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Attorneys for James Whittaker and Whittaker Two Dot Ranch LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER 84441 IN THE NAME OF
BRUCE AND GLENDA MCCONNELL

**WHITTAKER AND WHITTAKER TWO
DOT RANCH LLC JOINT WITNESS
AND EXHIBIT LIST**

James Whittaker and Whittaker Two Dot Ranch LLC (collectively "Whittaker"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., pursuant to Hearing Officer Cefalo's *Notice of Hearing and Scheduling Order* dated February 19, 2021, hereby jointly submit *Whittaker and Whittaker Two Dot Ranch LLC Witness and Exhibit List* summarizing the witnesses that may testify at the hearing and the exhibits that may be offered as evidence by Whittaker at the hearing scheduled for the above-entitled matter on April 21-22, 2021. The scheduling order assigned numbers 151-200 to Whittaker and 351-400 for Whittaker Two Dot Ranch LLC. Where this is a joint submission, Whittaker will use the exhibit numbers of 151-200.

WITNESSES

The following witnesses may be called by Whittaker to testify at the hearing:

1. James Whittaker
2. Jordan Whittaker
3. Linda Price

4. Michael Whitson
5. Chad Zens
6. Larry Borstelman
7. Steve Penner
8. Merritt Udy
9. Bryce Contor
10. Roger Warner
11. Any of the applicant's witnesses or the other protestant's witnesses

EXHIBITS

The following exhibits may be introduced at the hearing:

151. Injury Analysis of Application for Transfer of Water Right – Point(s) of Diversion 84441
152. Field Observation of “East Springs” Water Source of Idaho Water Right 74-157, Lemhi County, Idaho
153. Field Observation of Lee Creek, a Ditch Known Locally as “Kauer Ditch,” and the “Est Springs” Water Source of Idaho Water Right 74-157, Lemhi County, Idaho
154. Engineer Map from 1954
155. Engineer Map Legend
156. *Whittaker v. Kauer*, 78 Idaho 94, 298 P.2d 745 (1956)
157. Whittaker v. Kauer Decree (District Court Judgment)
158. Letter from Cindy Yenter to Merritt Udy
159. Photographs of Whittaker Diversions (unable to provide as of the date of service because of ice/snow).

Whittaker also hereby provides notice that their counsel may use ArcMap, a GIS mapping program, and/or Google Earth for illustrative purposes to aid Whittaker's description of various features that are relevant to the issues to be addressed at the hearing.

Whittaker reserves the right to submit additional exhibits, such as those necessary for rebuttal of any witnesses or exhibits, and to use any official documents that are included within IDWR's files for the water rights identified at the hearing on this matter.

DATED this 7th day of April, 2021.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2021, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: JAMES WHITTAKER AND WHITTAKER TWO DOT RANCH LLC JOINT WITNESS AND EXHIBIT LIST

EMAIL TO: James Cefalo
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Idaho Falls, ID 83402-1718
James.Cefalo@idwr.idaho.gov

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☒ Email



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

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Rocky Mountain
ENVIRONMENTAL™
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Injury Analysis of Application for Transfer of Water Right - Point(s) of Diversion 84441

RMEA Project No: 20-0111

March 26, 2021

Environmental

- Phase I, II, & III ESAs
- Groundwater Monitoring
- Underground Storage Tanks
- Asbestos Inspections
- Site Inspections & Remediation
- Plans & Permitting

Water Rights

- Water Right Due Diligences
- Transfers & Applications
- Mitigation Plans

Hydrology

- Hydrologic Modeling
- Flow Measurements
- Well Design
- Groundwater Supply
- Aquifer Characterization
- Recharge Studies

Wetlands

- Wetland Delineations
- Environmental Planning
- Mitigation Plans

482 Constitution Way, Suite 303, Idaho Falls, Idaho, 83402. (208) 524-2353
www.rockymountainenvironmental.com

Exhibit 151

Introduction

This report is my response to a request to evaluate Application for Transfer 84441 (Application) in the context of analysis of injury to other rights. Stated purposes of the application are to "Add diversion point(s)" and "Transfer is pursuant to Idaho Code §42-221.O.8." That section of the Idaho Code reads:

"For an application to change only the legal description for the place of use or the point of diversion when there will be no physical change in the location of the place of use or the point of diversion and no unauthorized physical change in the location of the place of use or the point of diversion has occurred inconsistent with the decree, license or transfer defining the water right, the total filing fee shall be \$50.00 per water right."

To consider applicability of this representation in the Application, I have reviewed whether it is a "Clerical Error Correction." I considered this from the viewpoint of a plain-language reading of the statute, and under a broader interpretation. I conclude that the transfer is not a Clerical Error Correction under either viewpoint.

Even if the Application were a Clerical Error Correction, the plain language of the statute appears to apply to fees and not to injury analysis. Independently of whether the Application is or is not a Clerical Error Correction, I performed an injury analysis. My conclusion is that the Application as written would directly injure water supplies available water right 74-157 and cause or perpetuate other non-water-supply injuries.

Clerical Error Correction

Plain Language Review

I have reviewed the excerpts of the 1911 Reddington vs. Bohannon et. al. decree and the 1980s Lemhi Adjudication that were provided by Chris M. Bromley in a 2014 affidavit for the Snake River Basin Adjudication (SRBA) claims for the seven subject water rights described in the Application, and I have reviewed the corresponding SRBA partial decrees.

The 1911 decree is lacking in detail, but neither the Lemhi Adjudication nor the SRBA mention the Section 20 diversion. Therefore, I conclude that the Application does not comport with the plain-language meaning of the words *"no unauthorized change... inconsistent with the decree..."*

Broader Interpretation Review

A broader interpretation might suggest that the intent of this statute is for a transfer that corrected any mistake or error of claim, recommendation or decree in the SRBA.

Based upon the repeated instructions I received as a Senior Water Resource Agent making recommendations in the SRBA that our duty was to recommend the water right "as it existed as of November 1987," I have reviewed the Application to see if indeed its effect would be to correct the water rights to be consistent with their status at that time. I used the general methods and classes of data that I applied to the hundreds of claims reviews and SRBA recommendations I made while employed by IDWR, and the dozens of field examinations for SRBA claims that I later made as a subcontractor in the SRBA. My approach was to answer the question of how the rights existed as of November 1987, and compare that answer with the effect that would be made by Application.

I confined my review to the Point of Diversion (POD) element of the subject water rights, as that is the element proposed to be changed. I referred to my July 2020 reports Field Observations of "East Springs" Water Source of Idaho Water Right 74-157, Lemhi County, Idaho (East Springs Report) and Field Observation of Lee Creek, A Ditch Known Locally as Kauer Ditch, and the "West Springs" Water Source of Idaho Water Right 74-157 (West Springs Report), a 2014 affidavit from Timothy J. Luke of Idaho Department of Water Resources (IDWR) for the SRBA claims for the subject rights, an August 6, 2020 letter from Ms. Cindy Yenter of IDWR to the Watermaster for Water District 74Z, Google Earth and National Aerial Image Program (NAIP) images, United States Geological Survey (USGS) topographic maps, the 1956 *Whittaker v. Kauer* decision issued by the Idaho Supreme Court, and the documents I reviewed in my consideration of Clerical Error Correction. Figure 1 (attached) maps the locations and features discussed, using names consistent with my analysis outlined below.

1911 Decree

The excerpts of the 1911 decree from Bromley's affidavit contain scant information regarding PODs. The most explicit information is the description that the right now identified as 74-367 *"shall extend only to the quantity of water that may be found flowing in said Left Fork below the point of diversion of the defendant, Grant Bohannon, at the place where said diversion is made at the time of this decree, located in the SE1/4 of the NE1/4 of Section 31 of said Township and Range...."* I interpret this to describe Bohannon's POD, which only indicates that 74-367's POD must have been downstream (north). Bohannon's right is identified as 74-369, now owned by the Whittakers.

1954 Engineer's Map

The 1954 engineer's map that I used in the July 2020 reports clearly shows the location of the Kauer Ditch at its current location and identifies its current physical POD as *"Head of the Kauer Ditch."* It also documents structures that allow water from the *"Floyd J. Whittaker Ditch"* to convey West Springs water across the Left Fork, and to

allow a ditch with no explicit name to carry water across the Left Fork to lands identified as "*Formerly the Charley Bohannon Ranch.*"

Whittaker v. Kauer

The *Whittaker v. Kauer* decision issued in 1956 provides a clear description of the operation of the Kauer ditch and its relationship to the Whittakers' water rights and the rights conveyed through the Kauer ditch. It states in part:

"The trial court found that in the year 1932, respondents entered into an oral contract with appellants' predecessors (and other interested parties), to whom water had been decreed by the July 1, 1912 decree, whereby the point of diversion of waters of the Left Fork of Lee Creek, decreed to and used upon lands, including the lands now occupied by appellants, situate northerly and below all of respondents' lands, was changed from a point situate on the main channel of Lee Creek to a point situate on the Left Fork thereof near the Southwest corner of Section 31, Township 16 North, Range 25 E.B.M., which point of diversion is situate about one and one-fourth miles southwesterly and above the West Springs; and whereby, in consideration of a grant by John Whittaker, father of respondent Floyd Whittaker, of a right of way for a ditch over certain of the John Whittaker lands (over Lots 4 and 3 and SE 1/4 of the NE 1/4, Sec. 31, Twp. 16 N., R. 25 E.B.M.) through which to convey from such point of diversion on the Left Fork, to the Right Fork of Lee Creek the said decreed waters. The trial court found that in the year 1932, respondents entered into an oral contract with appellants' predecessors (and other interested parties), to whom water had been decreed by the July 1, 1912 decree, whereby the point of diversion of waters of the Left Fork of Lee Creek, decreed to and used upon lands, including the lands now occupied by appellants, situate northerly and below all of respondents' lands, was changed from a point situate on the main channel of Lee Creek to a point situate on the Left Fork thereof near the Southwest corner of Section 31, Township 16 North, Range 25 E.B.M., which point of diversion is situate about one and one-fourth miles southwesterly and above the West Springs; and whereby, in consideration of a grant by John Whittaker, father of respondent Floyd Whittaker, of a right of way for a ditch over certain of the John Whittaker lands (over Lots 4 and 3 and SE 1/4 of the NE 1/4, Sec. 31, Twp. 16 N., R. 25 E.B.M.) through which to convey from such point of diversion on the Left Fork, to the Right Fork of Lee Creek the said decreed waters. The other parties, including appellants' predecessors, permitted respondents to remove a flume which had been used continuously since some time prior to the entry of the July 1, 1912 decree to transmit the waters of the West Springs across the Left Fork at a point situate in the described quarter section where the springs are situate, and to substitute in place of said flume an

earthen dam where the flume theretofore had been, thereby to capture all waters found flowing in the creek at that place." (emphasis in original)

Whittaker v. Kauer confirms that from 1932 through at least 1956, a dam prevented downstream movement of water in the Left Fork beyond the West Springs Ditch, and that Left Fork water instead bypassed the West Springs location via the Kauer Ditch.

Timothy J. Luke Affidavit

The affidavit of Luke includes his determination that Watermaster and IDWR *"references to Bruce McCollum were intended to refer to Bruce McConnell."* Luke presents a review of Lee Creek PODs that had been prepared in 2000 by Jane Tallman. It explicitly states:

"There are a total of four diversions on Lee and Stroud Creeks. One of the diversions is actually located on Everson Creek while the other three are actually on Stroud Creek, both tributary to Lee Creek."

The name "Stroud Creek" is from the US Geological Survey topographic map, identified as "Left Fork" in local parlance and some documents. Tallman's review includes a map consistent with the description, mapping the Smith/Tomchak diversion as the most upstream, the McCollum and C. Whittaker diversions very near the head of the Kauer Ditch, and the J. Whittaker diversion at a location on Stroud Creek (Left Fork) downstream of the Kauer Ditch and upstream of West Springs and East Springs. Consistent with Tallman's description of *"four"* diversions, there are no other diversions mapped besides these four. There are no diversions mapped on Lee Creek downstream of the confluence of Stroud Creek (or Left Fork) and Lee Creek proper (or Right Fork in local parlance).

The excerpt provided by Luke includes three hand-written field data sheets and accompanying photos. The data sheet titled "Bruce McCollum ditch (illegible)" bears initials "T. Luke" near the date, and site tag number "A0011439." It also includes a GPS filename but unfortunately does not record the geographic coordinates.

Contor Reconnaissance 2020

Figure 2 provides a GPS track of my reconnaissance in July 2020. Some of this was with Jordan Whittaker in his trail machine, some was on foot with Whittaker and some was on foot alone. The structure I observed at the head of the Kauer Ditch bears a site tag with the same number as the field data sheet for the McCollum diversion, and to the extent that I can see the poorly-copied photos, it was the same location. I summarized:

"From the 1954 engineer's map, the SRBA and 2019 aerial images and the condition of control and measurement structures, I conclude that the use of the

Kauer Ditch was longstanding (multiple decades of time). From the aerial images and IDWR site tag on the diversion structure, I conclude that its existence would have been readily apparent during a desktop investigation. From my observations of its current condition I conclude that it was in use up to very recently. From cross section and slope data I calculate that its capacity is most probably 15 cfs...."

I also confirmed that the current physical structure where the ditch from the West Springs crosses the channel of Stroud Creek (Left Fork) generally matches the 1954 engineer's drawing. Now that I have reviewed *Whittaker v. Kauer*, I conclude that the July 2020 configuration also is consistent with that decree. This extends to the condition that in 1956 and in July 2020 there was no physical channel, structure or direct means for water to proceed down the Stroud Creek channel beyond West Springs to Lee Creek proper (Right Fork). Instead, in July 2020 I observed water diverted at a POD not mentioned in the McConnell's SRBA decrees or the Application, conveyed beyond West Springs, and allowed to flow overland until it reentered the remnants of the channel of Stroud Creek (Left Fork) at a location where no authorized Point of Injection appears in the IDWR data.

IDWR Instructions to Watermaster

Cindy Yenter's letter to the Watermaster of August 6, 2020 states *"It appears that water from Stroud Creek may flow into Lee Creek below McConnell's authorized point of diversion."* Though I did not go that far downstream in my reconnaissance, I have no reason to dispute Yenter's conclusion or the administrative action taken based on it.

Review of Google Earth Image

Figure 3 is an excerpt from a June 30, 2020 Google Earth image. The arrows show three locations where channels cross a small east-west road. This is at the location marked "D" in Figures 1 and 2. In Figure 3, D1 is the crossing of what is either a ditch remnant or the eastern-most natural channel of Stroud Creek (Left Fork). D2 marks another potential natural channel of Stroud Creek (Left Fork) and D3 marks the crossing of Lee Creek proper (Right Fork). Though perhaps difficult to see in Figure 3, with the image opened on a large computer monitor directly within Google Earth, it is clear to me that in June 30, 2020 there was no flow in either the D1 or D2 channel. Because of a bridge or culvert at D3, I was not able to determine directly but any flow at that point would have to have been in Lee Creek proper.

Synthesis of Data

Consistencies in these data sources and observations include at least the following:

- As early as 1911 there was recognition that at least right 74-367 was subordinate to upstream right(s).
- From 1932 through July 2020 and presumably through the present there has not been a physical channel or means for flow in Stroud Creek (Left Fork) to proceed downstream beyond the West Springs Ditch except to be diverted and conveyed in a private ditch.
- The current condition and location of the Kauer Ditch and its diversion are consistent with diversion from Stroud Creek, injection into Lee Creek, and rediversion at point(s) downstream.
- My calculated capacity of the Kauer Ditch is within 0.2 cfs (1.3 percent) of the sum of McConnell's diversion rates from the Application. This close agreement likely is attributable to luck, but I did not know the sum of McConnell's rights when I performed the measurements and calculations.
- Yenter's observation that the currently-authorized McConnell diversion (Section 30 Diversion) cannot access flows coming down the Stroud Creek (Left Fork) channel is consistent with the diversion/rediversion paradigm, which would have placed the bulk of the flows in Lee Creek (Right Fork).
- The absence of flow in D1 and D2 in Figure 3 is consistent with a diversion/rediversion paradigm and consistent with an expectation that in 2014 and until cessation of use of the Kauer Ditch, McConnell's would have been able to access the waters that had been injected into Lee Creek proper from the Kauer Ditch at their upper (Section 30) diversion.

Based upon these data and using the methods, paradigms and instructions I relied upon while making SRBA recommendations, I would have recommended the following PODs for the seven McConnell rights that are subject to the Application. This description uses the nomenclature used in Figure 1.

- Point of Diversion: NW NW Section 6 Township 15N Range 25E
 - Point of Diversion Remark: Heading of the Kauer Ditch
- Point of Injection: NE NW Section 31 Township 16N Range 25E
 - Point of Injection Remark: Injection into Lee Creek known locally as Right Fork
- Point of Rediversion: NE NE Section 30 Township 16N Range 25E
- Point of Rediversion: SW SE Section 20 Township 16N Range 25E

This description assumes documentation that the accomplished transfer adding the Section 20 Point of Rediversion occurred prior to 1987. It also assumes that delivery conditions and historical practices related to priority delivery of 74-157 and the rights that are now McConnell's would be appropriately incorporated. I do not offer an opinion here of what a correct representation would be but I acknowledge the existence of the 1956 decree as well as the current controversy.

Except for field reconnaissance in the summer of 2020 and the 1954 engineer's map, all these data were available to the claimants and IDWR at the time of processing the late SRBA claims for these rights. In fact, I obtained most of these data from the claims files. Neither the 1954 map nor the field reconnaissance contradict the other data and neither are necessary to draw the conclusions outlined above.

Conclusion

The Application omits both the Point of Diversion and Point of Injection. It calls the Section 30 and Section 20 diversions Points of Diversion instead of Points of Rediversion. As these failures preclude it from representing the rights as they existed in November 1987, I conclude that the Application is not a Clerical Error Correction even under a broader interpretation of what that might mean.

Injury Analysis

Independently from the question of whether the Application is a Clerical Error Correction, I analyzed whether the Application would cause injury. My injury analysis is confined to analysis of flows, physical access to water, and the effects of the physical configuration and relationships upon other right holders and property owners. In that context I considered four concepts of injury. The first two speak directly to the decreed elements of water rights and are opposite sides of the same coin.

- Does the Application improve McConnell's access to water supplies?
- Does the Application reduce the supply available to other water user(s)?
- Does the Application interfere with the enjoyment of other water right(s) even if it does not reduce available supply?
- Does the Application impose negative effects on property owner(s) and/or the public, independently of water-rights questions?

McConnell's Access to Water Supplies

IDWR's August 6, 2020 letter to the Watermaster explains that the Section 20 diversion currently is not authorized. It also explains that water from Stroud Creek (Left Fork) bypasses the authorized Section 30 diversion. Clearly, authorizing the Section 20

diversion would give McConnell access to additional supplies from any junior right that it would then be able to call. By the conservation of mass, that would necessarily reduce flows for the newly-vulnerable junior.

Ironically, McConnell's Section 30 diversion suffers from lack of supply due to the recent curtailment of diversions to the Kauer Ditch. Though this was not caused by the Application, neither does the Application address this deficiency despite its implicit purpose to serve as a correction.

Supplies to Other Water Users

IDWR's letter also identifies that the lack of authorization to divert from the Section 20 diversion and lack of ability to access Stroud Creek (Left Fork) from the authorized Section 30 diversion meant that the Watermaster was to *"resume delivery of water right 74-157 from the West Spring."* Clearly, if the Section 20 diversion were to be authorized, delivery to 74-157 could again be curtailed, working immediate injury to its owner.

Interference with Other Water Rights

The failure to properly include the Kauer Ditch diversion in the SRBA claims resulted in a recent curtailment of diversion at that point, disrupting the long history of water-delivery patterns that were discussed earlier. Because of the physical configuration of the system documented since at least 1932, the McConnell rights now must be diverted through Whittakers' private headgate, conveyed beyond West Springs in Whittakers' private ditch, and injected into Stroud Creek (Left Fork) below West Springs. Conceptually, the requirement that another user convey McConnell's rights diminishes that other user's enjoyment. Though I have not quantified the reduction in enjoyment, the West Springs Report documents damage to Whittakers' infrastructure.

While it is true that an earlier failure (in filing and recommendation of SRBA claims) caused this harm, it is also true that the Application fails to address it and fails to seek authorization for the use of another POD and Point of Injection implicitly required for the water-delivery proposed by the Application.

Negative Effects Independent of Water-rights Questions

The West Ditch Report documents damage to wetlands and riparian areas in locations immediately downstream of Whittakers' diversion where the private ditch was unable to contain the increased flows resulting from the imposition of also conveying McConnell's rights.

When McConnell's flows are discharged from Whittakers' ditch, they first enter the remnants of an old ditch identified in the West Springs Report as the "Bohan" ditch,

which should have been called the "Bohannon" ditch. That ditch too is inadequate to contain the flows and it and the surrounding rangeland area also are being eroded and damaged by the new flow regime.

These negative effects also were not directly caused by the Application, but neither are they addressed by it. Instead, they would be perpetuated by it.

Conclusion

The Application would increase McConnell's enjoyment by giving administrative access to waters of West Springs which historically were not delivered to Lee Creek proper (Right Fork). Ironically, it would fail to reverse a reduction in McConnell's enjoyment at the currently-authorized Point of Diversion that resulted from the SRBA filing that the Application purports to correct.

It would directly injure water-right 74-157 by making it subject to a delivery call that historically it was isolated from.

The Application would indirectly injure Whittakers by requiring them to divert McConnell's rights through an unauthorized POD, convey them in their own private ditch and inject them into Stroud Creek without an authorized Point of Injection. Inexplicably, the Application does not seek authorization for this diversion, delivery and injection necessary to the operation of the conditions sought.

The Application would fail to address a deficiency in the SRBA decrees that is damaging wetlands, riparian areas and rangeland, despite its implicit purpose of correcting the SRBA decrees.

Summary

I conclude that the Application is not a Clerical Error Correction by a plain-language interpretation, because its effect would be to create additional enjoyment not previously decreed, licensed or otherwise authorized. It is not a Clerical Error Correction by a broad interpretation because it would not conform the water rights to the ideal of the SRBA, which is a description of the water rights as they existed as of November 1987.

Regardless of whether the Application is a Clerical Error Correction, I conclude that the Application fails an injury analysis by several metrics:

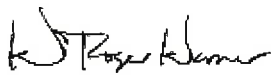
- It increases McConnell's enjoyment by the direct and immediate diminishment of enjoyment under 74-157;
- It implicitly imposes upon Whittakers the duty of diverting, conveying, and injecting McConnell's water, without seeking authorization for either the POD or Point of Injection;

- It fails to correct harm to adjacent wetlands, riparian areas and rangeland caused by a failure in the SRBA decrees it purports to correct.

Signatures



Bryce A. Contor, Senior Hydrologist



Reviewed by W. Roger Warner, Senior Hydrologist, President

Attachments

Figures (filename Figures Injury Analysis.pdf)

Figure 1. McConnell Transfer Overview Map

Figure 2. 2020 Reconnaissance

Figure 3. Google Earth Imagery June 30th, 2014

Affidavit of Chris M. Bromley (filename Affidavit Chris Bromley.PDF)

Field Observation of "East Springs" Water Source of Idaho Water Right 74-157, Lemhi County, Idaho (filename East Springs Report w Attach 20-0111.pdf)

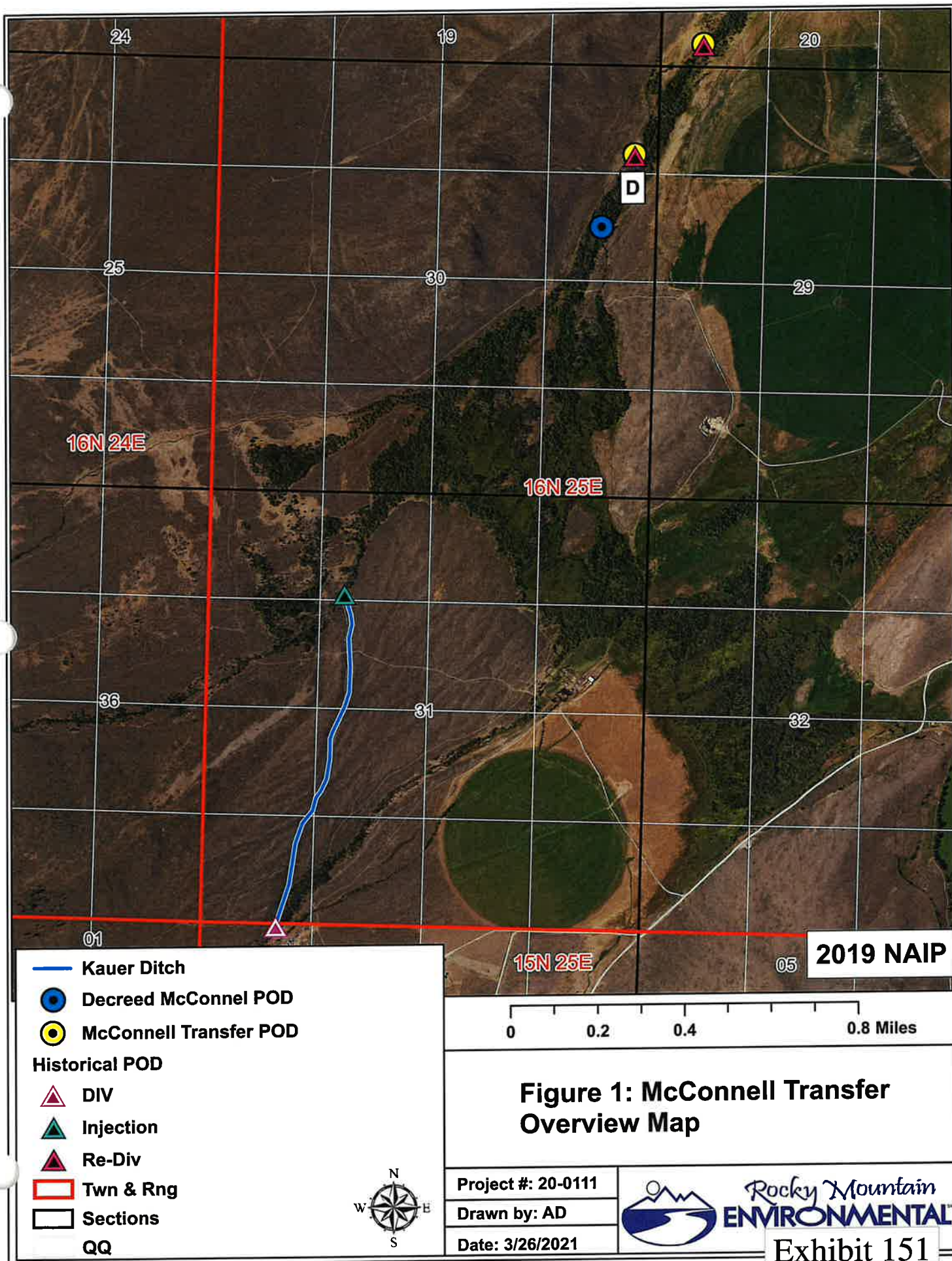
Field Observation of Lee Creek, a Ditch Known Locally as "Kauer Ditch," and the "West Springs" Water Source of Idaho Water Right 74-157, Lemhi County, Idaho (filename West Springs Report w Attach 20-0111.pdf)

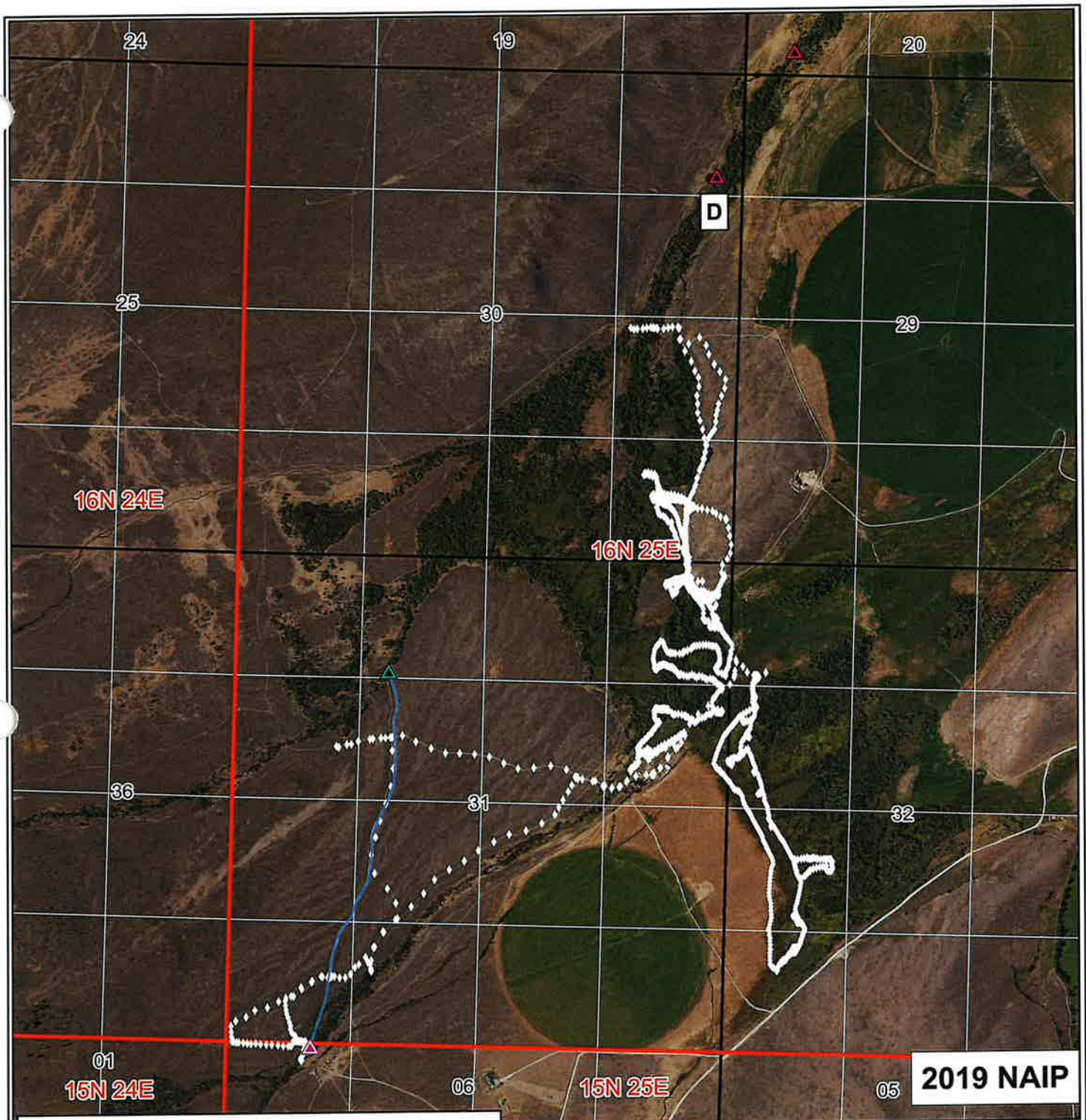
Affidavit of Timothy J. Luke (filename Affidavit Tim Luke.PDF)

Letter August 6, 2020 Re: WATERMASTER INSTRUCTIONS REGARDING MC CONNELL UNAUTHORIZED DIVERSION AND WHITTAKER RESUMPTION

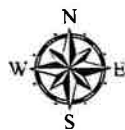
OF DELIVERY, LEE CREEK (filename Letter to Watermaster 2020-08-06.pdf)

Whittaker v. Kauer, 78 Idaho 94 (filename Whittaker v Kauer 78 Idaho 94.pdf)





- ◇ 2020 Recon GPS
- Kauer Ditch
- Historical POD**
- ▲ DIV
- ▲ Injection
- ▲ Re-Div
- Twn & Rng
- Sections
- QQ



0 0.2 0.4 0.8 Miles

Figure 2: 2020 Reconnaissance

Project #: 20-0111

Drawn by: AD

Date: 3/26/2021



Rocky Mountain
ENVIRONMENTAL

Exhibit 151



Figure 3: Google Earth Imagery June 30th, 2014

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Candice M. McHugh, ISB # 5908
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APR 28 2014
DEPARTMENT OF
WATER RESOURCES

Attorneys for Bruce and Glenda McConnell

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase Nos. 74-361, -362, -363, -364, -
365, -367, -368

AFFIDAVIT OF CHRIS M.
BROMLEY

STATE OF IDAHO)
) ss.
County of Ada)

CHRIS M. BROMLEY, being first duly sworn upon oath, deposes and says:

1. I am an attorney representing Bruce and Glenda McConnell ("McConnells"). I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as Exhibit A is true and correct copy of the original decree, *Reddington et al. v. Bohannon et al.*, Sixth Jud. Dist., Lemhi County (July 1, 1912), from which McConnells predecessors-in-interest originally derived their interest in water right nos. 74-361, -362, -363, -364, -365, -366, -367, and -368.

Affidavit of Chris M. Bromley

3. Attached hereto as Exhibit B are true and correct copies of the claims filed by McConnells' predecessor-in-interest in the Lemhi Adjudication for water right nos. 74-361, -362, -363, -364, -365, -366, -367, and -368.

4. Attached hereto as Exhibit C are true and correct copies of the pertinent pages from the Lemhi Adjudication "Green Book" for water right nos. 74-361, -362, -363, -364, -365, -366 (disallowed), -367, and -368.

5. Attached hereto as Exhibit D are true and correct copies of the pertinent pages, dated May 4, 1983, from IDWR labeled "Water Rights in the Lemhi River Drainage Basin" for water right nos. 74-361, -362, -363, -364, -365, -366 (disallowed), -367, and -368.

6. Attached hereto as Exhibit E is a true and correct copy of the *Corrected Order Adopting Proposed Memorandum Decision and Order* (March 22, 1991); *Order Adopting Proposed Memorandum Decision and Order* (January 16, 1991); and *Proposed Memorandum Decision and Order* (November 19, 1990) from the IDWR water right records for permit no. 74-7274, in which McConnells' predecessor-in-interest, who was recognized as holding valid senior-priority irrigation water rights, protested a stockwater permit from Lee Creek.

7. Attached hereto as Exhibit F is a true and correct copy of the Water District 74-Z 2014 annual meeting minutes, showing assessment to McConnells for delivery of water right nos. 74-361, -362, -363, -364, -365, -366, -367, and -368 during the 2014 irrigation season.

8. All documents in these subcases have been served upon the Court's expedited service list.

9. In addition to serving the expedited service list, counsel has served all documents in these subcases to users on Lee Creek, identified by IDWR's water right database as follows:

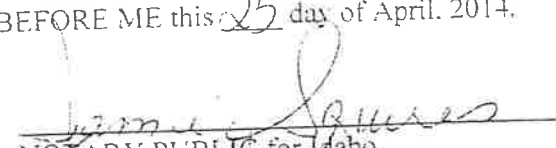
Basin	Sequence	Basis	Priority Date	Div. Rate (cfs)	Water Use	Owner
74	10554	Decreed	6 1 1876	0.02	STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH RUGGLES, AL: RUGGLES, JAMIN K
74	1831	Decreed	6 28 1912	0.24	IRRIGATION	RUGGLES, AL: RUGGLES, JAMIN K
74	949	Decreed	12 5 1918	0.04	IRRIGATION, STOCKWATER	UNITED STATES OF AMERICA ACTING THROUGH
74	14451	Decreed	6 28 1934	0.02	STOCKWATER	ANDERSON, BOBBIE E: ANDERSON, DORIS
74	2261	Decreed	12 21 1941	2	IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE	ANDERSON, BOBBIE E: ANDERSON, DORIS
74	2339	Decreed	12 21 1941	2	IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE	PETERSON, EDDIE R
74	7274	Permit	12 8 1989	0.07	STOCKWATER	PETERSON, HARVEY E
74	15200	License	5 8 1990	0.26	IRRIGATION	PETERSON, JANETTE S: PETERSON, KENNETH J
74	15201	License	5 8 1990	0.34	IRRIGATION	

Further your Affiant sayeth naught.

