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WATER RESOURCES
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Dana L. Hofstetter, ISB No. 3867
Tyler J. Anderson, ISB No. 6632
Amy M. J. Knight, ISB No. 11226
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
Telephone: 208-344-6000
Facsimile: 208-954-4867
Email: dhofstetter@hawleytroxell.com
tanderson@hawleytroxell.com
aknight@hawleytroxell.com

Attorneys for Marion Ogle

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 84698 IN THE
NAME OF MARION OGLE**

DECLARATION OF DANA L.
HOFSTETTER

Dana L. Hofstetter declares and states as follows:

- (1) I am Dana L. Hofstetter, counsel of record in this proceeding for Marion Ogle.
- (2) Attached hereto as Exhibit A are true and correct copies of Salubria's Notice of Supplemental Discovery Responses Concerning Expert Testimony and Scott King's January 10, 2022, Memorandum with the transmittal email that were emailed to me at 5:56 pm on January 10, 2022.
- (3) Attached hereto as Exhibit B is a true and correct copy of Salubria Holdings LLC's Fourth Supplemental Responses to Marion Ogle's First Set of Discovery Requests that were emailed to me at 4:41 pm on January 25, 2022.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022



Dana L. Hofstetter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2022, I caused to be served the foregoing DECLARATION OF DANA L. HOFSTETTER with Exhibits by the pre-paid method (s) indicated below, and addressed to each of the following:

Nick Miller
Manager, Western Region
IDAHO DEPARTMENT OF WATER
RESOURCES
2735 Airport Way
Boise, Idaho 83705
Email: nick.miller@idwr.idaho.gov

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ E-mail
- ☐ Facsimile 208-334-2348
- ☐ iCourt

Michael P. Lawrence
Charlie S. Baser
GIVENS PURSLEY LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701-2720
Email: mpl@givenspursley.com
csb@givenspursley.com

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivered
- ☐ Overnight Mail
- ☐ E-mail
- ☐ Facsimile 208-388-1300
- ☐ iCourt



Dana L. Hofstetter

From: Charlie S. Baser <charliebaser@givenspursley.com>
Sent: Monday, January 10, 2022 5:56 PM
To: Dana Hofstetter; Tyler Anderson
Cc: Michael P. Lawrence; Stephanie White
Subject: Salubria Holdings LLC's supplemental discovery responses concerning expert testimony [IWOV-GPDMS.FID1077035]
Attachments: 16014754_1_Salubria_s notice of supplemental expert witness disclosure (1-10-2022).PDF; 16014712_1_SPF Report 2022-01-10.PDF

*** NOTICE: EXTERNAL EMAIL ***

Dana and Tyler,

Attached, please find Salubria Holdings LLC's supplemental discovery responses concerning expert testimony as well as a notice thereof, which was served to IDWR today.

Best,
Charlie

CHARLIE SUZANNAH BASER

GIVENS PURSLEY LLP

601 W Bannock St, Boise, ID 83702

main 208-388-1200

direct 208-388-1271

fax 208-388-1300

charliebaser@givenspursley.com

www.givenspursley.com

CONFIDENTIALITY NOTICE: This communication is confidential and may contain privileged information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Michael P. Lawrence, ISB #7288
Charlie S. Baser, ISB #10884
GIVENS PURSLEY LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Fax: 208-388-1300
Attorneys for Salubria Holdings LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE APPLICATION
FOR TRANSFER NO. 84698 IN THE NAME
OF MARION OGLE

**SALUBRIA'S NOTICE OF
SUPPLEMENTAL DISCOVERY
RESPONSES CONCERNING EXPERT
TESTIMONY**

Pursuant to the Hearing Officer's January 4, 2022 *Order on Motion to Exclude Expert Witness* (the "*Order*"), Protestant Salubria Holdings LLC ("Salubria"), through its attorneys Givens Pursley LLP, hereby notifies the Hearing Officer that Salubria has disclosed the information required by the *Order* upon the following parties or their counsel of record by email as follows:

Marion Ogle
c/o Dana Hofstetter
Hawley Troxell Ennis & Hawley
DHofstetter@hawleytroxell.com

DATED as of January 10, 2022.

GIVENS PURSLEY LLP

/s/ Charlie S. Baser
Michael P. Lawrence
Charlie S. Baser
Attorneys for Salubria Holdings LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 10th day of January, 2022, I served a true and correct copy of the above and foregoing document via the manner listed below to the following:

FILED

Nick Miller	X	U. S. Mail
Hearing Officer		Hand Delivered
Idaho Department of Water Resources		Overnight Mail
Idaho Water Center		Facsimile
322 W. Front Street	X	E-mail
Boise, ID 83702		
Email: nick.miller@idwr.idaho.gov		

SERVED

Dana Hofstetter		U. S. Mail
Hawley Troxell Ennis & Hawley		Hand Delivered
877 Main St., Ste. 1000		Overnight Mail
PO Box 1617		Facsimile
Boise, ID 83701-1617	X	E-mail
Email: DHofstetter@hawleytroxell.com		
<i>Attorney for Marion Ogle</i>		

/s/ Charlie S. Baser
Charlie S. Baser

MEMORANDUM

DATE: January 10, 2022
TO: Michael Lawrence, Givens Pursley
Charlie Baser, Givens Pursley
FROM: Scott King
PROJECT: 1681.0010
RE: Ogle Transfer No. 84698



Background

Marion Ogle (Ogle) filed water right Transfer No. 84698 proposing to change the place of use of water right nos. 67-250 and 67-301. These water rights authorize the diversion of 0.86 cfs from Rush Creek for irrigation of 50.1 acres:

- Water right 67-250 provides 0.4 cfs of Rush Creek water with a December 29, 1908 priority date for the irrigation of 20.8 acres.
- Water right 67-301 provides 0.46 cfs of Rush Creek water with a October 29, 1908 priority date for the irrigation of 29.3 acres.

Ogle's expert witness, Spronk Water Engineers, Inc (SWE), provided an expert report in support of Transfer 84698. This report does not include an analysis of past water use. Failure to beneficially use water rights for a period of five or more consecutive years may constitute forfeiture. Aerial imagery indicates that the water rights may not have been fully utilized.

Water Use Review

I reviewed NAIP¹ and Google Earth imagery from years 2009 through 2019. NAIP imagery is typically acquired during the spring and summer when crops are actively growing. Some of the NAIP and Google Earth images are identical (or nearly so) indicating Google Earth is providing imagery acquired through the NAIP program. Other Google Earth images are not identical to NAIP indicating Google Earth acquired imagery from other providers. For example, the 2019 NAIP image indicates an acquisition date of June 29, 2019 while the

¹ <https://www.fsa.usda.gov/programs-and-services/aerial-photography/imagery-programs/naip-imagery/index>

Google Earth indicates a date of August 2, 2019. These images are attached. Places of use for water rights 67-250 and 67-301 are depicted in blue and green, respectively, on the NAIP image series.

Irrigation is generally observed as green colors indicating actively growing crops. Cultivation of crops is generally indicated with parallel lines in the image indicating patterns of planting, furrowing, irrigation, harvest, or other farming activities.

In the 2011, 2013, 2015, and 2017 NAIP imagery, I outlined and labeled areas that appeared cultivated. These cultivated acres may have been irrigated. Irrigation of places of use outside of the highlighted areas is not clearly indicated. Irrigation and cultivation is indicated withing the 67-250 place of use, but not within the 67-301 place of use.

The 2019 NAIP imagery indicates a green color through much of the place of use, which may indicate active irrigation or non-irrigated dryland pasture, perhaps alfalfa or a similar crop, which may be consistent with early season growth on the June 2019 photo date. Areas with cultivation indicated within the 67-250 place of use are generally consistent throughout the image series. The 2019 Google Earth image indicates brown, non-irrigated acres through much of the places of use except perhaps the southern areas indicated as cultivated in the NAIP image review. The Google Earth image is dated August 2, 2019. We would expect that the water rights associated with this property, holding a 1908 priority date, would have been curtailed earlier in the season and may not have been deliverable in August.

Aerial imagery indicates that water right 67-301, and portions of water right 67-250, may not have been used for many years. Forfeiture is likely and a transfer proposing to change the unused portions should not be approved.

Injury and Enlargement

Water right 67-250 holds a December 29, 1908 priority date and 67-301 has an October 29, 1908 priority date. There are other water rights delivered from Rush Creek with a 1908 priority date including Salubria Holdings' water right 67-14643 with an October 29, 1908 priority. Approving a transfer of forfeited water rights will injure other water rights, particularly those with the same or junior priority dates. Salubria Holding's water right 67-14643 stands to be injured if Transfer No. 84698 is approved.

Similarly, approving Transfer No. 84698 as proposed enlarges water rights 67-250 and 67-301. Imagery indicates that all of 67-301 and approximately 13.3 acres of 67-250 have been forfeited through non-use. The transfer proposes to use the full amount of these rights, which will enlarge the rights beyond the acres and associated diversion rates that have been beneficially used.

Summary

Aerial imagery reviewed for 2009 through 2019 supports a conclusion that the water rights have not been fully beneficially used. The imagery appears to support approximately 7.5

acres of cultivation and irrigation within the 67-250 place of use during the past several years. The 67-301 place of use does not appear to have been irrigated throughout the reviewed imagery data set. Forfeiture is indicated.

The SWE report does not provide an analysis of historic water use or a forfeiture analysis.

Transfer No. 84698, if approved, has the potential to injure other Rush Creek water rights including Protestant's right 67-14643 and to enlarge the transferred water rights 67-250 and 67-301. The quantity of water rights approved for transfer should be limited to the amount clearly demonstrated to have been not forfeited.

