

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 47-2256F
Date Received:
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

SILVA & SONS DAIRY Phone: (208)543-5079
1202 E 4150 N
BUHL ID 83316

2. Date of Priority: 08/08/1954

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
09S	14E	34	SW NW	TWIN FALLS	
09S	14E	34	SW NW	TWIN FALLS	

5. Description of diverting works:

Well, pump to distribution system to pens & barn.

Well, pump & distribution system to pens & barns.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
STOCKWATER	01/01	12/31	0.09	31.5
COMMERCIAL	01/01	12/31	0.09	31.5

7. Total Quantity Appropriated is:
0.09 C.F.S. and/or 31.5 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

Number of other uses: Dairy

10. Place of use:

Township	Range	Section	1/4	of 1/4	Lot	Use	Acres
09S	14E	33	SE	NE		STOCKWATER	
			SE	SE		COMMERCIAL	
			SW	SE		COMMERCIAL	
			NW	SE		COMMERCIAL	
			NE	SE		COMMERCIAL	
			NE	NE		COMMERCIAL	
			NW	NE		COMMERCIAL	
			SW	NE		COMMERCIAL	
			SE	NE		COMMERCIAL	
09S	14E	34	SW	NW		STOCKWATER	
			SE	SW		COMMERCIAL	
			SW	SW		COMMERCIAL	
			NW	SW		COMMERCIAL	
			NE	SW		COMMERCIAL	
			SE	NW		COMMERCIAL	
			SW	NW		COMMERCIAL	
			NW	NW		COMMERCIAL	
			SE	NE		COMMERCIAL	
			SW	NE		COMMERCIAL	
			NE	NE		COMMERCIAL	

11. Place of use in counties: TWIN FALLS

12. Do you own the property listed above as place of use? No

13. Other Water Rights Used:

14. Remarks:

Commercial use is for a dairy located within the SWNW, S34, T09S, R14E.

After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

The total instantaneous diversion of water from all points of diversion under Transfer 68485 shall not exceed 0.36 cfs, nor total combined annual volume of 44.1 af.

The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.

Rights 47-2256F, 47-2349D, and 47-2358D when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 34.5 af.

15. Basis of Claim: License



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

March 24, 2009

MCFINNEY AGRIFINANCE LLC
PO BOX 1598
TWIN FALLS ID 83303-1598

Re: Notice of Security Interest in a Water Right for Water Right 47-2256F, 47-2349D,
47-2358D and 47-10225 / Silva Land Company LLC

Dear Party Holding Security Interest:

The Department of Water Resources acknowledges receipt of the Notice of Security Interest in a Water Right renewal you recently submitted on the above water rights. The Department has modified its records to reflect the new security interest expiration date of April 1, 2029, and has enclosed a computer-generated report for your records.

Please note that as of July 1, 1996, water right owners are required to report any change of water right ownership and any change of mailing address of the owners of a water right to the Department. Notice of the change must be provided to the Department within 120 days of the change. Change reporting forms are available from any office of the Department or on the Department's website.

Please feel free to contact this office with any questions you may have.

Sincerely,

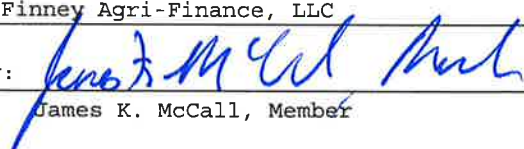
Trish Fawcett
Technical Records Specialist

Enclosures

RECEIVED

MAR 23 2009

DEPT. OF WATER RESOURCES
SOUTHERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**Notice of Security Interest in a Water Right****And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right**Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s).: 47-2349D, 47-2358D, 47-10225 and 47-2256F
Adjudication Claim No(s).: _____
2. The following **REQUIRED** information must be submitted with this form:
 - A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**
 - B) A **FEE of \$25.00 per water right** or adjudication claim.
3. Name and Mailing Address of Person or Company holding Security Interest
McFinney Agri-Finance, LLC
P.O. Box 1598
Twin Falls, ID 83303-1598
4. Name of Water Right Owner/Claimant(s) Silva Land Company, LLC
5. Expiration Date of Notification Period April 1, 2029
6. Is this a Renewal of Request for Notification? ☒ YES ☐ NO
7. Signature(s) of Security Interest holder(s) McFinney Agri-Finance, LLC
(and title if applicable)
By: 
James K. McCall, Member

For Office Use Only

Received by <u></u>	Date <u>3/23/09</u>	Fee <u>\$100</u>
Received by <u></u>	Date <u>3/23/09</u>	Receipt No. <u>5030760</u>
Processed by <u>AJ</u>	Date _____	WR _____ Date <u>3.24.09</u>

TWIN FALLS COUNTY

RECORDED FOR:

TITLEFACT

11:03:29 am 03-20-2009

2009-006024

NO. PAGES: 34

FEE: \$102.00

KRISTINA GLASCOCK

COUNTY CLERK

DEPUTY: CNICE

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

McFinney Agri-Finance, LLC
P.O. Box 1598
Twin Falls, ID 83303-1598

COPY

58691 sm

**FIRST MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

This First Mortgage, Security Agreement and Assignment of Rents (the "Mortgage") is made as of this 1st day of March, 2009 by SILVA LAND COMPANY, LLC, an Idaho limited liability company whose address is 1202 East 4150 North, Buhl, ID 83316 (the "Mortgagor") to MCFINNEY AGRI-FINANCE, LLC, an Idaho limited liability company whose address is 409 Shoshone St. South, Suite 25, Twin Falls, Idaho 83301 (the "Mortgagee");

WITNESSETH:

Mortgagor, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of and to secure repayment in accordance with the terms of the First Mortgage Promissory Note of the Mortgagor, SILVA DAIRY, LLC, an Idaho limited liability company whose address is 1202 East 4150 North, Buhl, ID 83316 ("Silva Dairy"), MANUEL M. SILVA and MARIA O. SILVA, also known as OLINDA SILVA, husband and wife whose address is 1202 East 4150 North, Buhl, ID 83316 ("Manuel & Maria"), ANTHONY SILVA, also known as TONY SILVA, and LINDSI SILVA, husband and wife whose address is 1248 East 4150 North, Buhl, ID 83316 ("Tony & Lindsy"), ALBERTO JOHN SILVA, also known as JOHN SILVA, an unmarried man whose address is 1200 East 4153 North, Buhl, ID 83316 ("John"), HEILO SILVA, also known as EILO SILVA, and LORI SILVA, husband and wife whose address is 214 Lewis and Clark Road, Buhl, ID 83316 ("Eilo & Lori") and MAXIMAINO SILVA, also known as MAX SILVA, and MONA CHARICE WEST-SILVA, also known as CHARLE SILVA, husband and wife whose address is 109 Smalley Circle, Buhl, ID 83316 ("Max & Charle," and together with Silva Land Company, Silva Dairy, Manuel & Maria, Tony & Lindsy, John, and Eilo & Lori, the "Borrower") dated the date hereof in the principal amount of One Million Sixty Thousand and No/100ths Dollars (\$1,060,000.00) (the "Note"), does hereby irrevocably, GRANT, BARGAIN, SELL, CONVEY, MORTGAGE, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Mortgagee and to its successors and assigns, (a) all the real property, water, water rights, ditches, ditch rights, storage rights, permits, licenses, certificates and shares of stock described in Exhibit "A" attached hereto and by this reference incorporated herein; and (b) all the property, permits and rights described in Exhibit "B" and Exhibit "C" attached hereto and by this reference incorporated herein, whether now owned or hereafter acquired; (collectively, the "Property");

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in, to or under all leases (including grazing permits, leases and oil and gas leases) or subleases covering the Property or any portion thereof during the period in which this Mortgage is in effect, whether now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and all water, water rights, water appropriations, irrigation works, lines, pivots, drip lines, hand lines, wheel lines, pumps, motors, equipment and electric panels of every kind and nature, ditches, canals, wells, franchises upon, leading to or connected with said property, in addition to any replacements, substitutions and additions thereto, and all other rights and privileges now or hereafter owned by Mortgagor, or belonging to, with, leading to, connected with, or usually had or enjoyed in connection with the Property or appurtenant thereto, whether represented by shares of capital stock in any ditch company, irrigation company, irrigation district or water association, by voting or other rights or interests with respect thereto or by actual individual ownership, or which may hereafter be acquired by Mortgagor, during the existence of this Mortgage;

TOGETHER WITH all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any road adjoining the Property

TOGETHER WITH any and all buildings, structures, fences, pipelines, pipes, tanks, dams, reservoirs, pumps, pumping equipment and all other improvements and fixtures now located or hereafter erected thereon or used in connection therewith, including, but not limited to, the fixtures, attachments, equipment, machinery, and other articles attached to said buildings and improvements, including all dairy equipment, milk handling, milk storage and milking equipment, livestock fixtures and other non-rolling stock necessary to run a dairy (collectively, the "Improvements"), but not including farm machinery and vehicles;

TOGETHER WITH, all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property; and

TOGETHER WITH all accounts arising out of, or in connection with, (a) milk, cream or dairy product proceeds, whether pursuant to payment from milk agreements with Glanbia Foods, Inc., other milk producers or otherwise and (b) the Property (including all leases, bonuses, royalties, subleases, franchises, rents, issues, profits and income in connection with the Property, and all the estate, right, title and interest of every nature whatsoever of the Mortgagor in and to the same), whether now owned or hereafter acquired. Mortgagor will execute such assignments as Mortgagee may from time to time reasonably request, which shall include, but not be limited to, assignments of milk, cream and dairy product proceeds, and assignments of rents, issues and profits in reasonable form acceptable to Mortgagee. Mortgagor shall pay the cost of recording any such assignments. Mortgagee is authorized to notify any or all lessees, tenants or occupants

of all or part of said Property of the assignment of rents, issues or profits made hereunder or under any such special assignments. Mortgagee shall have no personal liability and shall not be responsible for the performance of Mortgagor's covenants under any of said leases or rentals. Mortgagee shall not be liable to Mortgagor for any action taken or omitted in connection with any such leases or rentals or the operation of said Property. Until the occurrence of a default as hereinafter provided, Mortgagor may use and occupy the Property and receive all rents, issues and profits thereof.

The entire estate, property (both real and personal) and interest hereby conveyed to Mortgagee may hereafter collectively be referred to as the "Mortgaged Property." All property except the real property may hereinafter be referred to as the "Personal Property." Personal Property does not include farm machinery, vehicles, livestock, household furnishings, household appliances or unattached household fixtures, or any income therefrom.

FOR THE PURPOSE OF SECURING:

- (a) Payment of indebtedness in the total principal amount of One Million Sixty Thousand and No/100ths Dollars (\$1,060,000.00), together with interest on the unpaid balance thereof, from date of funding by the Mortgagee until paid, evidenced by that certain Note of even date herewith with a maturity date of April 1, 2029, executed by Borrower, which has been delivered to and is payable to the order of Mortgagee, and which by this reference is hereby made a part hereof, together with any and all modifications, extensions and renewals thereof; both principal and interest and all other indebtedness accruing hereunder or thereunder being payable in lawful money of the United States which shall be legal tender for the payment of all debts and dues, public and private, at the time of payment, at the address set forth on the Note with the following notations, or at such other place as may be designated in writing by the Mortgagee:

Lender: McFinney Agri-Finance, LLC

Borrower: Silva Land Company, LLC and Silva Dairy, LLC

- (b) Performance of all obligations of Borrower and Mortgagor (and each of them) under any loan application, report, commitment letter, loan agreement, mortgage, deed of trust, security agreement, financing statement, assignment, assignment of bonuses, rentals and royalties, intercreditor agreement, subordination agreement, power of attorney (limited or otherwise), guaranty, or other agreement given as security for the Note or entered into in connection with the transactions contemplated hereby (collectively, with the Note, the Loan Agreement (as such term is defined below), the Security Agreement (as such term is defined below) and this Mortgage, the "Credit Documents").
- (c) Payment of all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the rates set forth in the Note.

- (d) Performance of all obligations of any guarantor of any of the obligations of Borrower or Mortgagor (or any of them) contained in the Credit Documents or any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby.

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES:

ARTICLE I

COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby represents, covenants and agrees:

- 1.01 Title. That at the time of delivery hereof, Mortgagor is the lawful owner of the property hereinabove granted, and is seized of good, marketable and indefeasible title in fee simple therein, free and clear of all encumbrances (other than (a) the Security Agreement (as such term is defined below), (b) encumbrances in favor of D.L. Evans Bank on milk products that are subject to an intercreditor agreement by and between the Mortgagee and D.L. Evans (the "Intercreditor Agreement"), (c) encumbrances in favor of the Mortgagee arising in connection with the First Mortgage Note of the Borrower to the Mortgagee dated October 20, 2006 in the original principal amount of Five Hundred Fifty Thousand and No/100ths Dollars (\$550,000.00), as supplemented by the Joinder Agreement of Lindsy Silva dated January 2008 (the "Existing McFinney Loan") and (d) the Lease by and among Silva Land, Manuel & Maria, Toni & Lindsy, John, Eilo & Lori, Max & Charle and AgStar Financial Services, ACA, under its Agri-Access division dated on or about December 14, 2007 (the "Existing Agri-Access Lease")), and that Mortgagor will warrant and defend the same in the quiet and peaceful possession of the Mortgagee, its successors and assigns, forever, against the claims of all persons whomsoever. The encumbrances on milk products in favor of D.L. Evans Bank that are subject to the Intercreditor Agreement, the encumbrances arising under the Existing McFinney Loan and the encumbrances arising under the Existing Agri-Access Lease are collectively, the "Permitted Existing Encumbrances."
- 1.02 Payment of Secured Obligations. That Borrower has executed and delivered to Mortgagee the Note; that the Borrower has executed and delivered to Mortgagee the Loan Agreement dated as of the date hereof by and among the Borrower and the Mortgagee (the "Loan Agreement"); that Mortgagor has executed and delivered to Mortgagee this Mortgage; that the Borrower has executed and delivered to the Mortgagee the Security Agreement dated as of the date hereof by and among the Borrower and the Mortgagee (the "Security Agreement"); that the Borrower agrees to pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided

in the Credit Documents, and the principal of, and interest on, any future advances secured by this Mortgage or the Security Agreement.

- 1.03 Maintenance, Repair, Alterations and Good Standing. To keep the Mortgaged Property in good condition and repair, not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Improvements; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property or any part thereof; not to commit, suffer or permit any waste or deterioration of the Mortgaged Property; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation; in the event the Mortgagor is a corporation, partnership, limited liability company, cooperative, business trust or other entity, to keep the Mortgagor in existence and in good standing.
- 1.04 Required Insurance. To at all times provide, maintain and keep in force the following policies of insurance:
- (a) If Mortgagor constructs or installs improvements on the Property that were not existing on the Property on the date of this Mortgage, then Mortgagee may require that Mortgagor keep and maintain in force with respect to said improvements such of the following policies of insurance ("insurance" or "policies of insurance") as may be reasonably requested. Insurance may, in the discretion of Mortgagor, be in the form of individual policies or blanket policies covering other improvements.
 - (b) Physical hazard insurance covering the perils of fire, flood, tornado, lightning, and extended coverage in an amount equal to at least the full insurable value of the Mortgaged Property, and such additional coverage as Mortgagee may from time to time reasonably require.
 - (c) Such other insurance, and in such amounts, as may from time to time reasonably be required by Mortgagee against the same or other hazards.
 - (d) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Mortgagor.

- 1.05 Delivery of Policies, Payment of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company satisfactory to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee copies of all policies of required insurance. All such policies shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the rate provided in the Note shall be secured by this Mortgage.
- 1.06 Insurance Proceeds. That after the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.
- (a) In the event of any damage or destruction of the Improvements, Mortgagee shall have the option in its sole discretion of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine, (ii) to the restoration of the Improvements, provided the Improvements are restored to good working condition, or (iii) to Mortgagor; provided that at Mortgagor's election, the insurance proceeds shall be applied to restoration of the Improvements if Mortgagor has had a satisfactory credit record with Mortgagee, is not then in default under the Note or the other Credit Documents, and establishes to Mortgagee's reasonable satisfaction that the insurance proceeds together with Mortgagor's other resources, if required, would be sufficient to restore the Improvements to a condition satisfactory for operation of Mortgagor's business.
 - (b) In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. After applying the proceeds to all indebtedness secured hereby, the balance of such proceeds, if any, shall be promptly paid to Mortgagor. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.
 - (c) Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the

Mortgaged Property or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in an amount, and the application or release by Mortgagee, of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.07 Assignment of Policies Upon Foreclosure. That in the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Property.

1.08 Indemnification; Subrogation; Waiver:

- (a) If Mortgagee or any of its members, officers, employees and agents (each in its capacity as an indemnified party, a "Mortgagee Indemnatee") is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend, protect and hold harmless each Mortgagee Indemnatee from and against any and all claims, losses, liabilities, damages, assessments, adjustments, costs and expenses (including specifically, but without limitation, attorneys' fees and expenses of investigation) (collectively, "Damages") incurred by such Mortgage Indemnatee in connection with such suit or proceeding, unless such Damages arise as a direct result of the gross negligence or willful misconduct of the Mortgagee. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any such secured hereby, Mortgagor shall pay to Mortgagee attorney's fees and expenses, and the right to such attorney's fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee attorney's fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach.
- (b) Mortgagor waives any and all right of claim or recovery against Mortgagee, its members, officers, employees and agents, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or

the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

- (c) All sums payable by Mortgagor hereunder shall be paid without notice, demand counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) subject to provisions of applicable law, any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee or the Borrower; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor or the Borrower; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, and except as otherwise prohibited by applicable law, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.
- (d) To the extent applicable and permitted by law, the Mortgagor waives all homestead exemption rights relating to the Mortgaged Property.
- (e) To the extent permitted by law, the Mortgagor expressly agrees that the Note, or any payment thereunder, may be extended from time to time, or the terms of payment or interest may otherwise be varied by agreement with any person now or hereafter liable for payment of the Note (including without limitation conversion of the Note to another product in accordance with the terms and provisions thereof), without in any way affecting the obligations of the Mortgagor hereunder or the lien, encumbrance and security interest created hereby.

1.09 Taxes and Impositions.

- (a) Mortgagor agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation payments with

respect to water rights (collectively, the "Impositions"); *provided, however*, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

- (b) Mortgagor covenants to furnish Mortgagee within forty-five (45) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof.
- (c) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section.

1.10 Power and Utilities. Mortgagor agrees to pay when due all power and utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property.

1.11 Actions by Mortgagee to Preserve Mortgaged Property. That should Mortgagor fail to make any payment or to do any act as and in the manner provided in any of the Credit Documents, Mortgagee, in its own discretion, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may reasonably make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. Mortgagor shall, immediately upon demand therefore by Mortgagee, pay all reasonable costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorney's fees.

