

06/05/2003

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

RIGHT NUMBER: 29-328B

NAME AND ADDRESS: PHILIP J FERGUS
PO BOX 143
DOWNEY ID 83234

SOURCE: BIRCH CREEK

TRIBUTARY: MARSH CREEK

QUANTITY: 2.020 CFS

The amount of water diverted under this water right may not exceed 5/24 of the stream flow of Birch Creek at the point of diversion described below at any given time. This water right shall not provide more than .02 cubic feet per second per acre at any time.

USE OF THIS RIGHT WITH RIGHT NO. 29-12020 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 2.02 CFS.

PRIORITY DATE: 10/10/1878

POINT OF DIVERSION:

T12S R36E S23 SENE Rediversion Within BANNOCK County

T12S R36E S27 SENWSW Within BANNOCK County

T12S R36E S27 SENWSW Injection Within BANNOCK County

T12S R36E S27 SENWSW Injection Within BANNOCK County

T12S R36E S27 SENWSW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	2.020 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T12S R36E S11	SWNE	2.2	T12S R36E S11	SENE	34.0
T12S R36E S11	NESE	38.0	T12S R36E S11	NWSE	23.0
T12S R36E S12	NWSW	3.6			

100.8 ACRES TOTAL

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 100.8 ACRES IN A SINGLE IRRIGATION SEASON. COMBINED RIGHT NOS.: 29-328B AND 29-12020.

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

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION 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 BIRCH CREEK CANAL (DITCH).

06/05/2003

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

RIGHT NUMBER: 29-10461

NAME AND ADDRESS: LAZY VZ TRUST LAND & WATER
C/O LOUIS BLOXHAM
PO BOX 41
DOWNEY ID 83234

SOURCE: STATION CREEK

TRIBUTARY: BIRCH CREEK

QUANTITY: 3.080 CFS

The amount of water diverted under this water right may not exceed 2/5 of the stream flow of Station Creek at the point of diversion described below at any given time. This water right shall not provide more than .02 cubic feet per second per acre at any time.

USE OF THIS RIGHT WITH RIGHT NO. 29-10462 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.54 CFS.

PRIORITY DATE: 06/09/1904

POINT OF DIVERSION:

T12S R36E S2 SENESW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	3.080 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T11S R36E S35	NENE	18.0	T11S R36E S35	NWNE	14.0
T11S R36E S35	SWNE	6.2	T11S R36E S35	SENE	18.0
T11S R36E S35	NESE	37.0	T11S R36E S35	NWSE	9.5
T11S R36E S35	SESE	19.0	T11S R36E S36	NENW	0.5
T11S R36E S36	NWNW	15.0	T11S R36E S36	SWNW	10.0
T11S R36E S36	SENW	1.1	T11S R36E S36	SWSW	5.9

154.2 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 29-10462 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 154.2 ACRES IN A SINGLE IRRIGATION SEASON.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 241 ACRES IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 29-4206, 29-10461 AND 29-10462

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

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

01/22/2003

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

RIGHT NUMBER: 29-328B

NAME AND ADDRESS: PHILIP J FERGUS
PO BOX 143
DOWNEY ID 83234

SOURCE: BIRCH CREEK

TRIBUTARY: MARSH CREEK

QUANTITY: 2.020 CFS

USE OF THIS RIGHT WITH RIGHT NO. 29-12020 IS LIMITED TO A TOTAL COMBINED
DIVERSION RATE OF 2.02 CFS.

PRIORITY DATE: 10/10/1878

POINT OF DIVERSION:

T12S R36E S23 SENE Rediversion Within BANNOCK County

T12S R36E S27 SENWSW Within BANNOCK County

T12S R36E S27 SENWSW Within BANNOCK County

T12S R36E S27 SENWSW Injection Within BANNOCK County

T12S R36E S27 SENWSW Injection Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/01 10/31

2.020 CFS

PLACE OF USE:

IRRIGATION Within BANNOCK County

T12S R36E S11	SWNE	2.2	T12S R36E S11	SENE	34.0
T12S R36E S11	NESE	38.0	T12S R36E S11	NWSE	23.0
T12S R36E S12	NWSW	3.6			

100.8 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.

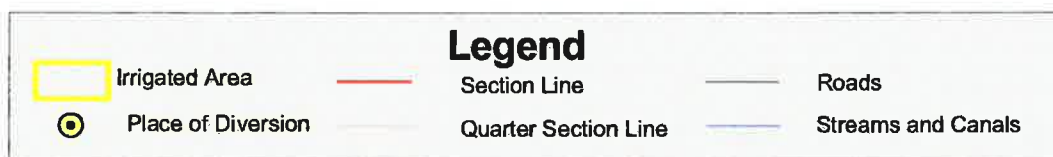
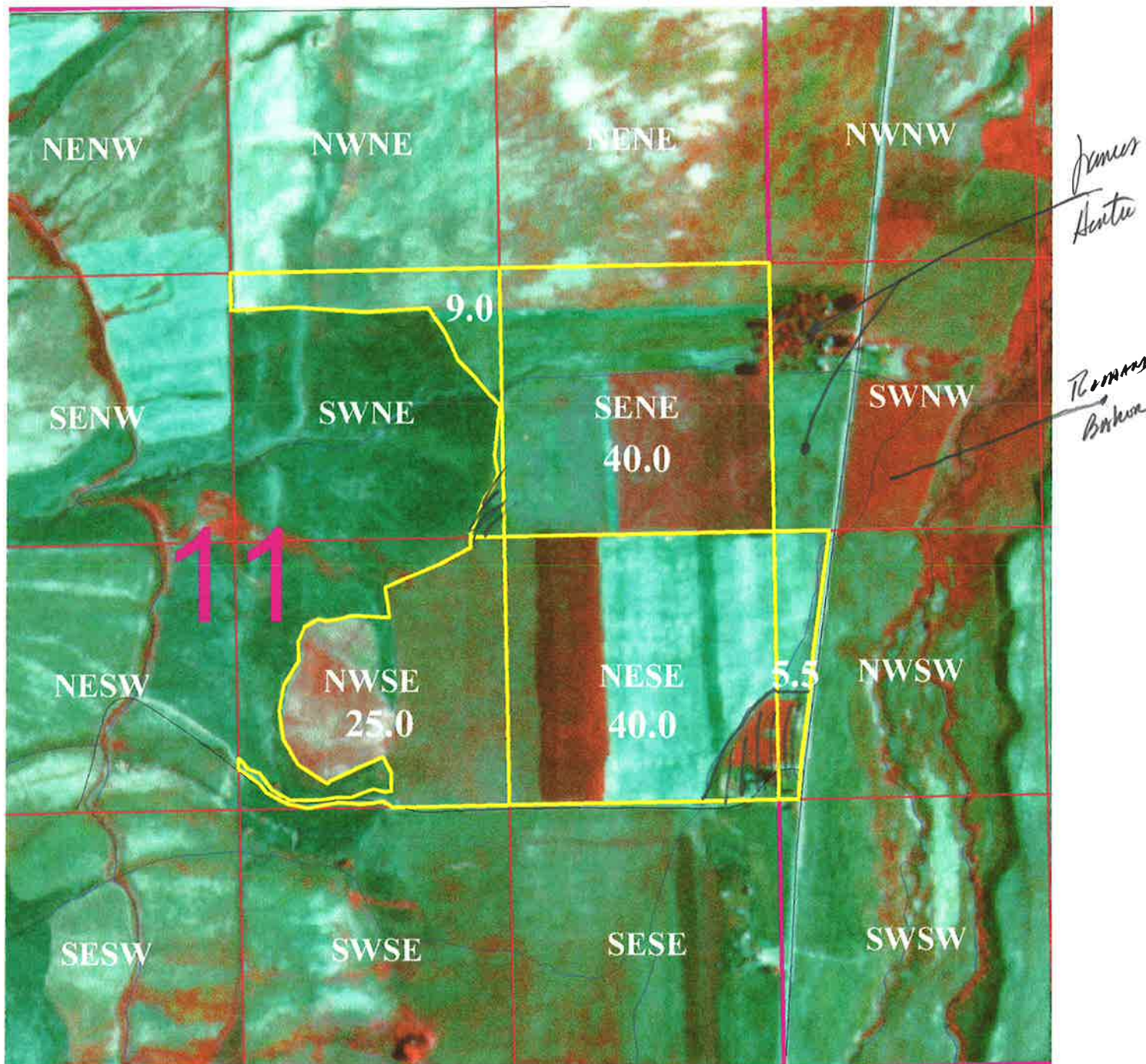
EXPLANATORY MATERIAL: Decreed

RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
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 BIRCH CREEK CANAL (DITCH).

