

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 29-10889 V1

WATER RIGHT NUMBER: 29-10889 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MATT J ZAUSCH 8195 W POCATELLO CREEK RD POCATELLO, ID 83201 (208)232-4430
Current Owner	SHERRY L ZAUSCH 8195 W POCATELLO CREEK RD POCATELLO, ID 83201 (208)232-4430

Priority Date: 04/01/1904

Basis: Beneficial Use

Status: **Disallowed**

<u>Source</u>	<u>Tributary</u>
NORTH FORK POCATELLO CREEK	POCATELLO CREEK

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 10/31	0.020 CFS	
	<u>Total Diversion:</u>	0.020 CFS	

Location of Point(s) of Diversion

NORTH FORK POCATELLO CREEK	SE1/4NE1/4NE1/4	Sec. 20, Twp 06S, Rge 35E, B.M.
BANNOCK County		

Place of UseIRRIGATION Within BANNOCK County

T06S R35E S20 SENE 0.6

Total Acres: 0.6

Conditions of Approval:

1. P01 NO LAWFUL APPROPRIATION SHOWN: There are a number of circumstances in which a claim is proposed to be disallowed on this basis. This is most commonly included for a claim based on beneficial use or posted notice that is PROPOSED to be disallowed because the right claimed is not within an exception to the mandatory permit statute, and beneficial use of water prior to the mandatory permit statute was not confirmed. This is also included where a claim is PROPOSED to be disallowed because the claim is to water that is not public water subject to appropriation. This is also included where a right was determined not to exist in a prior adjudication.
2. P03 NO BENEFICIAL USE FOUND: This is included for a claim based on beneficial use that is PROPOSED to be disallowed because beneficial use of water was not confirmed by IDWRs field examination or by other evidence submitted by the claimant.

Remarks:

1. General NO LAWFUL APPROPRIATION SHOWN.
2. General NO BENEFICIAL USE FOUND.

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 29-10889 V1

Comments:

1. csaxton 12/5/2001 Disallow

Comment: No Beneficial use found. Requested priority evidence on 4/24/01 - no response. Letter sent 11/19/01 informing claimant that without further evidence I could not make a favorable recommendation. To date - no response.

2. csaxton 12/5/2001 Photography

Comment: 1987 NAPP, 1985 USGS Orthoquad maps do not show signs of irrigation.

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal: S
Owner Name Connector: AND
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Element Reviewed/Verified Dates:

