

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
Application for Transfer 85625 involving water rights 33-02056 et. al.

March 28, 2022

RECEIVED
MAR 28 2022
DEPARTMENT OF
WATER RESOURCES
RECEIVED

MAR 31 2022

1. Matter being protested

Application for Transfer No. 85625 involving water rights 33-02056, 33-02068B, 33-02093, and 33-02113, filed by Pancheri, Inc.

Department of Water Resources
Western Region

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price

4. Service mailing address

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

On December 6, 2021, Pancheri, Inc. ("Applicant") filed Application for Transfer No. 85625 involving water rights 33-02056, 33-02068B, 33-02093, and 33-02113. The Application for Transfer seeks to add two new Points of Diversions ("PODs") T07N, R27E, S12, NWNE and NENW from groundwater and add existing groundwater PODs from all the other rights. The transfer also seeks to add four new injection/ re-diversion points listed as follows; T05N, R29E, S04, Lot 4 (NENWNW) (Re-diversion), T06N, R29E, S32, SWNWNW, T06N, R29E, S30, Lot 2 (SESWNW) (Re-Diversion); and T07N, R27E, S12, SENWNW (injection point). The new diversions and re-diversions seek to divert water from groundwater onto property owned by the applicant and inject water back into the Little Lost River to be rediverted onto applicants property. This transfer also describes Places of Use ("POUs") that describe federal land managed by BLM. Applicant is not authorized for any irrigated agricultural activities on federal lands (BLM).

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The following POUs entirely describe federal land and should be removed from the legal land description and applicant shall cease and desist all irrigated agricultural activities of federal lands managed by BLM:

T05N, R29E, S05, NWNE and SWNE
T06N, R29E, S31, SWNE

Notice of Claim were filed in the SRBA that did not include BLM land. IDWR's Director's Report recommendations added BLM land as an accomplished change. On April 10, 2000, BLM filed Objections (SF-1) in the SRBA to remove federal lands that described BLM under the (POUs). BLM's objection stated "farming on federal land is not authorized" and removed POUs that described federal land including T05N, R29E, S05, Lot 2 (NWNE), T06N, R29E, S31, SWNE, SENW, and S32, NWSW.

On February 22, 2002, an NCAP was filed with the court based on completed Transfer 68522 which did not contain any POUs on BLM. On March 7, 2002, BLM made an Oral Motion to Withdraw its Objection based on the NCAP, and Partial Decrees were issued May 2002. Applicant has since filed successive transfers, and Transfer 81449 approved 08-14-2017 appears to have again added BLM land for irrigation use under the POU. Applicant is not authorized for irrigated agricultural activities on federal land managed by BLM.

Trespass on federal land is a prohibited act (43 CFR §2808.10(a)). A water right cannot be established in trespass (See e.g., *In RE General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); citing, *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931)).

7. What would resolve your protest?

- A. Remove federal land from the Place of Use described as T05N, R29E, S05, NWNE and SWNE; and T06N, R29E, S31, SWNE. and;
- B. Applicant shall cease and desist all irrigated cultural activities of federal land managed by BLM. and;
- C. Include the following condition to any approved transfer:
"This right does not grant any right-of-way or easement across the land of another."

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 28th day of March 2022.

Protestant

Fredric W. Price, Water Rights Specialist

Attachments:

♦Maps prepared by BLM for illustrative purposes.

♦Master Title Plat: T05N, R29E; T06N, R28E; T06N, R29E; T07N, R27E, T07N, R28E;
and T08N, R27E

FOR DEPARTMENT USE ONLY

Received by Ku Date 3.28.22
Fee Paid \$25.00 Date 3/28/22 Received by Ku Receipt # C112261

CERTIFICATE OF SERVICE

I certify that on March 28, 2022, I served a true and correct copy of the “**Protest of Application for Transfer No. 85625**” with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Shelley Keen, Water Allocation Bureau Chief
Idaho Department of Water Resources (IDWR)
State Office
Water Management Division
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Copies to:

James Cefalo, P.E., Regional Manager
Idaho Department of Water Resources
Eastern Regional Office
650 Addison Ave W., Ste 500
Twin Falls, Idaho 83301-5858

