

01/29/2004

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

RIGHT NUMBER: 23-11230
NAME AND ADDRESS: ZELLA S BYBEE
11477 S SNAKE RIVER RD
REXBURG ID 83440

WALTER L BYBEE
11477 S SNAKE RIVER RD
REXBURG ID 83440

SOURCE: UNNAMED STREAM TRIBUTARY: SNAKE RIVER
QUANTITY: 1.030 CFS

USE OF THIS RIGHT WITH RIGHT NO. 22-13266 IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 1.03 CFS.

THIS RIGHT WHEN COMBINED WITH RIGHT NO. 22-13266 SHALL PROVIDE NO
MORE THAN .02 CFS PER ACRE.

PRIORITY DATE: 05/01/1884

POINT OF DIVERSION:

T04N R40E S25 SWSWNW Within MADISON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/15 10/31	1.030 CFS

PLACE OF USE: IRRIGATION Within MADISON County

T04N R40E S22	NENE	0.5	T04N R40E S22	NWNE	28.0
T04N R40E S22 Lot 2	SWNE	7.0	T04N R40E S22 Lot 1	SENE	4.0

39.5 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 22-13266 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 39.5 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: Decreed

THE ORIGINAL DECREED SOURCE UNDER THIS RIGHT IS HAWLEY SPRING.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN SOURCE PURSUANT TO
SECTION 42-1425, IDAHO CODE.

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT
TO SECTION 42-1425, IDAHO CODE.

WATER IS DELIVERED THROUGH SUNNYDELL CANAL.

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 23-10010. ALSO SEE
22-13266.



