

05/27/2003

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

RIGHT NUMBER: 29-10007

NAME AND ADDRESS: ARTHUR POWELL
9718 MARSH CREEK RD
MC CAMMON ID 83250

LORI POWELL
9718 MARSH CREEK RD
MC CAMMON ID 83250

SOURCE: COTTONWOOD CREEK TRIBUTARY: MARSH CREEK

QUANTITY: 0.010 CFS

PRIORITY DATE: 06/18/1902

POINT OF DIVERSION:

T09S R36E S21 SENESE Within BANNOCK County Source: COTTONWOOD CREEK

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 10/31	0.010 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T09S R36E S21	NWSE	0.2	T09S R36E S22	NWSW	0.1
---------------	------	-----	---------------	------	-----

0.3 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

RIGHT NO. 29-13164 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

PROPERTY IS ALSO KNOWN AS LOT 11, IN THE COTTONWOOD ACRES SUBDIVISION.

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 29-4045.

10/17/2002

IDAHO DEPARTMENT OF WATER RESOURCES
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T09S R36E S21 SENESE 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	0.010 CFS

PLACE OF USE: IRRIGATION Within BANNOCK County

T09S R36E S21	NWSE	0.2	T09S R36E S22	NWSW	0.1
---------------	------	-----	---------------	------	-----

0.3 ACRES TOTAL

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

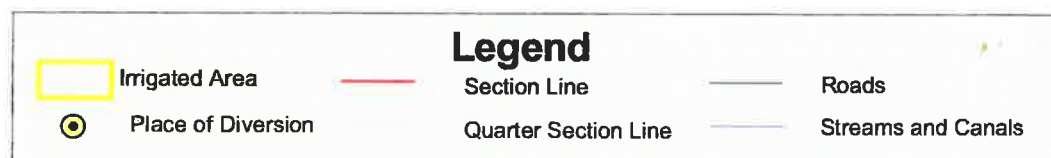
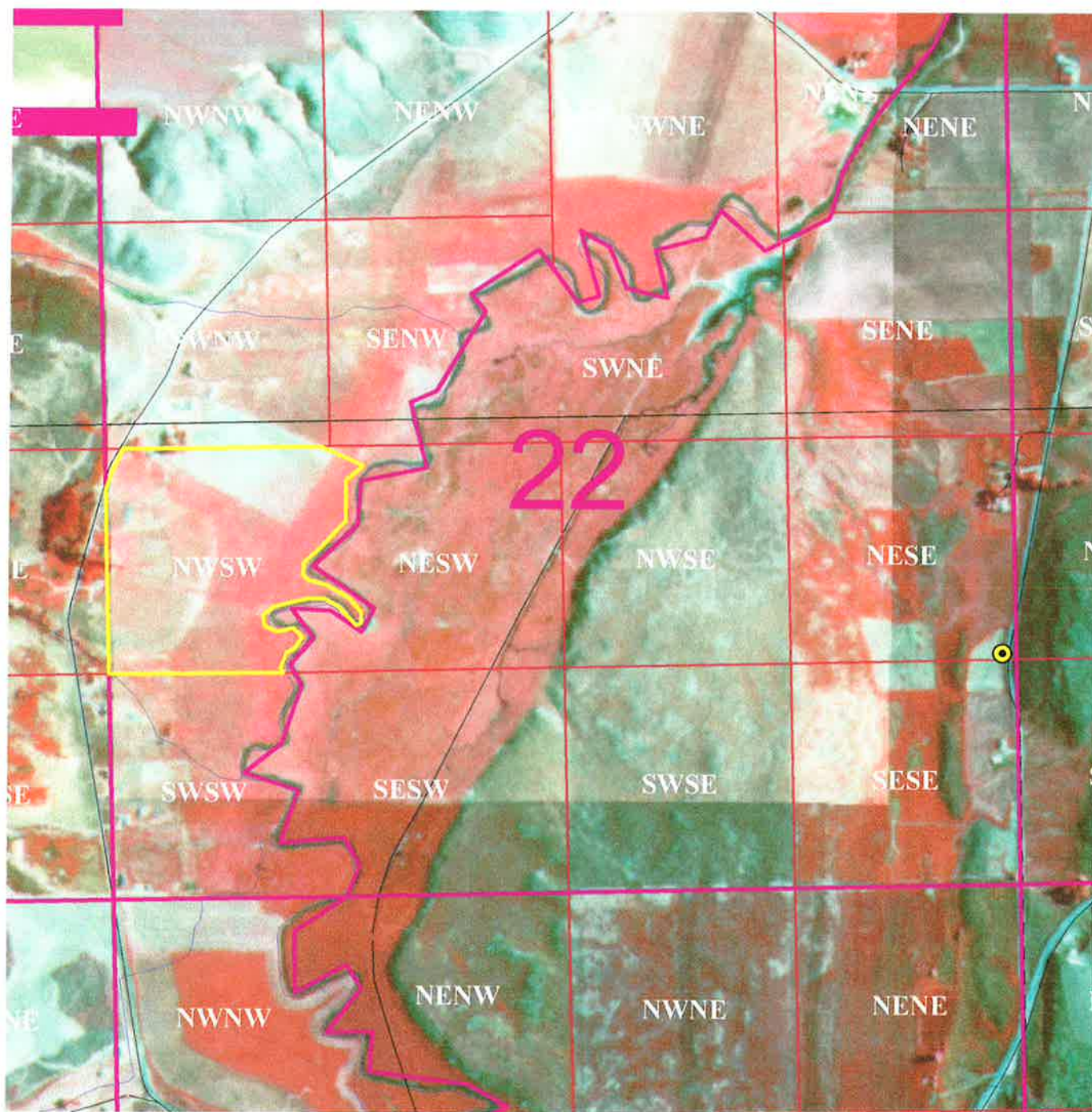
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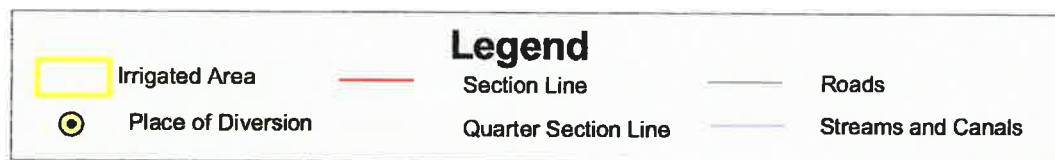
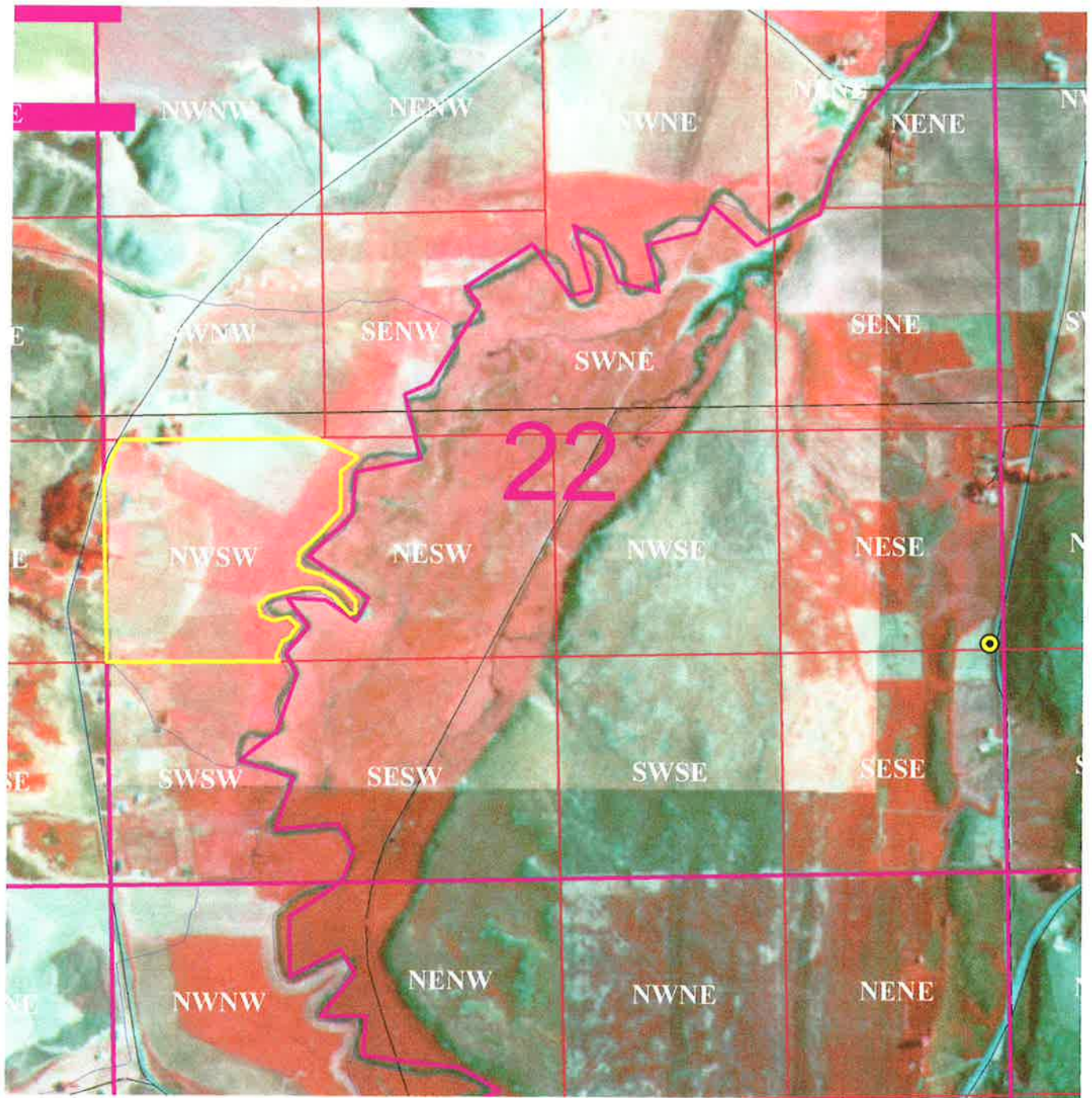
Township , 9S36E



