

MAR 19 2020

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

Amended Application for Transfer 83773 involving Water Rights 57-01220, 57-01219, 57-1222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, and 57-07333A

March 19, 2020

1. Matter being protested

Amended Application for Application for Transfer 83773 (involving Water Rights 57-01220, 57-01219, 57-1222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, and 57-07333A) filed by Black & Becker, LLC.

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 February 11, 2020, Black & Becker, LLC ("Applicant") filed an Amended Application for Transfer 83773 involving Water Rights 57-01220, 57-1219, 57-1222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, and 57-07333A. The application for transfer seeks to add 5 new points of diversions ("PODs") to existing rights, described as 4 wells (2 existing wells and 2 new wells) and one surface water source (Shoofly Creek). The application further seeks a new proposed place of use (PPU) by moving 509 acres (4.44 cfs) approximately 4 miles north, applicant will dry-up the existing Place of use (POU) area currently irrigated.

The transfer application new PPU is on parcels of land owned by different individuals; Black & Becker LLC, Douglas Doan (RP07S03E040021), Dan Truscott (RP07S03E041300), Karen Ranae Jolley (RP07S03E0449900), and BLM. The application lacks evidence of legal access to properties not owned by the applicant.

BLM is filing a protest because the transfer application includes federal lands managed by BLM listed under the PPU and also within the proposed POU boundary map. The applicant is not authorized to conduct agricultural activities on federal land managed by BLM.

POUs described under the proposed place of use (PPU) that entirely describe federal land:

T07S, R03E, S05, NESE (BLM)

T07S, R03E, S04, SENW (BLM)

T06S, R03E, S34, SWNE (BLM)

POUs included on the transfer map, but not listed under the PPU, that entirely describes federal land:

T06S, R03E, S34, SENW
T06S, R03E, S34, SENE
T07S, R03E, S04, Lot 2 (NWNE)
T07S, R03E, S04, SESW (mixed, BLM and private)
T07S, R03E, S04, NWSE

Irrigation of federal land manage by BLM in trespass:

T06S, R03E, S34, SWNE – including an existing trespass

Review of the transfer application shows irrigation and farming occurring in trespass on federal lands: T06S, R03E, S34, SWNE. The applicant is not authorized to irrigate or farm federal lands. The applicant should cease and desist agricultural activities of federal lands.

A water right also 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)).

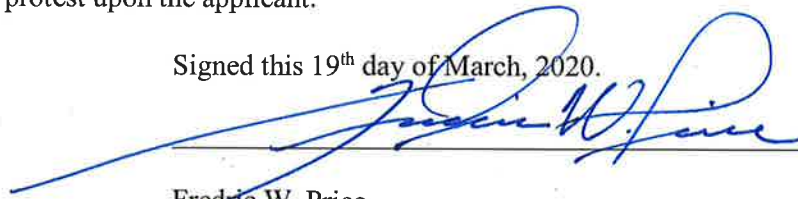
In the Innovative Mitigation Solutions case (37-22852), the application for permit was rejected by IDWR because “there is no information in the record demonstrating the Applicant has legal access to the property necessary to operate the project proposed in Application 37-22852, or authority to exercise imminent domain authority to obtain such access. Protestants are entitled to judgment as a matter of law that Application 37-22852 was not filed in good faith. See IDAPA 37.03.08.45.01.c.i.”

7. What would resolve your protest?

- A. Withdraw the application; or
- B. Amend the application to exclude federal land from the PPU, POU, and boundary shape; and except terms and conditions that makes it clear only private land is intended:
 - 1) “The place of use does not include any federal land.”; and
 - 2) “This right does not grant a right-of-way or easement across the land of another.”

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

Signed this 19th day of March, 2020.



Fredric W. Price
Protestant's Representative

Attachments:

- ◆ Maps prepared by BLM for illustrative purposes.
- ◆ Master Title Plats: T06S, R03E; T07S, R02E; T07S, R03E

FOR DEPARTMENT USE ONLY

Received by LE Date 3/19/2020
Fee Paid \$25.00 Date 3/19/2020 Received by LE Receipt # W048123

CERTIFICATE OF SERVICE

I certify that on March 19, 2020, I served a true and correct copy of the **“Protest of Amended Application for Transfer No. 83773”** 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:

Black & Becker, LLC
c/o Marshall Becker and Martin Black
31383 Mud Flat Road
Grand View, Idaho 83624-5049

Douglas Doan
556 NW Beaman St.
Mountain Home, Idaho 83647-5196

Black & Becker, LLC
c/o Marshall Becker and Martin Black
29458 Whitson Lane
Bruneau, Idaho 83604-5020

Dan Truscott
3301 W. Teton St.
Boise, Idaho 83705-6016

James Tarter, Natural Resource Specialist
Jeff Mork, Realty Specialist
U.S., Department of the Interior
Bureau of Land Management
Boise District Office
3948 South Development Avenue
Boise, Idaho 83705-5339

Karen Jolley
3682 River Rd.
Homedale, Idaho 83628-3599

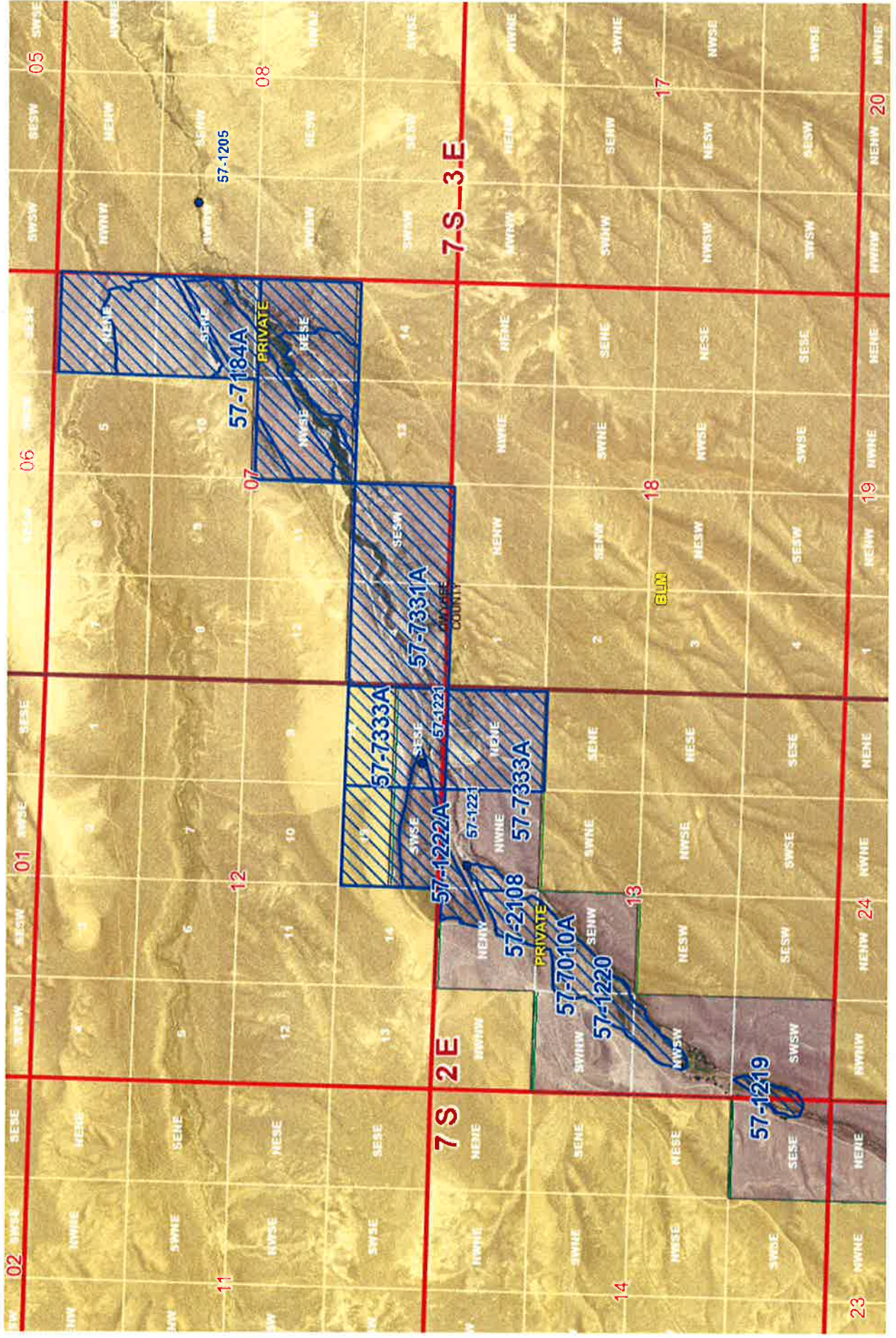
Sandra McCrea

Person Serving Documents (print name)