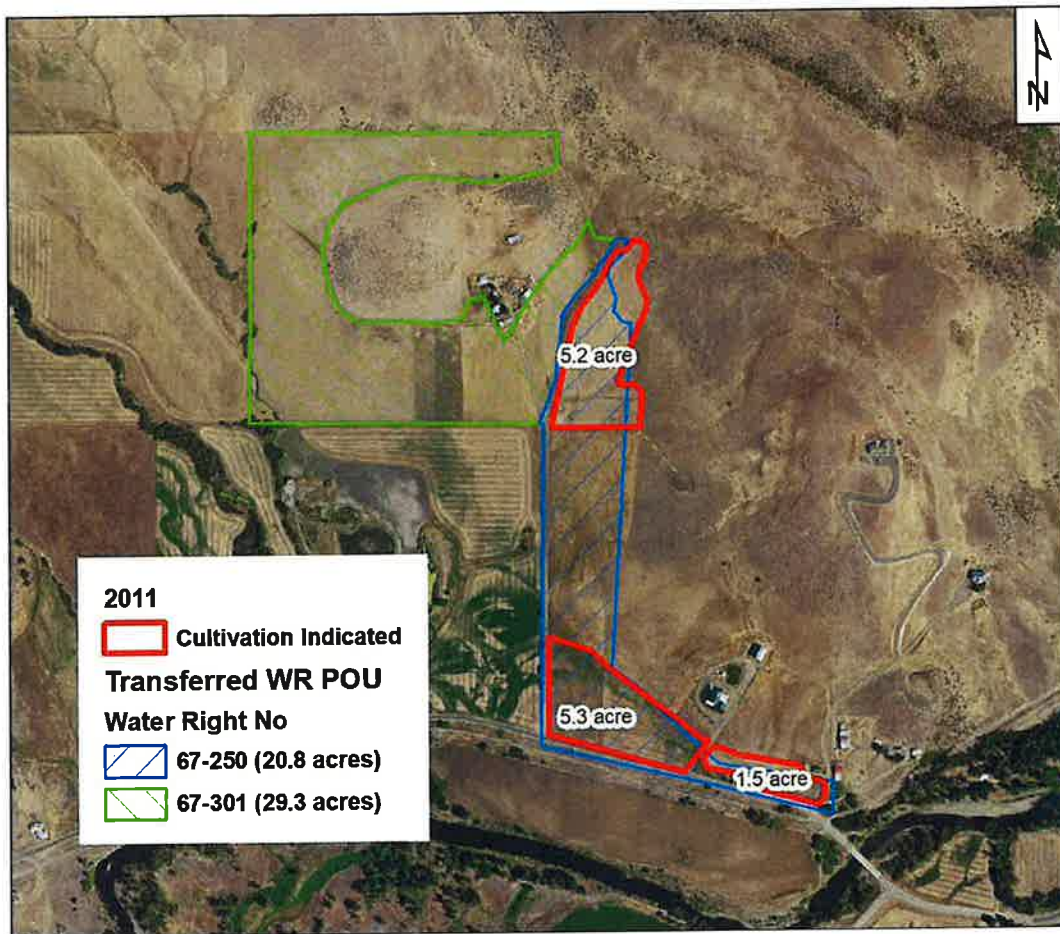


Figure 1: NAIP 2011

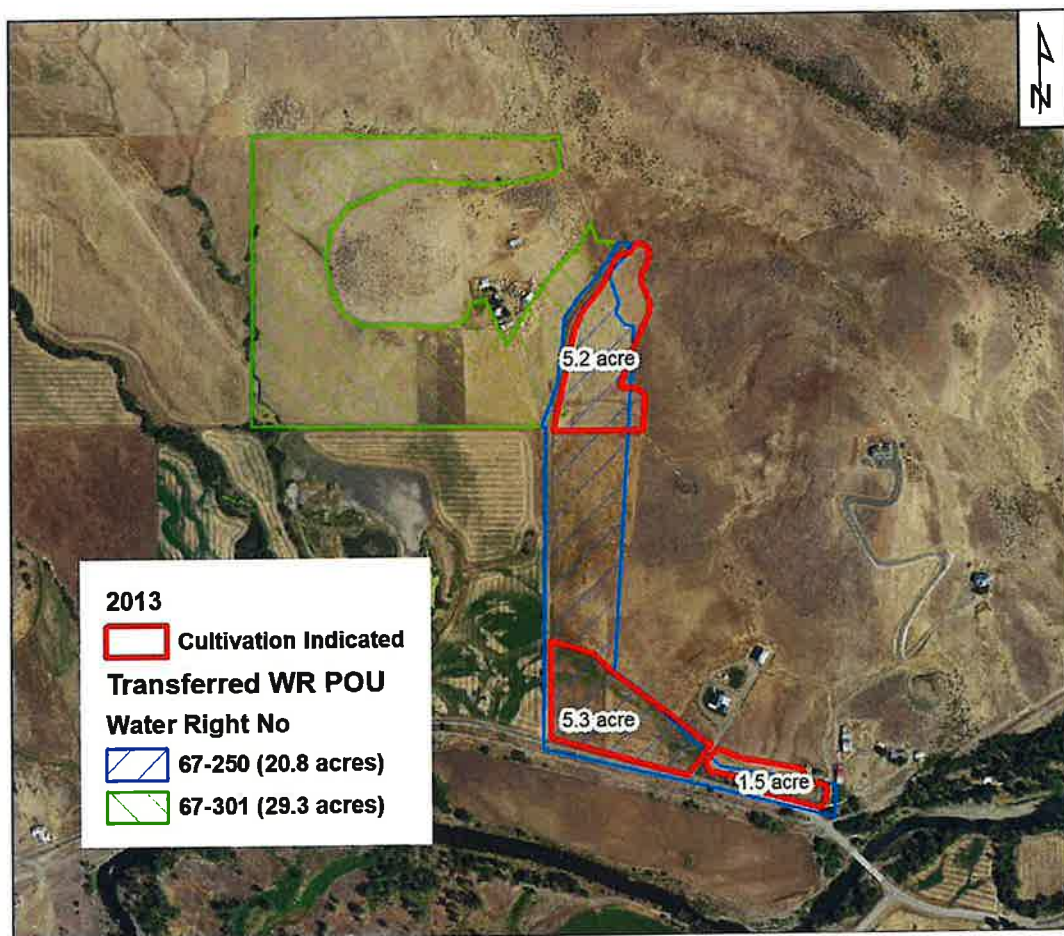


Figure 2: NAIP 2013

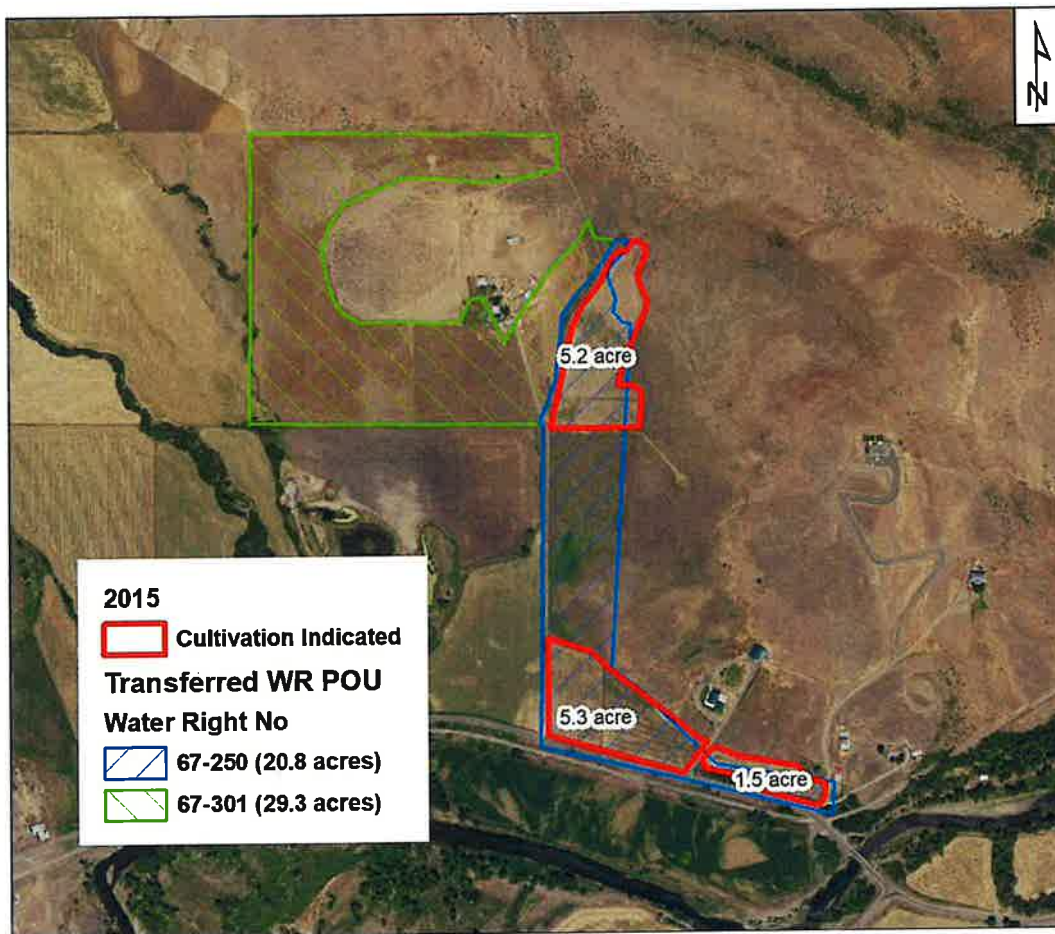


