

Field Investigation – Narrative

Investigator: Cherie Palmer

Date: October 11, 2017

On September 26, 2017, I conducted a field inspection along with Erik Boe of Western Regional office in response to a complaint received on August 25, 2017, from John and Christy Hoff. The complaint and subsequent office visit by the Hoffs indicated that their upstream neighbor, Jim Eckhardt, installed several illegal ponds in Jenkins Ck. The Hoffs also had concerns in a drain, unofficially known as Tar Gulch. The claim is there were many illegal structures along Tar Gulch for stockwatering purposes and water was being diverted or prevented from going downstream to the Hoff property.

Background: Hoffs initially filed a complaint in 2014, which resulted in a field inspection by Rick Collingwood of Western Regional Office. Rick inspected ponds #1-6 during his inspection. Rick concluded that the ponds have caused a reduction in the Jenkins Creek drainage. Steve Lester followed-up with Eckhardt by sending a letter suggesting he file applications for permit to cover the unauthorized storage of water. Eckhardt responded by filing 5 applications for permit for ponds 1-6 and 9 & 11. Western Region helped Eckhardt file the applications. Hoffs subsequently protested to all 5 applications for permit, citing injury to their water rights. Before a hearing could be held, on January 29, 2016, Eckhardt withdrew his applications claiming that all the water he diverts/impounds is diffuse surface water and is not subject to public appropriation. On August 25, 2017, Hoffs submitted a second complaint to the Department.

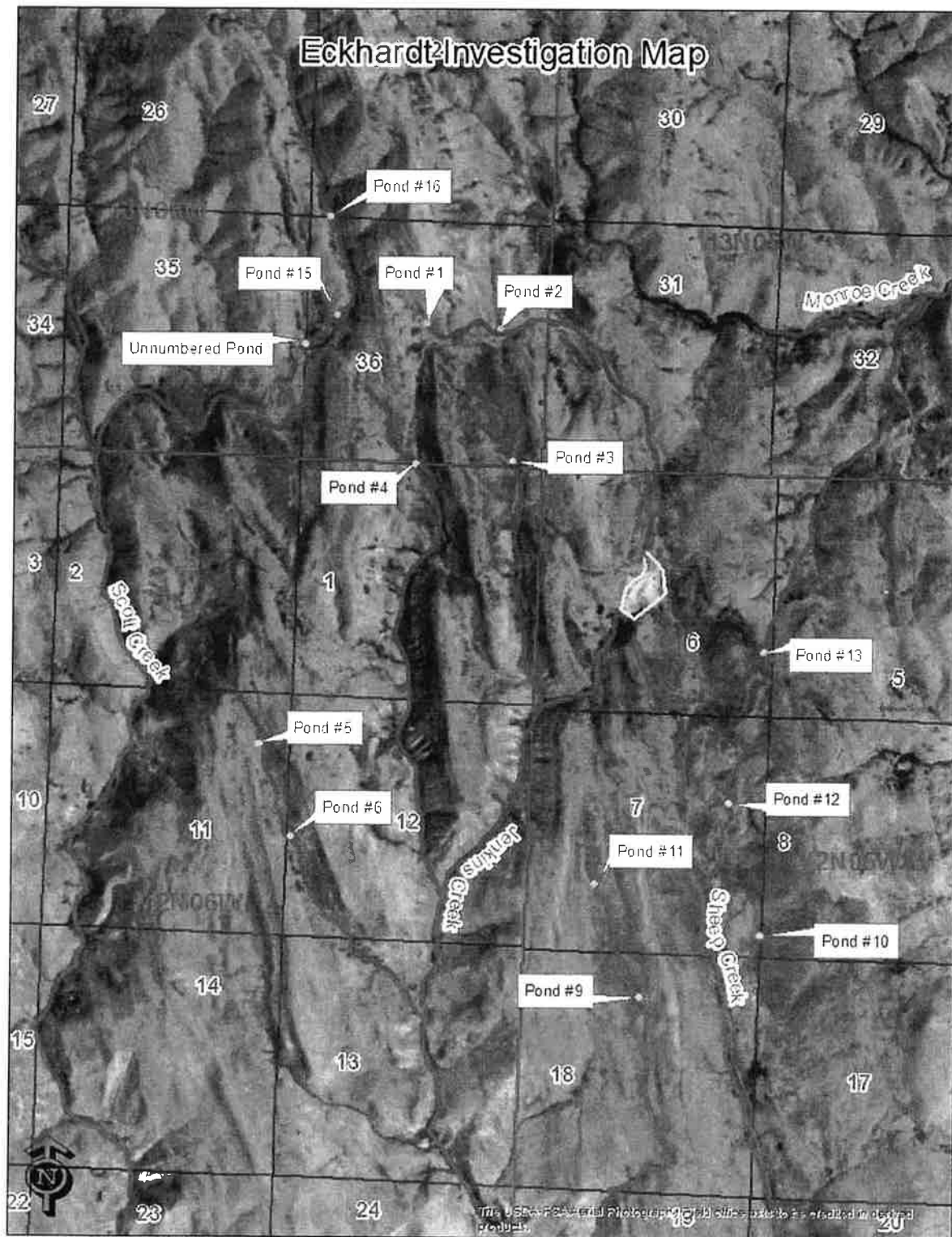
Field Inspection: Before the field visit, I studied Google Earth imagery along with NAIP and DRG images of the subject lands to ensure that I documented each and every pond on the Eckhardt property. I found some ponds outside of Jenkins Ck that weren't subject to the Hoff complaint but, deserve attention since they are within the scope of my goal. The goal of the field visit was to determine if diffuse surface water is the only source of water Eckhardt is impounding in the 14 ponds I identified on his property. I studied the landscape upstream of each pond and downstream to determine if a defined channel existed, especially downstream. The attached spreadsheet itemizes the findings I found during the inspection in addition to some findings that Rick collected in 2014.

Conclusion: Ponds 1-6, 9-13 and 16 all require water rights since they are impounding water that could enter a defined channel that is tributary to another stream i.e., Jenkins Creek, Scott Creek, and Monroe/Sheep Creek.

EXHIBIT

316

PROTESTANT000374



Eckhardt Enforcement Case #E2017-1235 (potential unauthorized pond issue)

Pond #	Drainage	Water Right Required?	Estimated Depth**	***Estimated Area	Calculated Size	Inspected	2017 Inspection Comments
Depth in Ft (0.40) x Area in Acres =							
1	Jenkins	Yes			0.4*	11/14/2014 and 9/26/2017	Pond rarely impounds water. Pond is within a defined channel, downstream of the pond.
2	Jenkins	Yes			0.4*	11/14/2014 and 9/26/2017	Pond contained water at 2017 visit and is most likely fed by a spring. Pond is within a visible channel upstream and downstream. Runoff can be captured in the pond in spring/summer months. Since the spring is within a channel, it most likely contributes to Jenkins Ck.
3	Jenkins	Yes			0.5*	11/14/2014 and 9/26/2017	""
4	Jenkins	Yes			1.5*	11/14/2014 and 9/26/2017	""
5	Jenkins	Yes			0.4*	11/14/2014	Ponds 5 & 6 are in a defined channel per the DRG map.
6	Jenkins	Yes			0.4*	11/14/2014	
9	Jenkins	Yes		6	0.18	0.4	9/26/2017 Based on review of USGS quadrangle map and on-site visual assessment, the structure impounds water from an natural channel within the basin.
10	Sheep/Monroe	Yes		3	0.21	0.3	9/26/2017 Visibly within a defined channel. No water present in the pond.
11	Jenkins	Yes		9	0.26	0.9	9/26/2017 Based on review of USGS quadrangle map and on-site visual assessment, the structure impounds water from an natural channel within the basin.
12	Sheep/Monroe	Yes		6	0.09	0.2	9/26/2017 Visibly within a defined channel.

