

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: A37-11269
Date Received: 9/07/1988
Receipt No: S002092
Received By: SCC

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

853 1334

1. Name: JOHN K. BARTON
Address: BOX 5432
BOISE, ID 83705
OR
Name: LETA BARTON
Address: BOX 5432
BOISE, ID 83705
208-888-3646
208-888-3646

2. Date of Priority: JUN 30, 1899

3. Source: UNNAMED SPRINGS Trib. to: FISH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
02N	22E	36	NW	SE	NW		BLAINE

5. Description of diverting works:
100 HP PUMP TO SPRINKLERS

6. Water is used for the following purposes:

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

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

A.F.A.

8. Total consumptive use is 188.0 Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
02N	22E	25	SW	SW		IRR	40.0
			SE	SW		IRR	40.0
			SW	SE		IRR	40.0
						Section Acres	120.0
		26	SE	SE		IRR	40.0
						Section Acres	40.0
		36	SE	NW		IRR	40.0
						Section Acres	40.0
						Total Acres	200.0

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:
A37-00777, A37-00778

14. Remarks:
SPRINGS ARE USED TO SUPPLEMENT OTHER WR. SPRINGS MAY NOT BE
CONSIDERED TRIBUTARY TO FISH CREEK, MAY BE SINKS.

15. Basis of Claim: STATUTORY CLAIM

MICROFILMED
FEB 25 1993

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: 2

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): *John H. Barton* Date: *Sept 7, 1988*
Date: _____

State of Idaho)
County of *Twin Falls*) SS.

Subscribed and sworn (or affirmed) before me this *7th* day
of *September* 19 *88*

Roxanne Storey
Notary Public

Seal

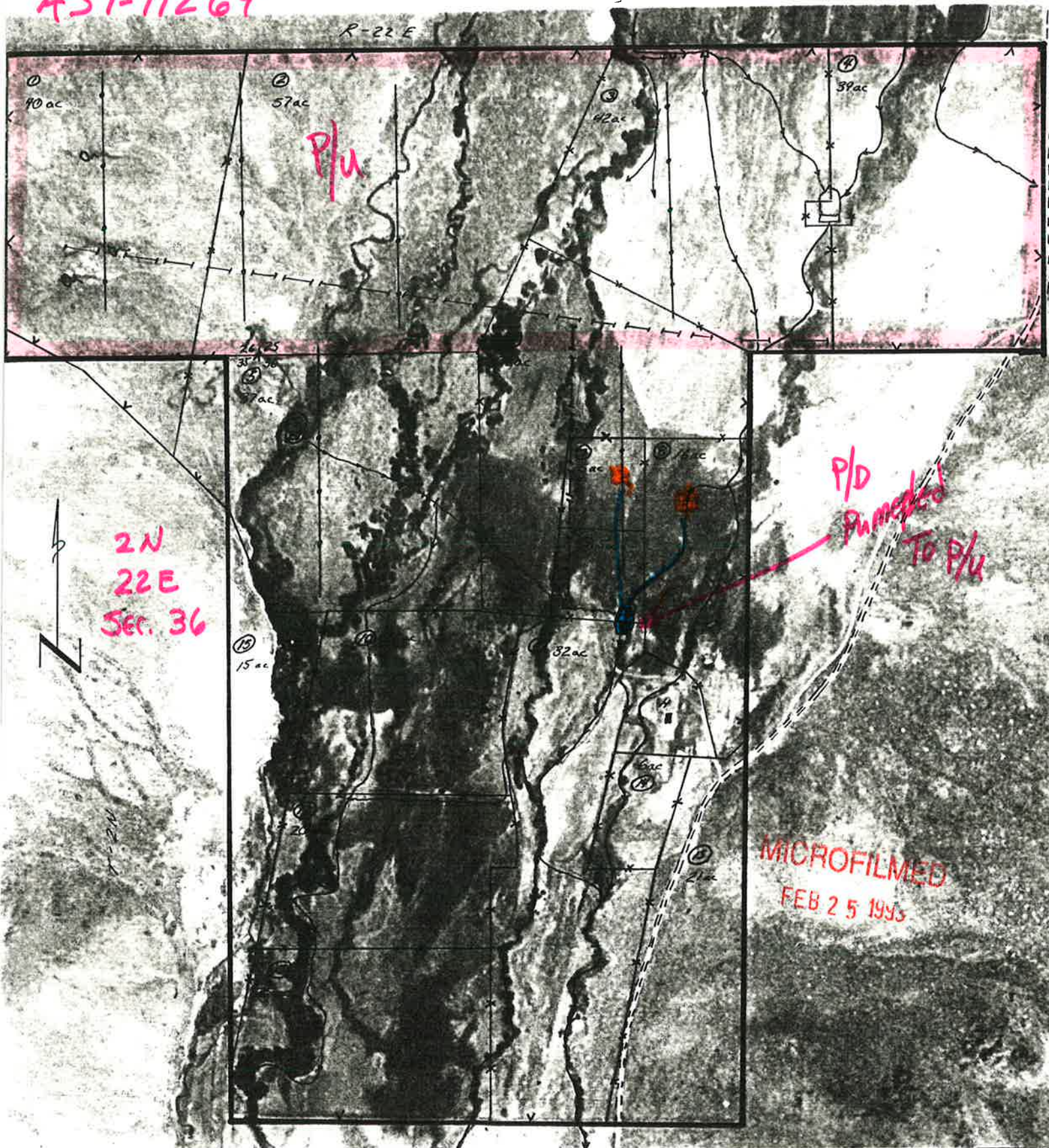
Residing at *Buhl, Id*
My Commission Expires *6-30-94*

OCTOBER 1976

CONSERVATION PLAN MAP

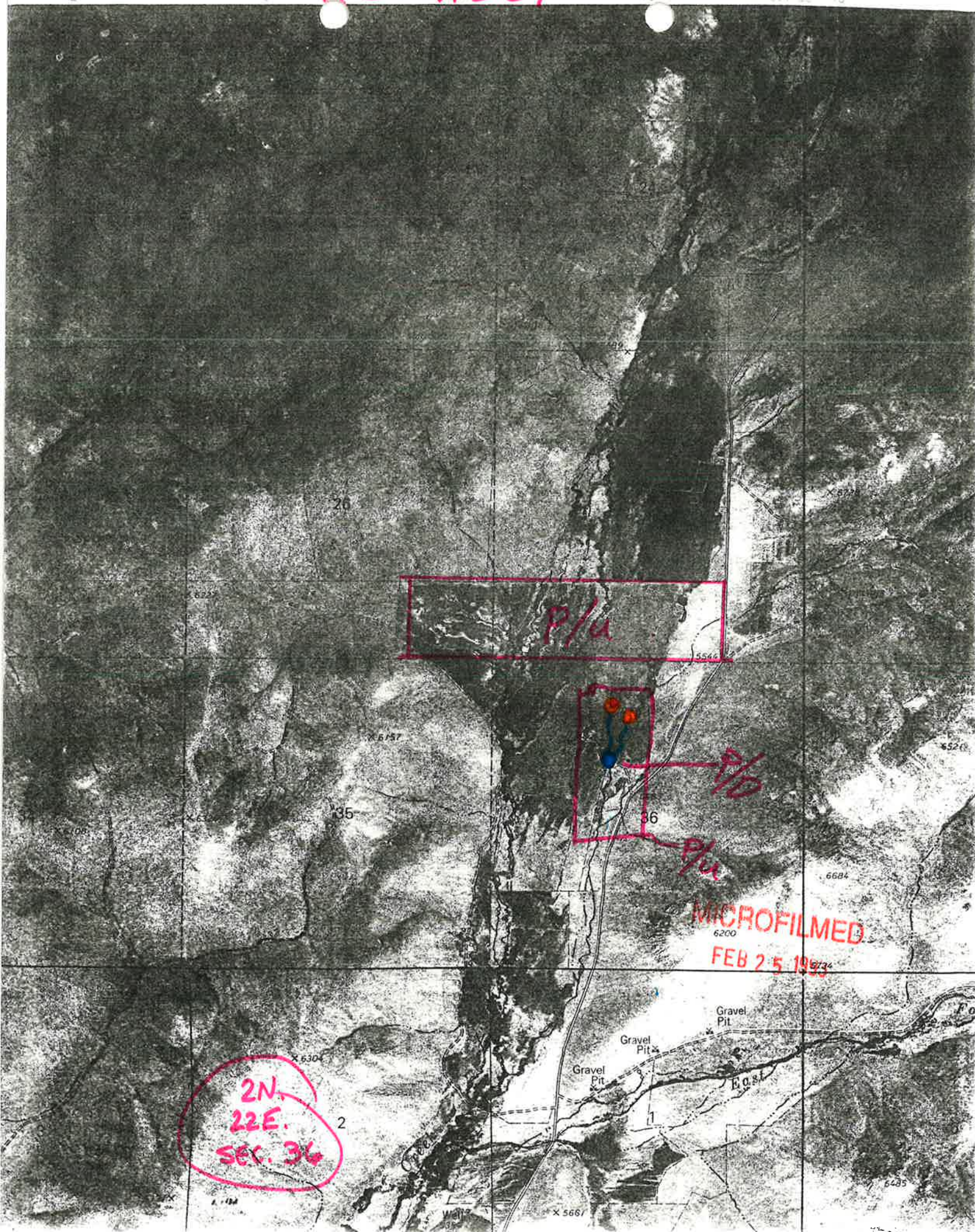
Owner John Borton Operator SAMC
County Blaine State Idaho Date 4/76
Approximate acres _____ Approximate scale 8" = 1 mi
Cooperating with Blaine Soil _____ Conservation District
Plan identification _____ Photo number _____
Assisted by Greg Jones USDA Soil Conservation Service

