

09/10/2008

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

RIGHT NUMBER: 22-13867

NAME AND ADDRESS: STATE OF IDAHO
IDAHO TRANSPORTATION DEPT
PO BOX 97
RIGBY ID 83442-0097

SOURCE: BADGER CREEK

TRIBUTARY: TETON RIVER

QUANTITY: 1.090 CFS

PRIORITY DATE: 06/01/1891

POINT OF
DIVERSION:

T06N R45E S8 NWNESE Within TETON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/15 10/31

1.090 CFS

PLACE OF USE:

IRRIGATION in TETON County

T06N R45E S08

SWSW

34.00

T06N R45E S08

SESW

20.00

54 ACRES TOTAL

Use of this right with Right Nos. 22-13867, 22-13869 and 22-13871 are limited to the irrigation of a combined total of 54 acres in a single irrigation season.

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Water is delivered through Stewart Ditch.

This right is a split from former right 22-13375 .

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

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

RIGHT NUMBER: 22-13867

NAME AND ADDRESS:

STATE OF IDAHO
IDAHO TRANSPORTATION DEPT
PO BOX 97
RIGBY ID 83442-0097

SOURCE:

Source:
BADGER CREEK

Tributary:
TETON RIVER

QUANTITY:

1.310 CFS

~~1.090 CFS~~

PRIORITY DATE:

06/01/1891

POINT OF DIVERSION:

T06N R45E S8 NWNESE
Within TETON County

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

IRRIGATION

04/15 10/31

1.310 CFS

~~1.090 CFS~~

PLACE OF USE:

IRRIGATION within TETON County

T06N R45E S08 SWSW 36.0

~~T06N R45E S08 SWSW 34.0~~

T06N R45E S08 SESW 21.0

~~T06N R45E S08 SESW 20.0~~

57 ACRES TOTAL

~~54 ACRES TOTAL~~

The rights listed below are limited to the irrigation of a combined total of 57 acres in a single irrigation season. Combined Right Nos.: 22-13867, 22-13869, and 22-13871.

~~Use of this right with Right Nos. 22-13867, 22-13869 and 22-13871 are limited to the irrigation of a combined total of 54 acres in a single irrigation season.~~

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is a split from former right 22-174B.

Water is delivered through Stewart Ditch.

~~This right is a split from former right 22-13375.~~

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



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

November 25, 2008

STATE OF IDAHO
IDAHO TRANSPORTATION DEPARTMENT
PO BOX 97
RIGBY ID 83442

RE: Notice of Change of Water Right Ownership (NCO) for
22-13375 (Split into 22-13866 and 22-13867) and Notice of Completed Administrative Proceeding (NCAP)

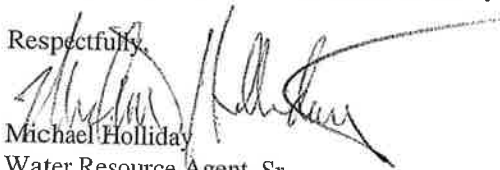
Dear SIR/MADAM:

The Idaho Department of Water Resources (IDWR) received an NCO changing the right holder for a portion of the above referenced water right(s). Based on this NCO, IDWR water right records for the Snake River Basin Adjudication (SRBA) have been updated with new water right numbers reflecting the division of the water right(s). Once IDWR processes the change of ownership, IDWR mails a copy of the updated water right record(s) (Director's Report) to each party listed on the NCAP. Enclosed please find the relevant NCAP(s) for your right(s). The intent of this mailing is to ensure each party has a current record of the water right(s) as recorded in the SRBA.

You may recall the initial hearings held in Rexburg on August 19, 2008. During those hearings the present parties discussed changes that needed to be made to resolve issues related to place of use, acreage and diversion rate for the aforementioned water rights. You may notice that the changes discussed at the initial hearings are not reflected in the enclosed Director's Report. Those changes were excluded from this version of the Director's Report solely because the purpose of the NCAP is simply to inform the parties and the SRBA Court of the changes in ownership. A Standard Form 5 (SF5) settlement document will follow shortly under separate cover. The SF5 will incorporate the corrections that we discussed at the initial hearings. Once the parties sign the SF5 settlement documents for these water rights, the SF5s will be sent to Special Master Bilyeu for her review and then to Judge Melanson for partial decree.

