

12/17/2002

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

RIGHT NUMBER: 29-4080

DISALLOWED

NAME AND ADDRESS: MAURICE A TOLER
231 E GLOVER RD
ARIMO ID 83214

HELEN TOLER
231 E GLOVER RD
ARIMO ID 83214

SOURCE: GARDEN CREEK

TRIBUTARY: MARSH CREEK

QUANTITY: 0.000 CFS

PRIORITY DATE: 07/08/1895

POINT OF DIVERSION:

T10S R36E S11 NWNW Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/01 11/01

PLACE OF USE:

IRRIGATION Within BANNOCK County

T10S R36E S02

NESW

T10S R36E S02

SWSW

T10S R36E S02

SESW

ACRES TOTAL

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

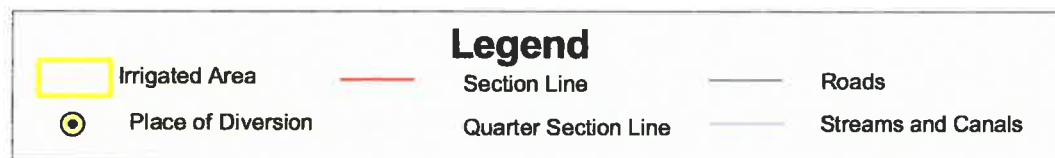
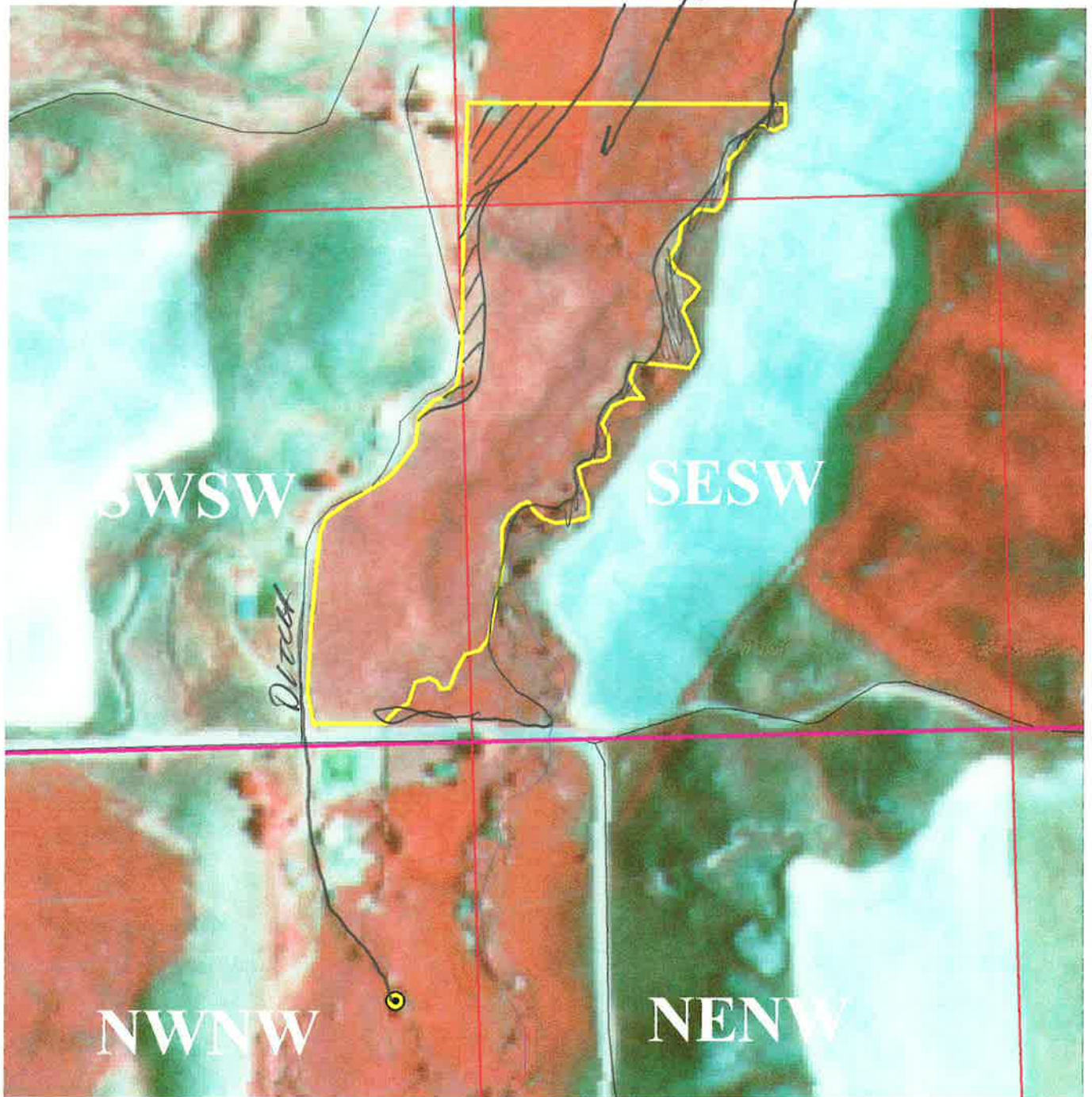
EXPLANATORY MATERIAL:

5/04/04 Mr & Mrs Toler wrote in to discuss the 'Disallowed' Recommendation.
I attempted to explain that this right predates the Garden
Creek Decree, the water right (claim) was not part of that
action and that's why it was disallowed - Mr. Toler's basis
or claim is predicated on an abstract with a posteo
notice - But Mr Toler has 4 other Decree Rts from
that Decree of Priorities of 1904, 1904, 1896 and, 1887.

SCANNED

JUN 30 2004

Township , 10S36E



200 0 200 400 Feet



8/8/02 JBR

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

RIGHT NUMBER: 29-4080

NAME AND ADDRESS:

HELEN TOLER
231 E GLOVER RD
ARIMO ID 83214

MAURICE A TOLER
231 E GLOVER RD
ARIMO ID 83214

SOURCE:

Source:

GARDEN CREEK

Tributary:

MARSH CREEK

QUANTITY:

0.720 CFS

~~0.000 CFS~~

0.000 AFY

Use of the rights listed below is limited to a total combined diversion rate of 3.50 cfs.
Combined Right Nos.: 29-376, 29-377, 29-389, 29-390, 29-4079 and 29-4080.

PRIORITY DATE:

04/01/1918

~~07/08/1895~~

POINT OF DIVERSION:

~~T10S R36E S11 NWNW
Within BANNOCK County~~

T10S R36E S11 SENWNW
Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

IRRIGATION

04/01 10/31

0.720 CFS

~~04/01 11/01~~

~~0.000 CFS~~

PLACE OF USE:

IRRIGATION

within BANNOCK County

T10S R36E S02 SENW 1.4

T10S R36E S02 NESW 15.0

T10S R36E S02 SWSW 5.4

T10S R36E S02 SESW 7.0

~~T10S R36E S02 NESW~~

~~T10S R36E S02 SWSW~~

~~T10S R36E S02 SESW~~

28.8 ACRES TOTAL

~~2.6 ACRES TOTAL~~

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

Use of the rights listed below is limited to the irrigation of a combined total of 117.2 acres in a single irrigation season. Combined Right Nos.: 29-376, 29-377, 29-389, 29-390, 29-4079 and 29-4080.

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.