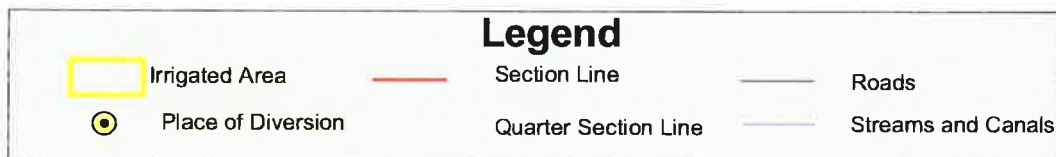
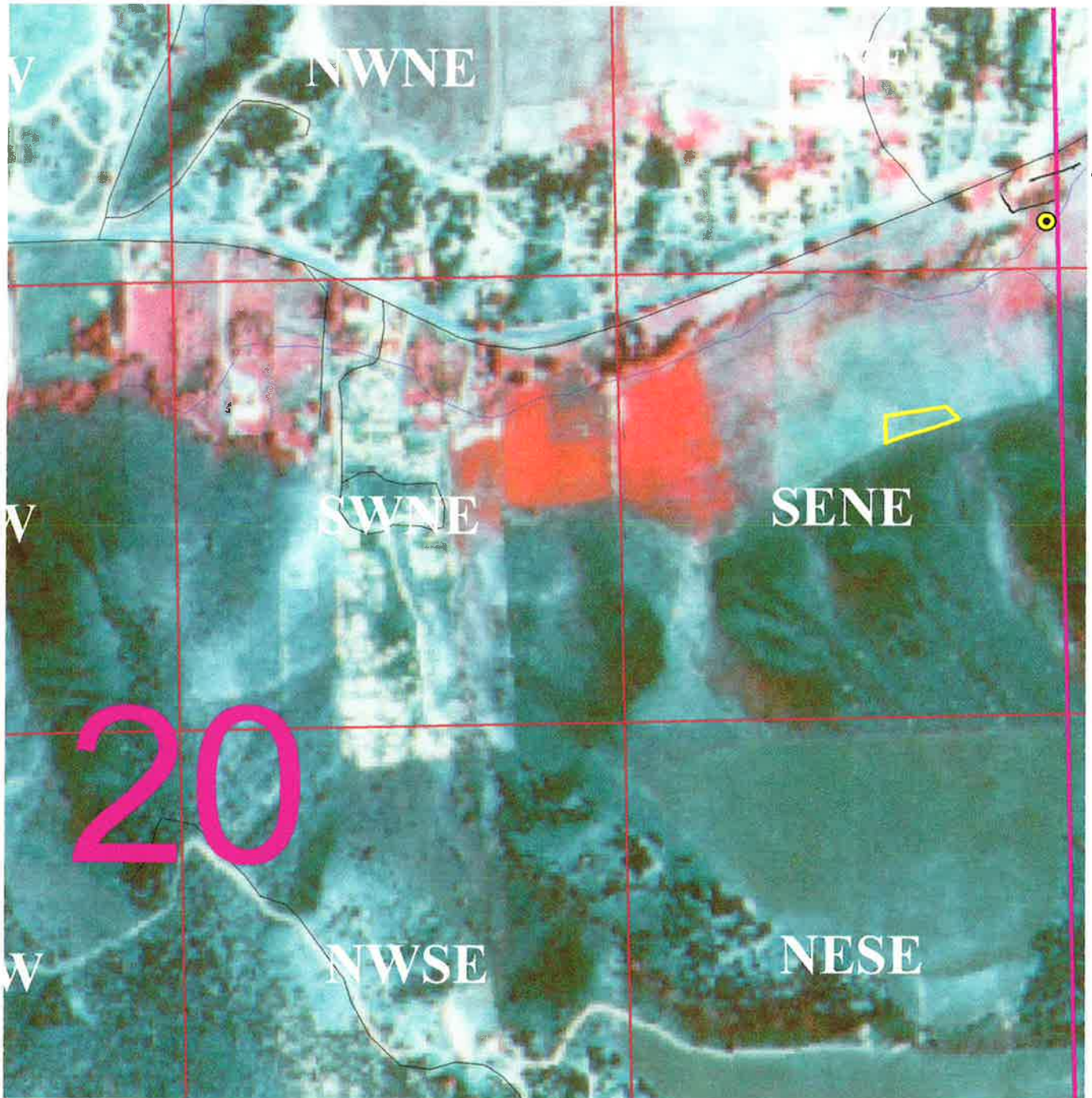
<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
Summary	12/5/2001 9:41:45 AM	csaxton	12/5/2001 9:41:45 AM	csaxton	Disallowed

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
Contacts	12/5/2001 9:23:18 AM	csaxton	(No) 1. Do you want to schedule an appointment?
Summary	12/5/2001 9:41:47 AM	csaxton	Comment for 1: Field Exam 7/26/01 (No) 1. Is the basis of this claim a Decree, License, Permit, Application or Posted Notice? (No) 3. Is the water being used for all of the purposes claimed and to the extent claimed? (No) 4. Is any portion of the claim be recommended? (Yes) 5. Is an additional remark and/or condition required? (Yes) 6. Would you like to view the recommended right? (No) 7. Is this a split or combined right? (No) 8. Do you have documents you would like to attach or link to the file? (Yes) 9. Would you like to set the verification date?

