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(Both dates inclusive)

(cfs, af)		(Domestic, Irrigation, Stock, Etc.)	(Mo., Day)	(Mo., Day)
Quantity	3.76 cfs	Use Irrigation	Period of Use From 6-1	To 8-1
Quantity	0.02 cfs	Use Stock	Period of Use From 11-1	To 3-31
Quantity		Use	Period of Use From 1-1	To 12-31
Quantity		Use	Period of Use From	To
Quantity		Use	Period of Use From	To

- (4) 3.76 cfs TOTAL QUANTITY USED.
(cfs. af)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

NW 1/4 SW 1/4 Sec. 16 Twp. 5N Rge. 44E B.M., County of Teton

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Headgate in creek through steel pipeline to 2 handlines via

Headgate in creek through steel pipeline to 2 handlines via gravity flow *also some flood irrigation in d. creek & livestock water*

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

No. of acres 188

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

B) If water is used for other than irrigation, fully describe that use, being as specific as possible.

Used to water livestock from natural & from Cistern or Dams
by means of Creek & pipeline

NOTE: Include here the type and number of stock watered: 25 75 head

- (7) If you are claiming water as a member of an organization, list name of organization:

NOTICE OF CLAIMS TO WATER RIGHTS
The following claim(s) have been filed on water rights created for diversion and beneficial use:
22-4077
Osgood, S.M.
Lerwill, Garry
Star Rt., Teton, ID 83452
Source: Dude Creek tributary to Horseshoe Creek
Priority date: 06-01-1945
Amount: 3.76 cfs
Diversion Point: NWSW SWNE Sec 16 T 05N R 44E, Teton Co.
Use: Irrigation (3.76 cfs) from 05-01 to 09-01
Stockwater (0.02 cfs) from 01-01 to 12-31
Place of Use: NWSW SWNE NENW SENW Sec 16 T 05N R 44E for 188 acres
Diversion means: Headgate, pipeline, handlines & portable dams.
Exceptions to a claim may be filed with the Director, Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402.
Ken Dunn, Dir.
Published in the Teton Valley News November 18 and 24, 1982.

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Department of Water Resources
Eastern Region

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JUL 06 2005

Department of Water Resources
Eastern Region

01/20/2005

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: 22-4077

GARRY L LERWILL
250 N 800 W
TETONIA ID 83452
Telephone Number: (208)456-2579

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

*We object to place of use
We object to amount of CFS
We object to total Acres and limited irrigation acres per season*

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

** See conservation map dated 8-81 showing irrigation acreage. We need water from Dade Creek to be used where we need it year by year. The area outlined has underground main line which we use where needed according to our planting that year, and as water supply is adequate.*

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

*Does not cover enough acres
" " list enough water*

Some years there is enough water to cover more acres

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

DATE: 6-15-05

SIGNATURE:

Garry Lerwill

Please print your name:

