

RECEIVED

APR 23 2018

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
Application for Transfer No. 82209, involving 02-07039

April 23, 2018

1. Matter being protested

Transfer No. 82209, involving Water Right 02-07039.

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 March 01, 2018, Dale and Diana Hooley ("Applicant") filed Application for Transfer 82209 (re-instatement of previously withdrawn Application for Transfer No. 80917). The transfer proposes splitting Water Right 02-07039 Place of Use (POU) into Part A (9.07 cfs/ 2,435 AF) and Part B (2.63 cfs/ 705 AF). Part A will remain at the existing Point of Diversion (POD) and also adds 40 acres of irrigation use in T05S, R07E, S33, NESE (entirely federal land). Part B portion will have a new POD and POUs. Part B portion of the split entirely describes private lands.

The transfer Part A POU contains a legal land description that entirely describes BLM land (T05S, R07E, S33, NESE (40 acres)). The applicant is not authorized for agricultural activities on federal lands. The POU describing BLM lands should be removed from the application.

Transfer Application Attachment 7A and 7B1 shows irrigation occurring in trespass on federal lands; T05S, R07E, S33, SENE, NESE, and SWSE (BLM land). The applicant is not authorized to irrigate federal lands. The applicant should cease and desist agricultural activities of BLM lands.

Trespass on federal land is a prohibited act (43 CFR §2808.10(a)). 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)).

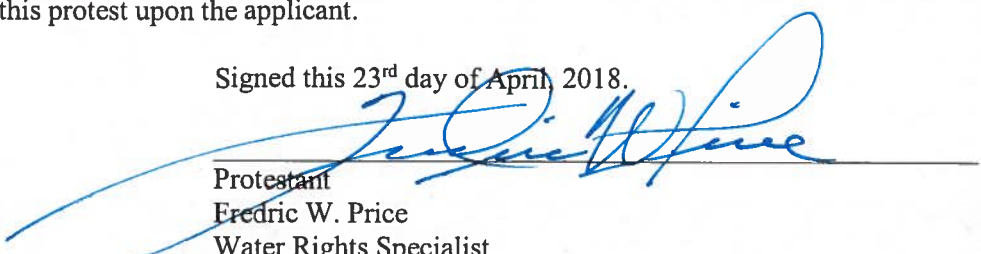
7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdrawing the application and cease agricultural activities on federal lands (T05S, R07E, S33, SENE, NESE, and SWSE; or
- 2.) Amend the application to remove the POU that describes federal land (T05S, R07E, S33, NESE) and cease agricultural activities on federal lands (T05S, R07E, S33, SENE, NESE, and SWSE.

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 23rd day of April, 2018.


Protestant

Fredric W. Price

Water Rights Specialist

Attachments:

◆Maps prepared by BLM for illustrative purposes.

◆Master Title Plats: T05S, R07E

FOR DEPARTMENT USE ONLY

Received by 

Date 4-23-18

Fee Paid \$25.00

Date 4-23-18

Received by 

Receipt # W046262

CERTIFICATE OF SERVICE

I certify that on March 23, 2018, I served a true and correct copy of the **“Protest of Application for Transfer 82209, involving water right 02-07039”** for Dale and Diana Hooley 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.
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705-5082

Copies to:

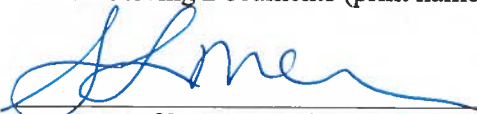
Dale and Diana Hooley
26796 Indian Cove Lane
Hammett, Idaho 83627-5016

SPF Water Engineering
c/o Lori Graves
300 East Mallard Drive, Suite 350
Boise, Idaho 83706-6660

Al Tarter, Natural Resource Specialist
Becky Lazdauskas, Realty Specialist
USDI-BLM;
Boise District Office
3948 South Development Avenue
Boise, Idaho 83705-5339

SANDRA McCREA

Person Serving Documents (print name)



Signature of Person Serving Documents

Protest: Application for Transfer 82209,
 involving Water Right 02-07039
 (Hooley)

Rev. 01/15

STATE OF IDAHO
 DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☐ ☒	2-7039 (Part A)	9.07/2435	Irrigation	3/15 to 11/15	Snake River
☐ ☒	2-7039 (Part B)	2.63/705	Irrigation	3/15 to 11/15	Snake River
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 11.7 cfs and/or 3140 acre-feet.