13 Monroe	Yes	6	0.08	0.2	9/26/2017	Visibly within a defined channel. No water present in the pond.
15 Scott	No	na	na	na	9/26/2017	Visibly within a defined channel. However, pond is present on the DRG maps which indicate it may be a natural structure and won't require a water right filing. Water present in the pond.
16 Scott	Yes	18	0.13	0.9	9/26/2017	Visibly within a defined channel. This is a constructed pond with a dam. No water in pond upon inspection.
Unnumb Scott	No	na	na	na	9/26/2017	Visibly within a defined channel. However, pond is present on the DRG maps which indicate it may be a natural structure and won't require a water right filing. Water present in the pond.

*Conclusion from previous field inspection 11/2014

**Number derived from GPS points acquired at the site visit and GPS data from Google Earth, unless otherwise noted in the photo report.

***Numbers derived from ArcMap GIS using land measurement tool and ESRI Imagery

Field Investigation – PHOTO REPORT

Investigator: Cherie Palmer

Enforcement Case No: E2017-1235

Notes/Comments: Weather has been dry with the exception of a week of intermittent rain prior to the field visit.

Jenkins Creek Drainage



Picture 1

Site Identification/Details:

Pond #4

Date Taken: 9/27/2017 (all pics taken this date)

GPS Location or other Location Information:
44.41947 -117.003982

Photo taken looking to the south.

Comments:

The spillway for the constructed dam is located on the southeastern portion of the pond. There is possibly a spring that feeds this pond as it was nearly full at the visit.



Picture 2

Site Identification/Details:

Pond #4

Date Taken: _____

GPS Location or other Location Information:
Looking downstream of the spillway.

Comments:

Defined channel present downstream of the pond.



Picture 3

Site Identification/Details:

Pond #4

Date Taken: _____

GPS Location or other Location Information:

Photo looking north, with the pond behind me.

Comments:

Defined channel present



Picture 4

Site Identification/Details:

Pond #4

Date Taken: _____

GPS Location or other Location Information:

Looking northwesterly with the pond behind me.

Comments:

There's cobbles present the appear to be in some sort of channel.



Picture 5

Site Identification/Details:

Pond #1.

Date Taken: _____

GPS Location or other Location Information:

44.420328 -117.003968

Comments:

Looking to the west, standing on the dam with the spillway to the west of the pond. Eckhardt states that this pond rarely captures water since the drainage doesn't produce much water.



Picture 6

Site Identification/Details:

Pond #1

Date Taken: _____

GPS Location or other Location Information:

Standing on the dam, photo taken to the southeastern.

Comments:

Photo shows historic channel that appears to not carry water any longer. Overgrown vegetation seems to indicate a dry channel.



Picture 7

Site Identification/Details:

Pond #1

Date Taken: _____

GPS Location or other Location Information:

Looking north of the pond.

Comments:

There doesn't appear to be the presence of a channel upstream of the pond.



Picture 8

Site Identification/Details:

Pond #1

Date Taken: _____

GPS Location or other Location Information:

Looking downstream of the pond, at the spillway

Comments:



Picture 9

Site Identification/Details:

Pond #1

Date Taken: _____

GPS Location or other Location Information:

Looking down the channel to the south with the
pond's spillway behind me.

Comments:

Again, overgrown vegetation indicates that water
hasn't flown in recent times down the spillway.

The pond is shallow, maybe 2 feet deep or so to
the spillway from the bottom of pond.



Picture 10

Site Identification/Details:

Pond #3

Date Taken: _____

GPS Location or other Location Information:

44.41226 -116.996286

Looking southwesterly

Comments:

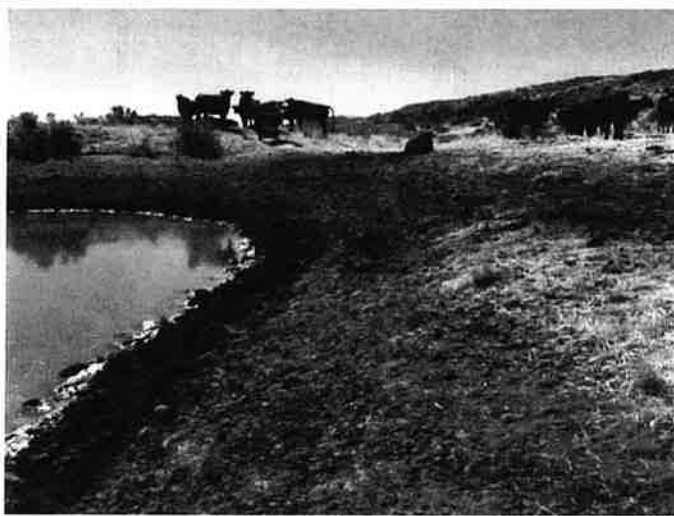
Field Investigation – PHOTO REPORT

Investigator: Cherie Palmer

Enforcement Case No: E2017-1235

Notes/Comments: Weather has been dry with the exception of a week of intermittent rain prior to the field visit.

Jenkins Creek Drainage



Picture 11

Site Identification/Details:

Pond #3

Date Taken: 9/27/2017 (all pics taken this date)

GPS Location or other Location Information:
Looking south.

Comments:

A cow is laying in the spillway for this pond.

Eckhardt said the pond is excavated another 3'
deeper than the current water level.



Picture 12

Site Identification/Details:

Pond #3

Date Taken: _____

GPS Location or other Location Information:
Looking upstream of pond, to the northwest.

Comments:

Drainage to the pond. Eckhardt stated that this is
a perfect place for a pond since it captures water
that comes down the drainage.



Picture13

Site Identification/Details:

Pond #3

Date Taken: _____

GPS Location or other Location Information:

Looking northwesterly, downstream of the pond;
standing at the spillway.

Comments:

DRG shows that this pond is constructed in a
channel that eventually leads to Jenkins Ck.



Picture14

Site Identification/Details:

Pond #2

Date Taken: _____

GPS Location or other Location Information:

Looking south

Comments:

Dam



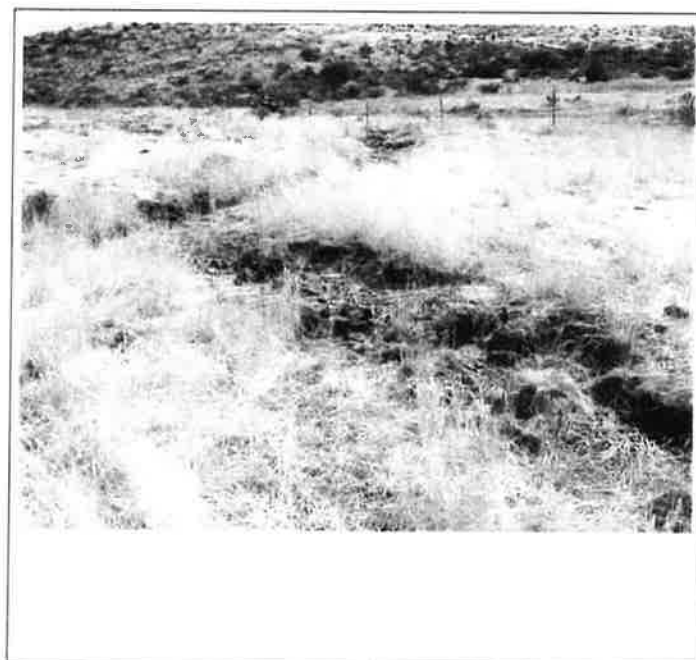
Picture15

Site Identification/Details:
Pond #2

Date Taken: _____

GPS Location or other Location Information:
Looking at the spillway to the southwest.

