

IDAHO DEPARTMENT OF WATER RESOURCES

RIGHT NUMBER: 29-4434

NAME AND ADDRESS: RONALD J CAPELL
PO BOX 116
ARIMO ID 83214

LINDA CAPELL
PO BOX 116
ARIMO ID 83214

MAXILYN CAPELL
PO BOX 146
ARIMO ID 83214

QUANTITY: 0.340 CFS
2.000 AFY
FACILITY VOLUME 2 AF.

POINT OF DIVERSION:

PURPOSE AND
PERIOD OF USE:

PLACE OF USE:							
<u>IRRIGATION Within BANNOCK County</u>							
T10S R37E S18	NESE	3.0	T10S R37E S18	SESE	14.0		
<u>IRRIGATION FROM STORAGE Within BANNOCK County</u>							
T10S R37E S18	NESE		T10S R37E S18	SESE			
<u>IRRIGATION STORAGE Within BANNOCK County</u>							
T10S R37E S18	NESE		T10S R37E S18	SESE			
<u>RECREATION STORAGE Within BANNOCK County</u>							
T10S R37E S18	NESE		T10S R37E S18	SESE			
<u>RECREATION FROM STORAGE Within BANNOCK County</u>							
T10S R37E S18	NESE		T10S R37E S18	SESE			

1

04/09/2003

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

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: Beneficial Use

USE OF WATER UNDER THIS RIGHT IS COMBINED WITH WATER FROM
PORTNEUF IRRIGATION CO.

06/11/2002

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

RIGHT NUMBER: 29-4434
NAME AND ADDRESS: KATHRYN CAPELL
PO BOX 146
ARIMO ID 83214
SOURCE: SPRINGS TRIBUTARY: MARSH CREEK
QUANTITY: 0.34 CFS
2.0 AFY
FACILITY VOLUME 2 AF.
PRIORITY DATE: 06/22/1948
POINT OF DIVERSION:

T10S R37E S18 SESE Within BANNOCK County
T10S R37E S18 SESE 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	0.340 CFS
IRRIGATION FROM STORAGE	04/01 10/31	2.00 AFY
IRRIGATION STORAGE	01/01 12/31	2.00 AFY
RECREATION STORAGE	01/01 12/31	2.00 AFY
RECREATION FROM STORAGE	01/01 12/31	2.00 AFY
RECREATION STORAGE IS FOR PRIVATE FISHING POND		

PLACE OF USE: IRRIGATION Within BANNOCK County
T10S R37E S18 NESE 3.0 T10S R37E S18 SESE 14.0
IRRIGATION FROM STORAGE Within BANNOCK County
T10S R37E S18 NESE T10S R37E S18 SESE
IRRIGATION STORAGE Within BANNOCK County
T10S R37E S18 NESE T10S R37E S18 SESE
RECREATION STORAGE Within BANNOCK County
T10S R37E S18 NESE T10S R37E S18 SESE
RECREATION FROM STORAGE Within BANNOCK County
T10S R37E S18 NESE T10S R37E S18 SESE

17 ACRES TOTAL

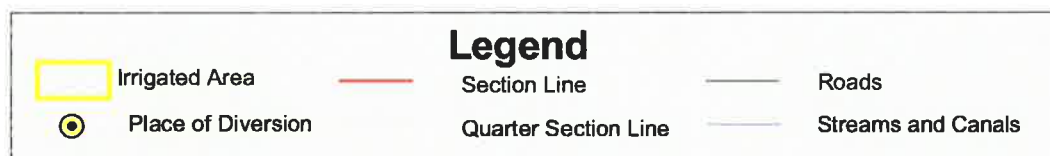
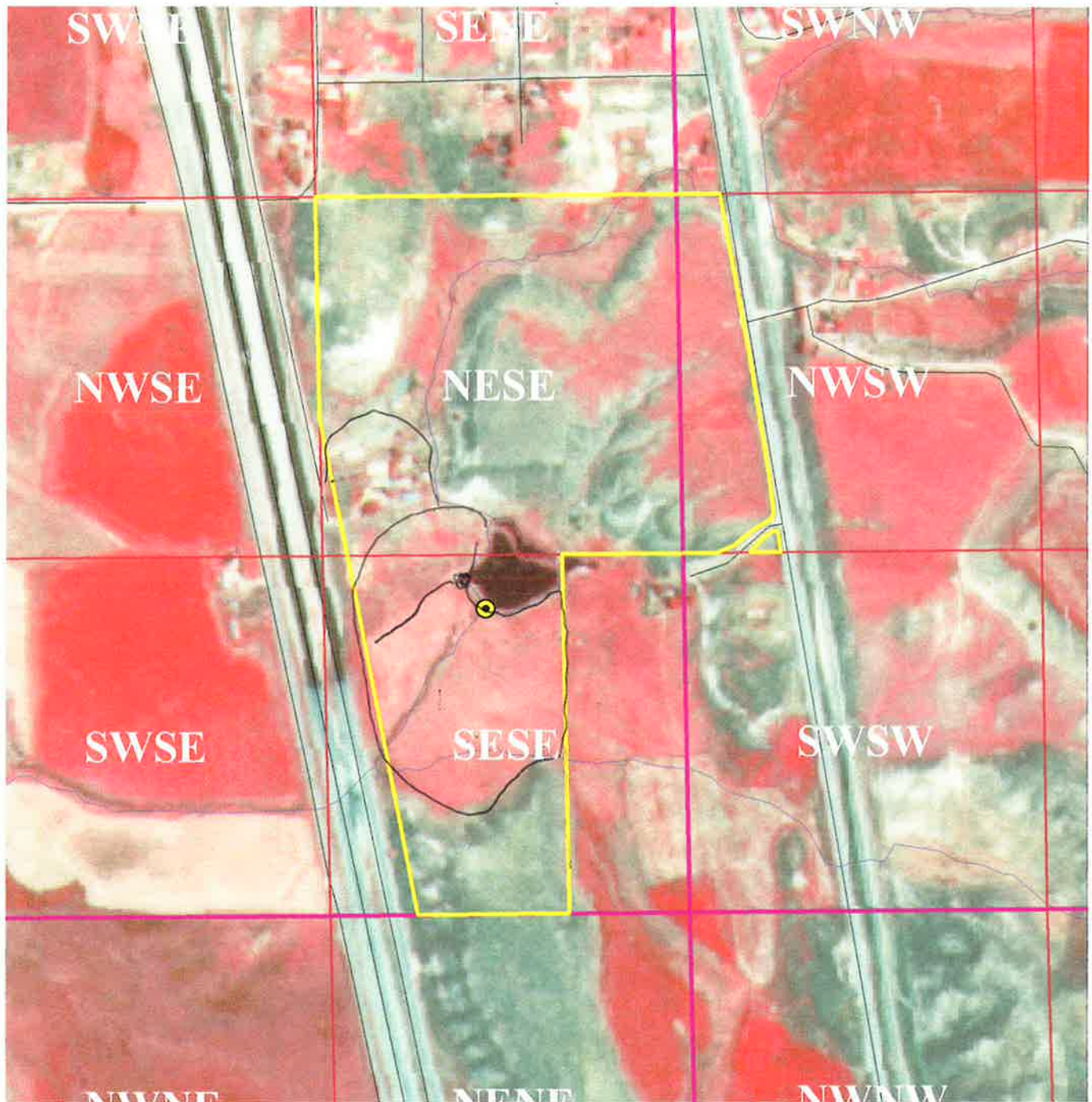
OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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: Beneficial Use

USE OF WATER UNDER THIS RIGHT IS COMBINED WITH WATER FROM
PORTNEUF IRRIGATION CO.