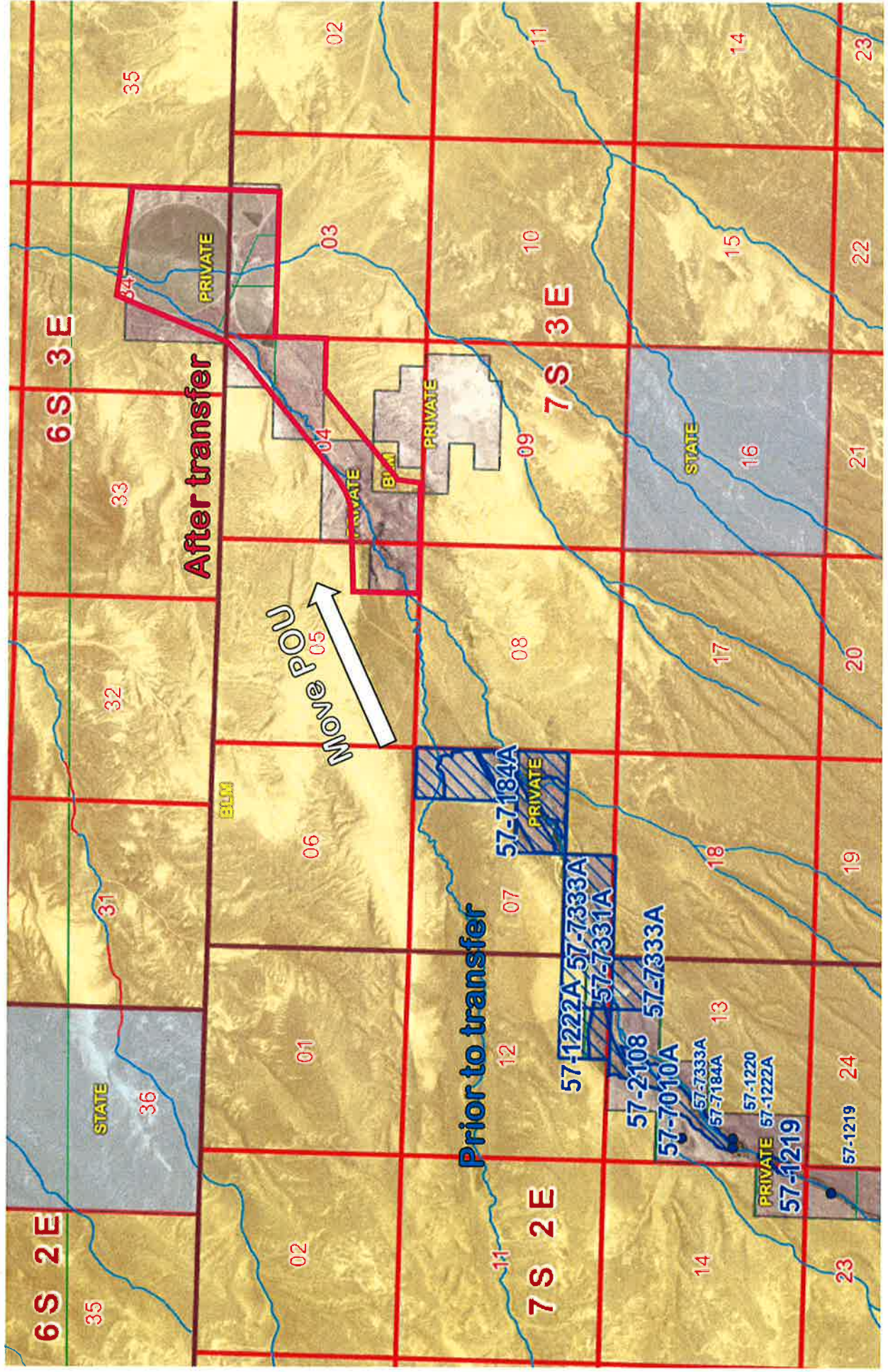


Signature of Person Serving Documents

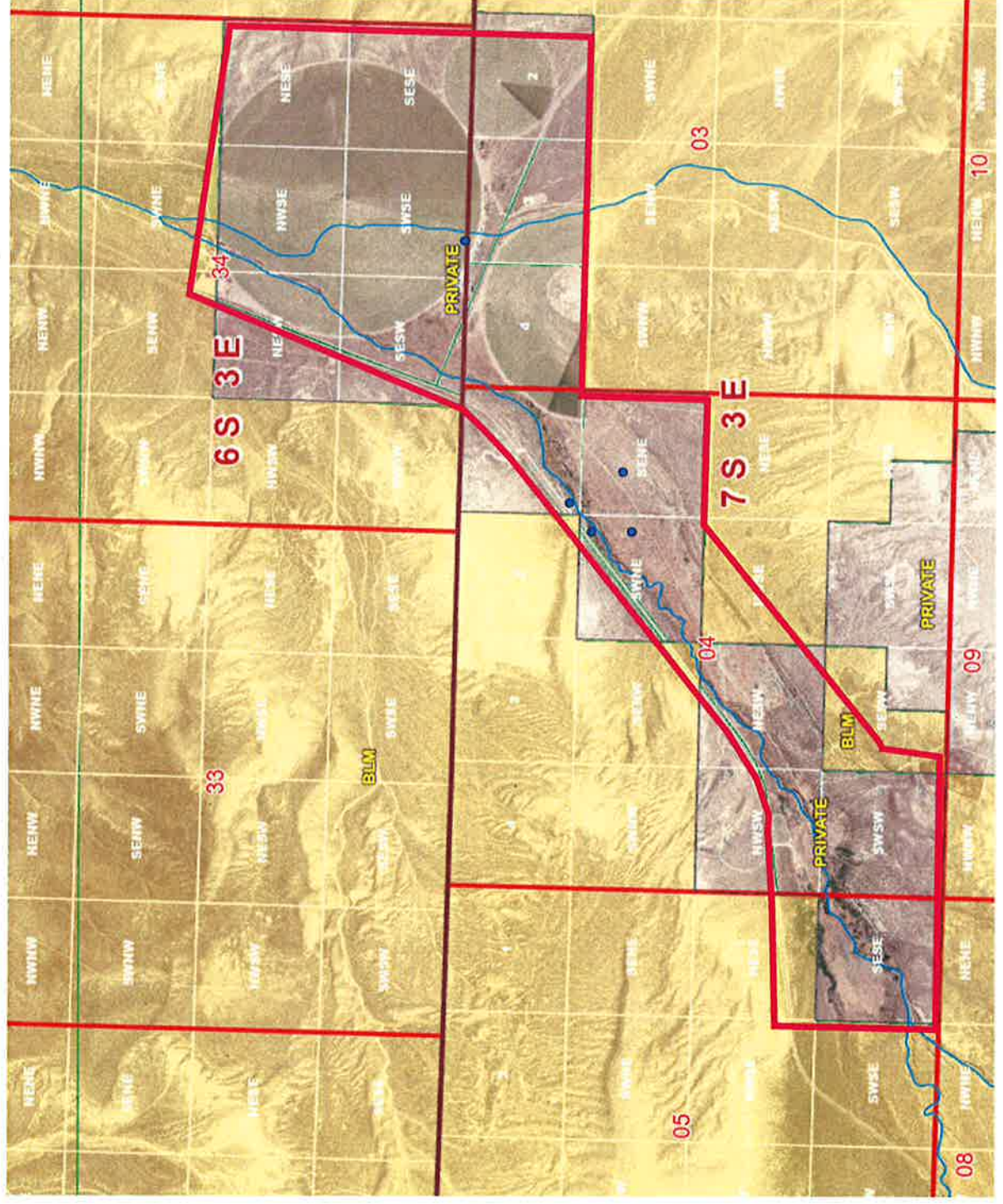
Protest: Application for Transfer 83773, Black & Becker LLC
57-01219, 57-01220, 57-01222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, 57-07333A
WRs prior to transfer.



