

MEMO

FROM: Allen Merritt

AD

DATE: September 3, 1999

TO: Transfer File No. 3700

Water Right(s): 41-00051, 41-04013

In the Name of: Melvin Osborn

TO: Transfer File No. 5476

Water Right(s): 41-07086

In the Name of: Jennie Osborn

TO: Transfer File No. 5477

Water Right(s): 41-00051A, 41-04013A, 41-07086B

In the Name of: Jennie Osborn

SUBJECT: Review and Recommendation

These three transfers are related and should be reviewed together.

T3700 was originally filed in 1985 and protested. It was amended in 1990 with protests continuing. Ultimately the protests were resolved in 1998. The application was again amended in 1999 and this amendment was not protested. The purpose of this transfer is to split the two rights by ownership (Jennie Osborn retains the "A" portions and Melvin &/or Esther Osborn retain the "B" portions.) and to divert the "B" portions from the Snake River instead of from Little Warm Creek and Fall Creek where they were developed.

T5476 and T5477 deal with Jennie Osborn's property. In 1998 it was found that a new pivot was installed on this property and we wrote them a warning letter. In response these two transfers were filed. T5476 was filed to move acres from a groundwater right licensed on other acres owned by Jennie Osborn on a farm up river to these lands. 15 acres are to be dried up under the well and moved down to the lower farm. Instead of groundwater the water is to be diverted from Fall Creek and Little Warm Creek. T5477 was filed to move acres around for her "A" portion of the rights created by T3700 and right 41-07086B created by T5476 and place these rights in a 312 acre PPU.

ANALYSIS

Decreed right 41-00051 was claimed in the SRBA jointly by the Osborn family. The department has recently issued recommendations for this claim under R41-00051A & R41-00051B. Likewise statutory claim 41-04013 was jointly claimed by the Osborn family and the department has issued recommendations for this claim under R41-04013A & R41-04013B. Essentially Jenny gets the "A" portions and Melvin and Esther get the "B" portions. It is noted that the Osborn diversions are the last on Little Warm Creek and Fall Creek before these creeks flow into the Snake River. It is also noted that groundwater in this area is hydraulically connected to the Snake River. Note

41-07086B - T# 5476

that the priority of 41-04013 A & B has been recommended as 5/31/1890 and the season of use of all these rights is 4/1 to 10/31.

T3700 takes the "B" portions and diverts these rights out of the Snake River at a site where a pump already diverts water from the Snake River. The water currently being diverted from the Snake River is rental pool water. This transfer proposes to allow their share or the "B" portions to go un-diverted in Fall & Little Warm Creeks and flow into the Snake River where it would then be diverted as sort of an exchange. This seems not to be an expansion as long as the water flowing into the Snake River and is measured and delivery to the Osborn Pump is limited by right or amount of measurement. Another limiting factor is that the recommendations for the "B" portions are limited when combined to 1.6 cfs total for irrigation of 80 acres.

T5476 & T5477 are intended to get Jenny's property covered. T5476 in moving groundwater to Fall Creek and Little Warm Creek should not be a problem since the groundwater is hydraulically connected to the Snake River and her diversions are the last on the creeks before they flow into the Snake River. Also the priority of the right is junior to all rights on these two streams. In reviewing these two transfers the only point of diversion listed on the application is the lift pump in the pond where Fall Creek and Little Warm Creek are mingled. It is described as the NENWSE of Sec 16 but in viewing the map it is also very close to the line and could be in the SENWSE of Sec 16. This should be considered a re-diversion if anything. The point of diversion for Little Warm Creek as recommended is in the SWNESE of Sec 16. This is where the creek dumps into the pond. The recommended diversion from Fall Creek is in NENENE Sec 29. These two listings should remain on these rights. Fall Creek water flows in a ditch then pipeline then dumps into the pond mentioned above.

I recommend that since the diversions exist and are not being changed that re-advertisement of these transfers is not warranted.

RECOMMENDATION

I recommend the transfers be approved as follows with noted conditions:

T3700

- Rights 41-00051B and 41-04013B are authorized to be exchanged with waters of the Snake River. They are under the control of the watermaster of Water District 01.
- Measuring devices must be installed by the applicant under the direction of the watermaster to measure the outflow of Fall Creek and Little Warm Creek into the Snake River and at the point of Diversion from the Snake River.
- Right 41-00051B authorizes the diversion of up to 0.85 cfs at the Snake River diversion if same is measured flowing from Little Warm Creek into the Snake River.
- Right 41-04013B authorizes the diversion of up to 1.6 cfs at the Snake River diversion if same is measured flowing from Little Warm Creek into the Snake River.
- When rights 41-00051B and 41-04013B are combined the total diversion rate is limited to 1.60 cfs for irrigation of 80 acres.
- Season of use is as SRBA recommended 4/1 to 10/31.