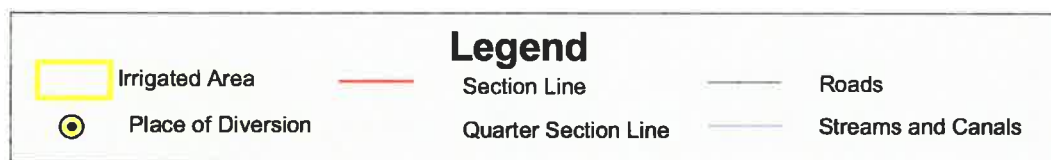
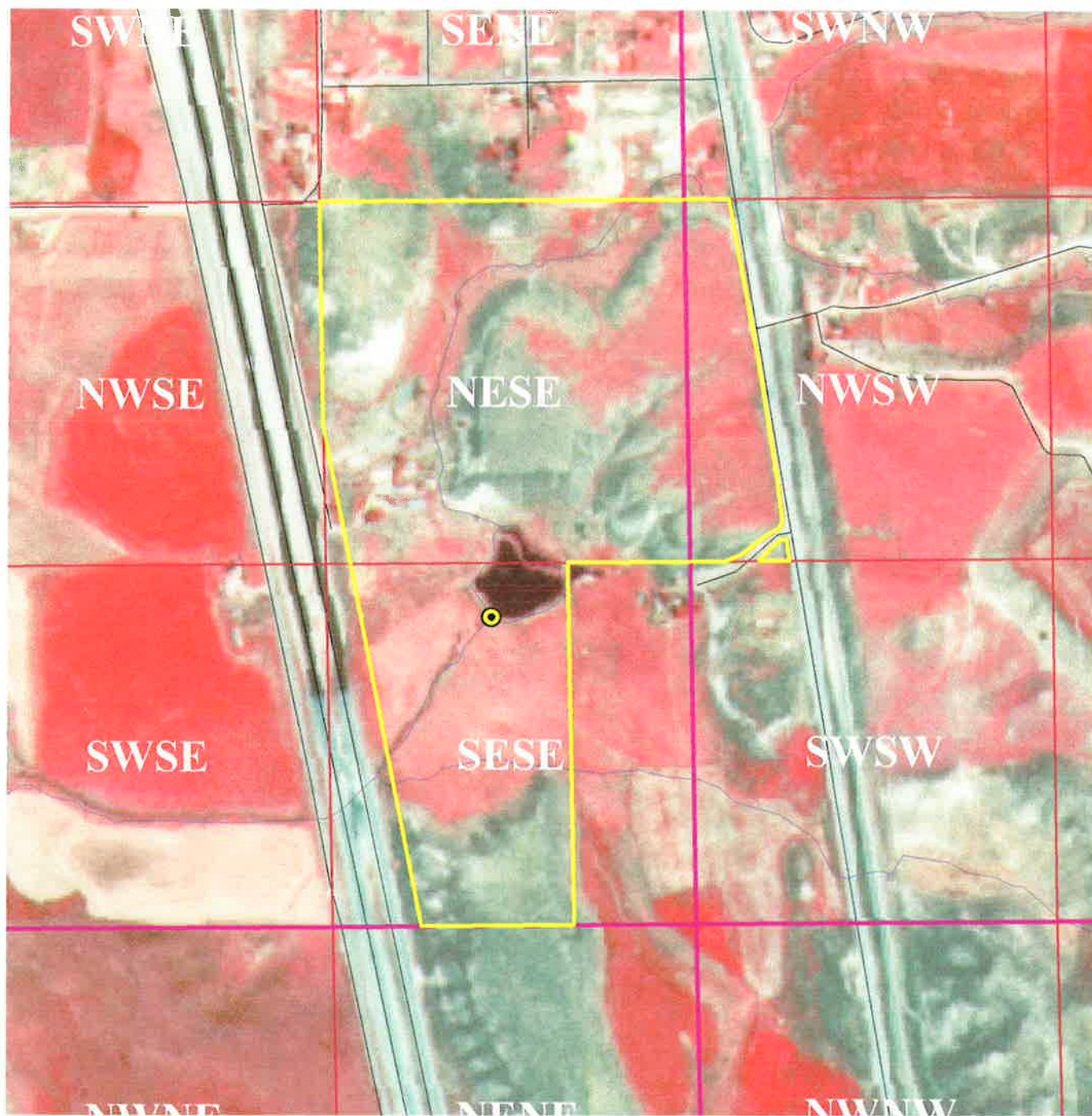
Township , 10S37E



200 0 200 400 Feet



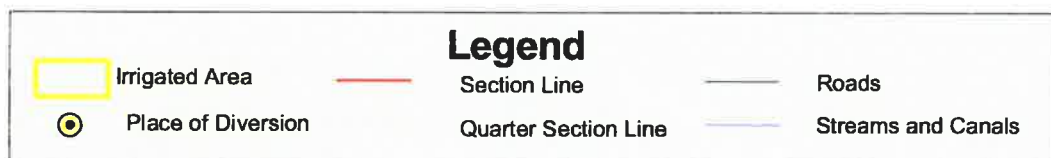
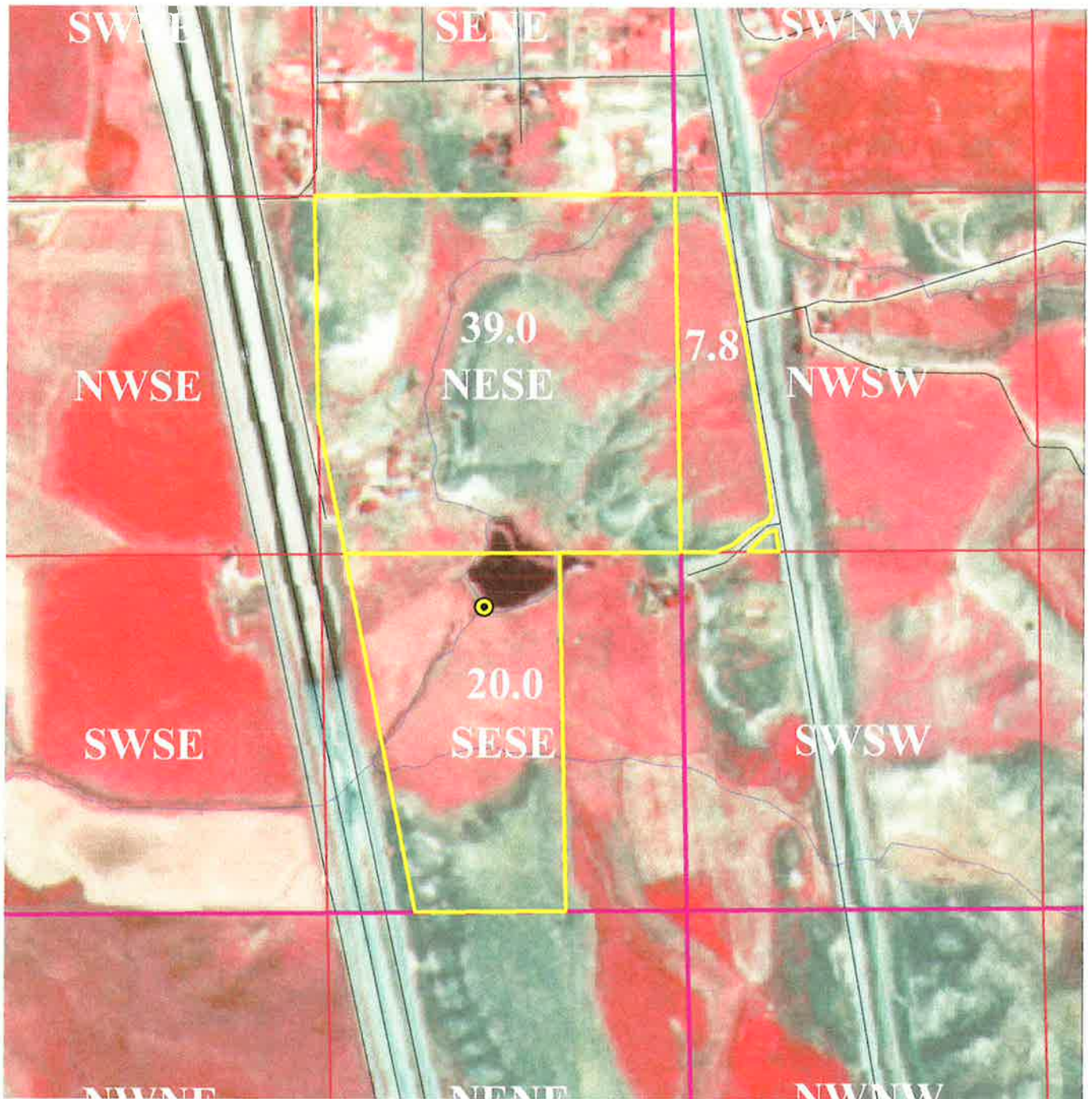
Township , 10S37E