DATED this 25 day of April, 2014.


CHRIS M. BROMLEY
Attorneys for Bruce and Glenda McConnell

SUBSCRIBED AND SWORN TO BEFORE ME this 25 day of April, 2014.


NOTARY PUBLIC for Idaho

Residing at: Star

My Commission Expires: 9/20/15

(seal)

Affidavit of Chris M. Bromley

EXHIBIT A

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI.

John B. Reddington, Cora Redd-
ington and Julia Reddington,
Plaintiffs,

vs

Grant Bohannon, Gus Mulkey
and James R. Schoonover,
Defendants.

D E C R E E

This cause having come on to be heard on the 7th day of November, 1911,
before the District Court of the Sixth Judicial District of the State of Idaho,
in and for the County of Lemhi, sitting without a jury, F. J. Cowen, Esq., appear-
ing as counsel for the plaintiffs, E. W. Whitcomb, Esq., appearing as counsel for
the defendants, Grant Bohannon and James R. Schoonover, and Messrs. Holden & Holden
and A. W. Holden, appearing as counsel for the defendant Augusta R. Mulkey; and
the Court having heard the testimony; and the parties having filed their stipu-
lations herein; and the Court being fully advised in the premises; and having ordered
judgment to be entered in accordance with the said findings and stipulations, now
makes and files its judgment and decree in accordance therewith, and orders, adjudges
and decrees as follows:

I

74 0361

It is ordered, adjudged and decreed that the plaintiff, John B. Redding-
ton, is entitled to the use of 60 inches, or 1-1/5 cubic feet per second of the
flow of the waters of Lee Creek, in the County of Lemhi, State of Idaho, under date
of May 12th, 1883, and is also entitled to the further use of 20 inches, or 1/10
cubic feet per second of the flow of the waters of said stream, under date of May
1st, 1906, for the irrigation of the E 1/2 of the NE 1/4, the SW 1/4 of the NE 1/4, and the SE 1/4
of the NW 1/4 of Section 17, Township 16 North of Range 25, East of the Boise Meridian;
and the S 1/2 of the SE 1/4 of Section 8, and the NE 1/4 of the NW 1/4, and the NW 1/4 of the NE 1/4
of Section 17, Township 16 North, Range 25 East of the Boise Meridian, to which
lands the said water rights shall be appurtenant.

74 0362

APR 21 1996

SCANNED

APR 10 2007

74 0363

II

It is further ordered, adjudged and decreed that the plaintiff, Cora Reddington, is entitled to the use of 50 inches, or 1 cubic foot per second of the waters of said Lee Creek, under date of May 12, 1883, and is further entitled to 65 inches, or $1\frac{3}{10}$ cubic feet per second of the flow of the waters of said stream, under date of June 1st, 1900, for the irrigation of the $W\frac{1}{2}$ of the $NW\frac{1}{4}$, and the $W\frac{1}{2}$ of the $SW\frac{1}{4}$ of Section 9, Township 16 North, Range 25 East of the Boise Meridian, to which lands the said water rights shall be appurtenant.

74 0365

III

It is further ordered, adjudged and decreed that the plaintiff, Julia E. Reddington, is entitled to the use of 90 inches or $1\frac{4}{5}$ cubic feet per second of the flow of the waters of said Lee Creek, under date of May 12th, 1883, and is further entitled to the use of 70 inches, or $1\frac{2}{5}$ cubic feet per second of the flow of said stream, under date of June 1st, 1900, for the irrigation of the $W\frac{1}{2}$ of the $NE\frac{1}{4}$, and the $W\frac{1}{2}$ of the $SE\frac{1}{4}$, the $E\frac{1}{2}$ of the $SW\frac{1}{4}$, and the $SE\frac{1}{4}$ of the $NW\frac{1}{4}$ of Section 9, Township 16, North, Range 25 East of the Boise Meridian, to which lands the said water rights shall be appurtenant.

IV

74 0367

It is further ordered, adjudged and decreed that the defendant, James R. Schoonover, is entitled to the use of one half, but not exceeding 30 inches, or $\frac{3}{5}$ cubic feet per second of the flow of water of the Left Fork of said Lee Creek, under date of May 12, 1883, but such right shall extend only to the quantity of water that may be found flowing in said Left Fork below the diversion point of the defendant, Grant Bohannon, at the place where said diversion is made at the time of this decree, located in the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 31 of said Township and Range, and said right shall apply only after the appropriations of the defendants, A. R. Mulkey and Grant Bohannon, hereinafter mentioned, shall first be supplied, and shall apply to all of the waters arising in said stream below the said diversion; and the defendant, James R. Schoonover, is further entitled to the use of 290 inches, or $5\frac{4}{5}$ cubic feet per second of the flow of the waters of the Right Fork of said Lee Creek, under date of November 5th, 1909; all for the purpose of

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irrigating the $E\frac{1}{2}$ and the $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 17, the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 18, the $NE\frac{1}{4}$ of the $NE\frac{1}{4}$ of Section 19, the $W\frac{1}{2}$ of the $NW\frac{1}{4}$ and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 20, Township 16 North, Range 25, East of the Boise Meridian, to which lands the said water rights shall be appurtenant.

V

74 0369

It is ordered, adjudged and decreed that the defendant, Grant Bohannon, is entitled to the use of 120 inches, or $2\frac{2}{5}$ cubic feet per second of the flow of the waters of the Left Fork of Lee Creek, under date of May 12th, 1883, for the irrigation of the $E\frac{1}{2}$ of the $SW\frac{1}{4}$ of Section 29, and the $N\frac{1}{2}$ of the $NW\frac{1}{4}$ of Section 32, and the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$, the $S\frac{1}{2}$ of the $NW\frac{1}{4}$, and the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 29, all in Township 16 North, Range 25 East of the Boise Meridian, to which lands the said water right shall be appurtenant.

VI

74 0370 It is ordered, adjudged and decreed that the defendant, Augusta R. Mulkey, is entitled to the use of 200 inches, or $\frac{1}{4}$ cubic feet per second of the flow of the waters of the Left Fork of Lee Creek, under date of May 12th, 1883, for the irrigation of the $SE\frac{1}{4}$ of the $NW\frac{1}{4}$, the $NW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 32; the $SE\frac{1}{4}$ of the $NE\frac{1}{4}$ and the $NE\frac{1}{4}$ of the $SE\frac{1}{4}$ of Section 31, and the $SW\frac{1}{4}$ of the $SW\frac{1}{4}$ of Section 32, the $SE\frac{1}{4}$ of the $SE\frac{1}{4}$, and the $W\frac{1}{2}$ of the $SE\frac{1}{4}$ of Section 31, all in Township 16 North, Range 25, East of the Boise Meridian, to which lands the said water right shall be appurtenant.

VII

~~74 0371~~ It is further ordered, adjudged and decreed that when the flow of Lee Creek shall fall below the amount of the said 320 inches herein decreed to the said Augusta R. Mulkey and the said Grant Bohannon, that then and in such case the said August R. Mulkey and Grant Bohannon shall pro-rate the waters of said Left Fork of Lee Creek flowing therein above their points of diversion, according to the respective amounts of water herein decreed to them; and it is further ordered that all waste water and seepage water arising or flowing from said lands of the said Augusta R. Mulkey and the said Grant Bohannon, shall be returned to said Left Fork of Lee Creek below their respective tracts of land; and it is

JUL 31 1996

further ordered that the said August R. Mulkey and the said Grant Bohannon shall not be obliged to pro-rate with any other parties to this action, whose right of appropriation is of equal priority therewith, in case the flow of the waters of the said Left Fork shall be of insufficient quantity to supply all rights, under date of May 12th, 1883.

VIII

It is further ordered adjudged and decreed that each of the parties hereto, shall be restrained and enjoined from interfering with the rights of any other party to this action, as the same are herein adjudicated, and that each of the parties hereto, shall pay his own costs and expenses of this action.

Done in open court this 23th day of June, 1912.

Filed July 1st, 1912.

J. M. Stevens, Judge.

J. L. Kirtley, Jr., Clerk.

State of Idaho)
County of Lemhi)

I, J. L. Kirtley, Jr., Clerk of the District Court of the Sixth Judicial District of Idaho in and for the County of Lemhi, do hereby certify that the above and foregoing is a full, true and correct copy of the Decree in the case of John B. Reddington et al vs Grant Bohannon et al, as the same appears of record in Judgment Book B pages 74 and 75, Records of Lemhi County, Idaho.

In Witness Whereof, I have set my hand and affixed my official seal this 1st day of July 1912.

(SEAL)

/s/ J. L. Kirtley, Jr.
Clerk of the District Court.

EXHIBIT B

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

NOTICE OF CLAIM
TO A
WATER RIGHT

IDENTY. NO. 74-0361
MAP NO. 16N-25E-B & C

Notice is hereby given that PACLEY A. ARAYE and/or Robert T. Hemming
claim a right to the diversion

of the water of the surface or groundwater of or tributary to the LEMHI River;

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) May 12, 1983

(2) Name of stream, lake, spring, etc., or groundwater: Lee Creek, tributary to
Local River, Div. 10-2

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity 1.2 Use Irrigation Period of Use From April 1 To November 1
KXXXXXX
Quantity 1.2 Use Domestic, stock, farm, etc. Period of Use From To
Quantity 1.2 Use Domestic, stock, farm, etc. Period of Use From To
KXXXXXX

(4) TOTAL QUANTITY CLAIMED

(5) A) Point of Diversion: Give location of point where water is diverted from its source. SE NE
Sec. 70 Twp. 16N Rge. 25E B.M.; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and ditch, etc.)
Give area and caption; be as specific as possible. Ditch is approximately
3 miles long.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE4	NW4	SW4	SE4	TOTAL
16N	25E	8				34.035.3	69.3
16N	25E	17	9.4	26.9	40.	27.2	143.5
16N	25E	17	9.8				
This land is also irrigated by Right 74-0361.							

Total No. of acres. 212.6

(7) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(8) Effluent, sewage waste, or return water from this use is discharged into:

(9) If you are claiming water as a member of an organization, list name of organization:

(10) Remarks:

(11) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use.
☒ B) Right decreed by court, cite title of case. John B. Reddington et al.
vs. Grant Bohannon et al. (John B. Reddington)
☐ C) Right based on application, license, or claim filed with the Idaho Department of Water Administration.

It is known that the undersigned, after being duly sworn on each deposition and say(s) that all statements included herein are true and accurate to the best of this, her, their knowledge.

March 2, 1972
(Date)

State of Idaho

County of Lemhi

On this 2nd day of March in the year 1972, before me,

a notary public, personally appeared RAY ROBERT T. Hemming

known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or

Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI
 NOTICE OF CLAIM
 TO A
 WATER RIGHT
 IDENT. NO. 74-0362
 MAP NO. 16N-25E-B & C

Notice is hereby given that Barley A. Arave and/or Robert T. Hemming
 (Name of Claimant)

Box 1, Lecha, Idaho 83465, claims a right to the diversion
 (Mailing Address)

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) May 1, 1906

(2) Name of source of water: (Name of stream, lake, spring, etc., or groundwater) Lee Creek, tributary to
Lecha River, Div. 12-2.

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

QUANTITY 111 Use Irrigation Period of Use From April 1 To November 1
 (MAY, DAY) (MAY, DAY)
 (Both Dates Inclusive)
 QUANTITY 111 Use Irrigation Period of Use From April 1 To November 1
 (MAY, DAY) (MAY, DAY)
 (Both Dates Inclusive)
 QUANTITY 111 Use Irrigation Period of Use From April 1 To November 1
 (MAY, DAY) (MAY, DAY)
 (Both Dates Inclusive)

(4) TOTAL QUANTITY CLAIMED 111

(5) A) Point of Diversion: Give location of point where water is diverted from its source SE 1/4 NE 1/4
 Sec. 30 Twp. 15 Rge. 18E, NMC; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
 Give size and capacities; be as specific as possible. Handgate and ditch. Ditch is approximately
2 miles long.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	TOTAL
16N	25E	8				34.35	59.3
16N	25E	17	9.4	26.9	40.		113.3

This land is also irrigated by Right 74-0361.

Total No. of acres 212.6

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(7) Effluent, sewage waste, or return water from this use is discharged into

(8) If you are claiming water as a member of an organization, list name of organization.

(9) Remarks

(10) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use.

☒ B) Right decreed by court, cite title of case John B. Reddington et al.
vs. Grant Robinson et al. (John B. Reddington)

☐ C) Right based on application, license, or claim filed with the Idaho Department of Water Administration

Be it known that the undersigned, after being duly sworn, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

March 2, 1972
 (Date)

Individual
Robert T. Hemming
 (Signature of Claimant)

Organization

(Signature of Spouse)

State of Idaho

County of Lemhi

On this 2nd day of March, in the year 1972, before me,

a notary public, personally appeared Robert T. Hemming, in the year 1972, before me,
 known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they)
 executed the same. Lyle Elmer Taylor
 corporation, partnership or Salmon, Idaho

Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF IDAHO, IN AND FOR THE COUNTY OF LEMHI
 NOTICE OF CLAIM
 TO A
 WATER RIGHT

IDENT. NO. 74-0363
 MAP NO. 16N-25E-3

Notice is hereby given that Parley A. Arave and/or Robert T. Hemming
 Box 1, Lemhi, Idaho 83465

claims a right to the diversion
 and beneficial use of the surface or groundwater, of or tributary to the LEMHI RIVER;

The extent and nature of said claim is as follows:
 (1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) May 12, 1893

(2) To what source of water (Name of stream, lake, spring, etc., or groundwater) Los Creek, tributary to
Lemhi River, Div. 10-2.

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity 1.0 ~~XXXX~~ Irrigation Period of Use From April 1 To November 1
 (Mo., Day) (Mo., Day)
 (Both Dates Inclusive)
 Quantity 1.0 ~~XXXX~~ Irrigation Period of Use From April 1 To November 1
 (Mo., Day) (Mo., Day)
 (Both Dates Inclusive)
 Quantity 1.0 ~~XXXX~~ Irrigation Period of Use From April 1 To November 1
 (Mo., Day) (Mo., Day)
 (Both Dates Inclusive)
 (4) 1.0 TOTAL QUANTITY CLAIMED

(5) A) Point of Diversion: Give location of point where water is diverted from its source. SE NE
 Sec. 30 Twp. 10 Rge. 25 N.M.; additional points:

B) Describe means of diversion of water: (Dump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
 Give size and capacities, be as specific as possible. Headgate and ditch. Ditch is approximately
5 miles long.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for
 irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTAL
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	25E	9							3.1			4.7	8.3						46.1
			Belongs to another party but claimant claims he irrigates this.																
			This land is also irrigated by right #74-0363.																

Total No. of acres 46.1

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(7) Effluent, sewage waste, or return water from this use is discharged into

(8) If you are claiming water as a member of an organization, list name of organization

(9) Remarks

(10) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use.

☒ B) Right decreed by court, cite title of case. John B. Reddington, et al. vs. Grant Bohannon, et al. (Cora Reddington)

☐ C) Right based on application, license, or claim filed with the Idaho Department of Water Administration.

No it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and correct to the best of (his, her, their) knowledge.

March 2, 1972
 (Date)

State of Idaho ss. Organization Seel

County of Lemhi On this 2nd day of March in the year 1972, before me,

a notary public, personally appeared Robert T. Hemming known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they) executed the same.

Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI
 NOTICE OF CLAIM
 TO A
 WATER RIGHT

IDENT. NO.

MAP NO.

74-0364

16N-25E-3

Notice is hereby given that Parley A. Arave and/or Robert T. Humming

(Name of Claimant)

Box 1, Lemhi, Idaho 84465, claims a right to the diversion
 (Mailing Address)
 and beneficial use of the surface or groundwater, or of tributary to the LEMHI River:

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) June 1, 1900

(2) Describe source of water: (Name of stream, lake, spring, etc., or groundwater) Lee Creek, tributary to
 Lemhi River, Div. 13-2.

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity	Use	Period of Use From	To
1.3	Irrigation	April 1	November 1
1.3	Irrigation	April 1	November 1
1.3	Irrigation	April 1	November 1

(4) TOTAL QUANTITY CLAIMED
1.3

(5) A) Point of Diversion: Give location of point where water is diverted from its source. SE NE
 Sec. 20 Twp. 16N Rge. 25E B.M.; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
 Give sizes and capacities; be as specific as possible. Headgate and ditch. Ditch is approximately
 3 miles long.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for
 irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE1/4	NW1/4	SW1/4	SE1/4	TOTAL
16N	25E	9					46.1
Belongs to another party but claimant claims he irrigates this.							
This land is also irrigated by Right #74-0364.							

Total No. of acres 46.1

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(7) Effluent, sewage waste, or return water from this use is discharged into

(8) If you are claiming water as a member of an organization, list name of organization

(9) Remarks

(10) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use.
☒ B) Right decreed by court, cite title of case John P. Reddington, et al.
 vs. Grant Bohannon, et al. (Cora Reddington)
☐ C) Right based on application, license, or claim filed with the Idaho Department of Water
 Administration.

Do it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are
 true and accurate to the best of (his, her, their) knowledge.

March 2, 1972

(Date)

Robert T. Humming
 (Signature)

(Signature of Appraiser)

Organization

State of Idaho

ss.

Organization

County of Lemhi

Seal

(Signature of Authorized Agent)

On this 2nd day of March

In the year 1972

before me,

a notary public, personally appeared

Robert T. Humming

known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they
 executed the same.

corporation, partnership or

Lytle Glen Layton
 Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

IN THE DISTRICT COURT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

NOTICE OF CLAIM
TO A
WATER RIGHT

IDENT. NO. 74-0366 MAP NO. 16N-25E-5

Noted is hereby given that Forley A. Arava and/or Robert T. Hemming (Name of Claimant)

Box 1, Lemhi, Idaho 24465 (Mailing Address) claims a right to the diversion

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) June 1, 1900

(2) Location of water: (Name of stream, lake, spring, etc. or point of diversion) Lee Creek, tributary to Lemhi River, Div. 10-2

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

XXXXX Irrigation Period of Use From April 1 To November 1
XXXXX Period of Use From To
XXXXX Period of Use From To

(4) TOTAL QUANTITY OF WATER

(5) At Point of Diversion, Give location of point where water is diverted from its source SE NE NW SW

(6) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
Ditch is approximately 5 miles long.

(7) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC	NW1/4	SW1/4	SE1/4	NW1/4	SW1/4	SE1/4	NW1/4	SW1/4	SE1/4	NW1/4	SW1/4	SE1/4	TOTAL
16N	25E	5													16.4
			XXXXX												

Total No. of acres 16.4

(8) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(9) Pollent, sewage, waste, or return water from this use is discharged into:

(10) If you are claiming water as a member of an organization, list name of organization:

(11) Remarks:

(12) Basis of claim: (Check one) ☒ A) Right based on diversion and beneficial use.

☒ B) Right decreed by court, cite title of case John B. Riddington et al. vs. Grant Buchanan, et al. (Julia E. Riddington)

☐ C) Right based on application, license, or claim filed with the Idaho Department of Water Administration.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of (his, her, their) knowledge.

March 2, 1972 (Date)

Individual: Robert T. Hemming (Signature of Claimant)

Organization: (Signature of Spouse)

State of Idaho vs. Organization

County of Lemhi Day of March 1972 In the year before me,

a notary public, personally appeared Robert T. Hemming

known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that he, (they), executed the same.

Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI
 IN FOR WATER OF THE GENERAL WATER
 NOTICE OF CLAIM IDENT. NO. MAP NO.
 TO A
 WATER RIGHT 74-0767 16N-25E-7

Notice is hereby given that Arley A. Adams and/or Robert T. Hemming
 Box 1, Lunda, Idaho 87465

claims a right to the diversion
 (Name of Claimant)

The extent and nature of said claim is as follows:
 (1) Date of priority: (When was the water first applied to a beneficial use, or date that permit was issued) May 12, 1933

(2) Describe source of water: (Name of stream, lake, spring, etc. or groundwater) Lee Creek, tributary to
Lee River, Riv. 10-2

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity	Use	Period of Use From	To
0.5	Irrigation	April 1	November 1
XXXX			
0.5	TOTAL QUANTITY CLAIMED		
XXXX			

(4) A) Point of Diversion: Give location of point where water is diverted from its source. SE NE
 Sec. 32 Twp. 16N Rge. 25E B.M.; additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
 Give sizes and capacities; be as specific as possible. See gate and ditch. Ditch is approximately
5 miles long.

(5) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE 1/4	NW 1/4	SW 1/4	SE 1/4	TOTAL
16N	25E	17	9.4	26.9	7.8	40	74.1
16N	25E	17	39.2			23.2	62.4
16N	25E	18				33.4	33.4
16N	25E	19	35.7				35.7
16N	25E	20		40	59.1	39.5	138.6

Total No. of acres 244.8

B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(7) Effluent, sewage waste, or return water from this use is discharged into:

(8) If you are claiming water as a member of an organization, list name of organization:

(9) Remarks:

(10) Basis of claim: (Check one) ☐ A) Right based on diversion and beneficial use

☒ B) Right decreed by court, cite title of case John P. Redington et al.
vs. Grant Buchanan, et al. (James Schoonover)

☐ C) Right based on application, license, or claim filed with the Idaho Department of Water Administration.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of this, her, their knowledge.

March 2, 1972
 (D.W.)

Individual
Robert T. Hemming
 (Signature of Claimant)

Organization
 (Signature of Spouse)

State of Idaho
 County of Lemhi
 On this 2nd day of March, in the year 1972, before me,

a notary public, personally appeared Robert T. Hemming

known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that (he, she, they, corporation, partnership or, executed the same. Lyle Glen Taylor

Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LEMHI

IN THE MATTER OF THE EIGHTH DIVISION OF THE STATE OF IDAHO
DIVISION OF WATER RESOURCES
STATEMENT OF THE RIGHT TO THE WATER
TO A WATER RIGHT
IDENT. NO. 168-252-0
MAP NO. 168-252-0

Notary Public, State of Idaho, Parley A. Amey and/or Robert T. Henning

Box 1, Lemhi, Idaho 83455

claims a right to the diversion
of water from the State of Idaho, of a tributary of the Lemhi River.

The extent and nature of said claim is as follows:

(1) Date of priority: (When was the water first applied to a beneficial use, or date that person claimed) November 21, 1909

(2) Describe source of water: Name of stream, lake, spring, etc., or ground water Lee Creek, this tributary to
Lemhi River, Div. 10-2.

(3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Quantity 5.2 Use Irrigation Period of Use From April 1 To November 1

Quantity XXXXX Use To Period of Use From To

Quantity Use To Period of Use From To

Quantity Use To Period of Use From To

(4) 5.2 TOTAL QUANTITY CLAIMED XXXXX

(5) A) Point of Diversion: Give location of point where water is diverted from its source SE NE
Sec. 10 Twp. 10 Rge. 2 E.M. additional points:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.)
Ditch is approximately 3 miles long.

(6) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE 1/4	NW 1/4	SW 1/4	SE 1/4	TOTAL
16N	25E	17	6.4	26.9	8.8	40.	72.1
16N	25E	17	9.8		28.2	5.7	43.7
16N	25E	18				38.4	38.4
16N	25E	19	25.3				25.3
16N	25E	20		40.	28.5		68.5

This land is also irrigated by Right #7440767.

Total No. of acres 344.9

(7) If water is used for other than irrigation, fully describe that use, being as specific as possible:

(8) Effluent, sewage waste, or return water from this use is discharged into

(9) If you are claiming water as a member of an organization, list name of organization

(10) Remarks

(11) Basis of claim (Check one) ☐ A) Right based on diversion and beneficial use. John B. Reddington et al.

☒ B) Right decreed by court, cite title of case vs. Grant Bohannon et al. (James Schoonover)

☐ C) Right based on application, license, or claim filed with the Idaho Department of Water Administration.

Be it known that the undersigned, after being duly sworn on oath, depose(s) and say(s) that all statements included herein are true and accurate to the best of this, her, their) knowledge.

March 2, 1972

(Date)

Individual

Robert T. Henning

(Signature of Individual)

Organization

(Signature of Officer)

State of Idaho

Organization

County of Lemhi

Seal

On this 2nd day of March

1972

(Signature of Authorized Agent)

before me, a notary public, personally appeared Robert T. Henning

known to me to be the person(s) whose name(s) are subscribed to the above instrument, and acknowledged to me that he/she/they

executed the same. Lyle Blue Taylor

Notary Public residing at Salmon, Idaho

My commission expires July 14, 1974

EXHIBIT C

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR

LEWIS COUNTY

PROPOSED FINDING OF WATER RIGHTS

IN THE

LEWIS RIVER BASIN

CIVIL CASE NO. 1948

PROPOSED FINDING OF WATER RIGHTS - LEWIS RIVER DRAINAGE

SOURCE: Lee Creek and Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
74-0361	ARAVE, Parley A. and/or HENNING, Robert T. Box 1 Lemhi, Idaho	5 -12-1883	Irrigation	4/1 11/1	1.2	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.30 T16N, R25E	Sec. 8 SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17 NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, T16N, R25E	Decree Lee Creek
							9.4 39.8 26.9 40.0 27.2 212.6	
74-0363	ARAVE, Parley A. and/or HENNING, Robert T. Box 1 Lemhi, Idaho	5 -12-1883	Irrigation	4/1 11/1	1.0	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.30 T16N, R25E	Sec. 9 SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, T16N, R25E	Decree Lee Creek
							3.1 34.7 8.3 46.1	
74-0365	ARAVE, Parley A. and/or HENNING, Robert T. Box 1 Lemhi, Idaho	5 -12-1883	Irrigation	4/1 11/1	1.2	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.30 T16N, R25E	Sec. 9 SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, T16N, R25E	Decree Lee Creek
							14.5 6.3 20.8	

PROPOSED FINDING OF WATER RIGHTS - LEMHI RIVER DRAINAGE

95

SOURCE: Lee Creek and Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE	MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
74-0367	ARAVE, Parley A. and/or HEMMING, Robert T. Box 1 Lemhi, Idaho	5	12-1883 Irrigation	4/1	11/1 0.6	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.30 T16N, R25E	Sec. 17 NE $\frac{1}{4}$ SW $\frac{1}{4}$, 8.8 SW $\frac{1}{4}$ SW $\frac{1}{4}$, 40.0 SE $\frac{1}{4}$ SW $\frac{1}{4}$, 28.2 NW $\frac{1}{4}$ SE $\frac{1}{4}$, 5.7 SW $\frac{1}{4}$ SE $\frac{1}{4}$, 13.8 Sec. 18 SE $\frac{1}{4}$ SE $\frac{1}{4}$, 38.4 Sec. 19 NE $\frac{1}{4}$ NE $\frac{1}{4}$, 26.3 Sec. 20 NW $\frac{1}{4}$ NW $\frac{1}{4}$, 40.0 SW $\frac{1}{4}$ NW $\frac{1}{4}$, 39.1 NW $\frac{1}{4}$ SW $\frac{1}{4}$, 28.5 T16N, R25E 268.8	Decree Lee Creek
74-0369	WHITTAKER, Floyd J. Box 177 Leadore, Idaho	5	12-1883 Irrigation	4/1	11/1 2.4	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.31 T16N, R25E	Sec. 29 SW $\frac{1}{4}$ NE $\frac{1}{4}$, 40.0 SW $\frac{1}{4}$ NW $\frac{1}{4}$, 33.4 SE $\frac{1}{4}$ NW $\frac{1}{4}$, 38.8 NE $\frac{1}{4}$ SW $\frac{1}{4}$, 40.0 NW $\frac{1}{4}$ SW $\frac{1}{4}$, 13.3 SE $\frac{1}{4}$ SW $\frac{1}{4}$, 40.0 Sec. 32 NE $\frac{1}{4}$ NW $\frac{1}{4}$, 36.9 NW $\frac{1}{4}$ NW $\frac{1}{4}$, 33.0 T16N, R25E 275.4	Decree Left Fork of Lee Creek
This right and right 74-0370 shall not be obliged to pro-rate with any other parties on Lee Creek, whose appropriation is of equal priority therewith, in case the flow of the waters of the Left Fk. of Lee Creek shall be an insufficient quantity to supply all rights under date of priority of May 12, 1883.								
When the flow in the Left Fk. of Lee Creek shall fall below the amounts decreed in rights 74-0369 and 74-0370, the two rights shall be pro-rated according to the respective amounts of water decreed.								

This right and right 74-0370 shall not be obliged to pro-rate with any other parties on Lee Creek, whose appropriation is of equal priority therewith, in case the flow of the waters of the Left Fk. of Lee Creek shall be an insufficient quantity to supply all rights under date of priority of May 12, 1883.

When the flow in the Left Fk. of Lee Creek shall fall below the amounts decreed in rights 74-0369 and 74-0370, the two rights shall be pro-rated according to the respective amounts of water decreed.

PROPOSED FINDING OF WATER RIGHTS - LEWIS RIVER DRAINAGE

SOURCE: Lee Creek and Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE From To	MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
74-0370	WHITTAKER, Calvin J. and/or Carol L. Box 26 Leadore, Idaho	5-12-1883	Irrigation	4/1 11/1	4.00	Lot 4, S. 6 T15N, R25E	Sec. 31 SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32 SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, T16N, R25E	Decree Left Fork of Lee Creek
This right and right 74-0369 shall not be obliged to pro-rate with any other parties on Lee Creek, whose appropriation is of equal priority therewith, in case the flow of the waters of the left Fk. Lee Creek shall be an insufficient quantity to supply all rights under date of priority May 12, 1883.								
When the flow in the left Fk. Lee Creek shall fall below the amounts in rights 74-0369 and 74-0370, the two rights shall be pro-rated according to the respective amounts of water decreed.								
74-0364	ARAVE, Parley A. and/or HEMING, Robert T. Box 1 Lemhi, Idaho	6-1-1900	Irrigation	4/1 11/1	1.30	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S. 30 T16N, R25E	Sec. 9 SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, T16N, R25E	Decree Lee Creek
74-1665	MAHAFFEY, Taylor and/or Jessie B. Box 36 Lemhi, Idaho	12-22-1903	Irrigation	4/1 11/1	0.54	SW $\frac{1}{4}$ SE $\frac{1}{4}$, S. 4 T16N, R25E	Sec. 4 SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, T16N, R25E	Beneficial Use Springs
74-0362	ARAVE, Parley A. and/or HEMING, Robert T. Box 1 Lemhi, Idaho	5-1-1906	Irrigation	4/1 11/1	4.10	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S. 30 T16N, R25E	Sec. 8 SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 17 NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, T16N, R25E	Decree Lee Creek
							9.4 39.8 26.9 40.0 27.2 212.6	

PROPOSED FINDING OF WATER RIGHTS - LEMHI RIVER DRAINAGE

SOURCE: Lee Creek and Tributaries

IDENT. NO.	NAME AND ADDRESS	PRIORITY	PURPOSE	PERIOD OF USE		MAXIMUM RATE OF DIVERSION (cfs)	POINT OF DIVERSION	PLACE OF USE and LANDS IRRIGATED	BASIS OF RIGHT and REMARKS
74-0368	ARAVE, Parley A. and/or HEMMING, Robert T. Box 1 Lemhi, Idaho	11-5 -1909	Irrigation	4/1	11/1	5.80	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.30 T16N, R25E	Sec. 17 NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 18 SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 19 NE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 20 NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NNW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, T16N, R25E	Decree Lee Creek
								8.8 40.0 28.2 5.7 13.8 38.4 26.3 40.0 39.1 28.5 <u>268.8</u>	
74-1136	WHITTAKER, Floyd J. Box 77 Leadore, Idaho This right is used during flood water flows.	6 -28-1912	Irrigation	6/1	7/10	2.00	SE $\frac{1}{4}$ NE $\frac{1}{4}$, S.31 T16N, R25E	Sec. 29 NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32 NW $\frac{1}{4}$ NW $\frac{1}{4}$, T16N, R25E	Beneficial Use Stroud Creek
								13.3 16.3 40.0 33.0 <u>102.6</u>	
74-1855	WHITTAKER, Calvin J. and/or Carol L. Box 26 Leadore, Idaho This right is used during flood water flows.	6 -28-1912	Irrigation	6/1	7/10	2.00	Lot 4, S.6 T15N, R25E	Sec. 31 SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32 SW $\frac{1}{4}$ NNW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, T16N, R25E	Beneficial Use Stroud Creek
								10.9 38.3 18.1 31.4 39.2 4.9 23.9 20.0 <u>186.7</u>	

The following claims to a water right on the Lemhi River and tributaries are found to be invalid for the reason listed and are recommended to be disallowed.

IDENT. NO.	NAME	REASON
74-0043F	Mina Ohlson c/o Elsie A. Beaumont	No beneficial use found - Use forfeited or abandoned.
74-0105	Kermit Purcell	No beneficial use found - Use forfeited or abandoned.
74-0112	James &/or Maybelle Ellsworth	Exceeds duty when combined with 74-0067 and 74-0111.
74-0308	McFarland Livestock Co., Inc.	Claim withdrawn by T. L. McFarland.
74-0319E	U. S. Department of Interior - BLM	Recommended as 74-1846.
74-0366	Parley A. Arave &/or Robert F. Hemming	Extent of Right Recommended included in 74-0365.
74-0383	Scott J. Raymond	Use abandoned or forfeited.
74-0395A	Eldon &/or Edna Z. Jolley	Recommended as 74-1095B.
74-0395B	Eldon &/or Edna Z. Jolley	Recommended as 74-1005C.
74-0396	Eldon &/or Edna Z. Jolley	Recommended as 74-1005A.
74-0417	Fred L. &/or Dorothy L. Marshall	Source outside Lemhi River Basin.
74-0452	Ralph G. &/or Mildred I. Logan	Included in Recommendation of 74-0186.
74-0459	Ralph G. &/or Mildred I. Logan	Included in Recommendation of 74-0186.
74-0486	Delos P. &/c Ann B. Olson	Source outside Lemhi River Basin.
74-0487	Delos P. &/or Ann B. Olson	Source outside Lemhi River Basin.
74-0489	Walter Jackson &/or Shirley W. Parmenter	Source outside Lemhi River Basin.
74-0517	Joseph C. Bohne	No beneficial use found.
74-0552	Lois Gemlek	No beneficial use found.
74-0558	Dallas &/or Shirley Olson	Source outside Lemhi River Basin.
74-0559	Dallas &/or Shirley Olson	Source outside Lemhi River Basin.
74-0560	Dallas &/or Shirley Olson	Source outside Lemhi River Basin.
74-0599	The American Oil Co.	No beneficial use found.
74-0633	Nick &/or Caroline Demick	Source outside Lemhi River Basin.
74-0721	William B. &/or Marian H. Swahlen	Included in Recommendation of 74-0177 & 74-0181.
74-0759	James P. Wright	No diversion.
74-0777	William B. &/or Marian H. Swahlen	No point of diversion.
74-0780	William B. &/or Marian H. Swahlen	Included in Recommendation of 74-0779.
74-0781	William B. &/or Marian H. Swahlen	Included in Recommendation of 74-0779.
74-0864	George H. &/or Josie B. Stoddard	Source outside Lemhi River Basin.
74-0904	Sandy H. Sims	Source outside Lemhi River Basin.
74-0910	Dale &/or William L. Fayle	Exceeds duty when combined with 74-2169.