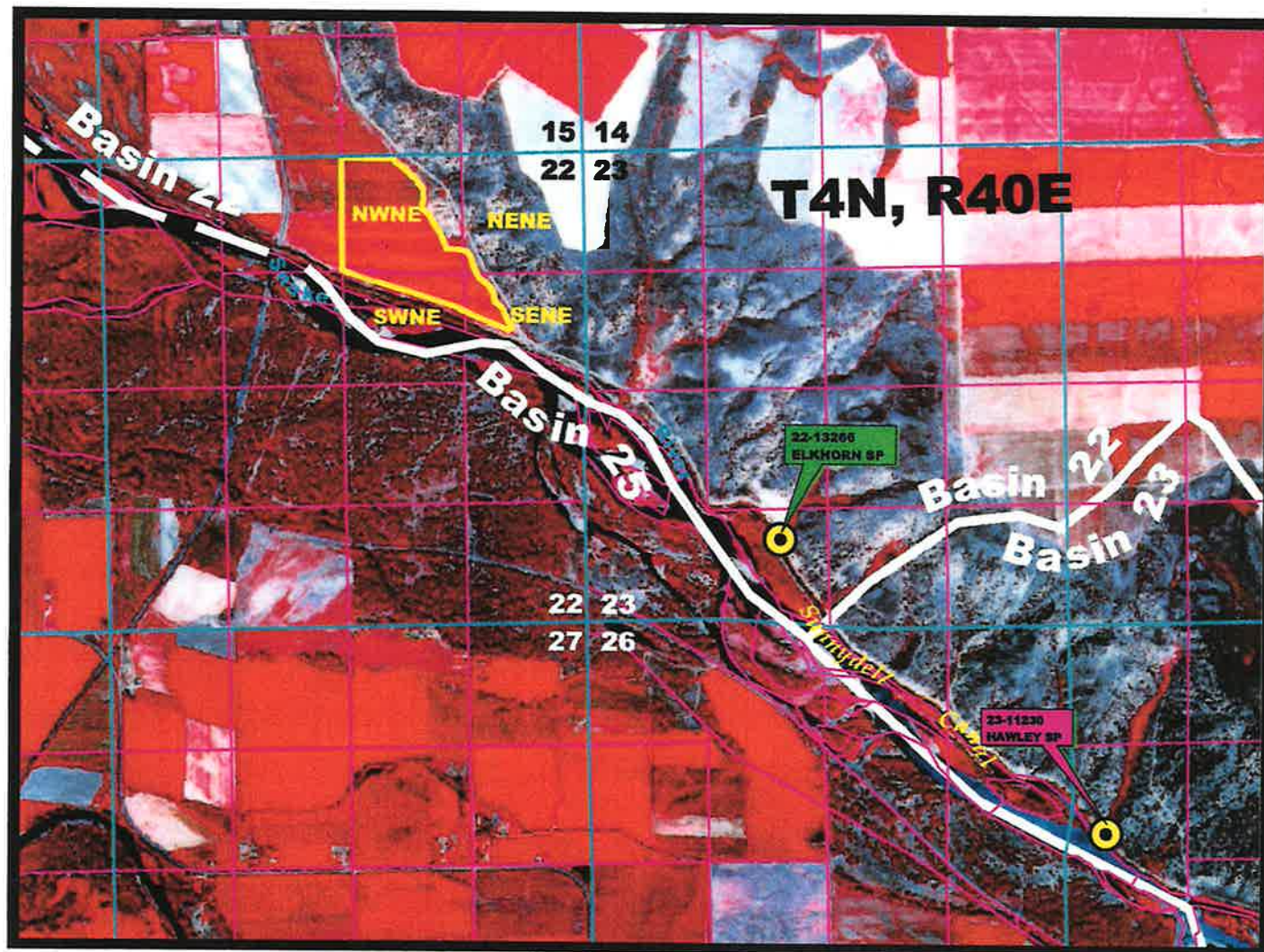
JUL 22 2004

SCANNED

State of Idaho

Department of Water Resources

Eastern Region

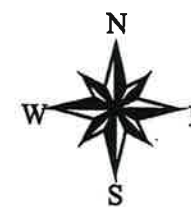


750 0 750 1500 2250 3000 3750 4500 5250 6000 6750 7500 8250 9000 9750 10500 11250 Feet

Water Right(s):
23-11230, 22-13266

Place of Use: T4N, R40E
Sec. 22 (parts of) NE

Point(s) of Diversion: T4N, R40E
Sec. 23 NESESW (Elkhorn Sp)
Sec. 25 SWSWNW (Hawley Sp)



LEGEND

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

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: A. Ruberry
Date: March 2003

Contacts Data Entry Form

23-11230 *
Water Right No. 23-10010

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

Current Owner WALTER BYBEE

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

Current Owner _____

Current Owner _____

Representing Attorney: _____ Phone Number: _____

Accompanied By: _____ Phone Number: _____

Relationship to Claimant: _____

Date of Field Exam: _____ Time: _____

Directions to Property (if different from above) and/or update owner information:

DECREED UNDER RUSBURG JUDG vs TETON JUDG, 1910
As # 17, up to 210 inches (4.2 cfs). TO C.B. HAWLEY
"3/5 OF THE FLOW OF ELK HORN AND HAWLEY SPRINGS..."

Remarks
(up to 210")
3/5 OF FLOW...

* 23-10010 IS SPLIT INTO 23-11230 AND 23-11231.

DONE TO PUT SEPARATE SOURCES INTO PROPER
BASIN. CONDITIONS AND REMARKS TIE THE TWO CLAIMS
TOGETHER.

23-11231 WAS RENUMBERED TO 22-13266 TO
ACCOMPLISH THE ABOVE

Reviewer: _____

Date: _____

SCANNED

JUL 22 2004

Priority Date Data Entry Form

Claim Number: _____

Water Right Priority Date: _____ Water Right Basis: _____

Claimed Priority Date: 5/1/1884 Claimed Basis: DECREERecommended Priority Date: 5/1/1884 Recommended Basis: DECREE☐ Use Claimed Priority Date and Basis as Recommended Priority Date and Basis

Document the evidence submitted/reviewed for the priority date claimed, include your analysis of the evidence:

MATCHES DECREE

Reviewer: _____

Date: _____

Point of Diversion and Source Data Entry Form

Claim Number: _____

Water Right Point of Diversion: T____, R____, Sec.____,____,____,____. County: _____

Source: _____ Tributary: _____

Claimed Point of Diversion: T____, R____, Sec.____,____,____,____. County: _____

Source: _____ Tributary: _____

Recommended Point of Diversion: T____, R____, Sec.____,____,____,____. County: _____

Source: _____ Tributary: _____

____ Use Claimed POD and Source as Recommended POD and Source

Twp	Rge	Sec	Gov Lot	OOQ of QQ of Q	County	Source
4N	40E	23		NESESW	MADISON	UNNAMED STREAM

GPS Coordinates: _____

GPS Coordinates: _____

GPS Coordinates: _____

4N	40E	25		SWSWNW	MADISON	UNNAMED STREAM
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GPS Coordinates: _____

GPS Coordinates: _____

GPS Coordinates: _____

GPS Coordinates: _____

Other rights from this POD? _____

Document how the POD and Source were verified and/or Pump and Motor data:

PROBLEM HERE: THIS RIGHT AS DECREED DISCUSSES SOURCES AS ELKHORN SPRING AND HAWLEY SPRING. THE PROBLEM IS THAT ELKHORN SPRING IS IN BASIN 22 WHILE HAWLEY SPG. IS IN BASIN 23. SUGGEST SPLITTING RIGHT TO BASIN 22 (ELKHORN SP) AND BASIN 23 (HAWLEY SP.). QUESTION THEN BECOMES HOW MUCH FLOW IS CONTRIBUTED BY EACH-

Transfers Changing POD _____

Reviewer: _____

Date: _____

SOLUTION: SPLIT RIGHT TO BASIN 22 AND BASIN 23. Q WOULD BE LISTED AS 4.2 cfs ON EACH WITH REMARKS COMBINING USE TOGETHER NOT TO EXCEED 4.2 cfs.