200 0 200 400 Feet



Township , 10S37E



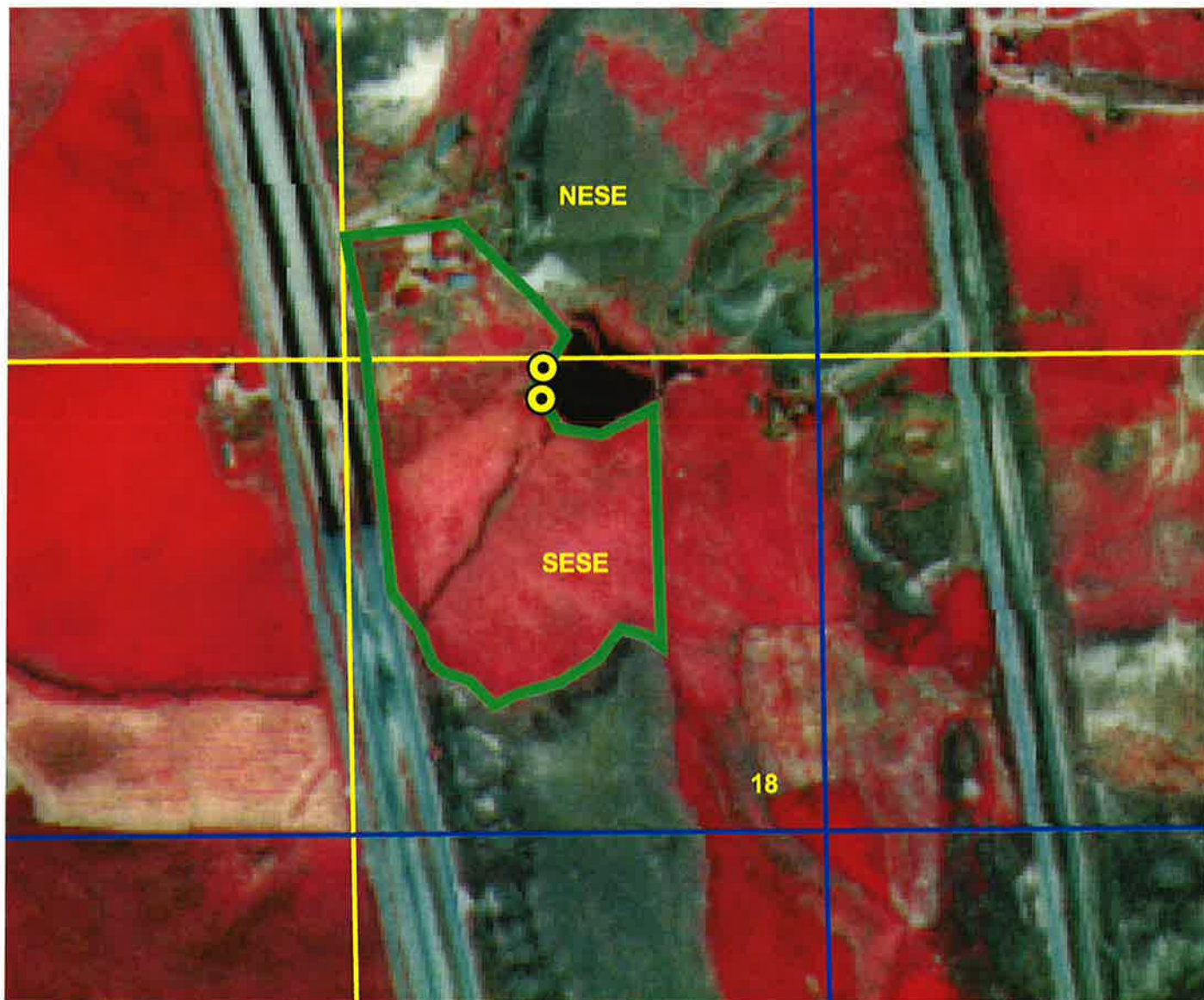
200 0 200 400 Feet



IDAHO DEPARTMENT OF WATER RESOURCES

29-04434

T10S, R37E SEC. 18



PROFILED

ACRES IRRIGATED- 17



POINT OF DIVERSION



PLACE OF USE

SCANNED
APR 05 2006

**GIS: PLACE OF USE
POINT OF DIVERSION
1987/1988 NAPP PHOTOS
DAVE CARLSON**

Crabtree, Jennifer

From: McHugh, Candice
Sent: Monday, April 05, 2004 12:02 PM
To: Crabtree, Jennifer
Cc: Carlsen, Ernie
Subject: RE: 29-4434 (Kathryn Capell ownership change)

When we changed the ownership in 2001 we should have put the water right in the name of the Kathryn Capell Revocable Trust so we have the wrong owner on the right as it is. I have called Mr. Lyon and need documents showing a conveyance of the property from the Trust to the individuals before we can change the ownership again. As far as fees are concerned, we should collect the fee because the ownership had to be changed from the Trust to the individuals anyway. I will get back to you with the additional information once I've received it.

Candice

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

From: Crabtree, Jennifer
Sent: Monday, April 05, 2004 11:45 AM
To: McHugh, Candice
Subject: RE: 29-4434 (Kathryn Capell ownership change)

The only reason she got on the right is because her husband added her name to the change of ownership form. I believe I sent that with the original scanned documents. He just wrote his name "and Linda Capell". If you don't have that ownership change I will send it again.

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

From: McHugh, Candice
Sent: Monday, April 05, 2004 11:43 AM
To: Crabtree, Jennifer
Subject: RE: 29-4434 (Kathryn Capell ownership change)

I'm looking for the document that explains how Linda got on the water right. Should be a change of ownership form of some kind.

Candice

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

From: Crabtree, Jennifer
Sent: Monday, April 05, 2004 11:36 AM
To: McHugh, Candice
Subject: 29-4434 (Kathryn Capell ownership change)

Hi. It appears Katherine filed the claim in 1990 based on a 243 claim filed by James Capell in 1983.
<< File: 29-4434.tif >>

PROFILED

SCANNED
APR 05 2006

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

07/10/2003

RECEIVED
FEB 26 2004

Department of Water Resources

RIGHT NUMBER: 29-4434
NAME AND ADDRESS: RONALD J CAPELL
PO BOX 116
ARIMO ID 83214

LINDA CAPELL
PO BOX 116
ARIMO ID 83214

MAXILYN CAPELL
PO BOX 146
ARIMO ID 83214

*Name to be removed from
water rights claim.
See original trust document, page 243*

SOURCE: SPRINGS
TRIBUTARY: MARSH CREEK

QUANTITY: 0.340 CFS
2.00 AFY
FACILITY VOLUME 2 AF.

PRIORITY DATE: 06/22/1948

POINT OF
DIVERSION: T10S R37E S18 SESE Within BANNOCK County
T10S R37E S18 SESE Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	04/01 10/31	0.340 CFS
IRRIGATION FROM STORAGE	04/01 10/31	2.00 AFY
IRRIGATION STORAGE	01/01 12/31	2.00 AFY
RECREATION STORAGE	01/01 12/31	2.00 AFY
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RECREATION STORAGE IS FOR PRIVATE FISHING POND		

PLACE OF USE:

<u>IRRIGATION Within BANNOCK County</u>			
T10S R37E S18	NESE	3.0	T10S R37E S18 SESE 14.0
<u>IRRIGATION STORAGE Within BANNOCK County</u>			
T10S R37E S18	NESE		T10S R37E S18 SESE
<u>IRRIGATION FROM STORAGE Within BANNOCK County</u>			
T10S R37E S18	NESE		T10S R37E S18 SESE
<u>RECREATION STORAGE Within BANNOCK County</u>			
T10S R37E S18	NESE		T10S R37E S18 SESE
<u>RECREATION FROM STORAGE Within BANNOCK County</u>			

SCANNED

APR 05 2006

1318

07/10/2003

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

T10S R37E S18

NESE

T10S R37E S18

SESE

17 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: BASIS OF CLAIM - Beneficial Use

USE OF WATER UNDER THIS RIGHT IS COMBINED WITH WATER FROM
PORTNEUF IRRIGATION CO.

SCANNED

APR 05 2006

Kenneth E. Lyon, Jr.

*Attorney At Law
602 South Fifth Avenue
P.O. Box 4866
Pocatello, Idaho 83205*

Of Counsel:

*Kenneth E. Lyon, III **

** Admitted to practice law in Idaho and Nevada*

RECEIVED *Karl*

FEB 26 2004

Department of Water Resources

(208) 233-1240

Fax (208) 232-8867

February 24, 2004

Idaho Department of Water Resources
Attn: Karl J. Dreher
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED

MAR 29 2004

Department of Water Resources
Eastern Region

Re: Capell

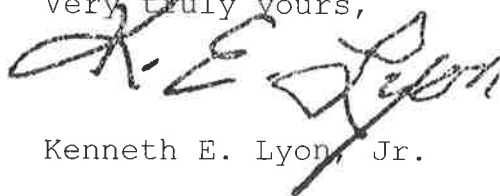
Dear Mr. Dreher:

Enclosed please find a copy of the Recommended Water Rights Acquired Under State Law dated July 10, 1003, that lists Linda Capell as having water rights to Right number 29-4434.

Also enclosed please find a copy of the Kathryn Capell Revocable Trust that indicates that Linda Capell has no right to the water rights as set forth above. As you can see on pages 2 and 3 of the trust, there is no mention of Linda's name to receive any of the property. As such, we would request that you remove Linda Capell's name from the water right number 29-4434.

If you have any questions or concerns, or need additional information, please contact my office.

Very truly yours,


Kenneth E. Lyon, Jr.

KEL/tra
Enclosures

PROFILED

SCANNED

APR 05 2006

Kathryn Capell

KATHRYN CAPELL REVOCABLE TRUST

This declaration of trust is made on Sept 7th, 1993 by **KATHRYN CAPELL**, of 14700 South Capell Road, City of Arimo, County of Bannock, State of Idaho, sometimes referred herein as trustor and/or trustee.

I, Kathryn Capell, recite and declare that:

1. I am now the owner of the property described in Exhibits "A - F," attached hereto.

2. I desire to make provisions for the care and management of such property, the collection of the income therefrom, and the disposition of both such income and such property in the manner herein provided.

For the reasons set forth above, I hereby designate myself as trustee and create the Kathryn Capell Revocable Trust (Capell Trust), pursuant to the terms set forth below:

**SECTION ONE
TRANSFER IN TRUST**

Trustor, in consideration of acceptance by trustee of the trust herein created, conveys, transfers, assigns and delivers to the Capell trust the property described in Exhibits "A - F," attached and incorporated by reference. That property, together with all other property that may from time to time be held by trustee hereunder, is referred to as "trust estate."

**SECTION TWO
DISPOSITION OF PRINCIPAL AND INCOME**

(a) During my lifetime, the income of the trust shall be distributed to me at least quarterly each year.

(b) The trustee shall also distribute to and for my benefit so much of the principal of the trust, as appears to the trustee to be reasonably necessary, appropriate, and convenient to provide for my medical needs, care, comfort, support, education, and to maintain as nearly as can be maintained the standard of living I presently enjoy.

(c) Upon my death, the successor trustee shall distribute the residue of the trust as follows:

1. The cash assets shall first be used to pay my funeral and burial expenses and my expenses of last illness, all of my debts, all taxes owed at or because of my death, and all costs and expenses in connection with the settlement of my estate in the distribution of trust assets. The proceeds from my Beneficial Life Insurance Policy shall be applied first to the foregoing expenses and obligations.