Figure 3: NAIP 2015

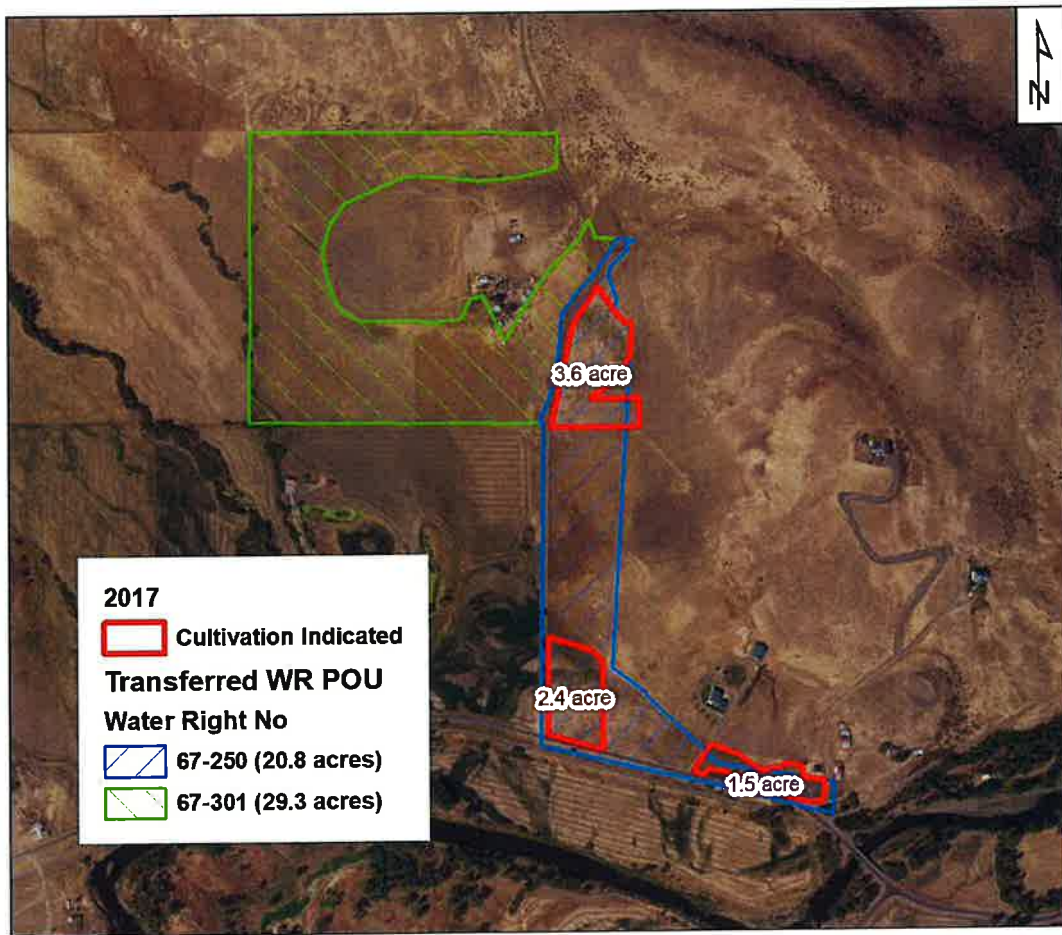


Figure 4: NAIP 2017

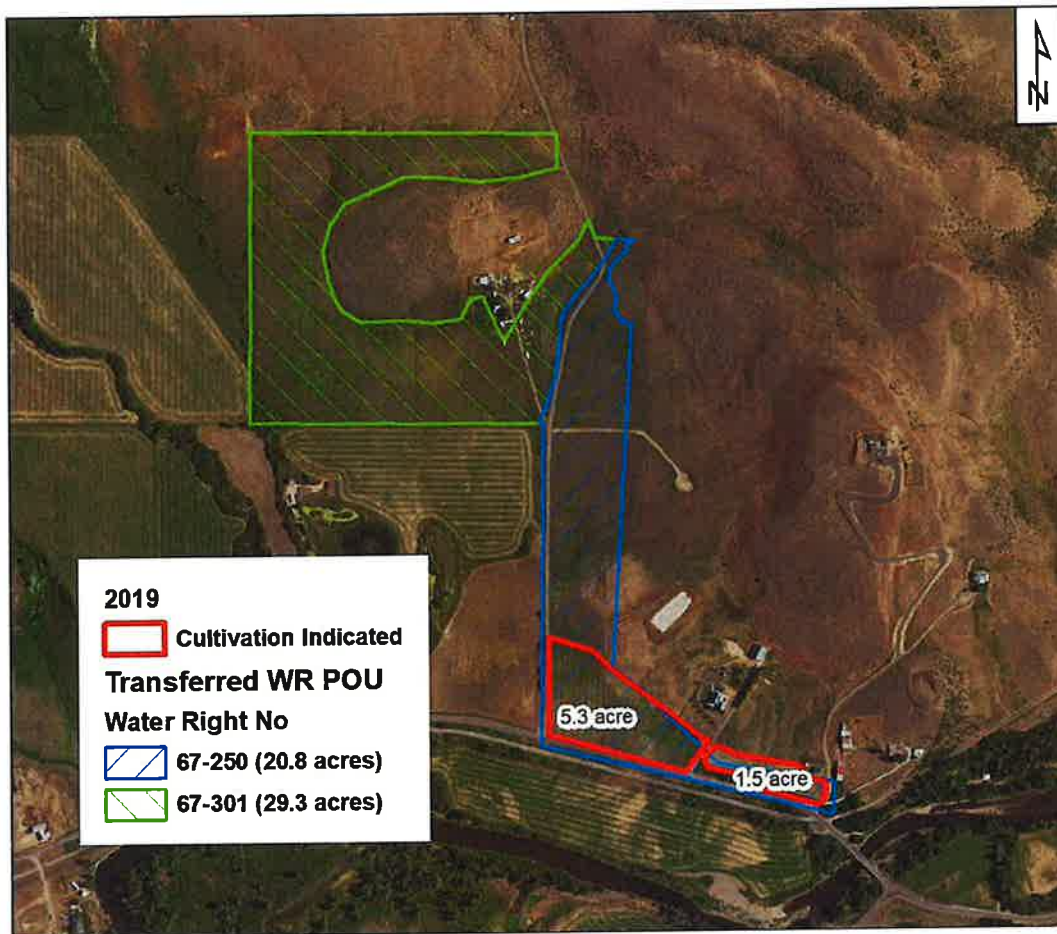


Figure 5: NAIP 2019 (June 29, 2019).