2. Total amount of water proposed to be transferred or changed 11.7 cubic feet per second and/or 3140 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it Attachment #5.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
n	2		SW	NW	34	5S	7E	Owyhee	Snake River	Part A pod - no change
y	2		SW	NE	2	6S	6E	Owyhee	Snake River	Part B pod - existing

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

	Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
				NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
Part A	5S	7E	32			40	40					40			40	40	40	40		*320
			33			40				40	40	40	40	40	40	40				*360
Part B	6S	6E	11					34	33	36	38									141

Total Acres (for irrigation use)

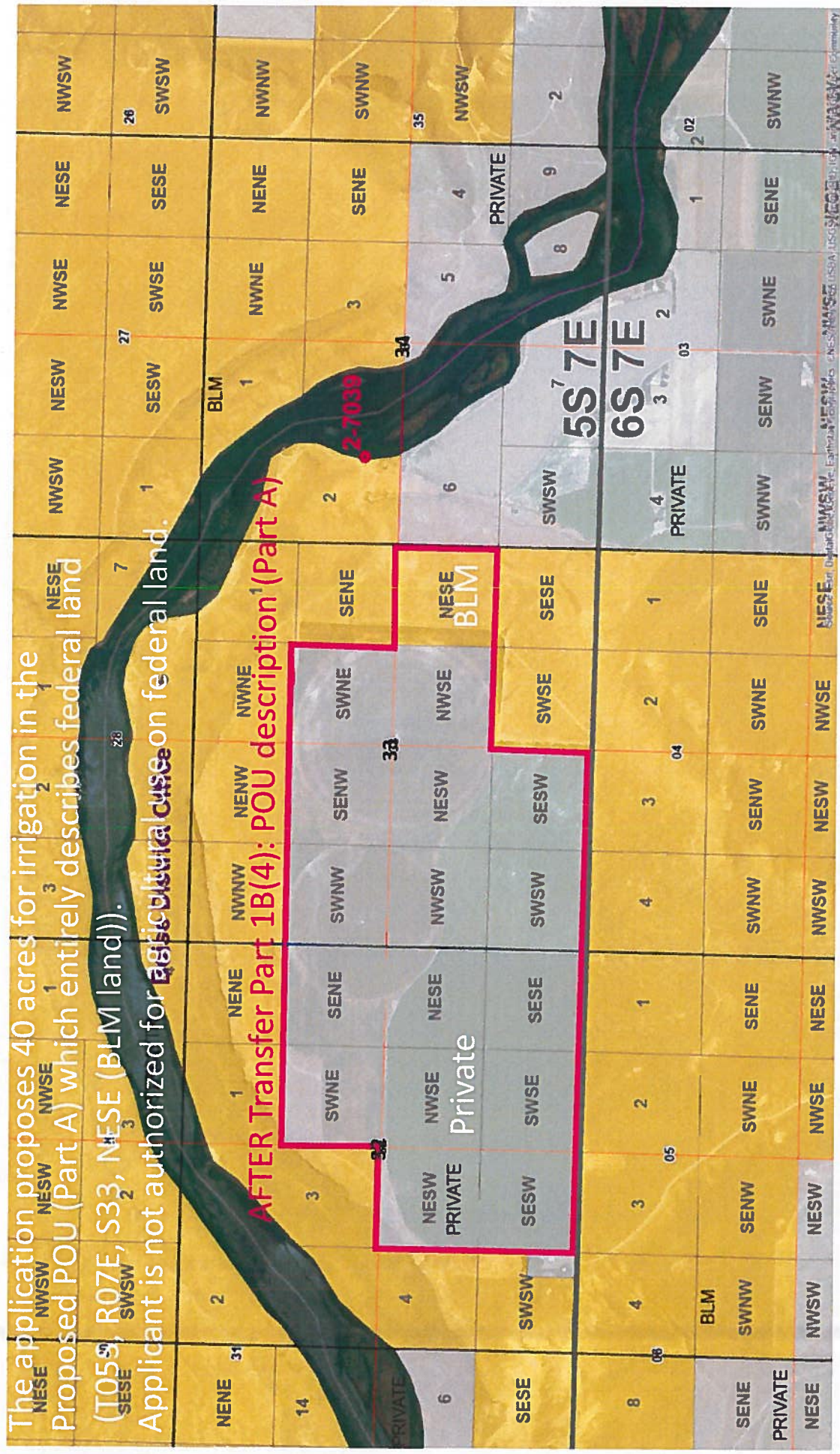
Applicant is not authorized for agricultural activities on federal land.