400 0 400 800 Feet



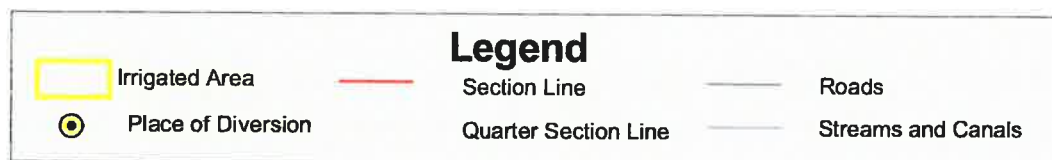
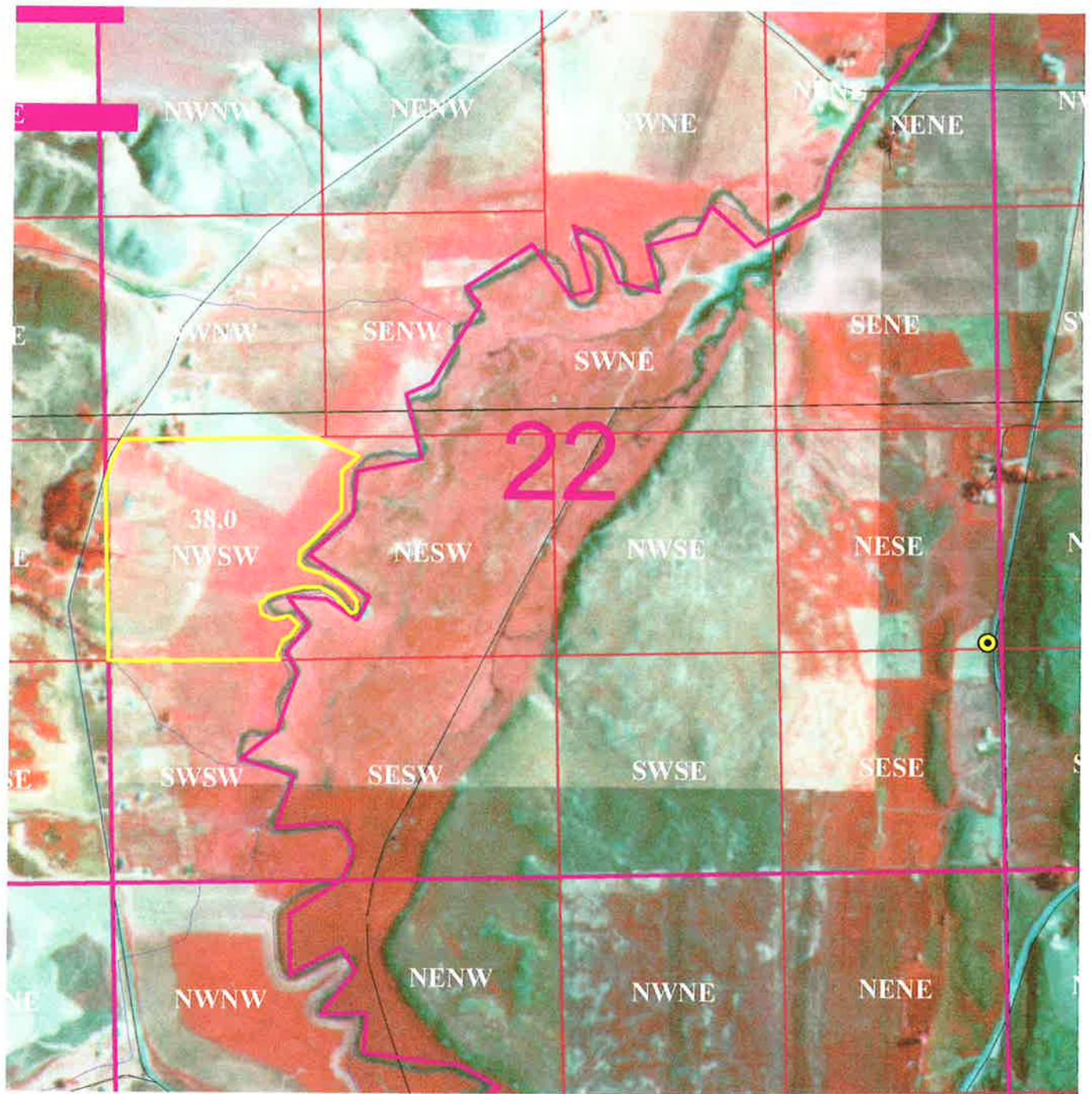
Township , 9S36E