That in the event Mortgagee is called upon to pay any sums of money to protect this Mortgage and the Note secured hereby as aforesaid, all monies advanced or due hereunder shall become immediately due and payable, together with interest at a rate as is set forth in the Note for regular and default interest.

1.12 Survival of Warranties. To fully and faithfully satisfy and perform the obligations of Mortgagor contained in the Borrower's loan application and any of the Credit Documents. All representations, warranties and covenants of Mortgagor contained therein shall survive the close of escrow and funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

- 1.13 Eminent Domain. That should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.
- (a) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefore, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.
- (b) In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney's fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Mortgagee may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. After applying the Proceeds to the restoration of the Mortgaged Property, the balance of such Proceeds, if any, shall be promptly paid to Mortgagor.
- 1.14 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.
- 1.15 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Note, whether or not named as Mortgagee herein. In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 1.16 Inspections. That Mortgagee, or its agents, representatives or workmen, upon giving reasonable notice to Mortgagor, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Credit Documents.

- 1.17 Liens. To pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, but not more than one and one-half (150%) of the amount of the claim, and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge or such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.
- 1.18 Other Mortgages. That Mortgagor will not create, assume or suffer to exist in respect of the Mortgaged Property, or any part thereof, any mortgage or security agreement other than this Mortgage, the Security Agreement or the Permitted Existing Encumbrances. Mortgagor agrees to make all payments when due on indebtedness secured by the foregoing described mortgages and security agreements.
- 1.19 Financial Statements. That Mortgagor will cause to be delivered to Mortgagee, without expense to Mortgagee, such financial records and information as are required by the Mortgagee from time to time.
- 1.20 Mortgagor's Waiver of Certain Rights. The Mortgagor waives to the extent not prohibited by applicable law that cannot be waived (a) the benefit of all laws now existing or hereafter enacted providing for any appraisal before sale of any portion of the Mortgaged Property, (b) the benefit of all laws now existing or hereafter enacted in any way extending the time for enforcement or collection of the obligations contained in the Credit Documents, (c) all benefit that might accrue to Mortgagor by virtue of any present or future statute of limitations or law or judicial decision exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption, moratorium, or extension of time for payment, and (d) all notices of Mortgagee's election to exercise or its actual exercise of any right, remedy or recourse provided for under the Credit Documents or at law or in equity. To the extent it may lawfully do so, the Mortgagor agrees that it will not at any time insist upon, plead, claim or take the benefit or advantage of, any law now or hereafter in force providing for any appraisal, valuation, stay or extension, and the Mortgagor hereby waives and releases all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the obligations contained in the Credit Documents and marshaling in the event of foreclosure of the liens hereby created. To the extent permitted by applicable law, the Mortgagee shall not be required in connection with any foreclosure, pursuant to any power of sale herein granted, or

in connection with any deed in lieu of foreclosure, to foreclose, to sell or to take a deed in lieu of foreclosure, covering all or any specific portion of the Mortgaged Property and the Mortgagee may elect to foreclose, to sell or to take a deed in lieu of foreclosure to all or any portion of the Mortgaged Property and the Mortgagee's rights in connection with any foreclosure, pursuant to the power of sale herein granted, or in connection with any deed in lieu of foreclosure hereunder granted by the Mortgagor, may be exercised in any combination with respect to some or all of the Mortgaged Property. To the extent permitted by applicable law, the Mortgagee shall not be required to marshal or sell the Mortgaged Property, the leases, rents, issues and profits assigned by the Mortgagor or any other security by which the obligations contained in the Credit Documents are secured in any particular order.

ARTICLE II

SECURITY AGREEMENT

- 2.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property described in the Credit Documents and in this Mortgage, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Mortgagor contained in any of the Credit Documents.
- 2.02 Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants as follows:
- (a) Except for the security interest granted hereby, by the Security Agreement or by the Permitted Existing Encumbrances, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.
 - (b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.
 - (c) The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor. Mortgagor may replace any

item of Personal Property in the ordinary course of business, without the prior consent of Mortgagee.

- (d) Mortgagor maintains a place of business in the State of Idaho that is Mortgagor's chief executive office and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage.
- (e) At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.
- (f) All covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.
- (g) Mortgagor understands and agrees that certain items of irrigation equipment and feedlot or dairy equipment (if any) hereinbefore described or referred to as "personal property" actually and as a matter of law are fixtures and are deemed a part of the land covered by this Mortgage, and that said designation as "personal property" is for convenience only and shall be disregarded in the case of any fixtures described or referred to following such designation. The Mortgagor will not sell or dispose of any of said personal property, nor attempt to do so, nor part with possession of any of the same, nor remove the mortgaged personal property or any of the same, nor permit it to be removed, from the real property described on Exhibit "A", or from the adjoining or adjacent lands where said personal property may be located, while this Mortgage shall remain in force and affect, without the written consent of the Mortgagee; *provided, however*, that the language of this paragraph shall not prevent the Mortgagor from replacing or upgrading any personal property subject to this Mortgage in the ordinary course of business without the written consent of the Mortgagee. All upgrades or replacements shall become subject to this Mortgage and security interest herein provided for. All the mortgaged Personal Property shall at all times while this Mortgage remains in force and effect be kept and maintained by the Mortgagor, at Mortgagor's own cost and expense, in good working order, condition and repair, and the Mortgagor will from time to time make all replacements of such Personal Property which may reasonably be necessary for the irrigation and cultivation of the real property described on Exhibit "A" and Mortgagor will neither commit nor suffer any damages or waste on or to the mortgaged premises and said personal property nor do or permit to be done anything that may lessen or impair the value of the mortgaged property, real or personal, or the lien or security thereof.

- (h) This Mortgage constitutes a security agreement as that term is used in the Uniform Commercial Code of Idaho.

ARTICLE III

ASSIGNMENT OF RENTS, ISSUES AND PROFITS

- 3.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all accounts arising out of, or in connection with, leases, bonuses, royalties, subleases, franchises, rents, issues and profits arising out of, or in connection with, the Mortgaged Property (hereinafter collectively referred to as "rents"), and hereby gives to and confers upon Mortgagee the right, power and authority to collect such rents. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, and apply the same to the indebtedness secured hereby; *provided, however*, that Mortgagor shall have the right to collect such rents (but not more than thirty days in advance) prior to or at any time there is not an event of default under any of the Credit Documents.
- 3.02 Collection Upon Default. Upon any event of default under any of the Credit Documents, Mortgagee may, at any time without notice, enter upon and take possession of the Mortgaged Property, or at any part thereof, in its own name sue for or otherwise collect such accounts, rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.
- 3.03 Restriction on Further Assignments, etc. Except as herein specifically provided, Mortgagor will not, without prior written consent of the Mortgagee, assign the accounts, rents, issues or profits, or any part thereof, from the Mortgaged Property; and will not consent to the modification, cancellation or surrender of any lease or sublease covering the Mortgaged Property, or any part thereof. Any action of Mortgagor in violation of the terms of this Section shall be void as against Mortgagee in addition to being a default under this Mortgage.

ARTICLE IV

REMEDIES UPON DEFAULT

- 4.01 Event of Default. The occurrence of any one or more of the following events shall constitute a default hereunder:

- a) the occurrence of an Event of Default under the Note, including without limitation the sale, assignment, lease with the option of sale disposal or other transfer of the Mortgaged Property or any interest in the Mortgagor; or
- b) failure to observe or perform any covenant, agreement, condition, term or provision of this Mortgage or any other Credit Document (other than an Event of Default described in clause (a) above).

4.02 Remedies. In the event of the occurrence and during the continuance of any default, the Mortgagee may at any time thereafter, subject to the provisions set forth in this Section 4.02, exercise any or all of the following remedies:

- a) all of the rights and remedies provided in the Note, including declaring the entire amount of the indebtedness and obligations immediately due and payable, and the indebtedness and obligations thereupon shall become immediately due and payable without presentment, protest, notice of protest or further demand or notice of any kind, all of which are hereby expressly waived;
- b) all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the jurisdiction in which the Property is located;
- c) enter the Property and take exclusive possession thereof and of all books, records and accounts relating thereto, and if Mortgagor remains in possession of the Property during the continuance of an event of default without Mortgagee's written consent, Mortgagee may invoke any legal remedies to dispossess Mortgagor;
- d) to the greatest extent permitted by law, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of same, to the highest bidder for cash at public auction, and the right of sale arising out of any event of default shall not be exhausted by one or more sales. Such sale shall be made in accordance with the laws of Idaho relating to the sale of real estate or by Article 9 of the UCC relating to the sale of other collateral after default by a debtor (as such laws now exist or may be hereafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same;
- e) commence an action to foreclose this Mortgage;
- f) specifically enforce any of the covenants hereof;
- g) the right to appoint a receiver of the Mortgaged Property, which appointment, to the extent permitted by applicable law, may be made either before or after foreclosure sale, upon notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for

such receiver and without regard to the then value of the Mortgaged Property;

- h) such other actions or proceedings available to the Mortgagee under applicable law as it deems necessary or advisable to protect its interest in the Mortgaged Property and the indebtedness and obligations secured thereby; and
- i) the right to receive rent under Article III, including without limitation the right to receive payments under any assignment of bonuses, rentals and royalties, governmental subsidy or program referenced in Section 5.04 hereof.

In the event of default hereunder, the interest rate shall be as is set forth in the Note.

To the extent it may lawfully do so, the Mortgagor agrees that it will not (i) invoke or utilize any law now or hereafter in force which might prevent, cause a delay in or otherwise impede the enforcement of the rights of the Mortgagor in the Mortgaged Property or (ii) protest the appointment of a receiver of the Property pursuant to Section 4.02(g) hereof.

Prior to exercising any remedy with respect to an Event of Default under Section 4(a) of the Note, the Mortgagor shall have ten (10) days to effect a full and complete cure of such Event of Default by paying all amounts due and payable in accordance with the terms thereof.

Prior to exercising any remedy with respect to any such default (other than an Event of Default under Sections 4(a) or 4(i) of the Note), the Mortgagee shall first give written notice to the Mortgagor at the address set forth in Section 5.02 via registered mail, which notice shall specify in writing each and every claimed default. The Mortgagor shall have twenty (20) days from the receipt of such notice to effect a cure of each and every claimed default. If any claimed default remains uncured after such twenty (20) day period, the Mortgagee may then proceed to exercise any of the remedies to which it may be entitled, including those set forth in this Section 4.02, without the obligation to provide further notice to the Mortgagor.

- 4.03 **Remedies Not Exclusive.** Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Credit Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or

enforce any other security now or hereafter held by Mortgagee, it is being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Credit Documents to Mortgagee or to which it may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

ARTICLE V

MISCELLANEOUS

- 5.01 Interpretation; Governing Law; etc. Time is (and shall be) of the essence in this Mortgage and the other Credit Documents. All covenants, agreements, representations and warranties made in this Mortgage or any other Credit Document or in certificates delivered pursuant hereto or thereto shall be deemed to have been relied on by the Mortgagee, notwithstanding any investigation made by the Mortgagee on its behalf, and shall survive the execution and delivery to the Mortgagee hereof and thereof. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision hereof, and any invalid or unenforceable provision shall be modified so as to be enforced to the maximum extent of its validity or enforceability. The headings in this Mortgage are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. This Mortgage and the other Credit Documents constitute the entire understanding of the parties with respect to the subject matter hereof and thereof and supersede all prior and contemporaneous understandings and agreements, whether written or oral. This Mortgage may be executed in any number of counterparts which together shall constitute one instrument. This Mortgage, and any issue, claim or proceeding arising out of or relating to this Mortgage or the conduct of the parties hereto, whether now existing or hereafter arising and whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws (other than the conflict of laws rules) of the State of Idaho, provided that the laws of the state in which the Mortgaged Property is located shall govern lien perfection, lien priority and validity of this Mortgage and the procedures with respect to the enforcement hereof.
- 5.02 Notices. Except as otherwise specified in this Mortgage or any other Credit Document, any notice required to be given pursuant to this Mortgage or any other Credit Document shall be given in writing. Any notice, consent, approval, demand or other communication in connection with this Mortgage or any other Credit Document shall be deemed to be given if given in writing addressed as provided below (or to the addressee at such other address as the addressee shall have specified by notice actually received by the addressor), and if either (a)

actually delivered in fully legible form to such address or (b) in the case of a letter, unless actual receipt of the notice is required by any Credit Document, five days shall have elapsed after the same shall have been deposited in the United States mails, with first-class postage prepaid and registered or certified.

- a) If to the Mortgagor, to it at the addresses listed on the signature page hereto.

5.03 Joint and Several Obligations; Heirs and Assigns. In the event the Mortgagor consists of more than one individual or entity, the covenants, agreements, conditions, provisions, representations, warranties or obligations of each hereunder or under any Credit Document shall apply to each and shall be joint and several. A default hereunder shall also apply with respect to the act or omission of any one or more individuals or entities comprising the Mortgagor. This Mortgage and the other Credit Documents shall bind the heirs, personal representatives, successors and assigns of each of the Mortgagor; *provided, however*, that neither this Mortgage nor any other Credit Document be assigned without the express written consent of the Mortgagee.

5.04 Subsidy and Payment in Kind Compensation.

- a) Mortgagor shall not register the Property, or any portion thereof, with any federal, state or local government office for the purpose of obtaining subsidy or payment-in-kind compensation without first obtaining Mortgagee's prior written consent. Mortgagor hereby grants to Mortgagee a security interest in any such subsidy or payment-in-kind compensation whether or not Mortgagee gives its written consent to Mortgagor to register the Property, or any portion thereof, for such compensation. Mortgagor, upon the written request of Mortgagee, shall execute any documents necessary to further perfect Mortgagee's security interest in such compensation. Any such document is to be in form and substance acceptable to Mortgagee. Mortgagor hereby appoints Mortgagee its attorney-in-fact to execute such documents in Mortgagor's name and behalf. Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee any document of title Mortgagee desires to hold to secure Mortgagee's interest in any such government compensation.
- b) Upon any event of default under any of the Credit Documents, Mortgagee may, at any time without notice, take possession of any such subsidy or payment-in-kind compensation, or at any part thereof, in its own name sue for or otherwise collect such subsidy or payment-in-kind compensation, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorney's fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such government compensation or the entering upon and taking possession of any subsidy or payment-in-kind compensation, or the application thereof as aforesaid, shall not cure or

waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

- 5.05 Habendum Clause. Upon payment in full of the indebtedness secured hereby and the performance by Mortgagor of all of the obligations imposed on Mortgagor herein and in the Loan Agreement and the Note, these presents shall be null and void, and Mortgagee shall release this Mortgage and the lien hereof by proper instrument executed in recordable form.
- 5.06 Hazardous Substances. Mortgagor represents and warrants that to the best of its knowledge (1) the Property (including, without limitation, the subsurface soil and the ground water thereunder) does not contain any "hazardous or toxic substances" (as hereinafter defined); (2) Mortgagor has no knowledge of any generation, transportation, storage, treatment or disposal of any hazardous or toxic substances on the Property, or within one-half mile thereof, now or in the past; (3) Mortgagor is not aware of any pending or threatened litigation or proceedings before any court or administrative agency in which any person or entity alleges, or threatens to allege, the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at the Property, of any hazardous substance; (4) Mortgagor has not received any notice of and has no knowledge that any governmental authority or any employee or agent thereof has determined or alleged, or is investigating the possibility, that there is a presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment, or disposal at the Property, of any hazardous or toxic substance; (5) to Mortgagor's knowledge, there have been no communications or agreements with any governmental authority or agency (federal, state or local) or any private person or entity (including, without limitation, any prior owner of the Property) relating in any way to the presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property, of any hazardous or toxic substance.

For the purpose of this paragraph, "hazardous or toxic substance" shall mean and include (1) a "hazardous substance" as defined in 42 U.S.C. § 9601(14) and as hereafter amended from time to time, or as defined under applicable state health, safety and water codes, and (2) any other material, gas or substance known or suspected to be toxic or hazardous (including, without limitation, any radioactive substance, methane gas,¹ volatile hydrocarbons, industrial solvents and asbestos) or which could cause a material detriment to, or materially impair the beneficial use of the Property, or constitute a material health, safety or environmental risk to tenants, occupants or patrons of the Property. The term "hazardous substance" shall not include water containing nutrients from livestock waste lawfully stored or applied to the real property of the Mortgagor or third parties.

¹ Methane gas generated by animal manure is not included so long as Mortgagor is in full compliance with any and all codes and regulations governing animal manure and its by-products.

- 5.07 Milk Proceeds. The Mortgagor covenants and agrees that it will make no further or future assignments of the milk, cream or dairy product proceeds of the Mortgagor or Silva Dairy which would alter or eliminate the Mortgagee's right to receive from such milk, cream or dairy product proceeds a sum sufficient to satisfy the monthly payments due under the Note. A breach of this covenant shall constitute a default under this Mortgage at the option of the Mortgagee.
- 5.08 Legal Compliance. The Mortgagor shall furnish evidence satisfactory to the Mortgagee confirming the issuance on terms and conditions satisfactory to the Mortgagee, by the appropriate federal, state, county, regional or local authorities (including authorities whose jurisdiction involves environmental protection), of all licenses, approvals or permits necessary in connection with (a) the operation of the Mortgagor's business and the lawful occupancy thereof for the purpose for which such project was created (including the issuance by any federal, state, county, regional or local authorities of such licenses, approvals or permits where jurisdiction involves environmental protection), and (b) the possession of all Property in connection therewith. The Mortgagor covenants to continue to maintain compliance with all such licenses, approvals or permits as well as any applicable federal, state, county, regional or local laws and regulations, including without limitation its Nutrient Management Plan approved by the Idaho State Department of Agriculture.
- 5.09 INTEREST RATE ADJUSTMENTS. THE NOTE SECURED HEREBY EXPRESSLY PROVIDES FOR INTEREST RATE ADJUSTMENTS AS SET FORTH THEREIN.
- 5.10 Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest: (i) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee reasonably deems appropriate to protect Mortgagee's interest in the Mortgaged Property if Mortgagor shall fail to do so within three (3) days after written request by Mortgagee, (ii) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery (and acceptance by Mortgagee) of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to leases, rents and the other Mortgaged Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, and (iii) upon the occurrence of an event of default, to perform any duty or obligation of Mortgagor under this Mortgage or under any of the other Credit Documents (including payment of taxes and insurance premiums); *provided, however*, that: (1) Mortgagee shall not under any circumstances be obligated to perform any duty or obligation of Mortgagor; (2) Mortgagor shall reimburse Mortgagee for all sums expended in such performance plus interest at any applicable default rate; (3) Mortgagee, as such attorney-in-fact, shall only be accountable for such funds as are actually received by Mortgagee; and (4) Mortgagee shall not be liable to Mortgagor or any other person for any failure to take any action which it is empowered to take under this Section 5.10.

