

WATER SUPPLY BANK LEASE CONTRACT No. 712

This Lease Contract ("Lease") is between the Idaho Water Resource Board ("Board"), and

RECEIVED

JAN 18 2018

LESSOR: KIMBERLY JOHNSON
13930 DEXTER ST
THORNTON, CO 80602

**DEPARTMENT OF
WATER RESOURCES**

RECITALS

1. The Board is authorized under chapter 17, title 42, Idaho Code to operate a water supply bank and to contract with lessors to act as an intermediary in facilitating the rental of water.
2. The Lessor has filed a completed application to lease water rights described below into the Water Supply Bank on forms supplied by the Idaho Department of Water Resources and received by the Department on December 26, 2017.
3. The Director of the Idaho Department of Water Resources has reviewed the application for compliance with the Water Supply Bank rules and has approved the Lease subject to conditions listed below.

NOW, THEREFORE, in consideration of the mutual covenants and contracts herein contained, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **WATER RIGHTS:** The Lessor shall lease and the Board shall accept into the Bank the Applicant's water rights described as follows:

Summary of Water Rights or Portions Leased to the Bank

Water Right No.	Priority Date	Source	Diversion Rate (CFS)	Diversion Volume (AF)	Acres (AC)
75-14095	5/13/1898	WALLACE CREEK, tributary to SALMON RIVER	0.07	28.7	8.2
75-14097	6/1/1902	WALLACE CREEK, tributary to SALMON RIVER	0.10	28.7	8.2
Combined Lease Totals			0.17	28.0	8.2

2. **COMPENSATION:** The Lessor shall accept and the Board shall pay compensation determined by the amount of water rented under the following rental rate during such times as the water is rented from the Bank over the term of this Lease.

Minimum Payment Acceptable: Current Rental Rate

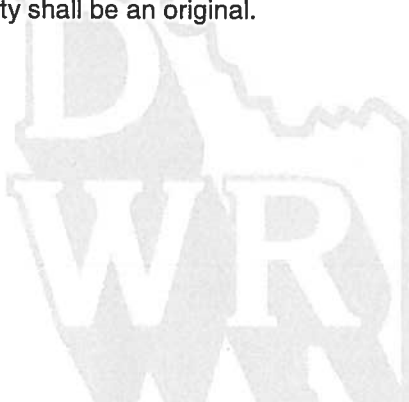
3. **TERM OF LEASE:** The term of this lease shall be January 1, 2018 to December 31, 2022. This Lease shall bind the parties and take effect when both parties have signed it.

SUPPORT DATA

IN FILE # 75-14095

LEASE CONTRACT NO. 712

4. **WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE:** The Lessor shall abide by all terms and conditions contained in the Water Supply Bank Conditions of Acceptance, attached hereto as "Attachment A" and incorporated herein by this reference.
5. **CHANGE OF WATER RIGHT:** This lease specifies water right elements including but not limited to: diversion rates; diversion volumes; number of acres authorized to be irrigated; places of use; points of diversion; beneficial uses; and seasons of use. During the term of this lease, if a water right is administratively changed due to a water right split and renumbering, this lease may be reduced by an equal amount to reflect the water right elements as legally defined under the water right. If a lease contract cannot be reduced sufficient to reflect the legal definition of a water right as amended through a water right split and/or water right transfer, the Board may release the water right from the Water Supply Bank.
6. **ASSIGNMENT OF CONTRACT:** This lease is between the Board and the Lessor, who is the recognized owner or designated representative of the recognized owners of water rights described herein. Should ownership of any part of a water right herein described change during the term of this lease, either through a water right split, a water right transfer, sale of property to which the water right is appurtenant, or through any other recognized water right reassignment, the lease benefits and obligations to the conditions of acceptance for any such water rights will be assigned to the new owners.
7. **DUPLICATE ORIGINAL:** This Lease is executed in duplicate. Each of the documents with an original signature of each party shall be an original.



LEASE CONTRACT NO. 712

IN WITNESS WHEREOF, the parties have executed this Contract on the date following their respective signatures.

LESSOR: KIMBERLY JOHNSON

13930 DEXTER ST

THORNTON, CO 80602

By Kimberly Johnson

Title _____

Date 1-15-17

IDAHO WATER RESOURCE BOARD

322 East Front Street

P.O. Box 83720

Boise, ID 83720-0098

By Brian Patton
Brian Patton, Acting Administrator
Idaho Water Resource Board

Date 1/19/2018

Lease approved by IDWR Cheryl West

Date 1-19-2018

ATTACHMENT A
WATER SUPPLY BANK CONDITIONS OF ACCEPTANCE
FOR LEASE CONTRACT NO. 712

The water rights or portions thereof leased to the bank are described as follows:

Source and Location of Point(s) of Diversion for Water Right No(s): 75-14095, 75-14097

WALLACE CREEK L 7(NWSW) Sec. 6 Twp 22N Rge 22E LEMHI County

Water Right	Beneficial Use	Season of Use			Diversion Rate (CFS)	Volume (AF)
		From		To		
75-14095	IRRIGATION	04/01	to	10/31	0.07 cfs	28.7 AF
75-14097	IRRIGATION	04/01	to	10/31	0.10 cfs	28.7 AF
Totals:					0.17 cfs	28.7 AF

PLACES OF USE TO BE IDLED UNDER THIS LEASE: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	22E	6		0.4			0.5												0.9
							L4												
23N	22E	31												0.9			2.2		3.1
23N	22E	31												4.2					4.2
														L11					

Total Acres: 8.2

ADDITIONAL CONDITIONS OF ACCEPTANCE

1. The water rights referenced above will be rented from the bank at the current rental rate.
2. There is no rental payment to the lessor of the water right if the right or a part thereof is not rented from the bank.
3. While a right is in the bank, the lessor may not use the right without approval of the Department even if the right is not rented from the bank. Any violation of the terms of this lease may result in enforcement procedures pursuant to Idaho Code § 42-351 for illegal diversion and use of water and may include civil penalties pursuant to Idaho Code § 42-1701B.
4. A right accepted into the bank stays in the bank until the Board releases it, or the lease term expires. A right may be released from the bank upon request, provided the Board approves the release. Unless approved by the Department, leased rights may not be immediately available for release.
5. While a water right is in the bank, forfeiture provisions are stayed pursuant to Idaho Code § 42-223(5).
6. Rental of water under this right is subject to the limitations and conditions of approval of the water right.
7. Failure of the right holder to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.

8. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other Department application process.
9. In accordance with Idaho Code § 42-248 and § 42-1409(6), all owners of water rights are required to notify the Department of any changes in mailing address or change in ownership of all or part of a water right. Notice must be provided within 120 days of the change.
10. If a water right leased into the Water Supply Bank is sold or conveyed during the lease term, and if the leased right was rented, the rental proceeds will be disbursed in the following manner regardless of any arrangements between the buyer(s) and seller(s) to the contrary:
 - a. Rental payments will go to the lessor(s) of record at the beginning of the rental season, even if the Department processes a Notice of Change in Water Right Ownership during the rental season.
 - b. New lessor(s) of record will receive payment for any subsequent rental seasons.
11. The water right(s) is leased to the bank subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.
12. Right Nos. 75-14095 and 75-14097 are limited to the irrigation of a combined total of 8.2 acres in a single irrigation season.
13. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 75E.