Verma Lerwill

VERNA LERWILL

IDWR Regional Office,

** See copy of enclosed water right place of use.*

*10/28/05 GARY AND Mrs. LERWILL WOULD IN TO DISCUSS THIS
RECOMMENDATION AND OLD LIC 22-2167 (NO SRISA CLAIM)*

SCANNED



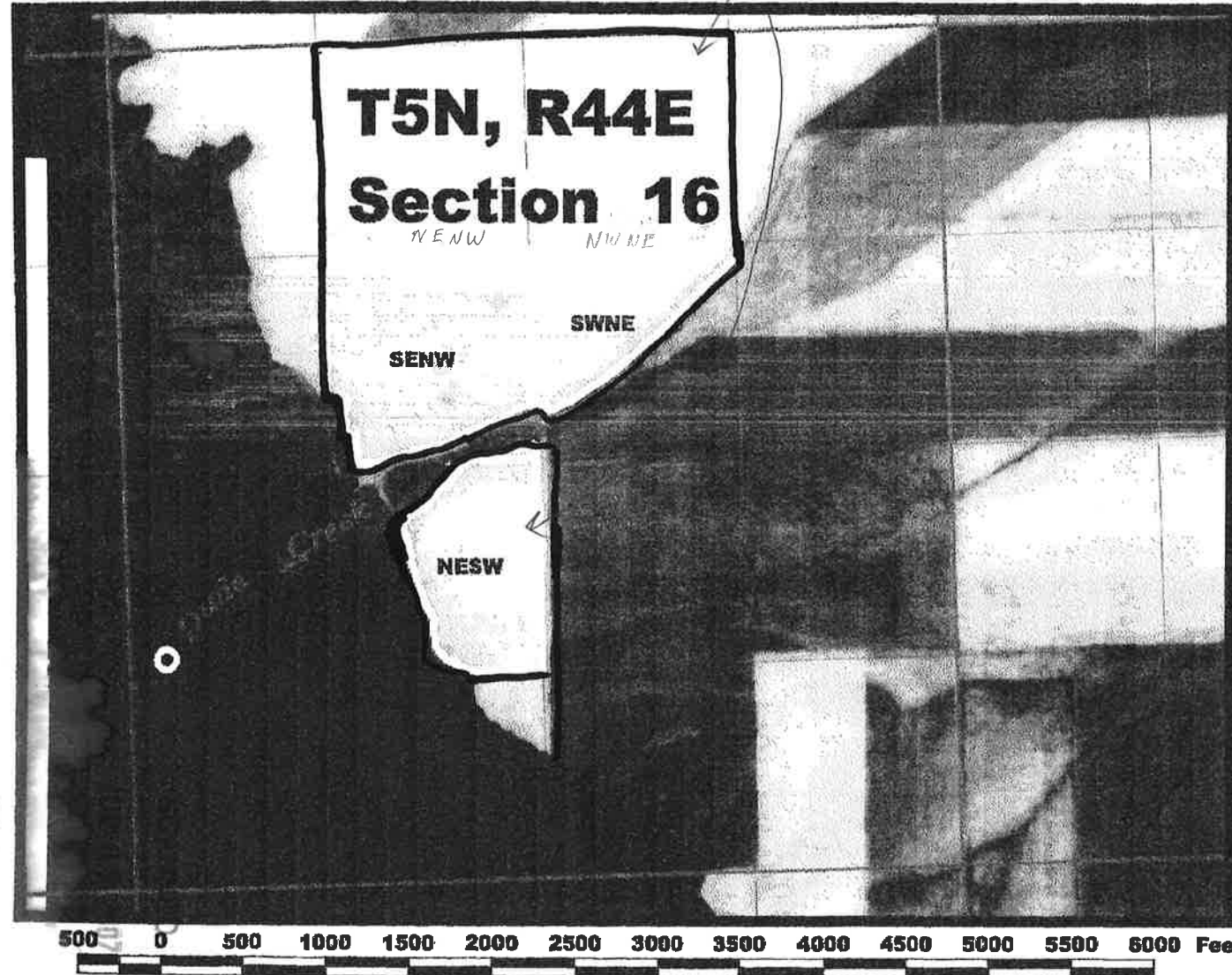
State of Idaho

Department of Water Resources

Eastern Region



*Irrigates
acres with
underground
main line*



Water Right(s):
22-04077

Point(s) of Diversion:
T5N, R44E
Sec. 16 SWNWSW

Place of Use: (parts of)
T5N, R44E Sec. 16
SENE, NESW, SWNE

LEGEND

-  **Point of Diversion**
- SENE**  **Place of Use**
-  **Section**
-  **Quarter-Quarter**