2. To my son, Ronald James Capell, the following described parcels of property, located in Bannock County, T10S, R35E:

- ✓(a) SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28
- ✓(b) E $\frac{1}{2}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33 (17)
- ✓(c) W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 34

3. To my son, Ronald James Capell, and to my daughter, Maxilyn Marie Capell, as joint tenants with right of survivorship and not as tenants in common, the property described in the attached Exhibit C; together with water in the Portneuf Irrigation Company or Canal Company, as covered by Water Certificates for three-fourths and one-seventh shares respectively. Said property is commonly referred to as the "Homeplace." Notwithstanding the foregoing, I except from the property described in Exhibit C the following parcel of property referred to herein as the residence property:

The home residence in which I am residing and one (1) acre around said dwelling place and an easement for ingress and egress over historically used ground. Said one (1) acre will include two (2) stalls in the existing parking shed, but none of the other property that includes any of the out-buildings or structures that are currently being used for farming purposes and storage. The remaining stall in the parking shed is to be used by Ronald James Capell.

The homeplace and the residence property shall further be subject to the following easements:

- a) Easement to Ronald James Capell for ingress and egress to the parking shed and the right to use, day or night, one of the three stalls in the parking shed. This easement shall be for the benefit of the said Ronald James Capell, his heirs, successors, assigns and invitees.
 - b) Recreation easement to my children, grandchildren and great-grandchildren to use the fish pond for fishing purposes together with ingress and egress to the fish pond and a convenient area around the pond to facilitate fishing.
 - c) The successor trustee shall be charged with the power and discretion to determine the boundaries of the easements and to make such other adjustments or limitations as he deems fit.
4. To my daughter, Maxilyn Marie Capell, the residence property. Prior to conveying the residence property to my daughter, my successor trustee shall have the property surveyed and legally described. My successor trustee shall have discretion to determine the exact boundaries of the residence property, subject to the limitations provided in this trust instrument.
5. To my son, Harvey J. Capell, that property known as the "Hawkins Basin Farm" as more particularly described as follows:

✓ T10S - R35E
✓ SEC 10 NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ R 426700 3300
✓ SEC 15 NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ R 42 67006100
SE $\frac{1}{4}$ NW $\frac{1}{4}$ R 4267006100

6. To my son, Daniel B. Capell, that property known as the "Henderson Farm" and more particularly described as follows:

T9S-36E
SEC 34 SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$

7. To my three children, Harvey J. Capell, Daniel B. Capell and Maxilyn M. Capell, as Tenants in Common, with no rights of survivorship, that property known as the "Denton Farm" and more particularly described as follows:

R24267011100

SEC 35 S $\frac{1}{2}$ SE $\frac{1}{4}$ T10S R35E

T11S - R35E

R442900300

SEC 2 W $\frac{1}{2}$ Government Lot 1, W $\frac{1}{2}$ E $\frac{1}{2}$
Government Lot 1 and all of Government Lots
2 and 5.

77.92AC

8. To my daughter, Maxilyn M. Capell, that property known as the "Reddyville Farm" and more particularly described as follows:

R4057016500

T8S - R36E T4057018400

R4057017900

SEC 16 SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ 93015796 - 91004506

SEC 17 SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ 93015796

SEC 20 N $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$
N $\frac{1}{2}$ NE $\frac{1}{4}$ 93015796 - 91004506

SEC 21 S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ R4057018800
N $\frac{1}{2}$ N $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ 93015796 - 91004506

Property Described in Exhibit B.

SEC 22 TAX #31 NW $\frac{1}{4}$ NW $\frac{1}{4}$ Except: Portion
Lying East of the Westerly Line of Marsh
Creek Road.

93015796 - 91004506

9. To my grandchildren and ex-daughters-in-law, as follows:

Lynette Capell Coonce	\$ 1,000.00
John Edward Capell	\$ 1,000.00
Joseph Capell	\$ 1,000.00
James M. Capell	\$ 1,000.00
Jeff H. Capell	\$ 1,000.00
Susan Ann Capell	\$ 1,000.00
Michael Ryan Capell	\$ 1,000.00
Matthew John Capell	\$ 1,000.00
Julie Ann Capell	\$ 1,000.00
Alice Melton Capell	\$ 500.00
Rosiline Swenson Capell	\$ 500.00
Danny Somsen	\$ 500.00
Darwin Somsen	\$ 500.00
Da'Nae Somsen	\$ 500.00
Jimmy Somsen	\$ 500.00
Matt Adams	\$ 500.00
Zack Adams	\$ 500.00

10. To one of my four (4) children, the vehicle which I am currently driving to be decided by placing the names of my four (4) children together and then drawing one (1) name who shall be the one who receives the vehicle.
11. Inasmuch as during my lifetime, I have financially assisted and loaned monies to my children, Ronald James Capell, Maxilyn Marie Capell, and Daniel B. Capell, the successor trustee shall convey to Harvey J. Capell and Bonnie Capell, his wife, that certain Duncan Phyfe table, plus all the leaves to the same, and the six (6) chairs with green seats. The successor trustee shall convey to Harvey J. Capell and Bonnie Capell, his wife, the Noritake China, and the sterling silver located on top of the china closet, together with all crystal in the china closet.
12. To Lynette Capell Coonce, one (1) dozen of the bronzeware table service.
13. To Susan Capell Baumgardner and Julie Capell, one (1) dozen silverware located in the drawer and to Susan Baumgardner, the music picture which hangs over the piano.
14. To Bonnie Capell my large table cloths. However, each of my children may reclaim any table cloth that was given to me by said child. The remaining cloths, other than the large table cloths, shall be distributed among my children, with the oldest child having first selection, and each of my surviving children choosing one thereafter, until the same are distributed by and between said children.
15. Each of my surviving children shall reclaim books that were gifts to me, during my lifetime. After said books are reclaimed, then my surviving children and grandchildren may choose the remaining books, by turns.
16. To my daughter, Maxilyn Marie Capell, my rings, and all furnishings she wishes to retain that are located in the residence

property at the time of my demise. Any furnishings she does not wish to keep or retain, may be disposed of, as she wishes.

17. To my son, Ronald James Capell, all farm equipment, machinery and trucks.

18. All the rest, remainder and residue of my trust shall be divided among my children, share and share alike.

(d) In the event that a beneficiary, who would receive a portion of the trust estate shall be deceased prior to my death and die without issue, that beneficiary's, share of the trust estate shall pass in equal shares to his or her siblings, or if there are no siblings, to the trustor's heirs at law.

(e) In the event a beneficiary, who would receive a portion of the trust estate shall be deceased prior to my death and die with issue, that beneficiary's share of the trust estate shall pass to his children in equal shares per stirpes.

(f) The names of my children are as follows:

1. Ronald James Capell
2. Harvey John Capell
3. Maxilyn Marie Capell
4. Daniel Bruce Capell

I have no other children.

SECTION THREE GENERAL RULES OF DISTRIBUTION

(a) Until the successor trustee shall receive written notice of my death or of any other event on which a person's right to receive any payments from this trust may depend, said trustee shall not make disbursements from this trust.

(b) In any case in which a trustee is authorized in his discretion, or is directed, or both, to pay or distribute income to any beneficiary, whether a minor or otherwise, said trustee may, in his sole discretion, at any time, apply the full or any part of such income to or for the care, comfort, maintenance, support, education, use or other benefit of such beneficiary directly, instead of paying or distributing the same to such beneficiary.

(c) In case any beneficiary shall be a minor or incompetent, trustee may, in his sole discretion, make payment or distribution of any property to which such minor or incompetent shall be entitled hereunder to the guardian, legal or natural, or any other legal representative, wherever appointed, of such minor or incompetent or to the person with whom such minor or incompetent shall reside. The written receipt of the person or persons to whom any such payment or distribution is so made shall be a full and sufficient discharge of trustee.

SECTION FOUR ADDITIONS TO TRUST

Trustor, and any other person, shall have the right at any time to add property acceptable to trustee to this trust. Such property, when received and accepted by trustee, shall become part of the trust estate.

SECTION FIVE POWERS OF TRUSTEE

Trustee shall have full responsibility and discretion to make investments and to manage the trust assets, subject to the limitations specified in this agreement, and further subject to the terms of the "Uniform trustee' Powers Act" (I.C. § 68-104 et. seq.).

SECTION SIX DURATION OF TRUSTEE'S POWERS

All of the rights, powers, authorities, privileges and immunities given to trustee by this agreement shall continue after termination of the trust created hereby until trustee shall have made actual distribution of all property held by them hereunder.

SECTION SEVEN DIRECTIONS TO TRUSTEE

In the event I resign as trustee, I reserve the right, as long as I am legally competent, to direct any successor trustee in the exercise of trust powers. However, in the event I give written direction to any successor trustee, the said successor trustee shall not be accountable for any loss sustained by reason of any action taken or omitted pursuant to that written direction. No person dealing with

trustee need inquire whether such directions have been complied with by trustee. In the absence of written direction from me, the successor trustee shall have complete power and responsibility to exercise all trust powers in accordance with the terms of this agreement and applicable law.

SECTION EIGHT TRANSACTIONS WITH THIRD PARTIES

No person dealing with trustee shall be bound to administer the application or disposition of cash or other property transferred to trustee, or to inquire into the authority for, or propriety of, any action by trustee.

SECTION NINE TRUSTEE'S BOND, COURT APPROVAL AND PERSONAL LIABILITY

No bond, surety or other security shall be required of trustee for the faithful performance of his duties hereunder, any law of any state or other jurisdiction to the contrary notwithstanding. Nor shall trustee be required to qualify before, be appointed by, or, in the absence of breach of trust, account to any court, or to obtain the order or approval of any court in the exercise of any power or discretion hereunder. Trustee shall not be personally liable on any contract, note or other instrument executed by him as trustee hereunder or for any indebtedness of the trust estate.