5.11 Amendment. This Mortgage may not be amended, modified or restated without the express written consent of the Mortgagor and the Mortgagee.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

MORTGAGOR

1202 East 4150 North
Buhl, Idaho 83316

SILVA LAND COMPANY, LLC

By: Manuel M Silva
Manuel M. Silva, Member

By: Maria O Silva
Maria O. Silva a/k/a Olinda Silva,
Member

By: TONY SILVA
Anthony Silva a/k/a Tony Silva,
Member

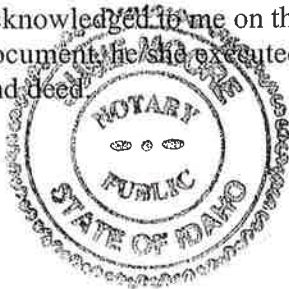
By: John A Silva
Alberto John Silva a/k/a John Silva,
Member

By: Eilo Silva
Heilo Silva a/k/a Eilo Silva,
Member

By: Maximino Silva
Maximaino Silva a/k/a Max Silva,
Member

STATE OF IDAHO)
 : ss.
County of Twin Falls)

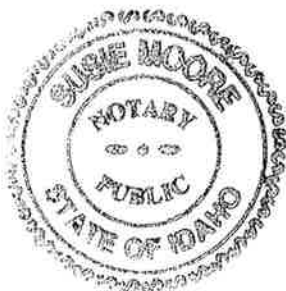
On this 19th day of March, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Manuel M. Silva**, known or identified to me to be the person listed above and a member of **Silva Land Company, LLC**, an Idaho limited liability company, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entity as his/her free and voluntary act and deed.



Susan Moore
Notary Public for the State of Idaho
Residing at: Twin Falls Idaho
My Commission Expires: 11-28, 2014

STATE OF IDAHO)
 : ss.
County of Twin Falls)

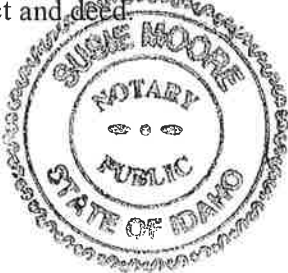
On this 19th day of March, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Maria O. Silva, also known as Olinda Silva**, known or identified to me to be the person listed above and a member of **Silva Land Company, LLC**, an Idaho limited liability company, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entity as his/her free and voluntary act and deed.



Susan Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

STATE OF IDAHO)
 : ss.
County of Twin Falls)

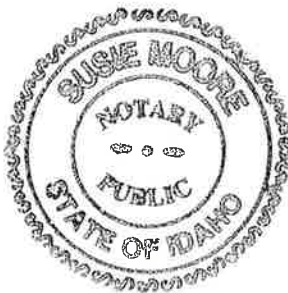
On this 19th day of March, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Anthony Silva, also known as Tony Silva**, known or identified to me to be the person listed above and a member of **Silva Land Company, LLC**, an Idaho limited liability company, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entity as his/her free and voluntary act and deed.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

STATE OF IDAHO)
 : ss.
County of Twin Falls)

On this 19th day of March, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Alberto John Silva, also known as John Silva**, known or identified to me to be the person listed above and a member of **Silva Land Company, LLC**, an Idaho limited liability company, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entity as his/her free and voluntary act and deed.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

STATE OF IDAHO)
 : ss.
County of Twin Falls)

On this 1st day of March, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Heilo Silva, also known as Eilo Silva**, known or identified to me to be the person listed above and a member of **Silva Land Company, LLC**, an Idaho limited liability company, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entity as his/her free and voluntary act and deed.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

STATE OF IDAHO)
 : ss.
County of Twin Falls)

On this 1st day of March, in the year 2009, before me, a notary public for the State of Idaho, personally appeared **Maximaino Silva, also known as Max Silva**, known or identified to me to be the person listed above and a member of **Silva Land Company, LLC**, an Idaho limited liability company, and acknowledged to me on this day under oath, that, being informed of the contents of this document, he/she executed the same on behalf of such entity as his/her free and voluntary act and deed.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2014

PARCEL NO. 1

Township 10 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho
Section 4: Lot 2; SW¼NE¼; NW¼SE¼

EXCEPTING a strip of land described as follows:

BEGINNING at the Northwest corner of the NE¼ of said Section; running

THENCE South 215 feet;

THENCE East on a line parallel to and distant 215 feet South from the North line of said Section
to a point on the East line of said Lot 2, 215 feet South of the Northeast corner thereof;

THENCE North 215 feet;

THENCE West to the POINT OF BEGINNING.

AND EXCEPT a parcel of land being on both sides of the centerline of U.S. Highway No. 30,
Project No. F-2361(11) Highway Survey as shown on the plans thereof now on file in the office
of the Department of Highways of the State of Idaho and being a portion of Government Lot 2 of
Section 4, Township 10 South, Range 15 East, Boise Meridian, described as follows, to-wit:

COMMENCING at the Northwest corner of Government Lot 2 of Section 4, Township 10 South,
Range 15 East, Boise Meridian;

THENCE South 0°41'15" West along the West line of said Government Lot 2 a distance of
243.27 feet to a point on a line parallel with and 80.00 feet Southerly from the centerline and
bears South 6°24'00" West from Station 130+36.09 of said U.S. Highway No. 30, Project No.
F-2361(11) Highway Survey and being the REAL POINT OF BEGINNING;

THENCE South 83°36'00" East along said parallel line 1325.00 feet to a point in the East line of
said Government Lot 2 opposite Station 143+61.09 of said Highway Survey;

THENCE North 0°16'25" East along said East line 171.19 feet to a point in the Southerly
right-of-way line of the Union Pacific Railroad and bears North 6°24'00" East 90.21 feet
from Station 143+42.82 of said Highway Survey;

THENCE North 89°47'31" West along said Southerly railroad right-of-way line 1317.23 feet to a
point in the West line of said Government Lot 2;

THENCE South 0°41'15" West along said West line 28.27 feet to the REAL POINT OF
BEGINNING.

ALSO EXCEPT a tract of land situated in the SW¼NE¼ of Section 4, Township 10 South,
Range 15 East, Boise Meridian, Twin Falls County, Idaho, described as follows:

COMMENCING at a found ½-inch steel pin monumenting the Northwest corner of said
Section 4;

THENCE following the Northerly line of said Section 4 North 89°36'13" East a distance of
2,639.87 feet to a found ½-inch steel pin monumenting the North quarter corner of said
Section 4;

THENCE leaving said Northerly line and following the Westerly line of the NE¼ of said
Section 4 South 00°06'29" East a distance of 1,500.00 feet to a set ½-inch steel pin being the
POINT OF BEGINNING;

THENCE leaving said Westerly line South 83°59'24" East a distance of 191.95 feet to a set
½-inch steel pin;

THENCE North 89°58'52" East a distance of 144.55 feet to a set ½-inch steel pin;
THENCE South 89°52'39" East a distance of 55.70 feet to a set ½-inch steel pin;
THENCE South 62°22'02" East a distance of 112.22 feet to a set ½-inch steel pin;
THENCE South 00°57'38" West a distance of 176.37 feet to a set ½-inch steel pin;
THENCE 790.53 feet following the arc of a non-tangent curve to the left, said curve having a
radius of 1,360.00 feet, a central angle of 33°18'15", a chord bearing of South 36°27'29"
West and a chord distance of 779.44 feet to a set ½-inch steel pin;
THENCE South 89°53'31" West a distance of 22.79 feet to a set ½-inch steel pin on the Westerly
line of said NE¼;
THENCE following said Westerly line North 00°06'29" West a distance of 875.51 feet to the
POINT OF BEGINNING.

PARCEL NO. 2

Township 10 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho
Section 4: SE¼NW¼

TOGETHER WITH an ingress and egress easement recorded March 21, 1985, as Instrument
No. 877663, records of Twin Falls County, Idaho, and more particularly described as follows:
Township 10 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho
Section 4: A parcel of land located in the SE¼NW¼ being more particularly described as
follows:

BEGINNING at the Northeast corner of the SE¼NW¼;
THENCE running South 20 feet;
THENCE West 382 feet;
THENCE North 20 feet;
THENCE East 382 feet to the TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM a parcel of land located in the SE¼NW¼ of said Section 4,
Township 10 South, Range 15 E., B.M., being more particularly described as follows:
BEGINNING at the Northeast corner of the SE¼NW¼ of said Section 4 and running
THENCE South 250 feet;
THENCE West 382 feet;
THENCE North 250 feet;
THENCE East 382 feet to the POINT OF BEGINNING.

PARCEL NO. 3

Township 10 South, Range 15 East, Boise Meridian, Twin Falls County, Idaho
Section 4: NE¼SE¼
SUBJECT TO Highway District right of way.

PARCEL NO. 4

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 33: N½SE¼, **EXCEPT** the East 25 feet thereof.

PARCEL NO. 5

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 33: SE $\frac{1}{4}$ NE $\frac{1}{4}$, **EXCEPT** the South 30 feet thereof.

Section 34: SW $\frac{1}{4}$ NW $\frac{1}{4}$, **EXCEPT** A parcel of land located in the Southwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and being more particularly described as follows:

COMMENCING at the West quarter corner of Section 34, Township 9 South, Range 14 East, Boise Meridian; said point being the REAL POINT OF BEGINNING;

THENCE North 0°29'13" East 397.11 feet along the Westerly boundary of said Section 34;

THENCE South 89°58'22" East 1323.40 feet to a point on the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34;

THENCE South 0°24'56" West 394.81 feet along the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the Southeast corner thereof;

THENCE South 89°55'40" West 1323.91 feet along the Southerly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the REAL POINT OF BEGINNING.

SUBJECT TO a 25-foot-wide road right of way along the Westerly and Southerly boundaries.

PARCEL NO. 6

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land located in the Southwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and being more particularly described as follows:

COMMENCING at the West quarter corner of Section 34, Township 9 South, Range 14 East, Boise Meridian; said point being the REAL POINT OF BEGINNING;

THENCE North 0°29'13" East 397.11 feet along the Westerly boundary of said Section 34;

THENCE South 89°58'22" East 1323.40 feet to a point on the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34;

THENCE South 0°24'56" West 394.81 feet along the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the Southeast corner thereof;

THENCE South 89°55'40" West 1323.91 feet along the Southerly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the REAL POINT OF BEGINNING.

SUBJECT TO a 25-foot-wide road right of way along the Westerly and Southerly boundaries.

EXCEPT: Part of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows:

BEGINNING at the West quarter section corner of Section 34; said corner marked by a 5/8" rebar which shall be the POINT OF BEGINNING;

THENCE North 00°20'49" East along the West section line for a distance of 280.44 feet;

THENCE North 89°46'53" East for a distance of 25.00 feet to a 1/2" rebar;

THENCE North 89°46'53" East for a distance of 130.33 feet to a 1/2" rebar;

THENCE South 00°20'49" West for a distance of 255.44 feet to a 1/2" rebar;

THENCE South 00°20'49" West for a distance of 25.00 feet to the South line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$;

THENCE South 89°46'53" West along said line for a distance of 155.33 feet to the POINT OF BEGINNING.

PARCEL NO. 7

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ being more particularly described as follows:

COMMENCING at the East quarter corner of said Section 34 from which the West quarter corner of said Section 34 bears South 89°55'40" West 5303.08 feet;

THENCE South 89°55'40" West along the South boundary of the NE $\frac{1}{4}$ is said Section 34 for a distance of 1859.78 feet to the TRUE POINT OF BEGINNING;

THENCE continuing South 89°55'40" West along the South boundary of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34 for a distance of 371.63 feet;

THENCE North 01°38'13" West for a distance of 316.53 feet;

THENCE South 89°55'40" West parallel with the South boundary of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34 for a distance of 413.00 feet to a point on the West boundary of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34;

THENCE North 00°19'44" East along the West boundary of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34 for a distance of 1,012.95 feet to the Northwest corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34;

THENCE North 89°55'15" East along the North boundary of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34 for a distance of 1,324.11 feet to the Northeast corner of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34;

THENCE South 00°10'38" West along the East boundary of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 34 for a distance of 1,032.36 feet;

THENCE North 88°02'02" West for a distance of 510.82 feet;

THENCE North 02°24'36" West for a distance of 12.09 feet;

THENCE South 87°22'44" West for a distance of 268.15 feet;

THENCE South 02°37'15" East for a distance of 154.97 feet;

THENCE South 42°40'35" East for a distance of 127.67 feet;

THENCE South 66°24'13" East for a distance of 166.09 feet to the TRUE POINT OF BEGINNING.

SUBJECT TO Highway District right of way.

PARCEL NO. 8

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: SE $\frac{1}{4}$ NW $\frac{1}{4}$

SUBJECT TO Highway District right of way.

EXCEPT:

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34:

BEGINNING at the Southwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$;

THENCE North along said quarter section line a distance of 208.71 feet to a point on said quarter section line;

THENCE East along a line parallel to the South line of Section 34 a distance of 208.71 feet to a point;

THENCE South along a line parallel to the West boundary of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 34, a distance of 208.71 feet to a point on the South line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$;

THENCE West along the South line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 208.71 feet to the POINT OF BEGINNING.

PARCEL NO. 9

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land more particularly described as follows:

BEGINNING at the Southwest corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$;

THENCE North along said quarter section line a distance of 208.71 feet to a point on said quarter section line;

THENCE East along a line parallel to the south line of Section 34 a distance of 208.71 feet to a point;

THENCE South along a line parallel to the West boundary of the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34 a distance of 208.71 feet to a point on the south line of said Section 34;

THENCE West along the south line of said Section 34 a distance of 208.71 feet to the POINT OF BEGINNING.

SUBJECT TO Highway District right of way.

Together with any and all water, water rights, ditches and ditch rights, storage rights and permits, licenses, certificates or shares of stock belonging or in any way appurtenant to the real property described in this Exhibit A, whether now owned or hereafter acquired, whether now existing or hereafter arising, all re-issuance or replacements thereof, and all proceeds from the sale or other disposition of any such property. Such water rights shall include, without limitation, the following:

Idaho Department of Water Resources

Number	Priority Date	Source	Diversion Rate	Use
47-2349D	04/03/1961	Ground Water	0.02 CFS	Stockwater (0.02 CFS) and Commercial (0.02 CFS)
47-2358D	11/06/1961	Ground Water	0.21 CFS	Stockwater (0.21 CFS) and Commercial (0.21 CFS)
47-10225	01/01/1940	Ground Water	0.04 CFS	Stockwater (0.04 CFS), Commercial (0.04 CFS) and Domestic (0.04 CFS)
47-2256F	08/08/1954	Ground Water	0.09 CFS	Stockwater (0.09 CFS) and Commercial (0.09 CFS)

Twin Falls Canal Company

Certificate No.	Shares
38772	40.0
38773	73.0
38774	7.0
38775	32.2
38776	80.0
7124 37124	40
38937	38.0
38938 (partial re-issuance)	113.20
Total:	423.40

Exhibit B

Any and all as-extracted collateral (including, without limitation, oil, gas and other minerals); fixtures (including, without limitation, trade fixtures and windmills); equipment (excluding farm machinery, rolling stock and vehicles, but including, without limitation, all livestock handling equipment, milk tanks, compressors, pumps, stanchions, milking units and other milking equipment, equipment relating to power generation, irrigation equipment, pivots, pumps, motors, sprinkler systems, mainlines, hand lines, wheel lines, siphon tubes, gated pipe and all other irrigation equipment used for the production or transportation of water on the real property described in the attached Exhibit A or for the irrigation or drainage thereof); embedded software relating to the foregoing; permits, licenses, agreements and documents necessary to own or operate the real property described in the attached Exhibit A; supplies; and accounts generated from the real property described in the attached Exhibit A (including, without limitation, all leases, royalties, subleases, franchises, rents, issues, profits and incomes arising therefrom and all the estate, right, title and interest of every nature in and to the same); whether now owned or hereafter acquired, whether now existing or hereafter arising, and all accessions, parts, additions, replacements and substitutions for any of such property, and all proceeds (including, without limitation, insurance proceeds) from the sale or other disposition of any such property. The foregoing shall include, without limitation, the following:

Milking Equipment

Double 13 parlor with milking equipment
Parlor-Mueller Tank
Alfa Laval DE578 plate cooler, SN# 814802
Champion Compressor, SN# V15010752
American Standard Gas Water Heater (100 gallon), SN# E06-2536
Rheem/RUUD storage / aux. heater (85 gallon), SN# DL0998BX0996RV0796E00363
Robuschi vacuum pump
200,000 pound scale with scale house
25,000 gallon above-ground steel fuel storage tank

Milking equipment shall include without limitation scales, milk silos, motors, hoppers, augers, pipelines, couplers, compressors, feed drops, cow lockups, corral shades, stalls, stands, stanchions, tubes, pumps, tanks, valves, washers, milk receivers, dispensers, controls, filters, take-offs, pulsators, pulsations controllers, claws, automatic detachers, chillers, mounting material, in ground wash heads, runner parlor mats, power generators and sanitation equipment.

Irrigation Equipment

Section 4

1 – 3 Tower Zimmatic Pivot
1 – 7 Tower Pivot
1 – 20 hp Electric Layne Pump, Serial number not available
1 – Pump Motor, SN# 37J644T868H1

1 – 5 hp Electric Pump, SN# 99C03272-1
1 – Pump Motor, SN# 38F970W970

Section 33

3 – 3 Tower Reinke Pivots
3 – 15 hp Baldor Motors, Serial numbers not available
3 – Berkeley Pumps, SN# 2J01G1, 2J01E1 and 2J01H1
1 – Lagoon Pump & Motor, Serial numbers not available

Section 34

2 – 3 Tower Reinke Pivots
2 – Pivots
2 – 20 hp Baldor Motors, SN# Z0502240057 and Z0502240047
2 – Berkley Pumps, SN# M12804 and M12805
Steelman-Rotary Three Phase Converter, SN# R-25/60-460-HD/TB1

Irrigation equipment shall include without limitation above and under ground pipeline, main lines, hand lines, wheel lines, gated pipe, pivots, pumps, motors and all allied equipment such as switch panels, pivot controls, wiring, shafting, openers, tubing, bowls, suction pipe, cones, valve openers, reducers, end plugs, risers, stems, sprinkler heads, hoses and nozzles.

Exhibit C

Any and all milk, cream and dairy products and accounts generated therefrom, including, without limitation, milk, cream and dairy product proceeds, whether pursuant to payments from agreements with Glanbia Foods, Inc., other milk, cream or dairy product purchasers or otherwise; whether now owned or hereafter acquired; whether now existing or hereafter arising; and all accessions, additions, replacements and substitutions for any of such property, and all proceeds (including, without limitation, insurance proceeds) from the sale or other disposition of any such property.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

JAMES E. RISCH
Governor

KARL J. DREHER
Director

November 7, 2006

SILVA LAND COMPANY LLC
1202 E 4150 N
BUHL ID 83316

Re: #47-10225, 47-2349D, 47-2358D, 47-2256F

Dear Claimant,

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the records of current ownership to you. Please find the enclosed copies of the computer records of the claims noting the change in claimant. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Carrie Hahn'.