Pancheri, Inc.
C/O Roman Pancheri
1494 Hwy 33
Howe, Idaho 83244-8719

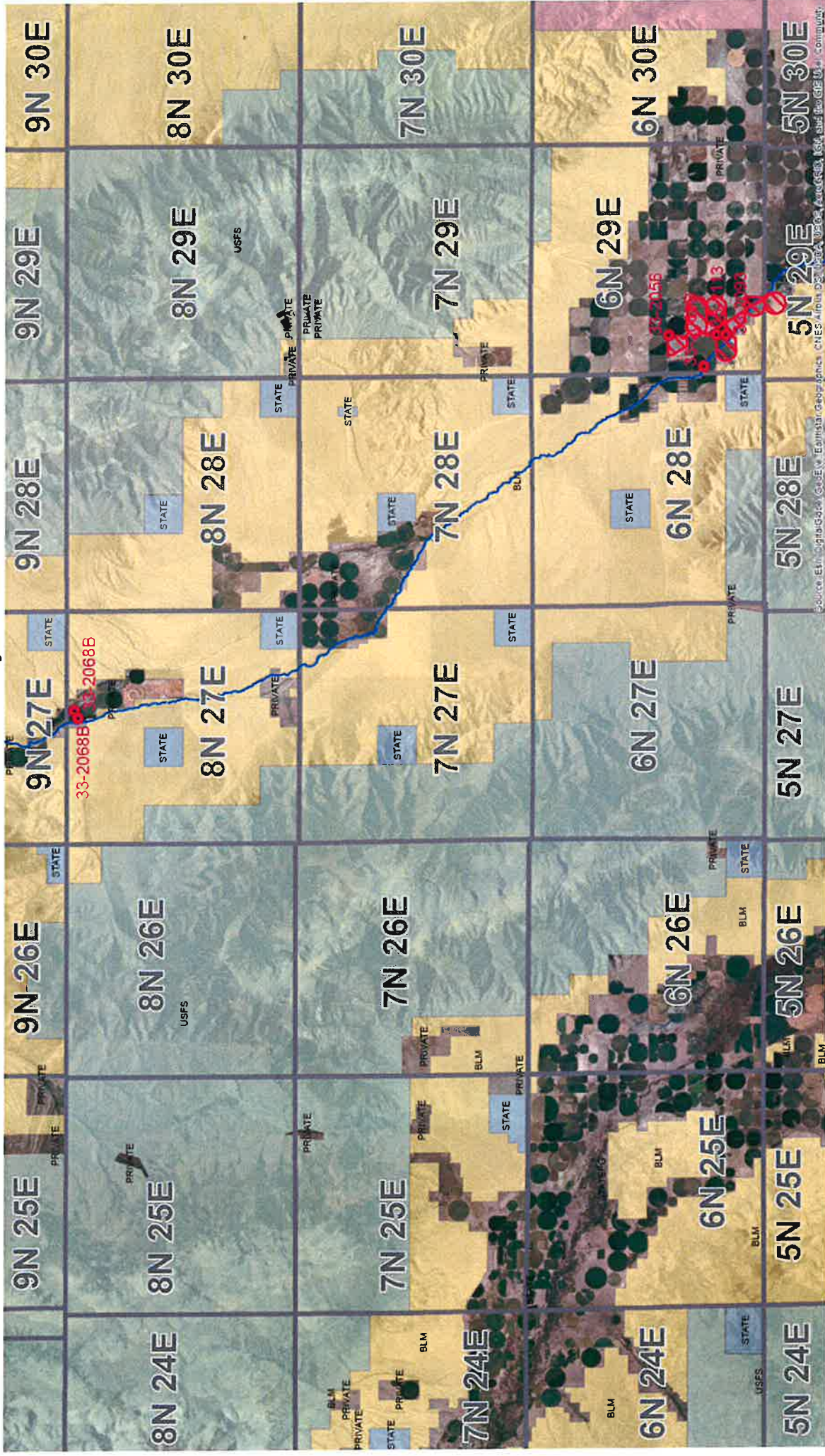
Deena Teel, Assistant Field Manager
Becky Lazdauskas, Realty Specialist
U.S., Department of the Interior,
Bureau of Land Management,
Upper Snake Field Office
1405 Hollipark Drive
Idaho Falls, ID 83401

SANDEA McCrea
Person Serving Documents (print name)


Signature of Person Serving Documents

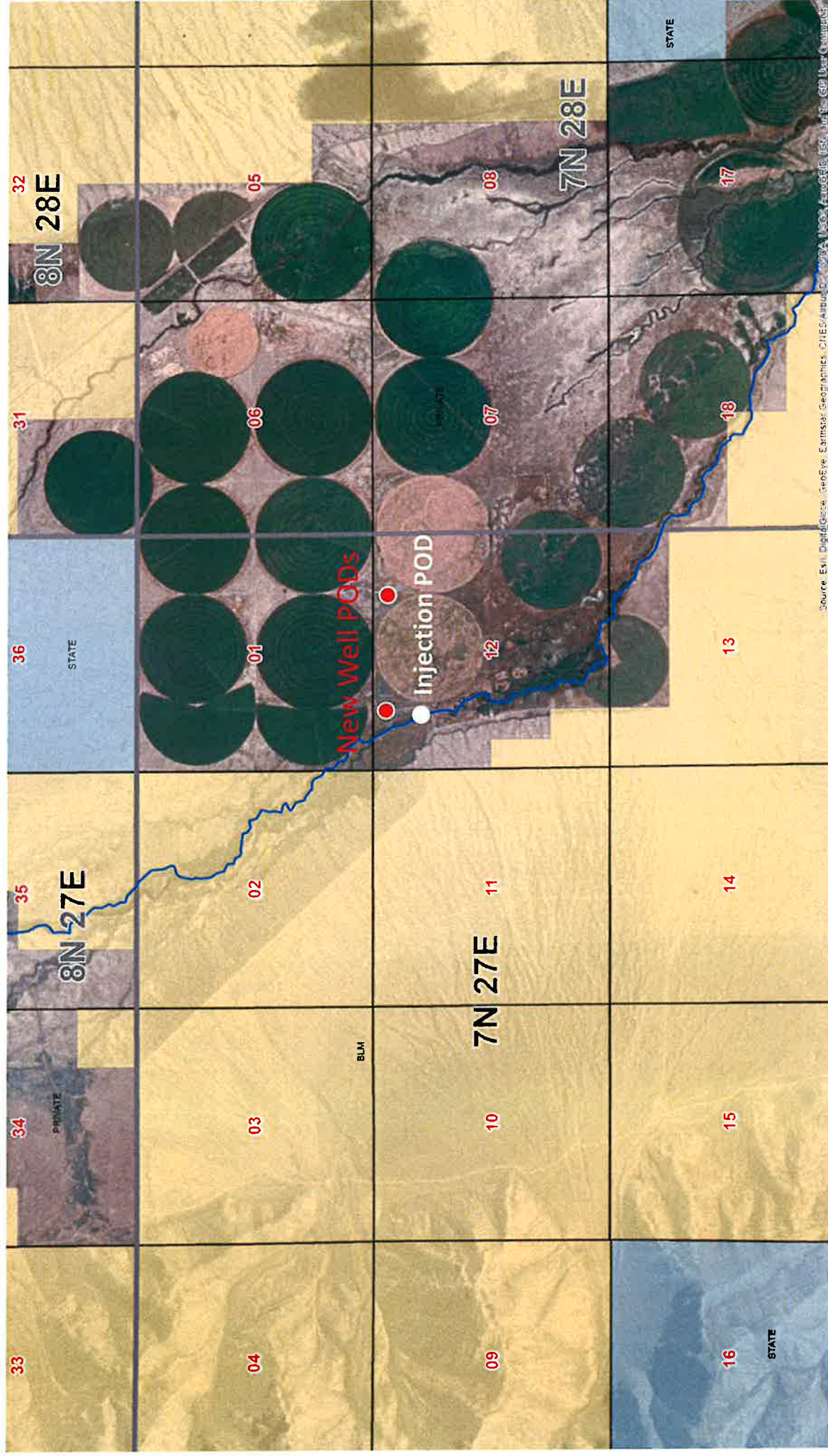
Transfer 85625 involving Water Rights 33-02056, 33-02068B, 33-02093, and 33-02113
Pancheri, Inc.

