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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST
Application for Permit No. 51-13127

August 20, 2018

RECEIVED
AUG 20 2018
WATER RESOURCES
WESTERN REGION

1. Matter being protested

Application for Permit No. 51-13127 (2nd Amended) filed by Ace Black Ranches

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 July 2, 2018, Ace Black Ranches. ("Applicant"), filed Amended Application (2nd Amended) for Permit 51-13127. The application seeks 2.26 cfs from wastewater and unnamed ditch for irrigation use (113 acres). The application route from the R05E Points of Diversion ("PODs") to the R06E Place of Use ("POUs"), described as T06S, R06E, S25, NESE and SESE, would have to cross several drainages and approximately 4.5 miles of BLM land (in T06S, R06E, S25, S26, S27, S28, and S29). The applicant is not authorized to construct a conveyance facility across federal land nor to transport this water.

The description of Section 25 POUs in R06E appears to be a typographical error and should be described in T06S, R05E, S25, NESE and SESE which would be private land adjacent to the Sec. 30 and 31 POUs (and would be consistent with the map attached to the application).

Unauthorized use of federal land is a prohibited act (43 CFR §2808.10(a)). 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)).

7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdraw the application; or
- 2.) Amend the application and details page to ensure federal lands are not included (i.e. such that all the PODs, POUs and the route between them describe privately owned lands) by

correcting the Section 25 POUs to be in R05E rather than R06E (i.e. change T06S, R06E, S25 to R05E).

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 20th day of August, 2017.



Gary A. Madenford

Protestant's Representative

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plat: T06S, R05E; and T06S, R06E

FOR DEPARTMENT USE ONLY

Received by CS Date 8/20/18
Fee Paid \$25.00 Date 8/20/18 Receipted by CS Receipt # W046676

CERTIFICATE OF SERVICE

I certify that on August 20, 2018 I served a true and correct copy of the "**Protest of Application for Permit No. 51-13127**" filed by Ace Black Ranches, 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

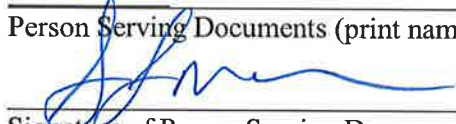
Copies to:

Ace Black Ranches
c/o Terry Black, Managing Partner
28892 Hot Springs Road
Bruneau, Idaho 83604-5007

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

SANDRA MCCLREA

Person Serving Documents (print name)


