

IDAHO DEPARTMENT OF WATER RESOURCES 10/23/2001
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

NAME AND ADDRESS: DAVID J HART
PO BOX 5321
CHUBBUCK ID 83202

LAUREL H TAYLOR
PO BOX 5321
CHUBBUCK ID 83202

HARRY R HARTWIGSEN
PO BOX 5321
CHUBBUCK ID 83202

JAMES W HART
PO BOX 5321
CHUBBUCK ID 83202

ROBERT E HART
PO BOX 5321
CHUBBUCK ID 83202

SOURCE: LITTLE POCATELLO CREEK TRIBUTARY: SINKS
QUANTITY: 2.00 CFS
PRIORITY DATE: 04/27/1906
POINT OF DIVERSION:

T06S R35E S5 SWSWSW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	01/01 12/31	0.050 CFS
IRRIGATION	04/01 10/31	2.000 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T06S R35E S06	NESW	8.2	T06S R35E S06	SESW	39.0
T06S R35E S06	NWSE	5.8	T06S R35E S06	SWSE	39.0
T06S R35E S06	SESE	8.0			

STOCKWATER same as IRRIGATION

100 ACRES TOTAL

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

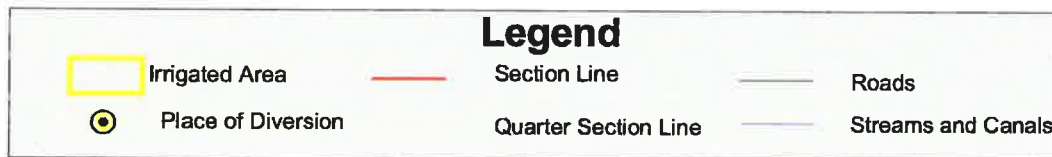
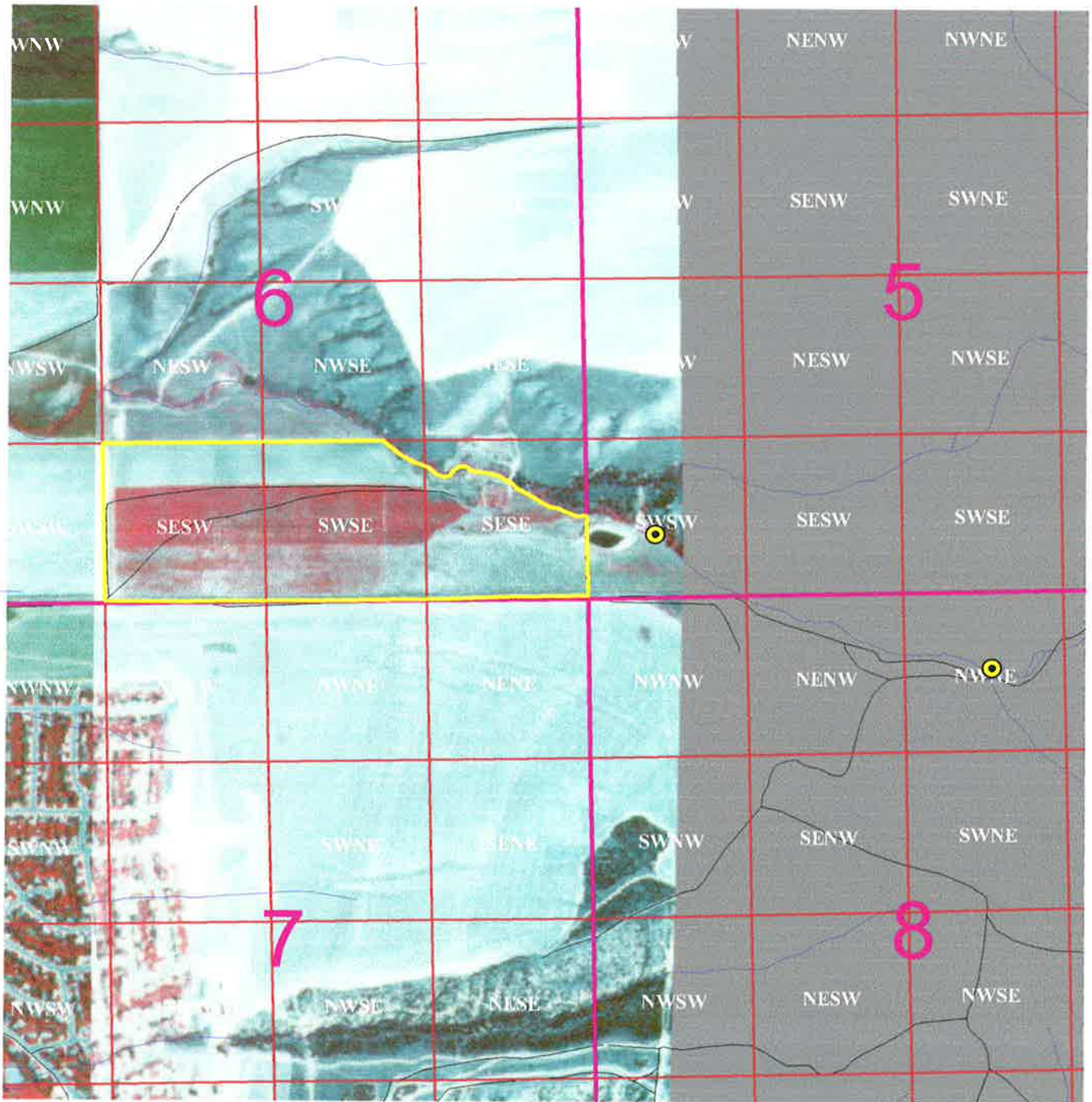
150 HEAD OF STOCK
THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),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

EXPLANATORY MATERIAL: License

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

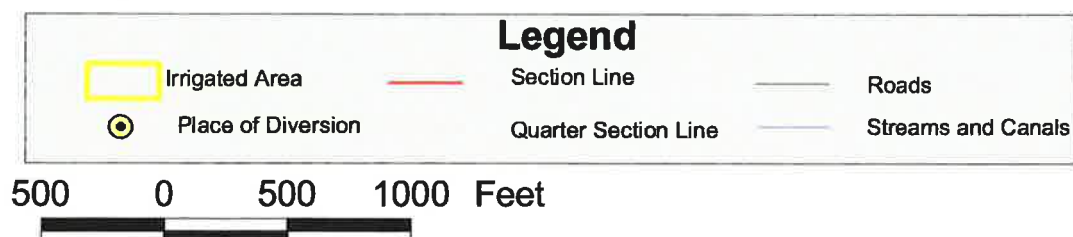
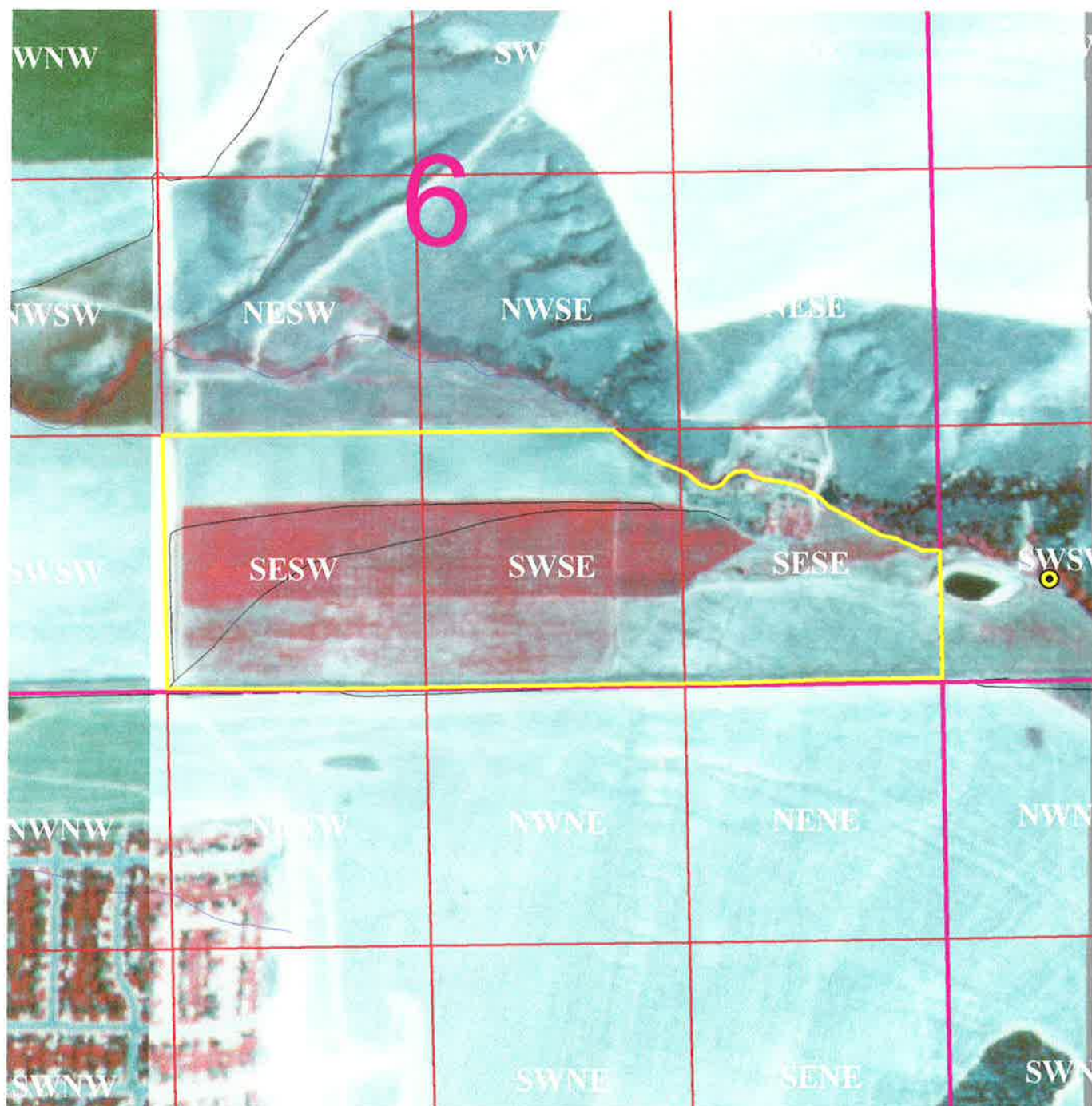
Water Right Claim Number A29-02041
Township , 6S35E