Remark
AKA: ELKHORN
WARM SP.
TRIB. TO: SNAKE R.

Remark
AKA: HAWLEY WARM
SP.
TRIB. TO: SNAKE R.

Place Of Use Data Entry Form

Claim Number: _____

_____ Use Claimed POU as Recommended POU

Claimed Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use
4N	40E	22	NE		JEFFERSON		395	Trng.

Total Acres _____

Recommended Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use
4N	40E	22	NENE		MADISON		0.5	Trng
			NWNE		"		20.0	"
			SWNE		"		7.0	"
			SENE		"		4.0	"

Total Acres

395 *

Document how the POU was verified:

POU claimed LAYS TOTALLY w/ MADISON COUNTY AND BASIN 22
 THIS IS NOT A PROBLEM IN THAT SOURCES ARE SPLIT: 1 IN BASIN 22
 AND 1 IN BASIN 23. BOTH REFERENCE SAME POU. LIMITING COMBINED
 USE REMARKS.

* THE POU DESCRIBED HERE IS NOT IN THE CANAL DISTRICT, BUT
 THE WATER RIGHT IS DELIVERED BY THE SUNNYDELL CANAL

Transfers Changing POU _____

Reviewer: _____

Date: _____

Period of Use and Quantity Data Entry Form

Claim Number: _____

☐ Use Claimed Period of Use and Quantity as Recommended Period of Use and Quantity

Water Right Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume

Overall Diversion Rate _____ Overall Diversion Volume _____

Claimed Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
Spring	4/1	11/1	4.2	

Overall Diversion Rate _____ Overall Diversion Volume _____

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
Spring*	4/15	10/31	4.2	

Overall Diversion Rate _____ Overall Diversion Volume _____

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

DECROS DOES NOT DEFINE SEASON OF USE. USOD DEPT.
STD SOL AS 4/15 TO 10/31.

COMBINED USE (Limiting) REMARKS FOR BOTH:
23-11230 AND 22-13266. Limits @ AND AC. REMARKS

Reviewer: _____

Date: _____

01/28/2004

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS:

Water right number: 23-11230

ZELLA S BYBEE
11477 S SNAKE RIVER RD
REXBURG ID 83440
Telephone Number: (208)356-6156

WALTER L BYBEE
11477 S SNAKE RIVER RD
REXBURG ID 83440
Telephone Number: (208)356-6156

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

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

See Stipulation for Resolution of Claim between Kyle Bybee in behalf of Walter Bybee and the Sunnydell Irrigation District and Michael Quinn.

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

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

DATE: 4-26-04 SIGNATURE: Walter L. Bybee

Please print your name: _____

IDWR Regional Office,

BLAIR GROVER, ESQ.
GROVER & BUTIKOFER, P.A.
215 Farnsworth Way
P.O. Box 36
Rigby, Idaho 83442-0036
Telephone: (208) 745-6653
Telefax: (208) 745-6655
ISB #1494

This Don't work
FILE IN
23-11230

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)	Civil Case No.: 39576
OF RIGHTS TO THE USE OF WATER)	
FROM THE SNAKE RIVER BASIN)	Subcase Nos. 82-10010
WATER SYSTEM,)	
)	
vs.)	STIPULATION FOR RESOLUTION
)	OF CLAIMS
)	

WITNESSETH:

This agreement is made and entered into this 29th day of April, 2004 by and between **KYLE BYBEE (BYBEE)**, individually and for and in behalf of **WALTER L. BYBEE and ZELLA S. BYBEE**, with reference to Claim Nos. 23-11230 and 22-13266, and the **SUNNYDELL IRRIGATION DISTRICT (SUNNYDELL)** by and through its authorized representatives with reference to Claim No. 22-13269 and **MICHAEL QUINN (QUINN)** with reference to the following claims:

- | | |
|----------------------|----------------------|
| Claim No. 23-2084B | |
| Claim No. 23-10015V1 | Claim No. 23-10015V2 |
| Claim No. 23-10016V2 | Claim No. 23-10016V1 |
| Claim No. 23-10017V2 | Claim No. 23-10017V1 |
| Claim No. 23-10018V2 | Claim No. 23-10018V1 |
| Claim No. 23-10019V2 | Claim No. 23-10019V1 |
| Claim No. 23-10021 | Claim No. 23-10023 |
| Claim No. 23-10024 | Claim No. 23-10025 |
| Claim No. 23.10026 | Claim No. 23-10027 |

1. The claims and water rights subject to this agreement are Elk Horn Springs and Hawley Springs. Watercress grows in the creek flowing from Elk Horn Springs and it later became popularly known as Cress Creek, but Elk Horn Springs and Cress Creek are one and the same. Said spring and creek flow into the Sunnyside Canal approximately one (1) mile below the Heise Bridge in Jefferson County, Idaho. Hawley Springs flows into the Snake River just above the Sunnyside diversion.