Comments:



Picture16

Site Identification/Details:
Pond #2, downstream.

Date Taken: _____

GPS Location or other Location Information:
Pic taken facing southeasterly.

Comments:

Spillway behind me



Picture17

Site Identification/Details:

Upstream of Pond #2

Date Taken:

GPS Location or other Location Information:

Pic taken while facing the northwest direction.

Pond is directly behind me.

Comments:

Field Investigation – PHOTO REPORT

Investigator: Erik Boe

Enforcement Case No: E2017-1235

Notes/Comments: Clear skies, mild temperature, ground was dry.



Picture 1

Site Identification/Details:

Pond #9

Date Taken: 9/26/2017

GPS Location or other Location Information:
44.38047, -116.984

Comments:

Pond was dry at time of inspection. Depth from
base of pond to crest of spillway was
approximately 6 feet (visual estimate). Pond high
water mark surface area was approximately 0.18
acres based on 2015 aerial image.



Picture 2

Site Identification/Details:

Pond #9

Date Taken: 9/26/2017

GPS Location or other Location Information:
Photo taken looking downstream from spillway
channel.

Comments:

The spillway runs along the left abutment of the
embankment structure.



Picture 3

Site Identification/Details:

Pond #9

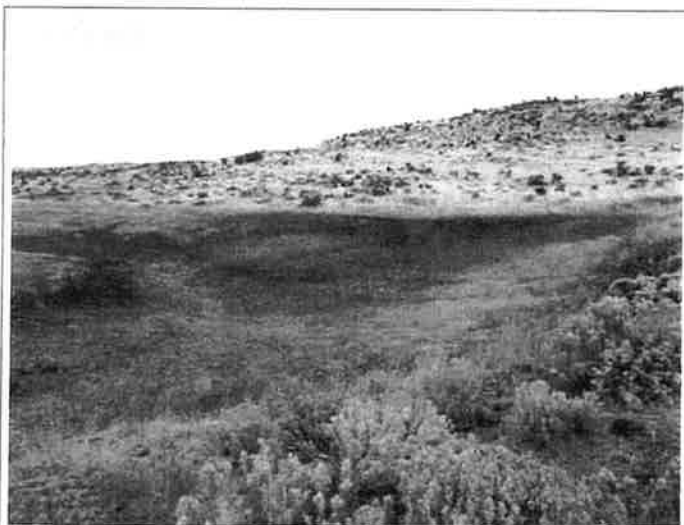
Date Taken: 9/26/2017

GPS Location or other Location Information:

Photo taken from center of crest looking upstream of pond.

Comments:

Based on review of USGS quadrangle map and on-site visual assessment, the structure impounds water from a natural channel within the basin.



Picture 4

Site Identification/Details:

Pond #11

Date Taken: 9/26/2017

GPS Location or other Location Information:

44.38718, -116.988

Comments:

Pond was dry at time of inspection. Depth from base of pond to crest of spillway was approximately 9 feet (visual estimate). Pond high water mark surface area was approximately 0.26 acres based on 2015 aerial image.



Picture 5

Site Identification/Details:

Pond #11

Date Taken: 9/26/2017

GPS Location or other Location Information:

Photo taken looking downstream from spillway channel.

Comments:

The spillway runs along the left abutment of the embankment structure.



Picture 6

Site Identification/Details:

Pond #11

Date Taken: 9/26/2017

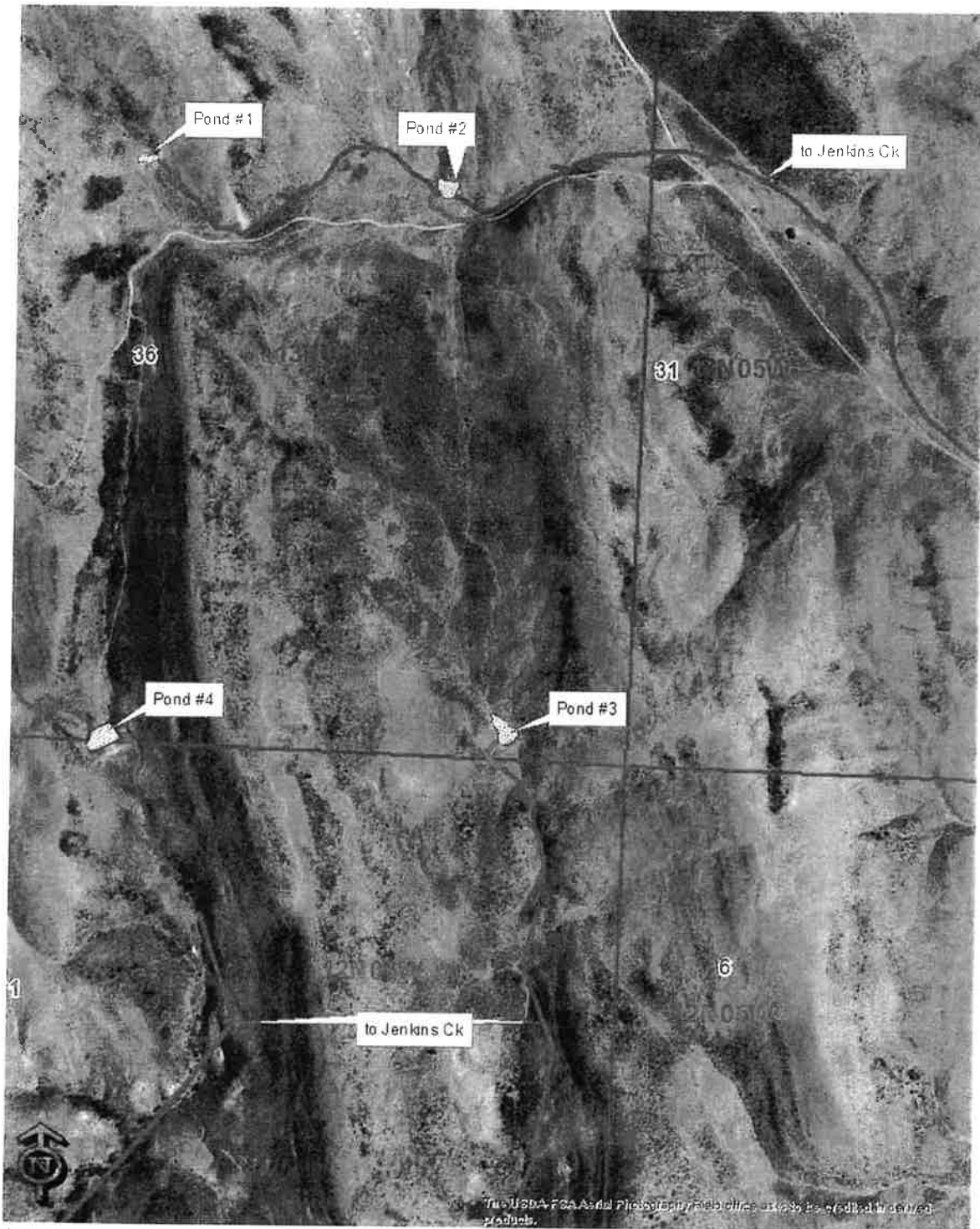
GPS Location or other Location Information:

Photo taken from center of crest looking upstream of pond.