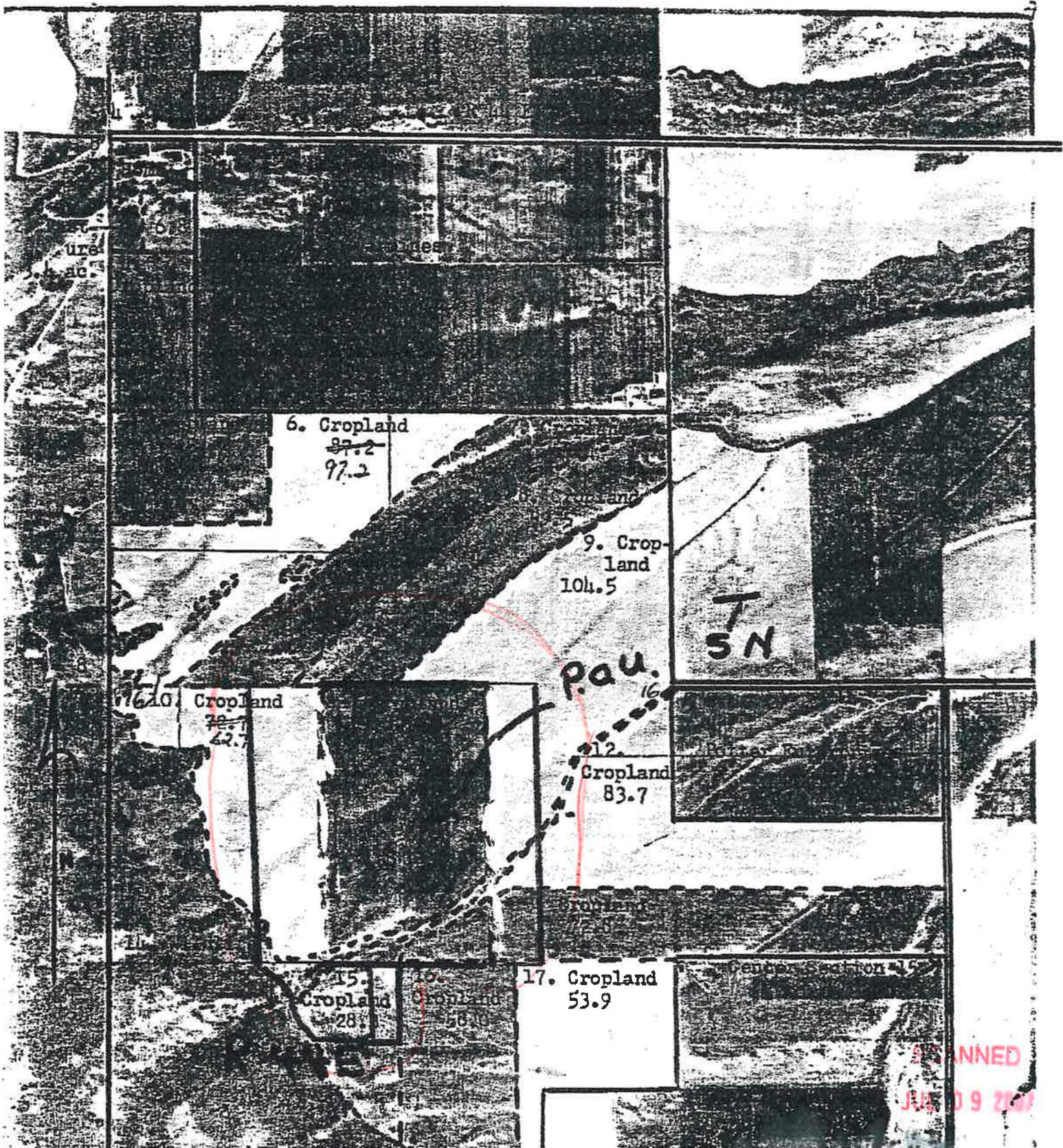


GIS Place of Use Illustration
1987/1988 NAFF Photography
Prepared by: A. Ruberry
Date: January 2005

CONSERVATION PLAN MAP

U.S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE

Owner Garry Lerwill Operator same **A22-04077**
County Teton State Idaho Date 8-81
Approximate acres 1045 Approximate scale 4" = 1 mile
Cooperating with Teton Soil Conservation District
Plan identification _____ Photo number _____
Assisted by Steve Smart USDA Soil Conservation Service



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: A22-04077
Date Received: 9/21/1988
Receipt No: ECO 1893
Received By: HWJ

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: NANCY OSGOOD
Address:

TETONIA, ID 83452

OR

Name: GARRY LERWILL

208-456-2579

Address: 891 W. 400 N. PACKSADDLE RD.
TETONIA, ID 83452

2. Date of Priority: JUN 01, 1945

3. Source: DUDE CREEK

Trib. to: HORSESHOE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
05N	44E	16	NW	SW			TETON

5. Description of diverting works:

HEADGATE, PIPELINE, HANDLINES & PORTABLE DAMS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	05/01	09/01	3.760		
STOCKWATER	01/01	12/31	0.020		

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

A.F.A.

8. Total consumptive use is

376.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/25-75 RANGE.

A22-04077

Page

1

Date: 09/26/88

SCANNED

JUL 09 2007

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	44E	16	NW	NE		IRR	40.0
			SW	NE		IRR	40.0
			NE	NW		IRR	40.0
			SE	NW		IRR	40.0
			NE	SW		IRR	10.0
Section Acres							170.0
Total Acres							170.0

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:

APPLICANT LERWILL OWNS THE WEST HALF OF THE NORTH EAST QUARTER
AND LEASES THE REST FROM NANCY OSGOOD.

15. Basis of Claim: STATUTORY CLAIM
Water Right Number: 224077

*Lerwill purchased the
remainder of property with
water rights from Nancy Osgood.
May 15, 1990. See copy of
WARRANTY DEED.*

WARRANTY DEED

THIS INDENTURE, Made this 15th day of May, 1990, between NANCY M. OSGOOD, a single woman, of 2903 Westwood Road, Minnetonka Beach, Minnesota 55361, the party of the first part, and GARRY L. LERWILL and VERNA J. LERWILL, husband and wife, of 891 West 400 North, Teton, ID 83452, the parties of the second part,

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Ten and no/100 Dollars, lawful money of the United States of America, and other valuable consideration to her in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold and by these presents, does grant, bargain, sell and convey and confirm unto the said parties of the second part, and their heirs and assigns, forever, all the following described real estate, situated in Teton County, State of Idaho, to-wit:

Township 5 North, Range 44 East, Boise Meridian,
Teton County, Idaho

Section 16:

Tract 1: W1/2SW1/4NW1/4; E1/2NW1/4; NE1/4SW1/4

Tract 2: E1/2W1/2 NW1/4; W1/2SW1/4; SE1/4SW1/4

Subject to easements, if any, of record or in existence for roads, streets, ditches, canals, pipelines and utilities.

