

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
Application for Transfer No. 82818

January 7, 2021

RECEIVED
JAN 07 2021 DE
WATER RESOURCES
WESTERN REGION

1. Matter being protested

Application for Transfer No. 82818, involving water right 67-14385, James L. and Nellie Eckhardt

2. Name of protestant

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

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

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

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

On October 15, 2018, James L. and Nellie Eckhardt ("Applicants") filed Application for Transfer No. 82818, involving water right 67-14385. The applicants are seeking to change one of the point of diversions ("POD") from T12N, R06W, S25, SWSWSW (Spring) to T12N, R06W, S25, NWSESW and a corresponding change to the place of use ("POU"). The application states that the proposed transfer is being filed to correct the legal description of a decreed spring location.

The transfer application involves a spring source describing a POD and POU pursuant to an SRBA decree as T12N, R06W, S25, SWSWSW which entirely describes federal land managed by the Bureau of Land Management ("BLM"). The decree was issued pursuant to a Stipulation signed August 29, 2002 between the United States and James L. and Nellie Eckhardt and SF-5 filed in subcase 67-14385.

The proposed POD and POU location described in the transfer application as T12N, R06W, S25, SESW involves a water development that is not authorized by the United States.

43 CFR § 4140.1 Acts prohibited on public lands.

(b) Persons performing the following prohibited acts related to rangelands shall be subject to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization.

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

The application suggests that the decreed POD and POU is an error. The decree issued in the SRBA is consistent with the claim filed and with the settlement reached in 67-14385. There is no error. The decree is final, therefore this is an application to move water from one water source to a different water source.

Historical imagery shows a trough located in T12N, R06W, S36, NWNW on private land that has no water right associated with it (in violation of I.C. 42-351). Perhaps the transfer could be amended to cover that diversion of surface water at that location which has no water right?

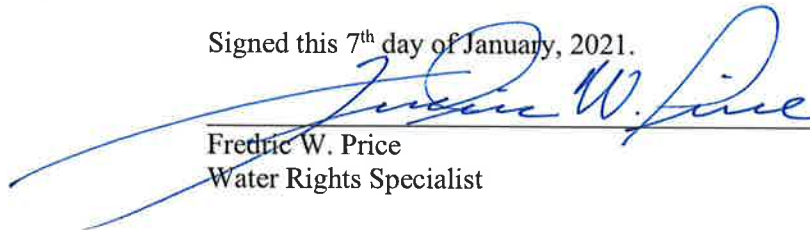
7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdraw the application; or
- 2.) Applicant amends the application to move the POD and POU to a spring source located on private lands owned by the applicant; or

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

Signed this 7th day of January, 2021.


Fredric W. Price
Water Rights Specialist

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plats: T12N, R06W

FOR DEPARTMENT USE ONLY

Received by ds Date 01/07/2021
Fee Paid \$25.00 Date 01/07/2021 Received by ds Receipt # W049006

CERTIFICATE OF SERVICE

I certify that on January 7, 2021, I served a true and correct copy of the "**Protest of Application for Transfer 82818**" with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Nick Miller, P. E., Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83702-5082

Copies to:

James and Nellie Eckhardt.
1275 Jenkins Creek Road
Weiser, Idaho 83672-5158

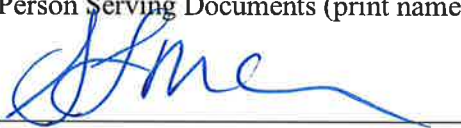
Norman Semanko
Parsons, Behle, & Latimer
800 W. Main St, Ste. 1300
Boise, Idaho 83702

Representing: James L. and Nellie Eckhardt

Brent Ralston, Field Manager
James Tarter, Natural Resource Specialist
U.S., Department of the Interior
Bureau of Land Management
Four Rivers Field Office
3948 South Development Avenue
Boise, Idaho 83705-5339