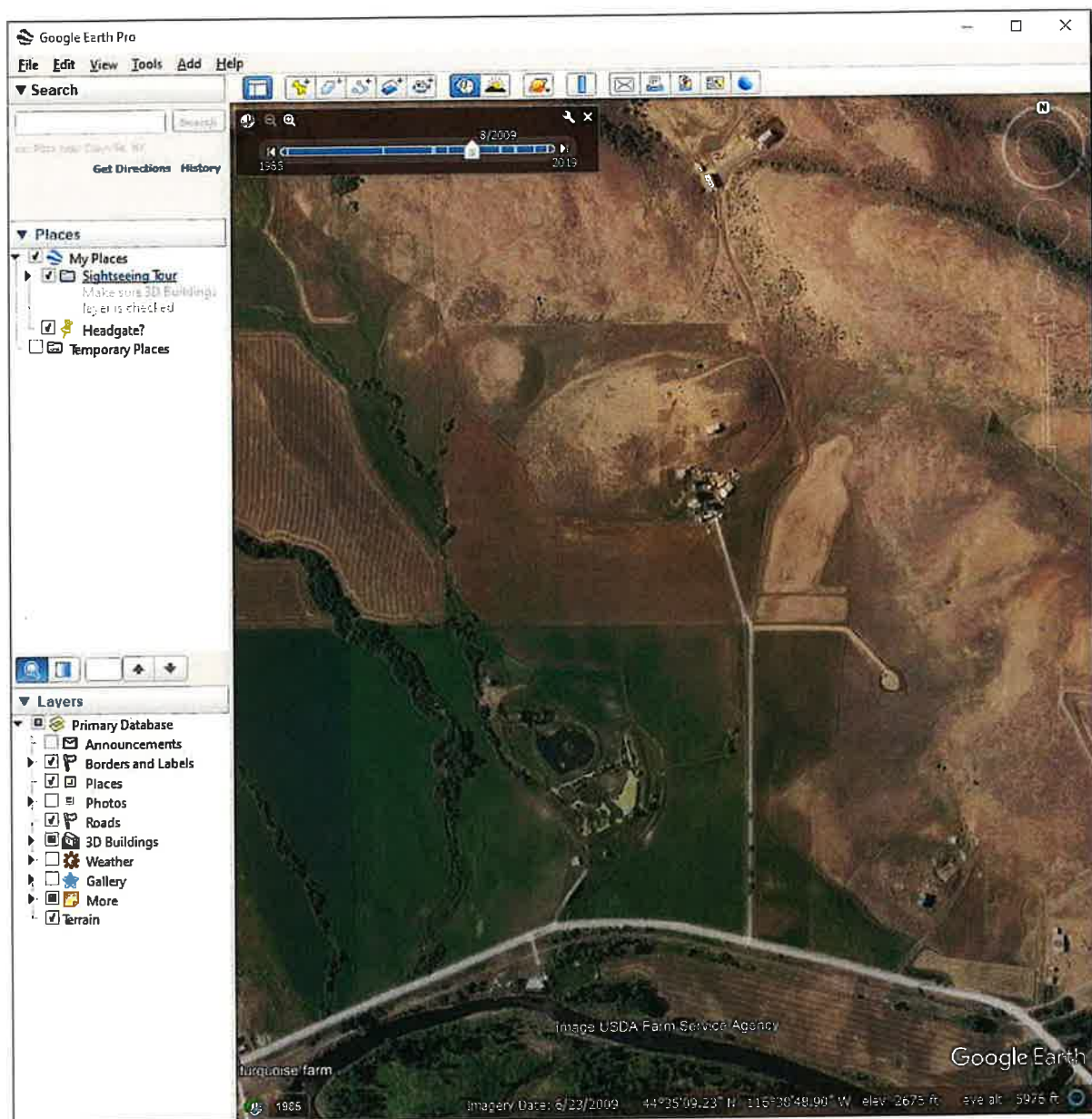


Figure 6: Google Earth 2009

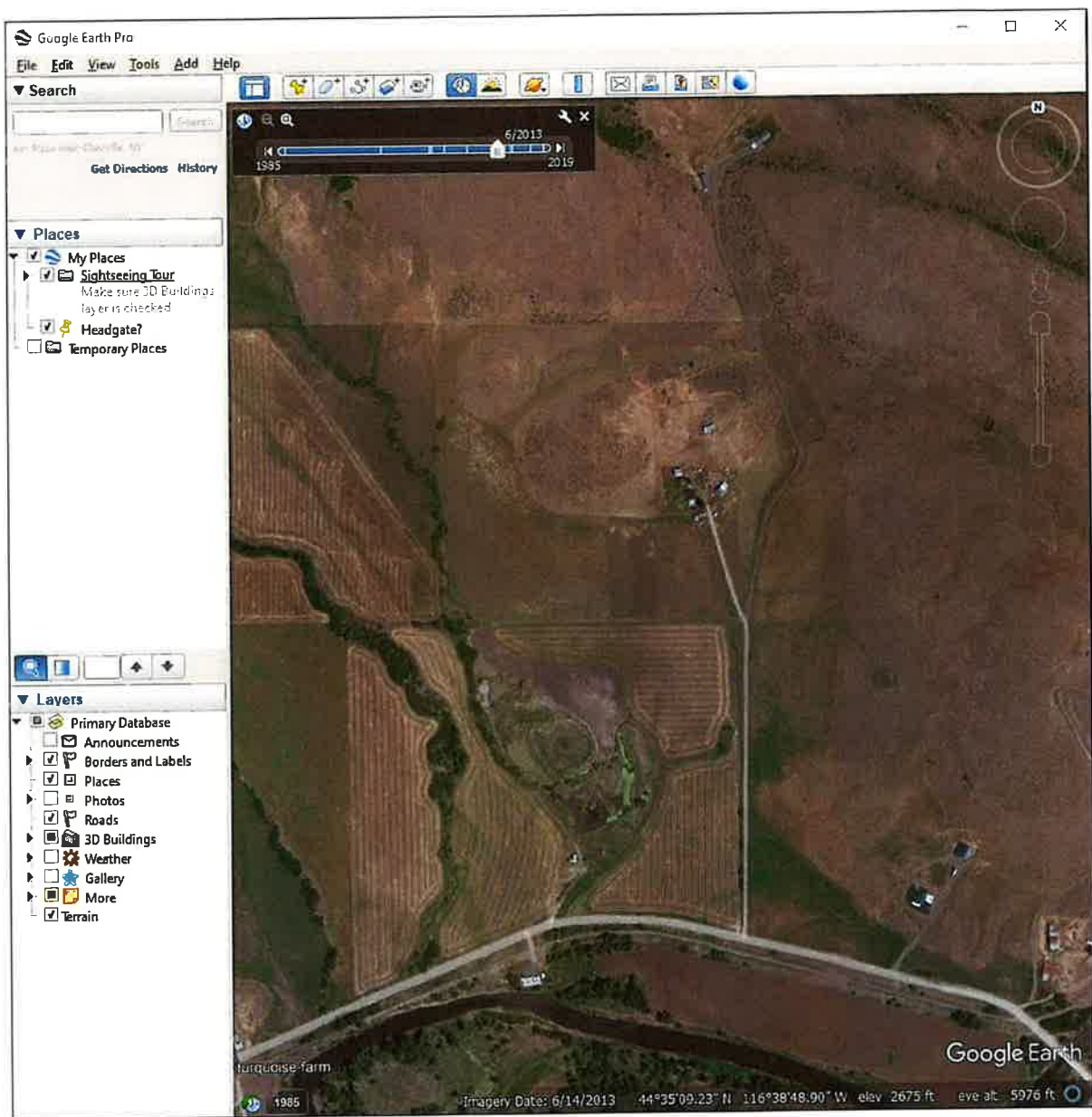


Figure 7: Google Earth 2013

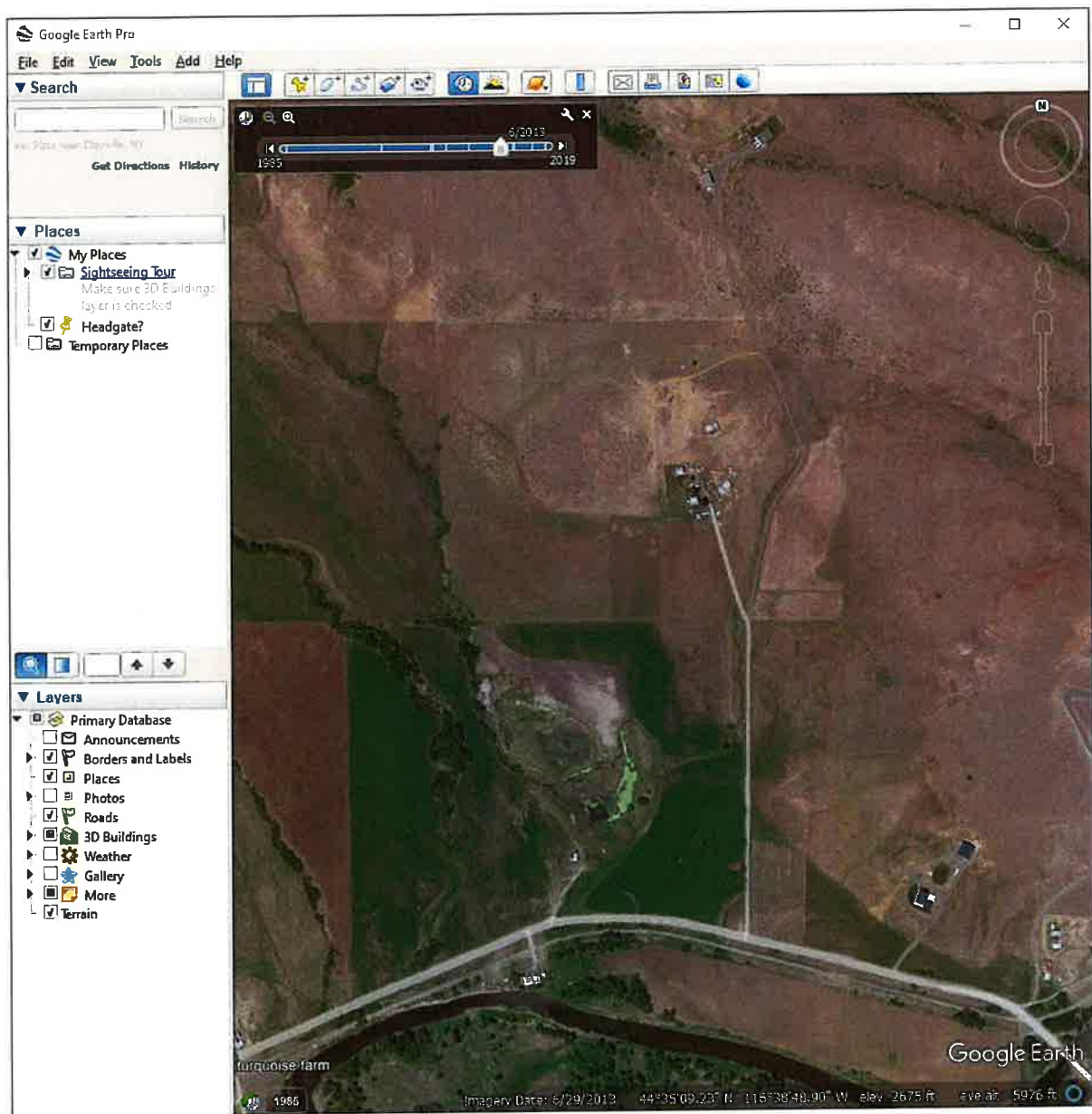


Figure 8: Google Earth 2013

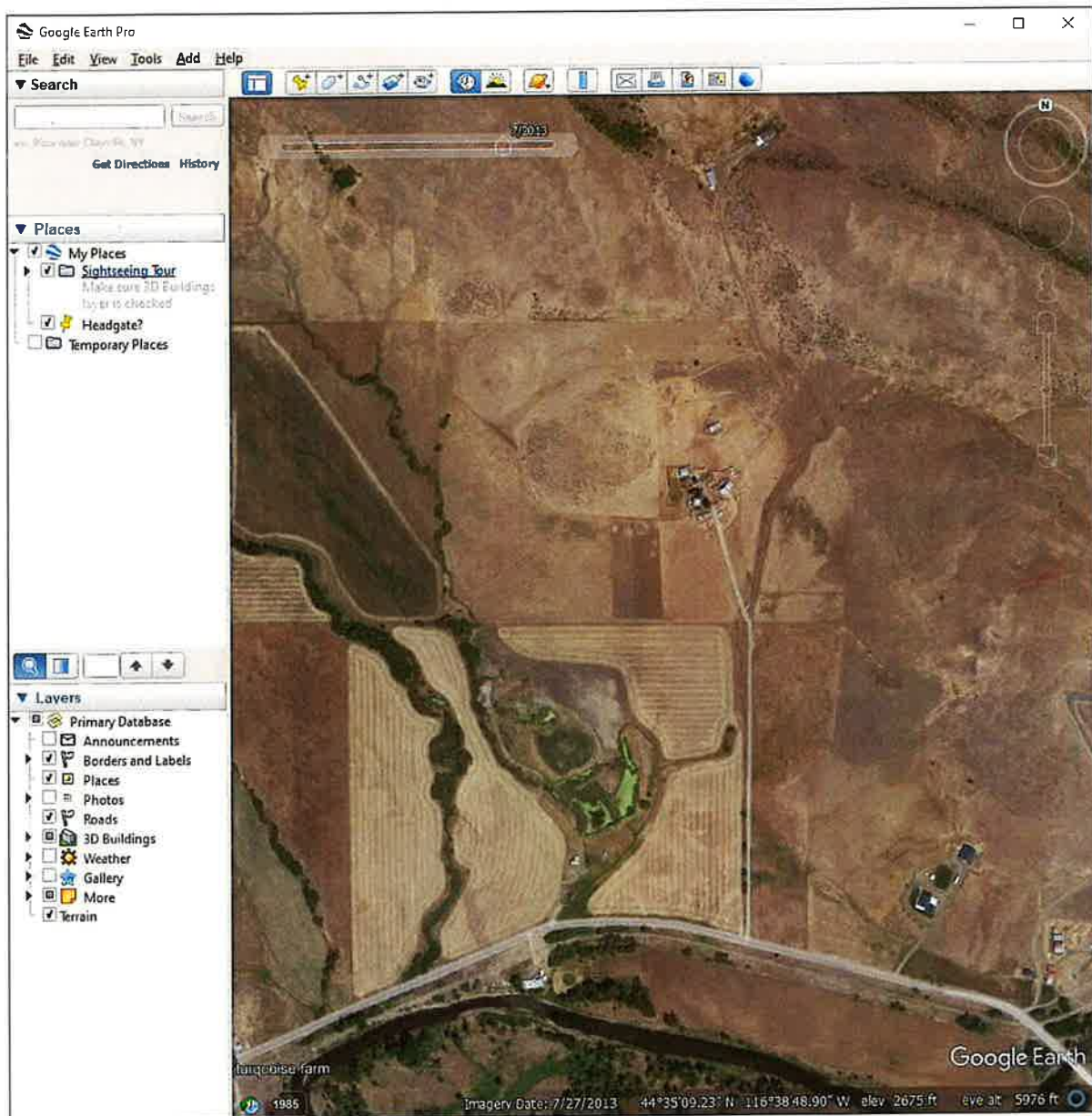


Figure 9: Google Earth 2013

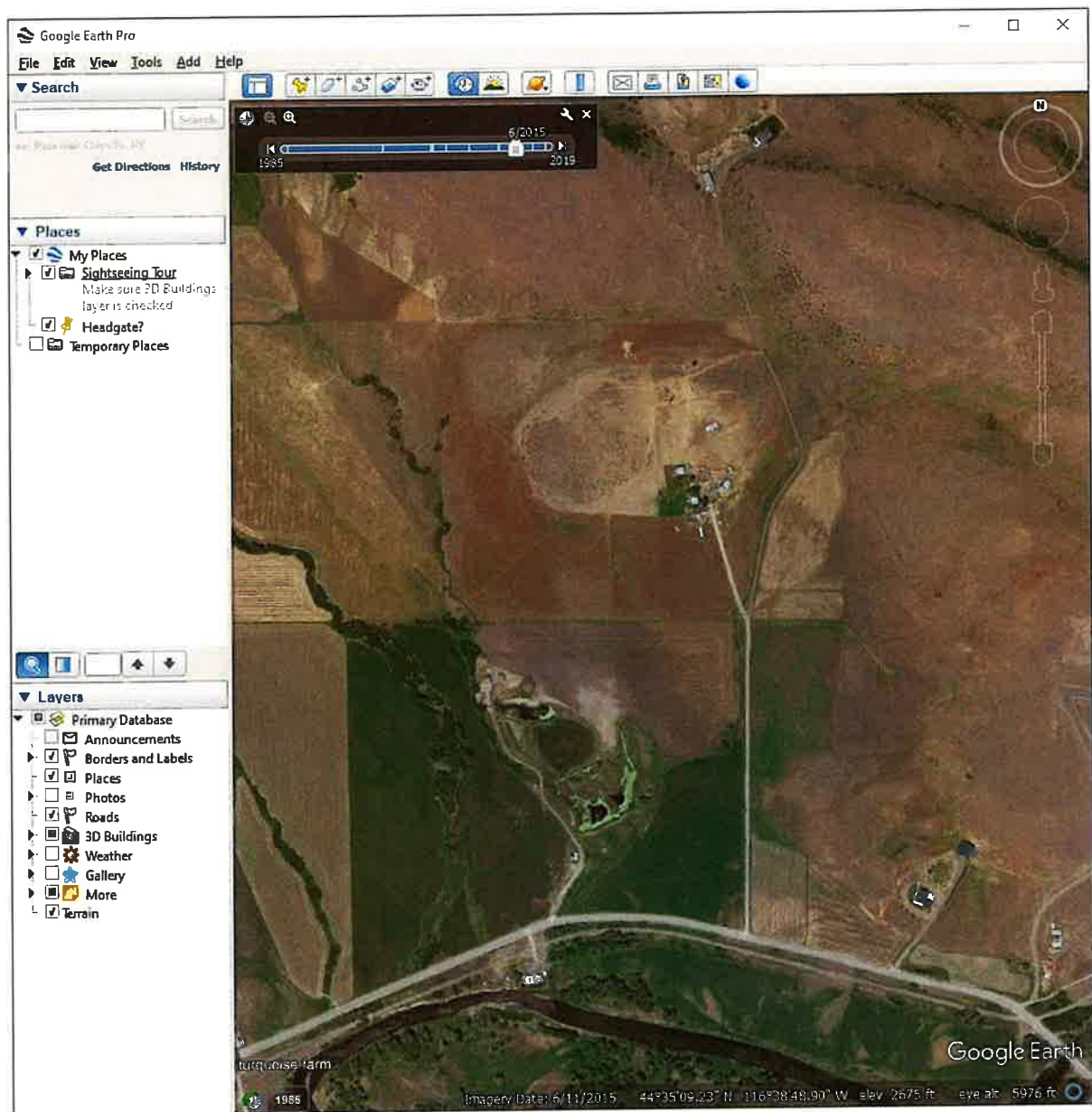


Figure 10: Google Earth 2015

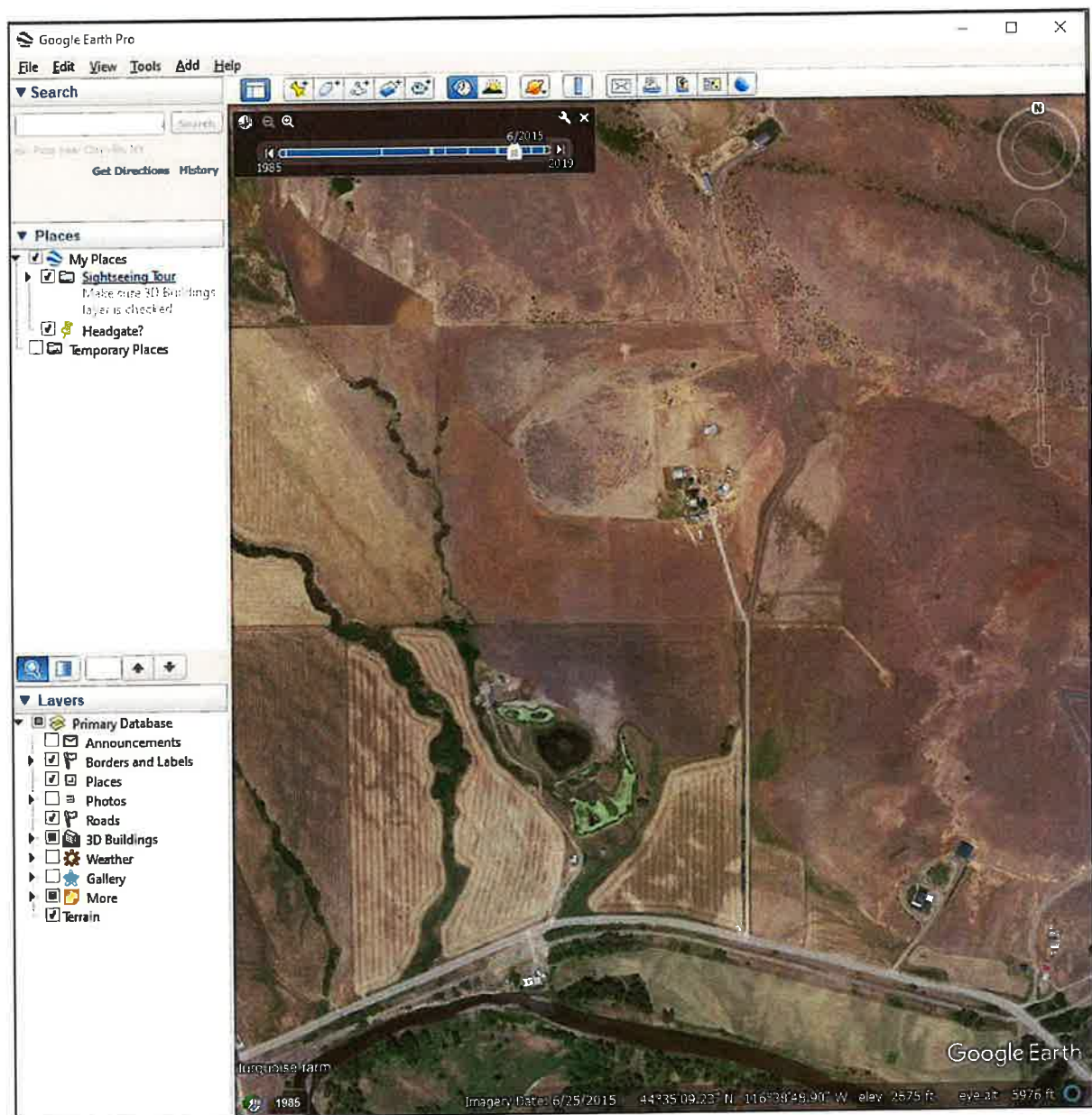


Figure 11: Google Earth 2015

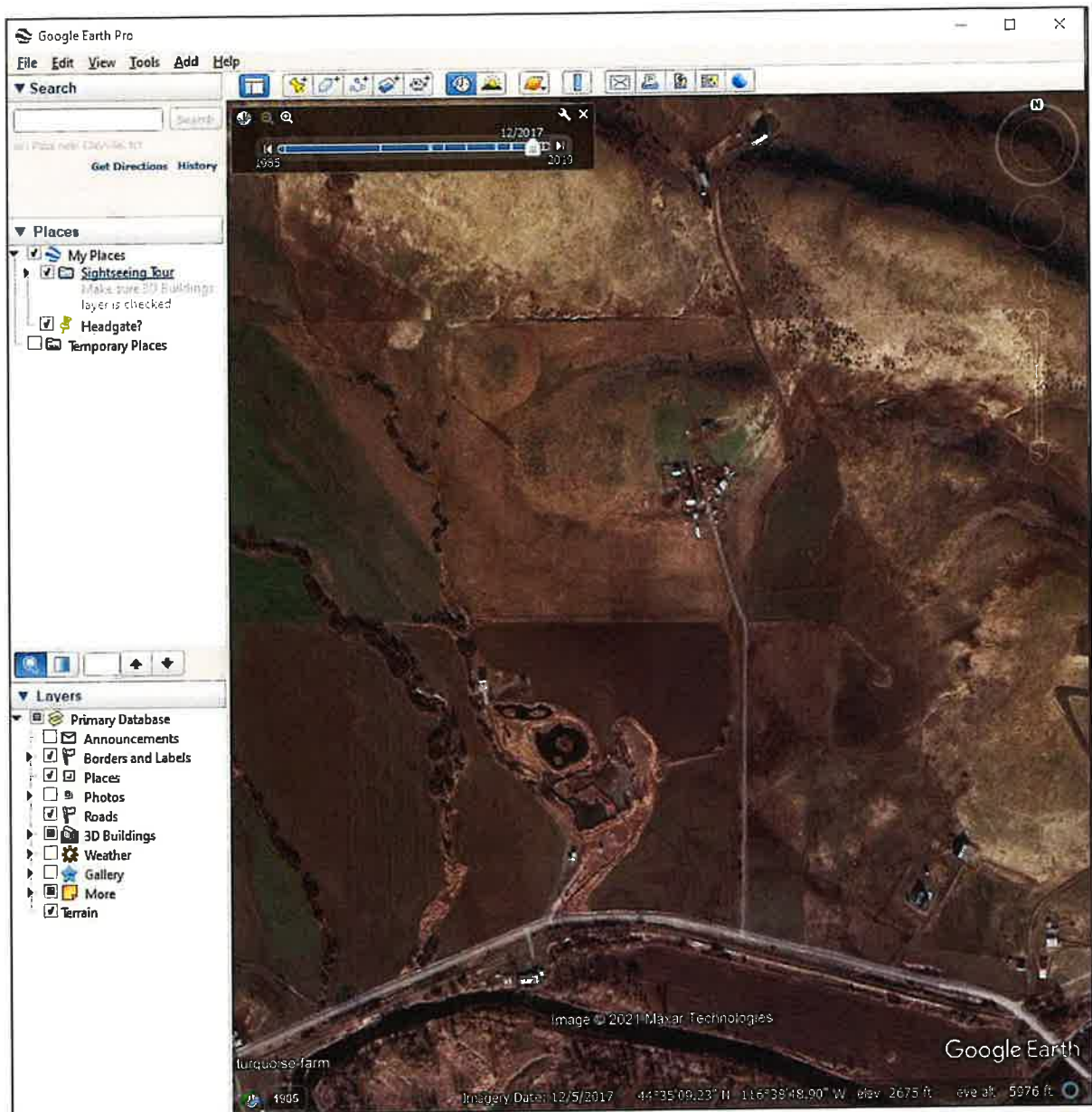


Figure 12: Google Earth 2017

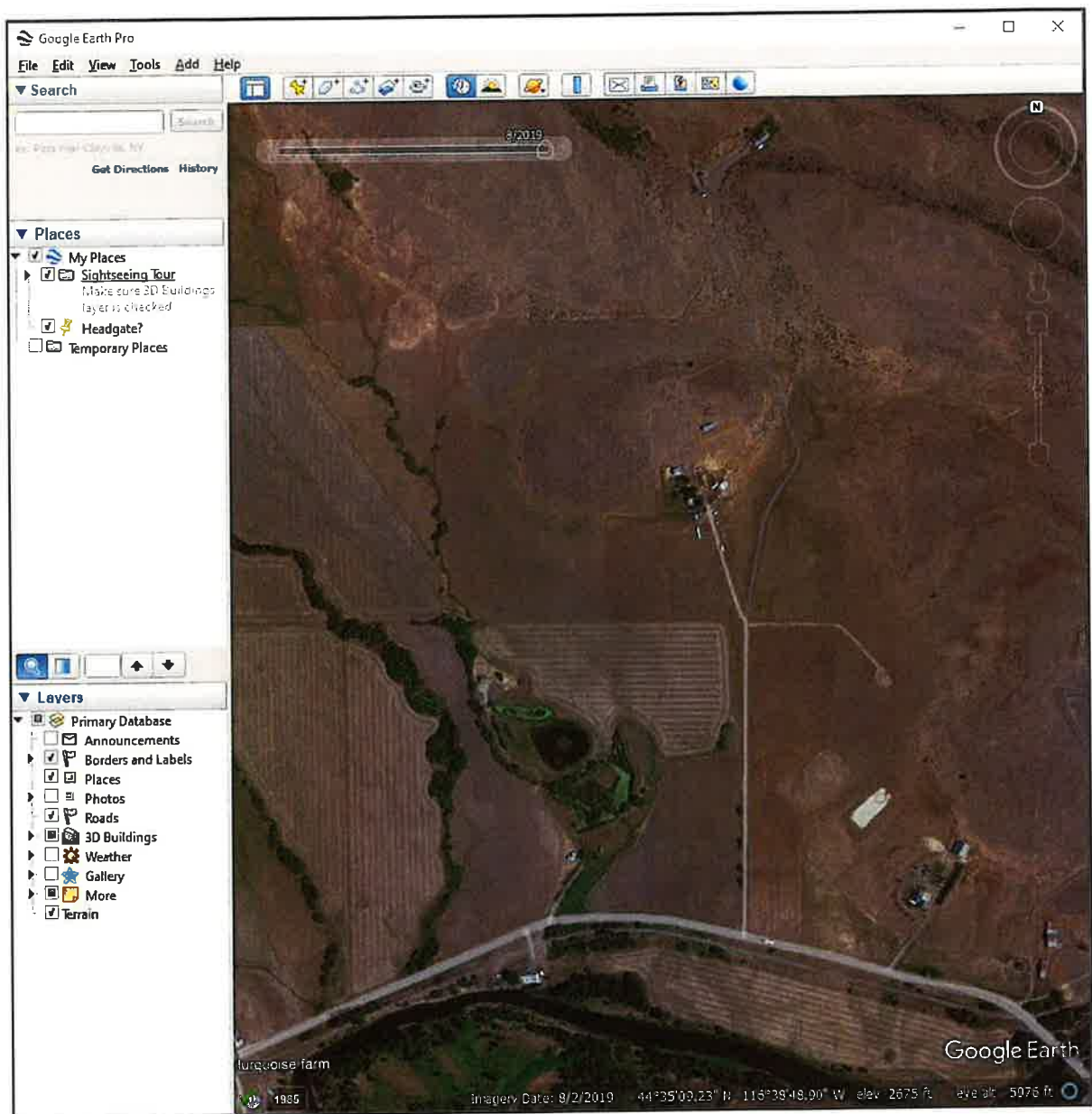


Figure 13: Google Earth 2019

Michael P. Lawrence, ISB #7288
Charlie S. Baser, ISB #10884
GIVENS PURSLEY LLP
601 W. Bannock St.
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Fax: 208-388-1300
Attorneys for Salubria Holdings LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE APPLICATION
FOR TRANSFER NO. 84698 IN THE NAME
OF MARION OGLE

**SALUBRIA HOLDINGS LLC'S
FOURTH SUPPLEMENTAL
RESPONSES TO MARION OGLE'S
FIRST SET OF DISCOVERY
REQUESTS**

The following are the supplemental responses of Protestant Salubria Holdings LLC ("Salubria" or "Protestant") to *Marion Ogle's First Set of Interrogatories and Requests for Production to Salubria Holdings* dated October 29, 2021 ("*First Discovery Requests*"). These responses supplement *Salubria Holdings LLC's Responses to Marion Ogle's First Set of Discovery Requests* dated November 12, 2021, *Salubria Holdings LLC's Supplemental Responses to Marion Ogle's First Set of Discovery Requests* dated January 12, 2022, *Salubria Holdings LLC's Second Supplemental Responses to Marion Ogle's First Set of Discovery Requests* dated January 18, 2022, and *Salubria Holdings LLC's Third Supplemental Responses to Marion Ogle's First Set of Discovery Requests* dated January 20, 2022.

The following responses are based upon such discovery and investigation as has been completed by Salubria to date after reasonable inquiry of all available sources. The following