EXHIBIT D

44041b
05/04/83
S T A T E O F I D A H O
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

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* INDICATES TOTAL *

SOURCE: LEE CREEK

TRIBUTARY TO: LEWIS RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
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74-0361 ARAVE, PARLEY A.
HEMMING, ROBERT T.
P.O. BOX 1
LEWIS
ID 83465
05-12-1883 IRRIGATION 03-15 11-15
1.20 CFS SENE S30 WENE(09) NWNE(40) DEGREE
SENE(27) NENE(40)
SENE(27)
S17 T16N R25E
S4SE(34) SESE(35)
S08 T16N R25E

REMARKS: AC. IRR.=212.6*

* 212 ACRES*

74-0363 ARAVE, PARLEY A.
HEMMING, ROBERT T.
P.O. BOX 1
LEWIS
ID 83465
05-12-1883 IRRIGATION 03-15 11-15
1.00 CFS SENE S30 S4NW(03) NWS(35) DEGREE
S4SW(08)
S09 T16N R25E

REMARKS: AC. IRR.=46.1.

* 46 ACRES*

74-0365 ARAVE, PARLEY A.
HEMMING, ROBERT T.
P.O. BOX 1
LEWIS
ID 83465
05-12-1883 IRRIGATION 03-15 11-15
1.20 CFS SENE S30 SENE(14) NESW(06) DEGREE
T16N R25E S09 T16N R25E

REMARKS: AC. IRR.=20.8.

* 20 ACRES*

74-0367 ARAVE, PARLEY A.
HEMMING, ROBERT T.
P.O. BOX 1
LEWIS
ID 83465
05-12-1883 IRRIGATION 03-15 11-15
*.60 CFS SENE S30 N4NW(40) S4NW(39) DEGREE
T16N R25E N4SW(29)
S20 T16N R25E
NENE(26)
S19 T16N R25E
SESE(38)
S18 T16N R25E
NESW(09) S4SW(40)
SESW(28) N4SE(06)
S4SE(14)
S17 T16N R25E

REMARKS: AC. IRR.=269.8.

* 269 ACRES*

74-0364 ARAVE, PARLEY A.
HEMMING, ROBERT T.
P.O. BOX 1
LEWIS
ID 83465
06-01-1900 IRRIGATION 03-15 11-15
1.30 CFS SENE S30 S4NW(03) N4SW(35) DEGREE
T16N R25E S4SW(08)
S09 T16N R25E

* 46 ACRES*

STAFFORD
DEPARTMENT OF WATER RESOURCES
WATER RIGHTS ABSTRACT

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05/04/83

INDICATES TOTAL

SOURCE: LEE CREEK

TRIBUTARY TO: LEEH RIVER

RIGHT NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR RIGHT
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74-0362 ARAYE, PARLEY A.
HEMING, ROBERT T.
P.O. BOX 1
LEWHI ID 83465
05-01-1906 IRRIGATION 03-15 11-15
4.10 CFS SENE S30 NENE(09) NENE(40) DEGREE
SENE S30 SENE(27) NENE(40)
SENE(27)
S17 T16N R25E
S4SE(34) SESE(35)
S08 T16N R25E

REMARKS: AC. 1HP.=212.6.

* 212 ACRES*

74-0368 ARAYE, PARLEY A.
HEMING, ROBERT T.
P.O. BOX 1
LEWHI ID 83465
11-05-1909 IRRIGATION 03-15 11-15
5.80 CFS SENE S30 NENE(40) SENE(39) DEGREE
SENE S30 NENE(28)
S20 T16N R25E
SENE(26)
S19 T16N R25E
SESE(38)
S18 T16N R25E
SENE(09) SENE(40)
SENE(28) NENE(06)
SENE(14)
S17 T16N R25E

REMARKS: AC. 1HP.=268.6.

* 268 ACRES*

74-1831 NEF, DARRELL J.
NEF, VERNA M.
STAR RT.
LEADORE ID 83464
06-28-1912 IRRIGATION 03-15 11-15
.24 CFS NESE S30 NENE(02) SENE(10) DEGREE
NESE S30 NENE(02) SENE(10)
S30 T16N R25E

* 12 ACRES*

74-0949 NEF, DARRELL J.
NEF, VERNA M.
STAR RT.
LEADORE ID 83464
12-05-1918 IRRIGATION 03-15 11-15
.02 CFS NESE S20 NENE(01) DEGREE
NESE S20 NENE(01)
S20 T16N R25E

* 1 ACRES*

STOCKWATER 01-01 12-31

.02 CFS

SAVE AS OTHER USE

---*AFA
* .04 CFS

74-2261 ANDERSON, HUBBIE R.
ANDERSON, DORIS
P.O. BOX 53
12-21-1941 IRRIGATION 03-15 11-15
2.00 CFS SENE S01 SENE(40) NENE(18) DEGREE
SENE S01 SENE(40) NENE(05)
L103 (NENE)(01)

EXHIBIT E

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 74-07274 IN THE NAME OF)
EDDIE PETERSON)
_____)

CORRECTED
ORDER ADOPTING
PROPOSED MEMORANDUM
DECISION AND ORDER

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on November 20, 1990, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order approving the Application for Permit be adopted and issued as the Final Decision and Order and proof of construction of works and application of water to beneficial use shall be submitted on or before February 1, 1992.

Dated this 22ND day of March, 1991.


R. KEITH HIGGINSON
Director

DEC 20 1991

Exhibit 151

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 74-07274 IN THE NAME)
OF EDDIE PETERSON)
_____)

ORDER ADOPTING
PROPOSED MEMORANDUM
DECISION AND ORDER

WHEREAS, R. Keith Higginson, Director of the Department of Water Resources, sent a copy of the Proposed Memorandum Decision and Order addressing the above captioned matter to the parties of record on November 20, 1990, pursuant to Section 67-5211, Idaho Code; and,

WHEREAS, more than fifteen days have passed since the service of the Proposed Memorandum Decision and Order; and,

WHEREAS, no exception to that Proposed Memorandum Decision and Order has been received;

IT IS, THEREFORE, HEREBY ORDERED that said Proposed Memorandum Decision and Order ^{and} ~~denying~~ the Application for Permit be adopted and issued as the Final Decision and Order and proof of construction of works and application of water to beneficial use shall be submitted on or before February 1, 1992.

Dated this 16TH day of January, 1991.

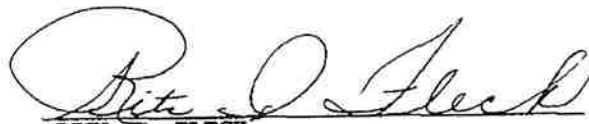

R. KEITH HIGGINSON
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this the 18th day of January 1991, a true and correct copy of the ORDER ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER was mailed, postage prepaid to:

Mr. Eddie R. Peterson
Box 85
Leadore, ID 83464

Farley A. Arave
Rt. 1 Box 65
Hill Ridge
Blackfoot, ID 83221

A handwritten signature in cursive script, appearing to read "Rita I. Fleck", written over a horizontal line.

RITA I. FLECK
Secretary/Records Manager
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 74-07274)
_____)

Eddie Peterson,
Applicant)

County: Lemhi
Source: Lee Creek)

Parley Arave,
Protestant)
_____)

PROPOSED MEMORANDUM DECISION AND ORDER

On December 8, 1989, Eddie R. Peterson filed an application for permit No. 74-07274 requesting the use of 0.07 cubic feet per second (cfs) for stockwater from Lee Creek.

Notice of this application was published in the Recorder-Herald on January 4 and 11, 1990. On January 16, 1990, Parley Arave submitted a protest objecting to the application on grounds that this stockwater use would adverse his existing water rights from Lee Creek.

A pre-hearing conference was held on September 14, 1990, for the purpose of discussing the issue of Mr. Arave's protest.

FINDINGS OF FACT

1. The protestant, Parley Arave, stated that no water was available for winter stockwater (October 15 through April 15) because the water from Lee Creek was used on irrigated ground all year long.

2. Parley Arave has rights 74-00361 through 74-00368 decreed in his name in the State of Idaho vs Mary Adams from Lee Creek. The period of use is listed as March 15 through November 15.

3. The applicant, Eddie Peterson, applied for 0.07 cfs to be diverted by ditch for stockwater from said Lee Creek to be used from October 15 through April 15 of each year.

CONCLUSIONS OF LAW

1. Section 42-201, of the Idaho Code states in part. . . no person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists. . . .

2. The protestant, Parley Arave, has irrigation rights from Lee Creek which extend from March 15 to November 15 of each irrigation season. The protestant has no right to divert and use water from Lee Creek after November 15 of each year.

3. Section 42-222, of the Idaho Code states in part. . . any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. . . .

4. The protestant has not applied for or received approval

to change period of use of his water rights.

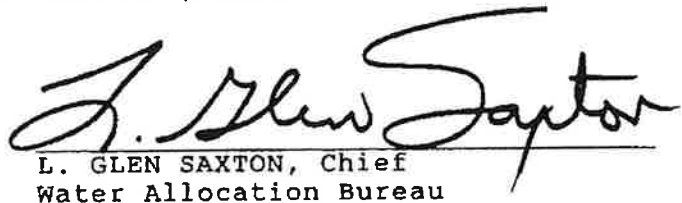
5. The applicant is entitled to a permit from the Department of Water Resources.

ORDER

IT IS, THEREFORE, ORDERED that Application for Permit No. 74-07274 is hereby APPROVED subject to the following conditions:

1. The period of use for this right is limited to be November 16 through March 14 of each season.
2. Proof of construction of works and application of water to beneficial use shall be submitted on or before date indicated on the final order.

Dated this 19th day of November, 1990.


L. GLEN SAXTON, Chief
Water Allocation Bureau

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this the 20th day of November, 1990, a true and correct copy of the Order Adopting Proposed Memorandum Decision and Proposed Memorandum Decision and Order, were mailed, postage prepaid to:

Eddie R. Peterson
Box 85
Leadore, ID 83464

Parley A. Arave
Rt. 1 Box 65
Hill Ridge
Blackfoot, ID 83221


RITA I. FLECK
Secretary/Records Manager

EXHIBIT F

March 3, 2014
Leadore City Community Building
Leadore, Idaho 83464

RECEIVED
MAR 11 2014
Department of Water Resources
Eastern Region

WATER DISTRICT 74-Z MEETING MINUTES

Meeting was called to order by Chairman Bruce McConnell, at 2:15 P.M. in the Leadore City Community Building, with six members and one guest.

Chairman McConnell requested everyone peruse the minutes of 2013. Motion was made by Steve Johnson to approve the minutes for 2013, the motion was seconded by Jordan Whittaker, so carried.

NEW BUSINESS

ADVISORY COMMITTEE: Carl Ellsworth moved to keep the Advisory Committee the same with the exception of replacing James Whittaker with Jordan Whittaker, Steve Johnson seconded, so carried. Advisory Committee: Jordan Whittaker, Carl Ellsworth and Ralph McRea

WAGES FOR WATER MASTER AND SECRETARY/TREASURER: Les Udy motioned to increase the Water Masters wages by \$100.00 making his total wage \$400.00 per month and raising equipment rental by \$100.00, making equipment rental \$600.00 per month. Water Master will receive \$40.00 year a year for the yearly Water Master Report. Ralph McRea seconded the motion so carried. Carl Ellsworth moved to increase the Secretary/Treasurer wages to \$350.00 per year plus \$50.00 for postage and office supplies. Steve Johnson seconded, motion carried. Ralph motioned to do away with the Lee Creek recording of waters for \$250.00. The Water Master will take over that recording. Steve Johnson seconded, so carried.

BUDGET: The budget was presented for the 2014 season. There is a carryover of \$1674.53. The proposed budget is for \$4850.00. Carl Ellsworth moved to increase and accept the budget for the 2014 season by \$1200.00 to encompass the raises given to the Water Master and Secretary/Treasurer, making the proposed budget \$6050.00. Ralph McRea seconded the motion, so carried.

Carl Ellsworth made a motion to use water measurement from the previous year for next year budget. Doing away with the adjustment from previous years. Steve Johnson seconded, so carried.

INTEREST: No changes

Water Master: Les Udy made the motion to retain Tom Udy as Water Master, Jordan Whittaker seconded. So Carried.

Officers: Ralph McRea resigned his post as Secretary/Treasurer. Carl Ellsworth moved that officers should be retained as is and elect Aleta Ries to replace Ralph McRea as secretary/treasurer. Jordan Whittaker seconded and the motion was carried.

The officers of 2014 are as follows:

Chairman: Bruce McConnell
Secretary/Treasurer: Aleta Ries

Water Master asked that a letter be sent to Shanna Foster and David Tomchak, requesting them to Clean or repair their head gate and have a workable measuring device.

James Cefalo from IDWR gave a presentation of snowpack update on the area.

OLD BUSINESS:

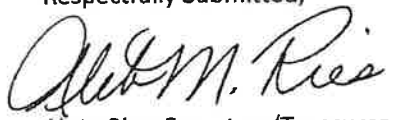
Having concluded all business of Water District 74-Z, Steve Johnson moved to adjourn, Ralph McRea seconded, so carried. Chairman McConnell adjourned the meeting at 3:00 P.M.

Water Users and/or representatives in attendance were:

Bruce McConnell
Jordan Whittaker
Steve Johnson
Carl Ellsworth
Ralph McRea
Les Udy

James Cefalo, IDWR

Respectfully Submitted,



Aleta Ries, Secretary/Treasurer

ADOPTED BUDGET AND RESOLUTIONS
PERTAINING TO THE COLLECTION THEREOF

FOR 20¹⁴

RECEIVED

MAR 11 2014

Department of Water Resources
Eastern Region

WATER DISTRICT NO. 74-Z
STREAM Big Eight Mile & Lee Creeks
COUNTY Lemhi
NAME OF SECRETARY Aleta M. Ries
ADDRESS OF SECRETARY P.O. Box 68, Leadore, Idaho 83464

COLLECTION AND HOLDING OF WATER DISTRICT FUNDS

Please check the appropriate box regarding the collection and holding of Water District funds.

☐ The Water District collects and holds its own funds.

☒ Lemhi
(county name) County collects and holds funds for the Water District.

☐ _____
(county name) County collects the Water District's funds and deposits the funds in an account held by the Water District.

(This report must be certified and made in duplicate, one copy to be forwarded to the appropriate regional office of the Idaho Department of Water Resources., and one copy to the Secretary of the Annual Water User's Meeting of the Water District. If a designated county collects funds for the water, then a third copy must be sent to the auditor of the designated county.)

Lemhi county, Idaho, March 7, 20¹⁴

I HEREBY CERTIFY that the within is true and correct copy of the budget as adopted at the annual Water User's Meeting of Water District No. 74-Z, held at Leadore, Idaho
on the 3rd day of March, 20¹⁴ and all resolutions adopted at said meeting pertaining to the time and the manner of collecting the amounts provided for in the said budget.

Aleta M. Ries
Secretary, Water District No. 74-Z

**BUDGET ADOPTED AT THE ANNUAL MEETING
OF THE WATER USERS**

WATER DISTRICT No. 74-Z

Estimated Amount for Watermaster's Salary	\$	2,000.00
Estimated Amount for Assistant Watermaster and other Water District Officials	\$	
Estimated Amount for Other Expenses	\$	4,050.00
TOTAL ESTIMATED EXPENSES FOR 2014	\$	6050.00

DISTRIBUTION OF THE BUDGET AMONG USERS

Individual, Ditch or Canal Company, assessed	Water Right Ident. No.	Address	Amount of Budget	
calvin Whittaker		P.O. Box 10 Leadore, Idaho 83464	\$ 439	38
David Tomchak, Jr.		1180 Merrett Drive Idaho Falls 83404	36	72
Shanna Foster		P.O. Box 212 Leadore, Idaho 83464	36	72
Bruce McConnell		100 Cotton Lane Leadore, Idaho 83464	344	57
Steven Johnson		1019 Lee Creek Road Leadore, Idaho 83464	648	26
Carl Ellsworth		P.O. Box 60 Leadore, Idaho 83464	712	67
Tom Udy		P.O. Box 215 Leadore, Idaho 83464	329	89
Kent Bird		101 Mustang Road Leadore, Idaho 83464	142	49
Karl Tyler		P.O. Box 16025 Missoula, Mt 59808	429	59
Dare Anderson c/o Ralph McRea		P.O. Box 21 Leadore, Idaho 83464	592	48
James Whittaker		P.O. Box 240 Leadore, Idaho 83464	2265	49
Ken Peterson		27 Harvey Lane Leadore, Idaho 83464	71	74

RESOLUTIONS PERTAINING TO THE TIME AND MANNER OF COLLECTING THE BUDGET AS
ADOPTED AT THE ANNUAL MEETING OF THE USERS OF

WATER DISTRICT No. 74-Z

Water District 74-Z
Leadore, Idaho 83464

Resolved: That the Amount of Assessment to each water user as shown on the 2014 adopted budget shall become due and payable May 1, 2014. Amounts if not paid, shall bear interest at the rate of 10% per annum as of May 1, 2014. That the Lemhi County Treasurer will bill and collect funds for Water District 74-Z

RECEIVED

WATER DISTRICT INFORMATION SHEET

MAR 11 2014

Department of Water Resources
Eastern Region

2014
Year

742 BIG EIGHT MILE & LEE CREEK
Water District # / Stream Name

THOMAS C. UDY
Watermaster Name

P.O. BOX 215, LEADORE, IDAHO 83464
Address

208 768-2603
Phone Number, Home / Cell

E-Mail Address

Assistant Watermaster Name

Address

Phone Number, Home / Cell

E-Mail Address

ALETA M. RIES
Secretary Name

P.O. BOX 68, LEADORE, IDAHO 83464
Address

208 768-2237 / 940-0638
Phone Number, Home / Cell

mikealetar@centurytel.net
E-Mail Address

Please print in the blank information above and return it to the Idaho Department of Water Resources. Your cooperation on this matter would be greatly appreciated. If you have any questions, please feel free to contact me.

Respectfully Submitted,

Sharla Cox
Administrative Assistant

Exhibit 151



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 11, 2014

Aleta M Ries
PO Box 68
Leadore ID 83464

WATER DISTRICT #74Z

Dear Secretary / Treasurer:

We acknowledge receipt of the Minutes of the Annual Watermaster's Election Meeting held in your district. The Watermaster Certificate will be sent under separate cover.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Dunn".

Dennis Dunn
Senior Water Right Agent

DD:sc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April 2014, I caused the foregoing document to be filed with the Court and true and correct copies served by the methods indicated:

1. Original to:

CLERK OF THE DISTRICT COURT SNAKE RIVER BASIN ADJUDICATION 253 THIRD AVENUE NORTH PO BOX 2707 TWIN FALLS, ID 83303-2707	☒ U.S. Mail, postage prepaid
---	--

2. Paper copies to:

IDWR DOCUMENT DEPOSITORY P.O. BOX 83720 BOISE, ID 83720-0098	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery
CHIEF NATURAL RESOURCES DIV. OFFICE OF THE ATTORNEY GENERAL STATE OF IDAHO P.O. BOX 44449 BOISE, ID 83711-0449	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery
UNITED STATES DEPT. OF JUSTICE ENVIRONMENT & NATURAL RESOURCE 550 WEST FORT STREET, MSC 033 BOISE, ID 83724-0101	☒ U.S. Mail, Postage Prepaid ☐ Hand Delivery

3. Paper copies to water users on Lee Creek:

AL RUGGLES JAMIN K. RUGGLES 1019 LEE CREEK RD. LEADORE, ID 83464	☒ U.S. Mail, Postage Prepaid
BOBBIE ANDERSON DORIS ANDERSON P.O. BOX 53 LEADORE, ID 83464	☒ U.S. Mail, Postage Prepaid
EDDIE R. PETERSON P.O. BOX 85 LEADORE, ID 83464	☒ U.S. Mail, Postage Prepaid
HARVEY E. PETERSON JANETTE S. PETERSON KENNETH J. PETERSON P.O. BOX 58 LEADORE, ID 83464	☒ U.S. Mail, Postage Prepaid

4. Transmittal letter with an attached DVD containing all documents filed in this matter to the SRBA Expedited Service List:

C. THOMAS ARKOOSH ARKOOSH LAW OFFICES PO BOX 2900 BOISE, ID 83701	☒ U.S. Mail, Postage Prepaid
ALBERT B. BARKER JOHN K SIMPSON SHELLEY M. DAVIS BARKER ROSHOLT & SIMPSON LLP PO BOX 2139 BOISE, ID 83701-2139	☒ U.S. Mail, Postage Prepaid
PAUL L. ARRINGTON TRAVIS L. THOMPSON BARKER ROSHOLT & SIMPSON LLP 195 RIVER VISTA PL. STE. 204 TWIN FALLS, ID 83301-3029	☒ U.S. Mail, Postage Prepaid
W. KENT FLETCHER FLETCHER LAW OFFICE PO BOX 248 BURLEY, ID 83318-0248	☒ U.S. Mail, Postage Prepaid
BERT L. OSBORN BERT L. OSBORN CHARTERED PO BOX 158 PAYETTE, ID 83661-0158	☒ U.S. Mail, Postage Prepaid
ADAM T. DEVOE DAVID G. SCOTT BROWNSTEIN HYATT & FARBER PC 410 17 TH ST., 22 ND FL DENVER, CO 80202-4437	☒ U.S. Mail, Postage Prepaid
RON KERL COOPER & LARSEN CHARTERED PO BOX 4229 POCATELLO, ID 83205-4229	☒ U.S. Mail, Postage Prepaid
TERRY G. HOGUE HOGUE & DUNLAP LLP PO BOX 460 HAILEY, ID 83333-0460	☒ U.S. Mail, Postage Prepaid

CHRISTOPHER H. MEYER JEFFREY C. FEREDAY MICHAEL C. CREAMER MICHAEL P. LAWRENCE GIVENS PURSLEY LLP PO BOX 2720 BOISE, ID 83701-2720	☒ U.S. Mail, Postage Prepaid
DAVID HEIDA PO BOX 969 KUNA, ID 83634-0900	☒ U.S. Mail, Postage Prepaid
DAVID F. SHIRLEY WILLIAM A. PARSONS PARSONS SMITH STONE LOVELAND & SHIRLEY LLP PO BOX 910 BURLEY, ID 83318-0910	☒ U.S. Mail, Postage Prepaid
DANIEL V. STEENSON SAWTOOTH LAW OFFICES PLLC RINGERT LAW CHARTERED LAWYERS PO BOX 7985 BOISE, ID 83707	☒ U.S. Mail, Postage Prepaid
BRANDELLE G. WHITWORTH WILLIAM F. BACON SHOSHONE-BANNOCK TRIBES TRIBAL COUNSEL OFFICE PO BOX 306 FORT HALL, ID 83206-0306	☒ U.S. Mail, Postage Prepaid
DOUGLAS B L ENDRESON REID PEYTON CHAMBERS SONOSKY CHAMBERS SACHSE ENDRESON & PERRY LLC 1425 K ST NW STE 600 WASHINGTON, DC 20005-3498	☒ U.S. Mail, Postage Prepaid
CLIFF S BENTZ YTURRI ROSE LLP 89 SW 3RD AVE ONTARIO, OR 97914-0058	☒ U.S. Mail, Postage Prepaid
ANGELO L ROSA 1155 EAST 2100 SOUTH, APT 649 SALT LAKE CITY, UT 84106-2863	☒ U.S. Mail, Postage Prepaid
B. J. DRISCOLL SMITH DRISCOLL & ASSOC., PLLC PO BOX 50731 IDAHO FALLS, ID 83405-0731	☒ U.S. Mail, Postage Prepaid
WILLIAM G. MYERS III HOLLAND & HART LLP PO BOX 2527 BOISE, ID 83701-2527	☒ U.S. Mail, Postage Prepaid

CHARLES L. HONSINGER HONSINGER LAW PLLC PO BOX 517 BOISE, ID 83701-0517	☒ U.S. Mail, Postage Prepaid
C. TIMOTHY HOPKINS JOHN D. HANSEN HOPKINS RODEN CROCKETT HANSEN & HOOPES PLLC PO BOX 51219 IDAHO FALLS, ID 83405-1219	☒ U.S. Mail, Postage Prepaid
JAMES C. TUCKER IDAHO POWER CO. PO BOX 70 BOISE, ID 83707-0070	☒ U.S. Mail, Postage Prepaid
DYLAN B. LAWRENCE SCOTT L. CAMPBELL MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD PO BOX 829 BOISE, ID 83701-0829	☒ U.S. Mail, Postage Prepaid
BRUCE M. SMITH MOORE SMITH BUXTON & TURCKE, CHTD 950 W. BANNOCK ST. STE. 520 BOISE, ID 83702-6118	☒ U.S. Mail, Postage Prepaid
ERIKA E. MALMEN PERKINS COIE LLP PO BOX 737 BOISE, ID 83701-0737	☒ U.S. Mail, Postage Prepaid
RICHARD A. CUMMINGS PO BOX 1545 BOISE, ID 83701-1545	☒ U.S. Mail, Postage Prepaid
CRAIG A. PRIDGEN CRAIG A. PRIDGEN ATTYS AT LAW 305 W. LAKE BLVD. TAHOE CITY, CA 96145	☒ U.S. Mail, Postage Prepaid
ELIZABETH P. EWENS ELLISON SCHNEIDER & HARRIS LLP 2600 CAPITOL AVE. STE 400 SACRAMENTO, CA 95816-5931	☒ U.S. Mail, Postage Prepaid
BLAIR J. GROVER BEARD ST. CLAIR GAFFNEY PA 2105 CORONADO ST. IDAHO FALLS, ID 83404-7495	☒ U.S. Mail, Postage Prepaid
JOSEPHINE P. BEEMAN BEEMAN & ASSOCIATES PC 409 W. JEFFERSON ST. BOISE, ID 83702-6049	☒ U.S. Mail, Postage Prepaid

RICHARD L. HARRIS HARRIS LAW OFFICE PO BOX 1438 CALDWELL, ID 83606-1438	☒ U.S. Mail, Postage Prepaid
MICHAEL B. WHITE HECLA MINING COMPANY 6500 N. MINERAL DR. STE. 200 COEUR D'ALENE, ID 83815-9408	☒ U.S. Mail, Postage Prepaid
CRAIG D. HOBDEY HOBDEY LAW OFFICE PLLC PO BOX 176 GOODING, ID 83330-0176	☒ U.S. Mail, Postage Prepaid
GRAY A. YOUNG TERRY T. UHLING J.R. SIMPLOT COMPANY PO BOX 27 BOISE, ID 83707-0027	☒ U.S. Mail, Postage Prepaid
JOHN M. MARSHALL JOHN M. MARSHALL LAW PLLC 575 W. BANNOCK ST. STE. B BOISE, ID 83702-5917	☒ U.S. Mail, Postage Prepaid
LARY C. WALKER LARY C. WALKER LAW OFFICE PO BOX 838 WEISER, ID 83672-0828	☒ U.S. Mail, Postage Prepaid
EDWARD A. LAWSON LAWSON LASKI CLARK & POGUE PLLC PO BOX 3319 KETCHUM, ID 83340-3310	☒ U.S. Mail, Postage Prepaid
ROGER D. LING LING LAW OFFICE PO BOX 623 RUPERT, ID 83350-0623	☒ U.S. Mail, Postage Prepaid
J. JUSTIN MAY MAY BROWNING & MAY PLLC 1419 W. WASHINGTON BOISE, ID 83702	☒ U.S. Mail, Postage Prepaid
CHARLES F McDEVITT McDEVITT & MILLER LLP PO BOX 2564 BOISE, ID 83701-2564	☒ U.S. Mail, Postage Prepaid
PATRICK D. BROWN PATRICK D. BROWN PC 335 BLUE LAKES BLVD. N. TWIN FALLS, ID 83301-4828	☒ U.S. Mail, Postage Prepaid

JAMES A. PENDLEBURY PENDLEBURY LAW OFFICE PA 101 S. PARK AVE. STE. 5 IDAHO FALLS, ID 83402-3601	☒ U.S. Mail, Postage Prepaid
JULIE K. FISCHER MORROW & FISCHER PLLC 332 N. BROADMORE WAY STE. 102 NAMPA, ID 83687-5123	☒ U.S. Mail, Postage Prepaid
DON B. MILLER NATIVE AMERICAN RIGHTS FUND 1509 BROADWAY ST. BOULDER, CO 80302-6217	☒ U.S. Mail, Postage Prepaid
DAVID J. CUMMINGS NEZ PERCE TRIBAL EXEC COMM. PO BOX 305 LAPWAI, ID 83540	☒ U.S. Mail, Postage Prepaid
RANDALL C. BUDGE RACINE OLSON NYE BUDGE & BAILEY CHTD. PO BOX 1391 POCATELLO, ID 83204-1391	☒ U.S. Mail, Postage Prepaid
JERRY R. RIGBY RAY W. RIGBY RIGBY ANDRUS & RIGBY CHTD PO BOX 250 REXBURG, ID 83449-0250	☒ U.S. Mail, Postage Prepaid
JAMES ANNEST PO BOX 686 BURLEY, ID 83318-0686	☒ U.S. Mail, Postage Prepaid
DANA L. HOFSTETTER 608 W. FRANKLIN ST. BOISE, ID 83702-5509	☒ U.S. Mail, Postage Prepaid
CHARLES J. OLSON 8813 OLD HIGHWAY 30 MOUNTAIN HOME, ID 83647-6017	☒ U.S. Mail, Postage Prepaid
JAMES P SPECK SPECK & AANESTAD A PROFESSIONAL CORPORATION 120 EAST AVENUE PO BOX 987 KETCHUM, ID 83340-0987	☒ U.S. Mail, Postage Prepaid
JAMES W GIVENS 1026 F ST PO BOX 875 LEWISTON, ID 83501-0875	☒ U.S. Mail, Postage Prepaid

KENT W. FOSTER ROBERT L. HARRIS HOLDEN KIDWELL HAHN & CRAPO PLLC PO BOX 50130 IDAHO FALLS, ID 83405	☒ U.S. Mail, Postage Prepaid
NORMAN M. SEMANKO IDAHO WATER USERS ASSOCIATION 1010 W. JEFFERSON ST. STE 101 BOISE, ID 83702-5453	☒ U.S. Mail, Postage Prepaid


CHRIS M. BROMLEY
MCHUGH BROMLEY, PLLC

CHRIS M. BROMLEY, ISB No. 6530
MCHUGH BROMLEY, PLLC
380 SOUTH 4TH STREET, SUITE 103
BOISE, IDAHO 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
Email: cbromley@mchughbromley.com

RECEIVED
APR 28 2014
DEPARTMENT OF
WATER RESOURCES

Attorney for Bruce and Glenda McConnell

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. 74-00361, 74-00362,
74-00363, 74-00364, 74-00365,
74-00367, and 74-00368

**AFFIDAVIT OF
TIMOTHY J. LUKE**

STATE OF IDAHO)
) ss.
County of Ada)

Timothy J. Luke, being first duly sworn upon oath, deposes and says:

1. My name is Timothy J. Luke. I am the Chief, Water Compliance Bureau, for the Idaho Department of Water Resources ("IDWR"). I have been employed at IDWR since September 1988. My work address is Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho 83720-0098. I reside in Boise, Idaho.

2. My responsibilities include the implementation and management of the water measurement program, providing assistance to water districts, periodic training of watermasters, and assistance or resolution of water distribution/water right disputes.

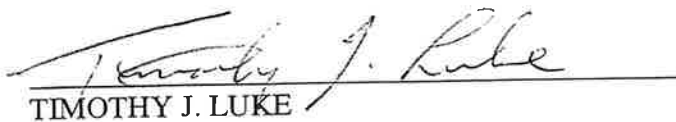
3. I have reviewed the annual watermaster's reports for Water District No: 74-Z (Big Eightmile and Lee Creeks) for the period 1983 through 2013. The annual watermaster's reports

for Water District No. 74-Z are on file with IDWR. The annual watermaster's reports for Water District No. 74-A, for the period 1983 through 2013, show delivery of water to Parley Arave (1983 – 1992) and Bruce McConnell (1993 – 2013).

4. Approximately in the summer of 2000, the Department conducted a water rights inventory for Water District No. 74-Z. Attached hereto as Exhibit A are true and correct copies of the documents associated with that inventory. Upon my review of these records, in preparing this affidavit, I determined that references to Bruce McCollum in the water rights inventory were intended to refer to Bruce McConnell.

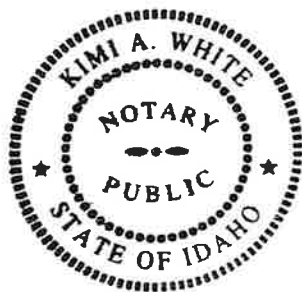
Further your Affiant sayeth naught.

DATED this 22nd day of April, 2014.


TIMOTHY J. LUKE

SUBSCRIBED AND SWORN TO BEFORE ME this 22nd day of April, 2014.