Idaho Water Resource Board
Water Supply Bank Lease Contract No. 712

75-14095 & 75-14097
Effective until December 31, 2022

This map depicts the **place of use to be idled** pursuant to the lease contract and is attached to the contract solely for illustrative purposes.



-  Approved Lease Point of Diversion
-  Approved Lease Place of Use
-  Townships
-  PLS Sections
-  Quarter Quarters



0 500 1,000 Feet

STATE OF IDAHO
WATER RESOURCE BOARD

RECEIVED

DEC 26 2017

DEPARTMENT OF
WATER RESOURCES

**APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK**

Designated Applicant Kimberly Johnson

(Select one owner – see item 1A on the application)

Water Right No. 75-14097

(One water right per application)

Is this application being submitted with a rental application as a lease/rental package?

Yes ☐ No ☒

This application must be prepared in accordance with the minimum requirement checklist below. Use this checklist to ensure all necessary documentation has been provided. This checklist is part of the lease application and must be included with the lease application. Applications that do not meet the minimum requirements will not be processed and may be returned or denied.

MINIMUM REQUIREMENT CHECKLIST

All items must be checked as either *Attached (Yes)* or *Not Applicable (N/A)*

Yes

- ☒ Completed *Application to Sell or Lease a Water Right to the Water Supply Bank*.
- ☒ Application filing fee of \$250.00 per water right. If you are submitting more than one lease application and the water rights have an overlapping, common place of use, or a common diversion rate or volume, the total fee for all water rights is \$500.00. For places of use, multiple water rights must be used to irrigate the same lands in order to qualify for the joint filing fee. Individual filing fees are required for water rights that share a common permissible place of use but which cover separate acres within the permissible place of use.
- ☒ Confirmation this form has been printed **single sided**, per requirement of the Water Supply Bank.

Attachment N/A Yes

- 1A ☐ ☒ Signatures and contact information for *all owners* of the water right to be leased or sold on this application.
- 1B ☒ ☐ An Internal Revenue Service (IRS) Form W-9 for the Designated Applicant.
- 1C ☒ ☐ Notice of Change in Water Right Ownership form (accessible from www.idwr.idaho.gov).
- 1D ☒ ☐ Contact information for an authorized representative and documentary proof they are authorized to represent the Designated Applicant on this application. If the Designated Applicant is a business, partnership, municipality, organization or association, include documents identifying officers authorized to sign or act on behalf of the entity.
- 2 ☐ ☒ Description of a water right portion offered to the Water Supply Bank.
- 3 ☐ ☒ A map that clearly outlines the specific location where irrigated acres will be dried up, or where a beneficial use of water will be suspended. You have the option of printing a map using the map tool on IDWR's website at: www.idwr.idaho.gov.
- 4A ☐ ☒ Written consent from irrigation district or water delivery company.
- 4G ☐ ☒ Evidence demonstrating the water right has not been forfeited pursuant to Section 42-222(2), Idaho Code.

Department Use Only

Fee Amount \$ 250.00Received By: TPDate Received: 12/26/2017 Receipt # C104459W-9 received? Yes ☐ No ☒ (Route W-9 to Fiscal)

Name on W-9:

951

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

1. CONTACT INFORMATION

- A. This application must be completed by a Designated Applicant who is a current owner of the water right being sold or leased to the Water Supply Bank. If there are additional current owners, those individuals must authorize the Designated Applicant to represent them on this application by completing and signing Attachment 1A of this application package.

Designated Applicant Kimberly Johnson

Mailing Address 13930 Dexter Street Thornton CO 80602

Street

City

State

Zip Code

Email Address eaoke5280@gmail.com

Phone Number 303-900-8487

☒ The Designated Applicant is the sole owner of the water right being sold or leased to the Water Supply Bank.

OR

☐ The Designated Applicant is representing additional water right holders who have completed Attachment 1A.

- B. Has the Designated Applicant submitted an IRS Form W-9 to this Department within the last 2 years? Yes ☒ No ☐
If no, complete the form and attach to this application (Attachment 1B).
- C. Are all applicants on this form listed in IDWR's records as the current owners of the water right? Yes ☒ No ☐
If no, attach a *Notice of Change in Water Right Ownership* form along with the required documentation and fee (Attachment 1C).
- D. Is this application being completed by an authorized representative of the Designated Applicant? Yes ☐ No ☒
If yes, representatives (includes employees of Designated Applicant companies) must complete this section and submit documentary proof of their authority to represent the Designated Applicant (Attachment 1D).

Name of Representative _____ Organization _____

Professional Title _____ Email Address _____

Mailing Address _____ Phone Number _____

☐ Send all correspondence for this application to the representative and not to the Designated Applicant.

OR

☐ Send original correspondence to the Designated Applicant and copies to the representative.

2. DESCRIPTION OF WATER RIGHT OFFERED TO THE BANK

- ☒ The full water right is being offered to the Bank.

OR

- ☐ A part of the water right is being offered to the Bank.

If a portion of the water right is being offered, **complete Attachment 2.**

3. MAP

Attach a map of the point(s) of diversion and place(s) of use proposed to be idled by this lease application. Make sure the idled place of use is outlined and annotated with legal land descriptions (Township, Range, Section and Quarter-Quarters) or with GPS coordinates. For irrigation purposes, mark the number of acres you desire to idle. If the water right proposed for lease is located within a permissible place of use (PPU) and portions of the PPU will continue to receive water from non-leased water rights, clearly outline on a map the acres within the PPU that will continue to be irrigated, as well as acres that will be idled during the lease term. Label the map **Attachment 3.**

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

4. GENERAL INFORMATION

- A. Is the diversion works or system owned or managed by an irrigation district or water delivery company? Yes ☒ No ☐
If yes, provide written consent from the company, corporation or irrigation district authorizing the proposed sale or lease (Attachment 4A).

If your water right is delivered through a canal, lateral or ditch operated by a canal company, irrigation district, or similar delivery entity, your lease request must include written consent from the company, district, or similar entity for your removal of water from its system pursuant to Section 42-108, Idaho Code and IDAPA WSB Rule 37.02.03.25.02e.

- B. Please provide a description of the current water diversion and delivery system.

Per the Water Master, Wallace Creek is head gated and metered

- C. Describe any other water rights used for the same purpose at the same place of use as the water right being offered to the Bank. N/A

- D. Are any of the water rights identified in Section 4C stacked with the water right proposed for lease? Yes ☐ No ☒

Stacked water rights are used together to achieve a common beneficial use, such as irrigation of the same lands. Stacked water rights cannot be separated and must be jointly leased to the Water Supply Bank. Stacked water rights qualify for the multiple fee payment of \$500.