SALUBRIA HOLDINGS LLC'S FOURTH SUPPLEMENTAL RESPONSES TO MARION OGLE'S FIRST SET OF DISCOVERY
REQUESTS

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Page 1 Of 19

EXHIBIT B - Declaration of Dana L. Hofstetter

responses are given without prejudice to Salubria's right to produce at hearing evidence of any subsequently discovered information or facts, facts which Salubria may later recall, or information and/or facts omitted as a result of good faith oversight. Salubria reserves the right to supplement or amend any and all responses herein as additional facts are ascertained and analyses are made and as provided by the Idaho Rules of Civil Procedure and procedural rules of the Idaho Department of Water Resources. The responses contained herein are made in a good faith effort to supply as much information as is presently known, but shall in no way prejudice the right of Salubria in relation to further discovery, research and analyses.

PRELIMINARY OBJECTIONS

Each of the objections set forth in this section is incorporated into each of Salubria's Responses to Interrogatories and Responses to Requests for Production of Documents as though set forth verbatim therein.

Salubria objects to the *First Discovery Requests*, including without limitation the Preliminary Statement and Definitions sections, to the extent they purport to impose duties and obligations beyond those contemplated by the applicable Idaho Rules of Civil Procedure and Department Rules of Procedure. Salubria's responses below respond to the *First Discovery Requests* in accordance with the standards that exist under Idaho law.

Salubria's responses below are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by, witnesses present and testifying in court. All such objections are hereby made and reserved and may be interposed at the time of hearing.