2. The parties recently had the flow of Elk Horn Springs (Cress Creek) and Hawley Springs measured by the Idaho Department of Water Resources (IDWR). The measurements showed a flow in Hawley Springs of 1.49 cfs and Elk Horn Springs (Cress Creek) of .262 cfs for a total flow of 2.11 cfs.¹ The flows could be affected by the existing drought and it is possible when the drought ends, there may be some increase in the flows. In any case, the claims of the parties as set forth herein, are substantially in excess of the current flow and in excess of any reasonably anticipated increase in the flows. Since at least 1959, Quinn has been diverting approximately .5 cfs for domestic water uses at the Heise Hot Springs Resort including domestic supply for seven (7) residents and/or commercial establishments; Bybee has been diverting approximately 1 cfs into the Sunnyside Canal as confirmed by Henry Eagle, watermaster; and, the Sunnyside is diverting the remainder of the flows. The parties acknowledge that actual pattern of use.

3. All of the parties recognize they could pursue their individual claims and recognize that among other things, the following issues exist:

- A. Showing appropriate chain of title transfers from the Rexburg decree through various Transferees to the Claimants Bybee and Sunnyside.
- B. Claims of adverse possession and/or adverse use by Quinn.
- C. Claims of total and/or partial forfeiture by one or more parties.
- D. Priority of domestic use over irrigation uses and issues valuing a water right or portion thereof.

¹The measurement was below the Quinn diversion, but at the time of the measurement (off season) Quinn was diverting .14 cfs or less. The calculations herein add .14 cfs to the measurement of 2.11 (totaling 2.25) to account for the Quinn use at the time of the measurement.

The parties also recognize and acknowledge the uncertainty and expense of contested hearings and/or litigation in the Snake River Basin Adjudication (SRBA). That becomes more significant where the water rights at issue are relatively small as reflected herein. In addition, the parties are friends and neighbors and would prefer to avoid the conflict and ill-will that often arises in litigation. Therefore, to avoid the uncertainty, expense and delay of litigating the various claims and issues identified herein, and perhaps others, the parties hereto agree to resolve their disputed claims to Elk Horn Springs (Cress Creek) and Hawley Springs as set forth hereafter.

I

DIVISION OF FLOW AT 2.25 CFS

The parties agree that when the flows are 2.5 cfs, as measured by the IDWR on or about the 1st day of April, 2004 (with the Quinn .14 added), said flow shall be divided:

- A. .81 cfs to Bybee.
- B. .90 cfs to Sunnydell.
- C. .54 cfs to Quinn.

That division reflects 36% of the combined flows to Bybee, 40% to Sunnydell and 24% to Quinn.

II

DIVISION WHEN FLOWS EXCEED 2.25 CFS

When the drought ends, if the combined flows exceed 2.25 cfs, the parties agree to divide the excess flow as follows:

- A. 36% to Bybee.
- B. 40% to Sunnydell.
- C. 24% to Quinn.

Provided, however, if one of the parties is unable to make an immediate beneficial use of the increase flow, said party agrees the other parties may temporarily use the increase in the flow until such time as said party is able to make a beneficial use. Said temporary use shall be without cost to said parties and shall not result in any permanent right. It is a permissive use as reflected and set forth herein.

III

DIVISION WHEN FLOWS ARE LESS THAN 2.11 CFS

In the event the flows of Elk Horn Springs (Cress Creek) and Hawley Springs are less than 2.25 cfs, the parties will share the combined flows as follows:

- A. 36% to Bybee.
- B. 40% to Sunnydell.
- C. 24% to Quinn.

Provided, however, the parties may make temporary arrangements among themselves, for consideration agreed upon, to make a different temporary division of the flows.

IV

EQUAL PRIORITY

The parties agree that the division of flows as set forth herein shall have an equal priority of May 1, 1884 as set forth in the Rexburg decree. Quinn is entitled to that priority because Sunnydell and Bybee are in effect relinquishing a portion of their claimed rights arising under the Rexburg decree to Quinn.

V

MODIFICATION OF SRBA CLAIMS

The parties hereto agree the SRBA claims filed by the respective parties to the waters of Hawley Springs and Elk Horn Springs (Cress Creek) should be amended and modified to reflect the terms of this agreement, and the SRBA should follow this agreement in recommending the decree from Elk Horn Springs (Cress Creek) and Hawley Springs..

VI

TRANSFER OF PALISADES WATER SHARES

As and for additional consideration for execution of this agreement, Quinn agrees to transfer 33 shares of the stock he owns in Palisades Water Users, Inc., to the Sunnydell, and 33 shares to Bybee.

STIPULATION FOR RESOLUTION OF CLAIMS

VII

CONVEYANCE OF BYBEE WATER BY SUNNYDELL

The Sunnydell agrees to continue to convey Bybee's share of water herein through its canal to his pump as it has in the past under agreeable terms and conditions.