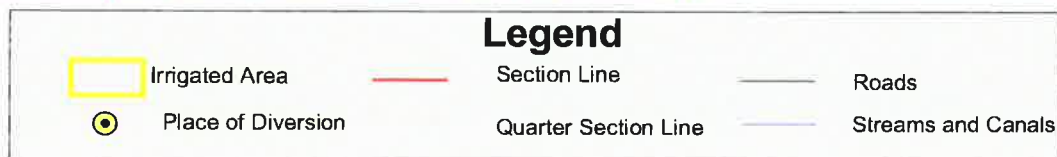
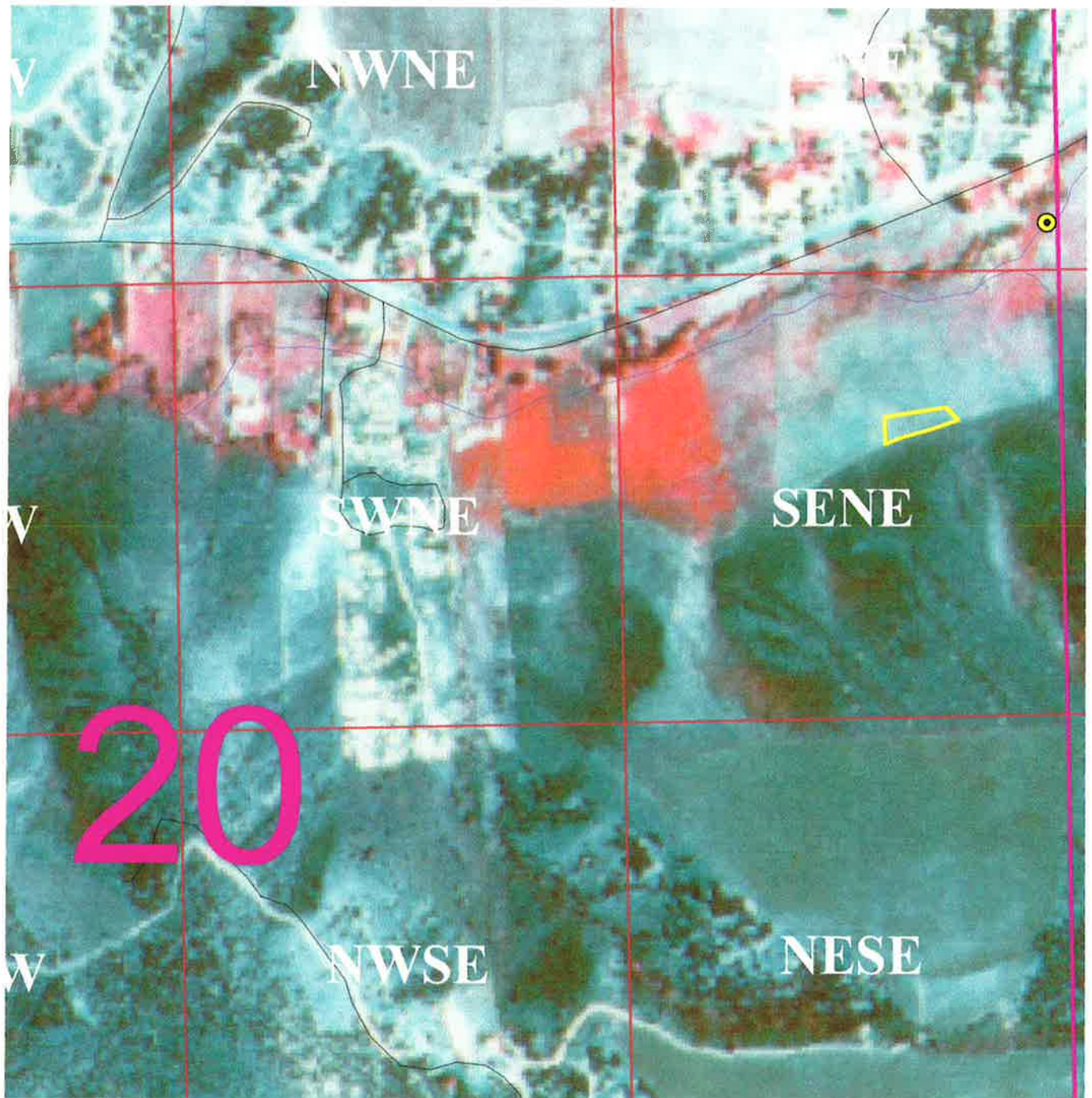
Water Right Claim Number A29-10889
Township , 6S35E