Please feel free to contact me at 525-7161 if you have any questions concerning this matter.

Respectfully,


Michael Holliday
Water Resource Agent, Sr.

Enclosure

cc: MERRILL BROWER & SONS INC

SCANNED
DEC 01 2008

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

In Re SRBA

Water Rights: 22-13375
(Split into 22-13866 and 22-13867)

Case No. 39576

NOTICE OF COMPLETED
ADMINISTRATIVE
PROCEEDING

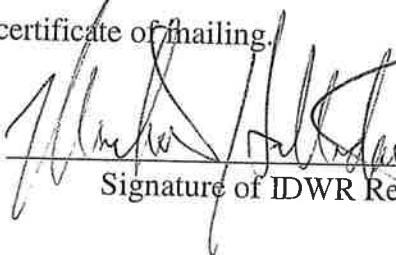
IDWR has completed the following Administrative proceeding:

- ☐ Address change
- ☒ Substitution of Party MERRILL BROWER & SONS-ID TRANSPORTATION DEPT &
COOKE
- ☐ I.C. § 42-222 transfer
- | | |
|---|--|
| ☐ point of diversion | ☐ place of use |
| ☐ period of use | ☐ nature of use |
| ☐ split of water right | ☐ change in ownership |

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

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

DATED: 11/25/2008


Signature of IDWR Representative

SCANNED
DEC 01 2008

CERTIFICATE OF MAILING

I certify that on Nov. 26, 2008, I mailed the original and copies of this form to the following persons, postage prepaid by regular mail and addressed as follows:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
PO Box 2707
Twin Falls ID 83303-2707
2. One copy to:
Claimant/Seller for Substitution of Party or attorney of record:
Merrill Brower & Sons Inc
642 Jeffrey Pl
Chubbuck ID 83202-5368
3. One copy to:
Claimant/Purchaser for Substitution of Party, or attorney of record:
Brett Cooke State of Idaho
Anita Cooke Idaho Transportation Department
50 E Wallace PO Box 97
Driggs ID 83422 Rigby ID 83442-0097
4. One copy to:
Each party in the subcase, or attorney of record
Beulah Brower
Kolene Later
C/O Jerry R Rigby
25 N 2nd E
PO Box 250
Rexburg ID 83440-0250
5. One copy each to:
Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449
6. One Copy to:
United States Dept of Justice
Environment & Natural Resource Div
550 West Fort Street MSC 033
Boise ID 83724


Signature of person or attorney mailing the form

SCANNED
DEC 01 2008

11/3/2008

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

W.R. NUMBER NAME AND ADDRESS

CLAIM DISPOSITION REASON

22-13375

Disallowed
Split into: 22-13866 and 22-13867

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

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IDAHO TRANSPORTATION DEPT
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PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

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1.090 CFS

PLACE OF USE:

IRRIGATION in TETON County

T06N R45E S08

SWSW

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T06N R45E S08

SESW

20.00

54 ACRES TOTAL

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EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

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This right is a split from former right 22-13375 .

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

SCANNED
DEC 01 2008

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

RECEIVED

APR 19 2007

Department of Water Resources
Eastern 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
22-13375	+22-13375	✓			
22-13378	A22-13378	✓			
22-13381	A22-13381	✓			

needs
NC AP

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)

Merrill Brower & Sons

P.O. Box 147, Teton, ID 83452

4. New Owner/Claimant(s)

Idaho Transportation Dept.