SECTION TEN COMPENSATION OF TRUSTEE

The original trustee hereunder, and all successor trustees, shall be entitled to reasonable compensation for their services as trustee.

SECTION ELEVEN RESIGNATION AND SUCCESSION OF TRUSTEE

(a) Trustee, or any successors, may resign at any time upon giving written notice thirty (30) days before such resignation shall take effect, to trustor, or, after the death or incompetency of trustor, to all adult beneficiaries and to a parent, or a guardian, if any, of each minor or incompetent beneficiary.

(b) If upon my death or incapacity I am still acting as trustee, then I appoint Craig Gardner to act as trustee. If he fails or is unable to act as trustee,

then I appoint Alan Van Orden to act as trustee. If Mr. Van Orden fails or is unable to serve as trustee then I appoint Key Trust of the west to serve as successor trustee.

(c) In the event that no successor trustee agrees to serve, then any trust beneficiary shall have the right to secure the appointment of a successor trustee by a court of competent jurisdiction, at the expense of the trust estate.

(d) The resigning trustee shall transfer and deliver to his or her successor the then entire trust estate. Provided that the resigning trustee has otherwise complied with the terms of this trust declaration, the resigning trustee shall thereupon be discharged as trustee of this trust and shall have no further powers, discretion, rights, obligations or duties in reference to the trust estate. On the day the resignation becomes final, all powers, discretion, rights, obligations and duties of the resigning trustee shall inure to, and be binding upon, such successor trustee.

(e) My successor trustee shall be entitled to reasonable compensation.

SECTION TWELVE ALLOCATION OF INCOME AND PRINCIPAL

The trustee shall determine what is income and what is principal of the trust created under this agreement. The trustee shall also determine what expenses, costs, taxes and charges of any kind whatsoever shall be charged against income and what shall be charged against principal in accordance with the applicable statutes of the State of Idaho as they now exist and may from time to time be enacted, amended or repealed.

SECTION THIRTEEN ACCOUNTING

Trustee shall not be required to file annual or other accounts in any court. However, trustee shall render annual statements of account to all adult beneficiaries after my death and/or incapacity.

SECTION FOURTEEN PURPOSE AND GENERAL CONSTRUCTION OF TRUST

My primary purpose and intent in creating this trust is for my benefit as income beneficiary during my lifetime. The rights and interest of remaindermen

are subordinate to that purpose. The provisions of this agreement shall be liberally construed in the interest and for my benefit as income beneficiary of the trust estate. The foregoing shall not, however, be deemed to limit the discretion hereby conferred upon trustee.

SECTION FIFTEEN SPENDTHRIFT PROVISION

No title or interest in the money or other property constituting the principal of the trust estate, or in any income accruing therefrom or thereon, shall vest in any beneficiary during the continuance of the trust created hereby. No such beneficiary shall have the power or authority to anticipate in any way any of the rents, issues, profits, income, monies, or payments hereby provided or authorized to be paid to such beneficiary, or any part thereof, nor to alienate, convey, transfer or dispose of the same or any interest therein or any part thereof in advance of payment. None of the same shall be involuntarily alienated by any beneficiary or be subject to attachment, execution, or be levied upon or taken upon any process for any debts that any beneficiary of the trust shall have contracted or shall contract, or in satisfaction of any demands or obligations that any beneficiary shall incur. All payments authorized and provided to be made by trustee shall be made and shall be valid and effectual only when paid to the beneficiary to whom the same shall belong, or otherwise, as herein provided.

SECTION SIXTEEN PERPETUITIES SAVING CLAUSE

Any other term or provision of this agreement to the contrary notwithstanding, the trust created hereby shall not continue beyond, but shall terminate, 21 years after the date of my death and the death of any beneficiary named herein and living on the date of this agreement.

SECTION SEVENTEEN REVOCATION AND AMENDMENT

I expressly reserve the right during my lifetime and for as long as I am competent to revoke this agreement by an instrument in writing acknowledged and delivered to trustee and also to amend it in whole or in part, and to withdraw from

the trust created hereby in equal shares at any time any or all of the property comprising the trust estate, all without the consent of, or notice to, any beneficiary. The duties of trustee shall not be materially increased by any amendment without the written approval of trustee. The revocation of this agreement, and any withdrawal of all or any part of the trust estate are conditioned upon payment of all sums due trustee, and the release and/or indemnification of trustee to its satisfaction against all liabilities lawfully incurred by trustee in the administration of the trust.

SECTION EIGHTEEN CONSTRUCTION

Whenever the terms "trustee" or "trustee" is used in this agreement, the words shall refer to the trustee specifically named in this agreement, and/or to any successor trustee depending on the context.

SECTION NINETEEN GOVERNING LAW

This agreement and the dispositions hereunder shall be construed and regulated, and their validity and effect shall be determined, by the laws of the State of Idaho, as such laws may from time to time exist.

IN WITNESS WHEREOF, trustor and trustee have executed this agreement at Pocatello, Idaho the day and year first above written.


Kathryn Capell

LEGAL DESCRIPTION

ACREAGE

T8S - R36E SEC 16 SW1/4, W1/2SW1/4	240
SEC 17 SE1/4, SE1/2SW1/4	200
SEC 20 W1/2SW1/4, NE1/2SW1/4, SE1/2SW1/4 W1/2SW1/4	160 80
SEC 21 SW1/4, W1/2SW1/4, E1/2SW1/4, NW1/4SW1/4, SW1/4SW1/4 NW1/4, SE1/2SW1/4	320 200
SEC 22 TAX #31 NW1/4SW1/4 EXCEPT: PORTION LYING EAST OF THE WESTERLY LINE OF MARSH CREEK ROAD	33.3
T9S-36E SEC 34 SE1/4SW1/4, W1/2SW1/4, SW1/4SW1/4	160
T10S - R36E SEC 10 NE1/2SW1/4, SW1/2SW1/4	80
SEC 15 NW1/2SW1/4, W1/2SW1/4, NE1/2SW1/4, SE1/2SW1/4	200
SEC 28 SE1/4, E1/2SW1/4	240
SEC 33 E1/2, SW1/4, SE1/2SW1/4	320
SEC 34 W1/2SW1/4	160
SEC 35 SE1/2SW1/4	80
T11S - R36E SEC 2 NW1/4 GOVERNMENT LOT 1, W1/2SW1/4 GOVERNMENT LOT 1 AND ALL OF GOVERNMENT LOTS 2 AND 3 — (SEE NOTE ON DEED)	77.92

SCANNED

APR 05 2006

A tract of land in SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 22, T.8S., R.36E., B.M., that is West of Marsh Creek Road, more particularly described as follows:

Beginning at the West quarter corner of Section 22, T.8S., R.36E., B.M.; thence

N89°33'00" E on the latitudinal centerline of said Section 22, 978.25 feet, more or less, to the Westerly right of way line of Marsh Creek Road; thence

N0°38'30"W on the said Westerly right of way line, 1,325.07 feet, more or less, to the North 1/16 line of said Section 22; thence

S89°29'20"W on the North 1/16 line of said Section 22, 966.10 feet, more or less, to the West line of Section 22; thence

S0°07'E on the West line of said Section 22, 1,324.91 feet, more or less, to the Point of Beginning.

SCANNED

APR 05 2006

The land referred to in this Guarantee is situated in the State of Idaho, County of Bannock, and described as follows:

Parcel 1:

That portion of the $W\frac{1}{2}NW\frac{1}{2}SW\frac{1}{4}$ of Section 17, Township 10 South, Range 37 East B.M. lying West of the Westerly Right-of-Way line of Highway 91-191 (Yellowstone Park Highway), BANNOCK COUNTY, IDAHO.

EXCEPTION THEREFROM:

Beginning at the West Quarter Section Corner of Section 17 Tp. 10 South Range 37 E.B.M. and running East 150 ft., to the West boundary of the Oregon Short Line R.R. Right of Way, thence South 50 ft., thence West 150 ft., thence North 50 ft., to the PLACE OF BEGINNING all in the North West Quarter of the Southwest Quarter of Section 17, Tp. 10 South Range 37 E.B.M.

Parcel 2:

The $E\frac{1}{2}$ of $SE\frac{1}{4}$ of Section 18 Township 10 South, Range 37 East B.M., BANNOCK COUNTY, IDAHO.

EXCEPTING THEREFROM:

Beginning at the S $1/16$ Corner of the East line of Section 18, T. 10 S., R. 37 E.B.M.; thence South along the said East line 1320 feet, more or less, to the South East Corner of said Section 18, thence West along the South line of the said Section 18, 440 feet, thence North 1320 feet, more or less, to the South $1/16$ line of the said Section 18, thence East along the said South $1/16$ line 440 feet to the PLACE OF BEGINNING.

ALSO EXCEPTING THEREFROM:

Beginning at the East Quarter Section Corner of Section 18, Tp. 10 South, Range 37 East of Boise Meridian, thence running along the $1/16$ Section line, West 1263 feet, thence South 50 ft., thence East 763 ft., thence South 60 ft., thence East 300 ft., thence North 60 ft., thence East 200 ft., thence North 50 ft., to the PLACE OF BEGINNING, all in the North East Quarter of South East Quarter, Section 18, Tp. 10 South, Range 37 East.