Carrie Hahn
Office Specialist

Enc.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

JAMES E. RISCH
Governor

KARL J. DREHER
Director

November 7, 2006

SILVA LAND COMPNAY LLC
1202 E 4150 N
BUHL ID 83316

RE: #47-10225, #47-2349D, #47-2358D, #47-2256F

Dear Sir,

Pursuant to a Notice of Security Interest in a Water Right that was submitted to the Department, we have added a security interest to the above water right claims. Please find the enclosed copies of the proof reports of the water rights noting the addition of the security interest. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

Carrie Hahn
Clerk

enc.

Cc McFinney Agri-Finance LLC

RECEIVED

OCT 24 2006

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

DEPT. OF WATER RESOURCES
SOUTHERN REGION

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 division of the existing water right or adjudication claim record will be required.

Water Right No(s)	Adjudication Claim No(s)	Split	Water Right No(s)	Adjudication Claim No(s)	Split
AG 47-10225			AG 47-2358D		
AG 47-2349D			AG 47-2256F		

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 usually attached to your deed or on file with the county).

OR

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 **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) Manuel M. Silva, an Idaho General Partnership
1202 E. 4150 N. Buhl, ID 83316
4. New Owner/Claimant(s) Silva Land Company, LLC.
 Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 1202 E. 4150 N.
- City, State and ZIP Code Buhl, ID 83316
- New Telephone Number (208) 280-1811 208-543-5079
5. Date you acquired the property October 20, 2006

6. **If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 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 (one water right per box, you may copy this page as 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(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s) Max Silva
(include title if applicable)
Silva Land Company, LLC., Max Silva, Authorized
Member

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.

For Office Use Only

Received by _____	Date _____	Fee <u>0</u> (Not decreed)
Received by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date <u>11.7.06</u>

Case No. 55676SM

TitleFact, Inc.
163 Fourth Avenue North
P.O. Box 486
Twin Falls, Idaho 83303

TWIN FALLS COUNTY
RECORDED FOR:
TITLEFACT
2:31:26 pm 10-23-2006
2006-026869
NO. PAGES: 3 FEE: \$9.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: CHICE

RECEIVED

OCT 24 2006
DEPT. OF WATER RESOURCES
SOUTHERN REGION

WARRANTY DEED

FOR VALUE RECEIVED **MANUEL SILVA & SON DAIRY, also shown of record as MANUEL M. SILVA & SONS DAIRY, an Idaho Partnership**, hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto **SILVA LAND COMPANY, LLC, an Idaho Limited Liability Company**, hereinafter called Grantee, whose address is: 1202 E. 4150 N., Buhl, Idaho 83316, the following described premises in Twin Falls County, Idaho; to-wit:

PARCEL NO. 1

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 33: N $\frac{1}{2}$ SE $\frac{1}{4}$, **EXCEPT** the East 25 feet thereof.

PARCEL NO. 2

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 33: SE $\frac{1}{4}$ NE $\frac{1}{4}$, **EXCEPT** the South 30 feet thereof.

Section 34: SW $\frac{1}{4}$ NW $\frac{1}{4}$, **EXCEPT** A parcel of land located in the Southwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and being more particularly described as follows:

COMMENCING at the West quarter corner of Section 34, Township 9 South, Range 14 East, Boise Meridian; said point being the REAL POINT OF BEGINNING;

THENCE North 0°29'13" East 397.11 feet along the Westerly boundary of said Section 34;

THENCE South 89°58'22" East 1323.40 feet to a point on the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34;

THENCE South 0°24'56" West 394.81 feet along the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the Southeast corner thereof;

THENCE South 89°55'40" West 1323.91 feet along the Southerly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the REAL POINT OF BEGINNING.

SUBJECT TO a 25-foot-wide road right of way along the Westerly and Southerly boundaries.

PARCEL NO. 3

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land located in the Southwest corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ and being more particularly described as follows:

COMMENCING at the West quarter corner of Section 34, Township 9 South, Range 14 East, Boise Meridian; said point being the REAL POINT OF BEGINNING;

THENCE North 0°29'13" East 397.11 feet along the Westerly boundary of said Section 34;

THENCE South 89°58'22" East 1323.40 feet to a point on the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34;

THENCE South 0°24'56" West 394.81 feet along the Easterly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the Southeast corner thereof;

THENCE South 89°55'40" West 1323.91 feet along the Southerly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 34 to the REAL POINT OF BEGINNING.

SUBJECT TO a 25-foot-wide road right of way along the Westerly and Southerly boundaries.

EXCEPT: Part of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 34, Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows:

BEGINNING at the West quarter section corner of Section 34; said corner marked by a 5/8" rebar which shall be the POINT OF BEGINNING;

THENCE North 00°20'49" East along the West section line for a distance of 280.44 feet;

THENCE North 89°46'53" East for a distance of 25.00 feet to a 1/2" rebar;

THENCE North 89°46'53" East for a distance of 130.33 feet to a 1/2" rebar;

THENCE South 00°20'49" West for a distance of 255.44 feet to a 1/2" rebar;

THENCE South 00°20'49" West for a distance of 25.00 feet to the South line of the SW $\frac{1}{4}$ NW $\frac{1}{4}$;

THENCE South 89°46'53" West along said line for a distance of 155.33 feet to the POINT OF BEGINNING.

PARCEL NO. 4

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ being more particularly described as follows:

COMMENCING at the East quarter corner of said Section 34 from which the West quarter corner of said

Section 34 bears South 89°55'40" West 5303.08 feet;

THENCE South 89°55'40" West along the South boundary of the NE $\frac{1}{4}$ is said Section 34 for a distance of 1859.78 feet to the TRUE POINT OF BEGINNING;

THENCE continuing South 89°55'40" West along the South boundary of the SW¼NE¼ of said Section 34 for a distance of 371.63 feet;
THENCE North 01°38'13" West for a distance of 316.53 feet;
THENCE South 89°55'40" West parallel with the South boundary of the SW¼NE¼ of said Section 34 for a distance of 413.00 feet to a point on the West boundary of the SW¼NE¼ of said Section 34;
THENCE North 00°19'44" East along the West boundary of the SW¼NE¼ of said Section 34 for a distance of 1,012.95 feet to the Northwest corner of the SW¼NE¼ of said Section 34;
THENCE North 89°55'15" East along the North boundary of the SW¼NE¼ of said Section 34 for a distance of 1,324.11 feet to the Northeast corner of the SW¼NE¼ of said Section 34;
THENCE South 00°10'38" West along the East boundary of the SW¼NE¼ of said Section 34 for a distance of 1,032.36 feet;
THENCE North 88°02'02" West for a distance of 510.82 feet;
THENCE North 02°24'36" West for a distance of 12.09 feet;
THENCE South 87°22'44" West for a distance of 268.15 feet;
THENCE South 02°37'15" East for a distance of 154.97 feet;
THENCE South 42°40'35" East for a distance of 127.67 feet;
THENCE South 66°24'13" East for a distance of 166.09 feet to the TRUE POINT OF BEGINNING.
SUBJECT TO Highway District right of way.

PARCEL NO. 5

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 34: SE¼NW¼
SUBJECT TO Highway District right of way.

EXCEPT:

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 34:
BEGINNING at the Southwest corner of the SE¼NW¼;
THENCE North along said quarter section line a distance of 208.71 feet to a point on said quarter section line;
THENCE East along a line parallel to the South line of Section 34 a distance of 208.71 feet to a point;
THENCE South along a line parallel to the West boundary of the SE¼NW¼, Section 34, a distance of 208.71 feet to a point on the South line of said SW¼NW¼;
THENCE West along the South line of said SE¼NW¼ a distance of 208.71 feet to the POINT OF BEGINNING.

PARCEL NO. 6

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 34: A parcel of land more particularly described as follows:
BEGINNING at the Southwest corner of the SE¼NW¼;
THENCE North along said quarter section line a distance of 208.71 feet to a point on said quarter section line;
THENCE East along a line parallel to the south line of Section 34 a distance of 208.71 feet to a point;
THENCE South along a line parallel to the West boundary of the SE¼NW¼ of Section 34 a distance of 208.71 feet to a point on the south line of said Section 34;
THENCE West along the south line of said Section 34 a distance of 208.71 feet to the POINT OF BEGINNING.
SUBJECT TO Highway District right of way.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and the Grantee's heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all encumbrances except as described above; and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: October 19, 2006

MANUEL M. SILVA & SONS DAIRY

BY: Manuel M Silva
MANUEL M. SILVA, Partner

BY: Olinda Silva
OLINDA SILVA, Partner

BY: Tony Silva
TONY SILVA, Partner

BY: John Silva
JOHN SILVA, Partner

BY: Eilo Silva
EILO SILVA, Partner

BY: Maximaino Silva
MAXIMAINO SILVA, Partner

* * * * *

STATE OF IDAHO
County of Twin Falls

On this 20th day of October, 2006, before me, a Notary Public, personally appeared **MANUEL M. SILVA, OLINDA SILVA, TONY SILVA, JOHN SILVA, EILO SILVA and MAXIMAINO SILVA**, known or identified to me to be the partners in **MANUEL M. SILVA & SONS DAIRY**, a partnership, 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.

Suzie Moore
Notary Public for Idaho
Residing in Twin Falls
Commission Expires 11-28-2008



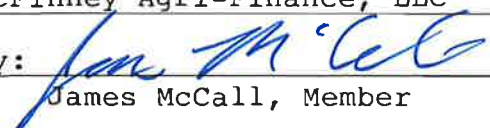
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
OCT 24 2006
DEPT OF WATER RESOURCES
SOUTHERN REGION

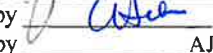
Notice of Security Interest in a Water Right

And Request for Notification of a Change in Ownership or Any Proposed
Or Final Action to Amend, Transfer, or Otherwise Modify a Water Right

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

1. Water Right No(s): 47-10225, 47-2358D, 47-2349D, 47-2256F
Adjudication Claim No(s): _____
2. The following **REQUIRED** information must be submitted with this form:
 - A) Evidence of the security interest. This may be a copy of a **DEED of TRUST, MORTGAGE, CONTRACT OF SALE** or other legal document indicating your interest in the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION.**
 - B) A **FEE of \$25.00 per water right** or adjudication claim.
3. Name and Mailing Address of Person or Company holding Security Interest
McFinney Agri-Finance, LLC
P.O. Box 1598
Twin Falls, ID 83303
4. Name of Water Right Owner/Claimant(s) Silva Land Company, LLC
5. Expiration Date of Notification Period 11/1/21
6. Is this a Renewal of Request for Notification? ☒ YES ☐ NO
7. Signature(s) (and title if applicable) McFinney Agri-Finance, LLC
 By: 
James McCall, Member

For Office Use Only

Received by <u></u>	Date <u>10/31/06</u>	Fee <u>100.00</u>
Received by <u></u>	Date <u>11/7/06</u>	Receipt No. <u>5029014</u>
Processed by _____ AJ	Date _____	WR _____ Date <u>11.7.06</u>

556768m

**FIRST MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS
(AGRI-ACCESS)**

TWIN FALLS COUNTY
RECORDED FOR:
TITLEFACT
2:31:27 pm 10-23-2006
2006-026870
NO. PAGES: 28 FEE: \$78.00
KRISTINA GLASCOCK
COUNTY CLERK
DEPUTY: CHICE

This First Mortgage, Security Agreement and Assignment of Rents (the "Mortgage") is made as of this 25th day of October, 2006, by and among SILVA LAND COMPANY, LLC, an Idaho limited liability company whose address is 1202 East 4150 North, Buhl, Idaho 83316 (the "Mortgagor") and MCFINNEY AGRI-FINANCE, LLC, an Idaho limited liability company whose address is 409 Shoshone St. South, Suite 25, Twin Falls, Idaho 83301 (the "Mortgagee");

W I T N E S S E T H:

Mortgagor, for valuable consideration, the receipt of which is hereby acknowledged, and in consideration of and to secure repayment in accordance with the terms of a first mortgage promissory note of even date to it in hand paid (the "Note"), does hereby irrevocably, GRANT, BARGAIN, SELL, CONVEY, MORTGAGE, ASSIGN, PLEDGE, TRANSFER AND SET OVER unto Mortgagee and to its successors and assigns, all the hereinafter described real and personal property and water rights located in the County of Twin Falls, State of Idaho, described in Exhibit "A" and Exhibit "B" attached hereto and by this reference incorporated herein (collectively, the "Property");

TOGETHER WITH all leasehold estate, right, title and interest of Mortgagor in, to or under all leases (including all oil and gas leases) or subleases covering the Property or any portion thereof during the period in which this Mortgage is in effect, whether now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto; and all water, water rights, water appropriations, irrigation works, lines, pivots, drip lines, hand lines, wheel lines, pumps, motors, equipment and electric panels of every kind and nature, ditches, canals, wells, franchises upon, leading to or connected with said property, in addition to any replacements, substitutions and additions thereto, and all other rights and privileges now or hereafter owned by Mortgagor, or belonging to, with, leading to, connected with, or usually had or enjoyed in connection with the Property or appurtenant thereto, whether represented by shares of capital stock in any ditch company, irrigation company, irrigation district or water association, by voting or other rights or interests with respect thereto or by actual individual ownership, or which may hereafter be acquired by Mortgagor, during the existence of this Mortgage;

TOGETHER WITH all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any road adjoining the Property

TOGETHER WITH any and all buildings, structures, fences, pipelines, pipes, tanks, dams, reservoirs, pumps, pumping equipment and all other improvements and fixtures now located or hereafter erected thereon or used in connection therewith, including, but not limited to,

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

MORTGAGOR

1202 East 4150 North
Buhl, Idaho 83316

SILVA LAND COMPANY, LLC

By: Manuel M Silva
Manuel M. Silva, Member

By: Olinda Silva
Olinda Silva, Member

By: Tony Silva
Tony Silva, Member

By: John Silva
John Silva, Member

By: Eilo Silva
Eilo Silva, Member

By: Maximino Silva
Maximino Silva, Member

STATE OF IDAHO)

County of Twin Falls) ss.

On this 20th day of October, in the year 2006, before me, a notary public for the State of Idaho, personally appeared **Manuel M. Silva**, known or identified to me to be a member of **Silva Land Company, LLC**, and acknowledged to me on this day under oath, that, being informed of the contents of this Agreement, he or she executed the same as his or her free and voluntary act and deed on behalf of such entities.

Susie Moore

Notary Public for the State of Idaho

Residing at: Twin FallsMy Commission Expires: 11-28, 2008

STATE OF IDAHO)

County of Twin Falls) ss.

On this 20th day of October, in the year 2006, before me, a notary public for the State of Idaho, personally appeared **Olinda Silva**, known or identified to me to be a member of **Silva Land Company, LLC**, and acknowledged to me on this day under oath, that, being informed of the contents of this Agreement, he or she executed the same as his or her free and voluntary act and deed on behalf of such entities.

Susie Moore

Notary Public for the State of Idaho

Residing at: Twin FallsMy Commission Expires: 11-28, 2008

STATE OF IDAHO)

: ss.

County of Twin Falls)

On this 20th day of October, in the year 2006, before me, a notary public for the State of Idaho, personally appeared **Tony Silva**, known or identified to me to be a member of **Silva Land Company, LLC**, and acknowledged to me on this day under oath, that, being informed of the contents of this Agreement, he or she executed the same as his or her free and voluntary act and deed on behalf of such entities.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2008

STATE OF IDAHO)

: ss.

County of Twin Falls)

On this 20th day of October, in the year 2006, before me, a notary public for the State of Idaho, personally appeared **John Silva**, known or identified to me to be a member of **Silva Land Company, LLC**, and acknowledged to me on this day under oath, that, being informed of the contents of this Agreement, he or she executed the same as his or her free and voluntary act and deed on behalf of such entities.



Susie Moore
Notary Public for the State of Idaho
Residing at: Twin Falls
My Commission Expires: 11-28, 2008

STATE OF IDAHO)

: ss.

County of Twin Falls)

On this 20th day of October, in the year 2006, before me, a notary public for the State of Idaho, personally appeared **Eilo Silva**, known or identified to me to be a member of **Silva Land Company, LLC**, and acknowledged to me on this day under oath, that, being informed of the contents of this Agreement, he or she executed the same as his or her free and voluntary act and deed on behalf of such entities.



A handwritten signature of Susie Moore in cursive script.

Notary Public for the State of Idaho

Residing at: Twin FallsMy Commission Expires: 11-28, 2008

STATE OF IDAHO)

: ss.

County of Twin Falls)

On this 20th day of October, in the year 2006, before me, a notary public for the State of Idaho, personally appeared **Maximaino Silva**, known or identified to me to be a member of **Silva Land Company, LLC**, and acknowledged to me on this day under oath, that, being informed of the contents of this Agreement, he or she executed the same as his or her free and voluntary act and deed on behalf of such entities.



A handwritten signature of Susie Moore in cursive script.

Notary Public for the State of Idaho

Residing at: Twin FallsMy Commission Expires: 11-28, 2008

Exhibit APARCEL NO. 1

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 33: N1/2SE1/4, **EXCEPT** the East 25 feet thereof.

PARCEL NO. 2

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho
Section 33: SE1/4NE1/4, **EXCEPT** the South 30 feet thereof.

Section 34: SW1/4NW1/4, **EXCEPT** A parcel of land located in the Southwest corner of the SW1/4NW1/4 and being more particularly described as follows:

COMMENCING at the West quarter corner of Section 34, Township 9 South, Range 14 East, Boise Meridian; said point being the **REAL POINT OF BEGINNING**;
THENCE North 0°29'13" East 397.11 feet along the Westerly boundary of said Section 34;
THENCE South 89°58'22" East 1323.40 feet to a point on the Easterly boundary of the SW1/4NW1/4 of said Section 34;
THENCE South 0°24'56" West 394.81 feet along the Easterly boundary of the SW1/4NW1/4 of said Section 34 to the Southeast corner thereof;
THENCE South 89°55'40" West 1323.91 feet along the Southerly boundary of the SW1/4NW1/4 of said Section 34 to the **REAL POINT OF BEGINNING**.

SUBJECT TO a 25-foot-wide road right of way along the Westerly and Southerly boundaries.