No incidental or implied admissions are intended by Salubria's responses below. The fact that Salubria has responded to any discovery request or part thereof is not an admission that Salubria accepts that the discovery request or the responses or objections thereto constitute admissible evidence. The fact that Salubria has responded to all or part of a discovery request is not intended as, and shall not be construed as, a waiver by Salubria of all or part of any objection to other requests. Salubria's response to any request herein does not constitute a waiver of Salubria's right to object to any future additional or supplemental discovery request regarding the same or similar matters.

Salubria specifically objects to the *First Discovery Requests* to the extent they seek information protected by the attorney-client privilege, the work product doctrine, and the rules governing discovery relating to experts as set forth in the Idaho Rules of Civil Procedure 26(b). This objection applies to all discovery requests that seek such information. Salubria, to the extent possible, has construed each request as requesting only information and/or documents not subject to any applicable protection.

Finally, Salubria specifically objects to the *First Discovery Requests* to the extent they seek information that is premature at this stage of the matter. Case investigation is in its early stages and all the information requested has not been obtained or finalized. Salubria's responses to the Interrogatories and Requests for Production will be supplemented as appropriate in accordance with applicable case deadlines.

INTERROGATORIES

INTERROGATORY 1: Please state the names, addresses, and telephone numbers of all persons you intend to call as fact witnesses at the hearing of this matter, and for each such person, please state the substance of the facts to which he or she is expected to testify.