A37-11269



A37-11269

7.5 MINUTE SERIES



12/11/2006

**NOTICE OF ERROR
REPLY**

RECEIVED

JAN 04 2007

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: 01/05/2007

Water right number: 37-11269

JOHN K BARTON
PO BOX 441
CAREY ID 83320
Telephone Number: (208)853-1334

LETA BARTON
PO BOX 441
CAREY ID 83320
Telephone Number: (208)853-1334

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):
2. Describe the changes you wish to make in the proposed recommendation:
3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation; no changes need to be made.

DATE:

12/27/2006

SIGNATURE:

John K. Barton

Please print your name:

John K. Barton

IDWR Regional Office, 322 E Front St
PO Box 83720, Boise, ID 83720-0098, 2082874800

SCANNED

JAN 04 2007

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

SOURCE: SPRING TRIBUTARY: POLE CANYON CREEK
QUANTITY: 1.500 CFS
The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.
PRIORITY DATE: 12/02/1911
POINT OF DIVERSION:
T02N R22E S36 NWSSEW Within BLAINE County

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER	04/15 10/31	0.140 CFS
IRRIGATION	04/15 10/31	1.500 CFS

IRRIGATION in BLAINE County

T02N	R22E	S25	SWSW	40.00	T02N	R22E	S25	SESW	40.00
T02N	R22E	S25	SWSE	39.00	T02N	R22E	S26	SESE	39.00
T02N	R22E	S36	NENW	40.00	T02N	R22E	S36	SWNW	29.00
T02N	R22E	S36	SENW	35.00	T02N	R22E	S36	NWSW	28.00

STOCKWATER in BLAINE County

T02N R22E S25	SWSW	T02N R22E S25	SESW
T02N R22E S25	SWSE	T02N R22E S26	SESE
T02N R22E S36	NENW	T02N R22E S36	SWNW
T02N R22E S36	SENW	T02N R22E S36	NWSW

This right is limited to the irrigation of 160 acres within the place of use described above in a single irrigation season.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.



Idaho Department of Water Resources

SRBA Recommendation:

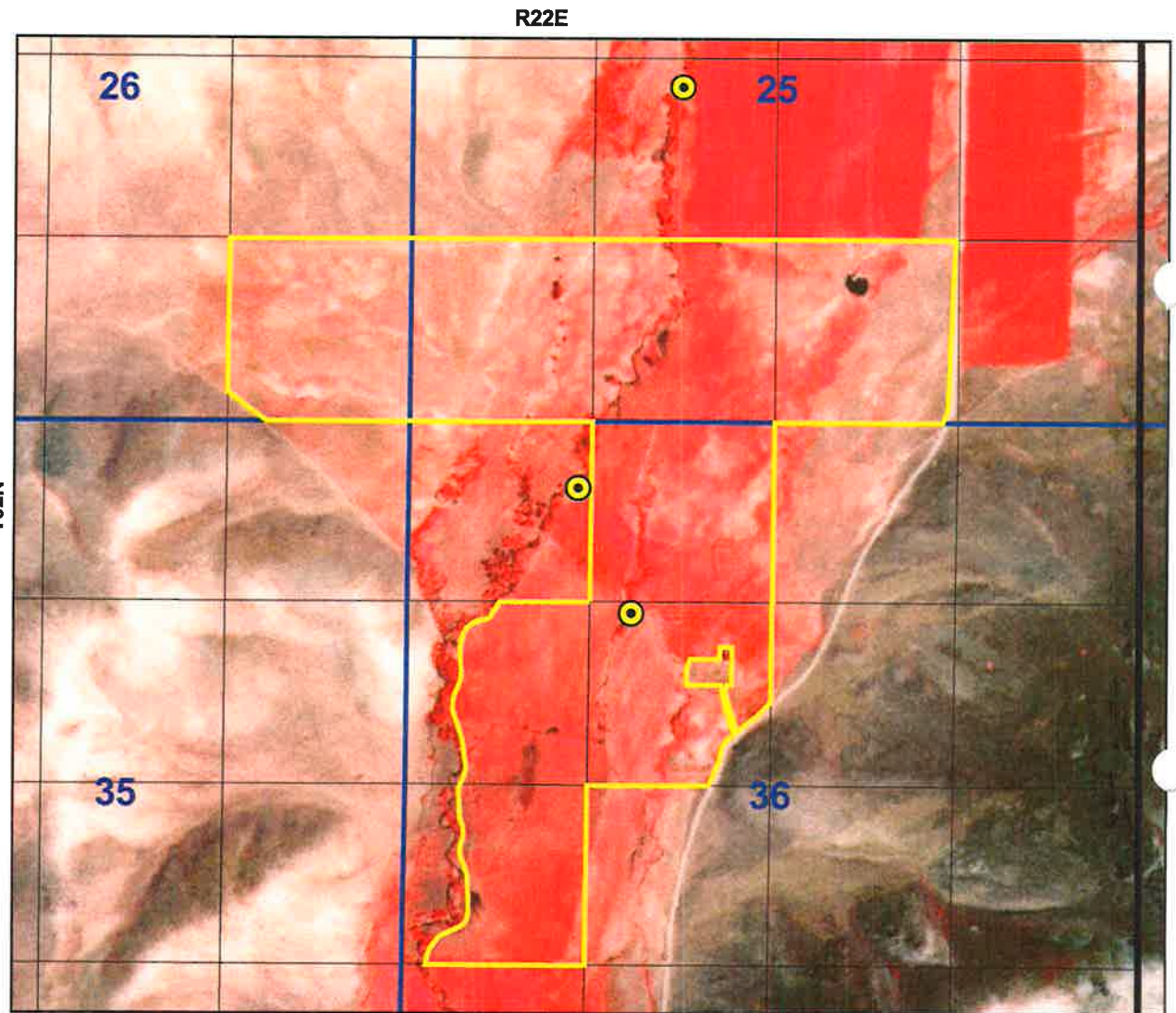
37-777
37-778
37-11269

Legend

-  Point of Diversion
-  Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



Blaine County
IDWR Basin 37



0 0.25 0.5 Miles



Prepared by M. Anders
On Wednesday, November 29, 2006
1987/88 Aerial Photography

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 37-11269
Date Received: 9/7/1988
Receipt No: S002092
Received By:

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

1. Name of Claimant(s)

JOHN K BARTON Phone: (208)853-1334
LETA BARTON
PO BOX 441
CAREY ID USA 83320

2. Date of Priority: 06/30/1899

3. Source: SPRINGS Trib. to: FISH CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
02N	22E	36	NW SE NW	BLAINE	

5. Description of diverting works:

100 HP PUMP TO SPRINKLERS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/01	11/01	1.5	
STOCKWATER	04/01	11/01	0.14	

7. Total Quantity Appropriated is:
1.5 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
02N	22E	25	SW SW	STOCKWATER	
			SE SW	STOCKWATER	
			SW SE	STOCKWATER	
			SW SW	IRRIGATION	40
			SE SW	IRRIGATION	40
			SW SE	IRRIGATION	40
Section Acres					120
02N	22E	26	SE SE	IRRIGATION	40
			SE SE	STOCKWATER	