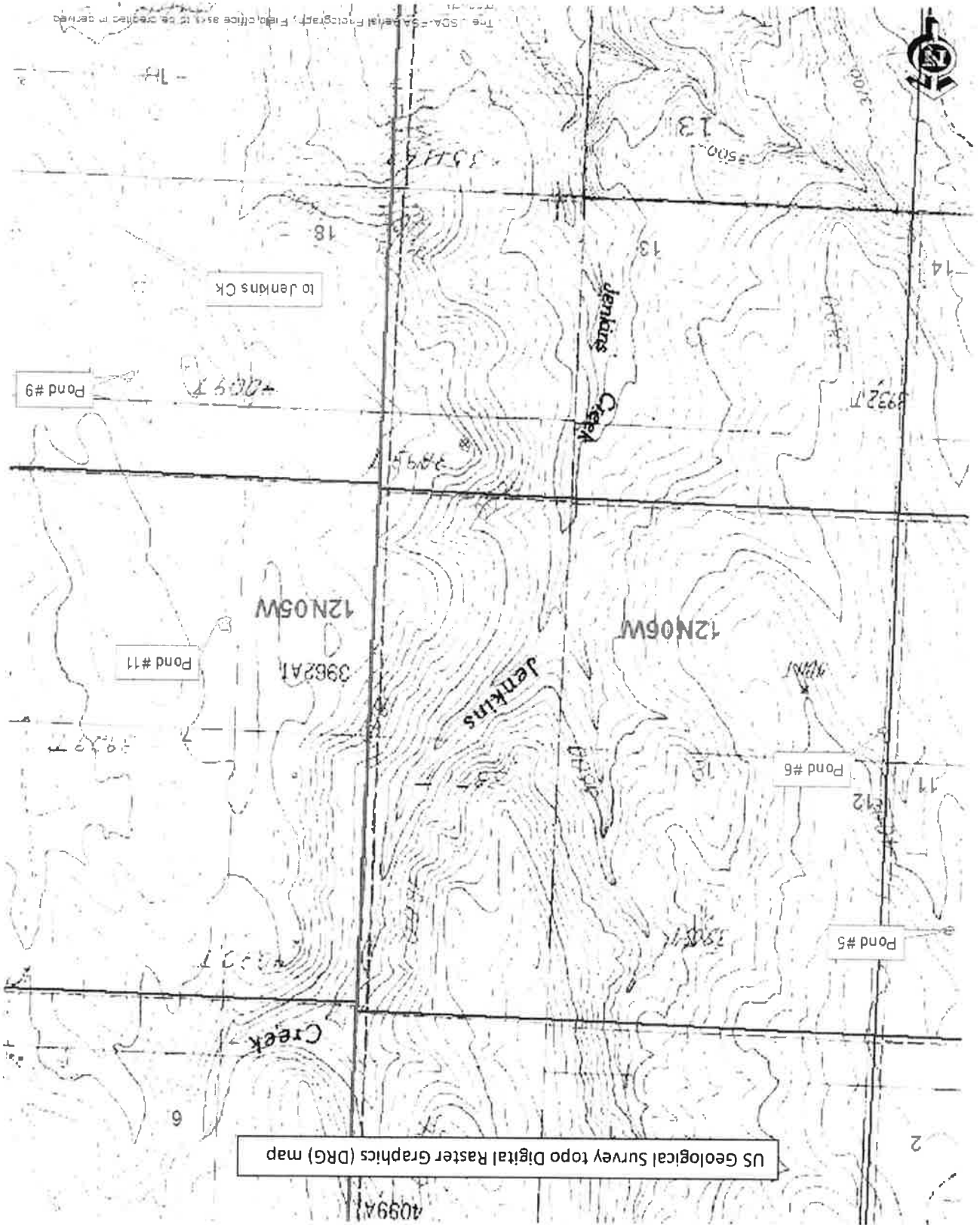
Comments:

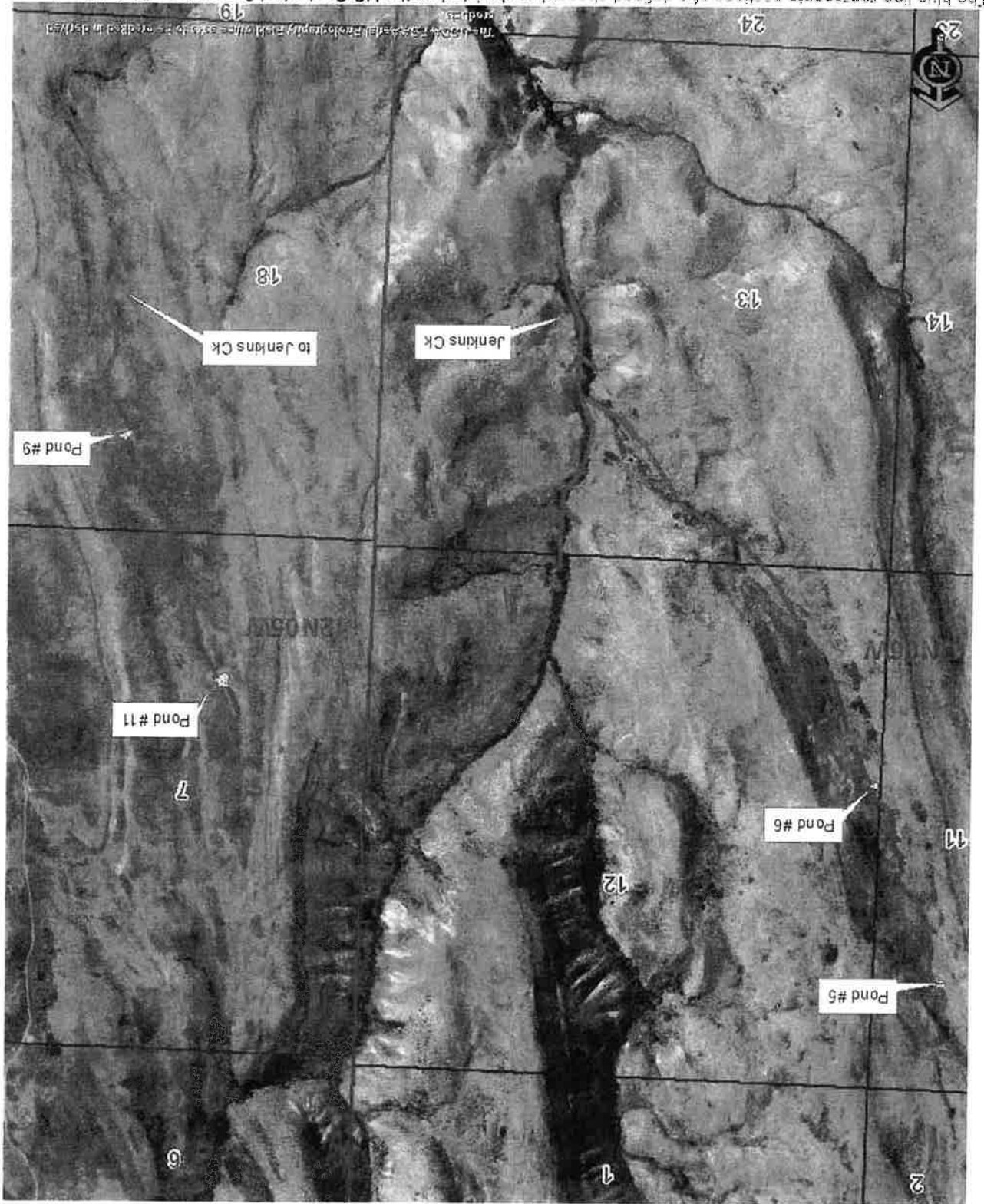
Based on review of USGS quadrangle map and on-site visual assessment, the structure impounds water from an natural channel within the basin.