VIII

SRBA FILING

The parties understand and agree that this document shall be filed with the SRBA. If it is necessary for certain terms or language to be modified and/or amended so that it can be more effectively and/or efficiently handled in the SRBA, the parties agree to such amendment or change provided the division of the cfs and/or the percentages reflected herein are not changed.

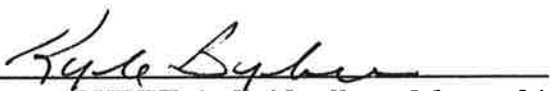
IX

INDEPENDENT EVALUATION

The parties agree they have made their own independent evaluation and determination of the merits of entering into this agreement and of the respective rights and claims they have. None are relying on promises, representations or inducements made by the other. In fact, all and/or their representatives, live near the springs and are now familiar with and have been familiar with the same for more than 50 years and are familiar with the actual diversion and uses for that same period of time.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year in the acknowledgments hereinafter set forth.

BYBEE:


KYLE BYBEE, individually and for and in
behalf of WALTER L. BYBEE and
ZELLA S. BYBEE

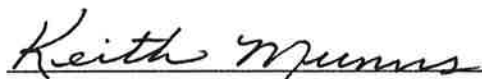
QUINN:


MICHAEL QUINN

SUNNYDELL:

SUNNYDELL IRRIGATION DISTRICT

By: 
GARY HILL, President/Director


KEITH MUNNS, Director


LEON MORTENSON, Director

STATE OF IDAHO)
)ss
County of Jefferson)

On this 27th day of April, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared **KYLE BYBEE, individually and for and in behalf of WALTER L. BYBEE and ZELLA S. BYBEE**, whose name(s) is (are) subscribed to the foregoing, and acknowledged to me that he (she) (they) executed the same.

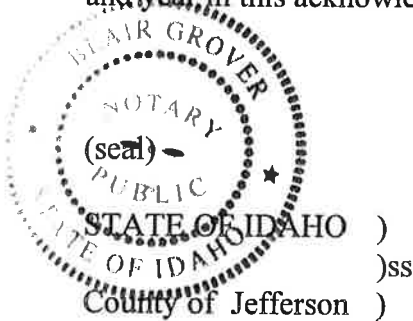
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment first above written.




Notary Public for Idaho
Residing at: Rigby, Idaho
Commission Expires: 10/24/2009

On this 26th day of April, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared **GARY HILL, as President/Director, KEITH MUNNS, and LEON MORTENSON as Directors of the SUNNYDELL IRRIGATION DISTRICT**, known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing, and acknowledged to me that he (she) (they) executed the same on behalf of **SUNNYDELL IRRIGATION DISTRICT**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment first above written.

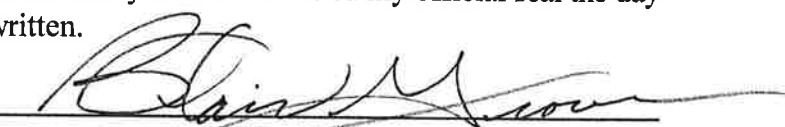



Notary Public for Idaho
Residing at: Rigby, Idaho
Commission Expires: 10/24/2009

On this 27th day of April, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared **MICHAEL QUINN**, whose name(s) is (are) subscribed to the foregoing, and acknowledged to me that he (she) (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment first above written.




Notary Public for Idaho
Residing at: Rigby, Idaho
Commission Expires: 10/24/2009

BLAIR GROVER, ESQ.
GROVER & BUTIKOFER, P.A.
215 Farnsworth Way
P.O. Box 36
Rigby, Idaho 83442-0036
Telephone: (208) 745-6653
Telefax: (208) 745-6655
ISB #1494

*This Don't work
File in
23-11230*

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 No.: 39576

Subcase Nos. 82-10010

vs.)

STIPULATION FOR RESOLUTION
OF CLAIMS

WITNESSETH:

This agreement is made and entered into this 28th day of April, 2004 by and between **KYLE BYBEE (BYBEE)**, individually and for and in behalf of **WALTER L. BYBEE and ZELLA S. BYBEE**, with reference to Claim Nos. 23-11230 and 22-13266, and the **SUNNYDELL IRRIGATION DISTRICT (SUNNYDELL)** by and through its authorized representatives with reference to Claim No. _____, and **MICHAEL QUINN (QUINN)** with reference to the following claims:

Claim No. 23-2084B

Claim No. 23-10015V1

Claim No. 23-10016V2

Claim No. 23-10017V2

Claim No. 23-10018V2

Claim No. 23-10019V2

Claim No. 23-10021

Claim No. 23-10024

Claim No. 23.10026

Claim No. 23-10015V2

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Claim No. 23-10017V1

Claim No. 23-10018V1

Claim No. 23-10019V1

Claim No. 23-10023

Claim No. 23-10025

Claim No. 23-10027

STIPULATION FOR RESOLUTION OF CLAIMS

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2. The parties recently had the flow of Elk Horn Springs (Cress Creek) and Hawley Springs measured by the Idaho Department of Water Resources (IDWR). The measurements showed a flow in Hawley Springs of 1.49 cfs and Elk Horn Springs (Cress Creek) of .262 cfs for a total flow of 2.11 cfs.¹ The flows could be affected by the existing drought and it is possible when the drought ends, there may be some increase in the flows. In any case, the claims of the parties as set forth herein, are substantially in excess of the current flow and in excess of any reasonably anticipated increase in the flows. Since at least 1959, Quinn has been diverting approximately .5 cfs for domestic water uses at the Heise Hot Springs Resort including domestic supply for seven (7) residents and/or commercial establishments; Bybee has been diverting approximately 1 cfs into the Sunnyside Canal as confirmed by Henry Eagle, watermaster; and, the Sunnyside is diverting the remainder of the flows. The parties acknowledge that actual pattern of use.

3. All of the parties recognize they could pursue their individual claims and recognize that among other things, the following issues exist:

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¹The measurement was below the Quinn diversion, but at the time of the measurement (off season) Quinn was diverting .14 cfs or less. The calculations herein add .14 cfs to the measurement of 2.11 (totaling 2.25) to account for the Quinn use at the time of the measurement.

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II

DIVISION WHEN FLOWS EXCEED 2.25 CFS

When the drought ends, if the combined flows exceed 2.25 cfs, the parties agree to divide the excess flow as follows:

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Provided, however, if one of the parties is unable to make an immediate beneficial use of the increase flow, said party agrees the other parties may temporarily use the increase in the flow until such time as said party is able to make a beneficial use. Said temporary use shall be without cost to said parties and shall not result in any permanent right. It is a permissive use as reflected and set forth herein.

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EQUAL PRIORITY

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STIPULATION FOR RESOLUTION OF CLAIMS

VII

CONVEYANCE OF BYBEE WATER BY SUNNYDELL

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VIII

SRBA FILING

The parties understand and agree that this document shall be filed with the SRBA. If it is necessary for certain terms or language to be modified and/or amended so that it can be more effectively and/or efficiently handled in the SRBA, the parties agree to such amendment or change provided the division of the cfs and/or the percentages reflected herein are not changed.

IX

INDEPENDENT EVALUATION

The parties agree they have made their own independent evaluation and determination of the merits of entering into this agreement and of the respective rights and claims they have. None are relying on promises, representations or inducements made by the other. In fact, all and/or their representatives, live near the springs and are now familiar with and have been familiar with the same for more than 50 years and are familiar with the actual diversion and uses for that same period of time.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year in the acknowledgments hereinafter set forth.

BYBEE:


KYLE BYBEE, individually and for and in
behalf of WALTER L. BYBEE and
ZELLA S. BYBEE

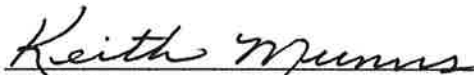
QUINN:


MICHAEL QUINN

SUNNYDELL:

SUNNYDELL IRRIGATION DISTRICT

By: 
GARY HILL, President/Director


KEITH MUNNS, Director


LEON MORTENSON, Director

STATE OF IDAHO)
)ss
County of Jefferson)

On this 27th day of April, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared **KYLE BYBEE, individually and for and in behalf of WALTER L. BYBEE and ZELLA S. BYBEE**, whose name(s) is (are) subscribed to the foregoing, and acknowledged to me that he (she) (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment first above written.




Notary Public for Idaho
Residing at: Rigby, Idaho
Commission Expires: 10/24/2009

On this 25th day of April, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared **GARY HILL, as President/Director, KEITH MUNNS, and LEON MORTENSON as Directors of the SUNNYDELL IRRIGATION DISTRICT**, known to me to be the person(s) whose name(s) is (are) subscribed to the foregoing, and acknowledged to me that he (she) (they) executed the same on behalf of **SUNNYDELL IRRIGATION DISTRICT**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment first above written.




Notary Public for Idaho
Residing at: Rigby, Idaho
Commission Expires: 10/24/2009

On this 27th day of April, 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared **MICHAEL QUINN**, whose name(s) is (are) subscribed to the foregoing, and acknowledged to me that he (she) (they) executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment first above written.




Notary Public for Idaho
Residing at: Rigby, Idaho
Commission Expires: 10/24/2009

Idaho Falls, Idaho

July 20, 1959

Mr. Kenneth Hacking, Secretary
Sunnydell Irrigation District
Route 1
Thornton, Idaho

Dear Mr. Hacking:

Mr. Walter Bybee was in the office today to discuss his water right in Elkhorn and Hawley springs. Both he and Mr. Clay have decreed rights in these springs but have been drawing their water thru the Sunnydell Canal.

For the past few years we have credited the Sunnydell Canal with a continuous flow of 1.0 second-feet from the above springs. We are doing the same this year.