02N	22E	36	SE	NW	Section Acres	40
			SE	NW	STOCKWATER	
					IRRIGATION	40
					Section Acres	40
					Total Acres	200

11. Place of use in counties: BLAINE
12. Do you own the property listed above as place of use? Yes
13. Other Water Rights Used:
14. Remarks:

SPRINGS ARE USED TO SUPPLEMENT OTHER WR. SPRINGS MAY NOT BE CONSIDERED
 TRIBUTARY TO FISH CREEK, MAY BE SINKS.

claim amended to add stockwater

15. Basis of Claim: Statutory Claim

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): *Jim K. Carter* Date: 11/16/05
 _____ Date: _____

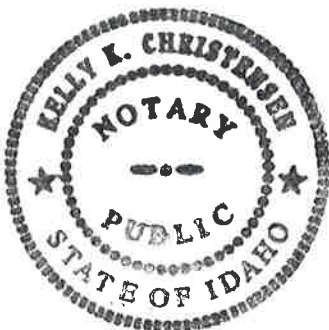
State of Idaho)
 County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 16th day of Nov 2005

Kelley K. Christensen
 Notary Public

Residing at _____ Twin Falls, ID

My commission Expires 4-2-2010



Adjudication Claim Notes

Claim(s): 37-777, 37-778, 37-11269

Background Data

37-777

- Source is Fish Creek
- Decreed for 3.1 cfs on 4 QQ
- Claimed 3.1 cfs on 160 acres

37-778

- Source is Fish Creek
- Decreed for 2.2 cfs on 4 QQ
- Claimed 2.2 cfs on 160 acres

37-11269

- Statutory Claim
- Source is unnamed springs tributary to sinks
- Claimed 1.5 cfs on 200 acres

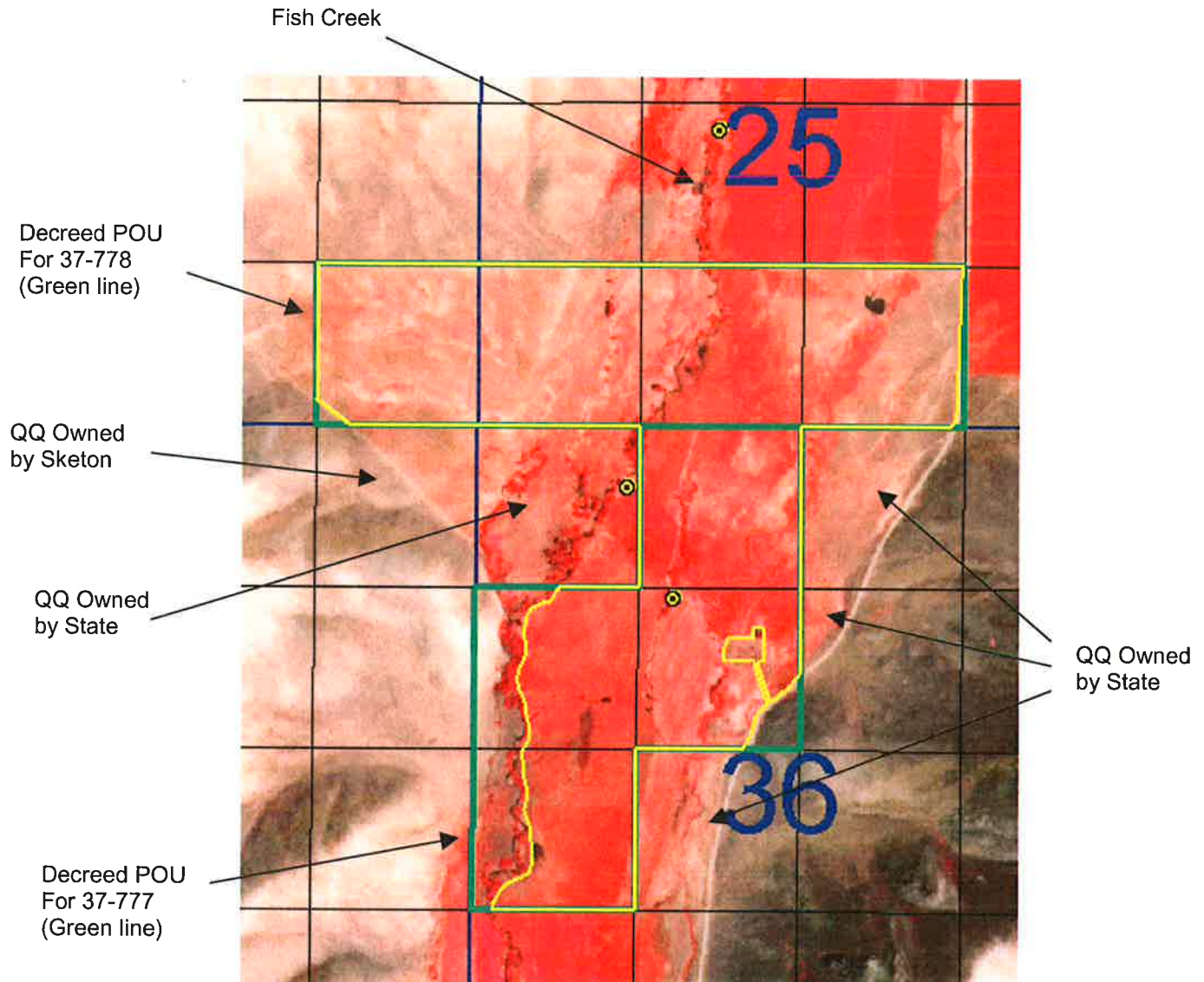
Place Of Use Data

Yellow line is the draft Place of Use created by IDWR based on historical data and records.

Yellow dot is draft Point of Diversion created by IDWR based on historical data and records.

Green line is decreed/licensed POU (this may only represent the Quarter-Quarter sections of the decree/license)

1987 Aerial Photo





Photograph of North POD from Fish Creek taken by Lee Peterson during field exam.
Location: 2517288 1363904
Plate: A0016258
Photo #: 1060642



Photograph of Middle POD from Fish Creek taken by Lee Peterson during field exam.
Location: 2517059 1363014
Plate: A0016257
Photo #: 1060641



Photograph of South POD from Springs taken by Lee Peterson during field exam.
Location: 2517178 1362734
Plate: A0016256
Photo #: 1060640

Notes

T2N R22E Sections 25, 26, & 36

- Found 290 acres for Irrigation
- NENE Section 35 and NWNW, NWNE, SWNE, & NESW Section 36 excluded because there is no evidence in deeds submitted or Blaine Co tax records that claimant owns this land.
- The owner would like to create a PPU. The owner presently co-mingles the water of these three claims uses a system of ditches, pipes, and pumps to deliver the water to all parts of the PPU. Pumps and pipe are used to deliver water to the NE & NW ends of the PPU. This land was in separate ownership prior to ~1948.
- 10/19/05 talked with owner on telephone. Mr. Barton stated that they have co-mingled the water from their rights since this ranch was homesteaded in the early 1900s. He said they have used the current system of pumping and hand-line since about 1975. Two of the springs claimed in 37-11269 are located 200 yd north and 100 yd east of the POD GPSd by Lee Peterson during the field exam. There is a third spring that is located out in one of the fields that only runs significantly when they are applying water to the field. They have always used these springs, but Mr. Barton said there have been disagreements over these springs. He referred to correspondence between himself and Doug Jones he submitted with the claim (see claim file).
- The major decree on Fish Creek is Patterson vs. Potter (1914). There is no mention of water from the springs in this decree, only "waters of Fish Creek and its tributaries."

➤ Evidence of priority for 37-11269:

- The submitted deeds mention "all of the water from certain springs on and near the property" as being appurtenant to this property. However, there is no discussion of the rate or use of this water. Earliest deed is 12/2/1911. Deeds for 160 acres of land.
- Since the water from the springs is mentioned in a series of deeds, I decided this was acceptable evidence of priority, even though a diversion rate was not given.
- Priority date: 12/2/1911

➤ Diversion rate for 37-11269:

- 11/06 unable to conduct field exam to measure diversion rate because of too much snow.
- Based on 1987 aerial photo that indicates irrigation of POU, evidence of priority submitted, a distribution system observed on during 2005 field exam, this is a different source than 37-777 and 37-778, and when combined with 37-777 and 37-778 the duty of water for POU is just slightly over 0.02cfs/acre, I decided to recommend diversion rate of 1.5 cfs.