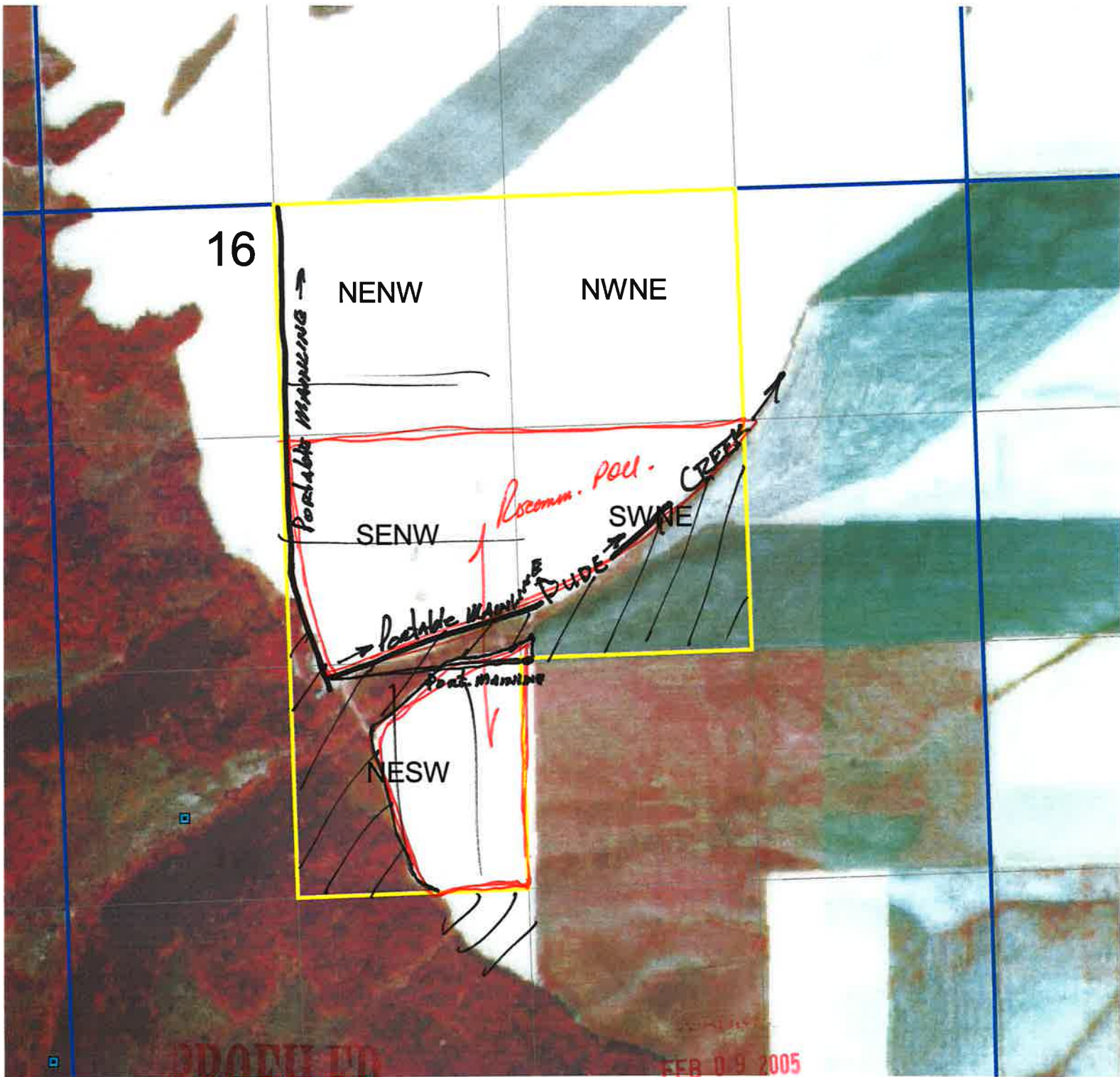
Subject to the effects, conditions and reservations of all property acquired by Seller from the State of Idaho.

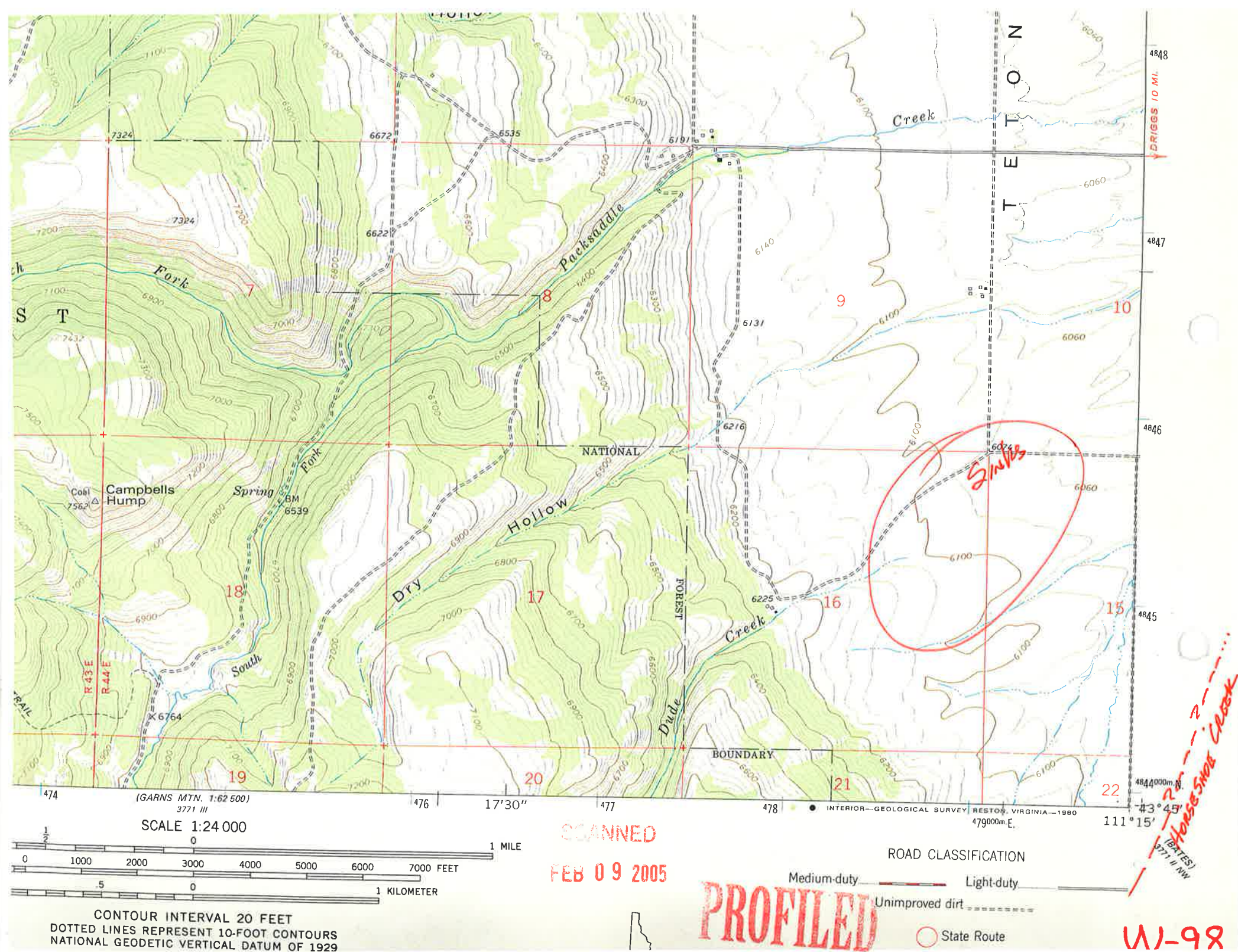
Together with any and all other water and water rights, ditch and ditch rights appurtenant thereto.