- E. Will the present place of use continue to receive water from any other source? Yes ☐ No ☒

If yes, explain the relationship between the different water sources and how enlargement of the authorized use will not occur if this water right is leased. _____

- F. Identify annual volumes and/or rates of water diverted in the last 5 years to accomplish the beneficial use authorized by this water right. None

- G. Has any portion of this water right undergone a period of five or more consecutive years of non-use? Yes ☒ No ☐

If yes, describe the circumstances and attach evidence to demonstrate how the water right has not been lost through forfeiture (Attachment 4G). See Section 42-223, Idaho Code for exceptions to forfeiture. Your application may be denied if forfeiture concerns are not addressed. Please see Attached explanation provided with our 2016 application.

- H. Is this water right involved in any other IDWR process, such as an application for transfer or a mitigation plan?

If yes, describe.

Yes ☐ No ☒

STATE OF IDAHO
WATER RESOURCE BOARD

APPLICATION TO SELL OR LEASE A WATER RIGHT
(Continued)

5. SALE/LEASE AGREEMENT

- A. Is the water right, or portion thereof, offered to the Idaho Water Resource Board (IWRB) for sale ☐ or lease ☒.

If lease, specify the years when the use of water will be suspended: 2018 to 2022 (maximum lease period 5 calendar years).
(Year) (Year)

- B. Show the minimum payment acceptable to the seller/lessor. The minimum payment may be shown as the "current rental rate" as established by the IWRB. Include the method of determining the minimum payment if other than the current rental rate.

Current rental rate

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this water right for sale or lease to the Idaho Water Resource Board.

The Designated Applicant acknowledges the following:

1. Payment to the Designated Applicant is contingent upon the sale or rental of the water right from the Bank.
2. While a water right is in the Bank, the seller/lessor of the water right may not use the water right, even if the water right is not rented from the Bank.
3. A water right accepted into the Bank stays in the Bank until the Designated Applicant receives written confirmation from the Board or Water Supply Bank that the water right has been released from the Bank.
4. While a water right is in the Bank, forfeiture is stayed.
5. Acceptance of a water right into the Bank does not, in itself, confirm the validity of the water right or any element of the water right.


Signature of Designated Applicant

Kimberly Johnson
Printed Name

5/2/16
Date

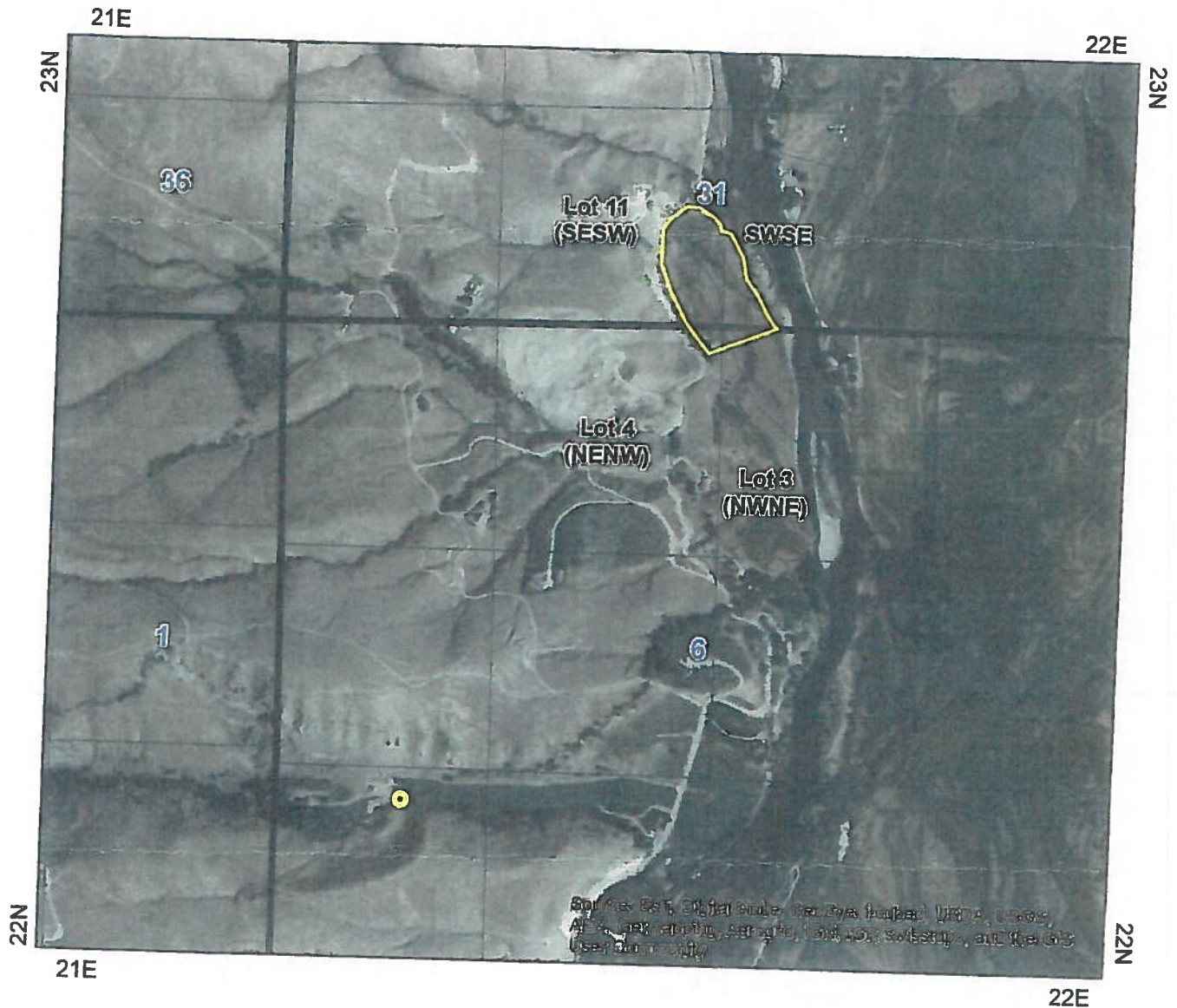
Signature of Authorized Representative

Printed Name

Date

Mail to:
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

State of Idaho
Department of Water Resources
Water Right License
75-14095 and 75-14097



● Point of Diversion

Place Of Use Boundary

Townships

PLS Sections

0 0.125 0.25 0.5 Miles



ATTACH 3A

- Legend**
- ESPA
 - GCDB Township/Range
 - GCDB Section
 - GCDB Quarter-Quarter
 - Counties



