

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

In Re SRBA
Case No. 39576

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-14007

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

NOV 29 2012

By

Clerk

Deputy Clerk

NAME AND ADDRESS: RICHARD A EGBERT LIMITED
PARTNERSHIP
1134 BOND AVE
REXBURG, ID 83440

SOURCE: SOUTH LEIGH CREEK TRIBUTARY: TETON RIVER

QUANTITY: 0.52 CFS

PRIORITY DATE: 04/15/1960

POINT OF DIVERSION: T06N R45E S33 NESESW Within Teton County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-15 TO 10-31	0.52 CFS

PLACE OF USE: Irrigation Within Teton County
T05N R45E S05 LOT 1 (NENE)26.0
26.0 Acres Total

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

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

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

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

In Re SRBA	)	Subcase No. 22-14007
	)	<i>Previously Disallowed</i>
	)	
Case No. 39576	)	STANDARD FORM 5
	)	
	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described as per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT/OBJECTOR:

Richard A. Egbert Limited Partnership

 10/18/2012
Robert L. Harris Date
Attorney for Claimant/Objector

IDWR Concurrence:

Denise Kidman 10-18-12
Denise Kidman Date
Senior Water Resource Agent

Andrea L. Courtney Date
Deputy Attorney General
Attorney for IDWR

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

RIGHT NUMBER: 22-14007

NAME AND ADDRESS: RICHARD A EGBERT LIMITED
PARTNERSHIP
1134 BOND AVE
REXBURG ID 83440

SOURCE: SOUTH LEIGH CREEK Tributary: TETON RIVER

QUANTITY: 0.520 CFS

PRIORITY DATE: 04/15/1960

POINT OF DIVERSION: T06N R45E S33 NESESW Within TETON County

PURPOSE AND PERIOD OF USE:	<u>Purpose of use</u>	<u>Period of use:</u>	<u>Quantity:</u>
	IRRIGATION	04/15 10/31	0.520 CFS

PLACE OF USE: IRRIGATION within TETON County
T05N R45E S05 Lot 1 NENE 26.0

26 ACRES TOTAL

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Water is delivered through Bell McCracken Ditch.

CERTIFICATE OF MAILING

I certify that on _____, 2012, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN ADJUDICATION
253 THIRD AVENUE NORTH
P. O. BOX 2707
TWIN FALLS, IDAHO 83303-2707

2. Copies to:

RICHARD A. EGBERT LIMITED PARTNERSHIP
Represented by:
ROBERT L. HARRIS
1000 RIVERWALK DR., STE. 200
P.O. BOX 50130
IDAHO FALLS, ID 83405-0130

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

Signature of person or attorney

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

RIGHT NUMBER: 22-14007

NAME AND ADDRESS: RICHARD A EGBERT LIMITED
PARTNERSHIP
1134 BOND AVE
REXBURG ID 83440

SOURCE: SOUTH LEIGH CREEK Tributary: TETON RIVER

QUANTITY: 0.520 CFS

PRIORITY DATE: 04/15/1960 04/15/1916

POINT OF DIVERSION: T06N R45E S33 NESESW Within TETON County

PURPOSE AND PERIOD OF USE:	<u>Purpose of use</u>	<u>Period of use:</u>	<u>Quantity:</u>
	IRRIGATION	04/15 10/31	0.520 CFS

PLACE OF USE: IRRIGATION within TETON County
T05N R45E S05 Lot 1 NENE 26.0

26 ACRES TOTAL

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

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

~~No beneficial use found.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Water is delivered through Bell McCracken Ditch.

~~No beneficial use found: This is included for a claim based on beneficial use that is proposed to be disallowed because beneficial use of water was not confirmed by IDWRs field examination or by other evidence submitted by the claimant.~~

Kidman, Denise

From: Rob Harris [rharris@holdenlegal.com]
Sent: Monday, July 09, 2012 11:55 PM
To: Kidman, Denise; egbertbr@gmail.com
Subject: SRBA Evidence for Claim No. 22-14007
Attachments: Egbert.Map.IDWR.pdf

Denise:

We have obtained aerial photos from the USDA from 1960 and 1966 for the Ebert parcel. While this does not take us back to the 1916 priority date that we claimed, it does demonstrate that the property has been historically irrigated under the mistaken presumption that the prior owners had a decreed right from the Rexburg decree. Mr. Egbert is still trying to contact some old timers to confirm their recollection that it has been irrigated. I will get that to you as soon as I can. But I think it is important to remember that the Rexburg Decree—albeit mistakenly—listed this land and others with a water right, and it seems logical that it would have been irrigated on that basis, along with neighboring properties.