➤ Recommendations:

- 290-acre PPU
- When combined rights limited to 290 acres
- 37-777
 - 3.1 cfs
 - 3.1 cfs for Irrigation of 160 acres within PPU
 - 0.14 cfs for Stockwater (limited to 13,000 gal/day)
 - Assuming accomplished transfer to add stockwater use.
- 37-778
 - 2.2 cfs
 - 2.2 cfs for Irrigation of 160 acres within PPU
 - 0.14 cfs for Stockwater (limited to 13,000 gal/day)
 - Assuming accomplished transfer to add stockwater use.
- 37-11269
 - 1.5 cfs
 - 1.5 cfs for Irrigation of 160 acres within PPU
 - 160 acres based on deed used for evidence of priority
 - 0.14 cfs for Stockwater (limited to 13,000 gal/day)
 - Source is Spring tributary to Pole Canyon Creek
 - according to research by Doug Jones
 - Priority Date: 12/2/1911

➤ Data used for review: 1987, 1992, & 2004 aerial photos, Blaine Co Tax Records, Idaho Ownership (idown.shp), & USGS 1:24,000 Topo

File No.
A37-00777=00778=11269

Owner
John & Leta Barton
Box 5432
Boise, Idaho

Date
7-7-05

I met Mr. & Mrs. Barton this afternoon at their ranch home above fish creek res. And reviewed these water rights with John. Two of the POD's are directly out of Fish creek and one is spring water. And all this water is commingled on their property, he said he would go down to Twin and see Jim Stanton about transferring his three water rights from individual areas, to cover his whole property. John said on his deed for this property it mentions water rights and springs.

W-right 37=777 John agreed this right is for the 160 acres, shown by the yellow area, the yellow POD's are all three incorrect as marked [see GPS] see red photo for comments about this file and questions regarding Ownership of land.

37-778= John said this 160 acres in yellow looks OK but the POD is in the wrong place [see GPS] and this water is from Fish creek. The green outline also looks good, the land on the East and West of this designated area is pumped and irrigated some when water is available [see red photo for comments].

37-11269= Again John said the area in yellow looks approx. good but the marked POD is incorrect, and is Fish creek water, and the two unnamed streams are springs on his property, the land middle East of red photo is school property sub irrig. and natural irrig.

but more needs shown

SEE Red line

Description	GPS Name & No.	Position No.	USR No.	Plate No.	Photo No.	
Photo look W	John	1	2517288	1363904	A0016258	1060642
" E	"	2	2517059	1363014	257	641
" W	"	3	2517178	1362734	256	640-639

Lee R. Peterson

Field Exam Data Form

Claim(s): 37-11269

Date of Field Exam: _____ Time: _____

Accompanied By: _____ Phone Number: _____

Relationship to Claimant: _____

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

*pump 2
in well or out of it
ditches
where main line
when pump part used
snow in ditch*

Reviewer: _____

Date: _____

Background Data

- This is a Statutory Claim
- Source is unnamed springs tributary to sinks
- Claimed 1.5 cfs on 200 acres

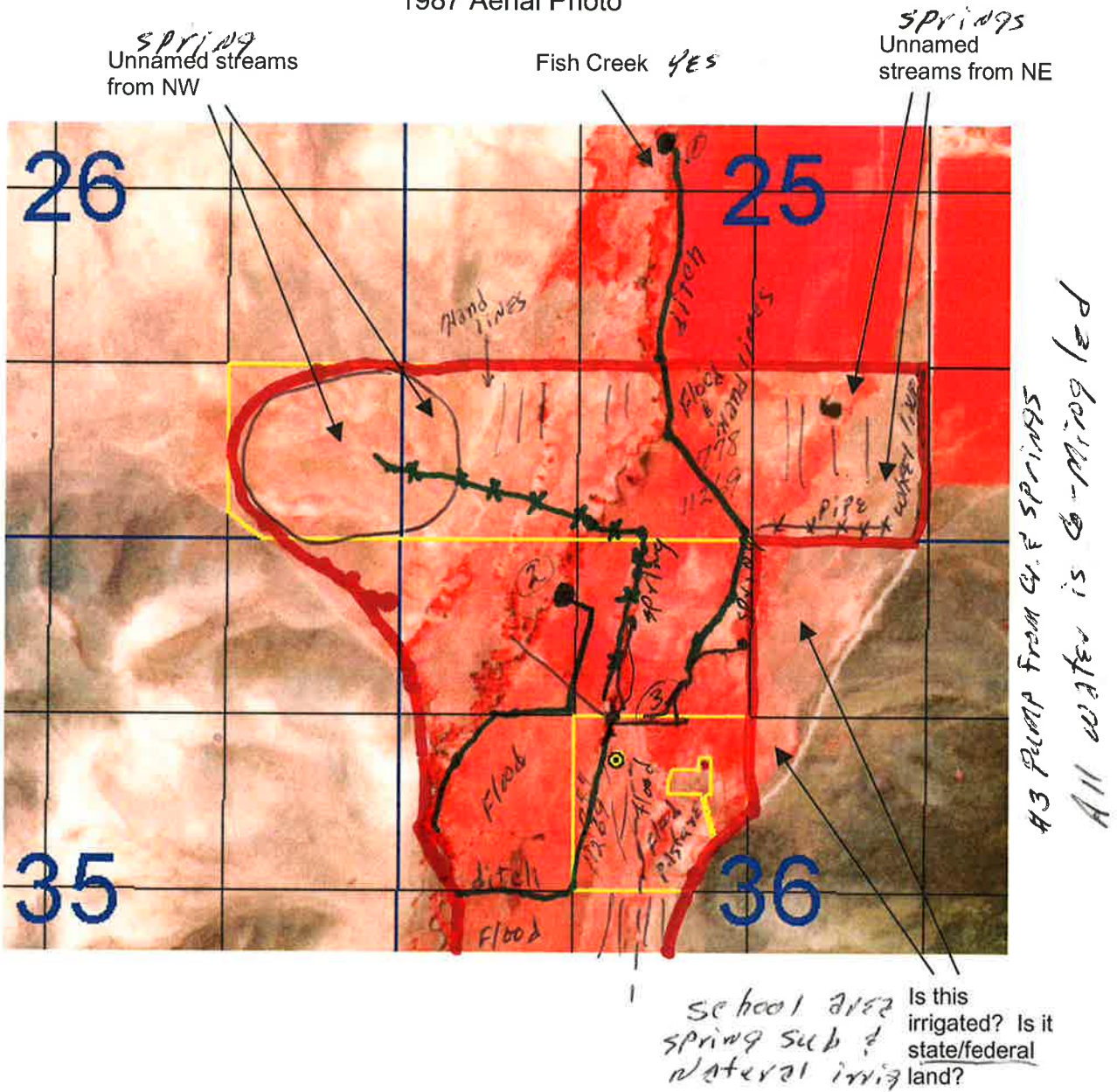
Place Of Use Data

Yellow line is the draft Place of Use created by IDWR based on historical data and records.