Name Connector (Check one): [] and, [] or, [] and/or

New Mailing Address

P.O. Box 97

City, State and ZIP Code

Rigby, ID 83442-0097

New Telephone Number

(208) 745-7781

5. Date you acquired the property

November 13, 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 <u>A22-13375</u>		
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	<u>1.21 cfs</u>	<u>59 acres</u>
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 <u>A22-13378</u>		
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	<u>1.21 cfs</u>	<u>59 acres</u>
Stock		
Domestic		
Other		
Total		

7. Signature of New Owner(s) or Claimant(s) _____
(include title if applicable)
- DISTRICT ENGINEER
- Tom Cole
4/18/07

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 _____
Received by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date _____

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 <u>A 22-13381</u>		
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	<u>0.37 cfs</u>	<u>59 acres</u>
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) _____
(include title if applicable) DISTRICT ENGINEER Tom Cole
4/17/07

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 _____
 Received by _____ Date _____ Receipt No. _____
 Processed by _____ AJ Date _____ WR _____ Date _____

CORPORATION WARRANTY DEED

Project No. TN-61

Key No. C09999

Parcel No. 01 Parcel ID No. 0043504

182443

Instrument # 182443

DRIGGS, TETON, IDAHO
2006-11-13 02:52:50 No. of Pages: 3
Recorded for : IDAHO TRANSPORTATION DEPT
NOLAN G. BOYLE Fee 0.00
Ex-Officio Recorder Deputy
Index to: DEED, CORPORATION WARRANTY

After recording return to:
Right of Way
Idaho Transportation Department
PO Box 7129
Boise, Idaho 83707-1129

THIS INDENTURE, Made this 13th day of NOVEMBER, 2006, between MERRILL BROWER AND SONS, INC., an Idaho Corporation, Grantor, and the STATE OF IDAHO, IDAHO TRANSPORTATION DEPARTMENT, by and through the IDAHO TRANSPORTATION BOARD, 3311 West State Street, Boise, Idaho 83703, Grantee.

WITNESSETH: That the Grantor, having authorized the undersigned officers by resolution duly passed by its Board of Directors to execute a conveyance to the hereinafter described lands, for value received, does grant, bargain, sell and convey unto the Grantee, the following described real property, County of Teton, State of Idaho, described as follows, to-wit:

See Exhibit "A" attached hereto.

Together with all right, title and interest in and to the Right of Way of State Highway 32 Westerly and contiguous to the the parcel described in the above mentioned Exhibit "A".

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, and Grantee's assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances, EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee; and subject to

Page 1

RECORD AT THE REQUEST OF THE STATE OF IDAHO
FEE EXEMPT - I.C. 67-2301

August 4, 2006

182443

CORPORATION WARRANTY DEED

Project No. TN-61
Key No. C09999
Parcel No. 01 Parcel ID No. 0043504

reservations, restrictions, dedications, easements, right of way and agreements, (if any) of record, and general taxes and assessments, (includes irrigation and utility assessments, if any) for the current year, which are not yet due and payable, and that the Grantor will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, The Grantor has caused its corporate name to be hereunto subscribed by its Dennis F. Brower President and its corporate seal to be affixed by its Jerrilee J. Brower Secretary, in pursuance to said resolution, the day and year first above written.

ATTEST: Jerrilee J. Brower
Secretary
(title)

MERRILL BROWER AND SONS, INC.

BY: Dennis F. Brower
President
(title)

STATE OF IDAHO)
County of Bannock) ss.

On this 13th day of November, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Dennis F. Brower and Jerrilee J. Brower, known to me to be the PRESIDENT and SECRETARY, respectively, of the corporation which executed the foregoing instrument, and acknowledged to me that said corporation executed the same.