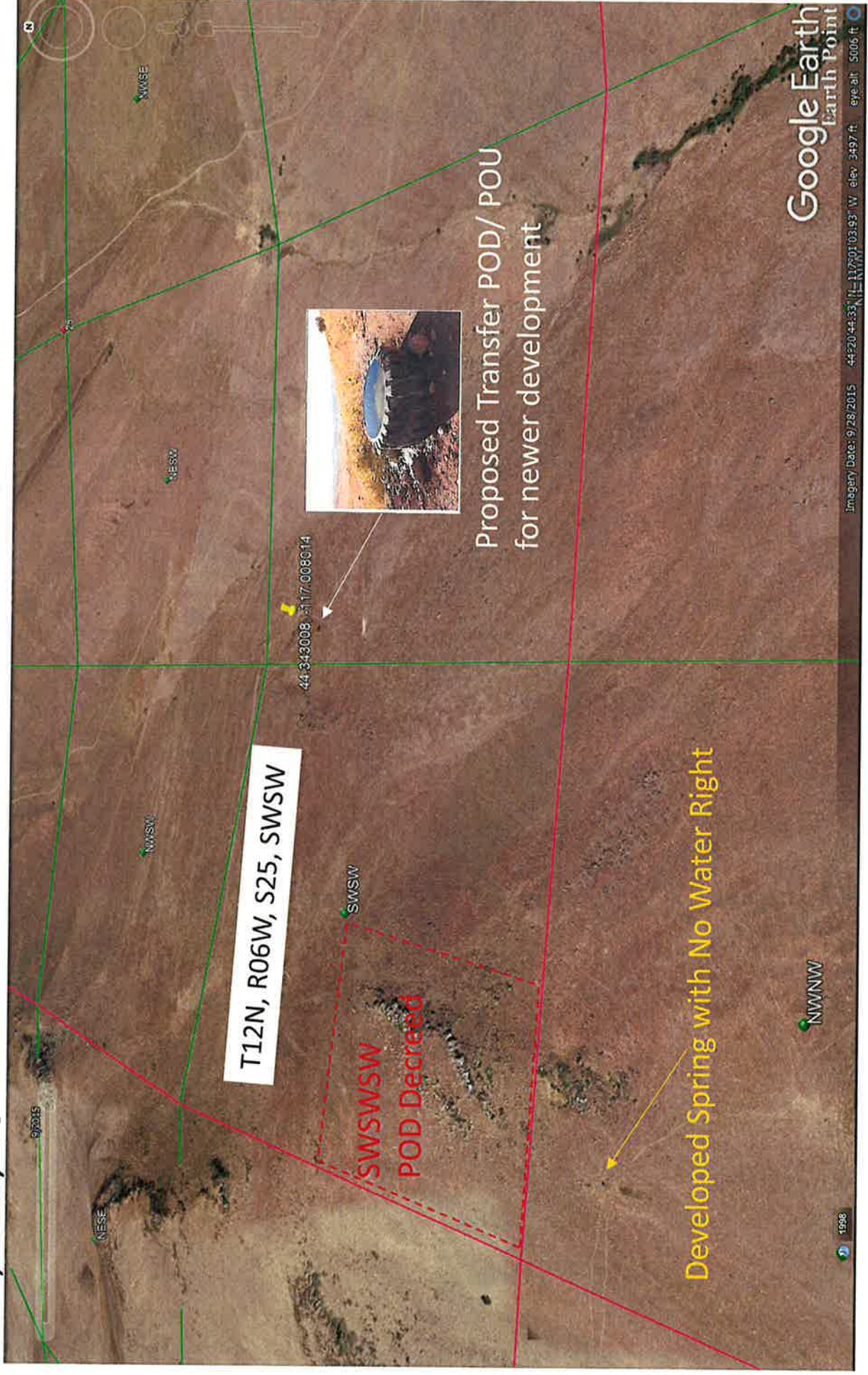
SANDRA MCCREA

Person Serving Documents (print name)