09/26/2000



Water Right Claim Number A29-10889
Township , 6S35E

09/26/2000

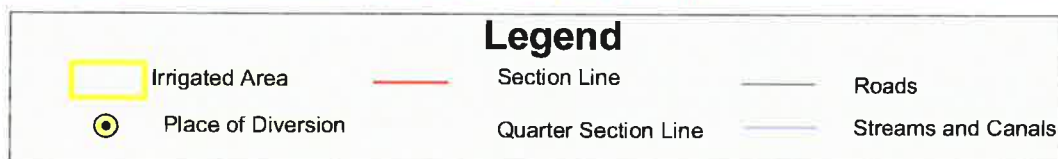
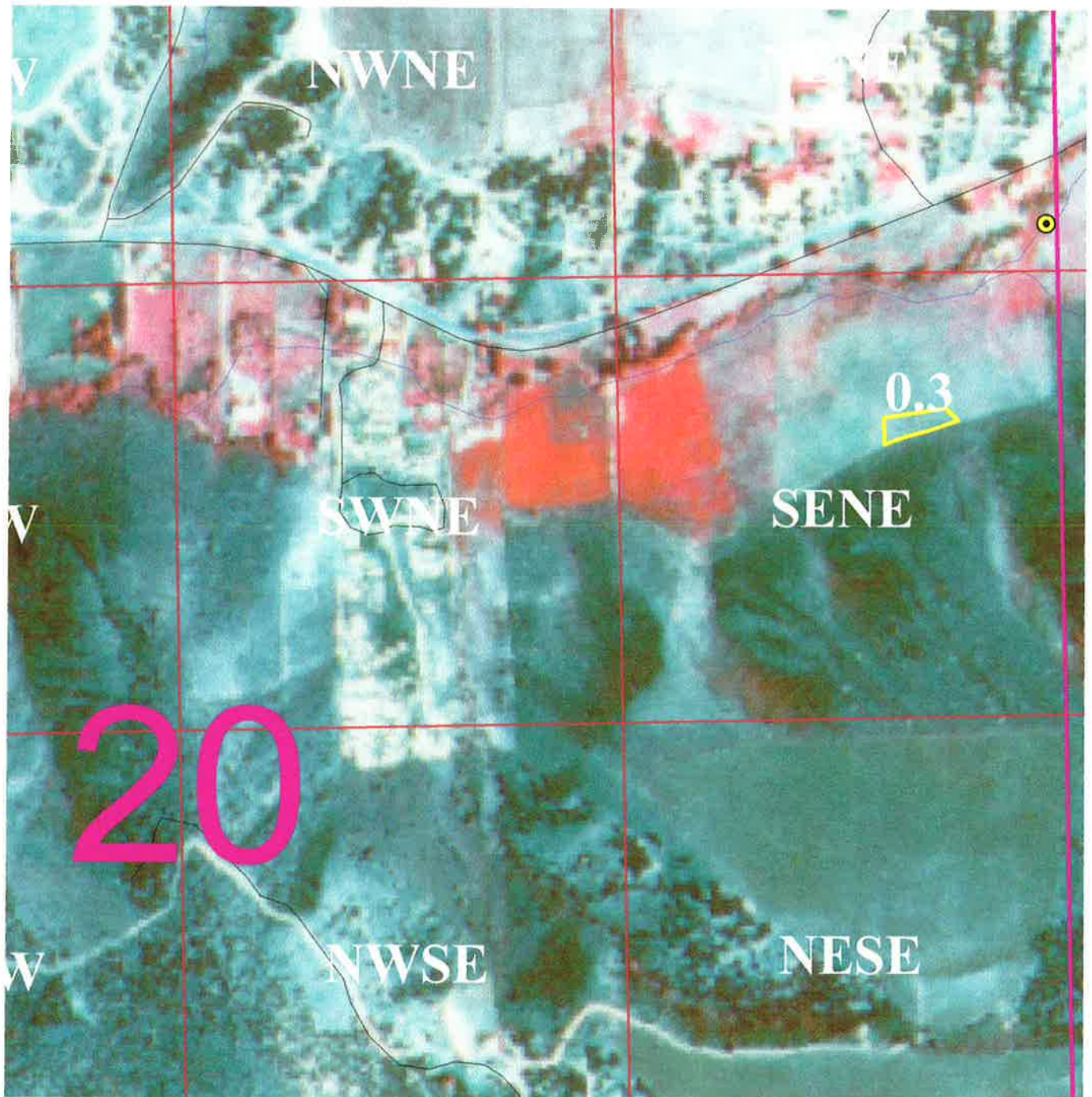


300 0 300 600 Feet



Water Right Claim Number A29-10889
Township , 6S35E

09/26/2000



300 0 300 600 Feet





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

EASTERN REGION

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 19, 2001

29-10889

MATT J ZAUSCH
SHERRY L ZAUSCH
8195 W POCATELLO CK RD
POCATELLO CK 83201

RE: Snake River Basin Adjudication (SRBA) claim 29-10889

Dear Matt and Sherry,

On April 25, 2001 the office sent a notice requesting Evidence of Priority for SRBA claim 29-10889 (enclosed). No response was received.

