

Saxton, Craig

From: Melanie Vining [mvining@fs.fed.us]
Sent: Thursday, September 11, 2008 8:43 AM
To: Saxton, Craig; Kathryn S Nash
Cc: Caleb F Zurstadt
Subject: RE: water right question (King Hill Creek ditch diversion)

Attachments: #A0016764 J Holmes King Hill POD.JPG; #A0016765 injection point s. grays creek #1pic.JPG; #A0016765 King hill injection #2 pic.JPG; #A0016766 South Grays Creek POD into manmade ditch.JPG



#A0016764 J Holmes King Hill P...njection point s. g... injection ... Grays Creek PO...

Kathy,

See e-mail history below; I went out to check on this for Caleb and thought I would try to gather info on it. You may already know some of this, but wanted to pass this on to you. It may help to decide whether it is worth having Joe Holmes apply for an SUP? I would say the place where the ditch blew out years ago is stable for now and not causing resource damage. If we got a "1997-like" event it may be a problem, but regular flows seem to be going down the creek and not into the ditch any longer (the creek has incised below the level of the diversion). I will be in the office all day at 253-0131 if you have questions, and I can e-mail you the photos of the ditch/diversion if you want...

Thanks Craig; all of the info helps. I had forgotten that a prior decree established priority date...rusty, rusty. I checked the map I have against the POD, injection, and redirection info you gave me and it actually all makes sense with what I saw in the field but I need to put my GPS points into GIS and double check. I am not sure what the FS would want to do with this. If they challenge the right it may prove to be more of a time or money investment than just asking Joe Holmes if he wants to apply for a Special Use Permit that would allow him to work on the ditch should he want the water in the future. This could be costly to Joe. I guess my concern when I saw this was that he may be pulling the .85 cfs out of S. Grays and using it (I am pretty sure S. Grays runs right through their ranch) even though King Hill water is no longer being injected into and redirected out of S. Grays. This may not be a problem now but if another right holder on S Grays needs more water in a low-flow year....? Anyway, I will pass this on to Kathy Nash, who does the Special Use Permits, and see what she thinks. Thanks again! Send a pic of Mia when you can; Wyatt and Wade (yes, they are destined for eternal name mixing) are doing great. I wish I could bottle and sell their energy.

Mel

"Saxton, Craig"
<Craig.Saxton@idwr.idaho.gov>

09/10/2008 10:26 AM

"Melanie Vining"
<mvining@fs.fed.us>

To

cc

Subject

RE: water right question

Hey Mel,

Ok, My meeting wasn't till 10:30 I guess so I had time to look a little deeper.

I wasn't entirely accurate in saying, at least in part, based his recommendation on.

#A0016764 J Holmes King Hill POD.JPG : 14N, 1E S11 SWNE

This is the POD. The location fits the claim and I don't see any major problem with it

#A0016765 injection point s. grays creek #1.JPG : 14N, 1E, S11, SWSW

#A0016765 King hill injection #2.JPG : 14N, 1E, S11, SWSW

The above photos are supposed to show the point of injection. It looks to me like a really old ditch to me. The GPS'd point is different than what is claimed. I am not really sure how to interpret that.

#A0016766 South Grays Creek POD into manmade ditch.JPG : 14N, 1W, S11, SWSE

This is the POD that Dan identified as the point of re-diversion. It is the same location as was claimed. I am not sure if this makes a lot of sense to me.

In conclusion, whether the recommendations are right or wrong, they are on there way to being partially decreed by the SRBA court since no one has filed an objection to either of them. We gave a lot of weight to rights based on old decrees. History has shown that the court doesn't like recommending forfeiture to decrees or licenses. However, we obviously do when it is clear.

If the Forest Service disagrees that these are valid water rights, they can still petition the SRBA court to file a late objection.

I am sorry I don't know much more about it. Anyway, let me know if you have other questions.

Good to hear from you and congrats on the Forest Service job!

Talk to you later,

c

<<#A0016764 J Holmes King Hill POD.JPG>> <<#A0016765 injection point s.

grays creek #1pic.JPG>> <<#A0016765 King hill injection #2 p1.JPG>>

<<#A0016766 South Grays Creek POD into manmade ditch.JPG>>

-----Original Message-----

From: Saxton, Craig

Sent: Wednesday, September 10, 2008 9:31 AM

To: 'Melanie Vining'

Subject: RE: water right question

Hey Melanie,

I have a meeting in a few minutes but I think I can kinda answer your questions real quick. I will look into it deeper and get back to you with a better answer. For now:

- Was the right decreed in the Basin 67 SRBA or was it a decreed right

prior to that?