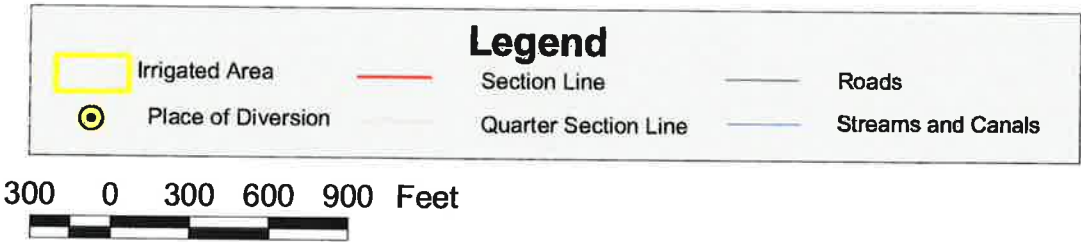
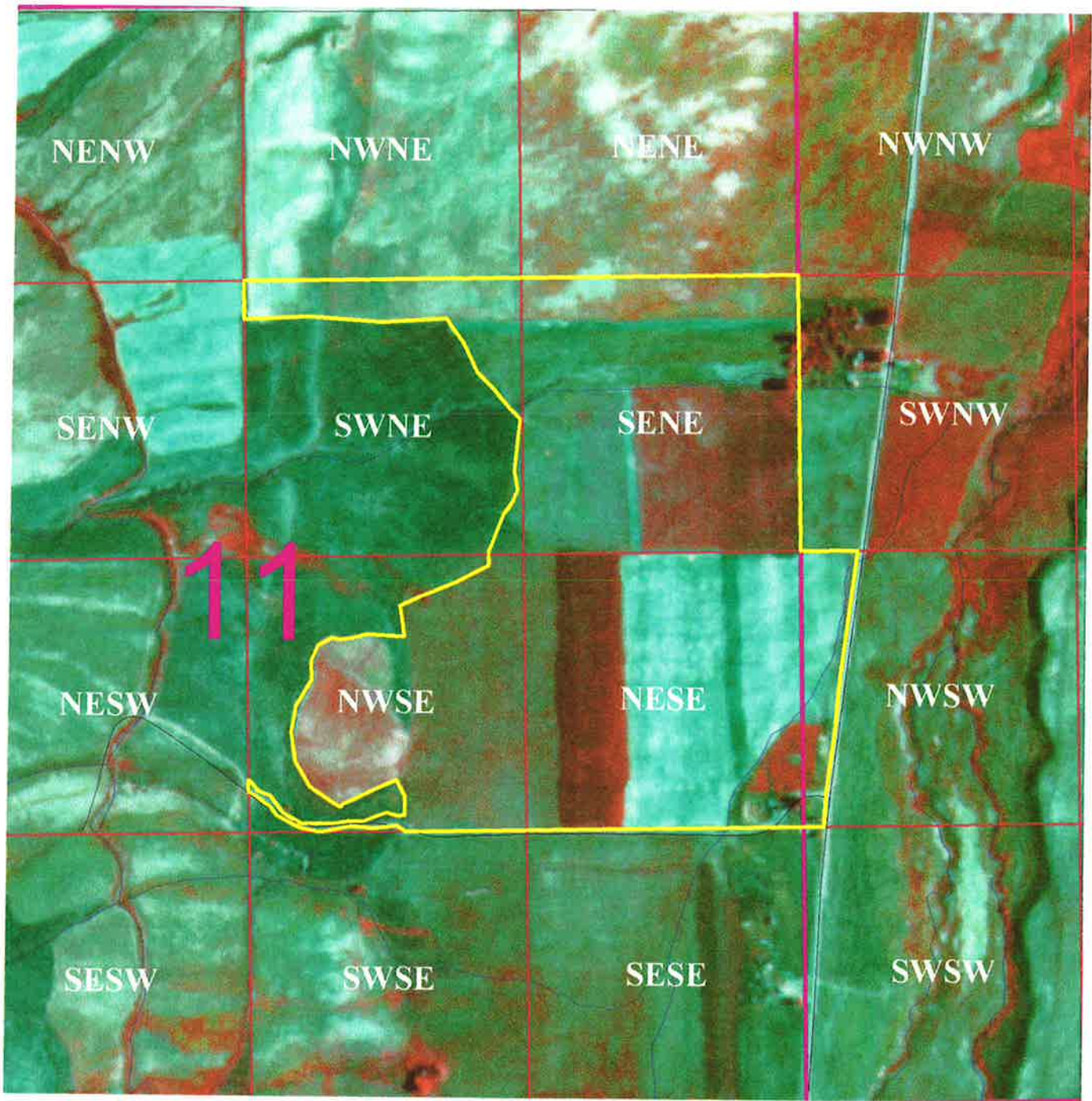
Township , 12S36E



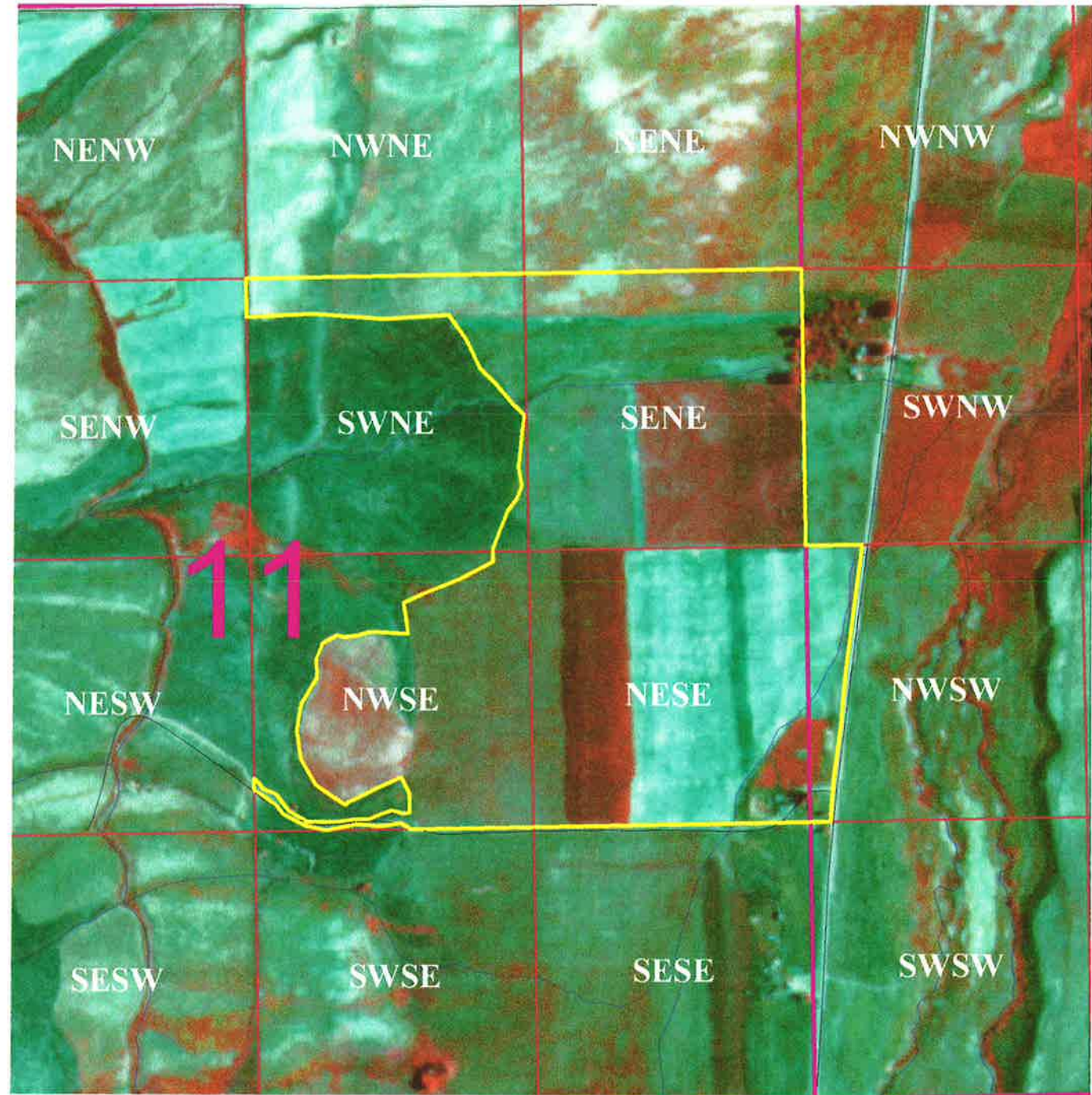
300 0 300 600 900 Feet



Township , 12S36E



Township , 12S36E



 Irrigated Area

 Section Line

 Roads

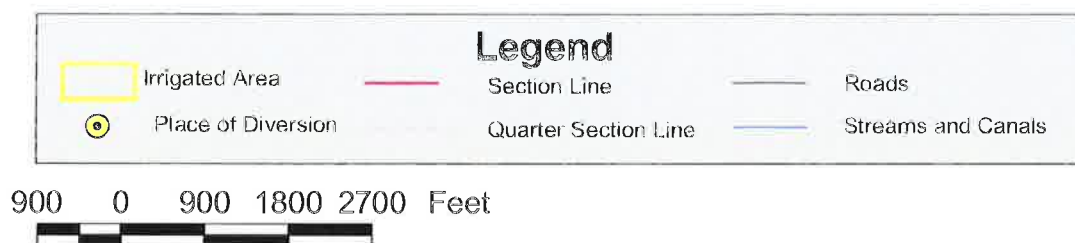
 Place of Diversion

 Quarter Section Line

 Streams and Canals

Legend







State of Idaho

Department of Water Resources

Eastern Region



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Water Right(s):

29-00328B, 29-12020

Place of Use: (parts of): T11S, R36E
Sec. 25 S2, Sec. 35 NE, Sec. 36 N2

Point(s) of Diversion: T12S, R36E
Sec. 11 SWSE (Rowley Creek)
Birch Creek (not shown);
Sec. 23 SWSW (Rediv)
Sec. 27 SENSW (2 PODs/POIs)

Note: Delivery through Birch Creek
Canal (ditch)



LEGEND



Point of Diversion

SESE

Place of Use



Section



Quarter-Quarter

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



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
June 4, 2003

TO: Basin 29 Surface Water User

I am writing this letter to you as a courtesy to inform you that after review of the Department of Water Resource's preliminary recommendation for your water right(s), a quantity remark has been added. The quantity remark will reflect how your water right(s) was historically decreed in a prior decree. The prior decree recognized the quantity for your water right(s) as a fractional amount of the stream flow listed from the source on your water right. You can expect the Department's Director's Report, which is to be filed with the SRBA Court sometime in July, to include a quantity remark as follows:

The amount of water diverted under this water right may not exceed (*decreed percent or fraction*) of the stream flow of (*decreed source*) at the point of diversion described above at any given time. This water right shall not provide more than .02 cubic feet per second per acre at any time.