09/18/2000



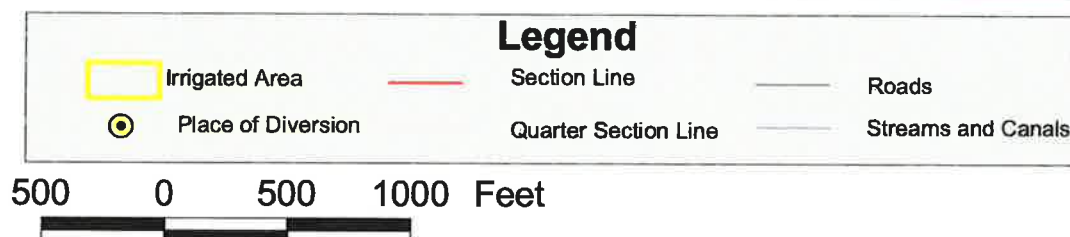
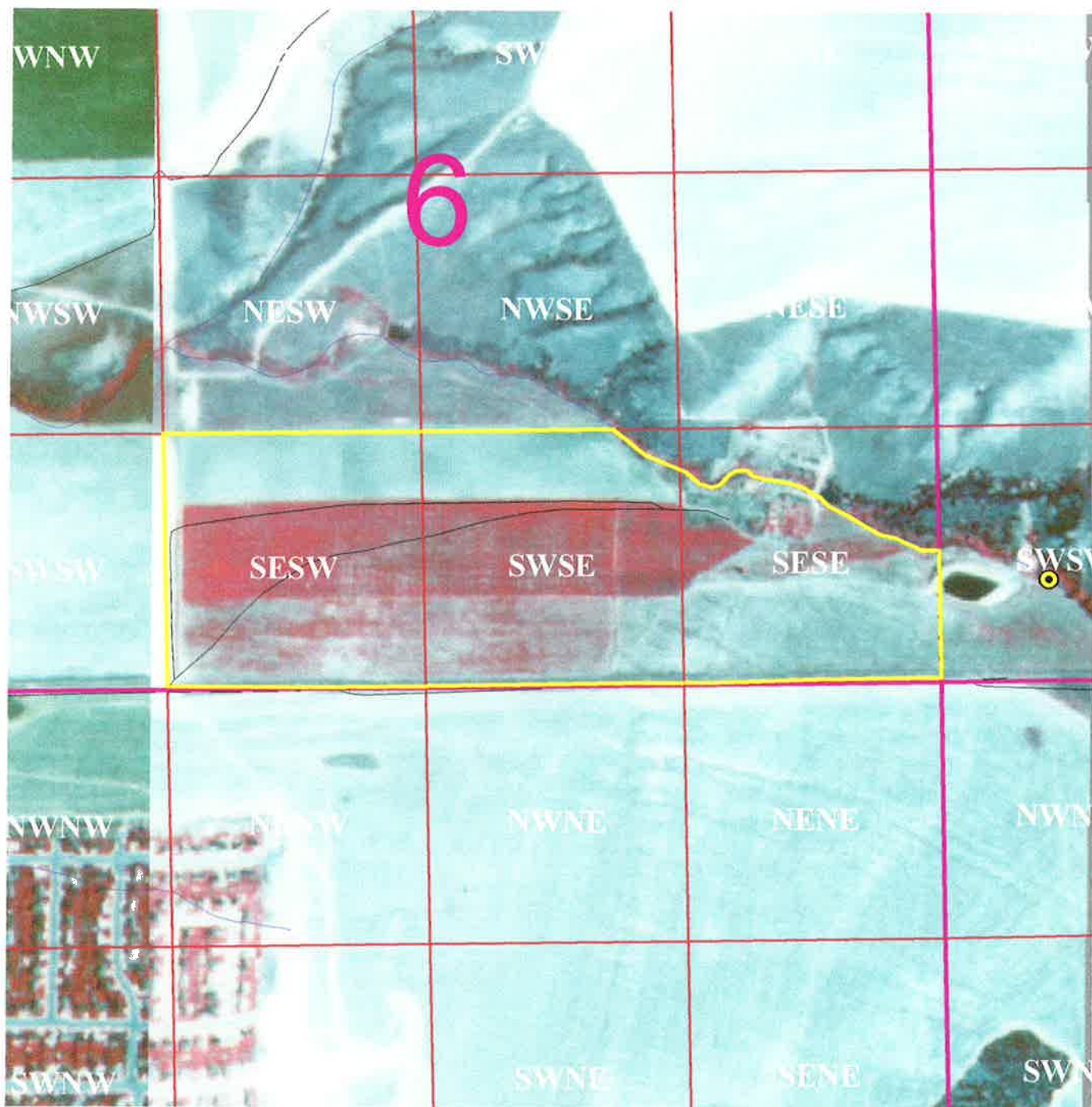
09/18/2000

Township , 6S35E



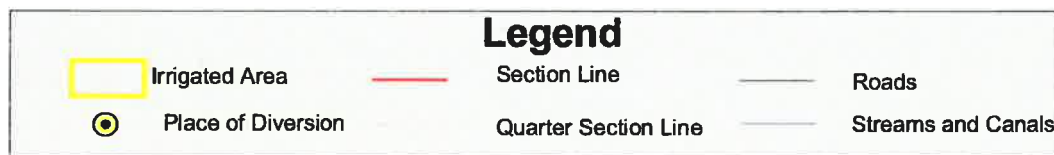
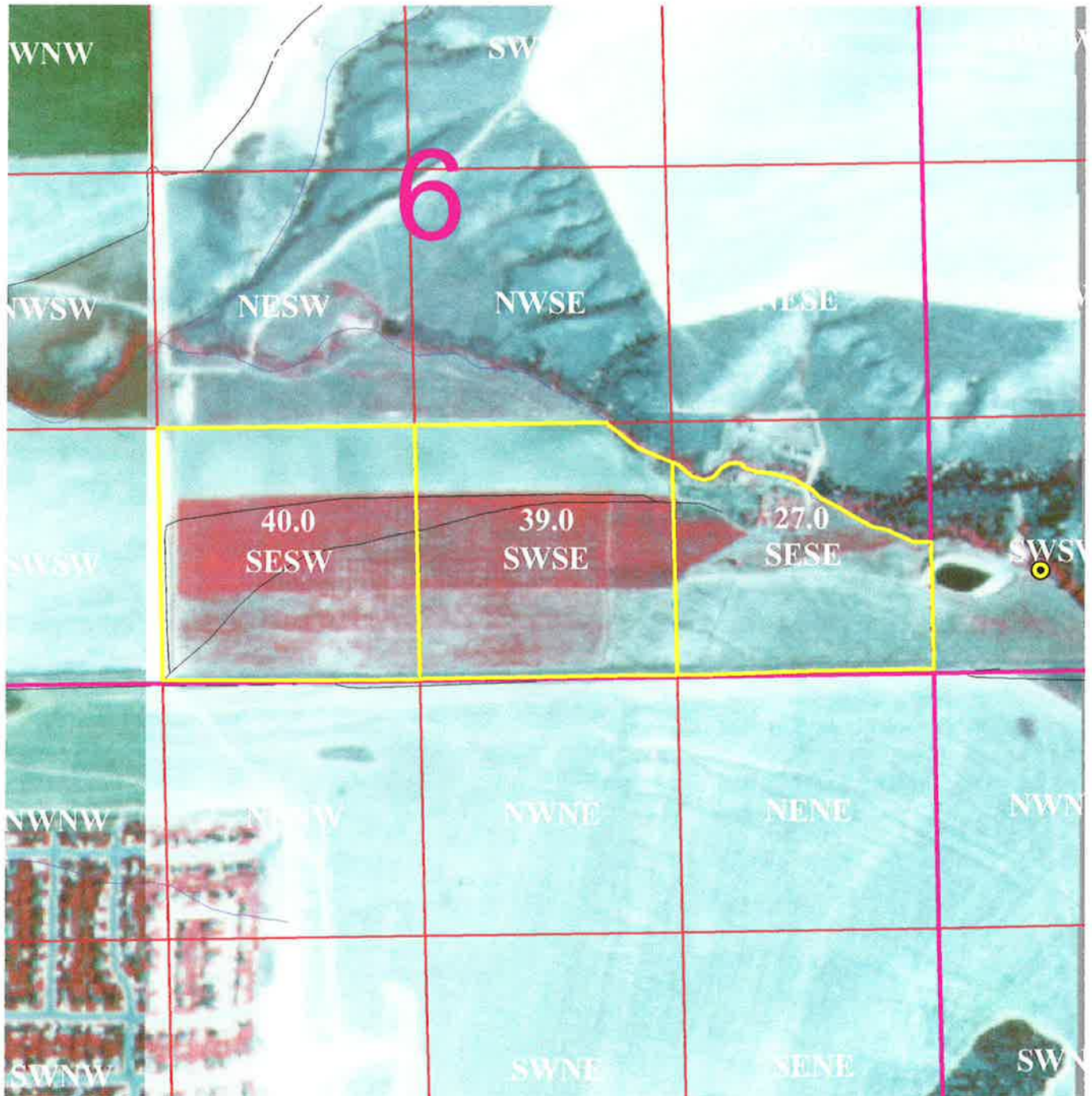
Water Right Claim Number A29-02041
Township , 6S35E