400 0 400 800 Feet



Township , 9S36E



400 0 400 800 Feet

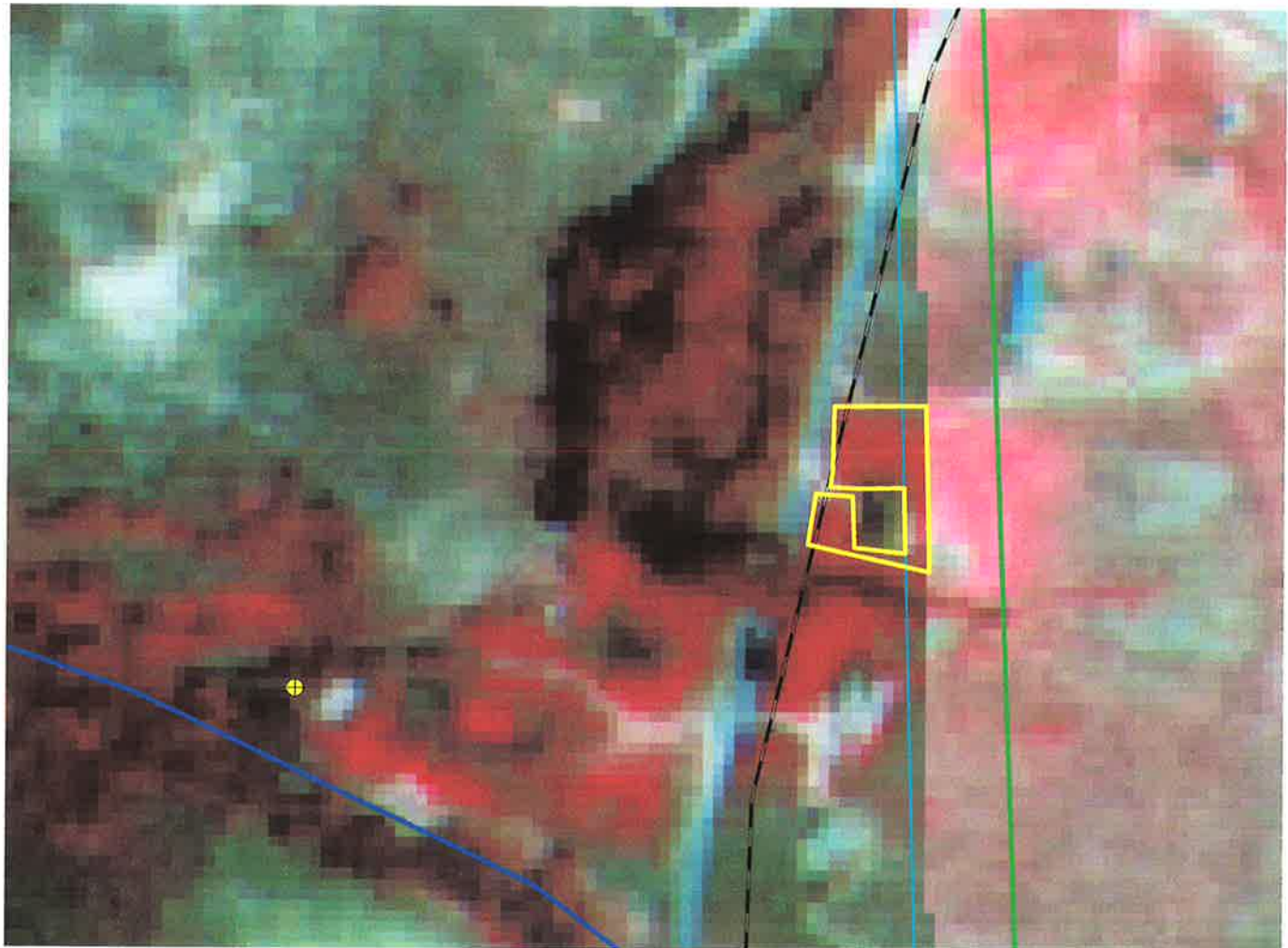




STATE OF IDAHO

Department of Water Resources
Eastern Region

Water Right 29-10007



300 0 300 600 900 Feet



LEGEND

-  Point of Diversion
-  Place of Use
-  STREETS
-  SECTIONS
-  QUATER-QUATERS
-  STREAMS

Place of Use: T9S, R36E,
(part of) Sections 21 & 22

Points of Diversion: T9S, R36E
Sec.21 NESE

SCANNED

GIS Place of Use Illustration
1987/88 NAPP PHOTOGRAPHY
Prepared by C. Bird
Date: August 2002

MAY 17 2036

PROFILE

A29-10007
Arthur C. Powell
Field exam 8/15/02
Cottonwood Creek



Photo 1. Looking southwesterly at pod on Cottonwood creek.

Lot 11 Cottonwood Acres Subdivision

PROFILED

SCANNED
MAY 17 2006

goes by Charlie

Contacts Data Entry Form

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

Current Owner Arthur C. Powell 9718 S. Marsh Creek Rd

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

Current Owner McCammon, ID 83250

Current Owner _____

Representing Attorney: _____ Phone Number: _____

Accompanied By: Charles Powell Phone Number: 254-9151

Relationship to Claimant: Claimant

Date of Field Exam: 8/15/02 Time: 8:30 AM

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

- Charlie said Dave Carbon was out last year but no information is in the file?

Reviewer: CB

Date: 8/16/02

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MAY 17 2006

Priority Date Data Entry Form

Claim Number: A29-10007Water Right Priority Date: June 18, 1902 Water Right Basis: _____Claimed Priority Date: June 18, 1902 Claimed Basis: Beneficial UseRecommended Priority Date: 6-18-1902 Recommended Basis: B.U.☐ 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:

evidence of priority brochure left on
8/15/02 during field exam with
Bob Murray.

- evidence in Bob Murray's file 29-13164
System is shared with Bob
Murray.

Reviewer: CBDate: 8/15/02

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MAY 17 2006

Point of Diversion and Source Data Entry Form

Claim Number: A29-10007Water Right Point of Diversion: T 9S, R 34E, Sec. 22, NE, SE, County: Bannock

Source: _____ Tributary: _____

Claimed Point of Diversion: T 9S, R 34E, Sec. 22, NE, SE, County: BannockSource: Cottonwood Crk Tributary: Marsh CrkRecommended Point of Diversion: T 9S, R 34E, Sec. 21, NE, SE, County: BannockSource: Cottonwood Crk Tributary: Marsh Crk

____ Use Claimed POD and Source as Recommended POD and Source

Twp	Rge	Sec	Gov Lot	QQQ of QQ of Q	County	Source
<u>9S</u>	<u>34E</u>	<u>21</u>		<u>NESE</u>	<u>Bannock</u>	<u>Cottonwood Crk</u>
GPS Coordinates: <u>N4420 37.345'</u> <u>W1120 14.681'</u>						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						
GPS Coordinates: _____						

Other rights from this POD? 29-13164

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

field exam

Transfers Changing POD _____

Reviewer: CBDate: 8/14/02

SCANNED
MAY 17 2006

Place Of Use Data Entry Form

Claim Number: A29-10007☐ Use Claimed POU as Recommended POU

Claimed Place of Use

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

Total Acres _____

Recommended Place of Use

Twp	Rge	Sec	QQ	Q	County	Lot Num	Acres	Purpose of Use
9S	34E	21	NESE		Bannock		0.2	Irrigation
		22	NW SW				0.1	Irrigation

Total Acres 0.3

Document how the POU was verified:

field exam
1987/88 NAPP PHOTOGRAPHY

Transfers Changing POU _____

Reviewer: CSDate: 8/14/02

SCANNED
 MAY 17 2006

Purpose of Use Data Entry Form

Claim Number: A29-10007☐ Use Claimed Purpose of Use as Recommended Purpose of Use

Water Right Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit	Number of Other

Claimed Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit	Number of Other
Irrigation			1.0	

Recommended Purpose of Use

Water Use	Number of Homes	Number of Stock	Acre Limit	Number of Other
Irrigation			0.3	

Document how the Purpose of Use was verified:

1987/88 NAPP PHOTOGRAPHY
Field exam

Transfers Changing Purpose of Use _____

Reviewer: CBDate: 8/14/02

SCANNED

MAY 17 2006

Period of Use and Quantity Data Entry FormClaim Number: A29-10007☐ 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
Irrigation	3/15	11/15	0.20	

Overall Diversion Rate 0.20

Overall Diversion Volume _____

Recommended Period of Use and Diversion Rate

Water Use	Start	End	Rate	Volume
Irrigation	4/1	10/31	0.01	

Overall Diversion Rate 0.01Overall Diversion Volume 0.