T5476

- Right 41-07086B is further defined by transfer T5477.
- Right 41-07086A is limited to 2.28 cfs, 453.2 afa for irrigation of 113.3 acres.

T5477

- Season of use of all rights is 4/1 to 10/31.
- Right 41-07086B (0.30) may be diverted out of Little Warm Creek within SWNESE Sec 16 or Fall Creek within NENENE Sec 29 and then re-diverted by pump within NWSE Sec 16 for irrigation of 15 acres within the 312 acre PPU
- Right 41-00051A (3.15 cfs) may be diverted out of Fall Creek within NENENE Sec 29 and then re-diverted by pump within NWSE Sec 16 for irrigation of 297 acres within 312 acre PPU.
- Right 41-04013A (5.94 cfs) may be diverted out of Little Warm Creek within SWNESE Sec 16 and then re-diverted by pump within NWSE Sec 16 for irrigation of 297 acres within 312 acre PPU.
- When right 41-00051A and 41-04013A are combined they are limited to 5.94 cfs for irrigation of no more than 297 acres within 312 PPU.
- A measuring device must be maintained at both points of diversion.

“T” Records need to be changed to conform to this recommendation.

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant JENNIE OSBORN Phone (208) 548-2601
 Post Office address PO Box 173 AMERICAN FALLS, ID. 83211

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
 ☐ Add diversion point(s)
 ☒ Change place of use From Well To Surface

☐ Change nature of use
 ☒ Change period of use
 ☒ Other Change Source
- Describe the reason for the proposed changes 15 acres of land to be dried up & move to other land where windshield wiper pivot is used.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|------------------|-------------------|--------------------|-------------------|-----------------------------|
| <u>41-07086B</u> | <u>01/14/1992</u> | <u>0.30</u> | <u>Irrigation</u> | <u>3/15</u> to <u>11/15</u> |
| | | | | |
| | | | | |
| | | | | |
- Total amount of water being transferred 0.30 cubic feet per second and/or 45 acre-feet per annum.
- Source of water LITTLE WARM CRK FALL CRK tributary to SNAKE RIVER
- Point(s) of Diversion: FALL CRK

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
<u>2</u>	<u>NE</u>	<u>NW</u>	<u>SE</u>	<u>16</u>	<u>09S</u>	<u>29E</u>	<u>POWER</u>	<u>PUMP IN POND (Little warm crk for c/c Re div.)</u>
	<u>SW</u>	<u>NE</u>	<u>SE</u>	<u>16</u>	<u>09S</u>	<u>29E</u>	<u>Power</u>	<u>Little warm crk Div.</u>
	<u>NE</u>	<u>NE</u>	<u>NE</u>	<u>29</u>	<u>09S</u>	<u>29E</u>	<u>Power</u>	<u>Fall crk Div.</u>

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>09S</u>	<u>29E</u>	<u>16</u>											<u>12</u>	<u>3</u>					<u>15</u>
													<u>LOT</u>	<u>3</u>					

Total acres 15

* Add 9/2/99

PART 1

6. General Information: PUMP IN

a. Description of diversion system POND ON CREEK, PUMPED TO WINDSHIELD
WIPER PIVOT

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

* ADDITIONAL 22 ACRES TO CURRENT P/L in SW 1/4 SEC 16, T09S, R29E

d. Remarks:

* 15 ACRES FROM 41-07086
7 " " " 41-00051A-04013A

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 41-07086

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 10/31	2.58 CFS	516.0 AF

SOURCE

GROUNDWATER

Priority: 01/14/1992

LOCATION OF POINT(S) OF DIVERSION: Lot 1(NESE), Sec. 11, Township 09S, Range 29E
POWER County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
09S	29E	11	Lot 1(SENE) 8	Lot 1(NESE) 35	Lot 1(NWSE) 33	115
			Lot 2(SWSE) 22	SESE 17		14
		12	Lot 4(SWNW) 14			129
Total number of acres irrigated:						129

CONDITIONS/REMARKS:

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
2. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
3. The Director retains jurisdiction of the right to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
NO If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.30 cfs for Irrigation purposes from 4/1 to 10/31
(cfs/ac-ft) _____
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft) _____
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft) _____

2. Point(s) of Diversion:

Lot	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
1		NE	SE	11	09S	29E	POWER	WELL #1 GPS A0002528

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
09S	29E	11				3.1									2.6				5.7
09S	29E	12				LOT 1			9.3						LOT 1				9.3
									LOT 4										

Total acres 15 ac.