SCANNED

JUL 09 2007

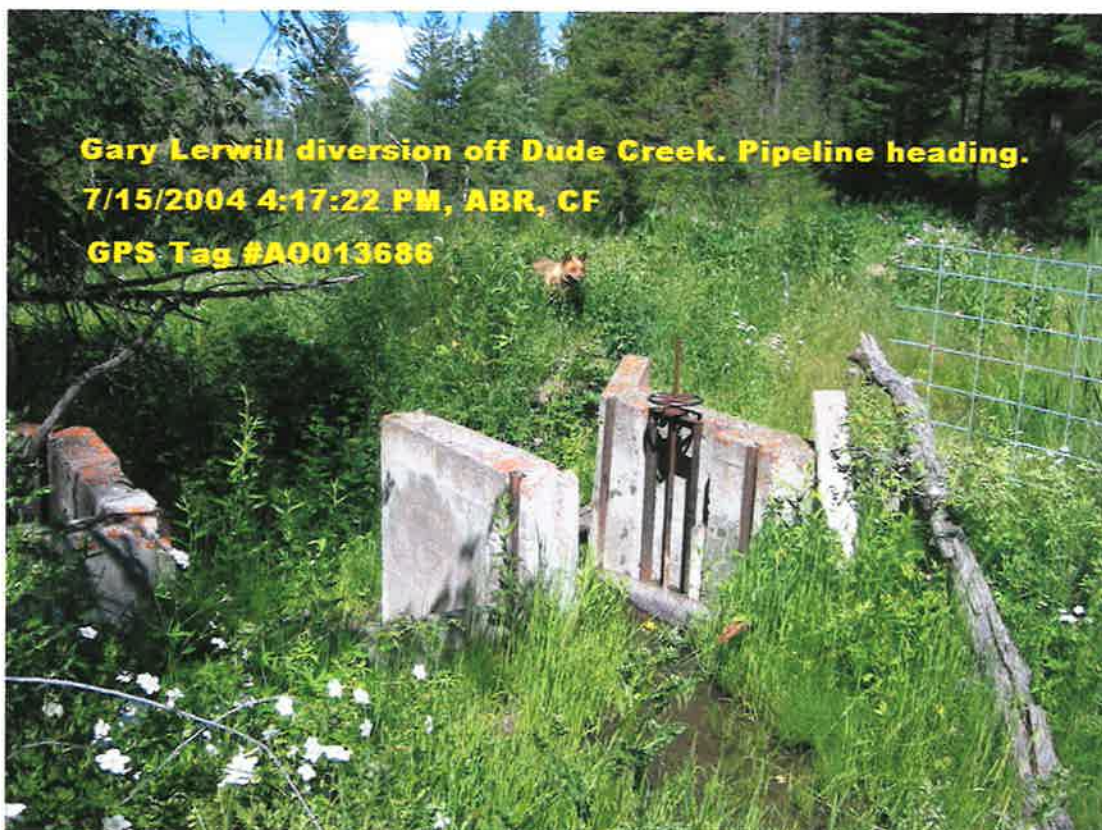
22-4077







**Gary Lerwill manifold on Dude Creek
7/15/2004 4:27:50 PM; ABR**



**Gary Lerwill diversion off Dude Creek. Pipeline heading.
7/15/2004 4:17:22 PM, ABR, CF
GPS Tag #A0013686**

PROFIT

**SCANNED
FEB 09 2005**

May 24, 2004

RECEIVED

JUN 07 2004

Department of Water Resources
Eastern Region

22-4097

EVIDENCE OF
Priority

To Whom It May Concern,

I have personal knowledge of beneficial and stock use of Dude Creek water.
In 1912 and for some years, my parents lived on and used the ground serviced by Dude
Creek.