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Purpose of Transfer is to move water from existing POU (blue) to the NE (pink).



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Map of new POU –after transfer

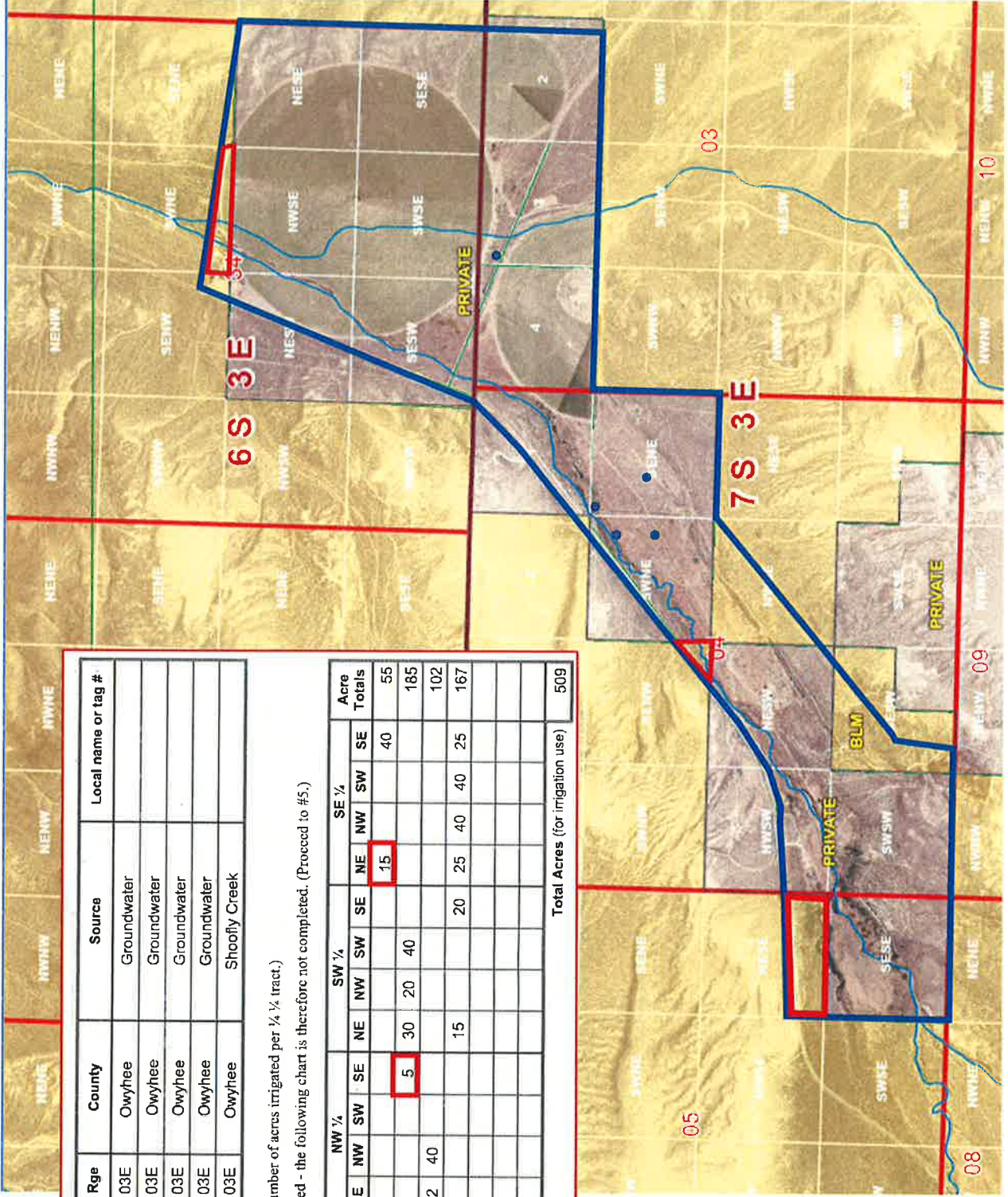


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 Transfer map includes BLM land that is asked for in the transfer.

New ?	Lot	1/4	1/4	Sec	Rge	County	Source	Local name or tag #
Y			SE	NE	04	07S	Groundwater	
Y			SE	NE	04	07S	Groundwater	
Y			SE	NE	04	07S	Groundwater	
Y			SE	SW	34	06S	Groundwater	
Y			SW	NE	04	07S	Shoofly Creek	

4. Place of use: (If irrigation, identify with number of acres irrigated per 1/4 1/4 tract.)
☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	03E	5													15			40	55
07S	03E	4																	185
07S	03E	3																	102
06S	03E	34																	167
Total Acres (for irrigation use)																			509



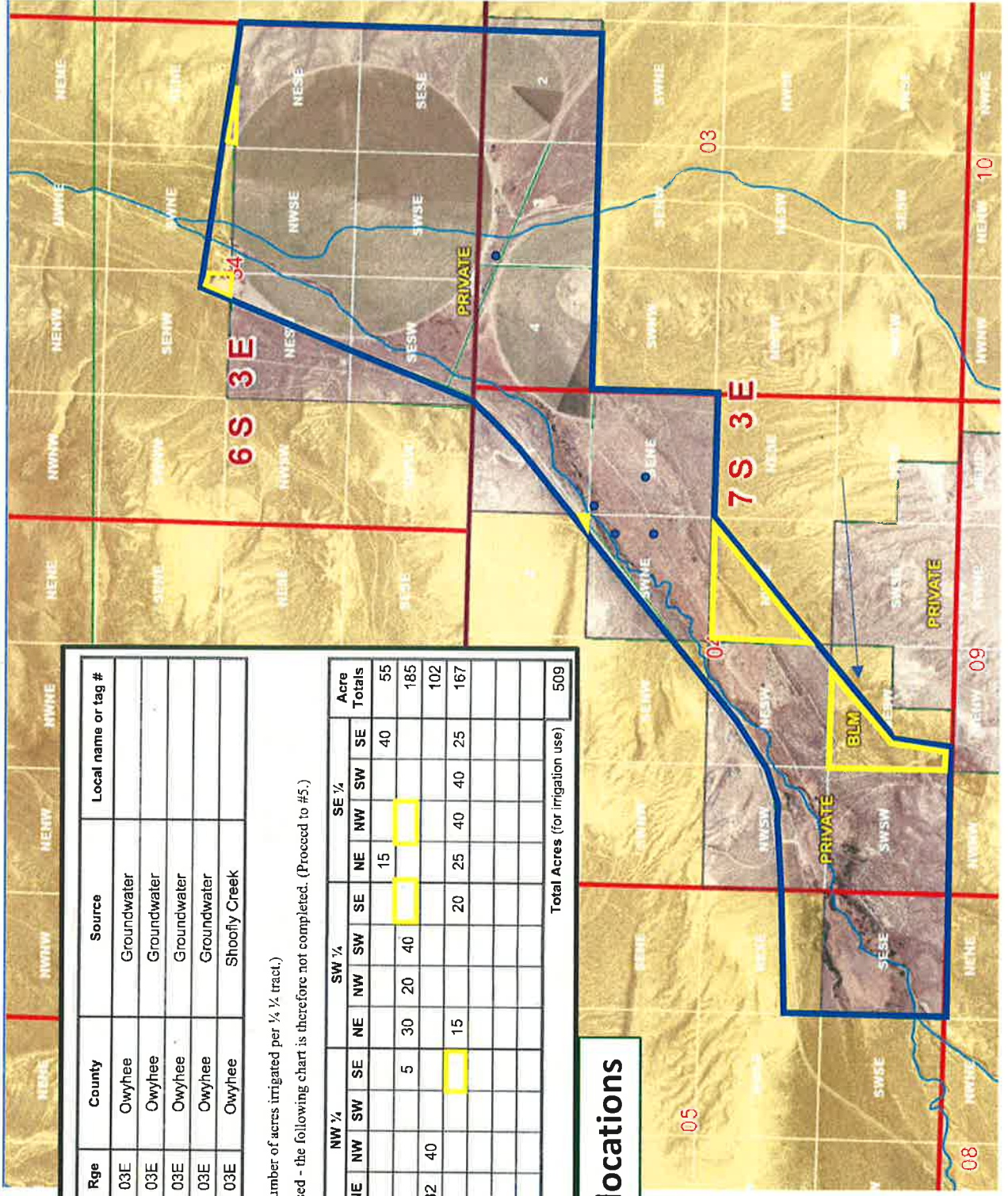
Protest: Application for Transfer 83773, Black & Becker LLC