The information in parentheses and italics will reflect whatever fraction and source is correct for your water right(s).

If you disagree with the inclusion of this quantity remark in your water right, you will be able to file an objection with the SRBA Court. A Notice of Filing Director's Report will be mailed to you along with the Director's Report for your water right(s) sometime in July. This Notice will outline the deadlines and process for filing an objection to your water right(s).

If you have any further questions regarding this matter, you can contact me at 208-327-7900.

Very truly yours,

A handwritten signature in cursive script, reading "Candice M. McHugh", is written over the typed name.

Candice M. McHugh
Deputy Attorney General, IDWR

cc: Allen Ruberry
CMM/pm

FILED

Natural Resources Division - Water Resources Unit
1301 North Orchard St., Boise, Idaho 83706-2237
Telephone: (208) 327-7920; Legal FAX: (208) 327-7866
Adjudication FAX: (208) 327-5400

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Claim No.	Claimant	Fract.	Q by Rec	Acres	Stream	Remarks
<u>Phillips vs Edwards Decree, 1924..... Rowley Creek</u>						
29-11242	Wm Phillips	1/2	1.50	75.0	Rowley Ck	
29-12020	P Fergus	1/4	2.02	100.8	Rowley Ck	
29-13469	K Williams	1/4	2.52	126.0	Rowley Ck	

Claimed in-full

Wakley vs Wakley, 1904..... Station Creek

29-00321	Vaughan, et al	1/5	3.91		Station Ck	
29-00326	F Winward	1/5	1.92	96.0	Station Ck	
29-10461	Lazy VZ Trust	2/5	3.08		Station Ck	
29-11699	P Adams	1/5	5.64	282.2	Station Ck	

Decreed right(s) claimed in-full

29-13476 TJL Properties 0.065 Station Ck Recommended as BU, Priority 6/10/1904

Wakley vs Wakley, 1904..... Dry Hollow (Big Ck) and Maple Ck (Mines Canyon)

29-00317A	Vaughan, et al	4/4 0/0	3.91		Big Ck/Maple Ck	DISALLOWED-ownership not proven
29-00320	Vaughan, et al	1/4	3.91		Big Ck/Maple Ck	
29-10462	Lazy VZ Trust	4/4 1/2	1.23		Big Ck/Maple Ck	Recommended as 1/2 flow **
29-11698	P Adams	1/4	5.64	282.2	Big Ck/Maple Ck	

Claimed in-full

29-11700 P Adams XX 0.36 282.2 Unnamed Strm Beneficial Use
 29-10407 TJL Properties XX 0.07 Big Ck/Maple Ck Recommended as BU, Priority 6/10/1904

Daniels vs Woodland, 1878..... Birch Creek

29-13103 Malad Valley Irr 3/4 6.20 Lg POU Birch Ck
 Marsh Creek side (B29) users got 1/4 of the flow of Birch Creek as shown below.

Wakley vs Wakley, 1904..... Birch Creek

29-00322	Vaughan, et al	4/24	3.91	195.3	Birch Ck	
29-00327	Marler/Gardner	2/24	2.54	128.0	Birch Ck	
29-00328A	K Williams	1/24	2.52	126.0	Birch Ck	
29-00328B	P Fergus	5/24	2.02	100.8	Birch Ck	
29-00328C	F Winward	2/24	1.92	96.0	Birch Ck	
29-00329	F Winward	2/24	0.80	40.0	Birch Ck	
29-11241	Wm Phillips	2/24	1.50	75.0	Birch Ck	
29-11650	TJL Properties	2/24	1.76	88.0	Birch Ck	
29-11697	P Adams	4/24	5.64	282.2	Birch Ck	

Claimed in-full

Notes:

** Re; 29-10462 see Transfer #3032 Claim combines 29-317 and 29-330C (which recombines A & B)
 The Decree of Davis vs Treasure only involves Birch Creek water.

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 SEP 27 2005



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

December 11, 2002

Dear Claimant(s):

I am the Deputy Attorney General for the Idaho Department of Water Resources working on the SRBA in Basin 29. After reviewing your water right claim, it appears that the priority date you claimed for your water right(s) might not be correct and that October 10, 1878, might be the appropriate priority date for your claim(s). In order to recommend this priority date, which is earlier than the priority date you originally claimed, your claim(s) would need to be amended. Therefore, I have enclosed for your review and signature an amended claim form. If you would like to amend your claim(s) to reflect the earlier priority date please initial the change on the amended claim form and have your signature notarized; then, return the signed amended claim in the enclosed self-addressed envelope.

The Department intends to issue its preliminary Director's Report for your water right(s) in January, 2003. If we do not receive the signed, notarized amended claim form from you prior to January 10, 2003, the Department will recommend your water right(s) with the priority date no earlier than the priority date that you have currently claimed.

If you have any questions concerning this matter, you can contact me at (208) 327-5404 or Allen Ruberry, Senior Water Resource Agent with IDWR's Eastern Region Office at (208) 525-7161.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "Candice M. McHugh".

Candice M. McHugh
Deputy Attorney General, IDWR

Enclosures

cc: Allen Ruberry

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SEP 27 2005

WARRANTY DEED

For Value Received WILLIAM T. EVANS, a married man, dealing with his sole and separate property

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

PHILIP J. FERGUS AND JOYCE FERGUS, husband and wife

whose address is: P.O. BOX 143 DOWNEY, ID 83234

Hereinafter called the Grantee, the following described premises situated in BANNOCK County, Idaho, to-wit:

Beginning at a point on the East line of Section 11, Township 12 South, Range 36 E.B.M., BANNOCK COUNTY, IDAHO, 1853.2 feet South of Northeast corner of said Section; thence South on the said East line of Section 11 786.8 feet, more or less, to the quarter section corner between Sections 11 and 12; thence East on latitudinal centerline of Section 12 297.5 feet to the center of the County Road; thence South 7°33' West along the said County Road 1331.6 feet, more or less, to the intersection of its centerline with the South 1/16 line of Section 12, Township 12 South, Range 36 E.B.M.; thence West on South 1/16 Section line of Section 11 and 12 1442.5 feet, more or less, to the East 1/16 Section corner of the South 1/16 Section line of Section 11; thence North on the East 1/16 line of Section 11 2106.8 feet, more or less, to a point 1853.2 feet South of the North line of said Section; thence East on a line parallel with the North line of said Section 11 1320 feet, more or less, to the PLACE OF BEGINNING, the said tract being in the Northeast quarter of the Southeast quarter of Section 11 and a part of the Southeast quarter of the Northeast quarter of Section 11 and a part of the Northwest quarter of the Southwest quarter of Section 12, Township 12 South, Range 36 E.B.M., BANNOCK COUNTY, IDAHO.

Also the following described tract of land, beginning at a point on the East 1/16 Section line of Section 11, Township 12 South, Range 36 E.B.M., 1853.1 feet South of the East 1/16 Section corner of North line of said Section 11; thence South on the said East 1/16 Section line 2106.8 feet, more or less, to the South 1/16 Section corner on said line; thence West on the South 1/16 Section line of said Section 1320 feet, more or less, to the South 1/16 Section corner on the meridional centerline of said Section 11; thence North on said centerline 2106.8 feet, more or less, to a point on said line 1853.2 feet South of the North quarter corner of said Section 11; thence East on a line parallel with the North line of said Section 11 1320 feet, more or less, to the PLACE OF BEGINNING, the same being the Northwest quarter of the Southeast quarter and a part of the Southwest quarter of the Northeast quarter of Section 11, Township 12 South, Range 36 E.B.M., BANNOCK COUNTY, IDAHO.

Also, beginning at a point on the East line of Section 11, Township 12 South, Range 36 E.B.M., 1530 feet South of Northeast corner of said Section; thence South on the East line of said Section 11 323.2 feet; thence West on a line parallel with the North line of said Section 11 2640 feet, more or less, to the longitudinal centerline of said Section 11; thence North on said longitudinal centerline 323.2 feet; thence East on a line parallel with the North line of said Section 11 2640 feet, more or less, to the PLACE OF BEGINNING; the same being a part of the South half of the Northeast quarter of said Section 11, Township 12 South, Range 36 E.B.M., BANNOCK COUNTY, IDAHO.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee and to 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 said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U. S. Patent reservations, restrictions, easements of record, and easements visible upon the premises, and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: APRIL 8, 1998

William T. Evans
WILLIAM T. EVANS

STATE OF IDAHO)
: ss
COUNTY OF BANNOCK)

On This 8TH day of APRIL, in the year 1998, before me, a Notary Public in and for said State, personally appeared WILLIAM T. EVANS, known or identified to me to be the person(s) whose name(s) IS subscribed to the within instrument, and acknowledged to me that HE executed the same.

98006638

NO _____
RECORDED AT REQUEST OF
FIRST AMERICAN TITLE
98 APR 10 AM 9 41

OFFICIAL RECORD BOOK NO 709
BANNOCK COUNTY IDAHO
LARRY W. CHAN RECORDER
DEPUTY

Sheila Thompson
Notary Public of Idaho
Residing at INKOM
Commission Expires: 8-9-99

218
D E C R E E.

IN THE DISTRICT COURT THIRD JUDICIAL DISTRICT OF IDAHO TERRITORY
HELD IN AND FOR THE COUNTY OF ONEIDA.