Transfer seeks to add two new PODs and add One Injection Point and Three Re-diversion Points



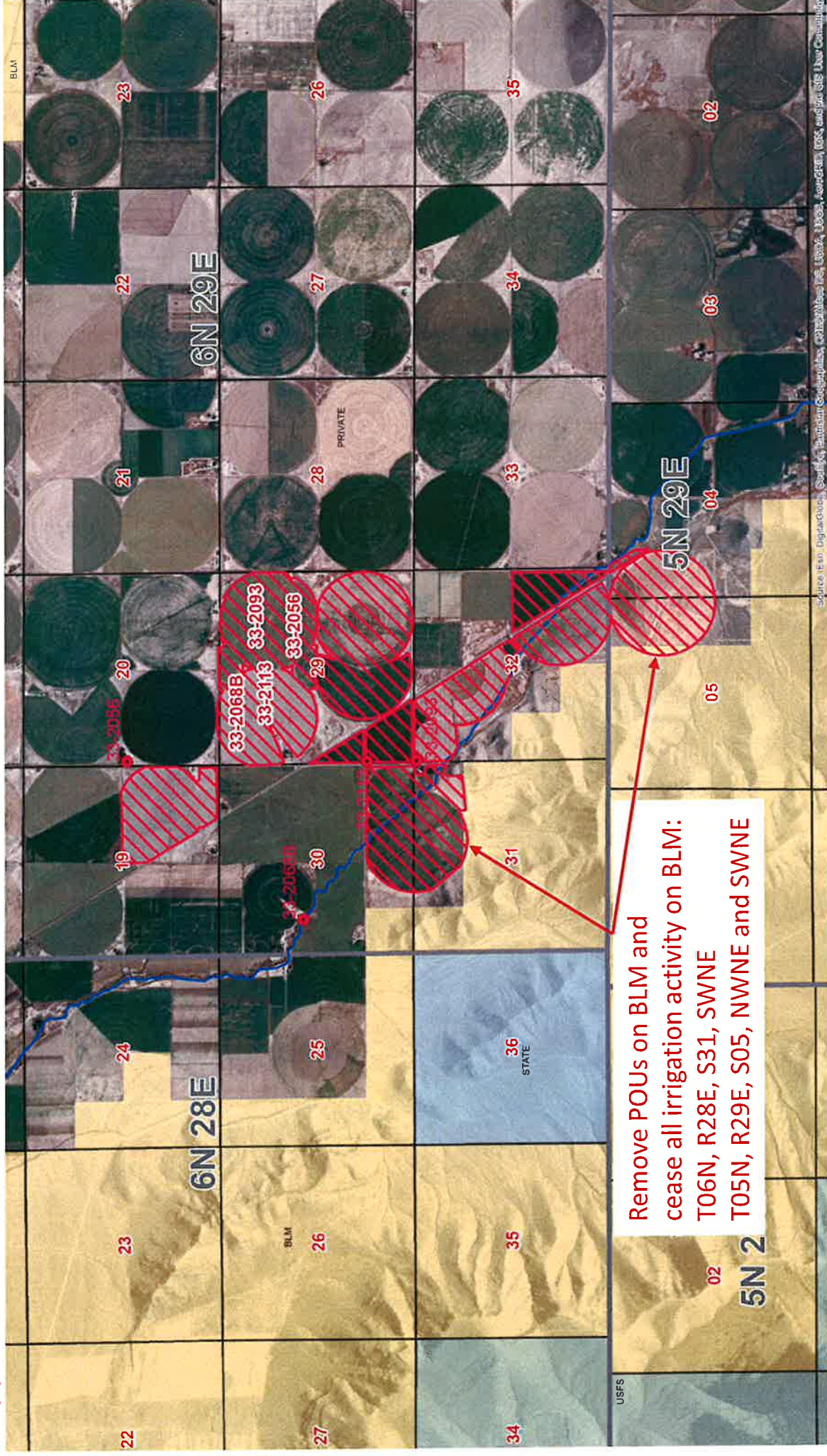
Applicant is not authorized for irrigated agricultural use on federal lands.