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
Y			SE	NE	04	07S	03E	Owyhee	Groundwater	
Y			SE	NE	04	07S	03E	Owyhee	Groundwater	
Y			SE	NE	04	07S	03E	Owyhee	Groundwater	
Y			SE	SW	34	06S	03E	Owyhee	Groundwater	
Y			SW	NE	04	07S	03E	Owyhee	Shoofly Creek	

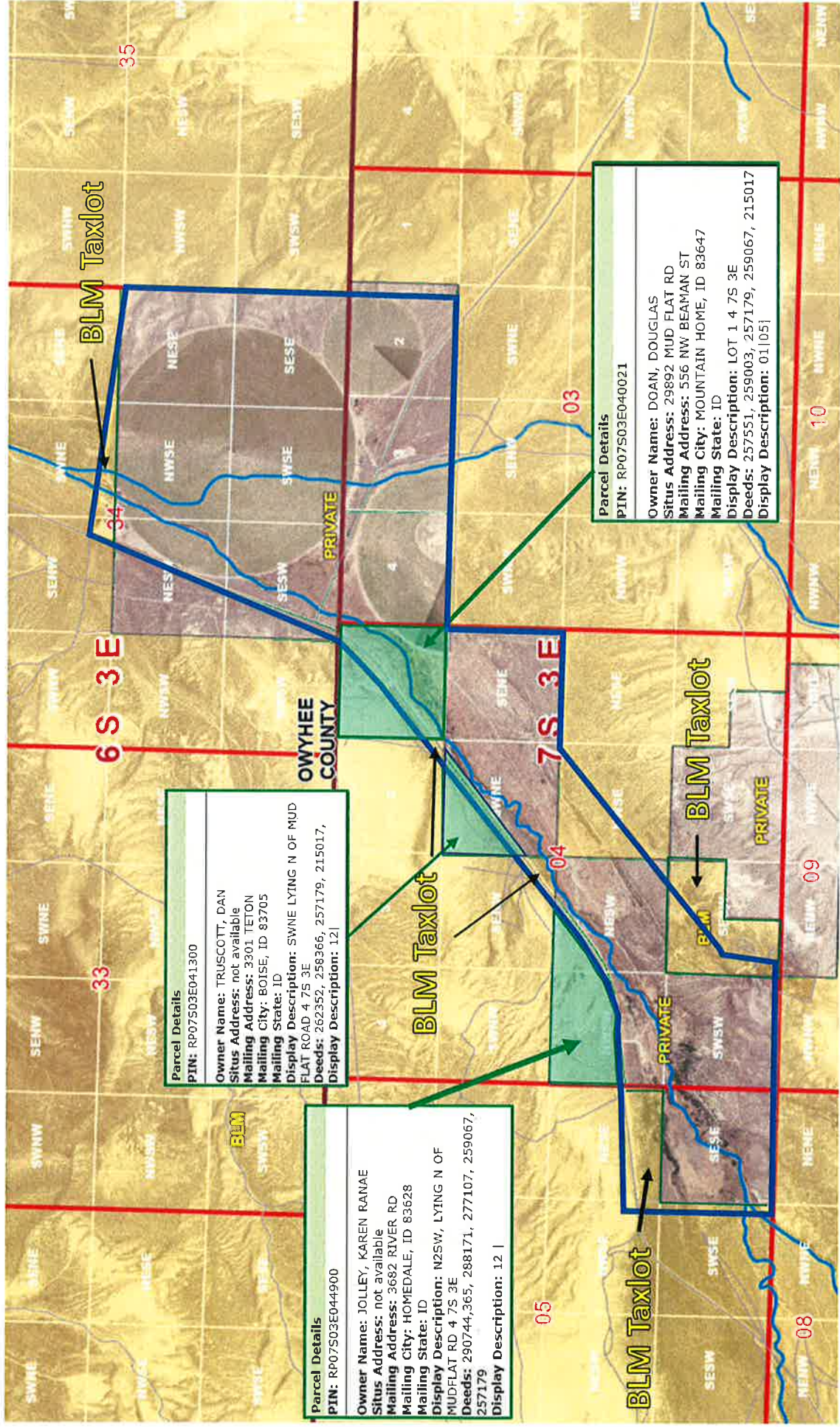
4. Place of use: (If irrigation, identify with number of acres irrigated per $\frac{1}{4}$ tract.)

[illegible]