Thomas Daniels, WM, H. Jones, David Leigh, 1
Daniel Thomas Sen., E. J. Davis, Henry R.
Evans, Richards Jones, Henry Peck, Daniel :
Daniels, James E. Jones and Morgan Morgan, :
Plaintiffs, :

agst.

William Woodland, Henry Wakely, George :
Wakely, John Wakely, Henry Woodland and :
Sam Bamford, :

Defendants.

I N
E Q U I T Y.

.....
The Summons and complaint in this action having been duly served and the answer of the Defendants having been filed thereto and the following agreement and stipulation of the respective parties having been filed in open court on the 10th day of October 1878, to-wit:

It is hereby agreed understood and stipulated by and between the plaintiffs and defendants in this action and each and all of them and by the respective attorneys thereto that the rights privileges and equities of the respective parties to this action shall be as follows, to-wit:

That these plaintiffs are entitled to the use, occupation and control of three quarters of all the waters of a stream situated in Oneida County, Idaho and known as Birch Creek which is the same stream set forth and described in the plaintiffs' Complaint and it is hereby admitted, agreed, understood, and stipulated that the said Plaintiffs are the first appropriators of the said three quarters of all the waters of the said Birch Creek and are entitled to the exclusive use possession and enjoyment of the same said water to be taken out at a point where plaintiffs ditch now intersects the said Birch Creek. It is further admitted that the said amount of water is not more than sufficient to irrigate the lands of plaintiffs and that the same is necessary for the successful irrigation of their farms and that a decree of this Court be entered in accordance with the prayer of the complaint in this action to the extent of said amount of water and in accordance with the terms of this stipulation. 3/4 mvi

It is agreed, understood, and stipulated on the part of the plaintiffs that the defendants are the first appropriators of one fourth of the waters of the said Birch Creek and are entitled to the exclusive use possession and enjoyment of the same and that a decree of this court be made and entered in their behalf for one fourth of the amount of the waters of the said Birch Creek and it is further admitted that said amount is necessary for the successful irrigation of the lands of these defendants. 1/4 rec

It is further agreed that the costs of this action be divided and paid equally between the parties thereto.

And it is further agreed and understood that this stipulation is made to carry into effect the former stipulation on file.

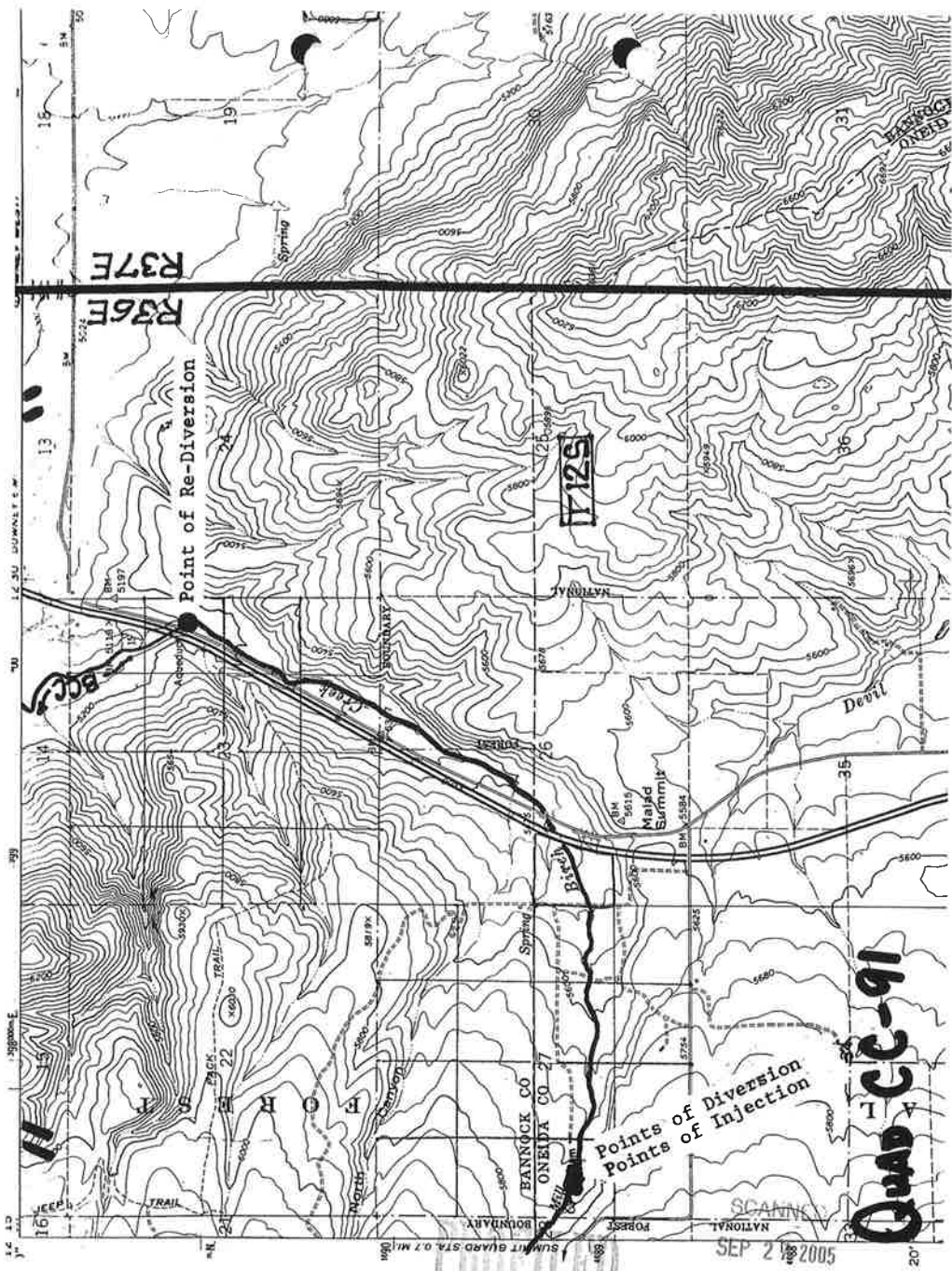
Dated Oct. 10th, 1878.

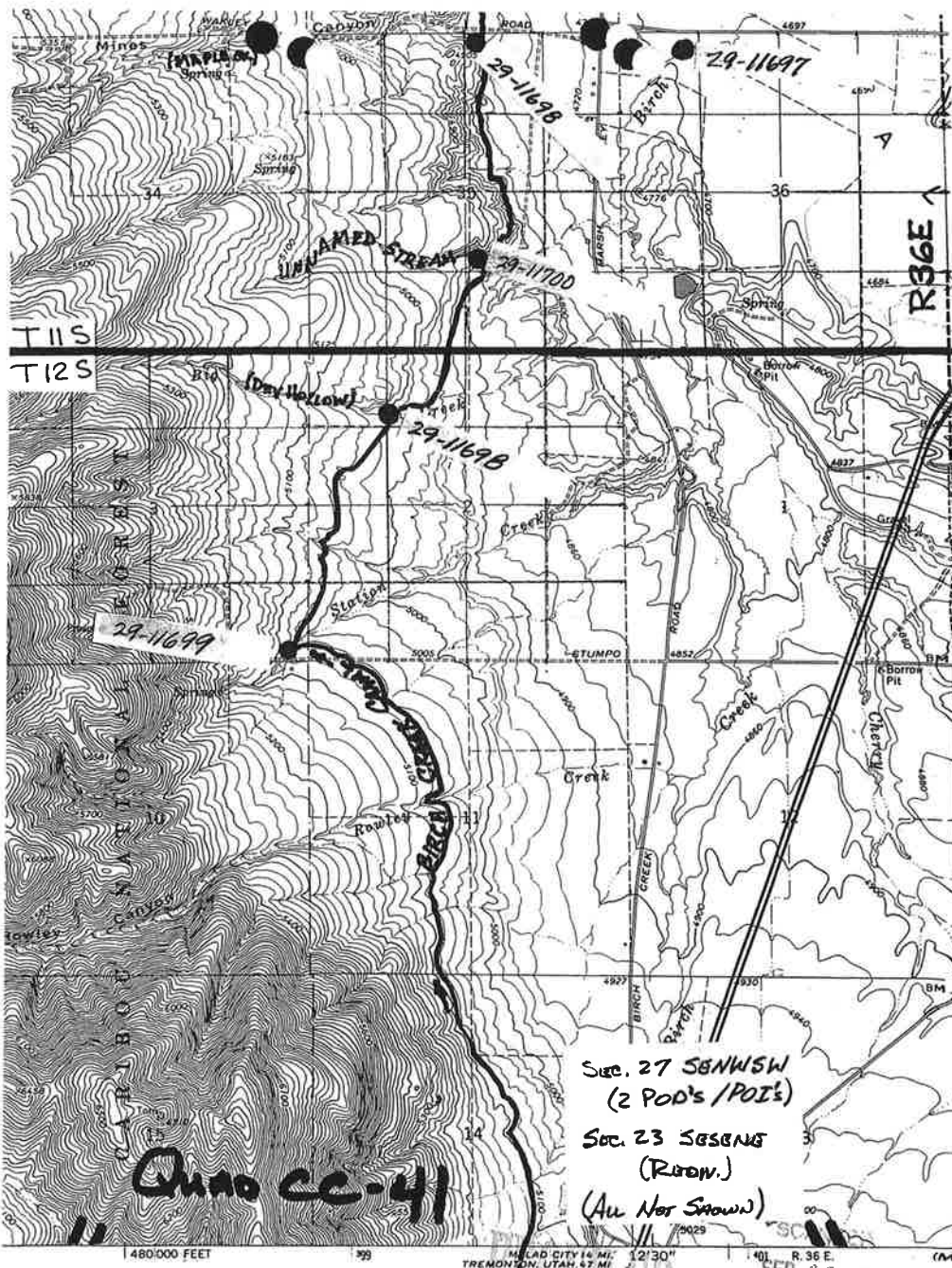
S. P. Highbee,
Willard Crawford, and
B. F. White,
Attys. for plifs.