Transfer 85625 involving Water Rights 33-02056, 33-02068B, 33-02093, and 33-02113
Pancheri, Inc.



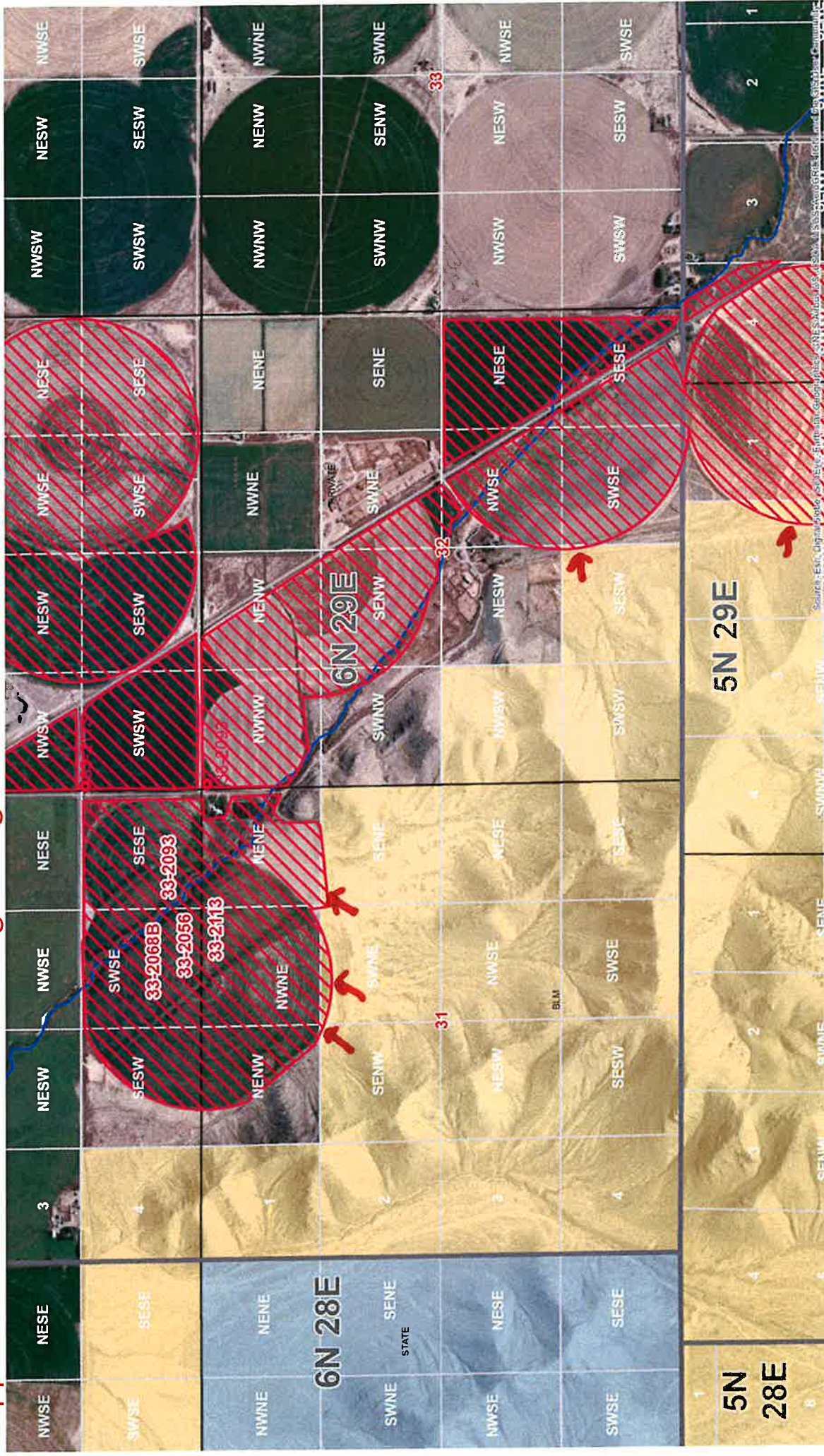
Transfer 85625 involving Water Rights 33-02056, 33-02068B, 33-02093, and 33-02113
Pancheri, Inc.

Applicant is not authorized for irrigated agricultural use on federal lands



Transfer 85625 involving Water Rights 33-02056, 33-02068B, 33-02093, and 33-02113
Pancheri, Inc.