Ans: It was decreed in the Muir v. Allison. It has not been decreed in the SRBA yet, but there are no objections to it so it is on path to being decreed.

- Was there a field exam done to verify use w/in the last 5 years and/or

POD and POU?

Ans: No field exam appears to have been done. Dan did a desktop review. Note that if decreed in the SRBA, we consider the forfeiture clock as being re-set, so it will take another 5 years after being decreed for us to consider forfeiture

- Is there proof of the priority date?

Ans: Being decreed in Muir v. Allison is the proof of priority date. You don't need to provide additional proof for a claim based on an old decreed right.

I hope that helps. Mia is great. She is getting into stuff now and standing (almost 9 months).

I hope all is well with your family.. Wyatt and ??? sorry, I forget the youngest.

Talk to you later,

Craig

-----Original Message-----

From: Melanie Vining [mailto:mvinining@fs.fed.us]

Sent: Wednesday, September 10, 2008 8:25 AM

To: Saxton, Craig

Cc: Caleb F Zurstadt

Subject: water right question

Hi Craig,

Long time, no talk....how's Mia (I hope I remembered her name!). I am working under a contract with the Forest Service here doing some hydrology work and I have a question about a water right. I went out to look at an old POD and ditch on Forest Service land that one of the specialists here had heard was blown out and might be causing resource damage/diverting the stream unnecessarily. The ditch was tied to the name of a rancher on private land who never obtained a special use permit to divert water and now we are trying to gather information/background on the ditch before our special uses person decides when/if to contact him and ask him if he would like to go through the process of getting a permit to divert. The first thing, though, is to see if the water right tied to the ditch is valid; if not, I guess all of this would be unnecessary.

The ditch did indeed blow out at some point, I am thinking a few years ago

as the stream at POD has in used below the level of the diversion, and the ditch looks as if it has not been used in some time. However, when I looked up the water rights online for the user, it did show a decreed right for that POD and ditch, and I am not aware of other ditches/diversions in that area so assume I am looking at the correct right. I wondered if you could check on the file for me and tell me if there really is a valid right here and if there was ever proof of beneficial use during adjudication field exams? Dan Narsavage did the write up for it, it appears from the spreadsheet linked to the water right in the search query I did. Here's what I am looking for:

- Was the right decreed in the Basin 67 SRBA or was it a decreed right prior to that?
- Was there a field exam done to verify use w/in the last 5 years and/or POD and POU?
- Is there proof of the priority date?

I am a little rusty on my water rights knowledge, and assume a lot of this is dependent on whether this was decreed prior to the SRBA. I think Dan left IDWR (???) but if not I can contact him. Let me know if you need more info; I figured you would be "the man" on this question! Here is the info:

Holder: Joan or John Holmes

Numbers: 67-455-B (.62 cfs) and 67-456 (.14 cfs)

Source: King Hill Creek (involves injection and redirection though)

Priority Date: 6/1/1885 for both

Hello to Dave, Monica, Dan, etc!! Also, we can use this new info to add to the file on the right if you need it. My number here is 253-0131.

Thanks Craig!

Mel (See attached file: #A0016764 J Holmes King Hill POD.JPG) (See attached file: #A0016765 injection point s. grays creek #1pic.JPG) (See attached file: #A0016765 King hill injection #2 pic.JPG) (See attached file: #A0016766 South Grays Creek POD into manmade ditch.JPG)

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 67-455B V1

WATER RIGHT NUMBER: 67-455B V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JOHN W HOLMES 2152 COVE RD WEISER, ID 8362 (208)549-0772
Current Owner	PHILIP J HOLMES 973 GRAYS CREEK RD INDIAN VALLEY, ID 83632 (208)256-4455
Original Owner	GEORGINE LUDWIG , ID
Current Owner	JOAN H HOLMES 1009 GRAYS CREEK RD INDIAN VALLEY, ID 83632 (208)256-4456

Priority Date: 06/01/1885

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
KING HILL CREEK	LITTLE WEISER RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 10/31	0.620 CFS	
	<u>Total Diversion:</u>	0.620 CFS	