09/18/2000



Water Right Claim Number A29-02041
Township , 6S35E

09/18/2000



IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-2041 V1

WATER RIGHT NUMBER: 29-2041 V1

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	MARY E BROWN
	POCATELLO, ID 83201
Current Owner	DAVID J HART
	PO BOX 5321
	CHUBBUCK, ID 83202
Original Owner	SAMUEL M SHAFFER
	, ZZ
Current Owner	LAUREL H TAYLOR
	PO BOX 5321
	CHUBBUCK, ID 83202
	(208)237-2050
Current Owner	HARRY R HARTWIGSEN
	PO BOX 5321
	CHUBBUCK, ID 83202
	(208)237-2050
Current Owner	JAMES W HART
	PO BOX 5321
	CHUBBUCK, ID 83202
Current Owner	ROBERT E HART
	PO BOX 5321
	CHUBBUCK, ID 83202

Priority Date: 04/27/1906

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
LITTLE POCATELLO CREEK	SINKS

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	01/01 to 12/31	0.050 CFS	
IRRIGATION	04/01 to 10/31	2.000 CFS	
	<u>Total Diversion:</u>	2.000 CFS	

Location of Point(s) of Diversion

LITTLE POCATELLO CREEK	SW1/4SW1/4SW1/4	Sec. 5,	Twp 06S,	Rge 35E, B.M.
BANNOCK County				

Place of UseIRRIGATION Within BANNOCK County

T06S R35E S06	NESW	8.2	T06S R35E S06	SESW	39.0
T06S R35E S06	NWSE	5.8	T06S R35E S06	SWSE	39.0
T06S R35E S06	SESE	8.0			
Total Acres: 100					

STOCKWATER same as IRRIGATION

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 29-2041 V1

Conditions of Approval:

1. C05 RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. C03 RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION PURSUANT TO SECTION 42-1425, IDAHO CODE.
3. 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:

1. General 150 HEAD OF STOCK

Comments:

1. csaxton 7/30/2001 Keith Field Exam
Comment: Field Exam done by Keith Wilson on April 25, 2000 by request from Harry Hartwigsen. A portion of the data that Keith collected was used for my recommendation.
2. csaxton 7/30/2001 Storage Ponds
Comment: Keith Wilsons field exam indicated that dam capacity is not large enough to require a storage componant to the right based on the silted in ponds. If the silt is removed, a storage componet might be necessary.
3. csaxton 9/28/2001 Storage Componant
Comment: The storage component of this system is being filed for under a permit, based on that the capacity of the storage ponds were enlarged in the early 80s.
4. csaxton 9/28/2001 C05
Comment: Accomplished change in place of use occurred in the early 1980s acoording to claimant statement on 9-28-01.
5. csaxton 10/23/2001 POD
Comment: Converrsation with Keith stated that there is no longer a POD in Section 8 as claimed.
6. csaxton 10/23/2001 Stockwater
Comment: Original license speaks of domestic uses - thus stockwater included in recommendation. Claimant stated about 150 stock during conversation in early October of 2000.

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 29-2041 V1

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: C
 State or Federal: S
 Owner Name Connector: AND
 Water District Number: 01
 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

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>
Contacts	7/30/2001 10:13:16 AM	csaxton			Active
Priority Date	7/30/2001 10:13:34 AM	csaxton			Active
POD	7/30/2001 10:17:45 AM	csaxton			Active
Source	7/30/2001 10:20:46 AM	csaxton			Active
Use	7/30/2001 10:31:04 AM	csaxton			Active
POU	7/30/2001 10:58:34 AM	csaxton			Active
Season	7/30/2001 11:04:22 AM	csaxton			Active
Quantity	7/30/2001 11:06:19 AM	csaxton			Active
Summary	7/30/2001 11:20:08 AM	csaxton	7/30/2001 11:20:08 AM	csaxton	Active
Summary	10/23/2001 10:11:51 AM	csaxton	10/23/2001 10:11:51 AM	csaxton	Active

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
POU	10/1/2001 8:07:07 AM	csaxton	Edited PLS
POU	10/23/2001 10:01:23 AM	csaxton	Edited shape boundary
POU	10/23/2001 10:01:45 AM	csaxton	Edited PLS

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-2041 V1

Summary	10/23/2001 10:11:53 AM	csaxton	(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. Is an additional remark and/or condition required? (Yes) 6. Would you like to view the recommended right? (No) 7. Is this a split or combined right? (No) 8. Do you have documents you would like to attach or link to the file? (Yes) 9. Would you like to set the verification date?
Contacts	7/30/2001 10:13:14 AM	csaxton	1. Appointment has not been scheduled. Comment for 1: In house review.
Priority Date	7/30/2001 10:13:32 AM	csaxton	1. (NO) There has not been a later court decree of the water right(s) from the water source. 4. (NO) The basis of claim is not beneficial use. 5. (NO) The basis of claim is not a posted notice. 6. (YES) Parent right has a priority date. 7. (NO) The basis of claim is not an application or permit. 12. (YES) The claim is recommended. 13. (YES) The claim is coded correctly. 14. (NO) Priority remark was not required. 15. (NO) Priority condition was not required.
POD	7/30/2001 10:17:43 AM	csaxton	1. (NO) The basis is not beneficial use. 2. (YES) Parent right has a Point of Diversion. 3. (NO) The claimed Point of Diversion can not be verified using the water right file. 4. (YES) There is evidence that there has been a change in the Point of Diversion. 5. (YES) The change can be verified as an accomplished transfer. Comment for 5: Two Points of Diversion 6. (YES) The file contains all the necessary information to verify the POD. Comment for 6: Keith Wilson Field Exam 8. (NO) Point of Diversion remark was not required. 9. (YES) Point of Diversion condition was required.
POD	7/30/2001 10:18:55 AM	csaxton	Edited point location
POD	7/30/2001 10:20:05 AM	csaxton	Edited point location
Source	7/30/2001 10:20:44 AM	csaxton	1. (NO) The basis is not beneficial use. 2. (YES) Parent right has a source. 3. (YES) The claimed source can be verified using the water right file. 8. (YES) The source is surface water. 9. (YES) The source is a standard source. 10. (NO) Source remark was not required. 11. (NO) Source condition was not required.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-2041 V1

POU	7/30/2001 10:58:32 AM	csaxton	1. (YES) The POU is required. 2. (NO) The basis of claim is not beneficial use. 3. (YES) The Parent Right has a POU. 4. (NO) The claimed POU can not be verified using the water right file. 5. (YES) There is evidence that there has been a change in the POU. 6. (YES) The change can be verified as an accomplished transfer. Comment for 6: No irrigation in SWSW SECTION 5. 100 acres irrigated in the remaining licensed POU. 9. (YES) The file contains all the necessary information to verify the POU. Comment for 9: Napp photography. 12. (NO) POU remark was not required. 13. (NO) POU condition was not required.
POU	7/30/2001 10:59:01 AM	csaxton	Edited shape boundary
POU	7/30/2001 11:03:06 AM	csaxton	Edited PLS
Season	7/30/2001 11:04:20 AM	csaxton	1. (NO) The basis of claim is not beneficial use. 2. (NO) The parent right does not have a period of use. 4. (NO) There is not evidence that there has been a change to the period of use. 9. (YES) The file contains all the necessary information to verify the period of use. 11. (NO) The basis of is not a decree, license, or a transferred beneficial use right that has had the period of use administratively determined. 13. (YES) Irrigation is the purposed use. 15. (NO) Period of Use remark was not required. 16. (NO) Period of Use condition was not required.
Quantity	7/30/2001 11:06:18 AM	csaxton	1. (NO) The basis of claim is not beneficial use. 2. (NO) The basis of claim is not a posted notice. 3. (YES) The parent right has a diversion rate and/or diversion volume. 4. (YES) The claimed diversion rate and/or volume can be verified using the water right file. 6. (NO) The source is not ground water and the purpose of use does not require a diversion volume limit. 7. (NO) The parent right does not have an annual diversion volume limit. 9. (NO) Quantity remark was not required. 10. (NO) Quantity condition was not required.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-2041 V1