The initial review of your claim indicates that your property is not located in any of the old decreed places of use. 1987 NAPP photography does not indicate irrigation on your property. In addition, I do not see any evidence that your property could have been flood irrigated back in 1904 as claimed.

At this time, I do not have enough evidence to make a favorable recommendation on your claim to the SRBA court.

If you feel that my assessment is incorrect you will need to provide this office with evidence of historical irrigation on your property at least dating before May 22, 1971. Please feel free to contact this office with any questions.

Respectfully submitted,

Craig L Saxton
Water Resource Agent
Adjudication Bureau

Enclosure (s)

Memorandum

Date: November 19, 2001

From: Craig L. Saxton

Subject: SRBA claim 29-10889

Evidence provided by Father of claimant Robert Zausch doesn't support historical use of Pocatello creek water on Matt's property.

1987 NAPP photography doesn't show signs of irrigation

1975 USGS orthoquad map doesn't show signs of irrigation

Evidence of Priority letter sent April 25, 2001 with no response.

Recommend as disallowed. No Beneficial Use found.

12/5/01 - Evidence Provided By Robert Zausch is not applicable to this property since Evidence calls out a nexts-and-bounds Description

[MSN Home](#)[Hotmail](#)[Web Search](#)[Shopping](#)[Money](#)[People & Chat](#)[Con](#)

Before you

CO

HomeAdvisor™

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Find

go

Image Size: Small Medium Large

Advanced Find

Style: Relief Topo Image

Locator



6 km E of Pocatello, Idaho, United States 30 Aug

Zoom

1m



Other Imagery:

[USGS Topo Map](#)[01 Jul 1980](#)

HomeAdvisor Links:

[Homes for sale in 83201](#)[Homes for sale in 83204](#)[Schools, Crime and](#)[Demographics for 83201](#)[Schools, Crime and](#)[Demographics for 83204](#)

Encarta Articles:

[Pocatello](#)

Hi Craig,

8-13-01

Here is The copy of The Letter from Duane and Elwin Anderson, granting a portion of Their Water Rights to Elden and Donna Martindale. AS I Told you, I There had This recorded as a part of My Deed for The Property.

Thanks
Bob Fausch

RECEIVED

AUG 14 2001

Department of Water Resources
Eastern Region

THE ROCKY MOUNTAIN ALL STAR DAIRY

POCATELLO CREEK ROAD & JEFFERSON STREET
POCATELLO, IDAHO

Nov. 24 1965

Contract of this date to
Eileen & Donna Martindale
from ~~Barney & Elwin Anderson~~
for the purchase of land.
located in Bannock County
on the Pocatello Creek Road.
with the description more or
less following.

That portion of land lying
on the South side of Pocatello
Creek Road T 6 S Range 35
E.B.M. Section 20.

The point of beginning where
Pocatello Creek Road meets Section
21 South to property line of
William Butts & J.B. Middleton
& United States property. Thence
West 167 feet then north to
Pocatello Creek Road then East
running parallel along Pocatello
Creek Road 275 feet to

THE ROCKY MOUNTAIN ALL STAR DAIRY

POCATELLO CREEK ROAD & JEFFERSON STREET

POCATELLO, IDAHO

II

point of beginning. a
 5' dump water right of $1\frac{1}{2}$ inch
 from Pocatello Creek.