(SEAL)



Mark Layton
Notary Public for STATE OF IDAHO
Residing at RIGBY
My commission expires 10-1-2008

EXHIBIT A

JORGENSEN ASSOCIATES, PC

Engineering • Land Surveying • Planning

April 12, 2006

Idaho Transportation Department District 6
JA Project #06504

DESCRIPTION:

A tract of land in the Southwest 1/4 of Section 8, Township 6 North, Range 45 East of the Boise Meridian, Teton County, Idaho being more particularly described as follows:

Commencing at a rebar with aluminum cap set at Southwest Corner of Section 8 in the centerline of Idaho State Highway 32;

Thence N89°57'36"E, a distance of 50.00 feet along the south line of said Section 8 to a Point on the East Right of Way Line of State Highway 32; Thence N00°17'28"E, a distance of 68.79 feet along the East Right of Way Line of State Highway 32 to the **TRUE POINT OF BEGINNING**;

Thence N00°17'28"E, a distance of 602.88 feet along the East Right of Way Line of State Highway 32 to a right of way monument recovered at Station 112+73.5;

Thence N00°17'28"E, a distance of 548.36 feet along the East Right of Way Line of State Highway 32 to the Northwest Corner of this description;

Thence leaving the East Right of Way Line of State Highway 32, N89°57'21"E, a distance of 1.86 feet to a recovered rebar with yellow plastic cap stamped PE&LS 2860;

Thence continuing N89°57'21"E, a distance of 1,939.71 feet to a rebar with yellow plastic cap stamped PE&LS 2860 recovered on the Westerly Right of Way Line of the old Oregon Shortline Railroad;

Thence S11°12'12"E, a distance of 1,243.67 feet to along the Westerly Right of Way Line of the old Oregon Shortline Railroad to a 5/8" rebar with 2" aluminum cap set on the South Line of Section 8;

Thence S89°57'36"W, a distance of 1,017.10 feet along the South Line of Section 8 to a 5/8" rebar with 2" aluminum cap set on the South Line of Section 8;

Thence N01°22'20"E, a distance of 68.73 feet to a recovered rebar with yellow plastic cap stamped PE&LS 2860;

Thence S89°57'50"W, a distance of 1,169.99 feet to a recovered a rebar with yellow plastic cap stamped PE&LS 2860;

Thence continuing S89°57'50"W, a distance of 3.60 feet to the **TRUE POINT OF BEGINNING**; said tract contains 55.94 acres, more or less, subject to easements and rights of way of record.

105 East Little Avenue ~ P.O. Box 584 ~ Driggs, ID 83422
Phone: (208) 354-8330 ~ Fax: (208) 354-8273
E-Mail: ja@jorgensenassociates.com

182443





Description _____

Location _____

Sheet _____ of _____

SWSW 38	SESW 21
78 18 17 NW NW 28	NE NW 28

$$\frac{59}{87} = 0.68$$

22-13381
0.55 cfs

^a ITD ~~50~~ 37 cfs 59 acres irrig 18.2 w/ 59 ac.