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount 2.28 for Irrigation purposes from 4/1 to 10/31
(cfs/ac-ft) _____
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft) _____
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft) _____

2. Point(s) of Diversion:

Lot	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
1		NE	SE	11	09S	29E	POWER	WELL #1 GPS A0002528

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
09S	29E	11				4.7									32.8	32.7	21.8	16.9	108.9
						LOT 1									LOT 1		LOT 2		
09S	29E	12							4.4										4.4
									LOT 4										

Total acres 113.3

IRIGATION TO BE DRIED UP

Lamar
Isaak

13.9

EXISTING P/D - P/U ±
SEC 11, T09S, R29E NESE

#269
Melvin Osborn

Register Rd

P/D

Interstate I-86

#269
Melvin Osborn

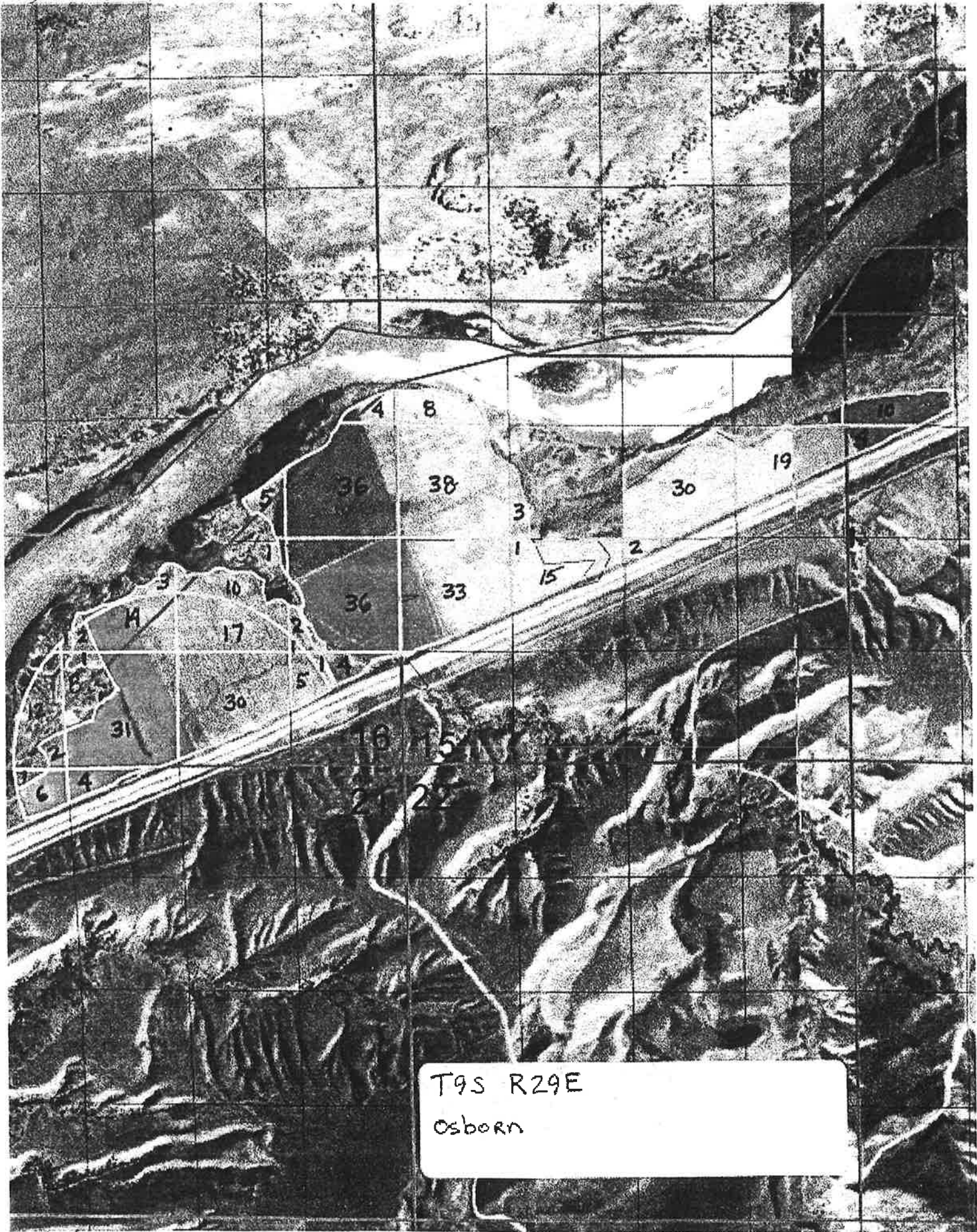
14 13

T122 5-
89.5

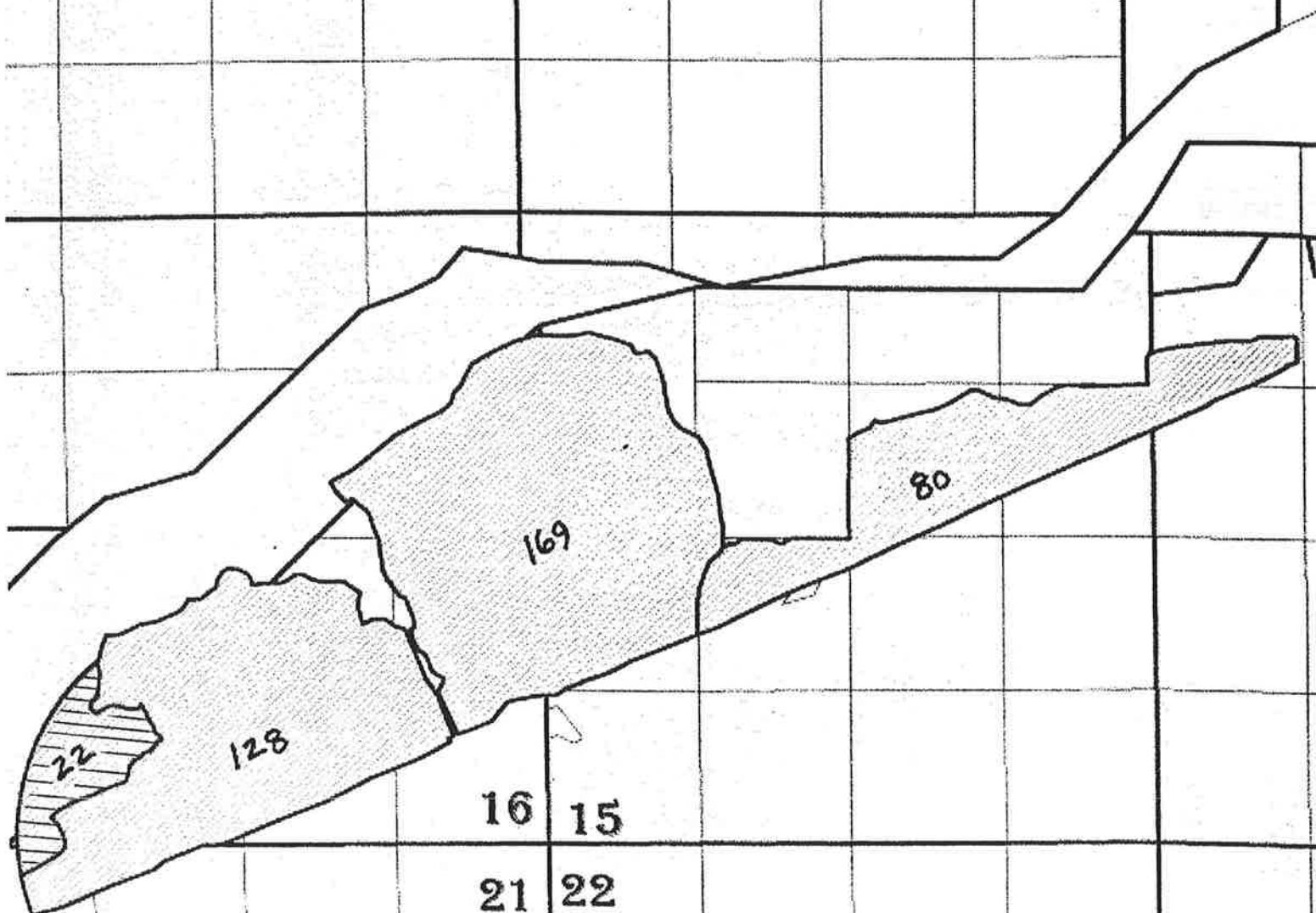
Well	13.9
	1.1
	15.0
98.3 = Big	
15	
30 acres little	
15 " " hand lines	
128.3	Total