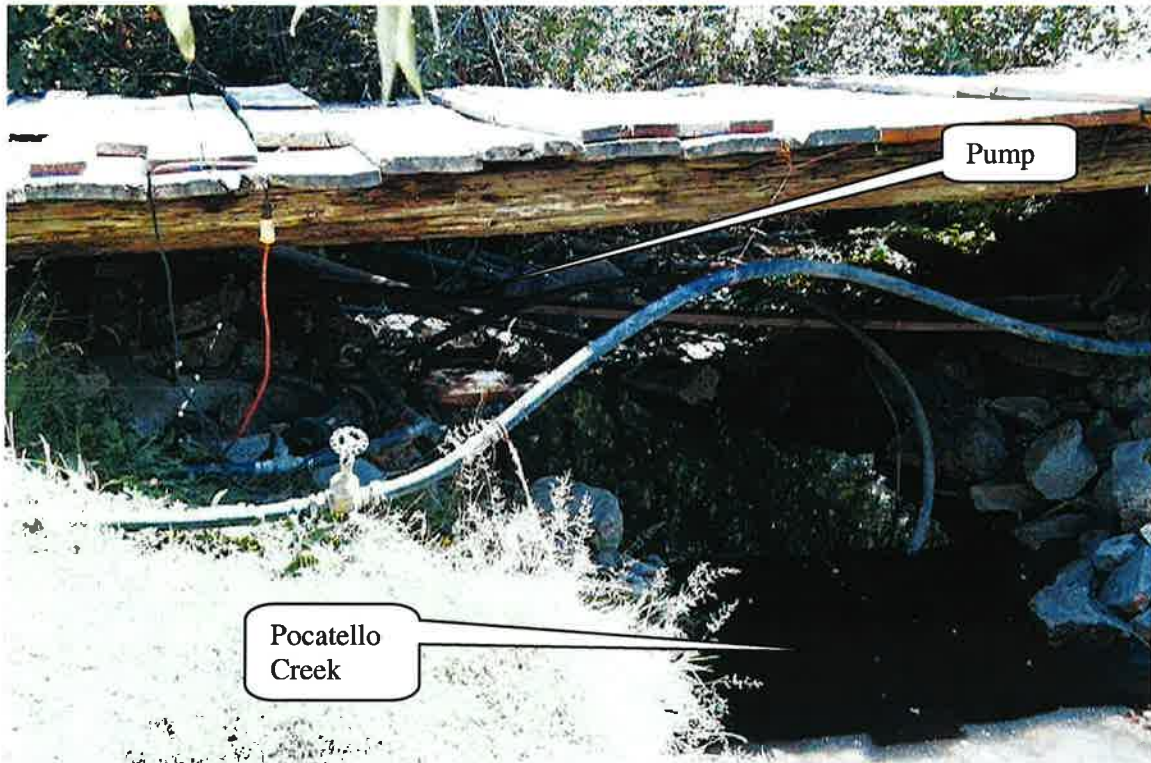
The terms of this contract
 is \$2000⁰⁰ full purchase price.
 One thousand dollars as down
 payment and the balance of
 1000⁰⁰ to be paid with 6%
 interest. Five Hundred dollars.

June 14, 1966 and the balance
 of five hundred dollars plus
 the interest January 14, 1967
 at which time a title insurance
 and Guarantee Deed
 will be furnished to purchaser
 by the seller. No penalty if
 Contract is paid earlier than
 date specified.

Elwin H. Anderson
 Duane M. Anderson

29-10888 and 29-10889

Date: 7/26/01



POD. Looking South. Pump set under bridge and supplies water to Roberts back pasture and Matts pasture.

29-10888 and 29-10889

Date: 7/26/01



POD. Looking South. Pump set under bridge and supplies water to Roberts back pasture and Matt's pasture (csaxton).

Memorandum

Date: July 6, 2001

From: Craig L. Saxton

Subject: Robert and Matt Zausch Claims

Claim No(s): 29-04220, 29-10888, 29-10889

No priority evidence submitted. Conversation with Robert on 5/10/01, he stated that before he purchased the property it was owned by Martindale who bought the property in 1969, and prior to that Mr. Anderson owned the property. Robert also says the he thinks the right is based on and old Decree.

All three claims claim an April 1, 1904 priority date. This priority date does not match any of the Decreed rights in 29-N-1, Tandy Vs. AL, signed 4-1-1925. The claimed POU does not fall in any of the decreed Places of use described in Decree 29-N-1, Tandy Vs. AL, signed 4-1-1925. In addition, an objection to Statutory claim 29-04220 filed on Feb 3, 1982, was filed by Dwaine W Anderson on 6/15/1985. In Mr. Anderson's objection it states, "I am one of the original owners of this ground and the water was never used on it. We sold this piece of ground in 1965."