^b Merrill 0.18 cfs 28 acres

22-13378
1.78 cfs

^a ITD 1.21 cfs 59 ac

^b Merrill 0.57 cfs 28 ac

22-13375

^a ITD 1.21 cfs 59 ac

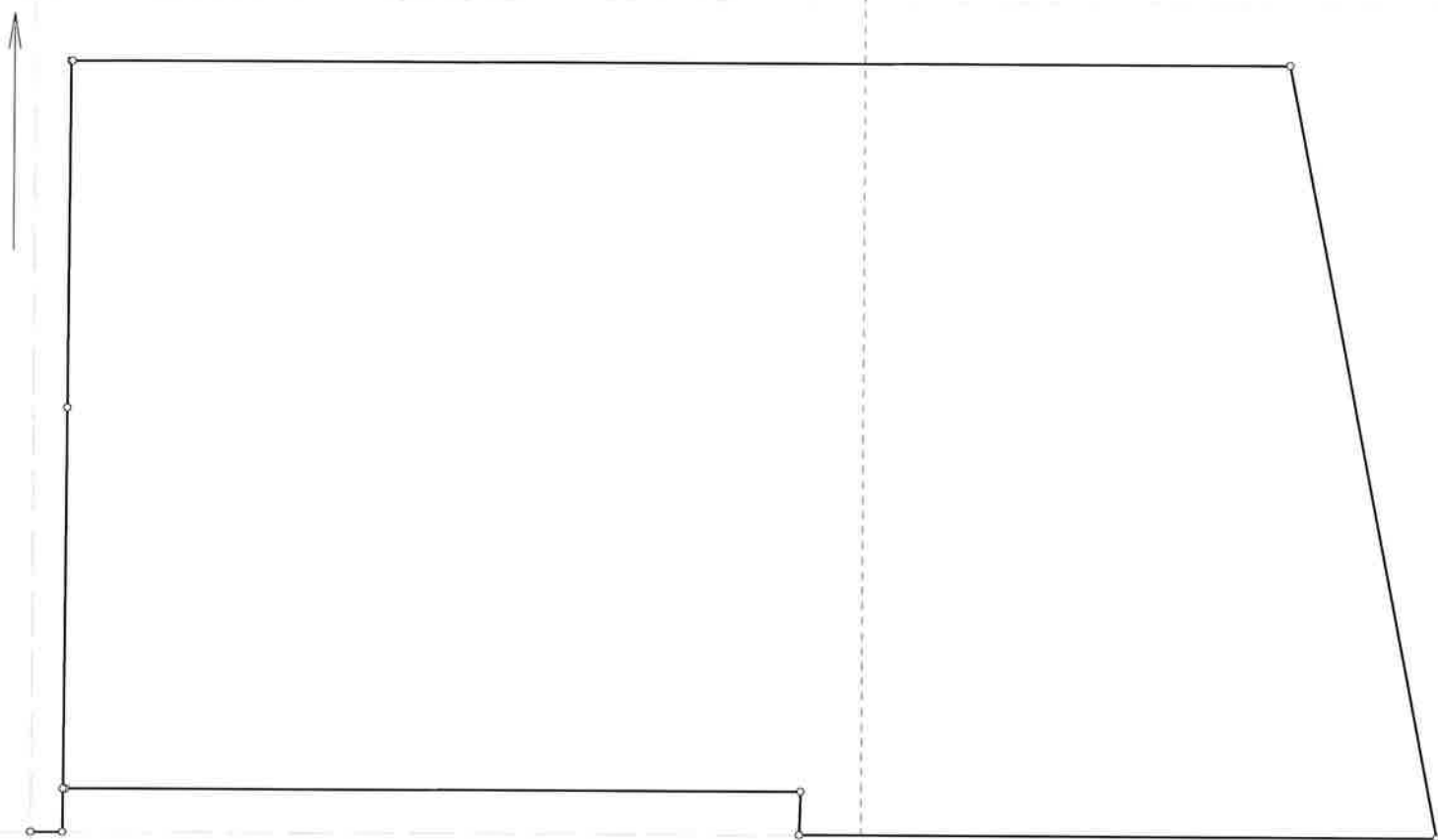
^b Merrill 0.59 cfs 28 ac.