Signature of Person Serving Documents

51-13117, Ace Black Ranches

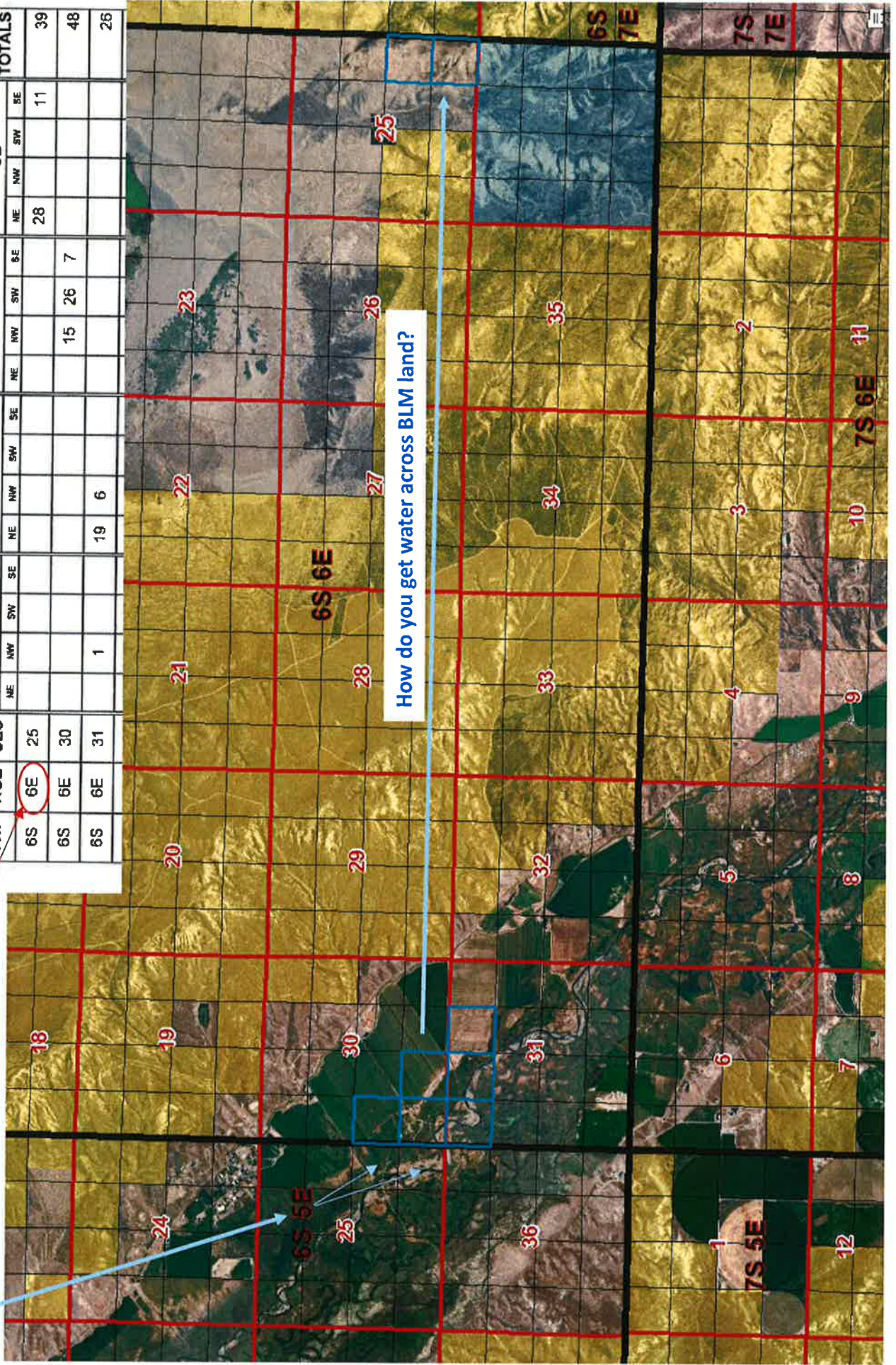
Should the Sec. 25 POUs be described in R05E instead of R06E?

Description of place of use (POU):

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below.

? R05E ?

TWP	RGE	SEC	NE			NW			SW			SE			TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6S	6E	25									28			11	39
6S	6E	30							15	26	7				48
6S	6E	31		1				19	6						26



How do you get water across BLM land?