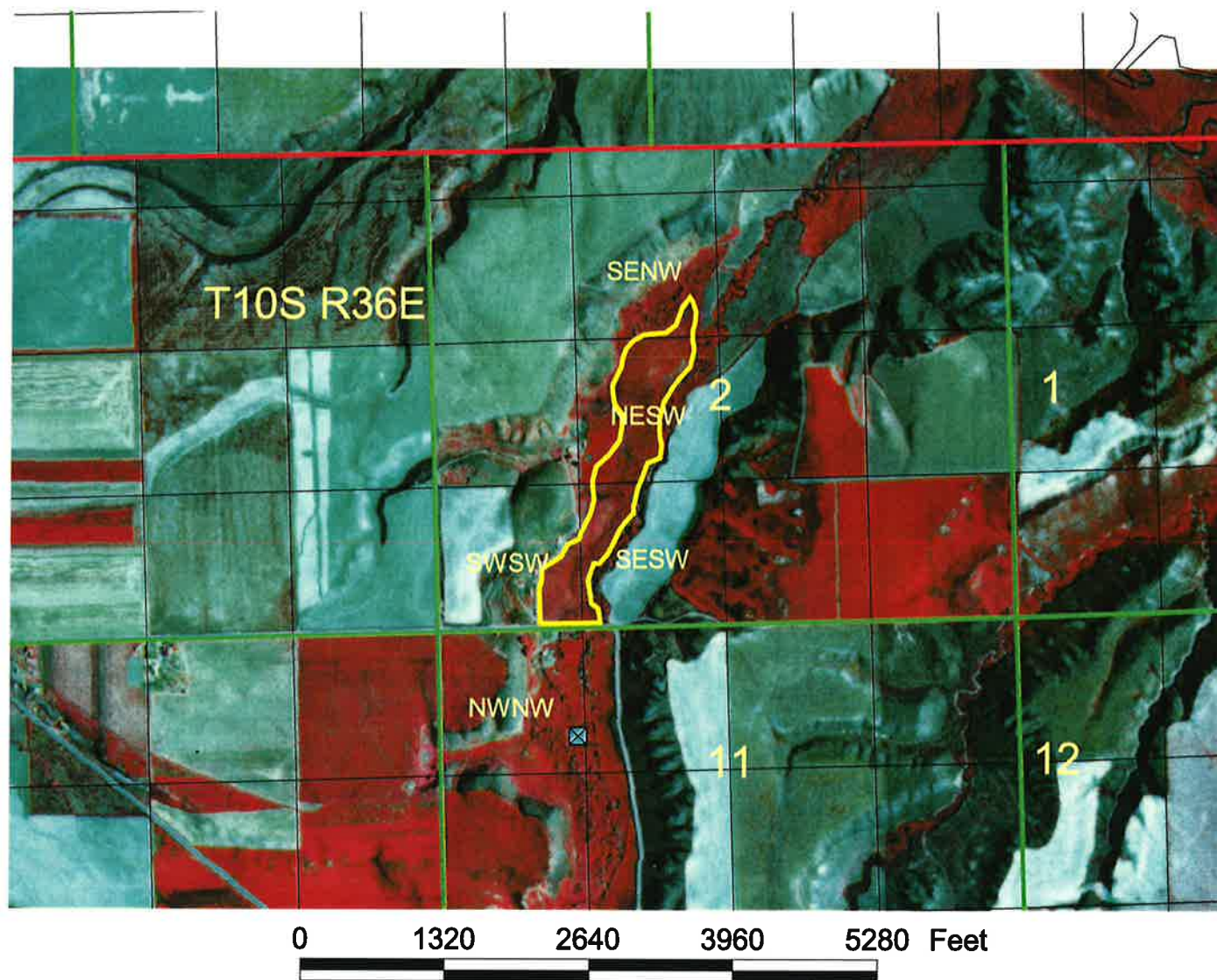
~~RIGHT NOT CLAIMED IN PRIOR ADJUDICATION: This is included for a claim that is PROPOSED to be disallowed because rights to water from the source claimed were determined in a prior general adjudication, the right was not decreed in the prior adjudication, and the claim cannot be recommended based upon beneficial use.~~
~~RIGHT NOT CLAIMED IN PRIOR ADJUDICATION.~~

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Use of this right is combined with water from Garden Creek Irrigation Co.

DEPARTMENT OF WATER RESOURCES

Claim No.: 29-4080



- Point of diversion.shp
- Place of use.shp
- Township/Range
- Sections
- QQ



PROFILED

GIS Place of Use Illustration
1987/1988 NAPP Photography
Prepared by: E. Carlsen
Date: July 2004

SCANNED
MAR 10 2006

Contacts Data Entry Form

29-4080
243 stat.

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

Current Owner MAURICE TOLER

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:

Bel Claim - PROBATOR CARDON CK Tinnig vs Wolverton, et al
15 Sept 1906.NO EVIDENCE OF Priority - NO REQUEST, yet.7/17/02 Letter SentRECEIVED Posted Notice w/NOTE 7/25/02, AttachedEVIDENCE DISCUSSES 1899 BUT APPARENTLY NOT
REJOINED TO CARDONCK vs WOLVERTON,* READ DISCUSSION OF Priority ON Priority DATA pg.FE: 8/8/02 w/ Mr. TOLER - VISITED POD/SOURCES
AND POOL'S.ENTRADO BNC memo 0480 cts on 10/15/01SCANNED
JUN 30 2004

Reviewer: _____

Date: _____

Disallowed - See Priority page for notes.

Priority Date Data Entry Form

Claim Number: _____

Water Right Priority Date: _____ Water Right Basis: _____

Claimed Priority Date: 7/08/1895 Claimed Basis: BU (243 stat.)Recommended Priority Date: 10 SEPT 1906 Recommended Basis: BU

____ 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:

No evidence of Priority - 1895 precludes GARDON CK
vs Wolverton Ditches (15 Sept 1906)

7/25/02 Submits 1899 Posted Notice - Shows Intent - However Also
Makes Reference to the Ditch/Diversion "... THE SAME BEING NOW IN COURSE
OF CONSTRUCTION, AND HAVING BEEN USED FOR ABOUT FOUR YEARS LAST PAST."