RESPONSE TO INTERROGATORY 1: Objection: premature. Salubria will disclose the identity of witnesses expected to be called at the hearing in accordance with the October 20, 2021 *Hearing Notice/Scheduling Order*. Without waiving any objection(s), at this time Salubria has identified the following persons who may testify as fact witnesses at the hearing:

(a) Rick Fereday may testify concerning facts related to Salubria's protest (the "*Protest*") of Application for Transfer No. 84698 (the "*Application*"), the delivery of and/or use of water under the water right sought to be changed in the Application, and the water rights currently held in the name of the Protestant.

(b) Brandi Horton Bonner, watermaster for basin 67, may testify regarding the delivery of water under 67-250 and 67-301.

(c) James Fronk may testify as to the Protest, the delivery of and/or use of water under the water right sought to be changed in the Application, and the water rights currently held in the name of the Protestant.

(d) Donald F. Driscoll may testify concerning the delivery of and/or use of water under the water right sought to be changed in the Application and the water rights currently held in the name of the Protestant.

(e) Hank Ivey may testify concerning the delivery of and/or use of water under the water right sought to be changed in the Application, the delivery of water under 67-250 and 67-301, and the water rights currently held in the name of the Protestant.

(f) Jeff Springer may testify regarding the delivery of and/or use of water under the water right sought to be changed in the Application, the delivery of water under 67-250 and 67-301, and the water rights currently held in the name of the Protestant.

(g) John Whitener may testify as to the delivery of and/or use of water under the water right sought to be changed in the Application, and the water rights currently held in the name of the Protestant.

(h) Kate Noah may testify as to the delivery of water under 67-250 and 67-301.

(i) Debra Dibble may testify concerning the delivery of water under 67-250 and 67-301.

(j) Marion Ogle may testify concerning the property associated with the Application and the delivery of water under 67-250 and 67-301.

SUPPLEMENTAL RESPONSE TO INTERROGATORY 1: Without waiving any objection(s), at this time Salubria responds as follows: In addition to the persons listed in Salubria's initial response to this interrogatory, the following people may be called as witnesses at the hearing in this matter: Lori Farrens, Matthew Summers, Logan Hobdey, and Perry Goodman, each of whom owns lands to which water right no. 67-250 and may testify as to the use of water right no. 67-250 and whether they have consented to removing the appurtenant water rights from their lands as proposed in the Application.

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY 1: Without waiving any objection(s), at this time Salubria responds as follows: In addition to the persons listed in Salubria's initial and supplemental responses to this interrogatory, the following people may be called as witnesses at the hearing in this matter: James Breszinsky, who owns lands near the lands upon which water right nos. 67-250 and 67-301 are appurtenant and may testify as to the delivery and use of water right nos. 67-250 and 67-301; and Kameron Ogle, who has served as the Lateral Manager of the Hubbard Lateral Water Users Association.

THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY 1: None.

FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY 1: Without waiving any objection(s), at this time Salubria responds as follows: In addition to the persons listed in Salubria's initial and supplemental responses to this interrogatory, the following people may be called as witnesses at the hearing in this matter:

Lori Farrens
223 Buckskin Drive
Nampa, Idaho 83687
208-602-0885

Rocky Farrens
208-484-0885

Logan Hobdey
10210 Guinevere Dr.
Boise, Idaho 83704
208-890-6130

Perry Goodman
2952 Mill Road
PO Box 38
Cambridge, Idaho 83610
208-407-6692

Matthew Summers
2964 Mill Road
PO Box 384
Cambridge, Idaho 83610
Phone number unknown

James Breszinsky
3042 Legg Lane
Cambridge, Idaho 83610
208-257-3283

Lloyd Dibble
Address and phone number unknown

INTERROGATORY 2: Please state the name, address, and telephone number of each and every person that is known to you or your attorneys who has any knowledge of, or who purports to have any knowledge of, any of the facts of this case, the Application, or the Protest

and, for each, state the relevant facts which you understand to be within the knowledge of such person. By this Interrogatory, Ogle seeks the names, addresses and telephone numbers of all witnesses who have any knowledge of any fact pertinent to this proceeding and the relevant facts which you understand to be within the knowledge of each such person.

RESPONSE TO INTERROGATORY 2: Objection: premature; requests attorney-client privileged information or attorney work product. Without waiving any objection(s), at this time, in addition to persons known to Applicant who are not listed here, Salubria has identified the following persons who may have knowledge of facts pertinent to this proceeding:

Rick Fereday
309 E. Lake Street
McCall, Idaho 83638
(208) 634-4999

Rick Fereday has knowledge of the facts related to the Protest, the delivery of and/or use of water under the water right sought to be changed in the Application, the use of water rights and property currently held in the name of the Protestant, and water right nos. 67-250 and 67-301.

Brandi Horton Bonner
2297 Snapp Lane
Midvale, Idaho 83645

Ms. Bonner may have knowledge based on her position as Basin 67 watermaster, including without limitation knowledge of the area, hydrology, delivery of and/or use of water under the water right sought to be changed in the Application, and administration of water rights.

Scott King
SPF Water Engineering, Inc.
300 East Mallard Drive, Suite 350
Boise, ID 83706
208-383-4140

Scott King has knowledge of facts related to the filing and processing of the Protest.

Donald F. Driscoll
PO Box 1669
McCall, Idaho 83638
208-473-4828

Donald F. Driscoll has knowledge of facts related to the delivery of and/or use of water under the water right sought to be changed in the Application and the use of water rights and property currently held in the name of the Protestant.

James Fronk
PO Box 576
McCall, Idaho 83638
208-634-8093

James Fronk has knowledge of facts related to the delivery of and/or use of water under the water right sought to be changed in the Application and the water rights and property currently held in the name of the Protestant.

Hank Ivey
PO Box 284
Council, Idaho 83612
(208) 740-0228

Hank Ivey may have knowledge of facts related to the delivery of and/or use of water under the water right sought to be changed in the Application and the use of water rights and property currently held in the name of the Protestant.

Jeff Springer
1956 Widner Rd.
Midvale, Idaho 83645
(208) 550 2474

Jeff Springer may have knowledge of facts related to the delivery of and/or use of water under the water right sought to be changed in the Application and the use of water rights and property currently held in the name of the Protestant.

John Whitener
2048 Widner Rd.
Midvale, Idaho 83645
(208) 566-1042

John Whitener may have knowledge of facts related to the delivery of and/or use of water under the water right sought to be changed in the Application and the use of water rights and property currently held in the name of the Protestant.

Kate Noah
2874 Warfield Rd.
Cambridge, Idaho 83610
(208) 550-0074

Kate Noah may have knowledge of facts related to the use of water right nos. 67-250 and 67-301.

Debra Dibble
2948 Mill Rd.
Cambridge, Idaho 83610
(208) 257-3410

Debra Dibble may have knowledge of facts related to the use of water right nos. 67-250 and 67-301.

Marion Ogle
1039 W. Indian Valley Rd.
Indian Valley, Idaho 83632
(208) 256-4448

Marion Ogle may have knowledge of facts related to the use of water right nos. 67-250 and 67-301.

SUPPLEMENTAL RESPONSE TO INTERROGATORY 2: Without waiving any objection(s), at this time Salubria responds as follows: In addition to the persons listed in Salubria's initial response to this interrogatory, the following people may be called as witnesses at the hearing in this matter: Lori Farrens, Matthew Summers, Logan Hobdey, and Perry Goodman, each of whom owns lands to which water right no. 67-250 and may testify as to whether they have consented to removing the appurtenant water rights from their lands as proposed in the Application. Contact information for these individuals currently is unknown.

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY 2: Without waiving any objection(s), at this time Salubria responds as follows: In addition to the persons listed in Salubria's initial and supplemental responses to this interrogatory, the following people may have knowledge of facts pertinent to this proceeding:

James Breszinsky
3042 Legg Lane
Cambridge, Idaho 83610

James Breszinsky may have knowledge related to the delivery and use of water right nos. 67-250 and 67-301.

Kameron Ogle
13221 W Bellflower Dr.
Boise, Idaho 83713

Kameron Ogle may have knowledge related to the delivery of water right nos. 67-250 and 67-301.

THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY 2: None.

FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY 2: Without waiving any objection(s), at this time Salubria responds as follows: In addition to the persons listed in Salubria's initial and supplemental responses to this interrogatory, the following people may have knowledge of facts pertinent to this proceeding:

Lori Farrens
223 Buckskin Drive
Nampa, Idaho 83687
208-602-0885

Lori Farrens may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301, to the ownership of right no. 67-250's decreed place of use, and to the owners' lack of consent to the proposed transfer.

Rocky Farrens
Address unknown
208-484-0885

Rocky Farrens may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301, to the ownership of right no. 67-250's decreed place of use, and to the owners' lack of consent to the proposed transfer.

Logan Hobdey
10210 Guinevere Dr.
Boise, Idaho 83704
208-890-6130

Logan Hobdey may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301, to the ownership of right no. 67-250's decreed place of use, and to the owners' lack of consent to the proposed transfer.

Perry Goodman
2952 Mill Road
PO Box 38
Cambridge, Idaho 83610
208-407-6692

Perry Goodman may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301, to the ownership of right no. 67-250's decreed place of use, and to the owners' lack of consent to the proposed transfer.

Matthew Summers
2964 Mill Road
PO Box 384
Cambridge, Idaho 83610
Phone number unknown

Matthew Summers may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301, to the ownership of right no. 67-250's decreed place of use, and to the owners' lack of consent to the proposed transfer.

James Breszinsky
3042 Legg Lane
Cambridge, Idaho 83610
208-257-3283

James Breszinsky may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301.

Lloyd Dibble
Address and phone number unknown
Lloyd Dibble may have knowledge related to the delivery and use of water right nos. 67-250 and/or 67-301, and to the ownership of right no. 67-250's decreed place of use.

INTERROGATORY 7: Please identify and describe in detail all facts and documents that you or your attorney are aware of that support, undermine, or in any way relate to your Protest.