51-13117, Ace Black Ranches

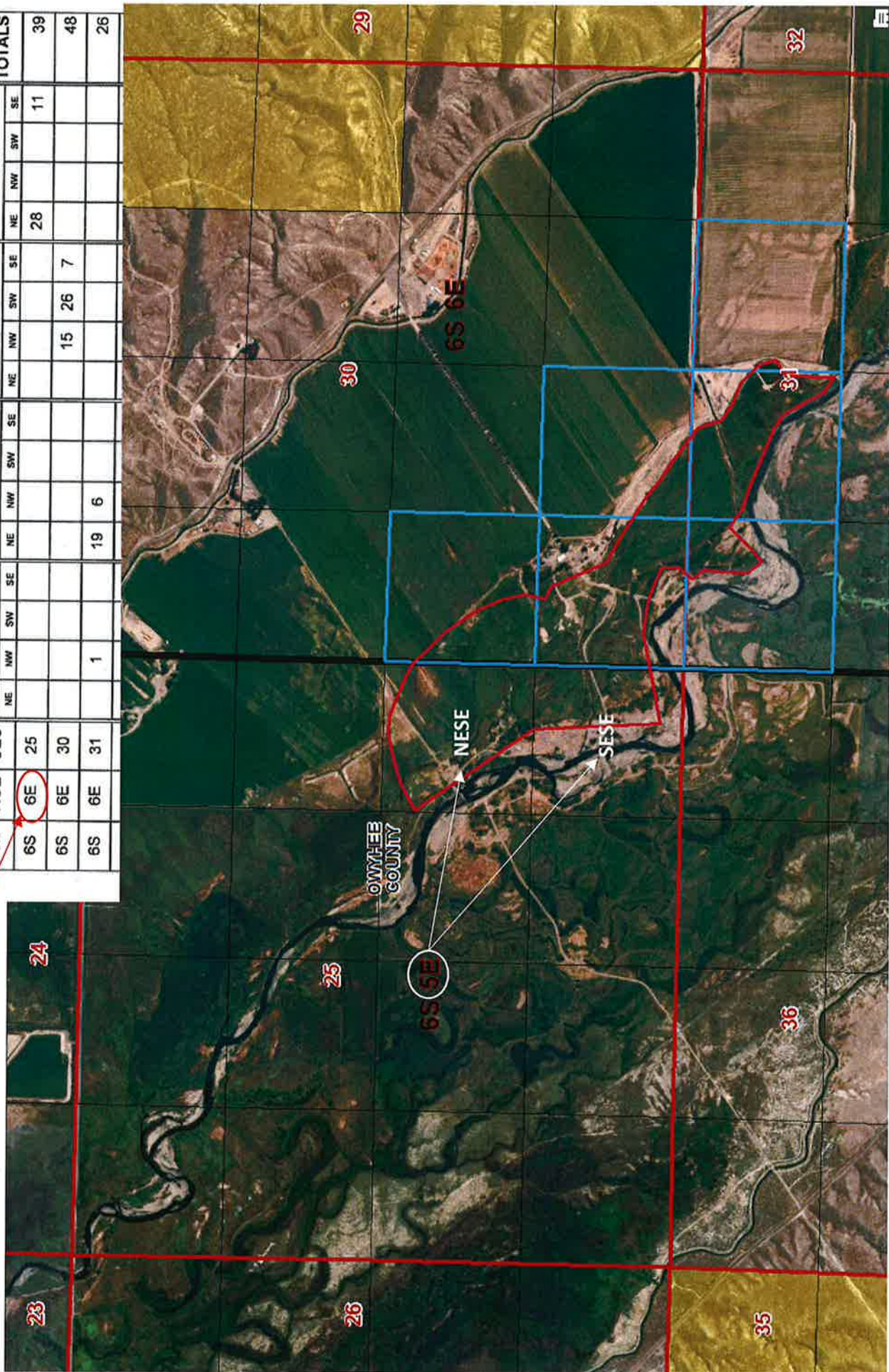
Should the Sec. 25 POU be described in R05E instead of R06E?

Description of place of use (POU):

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? R05E ?