ATTACH 3B



IDAHO DEPARTMENT OF WATER RESOURCES
Water Right 75-14097

5/6/2016

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	KIMBERLY JOHNSON 13930 DEXTER ST THORNTON, CO 80602 303-900-8487
Original Owner	SUSIE E SHOUP , ID
Original Owner	ANNA WRIGHT , ID
Original Owner	EDGAR S EDWARDS PO BOX 299 SALMON, ID 83467 (208)756-4728
Original Owner	WILLIAM R MAXWELL PO BOX 134 SALMON, ID 83467 (208)756-4006
Original Owner	ETHEL E BUNDY , ID
Original Owner	ETTIE S SUYDAM , ID
Previous Owner	DAN F FARLEY C/O SLAVIN LAW OFFICE 116 N CENTER ST SALMON, ID 83467 (208) 756-2030

Priority Date: 6/1/1902

Basis: Decreed

Status: Active

Source
WALLACE CREEK

Tributary
SALMON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	0.100 CFS	
	<u>Total Diversion</u>		0.100 CFS	

Source and Point(s) of Diversion

WALLACE CREEK

L7(NWSW)

Sec. 6, Twp 22N, Rge 22E, LEMHI County

Place Of Use

IRRIGATION within LEMHI County

ATTACH 3C p1

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right 75-14097

5/6/2016

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	22E	6		0.4			0.5												0.9
							L4												
23N	22E	31												0.9			2.2		3.1
23N	22E	31												4.2					4.2
														L11					

POU Total Acres: 8.2

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. P21 This right is a split from decreed right 75-84.
3. E55 Right Nos. 75-14095 and 75-14097 are limited to the irrigation of a combined total of 8.2 acres in a single irrigation season.

Comments:

1. mvanbussum 7/30/2009 Version 2
Created version 2 to preserve previous data entry and generate recommendation for objection resolution.
2. mciscell 5/12/2010 POD
Bulk Generate Shape From PLS
3. nmiller 8/29/2012 POD
PODID 759465 correlated from SpatialDataID 184417 to SpatialDataID 463683

Dates and Other Information

Decreed Date: 4/12/2010
 Civil Case Number: 39576
 Judicial District: FIFTH
 State or Federal: S
 Water District Number: 75E
 Mitigation Plan: False

Combined Use Limits

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
75-14095 ,75-14097		8.2

SubCase:

SubCaseNumber: 75-14097
 Class: 1
 SF5 Filed Date:
 Special Master Recorn Signed Date:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right 75-14097

5/6/2016

Attorney Assigned:
Adjudication Agent: kknobloc
Basis of Claim: Decreed
Date Filed: 1/17/2008
Objection Status: Active

Water Supply Bank:
N/A

ATTACH 3C p3

From: Steve Adams sadams1411@gmail.com
Subject: Re: Johnson Water Rights 75-14095 and 75-14097
Date: December 14, 2017 at 8:41 AM
To: Kimberly Johnson eaoke5280@gmail.com

SA

Kimberly,
To date there have been no changes to the ability to deliver water to your property.
As such I see no reason to object to your lease.
You may still be assessed the base charge for District administration.
Best,
Steve Adams
Water Master

Sent from my iPhone

On Dec 13, 2017, at 9:18 PM, Kimberly Johnson <eaoke5280@gmail.com> wrote:

Good Evening Steve -

I hope my email finds you well. We are in the process of renewing the water right lease to the state. As with the previous lease application, would you please reply with your "...written consent from the company, corporation or irrigation district authorizing the proposed sale or lease."?

Thanks kindly,
Kimberly

On Apr 25, 2016, at 5:05 PM, Steve Adams <sadams1411@gmail.com> wrote:

Kimberly,
Given that there is no physical means to deliver your water to your property at this time I see no reason to object to your application. As discussed, the regional water master suggested that you could be responsible for a base fee in the assessment of the District but would not be held to additional assessment as the water is not being delivered.

Steve Adams, Water Master
Wallace Creek Water District -75E

On Mon, Apr 25, 2016 at 2:15 PM, KJ Personal <eaoke5280@gmail.com> wrote:

Good afternoon Steve –

As we discussed, the water bank lease application for the water rights referenced above require "Written consent from irrigation district or water delivery company." I assume that is you ☺ As the Wallace Creek Water Master, would you please reply back with your consent to move forward with this application.

Also, thanks for passing my information along to Chuck. Although he's interested in restoring the ditch up from me, he's not in a position to do anything with it right now. He also mentioned that I would have difficulty getting the ditch restored through the property on the other side of him, unless we went through the slide area, as the property owner would not be receptive to running the ditch along the easement that was created post slide. You may or may not be aware, so I'm just passing along the info. Of course, both are a moot point until ditch is restored at the old Yanoff property (not sure who owns it now).

I really appreciate all your insight, guidance and information as I become educated.

ATTACH 4.A

Attachment 4G

From conversations with my father, Dan Farley, owner of record as of March 7, 2016, prior to his passing in May of 2013, the access to the water distribution has been blocked since The Slide, which I believe took place somewhere around 2004. In the years following, another area of the ditch was also blocked by a property owner, formerly the Yanoff property. I believe that obstruction is due to the construction of a driveway.

Although I don't have specifics, my father repeatedly discussed his disputes and inability to have the property owners restore the water flow from both obstructions. Those disputes continue to be unresolved.

As I only have a little firsthand knowledge, with my limited availability from Denver, I was able to do some research so that I could provide some supporting documentation (much of it on the IDWR website, for which I'm grateful) that the water has been blocked for many years and the ditch blocking continues to prevent us from taking advantage of the granted water rights, given the disputes.

9/7/2012 Letter from Tim Luke at IDWR responding to complaints that regarding the Wallace Creek water usage contained a memorandum from Nick Miller dated 9/4/2012 where he noted that due to upstream ditch blockage the Farley property (now mine) has no access to the water.
[Attachment 4G1]

4/26/2016 Email from Steve Adams to Kimberly Johnson confirming that the ditch is still blocked. *[Attachment 4G2]*

In addition to the Attachments 3A and 3B photos, I've included IDWR map photos showing an overview (Attachment 4G3) and close-ups of the approximate location of the Diversion point (Attachment 4G4), the 1st Obstruction "Yanoff" property (Attachment 4G5), and the 2nd Obstruction "The Slide" (Attachment 4G6) and Attachment 4G7 which shows the property lines/easements in relationship to the slide.

From prior interactions with a landowner two properties over, Martin Shefts, he tried to block access to our property post slide because he didn't want people driving through his property, even though that was the only access and the access has been in continued use for many years. Given his attempt to prevent basic access, I have not approached him directly regarding running a new ditch across the new easement.

Recently, I did speak to property owner Charles Mualem regarding making an effort to restoring the ditch functionality. He does not have any immediate plans to restore the ditch through his property. During that discussion, he also indicated Mr. Shefts would not be amenable to placing a new ditch across his property. As Mr. Mualem's property is closest to mine, I have not spoken to the other members impacted in the Lower Ditch nor with the new owners of the Yanoff property, as getting the ditch partially restored will not allow water to flow to my property.