I have been married and have lived on a neighboring farm since before 1945 and have
watched Dude Creek water being used for domestic, stock and irrigation use.

Murel Kay
Murel Kay

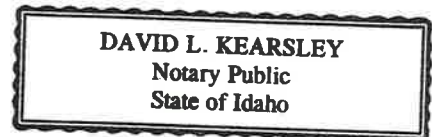
STATE OF Idaho

)
SS

COUNTY OF) Teton

On this 28th day of May in the year of 2004, before me, a Notary
Public in and for said State, personally appeared Murel Kay 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.

David L. Kearsley
Notary Public for The State of Idaho



Residing at: Driggs, Idaho
My commission expires: 5-23-2009

PROFILED

SE
FEB 10 3

May 26, 2004

RECEIVED

JUN 07 2004

Department of Water Resources
Eastern Region

Allen B. Ruberry: Sr. Water Resource Agent
State of Idaho Department of Water Resources
900 N. Skyline Dr., Suite A.
Idaho Falls, Idaho 83402-1718

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 22-4077

Dear Mr. Ruberry;

We purchased property including Dude Creek Water rights and the gravity fed sprinkler system from Nancy Osgood in December 1990.

Prior to that time, we had rented and irrigated the farm ground since 1971. We filed for water right on Dude Creek water with Nancy Osgood September 26, 1988.

I have been involved in farming the ground serviced by Dude Creek water and surrounding area since I was a boy. I have personal knowledge that my father worked with Earl Bainbridge operating both their connecting farms together beginning in 1942. They raised wheat, barley, alfalfa, potatoes and had some stock using an old gas motor and a pump to pump Dude Creek water out of a holding pond. Later, a steel pipeline to 2 handlines under gravity flow was installed. There was some flood irrigation out of the creek using portable dams. I have known of irrigation and Dude Creek water use for 50 years now. Earl and his family also used Dude Creek water for domestic use.


Garry Lerwill

STATE OF Idaho)
COUNTY OF Teton) :SS

On this 4 day of June in the year of 2004, before me, a Notary Public in and for said State, personally appeared Garry Lerwill known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.


Notary Public for

Residing at: Tetonia, Idaho
My commission expires: 2-27-10



SCANNED

FEB 09 2005

PROFILED

Contacts Data Entry Form

Claim Number: _____

Owner Type	Full Name	Address	City	State	Zip
------------	-----------	---------	------	-------	-----

Current Owner: GARY LERNER Phone No.: _____

Current Owner: _____ Phone No.: _____

Current Owner: _____ Phone No.: _____

Name connector: and _____, or _____, and/or _____.

Representing Attorney: _____ Phone No.: _____

Accompanied By: _____ Phone No.: _____

Relationship to Claimant: _____ Date of Field Exam: _____

A ADDRESS:

Discussion of right origin and split history. Questions and problems.250 N 800 W
TETONIA ID 83452CLAIMED AS STATUTORY CLAIM UNDER 42-243 IC
EVIDENCE TRAIL, RECEIVED 6/07/2004

Reviewer: _____ Date: _____

SCANNED

FEB 09 2005

PROFILE

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
						DUDGE CK	HORSE SHOE CK

Recommended Point(s) of Diversion and Source.

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source	Tributary to
5N	44E	16		SWNW1SW	TETON	DUDGE CK	SINKS

Other rights from this POD? _____

Transfers Pending or approved: _____

Document how the POD and Source were verified:

ACCORDING TO USGS QUAD W-9B
DUDGE CK IS TRIBUTARY TO SINKS → SO RECOMM.
COPY OF QUAD W-9B ATTACHED

Reviewer: _____ Date: _____

SCANNED

FEB 09 2005

PROFILE

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	Acres	Purpose of Use

Total acres 44² +/- 76³ ac

Pending or approved Transfers: _____

Overlapping rights: _____

Document how the POU was verified:

POU OF THIS SYSTEM CHANGES YEARLY DEPENDING ON
CROP ROTATION AND AVAILABILITY OF WATER.

GIS SHOWS 76³ ac - THIS CLAIM RECOMMENDATION LIMITS
USE TO 44² ACRES WITHIN ILLUSTRATED POU.

Reviewer: _____ Date: _____

SCANNED

FEB 09 2005

PROFILE

Season of Use and Quantity Data Entry Form

Claim Number: _____

Water Right Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume

Overall Diversion Rate _____

Overall Diversion Volume _____

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIG	5/1	9/1	3.76	
Stock			0.02	

Overall Diversion Rate 3.76

Overall Diversion Volume _____

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
IRRIG	5/1	9/1	0.88	
Stock	1/1	12/31	0.02	

Overall Diversion Rate 0.88

Overall Diversion Volume _____

Document how the Period of Use and/or Diversion Rate were verified:

IN BEST OF TIMES MR. LUTWILL CAN RUN 2-3 1/4 MI LINDS
W/ 32 NOZZLES @ 1 1/4" @ 50 PSI. = 6.19 gpm (from chart)

THEY DO A ROTATION OF IRRIGATION ON DIFFERENT LANDS
DEPENDING ON WATER YEAR AND CROP VIA PORTABLE MAINLINE.