(seal)




NOTARY PUBLIC for Idaho
Residing at: Boise, Idaho
My Commission Expires: 01/01/16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of April, 2014, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF TIMOTHY J. LUKE to the following by the method indicated:

Clerk of the District Court
SRBA
P.O. Box 2707
Twins Falls, ID 83303-2707

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Director of IDWR
PO Box 83720
Boise, Idaho 83720-0098

☒ U.S. Mail/Postage Prepaid
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Chris M. Bromley

EXHIBIT A

WB 74Z 2002

State of Idaho
Department of Water Resources
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866

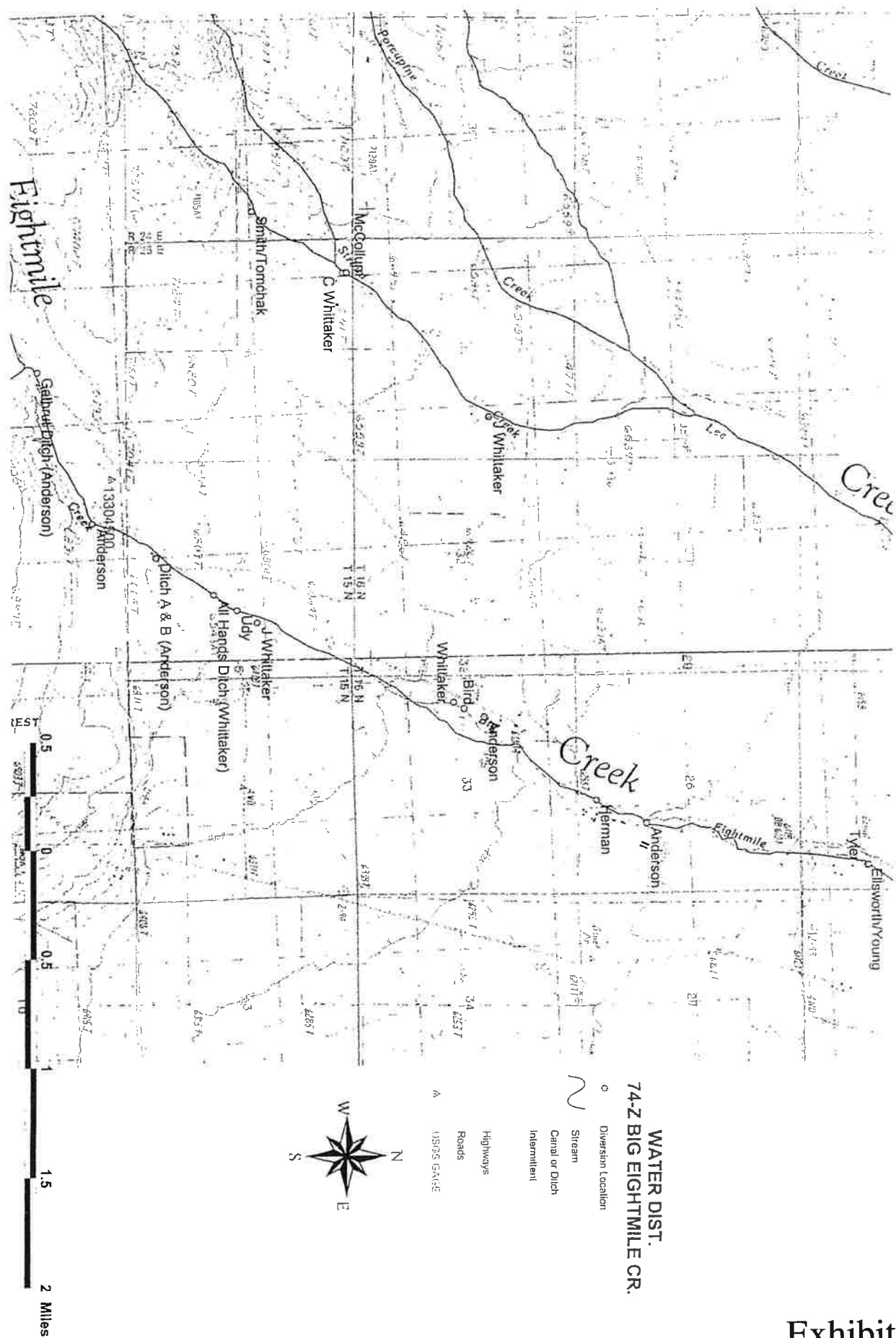
Date: July 10, 2002

To: Cal Whittaker, Advisory Board Chairman
Big 8 Mile & Lee Crks Water Dist 74-Z
PO Box 10
Leadore Id 83464
208-768-2485

From: Dayna Ball *for* Tim Luke 
Water Distribution
327-7907
Fax 327-7866

Enclosed is a copy of the memo from Jane Tallman dated August 2, 2000 regarding Inventory of water district 74-Z and a recent detailed map of the diversions.

Please feel free to contact Tim Luke at 327-7864 with any questions regarding these items



MEMORANDUM

To: File
From: Jane Tallman
Date: August 2, 2000
Subject: Water District 74-Z Inventory

A general inventory of diversions was made of the diversions in this district on June 14-15, 2000. The inventory was part of a general inventory of diversions in the Lemhi River Basin for water management and distribution purposes. Richard Moll is the watermaster in this district. There are a total of 19 diversions in the district. The diversions are described here in order from upstream to downstream.

Gethrut Ditch is accessible from Eight Mile Creek Road and diverts only during high water. The wood diversion box has been damaged and is set to be replaced before next year. The trees that have fallen on it and branches that have clogged its entrance need to be cleaned out. The Cipolletti weir is broken on one side and Moll has been told it will be replaced by a metal structure.

The following diversions visited are accessible by way of the unnamed road across the creek from Eight Mile Creek Road. The two uppermost ditches, Cartwright Ditch (not decreed) and an unnamed ditch owned by Dare Anderson, are high water diversions only, their head gates being within 10 feet of one another. The Cartwright Ditch is used only as a safeguard to protect head gates downstream from being "blown out" in very high water so the fact that the wooden diversion structure is no longer functional is not an issue to the other water users, based on my discussion with Moll. The neighboring unnamed ditch does need to have the wooden diversion structure reset as water is leaking under the boards and through the sides of the structure. Neither of these two ditches contains a measuring device, which is not critical, as these are high water diversions.

Ditch "A" and Ditch "B" have parallel headgates in a shared wooden structure in good condition. Both have adequate Cipolletti weirs in good condition but the silt build up needs to be cleaned out from behind each to obtain accurate measurements.

The Kent Bird Ditch, All Hands Ditch and the Tom Udy Ditch are accessible from Eight Mile Creek Road or from the unnamed road across Big Eight-Mile Creek. The All Hands and Udy ditches have head gates in good condition. The Kent Bird Ditch has a wooden gate with stop logs that provides good control but no lockable control. The weir in the Bird Ditch is silted in and requires weir pool maintenance. The weir in the All Hands Ditch should be reset for a more accurate measurement as it is leaning downstream. The weir in the Udy Ditch is in very good condition.

The Ted Peterson Ditch is located just downstream of the Bird Ditch. It has an adequate lockable

steel crew gate. The owner installed a Cipolletti weir in a steel box below the headgate but the weir is welded in the box at about a 60-degree downstream sloping angle. This device needs to be reset in the box at a 90-degree angle, leveled, and perpendicular to the flow. James Whittaker owns a small-unnamed ditch just upstream of the Ted Peterson Ditch. This ditch has a headgate but is used for high water diversion only. The watermaster indicated the ditch had not been used in a number of years.

The head gate and weir on the Ted Whittaker Ditch are in good condition but the moss build-up on the weir was not readily removed and needs to be cleaned out.

The Herman Ditch, Jimmy and Anderson Ditch are accessible from Eight-Mile Creek Rd through the James Whittaker Ranch. Both ditches have adequate lockable control gates. The Herman Ditch has a 6-ft. wood crest Cipolletti weir that requires some minor maintenance. The Anderson Ditch has no measuring device.

The Carl Tyler and Ellsworth-Young Ditches are the lower most diversions and are formed by a split in the creek. Neither diversion has any control device or structure. Both diversions have weirs which are in good condition.

There are a total of four diversions on Lee and Stroud Creeks. One of the diversions is actually located on Everson Creek while the other three are actually on Stroud Creek, both tributary to Lee Creek. Three of the four diversions had some limited type of stoplog control structure, while the fourth had no control. Three of the diversions had measuring devices but only one was operable (Tomchak-Smith diversion had two good broad crested weirs where the ditch splits). The remaining ditches need to have new devices installed or have significant repairs to the existing structures. The watermaster does not make regular visits to these diversions. Regulation of these diversions appears to be rather limited, occurring perhaps from time to time as needed.

The watermaster appears to be diligent in his inspection, measurement, and regulation of all diversions on Big Eight Mile Creek. There is adequate control over flow in all but the uppermost high water diversions, and limited control of the four diversions on the Lee Creek tributaries.

CERTIFICATE OF SERVICE

On August 3, 2000 (am), copies of the inventory sheets, photos, basin map, and memo for Water District 74-Q and 74-Z were mailed to the following:

Richard Moll, Watermaster
Water District 74-Q & 74-~~Z~~
PO Box 153
Leadore, Id 83464

Bob Foster
IDWR Salmon Field Office

Harold Jones
IDWR Eastern Region Office

Dayna M. Ball
Dayna M. Ball, Office Specialist II
Water Distribution Section

MEMORANDUM

To: File
From: Jane Tallman
Date: August 2, 2000
Subject: Water District 74-Z Inventory

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WD-THZ

DATE: 6/15/00

Site TAG # = A0008124

GPS FN No 615/16 B

STREAM/SOURCE: STAND CREEK, TRIB to LEE CR. TAG to Diversion structure

DIVERSION NAME: CAL WHITTAKER Ditch

POINT OF DIVERSION: _____

ACCESS: _____

USGS MAP: _____ (name) _____ (number)

WATERMASTER CONTROL: _____ YES X NO

DIVERSION DESCRIPTION: WOOD/TIMBER STRUCTURE IN
CREEK CHAINS/OWERS WATER TO DITCH. TWO RECTANGULAR
OPENINGS IN STRUCTURE BY PASS WATER TO CR.
CAN PLACE BOARDS ACROSS OPENING TO ADJUST FLOW

MEASUREMENT: None

CURRENT WATER RIGHTS: CAL WHITTAKER = CURRENT OWNER

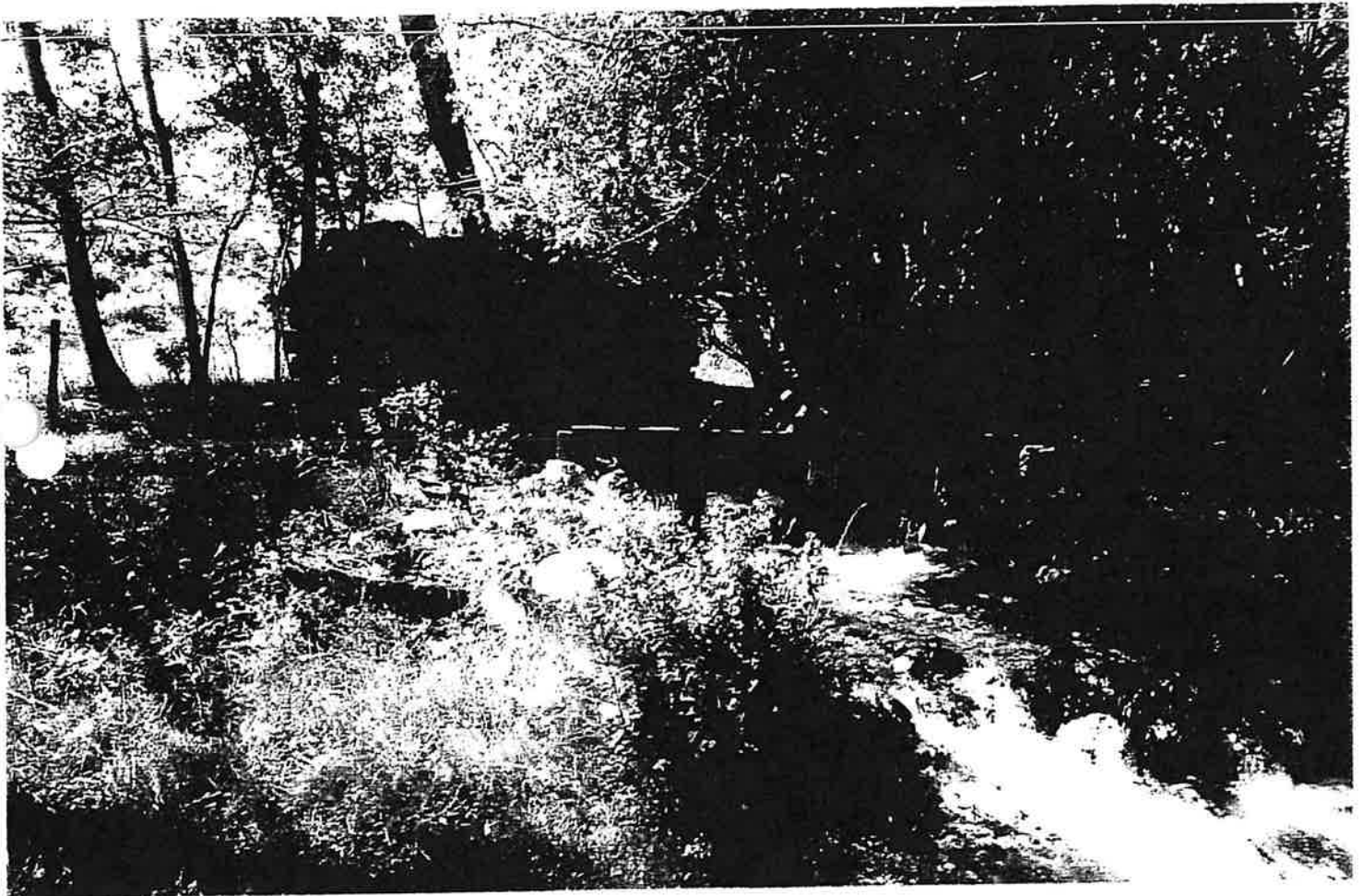
NOTE: GPS DOWN DITCH
≈ 10 FT. (SE of Div. Structure)

LEE CR. TRIB to BIG EIGHT MILE CR.
SOURCE MAY ALSO BE KNOWN AS LEE CREEK

SCANNED

JUN 12 2006

Exhibit 151



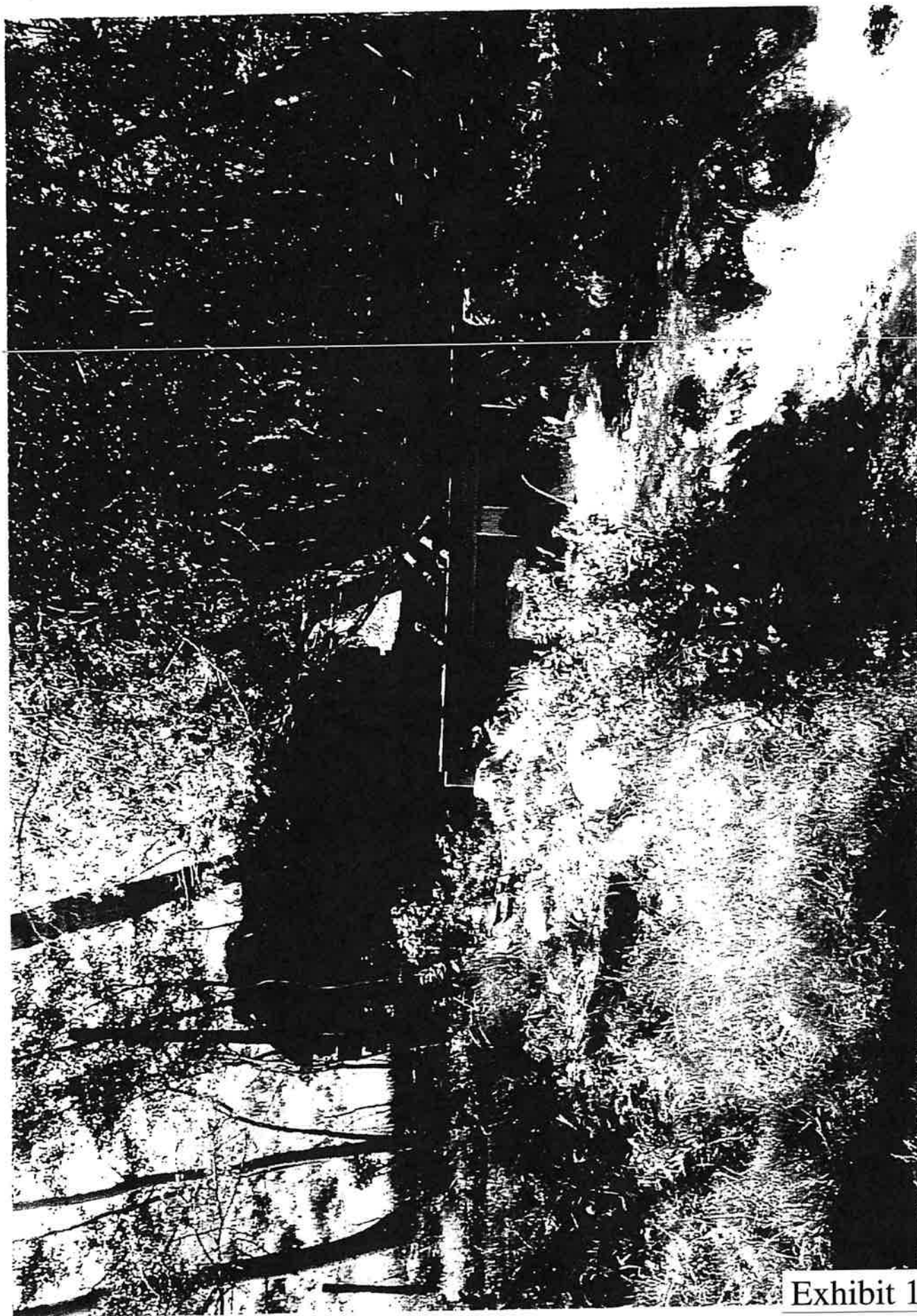


Exhibit 151

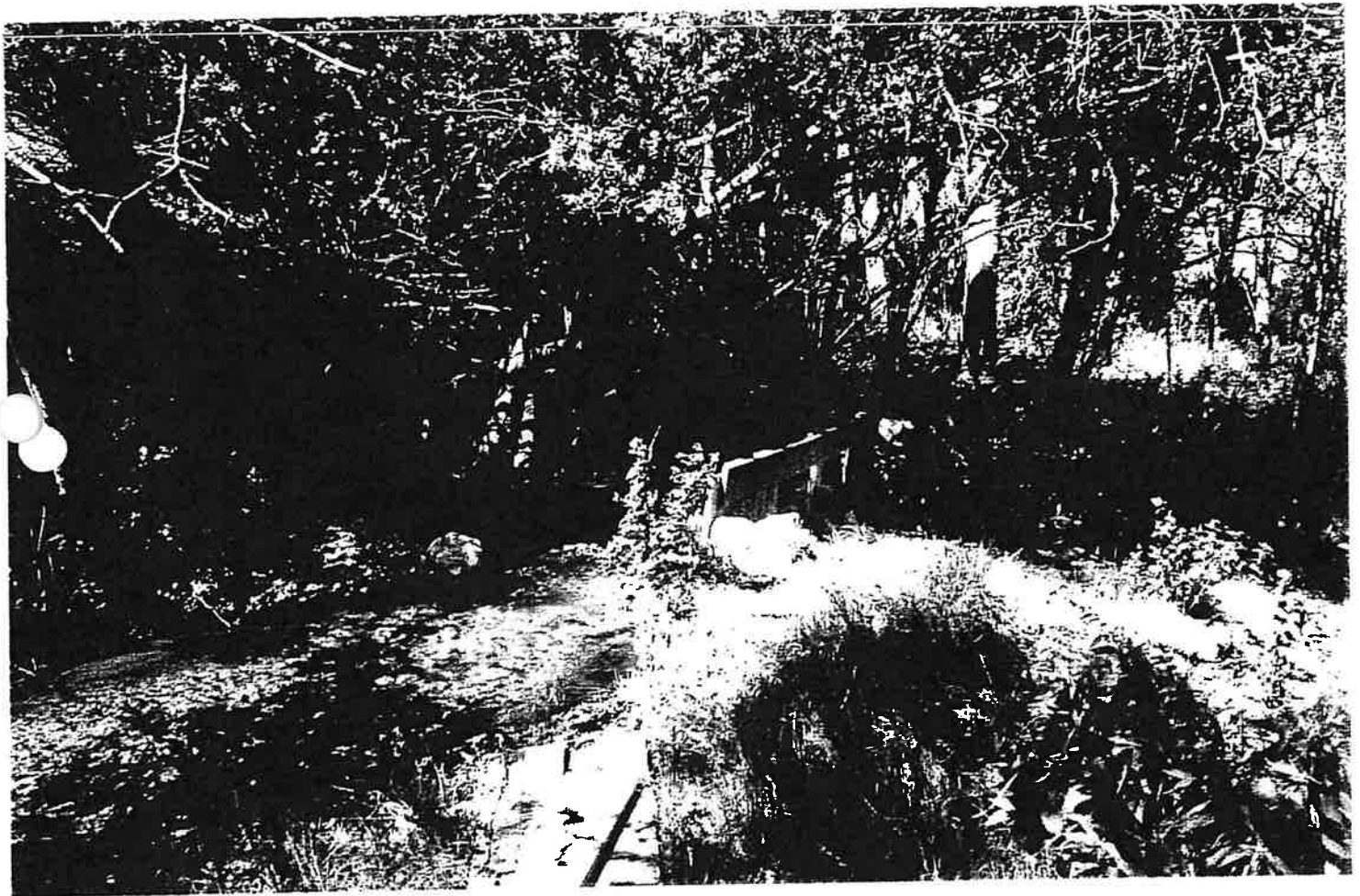




Exhibit 151

WD 74Z

SID TAG: A0011439

DATE: 6/15/00 T. Luke

GPS FN: A061517A

STREAM/SOURCE: STROUD Creek, trib. to Lee CR

TAG on WOOD HEADgate

DIVERSION NAME: BRUCE McCollum Div. Dam

BRUCE McCollum
NAILED to box

POINT OF DIVERSION:

ACCESS:

USGS MAP: (name) (number)

WATERMASTER CONTROL: ☒ YES ☐ NO
NO LOCKAGE

DIVERSION DESCRIPTION: ^{DAM} WOOD DIVERSION. ^{STRUCTURE} STROUD CREEK
CREEK CHUCKS & DIVERTS WATER TO WOOD DIVERSION
HEADgate. Flow can be controlled by
BOARDING DIVERSION BOX OR LAUNCHING/REMOVING
BOARDS FROM DIV. DAM.

MEASUREMENT: 3 Ft. WOOD Cipolletti weir in ditch
Below HLB Box. Weir is washed out, Flow goes
around weir. Should be reset. Weir is set in
wooden weir box. Edges & sides are wood/No thin
metal plate installed for crest or sides

CURRENT WATER RIGHTS: BRUCE McCollum - owner

SCANNED

JUN 12 2006



13000 80 500 1000 1000 1000

BRUCE M. TAYLOR

C.R.

10/10/10

Exhibit 151

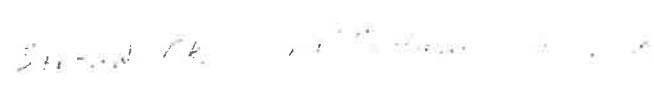
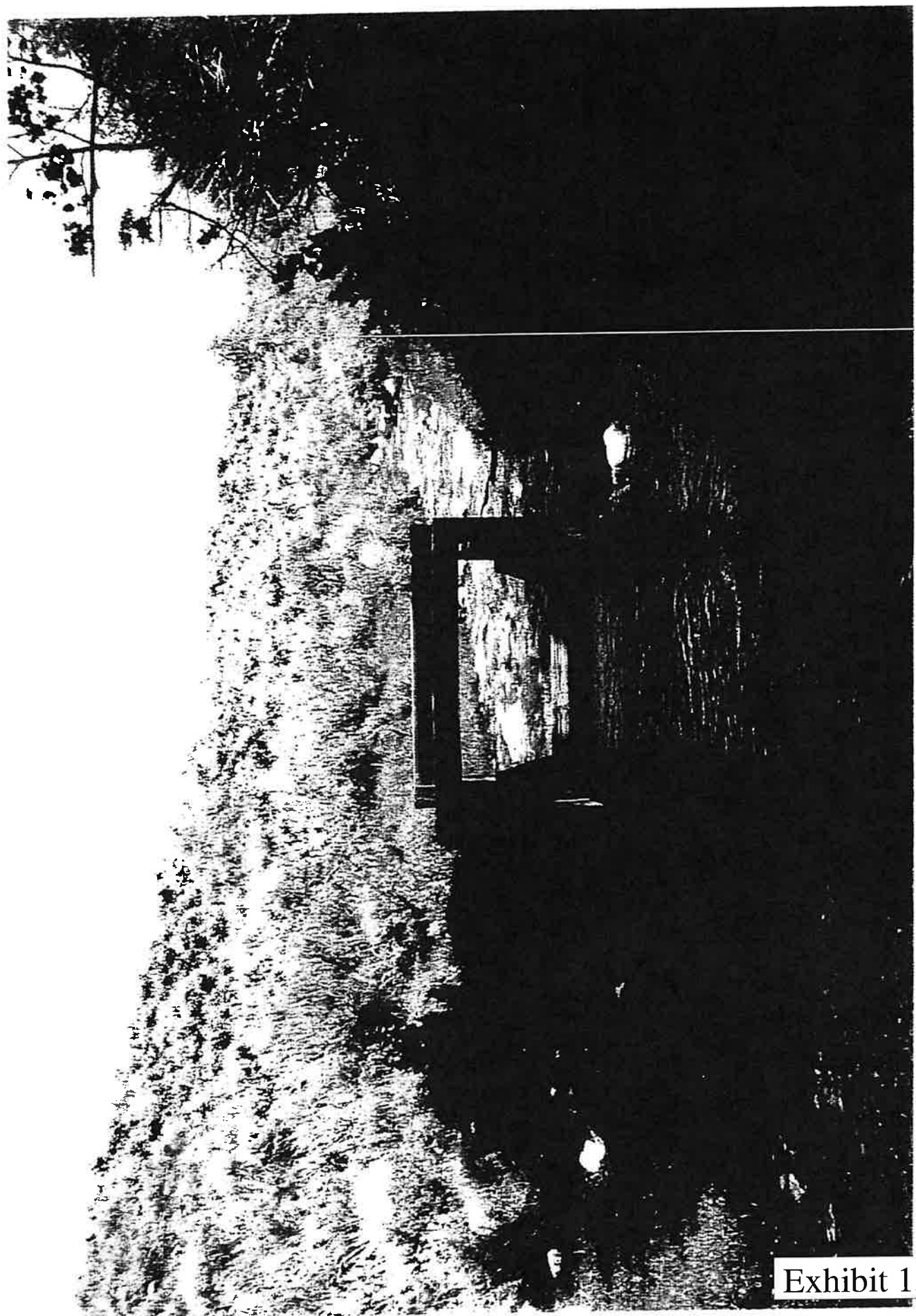


Exhibit 151



river water in the river
will be used for irrigation
(containing) in the river

Exhibit 151



Exhibit 151

WD-74-Z

DATE: 6/15/00

(Site Tag: A0011440
named to honor, Gen. J.A.H.)

STREAM/SOURCE: Stroud Creek, trib to Lee CR. GPS 111 Nch/517B

DIVERSION NAME: James Whitaker Ditch

POINT OF DIVERSION: _____

ACCESS: _____

USGS MAP: _____ (name) _____ (number)

WATERMASTER CONTROL: ☒ YES ☐ NO
Darius, no Lockhouse or pool

DIVERSION DESCRIPTION: Minor diversion from Stroud
Access road leads water to ditch. Some control
possible using board across diversion point.

This ditch has (exposed) but earthen d/s.
This is best location for generally no control, ditch
rides within mil of creek.

MEASUREMENT: 3' ft 1.000, cippolatti weir in ditch.
3 or 3.6 m head gates on weir. Weir should be removed,
ACG - w/ white metal plate on crest of weir
Weir Slope 1/4

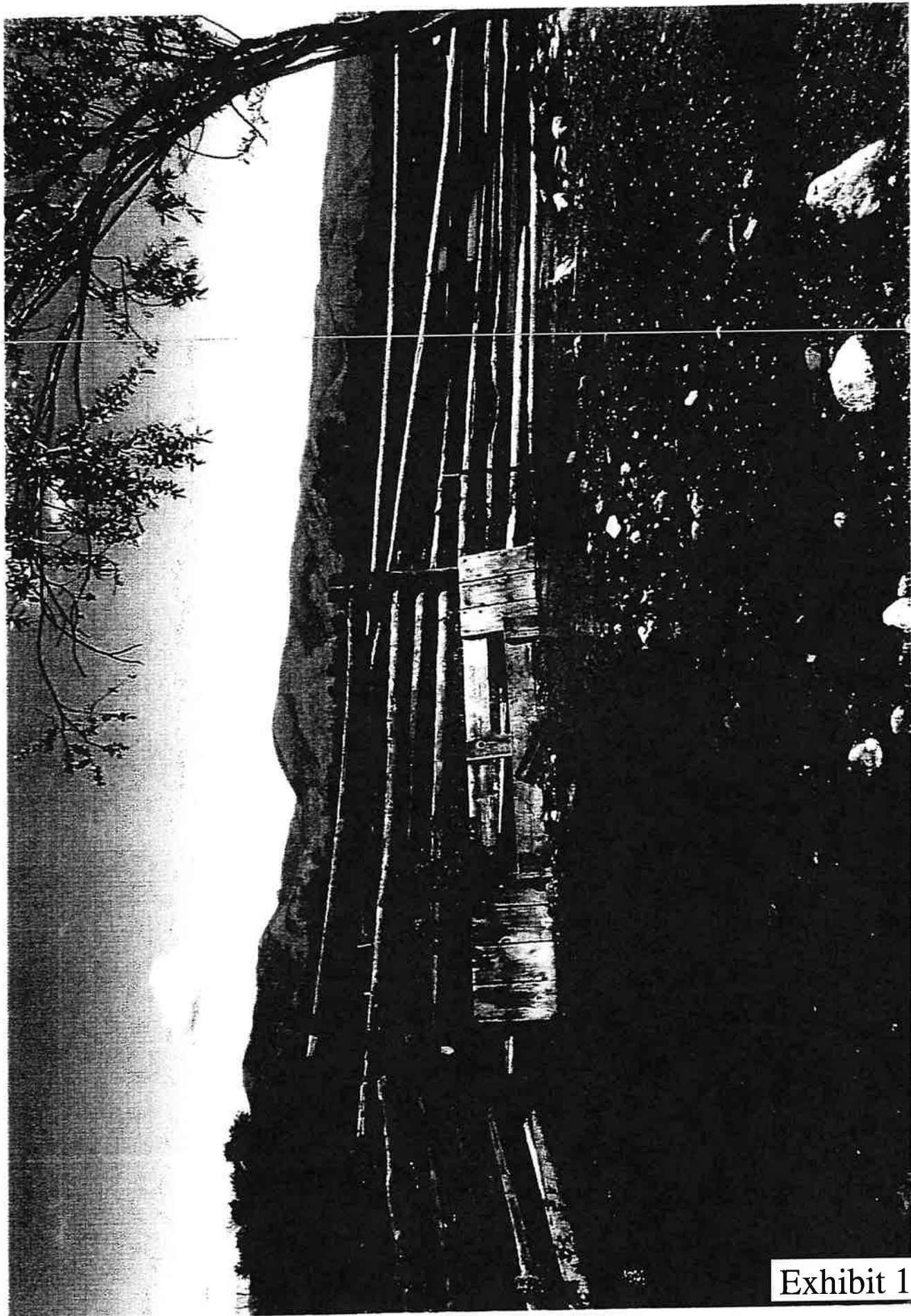
CURRENT WATER RIGHTS: James Whitaker - owner

Examiner: Toubert

SCANNED

JUN 12 2006

Exhibit 151



JAMES WHITAKER INTERVIEW
VIEW OF INTERVIEW CHAIRS, BUT NO CHAIRS IN VIEW

6/10/70

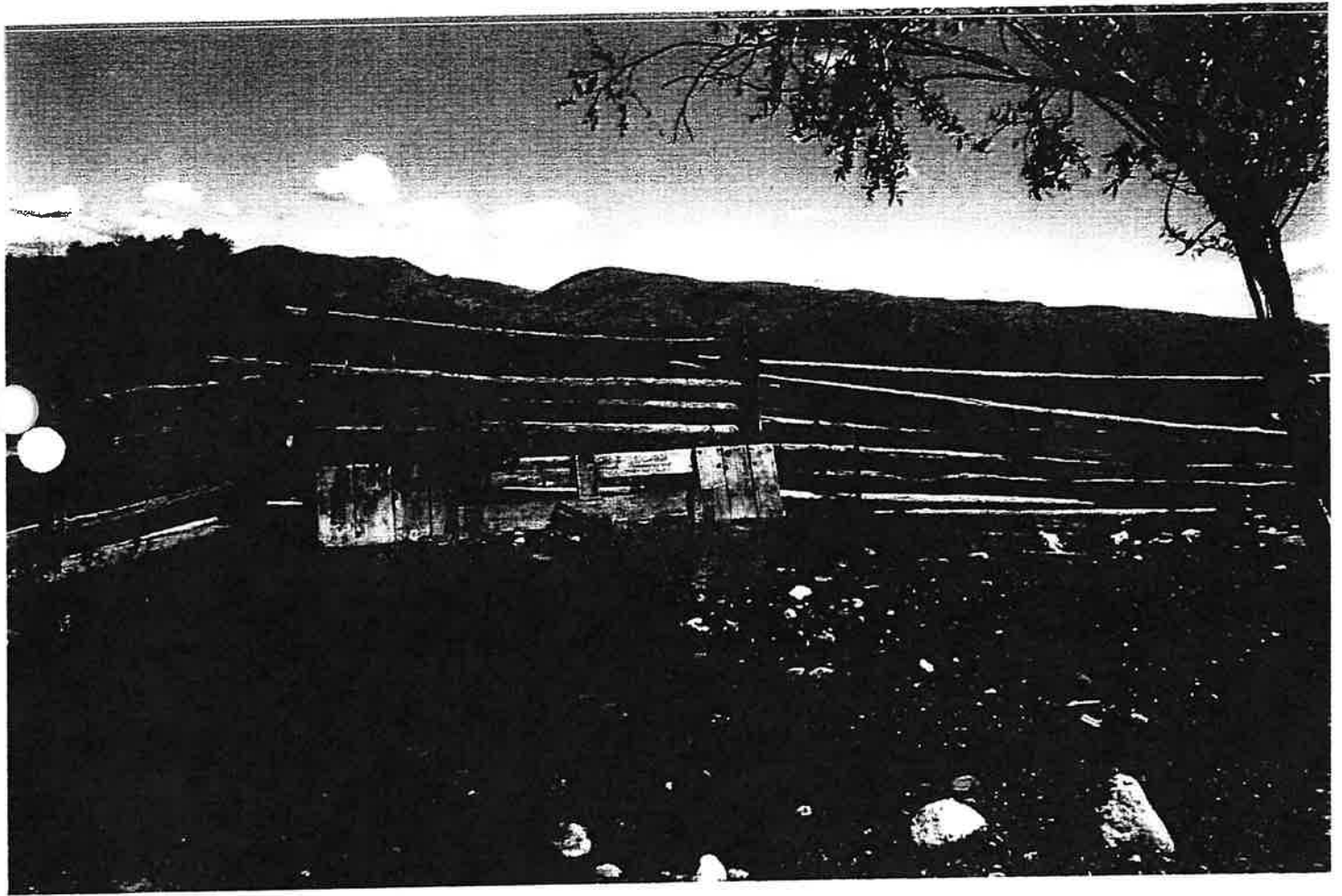
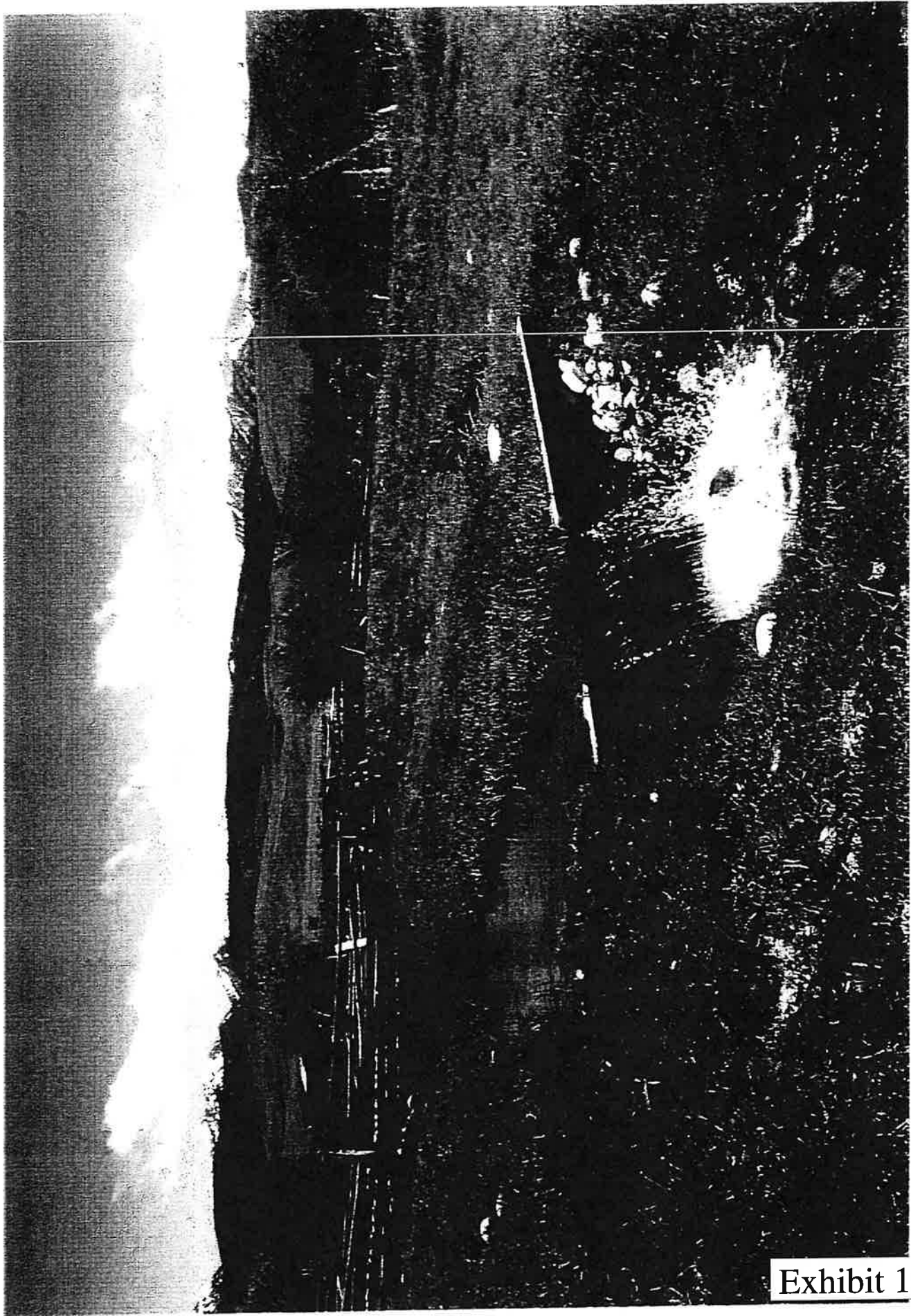


Exhibit 151



3711-18 white + black. Dried. 10/11/12. 10/11/12. 10/11/12.