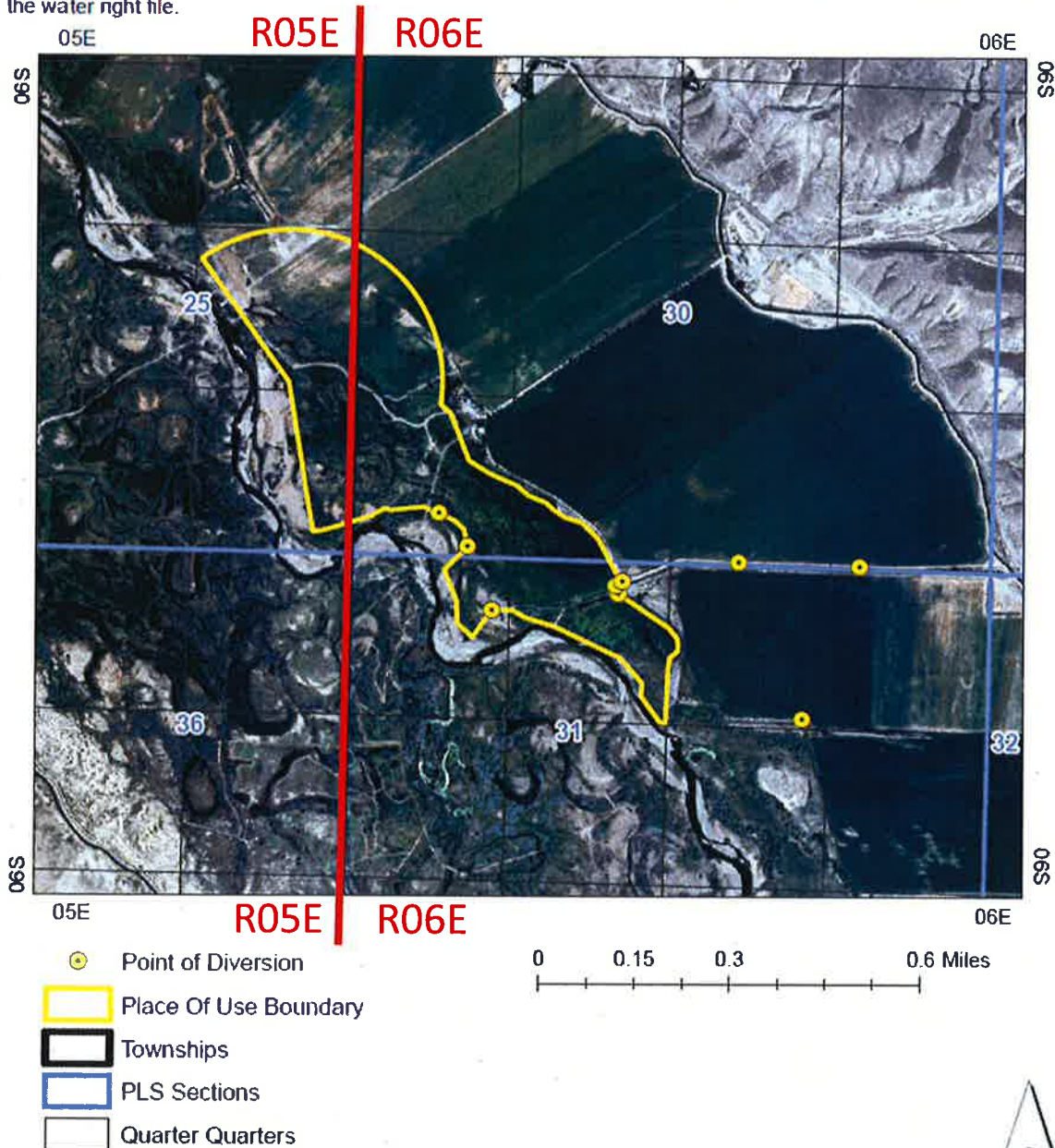
TWP	RGE	SEC	NE			NW			SW			SE			TOTALS
			NE	NW	SW	NE	NW	SW	NE	NW	SW	NE	NW	SW	
6S	6E	25													39
6S	6E	30							15	26	7				48
6S	6E	31		1			19	6							26



State of Idaho
Department of Water Resources
Application For Permit
51-13127

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.



Map produced on July 26, 2018

Protest: Application for Permit 51-13127 (Ace Black Ranches)

POU T06S, R06E, S25 describes a route across BLM,

Applicants do not hold a Right-of-Way to develop BLM federally managed lands for irrigation use.

Appears to be an error as IDWR map indicates T06S, R05E, S25 as POU.

7/26/2018

WATER RIGHT NO. 51-13127

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ACE BLACK RANCHES 28892 HOT SPRINGS RD BRUNEAU, ID 83604-5007 2088452601

Priority Date: 06/08/2018

Status: Active

<u>Source</u>	<u>Tributary</u>
WASTE WATER	UNNAMED DRAIN
UNNAMED DRAIN	BRUNEAU RIVER
WASTE WATER	BRUNEAU RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/01	11/15	2.26 CFS	
Total Diversion			2.26 CFS	

Location of Point(s) of Diversion:

WASTE WATER	SWSW Lt 4	Sec. 30	Township 06S	Range 06E	OWYHEE County
UNNAMED DRAIN	SWSW Lt 4	Sec. 30	Township 06S	Range 06E	OWYHEE County
UNNAMED DRAIN	SWSE	Sec. 30	Township 06S	Range 06E	OWYHEE County
UNNAMED DRAIN	SESE	Sec. 30	Township 06S	Range 06E	OWYHEE County
WASTE WATER	NWNE	Sec. 31	Township 06S	Range 06E	OWYHEE County
WASTE WATER	NENW	Sec. 31	Township 06S	Range 06E	OWYHEE County
WASTE WATER	NENW	Sec. 31	Township 06S	Range 06E	OWYHEE County
WASTE WATER	NENW	Sec. 31	Township 06S	Range 06E	OWYHEE County
WASTE WATER	NWNW Lt 1	Sec. 31	Township 06S	Range 06E	OWYHEE County

Place(s) of use:

Place of Use Legal Description: IRRIGATION OWYHEE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
06S	06E	25		NESE	28		SESE	11						
		30		NWSW	15		SWSW	26		SESW	7			
		31		NWNE	1									
				NENW	19		NWNW	6						

Total Acres: 113

Should S25 be described in T06S, R05E to match
IDWR application for Permit Map?

Dates:

Date Application Received: 06/08/2018

Date Application Denied:

Last Date of Beneficial Use:

Extension End Date:

Protest Deadline Date: 8/20/2018

Number of Protests: 0

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Application Type: New Appropriation

Applicant Remarks: Water from numerous unnamed drain commingles with the wastewater and Bruneau Buckaroo Ditch Company shares and is delivered to the fields for irrigation. Any water not used for irrigation open discharges into the Bruneau River. I have approximately 6,625 shares of Canal water. It comes out to 25 shares per inch of water. Approximately 262 inches of water.

Other Water Rights: Bruneau Buckaroo Ditch Company Shares, 51-7319 (water right from Unnamed Drain), and 51-7318 (water right from Unnamed Drain)

Time to Complete Works: 5

Transfer Affected Description:

Transfer Affected Contracts:

Old Transfer Number:

Transfer Reason:

Transfer Return Flows:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

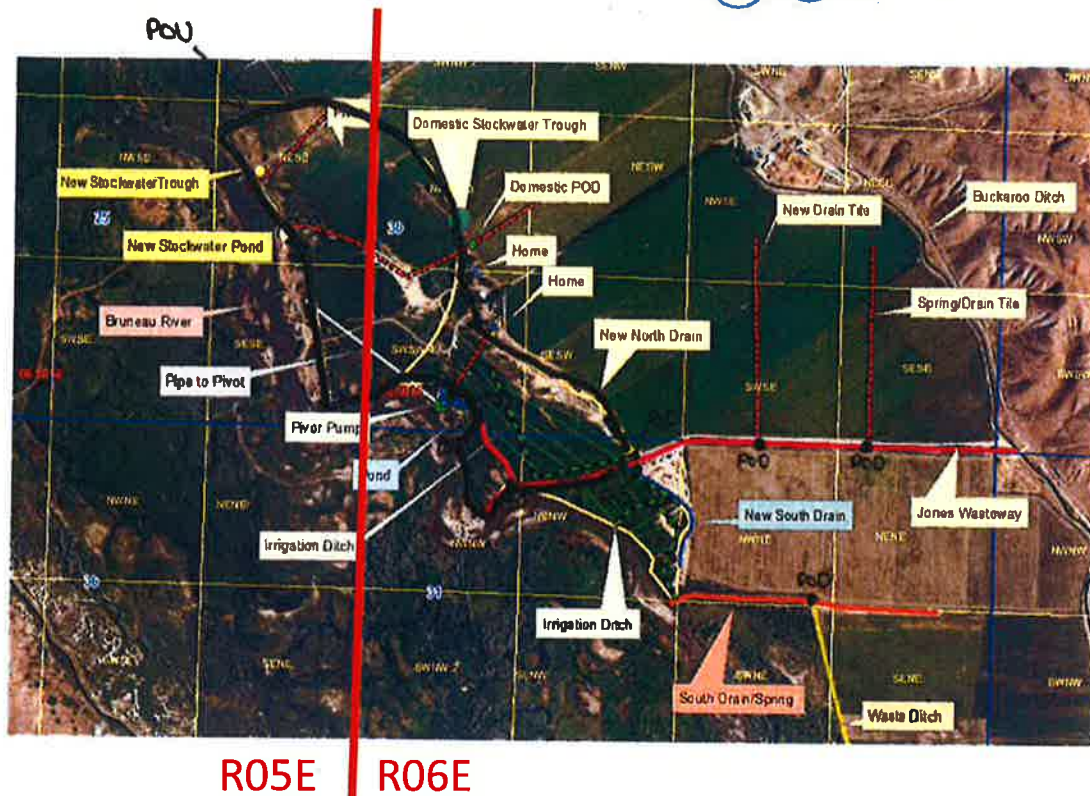
Mitigation Plan: False

Close

Should S25 be described in T06S, R05E to match
IDWR application for Permit Map?

COPY

Application for permit – Irrigation Ace Black Ranches



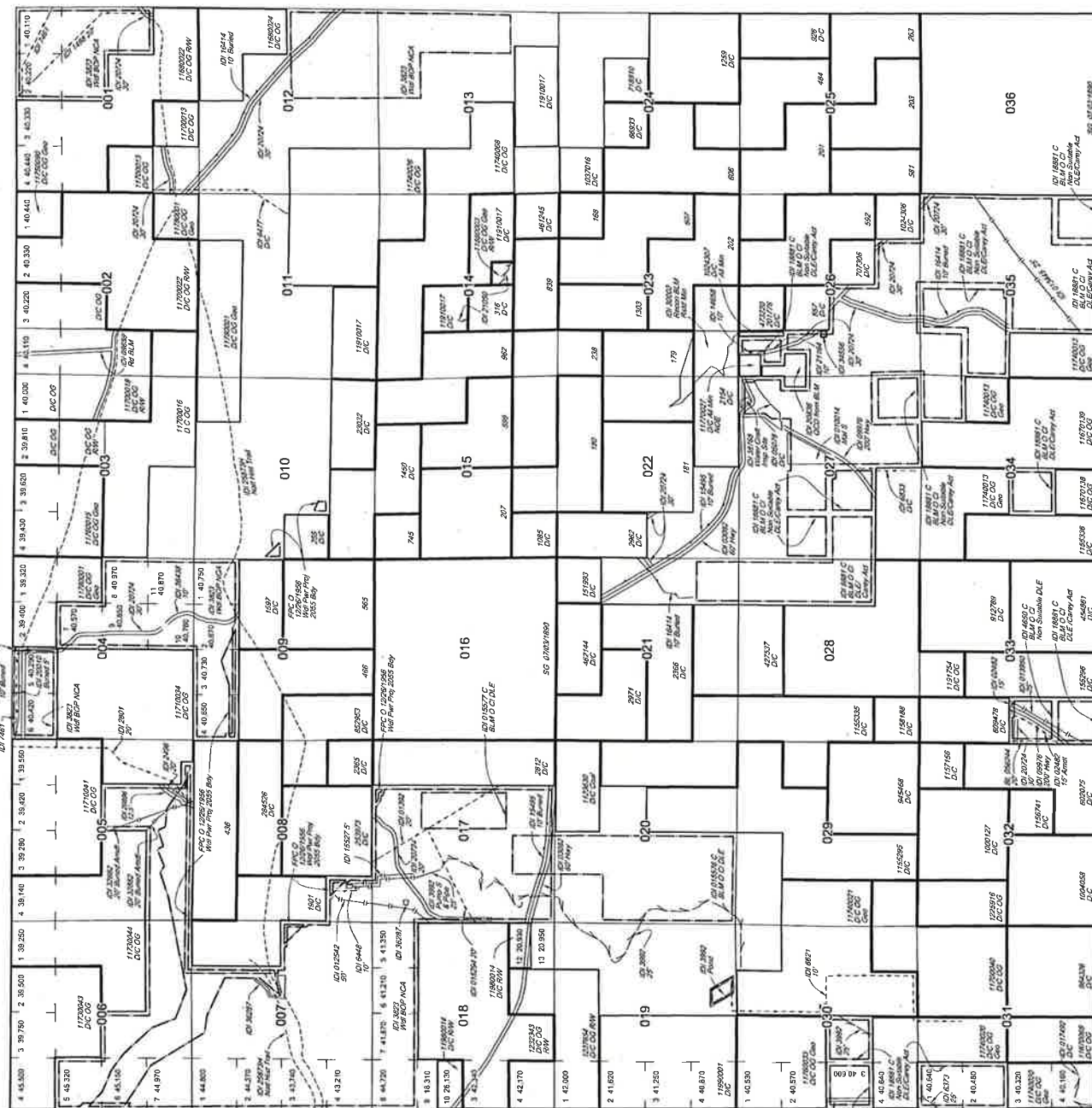
OWYHEE COUNTY 073
BOISE DISTRICT SEC 3STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MT PLAT