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

1987/88 NAPP PHOTOGRAPHY
Administrative SOU - licensed SOU on
Marsh at 3/15 - 11/15.

Reviewer: CBDate: 8/16/02

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MAY 11 2006



IDAHO DEPARTMENT OF WATER RESOURCES

SNAKE RIVER BASIN ADJUDICATION - BASIN 29

RIGHT ID
POD ID
Quad
Claim Type
Easting
Northing
GPSID

Diversion Description

Located on Cottonwood Creek. Upstream from stock corrals. 8" cmp; diversion can generate 2' of head. Tag on pipe collar
Creek hasn't flowed enough recently to supply water, according to Mr Smith, a neighbor. POD on existing ArcView database is mislocated.
Used orifice equation to calculate diversion rate, but pipe is unscreened, and may not have full hydraulic capacity.

Assumptions

Invoice

2000-037-01-0

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)

0

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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SCANNED

MAY 17 2006



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

EASTERN REGION

August 15, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Arthur Powell
9718 Marsh Creek Road
McCammon, Idaho 83250
Via FAX, 208-254-9151

Re: Forfeiture

Dear Mr. Powell:

This letter is to confirm the phone conversation you and I had about forfeiture.

According to Idaho Code 42-222 (2), "All rights to the use of water... shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter." There are exceptions for land that is enrolled in the Conservation Reserve Program, for water that has not been available due to drought, for land irrigated with land-applies waste water, and for non-use caused by circumstances beyond the water users control.

In the Snake River Basin Adjudication, our instructions are to only consider forfeiture that occurred before the date the claim was signed. Some claims were filed as long as twelve years ago, so it is possible that Mr. Carlson may recommend a Marsh Creek right that has been unused for five years, but not before the claim was signed. In this case, other water users will have the opportunity to object to the recommendation before the Snake River Basin Adjudication (SRBA) court. The charge of the SRBA is to determine the validity, ownership, and elements of water rights that are tributary to the Snake River or the Snake River Aquifer.

FILED

SCANNED
MAY 17 2006

We are in the process of investigating water rights in the McCammon area, and expect to present recommendations to the court within the next year.

Please feel free to call me if you have questions. Dave Carlson will be able to answer specific questions about your water rights. You may also wish to contact the court at 736-3011, or look at the statutes on the internet at

<http://www3.state.id.us/idstat/TOC/42FTOC.html>

Sincerely,

A handwritten signature in cursive script that reads "Bryce A. Contor".

Bryce A. Contor
Senior Water Resource Agent

cc: Dave Carlson

SCANNED

MAY 17 2006

JUN 04 2001

Log for claim A29-10007

Spatial Dynamics LTD

7/14/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
09s36e	22	NWSW	1	38	Indiscernible
Totals:			1	38	

AJ5809NP
No. A29-10007

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 04/27/00
PAGE: 199

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	ARTHUR POWELL	06/18/1902	IRRIGATION	03-15 11-15	0.200 CFS	
C	LORI POWELL					
	9718 MARSH CREEK RD					
	MC CAMMON ID 83250			TOTAL DIVERSION:	0.200 CFS	
	(208) 254-9151			CONSUMPTIVE USE:		2.50 AFA

Water Source: COTTONWOOD CREEK

Tributary to: MARSH CREEK

Stage: BENEFICIAL USE

Point(s) of Diversion: T09S R36E S22 SENESE

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
09S	36E	22	:											01						:	1.0
																				TOTAL ACRES	1.0

POU County: BANNOCK

Non-Irrigation Uses: NONE.

Other Rights: NONE.

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

A29-02269D A29-04045 A29-04045B A29-04045C A29-04045D A29-04113 A29-04113A A29-07617 A29-11621 A29-11622

Remarks: GEN THIS CLAIM IS A PART OF THE RIGHT FILED UNDER CLAIM NO. 29-4045.

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

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

Audit: 05/31/88 MCC 06/16/93 THOMPSON 03/29/95 POST-STD



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - FAX: (208) 525-7177

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

JUNE 16, 1993

ARTHUR POWELL
9718 MARSH CREEK RD
MC CAMMON ID 83250

RE: CHANGE IN OWNERSHIP FOR A29-10007 AND A29-10008

Dear Mr. Powell:

The request for Change in Ownership concerning your Notice(s) of Claim in the above reference has been processed and the Notice(s) modified to reflect you as the new owner.

Enclosed are typed Notices with your name shown as the current owner. Review the forms and if there are other corrections or questions, feel free to contact this office.

If there are no questions or corrections, please keep these Notices for your records.

Respectfully submitted,

Jo Thompson

for
Dave Carlson
Water Right Agent, Adjudications

DC:jt

Enclosure: Notices of Claim

MICROFILMED

APR 12 1994



NEW PROPERTY OWNER NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

Please print or type
(see instructions on back of page)

RECEIVED

JUN 15 1993

DATE OF CLOSING: _____

LEGAL DESCRIPTION OF PROPERTY: Township 09S Range 36E Department of Water Resources
Section 22, SE 1/4 of NE 1/4 of SE 1/4, Govt. Lot _____, Eastern District Office
Lot _____, Block _____, Subdivision/Townsite _____
If you have additional legal descriptions, please attach separate sheet.

☐ Served Only by a Public Service Water Supply (all water is received from a city or company who maintains water supply system, owns the water right, and bills the customer on a regular basis)

☐ Water Right Number(s)
Assigned by IDWR: A29-10007 also A29-10008
R29-10008

☐ Name and Address of Former Owner/Claimant(s)(Seller): _____

☐ New Owner/Claimant (Purchaser): Arthur Powell & Lori Powell

☐ New Mailing Address: 9718 Marsh Cr Rd
McLaren Td
83250

☐ New Telephone Number: (208) 254-9151

☐ Does the change in ownership result in a splitting of the water right owned/claimed? yes Xno
If yes, then describe the portion of the water right that is now owned/claimed by the new owner:

☐ Attach proof of ownership, describe proof attached: _____

(proof of ownership must describe either the property conveyed or include the claim number. Proof of ownership is not required if this form is signed by the former owner/claimant.)

☐ Signature of New Owner/Claimant(s) Arthur Powell Date 6/14/93
Lori Powell Date 6/14/93

☐ Signature of Former Owner/Claimant(s): _____ Date _____
_____ Date _____

(Signature of former claimant(s) is not required if proof of ownership is attached.)