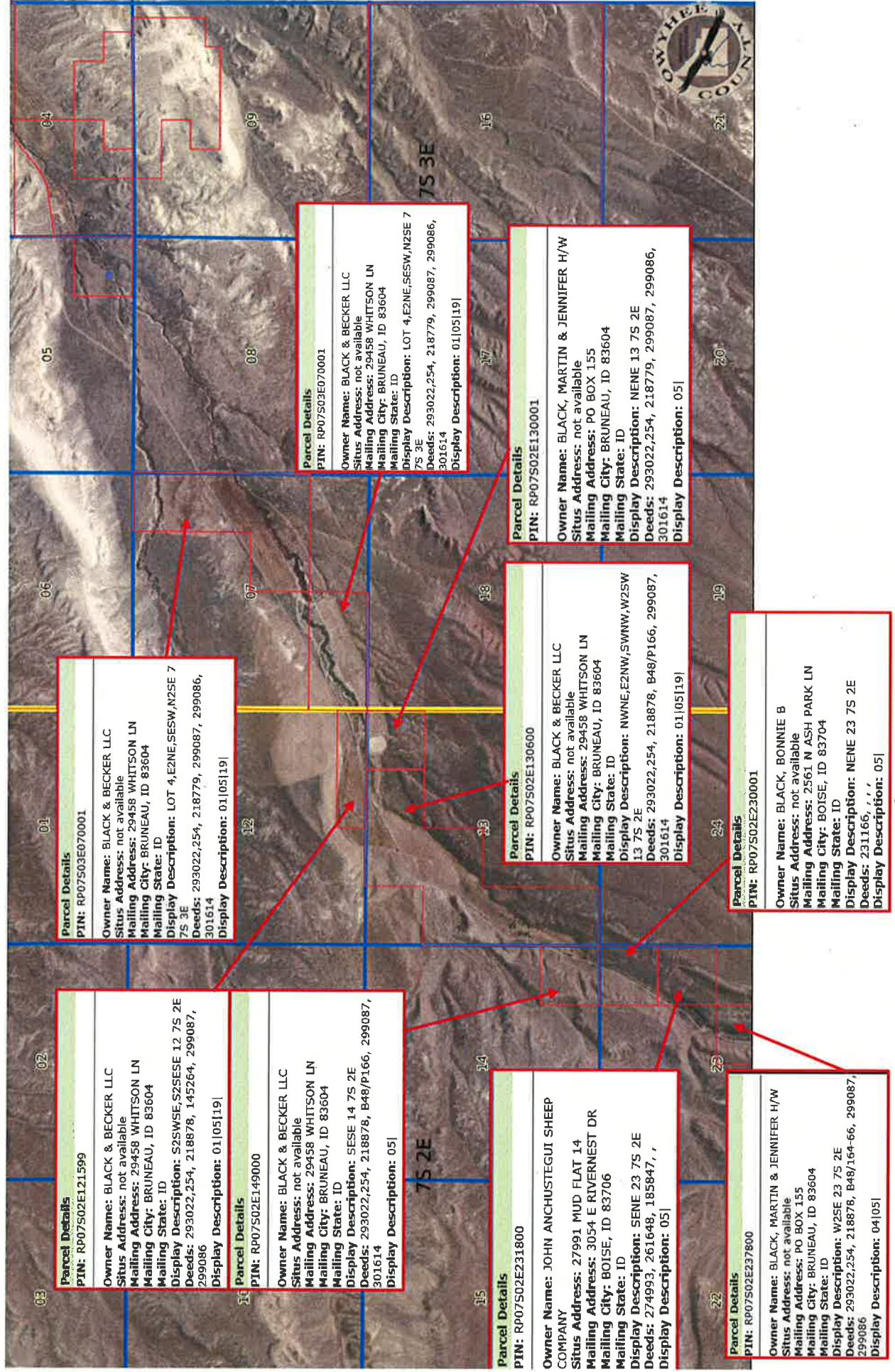
Undescribed POU locations



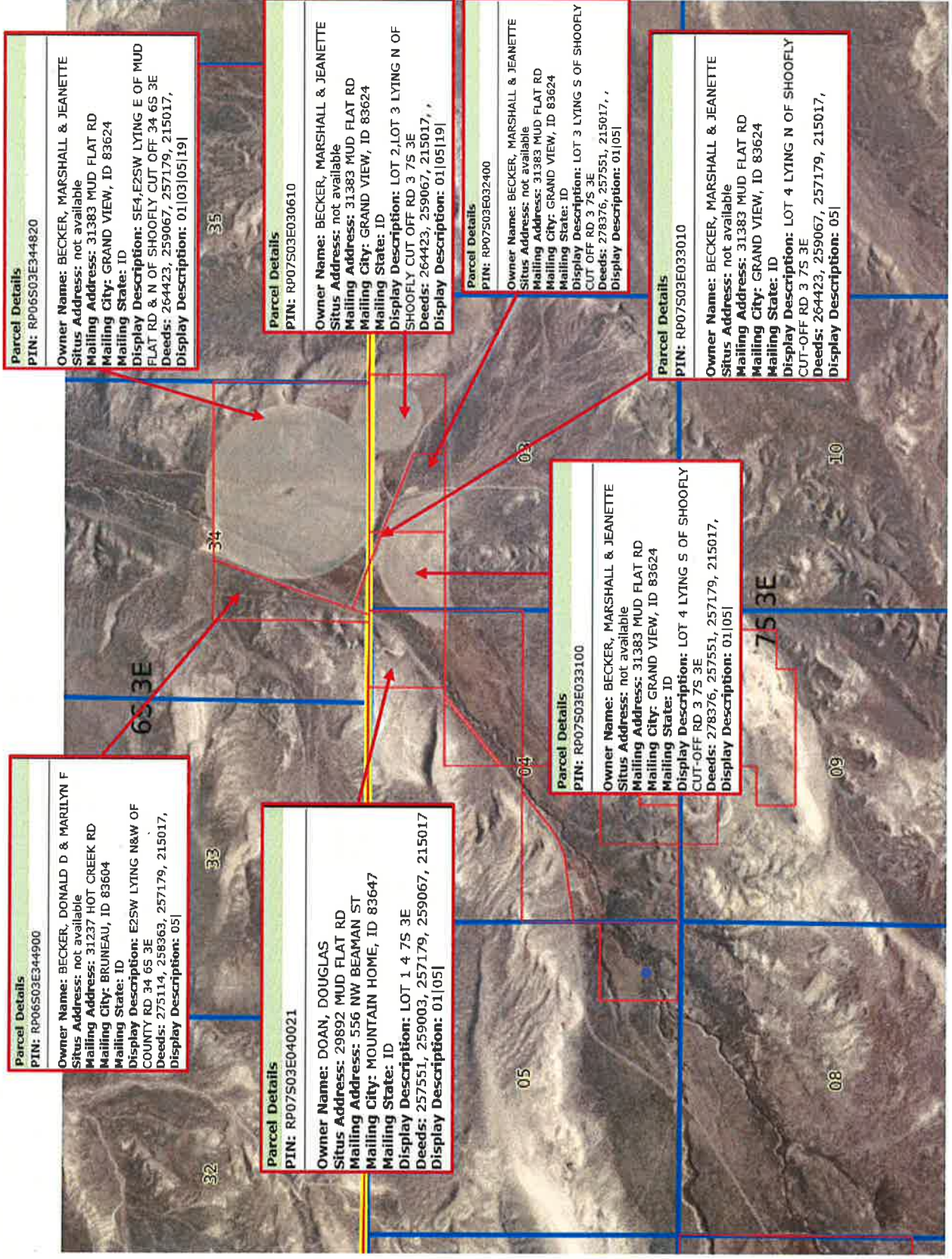
Application for Transfer 83773, Black & Becker LLC
57-01219, 57-01220, 57-01222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, 57-07333A
Taxlots in POU that are not owned by Black & Becker LLC



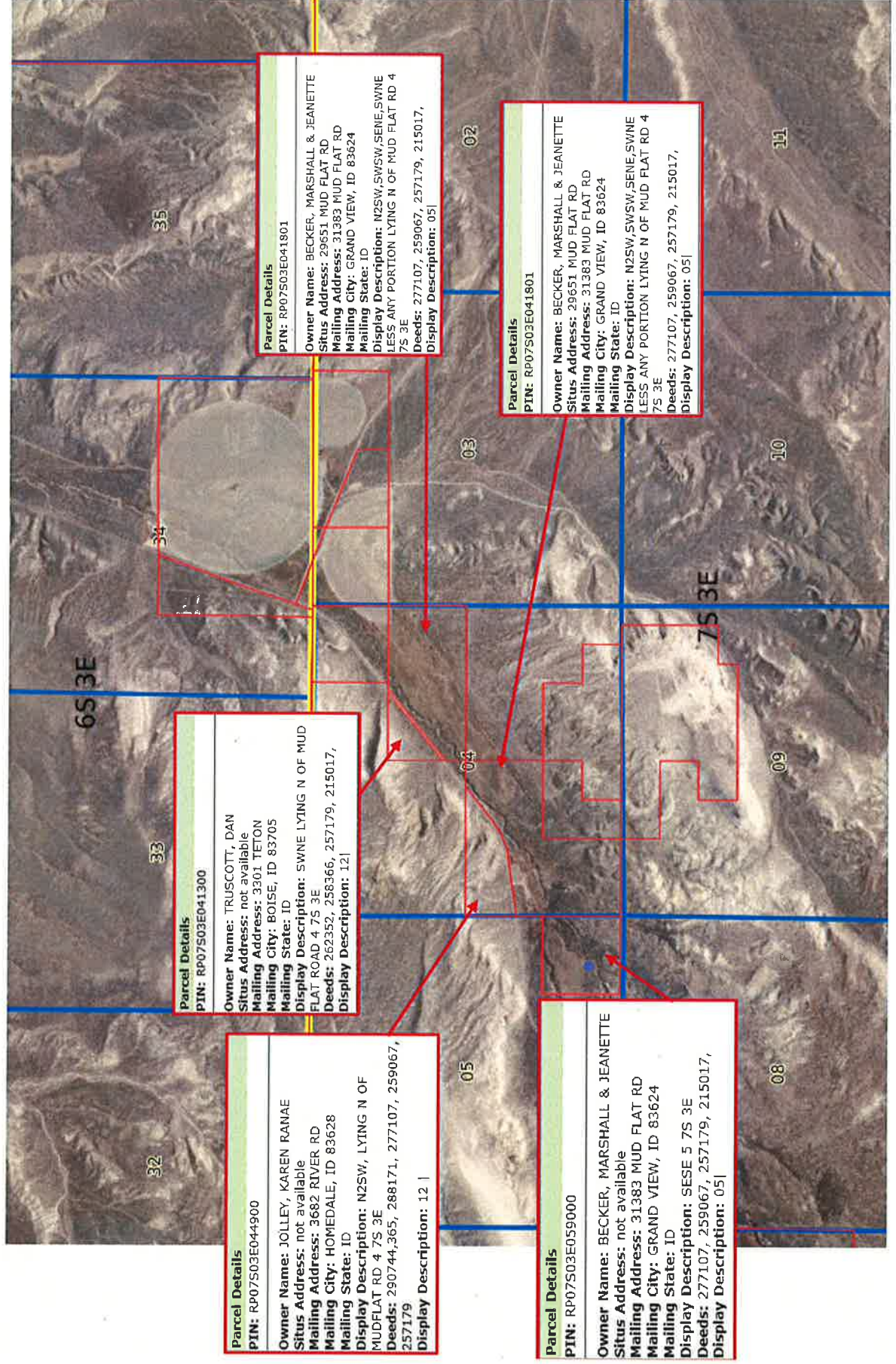
Application for Transfer 83773, Black & Becker LLC
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Ownership of taxlots for the POU's prior to transfer