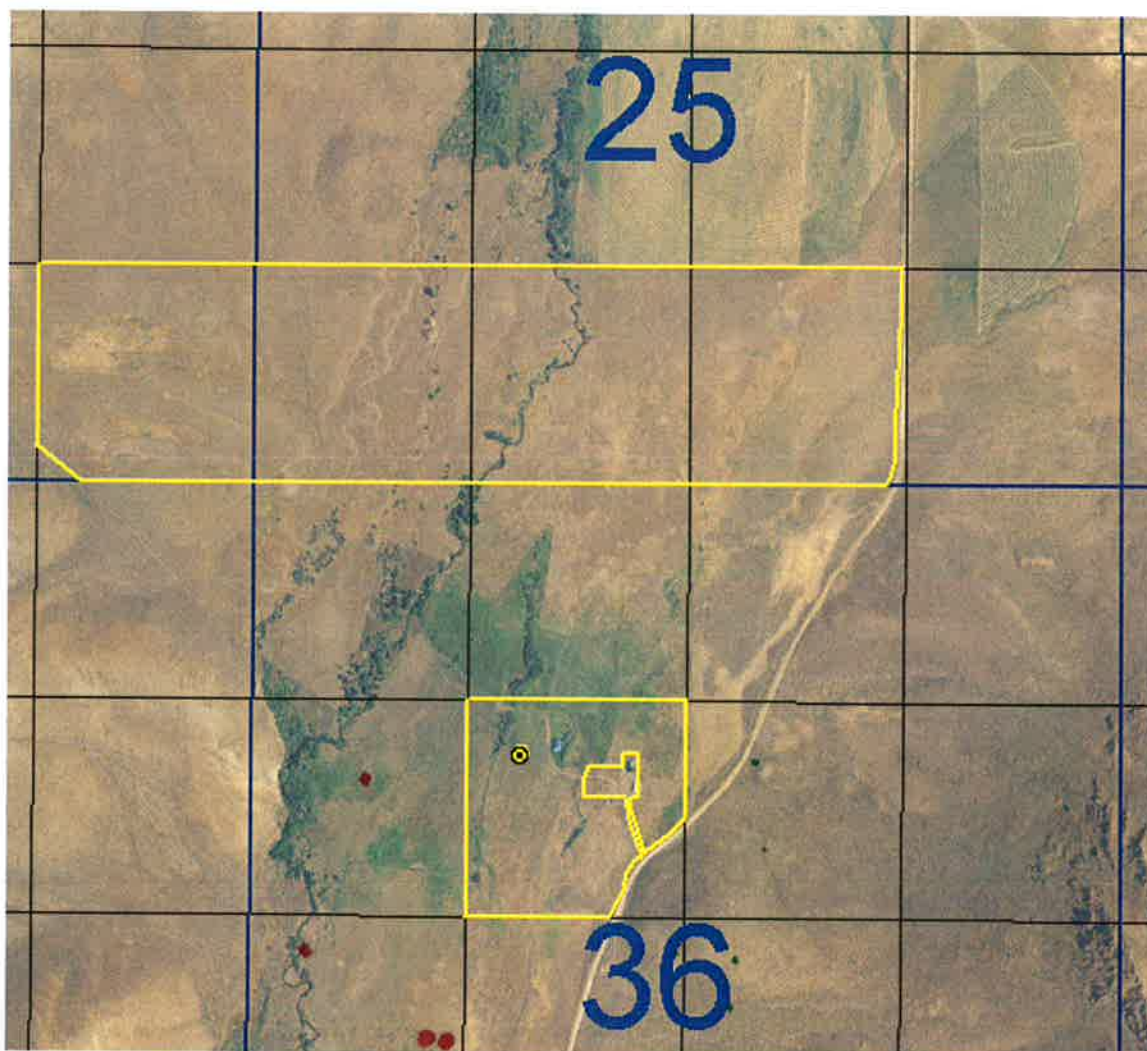
Yellow dot is draft Point of Diversion created by IDWR based on historical data and records.

Green line is decreed/licensed POU (this may only represent the Quarter-Quarter sections of the decree/license)

1987 Aerial Photo



2004 Aerial Photo



Notes

T2N R22E Sections 25, 26, & 36

- Found 194 acres.
- Claimed June 30, 1889 for priority date. 37-777 has a priority of 6/15/1889 and 37-778 has a priority of 6/15/1907. Should the southern portion of this POU, which overlaps with 37-777, have a 6/15/1889 priority and the northern portion, which overlaps with 37-778, have a priority of 6/15/1907?
- The NWNE & SWNE appear to be in state/federal ownership. Is it being irrigated under this right?
- *Pump* Why only one POD? There appear to be several springs. *PMBIR source*
- The relation between 37-777, 37-778, & 37-11269 is unclear. Portions of the POUs for 37-777 & 37-778 (both have Fish Creek as a source) appear to require a source other than just Fish Creek – the submitted deeds say springs “on and near” the property are also a source. If they already have a decreed right to these springs, why do they need a Statutory Claim - and vice versa – if they need a Statutory Claim on the springs, then do the POUs for 37-777 & 37-778 need to be reduced in size? There is no mention of springs anywhere in the decrees.

*John will be
- Jim from to whole
place*

- 25

Hannah Sparks

Hyrum Sparks

1

RECEIVED
MAY 10 2005
Department of Water Resources
Southern Region

P. O. Box 441
Carey, Idaho 83320
May 9, 2005

Douglas Jones, P.E.
Water Rights Supervisor
Department of Water Resources
1341 Fillmore St. # 200
Twin Falls, ID 83301-3380

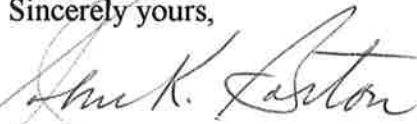
Dear Mr. Jones:

Enclosed please find official documents/records relating to your request letter for "Evidence of Priority," dated April 15, 2005.

The Carey, Idaho, property and companion water rights have been in our family since it was homesteaded. The enclosed documents present records of mortgages and requested records of water rights issues. Water Reference 37-11269.

Should you need further information, please contact me at the above Carey address.

Sincerely yours,



John K. Barton
Property Owner

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 37-11269

WATER RIGHT NUMBER: 37-11269

Owner Type Name and Address

Current Owner

JOHN K BARTON

PO BOX 5432

BOISE, ID 83705

(208) 888-3646

Current Owner

LETA BARTON

BOX 5432

BOISE, ID 83705

(208) 888-3646

*441 Carey, Id 83320**853-1334**Box 441**Carey, Id 83320**(208) 853-1334*

Priority Date: 06/30/1899

Basis: Statutory Claim

Status: Active

Source

SPRINGS

Tributary

FISH CREEK

Beneficial Use

IRRIGATION

From To

4/01 to 11/01

Diversion Rate

1.500 CFS

Annual VolumeTotal Diversion:

1.500 CFS

Location of Point(s) of Diversion

SPRINGS

NW1/4SE1/4NW1/4

Sec. 36, Twp 02N, Rge 22E, B.M.

BLAINE County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	22E	25											40.0	40.0			40.0		120.0
02N	22E	26															40.0		40.0
02N	22E	36							40.0										40.0

Total Acres: 200

Conditions of Approval:Remarks:

1. General

SPRINGS ARE USED TO SUPPLEMENT OTHER WR. SPRINGS MAY NOT BE CONSIDERED TRIBUTARY TO FISH CREEK, MAY BE SINKS.

Comments:

HYRUM M. SPARKS and CHARLOTTE SPARKS, MORTGAGE.
husband and wife,

Mortgagors,

TO

THE UNION CENTRAL LIFE INSURANCE
COMPANY, a corporation of
Ohio,

Mortgagee.

Re-recorded
Dated: Dec. 2, 1911.

Recorded: Dec. 16, 1911 at 1:40 P.M.
Book 81 of Mortgages, Page 137.

Signed: Hyrum M. Sparks, Charlotte
Sparks-- X her mark.

Witness: Frank S. Boone, S.D. Boone.

Ack. Dec. 6, 1911 before Samuel P.
Richards, N.P., Carey, Idaho. SEAL.
Com. exp. Nov. 21, 1915.

Granting words: Grant, bargain, sell
and convey.

Consideration: \$2500.00.

Mortgages:

The following described real estate situated in Blaine County,
Idaho, to-wit:

The East half ($\frac{1}{2}$) of Northwest quarter ($\frac{1}{4}$) and the Southwest
quarter ($\frac{1}{4}$) of the Northwest quarter ($\frac{1}{4}$) and the Northwest quarter ($\frac{1}{4}$) of
the Southwest quarter ($\frac{1}{4}$) of Section Thirty-six (36) Township Two (2)
North, Range Twenty-two (22) East of the Boise Meridian, containing 160
acres of land.

Together with all the waters of certain springs arising on or
near said land, and 100 inches of early water from Fish Creek.

GIVEN TO SECURE the payment of one promissory note of even date
herewith, for \$2500.00, due 10 years after date, with interest from date,
at the rate specified.

RE: 37- 11269
Claim #

JOSEPH W. FULD, ABSTRACTER
BLAINE COUNTY, IDAHO

FEB 13

HYRUM MORGAN SPARKS and
CHARLOTTE SPARKS, husband and
wife,

Mortgagors,

TO

LEE CHARLES MILLER,

Mortgagee.

IDAHO MORTGAGE.

Dated: May 1, 1922.

Recorded: June 3, 1922 at 2:20 P.M.

Book 122 of Mortgages, Page 473.