Norman Buck,
Attys. for dfts.

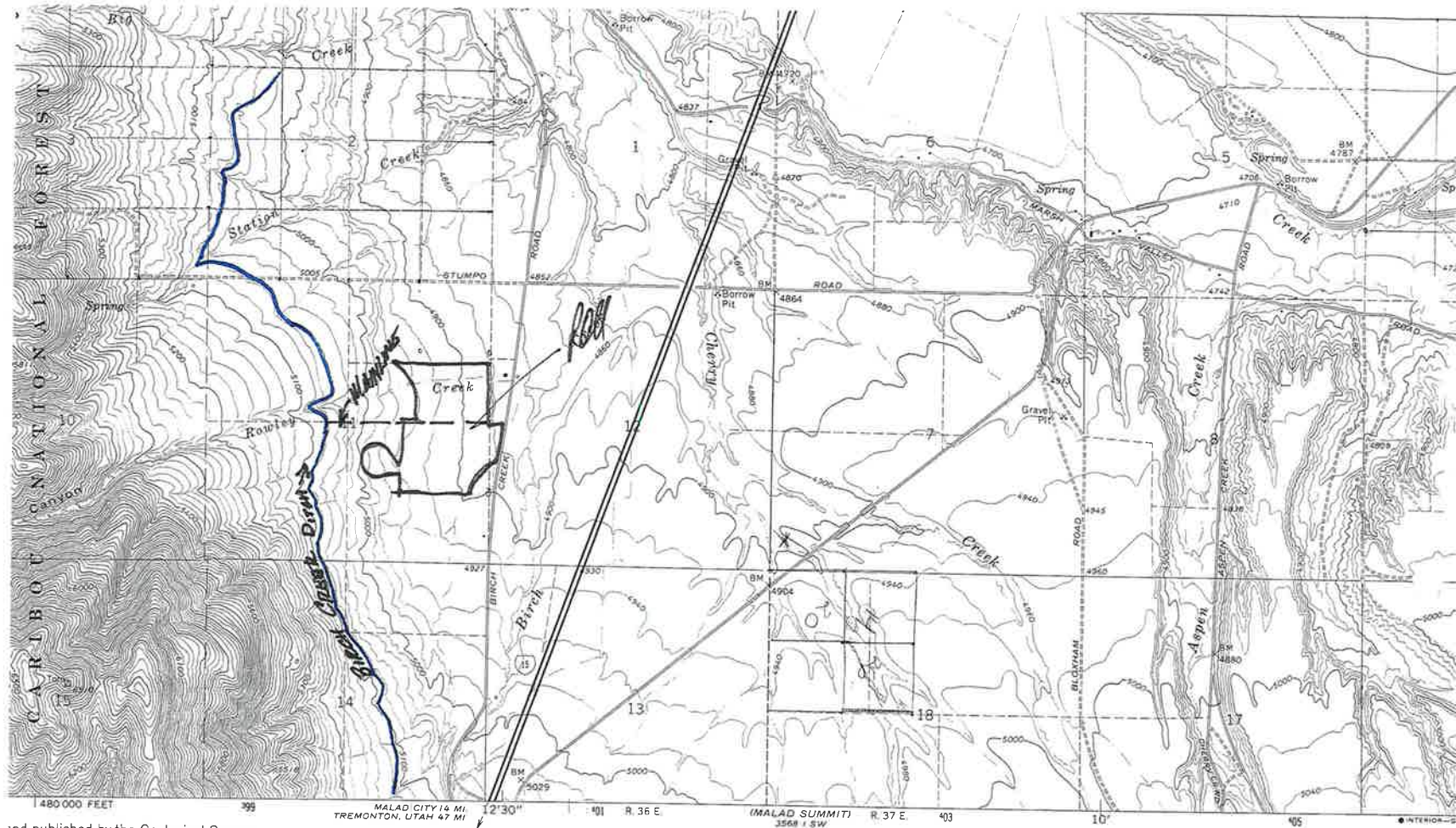
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SEP 27 2005

Daniels
&
Woodland

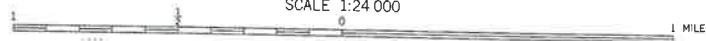




SEP 27 2005



and published by the Geological Survey
 nd NOS/NOAA



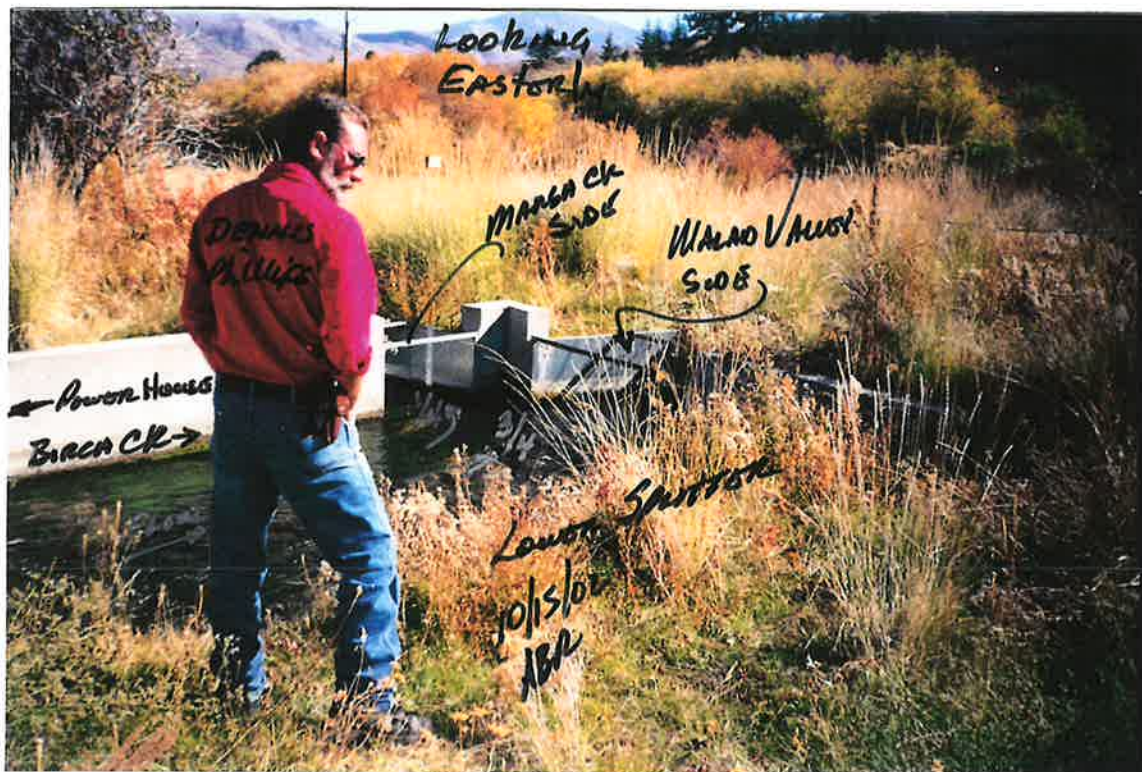
Primary highway, etc.



BIRCH CK RS-DW SEC 23 T72S R36E
LOWER DIVERSION (JUST OFF I75; R. SIDE)
DIVIDES BIRCH CK (ON MARSH CK SIDE). DENNIS
PHILLIPS, WATERMASTER, STANDS AT THE SIDE THAT
GOES ON TO NW, PIPED UNDER I75 TO BIRCH CK
CANAL.

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BIRCH CREEK
 SPLITTER BELOW
 THE POWER HOUSE
 DENNIS PHILLIPS
 BIRCH CK W/M
 SHOWN.
 ALSO SPLIT
 POWER HOUSE
 FLOW AS 1/4 TO
 MARSH CK SIDE
 3/4 FLOW TO
 MALAD VALLEY.