RESPONSE TO INTERROGATORY 7: Objection: premature; overbroad; unduly burdensome; requests attorney work product. Without waiving any objection(s) and reserving the right to supplement this response as additional information becomes known, Salubria responds as follows: on information and belief, based on personal observations of the diversion and delivery system and authorized place of use for water right nos. 67-250 and 67-301 since 2006, the place of use authorized for water right nos. 67-250 and 67-301 has not been irrigated with such water rights since 2006.

SUPPLEMENTAL RESPONSE TO INTERROGATORY 7: Objection: premature; overbroad; unduly burdensome; requests attorney work product. Without waiving any objection(s) and reserving the right to supplement this response as additional information becomes known, Salubria responds as follows: in addition to the foregoing, Ogle does not have authority to file the Application. Ogle failed to provide any information responding to Item 5.e, Part 1, of the Application, which asks the transfer applicant to "[d]escribe the effect on the land now irrigated if

the place or purpose of use is changed pursuant to this transfer.” This information is necessary for the Department to evaluate whether the transfer applicant has authority to change the places of use for the Dibble Rights. Additionally, Item 5.c, Part 1 of the Application fails to (a) indicate that two portions of the lands from which Ogle proposes to transfer water right no. 67-250 (tax parcel nos. RP14N03W011080 and RP15N03W368700) are subject to deeds of trust and (b) attach a notarized statement on official letterhead from an authorized representative of the holder of those deeds of trust agreeing to the proposed changes. Please see the attached documents, Bates numbered Salubria-000001 through Salubria-000120. Item 5.c, Part 1 of the Application form notes that “Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.”

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY 7: None.

THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY 7: None.

FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY 7: Objection: premature; overbroad; unduly burdensome; requests attorney work product. Without waiving any objection(s) and reserving the right to supplement this response as additional information becomes known, Salubria responds as follows: in addition to the foregoing initial and supplemental responses to this interrogatory, Perry Goodman, Matthew Summers, Lori Farrens, and Logan Hobdey own the property that is the place of use for Water Right No. 67-250. Protestant’s attorney has not yet been able to contact Mr. Summers. Mr. Goodman, Ms. Farrens, and Mr. Hobdey were not aware of this proceeding before being contacted by Protestant’s attorney on January 21, 2022, and did not consent to the transfer of Water Right No. 67-250 from their properties. Mr. Goodman, Ms. Farrens, and Mr. Hobdey have not observed the application of Rush Creek irrigation water on their properties.

INTERROGATORY 8: Please set forth a complete and full description of all your contentions in the Protest and the complete factual and legal bases for such contentions, including, without limitation, any of your contentions relating to:

- (a) “The Application does not conform to applicable statutes, regulation, or guidance and does not satisfy the criteria for approval set forth in Idaho Code 42-222”;
- (b) “Protestant is particularly concerned with the validity of the water rights proposed for transfer”;
- (c) whether the change proposed in the Application will injure other water rights;
- (d) whether the change proposed in the Application will constitute an enlargement in use of the original water right;
- (e) whether the change proposed in the Application is in the “local public interest” as defined in Idaho Code 42-202B;
- (f) whether the change proposed in the Application is consistent with the conservation of water resources within the State of Idaho; and
- (g) whether the change proposed in the Application will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates.

RESPONSE TO INTERROGATORY 8: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions. Without waiving any objection(s) and reserving the right to supplement this response as additional information becomes known, Salubria responds to each subpart of the Interrogatory as follows:

- (a) Approval of the Application will injure other water rights, will constitute enlargement of 67-250 and 67-301, is not in the “local public interest,” as defined by Idaho Code

§ 42-202B, is not consistent with the conservation of water resources within the State of Idaho, and the new use will not be a beneficial use because the land proposed to be irrigated already has irrigation water rights. Additional information responsive to the subpart (a) is provided in responses to subparts (b) through (g) below.

(b) Water right nos. 67-250 and 67-301 have undergone a period of non-use lasting at least five (5) years, and Applicant's use has not satisfied the resumption doctrine set forth under Idaho Code § 42-223(12) and therefore water rights nos. 67-250 and 67-301 are subject to forfeiture and the Application cannot be approved.

(c) The change proposed in the Application will injure Protestant's Rush Creek Water rights (water right nos. 67-14643, 67-14645, and 67-14647) because if water rights that are forfeited are diverted from Rush Creek, there is less water in Rush Creek for delivery to Protestant's water rights.

(d) The change proposed in the Application will constitute an enlargement. Water right nos. 67-250 and 67-301 have been forfeited and any resumption of use will necessarily result in an enlargement.

(e) The change proposed in the Application is not in the "local public interest" as defined in Idaho Code 42-202B because water is scarce in this area and other users (including Protestant) rely on the water that has not been used (i.e. that has been forfeited) under water right nos. 67-250 and 67-301.

(f) See response to subpart (e) above.

(g) The source of water is Rush Creek. The change proposed in the Application will not adversely affect the local economy of the Rush Creek watershed, but it would adversely affect

other users that divert from the Rush Creek watershed (such as Protestant) by reducing the amount of water available from Rush Creek.

SUPPLEMENTAL RESPONSE TO INTERROGATORY 8: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions. Without waiving any objection(s) and reserving the right to supplement this response as additional information becomes known, Salubria responds as follows: in addition to the foregoing, Ogle does not have authority to file the Application. Ogle failed to provide any information responding to Item 5.e, Part 1, of the Application, which asks the transfer applicant to “[d]escribe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer.” This information is necessary for the Department to evaluate whether the transfer applicant has authority to change the places of use for the Dibble Rights. Additionally, Item 5.c, Part 1 of the Application fails to (a) indicate that two portions of the lands from which Ogle proposes to transfer water right no. 67-250 (tax parcel nos. RP14N03W011080 and RP15N03W368700) are subject to deeds of trust and (b) attach a notarized statement on official letterhead from an authorized representative of the holder of those deeds of trust agreeing to the proposed changes. Please see the attached documents, Bates numbered Salubria-000001 through Salubria-000120. Item 5.c, Part 1 of the Application form notes that “Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.”

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY 8: None.

THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY 8: None.

FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY 8: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions. Without waiving any objection(s) and reserving the right to supplement this response

as additional information becomes known, Salubria amends its responses to subparts (c), (e), (f), and (g) of this Interrogatory as follows:

(c) Salubria does not contend that approval of the Application will injure its Rush Creek Water rights (water right nos. 67-14643, 67-14645, and 67-14647), but does contend that the change proposed in the Application will injure Rush Creek water right holders other than Salubria whose water rights have priority dates the same as or junior to those of the Dibble Rights because if water rights that are forfeited are diverted from Rush Creek, there is less water in Rush Creek for delivery to other water rights with the same or junior priorities.

(e) The change proposed in the Application is not in the “local public interest” as defined in Idaho Code 42-202B because water is scarce in this area and other users rely on the water that has not been used (i.e. that has been forfeited) under water right nos. 67-250 and 67-301.

(f) See fourth supplemental response to subpart (e) above.

(g) The source of water is Rush Creek. The change proposed in the Application will not adversely affect the local economy of the Rush Creek watershed, but it would adversely affect other users that divert from the Rush Creek watershed (such as junior water right holders) by reducing the amount of water available from Rush Creek.

INTERROGATORY 9: Please set forth a complete and full description, in chronological fashion (including dates), of all the efforts you made, analyses you had performed, and experts you hired in order to evaluate the issues in Interrogatories No. 8, including, without limitation:

(a) Prior to submitting/filing the Protest.

(b) During or after submitting/filing the Protest.

RESPONSE TO INTERROGATORY 9: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions; compound question. Without waiving any objection(s), Salubria responds as follows:

(a) Between 6/11/2021 (the date Protestant learned about the Application) and 7/2/2021 (the date Protestant filed its Protest), Protestant evaluated the Application, met with Ogle to attempt to reach an agreement on their respective water uses, and prepared and filed its Protest.

(b) Between 7/3/2021 and the date of this response, prepared for and attended the prehearing conference and prepared these discovery responses. On or around 11/10/2021, Protestant hired Scott King as an expert.

SUPPLEMENTAL RESPONSE TO INTERROGATORY 9: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions; compound question. Without waiving any objection(s), Salubria responds as follows: In addition to the foregoing, between 11/12/2021 and the date of this supplemental response, Salubria asked its expert witness, Scott King, to prepare a supplemental expert witness disclosure in accordance with the Hearing Officer's January 4, 2022 *Order On Motion to Exclude Expert Witness*. On and after 1/10/2022, Salubria also researched the ownership of lands to which water right nos. 67-250 and 67-301 are appurtenant, including without limitation by contacting the Washington County Recorder's Office on January 11, 2021 to obtain information about monetary encumbrances recorded against the original place of use of the Dibble Rights.

SECOND SUPPLEMENTAL RESPONSE TO INTERROGATORY 9: None.

THIRD SUPPLEMENTAL RESPONSE TO INTERROGATORY 9: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions; compound question. Without waiving any objection(s), Salubria responds as follows:

In addition to the foregoing, on and after 1/12/2022 and the date of this supplemental response, Salubria undertook additional factual and legal investigation in preparation for the February 1, 2022 hearing in this matter.

FOURTH SUPPLEMENTAL RESPONSE TO INTERROGATORY 9: Objection: premature; overbroad; unduly burdensome; requests attorney work product; requests legal conclusions. Without waiving any objection(s) and reserving the right to supplement this response as additional information becomes known, Salubria responds as follows: Salubria continues to undertake additional factual and legal investigation in preparation for the February 1, 2022 hearing in this matter, including without limitation by contacting potential witnesses and others who have knowledge of facts relevant to this matter.

DATED this 25th day of January, 2022.

GIVENS PURSLEY LLP



By: Charlie S. Baser
Attorneys for Salubria Holdings LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 25th day of January, 2022, I served a true and correct copy of the above and foregoing document via the manner listed below to the following:

DOCUMENT SERVED

Marion Ogle
c/o Dana Hofstetter
Hawley Troxell Ennis & Hawley
877 Main St., Ste. 1000
PO Box 1617
Boise, ID 83701-1617
Email: DHofstetter@hawleytroxell.com
tanderson@hawleytroxell.com
aknight@hawleytroxell.com

U. S. Mail
Hand Delivered
Overnight Mail
Facsimile
X E-mail



Charlie S. Baser