Application for Transfer 83773, Black & Becker LLC
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Ownership of taxlots for the suggested POUs after the transfer

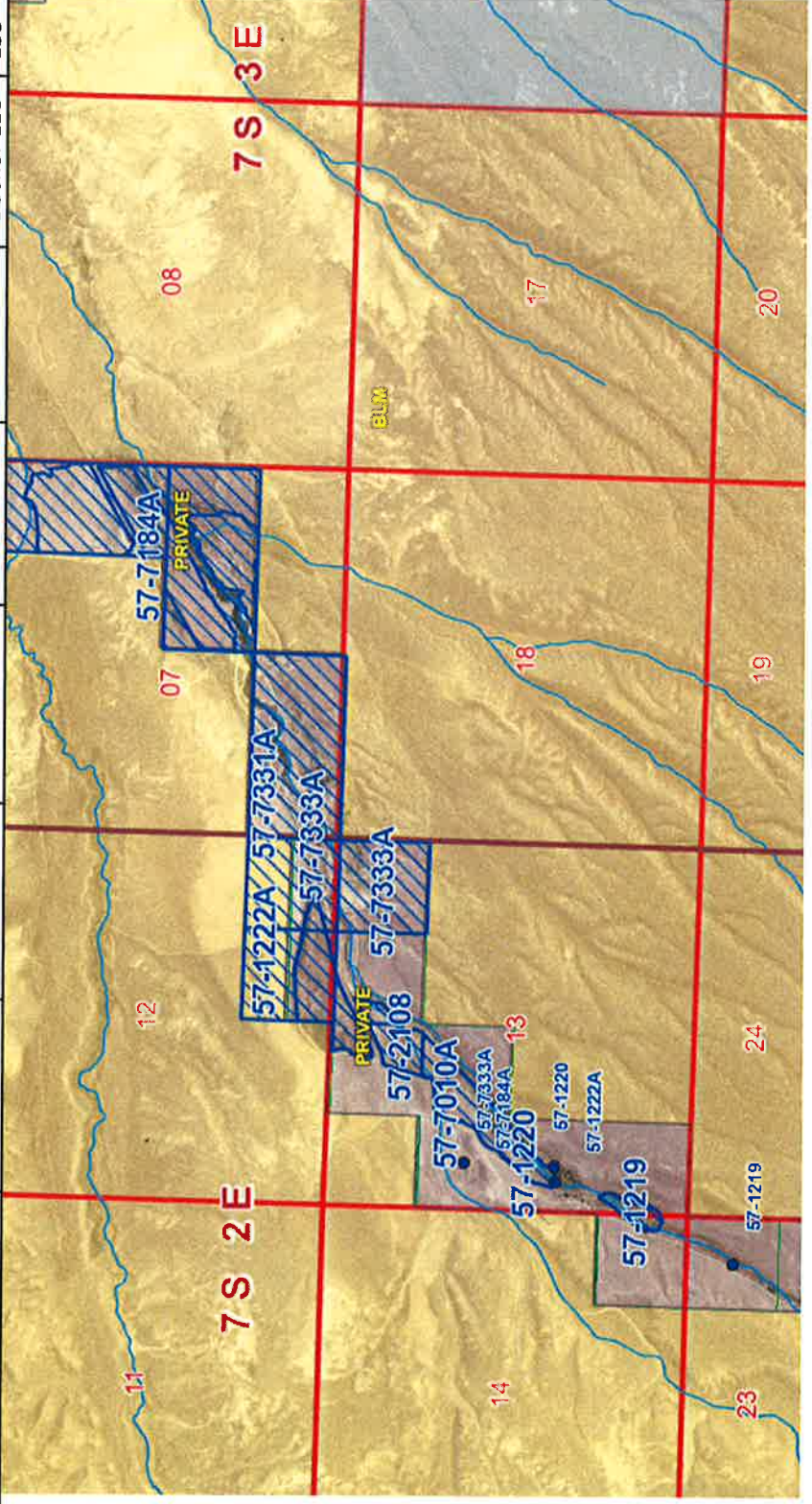


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Ownership of taxlots for the suggested POUs after the transfer



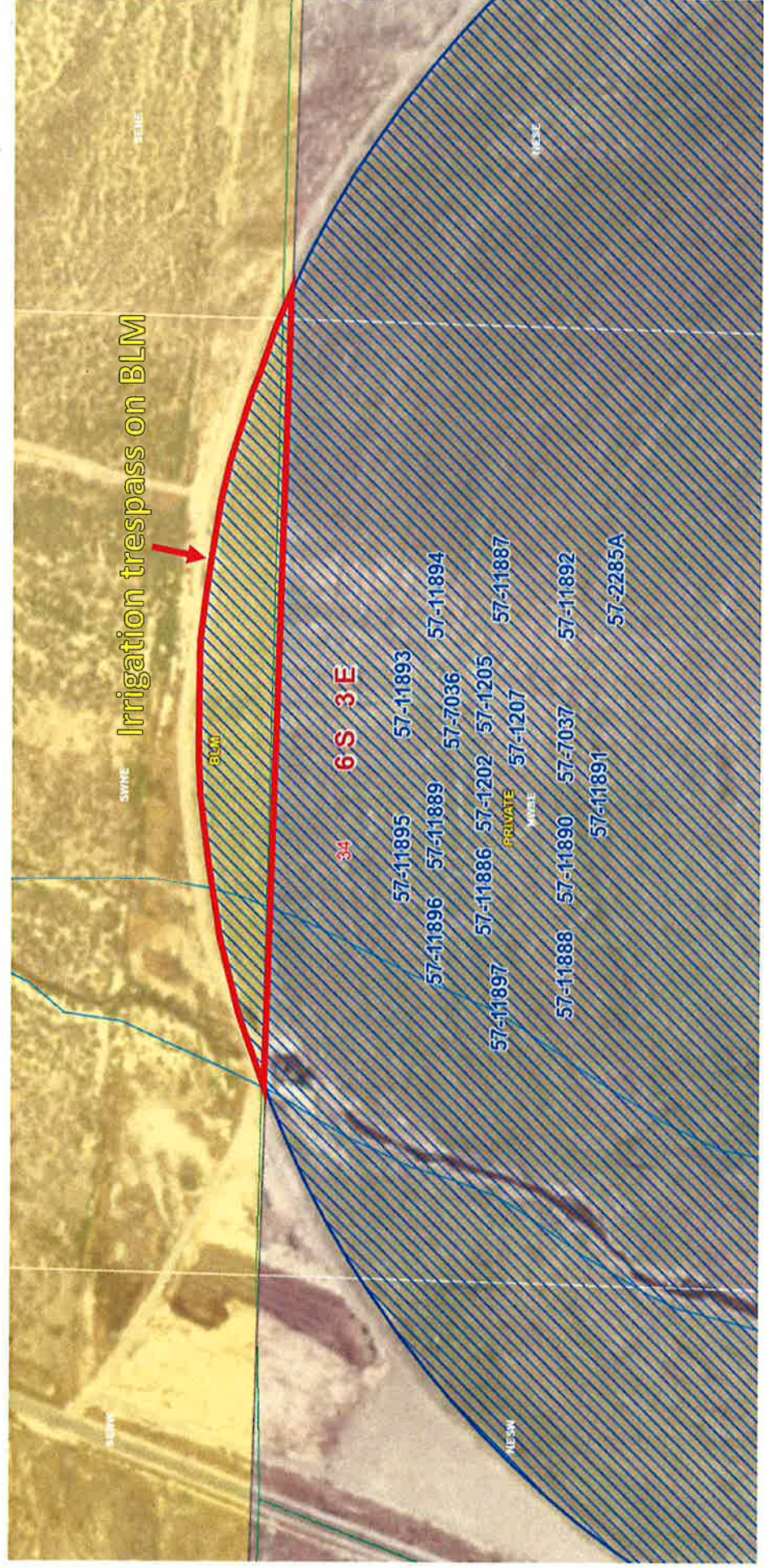
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 57-01219, 57-01220, 57-01222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, 57-07333A
Claimants of WRs in transfer.