PARCEL NO. 3

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land located in the Southwest corner of the SW1/4NW1/4 and being more particularly described as follows:

COMMENCING at the West quarter corner of Section 34, Township 9 South, Range 14 East, Boise Meridian; said point being the **REAL POINT OF BEGINNING**;
THENCE North 0°29'13" East 397.11 feet along the Westerly boundary of said Section 34;
THENCE South 89°58'22" East 1323.40 feet to a point on the Easterly boundary of the SW1/4NW1/4 of said Section 34;
THENCE South 0°24'56" West 394.81 feet along the Easterly boundary of the SW1/4NW1/4 of said Section 34 to the Southeast corner thereof;
THENCE South 89°55'40" West 1323.91 feet along the Southerly boundary of the SW1/4NW1/4 of said Section 34 to the **REAL POINT OF BEGINNING**.

SUBJECT TO a 25-foot-wide road right of way along the Westerly and Southerly boundaries.

EXCEPT: Part of the SW1/4NW1/4 of Section 34, Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho, more particularly described as follows:

BEGINNING at the West quarter section corner of Section 34; said corner marked by a 5/8" rebar which shall be the **POINT OF BEGINNING**;

THENCE North 00°20'49" East along the West section line for a distance of 280.44 feet;
THENCE North 89°46'53" East for a distance of 25.00 feet to a 1/2" rebar;
THENCE North 89°46'53" East for a distance of 130.33 feet to a 1/2" rebar;
THENCE South 00°20'49" West for a distance of 255.44 feet to a 1/2" rebar;
THENCE South 00°20'49" West for a distance of 25.00 feet to the South line of the SW1/4NW1/4;
THENCE South 89°46'53" West along said line for a distance of 155.33 feet to the **POINT OF BEGINNING**.

PARCEL NO. 4

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land located in the SW1/4NE1/4 being more particularly described as follows:

COMMENCING at the East quarter corner of said Section 34 from which the West quarter corner of said

Section 34 bears South 89°55'40" West 5303.08 feet;

THENCE South 89°55'40" West along the South boundary of the NE1/4 is said Section 34 for a distance of 1859.78 feet to the TRUE POINT OF BEGINNING;

THENCE continuing South 89°55'40" West along the South boundary of the SW1/4NE1/4 of said Section 34 for a distance of 371.63 feet;

THENCE North 01°38'13" West for a distance of 316.53 feet;

THENCE South 89°55'40" West parallel with the South boundary of the SW1/4NE1/4 of said Section 34 for a distance of 413.00 feet to a point on the West boundary of the SW1/4NE1/4 of said Section 34;

THENCE North 00°19'44" East along the West boundary of the SW1/4NE1/4 of said Section 34 for a distance of 1,012.95 feet to the Northwest corner of the SW1/4NE1/4 of said Section 34;

THENCE North 89°55'15" East along the North boundary of the SW1/4NE1/4 of said Section 34 for a distance of 1,324.11 feet to the Northeast corner of the SW1/4NE1/4 of said Section 34;

THENCE South 00°10'38" West along the East boundary of the SW1/4NE1/4 of said Section 34 for a distance of 1,032.36 feet;

THENCE North 88°02'02" West for a distance of 510.82 feet;

THENCE North 02°24'36" West for a distance of 12.09 feet;

THENCE South 87°22'44" West for a distance of 268.15 feet;

THENCE South 02°37'15" East for a distance of 154.97 feet;

THENCE South 42°40'35" East for a distance of 127.67 feet;

THENCE South 66°24'13" East for a distance of 166.09 feet to the TRUE POINT OF BEGINNING.

SUBJECT TO Highway District right of way.

PARCEL NO. 5

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: SE1/4NW1/4.

SUBJECT TO Highway District right of way.

EXCEPT:

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34:

BEGINNING at the Southwest corner of the SE1/4NW1/4;

THENCE North along said quarter section line a distance of 208.71 feet to a point on said quarter section line;

THENCE East along a line parallel to the South line of Section 34 a distance of 208.71 feet to a point;

THENCE South along a line parallel to the West boundary of the SE1/4NW1/4, Section 34, a distance of 208.71 feet to a point on the South line of said SW1/4NW1/4;

THENCE West along the South line of said SE1/4NW1/4 a distance of 208.71 feet to the POINT OF BEGINNING.

PARCEL NO. 6

Township 9 South, Range 14 East, Boise Meridian, Twin Falls County, Idaho

Section 34: A parcel of land more particularly described as follows:

BEGINNING at the Southwest corner of the SE1/4NW1/4;

THENCE North along said quarter section line a distance of 208.71 feet to a point on said quarter section line;

THENCE East along a line parallel to the south line of Section 34 a distance of 208.71 feet to a point;
THENCE South along a line parallel to the West boundary of the SE1/4NW1/4 of Section 34 a distance
of 208.71 feet to a point on the south line of said Section 34;
THENCE West along the south line of said Section 34 a distance of 208.71 feet to the POINT OF
BEGINNING.
SUBJECT TO Highway District right of way.

Together with any and all water, water rights, ditches and ditch rights, permits, licenses,
certificates or shares of stock evidencing any such water or ditch rights belonging or in any way
appurtenant to the real property described in this Exhibit A, whether now owned or hereafter
acquired, and whether now existing or hereafter arising, and all proceeds from the sale or other
disposition of any such property, including without limitation the following:

Idaho Department of Water Resources

Number	CFS	Use
47-10225	0.04	Stockwater/Commercial/Domestic
47-2358D	0.21	Stockwater/Commercial
47-2349D	0.02	Stockwater/Commercial
47-2256F	0.09	Stockwater/Commercial

Twin Falls Canal Company

Certificate No.	Shares
35125	32.2
33908	40.0
31191	73.0
28467	7.0
31192	80.0

08/14/2006

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

RIGHT NUMBER: 47-2256F

NAME AND ADDRESS: SILVA & SONS DAIRY
1202 E 4150 N
BUHL ID 83316

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.090 CFS
31.500 AFY

After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.

The total instantaneous diversion of water from all points of diversion under Transfer 68485 (three wells) shall not exceed 0.36 cfs, nor total combined annual volume of 44.1 af.

Rights 47-2256F, 47-2349D, and 47-2358D when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 34.5 af.

provide Prior to diversion of water under this approval, the right holder shall a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

PRIORITY DATE: 08/08/1954

POINT OF DIVERSION:

T09S R14E S34 SWSWNW Within TWIN FALLS County

T09S R14E S34 SWSWNW Within TWIN FALLS County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	01/01 12/31	0.090 CFS 31.50 AFY
COMMERCIAL	01/01 12/31	0.090 CFS 31.50 AFY

Commercial use is for a dairy located within the SWNW, S34, T09S, R14E.

PLACE OF USE: STOCKWATER Within TWIN FALLS County

T09S R14E S33 SENE T09S R14E S34 SWNW

COMMERCIAL Within TWIN FALLS County

T09S R14E S34 SWNW

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.

08/14/2006

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

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License



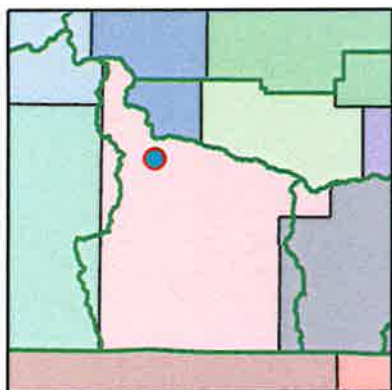
Idaho Department of Water Resources

SRBA Recommendation: **47-2256F, 47-2349D, and 47-2358D**

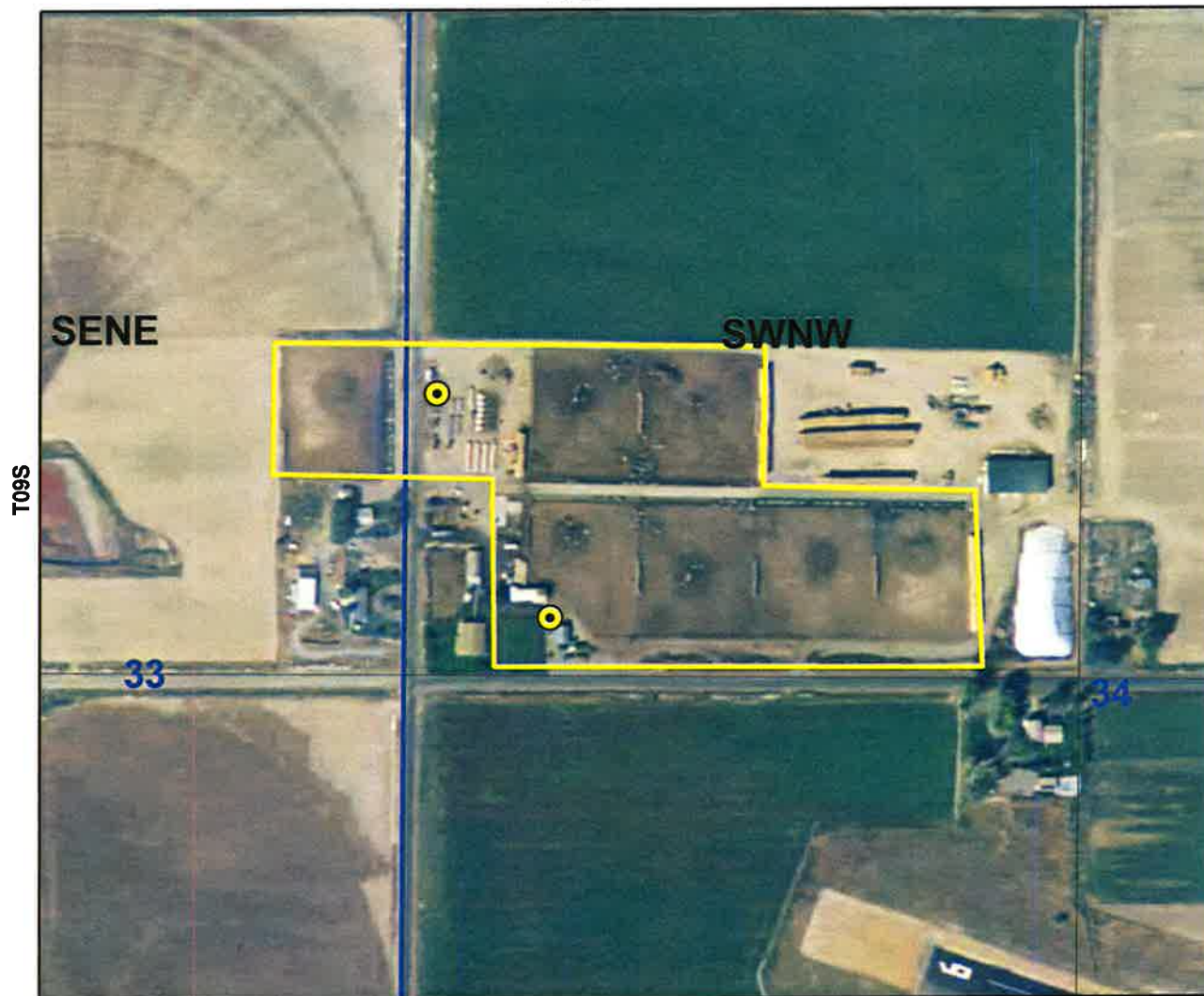
R14E

Legend

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



Twin Falls County
IDWR Basin 47



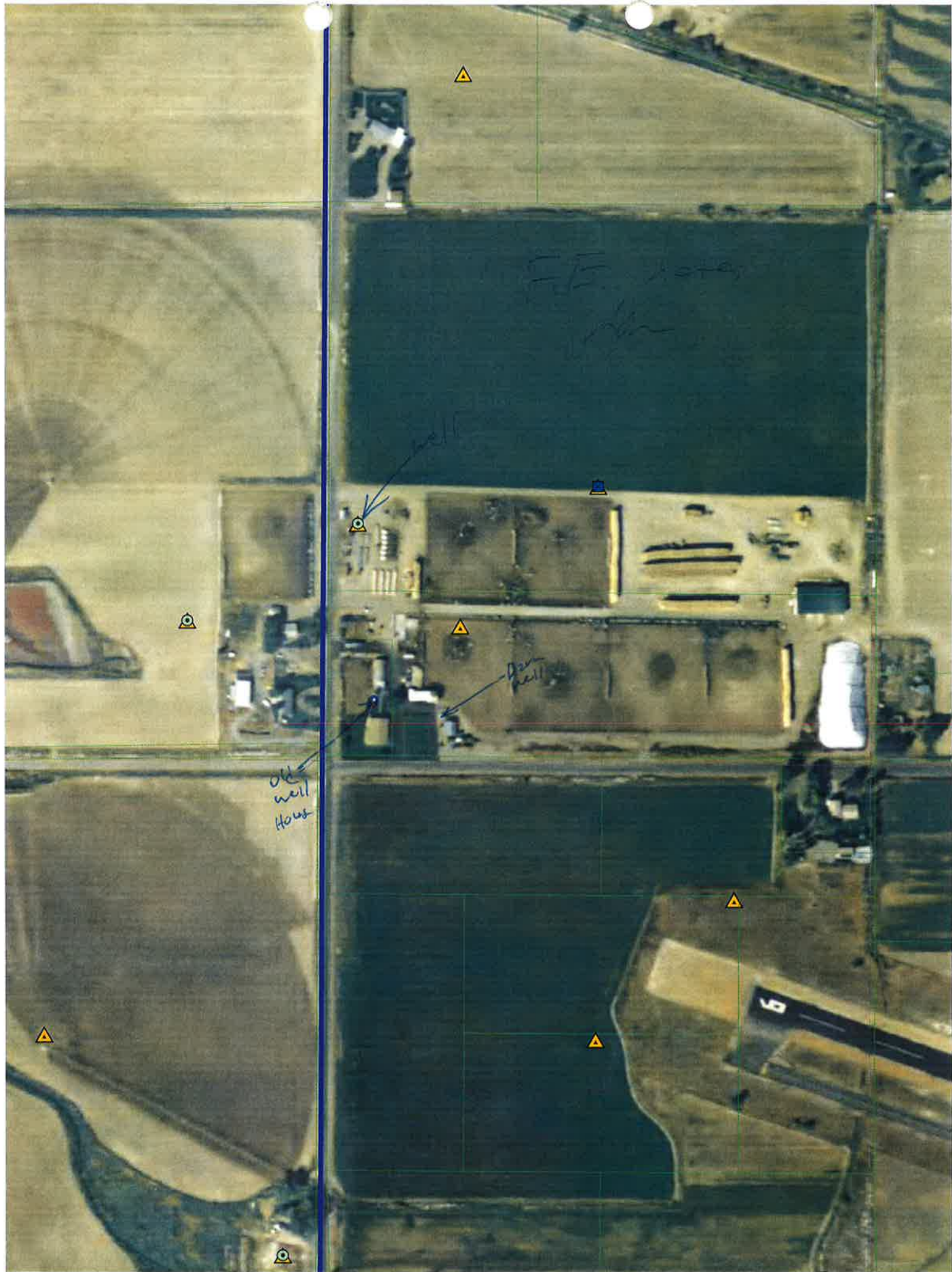
0 0.1 0.2 Miles



Prepared by A. Merritt
On Monday, August 14, 2006
2004 Aerial Photography

Owner: SILVA & SONS DAIRY

NOTE: Only one owner is listed. There may or may not be more than this in the IDWR database.



47

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 68485

Southern
RECEIVED
APR 23 2001
Department of Water Resources
Southern Region

This is to certify that: SILVA & SONS DAIRY
1202 E 4150 N
BUHL ID 83316

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document. The right holder shall accomplish the authorized change within one (1) year of the date of this approval. Failure of the right holder to comply with the conditions of approval for each water right affected by this transfer is cause for the Director to rescind approval of all or part of the transfer.

Summary of Water Rights Before the Proposed Change

Right	Origin/Basis	Priority	Rate	Volume	Acres	Total	Source
47-2256D	AJC/License	08/08/1954	2.51 cfs	1110 af	304.7	304.7	GROUND WATER
47-2349A	AJC/License	04/03/1961	0.41 cfs	199.2 af	304.7	304.7	GROUND WATER
47-2358A	AJC/License	11/06/1961	5.56 cfs	1216 af	304.7	304.7	GROUND WATER
47-10225	AJC/Beneficial Use	01/01/1940	0.04 cfs			N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
47-2256D	YES	YES	YES	YES	YES	YES
47-2349A	YES	YES	YES	YES	YES	YES
47-2358A	YES	YES	YES	YES	YES	YES
47-10225	NO	NO	YES	YES	NO	NO

Summary of Water Rights After the Approved Change

Existing Right	New No. (changed portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
47-2256D	47-2256F	0.09 cfs	31.5 af	N/A	N/A	47-2256E	2.42 cfs	1068 af	267.0	293.2
47-2349A	47-2349D	0.02 cfs	7.3 af	N/A	N/A	47-2349C	0.39 cfs	189.5 af	134.7	293.2
47-2358A	47-2358D	0.21 cfs	34.5 af	N/A	N/A	47-2358C	5.35 cfs	1170 af	292.5	293.2
47-10225	47-10225	0.04 cfs	9.6 af	N/A	N/A		N/A	N/A	N/A	N/A
TOTALS		0.36 cfs	44.1 af	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 18th day of April, 2001

J. Drew Saxton
Chief, Water Allocation Bureau

WATER RIGHT NO. 47-2256E
As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-2256E is now described as follows.

Right Holder: MATHERS RANCH INC
3485 E 3100 N
KIMBERLY ID 83341

Priority Date: 08/08/1954

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	2.42 CFS	1,068.0 AF
			2.42 CFS	1,068.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SWNW Sec. 32 Twp 11S Rge 18E TWIN FALLS
County

GROUND WATER SWSW Sec. 32 Twp 11S Rge 18E TWIN FALLS
County

GROUND WATER SWNE Sec. 31 Twp 11S Rge 18E TWIN FALLS
County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S 18E 31	1.6		8.5	38.0					2.6				40.0	26.0	38.0	37.0	191.7
11S 18E 32							39.0				40.0	22.5					101.5

Total Acres: 293.2

CONDITIONS OF APPROVAL

1. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
2. The total instantaneous diversion of water from all points of diversion under Transfer 5430 shall not exceed 8.16 cfs.
3. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.

WATER RIGHT NO. 47-2256E
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

4. Right 47-02256E is limited to the irrigation of 267.0 acres in the place of use described above in a single irrigation season.
5. Rights 47-02256E, 47-02349C and 47-02358C when combined shall not exceed a total annual maximum diversion volume of 1172.8 af at the field headgate and the irrigation of 293.2 acres.
6. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

WATER RIGHT NO. 47-2256F
As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-2256F is now described as follows.