Reviewer: _____

Date: _____

SCANNED

FILED

$$\rightarrow (2 \text{ LINDS}) (32 \text{ NOZZLES/LIND}) (6.19 \text{ gpm/NOZZLE}) = \frac{396 \frac{16}{4} \text{ gpm}}{448 \frac{8}{4} \text{ gpm/cks}} - \frac{0.88 \text{ cfs}}{0.02 \text{ cfs/AC}} = 4 \frac{1}{4} \text{ ACRES IRRIG}$$

↑ EVIDENCE STATES
2 HANDS

May 12, 2004

GARRY LERWILL
891 W 400 N PACKSADDLE RD
TETONIA ID 83452

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 22-4077

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the end of water rights review in Basin 22, the Teton River drainage. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting the priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

Your claim, as referenced above, claims a Priority Date of JUNE 1 1945 from DUDE CREEK.

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

For your reference, I have provided a printout of your Notice of Claim and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence which are acceptable and suggests which documents will fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date**". **PLEASE READ THE ENCLOSED PAMPHLET.**

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or soon will be conducted by Department personnel.

PROFILED

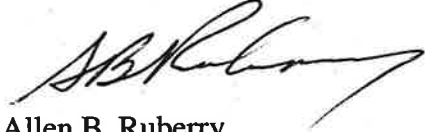
SCANNED

FEB 09 2005

.....
The Department will not recommend the Notice of Claim be decreed by the court if
evidence of a priority date is not submitted. The Notice of Claim will be disallowed.
.....

Please submit documentation supporting the priority date within 30 days of the date of this letter, referencing all documents with the corresponding claim number. If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact this office.

Respectfully submitted,



Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on "Evidence of Priority"

ROFILED

SCANNED
FEB 09 2005

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 22-4077
Date Received: 9/26/1988
Receipt No: E002593
Received By: MWH

AMENDED NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

GARRY L LERWILL Phone: (208)456-2579
250 N 800 W
TETONIA ID USA 83452

OR

VERNA J LERWILL Phone: (208)456-2579
250 N 800 W
TETONIA ID USA 83452

2. Date of Priority: 06/01/1945

3. Source: DUDE CREEK Trib. to: HORSESHOE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
05N	44E	16	NW SW	TETON	

5. Description of diverting works:

HEADGATE, PIPELINE, HANDLINES & PORTABLE DAMS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/15	10/31	3.76	
STOCKWATER	1/01	12/31	0.02	

7. Total Quantity Appropriated is:
3.76 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
05N	44E	16	NW	NE	IRRIGATION	37
			SW	NE	IRRIGATION	13
			NE	NW	IRRIGATION	40
			NW	NW	IRRIGATION	8.2
			SW	NW	IRRIGATION	4.6
			SE	NW	IRRIGATION	37
			NE	SW	IRRIGATION	23
					Section Acres	162.8
					Total Acres	162.8

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:

14. Remarks:

AMENDING CLAIM TO CORRECT LEGAL DESCRIPTION OF CLAIMED ACRES AND TO CORRECT THE SEASON OF USE.

15. Basis of Claim: Statutory Claim

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: _____

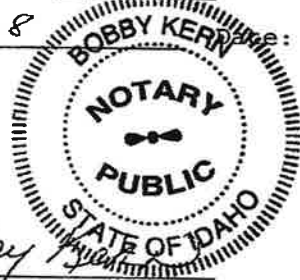
For Individuals:

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

Signature of Claimant(s): Verna J. Lervick Date: 9-17-08
9-17-2008

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 17th
of September 2008.



Notary Public

Residing at Adabo Falls

My commission Expires Sept 12, 2014

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: A22-04077
Date Received: 9/21/1988
Receipt No: EGO 2593
Received By: HWJ

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: NANCY OSGOOD *Drop*
Address:

TETONIA, ID 83452

OR

Name: GARRY LERWILL

208-456-2579

Address: 891 W. 400 N. PACKSADDLE RD.
TETONIA, ID 83452

2. Date of Priority: JUN 01, 1945

3. Source: DUDE CREEK Trib. to: HORSESHOE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05N	44E	16	NW	SW			TETON

5. Description of diverting works:
HEADGATE, PIPELINE, HANDLINES & PORTABLE DAMS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	05/01	09/01	3.760		
STOCKWATER	01/01	12/31	0.020		

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

8. Total consumptive use is 376.0 Acre Feet Per Annum.

9. Non-irrigation uses:
S/25-75 RANGE.

A22-04077

Page 1

Date: 09/26/88

SCANNED

FEB 07 2005

PROFILE

MICROFILMED

OCT 29 1992

A2204077



10. Place of Use:

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
05N	44E	16	NW		NE		IRR	40.0
			SW		NE		IRR	40.0
			NE		NW		IRR	40.0
			SE		NW		IRR	40.0
			NE		SW		IRR	10.0
							Section Acres	170.0
							Total Acres	170.0

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:

APPLICANT LERWILL OWNS THE WEST HALF OF THE NORTH EAST QUARTER
AND LEASES THE REST FROM NANCY OSGOOD.