Att. 4G



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

RECEIVED

SEP 12 2012

Department of Water Resources
Eastern Region

September 7, 2012

Wallace Creek Water Users

RE: Activating Water District 75-E, Wallace Creek

Dear Water User:

The Idaho Department of Water Resources (IDWR or Department) has received a number of complaints over the past month regarding the use of water and water rights on Wallace Creek. Additionally, the Department received an inquiry from the Lemhi County Sheriff's Office on August 27, 2012 regarding complaints it had received about unauthorized tampering of water diversions on Wallace Creek. On August 28, 2012, an IDWR staff representative, Nick Miller, investigated water diversion and water use on the creek. Lemhi County Deputy Sheriff's accompanied Mr. Miller during his investigation and Mr. Miller met with several Wallace Creek water users during his site visits. A summary of Mr. Miller's field investigation is enclosed with this letter.

In light of the recent water use complaints and the IDWR field investigation, it is clear that an active and duly elected watermaster is needed to distribute water in accordance with priority water rights on Wallace Creek and its tributaries. IDWR finds that it is not practicable to appoint a watermaster this year given that it is late in the irrigation season, the lack of measuring devices and controlling works in the system, the finding of certain water right irregularities and the lack of IDWR staff or resources in the area. As a result, IDWR recommends that users finish out the season by maintaining the level of diversions as found on August 28 unless notified differently by the Department. Water users are prohibited from adjusting any diversions on the creek except diversions that are authorized under their own water rights. Water users should not increase their diversions from what IDWR measured on August 28 except that the lower ditch users may continue to minimize or eliminate any leakage bypassing their diversion dam.

This letter is also intended to notify all water users within Water District 75-E, Wallace Creek and tributaries, that they must meet annually, starting in 2013, to elect a watermaster and fund the district as described in Idaho Code 42-605. If the water users fail to elect a watermaster and adopt a budget, IDWR will appoint a watermaster and set the watermaster's compensation in accordance with Section 42-605(8), Idaho Code.

IDWR suggests that the 2013 water district meeting be held on March 5, 2013 at a time and place convenient to the users. Bill Maxwell has agreed to act as the district liaison, so IDWR will mail him a meeting information request form in January 2013 to confirm the location, date, and time. IDWR will then mail notice of the meeting to all water right holders in the district at least 21 days prior to the meeting date.

ATTACH 461 p1

Additional actions by water users must be taken before a watermaster can perform his or her duties on the creek. Specifically, IDWR requires the following actions be taken:

- All water users must install permanent, lockable diverting and controlling works prior to diverting water in 2013;
- All water users must install standard measuring devices prior to diverting water in 2013;
- All water users must divert and use water at the locations described in their decreed water rights. As noted in the IDWR field report, water is being diverted from or used at locations not described or authorized by water rights. IDWR is immediately sending separate notices to any user whose use appears to be inconsistent with the authorized water rights. The notices will require the users to cease and desist from diverting water that may not be in conformance with their rights and/or bring their water use into compliance by following necessary administrative water right procedures.

In order to assure that users install adequate controlling works and measuring devices, the Department will soon issue a formal order requiring the installation of such devices prior to the 2013 irrigation season. Users who fail to comply with the Department's order may be subject to Notices of Violation and potential civil penalties. When the diversions in the district are equipped with adequate measurement and control devices, a watermaster will have the tools necessary to distribute the water in times of scarcity and can respond to changing water supply and demand to more effectively use the waters of Wallace Creek.

If you have questions regarding this notice or about water use and delivery during this remaining irrigation season, please contact Tim Luke or Nick Miller at 208-287-4800.

Sincerely,



Tim Luke
Chief, Water Compliance Bureau

Encl: Memorandum from Nick Miller to Gary Spackman and Tim Luke - Water District 75E Site Visit,
dated September 5, 2012

C: See Attached Certificate of Mailing
IDWR Eastern Region
Lemhi County Sherriff's Office

ATTACH 461 P2

MEMORANDUM

TO: Gary Spackman, Tim Luke
FROM: Nick Miller
DATE: September 4, 2012
RE: Water District 75E Site Visit

This memo is intended to document my August 28, 2012 visit to the Wallace Creek drainage. The purpose of my visit was to inventory the diversion systems and provide guidance regarding allocation of the waters of Wallace Creek pursuant to complaints by David Rhoades (a senior water right holder on Wallace Creek). I was accompanied by Deputies Steve Penner and Tom Whitson of the Lemhi County Sheriff's Office and met with Bill Maxwell (representing the users on the Lower Ditch), and Dale Gooby and Helen Silkman (representing users on the Savage Ranch Ditch). David Rhoades was unavailable for the meeting. The primary questions were related to whether it is appropriate to regulate the Savage Ranch diversion to provide water to senior water right holders that divert downstream. The secondary questions regarded who has the authority to make that determination and ensure that water is delivered accordingly.

Summary

I inventoried the Lower Ditch diversion, the Savage Ranch Ditch diversion, the water use from Maxwell's pipelines, and the Stokes/Moodie Ditch from the South Fork of Wallace Creek. I performed measurements of the amount diverted at the Stokes/Moodie Ditch, the Savage Ranch Ditch, the Lower Ditch, and the amount passing the Lower Ditch undiverted. I concluded that the water available at the Lower Ditch was insufficient to fill all water rights senior to those being diverted at the Savage Ranch diversion. However, the actual demand from the Lower Ditch is significantly less than all of the senior water rights and the uses include some that are inconsistent with senior water rights. As such, I recommended to Maxwell and Rhoades that they withdraw their call for regulation this season while they and others pursue plans to bring their water rights and water usage into conformance and plan to activate the water district in 2013 by electing a watermaster and equipping the diversions with adequate measurement and control. Maxwell and Rhoades each verbally agreed to this approach during telephone conversations following my visit.

Water Rights and System Overview

The uppermost diversions on the system are two ditches diverting water from the South Fork Wallace Creek under water rights with priorities of 6/1/1912. The Stokes/Moodie Ditch is uppermost and the Thomas Ditch is downstream less than one mile. The two ditches eventually combine before reaching the places of use, which are approximately 3-5 miles from the points of diversion. The Stokes/Moodie Ditch diverts with rocks and tarp dams and does not have a functional measuring device. Although I did not visit the Thomas Ditch, it reportedly has a similar diversion structure and is equipped with a measuring device of some type, likely a sharp-crested weir.

Approximately two miles downstream from the diversions on the South Fork is the Savage Ranch Ditch. That ditch diverts from Wallace Creek under water rights with priorities of 4/17/1923. The ditch diverts with a rock check structure into a steel fish screen/control structure. The ditch is equipped with a non-standard Cipolletti weir (the slope of the crest sides is steeper than 1:4).

Approximately 0.5 miles below the Savage Ranch Ditch, two pipelines divert from Wallace Creek.