Right Holder: SILVA & SONS DAIRY
1202 E 4150 N
BUHL ID 83316

Priority Date: 08/08/1954

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	01/01 to 12/31		0.09 CFS	31.5 AF
COMMERCIAL	01/01 to 12/31		0.09 CFS	31.5 AF
			0.09 CFS	31.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

PLACE OF USE: STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				Totals
	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
09S 14E 33				X													
09S 14E 34							X										

PLACE OF USE: COMMERCIAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
09S 14E 33	X	X	X	X									X	X	X	X	
09S 14E 34	X		X	X		X	X	X	X	X	X	X					

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

WATER RIGHT NO. 47-2256F
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

3. The total instantaneous diversion of water from all points of diversion under Transfer 68485 shall not exceed 0.36 cfs, nor total combined annual volume of 44.1 af.
4. Rights 47-2256F, 47-2349D, and 47-2358D when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 34.5 af.
5. Commercial use is for a dairy located within the SWNW, S34, T09S, R14E.
6. The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.
7. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

WATER RIGHT NO. 47-2349C

As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-2349C is now described as follows.

Right Holder: MATHERS RANCH INC

3485 E 3100 N

KIMBERLY ID 83341

Priority Date: 04/03/1961

Source: GROUND WATER

BENEFICIAL USE

<u>From</u>	<u>To</u>
-------------	-----------

Diversion Rate

Volume

IRRIGATION

03/15 to 11/15

0.39 CFS

189.5 AF

0.39 CFS

189.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER

SWNE Sec. 31 Twp 11S Rge 18E TWIN FALLS
County

GROUND WATER

SWNW Sec. 32 Twp 11S Rge 18E TWIN FALLS
County

GROUND WATER

SWSW Sec. 32 Twp 11S Rge 18E TWIN FALLS
County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	18E	31	1.6		8.5	38.0							2.6	40.0	26.0	38.0	37.0	191.7	
11S	18E	32						39.0			40.0	22.5						101.5	

Total Acres: 293.2

CONDITIONS OF APPROVAL

1. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
2. The total instantaneous diversion of water from all points of diversion under Transfer 5430 shall not exceed 8.16 cfs.
3. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.

WATER RIGHT NO. 47-2349C
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

4. Right 47-02349C is limited to the irrigation of 134.7 acres in the place of use described above in a single irrigation season.
5. Rights 47-02256E, 47-02349C and 47-02358C when combined shall not exceed a total annual maximum diversion volume of 1172.8 af at the field headgate and the irrigation of 293.2 acres.
6. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

WATER RIGHT NO. 47-2349D
As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-2349D is now described as follows.

Right Holder: SILVA & SONS DAIRY
1202 E 4150 N
BUHL ID 83316

Priority Date: 04/03/1961

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	01/01	to 12/31	0.02 CFS	7.3 AF
COMMERCIAL	01/01	to 12/31	0.02 CFS	7.3 AF
			0.02 CFS	7.3 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

PLACE OF USE: STOCKWATER

[illegible]

PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
09S	14E	33	X	X	X	X								X	X	X	X		
09S	14E	34	X		X	X		X	X	X	X	X	X						

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

WATER RIGHT NO. 47-2349D
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

3. The total instantaneous diversion of water from all points of diversion under Transfer 68485 shall not exceed 0.36 cfs, nor a total combined annual volume of 44.1 af.
4. Rights 47-2256F, 47-2349D, and 47-2358D when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 34.5 af.
5. Commercial use is for a dairy located within the SWNW, S34, T09S, R14E.
6. The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.
7. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

WATER RIGHT NO. 47-2358C
As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-2358C is now described as follows.

Right Holder: MATHERS RANCH INC
3485 E 3100 E
KIMBERLY ID 83341

Priority Date: 11/06/1961

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	to 11/15	5.35 CFS	1,170.0 AF
			5.35 CFS	1,170.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SWNE Sec. 31 Twp 11S Rge 18E TWIN FALLS
County

GROUND WATER SWSW Sec. 32 Twp 11S Rge 18E TWIN FALLS
County

GROUND WATER SWNW Sec. 32 Twp 11S Rge 18E TWIN FALLS
County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
11S	18E	31	1.6		8.5	38.0							2.6	40.0	26.0	38.0	37.0	191.7	
11S	18E	32						39.0				40.0	22.5						101.5

Total Acres: 293.2

CONDITIONS OF APPROVAL

1. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
2. The total instantaneous diversion of water from all points of diversion under Transfer 5430 shall not exceed 8.16 cfs.
3. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.

WATER RIGHT NO. 47-2358C
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

4. Right 47-02358C is limited to the irrigation of 292.5 acres in the place of use described above in a single irrigation season.
5. Rights 47-02256E, 47-02349C and 47-02358C when combined shall not exceed a total annual maximum diversion volume of 1172.8 af at the field headgate and the irrigation of 293.2 acres.
6. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

WATER RIGHT NO. 47-2358D
As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-2358D is now described as follows.

Right Holder: SILVA & SONS DAIRY
1202 E 4150 N
BUHL ID 83316

Priority Date: 11/06/1961

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	01/01	to 12/31	0.21 CFS	34.5 AF
COMMERCIAL	01/01	to 12/31	0.21 CFS	34.5 AF
			0.21 CFS	34.5 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

PLACE OF USE: STOCKWATER

[illegible]

PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals		
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>			
09S	14E	33	X	X	X	X											X	X	X	X	
09S	14E	34	X			X	X	X	X			X	X	X	X						

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

WATER RIGHT NO. 47-2358D
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

3. The total instantaneous diversion of water from all points of diversion under Transfer 68485 shall not exceed 0.36 cfs, nor total combined annual volume of 44.1 af.
4. Rights 47-2256F, 47-2349D, and 47-2358D when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 34.5 af.
5. Commercial use is for a dairy located within the SWNW, S34, T09S, R14E.
6. The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.
7. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

WATER RIGHT NO. 47-10225

As Modified by Transfer No. 68485

In accordance with the approval of Transfer No. 68485, Water Right No. 47-10225 is now described as follows.

Right Holder: SILVA & SONS DAIRY

1202 E 4150 N

BUHL ID 83316

Priority Date: 01/01/1940

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	01/01	to 12/31	0.04 CFS	1.2 AF
STOCKWATER	01/01	to 12/31	0.04 CFS	8.4 AF
COMMERCIAL	01/01	to 12/31	0.04 CFS	8.4 AF
			0.04 CFS	9.6 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

GROUND WATER SWNW Sec. 34 Twp 09S Rge 14E TWIN FALLS
County

PLACE OF USE: DOMESTIC

[illegible]

PLACE OF USE: STOCKWATER

[illegible]

PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
09S	14E	33	X	X	X	X									X	X	X	X	
09S	14E	34	X		X	X		X	X	X	X	X	X	X					

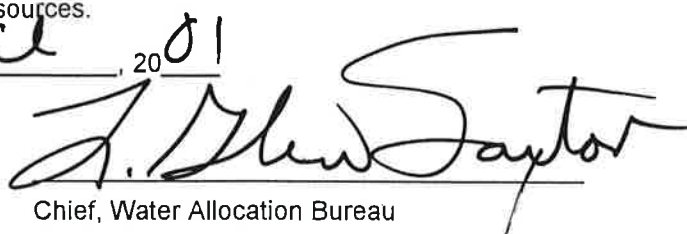
WATER RIGHT NO. 47-10225
As Modified by Transfer No. 68485

CONDITIONS OF APPROVAL

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
3. The total instantaneous diversion of water from all points of diversion under Transfer 68485 shall not exceed 0.36 cfs, nor total combined annual volume of 44.1 af.
4. Rights 47-2256F, 47-2349D, and 47-2358D when combined shall not exceed a total diversion rate of 0.32 cfs and a total annual maximum diversion volume of 34.5 af.
5. Commercial use is for a dairy located within the SWNW, S34, T09S, R14E.
6. The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. water diverted under this approval shall not be used for irrigation unless the water is first used in the dairy as authorized by these water rights.
7. After specific notification by the department, the right holder shall measure the diversion or shall enter into an agreement with the department to determine the amount of water diverted from power records and shall annually report the information to the department.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
10. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
11. Approval of transfer 68485 does not confirm SRBA Claim 47-10225.
12. Domestic use is for 1 home.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 18th day of April, 2001


Chief, Water Allocation Bureau

IDAHO DEPARTMENT OF WATER RESOURCES

T14S, R14E

							32 18	17 6
							10 25 25	21 ² 25
						35	40 25	25 25

660 0 660 1320 1980 2640 3300 3960 4620 5280 5940 6600 7260 7920 8580 9240 Feet

MICROFILMED

47-02394 (allocations record) 1.50 cfs

47-02394 (SRBA)

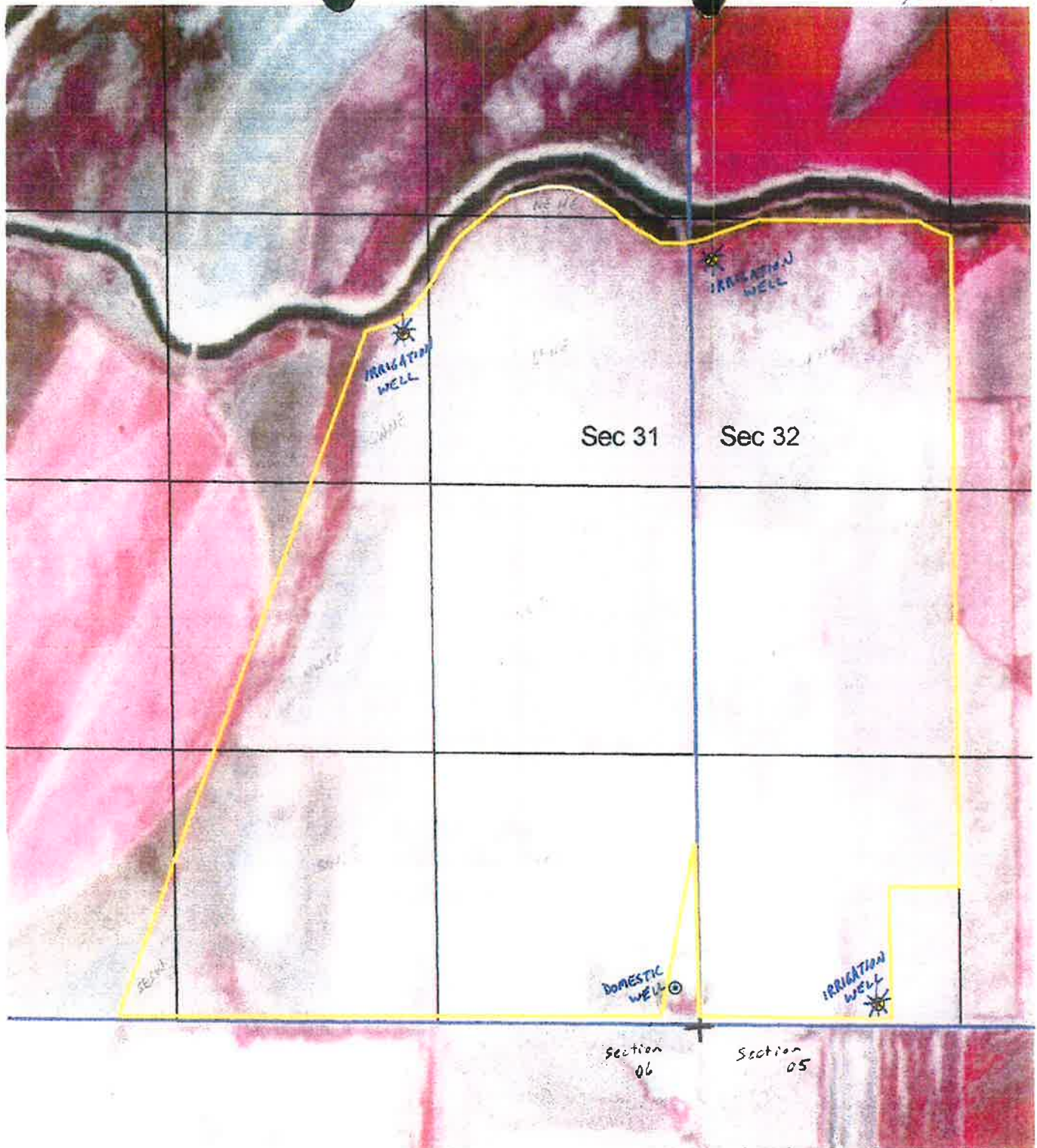
1.50 cfs

47-14096 (SRBA CLAIM FOR SPRING WATER)

T#5801

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T#5430



660 0 660 1320 1980 Feet

-  Subject Property
-  Point(s) of Diversion
-  Section Lines
-  Quarter/Quarter Lines

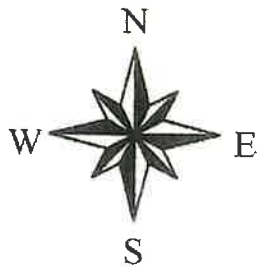
T11S R18E S31 & 32

Draft Place of Use Map
for Transfer
Transfer Conditions



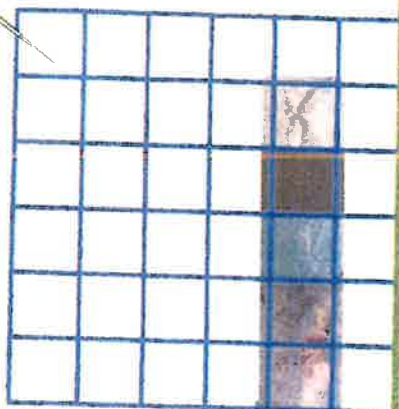
Data Entry: Douglas Jones
Date: 1/20/1999
Base Photo: 1987 or 1988 NAPP

REC 30
FEB 17 2000



3.0 AFA Consumptive Irrigation Requirement
4.0 AFA Field Headgate Requirement

Township 14 South
Range 14 East



2.5 AFA Consumptive Irrigation Requirement
3.5 AFA Field Headgate Requirement

47-2324

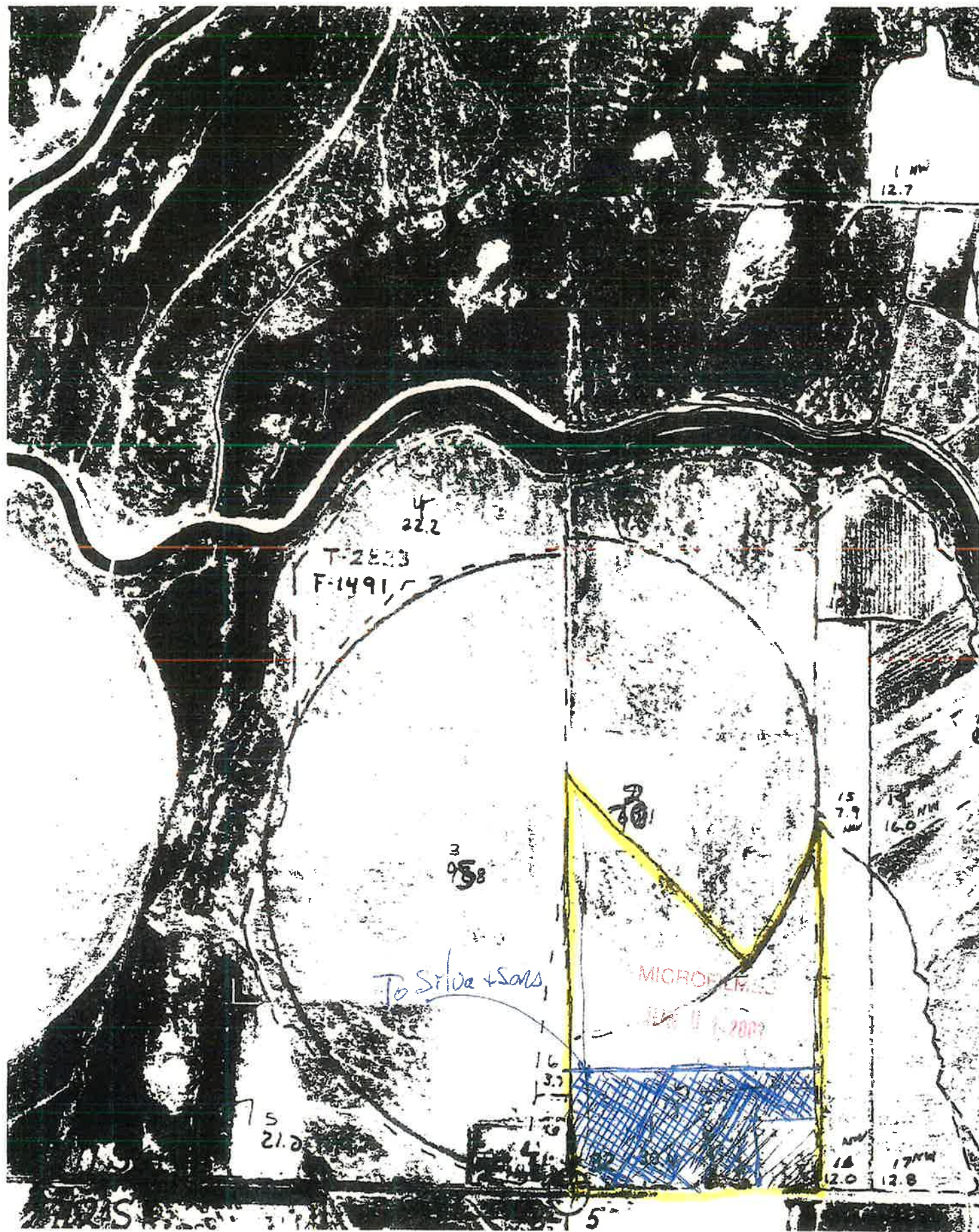
GIS by C. Skinner
07/31/2000

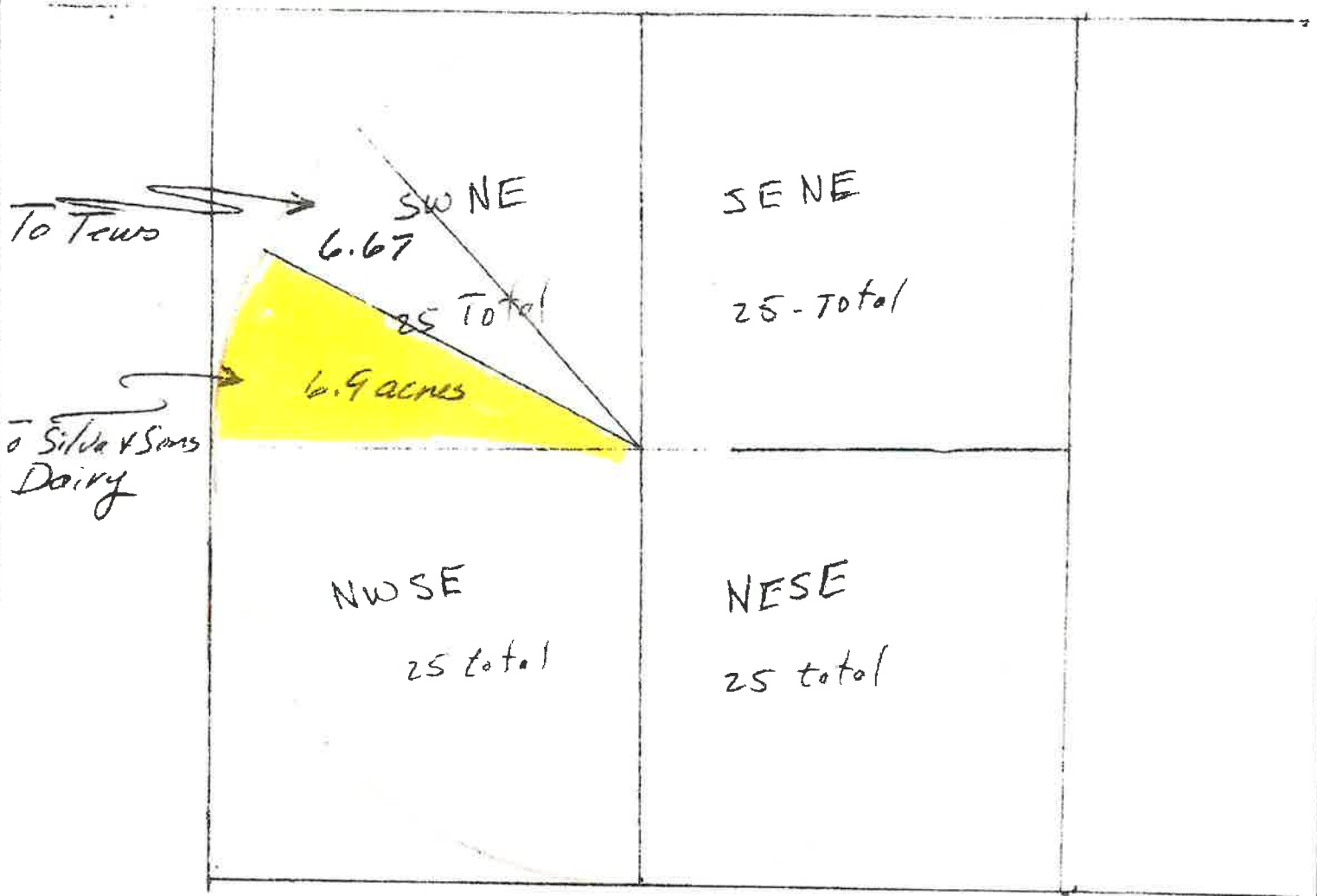
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JUN 14 2000