FLIGHT: POST 1984
DATE

Pg 5 of 10
T # 5476-



T9S R29E
Osborn



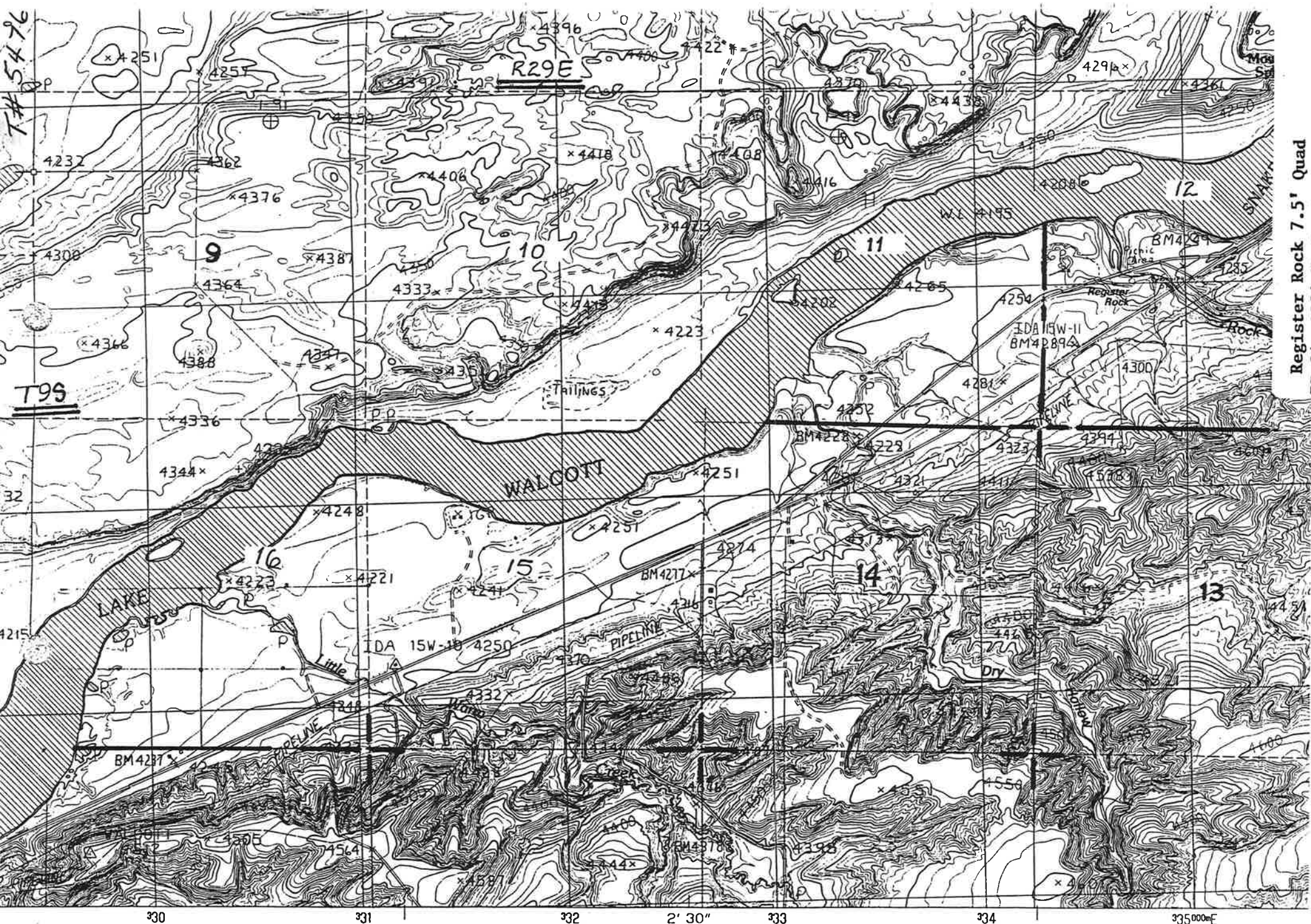
22.2c
15" (Sec 11)