- A six-inch PVC pipe diverts water to a Pelton wheel power plant approximately 1,200 feet below the intake. After passing the Pelton wheel, the water passes via an open ditch approximately 200 feet south to a pond that is approximately 70 feet in diameter and likely holds less than 0.3 acre-feet. The outlet of the pond has an overflow spill and is plumbed with a 3"- 4" pipe to supply irrigation to lands authorized to be irrigated under water rights 75-10330, 75-83C and 75-14577, and portions of 75-14716 and 75-14718. Other than the pipe at the outlet, no other irrigation or withdrawals are made from the pipe or pond. Water passing the overflow spill returns via approximately 80 feet of open channel to Wallace Creek.
- A 1.5 inch PVC pipe diverts water to a gravity sprinkler system that irrigates approximately 3.9 acres around the house and garage.

The head of the Lower Ditch is approximately 550 feet below the point where the pond overflow returns to Wallace Creek. This ditch is the last diversion from Wallace Creek before the confluence with the Salmon River, approximately 0.3 miles downstream. This ditch diverts from Wallace Creek under water rights with priority dates of 5/13/1898 and 6/1/1902. The ditch diverts with rocks and plastic tarps and has no measuring device. At the time of my visit, the ditch is blocked and cannot supply water to 20.6 acres of the 64.5 acres of lands authorized to be irrigated with water rights diverted via the Lower Ditch.

Water Supply Observations

Stokes/Moodie Ditch – On, approximately 0.4 cfs
Thomas Ditch – Not visited, reported to be on.
Savage Ranch Ditch – On, approximately 0.3 cfs
1.5" Pipeline – Off
6" Pipeline – On, approximately 0.5 cfs returning to the creek, the pipe take off was not diverting from the pond.
Lower Ditch – On, approximately 0.4 cfs diverted
Wallace Creek below Lower Ditch – approximately 0.2 cfs

Conclusions and recommendations:

Based on my observations and measurements, it appears that the supply of water in Wallace Creek is insufficient to supply the 1902 water rights in full. Given that approximately 0.4 cfs is diverted into the Lower Ditch and approximately 0.2 cfs is allowed to pass down the creek, approximately 0.6 cfs is available at the Lower Ditch without regulating junior users. As shown in the table below, water rights on the Lower Ditch senior to 1923 total 1.37 cfs. However, given that the ditch is blocked and some lower users (Farley, Wong-McClain, Lewis, and Shefts) have

no access to water, the maximum that can be demanded from this diversion is 0.94 cfs. Additionally, during a telephone conversation with David Rhoades, he stated that neither Yanoff nor Anderson have diverted or will divert water this season, so the actual maximum demand is 0.75 cfs. In other words, users on the Lower Ditch are short 0.15 cfs. However, both Maxwell and Rhoades are irrigating out of conformance with their senior water rights and it is not appropriate to regulate junior users to provide water to a use that is not authorized by a water right.

Water rights diverted at the Lower Ditch.

Priority	diversion rate (cubic feet per second)			
	Total	Non Deliverable	Reportedly Unused	Maximum Demand
1898	0.54	0.14	0.08	0.32
1902	0.83	0.29	0.11	0.43
Total	1.37	0.43	0.19	0.75

Users can demand regulation of junior water rights to provide water to senior users. If this is selected IDWR will:

- Instruct users on the Lower Ditch to cease bypass of water down Wallace Creek past the Lower Ditch. Although the current bypass was measured at only 0.2 cfs, this quantity is at least one-fourth of the total water right demand on the ditch so ditch users should make every effort to minimize the bypass. Junior users will likely be concerned if they are regulated and water is bypassing the senior's diversion.
- Instruct Maxwell to cease all irrigation from the 1.5" pipeline. The only water rights that authorize diversion from Wallace Creek in the NESE of Section 1, T22N R21E are junior to all other water rights on the creek and so must be regulated first. Furthermore, it appears that Maxwell is irrigating approximately 3.7 acres around his house without a water right. It is possible that 75-10330 is intended to cover some of that, but the water right as currently depicted does not appear to cover this area around the house and 75-10330 is a very junior water right (4/1/1949).
- Instruct Maxwell and Rhoades to cease irrigating from the pond. While it is possible that water right 75-10330 could authorize the storage in the pond and irrigation of Maxwell's land, it is junior and would be the first to be regulated. Neither Rhoades' nor Maxwell's senior water rights authorize diversion in the NESE of Section 1, T22N R21E (the location of the 6" PVC pipe). As such, their use of water from the pond constitutes an illegal diversion of water and must be curtailed prior to regulating junior users.
- Instruct users on the Savage Ranch Ditch to cease diverting Wallace Creek. Given the amount of water available, users at the Lower Ditch (excluding those users below the blockage and those users reportedly not using their rights) have rights to 0.75 cfs at the Lower Ditch under water rights senior to those of the Savage Ranch Ditch. The measurements I made indicate that regulating the Savage Ranch Ditch would provide the shortfall.

- Pursue notices of violation if users do not comply. Some type of formal notice should be sent to individual users who have any use that does not match their water rights.

Users on this system have the option to forego formal regulation this season and attempt to make do with the system as is. Given the shortness of the remaining irrigation season and the fact that the illegal and questionable uses will result in regulation of senior as well as junior water users, Maxwell and Rhoades have indicated that they would rather not pursue formal regulation this season. Nevertheless, IDWR should pursue a number of actions in the water district to address the illegal uses identified and to equip the district adequately to avoid or aid in the resolution of future disputes. Based on my observations, IDWR should require the following:

- Users equip the Lower Ditch with a permanent, lockable diverting and control works prior to diverting water in 2013.
- Users equip the Lower Ditch with an adequate measuring device. IDWR will provide a temporary measuring device for the remainder of this season, but a permanent structure should be installed prior to the start of the 2013 season.
- Maxwell must, prior to the 2013 season, bring his water rights into conformance with his water usage. He likely needs to file an application for transfer to authorize diversion of his senior irrigation water via the power pipeline diversion. Such a transfer would likely result in authorizing the storage pond under senior rights as well. Additionally, he must file a transfer or application for permit to authorize irrigating the full amount of ground he is currently irrigating around his house. Alternatively, he could reduce the irrigated acreage to that authorized by his rights.
- Rhoades must, prior to the 2013 season, bring his water rights into conformance with his water usage. He likely needs to file an application for transfer to authorize diversion of his irrigation water via the power pipeline diversion. Alternatively, he may cease irrigating via the pipe from the pond and instead irrigate all his ground via the Lower Ditch and obviate the need for a transfer.
- Users on Wallace Creek must make their water district (Water District 75-E) active in the spring of 2013 by holding an annual meeting to elect a watermaster and fund the district as described in Idaho Code 42-605. I suggest the meeting be held March 5th, 2013 at a time and place convenient to the users. Bill Maxwell has agreed to act as the district liaison, so IDWR will mail him a meeting information request form in January 2013 to confirm the location, date, and time. IDWR will then mail notice of the meeting to all water right holders in the district at least 21 days prior to the meeting date.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of September, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing September 7, 2012 Letter to Wallace Creek Water Users RE: Activating Water District 75-E, Wallace Creek and the September 4, 2012 Memorandum RE: Water District 75E Site Visit to the persons listed below:

JAMES R & JULIA GEIDEL
BOX 89
CARMEN ID 83462

NORMAN C & DOROTHY A OLSEN
PO BOX 131
CARMEN ID 83462-0131

LAWRENCE L SHILEY
SHIRLEY E CLAY
PO BOX 136
CARMEN ID 83462

WILLIAM ROBERT MAXWELL
PO BOX 256
CARMEN ID 83462

JEFFREY V WAITE
PO BOX 75
CARMEN ID 83462

DAVID & BRENDA RHOADES
2283 S 55TH W
IDAHO FALLS ID 83402

ROBERT & LESLIE J ANDERSON
PO BOX 852
KETCHUM ID 83340

DICK WILLIAMS
LINDA BARINAGA
2655 LINDER RD
KUNA ID 83634

RUSSELL & MICHELLE SNEED
9449 PERSHING AVE
ORANGEVALE CA 95662

WONG-MCCLAIN FAMILY TRUST
95 INVERLEITH TER
PIEDMONT CA 94611-3322

ROBERT HEBER OR JEAN STOKES
153 DIAMOND CRK RD
SALMON ID 83467

DALE F GOOBY
18 SAVAGE RANCH RD
SALMON ID 83467

LAWRENCE R & JANET GOSACK
320 DIAMOND CREEK LN
SALMON ID 83467

DAVID YANOFF
343 DIAMOND CREEK RD
SALMON ID 83467-5298

DALLAS A & VANCE LEWIS
357 DIAMOND CREEK RD
SALMON ID 83467

GREG & SANDY BOURDON
VERA M HARTLEY TRUST
59 SAVAGE RANCH RD
SALMON ID 83467

GREGORY MARTIN
CAROL ANNE SHEFTS
703 RIVERFRONT DR
SALMON ID 83467

CHARLES W MUALEM
76 ALDOUS DR
SALMON ID 83467

L ARDEN & ILENE ARRINGTON
BOX 1110
SALMON ID 83467

DAN F FARLEY
C/O SLAVIN LAW OFFICE
116 N CENTER ST
SALMON ID 83467

PENSCO TRUST COMPANY
CUSTODIAN L ARDEN ARRINGTON
BOX 1110
SALMON ID 83467

FREDDE HOWARTH-NOTT
SEPARATE PROPERTY TRUST
PO BOX 1166
SALMON ID 83467

JAMES H & MARTHA J MOODIE
MARY MOODIE
PO BOX 1211
SALMON ID 83467

LINDA K HEFFNER
WILLIAM R MAXWELL
PO BOX 134
SALMON ID 83467

CHARLES C & VIRGINIA A THOMAS
PO BOX 785
SALMON ID 83467

RALSTON W & RACHEL ADAMS
RT 1 BOX 224-50
SALMON ID 83467

DAVID JEFFREY ODELL
2742 ALPENGLOW RD
STEVENSVILLE MT 59870



Emalee Rushing
Administrative Assistant

ATTACH 461 07

KJ Personal

From: Steve Adams <sadams1411@gmail.com>
Sent: Monday, April 25, 2016 5:05 PM
To: KJ Personal
Subject: Re: Johnson Water Rights 75-14095 and 75-14097

Kimberly,

Given that there is no physical means to deliver your water to your property at this time I see no reason to object to your application. As discussed, the regional water master suggested that you could be responsible for a base fee in the assessment of the District but would not be held to additional assessment as the water is not being delivered.

Steve Adams, Water Master
Wallace Creek Water District -75E

On Mon, Apr 25, 2016 at 2:15 PM, KJ Personal <eaoke5280@gmail.com> wrote:

Good afternoon Steve –

As we discussed, the water bank lease application for the water rights referenced above require “Written consent from irrigation district or water delivery company.” I assume that is you ☺ As the Wallace Creek Water Master, would you please reply back with your consent to move forward with this application.

Also, thanks for passing my information along to Chuck. Although he’s interested in restoring the ditch up from me, he’s not in a position to do anything with it right now. He also mentioned that I would have difficulty getting the ditch restored through the property on the other side of him, unless we went through the slide area, as the property owner would not be receptive to running the ditch along the easement that was created post slide. You may or may not be aware, so I’m just passing along the info. Of course, both are a moot point until ditch is restored at the old Yanoff property (not sure who owns it now).

I really appreciate all your insight, guidance and information as I become educated.

Hope you have a lovely evening and don’t work too hard the rest of the week.

Thanks kindly,

Kimberly

ATTACH 4G2 AS

Water Districts Map

Water Districts in Idaho

2ND OBSTRUCTION

SLIDE
BLOCKAPPROX.
PROPERTY LINE

Created by NRCS from 1:24,000 scale USGS topographic maps. | Esri, HERE, DeLorme, iPC | USDA FSA, DigitalGlobe, GeoEye, Microsoft, CNES/Airbus DS