*Part A: a 680-acre ppu is proposed for remaining irrigation. The 487 acre to be initially irrigated are identified in Attachment 7B1

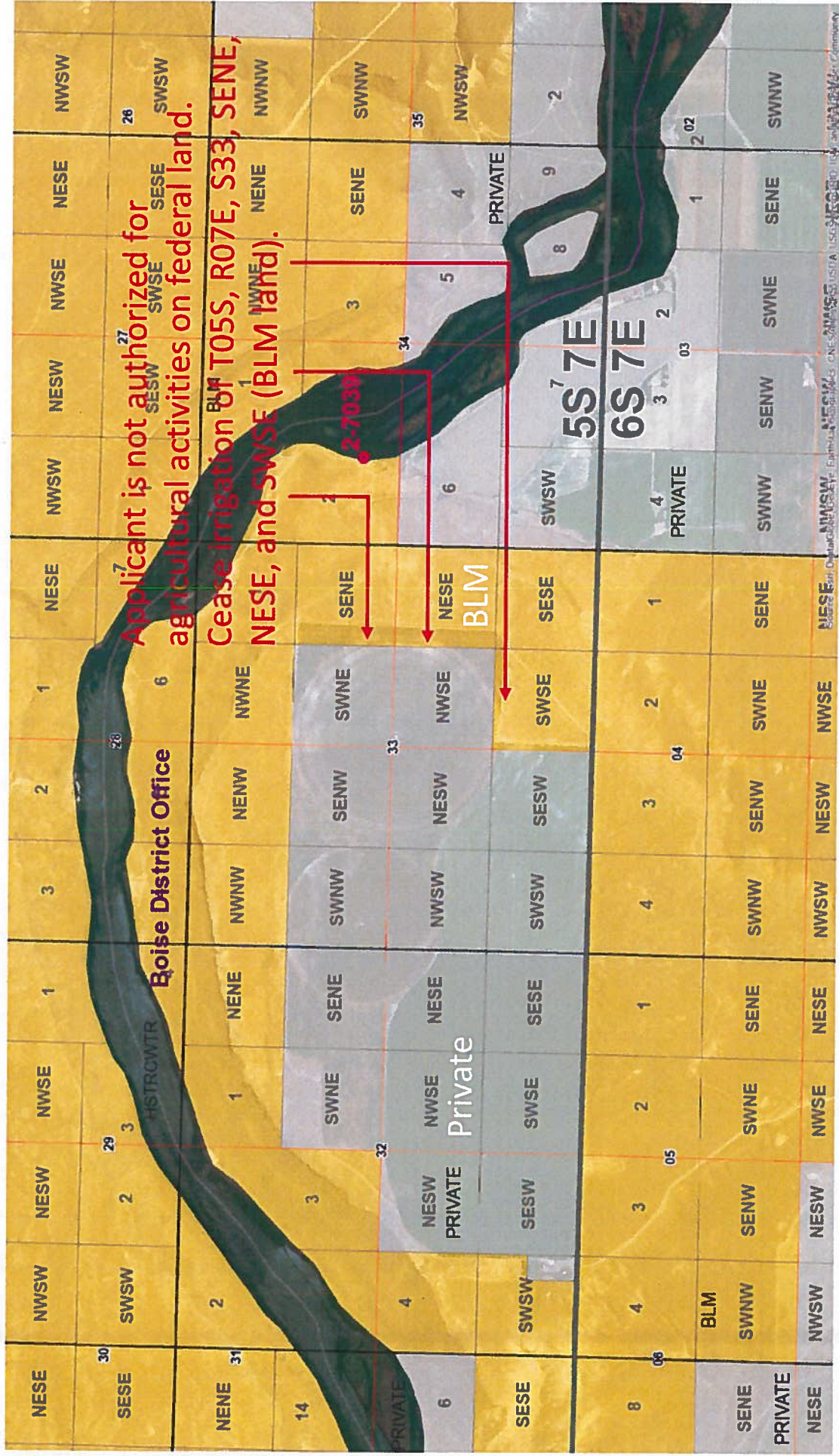
82209

2017

Protest: Application for Transfer 82209,
involving Water Right 02-07039 (Dale and Diana Hooley)



Protest: Application for Transfer 82209,
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TOWNSHIP 5 SOUTH RANGE 7 EAST OF THE BOISE MERIDIAN, IDAHO