DECREED POOL FOR 29-377 (LAST PART) DESCRIBES THE
SAME POOL AS DISCUSSED IN EVIDENCE 'NOTICE OF WATER
APPROPRIATION' (1899) ⇒ 29-377 CARRIES A 1904 PRIORITY
DATE - 29-04080 CLAIMS 1895 - GARDON CK vs
T. WOLVERTON DATES TO 1906. Q: Why WAS THE ELEMENTS
OF 29-4080 NOT RECOGNIZED BY GARDON CK vs
WOLVERTON? Likely DECROD UNDER 29-389 AND 29-390 AND/OR 29-377.
IN ADDITION, THE DECREED POOL FOR 29-389 AND 29-390
ALSO DESCRIBES E²NW & E²SW SEC. 11 10/36,

* THIS CLAIM IS DISALLOWED ON BASIS OF CLAIM AND
PRIORITY HAVING OTHER DECREED RTS ON CLAIMED POOL.
AND, THE I.S.Cs OF THIS CLAIM IS UNNECESSARY

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 105, R 366, Sec. 11, SE, NW, NW. County: BANNSource: GARDON CK Tributary: MARION CK

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
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

Other rights from this POD? _____

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

POD OTHER Rts 7

FB INDICATED -

Transfers Changing POD _____

Reviewer: _____

Date: _____

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
105	36E	2	N6SW		Bann		26	Tring
			S6SW		"		57	}
			S8SW		"		82	

Total Acres 166

Recommended Place of Use

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

Total Acres _____

Document how the POU was verified:

Overlap w/ other PUs?FB INDICATOR

Transfers Changing POU _____

Reviewer: _____

Date: _____



IDAHO DEPARTMENT OF WATER RESOURCES

SNAKE RIVER BASIN ADJUDICATION - BASIN 29



RIGHT ID 29 4079
POD ID 205551
Quad Arimo
Claim Type L
Easting 645811
Northing 164773
GPSID A0012618

Diversion Description

DIVERSION DAM TO DITCHES FOR FLOOD IRRIGATION from Garden Creek. 21" culvert on 1% slope runs 1/2 full maximum. Creek currently dry.

29-4080

Assumptions

Invoice #

Phase-0 (No Attention)
Phase-I (Ready to Go to Field)
Phase-II (Site Visit - Data Missin
Phase-III (Complete w/issues)
Phase-IV (Total Complete)

Linked

POD ID 205551 01.JPG

POD ID 205551 03.JPG

Photos

POD ID 205551 02.JPG

EPE (ft)

17 LH

Date (M/D/Y)

Time

Flow Rate (CFS)

6.44932716267982

Open Channel Flow

☒ Complete one box from both Area and Calculation sections

Cross Sectional Area

☐ Circular Channel

- ☐ Less than half full
☒ Half full
☐ More than half full
☐ Full

Diameter 1.75

Depth

☐ Rectangular Channel

Width

Depth

Flow Calculation

☐ Continuity

Velocity

0

☐ Orifice

(Use only for head over a pipe flowing full with free discharge)

Depth of Water above orifice centerline

☐ Weir

(Use only for water flowing freely over weir)

Height of water above nappe

Width of weir

☐ Manning (If used, include photo of representative channel section)

Channel Slope 0.01

Channel Description

Concrete lined	.016
Smooth earth	.025
Earth	.033
Rough bed, weeds on sides	.04
Smooth natural stream	.033
Rough natural stream	.1

Pumped System

HP

Pressure Head (psi)

Elevation Head (ft)

Motor Mfg

Motor Serial #

Pump Type

Pump Mfg

Pump Serial#

New Contact Information

New Contact Comments

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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
<i>Fraig</i>	<i>4/1</i>	<i>11/1</i>	<i>15</i>	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Overall Diversion Rate _____

Overall Diversion Volume _____

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
<i>Fraig</i>	<i>4/1</i>	<i>10/31</i>	<i>0.34</i>	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Overall Diversion Rate _____

Overall Diversion Volume _____

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

SOL by Dept Std 10 4/1 TO 10/31 - Not Spec By the Dams.

Cfs claimed @ 15 cfs: 16.6 ac X 0.02 = 0.33 cfs

Overlap w/ other Rk?

File indicated!

Reviewer: _____

Date: _____

SCANNED

MAY 31 2001

Log for claim A29-04080

Spatial Dynamics LTD

6/29/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
10s36e	2	NESW	2	3.8	
10s36e	2	SWSW	5	5.2	
10s36e	2	SESW	8	8.6	
Totals:			15	17.6	

Ruberry, Allen

To: McHugh, Candice
Subject: RE: Toler

JUST SO WE ARE STRAIGHT 4080 IS THE ONE GOING TO TRIAL, PROBABLY.

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

From: McHugh, Candice
Sent: Wednesday, May 05, 2004 12:43 PM
To: Ruberry, Allen
Cc: Music, Vicky
Subject: RE: Toler

Yes, change 4079 and provide us with an amended director's report to attach to an SF5 in underline/strikeout format. We will route for signatures etc.