APPROX LOCATION OF DIVERSION PT

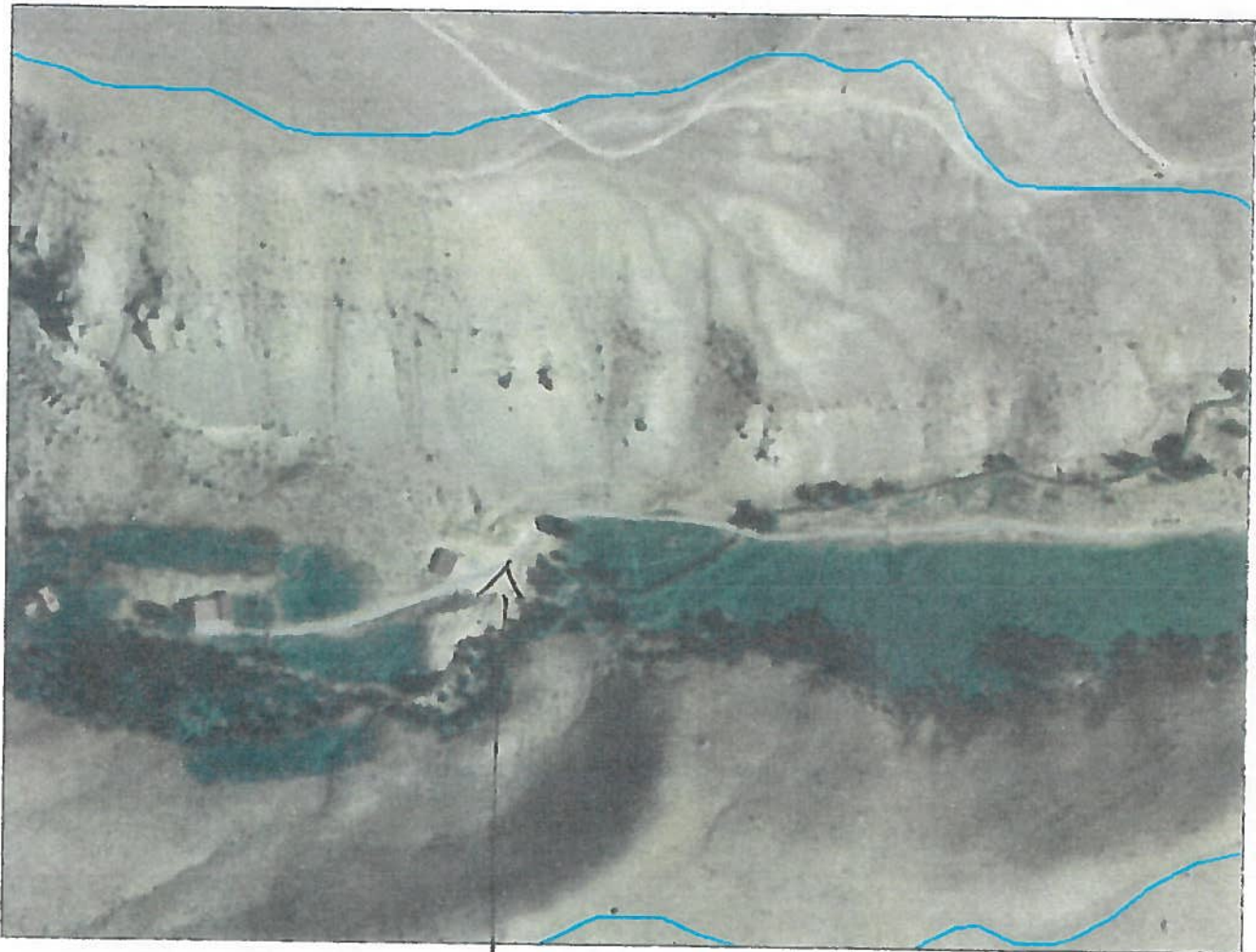
APPROX
1ST OBSTRUCTION

"YANOFF" PROPERTY

ATTACH 4G3

Water Districts Map

Water Districts in Idaho



Created by NRCS from 1:24,000 scale USGS topographic maps. | Esri, HERE, DeLorme, IPC | USDA FSA, DigitalGlobe, GeoEye, Microsoft

APPROX LOCATION OF
DIVERSION PT

ATTACH 4G4

Water Districts Map

Water Districts in Idaho



Created by NRCS from 1:24,000 scale USGS topographic maps. | Esri, HERE, DeLorme, iPC | USDA FSA, DigitalGlobe, GeoEye, Microsoft

1ST OBSTRUCTION
APPROX. LOCATION

ATTACH 4G5

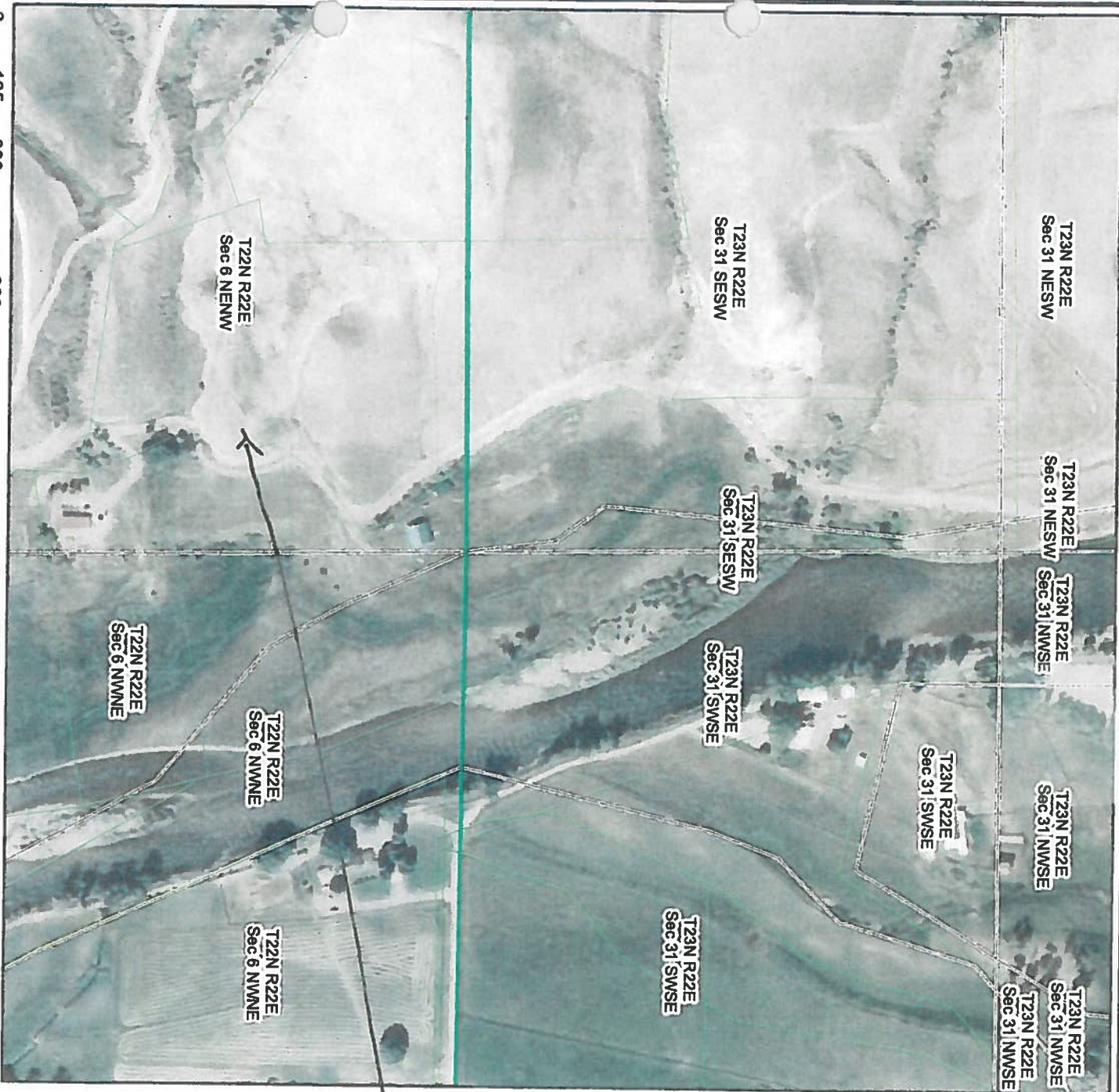
Home ▾ Water Districts Map

Details | Basemap |



LANDSLIDE BLOCKING DITCH
2ND OBSTRUCTION

ATTACH 4G6



- Legend**
- ESPA
 - GCDB Township/Range
 - GCDB Section
 - GCDB Quarter-Quarter
 - Counties

PROPERTY LINE
COMPARED TO SURVEY

ATTACH 467