Eckhardt ponds on Jenkins Ck drainage



The blue line represents sections of a defined channel as depicted on the US Geological Survey topo Digital Raster Graphics (DRG) map. Historic DRG map shows water discharging in the depicted channel into Jenkins Ck.

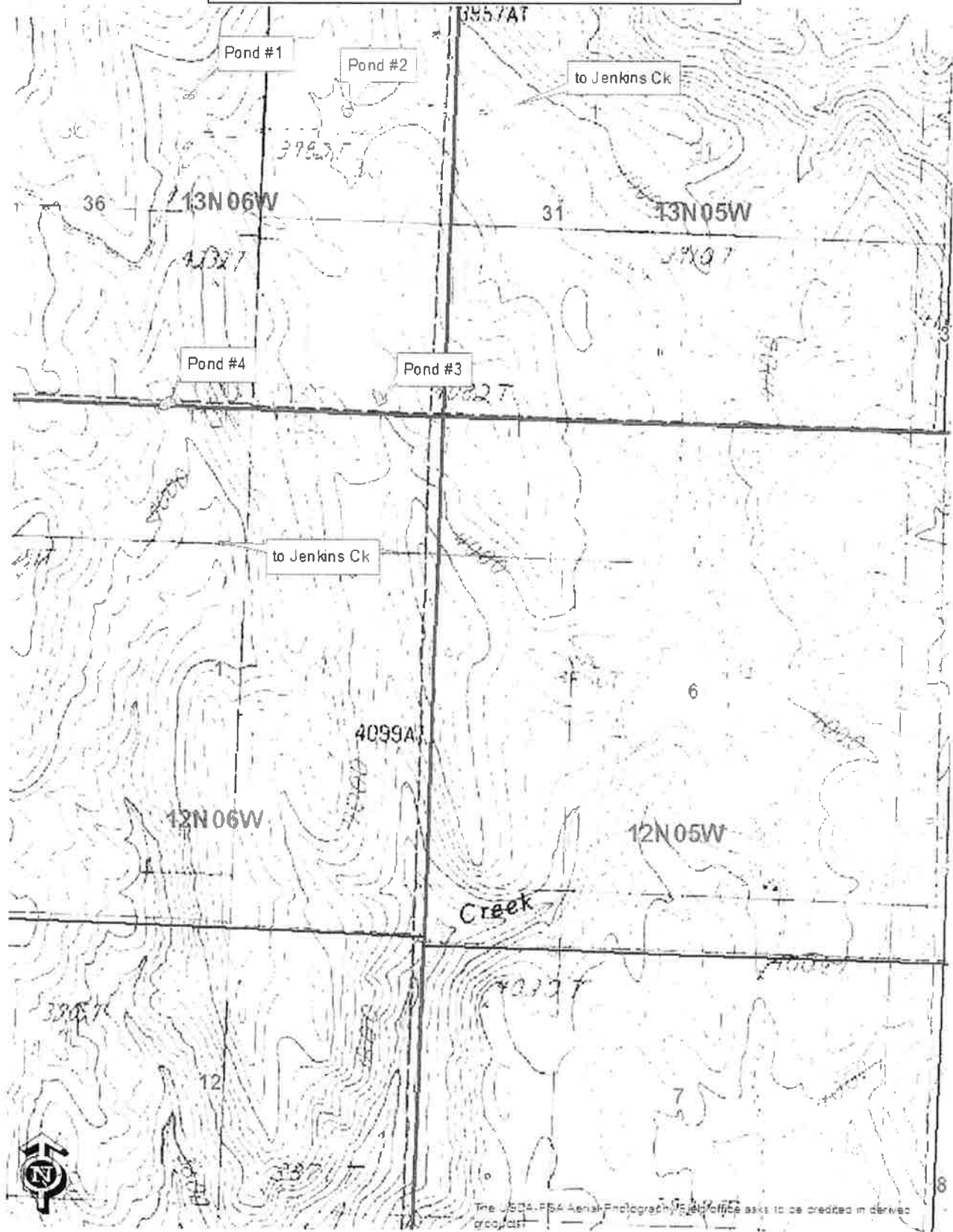




Eckhardt ponds on Jenkins Ck drainage

The blue line represents sections of a defined channel as depicted on the US Geological Survey topo Digital Raster Graphics (DRG) map. Historic DRG map shows water discharging in the depicted channel into Jenkins Ck.

US Geological Survey topo Digital Raster Graphics (DRG) map



Field Investigation – PHOTO REPORT

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Enforcement Case No: E2017-1235

Notes/Comments: Weather has been dry with the exception of intermittent rain a week prior to the field visit.

Scott Creek Drainage



Picture 1

Site Identification/Details:

Pond on the northwestern boundary of property
line (boundary with SageRock Ranch and BLM)

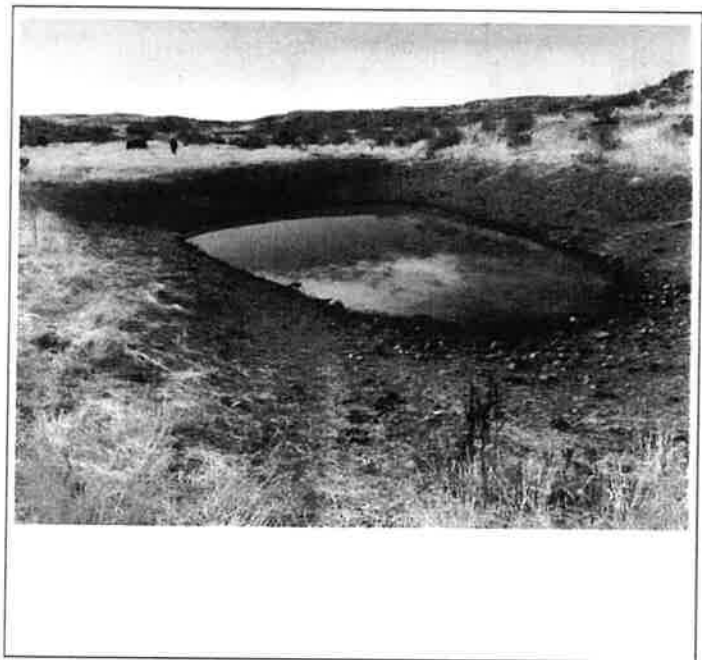
Date Taken: 9/27/2017 (all pics taken this date)

GPS Location or other Location Information:
44.418687 -117.014068

Unnumbered pond

Comments:

This pond is pictured on the DRG maps which
could indicate that this pond represents a natural
low spot in the topography. No dam was
constructed at this site.



Picture 2

Site Identification/Details:

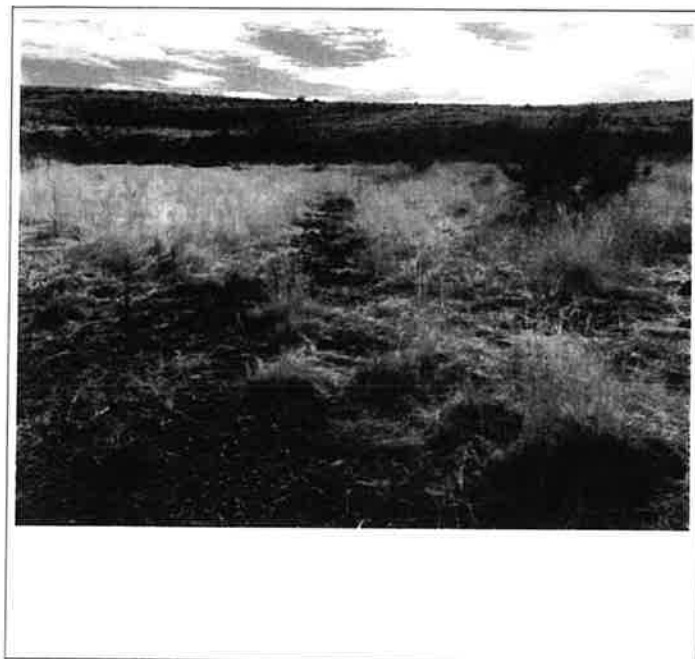
Unnumbered pond

Date Taken: _____

GPS Location or other Location Information:
Photo taken looking to the south, from the
northeastern corner of the pond.