Location of Point(s) of Diversion

KING HILL CREEK	SE1/4SW1/4NE1/4	Sec. 11, Twp 14N, Rge 01E, B.M.
ADAMS County		
KING HILL CREEK	SE1/4SW1/4SE1/4	Sec. 11, Twp 14N, Rge 01W, B.M.
ADAMS County	(Rediversion)	
KING HILL CREEK	SW1/4SW1/4	Sec. 11, Twp 14N, Rge 01E, B.M.
ADAMS County	(Injection)	

Place of Use

IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	Totals
14N	01W	2	NE NW SW SE	NE NW SW SE	NE NW SW SE	NE NW SW SE	66.0
			17.0	30.0	19.0		

Total Acres: 66

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Adjudication Recommendation Report 67-455B V1

Conditions of Approval:

1. K06 This right is limited to the irrigation of 49 acres within the place of use described above in a single irrigation season.
2. C18 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.

Remarks:Comments:

1. mcase 7/21/2004 POD
Comment: Updated shape

2. mcase 7/21/2004 POD
Comment: Updated shape

3. mcase 7/21/2004 POD
Comment: POD shapes for the Diversion and Injection were created using the claim map. The point of Rediversion was not created because it was not on the map.

4. mcase 7/21/2004 Quantity
Comment: Parent right decreed for 1.74 cfs. Claimed .62 cfs. Ohter split claimed 1.12 cfs - so total flow is correct.

5. mcase 7/21/2004 POU
Comment: Updated Shape

6. mcase 7/21/2004 POU
Comment: POU shape created using claim map. Parent right decreed for 139 acres. Claimed 66 acres with other associated rights.

7. dnarsavage 8/21/2006 PODs
Comment: After reviewing this claim, GPS data collected by Roger Meyer in 2005, and maps of the area; I believe that I understand the system that this claim attempts to describe. However the claimed point of injection (POI) appears to the confluence of an unnamed stream with the South Fork of Grays Creek. In fact, the actual POI into natural waters takes place near the head of the aforementioned unnamed stream. As a result, I will change the claimed POI without an amended claim (as I will not change the delivery system used for the right, only its description).

Dates and Other Information:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Defendant:

Plaintiff:

Civil Case Number:

Judicial District:

Notice of Error Flag:

State or Federal: S

Owner Name Connector: AND

Water District Number: 67

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:

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Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Priority Date	7/21/2004 9:22:20 AM	mcase			Active
POD	7/21/2004 9:25:45 AM	mcase			Active
Source	7/21/2004 9:25:54 AM	mcase			Active
POU	7/21/2004 9:30:09 AM	mcase			Active
Use	7/21/2004 9:30:15 AM	mcase			Active
Season	7/21/2004 9:30:45 AM	mcase			Active
Quantity	7/21/2004 9:30:56 AM	mcase			Active
Priority Date	8/21/2006 1:40:41 PM	dnarsavage			Active
POD	8/21/2006 1:41:42 PM	dnarsavage			Active
Source	8/21/2006 2:08:47 PM	dnarsavage			Active
POU	8/21/2006 2:09:05 PM	dnarsavage			Active
Use	8/21/2006 2:45:32 PM	dnarsavage			Active
Season	8/21/2006 2:52:26 PM	dnarsavage			Active
Quantity	8/21/2006 2:54:14 PM	dnarsavage			Active
Summary			08/21/2006	dnarsavage	Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Season	8/21/2006 2:52:26 PM	dnarsavage	(Yes) 1. Is the basis of claim Decree or License? (No) 4. Does the Decree or License have a Period of Use? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (Yes) 15. Is irrigation claimed as a Purpose of Use? (No) 18. Is a Period of Use remark and/or condition required?

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Quantity	8/21/2006 2:54:14 PM	dnarsavage	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a diversion rate and/or volume? (Yes) 5. Can the claimed diversion rate and/or volume be verified using the water right file? (No) 8. Does the parent right have an annual diversion volume limit? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use? (No) 12. Is a Quantity remark or condition required?
Summary	8/21/2006 2:54:55 PM	dnarsavage	(Yes) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 2. Does any evidence indicate a five year period of continuous nonuse occurred that could result in recommending forfeiture or partial forfeiture? (Yes) 5. Does this right have any combined use limits with other rights? (Yes) 6. Is an additional remark and/or condition required? (Yes) 7. Would you like to view the recommended right? (Yes) 8. Is this a split or combined right? (No) 9. Do you have documents you would like to attach or link to the file? (Yes) 10. Would you like to set the verification date?
POD	8/21/2006 11:06:08 AM	dnarsavage	Correlated PODID 623848 from SpatialDataID 378865 to SpatialDataID 59550
POD	7/21/2004 9:25:45 AM	mcase	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a POD? (No) 5. Can the claimed POD be verified using the water right file?
Source	7/21/2004 9:25:54 AM	mcase	(Yes) 1. Is the basis of claim Decree or License? (Yes) 4. Does the Decree or License have a source? (Yes) 5. Can the claimed source be verified using the water right file?
POU	7/21/2004 9:30:09 AM	mcase	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 2a. Is the POU required? (Yes) 5. Does the Decree or License have a POU? (No) 6. Can the claimed POU be verified using the water right file? (No) 7. Is there evidence that there has been a change in the POU?