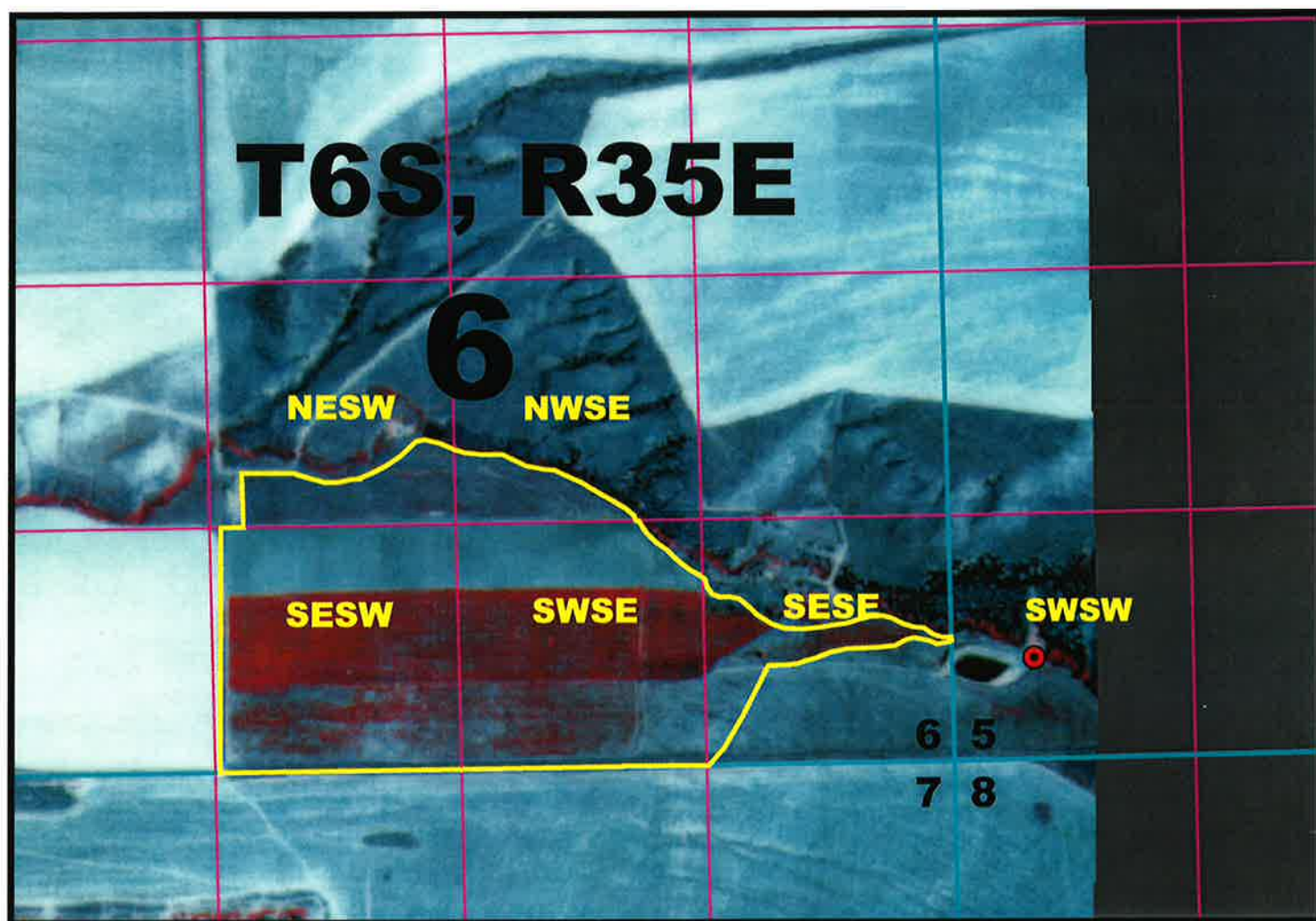
Summary	7/30/2001 11:20:06 AM	csaxton	1. (NO) The basis of the claim is not beneficial use. 3. (NO) There is no indication that there has been a five year period of continuous nonuse that could result in a recommendation of forfeiture or partial forfeiture. 5. (YES) General remark was required. 6. (NO) Explanatory remark was not required. 7. (NO) Additional condition was not required. 8. (YES) Wanted to view the recommended right. 9. (NO) This is not a split right. 10. (NO) This is not a combined right. 11. (NO) Documents were not linked or attached to this file. 12. (YES) Set the verification date.
POU	10/1/2001 8:06:43 AM	csaxton	Edited shape boundary
Use	7/30/2001 10:31:01 AM	csaxton	1. (NO) The basis of claim is not beneficial use. 2. (YES) The parent right has a purpose of use. 3. (YES) The claimed purpose of Use can be verified using the water right file. 11. (NO) Purpose of Use remark was not required. 12. (NO) Purpose of Use condition was not required.



STATE OF IDAHO

Department of Water Resources
Eastern Region

Water Right(s): 29-02041



1320 0 1320 2640 3960 Feet

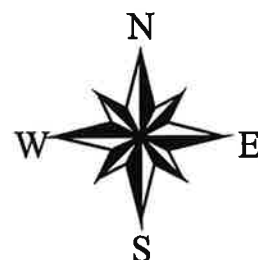
Total Irrigated Acres: 100

● Point(s) of Diversion

□ Place of Use

□ Quarter Quarter Lines

□ Section Lines



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GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: C. Saxton
Date: October 2001

Hart/Hartwigsen

29-02041

T6S, R35E

6

NESW

NWSE

8.2

5.8

SESW

39.0

SWSE

39.0

SESE

8.0

SWSW



6 5

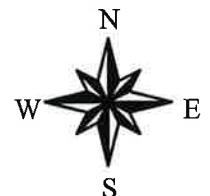
7 8

0 1320 2640 3960 Feet

Total Irrigated Acres: 100

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Acreage Distribution

Prepared By: Craig Saxton
October 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

August 30, 2001

HARRY HARTWIGSEN
PO BOX 5321
CHUBBUCK ID 83202

RE: Storage component of right 29-02041

Dear Mr. Hartwigsen,

After our conversation on August 30, 2001, it has come to my attention that you need to request the letter concerning the policy of storing water under your water right from the Water Allocations Bureau Chief in the state office in Boise.

Please contact:

Idaho Department of Water Resource
Attention: L. Glen Saxton
1301 N Orchard St
Boise, ID 83706
(208) 327-7900

I apologize for the inconvenience.

Respectfully Submitted,

Craig L. Saxton
Water Resource Agent
Adjudication Bureau

Saxton, Craig

From: Saxton, Glen
Sent: Thursday, August 30, 2001 10:52 AM
To: Saxton, Craig
Subject: RE: Storage Component of a Water right

No. lgs

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

From: Saxton, Craig
Sent: Thursday, August 30, 2001 10:51 AM
To: Saxton, Glen
Subject: RE: Storage Component of a Water right

Hello,

Ernie suggested that since Harry Hartwigsen told me his intent is to use the letter in court, that I should have him formally request a letter from you describing this practice as a guideline that has evolved as policy. Do you have a problem with this?

C

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

From: Saxton, Glen
Sent: Thursday, August 30, 2001 10:25 AM
To: Saxton, Craig
Subject: RE: Storage Component of a Water right

C,

The 24-hr storage rules has no basis in statute or the rules. This guideline has evolved as policy. The guideline essentially says that if during the delivery of a water right, any associated storage of water incidental to delivery of the water right does not need a storage component if the amount of storage involved is less than would accumulate in a 24 hr period at the authorized diversion rate. If you need a past writing relative to this matter, I may be able to find a letter or something similar. lgs

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State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

W. & H. Livestock
C/O John McNabb
976 McNabb Rd
Inkom, Idaho 83245

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: Diversion on Little Pocatello Creek

Dear Sir:

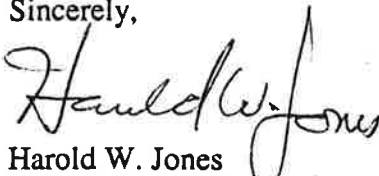
It has come to the attention of the Department of Water Resources that you may be diverting water for stockwater and domestic purposes from Little Pocatello Creek without the benefit of a water right.

Currently there is a water right holder on Little Pocatello Creek called Hart Company Partnership. They hold license 29-02041 for irrigation and domestic use. I have checked the database and there is no other apparent filings.

There is no requirement for stock watering directly out of a stream but if a pipeline or ditch is used then an approve filing needs to be made. Be aware that new form 113 is available for that transition. Our office supports moving stock out of the stream.

If you have any questions please contact me at the Idaho Falls Office.

Sincerely,


Harold W. Jones
Water Resource Supervisor

HWJ/ck

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DEC 20 2005

MEMORANDUM

TO: Harold Jones

October 12, 2000

FROM: Keith C. Wilson

RE: Letter dated April 19, 2000, from Harry Hartwigsen

On April 25, 2000, in response to a letter from Harry Hartwigsen (Hart Company Partnership), I met with Harry Hartwigsen & Jim Hart. They were concerned about land development and diversions upstream of their diversions on Little Pocatello Creek (Sec 08 NE ¼, T06S, R35E,) and stockwater diversion from an Unnamed Spring (Sec 05, SE¼, T06S, R35E).

Little Pocatello Creek:

- Photo page 1 - Silted in Reservoir.
- Photo page 2 - Silted in Reservoir.
- Photo page 3 - Plank walk to Reservoir control structure
- Photo page 4 - Road culvert upstream of Reservoir w/PVC Pipe through culvert, & stock tanks.
- Photo page 5 - Photo of water quality just above PVC pipe to domestic trailer.
- Photo page 6 - Stream with black PVC pipe supplying water to domestic trailer.

Mr. Hartwigsen and Mr. Hart were concerned with the clearing of land above the reservoir. They claim that before the clearing of the land above the reservoir that they had only had to clean out the silt in the reservoir once in $\approx$ 20 years. They said that after the land was cleared the reservoir silted-in (Photo pages 1, 2, & 3), in only one year. They feel that the current owner will continue developing and using water, and will use the water of Little Pocatello Creek, with or without filing for water rights, thus infringing (stealing) their water rights from Little Pocatello Creek. Mr. Hart and Mr. Hartwigsen also noted that other than their water rights there were no other water right filings for either stockwater or domestic. [Point of Diversion in NE¼ Sec 08, T06S, R35E: 29-02041 / A29-02041 (Hartwigsen & Hart).]

It appears that the black PVC pipe through the culvert (Photo page 4) has been used to fill the stock tanks (Photo page 4); however, there was no diversion into the stock tanks at the time of the field inspection.

I do not know what to make of the black PVC pipe going to the domestic trailer (Pages 5 & 6). The poor water quality of Little Pocatello Creek (Photo page 5 & 6) would make it unsuitable for domestic purposes. No evidence of irrigation was observed. Without irrigation I have no idea as to what the water is being used for or whether or not beneficial use is occurring.

The USGS map of the area indicates that Little Pocatello Creek is an intermittent stream (Map #1). In discussion with Greg Taylor, Little Pocatello Creek would not come under the stream alteration section of the Idaho Code.

It appears that the reservoir capacity and hydraulic height of the reservoir would not place it under the Safety of Dams program. According to Lewis Rounds there are no files in the Safety of Dams program for any reservoirs on Little Pocatello Creek.

I informed Mr. Hartwigsen & Mr. Hart that the silting-in of the reservoir on Little Pocatello Creek was a civil matter, however, they should contact the BLM, DEQ, and any other regulatory agency about the clearing of the land and the resulting decrease in water quality.

As far as the diversions from Little Pocatello Creek I informed them that this office would contact the current owner and inform him of the requirements to file for a diversion from a surface water source.

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DEC 20 2005

Memorandum (cont.)

To: Harold Jones

October 12, 2000

From: Keith C. Wilson

RE: Letter from Harry Hartwigsen - Little Pocatello Creek/Unnamed Spring

Unnamed Spring:

Photo page 7 - Old stock tank and pipe from spring location.