Instrument No. 50526.

Signed: Hyrum Morgan Sparks. Charlotte
Sparks-- My X mark.

Witness to mark: J.S. Fischer, Kean
Miller.

Ack. May 27, 1922 before J.S. Fischer,
N.P., Boise, Idaho. SEAL. Com. exp.
May 10, 1923.

Granting words: Grant, bargain, sell
and convey.

Consideration: \$3500.00.

Mortgages:

The following described real estate situated in Blaine County,
Idaho, to-wit:

The East half ($E\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) and the South-
west quarter ($SW\frac{1}{4}$) of the Northwest quarter ($NW\frac{1}{4}$) and the Northwest quar-
ter ($NW\frac{1}{4}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Thirty-six (36),
Township Two (2) North, Range Twenty-two (22) East of the Boise Meridian,
containing one hundred sixty (160) acres of land.

Together with a full primary water right for the above described
one hundred sixty (160) acres of land, consisting of all the waters of
certain springs arising on and near said land and one hundred fifty-five
(155) inches of the waters of Fish Creek with priority dating from June
30, 1899.

GIVEN AS A MORTGAGE to secure payment of one promissory note
for \$3500.00, due February 1, 1933, bearing even date herewith, interest
from May 1, 1922 as therein specified.

JOSEPH W. FULD, ABSTRACTER
BLAINE COUNTY, IDAHO

FLB 20

Thro inadvertance, said stenographer wrote in the form of return of sale prepared for use in this case, the name of said Union Central Life Insurance Company instead of Lee Charles Miller, the prospective purchaser, which form was used by Mr. Aaron Clements, Sheriff after the sale was made without discovering said error. That said stenographer prepared a proposed certificate of sale based upon said defective return of sale and that said certificate of sale contained the same error. That said sale was made under the provision in the judgment copied in this motion.

That both the Sheriff and this affiant looked over the said forms of return of sale and certificates of sale, correcting errors therein, but over-looked the above error.

HUGH E. McELROY.

Subscribed and sworn to before me this 25 day of September, 1925.

Luther W. Tennyson,

Notary Public for Idaho.

Residing at Boise, Idaho.

SEAL.

ORDER.

The foregoing motion duly coming on for hearing to the Courth this 26 day of September, 1925, and it appearing that thro inadvertance that the return of sale and the certificate of sale issued by the Sheriff are not in accord with the record and the facts of the case, it is ordered that said return and certificate of sale be, and they are hereby cancelled and the Sheriff of Blaine County, Idaho, is directed and authorized to issue an amended return of sale and an amended certificate of sale showing that Lee Charles Miller was the purchaser of the property and that the property was sold subject to:

"the prior lien of the mortgage from Hyrum Morgan Sparks and Charlotte Sparks, to Lee Charles Miller, dated May 1, 1922, and recorded at Page 473 of Book 122 of the Mortgage records of Blaine County, Idaho, on the 3rd day of June, 1922.

SHERIFF'S AMENDED RETURN ON SALE OF REAL ESTATE.

I, Aaron Clements, Sheriff of said County, do hereby certify that I received the annexed Order of Sale on August 10, 1925, and in compliance therewith I noticed the property described in^d and by said Writ directed to be sold, to be sold at public auction, by posting written notice particularly describing the property for twenty consecutive days, before the time set for the sale, in three public places in the precinct where said property was to be sold, to-wit: In front of the County Courthouse door in Hailey, Blaine County, Idaho. And by publishing a copy of said Notice once a week for the same period before the time set for the sale in the Times-Newsminer, a newspaper published in said County, said several notices stating the kind of money in which bids might be made at said sale, which was the same as specified in the judgment. And in said notices I named a time when and a place where said property was to be sold.

And on September 12th, 1925, at the hour of 3:00 o'clock in the afternoon of that day, in front of the County Courthouse door in the city of Hailey, Blaine County, Idaho, the time and place so named in said notices when and where the property was to be sold, I duly sold at public auction all and singular the following described property

JOSEPH W. FULD, ABSTRACTER

BLAINE COUNTY, IDAHO

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FLB 34

thus directed to be sold in manner as follows, to-wit:

I sold the land premises directed to be sold by said decree situated in Blaine County, Idaho, as follows:

The East half ($E\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) and the Southwest quarter ($SW\frac{1}{4}$) of the Northwest quarter ($NW\frac{1}{4}$) and the Northwest quarter ($NW\frac{1}{4}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Thirty-six (36) Township Two (2) North, Range Twenty-two (22) East of the Boise Meridian, containing the one hundred sixty (160) acres of land.

Together with a full primary water right for the above described one hundred sixty (160) acres of land, consisting of all the waters of certain springs arising on and near said land and one hundred fifty five (155) inches of the waters of Fish Creek with priority dating from June 30, 1899.

TOGETHER with all the improvements, privileges and appurtenances thereunto belonging, and all rights of homestead exemption; together with all ditch and water rights of every nature, however evidenced, used on said land or belonging to same or said mortgagors or which may be hereafter acquired or used upon said land, subject to the prior lien of the mortgage from Hyrum Morgan Sparks and Charlotte Sparks, to Lee Charles Miller, dated May 1, 1922, and recorded at Page 473 of Book 122 of the Mortgage records of Blaine County, Idaho, on the 3rd day of June, 1922, in one parcel to the plaintiff, Lee Charles Miller, who was the highest bidder therefor in the sum of \$1251.03 cash, lawful money and I have executed Certificates of Sale as prescribed by law and delivered the same to the said purchaser and filed a duplicate copy thereof for record in the Office of the County Recorder of the County.

I hereto append a statement, to-wit:

Amount of Judgment	\$1.192.27
Accruing interest	9.71
Costs of Sale	49.05
Total	<u>\$1,251.03</u>
Proceeds of sale	<u>1,251.03</u>
Deficiency	None .

I have applied the proceeds of said sale in satisfaction of the Judgment set out in said Writ and return the same herewith.

JOSEPH W. FULD, ABSTRACTER

BLAINE COUNTY, IDAHO

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AARON CLEMENTS, the Sheriff of Blaine
County, State of Idaho,

Grantor,

TO

LEE CHARLES MILLER,

Grantee.

SHERIFF'S DEED ON FORECLOSURE.

Dated: September 17, 1926.

Recorded: September 27, 1926 at 11:15 A. M.
Book 127 of Deeds, Page 468.

Signed: Aaron Clements, Sheriff of Blaine
County, State of Idaho.

Ack. September 17, 1926 before Cassie M.
Russell, Clerk of the District Court of
Fourth Judicial District in and for the
County of Blaine, State of Idaho. SEAL.
Granting words: Grant, bargain, sell and
convey.

Consideration: \$1251.03.

Conveys:

The property sold at public auction on September 12, 1925 in accordance with the Judgment and Decree of Foreclosure and Sale rendered and entered in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, on July 30, 1925, in an action then pending in said Court in favor of Lee Charles Miller, as plaintiff and against Hyrum Morgan Sparks and Charlotte Sparks, his wife, Morgan H. Sparks and Rosina Sparks, et al., and the Order of Sale issued out of the above mentioned Court on August 4, 1925 directing that the property be sold at public auction, and which was described and sold as follows:

The following described property situated in Blaine County, Idaho, to-wit:

The East half ($E\frac{1}{2}$) of the Northwest quarter ($NW\frac{1}{4}$) and the Southwest quarter ($SW\frac{1}{4}$) of the Northwest quarter ($NW\frac{1}{4}$) and the Northwest quarter ($NW\frac{1}{4}$) of the Southwest quarter ($SW\frac{1}{4}$) of Section Thirty six (36) Township Two (2) North, Range Twenty two (22) East of the Boise Meridian, containing one hundred sixty (160) acres of land.

Together with a full primary water right for the above described one hundred sixty (160) acres of land, consisting of all the waters of certain springs arising on and near said land and one hundred fifty-five inches (155) of the waters of Fish Creek with priority dating from June 30, 1899.

Together with all the improvements, privileges and appurtenances thereunto belonging, and all rights of homestead exemption; together with all ditch and water rights of every nature, however evidenced, used on said land or belonging to same or said mortgagors or which may hereafter acquired or used upon said land, subject to the prior lien of the mortgage from Hyrum Morgan Sparks and Charlotte Sparks, to Lee Charles Miller, dated May 1, 1922 and recorded at page 473 of Book 122 of the mortgage records of Blaine County, Idaho, on the 3rd day of June, 1922.