ALSO EXCEPTING THEREFROM:

A parcel of land being on both sides of the Centerline of Interstate 15, Project No. I-15-1(10)40 Highway Survey as shown on the plans thereof now on file in the office of the Department of Highways of the State of Idaho, and being a portion of the $W\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}$ of Section 18, Township 10 South, Range 37 East, Boise Meridian, described as follows, to-wit:

continued on page 2

SCANNED
APR 05 2006

LEGAL DESCRIPTION
ORDER NO. 16014-B
PAGE 2

BEGINNING at the Southwest Corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, Township 10 South, Range 37 East, Boise Meridian; thence Northerly along the West line of the E $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18 a distance of 1641.0 feet, more or less, to a point in the Northeasterly right of way fence line of existing U.S. Highway No. 91-191; thence Southeasterly along said existing right of way fence line 1678.0 feet, more or less, to a point in the South line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$; thence North 89°19' West (shown of record to be West) along said South line 315.0 feet, more or less, to the PLACE OF BEGINNING.

SCANNED

APR 05 2006

EXHIBIT "D"

That portion of the NW¼ SE¼ Sec. 18, T10S. R 37 E.B.M., lying Northeasterly of that certain highway right-of-way described in Instrument #265924 (Deed Book #105- page #231) with said highway project being designated as Yellowstone Park FI-113 (4) Highway and more particularly described as follows:

Commencing at the E¼ corner of Sec. 18, T 10 S, R 37 E.B.M., thence West 1329.00 feet to the E 1/16 corner on the latitudinal center line of said Sec. 18, the True Point of Beginning; thence South along the E 1/16 line of said Section 988.39 feet, more or less, to a point 1641.00 feet, more or less, North of the E 1/16 corner on the South line of said Sec. 18, said point being on the Northeasterly right of way line of said Yellowstone Park FI-113 (4) Highway Survey; thence along said highway right of way N 11°02' W a distance of 1007.00 feet, more or less, to the latitudinal centerline of said Sec. 18; thence East along said latitudinal centerline a distance of 192.72 feet, more or less, to the E 1/16 corner on said latitudinal center line, the True Point of Beginning and containing 2.20 acres, more or less.

SCANNED

APR 05 2006

EXHIBIT "E"

BANK ACCOUNTS, CERTIFICATES OF DEPOSIT AND
LIFE INSURANCE POLICIES

I. Certificate of Deposits

<u>Name of Issuer</u>	<u>Account #</u>	<u>Principal Balance</u>
Key Bank of Idaho	200411145069	\$30,000.00
Farm Bureau	10767-339	14,505.25
First Interstate	024-002-0394947	2,624.38
Key Bank	000 628 80 0787737	2,905.00
Key Bank	006 628 80 0787722	38,355.00
First Federal	6-000743-2	10,237.00
Farm Bureau	10767-439	11,766.15
Farm Bureau	10767-539	11,786.15

II. Life Insurance Policy

Beneficial Life Insurance Policy No. 1030774, in the face amount of \$50,000.00,
insuring the life of Kathryn Capell.

III. Safety Deposit Box No. 344, at Key Bank of Idaho.

RJC

SCANNED

APR 05 2006

Exhibit F-1

1973	Ford Model	F250	Pickup	F25YRS-00, 353
1966	GMC	DV4009	Truck	F-6,038-P
1949	Mack	EH	Truck	EHID-10573
1946	REO	21B	Truck	21B3 3509
1969	CHEV	CE20934	PU	KE249Z-889,858
1972	CHEV		Truck	CCE532V-105,596
1959	Ford	F-600	Truck	F60C9K-28,694
1962	Chev	C1534	PU	2C154K-128,421
1963	Chev	K2534	PU	3K254J-136,711
1950	GMC	FC-354	PU	A-248,114,031

Farm Machinery and Equipment

1	Caterpillar Tractor	D5	98J310
1	John Deere Tractor	8630	
1	Gleaner Combine	MHII	16
1	International Combine	403	1310
1	Oliver Tractor	1900	
1	Oliver Tractor	1900	
1	New Holland Swather	910	
1	New Holland Baler	283	
1	Graham Chisel Plow		
1	New Holland Manure Spreader	150	
4	International Grain Drills		
1	Shauffer Disc		
1	Calkins Rod Weeder		
1	Case Tractor	1200	
1	John Deere Molbold Plow	6 Bottom	
1	John Deere Molbold Plow	8 Bottom	
1	Oliver Molbold Plow	8 Bottom	
1	Oliver Subsoiler		
1	Snow Co Grain Auger	45	
1	Caterpillar D4 Tractor		
1	Ford Tractor		
1	Farm All M&A with Davis Loader		

SCANNED

APR 05 2006

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided, if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
	29-4434				

2. The following **REQUIRED** information must be submitted with this form:

A. The appropriate **FILING FEE**. See instructions for fee amounts. 0

B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.

C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or SURVEY MAP clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) are for ten or more acres of irrigation, you must submit a **USDA Farm Service Agency AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY or SURVEY MAP**.

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

Kathryn Capell

4. New Owner/Claimant(s)

Maxilyn M. Capell & Ronald J. or Linda Capell

Name Connector (Check one): [] and, [] or, [] and/or

New Mailing Address

MM same as Kathryn

Ron & Linda P.O. Box 116

City, State and ZIP Code

Arimo, ID 83214

New Telephone Number

(208) 254-3343

5. Date you acquired the property

7/31/01

PROFILED

SCANNED
APR 05 2006

KATHRYN CAPELL REVOCABLE TRUST

This declaration of trust is made on Sept 7^{ltv}, 1993 by **KATHRYN CAPELL**, of 14700 South Capell Road, City of Arimo, County of Bannock, State of Idaho, sometimes referred herein as trustor and/or trustee.

I, Kathryn Capell, recite and declare that:

1. I am now the owner of the property described in Exhibits "A - F," attached hereto.

2. I desire to make provisions for the care and management of such property, the collection of the income therefrom, and the disposition of both such income and such property in the manner herein provided.

For the reasons set forth above, I hereby designate myself as trustee and create the Kathryn Capell Revocable Trust (Capell Trust), pursuant to the terms set forth below:

SECTION ONE TRANSFER IN TRUST

Trustor, in consideration of acceptance by trustee of the trust herein created, conveys, transfers, assigns and delivers to the Capell trust the property described in Exhibits "A - F," attached and incorporated by reference. That property, together with all other property that may from time to time be held by trustee hereunder, is referred to as "trust estate."

SECTION TWO DISPOSITION OF PRINCIPAL AND INCOME

(a) During my lifetime, the income of the trust shall be distributed to me at least quarterly each year.

(b) The trustee shall also distribute to and for my benefit so much of the principal of the trust, as appears to the trustee to be reasonably necessary, appropriate, and convenient to provide for my medical needs, care, comfort, support, education, and to maintain as nearly as can be maintained the standard of living I presently enjoy.

(c) Upon my death, the successor trustee shall distribute the residue of the trust as follows:

1. The cash assets shall first be used to pay my funeral and burial expenses and my expenses of last illness, all of my debts, all taxes owed at or because of my death, and all costs and expenses in connection with the settlement of my estate in the distribution of trust assets. The proceeds from my Beneficial Life Insurance Policy shall be applied first to the foregoing expenses and obligations.

2. To my son, Ronald James Capell, the following described parcels of property, located in Bannock County, T10S, R35E:

- (a) SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 28
- (b) E $\frac{1}{2}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33
- (c) W $\frac{1}{2}$ W $\frac{1}{2}$ of Section 34

3. To my son, Ronald James Capell, and to my daughter, Maxilyn Marie Capell, as joint tenants with right of survivorship and not as tenants in common, the property described in the attached Exhibit C; together with water in the Portneuf Irrigation Company or Canal Company, as covered by Water Certificates for three-fourths and one-seventh shares respectively. Said property is commonly referred to as the "Homeplace." Notwithstanding the foregoing, I except from the property described in Exhibit C the following parcel of property referred to herein as the residence property:

The home residence in which I am residing and one (1) acre around said dwelling place and an easement for ingress and egress over historically used ground. Said one (1) acre will include two (2) stalls in the existing parking shed, but none of the other property that includes any of the out-buildings or structures that are currently being used for farming purposes and storage. The remaining stall in the parking shed is to be used by Ronald James Capell.

The homeplace and the residence property shall further be subject to the following easements:

- a) Easement to Ronald James Capell for ingress and egress to the parking shed and the right to use, day or night, one of the three stalls in the parking shed. This easement shall be for the benefit of the said Ronald James Capell, his heirs, successors, assigns and invitees.
 - b) Recreation easement to my children, grandchildren and great-grandchildren to use the fish pond for fishing purposes together with ingress and egress to the fish pond and a convenient area around the pond to facilitate fishing.
 - c) The successor trustee shall be charged with the power and discretion to determine the boundaries of the easements and to make such other adjustments or limitations as he deems fit.
4. To my daughter, Maxilyn Marie Capell, the residence property. Prior to conveying the residence property to my daughter, my successor trustee shall have the property surveyed and legally described. My successor trustee shall have discretion to determine the exact boundaries of the residence property, subject to the limitations provided in this trust instrument.
5. To my son, Harvey J. Capell, that property known as the "Hawkins Basin Farm" as more particularly described as follows:
- T10S - R35E
SEC 10 NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
SEC 15 NW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$
6. To my son, Daniel B. Capell, that property known as the "Henderson Farm" and more particularly described as follows:
- T9S-36E
SEC 34 SE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$

EXHIBIT

The land referred to in this Guarantee is situated in the State of Idaho, County of Bannock, and described as follows:

Parcel 1:

That portion of the W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 17, Township 10 South, Range 37 East B.M. lying West of the Westerly Right-of-Way line of Highway 91-191 (Yellowstone Park Highway), BANNOCK COUNTY, IDAHO.