Photo page 8 - Black PVC pipe flowing water just below old stock tank.

According to Mr. Hartwigsen and Mr. Hart, the current land owner had fenced in his property and had cut off their access to a supply of water for stockwater from the spring. They indicated that the spring was on BLM ground that they had leased for years, and the tank was on the other land owners property. They wanted to know if they could pipe the water to another location for stockwater.

Point of Diversion & Place of use in SE¼ Sec 05, T06S, R35E:

A29-10589 (Hartwigsen & Hart) Spring, Allotment # 06094

Source AKA Cement Trough Spring

A29-12587 (BLM) Spring, Record # 2903700190

A29-12588 (BLM) Spring, Record # 2903700190

A29-12590 (BLM) Spring, Record # 2903700191

I informed Mr. Hartwigsen and Mr. Hart that they would need to contact the BLM about the BLM requirements on diverting the spring for stockwater (i.e. special use permit). They could also check with the BLM to see if the owner had a special use permit to divert the water from BLM land.

Mr. Hartwigsen and Mr. Hart were also informed that a transfer would have to be filed with IDWR to change the place of use.

I told Mr. Hartwigsen and Mr. Hart that I did not know of any way that they could force the current owner of the land to allow them access to the spring water for stockwater purposes.



Keith C. Wilson
Senior Resource Agent



Date

SCANNED

DEC 20 2005

DEC 20 2005

SCAN

NOV 20 2005

T
6
S

R3SE SEC 8

Stock Tanks

PLANK WALK

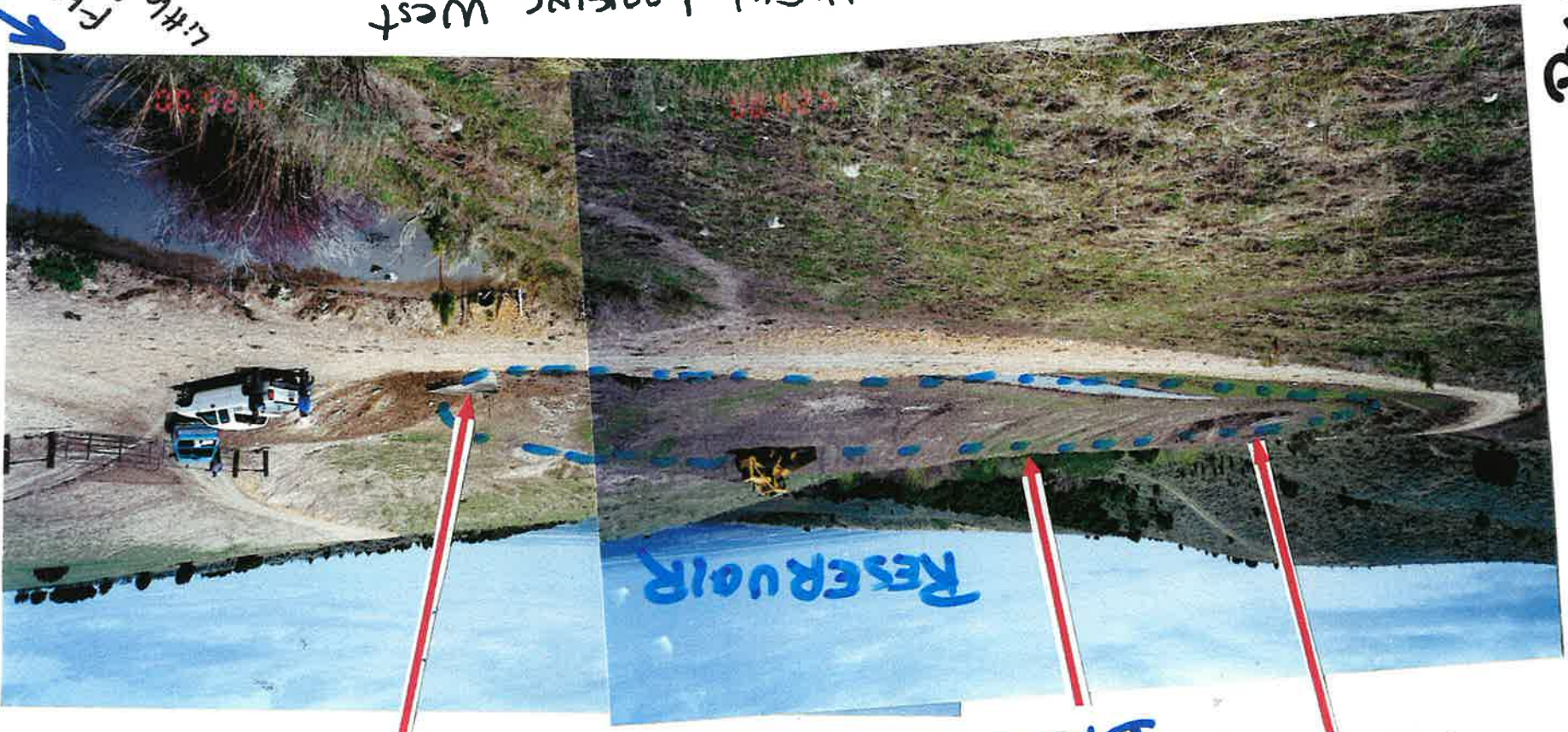


VIEW SOUTH

PAGE 1

SCANNED
DEC 20 2005

SEC 1
R35E SEC 8



VIEW Looking West
(downstream)