JOSEPH W. FULD, ABSTRACTER

BLAINE COUNTY, IDAHO

PLB 38

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MILLER & VIELE, a Corporation of the
State of Utah,

GRANTOR.

- TO -

PAUL F. KEYSER of the County of Salt Lake,
State of Utah, I hereby certify that

GRANTEE.

WARRANTY DEED (Special)

Dated April 12, 1933.

Recorded April 27, 1933, at 1:35 P. M.
Book 137 of Deeds, Page 425.

Signed; Miller & Viele, By Minnie W.
Miller, President. By Harold W.
Langton, Secretary-Treasurer. (Cor-
porate Seal)

Ack. April 14, 1933, before J. F.
Hegessy, N. P., Salt Lake City, Utah.
SEAL. Com. exp. April 12, 1936.

Consideration: \$10.00 and other.

Granting words: Grant and convey.

Covenant: Warranty title against persons
claiming under party of first part.

Conveys:

The following described real estate situated in Blaine County, State of Idaho,
to-wit:

The East half ($E\frac{1}{2}$) of Northwest quarter ($NW\frac{1}{4}$) and Southwest quarter ($SW\frac{1}{4}$)
of Northwest quarter ($NW\frac{1}{4}$) and Northwest quarter ($NW\frac{1}{4}$) of Southwest quarter
($SW\frac{1}{4}$) of Section Thirty-Six (36), Township Two (2) North Range Twenty Two
(22) East of Boise Meridian, containing One hundred sixty (160) acres of land.

Together with a full primary water right for the above described One hundred
Sixty (160) acres of land, consisting of all the waters of certain springs arising on
and near said land and one hundred fifty five (155) inches of the waters of Fish Creek
with priority dating from June 30, 1899.

This conveyance is made subject to a mortgage executed by Hyrum Morgan Sparks
and Charlotte Sparks, his wife to Lee Charles Miller for \$3500.00, said mortgage
being dated May 1, 1922, and duly recorded in Blaine County, Idaho, on June 3, 1922,
in Book 122 at Page 473.

This conveyance is made subject to all existing rights of way.

50 cents I. R. S. affixed and cancelled.

JOSEPH W. FULD, ABSTRACTER

BLAINE COUNTY, IDAHO

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WITNESSES: HENRY JOHNSON, Notary Public,
and JAMES M. HAWLEY, County Clerk of
Salt Lake, State of Utah.

GRANTORS.

- TO -

JOSEPH O. DAVIS of County
of State of Idaho,

GRANTEE.

GRANTEES.

Dated November 29, 1933.
Recorded March 27, 1934, at 2:57 P. M.
Book 127 of Deeds, Page 585.

Witness: Elsie Hewlett. Henry Johnson.

Ack. Nov. 29, 1933, before Henry Johnson,
N. P., Salt Lake City, Utah. SEAL.
Com. exp. Oct. 16, 1917.

Nov. 29, 1933, before Henry Johnson.
Granting words: Grant, bargain, sell
convey and confirm.

Covenant: Warrant and by these presents
forever Defend. Said warranties being
limited to acts or commissions of grantors.
Consideration: \$10.00 and other.

Conveys:

All the following described real estate situate in Gooding County, State of
Idaho, to-wit:

The East half ($E\frac{1}{2}$) of Northwest quarter ($NW\frac{1}{4}$) and Southwest quarter ($SW\frac{1}{4}$)
of Northwest quarter ($NW\frac{1}{4}$) and Northwest quarter ($NW\frac{1}{4}$) of Southwest quarter ($SW\frac{1}{4}$)
of Section thirty-six (36), Township Two (2) North Range Twenty Two (22) East of Boise
Meridian containing One hundred sixty (160) acres of land.

Together with a full primary water right for the above described One hundred
Sixty (160) acres of land, consisting of all the waters of certain springs arising on
and near said land and One hundred fifty five (155) inches of the waters of Fish Creek
with priority dating from June 30, 1899.

Subject to all taxes and assessments of every name and nature.

The grantors certify and declare that Margaret D. Keyser, is now, and since
the first day of December 1915 has been at all times the wife of Paul F. Keyser.

JOSEPH W. FULD, ABSTRACTER

BLAINE COUNTY, IDAHO



MORTGAGORS.

- 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,

MORTGAGEE.

Dated January 2, 1934.
Recorded Feb. 8, 1934, at 1:30 P. M.
Book 110 of Mortgages, Page 97.

ack. Jan. 30, 1934, before Jos. S. Cooper,
N. P., Carey, Idaho. SEAL. Com. exp.
June 23, 1935.

Granting words: Grant, bargain, sell
and convey.

Consideration: \$2000.00

Mortgages:

The following described real estate situate in the County of Blaine, State of Idaho, to-wit:

The East Half of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, and the Northwest Quarter of the Southwest Quarter of Section Thirty-six, Township Two North, Range Twenty-two, East of the Boise Meridian, containing 160 acres of land.

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:

155 inches of the waters of Fish Creek according to decree recorded in Book 7 of Judgments, page 269 of the Records of Blaine County, Idaho, and all waters of springs arising on said premises.

TO SECURE the performance of the covenants and agreements hereinafter contained, and the payment of the debt represented by one promissory note made by the mortgagors to the order of the mortgagee, of even date herewith, for the principal sum of Two Thousand Dollars (\$2000.00) with interest thereon from date until maturity at the rate of 5 per cent per annum, payable semi-annually, on the whole of said principal sum from time to time remaining unpaid, both principal and interest being payable to the said mortgagee at its office in the City of Spokane, State of Washington, on an amortization plan in 39 semi-annual installments of \$80.00 each and a final installment of \$57.89 which is due in 20 years from date hereof, unless matured sooner by extra payments on account of principal.

JOSEPH W. FULD, ABSTRACTER

BLAINE COUNTY, IDAHO

JOSEPH G. DAVIS and JENNIE M. DAVIS,
husband and wife, now and at all times
since November 29, 1933, and since vested
with title to all the property herein-
after described,

GRANTORS,

TO

J. M. BARTON and DORIS E. BARTON, husband
and wife,

GRANTEES.

WARRANTY DEED.

Dated: June 16, 1948.

Recorded: January 11, 1951 at 1:45 P. M.
Book 162 of Deeds, Page 13,
Instrument No. 98499.

Ack. June 16, 1948, before T. W. Walker,
N. P. Residing at Hailey, Idaho. My Com.
expires April 18, 1951. (SEAL)

Granting words: Grant, bargain, sell,
convey and confirm.

Covenant: WARRANT and defend.

Consideration: \$12,000.00.

(\$13.20 I.R.S. AFFIXED AND CANCELLED)

Conveys:

All the following described real estate, situated in the County of Blaine, State
of Idaho, to-wit:

The SOUTHEAST QUARTER of the SOUTHEAST QUARTER (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section
Twenty-six (26); South Half of the Southwest Quarter and Southwest
Quarter of the Southeast Quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$ & SW $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-
five (25); NORTHEAST QUARTER of the NORTHWEST QUARTER (NE $\frac{1}{4}$ NW $\frac{1}{4}$), SOUTH
HALF of the NORTHWEST QUARTER (S $\frac{1}{2}$ NW $\frac{1}{4}$), and NORTHWEST QUARTER of the
SOUTHWEST QUARTER (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Thirty-six (36), all in Township
TWO (2) NORTH, Range TWENTY-TWO (22) East of the Boise Meridian.

Together with all water and water rights, ditch and ditch rights thereunto
belonging or in anywise appertaining.

TOGETHER With all and singular the tenements, hereditaments and appurtenances
thereunto belonging or in anywise appertaining....

R. H. McCOY, BONDED ABSTRACTER
BLAINE COUNTY, IDAHO

3-G.



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A Professional Corporation

RE: Claim # 37-11269

Hepworth, Nungester & Lezamiz

John C. Hepworth
Wm. L. Nungester
John T. Lezamiz
Jeffrey E. Rolig
John C. Hohnhorst
J. Charles Hepworth*

August 24, 1989

Penelope Parker-Kimbert
Jeffrey J. Hepworth
Mick Hodges
Brit Groom

*Member CA Bar
†Member UT Bar

D. Brent Martens
(1949-1986)

Lee Peterson
Water District 37-U
P.O. Box 284
Carey, ID 83320

Ronald Peck, Secretary/
Treasurer
Decree Holders, Fish Creek
Carey, ID 83320

Re: Springs on John Barton Ranch

Dear Messrs. Peterson and Peck:

I have been retained by John Barton to respond to Douglas Jones' (engineer in training) letter dated July 21, 1989, regarding springs located on Mr. Barton's ranch property.