Because of the size of the scanned aerals, I am going to email them to you in separate emails to make sure they do not get caught up in the Department's SPAM filter. But you will see in the 1960s photo that there is flood irrigation going on, and that the ditch is clearly on the property. In the 1966 photo, you can see cultivated lines, similar to that on neighboring properties. I have attached a map of the property over a recent aerial photo.

Also, you will see that the railroad right of way went through the property, and that there was a separate branch that came in from the west. This means that the recommended place of use should remove the railroad land, which should be approximately 30 acres rather than the 40 we claimed. I tried to georeference these photos with my GIS program, but it is not doing what I tell it to do. Luke will be in tomorrow, and I think we can get it fixed. Once I georeference it, I will prepare a shapefile of the lands that appear to be irrigated, and will email you the map and shapefile.

Let me know if you have any questions.

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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Internal Revenue Service Circular 230 Disclosure: Please note that any discussion of or advice regarding United States tax matters contained herein (including any attachments hereto) is not intended or written to be relied upon or used and can not be relied upon or used for the purpose of promoting, marketing, or recommending any tax-related matters or advice to another party.

1960 Aerial

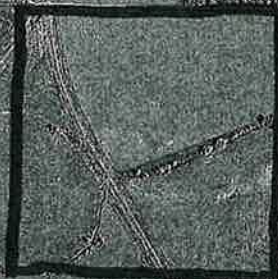


RECEIVED

JUL 11 2012

Department of Water Resources
Eastern Region

1966 AERIAL



RECEIVED

JUL 11 2012

Department of Water Resources
Eastern Region

RIGHT NUMBER: 22-14007

SOURCE: SOUTH LEIGH CREEK

TRIBUTARY: TETON RIVER

QUANTITY: 0.520 CFS

PRIORITY DATE: 04/15/1916

POINT OF
DIVERSION:

T06N R45E S33 NESESW Within TETON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/15 10/31

0.520 CFS

PLACE OF USE: IRRIGATION in TETON County

T05N R45E S05 Lot 1 NENE 26.00

26 ACRES TOTAL

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

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

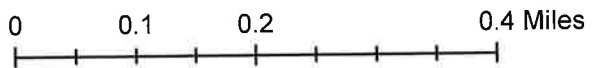
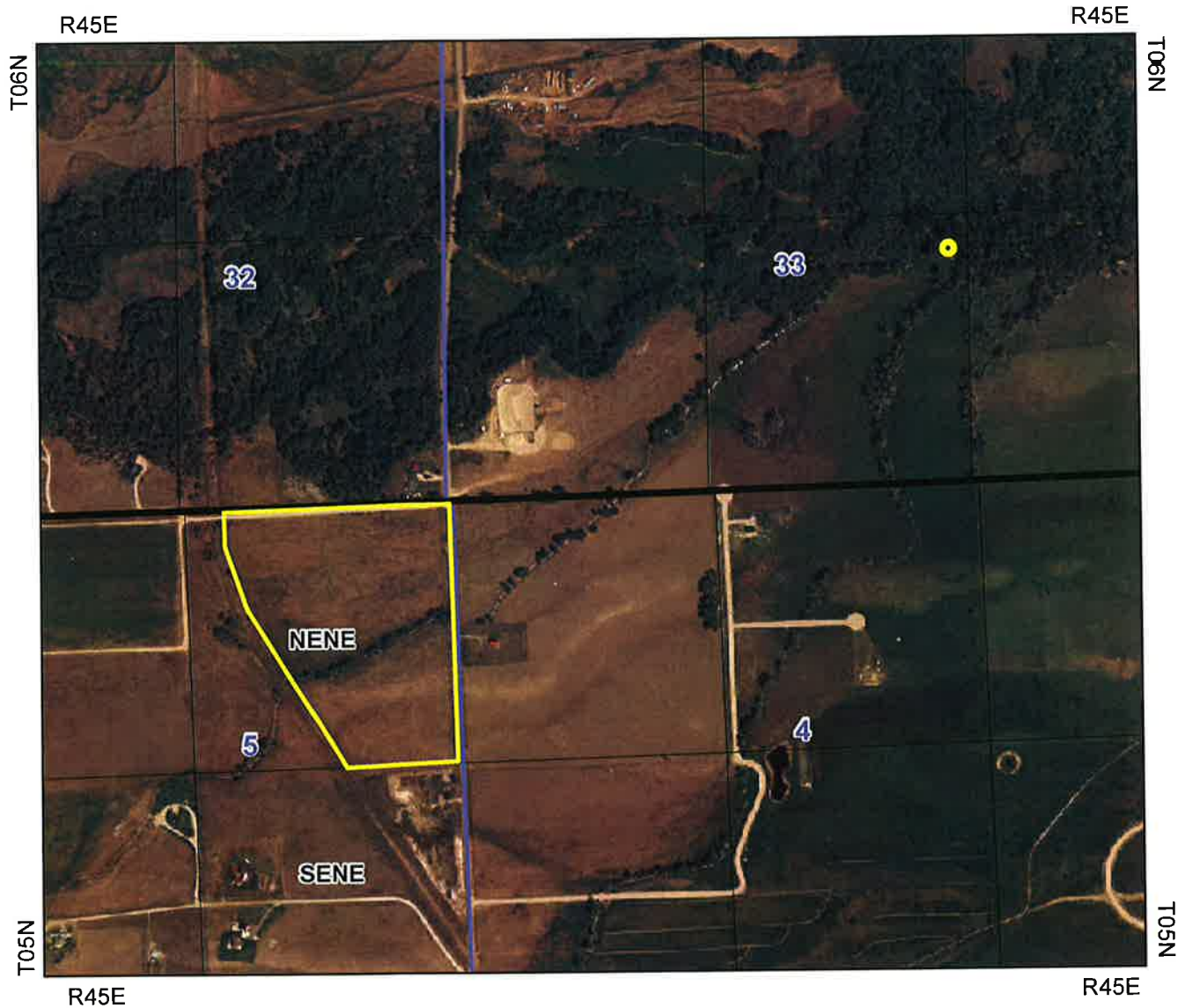
Water is delivered through Bell McCracken Ditch.