FLUW
Little Pocatello
Creek

Plank Walk

DAM

Stock Troughs

T R35E
6 Sec 8
S

PLANK WALK to get to Controlling works
of Dam

DAM CREST



According to
Harry Hartwigsen
Control works
still 6-8'
below hole

SCANNED

DEC 20 2005



R35E
T
6
S
→ FLOW
Sec 8
NW¼ NE¼

Down stream side of road

Pipe inside of
Culvert appears
to have diverted
water for stockwater



SCANNED
DEC 20 2005

4-25-2000

To Trailer
↖

DIVERSION to
Domestic
Trailer

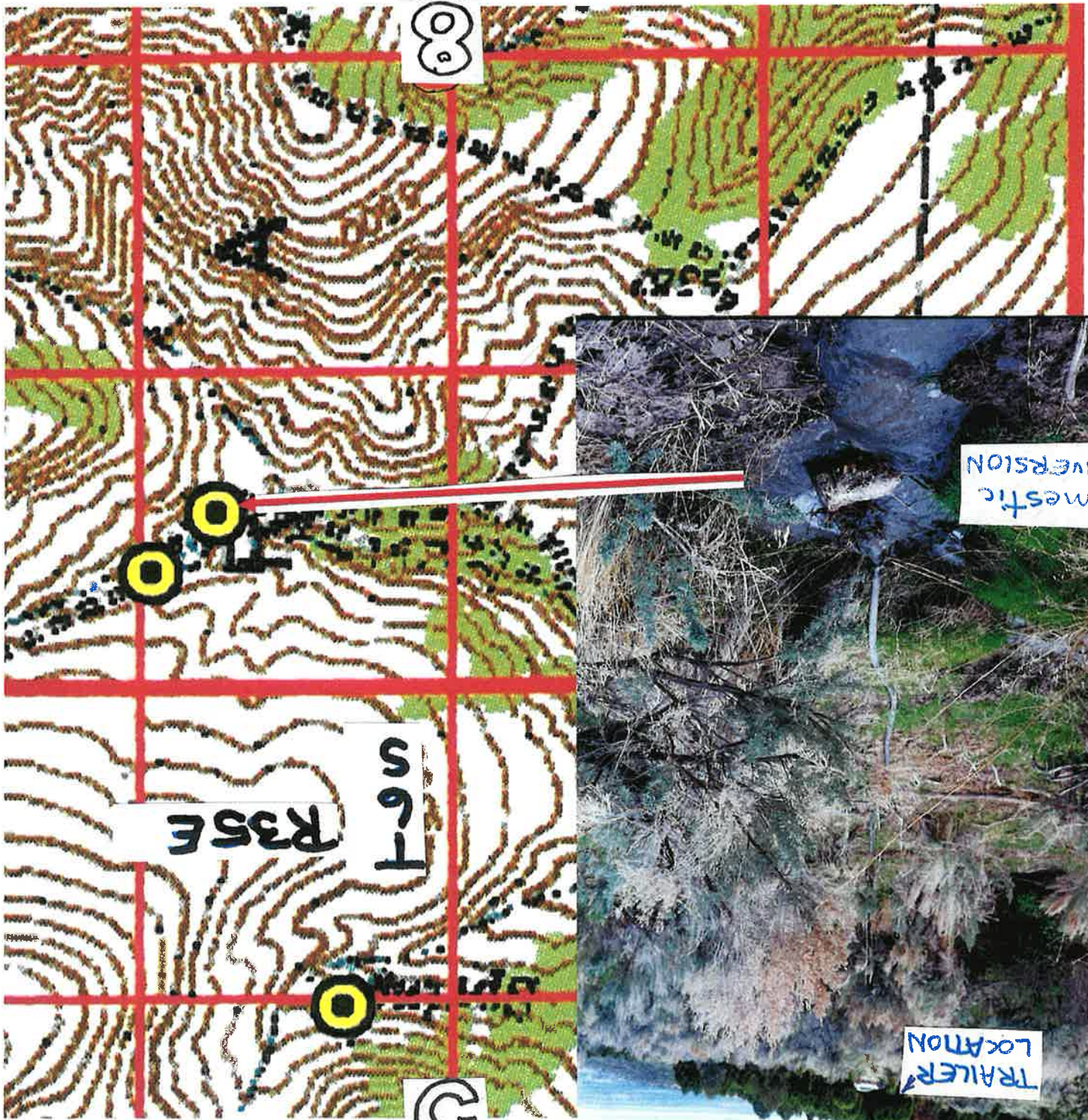


NOTE WATER QUALITY

DOMESTIC DIVERSION

SCANNED
DEC 20 2005

PAGE 5



SPRING AREA

BLM

PRIVATE

OLD PIPE COMING
FROM Spring

T R35E
6 SEC 5
S



Spring area

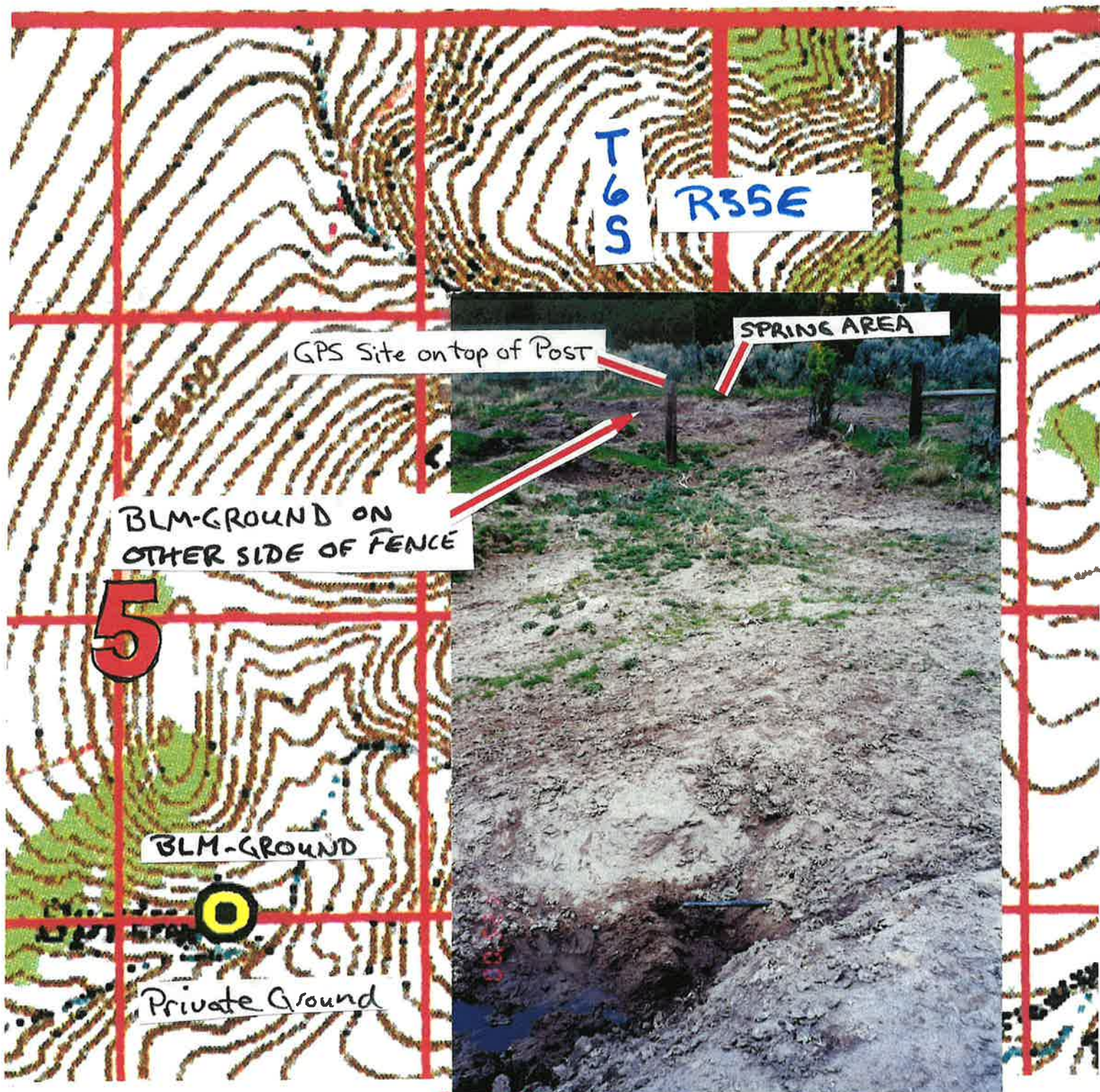


OLD STOCK
TROUGH



SCANNED
DEC 20 2005

PAGE - 7



T
6
S

R35E

GPS Site on top of Post

SPRING AREA

BLM-GROUND ON
OTHER SIDE OF FENCE

5

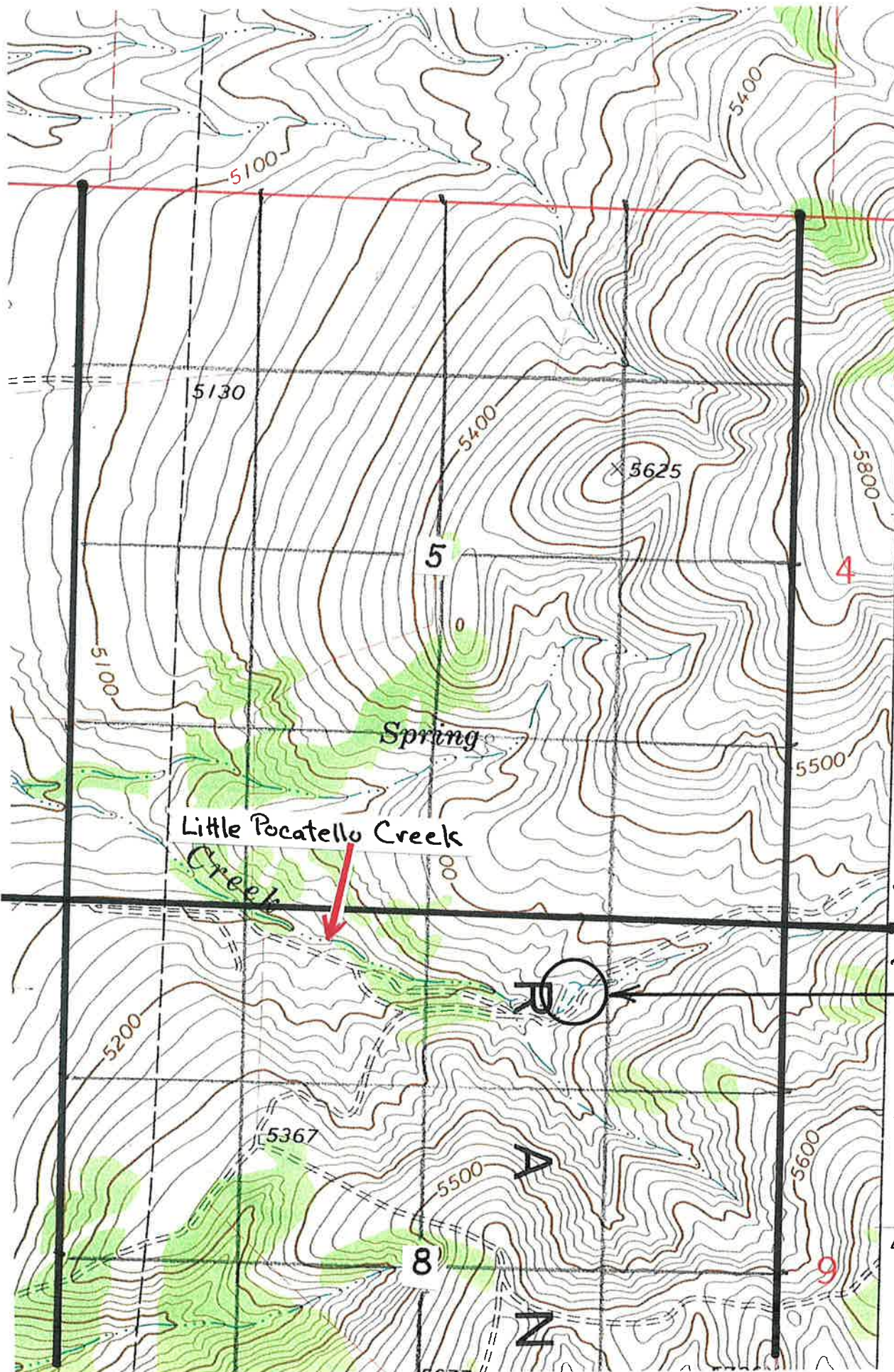
BLM-GROUND

Private Ground

SCANNED

DEC 20 2005

PAGE 8



(MOONLIGHT N
3569 IV NE

4754
T 6 S
R 35 E

4753
Little Pocatello
Creek

RESERVOIR

55'

4752

PROTECTED

SCANNED
DEC 20 2005

MAP #1

Conversation Memo

Date: 3/14/01

From: Craig Saxton

Subject: Little Pocatello Creek In-Stream Stock Issue

Mike McNabb came into the office today to inquire about filing and in-stream stockwater right from Little Pocatello Creek.

Background:

Mike has about 400 head of cattle that he winters on private land. BLM land borders Mike's private land. The cattle drink directly from the creek.

Mr. Hart below him feels that the stock drinking the water is injuring him because it prevents water from filling his ponds. Mr. Hart doesn't have a storage right, but his pond storage is less than what it would take to fill in a 24 hour period (conversation with Keith Wilson). He does however have a licensed irrigation right for 2.0 cfs with a 1906 priority date. Mr. Hart also feels that the cattle are polluting the stream and affecting the water quality in his domestic well. That is a DEQ issue.

Mike doesn't need a water right to have his stock drink directly from the creek that flows through his land, as long as Mike doesn't divert the water from the stream in anyway. Mike was concerned that he was illegal. Harold Jones said that he is not. Any argument needs to be settled in civil court.

Result:

Mike is going to file an in-stream stock adjudication claim based on historical use. If recommended, he will file to move the in-stream use to troughs.

SCANNED

DEC 20 2005

PROFILED



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: Harold Jones
Water Rights Supervisor
CC: Jim Hart
9250 Chubbuck Road
Pocatello, ID 83202
Fr: Bryce Contor
Date: 2/27/2001
Re: Interference with water right 29-2041

Mr. Hart called me today to follow up on a complaint he had lodged with the department about a year ago. Last spring, Keith Wilson went down and made a field inspection. I visited with Keith, he told me that he informed Mr. Hart that without an active water district, the department's ability to regulate is limited.