Applicant is not authorized for irrigated agricultural use on federal lands



BUTTE COUNTY 023
IDAHO FALLS DISTRICT SEC 3

STATUS OF PUBLIC DOMAIN LAND AND MINERAL TITLES AND ACQUIRED LANDS

MT PLAT

[illegible]

PLO 2759 08/28/1962 Mod Wdl AEC PLO 637 04/07/1950 to
Per Dept of Int to issue RW Subj to approval of AEC

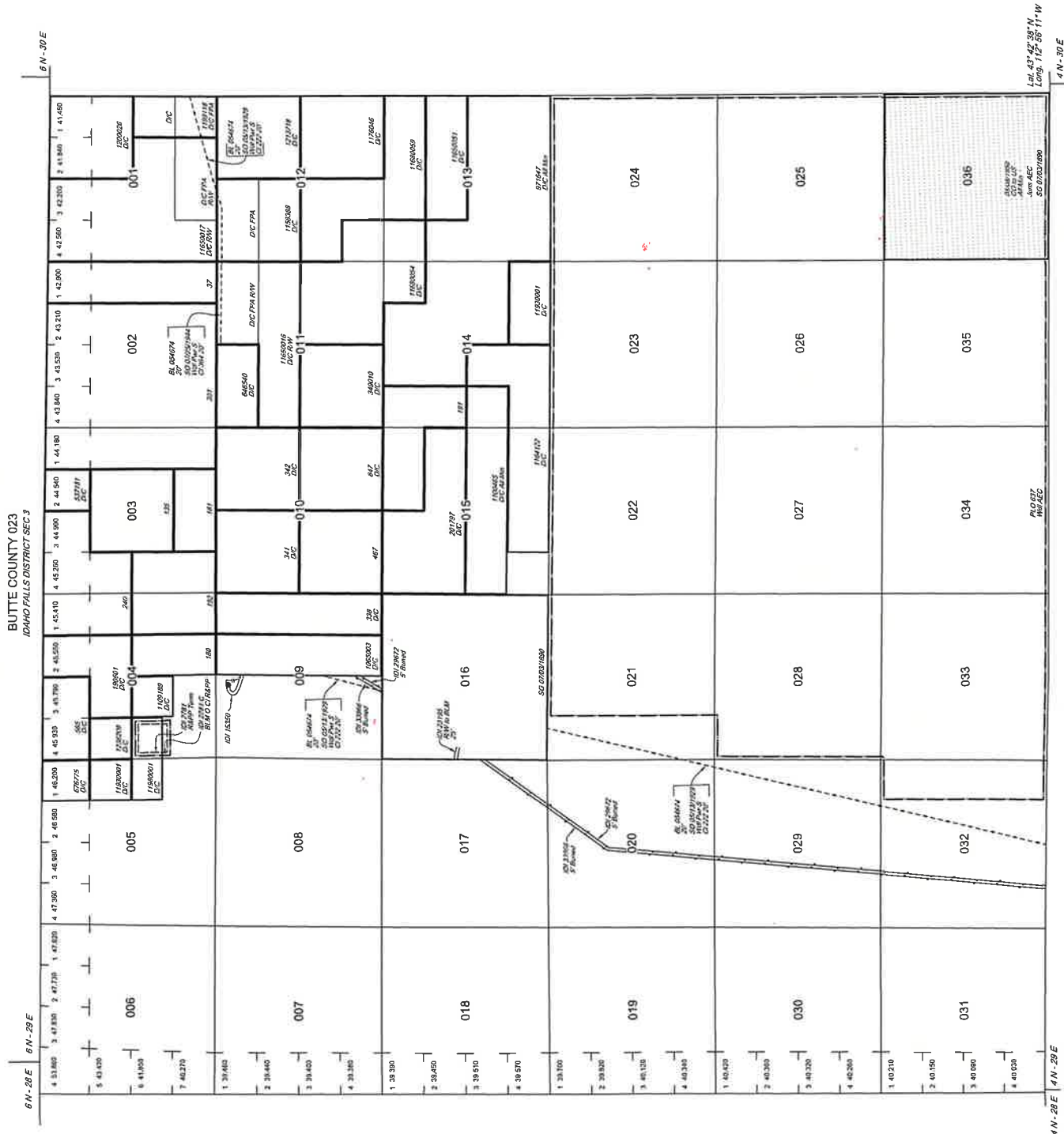
PLO 2954 02/28/1963 Mod Wdl AEC PLO 2759 08/28/1962
provided further upon notification to Dept of Int, AEC may issue
RAW

DI 2781 R&PP Landfill Lse Term 10/25/1997
Sec 4: NWSW

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LANDS REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

FILE #:	ISMS050600000000000000000000	WP: JCS
CONTACTED TIME:	03/25/2012	WFF: JCS
LAST UPDATED:	8/25/2012	WFF: JCS
DANCE #:	ISSB 0007072013	GANG #2: ISSB
POSTED TO PUBLIC RECORDS:	August 15, 2012	
PUBLIC LAND SURVEY SYSTEM (PLSS)	WP: JCS	
BURD CODE ACQUIRED:	06/08/2006	
OTHER:	N/A	
PROJECTED COORDINATE SYSTEM:	UTM ZONE 12N, MAG 1803	
NOTES:		
USE PAGE:		

030 Mer
T. 5 N
R. 29 E

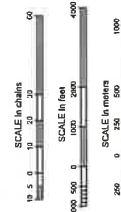


1500

This plot is only a graphic display of the Bureau of Land Management's (BLM) Record of Title and Township survey data. Records hereon do not reflect title changes which may have been affected by lateral movements of river or other bodies of water. Refer to cadastral surveys for official information.