T # 5801

T#5801





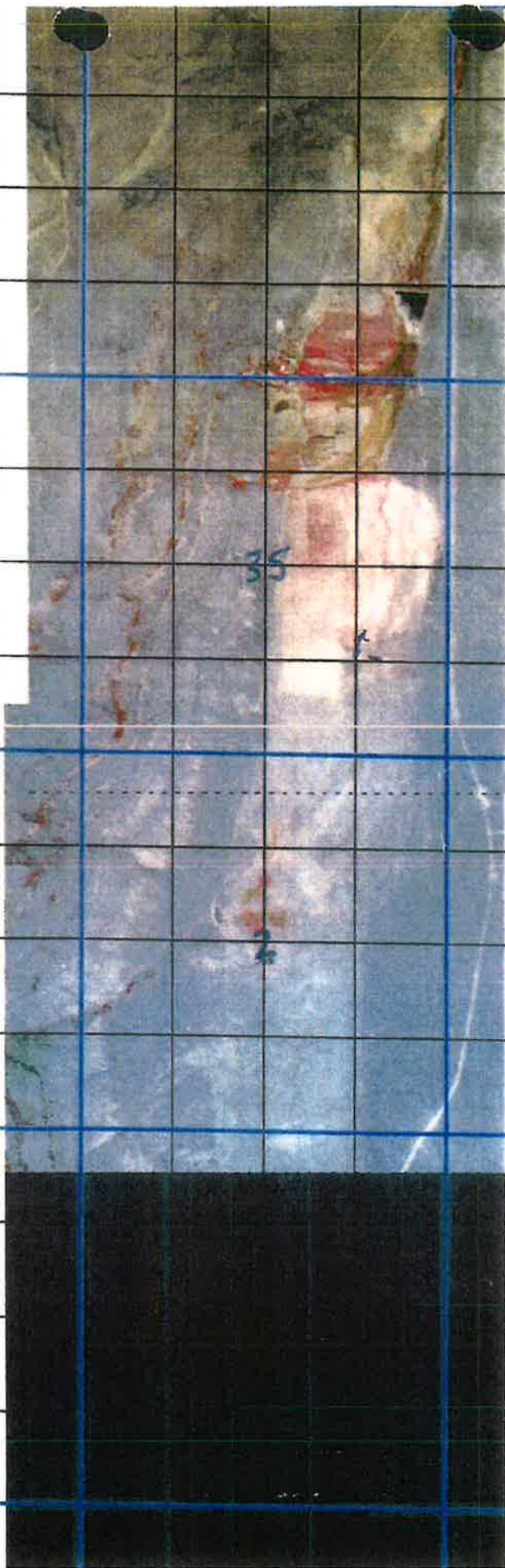
T 14S R 14E S 35

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JUN 11 2007

Harriet M. Silva 6-21-00
Gloria Silva 6-21-00

T#5801



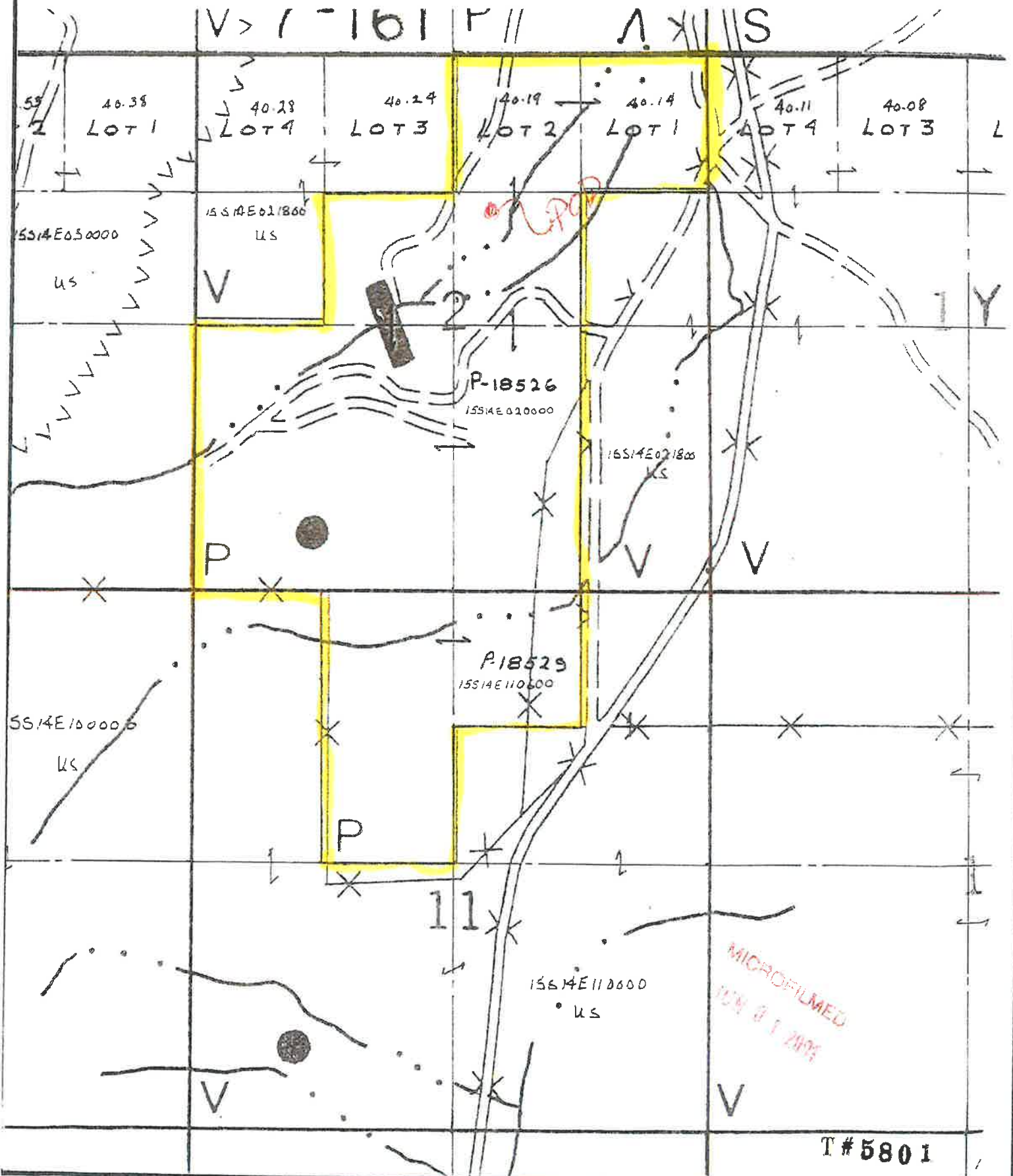
8/1/2000 FIELD NOTES P. SKINNER

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JUN 01 2001

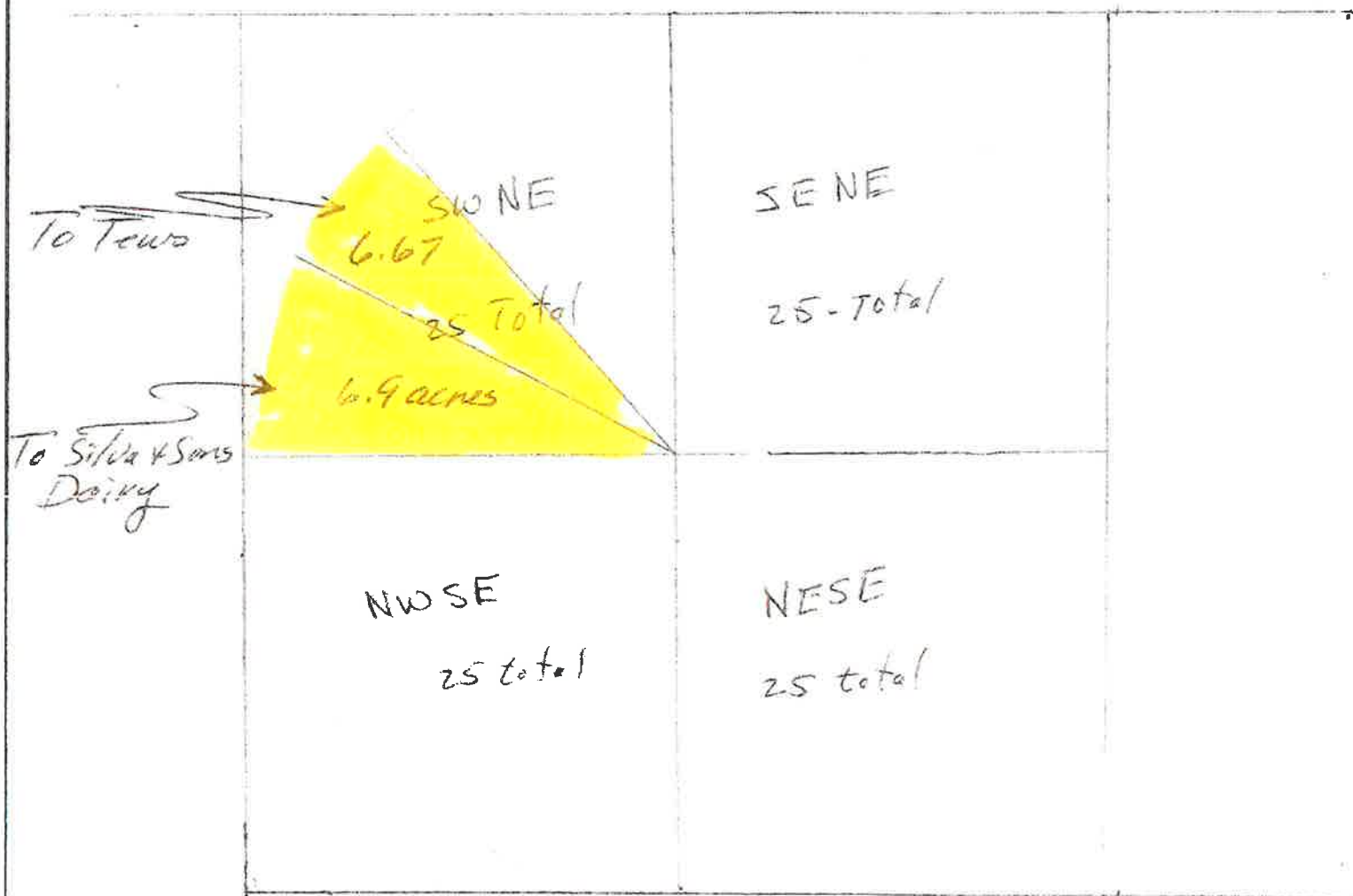
T#5801

T.15 S. R.14 E.

This drawing is to be used for reference purposes only, and county is not responsible for inaccuracies herein contained



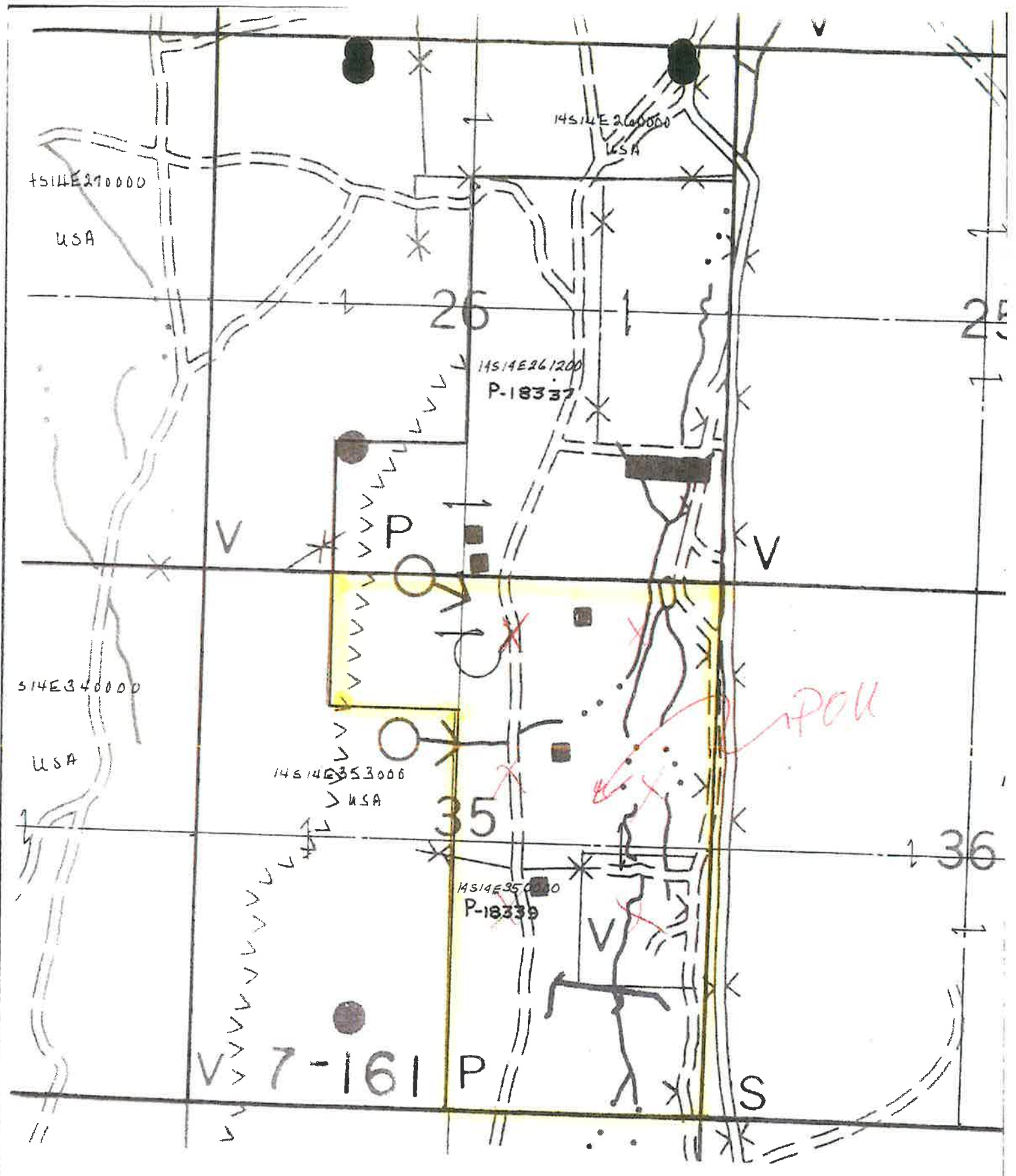
Transfer Log



T14S R14E S35

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JUN 11 2007

T#5801



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JUN 11 2001

T#5801

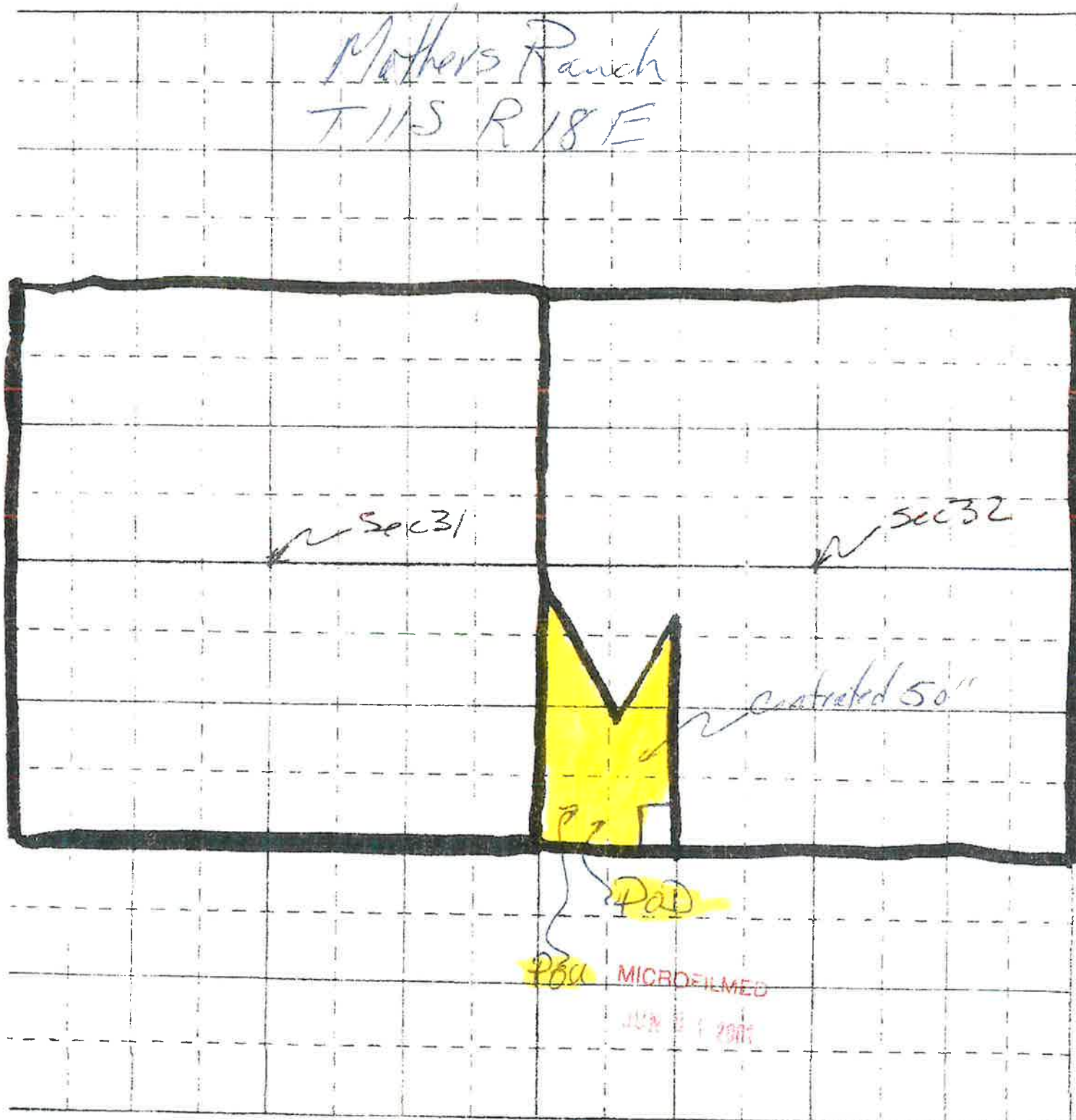
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