Cal
11/06

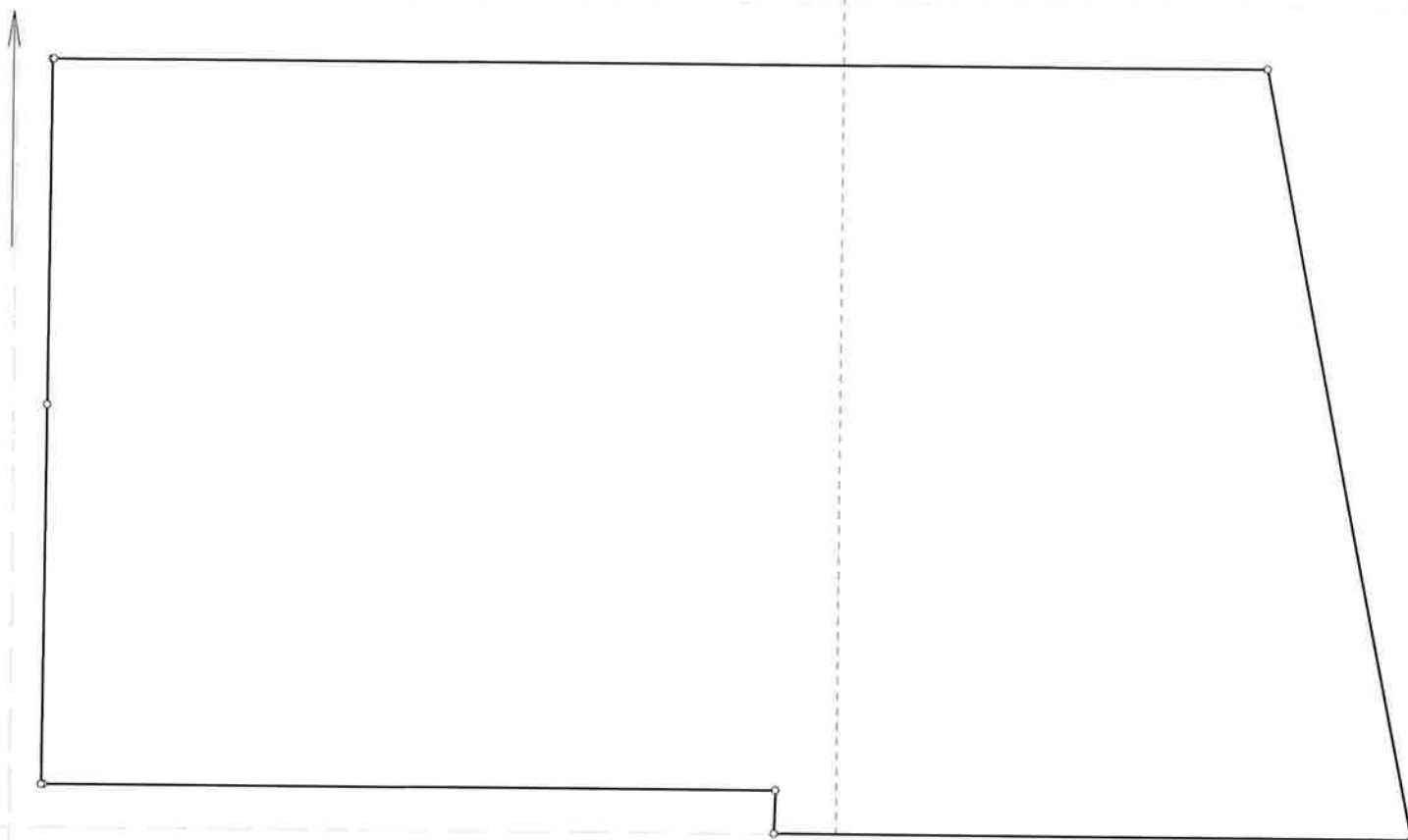
Computed by _____ Date _____ Project No. _____

Checked by _____ Date _____ File or Book No. _____

Bridge Drawing No. _____



Title:		Date: 08-06-2008
Scale: 1 inch = 300 feet	File:	
Tract 1: 56.995 Acres: 2482689 Sq Feet: Closure = s36.1118w 85.29 Feet: Precision =1/79: Perimeter = 6715 Feet		
001=/sw,8,6n,45e	006=n89.5721e 1.86	011=s89.5750w 1169.99
002=n89.5736e 50.00	007=n89.5721e 1939.71	012=s89.5750w 3.60
003=n00.1728e 68.79	008=s11.1212e 1243.67	
004=n00.1728e 602.88	009=s89.5736w 1017.10	
005=n00.1728e 548.36	010=n01.2220e 68.73	



Title:		Date: 08-06-2008
Scale: 1 inch = 300 feet	File:	
Tract 1: 56.001 Acres: 2439411 Sq Feet: Closure = s38.2911w 0.02 Feet: Precision =1/433139: Perimeter = 6596 Feet		
001=/sw,8,6n,45e	006=n89.5721e 1.86	011=s89.5750w 1169.99
002=/n89.5736e 50.00	007=n89.5721e 1939.71	012=s89.5750w 3.60
003=/n00.1728e 68.79	008=s11.1212e 1243.67	
004=n00.1728e 602.88	009=s89.5736w 1017.10	
005=n00.1728e 548.36	010=n01.2220e 68.73	