Exhibit 151

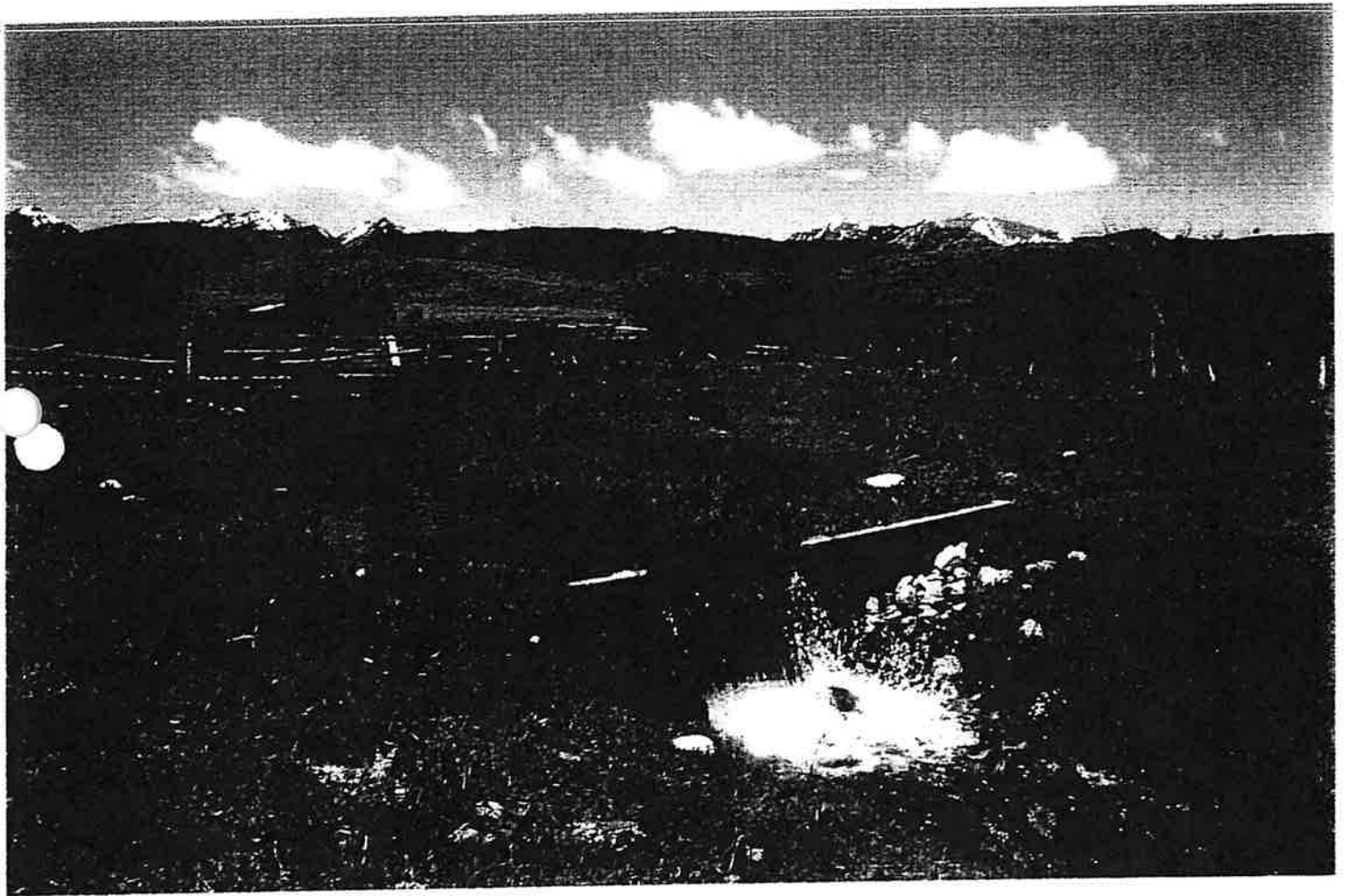


Exhibit 151

04/11/2014

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

RIGHT NUMBER: 61-12296

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF LANDS
300 N 6TH ST STE 103
PO BOX 83720
BOISE ID 83720-0050

SOURCE: SPRING

TRIBUTARY: UNNAMED STREAM

QUANTITY: 1.15 AFY

The capacity of the pond 1.25 AF.

The quantity of water under Right Nos. 61-7417 and 61-12296 shall not exceed 13,000 gallons per day.

PRIORITY DATE: 09/10/1981

This water right is subordinate to all water rights with a priority date earlier than April 12, 1994, that are not decreed as enlargements pursuant to Section 42-1426, Idaho Code. As between water rights decreed as enlargements pursuant to Section 42-1426, Idaho Code, the earlier priority right is the superior right.

POINT OF
DIVERSION:

T01N R06E S34 SESE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER FROM STORAGE	06/01 11/30	1.15 AFY
STOCKWATER STORAGE	01/01 12/31	1.15 AFY

PLACE OF
USE:

STOCKWATER FROM STORAGE in ELMORE County

T01N R06E S34 SESE

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

The quantity of water decreed for this water right is not a determination of historical beneficial use.

This right is based upon an enlargement of Right No. 61-7417 pursuant to Section 42-1426, Idaho Code.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Parcel No. RP01N06E340020

This right is a split from right 61-7417.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Salmon Field Office • 102 South Warpath • Salmon, Idaho 83467

Phone: (208) 742-0658 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

August 6, 2020

MERRITT UDY
WATERMASTER, WD74Z
PO BOX 145
LEADORE ID 83464-0145

RE: WATERMASTER INSTRUCTIONS REGARDING MC CONNELL UNAUTHORIZED DIVERSION
AND WHITTAKER RESUMPTION OF DELIVERY, LEE CREEK

Merritt:

Bruce and Glenda McConnell received the attached letter which requires closure of the unauthorized diversion on Lee Creek. Based on our field inspections, the lower of the two diversions is not authorized on the McConnell water rights.

Mr. McConnell has agreed verbally to close the diversion, and has been instructed in writing to complete the closure no later than Friday, August 7, 2020.

Please coordinate with Mr. McConnell as soon as possible and complete the following:

- confirm that the lower diversion in Lee Creek has been closed, and that all obstructions in the natural channel at that location have been removed
- forward a confirmation of the closure to the WD170 watermaster

Based on the investigation conducted yesterday, it appears that water from Stroud Creek may flow into Lee Creek below McConnell's authorized point of diversion. If McConnell cannot currently access this water from his authorized point of diversion, delivery of water right 74-157 held by James Whittaker may resume. Please complete the following:

- obtain a measurement of total flows available to McConnell at his authorized point of diversion
- make a measurement or estimate of flow in the side channel that is bypassing McConnell's authorized point of diversion
- resume delivery of water right 74-157 from the West Spring
- 12 to 24 hours after delivery to Whittaker is resumed, obtain another measurement of total flows available to McConnell at his authorized point of diversion and make another measurement or estimate of flow in the side channel that is bypassing McConnell's authorized point of diversion
- forward measurements of the diverted and bypassed flow to the WD170 watermaster

over

Exhibit 151

Thank you for your assistance, and please contact me if you have additional questions.

Regards,

A handwritten signature in cursive script that reads "Cindy Yenter".

Cindy Yenter
Watermaster, WD170
IDWR Salmon Field Office

cc: Rob Whitney, IDWR
Garrick Baxter, Deputy Attorney General



Rocky Mountain
ENVIRONMENTAL™
ASSOCIATES, INC.

Field Observation of "East Springs" Water Source of Idaho Water Right 74-157, Lemhi County, Idaho

Project number: 20-0111

Date: July 17, 2020

Mr. Jordan Wittaker
c/o Two Dot : Ranch
P.O. Box 240
Leadore, Idaho 83464

Environmental

- Phase I, II, & III ESAs
- Groundwater Monitoring
- Underground Storage Tanks
- Asbestos Inspections
- Site Investigation & Remediation
- Plans & Permitting

Water Rights

- Water Right Due Diligences
- Transfers & Applications
- Mitigation Plans

Hydrology

- Hydrologic Modeling
- Flow Measurements
- Well Design
- Groundwater Supply
- Aquifer Characterization
- Recharge Studies

Wetlands

- Wetland Delineations
- Environmental Planning
- Mitigation Plans

482 Constitution Way, Suite 303, Idaho Falls, Idaho, 83402. (208) 524-2353
www.rockymountainenvironmental.com

Exhibit 152

Field Observation of "East Springs" Water Source of Idaho Water Right 74-157, Lemhi County, Idaho

**Bryce A. Contor
July 17, 2020**

Introduction

Idaho Water right 74-157 is decreed in the Snake River Basin Adjudication with a water source of "Springs" tributary to "Lee Creek." Physically, the springs are configured in two groups, known by the water-right holder as the "East Springs" and the "West Springs." On July 3, 2020, I walked and observed the East Springs in response to the right holder's request to evaluate whether curtailment of diversion from the East Springs would contribute additional flow to Lee Creek. I followed up this field work with office review of historical maps obtained from the Bureau of Land Management and from the right holder, the water-rights claim file, the 1989 USGS topographic map, the 2019 NAIP aerial image, and an electronic Digital Elevation Model (DEM).

This report summarizes my findings that if not diverted, the water from the East Springs would flow to the northeast and would not contribute to flows in Lee Creek.

Documents Attached

Attachments to this report include the following:

- *Water right report and map*, generated from Idaho Department of Water Resources' website (idwr.idaho.gov/apps/ExtSearech/WRAJSearch/WRADJSearch.aspx) on July 17, 2020.
- *Figure 1 – Gov't Plat Map*. This figure includes a portion of a scanned image of the 1884 Government Plat Map (https://gloreCORDS.blm.gov/details/survey/default.aspx?dm_id=41560&sid=njmfkzio.mmw&surveyDetailsTabIndex=1) which I georeferenced and plotted with the GPS track of my walking traverse during my site visit.
- *Figure 2 - 1954 Engineer's Map*. This figure includes a portion of a scanned image of a 1954 engineer's drawing provided to me by the right holder. I georeferenced this image and also plotted it with the GPS track of my traverse from my site visit. It also includes an enhancement of the line showing the track of a leveling profile performed in 1954.

- *Figure 3 - 1954 Engineer's Certification and Leveling Profile.* This figure provides another part of the map referenced in Figure 2, with the Engineer's Certification and the profile surveyed along the track highlighted in Figure 2.
- *Figure 4 - 1989 USGS Topo Map.* This is the GPS track overlaid on the 1989 USGS Stroud Creek Triangle, Idaho-Lemhi County 7.5 Minute Series Topographic map. It was edited in 1989 based on 1985 photography, field checked in 1986. The contour interval is 40 feet. The copy I used is labeled "Provisional" and is unusual in omitting springs, as well as a number of ditches that clearly pre-date the map and are large enough to appear on aerial images.
- *Figure 5 - 2019 NAIP Image Map.* In this figure, the GPS track is overlaid on the 2019 natural-color National Agricultural Image Program aerial image.
- *Figure 6 - Contour Map from DEM.* This shows two-foot contours derived from a digital elevation model, with the GPS track and flowlines that I drew by hand.

Discussion

Description of My Traverse. I walked upstream along the ditch from the East Springs, from north to south, staying mostly on the uphill (west) side of the ditch. I tried to traverse around the larger inflow channels and associated springs. I took one downhill excursion, circling a spring that did not connect to the ditch. When I had traveled far enough up the ditch that there was no water in it, I returned on a separate track uphill of the ditch. GPS data were collected in track mode with a Garmin Etrex 10 handheld GPS unit.

Water Rights Report and Map. The water-rights report provides little detail regarding the springs, and even less regarding diversion works. The map shows points of diversion in locations that physically do not match what is on the ground. I reviewed all the files publicly available on the Idaho Department of Water Resources' website, and found neither descriptions nor investigations of the points of diversion, diversion works, and water source. This failure includes documents which I prepared in 2006, for an amended claim to adjust the place of use for these claims.

Government Plat Map. The stream features on the government plat map do not precisely match the topographic maps and aerial photographs, but are reasonably close. In the context of the east springs, the important feature of the government plat map is a stream west of the physical location of the East Springs. This stream is shown flowing to the north and turning to the east, and lying between the springs and the mapped stream near what is currently known as Lee Creek. That is the mapped stream entering the plat map on the west side of the map and turning north and then slightly west.

1954 Engineer's Map and Leveling Profile. This map shows a private ditch connecting the East Springs to a ditch that parallels Lee Creek and then diverges to the east. The sketched profile (Figure 3) shows a downward sloping profile from Point X to Point Z. The map also shows a trace near the location of the northeast-trending stream on the 1884 Government Plat map. Outside the frame of Figure 2, the 1954 map identifies this as the 1884 trace of Stroud Creek.

Topographic Map. The topographic map shows that my GPS trace, and therefore the ditch I was following, is nearly at a cross gradient to the natural topography. It also shows a number of uphill-facing points on the contours downhill of the spring line, consistent with topographic channels. These can be connected to indicate surface-drainage structures parallel to the 1884 channel identified on the 1954 map as the channel of Stroud Creek, leading away from Lee Creek.

2019 Aerial Image. The letters on Figure 5 show the locations of the following observations:

- *A.* This deviation from the path is typical of locations where I walked uphill to trace a larger inflow channel and the discrete spring that headed the channel. Where the ditch was collecting diffuse surface flows without distinct channels, I simply walked along the ditch bank in water I estimated to be two to four inches deep, in growing vegetation.
- *B.* I made a side excursion downhill from the ditch until I found a spring that did not deliver water to the ditch. It was a "pothole" spring that I visually estimate to be eight to ten feet across, with the bottom four to five feet below land surface and water level approximately two feet below land surface. I walked all the way around the spring without encountering a surface discharge channel.
- *C.* Uphill of this point, the ditch was dry and the vegetation in and adjacent to the ditch was beginning to mature and dry.
- *D.* From Point C I could see that the ditch extended toward me from a culvert passing under the road at Point D.
- *E.* Near this location, I again found myself walking through water two to four inches deep. I was not sure whether it was surface runoff from the irrigated parcel uphill, or diffuse spring water.
- *F.* This is a ditch bifurcation where the collection ditch can deliver water to the northwest or to the northeast. The ditch to the northwest would convey water to the water-right place of use. The ditch to the northeast runs approximately downhill and appears to more or less return water to where it would have flowed if not diverted.

Water was flowing in the ditch to the northeast on July 3. I did not measure

flow or the ditch at this point, but visually I estimate that the ditch was approximately a rectangular channel two feet wide and about 8 inches deep, with a water velocity in the range of one to 1.5 feet per second. This suggests flow in the range of 1.3 to 2.0 cubic feet per second.

- *Contour Map from DEM.* I drew flowlines attempting to honor two principles: First, flow will be at right angles to topographic contours and in the downhill direction. Second, uphill-facing points in contours suggest natural drainage topography to which flow would trend.

Except for the northernmost line, each flowline indicates the approximate path water would take from a discrete spring if it were not diverted by the collection ditch. The northernmost line more or less parallels the northeast-trending ditch I observed, and represents the approximate path water would naturally take if the private ditch conveying water to the place of use were curtailed.

Fate of Water If Not Diverted

It is my professional opinion that if the water from the East Springs were not diverted, or if it were curtailed at the end of the collection ditch, water would not reach Lee Creek, either on the surface or via subsurface flow, and would not contribute to flows in Lee Creek. The end of the collection ditch is the physical point on the ditch system nearest the Point of Diversion mapped by Idaho Department of Water Resources.



Bryce A. Contor
Senior Hydrologist

Attachments: Water-right Report
 Water-right Map
 Figures



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WATER RIGHT REPORT

7/16/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 74-157

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	F JAMES WHITTAKER
Current Owner	PAULA J WHITTAKER PO BOX 240 LEADORE, ID 83464 2087682491
Attorney	MOFFATT THOMAS BARRETT ROCK & FIELDS CHTD C/O SCOTT L CAMPBELL PO BOX 829 BOISE, ID 83701-0829 2083452000
Original Owner	FLOYD J WHITTAKER PO BOX 177 LEADORE, ID 83464

Priority Date: 04/01/1916

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	LEE CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	3.2 CFS	
STOCKWATER	01/01	12/31	0.02 CFS	
Total Diversion			3.2 CFS	

Location of Point(s) of Diversion:

SPRINGS | NENE | Sec. 31 | Township 16N | Range 25E | LEMHI County
 SPRINGS | SWNW | Sec. 32 | Township 16N | Range 25E | LEMHI County

Place(s) of use:

Place of Use Legal Description: IRRIGATION LEMHI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
16N	25E	29		SWNE	40									
				SWNW	33		SENE	39						
				NESW	40		NWSW	13		SWSW	16		SESW	40
		32		NENW	37		NWNW	33						

Total Acres: 291

Conditions of Approval:

1. E64 This right authorizes the irrigation of 291.7 total acres.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Licensed Date:

Decreed Date: 04/03/2012

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND/OR

Water District Number: 74Z

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

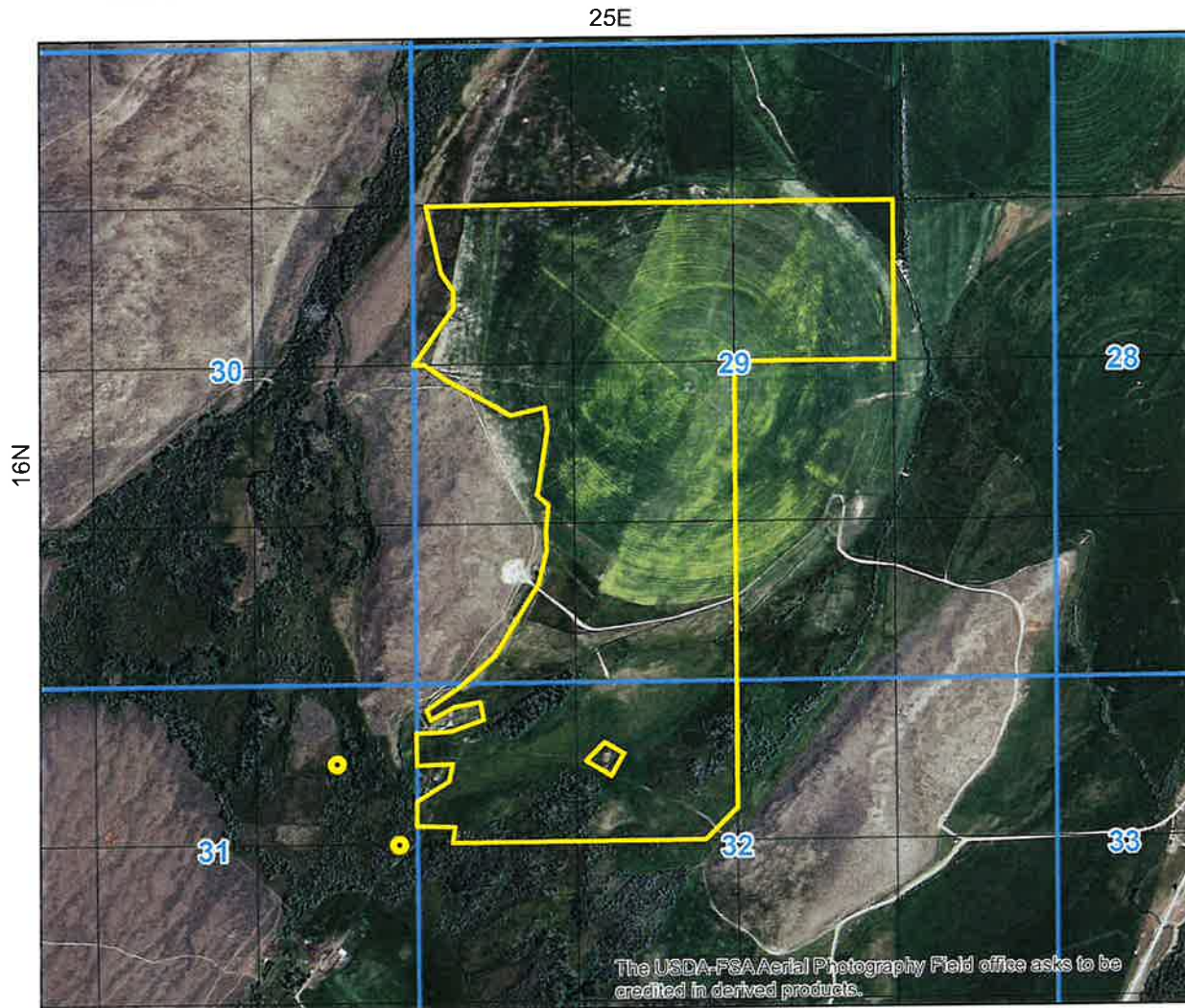
Mitigation Plan: False

State of Idaho
Department of Water Resources

**Water Right
74-157**

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.

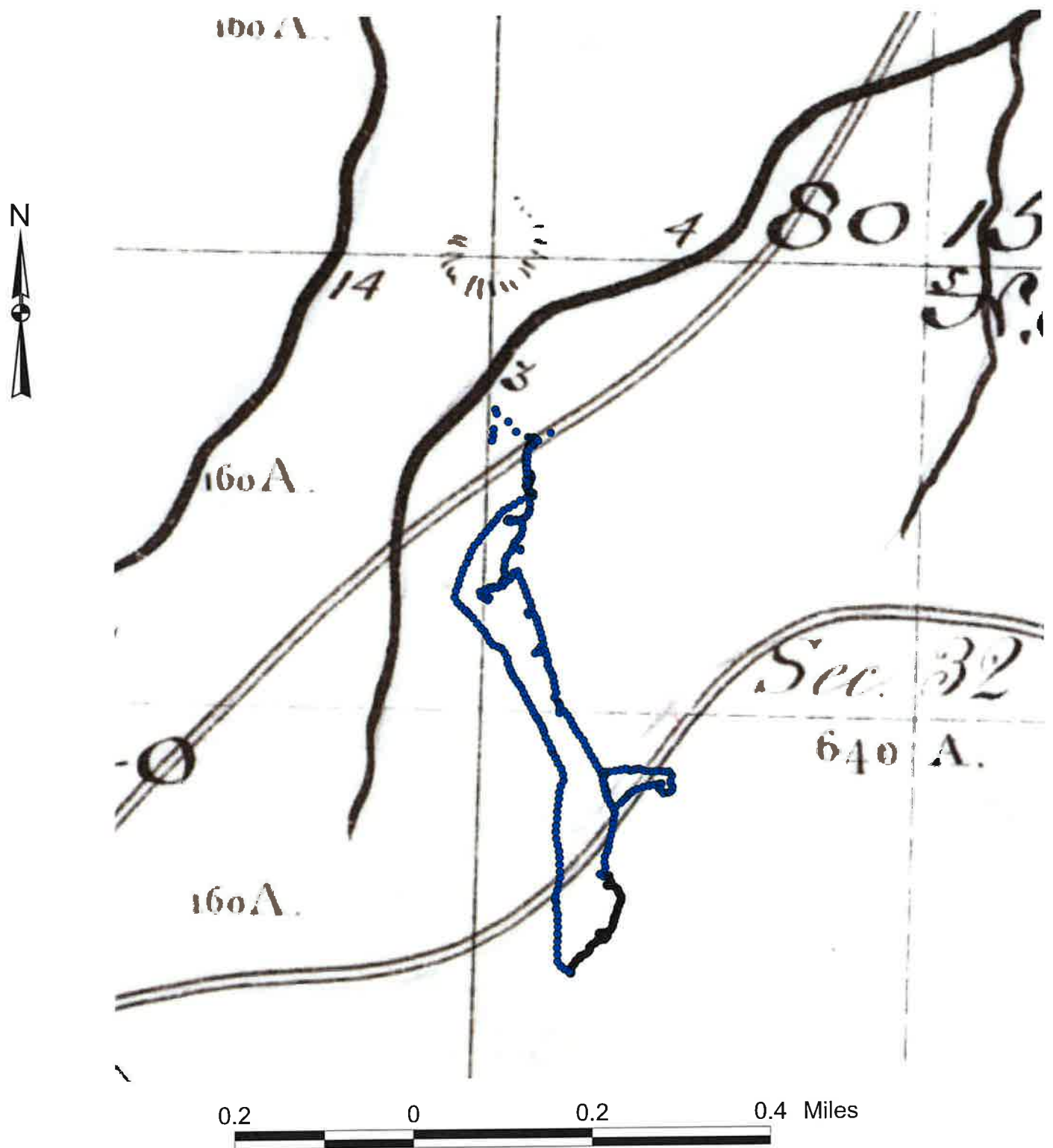


-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.175 0.35 0.7 Miles

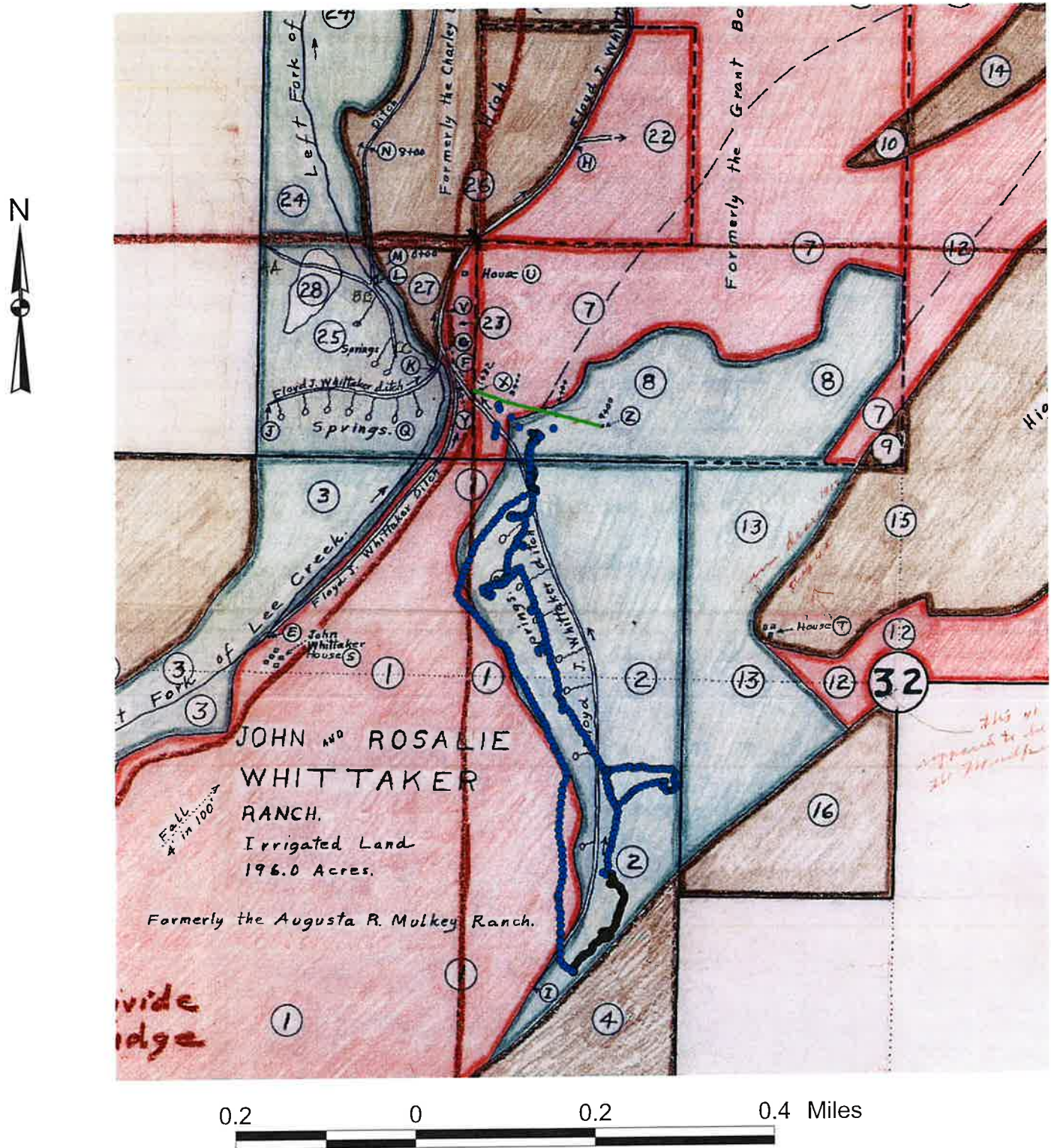


Figure 1 - 1884 Gov't Plat Map



• 2020-07-03 GPS Track

Figure 2 - 1954 Engineer's Map



• 2020-07-03 GPS Track
1954 Level Survey

Figure 3 – 1954 Engineer's Certification
and Leveling Profile

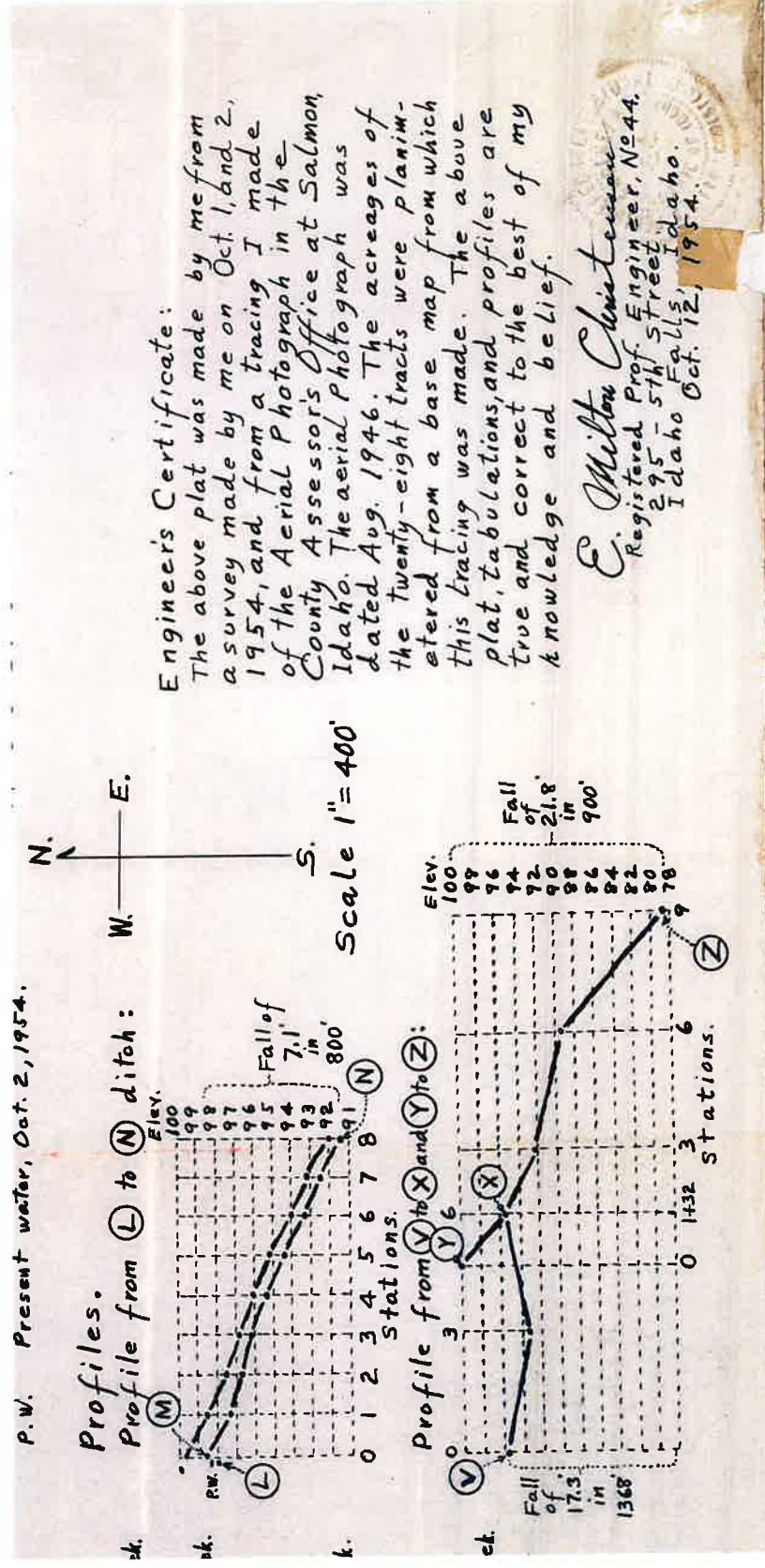
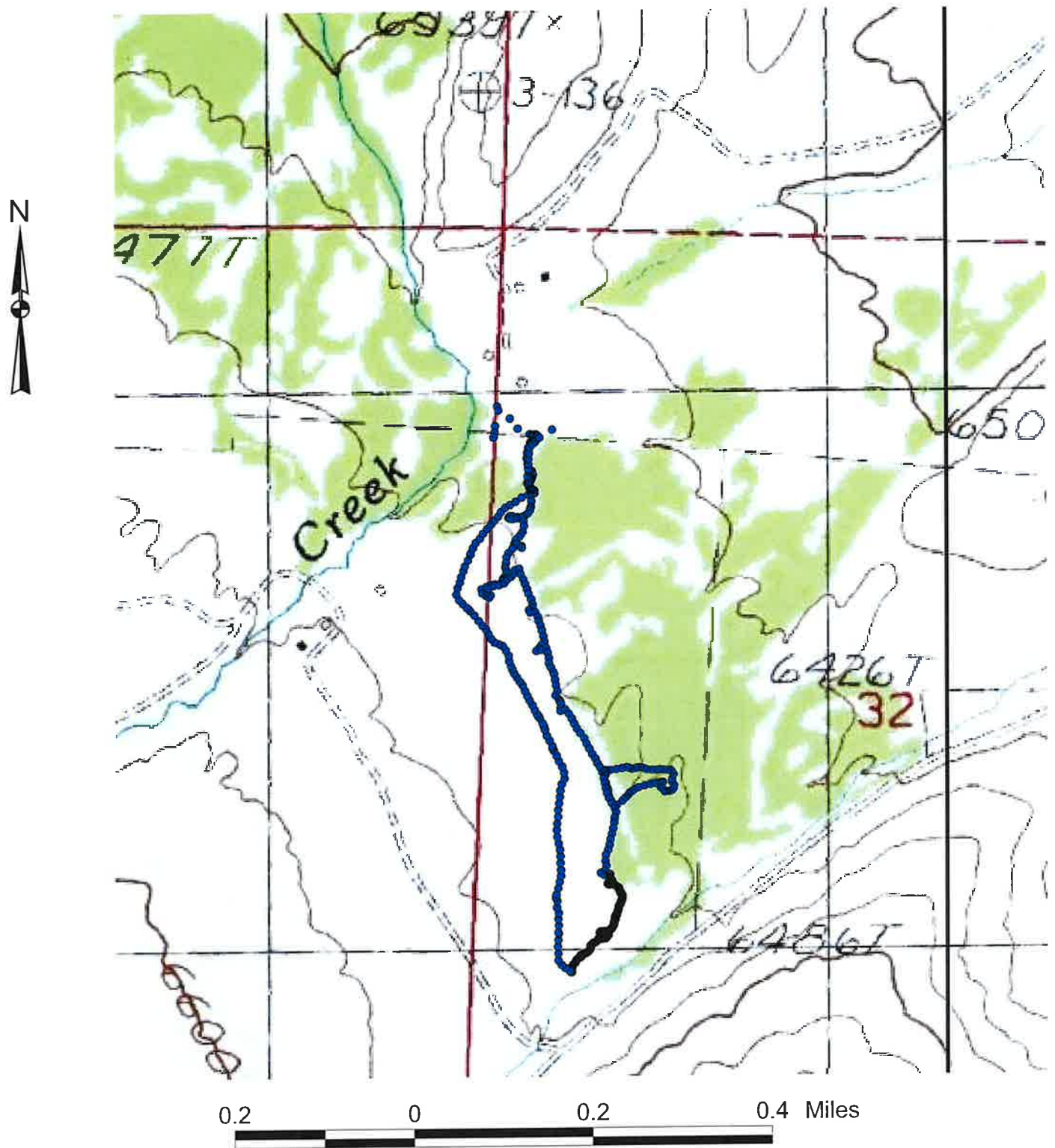