T9S R29E

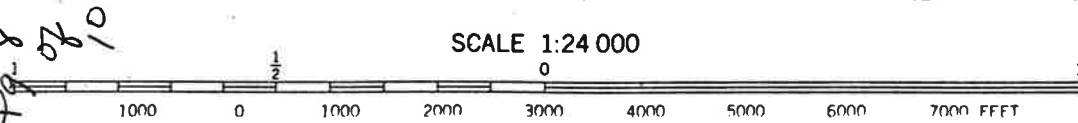
OSBORN

7 ac needed

See Transfer per 41-00051A-04013A



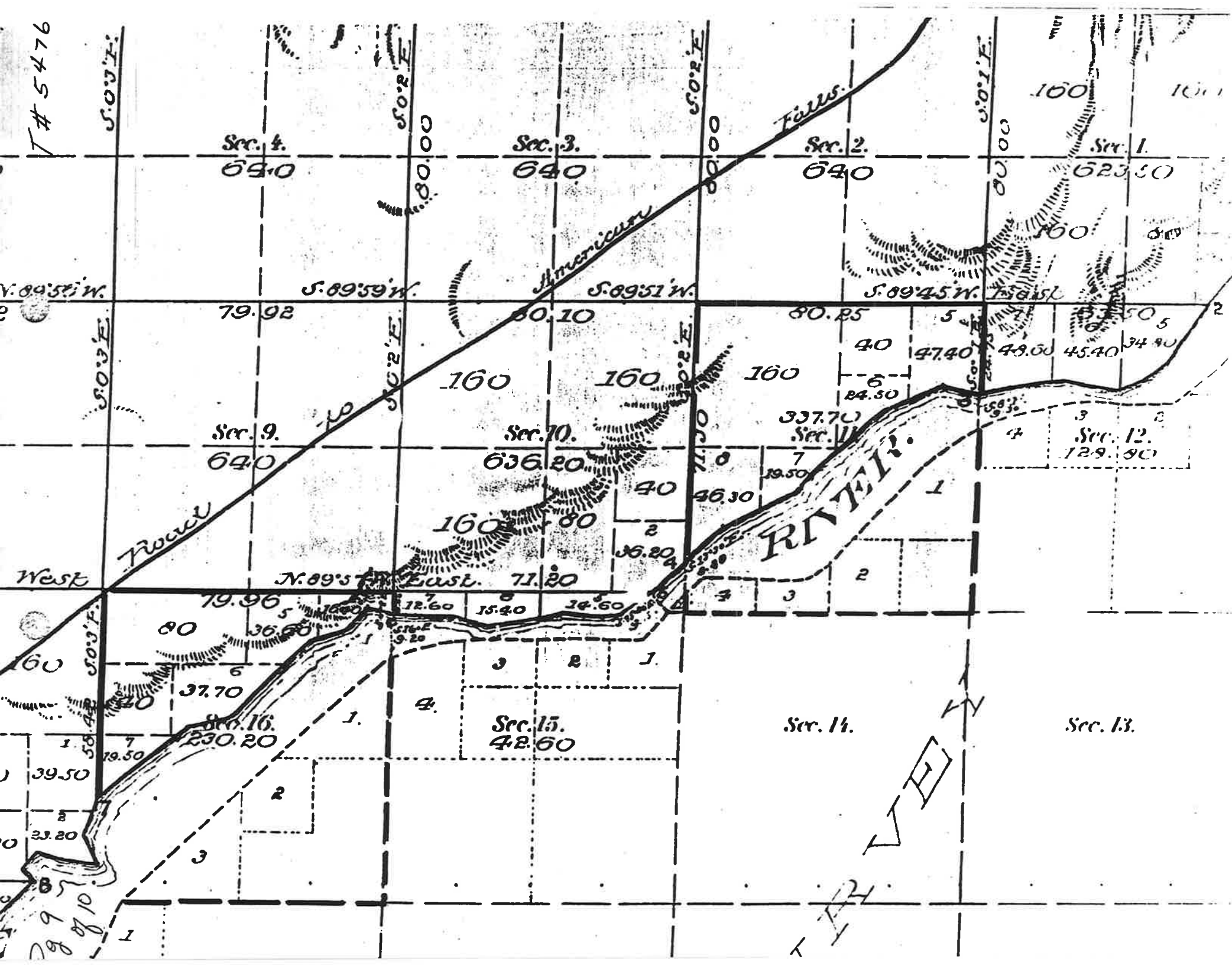
Register Rock 7.5' Quad



INTERIOR—GEOLOGICAL SURVEY, RESTON, VIRGINIA—1984

ROAD LEGEND

945 #1



PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

(SEC. 11) EXISTING WELL WOULD BE USING LESS OF AQUIFER(SEC. 16) EXISTING P/U RUN-OFF WOULD DIVERT BACK INTO CREEK &/OR RIVER
THE OSBORN'S ARE LAST USERS ON CREEK, THEREFORE NO INJURY TO
DOWNSTREAM USERS.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Jennie L Osborn
(Signature of Applicant)

Subscribed and sworn to before me this 2ND day of November, 1998.