At this time, I have no evidence to recommend the above rights. It seems the best option is for the claimant to find evidence of beneficial use after 1965 and before 1971.

The second option would be to file a permit on the water of proof can be made that use took place prior to 1987.

7/29/01 Field Exam with Robert. Didn't meet
Matt. Saw POD to Matt's Property and
the Pipeline that takes it over there.

JUN 15 2001

April 25, 2001

29-10889

MATT J ZAUSCH

SHERRY L ZAUSCH

8195 W POCATELLO CR RD

POCATELLO ID 83201

RE: EVIDENCE OF PRIORITY

Dear Claimant (s):

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

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

For your reference, I have provided a printout of your Notice and the pamphlet entitled **"Evidence of Priority"**. The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled **"What Kind of Evidence is Required"** and **"Some examples of Documents Which May Be Evidence of the Priority Date"**.

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

.....
The Department can not recommend the Notice be decreed by the court if no evidence of a priority date is submitted.
.....

Please submit the documentation supporting the priority date by May 11, 2001, **referencing all documents with the corresponding Notice number.** If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact me at 525-7161.

Respectfully submitted,

Craig L. Saxton
Water Resource Agent
Adjudication Bureau

Enclosure: Brochure on "Evidence of Priority"
 Notice of Claim 29-10889

Log for claim A29-10889

Spatial Dynamics BTD

9/26/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
06s35e	20	SENE	2	0.3	
Totals:			2	0.3	

- Domestic 29-108 40 PD'd

AJ5809NP
No. A29-10889

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 161

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	MATT J ZAUSCH	04/01/1904	IRRIGATION	04-01 11-01	0.060 CFS	
C	SHERRY L ZAUSCH					
	8195 W POCATELLO CREEK RD			TOTAL DIVERSION:	0.060 CFS	
	POCATELLO ID 83201			CONSUMPTIVE USE:		5.00 AFA
	(208) 232-4430					

Water Source: POCATELLO CREEK, NORTH FORK

Tributary to: POCATELLO CREEK

Stage: BENEFICIAL USE

AJ5809NP
No. A29-10889

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/24/00
PAGE: 162

Point(s) of Diversion: T06S R35E S20 SENENE BANNOCK County

Place of use Legal Description for: IRRIGATION

	NE				NW				SW				SE						
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
06S	35E	20	:					02	:										2.0
TOTAL ACRES																		2.0	

POU County: BANNOCK

Other Rights: NONE

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

29-10085	29-10709	29-10710	29-10887	29-11064	29-11359	29-12072	A29-04220	A29-10085	A29-10709
A29-10710	A29-10887	A29-10888	A29-10890	A29-11064	A29-11359	A29-12072			

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

A29-04366 A29-10539 A29-10888

Remarks: GEN SHARES DIVERSION SYSTEM WITH WATER RIGHT A29-10888 & A29-04220.

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

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

Audit: 03/30/90 MOBILE2 08/04/94 THOMPSON 03/29/95 POST-STD

JUN 15 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: A29-10889

Date Received: 3/30/1990

Receipt No: 100 6436

Received By: CA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MATT J. ZAUSCH 208-232-4430
Address: 8195 W. POCA TELLO CREEK RD.
POCA TELLO, ID 83201

AND/OR

Name: SHERRY L. ZAUSCH 208-232-4430
Address: 8195 W. POCA TELLO CREEK RD.
POCA TELLO, ID 83201

2. Date of Priority: APR 01, 1904

3. Source: POCA TELLO CREEK, NORTH FORK Trib. to: POCA TELLO CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
06S	35E	20	SE	NE	NE		BANNOCK

5. Description of diverting works:
PUMP AND PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	0.060		

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

8. Total consumptive use is 5.0 Acre Feet Per Annum.

9. Non-irrigation uses:

A2910889



10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	35E	20	SE	NE		IRR	2.0
Section Acres							2.0
Total Acres							2.0

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:
SHARES DIVERSION SYSTEM WITH WATER RIGHT A29-10888 & A29-04220.