EXCEPTION THEREFROM:

Beginning at the West Quarter Section Corner of Section 17 Tp. 10 South Range 37 E.B.M. and running East 150 ft., to the West boundary of the Oregon Short Line R.R. Right of Way, thence South 50 ft., thence West 150 ft., thence North 50 ft., to the PLACE OF BEGINNING all in the North West Quarter of the Southwest Quarter of Section 17, Tp. 10 South Range 37 E.B.M.

Parcel 2:

The E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 18 Township 10 South, Range 37 East B.M., BANNOCK COUNTY, IDAHO.

EXCEPTING THEREFROM:

Beginning at the S $\frac{1}{16}$ Corner of the East line of Section 18, T. 10 S., R. 37 E.B.M.; thence South along the said East line 1320 feet, more or less, to the South East Corner of said Section 18, thence West along the South line of the said Section 18, 440 feet, thence North 1320 feet, more or less, to the South $\frac{1}{16}$ line of the said Section 18, thence East along the said South $\frac{1}{16}$ line 440 feet to the PLACE OF BEGINNING.

ALSO EXCEPTING THEREFROM:

Beginning at the East Quarter Section Corner of Section 18, Tp. 10 South, Range 37 East of Boise Meridian, thence running along the $\frac{1}{16}$ Section line, West 1263 feet, thence South 50 ft., thence East 763 ft., thence South 60 ft., thence East 300 ft., thence North 60 ft., thence East 200 ft., thence North 50 ft., to the PLACE OF BEGINNING, all in the North East Quarter of South East Quarter, Section 18, Tp. 10 South, Range 37 East.

ALSO EXCEPTING THEREFROM:

A parcel of land being on both sides of the Centerline of Interstate 15, Project No. I-15-1(10)40 Highway Survey as shown on the plans thereof now on file in the office of the Department of Highways of the State of Idaho, and being a portion of the W $\frac{1}{2}$ E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 18, Township 10 South, Range 37 East, Boise Meridian, described as follows, to-wit:

continued on page 2

SCANNED

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LEGAL DESCRIPTION
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PAGE 2

BEGINNING at the Southwest Corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 18, Township 10 South, Range 37 East, Boise Meridian; thence Northerly along the West line of the E $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 18 a distance of 1641.0 feet, more or less, to a point in the Northeasterly right of way fence line of existing U.S. Highway No. 91-191; thence Southeasterly along said existing right of way fence line 1678.0 feet, more or less, to a point in the South line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$; thence North 89°19' West (shown of record to be West) along said South line 315.0 feet, more or less, to the PLACE OF BEGINNING.

SCANNED

APR 05 2006

the trust created hereby in equal shares at any time any or all of the property comprising the trust estate, all without the consent of, or notice to, any beneficiary. The duties of trustee shall not be materially increased by any amendment without the written approval of trustee. The revocation of this agreement, and any withdrawal of all or any part of the trust estate are conditioned upon payment of all sums due trustee, and the release and/or indemnification of trustee to its satisfaction against all liabilities lawfully incurred by trustee in the administration of the trust.

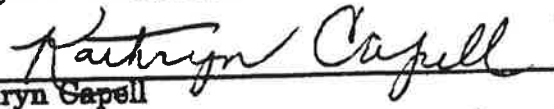
SECTION EIGHTEEN CONSTRUCTION

Whenever the terms "trustee" or "trustee" is used in this agreement, the words shall refer to the trustee specifically named in this agreement, and/or to any successor trustee depending on the context.

SECTION NINETEEN GOVERNING LAW

This agreement and the dispositions hereunder shall be construed and regulated, and their validity and effect shall be determined, by the laws of the State of Idaho, as such laws may from time to time exist.

IN WITNESS WHEREOF, trustor and trustee have executed this agreement at Pocatello, Idaho the day and year first above written.


Kathryn Capell

**LAST WILL AND TESTAMENT
OF
KATHRYN CAPELL**

I, Kathryn Capell, of ^{Arms Bannock} ~~Blackfoot~~, Bannock County, State of Idaho, am over the age of majority, of sound and disposing mind and memory and not acting under duress, menace, constraint, or undue influence of any kind. I freely, willingly, and as a voluntary act make, publish and declare this to be my Last Will and Testament.

**ARTICLE I
INTRODUCTORY CLAUSES**

Section 1.01. Revocation of Prior Wills.

I hereby revoke all Wills and Codicils that I have previously made.

Section 1.02. Declaration of Family.

My husband predeceased me and I am not married. I have four (4) children now living all of whom are adults and whose names are listed below:

Name

Ronald James Capell

Harvey John Capell

Maxilyn Marie Capell

Daniel Bruce Capell

As used in this Will, the term "my child" and "my children" shall include all of the above named children, and only those children. Reference in this Will to "my children" shall be deemed to include reference to "my child" whenever circumstances indicate the singular is appropriate.

Section 1.03. Debts, Taxes and Estate Expenses.

To the extent not paid for out of the Kathryn Capell Revocable Trust, I order and direct that all my just debts, all taxes at or because of my death, all expenses of my last illness and burial, and all costs and expenses in connection with the probate and distribution of my estate be paid at the discretion of my Personal Representative and I

LAST WILL AND TESTAMENT OF

Kathryn J. Capell

Page - 1

93-G-1912

SCANNED

APR 05 2006

new
kt

MAY 31 2001

Log for claim A29-04434

Spatial Dynamics LTD

7/5/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
10s37e	17	NWSW	10	7.8	
10s37e	18	NESE	20	39	Indiscernible
10s37e	18	SESE	10	20	Indiscernible
Totals:			40	66.8	

Needs to be Amended for
more AF STORAGE area OR
Recreational storage

1.5

springs flow into pond
springs are on the
Northeast Edge of
pond

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
A29-04434	10S 37E	18	NW	SE	SE			BANNOCK		

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
A29-04201 29-11093
A29-11093

WR RECORDS IN SAME 40 ACRE TRACT
29-04201

SOURCE: SPRINGS

TRIB: MARSH CREEK

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
29-04434	10S 37E	18		SE	SE			BANNOCK		

OTHER WR RECORDS WITH SAME WR POD

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX
A29-04201 29-11093
A29-11093

SOURCE: SPRING

TRIB: MARSH CREEK

C. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY
ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA? N/A() Y() N()

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM? Y() N()

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y() N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY
ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE? Y() N()

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM? Y() N()

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM) Y() N()

AJ FIELD EXAM (DATE OF FIELD EXAM) NAME OF EXAMINER Y() N()

OTHER (DESCRIBE IN NOTES BELOW)

NOTES:

=====

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

TWP. 10S	RGE. 37E	SEC. 18	1/4 NW	1/4 SE	1/4 SE	LOT	POD FLAG	COUNTY BANNOCK	DIVERSION NAME	DIVERSION NBR
___	___	___	___	___	___	___	___	___	___	___
___	___	___	___	___	___	___	___	___	___	___
___	___	___	___	___	___	___	___	___	___	___
___	___	___	___	___	___	___	___	___	___	___
___	___	___	___	___	___	___	___	___	___	___
___	___	___	___	___	___	___	___	___	___	___

SOURCE: _____

TRIB: _____

REVIEWED BY: _____

DATE: _____

=====

SYSTEM DESCRIPTION: DESCRIBED BELOW (___), SEE LICENSE FILE (___), OR SEE ATTACHMENT (___)

A. ROOT WATER RIGHT NUMBERS: A29-04434

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
10S	37E	17	NW	SW		CAPELL, KATHRYN	A29-04434 / 10.0	29-04434 / 10.0	35.0		
			NW	SW		PORTNEUF MARSH VALLEY CANAL	COA29-04060 / 16.0	- /			
			NW	SW		PORTNEUF MARSH VALLEY CANAL	COA29-00053 / 16.0	- /			
			NW	SW		PORTNEUF IRRIGATION CO	A29-11277 / 35.5	- /			
			NW	SW		CITY OF ARIMO	A29-07334 /	- /			
			NW	SW		PORTNEUF IRRIGATING CO	A29-00051 / 35.5	29-00051 /			
			NW	SW		PORTNEUF MARSH VALLEY CANAL	COA29-00052 / 16.0	- /			
			NW	SW		PORTNEUF MARSH VALLEY CANAL	COA29-00589 / 16.0	- /			
			NW	SW		CITY OF ARIMO	A29-04148 /	29-04148 /			
			NW	SW		EVANS, ALEXANDER JENKINS		29-08112 / 15.0			
10S	37E	18	NE	SE		CAPELL, KATHRYN	A29-04434 / 20.0	29-04434 / 20.0	34.0		
			NE	SE		PORTNEUF IRRIGATING CO	A29-00051 / 40.0	29-00051 /			
			NE	SE		PORTNEUF IRRIGATION CO	A29-11277 / 40.0	- /			
			NE	SE		CITY OF ARIMO	A29-07334 /	- /			
			NE	SE		CAPELL, KATHRYN	A29-10977 /	- /			
			NE	SE		CITY OF ARIMO	A29-04148 /	29-04148 /			
			NE	SE		CAPELL, KATHRYN	29-10977 /	- /			
			NE	SE		HENDERSON RANCHES INC.		29-04200 / 30.0			
10S	37E	18	SE	SE		CAPELL, KATHRYN	A29-04434 / 10.0	29-04434 / 10.0	31.0		
			SE	SE		LANCE, MARTHA W	A29-12890 /	- /			
			SE	SE		HENDERSON RANCHES INC	29-11093 /	- /			
			SE	SE		PORTNEUF IRRIGATING CO	A29-00051 / 35.0	29-00051 /			
			SE	SE		PORTNEUF IRRIGATION CO	A29-11277 / 35.0	- /			
			SE	SE		HENDERSON RANCHES INC	A29-11093 /	- /			
			SE	SE		LANCE, MARTHA W	A29-02456 / 8.0	29-02456 / 8.0			
			SE	SE		LANCE, MARTHA W	29-12890 /	- /			
			SE	SE		HENDERSON RANCHES INC.		29-04200 / 30.0			
			SE	SE		HENDERSON RANCHES INC.		29-04201 / 40.0			
			SE	SE		HENDERSON RANCHES INC.		29-04203 / 10.0			