The notation shown on withdrawals represent the last action taken, but may not be the effective date. See the historical prices for the date of original withdrawal order.

No warranty is made by the Bureau of Land Management. The accuracy, reliability, or completeness of these data for individual use or appropriate use with other data is not guaranteed.



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(208) 273-4000



BUTTE COUNTY 023

MT PLAT

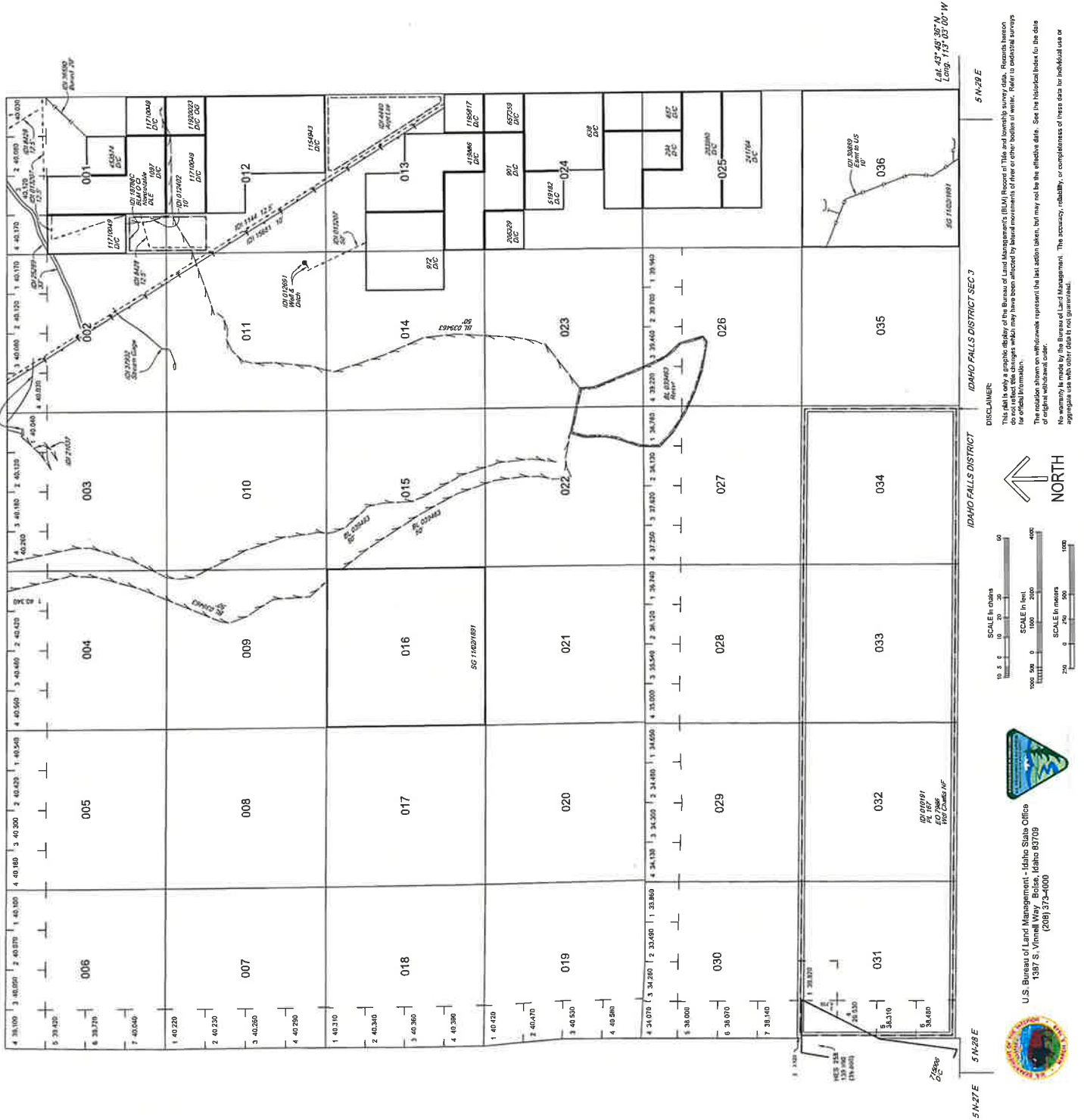
[illegible]

IDI 010191 Del PL 167 (Act of Cong 07/23/1955)
completed 02/24/1961. All NF surface Mgmt by USFS

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LANDS REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

[illegible]