[illegible]

<i> DX 7322 W&B BLM Prop 100' R/L land within 70' into Bruneau River in Tip </i>	<i> DX 2587341 Nat'l Hist Trail Public access </i>	<i> DX 30002 P&Y WD to BLM OE on 06/02/1988 Sec 22: M&B Sec 23: M&B </i>	<i> DX 35576 Pur Sec 18: Lot 9 30.00 acres </i>	<i> DX 3823 08/05/2017 PL 115-31 WD R/L modify the boundaries the Morley Nelson Snake River Birds of Prey NCA, including 25 feet on either side of the center line of the Gateway West transmission line (Prelim) </i>
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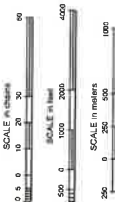
FOR ORDERS AFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LANDS REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

[illegible]Boise Mer.
T. 6 S
R. 5 E

DISCLAIMER: This page is a graphic display of the Bureau of Land Management's (BLM) Resource Inventory of Tila and Bonanza Survey data. Records were generated from the BLM's Geographic Information System (GIS) and should not be used to make any legal determination of land ownership or other official representation. The information shown on this website represents the best data available, but may not be the effective date. See the historical index for the date of the data. The accuracy, reliability, or completeness of these data for individual users or for use in any other application is not guaranteed by the Bureau of Land Management. The accuracy, reliability, or completeness of these data for individual users or for use in any other application is not guaranteed by the Bureau of Land Management.



NORTH



7S-4E

U.S. Bureau of Land Management - Idaho State Office
1387 S. Vinnell Way Boise, Idaho 83709
(208) 373-4000



OWYHEE COUNTY 073

MT PLAT

[illegible]

BULM O 03/12/1957 Pwr S Cl 365, Pwr Proj 2055
Down to Entry Subd to Sec 24 FPA
Sec 2: N25W, N25E
Sec 3: Lots 3,4, SWNW, NESW, N2SE

DI 7322 Wdl BLM Prop

01230000 Sales Act 08/14/97A

ASSEMBLY: 2005

Sec 5: W2SWNW

1

Historical information only, does not denote public access

DOI-3823 05/05/2017 PL 115-31 Wdr Rel modify the boundaries if the Morley Nelson Snake River Birds of Prey NCA, including 225 feet on either side of the center line of the Gateway West Transmission line. (Prelim)

500

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

FILE REF:	D0406062006G06.adf100000.dmg	
CONTAINER TYPE:	ISO9660	RT: LPM
LAST UPDATED:	30742017	BT: CD
GAGE ID:		GAGE #2
POINTED TO PUBLIC RECORDS:	August 14, 2017	
PUBLIC AND SURVEY SYSTEM (PLS):		
NAD GCB ACQUIRED:	9428/2005	
OTHER:	N/A	
PROJECTED COORDINATE SYSTEM:	UTM ZONE 11N, NAD 1983	
NOTE:		
USER NAME:		

Bolso Mar.
T. 6 S
R. 6 E