Mr. Hart asked me several questions that I couldn't properly answer, so I committed to forward this memo to you.

1. What is the procedure to get a water district organized? I looked at Idaho Code 42-604, and it appears that the director may organize water districts upon streams with decrees. Mr. Hart's source is Little Pocatello Creek. The only right referenced on the database for that creek is Mr. Hart's license.
2. Without a water district, is there any authority or ability of the department to regulate water? Mr. Hart is concerned about use of water upstream, preventing him from enjoying his licensed right. The upstream user has cattle, which drink from the stream. He has also checked up the stream, increasing the depth and the percolation losses, as well as constructed diversions for off-stream use of water.
3. Mr. Hart is also concerned about water quality issues from cattle manure in the water. This affects not only Mr. Hart's use of creek water for his cattle, but he fears the aquifer he relies upon for domestic water is being contaminated. I told him that we don't administer water quality regulations, and suggested he contact the Department of Environmental Quality.

Please contact Mr. Hart at 251-6705 and help him understand the follow-up to Keith's inspection last spring.

SCANNED

DEC 20 2005

PROFILED

JUN 11 2001

Log for claim A29-02041

Spatial Dynamics LTD

9/18/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
06s35e	6	SESW	40	40	
06s35e	6	SWSE	37	39	
06s35e	6	SESE	23	27	
Totals:			100	106	

AJ5809NP
No. A29-02041

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 34

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	JAMES W HART PO BOX 5321 CHUBBUCK ID 83202	04/27/1906	IRRIGATION	04-01 11-01	2.000 CFS	
					TOTAL DIVERSION: CONSUMPTIVE USE:	250.00 AFA

C HARRY R HARTWIGSEN
PO BOX 5321
CHUBBUCK ID 83202
(208) 237-2050

C ROBERT E HART
C DAVID J HART
PO BOX 5321
CHUBBUCK ID 83202

C LAUREL H TAYLOR
PO BOX 5321
CHUBBUCK ID 83202
(208) 237-2050

Water Source: LITTLE POCA TELLO CREEK

Tributary to: SINKS

Stage: LICENSE

Point(s) of Diversion:

T06S R35E S05
S08

SWSW
NWNE

BANNOCK County
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					
06S	35E	6	:																	:						
																			40	:			37	23	:	100.0
																			TOTAL ACRES						:	100.0

POU County: BANNOCK

Other Rights: NONE

Remarks: GEN ORIGINALLY THE HEAD OF A DITCH WAS LOCATED AT THE RETENTION POND
IN SECTION 8. NOW WATER FROM THIS POND IS RELEASED BACK INTO THE
CREEK CHANNEL AND THEN REDIVERTED INTO THE LOWER POND IN SECTION
5. WATER FROM THE LOWER POND IS DIVERTED INTO A GRAVITY FLOW
SPRINKLER SYSTEM AND CAN ALSO BE PUMPED USING A PORTABLE PUMP.

Dates: Exam Made Date:

Verified Date:

Objection Filed Date:

Misc: Water District Number: 01

Field Inspection Flag:
Presumption Flag: C

AJ5809NP
No. A29-02041

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 35

Audit: 03/15/90 CARLSEN 06/01/94 COX 03/29/95 POST-STD

Bannock County *
Little Pocatello Creek *
2 second feet *
Irrigation & Domestic *
Priority 4/27/1906 *

STATE OF IDAHO
Water License No. 1963

WHEREAS, On the 27th day of April, A.D. 1906, SAMUEL M. SHAFFER, of Pocatello, County of Bannock, State of Idaho, duly made application (No. 2750) to me for a permit to use 3.2 cubic feet per second of the waters of Little Pocatello Creek, County of Bannock, State of Idaho, for irrigation and domestic purposes, and,

WHEREAS, On the 28th day of April, A.D. 1906, Permit No. 1963 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 28th day of April, A.D. 1908, and for the application to beneficial use of said water on or before the 28th day of April, A.D. 1912, and,

WHEREAS, On the 28th day of April, A.D. 1908, SAMUEL M. SHAFFER, the holder of said permit, duly made proof of the completion of adequate works for the diversion of 3.2 cubic feet per second of said waters, as evidenced by my Certificate No. 1963, dated May 29th, 1908, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 3.2 cubic feet per second of water, with date of priority of April 27th, 1906, and,

WHEREAS, On the 11th day of January, A.D. 1912, SAMUEL M. SHAFFER transferred all his right, title and interest in and to said Permit No. 1963 to MARY E. BROWN of Pocatello, County of Bannock, State of Idaho, and,

WHEREAS, On the 20th day of April, A.D. 1912, MARY E. BROWN, the holder of said permit, duly made proof of the application to beneficial use of 2 cubic feet per second of said water:

NOW, THEREFORE, By virtue of authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to MARY E. BROWN, of Pocatello, County of Bannock, State of Idaho, the holder and owner of said Permit No. 1963, a perpetual right, dating from April 27th, 1906, to the use of 2 cubic feet per second of the waters of Little Pocatello Creek, in the County of Bannock and State of Idaho, or so much thereof as may be necessary for the purposes herein below mentioned, to be diverted at a point in the Northeast quarter (NE $\frac{1}{4}$), Section 8, Township 6 South, Range 35, East of the Boise Meridian, and conducted to and upon 100 acres, divided as follows: (40 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, 27 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, 17 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 6, and 16 acres in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 5, Township 6 South, Range 35, East of the Boise Meridian, for the purpose of irrigation and domestic use, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State, and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho, this 27th day of April, A.D. Nineteen hundred and twelve.

(SEAL)

A. E. Robinson.
State Engineer.

JONES ENGINEERING CO. PRINTED FEB. 7, 1904

No. 2750

A P P L I C A T I O N F O R P E R M I T

To appropriate the Public waters of the state of Idaho.

1. Name of applicant - SAMUEL M. SHAFFER

Postoffice address: P. O. - Pocatello.

County - Bannock.

2. The quantity of water claimed is 3.2 cubic feet per second.

3. source of water supply - Little Pocatello Creek.

County of Bannock.

4. Location of point of diversion - A point in the NE4 sec. 8, T. 6 S., R. 35 E. B. M., whence the N. E. corner of said sec. 8 bears N. 69° 41' E. distant 1614'.

5. To be used for:

I. Irrigation and domestic use:

(a) Number of acres to be irrigated 160 acres.

(b) In the following legal subdivisions - SW4 SW4 sec. 5, S2 SE4 & SE4 SW4 sec. 6, all of T. 6 S., R. 35 E., in Bannock Co., Idaho.

6. Estimated cost of works - \$200.00

7. Description of Works for Diversion:

I. Kinds of works - Ditch with dam & small reservoir.

II. Dimensions of Works:

(a) Height of dam 6 feet, length of dam at top 150 feet, length of dam at bottom 25 feet, material used in construction - earth

(b) Capacity of reservoir 22500 cubic feet.

(c) size of headgate, width 1.5 feet, height 1 foot.

(d) Ditch (flume or pipe) width at bottom 2 feet, width at water line 3 feet, depth of water .75 feet. Average grade per mile is 25 feet. Length of ditch is .75 miles, and it crosses the following quarter sections - N2 sec. 8, to SW4 SW4 sec. 5, which is the point of intended use.

8. Time required for the completion of the construction of such work is 4 years.

9. Time required for the complete application of the water to the proposed use is 4 additional years.

Remarks:

Part of this work has been done under permit 542 which has lapsed for non-completion of work, Mr. Shaffer being unable to complete it in the time therein specified. There are no contestants or other claimants to this water. The name of the stream/corrected from two and a half mile to Little Pocatello Creek.

G. H. Perry, Surveyor.

Approval of state engineer.

The number of this permit is 1963.

Date of first receipt of application 9 a. m. April 27, 1906.

Recorded in Book 6, page 1963. Approved April 28, 1906.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the state of Idaho and hereby grant the same, subject to the following limitations and conditions:

Work to begin on or before June 27, 1906, and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permit holder has no control.

One-fifth of the work above specified to be completed on or before April 28, 1907.

The whole of said work to be completed on or before April 28, 1908.

The time for the proof of beneficial use of water appropriated in accordance herewith, to extend to April 28, 1912.

Witness my hand this 28 day of April, 1906.

Jas. Stephenson, Jr.

state engineer.

Blank notice of proof of completion mailed applicant January 1, 1908.

Notice of proof received March 4, 1908, fixing April 28, 1908, as date and Pocatello, as place of proof.

Notice for publication mailed Pocatello Tribune March 13, 1908.

Deposition blanks mailed applicant March 13, 1908.

W. A. Samms authorized March 13, 1908, to make examination of works.

His report received April 21, 1908.

Depositions and affidavit of publication received April 30, 1908.

Fees received May 18, 1908.

Certificate of completion issued May 29, 1908.

Permit No. 1963

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom It May Concern:

This is to certify that SAMUEL M. SHAFER of Pocatello, County of Bannock and State of Idaho, the holder of Permit No. 1963, issued upon Application No. 2750, bearing date of priority of April 27, 1906, authorizing the diversion of 3.2 second feet of the waters of Little Pocatello Creek, County of Bannock, State of Idaho, for irrigation and domestic purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 3.2 second-feet of the waters of Little Pocatello Creek, that the point of diversion of said waters is in the Northeast quarter of Section 8, Township 6 South,

half of Southeast quarter (SE SE4) and Southeast quarter of Southwest quarter (SE4 SW4) Section 6,
Township 6 South, Range 35 East of Boise Meridian.

Witness my hand this 29th day of May, A.D.1908.

Jas. Stephenson, Jr.

State Engineer.

License issued for 2 second feet

P. 1025

QUITCLAIM DEED.