Comments:

Conclusion is this pond appears to be a natural
feature and does not require a water right filing.



Picture 3

Site Identification/Details:

Taken at the unnumbered pond.

Date Taken: _____

GPS Location or other Location Information:

Comments:

This photo shows a channel to the east of the pond.



Picture 4

Site Identification/Details:

Pond #16.

Date Taken: _____

GPS Location or other Location Information:

44.426449 -117.012181

Comments:

This photo is looking to the north. The dam's spillway is to the east. Note the channel downstream of the spillway.



Picture 5

Site Identification/Details:

Pond #16.

Date Taken:

GPS Location or other Location Information:

Looking at the channel below the spillway for Pond #16.

Comments:

Note that the channel discharges into the pond to the south (Pond #15).



Picture 6

Site Identification/Details:

Pond #16.

Date Taken:

GPS Location or other Location Information:

On top of the dam, facing north. Spillway is to the east.

Comments:

From the bottom of the pond to the spillway, a measurement of 18' was made. This impoundment appears to require a water right.



Picture 7

Site Identification/Details:

Upstream of Pond #16

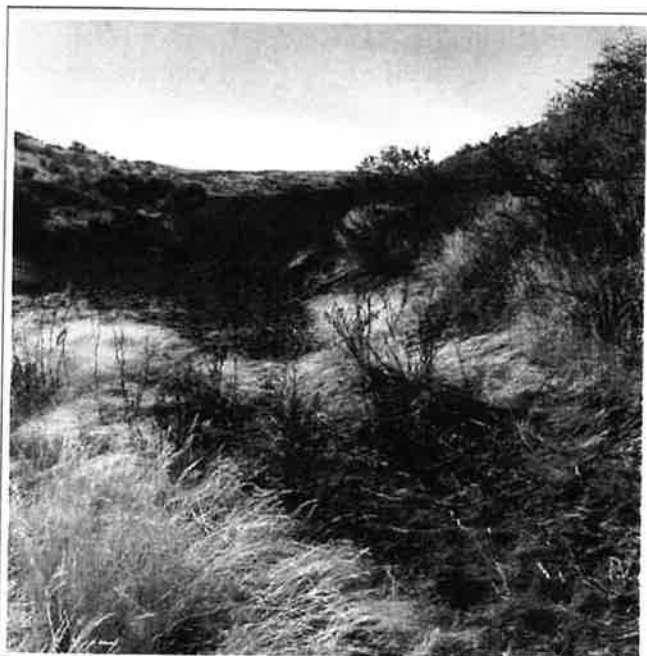
Date Taken:

GPS Location or other Location Information:

This photo is facing north with Pond #16 directly behind me.

Comments:

Defined channel present.



Picture 8

Site Identification/Details:

Pond #16

Date Taken:

GPS Location or other Location Information:

This photo is taken directly downstream of the dam
Facing the dam, looking northwesterly.

Comments:



Picture 9

Site Identification/Details:

Pond #15

Date Taken:

GPS Location or other Location Information:

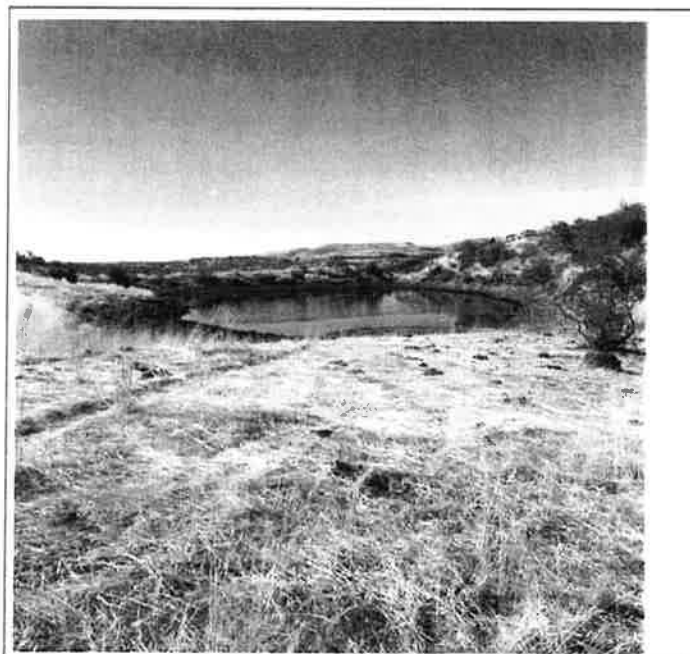
Looking southwesterly

Comments:

Walking the channel from Pond #16 to #15.

There are cobbles in the natural channel in between the two ponds.

According to Eckhardt, when water is flowing, it makes it to Scott Creek.



Picture 10

Site Identification/Details:

Pond #15

Date Taken:

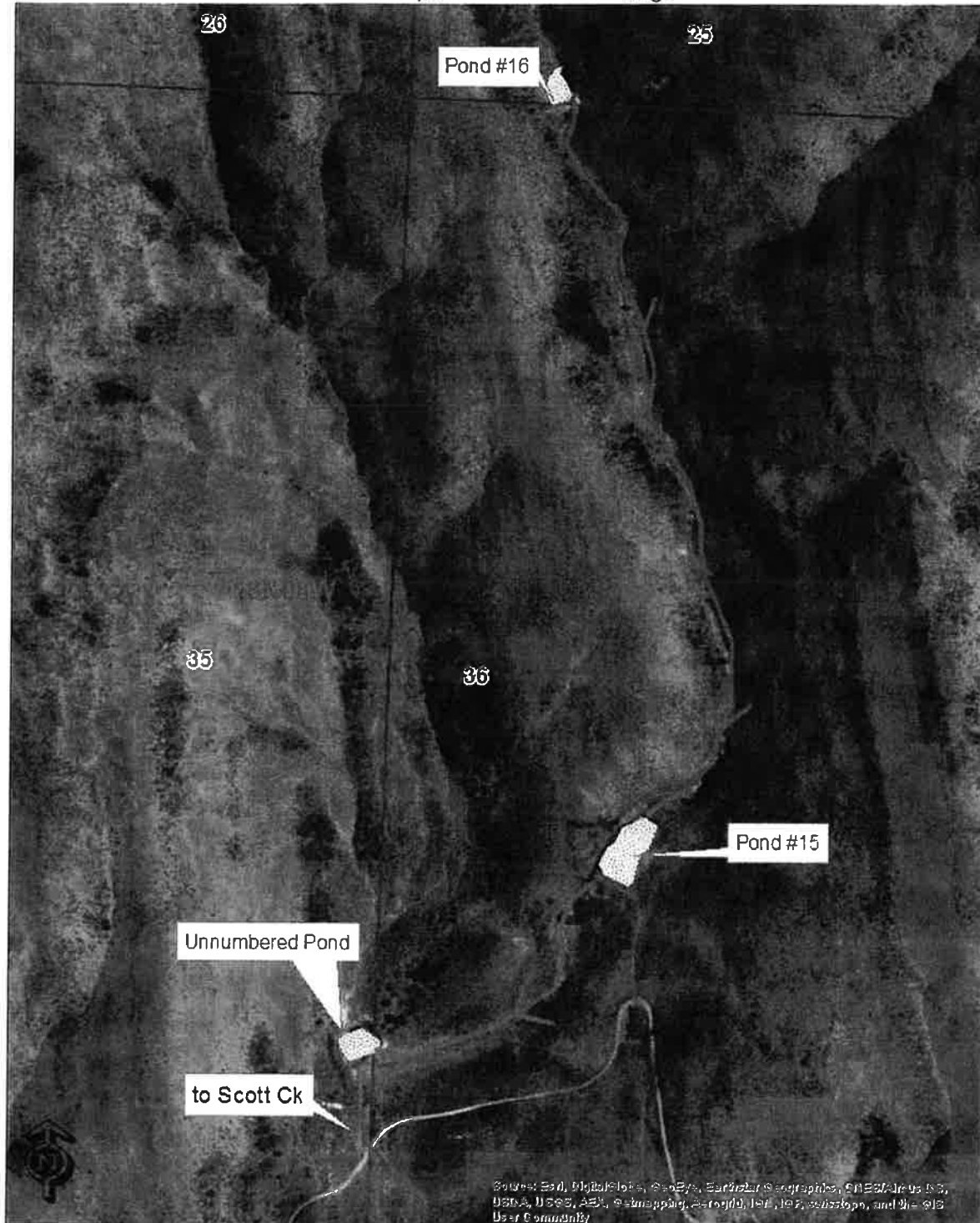
GPS Location or other Location Information:

Looking south

Comments:

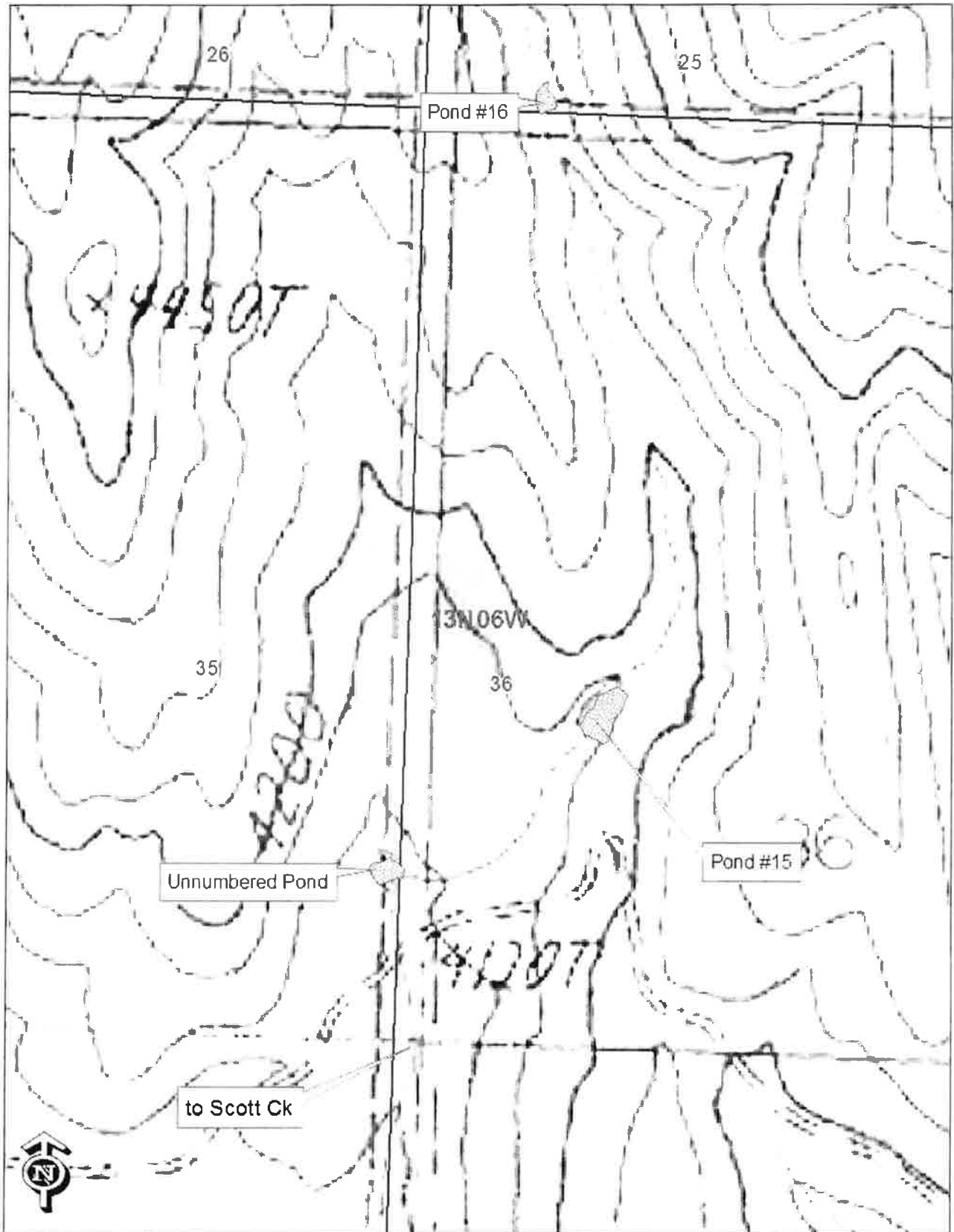
Water discharges from this pond from the southwestern corner of the pond. The pond discharges into the unnumbered pond. This pond is nearly full, maybe a foot away from spilling down the channel. This pond is spring fed and is present on the DRG map. It doesn't look like a water right is required for this pond.

Eckhardt pond on Scott Ck drainage



The blue line represents sections of a defined channel as depicted on the US Geological Survey topo Digital Raster Graphics (DRG) map. Historic DRG map shows water discharging in the depicted channel into Scott Creek.

US Geological Survey topo Digital Raster Graphics map



Field Investigation – PHOTO REPORT

Investigator: Cherie Palmer

Enforcement Case No: E2017-1235

Notes/Comments: Weather has been dry with the exception of a week of intermittent rain prior to the field visit.

Sheep and Monroe Creek Drainage



Picture 1

Site Identification/Details:

Pond #13

Date Taken: 9/27/2017 (all pics taken this date)

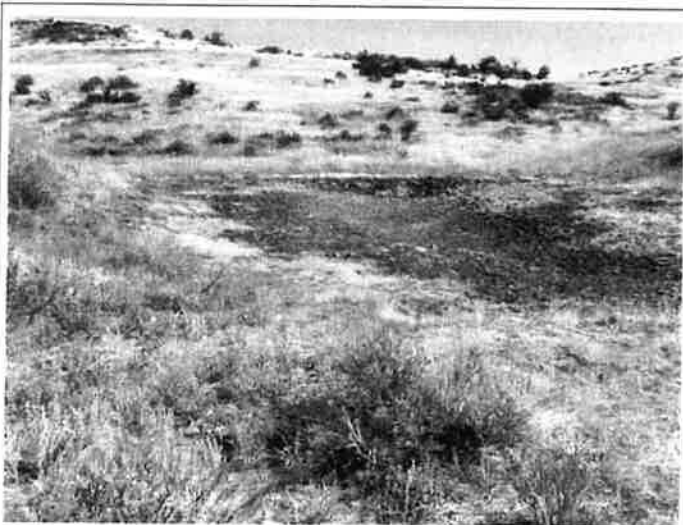
GPS Location or other Location Information:

44.401392 -116.974551

Looking to the south.