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
AND ACQUIRED LANDS

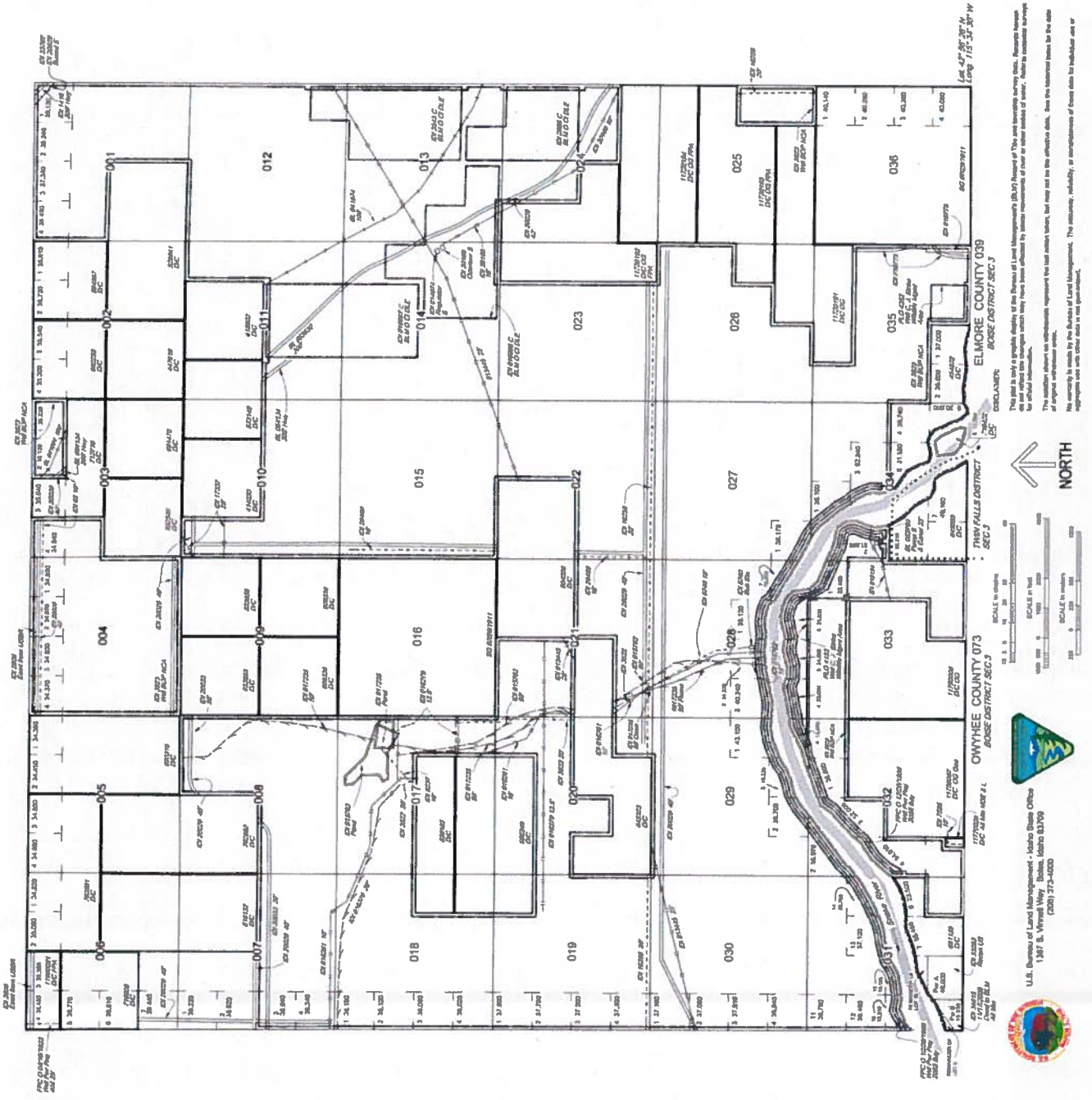
MT PLAT

INDEX TO SEGREGATED TRACTS	
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EO 1979/1913 Mod Per 3 Res 406 R/W Trans line
all lying within 20' of center line.
See 19 Lode 1 to 4 Mod
See 19 Lode 1 to 4 Mod, SE 1/4, SE 1/4, SE 1/4
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U.S. BUREAU OF LAND MANAGEMENT
CONVERTED FROM: 000-2000
LAST UPDATED: 08/20/2013
DATE: 11/15/2013
PROJECTED TO PUBLIC RECORD: February 1, 2013
PUBLIC LAND BUREAU SYSTEM (PLS)
BLM ACQUISITION SYSTEM
PROJECTED COORDINATE SYSTEM: UTM ZONE 11N, UTM 11N
NOTES:
US PLATIN

Scale: 1" = 1 mile
T. 5 S.
R. 7 E.



U.S. Bureau of Land Management - Idaho State Office
1387 S. Vinland Way Boise, Idaho 83720
(208) 373-4000