T#5801

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

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

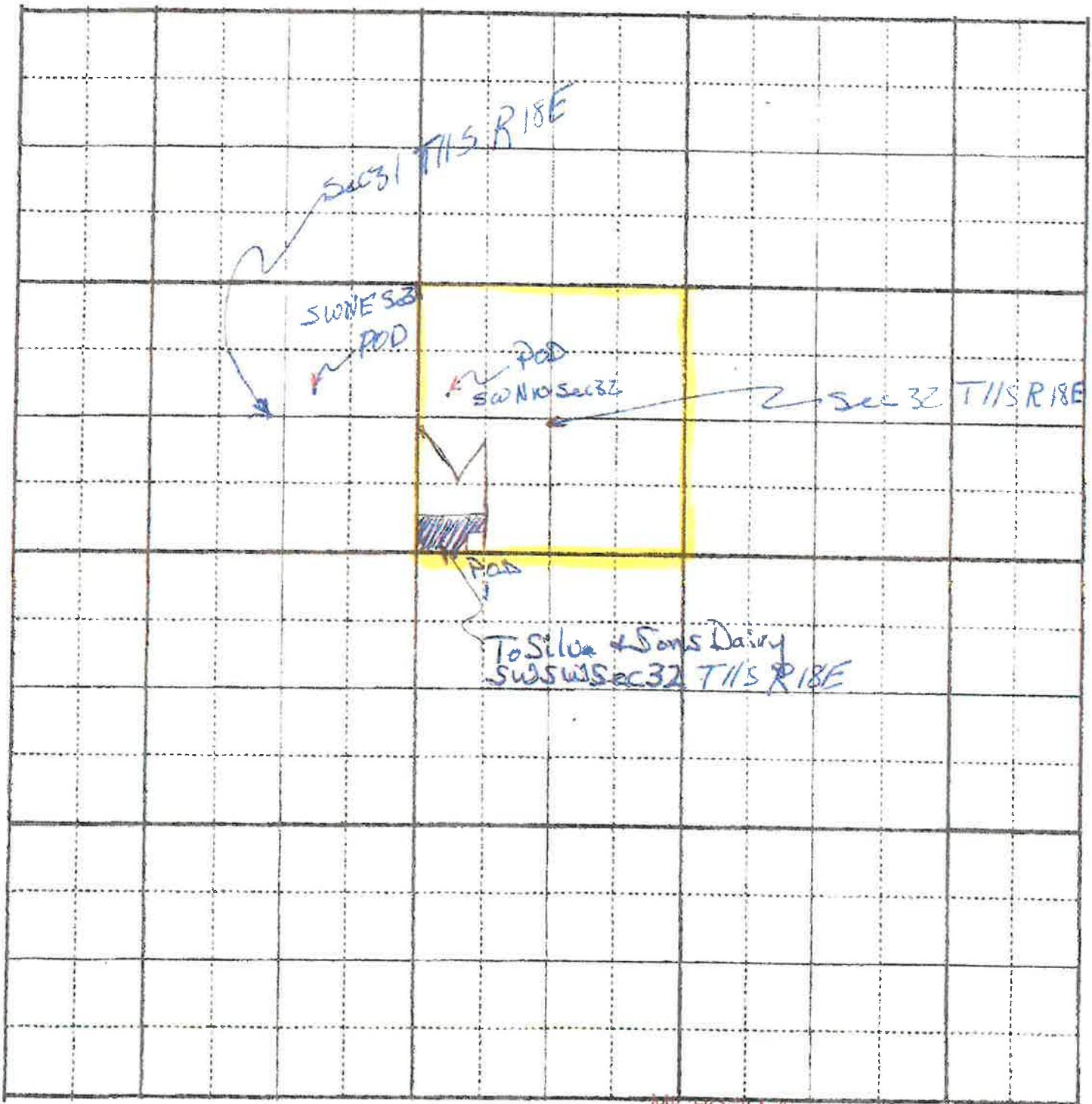


STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

T# 5801

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

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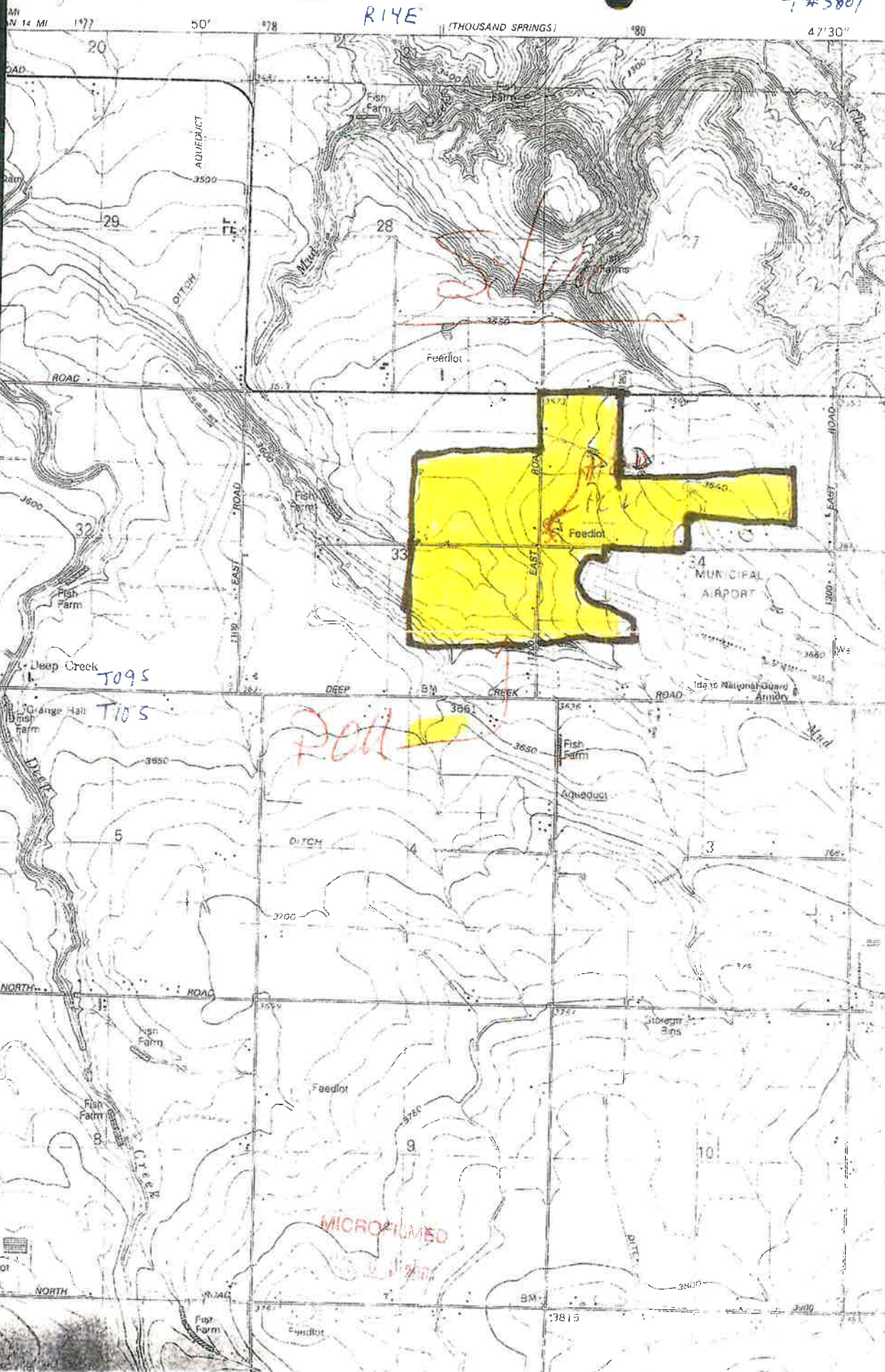
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JUN 10 1988

83 17 18

R14E

T#5801



T11S

Crop Report for 98
Farm Service Agency
Twin Falls, Idaho

RANGE 18 EAST

12823 H.A.

1491

IP

3
22.2

Gravel
P.T.

Grass

10.0

6
10.3

4
32.0

7
11.1

AIF

2
67.9

60.9

AIF

95.5

Gravel
P.T.

8
44.2

9
2.8

MICROFILMED
MAR 15 1999

T# 5358

T11S

Crop Report for 98
Farm Service Agency
Twin Falls, Idaho

RANGE 18 EAST

TEB23 HILL
1491
IP

3
22.2

AIF
95.5

Gravel
Pit

Gravel
Pit

10.0

6
10.3

32.0

11.1

AIF

2
67.9
60.9

Grass h

5
16.0

Gravel
Pit

44.2

3
13.2
6
5

T#5358

5 acres
to be
removed

MEMORANDUM

TO: Transfer Application #5801 and #5802 Files

FROM: Corey Skinner *CS*

DATE: August 7, 2000

SUBJECT: Staff Review

The enclosed transfer applications, #5801 filed by Silva and Sons Dairy and #5802 filed by Tews Land & Livestock, both involve transferring portions of the same water rights. Both applications proposes transferring portions of water rights 47-02256D, 47-02349A, 47-02358A, and 47-02394 to different points of diversion and places of use. Transfer #5801 (Silva & Sons) proposes transferring portions of these rights to a dairy operation located two miles west of Buhl. Transfer #5802 proposes transferring portions of these rights to a farm located three or four miles west of Hollister. The applications should be fairly straightforward, but there are some issues that should probably be considered before acting on the applications.

Water rights 47-02256D, 47-02349A, and 47-02358A are all currently appurtenant to property owned by Mathers Ranch Inc located along the Foothill Road about seven or eight miles south of Kimberly. These three rights were recently tied together in a 313-acre permissible place of use through transfer #5430, approved 01/26/2000. Transfers #5801 and #5802 are based on the transfer #5430 approval. In the review of transfer #5430 it was noted that there might be an overlap with Twin Falls Canal Company water on parts of the 313-acre permissible place of use. It appears that this potential overlap with canal water was not addressed in the transfer #5430 approval, but it may warrant consideration before acting on transfers #5801 and #5802.

Water right 47-02394 is currently appurtenant to land located about four or five miles southwest of Salmon Dam, west of Salmon Falls Creek Reservoir. There is a discrepancy between the amount of acres irrigated between license 47-02394 and the corresponding SRBA claim, A47-02394. The license lists 135 acres, and the claim lists 100 acres, in the same general area, but slightly different locations. The map that was filed with the SRBA claim indicates that the 100 acres are under a pivot sprinkler system. Transfers #5801 and #5802 were based on a rate per acre according to the SRBA claim. From various visits to the general area over the years, I could not recall much in the way of irrigation in this area. The Department's NAPP photos appear to indicate some possible irrigation occurring, though. On August 1, I visited the site and examined the irrigation system. A diesel motor powers the pump for the well, and the water is conveyed to the place of use through a ditch that runs to the north. It did not appear that water had been in the ditch anytime in the recent past, but an effort had been made to clean the ditch and work the ground that consisted of the place of use. Photos of this irrigation system were taken and are attached at the end of this memo.

T # 5801

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Transfer #5801 and #5802 Memo

August 7, 2000

Transfer #5801, in the name of Silva and Sons, also involves SRBA claim A47-10225, which is a stock water, commercial, and domestic filing. Note that a recommendation has not yet been filed with the SRBA court for this particular claim. I suspect this claim is the basis for the water use at the existing dairy operation, but transfer #5801 appears to only account for this claim for minimal volume. Del Kohtz, the gentleman who prepared the transfer for the applicant, said that the claim serves one home, with a yard, and the dairy. However, the applicant does not want to depend on the claim for a source of water for the dairy operation. It was included in the transfer application, to account for the additional point of diversion that will be added to the dairy/domestic system.

In addition to the items already mentioned in this memo, the Department should consider the relationships between the current points of diversion and places of use and the new points of diversion and places of use proposed by transfers #5801 and #5802. As previously indicated the extent of the past use of the water right 47-02394 is questionable, but transfers #5801 and #5802 both propose transferring the right across Salmon Falls Creek. The canyon that Salmon Falls Creek flows through is in excess of 400 feet deep. Examination of the well log for the well that serves as the point of diversion for water right 47-02394 reveals that the well is 815 feet deep with standing water at a depth of 143 feet. Transfer #5801 proposes transferring part of water right 47-02394 over 30 miles to the north, across Salmon Falls Creek Canyon. Transfer #5802 proposes transferring part of water right 47-02394 over 16 miles to the Northeast, across Salmon Falls Creek Canyon. Note that these proposed changes also cross season of use, and irrigation requirement boundaries. Rights 47-02256D, 47-02349A, and 47-02358A are proposed to be moved over 24 miles to the northwest, through transfer #5801, and over 15 miles to the Southwest, through transfer #5802.



Ditch to place of use

View of the well, pump, and motor, that serve as the point of diversion for right 47-02394.

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Transfer #5801 and #5802 Memo
August 7, 2000



ABOVE: View looking up the ditch from the well to the place of use for water right 47-02394. Note that the ditch has been recently cleaned out, but there was no sign of water being conveyed down the ditch. Also note the absence of lush vegetation along the ditch that would be expected if the ditch carried water on a regular basis.

BELOW: View looking down the ditch (indicated by arrows) at an area where the ditch was not recently cleaned out. Note the vegetation, including sagebrush, growing in the ditch.



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Transfer #5801 and #5803 Memo
August 7, 2000

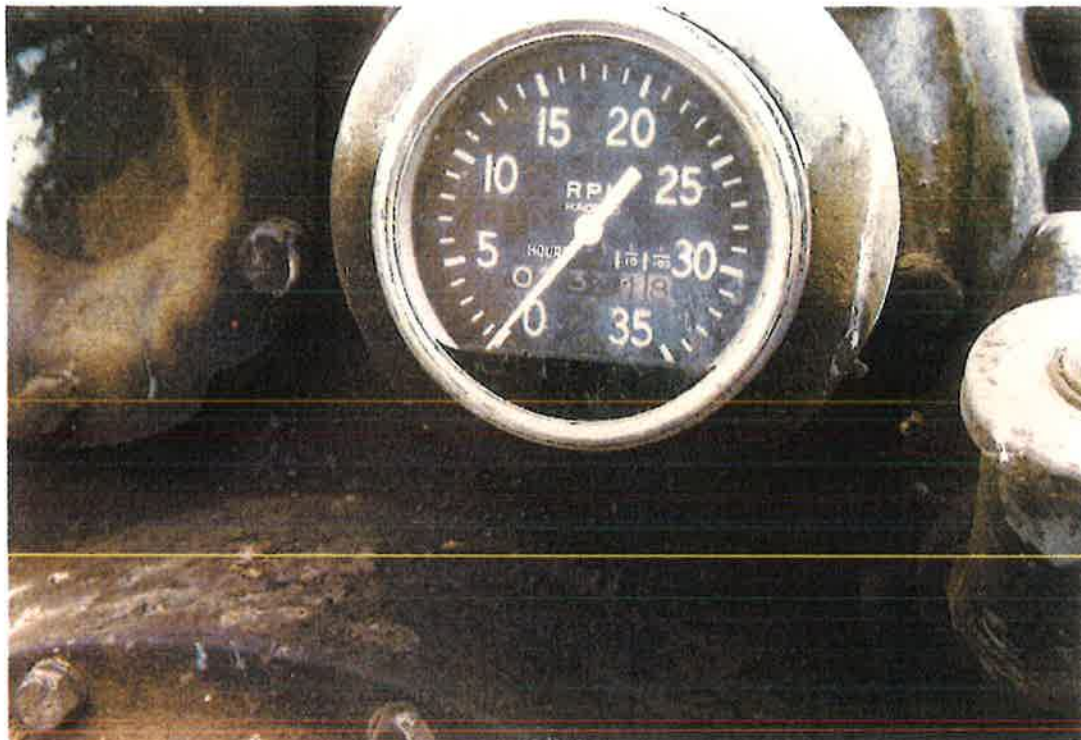


ABOVE & BELOW: Views of the place of use for water right 47-02394 (North $\frac{1}{2}$ of the Northeast $\frac{1}{4}$ of Section 35). The ground indicated that it had been worked this year, probably by a disk or a chisel plow. However, note the rabbit and sage brush that has been, and is still growing on the place of use. There was no indication that this ground had been recently irrigated. The map that was included with SRBA claim A47-02394 indicated that a pivot sprinkler was used to irrigate this ground. No pivot sprinkler, or past signs of a pivot sprinkler were observed during the field visit.



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Transfer #5801 and #5802 Memo
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View of the tachometer for the diesel motor that serves as the power source for the pump for the well that serves as the point of diversion for right 47-02394. Note that the gauge also indicates the number of hours that the motor has run. The hour reading was 733.18 hours. If the motor ran for 733.18 hours, and the pump was diverting at a rate of 1.5 cfs (licensed diversion rate) this would amount to a volume of just over 90 acre-feet.

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