BIRCH CREEK
 SPLITTER ABOVE
 POWER HOUSE.
 SPLITS: 1/4 FLOW
 TO MARSH CK
 SIDE; 3/4 FLOW
 TO MALAD VALLEY

PROFILED

SCANNED
 SEP 27 2005

2005/10/13

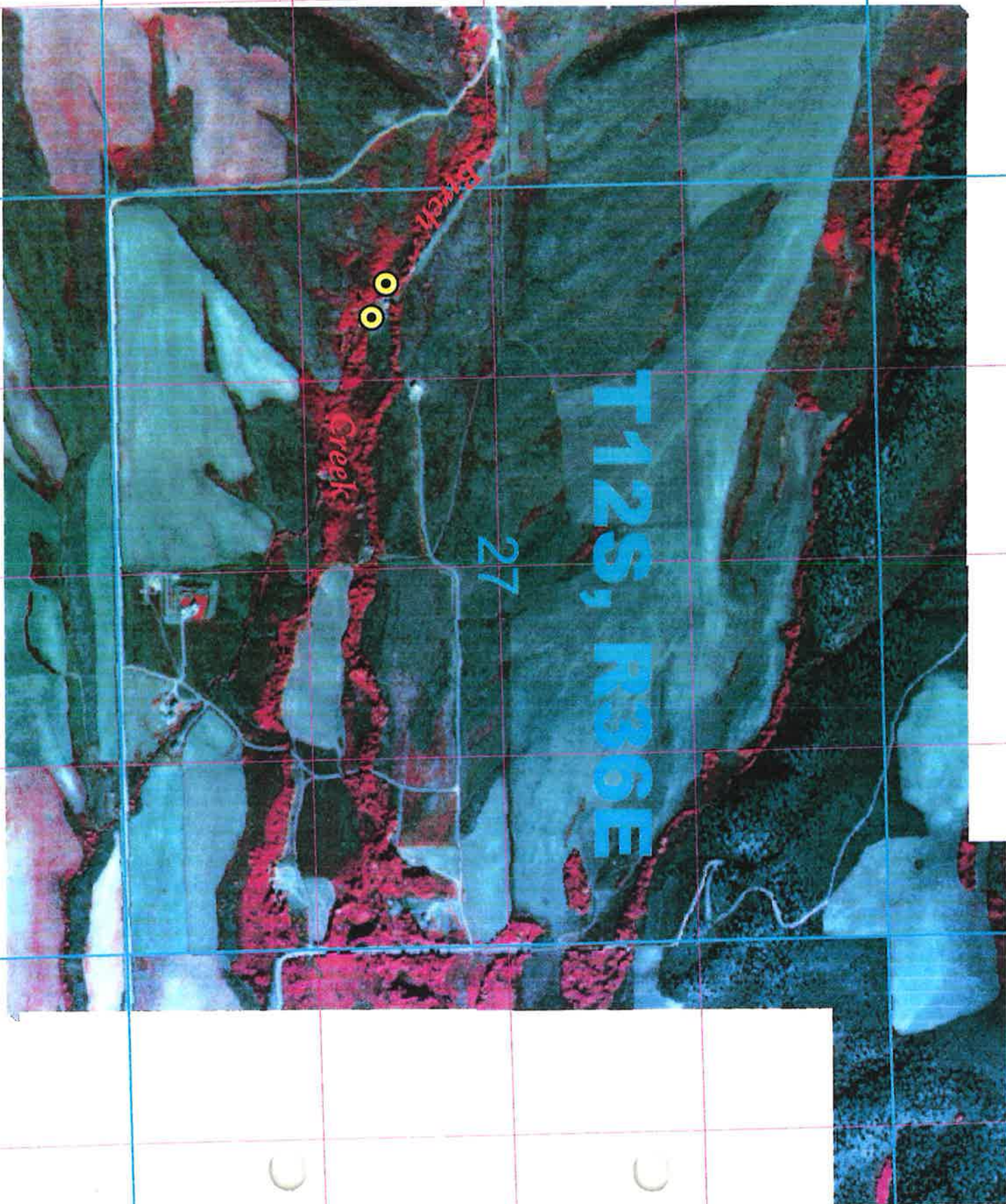
125/368

SBWMSW Soc. 27

SEP 27 2005

SCANNED

PROTECTED



Station Creek Rd

11 12

WILLIAMS, KENNETH MARK FAMILY TRUST

FERGUS, PHILIP J

HUNTER, JAMES & HUNTER, ANNA LEE

BAKER, R RICHARD

WILLIAMS, KENNETH MARK FAMILY TRUST

FERGUS, PHILIP J

PHILLIPS, THE LIVING TRUST

PHILLIPS, THE LIVING TRUST

JENSEN, VESTAL & HELEN S FAMILY TRUST & JENSEN, LEON

11 12

14 13



creek Ditch

Birch Creek Road

Birch Creek

Priority Date Data Entry Form

Claim Number: 29-328B
Water Right Priority Date: 9 June 1904 Water Right Basis: DECREES
Claimed Priority Date: " Claimed Basis: "
Recommended Priority Date: " Recommended Basis: "

☐ 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:

PRIORITY DATE CLAIMED MATCH DECREES (SIGNED) DATE.

A Quiet Claim Deed in File discusses "THE GRANTOR

... GOOD AND SUFFICIENT TITLE TO ... DESCRIBED WATER

RIGHT, HAVING DIVERTED AND USED ... MORE THAN

TWENTY (20) YEARS, IMMEDIATELY PRIOR TO THE DATE

HOTSPOT." Instrument No. 121 DATED: JUNE 14, 1899

* THIS WOULD PUT THE PRIORITY DATE BACK TO 1879

(MORE/Less). THIS DOCUMENT DISCUSSES "250 ACRES OF

THE WATERS OF BIRCH CREEK FOR USE ... E², NE, NESE

SECTION 11, N²SW SECTION 12 T12S R36E CONTAINING

200 ACRES.

* AMENDMENT OF PRIORITY LOOKS TO BE IN ORDER FOR

29-328 PARTS A/B/C per ATTACHED DOCUMENTS.

29-328 WAS DECREASED TO JOHN WARE, GRANTOR OF
ABOVE REFERENCED Quiet Claim Deed, 1899.

* SEE DISCUSSION ON PLACES OF USE.

Reviewer: _____

Date: _____

PROFIT

SCANNED

SEP 27 2005

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 12S, R 36E, Sec. 23,____,____, SE NE. County: BannockSource: Birch Cr Tributary: Marsh Cr

RSDIVERSION

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	QQQ of QQ of Q	County	Source
<u>12S</u>	<u>36E</u>	<u>27</u>		<u>SE NWSW</u>	<u>Bannock</u>	<u>Birch Cr</u>
GPS Coordinates: _____						
		<u>27</u>		<u>SE NWSW</u>		
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						

Div/Eng
Div/Eng

Other rights from this POD? _____

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

NO POD RECORDED BY DECRET

Transfers Changing POD _____

Reviewer: _____

Date: _____

SCANNED

SEP 27 2005

PROFILED

Contacts Data Entry Form

29-328B

D22283D

Owner Type _____ Full Name _____ Address _____ City _____ State _____ Zip _____ Phone _____
Current Owner Wm Evans → Phil Fergus 9/12/03/02
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:

Warloy vs Warloy, 1904Bannock Co. Assessor Ownership Thomas ShowsPhilip FergusMarl Catter in DowneyPO Box 143Downey Rd 83234 No Phone #As current owner. Letter Sent 7/10/02

Phil's Custom Mounts

897-5179

* Check Ownership Plat

11/15/02 Telecon w/ wife - He needs to call - She'll have
it done on Monday No Call!FIS INDICATED: POB POB Q Priority Data

11/15/02 No22603

Reviewer: _____

Date: _____

PROFILED

SCANNED
SEP 27 200527
24
61

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
12S	36E	11	S	NE		70		Farming
			N	SE		65		"
		12	NW	SW		5		"

Total Acres 140[±]

Recommended Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use

Total Acres _____

Document how the POU was verified:

29-328 WAS DECREASED TO POU AS: NE⁴ SEC. 12 T11S R 36E
 DEFINITE CHANGE TO POU - when _____?

Cp5

Transfers Changing POU _____

Reviewer: _____

Date: **SCANNED****SEP 27 2005****PROF**

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
Perig	4/1	11/1	2.8	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Overall Diversion Rate _____ Overall Diversion Volume _____

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
Perig	4/1	10/31	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Overall Diversion Rate _____ Overall Diversion Volume _____

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

ACCORD REFERENCE DEED STATES: "TOGETHER WITH ONE FOURTH
OF ALL THE WATERS OF THE JOHN E. WANE ESTATE, OF BARNOCK,
CO., IDAHO, AND WHICH WATER OF SAID ESTATE OF JOHN WANE,
CONSISTS OF ONE SIXTH (1/6) OF ALL THE WATERS OF WHAT IS KNOWN
AS BIRCH CREEK, AND ALL THE WATERS OF ... ROWLEY CREEK."

* THUSFORE: THIS RIGHT IS FOR 1/4 OF 1/6 OF BIRCH CK. ⇒ 5/12 WATER
 FLOW

Reviewer: _____

Date: **SEP 27 2005**

11/18/02 TELCON w/ MR. FERGUS. RUNS ABOUT 61 NOZZLES, @ 1/64", (FROM MAP - PRESSURE
 CALS AS 5080' - 4920' = 160' ÷ 2.31 = 69psi ⇒ @ 69psi w/ 1/64 NOZZLES (- 9psi LINE LOSS) 60psi
 EACH NOZZLE RUNS @ 6.80gpm X 61 NOZZLES = 414.8 gpm / 448 gpm/cts = 0.92 cts ÷ .02 = 46 ac

SPLIT HISTORY

29-328 DECREE

WAKLEY vs WAKLEY

DECREE # 29G1

9 JUNE 1904

29-328

PRIORITY DATE - Not Spec.

1/6 FLOW OF BIRCH CK.

POD: NOT SPEC.

POU: NE SEC 12

T11S R36E

KEN WILLIAMS

29-328A

DEED 4/67

9 JUNE 1904 BIRCH CK & ROWLEY CK

2.66 cts

POD: T12S R36E SEC. 10 NESE

SEC. 23 SENE

POU: T12S R36E SEC. 12 NW⁴ (133⁰ AC)

~~Wm EVANS~~ ⇒ Philip FERGUS

29-328B c/o letter sent 7/10/02, Rec'd 12/03/02

9 JUNE 1904 BIRCH CK

2.80 cts

POD: T12S R36E SEC. 23 SENE

POU: T12S R36E SEC. 11 S²NE, N³E

(140⁰ AC)

FRANK WINWARD

29-328C

c/o 10/00

9 JUNE 1904 BIRCH CK

2.5 cts

POD: T12S R36E SEC. 23 SWNE

POU: T12S R36E SEC. 1 SWSW

SEC. 2 SENE, E²SE

(125⁰ AC)

SEP 27 2005

SCANNED

PROFILED

AR/12-3-02
DE LOG

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

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

RECEIVED
NOV 27 2002
Department of Water Resources
Eastern Region

1. ~~Water Right Number(s)~~ 29-12020
Adjudication Claim Number(s) 29-00328 B
2. The following **REQUIRED** information must be submitted with this form.
- A. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE**, or other legal document indicating your ownership of the property and water rights or claims in question, **WITH ATTACHED LEGAL DESCRIPTION**.
AND
B. **PLAT OF PROPERTY** or **SURVEY MAP** for parcel of ten acres or less. (These are usually on file with the county.)
OR
C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) **AERIAL PHOTO** with irrigated acres outlined and point(s) of diversion clearly marked.