T. 6 N
R. 28 E



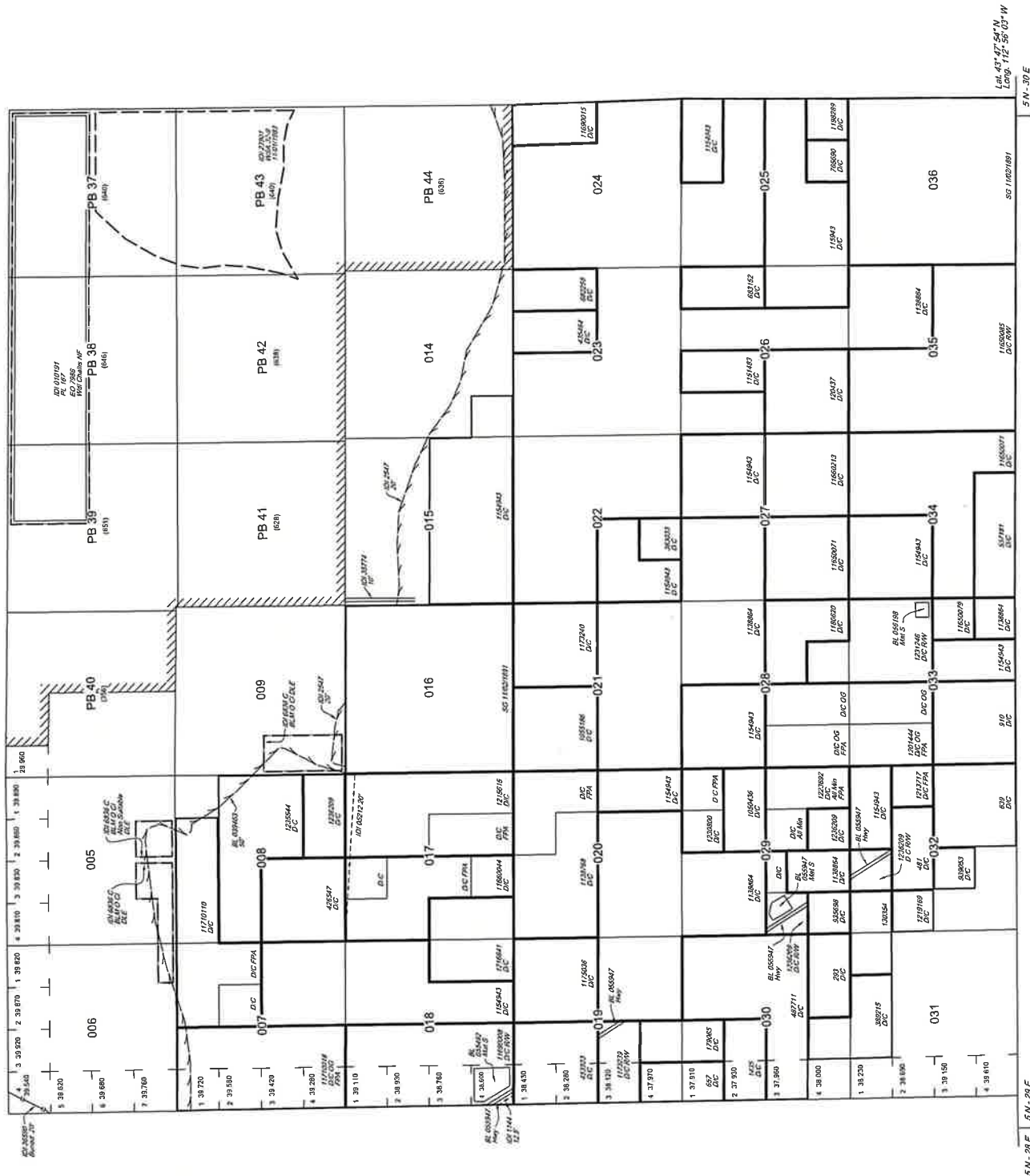
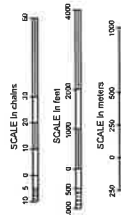
BUTTE COUNTY 023
IDAHO FALLS DISTRICT SEC 3

STATUS OF PUBLIC DOMAIN LAND AND MINERAL TITLES

INDEX TO SEGREGATED TRACTS

[illegible]

DI 010191 Del PL 167 (Act of Cong 07/23/1955) completed
07/24/1964 All NIS surface. Mammals NSES

[illegible]

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T. 6 N
R. 29 E

Production Claim No. 39 assigned 01/02/1965

8 N-26 E

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES[illegible]

DOI 010191 Del PL 167 (Act of Cong 07/23/1955) completed
02/24/1961. All NF surface Mgmt by USFS

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LAND REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

FILE REF: D04007067G2-AM10000-#mg	BY: LFM
CONVERTED TFF: 09/09/2011	BY: LFM
LAST UPDATED: 09/09/2011	
QAQC #1:	QAQC #2
POSTED TO PUBLIC RECORDS:	September 13, 2011
BY:	
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BULK QUANTITY ACQUIRED:	04062006
OTHER:	NA
PROJECTED COORDINATE SYSTEM: UTM ZONE 12N, NAD 1983	
NOTES:	
USE FLAG:	

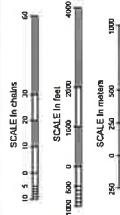
Boise Mer.
T. 7 N
R. 27 E

DISCLAIMER: This pull is only a graphic display of the Bureau of Land Management's (BLM) Record of Title and Township survey data. Records herein may not be the official field changes which may have been impacted by digital measurements of trees or other bodies of water. Please to contact a surveyor for more information.

*Lat: 43° 53' 07" N
Long: 115° 10' 27" W*

The relationships shown on this map do not necessarily represent the field activity taken, but may not be the effective data. See the technical report for the data and the map for more information.