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Use	7/21/2004 9:30:15 AM	mcase	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a Purpose of Use? (Yes) 5. Can the claimed Purpose of Use be verified using the water right file?
Priority Date	7/21/2004 9:22:20 AM	mcase	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (Yes) 4. Is the basis of claim decree or license? (Yes) 5. Does the decree or license have a Priority Date? (Yes) 6. Did the Claimant claim the decreed or licensed Priority Date ? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required?
POD	8/21/2006 10:51:39 AM	dnarsavage	Correlated PODID 623847 from SpatialDataID 378862 to SpatialDataID 342543
POD	8/21/2006 11:05:50 AM	dnarsavage	Correlated PODID 623848 from SpatialDataID 378865 to SpatialDataID 59550
POD	8/21/2006 11:06:03 AM	dnarsavage	Correlated PODID 623848 from SpatialDataID 378865 to SpatialDataID 59550
POD	8/21/2006 10:51:44 AM	dnarsavage	Correlated PODID 623847 from SpatialDataID 378862 to SpatialDataID 342543
POD	8/21/2006 10:51:49 AM	dnarsavage	Correlated PODID 623847 from SpatialDataID 378862 to SpatialDataID 342543
POD	8/21/2006 10:51:54 AM	dnarsavage	Correlated PODID 623847 from SpatialDataID 378862 to SpatialDataID 342543
POD	8/21/2006 11:05:56 AM	dnarsavage	Correlated PODID 623848 from SpatialDataID 378865 to SpatialDataID 59550
Season	7/21/2004 9:30:46 AM	mcase	(Yes) 1. Is the basis of claim Decree or License? (No) 4. Does the Decree or License have a Period of Use? (No) 6. Is there evidence that there has been a change in the Period of Use? (Yes) 12. Does the file contain all the necessary information to verify the Period of Use? (No) 13. Is the basis of claim a decree, license, or a transferred beneficial use right that has had the Period of Use administratively determined? (Yes) 15. Is irrigation claimed as a Purpose of Use?
Quantity	7/21/2004 9:30:57 AM	mcase	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a diversion rate and/or volume? (Yes) 5. Can the claimed diversion rate and/or volume be verified using the water right file? (No) 8. Does the parent right have an annual diversion volume limit? (No) 9. Is the source Groundwater and does the purpose of use require a diversion volume limit? (No) 11. Has a diversion volume limit been established by a decree, license or transfer for this water use?

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Source	8/21/2006 2:08:48 PM	dnarsavage	(Yes) 1. Is the basis of claim Decree or License? (Yes) 4. Does the Decree or License have a source? (Yes) 5. Can the claimed source be verified using the water right file? (No) 11. Is a Source remark and/or condition required?
General	8/21/2006 1:40:42 PM	dnarsavage	(No) 1. Should this water use have been included in a later court decree of the water rights from this source? (Yes) 4. Is the basis of claim decree or license? (Yes) 5. Does the decree or license have a Priority Date? (Yes) 6. Did the Claimant claim the decreed or licensed Priority Date ? (Yes) 15. Is the basis of claim coded correctly? (No) 16. Is a Priority Date remark and/or condition required?
POD	8/21/2006 1:41:42 PM	dnarsavage	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a POD? (Yes) 5. Can the claimed POD be verified using the water right file? (No) 10. Is a POD remark and/or condition required?
POD	8/21/2006 2:01:43 PM	dnarsavage	Updated PLS
POU	8/21/2006 2:09:05 PM	dnarsavage	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 2a. Is the POU required? (Yes) 5. Does the Decree or License have a POU? (Yes) 6. Can the claimed POU be verified using the water right file? (No) 14. Is a POU remark and/or condition required?
POD	8/21/2006 2:01:30 PM	dnarsavage	Updated shape
Use	8/21/2006 2:45:33 PM	dnarsavage	(Yes) 1. Is the basis of this claim a Decree or License? (Yes) 4. Does the Decree or License have a Purpose of Use? (Yes) 5. Can the claimed Purpose of Use be verified using the water right file? (No) 13. Is a Purpose of Use remark and/or condition required?