FOR IDWR USE ONLY:
Initial Review and Data-Entry
Date: _____ By: _____
Further Action Needed:
Further Action Taken
Date: _____ By: _____
Final Review and Data-Entry
Date: _____ By: _____
Claim Numbers of Split, if any:

MICROFILMED

APR 12 1994

Original to be mailed to Idaho Department of Water Resources
Copies to Former Owner and New Owner

To Whom It May Concern:

We, Arthur C. and Golda Hope convey to Arthur G. Powell and Lori A. Powell ten (10) miners inches of water from Cottonwood Creek, that water being subject to the same limitations and privileges as when conferred to the above in their purchase from Frank Lew in 1983.

Arthur C. Hope
Golda Hope

Subscribed and sworn before me this October 1, 1992.

Benaida A. Rivera
Notary of the State of New Mexico
My Commission expires: 7-13-96

MICROFILMED

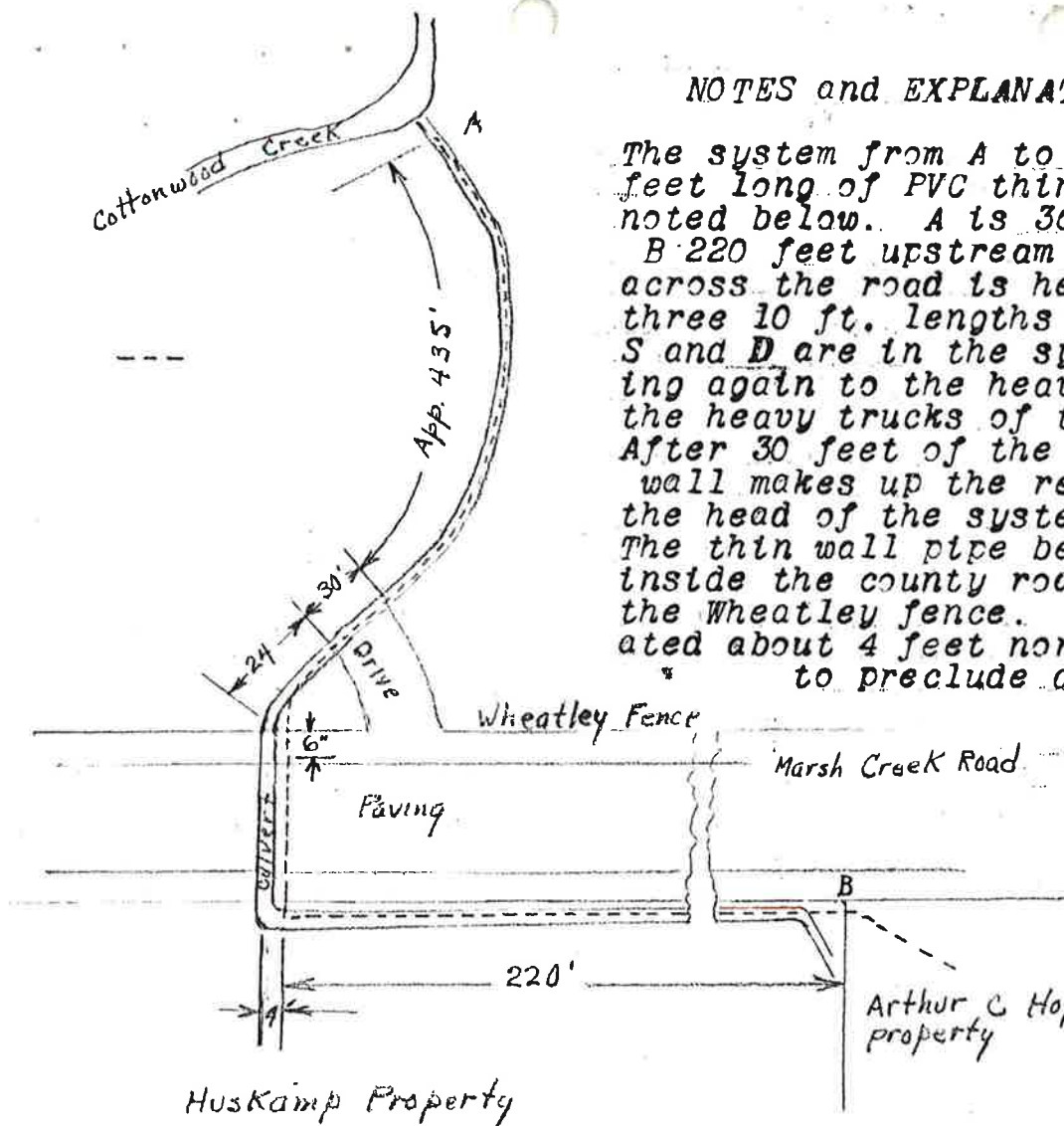
APR 12 1994

NOTES and EXPLANATION

The system from A to B is approx. 745 feet long of PVC thin wall except as noted below. A is 36 feet above B. From B 220 feet upstream and thence 50 feet across the road is heavy wall PVC. Then three 10 ft. lengths (30) of thin wall S and D are in the system before reverting again to the heavy pipe to accommodate the heavy trucks of the Wheatley drive. After 30 feet of the heavy pipe the thin wall makes up the rest of the system to the head of the system at Cottonwood Creek. The thin wall pipe begins first just 6 ft. inside the county road before encountering the Wheatley fence. The PVC pipe is located about 4 feet north of the culvert

to preclude damage when the county is cleaning or replacing the culvert nearby. The PVC is 30 inches or more below the asphalt. The pipe is only about 6 inches below the ditch bottom in the Huskamp property. It was placed 24 inches below the ditch through the Wheatley property but erosion toward

the upper end has left less coverage there. Huskamp made special arrangements and installed a T and valve at the corner where the system first enters his property. A 4 inch gate valve is located on the Huskamp-Hope property line.



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NOV 13 1992

RECEIVED

SEP 4 1990

August 31, 1990
McCammon, Ida. Department of Water Resources
Eastern District Office

Dept. of Water Resources,
150 Shoup Ave., Idaho Falls, Ida.

Mr. Paul Meyer,

You awaited upon me at an appointment early this spring. I appreciated your helpfulness. Perhaps you could help me just a little more. I would like the enclosed paperwork to be placed with my other papers in my filing. I think they are quite self explanatory.

However in the enclosure titled, ADDITIONAL INFORMATION FOR THE FILES OF ARTHUR C. HOPE I should like a little advisement on Item 10. That water surfaces into our waterway after snowmelt about 2 miles east of our present diversion. It is in Section 20 or possibly in Sec. 19. I'm pondering the costs and benefits of piping that water down to prevent its loss if the adjudication will allow. But I'm concerned that you may already have accepted filing upon it.

I view that water as being a source of our supply here at our diversion. In view of the interest manifested I would like to know if any others have filed on it-particularly the Wheatleys or an incorporation of theirs. I was told that they had filed on 33 sources in this area this spring. I feel sure our filing should protect us clear to the source since that is where the flow comes from above ground until after the snow melt.

Could you, and would you, investigate this and give me a phone call? I noticed your time was in great demand and I'm hesitant to request an appointment. If you feel we need to be together could you set up an appointment for me? We usually plan to leave this area about 1 October, but I may be delayed this year. I will be in Idaho Falls several times in the meantime.

Respectfully,

Phone 254-3318

Arthur C. Hope

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NOV 13 1992

RECEIVED

SEP 4 1990

Department of Water Resources
Eastern District Office

ADDITIONAL INFORMATION FOR THE FILES OF ARTHUR C. HOPE

The many filings and aspirations for the water of Cottonwood Creek seem to demand an inordinate amount of research in proportion to the amount of water in that tiny creek.