State of Idaho
Department of Water Resources

Adjudication Recommendation

22-14007

Water Service Area Boundary for Richard A Egbert Limited Partnership



Legend

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



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

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

CIVIL CASE NUMBER: 39576

Ident. Number 22-14007

Date Received 9/27/2011 SR7

Receipt Number C094030 P140-

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s) Richard A. Egbert Limited Partnership Phone (208) 356-8818

Mailing Address 1134 Bond Ave., Rexburg, Idaho Zip 83440

2. Date of Priority (Only (1) per claim) April 15, 1916

3. Source of water supply (a) South Leigh Creek

which is tributary to (b) Teton River

4.a. Location of existing point of diversion is:
Township 6N Range 45E Section 33, NE 1/4 of SE 1/4 of SW 1/4, Govt. Lot _____,
County of Teton
Parcel (PIN) No. _____

Additional points of diversion if any: _____

If Available, GPS Coordinates: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4 Govt. Lot _____ B.M.,
County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Headgate in stream to ditches for flood irrigation, through the Bell-McCracken ditch.

6. Water is claimed for the following purposes: _____ (Both dates are inclusive) (cfs) (acre feet)

For Irrigation purposes from 4/15 to 10/31 amount .8cfs or _____

7. Total quantity claimed (a) .8 (cfs) and/or (b) _____ (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) None

9. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the table below.
 - If water is used for other purposes, place a symbol of use (example: L for Domestic) in the corresponding place of use below. See instruction for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TLS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	45E	5	40																40

Parcel (PIN) No(s) _____ Total number of acres irrigated 40

10. In which county(ies) are lands listed above as place of use located? Teton

11. Do you own the property listed above as place of use? Yes ☒ No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

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

_____ or None (☒)

13. Remarks: This claim effectively replaces a prior recommendation to the Claimant for Water Right No. 22-568A, which was based upon a clerical mistake in the Rexburg decree and has now been disallowed by IDWR. Water has historically been delivered and used to irrigate the property identified above, and this beneficial use claim will document that use with a later priority date of April 15, 1916.