Figure 4 - 1989 USGS Topo Map



• 2020-07-03 GPS Track

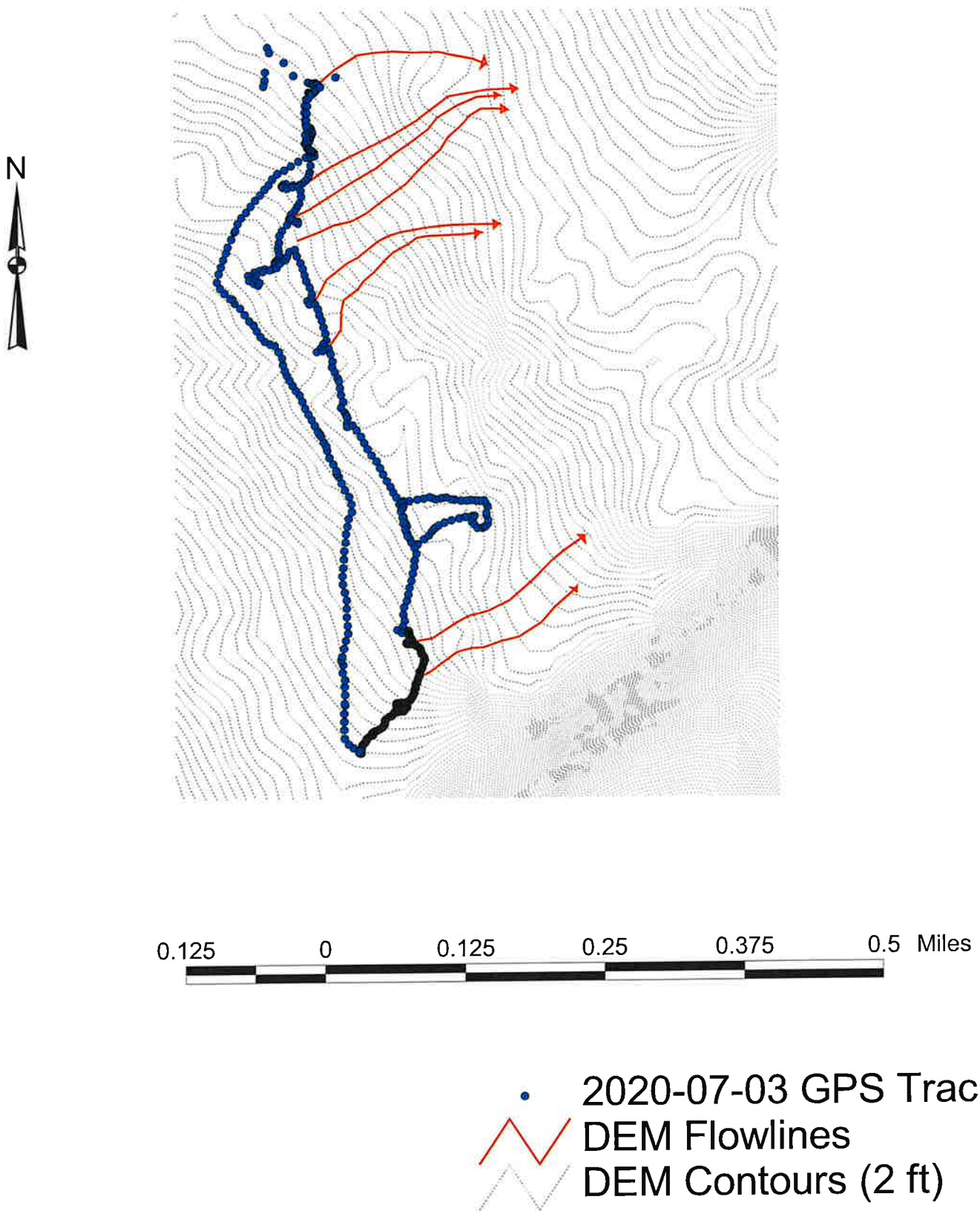
Figure 5- 2019 NAIP Image Map



0.2 0 0.2 0.4 Miles

• 2020-07-03 GPS Track

Figure 6 - Contour Map from DEM





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Field Observation of Lee Creek, a Ditch Known Locally as "Kauer Ditch," and the "West Springs" Water Source of Idaho Water Right 74-157, Lemhi County, Idaho

Project number: 20-0111

Date: July 20, 2020

Mr. Jordan Whittaker
c/o Two Dot : Ranch
P.O. Box 240
Leadore, Idaho 83464

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Exhibit 153

Field Observation of Lee Creek, a Ditch Locally Known as "Kauer Ditch," and the "West Springs" Water Source for Idaho Water Right 74-157

Bryce A. Contor
July 20, 2020

Introduction and Background Information

Idaho Water right 74-157 is decreed in the Snake River Basin Adjudication with a water source of "Springs" tributary to "Lee Creek." Physically, the springs are configured in two groups, known by the water-right holder as the "East Springs" and the "West Springs." The private ditches that convey water under this right currently also are being used to convey Lee Creek water past the collector ditches, bypassing locations where the historical channels of Lee Creek probably existed. Recent printouts of the water-right report and map generated by Idaho Department of Water Resources (IDWR) are attached.

The holder of right 74-157 indicates that prior to 2017, the Lee Creek water was conveyed via another ditch known locally as the "Kauer Ditch," and that the diversion through his own private ditches is a new condition. On July 3, 2020, I walked and observed the Kauer Ditch, Lee Creek, various water-control and measurement structures, West Springs, and the surrounding area in response to the right holder's request to evaluate the current condition and capacities of various channels. I followed up this field work with office review of historical maps obtained from the Bureau of Land Management and from the right holder, the water-rights claim file, the 1989 USGS topographic map, the 2019 NAIP aerial image, and an electronic Digital Elevation Model (DEM).

This report summarizes my findings.

Documents Attached

Attachments to this report include the following:

- *Water right report and map*, generated from Idaho Department of Water Resources' website (idwr.idaho.gov/apps/ExtSearech/WRAJSearch/WRADJSearch.aspx) on July 16, 2020.
- *Figure 1 – Location and Overview Map*
- *Figure 2 – Map with GPS Tracks and Waypoints*
- *Figure 3 – Photo of Kauer Ditch Control Structure*
- *Figure 4 – Photo of Kauer Ditch Cipoletti Weir*

- *Figure 5 – Photo of Kauer Ditch Cross-section Location*
- *Figure 6 – Cross Section of Kauer Ditch*
- *Figure 7 – Representation of Kauer Ditch in 1954 Engineer's Map*
- *Figure 8 – Engineer's Certification of 1954 Map*
- *Figure 9 – Kauer Ditch in 1984 SRBA Aerial Image*
- *Figure 10 – Kauer Ditch in 2019 Aerial Image*
- *Figure 11 – Water Control Structures and Channels*
- *Figure 12 – Looking North from Six-foot Cipoletti Weir*
- *Figure 13 – Distributed Channel Overflows*
- *Figure 14 – Distributed Channel Overflows*
- *Figure 15 – Head Cutting in Private Ditch*
- *Figure 16 – Representation of West Springs in 1954 Engineer's Map*
- *Figure 17 – Trace of Bohan Ditch*
- *Figure 18 – Trace of Bohan Ditch'*
- *Figure 19 – Topographic Depression*
- *Figure 20 – Map of Bohan Ditch Transect*
- *Figure 21 – Bohan Ditch Elevation Cross Section*
- *Figure 22 – Transects for DEM Evaluation*
- *Figure 23 – Topographic Profiles from DEM*
- *Figure 24 – Close-up View of Central Topographic Profiles*

Field Observations

Location Maps

Figure 1 shows the various features overlaid on a 2019 aerial photograph. Figure 2 adds Global Positioning System (GPS) tracks of the areas that I walked alone or with Mr. Jordan Whittaker, or rode to with Mr. Whittaker in a trail machine. It also adds GPS waypoints identifying locations referred to in this report. Some of the feature and place names on the map and in this report are local names. Not all waypoint numbers are represented on the map.

Kauer Ditch

Mr. Whittaker represents that from at least the 1950s, and probably since about 1908 (the approximate date of settlement), through 2016, nearly all the flow of Lee Creek was diverted into the Kauer Ditch during the spring and summer. I observed the following regarding the Kauer Ditch:

- Figure 3 is a photograph of a wooden structure at the point of diversion for the Kauer Ditch, near Waypoint 2 on Figure 2. The metal ruler on the measuring stick is four feet long, and the stick itself is under five feet. Channel configuration at the point of diversion suggest that in practice, this structure was not used; rather, water

likely was diverted into the ditch by manipulating the earthen channel of the stream. IDWR aluminum site tag number A0011439 is attached to this structure.

- Figure 4 is a photograph of a three-foot Cipoletti weir in the Kauer Ditch within about 100 feet downstream of the diversion. It appears that flow typically bypassed the weir and that the weir was not used to measure flows. Nevertheless its size provides information about the design capacity of the ditch.
- Figure 5 is a photograph of the channel of the Kauer Ditch obtained at Waypoint 3. The tape measure was leveled with a carpenter's level and used with a metal ruler to obtain a cross section.
- Figure 6 shows the cross section used in capacity calculations presented later in the report.
- Figure 7 shows part of a copy of a 1954 engineer's map in my possession, which I obtained from Mr. Whittaker. It shows the location of the Kauer Ditch and gives its slope as "Fall 2.5' in 100'" on the north (downstream) end of the ditch.
- Figure 8 provides the engineer's certification for the map shown in Figure 7.
- Figure 9 shows the Kauer Ditch trace from the 1954 engineer's map on a 1984 aerial image. This image was part of the IDWR 1987 Adjudication Aerial Image data set used in the Snake River Basin Adjudication (SRBA). The misalignment in the ditch trace likely results from differences in georeferencing of the 1946 aerial photo the engineer used and the SRBA image.
- Figure 10 shows the same 1954 trace on the 2019 NAIP aerial image, with a similar misalignment of the ditch trace

Water Control Structures and Channels

Near Waypoint 5, the flow of Lee Creek is controlled by a headgate, measured by two Cipoletti weirs, and can be delivered into a pipeline or into one of two ditches. Figure 11 shows a close-up of the GPS track of my observations, and the structures and channels I observed. Where the lines are broken, I was not sure of the precise location and/or did not continue mapping the channel.

Water flows into the farmyard of the old John Whittaker homestead (near Waypoint 5) from the south. A headgate can be closed to push water towards a three-foot Cipoletti weir on the east. From this Cipoletti weir, water flows into a pipeline intake. From near the pipeline intake, a historical ditch channel could carry water north, if not introduced into the pipeline intake.

When the headgate is open or partly open, the flow not diverted towards the three-foot Cipoletti weir is measured over a six-foot Cipoletti weir and continues

north in Whittakers' private ditch. Figure 12 shows the weir and the private ditch. In the two loops I walked to the west, north of the six-foot weir, I could not discern the original channel of Lee Creek. In the traverse that crosses Waypoint 13, I reached upland topography high enough that I am certain I crossed the location of whatever original channel had existed, though I could not identify it. In the two traverses through the willows near Waypoint 10 and Waypoint 13, I encountered multiple areas where water appeared to have overflowed the ditch and was eroding through the willows/wetland. Figures 13 and 14 do not adequately show the nature of the damage. From water marks and debris in the willows, it appears flows had recently been substantially higher than they were during my observations. Figure 15 shows head cutting in the Whittaker private ditch near Waypoint 104. Head cutting only occurs when a smooth gradient has not been established by the flowing stream. The existence of head cutting indicates a recent change to a different flow regime.

Figure 16 shows the representation of the West Springs on the 1954 engineer's map. From walking the bank of the collector ditch, I visually estimate that the ditch is four to five feet wide and incised three to four feet deep. The gradient is very flat and flow velocity is low. The engineer's map seems to indicate the channel of Lee Creek crossing the collection ditch from the West Springs near letter K, but I saw no indication of any kind of flume, siphon or culvert that would allow the creek to pass under or over the ditch.

From the West Springs collector ditch, the ditch proceeds to a hilltop distribution point with a three-foot Cipoletti weir and control gate that could convey water to the north-northwest, and a six-foot Cipoletti weir that delivers water down the hill into a ditch that proceeds to the north-northwest. The control gate was closed on July 3 and all water was passing over the six-foot weir and down the hill.

At the bottom of the hill, flow enters a ditch that connects with another collector ditch, known locally as the "Bohan Ditch," near Waypoint 36. I walked upstream along the Bohan Ditch until I encountered its intersection with and capture of the original channel. There is no control structure or bypass capacity, no indication of earth work or disturbance for many years, and no indication of flow down the original channel beyond the Bohan Ditch for many years. It appears that historically the Bohan Ditch would have captured any flow from upstream, including any Lee Creek flow that had not been captured by the West Springs collector ditch.

Immediately downstream of this confluence, the Bohan Ditch loses its integrity and flow exits the ditch via numerous bank failures, moving across the meadow in a number of small channels that gradually merge. The trace of the Bohan Ditch is shown in Figure 17 (taken at Waypoint 24) and Figure 18 (taken at

Waypoint 47). The metal ruler on the measuring stick is four feet long, and the stick itself is just short of five feet.

Water Flow

Just upstream of the Kauer Ditch diversion I did a quick reconnaissance flow measurement with a velocity-head rod. Near Waypoint 5 and near Waypoint 21 I used a weir stick to read the roll-up head on the Cipoletti weirs that were passing water, and the US Bureau of Reclamation "Measure H2O" app (apps.apple.com/ca/app/bor-measure-h20/id1070000537) to calculate flow. At Waypoint 48 I measured flow with a General Oceanics current meter. My intent in going so far downstream was to find a place where all the flow that had broken out of the Bohan Ditch would be collected into one channel. However, I may have erred in going too far downstream; water originating in additional springs to the southwest may also be included in flow at this location.

Topography

I observed the topography in all locations, with special attention to the John Whittaker farmstead area. I used a hand level to generate a topographic profile near Waypoint 36.

Analyses

Water Flow

Table 1 summarizes the flow measurements.

Table 1. Flow Measurement Summary

Location	Method	Subjective Assessment of Precision	Flow (cfs)
Lee Creek near Waypoint 2	velocity head rod	+/- 30%	9
Lee Creek flow to pipeline near Waypoint 5	three-foot Cipoletti weir	+/- 5%	2.52
Lee Creek flow north in private ditch near Waypoint 5	six-foot Cipoletti weir	+/- 5%	2.85

Location	Method	Subjective Assessment of Precision	Flow (cfs)
Ditch to the north-northwest near Waypoint 21	three-foot Cipoletti weir	(only minor leakage observed)	zero
Flow down hill at spill near Waypoint 21	six-foot Cipoletti weir	+/- 5%	3.54
Lee Creek at Waypoint 48	General Oceanics current meter – challenging location	+/- 10%	4.2

The 1954 engineer's map indicates the north end of the Kauer ditch has a slope of 2.5 feet per 100 feet (0.025). Using the DEM and the 2019 aerial image, I calculated a slope of 0.022 in the vicinity of the cross section. My field reference book indicates roughness coefficients (Manning's n values) of 0.030 to 0.040 for "earth, cobble bottom" and 0.040 to 0.045 for "rock, jagged." While the rocks in the channel visible in Figure 5 are cobbles and not jagged, they are very large and the channel is rough. Therefore, I used the upper-range coefficient of 0.045, resulting in a lower estimate of flow capacity than if the channel were smoother. Using this coefficient, the cross section shown in Figure 6 and a slope of 0.022, the capacity of the Kauer ditch is approximately 15 cubic feet per second (cfs). Due to imprecision in identifying the water-level mark in the ditch and imprecision of the roughness coefficient, there is considerable uncertainty in this estimate. However, it is reasonable in the context of flows observed just above the diversion, and given that the capacity of a three-foot Cipoletti weir ranges from 10.1 cfs at one foot of head to 18.6 cfs at 1.5 feet of head.

The imprecision of a sum or difference can be calculated from the variance of the components of the sum or difference using the following equation (A.J. Clemens and C.M. Burt, *Accuracy of Irrigation Efficiency Estimates*, Journal of Irrigation and Drainage Engineering, November/December 1997):

$$s_0^2 = s_1^2 + s_2^2 + 2s_{12}^2 \quad (1)$$

where:

- s_0^2 = variance of the sum or difference
- s_1^2 = variance of component 1
- s_2^2 = variance of component 2
- s_{12}^2 = covariance between components 1 and 2

The covariance is covariance in measurement methods, and can be omitted if the measurement methods are independent. The equation can be extended for sums or differences of more than two components.

The variance is the square of the standard deviation. Standard deviation can be estimated as one-fourth the total range, or one-half the "+/-" range. "10 cfs +/- 10%" implies a standard deviation of $(10 \times 0.10)/2$ or 0.5, and a variance of 0.5^2 or 0.25.

The process can be reversed to find the range of precision of a sum. If the sum were 15 with a variance of three, the standard deviation would be 1.73 (square root of three) and the +/- range would be 3.5 (1.73×2) or 23% ($3.5/15$). This would indicate the precision of the flow measurement was 11.5 to 18.5 cfs, or 15 cfs +/- 23%.

Assuming independence of measurements at each location, and applying Equation (1) and the calculations described, the water budget from upstream to downstream is presented in Table 2. Inflows are entered as negative values in the "Flow (cfs)" column, and outflows are entered as positive values. Negative results mean inflows exceed outflows, indicating losses (seepage from the stream to the aquifer). Positive results indicate gains.

Table 2. Upstream to Downstream Water Budget

Component	Flow (cfs)	Precision	Variance
<i>Gain/Loss Between Kauer Diversion and John Whittaker Farmstead</i>			
Waypoint 2. Lee Creek Inflow	-9	+/- 30%	1.8
Waypoint 5. Weir supplying Whittaker pipeline	+2.52	+/- 5%	0.004
Waypoint 9. Weir carrying water in bypass ditch	+2.85	+/- 5%	0.005
Gain/Loss	-3.6		1.81 (std dev 1.34)
Gain/Loss + 2 std deviations	-0.9		
Gain Loss – 2 std deviations	-6.3		

Component	Flow (cfs)	Precision	Variance
<i>Gain/Loss between John Whittaker Farmstead and Ridgetop Split</i>			
Waypoint 9. Weir carrying water in bypass ditch	-2.85	+/- 5%	0.005
Waypoint 21. Ditch to the north-northwest	-0	+/- 0%	0
Waypoint 21. Spill downhill	+3.54	+/- 5%	0.008
Gain/Loss	+0.69		0.013 (std dev 0.11)
Gain/Loss + 2 std deviations	+0.91		
Gain Loss – 2 std deviations	+0.47		
<i>Gain/Loss between Ridgetop Split and Downstream</i>			
Waypoint 21. Spill downhill	-3.54	+/- 5%	0.008
Waypoint 43. Lee Creek downstream	+4.2	+/- 10%	0.044
Gain/Loss	+0.66		0.052 (std dev 0.23)
Gain/Loss + 2 std deviations	+1.12		
Gain Loss – 2 std deviations	+0.20		

In each case, the +/- range very likely encompasses the true value and the calculated gain/loss value is the most probable. Table 3 summarizes the gains and losses from upstream to downstream, applying the same approach to estimating the variance of a sum.

Table 3. Summary of Gains and Losses

Reach	Most Probable (cfs)	Variance	Comment
Kauer Diversion to John Whittaker Farmstead	-3.6	1.81	
John Whittaker Farmstead to Hilltop Split	+0.69	0.013	Includes contributions from West Springs collection ditch
Hilltop Split to Lee Creek Downstream	+0.66	0.052	
Net	-2.3	1.88	Variance of 1.88 implies standard deviation of approximately 1.4 cfs.

Topographic Analysis.

At the John Whittaker farmstead yard, I observed and walked a topographic depression trending north-northeast away from a cut in a bank that allows flow to go to the north-northwest. It is hard to discern in the photo presented as Figure 19, but the observed depression trends towards the gap in the trees to the right of center. Near Waypoint 11, I encountered a distinct channel aligned with this topographic depression and continuing to the north-northwest.

In the field, I used a hand level to measure a topographic transect across a channel remnant north (downstream) of the Bohan collector ditch, and across the Bohan ditch itself just downstream of where the flows from the hilltop spill enter the Bohan ditch. Except across the historic channel and the ditch, I defined the horizontal location of transect points with GPS readings. Across the channels, for finer spatial resolution I used a tape measure to define horizontal location. The precision of elevations near the ditches, closer to the rod I was sighting to, is about 0.1 foot. On the west (left-hand side looking downstream) the elevation precision is about 0.5 foot. As mapped in Figure 20, the transect had two dog-leg deviations from a straight line, so that the transect across both channels would be at right angles to the channel. Figure 21 shows the elevation profile from west to east, that is, looking downstream.

I also used the topographic map to define a number of cross sections perpendicular to the mapped trace of Lee Creek, shown in Figure 22. I generated points approximately every meter along each transect and extracted the DEM elevation at each generated point. Figure 23 shows all the elevation

profiles, and Figure 24 highlights the central transects. The stepped appearance of the profiles results from the 30-meter pixel size of the DEM.

Conclusions

Based on the observations, calculations and analyses presented above, my professional opinions and conclusions are as follows:

Kauer Ditch

From the 1954 engineer's map, the SRBA and 2019 aerial images and the condition of control and measurement structures, I conclude that use of the Kauer Ditch was longstanding (multiple decades of time). From the aerial images and the IDWR site tag on the diversion structure, I conclude that its existence would have been readily apparent during a desktop investigation. From my observations of its current condition I conclude that it was in use up to very recently. From cross section and slope data I calculate that its capacity is most probably 15 cfs, and I subjectively estimate the precision of this estimate to be in the range of +/- 50%. This estimate is consistent with the size of the Cipoletti weir at the head of the ditch, and with flows observed just above the diversion.

Water Control Structures and Channels

From the observations described above, I conclude that water has been diverted through the Kauer Ditch for so many years that there is little remnant of the natural channel of Lee Creek north of Waypoint 5. Water is currently conveyed through Whittakers' private ditch, with increased flows great enough that the ditch is now being damaged by fast-moving head cuts. In places, water overflows the ditch banks and is eroding wetland areas. There is no distinguishable natural channel to accommodate flow, and there is no provision for flow to pass beneath or over the collection ditch from the West Springs. Consequently, all flows are conveyed in Whittaker private ditches until the vicinity of Waypoint 36.

Water Flow

Tables 1, 2 and 3 provide the water flow data and calculations. Table 3 indicates that the net loss from the Kauer Diversion to the downstream measuring point was 2.3 cfs, with a standard deviation of 1.4 cfs. Applying a range of +/- two standard deviations to the net value, it is possible that there is actually a small net gain. However, the most probable value is the calculated loss of 2.3 cfs.

Because the private ditch system now mingles the flow from the West Springs with flow from upstream along Lee Creek, all measured flows north (downstream) of the West Springs collection ditch include water produced by the springs as developed, which was not normally available under prior conditions. Losses would be greater if not for these contributions.

If I erred in measuring outflow too far downstream, so that additional spring flows from the west were included in the stream, then the calculated loss is underestimated.

As described above, the West Springs collection ditch is deep and wide. Spring discharges uphill of that ditch are mostly shallow and diffuse in nature. I conclude that the West Springs collection ditch functions as an improvement of the spring, and that the outflow of the collection ditch is greater than the combined flow of the springs would be if the ditch had not been constructed.

Topographic Analysis

The A-B elevation profile presented in Figure 23 seems to indicate that the current channel of Lee Creek is not in the bottom of the drainage at that location. This does not match my observations on the ground and likely indicates that I erred in my attempt to align the transect at right angles to the stream.

The profiles presented in Figure 24 do match my observations, which included observation of subtle variations at horizontal scales smaller than the 30-meter pixel size of the DEM. Both suggest that the topography in the vicinity of the John Whittaker farmstead would accommodate flows either proceeding to the northwest as currently observed, or to the northeast. To the northeast, flow could proceed along the Stroud Creek channel mapped in the 1884 government plat map and mapped and named in the 1954 engineer's map. Uphill-facing points on the topographic-map contours that are found downhill and to the northeast of the farmstead (visible in Figure 22) indicate the presence of topographic channel rivulets that could accommodate such flows, and most likely were created by them.

My professional opinion is that prior to human intervention, the stream likely alternated between flowing northwest and flowing northeast, depending on the natural reworking of channels and deposition of materials each spring. It appears in that in 1884, the configuration happened to have produced flows to the northwest.

From the size of the remnants of the Bohan Ditch and the channel remnant shown in my topographic cross section, I conclude that for decades, flows

proceeding to the northwest from the John Whittaker farmstead were small or nonexistent. I conclude that for decades, the Kauer Ditch had been diverting much or most of Lee Creek flows during high-flow periods.



Bryce A. Contor
Senior Hydrologist

Attachments: Water-right Report
 Water-right Map
 Figures



IDWR offices are open to the public and following the CDC guidelines for wearing masks and observing social distancing. For in-person visits, we encourage you to [call ahead for an appointment](#). ×

WATER RIGHT REPORT

7/16/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 74-157

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	F JAMES WHITTAKER
Current Owner	PAULA J WHITTAKER PO BOX 240 LEADORE, ID 83464 2087682491
Attorney	MOFFATT THOMAS BARRETT ROCK & FIELDS CHTD C/O SCOTT L CAMPBELL PO BOX 829 BOISE, ID 83701-0829 2083452000
Original Owner	FLOYD J WHITTAKER PO BOX 177 LEADORE, ID 83464

Priority Date: 04/01/1916

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	LEE CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	3.2 CFS	
STOCKWATER	01/01	12/31	0.02 CFS	
Total Diversion			3.2 CFS	

Location of Point(s) of Diversion:

SPRINGS | NENE | Sec. 31 | Township 16N | Range 25E | LEMHI County

SPRINGS | SWNW | Sec. 32 | Township 16N | Range 25E | LEMHI County

Place(s) of use:

Place of Use Legal Description: IRRIGATION LEMHI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
16N	25E	29		SWNE	40									
				SWNW	33		SENE	39						
				NESW	40		NWSW	13		SWSW	16		SESW	40
		32		NENW	37		NWNW	33						

Total Acres: 291

Conditions of Approval:

1. E64 This right authorizes the irrigation of 291.7 total acres.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Dates:

Licensed Date:

Decreed Date: 04/03/2012

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: AND/OR

Water District Number: 74Z

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

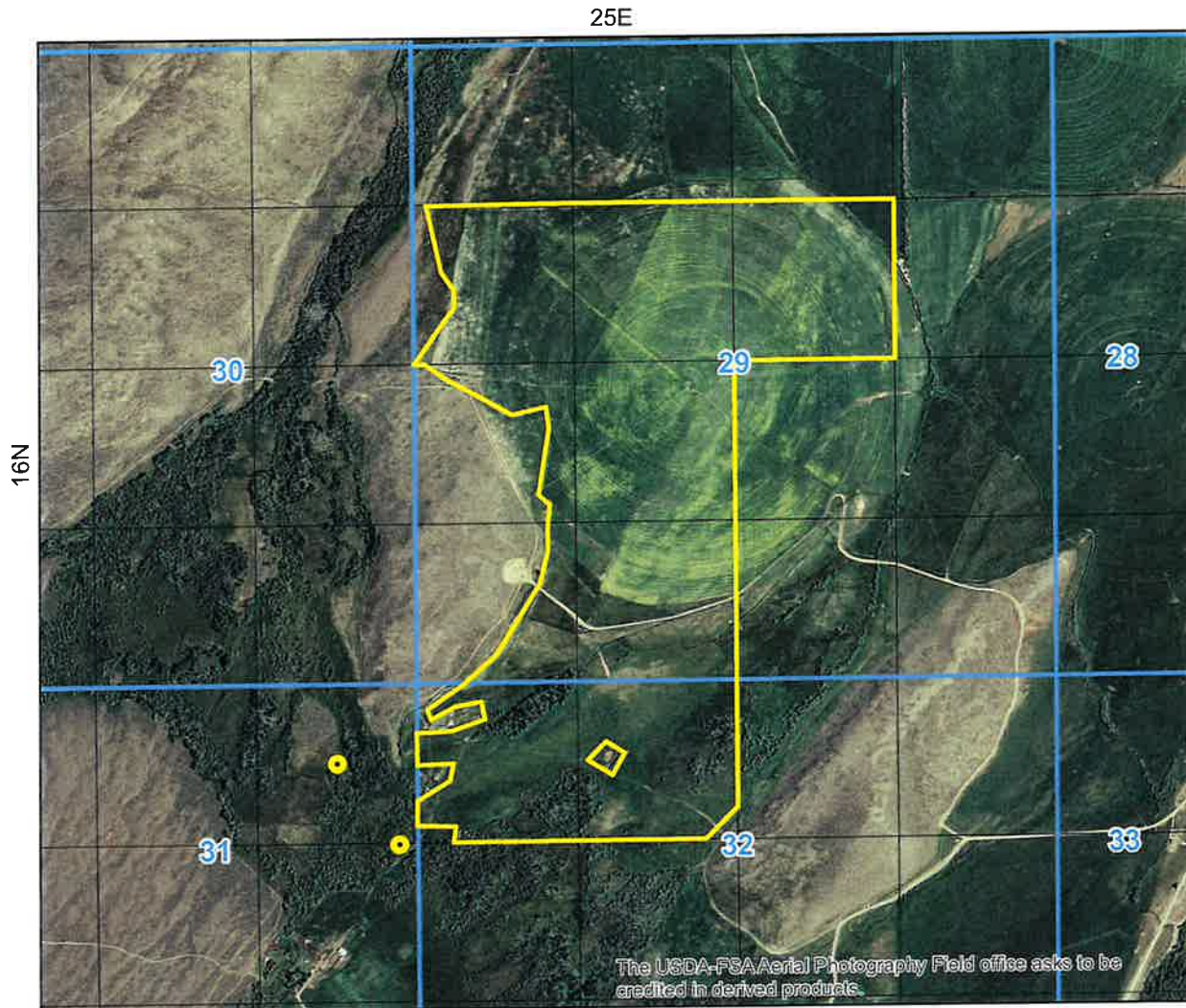
State of Idaho
Department of Water Resources