Water Supply Bank:



Idaho Department of Water Resources

SRBA Recommendation:

67-455B

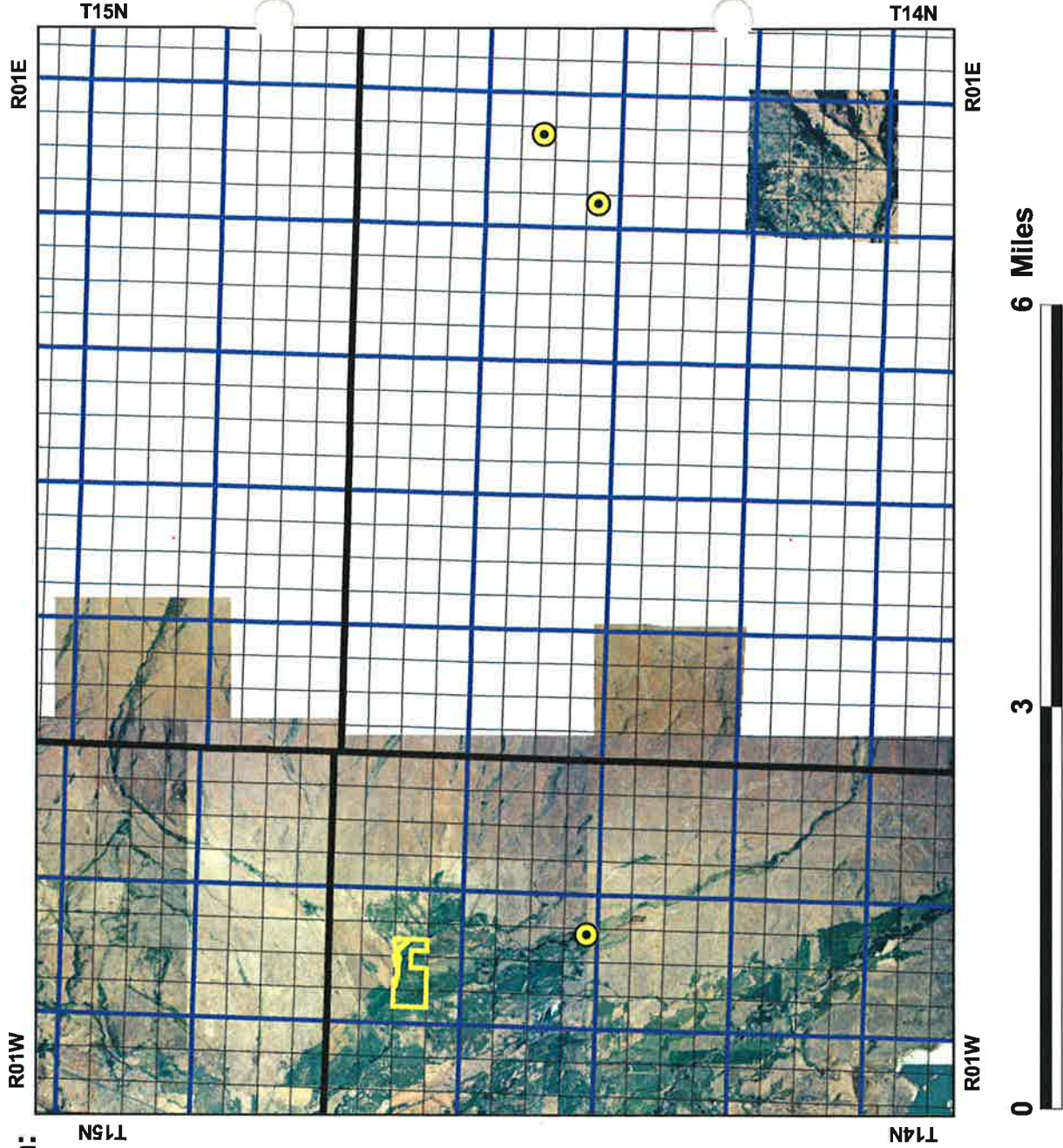
(Irrigation)

Legend

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



Adams County
IDWR Basin 67



Prepared by D. Narsavage
On Monday, August 21, 2006
1987/88 Aerial Photography

67-455B