Shirley Osborn
(Notary Public)

My commission expires 12/7/2000

FOR DEPARTMENT USE ONLY

Transfer contains 10 pages and 2 attachments

Received by GLS Date 02 NOV 98 Protest filed by None

Prelim. check by GLS Fee \$100

Received by GS Date 02 NOV 98 5021583

Published in Power Co. Press Copies of protest forwarded by _____

Pub. dates 7/12 & 7/19/99 Hearing held by _____ Date _____

Watermaster recommendation requested on N/A Recommended for ☒ approval ☐ denial

_____ rec'd. _____ by AB

Copy of transfer sent to lien holder _____

RECEIVED**NOV 03 1998**

Department of Water Resources
Southern Region

MEMO TO FILE

FROM: Georgia Satterlee
DATE: 10 November 1998
RE: 41-07086 (portion)

The Osborn's have developed approximately 22 acres, which will be watered by a new windshield wiper pivot. The new development is located in the SW $\frac{1}{4}$ of Section 16, T09S, R29E.

In order to provide water for the land, there are two applications for transfer. The first transfer will move 15 acres, 41-07086, from land that is irrigated from groundwater. The transfer will change the place of use, change the point of diversion, and change the source (from groundwater to surface).

The second transfer is necessary to move additional acres, associated with 41-00051, -04013, to the new development.

The first application for transfer proposes to dry up acres in Sections 11 and 12, T09S, R29E, and move these acres approximately 3 miles south-west along the south bank of the Snake River to more land owned by the Osborn's.

There will be a total of 15 acres, more described as follows: 3.1 acres from SENE $\frac{1}{4}$ and 2.6 acres from NESE $\frac{1}{4}$, both located in Section 11, T09S, R29E; and 9.3 acres from SWNW $\frac{1}{4}$ of Section 12, T09S, R29E.

The source will change from groundwater to surface. The priority date for 41-07086 is 01-14-92. The decreed surface right, 41-00051, has priority date of 04/02/1910. The priority date for the statutory claim, 41-04013, is 02/26/1890.

The p/d for 41-04013 is located SW'ly of existing place of use. The water from Fall Creek is diverted into a ditch. The one mile ditch then dumps the water into a pond. The pond (also p/d for 41-00051) is on-stream on the Little Warm Creek. The water is pumped from the pond into a pressurized mainline and a windshield wiper pivot which has replaced 90% of the wheel/hand lines.

The recommendation with the usual conditions is appropriate for the application for transfer.

T# 5476

M E M O T O F I L E

FROM: Georgia Satterlee
DATE: 27 April 1999
RE: 41-07086 portion

The Osborn's have developed approximately 22 acres, under a windshield wiper pivot. The new development consists of 21 acres located in the SW $\frac{1}{4}$ of Section 16, T09S, R29E and 1 acre in the NW $\frac{1}{4}$ of Section 21, T09S, R29E.

In order to provide water for the land, there are two applications for transfer. The first transfer will move 15 acres from licensed place of use to the new development. The source will change from groundwater to surface water.

The second application for transfer will move 7 acres associated with the surface rights, 41-00051A, -04013A, to the new development. The first transfer will supply 15 additional acres. The second transfer will show the place of use will increase acreage from 297 acres to 312 acres.

Conditions of approval:

- under control of District 01 Watermaster
- measuring devices, if required, to be installed
- rights are subject to SRBA review

T# 5476

SD-0613-2 Source System: WR Prefix: Basin: 41
S Starting Water Right: 07086 Ending Water Right: 07086
E Water Name
L Right No. Last, First CFS

41-07086 OSBORN, JENNIE 2.580

2.58
A B
2.28 cfs 0.30 cfs
129 ac. 152 acres

(Enter=Continue) (GOLD 6=Produce Report) (GOLD 7=This Query) (Menu _____)

COPY

Satterlee, Georgia

From: Dala Walton [DWALTON@pn.usbr.gov]
Sent: Friday, July 16, 1999 11:47 AM
To: gsatterlee@idwr.state.id.us
Subject: RE: Osborns transfer

Thank you for all the good information and maps. It is clear the BOR pou's being listed by Osborns are covered under a lease between them and BOR. So, everything looks good to us. We have no problem with the transfer.