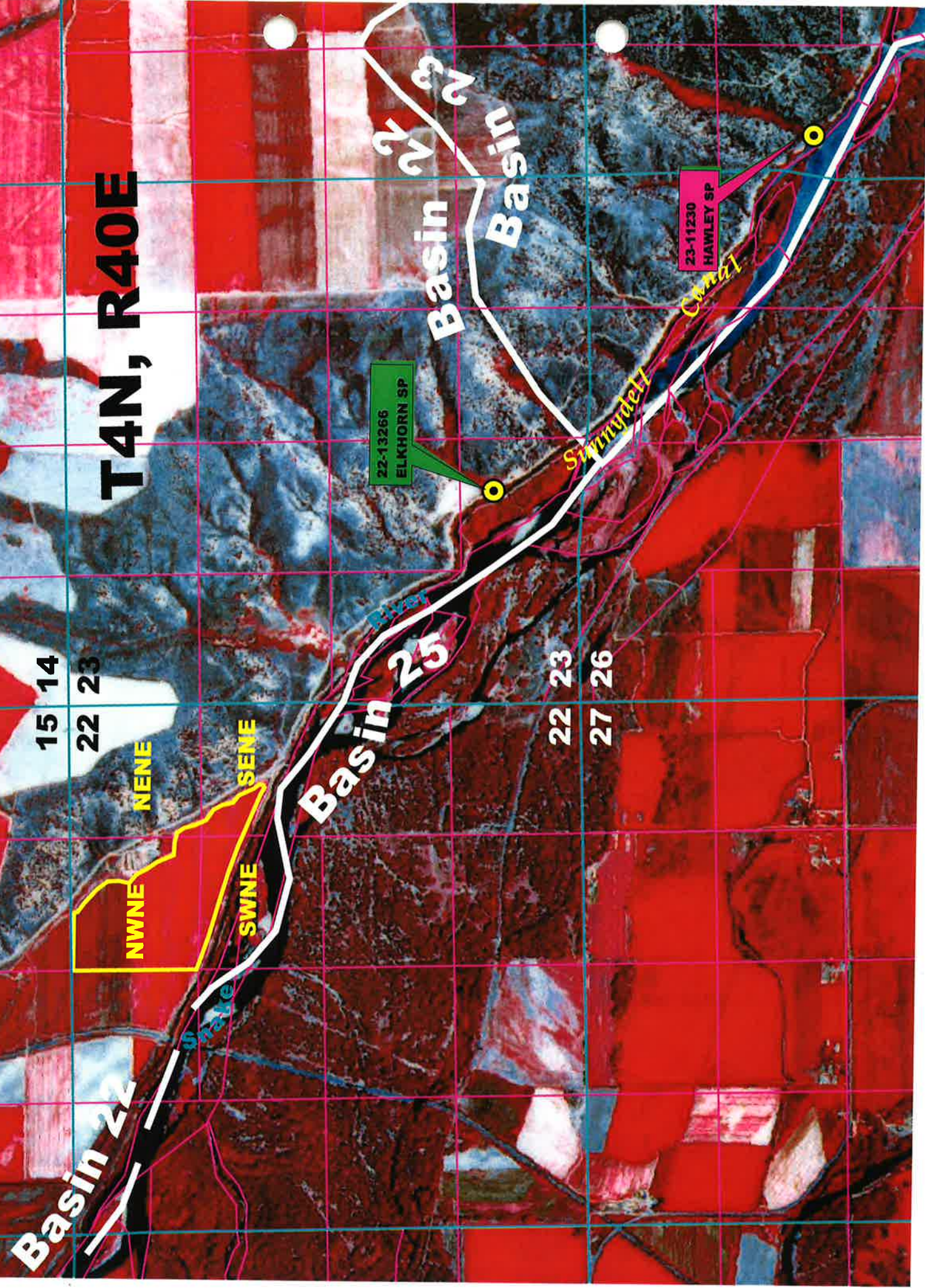
It is reported that developments at the Heise resort may result in a decreased inflow from Elkhorn and Hawley springs. We will obtain measurements in the near future but in any case, will continue to credit the Sunnydell with the full 1.0 second-feet. If there is a reduction in the spring inflow it will be charged against those obtaining the water.

Very truly yours,

H. C. Eagle
Watermaster

cc: Walter Bybee,
Rt. 1, Thornton

T4N, R40E



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 23-11230
Date Received: 4/1/2003
Receipt No:
Received By:

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

1. Name of Claimant(s)

ZELLA S BYBEE Phone: (208)356-6156
11477 S SNAKE RIVER RD
REXBURG ID USA 83440

WALTER L BYBEE Phone: (208)356-6156
11477 S SNAKE RIVER RD
REXBURG ID USA 83440

2. Date of Priority: 05/01/1884

3. Source: UNNAMED STREAM Trib. to: SNAKE RIVER

4. Point of Diversion:
Township Range Section 1/4 of 1/4 of 1/4 Lot County Type
04N 40E 25 SW SW NW MADISON

5. Description of diverting works:

SOURCE ORIGIN IS HAWLEY SPRING WHICH FLOWS TO RIVER (CANAL).