Comments:

Looking upstream of the pond



Picture 2

Site Identification/Details:

Pond #13

Date Taken: _____

GPS Location or other Location Information:

Looking mostly east at the pond.

Comments:



Picture 3

Site Identification/Details:
Pond #13

Date Taken: _____

GPS Location or other Location Information:
Looking downstream-to the north

Comments:
This channel goes off Eckhardt's property and
appears to be part of the Monroe Creek drainage.



Picture 4

Site Identification/Details:
Pond #12

Date Taken: _____

GPS Location or other Location Information:
44.392514 -116.977095

Looking southeast

Comments:
This pic shows the dam and a discharge
standpipe.



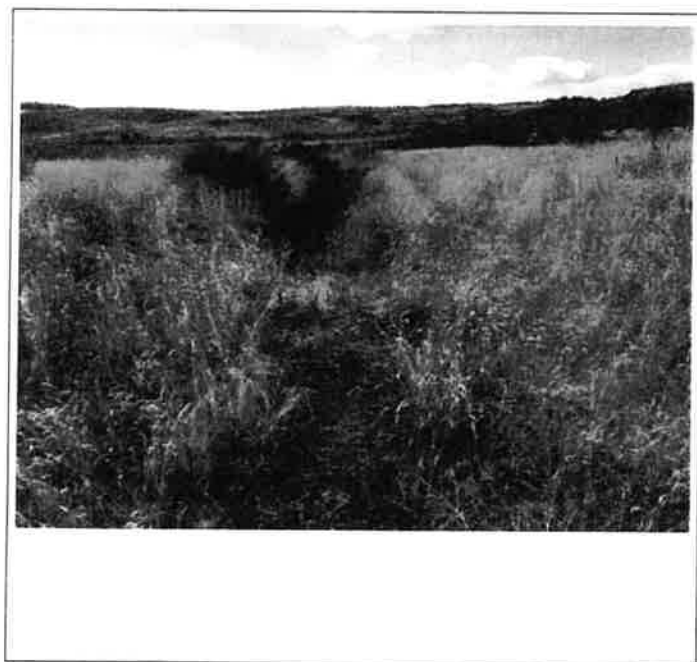
Picture 5

Site Identification/Details:
Pond #12

Date Taken: _____

GPS Location or other Location Information:
Looking north from the pond

Comments: _____



Picture 6

Site Identification/Details:
Pond #12

Date Taken: _____

GPS Location or other Location Information:
Looking upstream of the pond-to the north

Comments: _____



Picture 7

Site Identification/Details:

Pond #12

Date Taken: _____

GPS Location or other Location Information:

Looking downstream-to the west of the pond

Comments:



Picture 8

Site Identification/Details:

Pond #10

Date Taken: _____

GPS Location or other Location Information:

44.384488 -116.973787

Looking southeast

Comments:



Picture 9

Site Identification/Details:

Pond #10

Date Taken: _____

GPS Location or other Location Information:

Looking southeast from the dam.

Comments:

Can see evidence of a channel



Picture 10

Site Identification/Details:

Pond #10

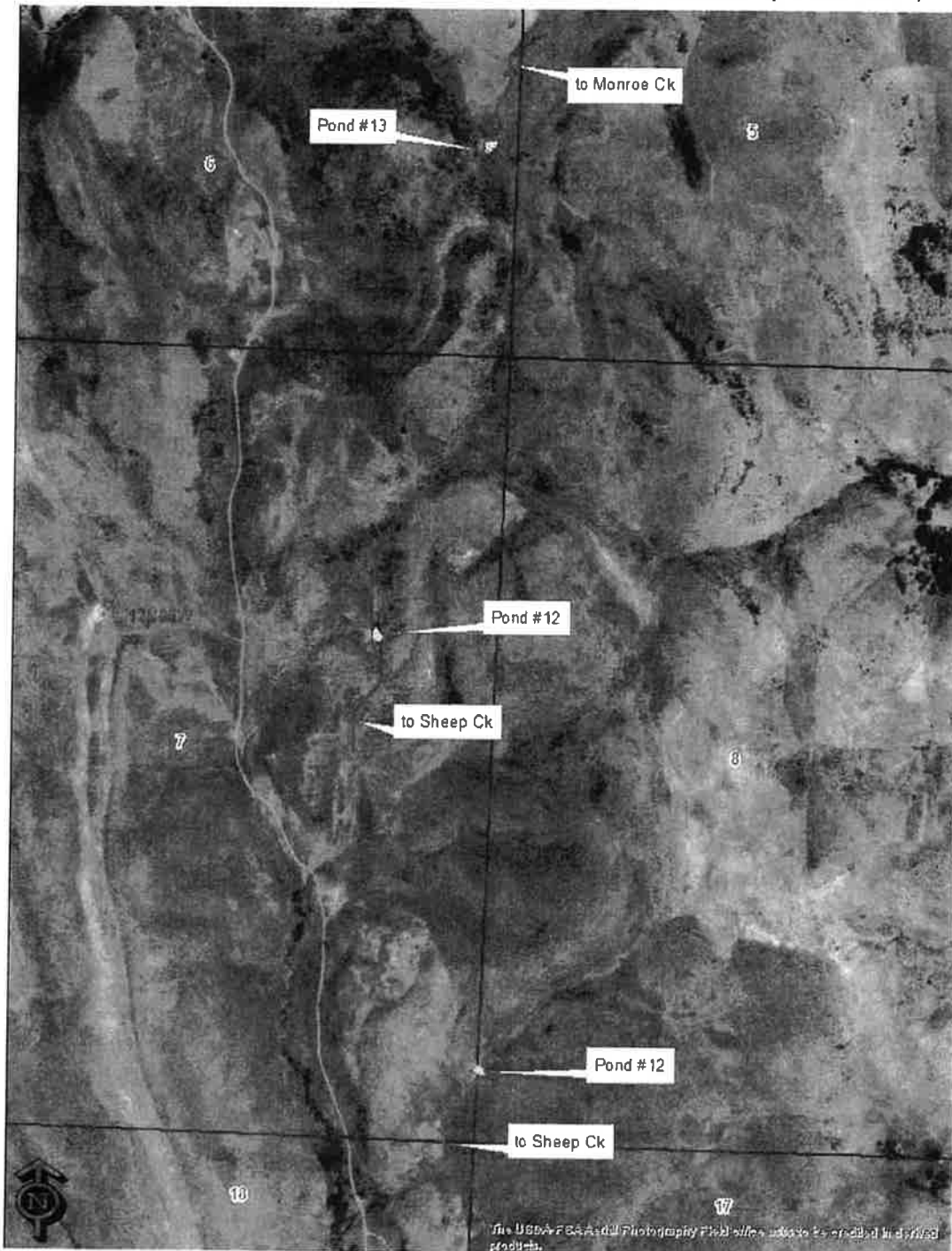
Date Taken: _____

GPS Location or other Location Information:

Looking west of the pond, downstream flow.

Comments:

Eckhardt's ponds on Sheep Ck/Monroe Ck drainage (Sheep Ck is tributary to Monroe Ck)



The blue line represents sections of a defined channel as depicted on the US Geological Survey topo Digital Raster Graphics (DRG) map. The pink lines represent channels that appear to be constructed. Drainage from Sheep Ck moves to the south and drainage from Monroe Ck moves to the north.