RECEIVED
JUL 17 1999
Department of Water Resources
Southern Region

COMMUNICATION DOCUMENTATION

IDWR Employee/Agent Georgia Satterlee

DATE

July 14, 1999 2:57pm

CUSTOMER

Dala Walton

SUBJECT: Osborn Transfers
phone call (.) walk-in (.)

Boy, where to start? The whole thing began last summer when our office rcvd a call of a new development that had no water rights appurtenant, (22 acres on the west end of Jennie's land, cross hatched area on map from T#5476). Come to find out, yes, they were tearing out sage and putting in a windshield wiper pivot. No, there were no water rights on the ground. Therefore the transfer(s) were created to get rights moved to the new development. There was an old transfer (from 1990+/-) in the name of Melvin Osborne still sitting in our office. I am unable to explain that one as I am not my co-workers' keeper. Anyway now we needed to deal with T#3700, which split the land and water rights on the large parcel (color map with T#3700) before we could get to the current issue, i.e. the new development. Once T#3700 was clarified, then we began to construct the next transfer, which is the 15 acres (T#5476) needed for the new development. The last transfer T#5477 encompasses and summarizes both T#5476 and T#5477. Hopefully this will explain some of the matter, and I am available at 736-3033.

M E M O T O F I L E

FROM: Georgia Satterlee
DATE: 27 April 1999
RE: 41-00051A, -04013A, -07086B

The Osborn's have developed approximately 22 acres, which will be watered by a windshield wiper pivot. The new development consists of 21 acres located in the SW $\frac{1}{4}$ of Section 16, T09S, R29E and 1 acre in the NW $\frac{1}{4}$ of Section 21, T09S, R29E.

In order to provide water for the land, there are two applications for transfer. The first transfer will move 15 acres from land associated with 41-07086.

The second application for transfer is necessary to move additional acres within the surface rights, 41-00051A, -04013A, to the new development and address all the appurtenant rights.

The water is pumped from the pond (which is fed by both Little Warm Creek and Fall Creek) into a pressurized mainline for a windshield wiper pivot plus hand/wheel lines.

The recommendation dated 10/06/1998 by Steve Clelland for 41-00051, -04013 is included in the file. In 1995 ADM wrote a memo per the discussion with Steve regarding the water use on the land; the conclusion was, and still is, the right(s) have not been forfeited through non-use.

Conditions of approval:

- under the control of District 01 Watermaster
- measuring devices, if required, to be installed
- rights are subject to SRBA review

Esther, Melvin, & Jennie Osborn
Mon. 02 Nov 4pm
Twin Falls Office

For ~~Cory~~ STEVE GEORGIA	Urgent ☐	
Date 10/29	Time 1:00	
While You Were Out		
M	Mrs Melvin Osborn	
Of		
Phone	208-548-2606	
AREA CODE	NUMBER	EXTENSION
Telephoned ☒	Please Call ☒	
Came To See You ☐	Will Call Again ☐	
Returned Your Call ☐	Wants To See You ☐	
Message 7 acres to dry up		
She was sent a letter to make		
an appointment - She want		
an appointment Monday -		
Please call and leave message		
when convenient		
Signed WANTS TO MEET WITH STEVE & GEORGIA WANTS AN APPOINTMENT / one		

9711

ADAMS BUSINESS FORMS

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Georgia Satterlee

DATE

September 3, 1998 2:28pm

CUSTOMER

Jennie Osborn

SUBJECT: 41-07086 (Part)
phone call (.) walk-in (.) reply (.)

Please review the attached Application for Transfer. When you are ready to sign the application, please include the \$100 application fee. If you need to come in, please call for an appointment.

We will need the 1997 tax notices for the lands in Section 11, 12, and 16, T09S, R29E.

If the lands are subject to any liens, deeds of trust, mortgages, or contracts, we will need a notarized statement from the holder agreeing to the proposed changes.

Mtg. = 14 Sept @ 1230 pm Perkins in Burley

COMMUNICATION DOCUMENTATION

I STILL DO NOT BELIEVE IT WAS AN IRRIGATED PARCEL, THEY HAVE HAD TO LEVEL THE AREA TO FACILITATE THE NEW IRRIGATION UNDER SPRINKLERS, THEREFORE, I DON'T SEE HOW THEY COULD HAVE GRAVITY IRRIGATED THERE INSTEAD. (THEY STATED IT WAS NOT SPRINKLER IRRIGATED BECAUSE THE GROUND WAS TOO ROUGH AND STEEP.)