14. Basis of Claim (Check one) Beneficial Use ☒ Posted Notice _____ Permit _____ Decree _____
License _____ If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

15. Signature(s)

(a) By signing below, I/we acknowledge that I/we have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b) I/we do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of Attachments _____

For Individuals: I/we do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s) _____ Date _____

_____ Date _____

Last Name _____ Ident. Number _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am the attorney of
(Title)

Richard A. Egbert Limited Partnership, that I have signed the foregoing document in the space below as
(Organization)

the attorney of Richard A. Egbert Limited Partnership
(Title) (Organization)

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Robert L. Harris

Title and Organization Attorney, Richard A. Egbert Date June 23, 2011
Limited Partnership

17. Notice of Appearance:

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

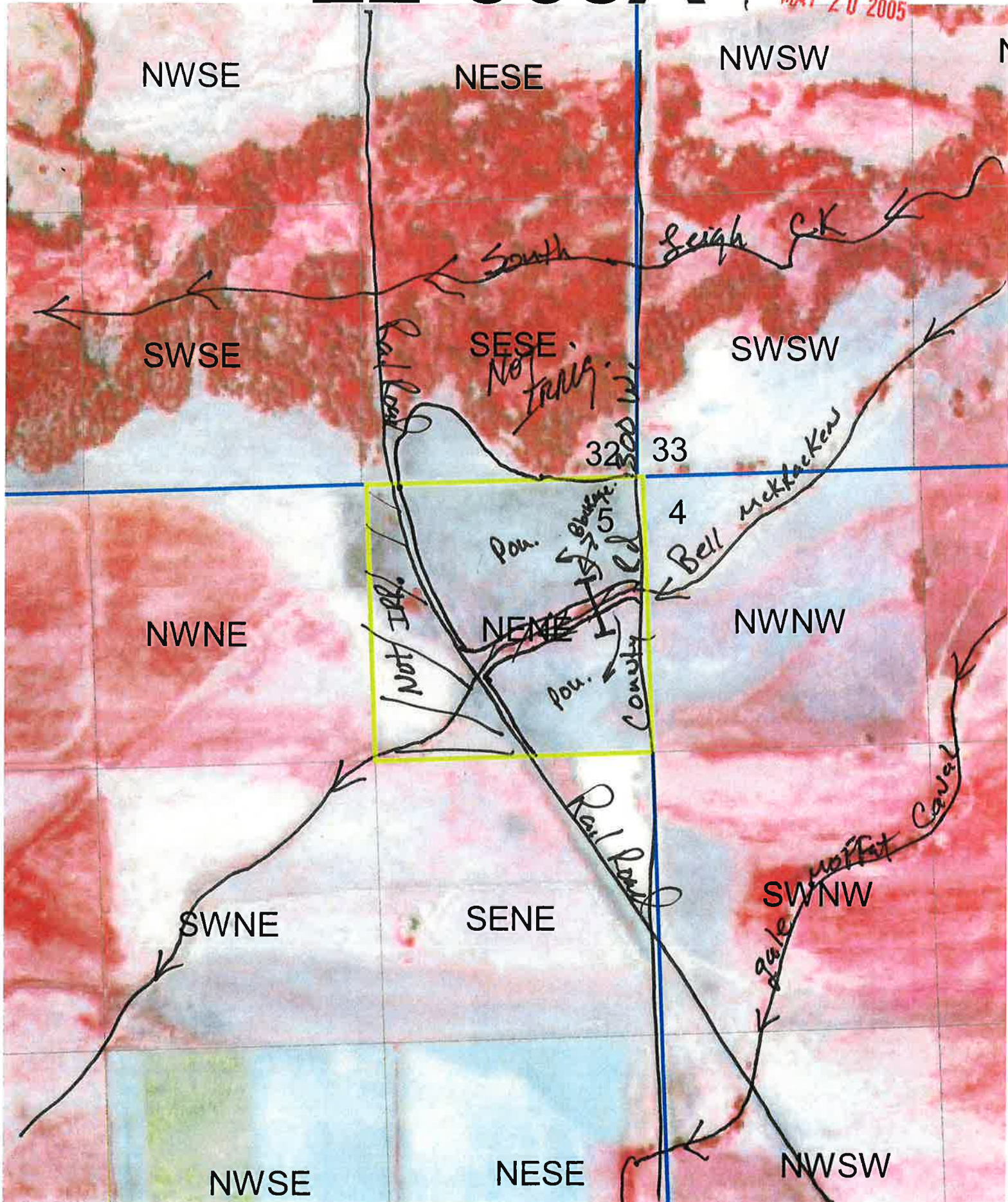
Signature Robert L. Harris
Address Holden, Kidwell, Hahn & Crapo, P.L.L.C.
PO Box 50130, Idaho Falls, ID 83405-0130

Date June 23, 2011

PROFILED

22-568A

9-23-04
SCANNED
MAY 20 2005





GPS TAG

Bell-McCracken
Ditch - diverts
out of South
Leigh Creek

GPS TAG # A0Φ13845

POD:

T6N R45E SEC. 33 NESESW

PROFILED

SCANNED

MAY 20 2005

7/15/04 DO