3. Name and Address of Former Owner/Claimant(s) William T. Evans

4. New Owner/Claimant(s) Philip J. Fergus
Name connector (Check one): ☐ AND, ☐ OR, ☐ AND/OR
New Mailing Address PO Box 143

City, State and ZIP Code Downey ID 83234
New Telephone Number (208) 254-3290

5. Date you acquired the property _____
6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.

Number of acres actually irrigated _____ Number and type of stock _____

Diversion rate in CFS _____ Number of homes _____ Other uses _____
cubic feet per second

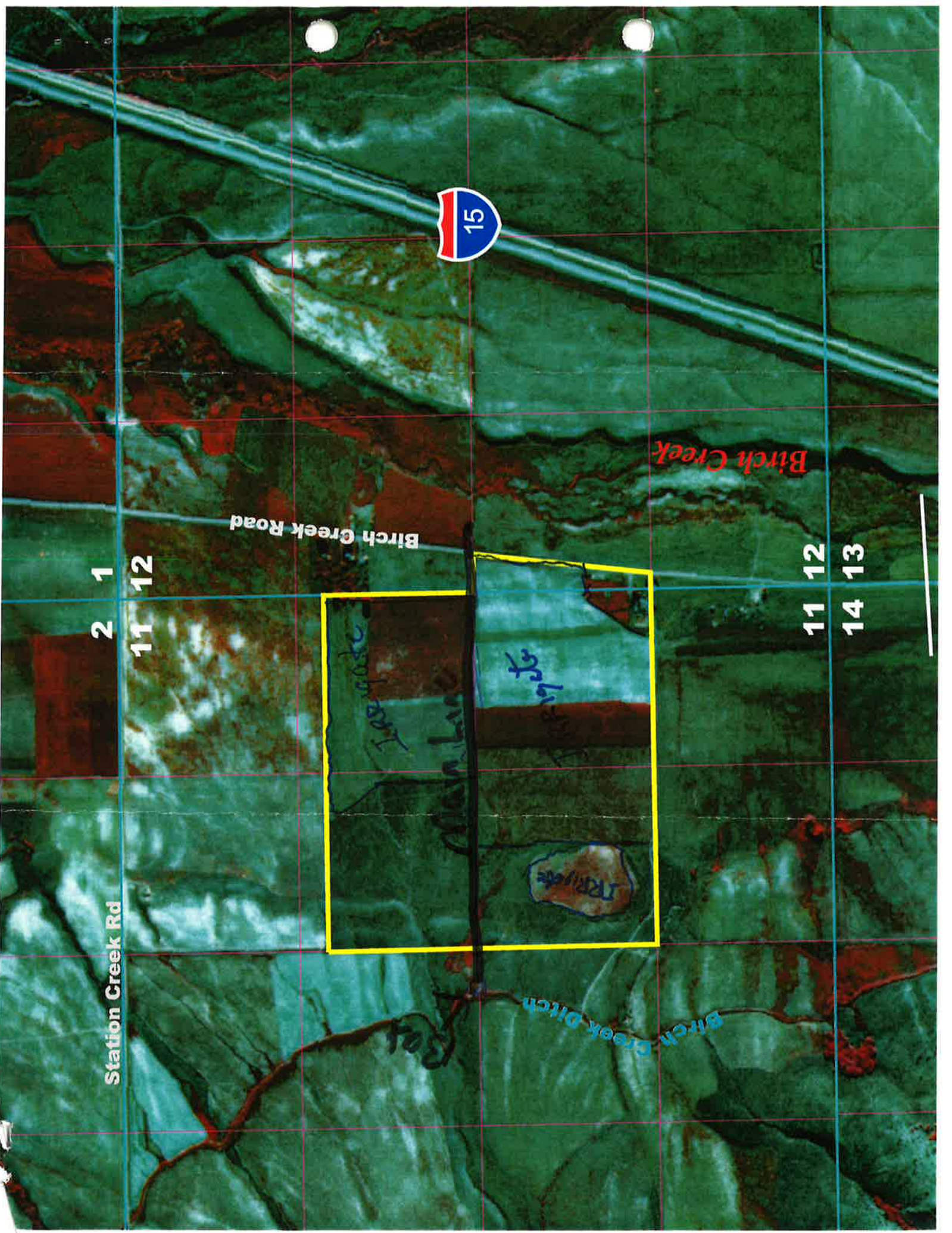
If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.

7. Signature of New Owner/Claimant(s) Philip Fergus Date 11-20-02

SCANNED

Date _____

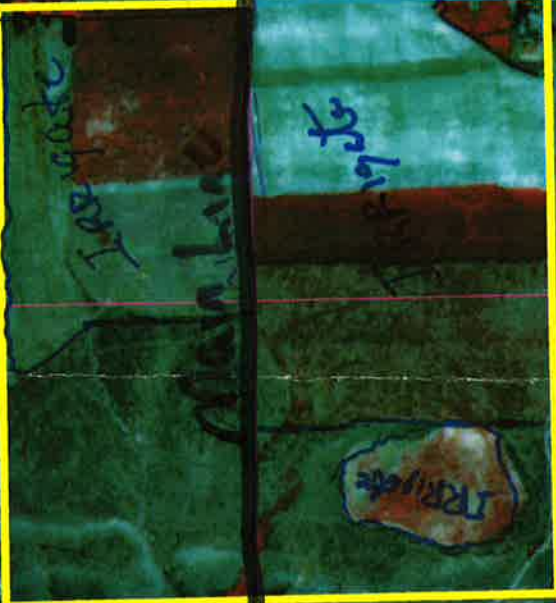
- (Corporations or other organizations must submit a list of directors/officers demonstrating authority to sign form.)
8. For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.



Birch Creek Road

Birch Creek

Station Creek Rd



11 12

14 13

Birch Creek Ditch



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

July 10, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

PHILLIP FERGUS
PO BOX 143
DOWNEY ID 83234

RE: CHANGE IN OWNERSHIP FOR A29-328B & 29-12020

Dear Mr. Fergus:

It has come to our attention that you may have recently purchased a tract of land in Bannock County. The property to which I am referring was most recently owned by William Evans. The legal description is as follows:

T12S, R36E, SEC 23 SE/NW & T12S, R36E, SEC 10 NE/SE

This property was filed on in the Snake River Basin Adjudication (SRBA), and we recommend that if, in fact, you now own the property in question, you file a "Change in Ownership" with this department in order that we may send all further correspondence to the appropriate owner(s).

Enclosed is a Change in Ownership form. Please fill out the form completely, sign and date it and return it to my attention along with a "copy" of your Warranty Deed and legal description of the property you have purchased.

If you questions regarding this matter, please call 525-7161. Please call Allen concerning this matter. He needs to discuss it with you.

Respectfully submitted,

Jennifer Crabtree
Technical Records Specialist

Enclosure(s)

SCANNED

SEP 27 2005

PROFILED

MAY 24 2001

Log for claim A29-00328B

Spatial Dynamics TWB

5/10/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
12s36e	11	SWNE	30	9	Indiscernible
12s36e	11	SENE	40	40	
12s36e	11	NESE	35	40	
12s36e	11	NWSE	30	25	
12s36e	12	NWSW	5	5.5	
Totals:			140	119.5	

AJ5809NP
No. A29-00328B

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 04/24/00
PAGE: 13

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	WILLIAM T EVANS 25976 S HWY 91 DOWNEY ID 83234 (208) 897-5734	06/09/1904	IRRIGATION	04-01 11-01	2.800 CFS	
TOTAL DIVERSION: CONSUMPTIVE USE:					2.800 CFS	350.00 AFA

Water Source: BIRCH CREEK

Tributary to: MARSH CREEK

Stage: DECREED

Point(s) of Diversion: T12S R36E S23 SENE

BANNOCK County

Place of use Legal Description for: IRRIGATION

		NE				NW				SW				SE				
T	R S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
12S	36E 11	:														35	30	135.0
12S	36E 12	:																5.0
TOTAL ACRES																	140.0	

POU County: BANNOCK

Non-Irrigation Uses: NONE

Other Rights: A29-12020

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A29-00328A A29-11697

Other Water Rights Listing Overlapping Place(s) of Use:
A29-00328 A29-12020

Remarks: GEN THE DECREE GAVE A PERCENTAGE OF CREEK. IT DID NOT SPECIFY A FLOW
RATE. THE RATE IS BASED ON AN INCH TO THE ACRE. MR EVANS DEEDS
INDICATE HE IS TO GET 5/24 OF THE WATERS OF BIRCH CREEK.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag: C

Audit: 05/08/90 DUNN 05/24/94 COX 03/29/95 POST-STD

QUIT CLAIM DEED.

Grantor:-

John Ware.

Grantee:-

Lucy Ware.

Dated:-

June 14, 1899.

Consideration:-

\$500.00

Recorded:-

June 21, 1899 at 9:25 A.M.
in Book 11 of Deeds at page
430. Records of Bannock
County, Idaho.