The letter indicates that this "spring probably is tributary to Fish Creek." The letter goes on to instruct Mr. Peterson to remove the diversions created by Mr. Barton to allow the water to "flow south in the former channel."

Please be advised that the water referred to is a spring which is located wholly and entirely upon the lands of John Barton and appurtenant to the real estate which was originally homesteaded. Barton Ranches acquired title to the springs by virtue of the real estate deed.

Idaho Code Section 42-212 provides as follows:

"The department of water resources is hereby prohibited from issuing or granting permits to divert or appropriate the waters of any . . . spring in this state, which is located or situated wholly or entirely upon the lands of a person . . . except to the person or corporation owning said land"

Idaho Code Section 42-212.

Twin Falls Office
Blick Building
133 Shoshone St. N.
P.O. Box 389
Twin Falls, ID
83303-0389
(208) 734-7510
FAX: (208) 734-4115

Boise Office
537 West Bannock
P.O. Box 2582
Boise, ID 83702-2582
(208) 343-7510
FAX: (208) 342-2927



Lee Peterson
Ronald Peck
August 24, 1989
Page 2

Secondly, the spring is not "tributary" as assumed by Mr. Jones. The spring is "dry" as defined by law as it is mere surface drainage occasioned by extraordinary causes. There has never been a natural channel in which the spring flowed. The water never has flowed into Fish Creek.

Please be advised that any attempts by Mr. Peterson to remove any diversions located on Barton Ranches will be considered an intentional trespass and will prompt the filing of both criminal and civil complaints. Mr. Peterson should also be reminded that he is a Fish Creek decree holder, as well as Water Master. Therein lies a serious conflict of interest which further subjects Mr. Peterson to liability.

It is obvious that Mr. Peterson's personal claim has no merit. However, should he wish to pursue this matter, he should do so through the appropriate legal means.

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

Sincerely,

HEPWORTH, NUNGESTER & LEZAMIZ


Jeffrey J. Hepworth

JJH:rlm

cc: John Barton

Douglas Jones, Engineer
in Training
Dept. of Water Resources
2148 4th Ave. East
Twin Falls, ID 83301

RE: Claim # 37-11269

August 4, 1989

Ronald Peck
Secretary/Treasurer
Decree Holders, Fish Creek
Carey, Idaho 83320

Dear Ronald:

In response to your communication of July 26, 1989, I am writing this letter in the confidence that I can avoid future conflict over water that clearly belongs to Barton Ranches.

The letter written to Lee Peterson, dated July 21, 1989, by Douglas Jones, Engineer-in-Training, is devoid of factual information, both legal and historical.

Those facts: As per State Law 42-212, the Department of Water Resources is prohibited from issuing or granting permits to divert or appropriate ... a spring in this state [Idaho] which is situated wholly or entirely upon the lands of an individual or a corporation except to the person or corporation owning said land, or with his or its written permission. ...as per to convey real estate. (Please see attached document.)

Hence, the springs in question are and have been since this property was taken up under the Homestead Act of 1862, been LEGALLY treated as personal property which is accordance with law 42-212.

Over the years, my grandfather, father and I have developed the springs by making a ditch to join our decree and springs in order to better utilize the water.

In the event that some waste water left the property, it would go to my neighbor, Don Morrow, either through seepage or by Pole Creek which by action of a court, is declared to be a dry stream, and hence, NOT A TRIBUTARY OF FISH CREEK.

Without question, my right to utilize the springs, are founded in law and court clarification of same. Those who argue that there are no recorded water rights are in error because in this case, the deed is the perscribed and legal record of the water rights.

Thank you for taking an interest in clarifying this matter. Please verify and record the information that I have referenced so that this matter might be put to final rest. And so that every time a new Water Master is elected, he is not induced by factions who covet the water, to antagonize me or future owners of the property.

Sincerely yours,

John K. Barton

JK:ks

cc: Jeffery Hepworth, Attorney at Law



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 2148 4th Ave. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

Ron Peck, Secretary-Treasurer
Fish Creek Irrigation Company
Carey, ID 83320

15-Nov-1989

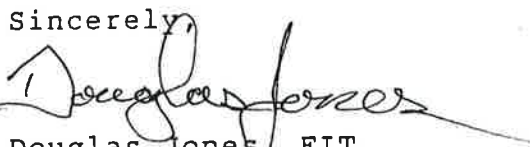
Dear Mr. Peck,

At long last I am writing a follow-up to your concern about certain springs above the reservoir on Fish Creek. After visiting the Barton Ranch (first with Mr. Peterson and then with Mr. Barton) and reading further in the decrees covering the area I have concluded that these springs are not tributary to Fish Creek, but rather are tributary to Pole (Canyon) Creek. The Telfer-Eldridge vs Smith decree specifically states that Pole Creek is not tributary to Fish Creek.

It is clear that modifications of natural and delivery channels, and land surfaces over time have made interpretations of tributaries difficult. My previous letter of 21-Jul-1989 to Mr. Peterson was correct in the analysis of water rights, adjudication claims, and water district responsibilities, but was incorrect about the spring's relation to each of the streams.

Please retain this letter in your files for future reference. If you have any questions please contact us.

Sincerely,


Douglas Jones, EIT
Water Resources Engineer-In-Training

cc: John Barton
Lee Peterson

RE: Claim # 37-11269



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 15, 2005

X
X
X
X

RESPONSE DEADLINE
JUNE 17, 2005

Re: Evidence of Priority

Dear Claimant:

The Notice of Claim identified with the number shown above your name on the mailing label has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates your water usage is based on "Beneficial Use" or a "Statutory Claim." 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. The date of first use, known as the priority date, has not been confirmed by a License, Decree or Permit. The Department will, in the coming year, conduct reviews and/or field exams for the claims in your area. Since the priority date of a beneficial use water right cannot be confirmed by field examination, **proof must be provided by the claimant** supporting the priority date claimed.

If you no longer own the property to which the claim is appurtenant please forward this correspondence to the present owner, or return it to the Department. If you have received this correspondence from the previous owner of the property it is required that you file a Change of Ownership form with the Department in order to receive future mailings and to continue to be a party in the adjudication.

Enclosed you will find a computer printout of your Notice of Claim and the pamphlet entitled "Evidence of Priority." The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement.

PLEASE NOTE: The Department will not recommend the court decree the notice **as claimed** if no evidence of a priority date is submitted – it may be disallowed. It will be to your advantage to provide clear and convincing evidence. If you choose to submit statements from individuals as evidence, the statement does **not** need to be in the form of a notarized affidavit as described in the brochure, but must relate first hand knowledge of the water right in question and include dates, quantities of water and extent of water use.

Submit the required evidence supporting the priority date by the date shown above, referencing all documents with the corresponding Notice of Claim number (i.e. 37-____). If you have questions not covered by this letter or the enclosed pamphlet, please contact this office.

Sincerely,

Douglas Jones, P.E.
Water Rights Supervisor

Enclosures

To : 432-11269

Ron Peck, Secretary-Treasurer
Fish Creek Irrigation Company
Carey, ID 83320

15-Nov-1989

Dear Mr. Peck,

At long last I am writing a follow-up to your concern about certain springs above the reservoir on Fish Creek. After visiting the Barton Ranch (first with Mr. Peterson and then with Mr. Barton) and reading further in the decrees covering the area I have concluded that these springs are not tributary to Fish Creek, but rather are tributary to Pole (Canyon) Creek. The Telfer-Eldridge vs Smith decree specifically states that Pole Creek is not tributary to Fish Creek.

It is clear that modifications of natural and delivery channels, and land surfaces over time have made interpretations of tributaries difficult. My previous letter of 21-Jul-1989 to Mr. Peterson was correct in the analysis of water rights, adjudication claims, and water district responsibilities, but was incorrect about the spring's relation to each of the streams.

Please retain this letter in your files for future reference. If you have any questions please contact us.

Sincerely,

Douglas Jones, EIT
Water Resources Engineer-In-Training

cc: John Barton
Lee Peterson

MICROFILMED
FEB 25 1993