We will just have to set 29-4079 for trial, I guess. I'm sure the court will want a report from us We'll cross that bridge in June.

Candice

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

From: Ruberry, Allen
Sent: Wednesday, May 05, 2004 12:09 PM
To: McHugh, Candice
Subject: Toler

I think we've agreed on 29-04079. I am going to increase Q to 1"/ac (he's the only user from the spring and no injury exists, even though the flow isn't there due to poor water years).

29-04080, is not going to settle and I don't think he understands his responsibilities.....

I really believe the entire issue here is that he just don't understand. He has 4 other decreed rights for the same lands dating to 1904 (2), 1896, and 1887. Availability of water is the issue and that's the way it is when your on the end of the ditch. The watermaster needs to be more proactive. He insists that the 4080 is a 1921 right from the springs even though he claimed it as 1895 from the creek. 4079, is claimed as 1921 from springs and so recommended.

guidance? should I do the changes of Q?

RECEIVED

SEP 15 2003

Department of Water Resources

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

In Re SRBA

Case No. 39576

A: Subcase 29-4080
(insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

Name: Maurice A Toler & Helen Toler

Address: 231 E Glover Rd.

Armo ID 83214

Daytime Phone: (208) 254-3361

winter: (435) ~~396-8968~~
986-3960

Name & Address of Attorney, if any:

C: CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Same as Above.

Address: _____

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ Name and Address
Should be: _____
2. ☒ Source
Should be: _____
3. ☒ Quantity
Should be: _____
4. ☒ Priority Date
Should be: _____
5. ☒ Point(s) of Diversion
Should be: _____
6. ☒ Instream Flow Description
Should be: _____
7. ☒ Purpose(s) of Use
Should be: _____
8. ☒ Period of Year
Should be: _____
9. ☒ Place of Use
Should be: _____

11. I object because:

☐ This water right should not exist.

☒ This water right was not recommended, but should be recommended with the elements described above. *See attachment A for elements.*

E. REASONS SUPPORTING OBJECTION(S): *- This water was filed on by William Marley under a Posted Notice dated July 1899. See Attachment B.*

F:

VERIFICATION (Must be Completed)

State of Idaho)
County of Bannock)ss.

Maurice A. Toler, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Maurice A. Toler
(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn to before me on: August 25, 2003

Jennifer Crabtree
Notary Public for Idaho
Residing at: Idaho Falls
My Commission Expires: 9/23/09



INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on _____, 199__, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: _____
Address: _____

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

Signature of Objector or attorney
mailing on Objector's behalf

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 29-4080

WATER RIGHT NUMBER: 29-4080

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MAURICE A TOLER 231 E GLOVER RD ARIMO, ID 83214 (208)254-3361
Current Owner	HELEN TOLER 231 E GLOVER RD ARIMO, ID 83214 (208)254-3361

Priority Date: 07/08/1895
Basis: Statutory Claim
Status: Active

<u>Source</u>	<u>Tributary</u>
GARDEN CREEK	MARSH CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	1.500 CFS	
	<u>Total Diversion:</u>	1.500 CFS	

<u>Location of Point(s) of Diversion</u>		
GARDEN CREEK	NW1/4NW1/4	Sec. 11, Twp 10S, Rge 36E, B.M.
BANNOCK County		

Place of Use
IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	Totals
10S	36E	2	2.6	5.7	8.3		16.6

Total Acres: 16.6

Conditions of Approval:

Remarks:

Comments:

Dates and Other Information:

Attachment B.

Sheet No. 3.

Instrument No. 3.

GRANTOR: United States of America.
GRANTEE: William Marley.

Kind of Instrument, - - - - - Patent.
Date of Instrument, - - - - - June 25, 1900.
Consideration, - - - - - Full payment.
Recorded, - - - - - April 5, 1905

at 10:51 A. M., in Book "4" of Patents at page
338, Records of Bannock County,
Idaho.

DESCRIPTION AND REMARKS.

The southwest quarter of the northwest quarter and the
west half of the southwest quarter of Section two in township
ten south of Range thirty-six east of Boise Meridian in Idaho,
containing one hundred and twenty acres.

And there is reserved from the lands hereby granted a
right-of-way thereon for ditches or canals constructed by the
authority of the United States.

Instrument bears the seal of the General Land Office.

can 3
FEB 5

Attachment B.

Sheet No. 5.

Continuation of Instrument No. 4.

from the date of this notice, the same being now in course of construction, and having been used for about four years last passed.

In Witness Whereof, the said claimant has hereunto set his hand and seal this 8th day of July, A. D. 1899.