THIS INDENTURE, Made this 11th day of January, in the year of our Lord One Thousand
Nine Hundred and twelve, (1912) between Samuel M. Shaffer, and Mary Shaffer, his wife, of
Pocatello, of the County of Bannock and State of Idaho, the parties of the first part, and
Mary E. Brown of Pocatello, of the County of Bannock, and State of Idaho, the party of the
second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the
sum of Five Hundred and no/100 (\$500.00) Dollars, lawful money of the United States of America,
to them in hand paid by the said party of the second part, the receipt whereof is hereby ac-
knowledge, do by these presents demise, release and forever Quitclaim unto the said party of
the second part, and to her heirs and assigns forever, all that certain water right situated
in Bannock County of the State of Idaho, more particularly described as follows, to-wit:

All the right, title and interest of the grantees in and to State Engineer's permit
No. 1963, and all the right, title and interest of the grantors in and to 3.2 second feet of
the waters of Little Pocatello Creek, in Bannock County, claimed under such permit.

Together with all and singular, the tenements, hereditaments and appurtenances there-
unto belonging, or in anywise appertaining, and the reversion and reversions, remainder and re-
mainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances
unto said party of the second part, and to her heirs and assigns forever.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands
and seals the day and year first above written.

Signed, Sealed and Delivered
in the Presence of

Samuel M. Shaffer (SEAL)

Mary Shaffer (SEAL)

Mary Hamilton

Theo. Turner.

STATE OF IDAHO,)
County of Bannock.) ss

On this 11th day of January in the year 1912, before me Theo. Turner, a Notary Public

of the County of Bannock, State of Idaho, do hereby certify that Samuel M. Shaffer and Mary Shaffer, husband and

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

(SEAL)

Theo. Turner,

Notary Public.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 9.00 a.m.
Mar. 11, 1912.

A. E. Robinson,

State Engineer
W.

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 29-2041
Date Received: 3/15/1990
Receipt No: E012382
Received By: DC

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

1. Name of Claimant(s)

DAVID J HART Phone:

PO BOX 5321
CHUBBUCK ID USA 83202

LAUREL H TAYLOR Phone: (208)237-2050

PO BOX 5321
CHUBBUCK ID USA 83202

HARRY R HARTWIGSEN Phone: (208)237-2050

PO BOX 5321
CHUBBUCK ID USA 83202

JAMES W HART Phone:

PO BOX 5321
CHUBBUCK ID USA 83202

ROBERT E HART Phone:

PO BOX 5321
CHUBBUCK ID USA 83202

2. Date of Priority: 04/27/1906

3. Source: LITTLE POCA TELLO CREEK , LITTLE POCA TELLO CREEK Trib. to: SINKS , SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
06S	35E	5	SW SW	BANNOCK	
06S	35E	8	NW NE	BANNOCK	

5. Description of diverting works:

TWO RETENTION PONDS, PIPELINE AND SPRINKLER SYSTEM.

6. Water is used for the following purposes:

Purpose
IRRIGATION
STOCKWATER

From To C.F.S.
04/01 11/01 2
01/01 12/31 0.1

(or) A.F.A

7. Total Quantity Appropriated is:
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
06S	35E	6	SW	SE	STOCKWATER	
			SE	SW	STOCKWATER	
			SE	SE	STOCKWATER	
			SE	SW	IRRIGATION	40
			SE	SE	IRRIGATION	23
			SW	SE	IRRIGATION	37
Section Acres						100
Total Acres						100

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:

ORIGINALLY THE HEAD OF A DITCH WAS LOCATED AT THE RETENTION POND IN SECTION 8. NOW WATER FROM THIS POND IS RELEASED BACK INTO THE CREEK CHANNEL AND THEN REDIVERTED INTO THE LOWER POND IN SECTION 5. WATER FROM THE LOWER POND IS DIVERTED INTO A GRAVITY FLOW SPRINKLER SYSTEM AND CAN ALSO BE PUMPED USING A PORTABLE PUMP

15. Basis of Claim: License

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.

SCANNED
DEC 20 2005

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): Jim Hart Harry Hartwigson Date: Oct 5, 01
_____ Date: _____

State of Idaho
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this
5 of Oct 2001

Dave Carlson

Notary Public

Residing at Rigby, Id

My commission Expires 5/26/2002



SCANNED

DEC 20 2005

JUN 11 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

Ident. Number: A29-02041
Date Received: 3/15/1990
Receipt No: 8012382
Received By: EMC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name:	LAUREL H. TAYLOR	208-237-2050
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	HARRY R. HARTWIGSEN	208-237-2050
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	ROBERT E. HART	
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	JAMES W. HART	
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202
AND/OR		
Name:	DAVID J. HART	
Address:	P.O. BOX 5321	
	CHUBBUCK, ID	83202

A2902041



2. Date of Priority: APR 27, 1906

3. Source: LITTLE POCA TELLO CREEK Trib. to: SINKS

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	35E	5		SW	SW		BANNOCK
		8		NW	NE		BANNOCK

5. Description of diverting works:
TWO RETENTION PONDS, PIPELINE AND SPRINKLER SYSTEM.

A29-02041

Page 1

Date: 03/15/90

MICROFILMED

NOV 13 1992

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.000		

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

A.F.A.

8. Total consumptive use is 250.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	35E	6	SE	SW		IRR	40.0
			SW	SE		IRR	37.0
			SE	SE		IRR	23.0

Section Acres 100.0

Total Acres 100.0

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:
NONE

14. Remarks:

ORIGINALLY THE HEAD OF A DITCH WAS LOCATED AT THE RETENTION POND IN SECTION 8. NOW WATER FROM THIS POND IS RELEASED BACK INTO THE CREEK CHANNEL AND THEN REDIVERTED INTO THE LOWER POND IN SECTION 5. WATER FROM THE LOWER POND IS DIVERTED INTO A GRAVITY FLOW SPRINKLER SYSTEM AND CAN ALSO BE PUMPED USING A PORTABLE PUMP.

15. Basis of Claim: LICENSE
Water Right Number: 1963

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): Harry R. Hartwigsen Date: 3-15-90

Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 15 day

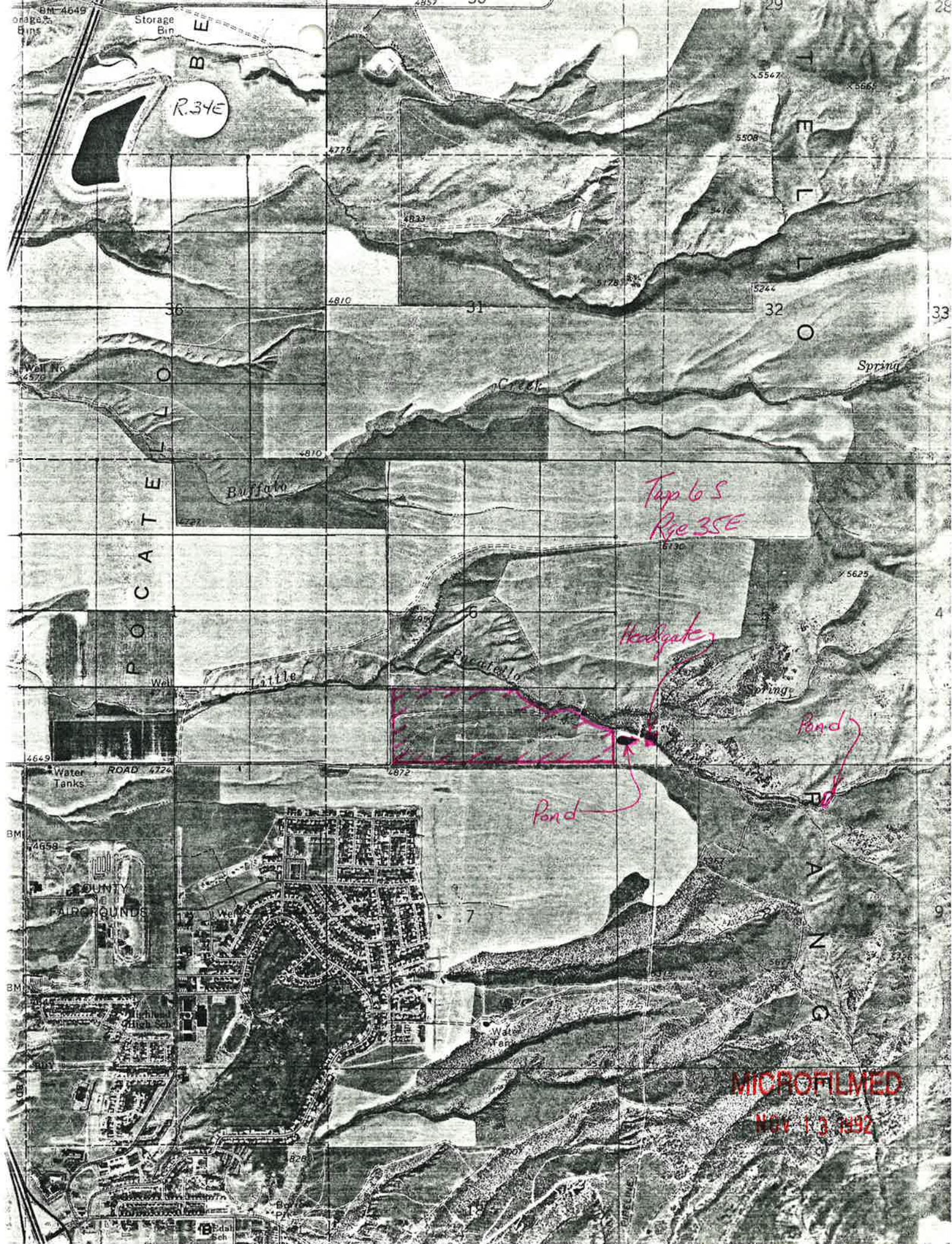
of March 19 90.

Ernest Carlson
Notary Public



Residing at Adelphi Falls, ID

My Commission Expires 6-14-1994



MICROFILMED
NOV 13 1992