Water Right

74-157

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.175 0.35 0.7 Miles



Figure 1. Location and Overview Map

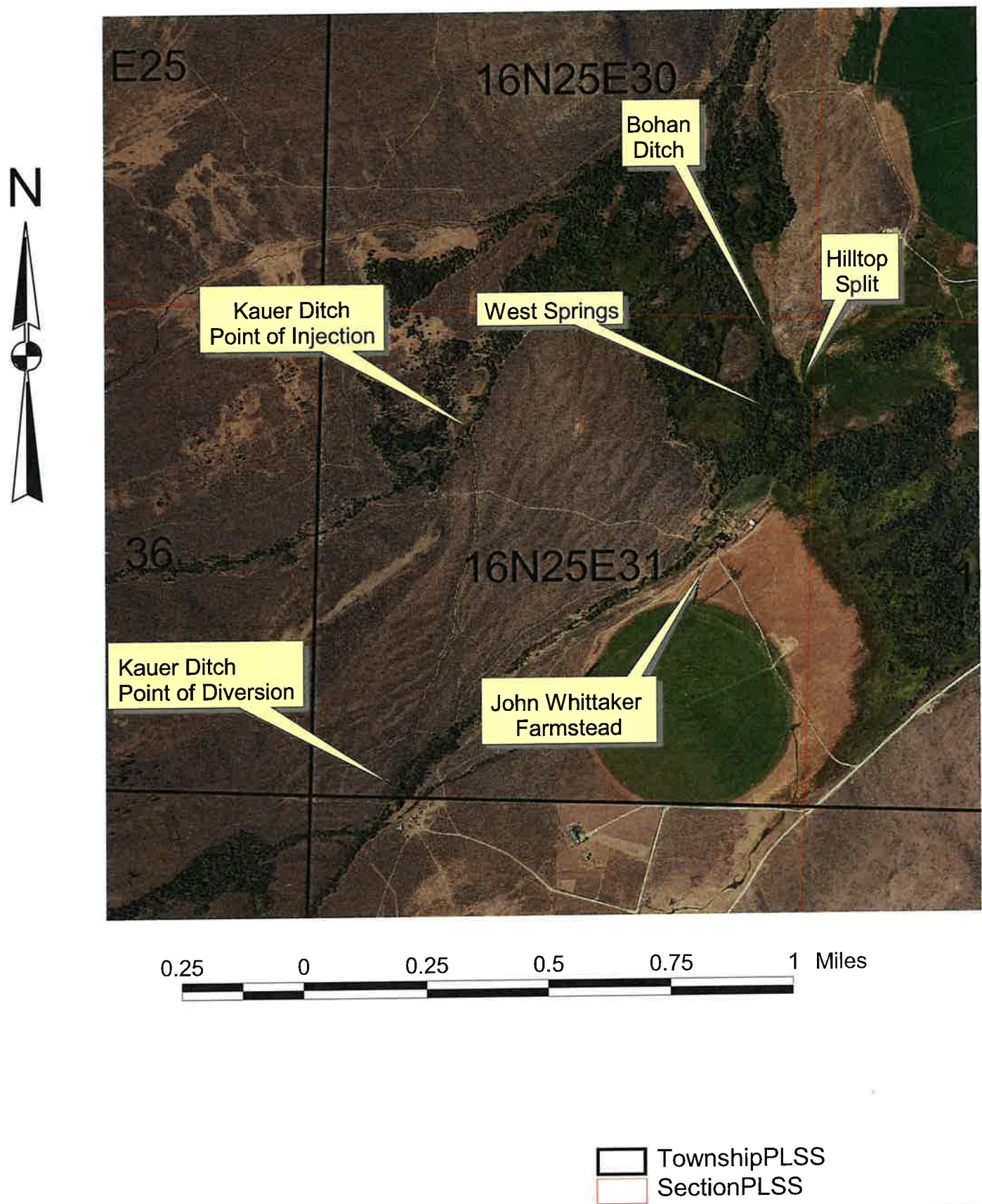
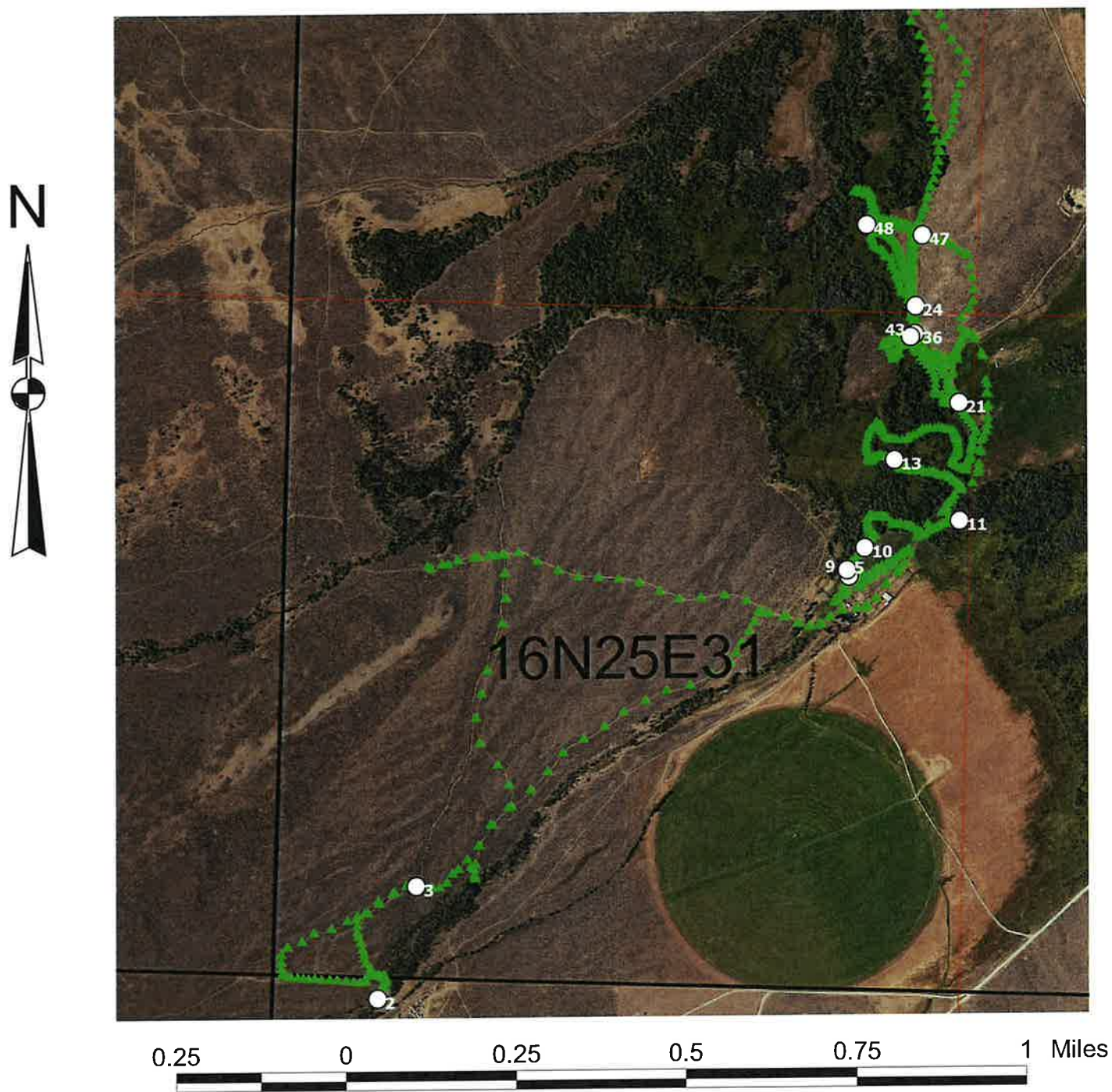


Figure 2. Map with GPS Tracks and Waypoints



- Selected Waypoints
- ▲ GPS Track
- ▭ Township PLSS
- ▭ Section PLSS

Figure 3. Photo of Kauer Ditch Control Structure



Figure 4. Photo of Kauer Ditch Cipoletti Weir



Figure 5. Photo of Kauer Ditch Cross-Section Location



Figure 6. Cross Section of Kauer Ditch

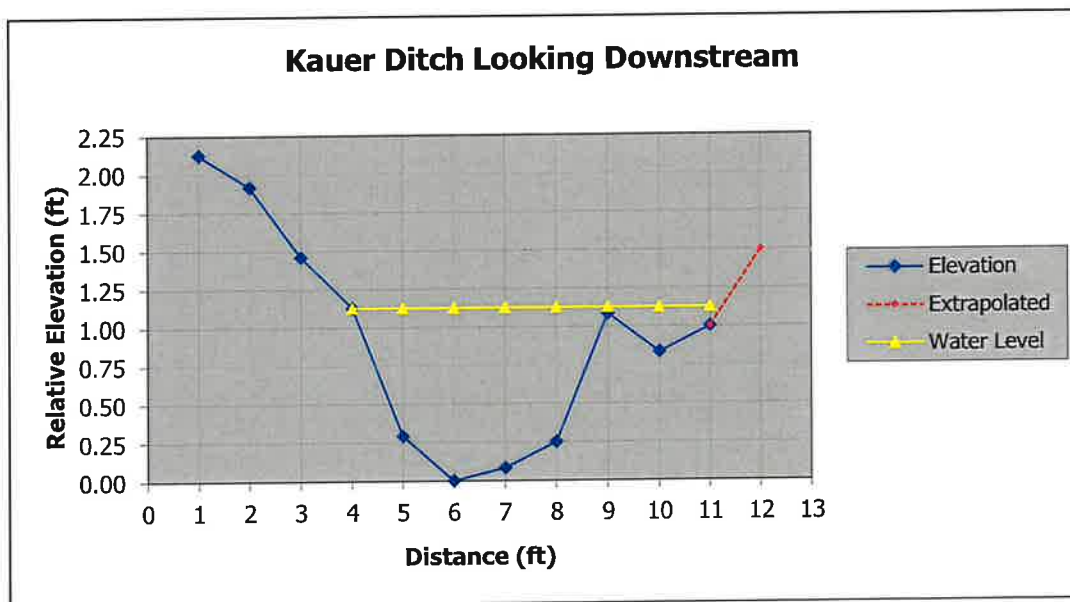


Figure 7. Representation of Kauer Ditch in 1954 Engineer's Map

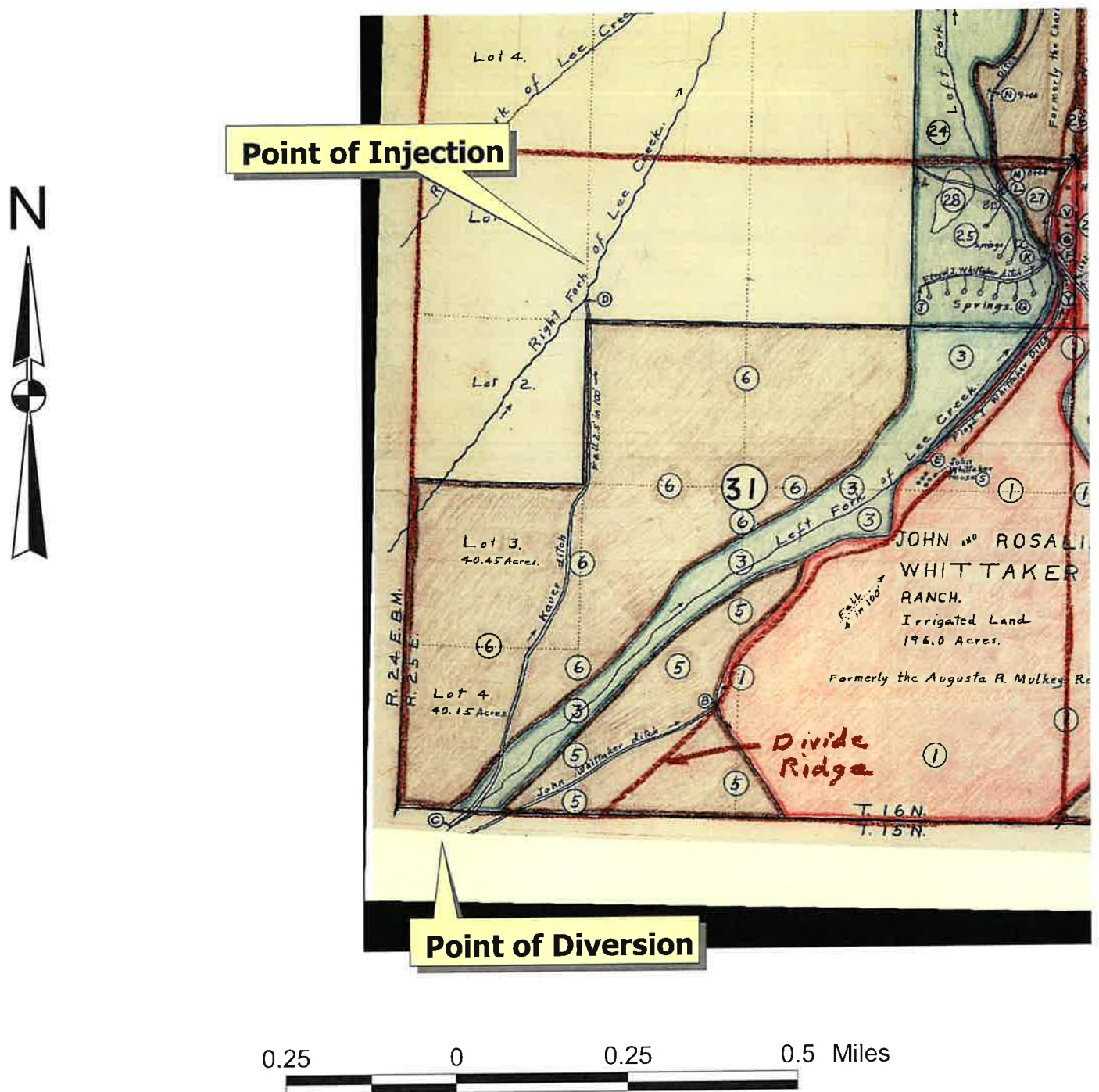


Figure 8. Engineer's Certification of 1954 Map

Engineer's Certificate:

The above plat was made by me from a survey made by me on Oct. 1, and 2, 1954, and from a tracing I made of the Aerial Photograph in the County Assessor's Office at Salmon, Idaho. The aerial Photograph was dated Aug. 1946. The acreages of the twenty-eight tracts were planim-etered from a base map from which this tracing was made. The above plat, tabulations, and profiles are true and correct to the best of my knowledge and belief.

E. Milton Christensen

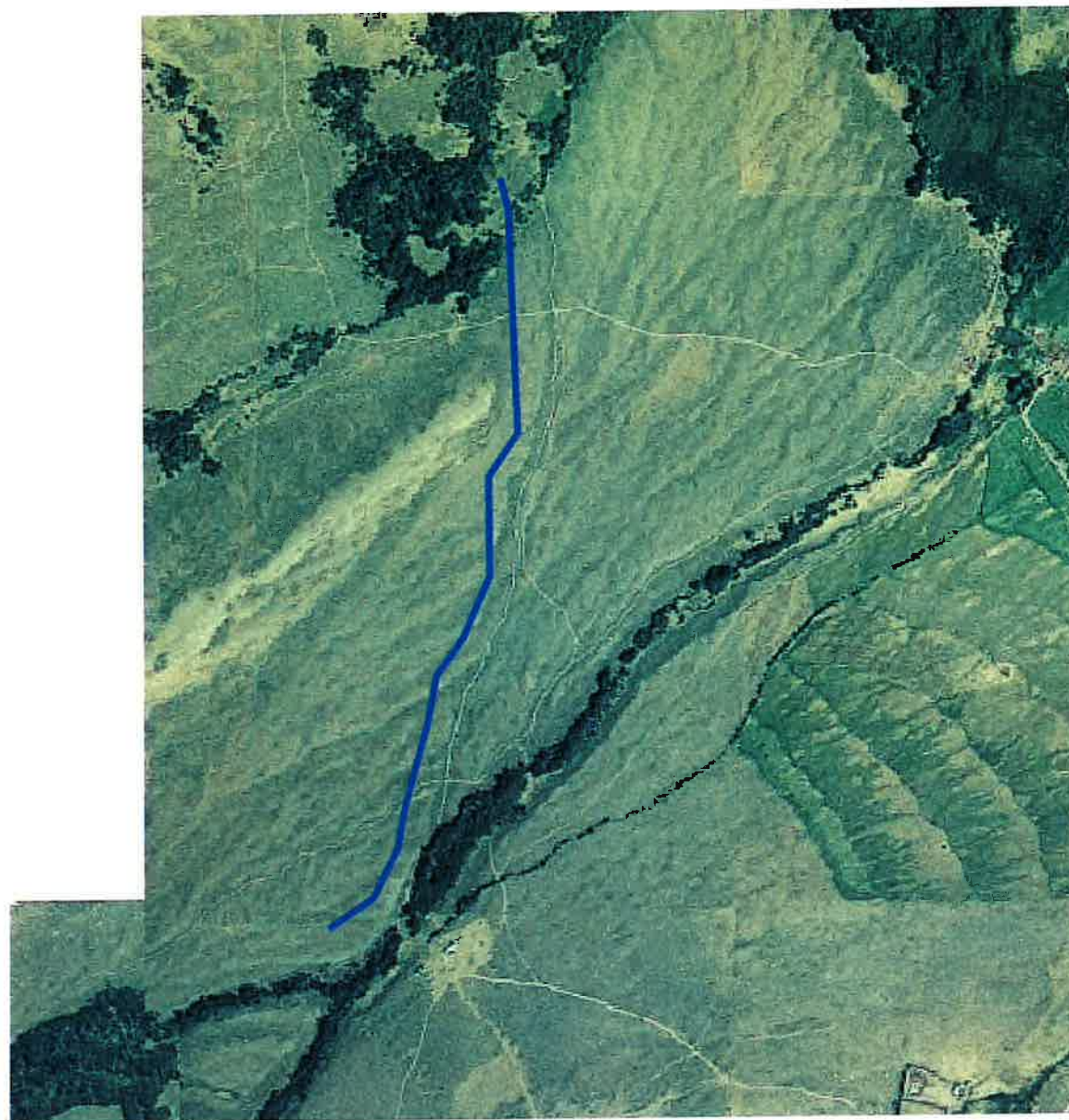
Registered Prof. Engineer, No. 44.

295 - 5th Street,

Idaho Falls, Idaho.

Oct. 12, 1954.

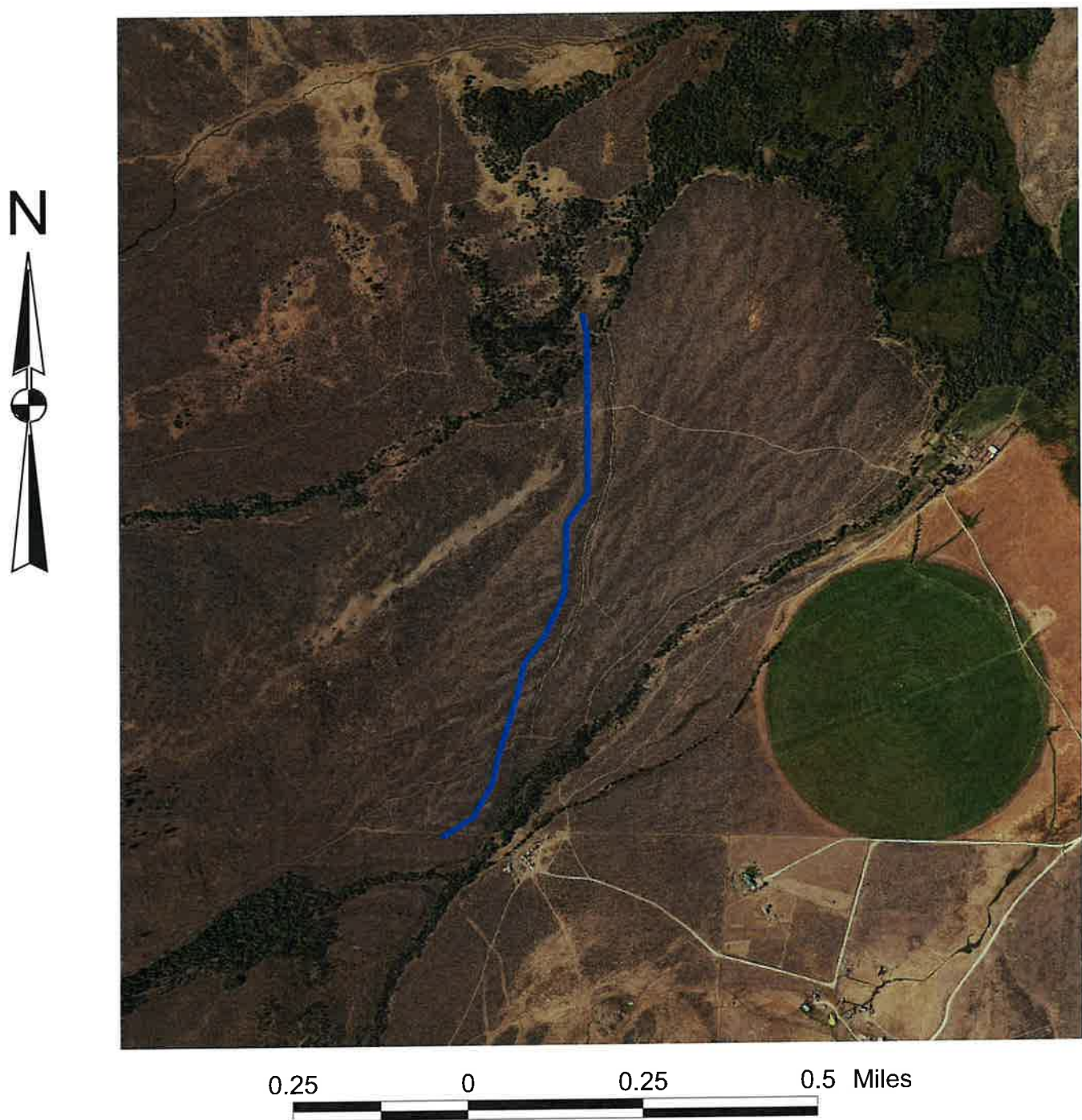
Figure 9. Kauer Ditch in 1984 SRBA Aerial Image



0.25 0 0.25 0.5 Miles

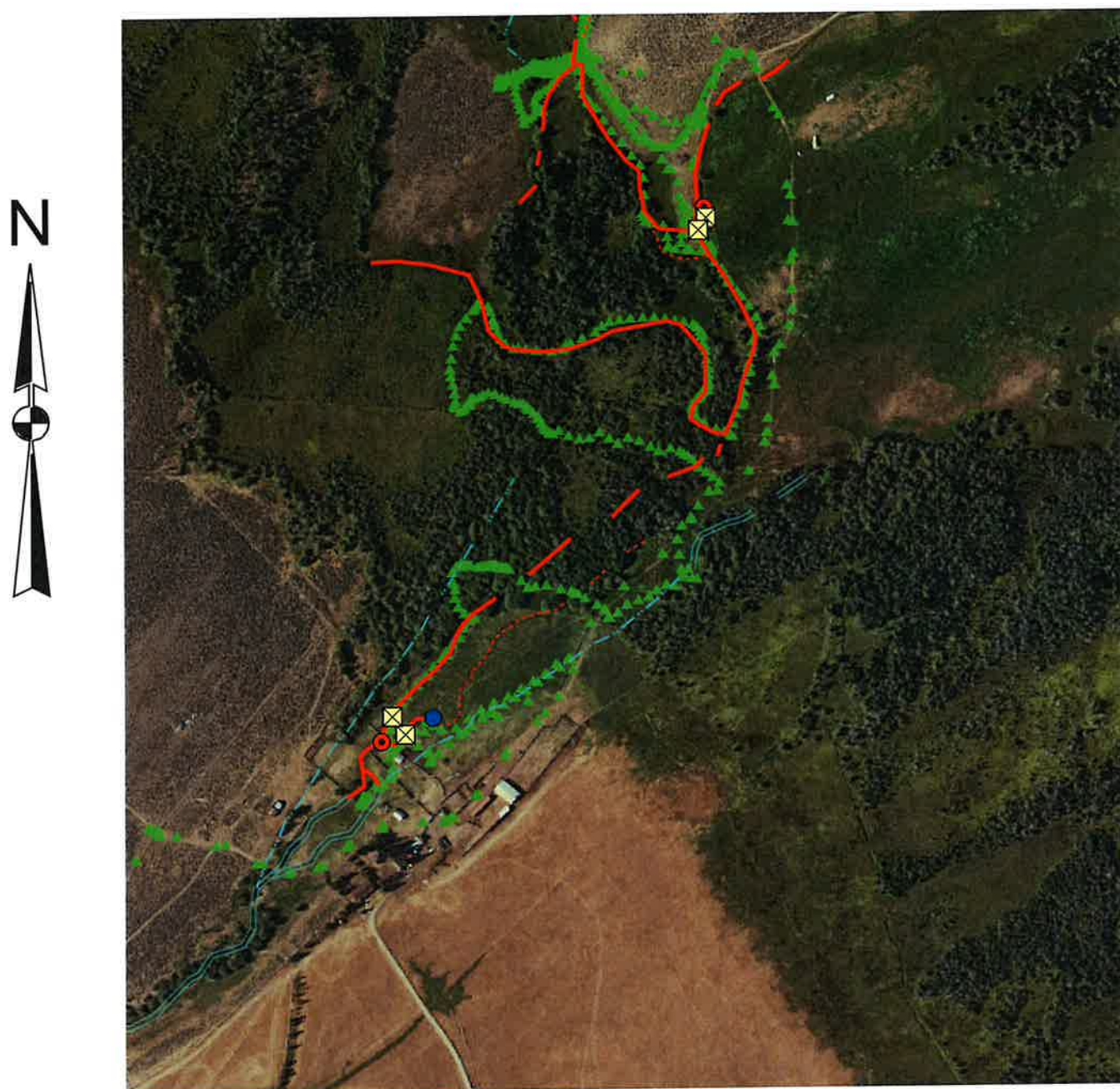
 1954 Trace of Kauer Ditch

Figure 10. Kauer Ditch in 2019 Aerial Image



 **1954 Trace of Kauer Ditch**

Figure 11. Water Control Structures and Channels



500 0 500 1000 Feet

- ▲ GPS Track
- Structures**
 - Control
 - Pipe Intake
 - ⊠ Weir
- Channels**
 - Active Human Made
 - Active Natural
 - - - Historic Human Made
 - - - Possible Historic Natural