Acknowledged:-

June 14, 1899 by John Ware
and Lucy Ware before A.L.Ri-
chardson, Clerk U.S. District
Court, Bannock County, Idaho.
Sealed.

Witnesses:-

H.L. Jefferiss
Theo. Turner.

Description of Property. Two Hundred and Fifty inches (250) of the waters of Birch Creek, for use upon her Desert Entry #2050, embracing the East Half, Northeast Fourth, the Northeast fourth Southeast Fourth of Section 11, and the North half of the Southwest Fourth of Section 12, township 12, South Range 36, East of the Boise Meridian, containing 200 acres.

The Grantor herein covenants; that he is well siezed of a good and sufficient title to the hereinbefore described water right, having diverted and used the same for more than twenty (20) years, immediately prior to the date hereof.

(\$1.00 I.R. Stamps affixed and cancelled J.W.6/14/99.)

06-27-07
MICROFILMED

NOV 13 1992

RECEIVED

JAN 17 2003

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 29-328B
Date Received: 5/7/1990
Receipt No: E014219
Received By:

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

PHILIP J FERGUS
PO BOX 143
DOWNEY ID USA 83234

Phone:

2. Date of Priority: 06/09/1904/

10/10/1878

3. Source: BIRCH CREEK Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
12S	36E	23	SE NE	BANNOCK	

5. Description of diverting works:

CONCRETE HEADGATE AND DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A.
IRRIGATION	4/01	11/01	2.8	

7. Total Quantity Appropriated is:
2.8 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
12S	36E	11	SW NE	IRRIGATION	30
			SE NE	IRRIGATION	40
			NE SE	IRRIGATION	35
			NW SE	IRRIGATION	30

SCANNED

SEP 27 2005

FILED

12S	36E	12	NW	SW	Section Acres	135
					IRRIGATION	5
					Section Acres	5
					Total Acres	140

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:

14. Remarks:

C/O 12/03/02.

THE DECREE GAVE A PERCENTAGE OF CREEK. IT DID NOT SPECIFY A FLOW RATE. THE RATE IS BASED ON AN INCH TO THE ACRE. MR EVANS DEEDS INDICATE HE IS TO GET 5/24 OF THE WATERS OF BIRCH CREEK.

15. Basis of Claim: Decreed

16. Signature(s)

PROFILED

SCANNED
SEP 27 2005

(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): Philip Feyen Date: 1-10-03
_____ Date: _____

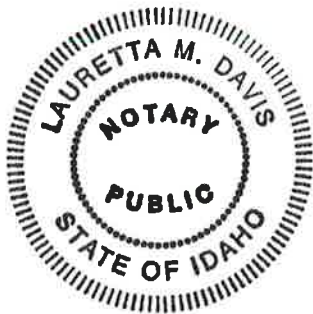
State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 10th
of January 2003. Lauretta M. Davis

Notary Public

Residing at Downey, Idaho

My commission Expires 12-22-05



PROFILED

SCANNED
SEP 27 2005

MAY 24 2001

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

25319

Ident. Number: A29-00328B
Date Received: 5/07/1990
Receipt No: E014219
Received By: BMD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: WILLIAM T. EVANS 208-897-5734
Address: 25976 SOUTH HIGHWAY 91
DOWNEY, ID 83234

2. Date of Priority: JUN 09, 1904

3. Source: BIRCH CREEK Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
12S	36E	23		SE	NE		BANNOCK

5. Description of diverting works:
CONCRETE HEADGATE AND DITCH

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.800		

7. Total Quantity Appropriated is:
2.800 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 350.0 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
12S	36E	11	SW	NE		IRR	30.0
			SE	NE		IRR	40.0
			NE	SE		IRR	35.0
			NW	SE		IRR	30.0

A29-00328B

Page 1

Date: 05/07/90

MICROFILMED

SCANNED

NOV 13 1992

SEP 27 2005

A2900328B



10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	135.0
		12	NW	SW	IRR	5.0
					Section Acres	5.0
					Total Acres	140.0

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:
A29-12020

14. Remarks:

THE DECREE GAVE A PERCENTAGE OF CREEK. IT DID NOT SPECIFY A FLOW RATE. THE RATE IS BASED ON AN INCH TO THE ACRE. MR EVANS DEEDS INDICATE HE IS TO GET ~~5/12~~ OF THE WATERS OF BIRCH CREEK.

15. Basis of Claim: DECREEED

5/24 - 7 May 1990 DMS 5/12 is correct

Case Number:

Court :

Decree date:

*1/4 or 1/6
6/24 4/24 = 10/24 5/12*

GEORGE WAKLEY

Decree Plaintiff

vs

HENERY WAKLEY ET. AL.

Decree Defendant

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): William D Evans Date: 5/7/90

Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 7th day
of May 19 90

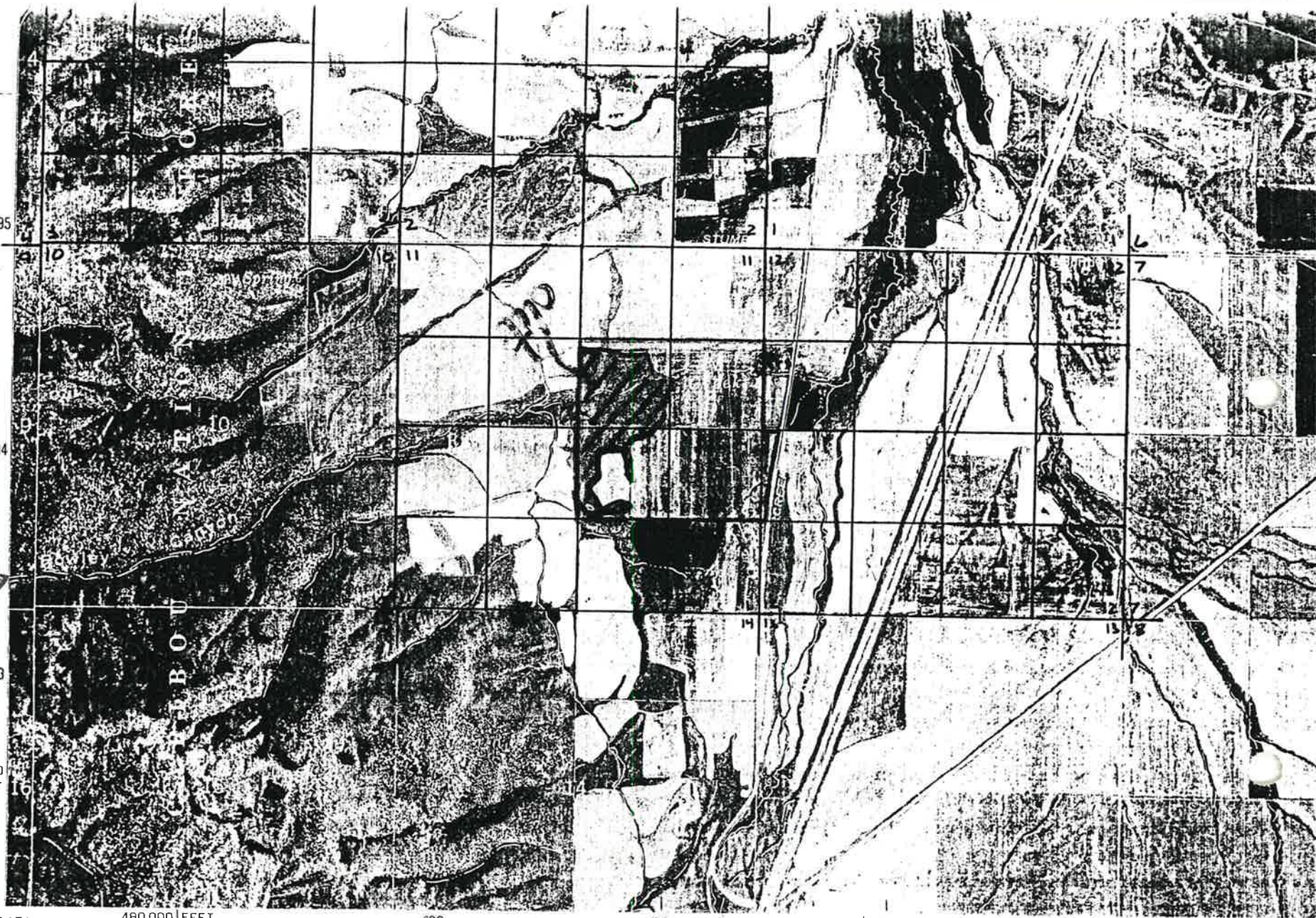
Seal

Betty J Thompson
Notary Public

Residing at BETTY J. THOMPSON, NOTARY PUBLIC
RESIDING AT IDAHO FALLS, IDAHO
My Commission Expires COMMISSION EXPIRES: 6-30-94

36F
125

Rowley Canyon



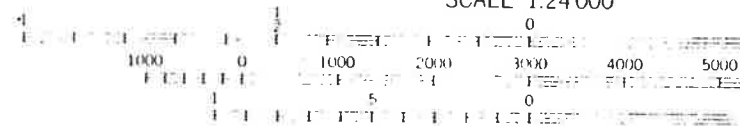
42° 22' 30"
112° 15'

Produced by the Geological Survey
in cooperation with the Forest Service

Orthophotograph prepared from 1:78 000-scale
aerial photographs taken August 7, 1976

Projection and 10,000-foot grid ticks: Idaho coordinate
system, east zone and transverse Mercator
1000-meter Universal Transverse Mercator grid ticks,
zone 12. 1927 North American datum

NOV 13 1992
MICROFILMED



SCALE 1:24 000