William Marley
Claimant.

State of Idaho,)
County of Bannock,) ss.

William Marley, being first duly sworn according to law, deposes and says that he is the claimant of the water right mentioned in the foregoing notice of appropriation, and whose name is subscribed thereto; that the statements in said notice contained are true and that the original notice of which the foregoing is a true copy was posted in a conspicuous place at the point of diversion therein described at 45 minutes past 10 o'clock A. M., on the 8th day of July, A. D., 1899.

William Marley

Subscribed in my presence by the said William Marley and by him sworn to before me this 8th day of July, A. D., 1899.
(Seal).

James Henderson
Notary Public.

Recorded, - - - - - July 18, 1899
at 10:00 A. M., in Book "2" of Water Locations, page
15, Records of Bannock County, Idaho.

FEB 7

Exhibit B

A 25-04080

Point of Diversion

Place of Use

T
10
5
36E

B
782

32

154

313

214

11	12
21	22

MEMORANDUM

DATE: August 25, 2003

FROM: Ernie Carlsen

TO: 29-4079 and 29-4080

RE: Consultation with Maurice Toler, claimant

Maurice scheduled an appointment to discuss with me issues he had about the recommendations for the above referenced numbers. After reviewing his irrigation practices it appears the recommendation for the point of diversion, quantity and place of use under 29-4079 are incorrect. According to Maurice this right historically irrigated approximately 36 acres on the east side of Garden Creek from a diversion in the SENW Section 11. This matter will easily resolved once he files an objection to the recommendation. The more difficult issue is 29-4080. This right was disallowed because he claimed a priority date that predates some of the rights on Garden Creek decreed in the case of Garden Creek Irrigation v Wolverton in October 1906. His basis for this claim is a posted notice by William Marley going back to 1895. He indicated water diverted under this claim consists of water rising in the channel downstream from the headings for Garden Creek Irrigation. Though this water is diverted separate from rights conveyed by Garden Creek Irrigation, I explained to Mr. Toler, in my opinion, we could not recommend a priority date earlier than October 1906 since the land described by posted notice is part of the decreed place of use for rights 29-376 and 29-377. Mr. Toler wanted to know why the State was taking water away from the water users? At that point I suggested we simply agreed to disagree on this issue and I provided him with another objection form.

Maurice Toler

12/17/02

	WATER RIGHT CLAIM	SOURCE	Cfs	PRIORITY	STAGE
①	29-376	GARDEN CK	0.75	5/01/1887	DEGREE
②	29-377	GARDEN CK	1.00	5/01/1904	DEGREE
③	29-389	GARDEN CK	0.75	5/01/1896	DEGREE
④	29-390	GARDEN CK	1.00	5/01/1904	DEGREE
⑤	29-4079	SPRINGS	1.00	4/01/1921	STATUTORY
⑥	29-4080	GARDEN CK	1.50	7/08/1895	STATUTORY

$E_a \ 6.9 \ cfs$

POU: THERE ARE BASICALLY TWO SYSTEMS: AN UPPER AND A LOWER. MOST OF THE UPPER POU IS IN CRP. A GOOD CHOICE SINCE GARDEN CK WATER IS BASICALLY UNAVAILABLE, THE LOWER IS SETUDD BY GARDEN CK (NOT CANAL) AND SPRINGS THAT ARE COLLECTED BY DITCHES AND CONVEYED TO VARIOUS POU'S ON DOWNSTREAM. $A \Sigma_{ac} = 117^{\frac{2}{3}}$. AT $0.02 cfs/ac$ A MAX. OF 2.36 CAN BE USED ($942-202 IC$), AND GIVEN PRIORITIES AN ADEQUATE Q IS OVERCLAIMED, AS ABOVE. $117^{\frac{2}{3}}_{ac} \times 0.02 cfs/ac = 2.34 cfs$. #2 AND #4, 1904 PRIORITIES ARE VERY RARE IN DELIVERY AND IF AVAILABLE... LASTS ABOUT 30 MINUTES. CLAIMS #1 AND #3 ARE GOOD RIGHTS (GIVEN GARDEN CK PRIOR HAS AN 1877 DATE). THEREFORE, GIVEN #1, #2, #3 & #4 THERE IS MORE Q THAN CAN BE USED ON $117^{\frac{2}{3}}_{ac}$. PLUS, MR. TOLER HAS GARDEN CK INT SHARES UNDER THE 1877 PRIORITY.

RECOMMENDED AS #1, #2, #3, #4 & #5 WITH APPROPRIATE LIMITS.
CLAIM #6 IS DISALLOWED.