Figure 12. Looking North from Six-foot Cipoletti Weir



Figure 13. Distributed Channel Overflows



Figure 14. Distributed Channel Overflows



Figure 15. Head Cutting in Private Ditch



Figure 16. Representation of West Springs in 1954 Engineer's Map

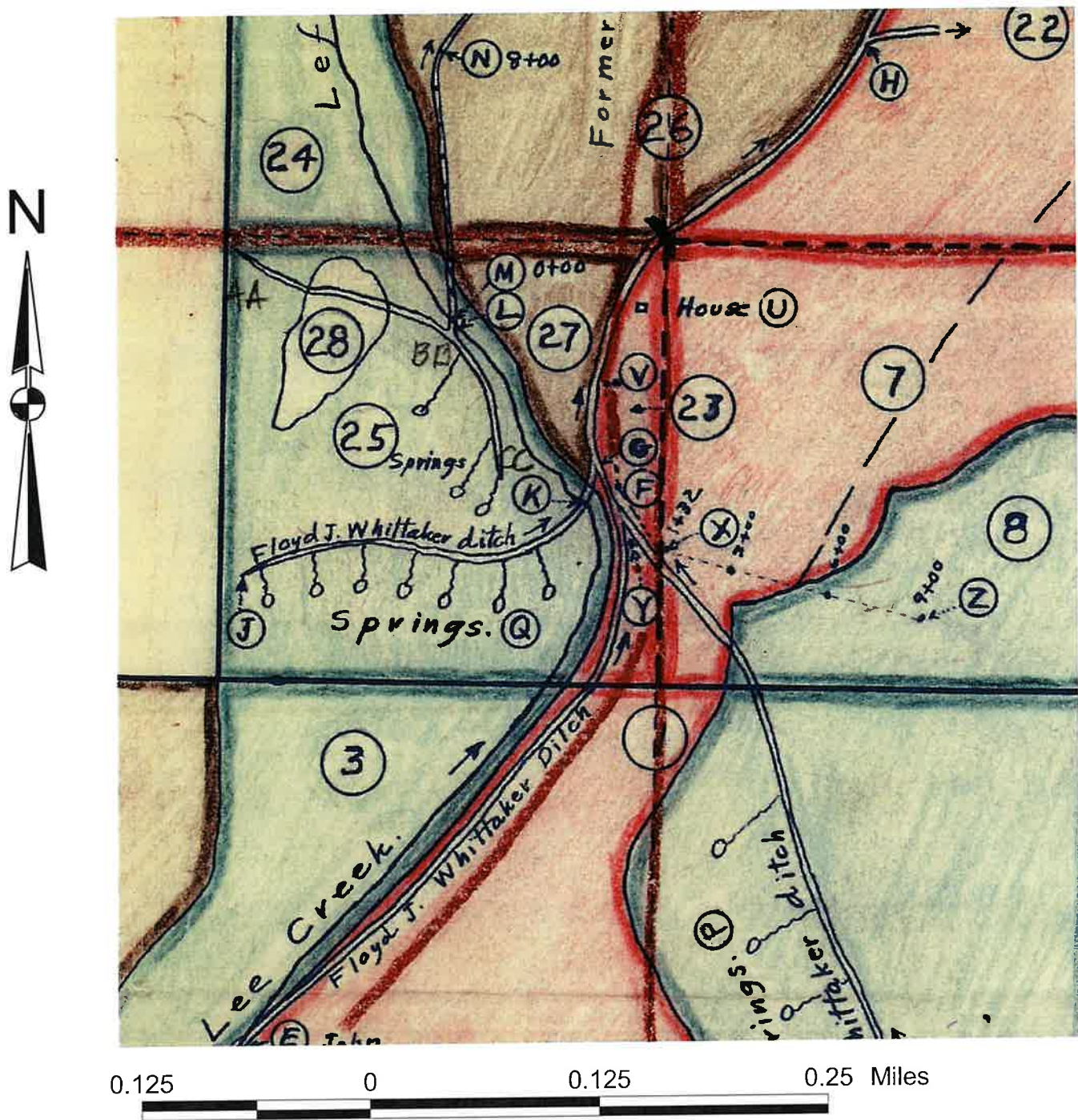


Figure 17. Trace of Bohan Ditch



Figure 18. Trace of Bohan Ditch

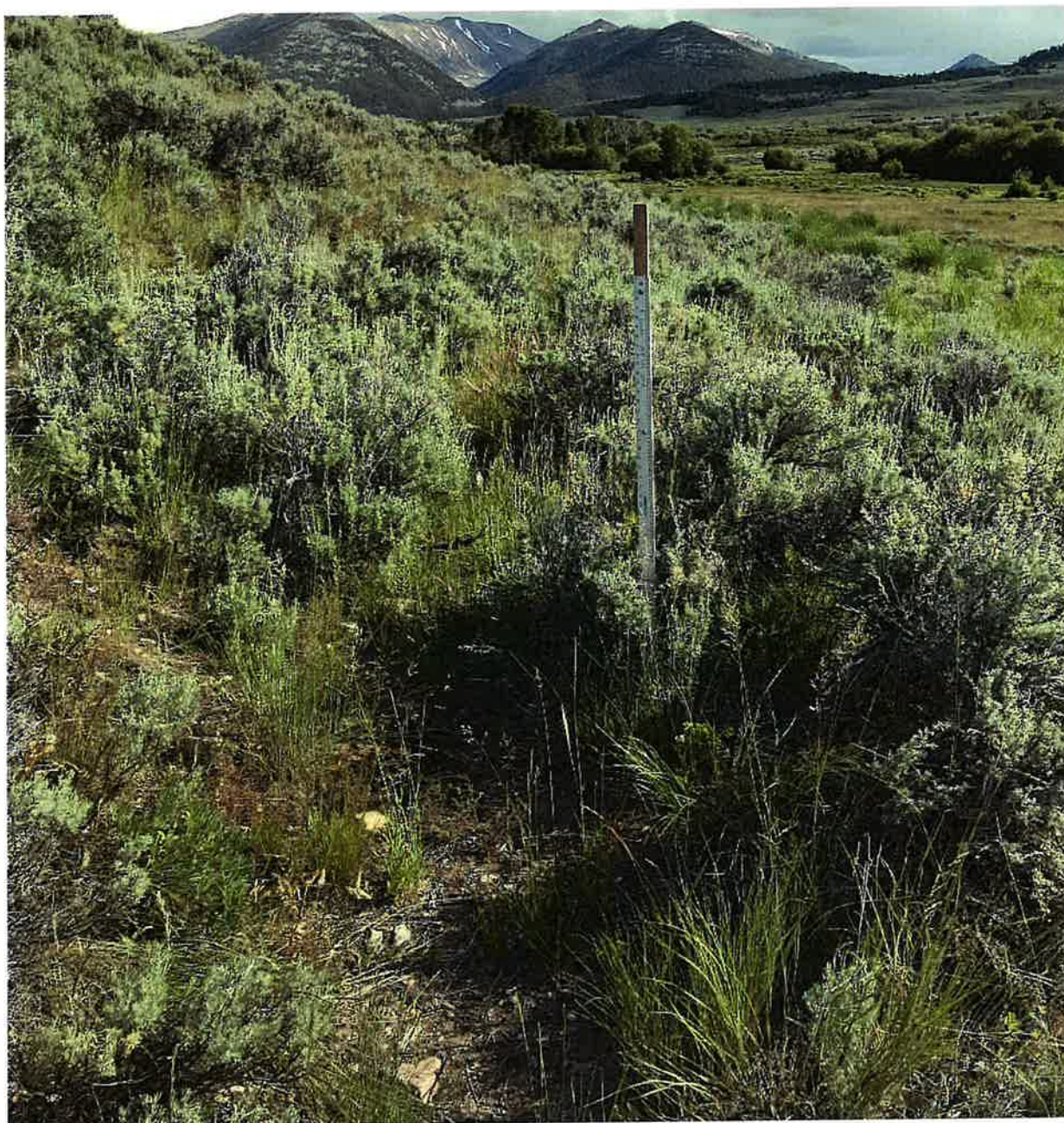


Figure 19. Topographic Depression



Figure 20. Map of Bohan Ditch Transect

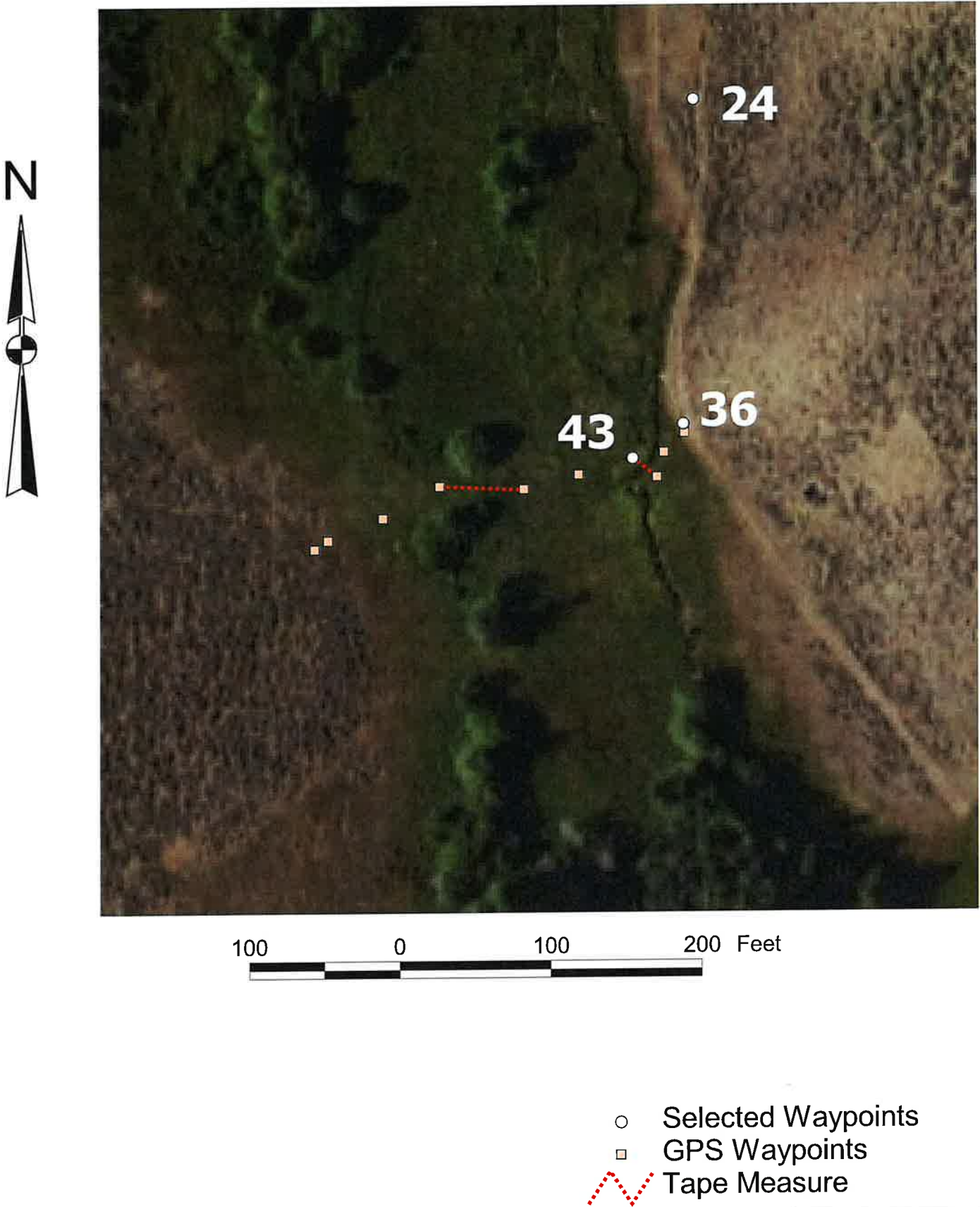


Figure 21. Bohan Ditch Elevation Cross Section

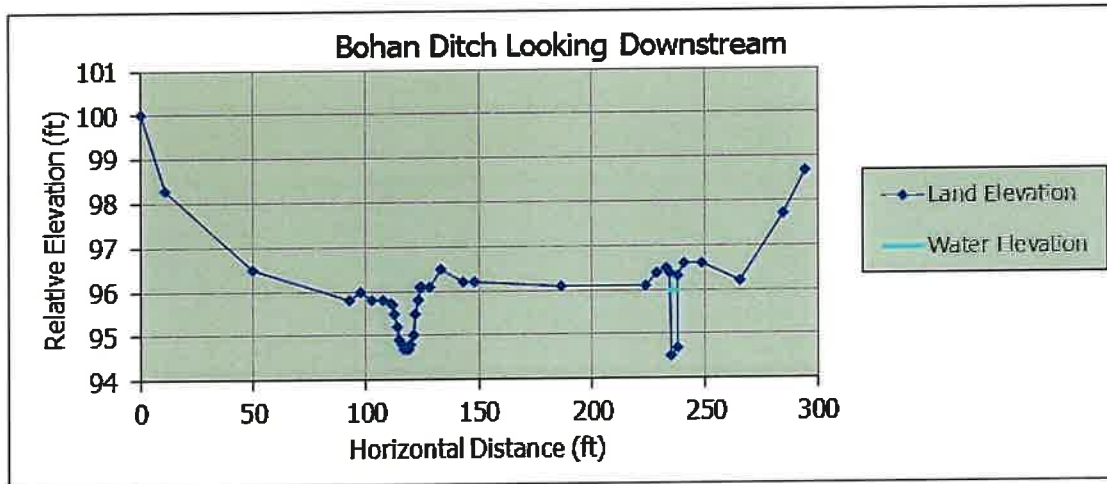


Figure 22. Transects for DEM Evaluation

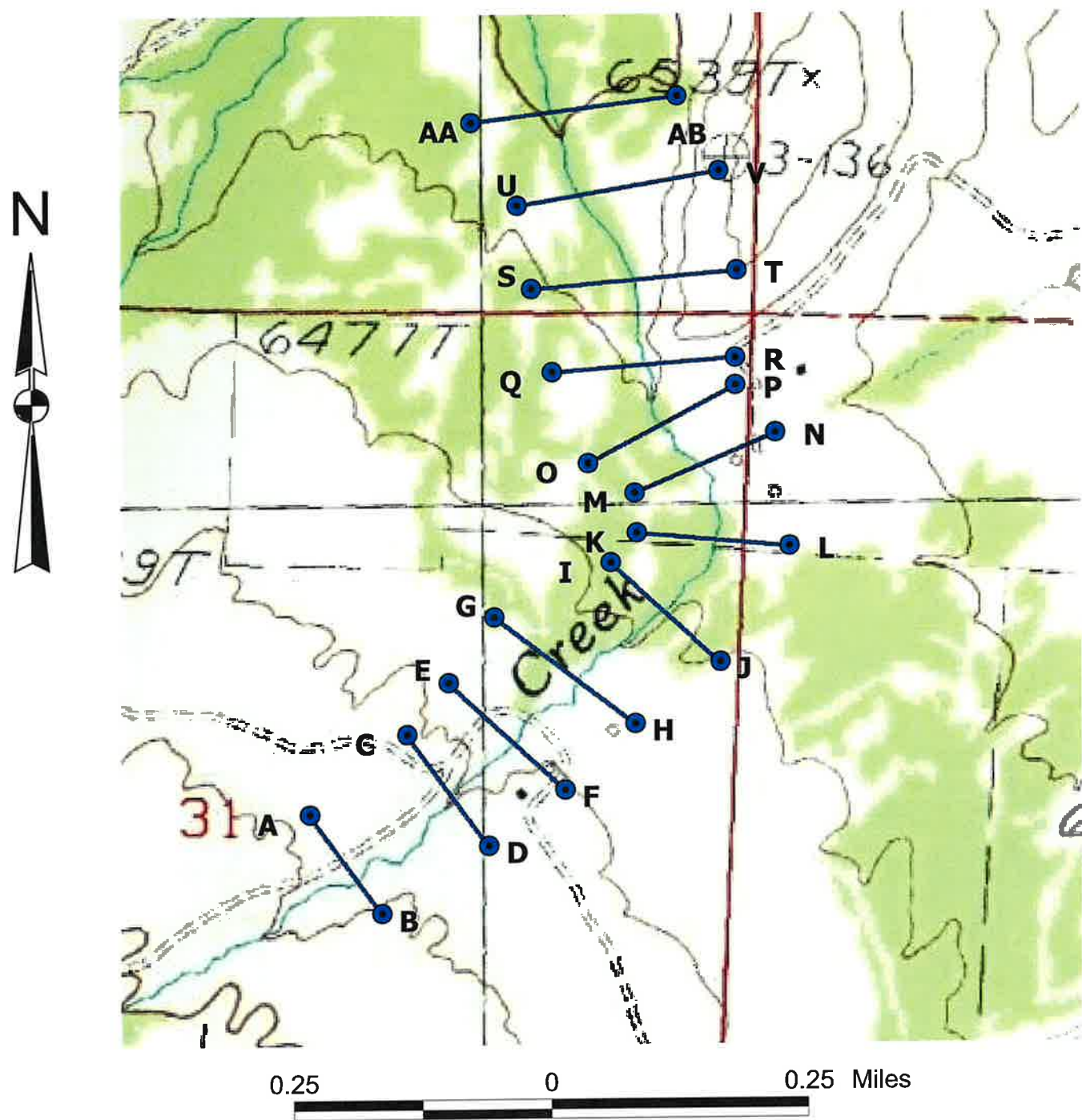


Figure 23. Topographic Profiles from DEM

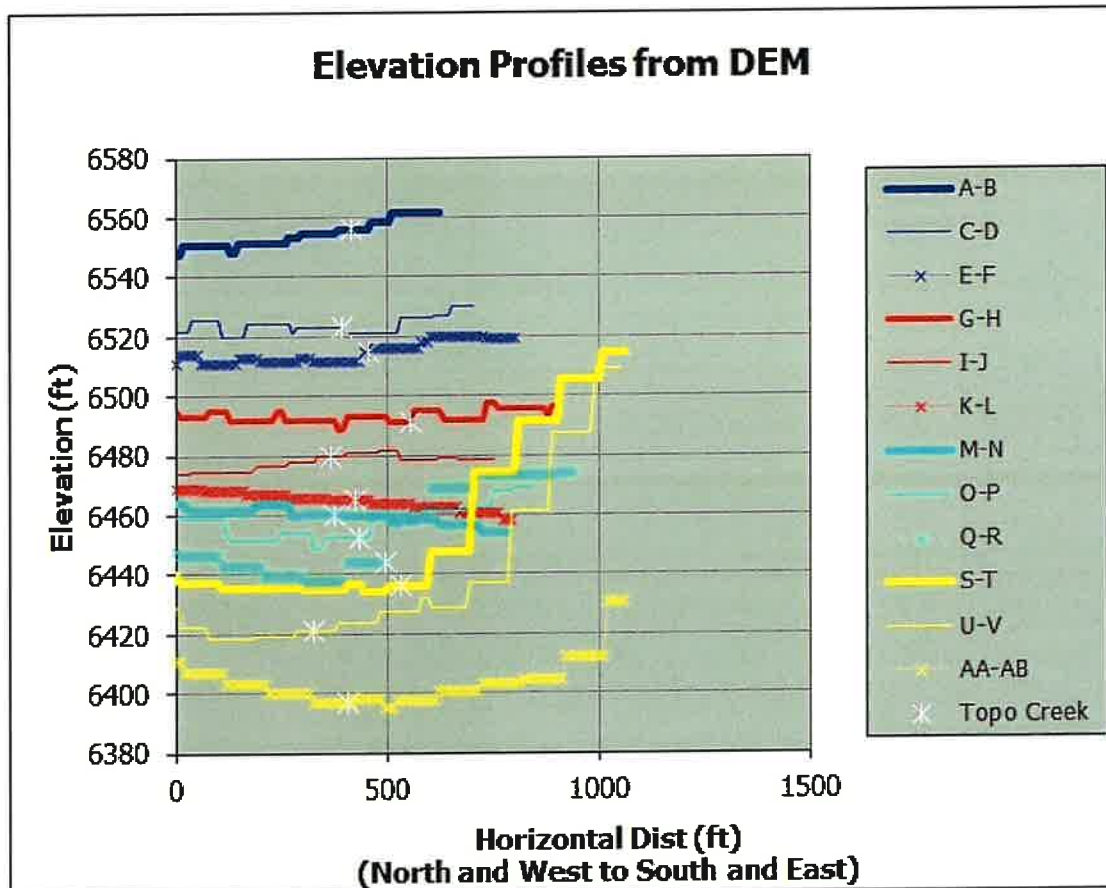
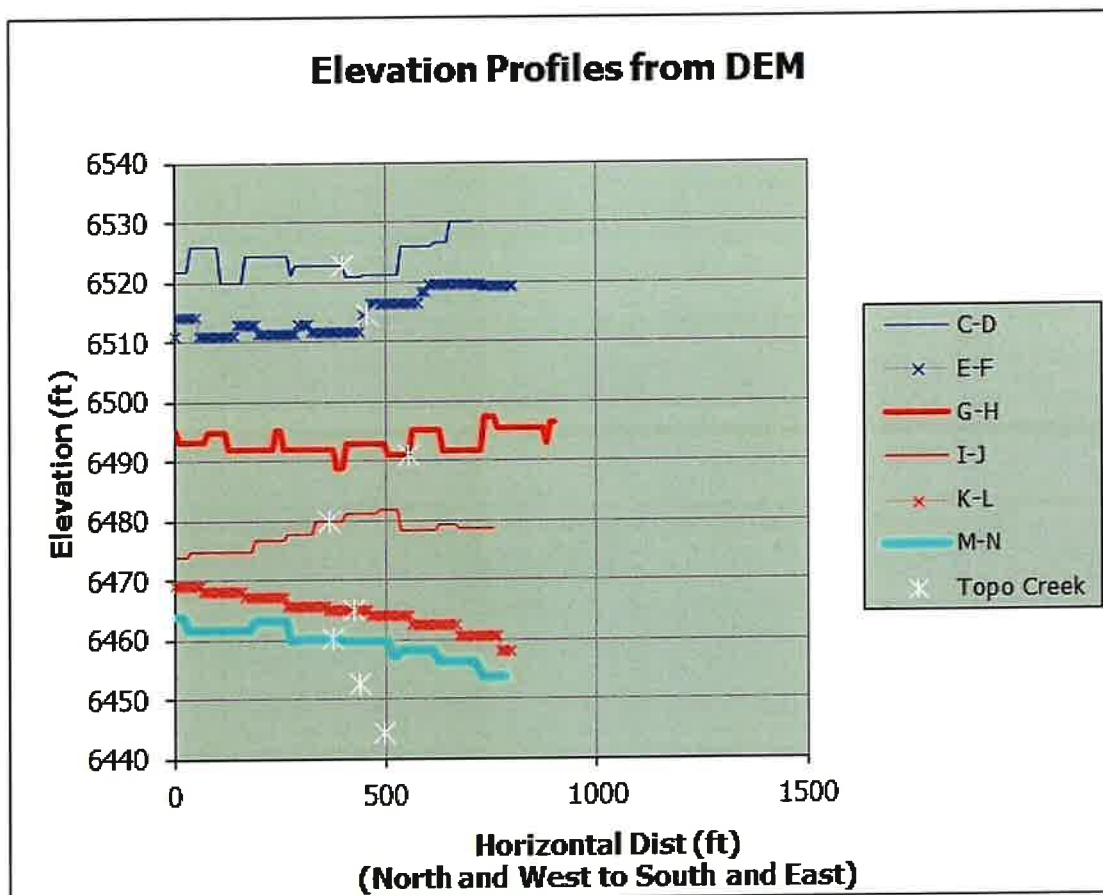
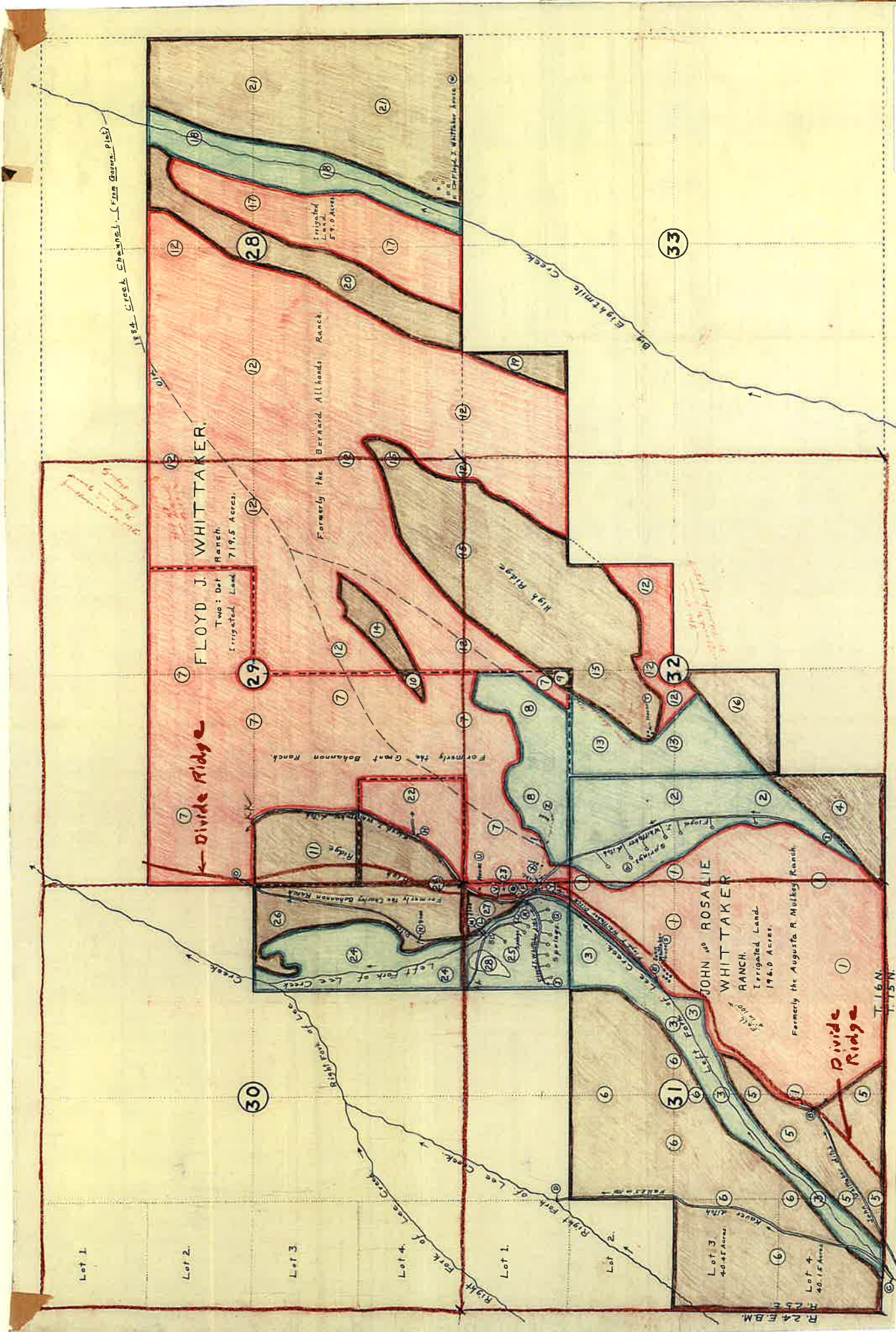


Figure 24. Close-up View of Central Topographic Profiles





Note
Section 6,
T. 15N., R. 25E.
is unsurveyed land.

All the above are in R. 25 E. B. N.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

WATER HEADINGS:

John R. Redding:
60 inches of Lee Creek,
Dated May 12th, 1893.
205 inches of Lee Creek,
Dated May 1st, 1904.

Corra Redding:
50 inches of Lee Creek,
Dated May 12th, 1893.
65 inches of Lee Creek,
Dated June 1st, 1900.

Julia E. Redding:
90 inches of Lee Creek,
Dated May 12th, 1893.
70 inches of Lee Creek,
Dated June 1st, 1900.

James R. Schoonover:
30 inches of Left Fork Lee Creek,
Dated May 1st, 1893.
290 inches of Right Fork Lee Creek,
Dated Nov. 5th, 1899.

(12) TRACT numbers.
 (A) Point or Zone numbers.
 Irrigated Land.
 Grazing Land.
 Waste Land.
 Houses and other bldgs.
 p.u. Springs.
 Ditches.
 Creeks.
 — Old Creek channel in 18
 Properly boundary (properly
 Formerly property lines.
 Section Lines.
 Quarter and Lot lines.
 Line of Towns taken.
 p.v. Present water, Cont. E. 1954.

Engineer's Certificate)
and certificate made by me from
an inspection made by me on Oct. 12nd 2.
1926, and from a tracing in 1926
of the Aerial Photograph in the
County Treasurer's Office at Salinas
County. The Aerial Photograph was
dated May 1917. The accuracy of
this tracing was made map from which
this tracing was made. The above
plat, tabulations, and profiles are
true and correct to the best of my
knowledge and belief.

E. W. Little, Clerk,
Engineering Div., Salinas, N. Cal.
1926.

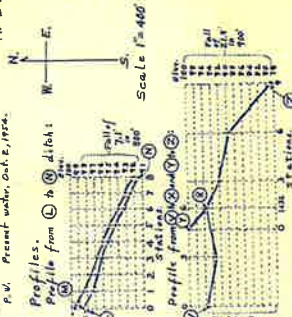


Exhibit 155

Whittaker v. Kauer

Supreme Court of Idaho

June 11, 1956

No. 8363

Reporter

78 Idaho 94 *; 298 P.2d 745 **; 1956 Ida. LEXIS 240 ***

Floyd J. WHITTAKER and Mrs. Floyd J. Whittaker, his wife, Plaintiffs-Respondents, v. John KAUER and Fern Kauer, his wife, and Rodney H. Tobias, Defendants-Appellants

Core Terms

waters, Springs, decree, predecessors, trial court, appellants', Creek, diversion, situate, dam, inches of water, public water, respondents', flowing

Counsel: [***1] E. H. Casterlin, Pocatello, Fred H. Snook, Salmon, for appellants.

An appellate court may consider the opinion of the trial court for the purpose of understanding the findings. *Noble v. Kertz & Sons*, 72 Cal.App.2d 153, 164 P.2d 257; *Union Sugar Co. v. Hollister Estate Co.*, 3 Cal.2d 740, 47 P.2d 273.

An opinion cannot be used to impeach a finding of fact but it may be given special attention where it furnishes information as to the basis of the decision. *Coakley v. Aguria*, 209 Cal. 745, 290 P. 33.

While the rule prevails that lakes of a surface area of less than five acres and pools and springs, located wholly upon and within the lands of a person or corporation, are appurtenant to and a part of the lands and belong exclusively to the owners of the land, it is also well settled that the waters of natural springs, which

form a natural stream or streams flowing off the premises on which they arise, are public waters subject to acquirement by appropriation, diversion and application to a beneficial use. [Jones v. McIntire](#), 60 Idaho 338, 91 P.2d 373; [Maher v. Gentry](#), 67 Idaho 559, 186 P.2d 870.

A. A. Merrill, Idaho Falls, for respondents.

The "West Springs" involved in this case [***2] are located on respondents land and are appurtenant to and a part of his land. [Kennison v. McMillan Sheep Co.](#), 46 Idaho 754, 270 P. 1062; [Hall v. Taylor](#), 57 Idaho 662, 67 P.2d 901; [Washington County Irr. Dist. v. Talboy](#), 55 Idaho 382, 43 P.2d 943; [Marshall v. Niagara Springs Orchard Co., Ltd.](#), 22 Idaho 144, 125 P. 208; [Maher v. Gentry](#), 67 Idaho 559, 186 P.2d 870.

The right to the use of the waters of rivers, streams, springs and of subterranean waters may be acquired by appropriation. [Section 42-103 I.C.](#); [Jones v. McIntire](#), 60 Idaho 338, 91 P.2d 373.

Judges: Smith, Justice. Taylor, C. J., Keeton and Anderson, JJ., and Baker, District Judge, concur.

Opinion by: SMITH

Opinion

Whittaker v. Kauer

[*95] [745]** Rodney H. Tobias, shown as an appellant, is a water master against whom respondents took nothing; therefore, reference **[**746]** herein to appellants refers to appellants Kauer and wife.

Respondents brought this action to quiet in themselves the title to two separate groups of springs and waters arising therefrom. One group is known as the West Springs from which arise approximately 80 miners inches of water and to which this appeal is limited; reference herein to springs, refers to the West **[***3]** Springs. The trial court by its judgment quieted title in respondents to the 80 inches of the waters of West Springs. Appellants perfected an appeal from such judgment, and have furnished a clerk's transcript in support of their assignments of error urged on the appeal; they have not furnished a reporter's transcript of the testimony taken at the trial of the action.

The West Springs arise in and upon the NE 1/4 of the NE 1/4 of Section 31, Township 16 North, Range 25 E.B.M., in Lemhi County in and upon lands belonging to respondents. The springs are situate immediately west of the channel and in the drainage area of the Left Fork of Lee Creek, which flows northerly through the described land.

[*96] Respondents by their complaint, supplemented by a bill of particulars, assert that for more than 40 years last past they and their predecessors have owned, been in possession of and used said waters; they also allege adverse use of the water during said time; also that the water arising from the springs is "private water owned by the plaintiffs."

Appellants by their answer denied that respondents were the owners in possession and using said water, and admit that they, appellants, **[***4]** claim the right to the use of said water. Appellants' answer includes their cross-complaint whereby they allege the entry of a decree July 1, 1912 (hereinafter called the July 1, 1912 decree), in the Lemhi County District Court, in the case of John B. Reddington, Cora Reddington and Julia E. Reddington, plaintiffs, v. Grant Bohannon, Gus Mulkey and James R. Schoonover, defendants, which adjudicated the waters of Lee Creek. The decree made awards as follows:

To the Reddingtons, the total of 540 inches of water out of Lee Creek with priorities May 12, 1883 to May 1, 1906, *for use upon lands* North and below West Springs, *now owned by appellants Kauers*;

To James R. Schoonover not exceeding 30 inches

of water 'that may be found flowing in said Left Fork below the diversion point of defendant Grant Bohannon, at the place where the said diversion is made at the time of this decree, located in the SE 1/4 of the NE 1/4 of Section 31, of said Township [16 North] and Range [25 E.B.M.] and said right shall apply only after the appropriations of the defendants A. R. Mulkey and Grant Bohannon, hereinafter mentioned, shall first be supplied, and shall apply to all waters arising **[***5]** in said stream below the said diversion,' with priority of May 12, 1883, *for use upon lands* North and below the West Springs, *now owned by appellants Kauers*.

To Grant Bohannon 120 inches of water out of the Left Fork with priority of May 12, 1883, to be diverted at a point in the SE 1/4 of the NE 1/4 of Section 31, for use on lands lying east of the Left Fork and now owned by respondents Whittaker.

To Augusta R. Mulkey 200 inches of water out of the Left Fork with priority of May 12, 1883, for use on lands now owned by John and Rosalie Whittaker.

Appellants assert that the waters from the West Springs flowed into the Left Fork of Lee Creek and thereby became a part of the public waters of that stream, subject to the July 1, 1912 decree adjudicating the waters thereof; also, that respondents must be held to the theory of their pleadings, i. e., that the waters of the springs are private waters, whereas appellants by their cross-complaint allege that the same are public waters.

[*97] Appellants assert that the trial court committed error in quieting title in respondents to the 80 miners inches of the waters of the West Springs, asserting the **[**747]** absence **[***6]** of any finding of fact to support such a decree; also committed error in failing to dispose of the material issue presented by the pleadings, by proper findings, conclusions and decree, i. e., whether the said waters are private waters or public waters.

The trial court found that in the year 1932, respondents entered into an oral contract with appellants' predecessors (and other interested parties), to whom water had been decreed by the July 1, 1912 decree, whereby the point of diversion of waters of the Left Fork of Lee Creek, decreed to and used upon lands, including the lands now occupied by appellants, situate northerly and below all of respondents' lands, was changed from a point situate on the main channel of Lee Creek to a point situate on the Left Fork thereof near the Southwest corner of Section 31, Township 16 North,

Whittaker v. Kauer

Range 25 E.B.M., which point of diversion is situate about one and one-fourth miles southwesterly and above the West Springs; and whereby, in consideration of a grant by John Whittaker, father of respondent Floyd Whittaker, of a right of way for a ditch over certain of the John Whittaker lands (over Lots 4 and 3 and SE 1/4 of the NE 1/4, Sec. 31, Twp. 16 N., [***7] R. 25 E.B.M.) through which to convey from such point of diversion on the Left Fork, to the Right Fork of Lee Creek the said decreed waters. The other parties, including appellants' predecessors, permitted respondents to remove a flume which had been used continuously since some time prior to the entry of the July 1, 1912 decree to transmit the waters of the West Springs across the Left Fork at a point situate in the described quarter section where the springs are situate, and to substitute in place of said flume an earthen dam where the flume theretofore had been, *thereby to capture all waters found flowing in the creek at that place.*

The court further found that pursuant to said contract the dam was constructed, maintained and used by respondents at all times since 1932 continuously and without interruption until the year 1954 when, at appellants' instance, the water master cut the dam, which allowed the waters to flow down the channel but nevertheless into a diversion ditch of respondents situate some 650 feet below and northeasterly from said dam.

The court further found that pursuant to such contract the ditch referred to was constructed in and upon the right of way granted [***8] therefor over the aforementioned John Whittaker lands and that the ditch has been used continuously by appellants' predecessors and by appellants (and other interested parties) ever since the year 1932, without interference, for the conveyance of said decreed waters from the Left Fork to the Right Fork, and then down to [*98] and through the main channel of Lee Creek, to the lands now owned by appellants, to which the waters were decreed by the July 1, 1912 decree, excepting the waters decreed to James R. Schoonover by the July 1, 1912 decree.

This Court may regard the trial court's memorandum opinion for the purpose of better understanding the findings. *Union Sugar Co. v. Hollister Estate Co.*, 3 Cal.2d 740, 47 P.2d 273; *Buckhantz v. R. G. Hamilton & Co.*, 71 Cal.App.2d 777, 163 P.2d 756; *Noble v. Kertz & Sons Feed & Fuel Co.*, 72 Cal.App.2d 153, 164 P.2d 257. Such memorandum opinion sets forth matters indicative of the public classification of the waters of the

West Springs, but the trial court did not make a finding thereon. If the fact that said waters are public in character, will not affect the judgment of the trial court, then the failure so to find constitutes harmless [***9] and not reversible error. *Pleasants v. Henry*, 36 Idaho 728, 213 P. 565; *McMillan v. McMillan*, 42 Idaho 270, 245 P. 98; *Koser v. Bohemian Breweries*, 69 Idaho 33, 202 P.2d 398; *Cazier v. Economy Cash Stores*, 71 Idaho 178, 228 P.2d 436.

The findings of the trial court, hereinbefore referred to, show that the waters of the West Springs have been used by respondents' predecessors and by respondents continuously since some time prior to the entry of the July 1, 1912 decree; also that commencing with the year 1932, pursuant to and upon consummation of the contract referred to, the predecessors of appellants allowed respondents to capture [**748] all the waters of the Left Fork found flowing in the Creek at the place where, pursuant to the contract respondents constructed said dam below appellants' newly designated upstream point of diversion, and such waters so captured by respondents included the waters of the West Springs.

The conclusion is inescapable also, that appellants' predecessors had knowledge of respondents' use of the waters of the West Springs, inasmuch as appellants' predecessors consented to the damming of the Left Fork by respondents at the place where, since prior [***10] to or about the year 1912, the flume had conveyed the waters of the springs across the Left Fork; also that, beginning with the year 1932 and continuously ever since for some 22 years, until during the year 1954, appellants' predecessors knew that respondents, without interruption or molestation, had used the waters of the springs pursuant to the status which resulted upon consummation of the contract which the trial court set out in its findings.

Under the facts and circumstances as related, respondents' right to the use of the waters of the West Springs, though they be public waters, must be held to have been abandoned by appellants' predecessors; *St. John Irrigating Co. v. Danforth*, 50 Idaho 513, 298 P. 365; *Chill v. [**99] Jarvis*, 50 Idaho 531, 298 P. 373; *Graham v. Leek*, 65 Idaho 279, 144 P.2d 475; and such right must be held to have been acquired by respondents by appropriation and application to beneficial use. *I.C. § 42-101*; *I.C. § 42-103*; *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373; *Maher v. Gentry*, 67 Idaho 559, 186 P.2d 870. A finding, if made by the trial court, that the waters of the West Springs are public

Whittaker v. Kauer

waters, would not change such result nor affect the trial [***11] court's decree.

Appellants by their further assignment assert that respondents must be held to the theory of their case, i. e., that the waters of the West Springs are private waters. While respondents allege as one of their theories, or in effect by one count of their complaint, that the waters of the West Springs are private waters, nevertheless they additionally allege their unqualified possession, ownership and use of said waters by their predecessors and by them for more than 40 years last past. Respondents' last mentioned theory is in harmony with the findings and decree of the trial court which in effect quiets title in respondents to the beneficial use of the 80 miners inches of the waters of the West Springs.

The judgment of the trial court is affirmed. Costs to respondents.

TAYLOR, C. J., KEETON and ANDERSON, JJ., and
BAKER, District Judge, concur.

End of Document

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN
AND FOR THE COUNTY OF LEMHI

FLOYD J. WHITTAKER, and
MRS. FLOYD J. WHITTAKER, his wife,

Plaintiffs,

vs.

JOHN KAUER and FERN KAUER,
his wife, and RODNEY H. TOBIAS,

Defendants.

DECREE

No. 3665

From the above and foregoing findings of fact, conclusions of law the Court decrees as follows:

That the Court has jurisdiction over the subject matter of this suit, and over the parties hereto, and the right to grant the relief prayed for in plaintiffs' complaint.

That all of the material allegations of the plaintiffs' complaint are true and were duly proven.

WHEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED:

That the defendants and neither of them have any right, estate, interest, or title whatsoever in and to the said 160 miner inches of water hereinafter more fully described.

That the plaintiffs are the owners and are in possession of 160 miners inches of water, 80 inches of which arise on lands owned by the plaintiffs described as follows:

NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31, Township 16, North Range 25, E.B.M., Lemhi County, Idaho

and 80 inches of which arise on lands owned by John and Rosalie Whittaker described as follows:

NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 32, Township 16, North Range 25, E.B.M., Lemhi County, Idaho.

That the title of the plaintiffs in and to the said 160 miner inches of water is good and valid and is adjudged to be quieted against all claims and demands of all of the defendants or either of them, and that said defendants and each of them and all persons claiming through or under them are hereby enjoined, restrained, and debarred from asserting any right, title, or interest in and to said 160 miner inches of water or any part thereof adverse to the plaintiffs.

That the defendants take nothing by reason of their cross-complaint.

That the plaintiffs recover their costs in the sum of \$228.50.

DATED this 9th day of May, 1955.

Preston Thatcher
District Judge

Filed May 12th, 1955 at
37 minutes past 9 o'clock A.M.
W. W. Simmonds, Clerk
By Opal Reddington, Deputy
Book E of Judgments
Page 398

Seventh Judicial District
STATE OF IDAHO
COUNTY OF LEMHI
I, BRENDA ARMSTRONG, CLERK OF THE DISTRICT COURT
OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF LEMHI,
DO HEREBY CERTIFY THAT THE PROCEEDING IS A
TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE
IN THIS OFFICE. IN WITNESS WHEREOF I HAVE HERE
UNTO SET MY HAND AND AFFIXED MY
OFFICIAL SEAL THIS
OF JUNE 22 DAY 2020
BRENDA ARMSTRONG, CLERK
BY Opal Reddington DEPUTY



State of Idaho

DEPARTMENT OF WATER RESOURCES

Salmon Field Office • 102 South Warpath • Salmon, Idaho 83467

Phone: (208) 742-0658 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

August 6, 2020

MERRITT UDY
WATERMASTER, WD74Z
PO BOX 145
LEADORE ID 83464-0145

RE: WATERMASTER INSTRUCTIONS REGARDING MC CONNELL UNAUTHORIZED DIVERSION
AND WHITTAKER RESUMPTION OF DELIVERY, LEE CREEK

Merritt:

Bruce and Glenda McConnell received the attached letter which requires closure of the unauthorized diversion on Lee Creek. Based on our field inspections, the lower of the two diversions is not authorized on the McConnell water rights.

Mr. McConnell has agreed verbally to close the diversion, and has been instructed in writing to complete the closure no later than Friday, August 7, 2020.

Please coordinate with Mr. McConnell as soon as possible and complete the following:

- confirm that the lower diversion in Lee Creek has been closed, and that all obstructions in the natural channel at that location have been removed
- forward a confirmation of the closure to the WD170 watermaster

Based on the investigation conducted yesterday, it appears that water from Stroud Creek may flow into Lee Creek below McConnell's authorized point of diversion. If McConnell cannot currently access this water from his authorized point of diversion, delivery of water right 74-157 held by James Whittaker may resume. Please complete the following:

- obtain a measurement of total flows available to McConnell at his authorized point of diversion
- make a measurement or estimate of flow in the side channel that is bypassing McConnell's authorized point of diversion
- resume delivery of water right 74-157 from the West Spring
- 12 to 24 hours after delivery to Whittaker is resumed, obtain another measurement of total flows available to McConnell at his authorized point of diversion and make another measurement or estimate of flow in the side channel that is bypassing McConnell's authorized point of diversion
- forward measurements of the diverted and bypassed flow to the WD170 watermaster

over

Exhibit 158

Thank you for your assistance, and please contact me if you have additional questions.

Regards,

A handwritten signature in cursive script that reads "Cindy Yenter".

Cindy Yenter
Watermaster, WD170
IDWR Salmon Field Office

cc: Rob Whitney, IDWR
Garrick Baxter, Deputy Attorney General



Exhibit 159



Exhibit 160



Exhibit 161