Water Right #	57-01219	57-01220	57-01222A	57-02108	57-07010A	57-07184A	57-07331A	57-07333A
Original Claimant	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mike Black	Mike Black
PD	Y	Y	Y	Y	Y	Y	Y	Y
Amended DR (NCAP)	N	N	N	N	N	N	Y	Y
PD Claimant	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black	Mattie & Paul Black
Current Owner (IDWR)	Black & Becker LLC	Black & Becker LLC	Black & Becker LLC	Black & Becker LLC	Black & Becker LLC	Black & Becker LLC	Black & Becker LLC	Black & Becker LLC

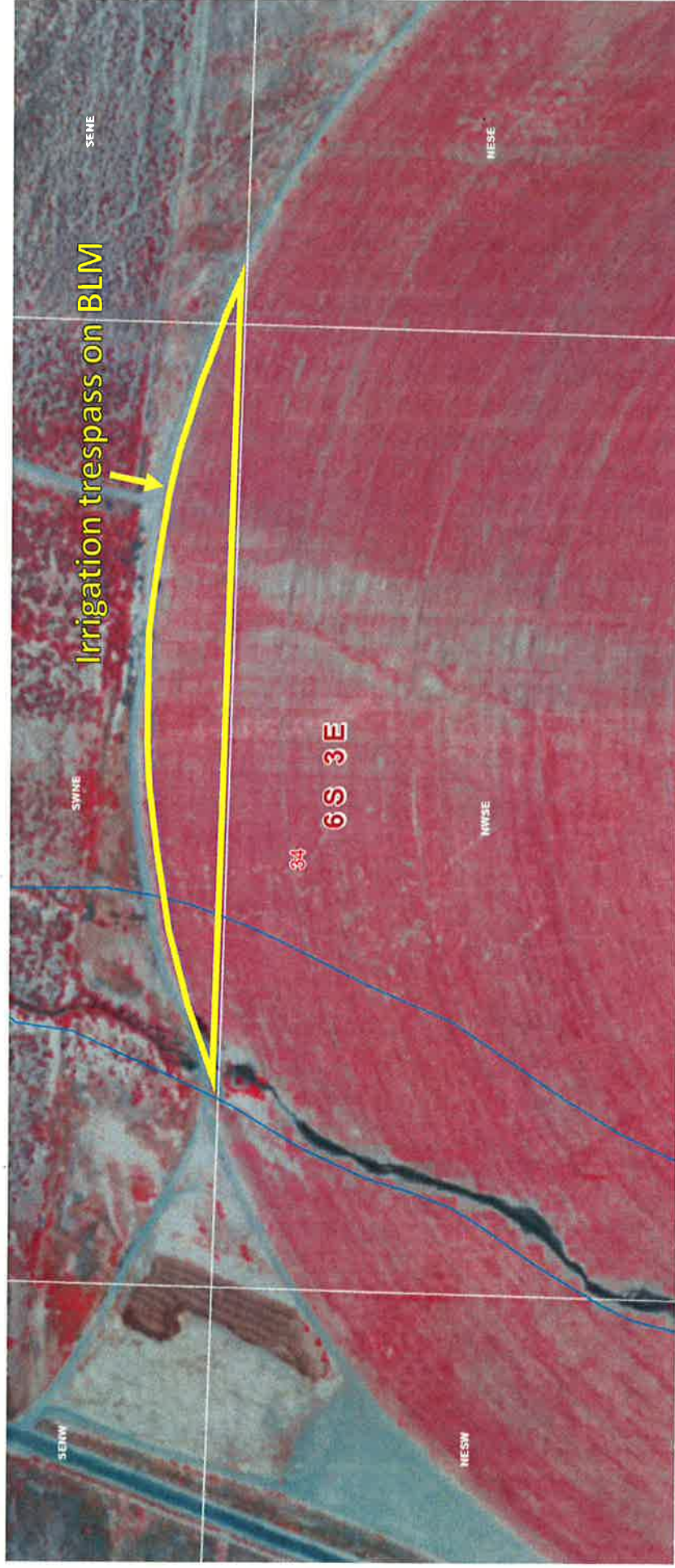


Application for Transfer 83773, Black & Becker LLC

57-01219, 57-01220, 57-01222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, 57-07333A
Irrigation Trespass on BLM (T06S, R03E, S34, SWNE).



Application for Transfer 83773, Black & Becker LLC
57-01219, 57-01220, 57-01222A, 57-02108, 57-07010A, 57-07184A, 57-07331A, 57-07333A
Irrigation Trespass on BLM (T06S, R03E, S34, SWNE) –false color.