In deeding the flow there seem to be two parts to the problem:

1. A diminishing but very useful flow up to about 1 July,
2. A further diminishing-and heretofore abandoned-flow thereafter coming only from a series of springs approximately 500 feet west of Marsh Creek Road. More springs entering the waterway 2 miles west will be treated later in this document.

The following information and enclosures seem pertinent.

1. In processing a loan to Mr. Fred Bischoff the Federal Land Bank of Spokane in 1954 had some access to a filing of June 18, 1902. After contacting BLM, U.S. Forest Service, County Planning Board, Idaho State Archives and an old, resident farmer of this slope I can find no one with maps or knowledge of this creek. In a court case of June 1924; Judgements Nos. 29-0433 and 29-0434) and Marsh Creek as mentioned in the Federal Land Bank enclosure of 26 Oct. 1954. In this latter enclosed paper our Cottonwood Creek would seem to be that Quaken Asp Creek of 1902 with a permit of one (1) c.f.s. Cottonwood Creek and Goodenough Creek (Rowe Creek) are the only significant indigenous flows accessible to this stretch of farm land. Waters of Rowe Creek are north of the properties of our Cottonwood Creek and Marsh Creek is below the properties and are not at issue in this explanation. Application #27651 and Permit #20063 executed by and for Mr. Fred Bischoff are for waters of Marsh Creek (1952). I will assume that the criticality of identifying Quaken Asp Creek does not merit further research.
2. Since that time the Bishoff property was sold to Frank Lew and subdivided by him into small acreages. Then confusion began.
3. As for a history of water rights to Cottonwood (Quaken Asp) Creek a story of courthouse burning is given for lack of recorded continuity. Various property owners up and down the road made filings, all after 1972-a cutoff date I believe.
4. In transferring the various properties, I'm of the opinion that Frank Lew made no effort-or an incomplete one-to deed water from Cottonwood Creek to anyone but me, Arthur C. Hope, and perhaps to Kurttis Smith to the north of me. It appears that only in the contract was an effort made to transfer water to the Kurtis Smith and David Larson purchases immediately north of me but Lew reclaimed the latter purchase through default. And apparently those contract wordings did not legally show Lew's intent to transfer the water since I was billed for another \$63 subsequently for a transfer instrument (in my file) by Lawyer Whittier in Pocatello. I purchased the last piece of the subdivision in 1983. My title of ten (10) inches of Cottonwood Creek water is not completely recognized I'm told but shows the unmistakable intent of Frank Lew in transferring the water as far as it was possible.
5. As shown in the files the water was diverted and used as confirmed by Mr.

MICROFILMED

NOV 13 1992

Bishoff and his antecedents through a system of ditches to irrigate only the ground to the northward of the creek and diversion into the Quarter Sections of 21 and 22 as marked. The lands south of the diversion ditch and creekbed is mainly meadow ground and show no evidence of a planned irrigation system. Overflow from spring runoff or summer storm was allowed to seek its own path through the meadow toward Marsh Creek.

6. The claim to Cottonwood water by Spiegel (now Kathleen Spiegel and her father, Don Worthylake) was settled in a court trial, Case # 3099 (enclosure). It was settled 29 Mar. 1976 with a provision for Spiegel to have all water OVER 2.0 c.f.s. They have never acted on that provision.

7. The (one) 1 c.f.s. claimed by Kurttis Smith is directed northward at the creek diversion and west of Marsh Creek Road and thence down to his farmstead. Difficulty in maintaining that waterway discouraged his effort except for one year-about 1980. Water to the Larson (reclaimed) property has not been taken since 1980. Hence in the past ten years availability and facilities for effective usage after July has been limited to the Murray (Huscamp) property and mine. And after July and of 1987 my property only has been so qualified.

8. On two separate occasions I contacted Huscamp AND Frank Lew for help in burying a pipe to the creek but they refused. In the spring of 1987 I proceeded alone. I buried 750 feet of 4 inch pipe under the diversion ditch to the creek to encapsulate the water and give the necessary pressure. And I have several additional hundreds of feet buried under my acre. Mr. Huscamp helped with a little handwork and in subsequently hauling rock ballast to the creek dam. I have shared the facilities and water with him and his purchaser, Murray, since. No others have offered help of any kind but have continued to reap benefit from the overflow.

9. It seems quite absurd to attempt to apportion a steadily diminishing flow on a c.f.s. allotment. And since homesteading began all property holders have abandoned all efforts at use after about July 1. With my piping system all discharge from the spring can be put to my property but the flow diminishes in late summer to permit only four sprinkler heads. Even that I have shared with the Murray-Huscamp neighbors. I will continue to do so with special arrangement for use of the piping. Other neighbors can still use the overflow up until 1 July. Therefore I request that I be issued the 10 inches or the entire flow of my 4 inch pipe. Under the best of conditions that pipe will not carry the ten (10) inches which was stated in my contract with Lew. I have salvaged water that was completely lost before I put in the pipe. And it will henceforth be lost to any aspiring filant without a pipe system.

even after snowmelt

10. Spring flow emerges into the bed of Cottonwood Creek about 2 miles west from the diversion near my acre. As summer passes it disappears within a few yards. In former years that water was shunted to a ditch on the south side of the Cottonwood Creek bed to diminish the streambed loss and then cut back into the streambed at a lower point. That diversion channel is still to be seen. I assume that water is a part of the flow of Cottonwood Creek and would view with serious disapproval any attempt to file on that flow by any others than who are interested in the diversion of the creek near my acre.

P.S. The adjudication filing should show that my acre lies astride the Sec. 21 and 22 line.

A.C.H.

Arthur C. Hope

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NOV 13 1992

THE SPIEGEL-LEW COURT CASE

Water rights on Cottonwood Creek were subjected to litigation by Charles and Kathleen Spiegel (plaintiffs) and Frank Lew (defendant) as Case #33099 on Dec 4, 1974. The judgement was given on 3 Mar. 1976 in Docket #13. The following statements are excerpts:

2. Mr. Lew may appropriate, subject to any other third party rights, up to a maximum of two (2) c.f.s. from Cottonwood Creek.
3. That Mr. and Mrs. Spiegel may appropriate waters in excess of 2 c.f.s. if it does not interfere with Mr. Lew's prior rights.
4. Neither will interfere with the other's appropriations
5. Spiegals will install a weir to indicate whether Mr. Lew is utilizing in excess of (2) c.f.s.
6. Spiegals are perpetually enjoined from willful or intentional acts or omissions to interfere with Mr. Lew's earthen dam on Cottonwood Creek.
7. Use of water from Marsh Creek is permissible.

Handwritten notes accompanying this case state that the Spiegals moved onto their property in 1972 and water rights were not discussed at purchase.

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RECEIVED

FEB - 5 1990

31 January 1990
Las Cruces, New Mex.

Department of Water Resources
IDWR Eastern Regional Office

150 W. Shoup Ave.
Idaho Falls, Ida.

Mr. McCormack or others:

I received the notice today of the water filling date for Bannock County. I'd been expecting it. You couldn't possibly remember that I made the filling a year ago--\$76 which seems more than is required in your notice. Be that as it may.

I'm writing this for information and inclusion in my files there in your office. For background let me explain: (My paperwork is in McCammon and there may be some slight errors in my memory).