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	4/01	11/01	4.2	

7. Total Quantity Appropriated is:
4.2 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
04N	40E	22	NE	NE	IRRIGATION	0.5
			NW	NE	IRRIGATION	28
			SW	NE	IRRIGATION	7
			SE	NE	IRRIGATION	4

Section Acres 39.5
Total Acres 39.5

11. Place of use in counties: MADISON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

THIS RIGHT ORIGINATED AS PART OF 23-10010 WHICH WAS SPLIT TO PLACE SEPARATE SOURCES INTO PROPER BASINS. ALSO SEE 22-13266.

15. Basis of Claim: Decreed

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

Signature of Claimant(s): _____ Date: _____

_____ Date:

State of Idaho)
County of _____) SS.

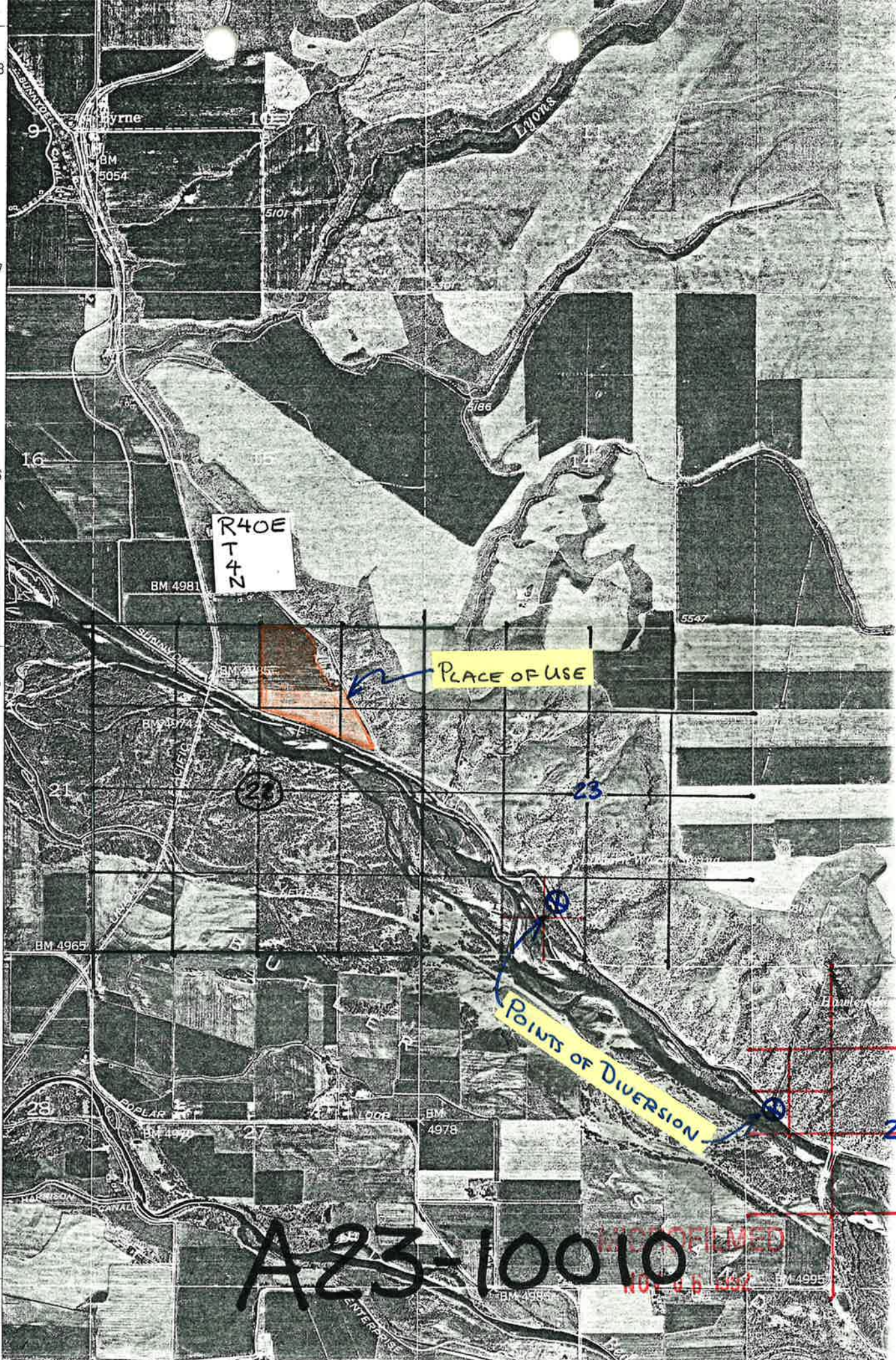
Subscribed and sworn (or affirmed) before me this
of _____ 20__

Notary Public

Residing at _____

My commission Expires _____

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A23-10010

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