July 17, 2002

MAURICE TOLER
231 EAST GLOVER ROAD
ARIMO ID 83214

RE: EVIDENCE OF PRIORITY 29-04080

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the end of water rights review in Basin 29. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting the priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

29-04080 shows a claimed priority date of July 8, 1895. This claim will require some type of documentation supporting the claimed priority date. I have attached the first page of the claim as a reference for your use.

In addition, I will be contacting you in the near future for the purpose of scheduling an on-site visit of each of your SRBA claims.

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

For your reference, I have provided a printout of your Notice of Claim and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. While I encourage you to

read the entire pamphlet, I direct your attention to the two sections entitled **“What Kind of Evidence is Required”** and **“Some Examples of Documents Which May Be Evidence of the Priority Date”**.

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or soon will be conducted by Department personnel.

.....
The Department will not recommend the Notice of Claim be decreed by the court if evidence of a priority date is not submitted. The Notice of Claim will be disallowed.
.....

Please submit the documentation supporting the priority date within 30 days of the date of this letter, referencing all documents with the corresponding Claim number. If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact this office.

Respectfully submitted,

Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on “Evidence of Priority”
Notice of Claim (copy) 29-04080



IDAHO DEPARTMENT OF WATER RESOURCES

SNAKE RIVER BASIN ADJUDICATION - BASIN 29

RIGHT ID
POD ID
Quad
Claim Type
Easting
Northing
GPSID

Diversion Description

DIVERSION DAM TO DITCHES FOR FLOOD IRRIGATION. Diversion from Garden Cr. with headgate. Diversion is 21" wide with ordinary high water mark at 6". Weedy channel.

Assumptions

Slope.

Invoice #

Phase-0 (No Attention)
Phase-I (Ready to Go to Field)
Phase-II (Site Visit - Data Missin
Phase-III (Complete w/issues)
Phase-IV (Total Complete)

Linked

Photos

EPE (ft)

Date (M/D/Y)

Time

Flow Rate (CFS)

Open Channel Flow

☒ Complete one box from both Area and Calculation sections

Cross Sectional Area

☐ Circular Channel

- ☐ Less than half full
☐ Half full
☐ More than half full
☐ Full

Diameter

Depth

☒ Rectangular Channel

Width

Depth

Flow Calculation

☐ Continuity

Velocity

☐ Orifice

(Use only for head over a pipe flowing full with free discharge)

Depth of Water above orifice centerline

☐ Weir

(Use only for water flowing freely over weir)

Height of water above nappe

Width of weir

☐ Manning (If used, include photo of representative channel section)

Channel Slope

Channel Description	Concrete lined	.016
	Smooth earth	.025
	Earth	.033
	Rough bed, weeds on sides	.04
	Smooth natural stream	.033
	Rough natural stream	.1

Pumped System

HP

Pressure Head (psi)

Elevation Head (ft)

Motor Mfg

Motor Serial #

Pump Type

Pump Mfg

Pump Serial#

New Contact Information

New Contact Comments

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AJ5809NP
No. A29-04080

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 04/27/00
PAGE: 110

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	MAURICE A TOLER	07/08/1895	IRRIGATION	04-01 11-01	1.500 CFS	
C	HELEN TOLER					
	231 E GLOVER RD					
	ARIMO ID 83214					
	(208) 254-3361					
				TOTAL DIVERSION:	1.500 CFS	
				CONSUMPTIVE USE:		41.50 AFA

Water Source: GARDEN CREEK

Tributary to: MARSH CREEK

Stage: STATUTORY CLAIM

Point(s) of Diversion: T10S R36E S11

NWNW

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
10S	36E	2	:											02		05		08		:	16.6
																				TOTAL ACRES	16.6

POU County: BANNOCK

Non-Irrigation Uses: NONE

Other Rights: 29-00376/00377/04079/00389/00390

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A29-04079

Other Water Rights Listing Overlapping Place(s) of Use:

A29-00362 A29-00376 A29-00377 A29-00389 A29-00390 A29-04079 A29-07193 A29-11424

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

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

Audit: 04/18/90 WILSON 07/19/94 THOMPSON 03/29/95 POST-STD

Enclosed find notice of priority date for claim
A29-04080 I found this in my abstract book
if this is not sufficient please let me know.