No warranty is made by the Bureau of Land Management. The accuracy, reliability, or completeness of these data for individual use or for any other purpose is not guaranteed.



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SM 26 E

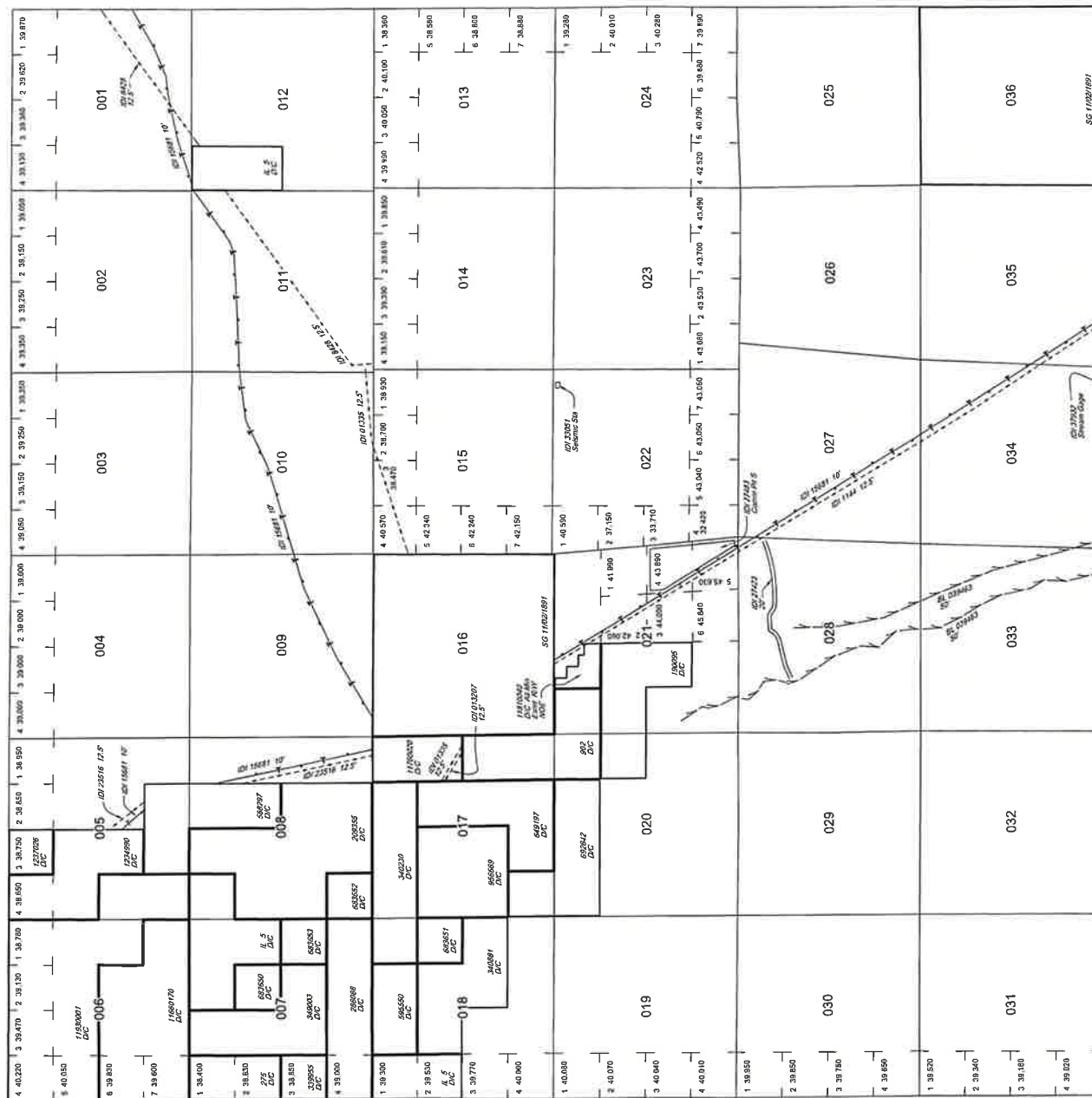
BUTTE COUNTY 023
IDAHO FALLS DISTRICT SEC 3

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES[illegible]

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LANDS REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

FILE REF: E56929W2020E6E141000001.mpg	
CONVERTED TIF: 07/17/2010	BY: LHM
LAST UPDATED: 07/10/2015	BY: HS
GAGE #1: 1710120231	GAGE #2:
POSTED TO PUBLIC RECORDS: July 1, 2015	BY:
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BUM GAGE ACQUIRED: 9/26/2005	
OTHER: NA	
PROJECTED COORDINATE SYSTEM: UTM ZONE 12N, WAD 1983	
NOTES:	
USE PLATS:	

Boise Mer
T. 7 N
R. 28 E

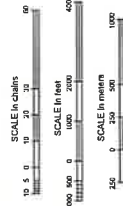
Lat. 43° 53' 49" N
Long. 112° 03' 00" W

• **Other**

This plot is only a graphic display of the Bureau of Land Management's (BLM) Record of Tide and Township survey data. Records hereon do not reflect title changes which may have been affected by lateral movements of river or other bodies of water. Refer to cadastral surveys for details.

The notation shows on which days the last action taken, but may not be the effective date. See the historical index for the date indicated with diagonal border

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