OWYHEE COUNTY 073
BOISE DISTRICT SEC 3

MT PLAT

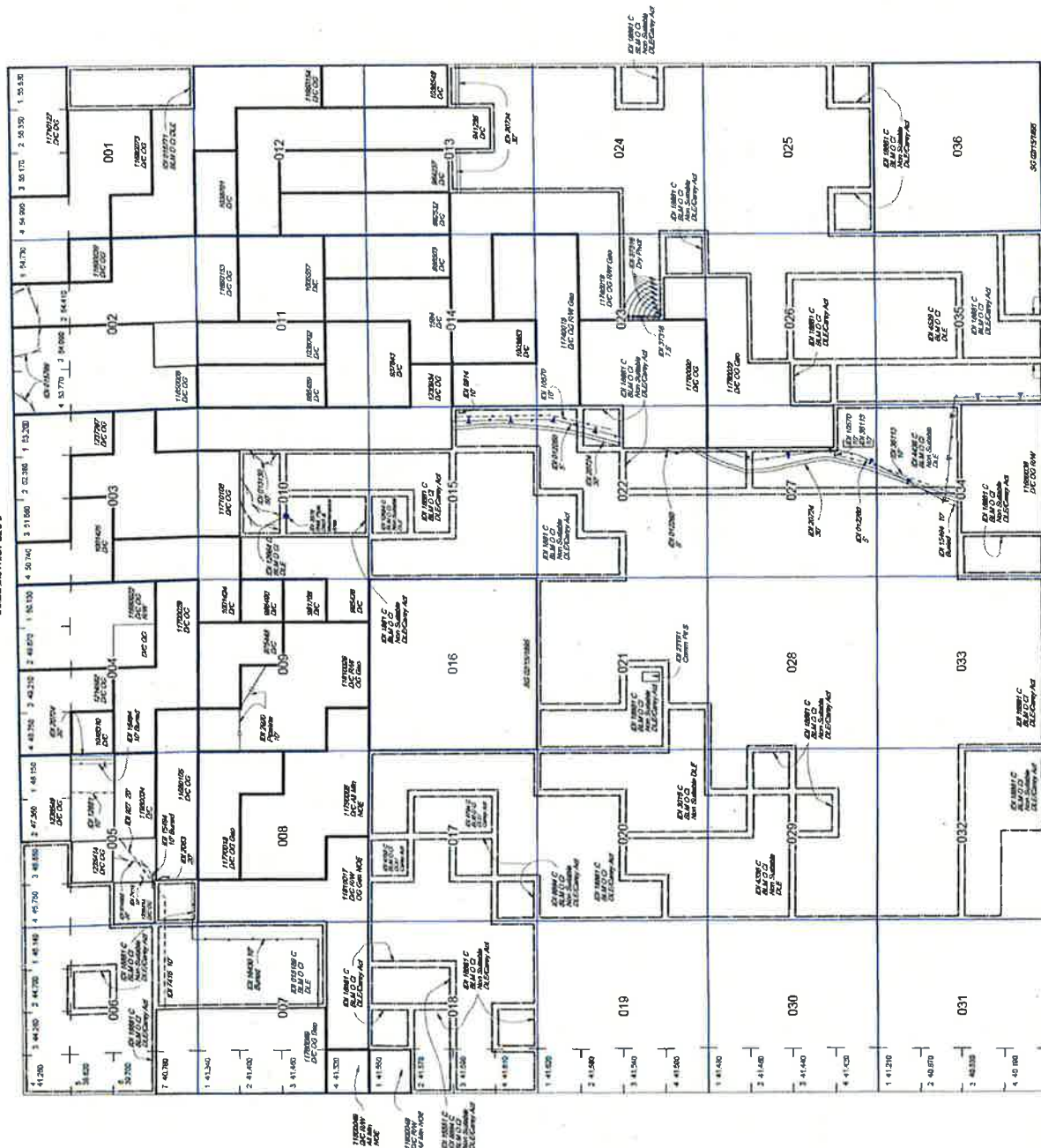
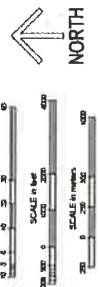
[illegible]

1201 17792 POW C of E Missile Support
Sec 30: Ldtg 1,2,3,4, E2W2
Sec 32: W2

UD 1792 RW-G of E Missile Support
Sec 30 LAR 12.3.4, EDW2
Sec 32 W2

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

FILE REF:	C08267000200054AT-00002 .log
CONVERTED TRF:	E0900000
LAST UPDATED:	11/14/2018
DATE IN:	3/4/2000
POSTED TO PROJECT RECORDS:	January 7, 2020
PUBLIC LAND SURVEY SYSTEM (PLSS):	B.T.
S&M GRAM ACQUIRED:	E0400000
OTHER:	N/A
PROJECTED CLOSURE SYSTEM:	UTM ZONE 11N QD 1983
NOTES:	
USE RATE:	

[illegible]

U.S. Bureau of Land Management - Idaho State Office
1367 S. Vinland Way Boise, Idaho 83709
(208) 373-4000



OWYHEE COUNTY 073
BOISE DISTRICT SEC 3

MT PLAT

[illegible]

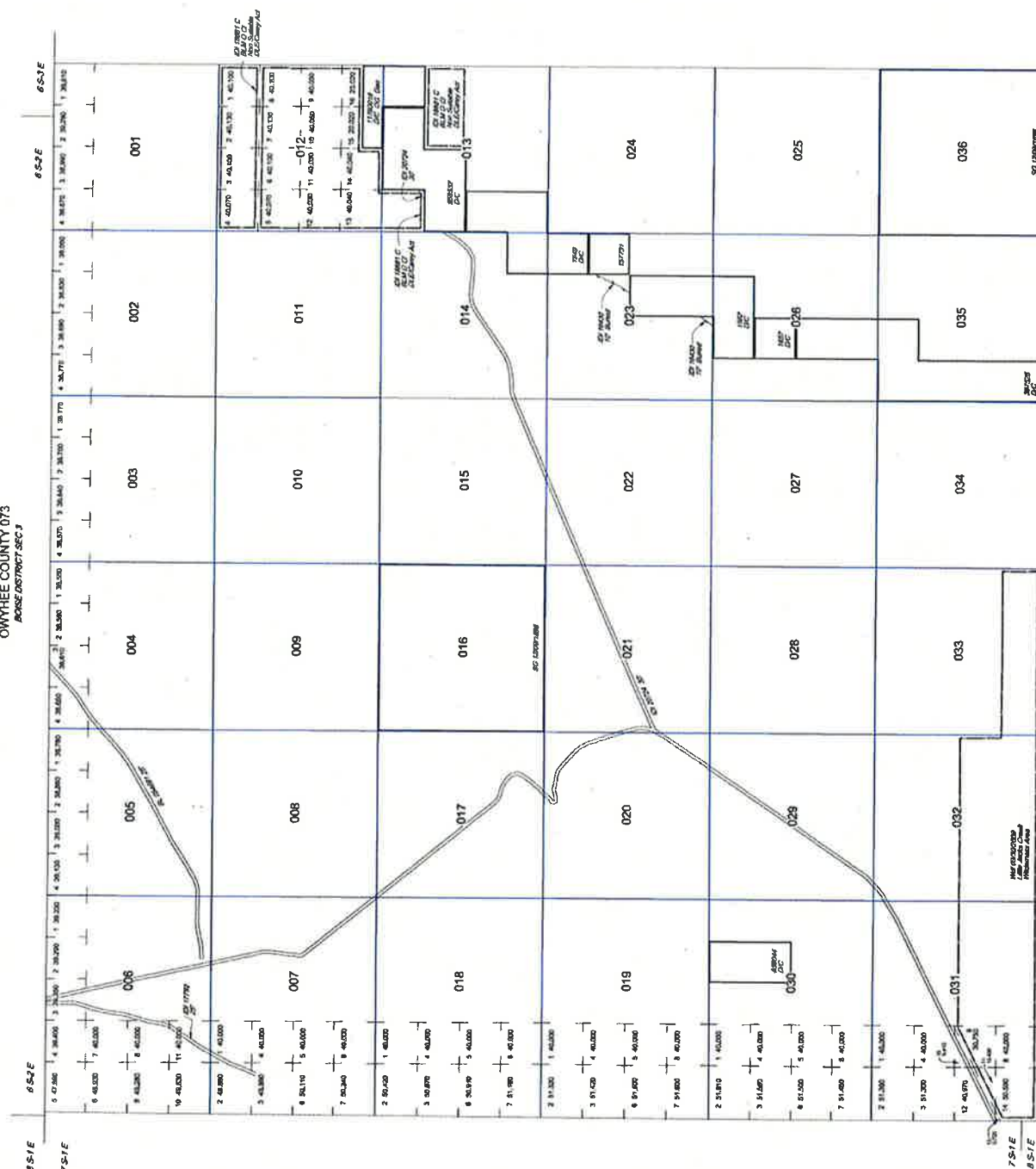
LN 32096 Per

Sec 12' LN 14 7.2 acres

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

FILE #P:	D0000526202	AM100002	img
CONVERTED TFF:	11/18/2009	BT:	LPM
LAST UPDATED:	5/17/2015	BT:	CD
QACC #1:	57152018	DOM	QACC #2:
POSTED TO PUBLIC RECORDS:	July 14, 2018	BT:	
PUBLIC LAND SURVEY SYSTEM (PLSS)			
BLM GDS# ACQUIRED:	Q4C5000		
OTHER:	NA		
PROJECTED COORDINATE SYSTEM:		UTM ZONE 11N, NAD 1983	
NOTES:			
USE PLATS:			

1975
1976
1977



DISCLAIMER:
The goal is to provide updates of the Bureau of Labor Management's (BLM) *Report of Time and Spending* survey data. Reports from the survey are confidential and may have been obtained by other members of your firm or other parties of similar firms. In addition, reports of other information.

The individual pages of publications represent the best practice taken, but may not be the effective data. See the historical data for the data.

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Long: 118-117-00-11



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