1. In 1973 Frank Lew filed on 2+ acre feet of Cottonwood Creek which is 4 miles southwest of McCammon.

2. Subsequently he sold ground and 1 acre foot to Kurtis Smith.

3. Next, Lew sold 15+ acres to a Mr. Larson below and partially surrounding my 1 acre which I purchased in 1984.

4. He deeded 25 inches of water to Larson and 10 inches to me.

5. I believe that left 15 inches which Lew had "kept for himself" as he told me although he then had no ground to apply the water to.

6. The creek flows with mountain runoff until July and is a constant spring-fed thereafter. It was insufficient for any surface use.

7. I propositioned Lew and Smith to participate with me in a buried pipe from the spring. Both demurred several times and I went ahead and paid for and layed the system myself. 750 ft. 4" pipe

8. Larson defaulted on his property and Lew reclaimed it. Lew became angered at my success and tried for two weeks to surface irrigate and could hardly get the water out of the ditch. He abandoned the effort and died a year ago last August.

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NOV 13 1992

Arthur C. Hope

Respectfully,

9. Now the family is trying to sell the property and have brought court action against each other as well as some neighbors.

That is about the situation as of now. The 10 miners inches is insufficient to provide for my acre. My 4 inch line does real well and does not take the entire flow until after July. After that I need all I can get out of the creek. Those mentioned above have wasted efforts after July and other neighbors have no entitlement.

Kurtis Smith will file on his entitlement and I'm hoping that the Lew family will be too embroiled in other things to care for it. I believe the 1973 Lew filing is not entirely recognized because of the filing date.

I need that other 40 inches if I can possibly get it. To see my system in operation will convince you that I am wasting no water after it surfaces at the springs. Any efforts of other interested people after July is just a waste of water. Before July they get more than previously.

If there is anything I can do in the meantime will you kindly advise. If not, will you see that this letter becomes a part of my file in your office?—Or perhaps your files also?

In the absence of any other communication I will try and call at your offices in late April when we return to your area.

R.M. WHITTIER
JOHN C. SOUZA
MONTE R. WHITTIER

WHITTIER & SOUZA, P.A.
ATTORNEYS AT LAW
940 EAST CLARK
POCATELLO, IDAHO 83205

P. O. BOX 4082
PHONE 233-6444

September 12, 1986

Arthur and Golda Hope
Box 278
McCammon, ID 83250

Re: Frank Lew

Dear Mr. and Mrs. Hope:

Please find enclosed herewith the document prepared in reference to the water rights matter with Frank Lew. However, please note that this does not adjudicate the water rights other than the filing of the claims with the State of Idaho, Department of Water Resources.

If you have any questions or comments, please feel free to contact me.

Very truly yours,

WHITTIER & SOUZA, P.A.

R. M. Whittier
R. M. WHITTIER

RMW/lis

Enclosure

MICROFILMED
NOV 13 1992

BILL OF SALE

STATE OF IDAHO)
 : ss
County of Bannock)

KNOW ALL MEN BY THESE PRESENTS, that on this 2nd day of Sept, 1986 FRANK LEW, a single person of McCammon, County of Bannock, State of Idaho, the party of the first part, for and in consideration of the sum of ONE DOLLAR AND NO/100 CENTS (\$1.00) and other valuable consideration, lawful money of the United States of America, to him in hand paid by ARTHUR CARL HOPE and GOLDA HOPE, as Husband and Wife of the County of Bannock, State of Idaho, the parties of the second part. the receipt whereof is hereby acknowledged, do by these presents, grant, bargain, sell and convey unto said parties of the second part, their heirs and assigns all their right, title and interest up to ten (10) miner's inches of certain water rights out of the Cottonwood Creek, that Seller may have as exhibited by the claims filed with the Idaho Department of Resources, Claim No. 29-4045, filed the 21st day of January, 1975, the same being incorporated herein by reference as if set forth at length herein with the understanding that the Seller transferring these certain water rights claimed by him to the Purchasers and is made with the understanding that there has been no adjudication of the water rights other than the filing of the claims with the State of Idaho, Department of Water Resources.

If challenges are made as to the water rights, then Purchasers, the party of the second part, are not to make any claim against the Seller to defend the water rights. The Purchasers agree to be fully responsible for defending any and all water rights transferred herein.

TO HAVE AND TO HOLD, the same unto the said parties of the second part, their heirs and assigns forever; and the said party of the first party hereby conveys all right, title and

interest that he has in and to the said ten (10) miner's inches of water as might be granted by the Department of Water Resources of the State of Idaho under and by reason of Claim No. 29-4045 as shown by the records of the Department of Water Resources of the State of Idaho.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and the year, first above written.


FRANK LEW

STATE OF IDAHO)
 : ss
County of Bannock)

On this 2nd day of August, 1986, before me, a Notary Public in and for the State of Idaho, personally appeared FRANK LEW, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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




NOTARY PUBLIC for Idaho
Residing at Pocatello

20 day 1937

To whom it may concern:

818504

This instrument will confirm previous oral arrangements. It pertains to the irrigation piping extending from the locally-known Cottonwood Creek immediately west of the Wheatley buildings and thence some 500 feet easterly to the Huscamp property and thence some 240 feet along the road to the corner of the Arthur C. Hope property. This piping hereafter will be known as the system.

The refusal of additional right-of-way makes it necessary that the system underlie the bed of the ditch which has been in use for many years.

Persons legally interested in waters of this ditch were contacted but declined cost sharing in the installation of the system.

The system is the sole property of Arthur C. Hope or assignees.

The system owner reserves right-of-way privileges in the free-flowing stream above the system and denies use of the system to anyone without special arrangement.

Any use permitted to non-owners will be by piping with shut off valves located above ground and within 36 inches of the system. Any piping ahead of the valves will automatically become a part of the system.

The owner reserves the right and will exercise the same to suspend use of the system for the period of time necessary to forestall any establishment of right-of-way in the system by virtual continual use.

Arthur C. Hope
System owner

Emil A. Huscamp
Interested user

STATE OF IDAHO)
COUNTY OF BANNOCK) ss.

On this 15th day of September, 1938 before me, a Notary Public in and for the State of Idaho, personally appeared Arthur C. Hope AND Emil A. Huscamp known to me to be the SAME of the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Seal

Louise W. Jones
Notary Public for the State of Idaho
Residing in Pocatello, Idaho
Notary Expires on 2 of 1938

NO. 818504
RECORDED
ARTHUR C. HOPE
'88 SEP 15 P3:20

489
1.00
3.00

IDAHO FORM

FEDERAL FARM LOAN AMORTIZATION MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, That on this 26th day of October, 1954,Fred R. Bishoff and Esther Bishoff, husband and wife,

hereinafter called the Mortgagors, hereby grant, bargain, sell, convey and mortgage to THE FEDERAL LAND BANK OF SPOKANE, a corporation organized and existing under the Federal Farm Loan Act as amended, with its principal place of business in the City of Spokane, County of Spokane, State of Washington, herein-

after called the Mortgagee, the following described real estate situate in the County of Bannock, State of Idaho, to wit:

All that portion of the East Half of the East Half of Section Twenty-one lying East of the County Road; Lots Eight, Nine and Ten, and that part of the Southwest Quarter of the Northwest Quarter of Section Twenty-two lying East of the County Road; all in Township Nine South, Range Thirty-six East of the Boise Meridian.