15. Basis of Claim: STATUTORY CLAIM
Water Right Number: 224077

A22-04077

Page 2

Date: 09/26/88

SCANNED
FEB 07 2005

PROFILED

MICROFILMED
OCT 29 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: _____

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): Henry L. Lemwill Date: 9-26-88

Date: _____

State of Idaho)
County of Bonner) SS.

Subscribed and sworn (or affirmed) before me this 26th day
of September 19 88 Betty J. Thompson
Notary Public

Seal

Residing at Idaho Falls

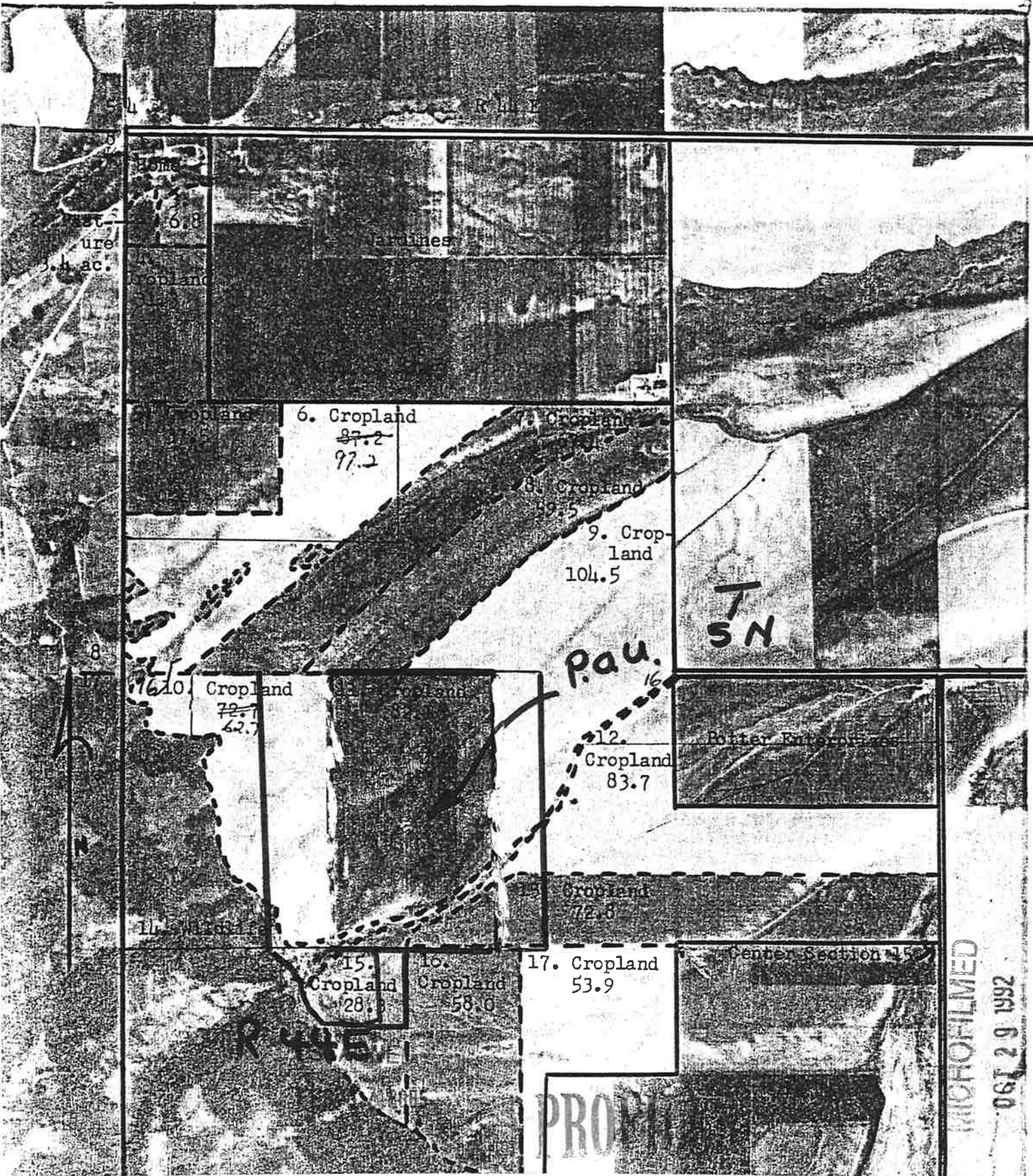
My Commission Expires 6-94

CONSERVATION PLAN MAP

U.S. DEPARTMENT OF AGRICULTURE
CONSERVATION SERVICE

A22-04077

Owner Garry Lerwill Operator same
County Teton State Idaho Date 8-81
Approximate acres 1045 Approximate scale 4" = 1 mile
Cooperating with Teton Soil Conservation District
Plan identification _____ Photo number _____
Assisted by Steve Smart USDA Soil Conservation Service



MICROFILMED

06/29/1992