Manning Pole

RECEIVED

JUL 25 2002

Department of Water Resources
Eastern Region

CLAIM TO A WATER RIGHT

Notice is hereby given that Maurice A. Toler,

The extent and nature of said claim is as follows:

- | | | | | | | | | |
|--------|----------------------|-----|-------------------------------|----------------|------|---------------|----|------------------------|
| Amount | <u>1.50</u> | Use | <u>Irrigation</u> | Period of Use: | From | <u>Apr. 1</u> | To | <u>Nov. 1</u> |
| Amount | _____ | Use | _____ | Period of Use: | From | _____ | To | _____ |
| Amount | _____ | Use | _____ | Period of Use: | From | _____ | To | _____ |
| | (cfs, gpm
or a/f) | | (dom., irri.,
stock, etc.) | | | | | (both dates inclusive) |

- (4) Priority claimed: (the date water was first applied to beneficial use) July 8, 1895

(5) A) Point of diversion: (give location of point where water is diverted from its source)

NW ¼ NW ¼, Sec. 11 Twp. 10S Rge. 36E B. M. County of Bannock

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. Headgate and ditch

- [illegible]

Total No. of acres 12

- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible:

- (7) If you are claiming water as a member of an organization, list name of organization:

NOTICE OF WATER APPROPRIATION.

State of Idaho,
County of Bannock, } ss.

Claim # A2904080

TO ALL CONCERNED:-

Notice is hereby given:- That William Marley of Robin of the County of Bannock of the State of Idaho, hereby appropriates and claims the use of the surplus waters of Garden Creek here flowing to the amount, or extent, of one and one-half (1-1/2) cubic feet per second of time, to be diverted from said stream at a point near the south-east corner of the north-west quarter of the North-west quarter of Section eleven (11) Township ten (10) South, Range thirty-six (36) East, where a copy of this notice is posted.

It is intended to use said waters, and the same have been used for the period of four (4) years last passed, for agricultural and domestic purposes upon the west half (1/2) of the southwest quarter (1/4) and the southwest quarter (1/4) of the northwest quarter (1/4) of Section two (2), Township ten (10) South, Range thirty-six (36) East of the Boise Meridian in Idaho, being the lands comprised in Desert Entry #3039, made at the District Land Office at Blackfoot, Idaho.

*W2SW
SWNW
SEC 2
10/36*

It is intended to divert said waters by means of a dam and ditch; said dam being about three (3) feet high, seven (7) feet through at the bottom, four (4) feet through at the top, and about ten (10) feet in length, and said ditch being about four (4) feet wide and one and one-half (1-1/2) feet deep. The length of said ditch is about three-fourths (3/4) of a mile, and the general course thereof is northeasterly from the point of diversion.

It is intended to have the works for the diversion and use of said waters as aforesaid completed within three years

exp 4

Sheet No. 5.

Continuation of Instrument No. 4.

from the date of this notice, the same being now in course of construction, and having been used for about four years last passed.

In Witness Whereof, the said claimant has hereunto set his hand and seal this 8th day of July, A. D. 1899.

William Marley 1895
Claimant.

State of Idaho,)
County of Bannock,) ss.

William Marley, being first duly sworn according to law, deposes and says that he is the claimant of the water right mentioned in the foregoing notice of appropriation, and whose name is subscribed thereto; that the statements in said notice contained are true and that the original notice of which the foregoing is a true copy was posted in a conspicuous place at the point of diversion therein described at 45 minutes past 10 o'clock A. M., on the 8th day of July, A. D., 1899.

William Marley

Subscribed in my presence by the said William Marley and by him sworn to before me this 8th day of July, A. D., 1899.

(Seal).

James Henderson
Notary Public.

Recorded, - - - - - July 18, 1899

at 10:00 A. M., in Book "2" of Water Locations, page 15, Records of Bannock County, Idaho.

MAY 31 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: A29-04080
Date Received: 4/18/1990
Receipt No: E013276
Received By: KCW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MAURICE A. TOLER 208-254-3361
Address: 231 EAST GLOVER ROAD 83214
ARIMO, ID
OR
Name: HELEN TOLER 208-254-3361
Address: 231 EAST GLOVER ROAD 83214
ARIMO, ID

A2904080



2. Date of Priority: JUL 08, 1895
3. Source: GARDEN CREEK Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4	Lot	County
10S	36E	11	<u>SE</u> NW NW		BANNOCK

5. Description of diverting works:
DIVERSION DAM TO DITCHES FOR FLOOD IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	1.500		

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

8. Total consumptive use is 41.5 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE

A29-04080

Page 1

Date: 04/18/90

MICROFILMED
NOV 13 1992

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
10S	36E	2	NE	SW	IRR	2.6
			SW	SW	IRR	5.7
			SE	SW	IRR	8.3

Section Acres 16.6

Total Acres 16.6

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:

29-00376/00377/04079/00389/00390

14. Remarks:

15. Basis of Claim: STATUTORY CLAIM

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): Maurice A. Poler Date: 4/18/90

Date: _____

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 18 day
of April 19 90

William C. Kay
Notary Public

Seal

Residing at Idaho Falls
My Commission Expires 5/29/1991