Together with all water rights, and rights in ditches, canals and laterals, and rights of way therefor, appurtenant to said premises or used in connection therewith now and/or at any time during the existence of this mortgage, including (but not limited to) the following: 4 c.f.s. of the waters of Rowe Creek with a priority of June 18, 1902; 1 c.f.s. of the waters of Quaken Asp Creek with a priority of June 18, 1902; 2.5 c.f.s. of the waters of Marsh Creek with a priority of May 5, 1947, under State Permit #20063.

Together with all pumping equipment, including but not limited to, one 7½ HP, single phase, Fairbanks Morse Motor #577004; one 7½ HP, single phase, Fairbanks Morse Motor #576314; one 1750 RPM Impeller Fairbanks Morse Pump #PF10816-4; one 1750 RPM Impeller Fairbanks Morse Pump #PF10816-10; engines, pumps and pipes, under or on the surface of the land, now or hereafter belonging to or used in connection with the above described premises, all of which are hereby declared to be and remain a part of the real estate above described, and



*This document is recorded on Page 455
of Book 104 of Mortgages
5 Nov. 1954*

together with the tenements, hereditaments, rights, privileges and appurtenances, including private roads, now or hereafter belonging to or used in connection with the above described premises; and all plumbing, lighting, heating, cooling, ventilating, elevating, watering and irrigating apparatus, stationary scales and other fixtures, now or hereafter belonging to or used in connection with the above described premises, all of which are hereby declared to be appurtenant to said land; and together with all waters and water rights of every kind and description and however evidenced, and all ditches or other conduits, rights therein and rights of way therefor, which now are or hereafter may be appurtenant to said premises or any part thereof, or used in connection therewith,

Permit No. 20063

Certificate of Completion of Works

TO ALL WHOM IT MAY CONCERN:

This is to certify that **FRED R. BISHOFF**
 of **McCammon**, County of **Bannock**, and State of
Idaho, the holder of Permit No. 20063, issued upon Application
 No. 27651 bearing date of priority of **April 24, 1947**, authorizing the diversion of
2.5 second feet of the waters of **Marsh Creek, a tributary of**
Portneuf River,

County of **Bannock**, State of **Idaho**, for **irrigation**
 purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof
 of completion of the works of diversion set out and described in said Permit; that said works are adequate for
 diverting and conveying to the place of intended use **2.5**
 second feet of the waters of **Marsh Creek;**

that the point of diversion of said waters is in the **SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 22, Township 9 South,**
Range 36 East, B. M.

and that the lands proposed to be irrigated by the use of said water are described as follows, to-wit:

That portion of the **E $\frac{1}{2}$ E $\frac{1}{2}$ Section 21, lying East of the County Road; also**
Lots 8, 9 and 10, and that portion of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 22, lying East of the
County Road; All in Township 9 South, Range 36 East, B. M. Containing 125 acres.

Certificate of Completion

Dated March 22, 1952

Recorded in Book 72 of Permits page 20063

Witness my hand this **22nd** day of **March**, A. D. 19**52**.

Mark R. Kulp
 State Reclamation Engineer

1-58713-6

Warranty Deed

For Value Received

92013936

ARTHUR CARL HOPE AND GOLDA HOPE, HUSBAND AND WIFE.

the grantor, do hereby grant, bargain, sell and convey unto
ARTHUR G. POWELL AND LORI A. POWELL, HUSBAND AND WIFE.

whose current address is
9718 SOUTH MARSH CREEK ROAD, MC CAMMON, ID 83250

the grantee, the following described premises, in BANNOCK County Idaho, to wit:

LOT 11, COTTONWOOD ACRES, BANNOCK COUNTY, IDAHO, AS THE SAME APPEARS ON THE
OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER FO BANNOCK
COUNTY, IDAHO.

SUBJECT TO: ALL existing patent reservations, easements, rights of way, protective covenants, zoning
ordinances and applicable building codes, laws and regulations.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee,
heirs and assigns forever. And the said Grantor do hereby covenant to and with the said
Grantee, that he the owner in fee simple of said premises; that they are free from all incumbrances.

and that he will warrant and defend the same from all lawful claims whatsoever.

Dated: September 10, 1992

Arthur Carl Hope
ARTHUR CARL HOPE

NOTARY SEAL

Golda Hope by Arthur C.
Hope City in fact.

STATE OF IDAHO }
COUNTY OF BANNOCK ss.

On this 10th day of SEPT in the year 1992 before me, a Notary
Public, personally appeared ARTHUR CARL HOPE

known to me to be the person whose name is subscribed to the within instrument
as the attorney in fact of GOLDA HOPE
and acknowledged to me that he subscribed the name of GOLDA
HOPE

thereto as principal, and ~~XXX~~ (his) own name attorney in fact.

Residing at POCATELLO
Comm. Expires 1-14-98

Notary Public

NO. 92013936

RECEIVED
AMERICAN LAND TITLE CO.
'92 SEPT 10 P 4:36

571

300

711

Formed by the AMERICAN LAND TITLE COMPANY, INC.

SCANNED
JUN 04 2001
COPY

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: A29-10007
Date Received: 5/31/1988
Receipt No: E000297
Received By: _____

**COPY FOR
YOUR FILES**

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

**COPY FOR
YOUR FILES**

1. Name: ARTHUR POWELL 208-254-9151
Address: 9718 MARSH CREEK RD
MC CAMMON ID 83250

AND/OR

Name: LORI POWELL 208-254-9151
Address: 9718 MARSH CREEK RD
MC CAMMON ID 83250

2. Date of Priority: JUN 18, 1902

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
09S	36E	22	SE	NE	SE		BANNOCK

5. Description of diverting works:
HEADGATE AND DITCH WITH 4" P.V.C PIPELINE IN DITCH BOTTOM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.200		

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

8. Total consumptive use is 2.5 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE.

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APR 12 1994

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
09S	36E	22	NW SW		IRR	1.0
Section Acres						1.0
Total Acres						1.0

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:
NONE.

14. Remarks:

THIS CLAIM IS A PART OF THE RIGHT FILED UNDER CLAIM NO. 29-4045.

15. Basis of Claim: BENEFICIAL USE

Water Right Number: 294045

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APR 12 1994

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: A29-10007
Date Received: 5/31/1988
Receipt No: E000297

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ARTHUR HOPE 208-254-3318
Address: 9718 MARSH CREEK ROAD
MCCAMMON, ID 83250

2. Date of Priority: JUN 18, 1902

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	36E	22	SE	NE	SE		BANNOCK

5. Description of diverting works:
HEADGATE AND DITCH WITH 4" P.V.C PIPELINE IN DITCH BOTTOM.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	03/15	11/15	0.200		

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

8. Total consumptive use is 2.5 Acre Feet Per Annum.

9. Non-irrigation uses:
NONE.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	36E	22	NW	SW		IRR	1.0
Section Acres							1.0
Total Acres							1.0

A29-10007 Page 1 Date: 05/31/88

A2910007



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NOV 13 1992

11. Place of use in counties: BANNOCK

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

13. Other Water Rights Used:
NONE.

14. Remarks:

THIS CLAIM IS A PART OF THE RIGHT FILED UNDER CLAIM NO. 29-4045.

15. Basis of Claim: BENEFICIAL USE
Water Right Number: 294045

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 X 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): Arthur C. Hope Date: 31 May 1988

Date: _____

State of Idaho)
County of Bonnerille) SS.

Subscribed and sworn (or affirmed) before me this 31ST day
of May 19 88
Deena Green
Notary Public

Seal

Residing at Rigby
My Commission Expires 4-22-1994

DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

R 36 East

112°15' 398000m E.
42°37'30"

4719000m N.

T.9 South

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NOV 13 1992