ADDITIONAL POU FOUND

TOTAL ACRES	A29-04434	40.00	40.00	100.00
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POU COUNTY: BANNOCK

C. IS WATER USAGE FOUND IN TRACTS OTHER THAN THOSE CLAIMED?

Y() N()

* IF YES, ARE THESE TRACTS LISTED ABOVE (), OR ARE THEY LISTED ON AN ATTACHED SHEET ()

LIST OF ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A29-04434	SPRINGS	CAPELL, KATHRYN	0.800	0.020		
A29-00051	PORTNEUF RIVER	PORTNEUF IRRIGATING CO	55.000	0.016		
A29-00052	PORTNEUF RIVER	PORTNEUF MARSH VALLEY CANAL CO	176.850	0.034		
A29-00053	TOPONCE CREEK	PORTNEUF MARSH VALLEY CANAL CO	164.430	0.032		
A29-00589	PORTNEUF RIVER	PORTNEUF MARSH VALLEY CANAL CO			16410.00	3.23
	TOPONCE CREEK					
A29-02456	SPRING	LANCE, MARTHA W	0.800	0.020	139.30	3.48
A29-04060	PORTNEUF RIVER	PORTNEUF MARSH VALLEY CANAL CO			21834.00	4.30
A29-11277	PORTNEUF RIVER	PORTNEUF IRRIGATION CO	55.000	0.016		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A29-07334	MUNICIPAL	CITY OF ARIMO	FROM 01-01 TO 12-31	0.740 CFS	
A29-04148	MUNICIPAL	CITY OF ARIMO	FROM 01-01 TO 12-31	0.330 CFS	
A29-10977	DOMESTIC	CAPELL, KATHRYN	FROM 01-01 TO 12-31	0.040 CFS	
A29-10977	STOCKWATER	CAPELL, KATHRYN	FROM 01-01 TO 12-31	0.020 CFS	
29-10977	DOMESTIC	CAPELL, KATHRYN	FROM 01-01 TO 12-31	0.040 CFS	
29-10977	STOCKWATER	CAPELL, KATHRYN	FROM 01-01 TO 12-31	0.020 CFS	
A29-12890	DOMESTIC	LANCE, MARTHA W	FROM 01-01 TO 12-31	0.040 CFS	
A29-12890	STOCKWATER	LANCE, MARTHA W	FROM 01-01 TO 12-31	0.020 CFS	
29-11093	DOMESTIC	HENDERSON RANCHES INC	FROM 01-01 TO 12-31	0.040 CFS	
29-11093	STOCKWATER	HENDERSON RANCHES INC	FROM 01-01 TO 12-31	0.040 CFS	
A29-11093	DOMESTIC	HENDERSON RANCHES INC	FROM 01-01 TO 12-31	0.040 CFS	
A29-11093	STOCKWATER	HENDERSON RANCHES INC	FROM 01-01 TO 12-31	0.040 CFS	
29-12890	DOMESTIC	LANCE, MARTHA W	FROM 01-01 TO 12-31	0.040 CFS	
29-12890	STOCKWATER	LANCE, MARTHA W	FROM 01-01 TO 12-31	0.020 CFS	

D. ARE OTHER WATER RIGHTS USED FOR THE SAME PURPOSE?

Y() N()

* IF YES, COMPLETE OVERLAP REVIEW:

OTHER RIGHTS LISTED IN CLAIM: DELIVERED THROUGH ARIMO DITCH CO.

AJ5809NP
No. A29-04434

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 04/27/00
PAGE: 151

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	KATHRYN CAPELL PO BOX 146 ARIMO ID 83214 (208) 254-3596	12/27/1944	IRRIGATION IRRIGATION STORAGE IRRIGATION FROM STORAGE	04-01 11-01 01-01 12-31 04-01 11-01	0.800 CFS	2.00 AFA 2.00 AFA
TOTAL DIVERSION:					0.800 CFS	
CONSUMPTIVE USE:						100.00 AFA

Water Source: SPRINGS

Tributary to: MARSH CREEK

Stage: STATUTORY CLAIM

Point(s) of Diversion:

T10S R37E S18

NWSESE

BANNOCK County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE								
T	R	S	:	NENE	NWNE	SWNE	SENE	:	NENW	NWNW	SWNW	SENW	:	NESW	NWSW	SWSW	SESW	:	NESE	NWSE	SWSE	SESE	:	SUM
			:	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	:	
10S	37E	17	:					:					:					:					:	10.0
10S	37E	18	:					:					:					:					:	30.0
TOTAL ACRES																							40.0	

Place of use location for IRRIGATION FROM STORAGE is the same location as described for: IRRIGATION

POU County: BANNOCK

Non-Irrigation Uses: THE POND IS ALSO USED AS A PRIVATE FISHERY.

Other Rights: DELIVERED THROUGH ARIMO DITCH CO.

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):
A29-04201

Other Water Rights Listing Overlapping Place(s) of Use:
A29-00051 A29-00052 A29-00053 A29-00589 A29-02456 A29-04060 A29-11277

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

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

Audit: 04/03/90 MOBILE2 07/25/94 THOMPSON 03/29/95 POST-STD

CLAIM TO A WATER RIGHT

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

(Zip Code)

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

RECEIVED

FEB 15 1995

Department of Water Resources
Eastern District OfficeSTATE OF IDAHO
DEPARTMENT OF FISH AND GAME
Boise, Idaho

June 22 19 68

PRIVATE FISH POND PERMIT

In conformance with Section 35-1501 I.C.A. and the powers invested in the State Fish and Game Commission, permission is hereby granted to:

Name Paul Evans & James E. Capell Address Arino, Virginia, Idaho

to establish and maintain a private fish pond on premises owned by him for the purpose of propagating fish under the following conditions:

(1) Such pond shall not be established so as to contain any waters where game fish naturally abound without constructing inlets and outlets approved by the Director of the Idaho State Fish and Game Department.

(2) Fish from a pond stocked by the state may not be sold, nor may a charge be made for fishing; the owner of the pond may or may not allow others to fish at his discretion.

(3) Anyone fishing in the pond (including the owner) must have a state fishing license and must conform to size and bag limits and seasons.

(4) The state may take surplus fry for stocking other waters.

(5) Private ponds larger than 25 surface acres must have at least one third of their shoreline and surface open to the public for fishing.

The following number and species of fish will be supplied for stocking purposes:

None

and will be supplied by:

Water for this pond is supplied by a spring located on the SE 1/4 Sec 18 T 10 S, R 37 E.

PROVISIONS OF PERMIT ACCEPTED:

IDAHO STATE FISH & GAME DEPARTMENT

James E. Capell
Signature of Permittee
Paul Evans

Director, T.B. Murray
By James C. Simpson
MICROFILMED
NOV 13 1990

SCANNED
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: A29-04434

Date Received: 4/03/1990

Receipt No: 1006450

Received By: CF

90
40 AC
50

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

251-4218

1. Name: KATHRYN CAPELL
Address: P.O. BOX 146
ARIMO, ID

208-254-3596

83214

2. Date of Priority: DEC 27, 1944

3. Source: SPRINGS

Trib. to: MARSH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
10S	37E	18	NW	SE	SE		BANNOCK

5. Description of diverting works:

DAM, POND & DITCHES, OR A PUMP AND SPRINKLERS ARE SOMETIMES USED

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.800		
IRRIGATION STORAGE	01/01	12/31			2.00
IRRIGATION FROM STORAGE	04/01	11/01			2.00

7. Total Quantity Appropriated is:

0.800 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is 100.0 Acre Feet Per Annum.

9. Non-irrigation uses:

THE POND IS ALSO USED AS A PRIVATE FISHERY.

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
10S	37E	17	NW	SW		IRR	10.0

Section Acres 10.0

A29-04434

Page 1

Date: 04/03/90

A2904434



MICROFILMED

NOV 13 1992

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
10S	37E	18	NE	SE		IRR	20.0
			SE	SE		IRR	10.0
						Section Acres	30.0
						Total Acres	40.0

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:
DELIVERED THROUGH ARIMO DITCH CO.

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: -1-

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): Rathsign J. Capell Date: Apr. 2, 1990

Date: _____

State of Idaho)
County of Bannock) SS.

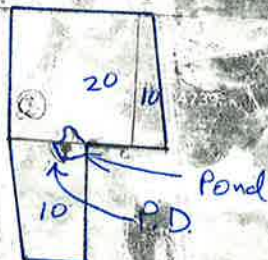
Subscribed and sworn (or affirmed) before me this 3rd day
of April 19 90 Carter Fritschle
Notary Public

Seal

Carter Fritschle, Notary Public
Residing at _____ Residing at Eagle, Idaho
My commission Expires March 21, 1994
My Commission Expires _____

1129-04434

T 10S
R 37E



MICROFILMED
NOV 13 1992