Signature of Person Serving Documents

**BLM Protest to Transfer No. 82818 (James L. and Nellie Eckhardt)
T12N, R06W, S25**



WASHINGTON COUNTY 087
BOISE DISTRICT SEC 3

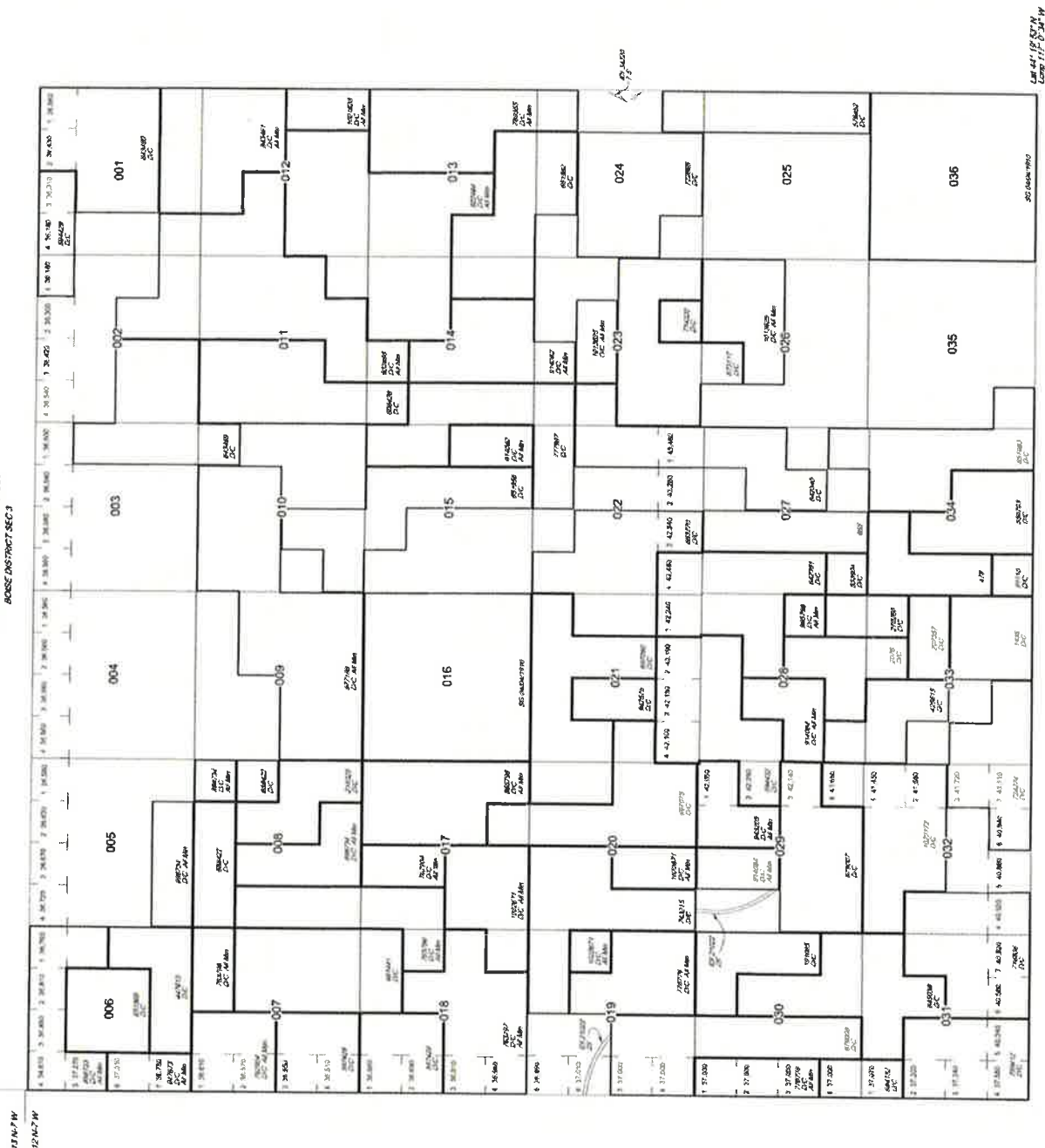
MT PLAT

[illegible]

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

FILE NO:	2007-020000000000000000
CONVERTED TO:	01/11/2008
LAST UPDATED:	01/11/2008
DATE:	01/11/2008
POINTED TO PUBLIC RELEASE:	NO
PUBLIC AND SURVEY SYSTEM (PSS)	NO
FILE ORDER NUMBER:	00000000
FILE ORDER NUMBER:	NO
PROJECTED COORDINATE SYSTEM:	UTM ZONE 17N WAD 180
NOTE:	
FILE NAME:	

1922 Mar.
 T. 12 N
 R. 6 W



TEST CASES

THE INFORMATION ON THIS FORM IS NOT TO BE RELEASED TO THE PUBLIC BY THE FBI WITHOUT A WRITING FROM THE FBI DIRECTOR.

In entirety is made by the Bureau of Land Management. The accuracy, reliability, or completeness of these data for individual use is not warranted. For more information, please contact the Bureau of Land Management, Department of the Interior, Washington, D.C. 20090.



U.S. Bureau of Land Management - Idaho State Office
1527 S. Vineyard Way Boise, Idaho 83709
(208) 334-0000



Idaho Department of Water Resources Receipt

Receipt ID: W049006

Payment Amount \$25.00 Date Received 1/7/2021 Region WESTERN

Payment Type Charge Card

Payer MCCREA, SANDRA L / BLM - PURCHASE

Comments NOTICE OF PROTEST ON BEHLAF OF USDOJ - BLM FOR WR TRANSFER 82818 IN THE NAME OF JAMES L & NELLIE ECKHARDT
ORDERID: 44484444
LOCAL REFID: gyn2zGbpM0Wgudi0Vx6dvg==
TOTAL PAID: \$26.75(FEEs: \$1.75)
AUTH_CODE: 021706
REC DATE: 1/7/2021 03:12:33 PM MST

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	62103	0229	21		1155



Signature Line (Department Representative)