15. Basis of Claim: BENEFICIAL USE

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: -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): Matt Zamb Date: 3-30-90

Date: _____

State of Idaho)
County of Bannock) SS.

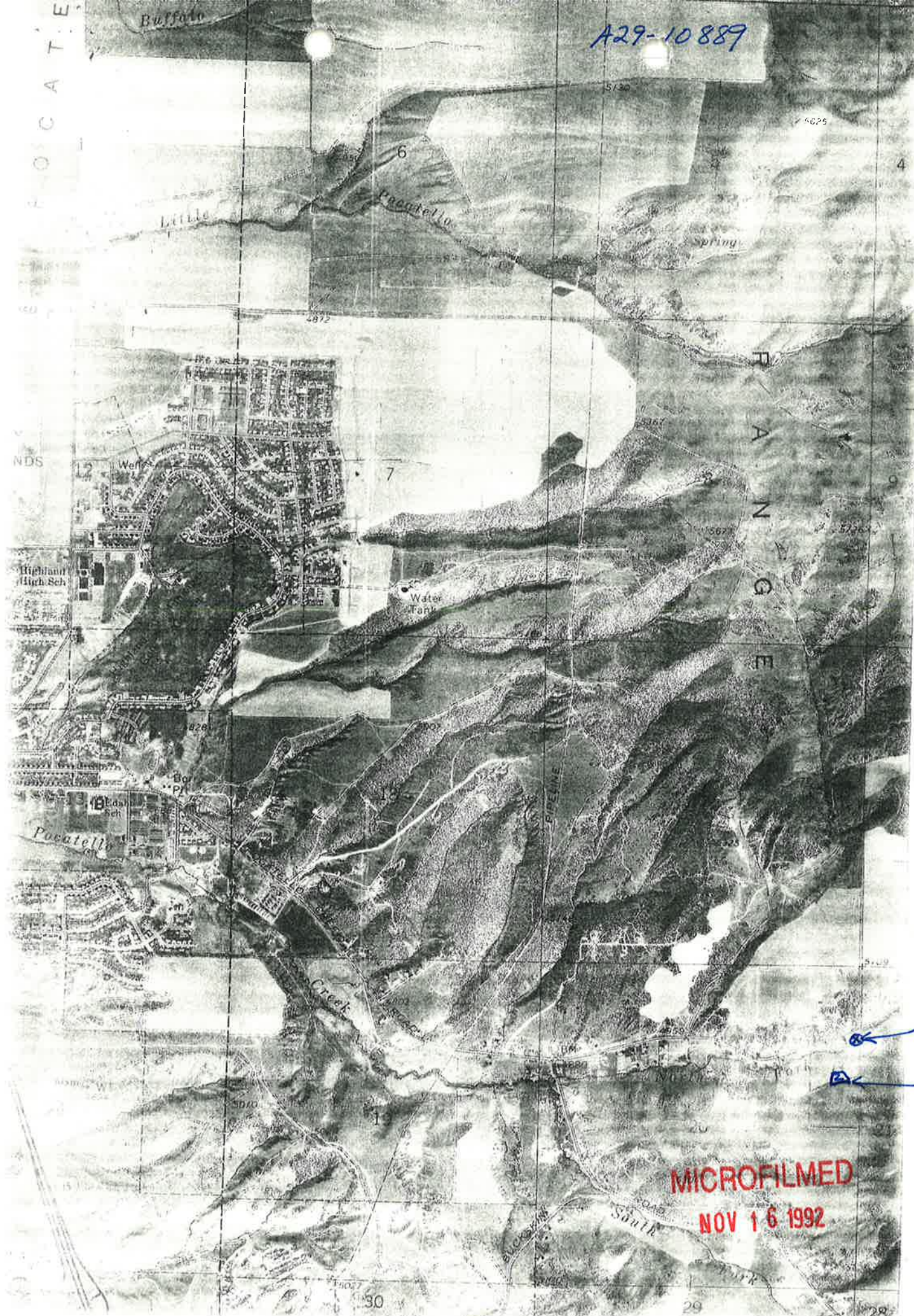
Subscribed and sworn (or affirmed) before me this 30th day
of March 19 90

Carter Fritschle
Notary Public

Seal

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

A29-10889



T6S
R35E

P.D.
P.U.

MICROFILMED
NOV 16 1992