

ORIGINAL

Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorney for Applicants/Protestants

RECEIVED

AUG 30 2017

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT
TRANSFER APPLICATION NO. 81039 IN
THE NAME OF WALLACE AND PERMIT
NOS. 78-12439 IN THE NAME OF
KALINOWSKI AND 78-12447 IN THE
NAME OF HENLEY AND APPLICATION
NO. 78-12445 IN THE NAME OF
WALLACE

**KALINOWSKI AND HENLEYS'
EXCEPTIONS TO PRELIMINARY
ORDERS FOR TRANSFER
APPLICATION NO. 81039, AND
WATER RIGHT APPLICATION NOS.
78-12439 AND 78-12447**

COME NOW, the Applicants/Protestants, James and Sandra Henley, and Edward Kalinowski, by and through their counsel of record, the law firm Barker Rosholt & Simpson LLP, and hereby submit this Brief on Exceptions to the above-referenced applications, pursuant to IDAPA Rule no. 37.01.01.730.02.a. and Idaho Code § 67-5245. For the following reasons, the Hearing Officer's determination to grant transfer application no. 81039, and deny water right application nos. 78-12439 and 78-12447 must be reversed.

ARGUMENT

I. The Hearing Officer Materially Misstated and Ignored Evidence in the Record to Reach his Determination to Approve Transfer Application No. 81039:

The Hearing Officer's misstatements of the record begin with findings of fact nos. 4 and 5, located at p. 2 of the Preliminary Order Approving Transfer. In the two findings of fact, the Hearing Officer states that water right no. 78-10067, partially decreed in the SRBA in

November, 2007, “authorizes the diversion from two springs for domestic use at two homes and the irrigation of 4.0 acres.” In the next finding of fact, no. 5, he states that “[s]pring #1 arises on Kalinowski’s property and is diverted for use at the home owned by Wallace. Spring #2 arises on Henley’s property and is diverted for use at the home owned by Leonard Wallace.” Preliminary Order Approving Transfer (“Transfer Order”), p. 2. Water right no. 78-10067 authorizes diversion of water for two springs from points of diversion that are nowhere located on the Kalinowski and Henley properties, but rather from T19N, R02E, S09, Lot 3 of the SENWSW, and SENWSW. Ex. 14. The description of the land where the points of diversion are located does not correspond to the two springs located on the Kalinowski and Henley properties. *Id.*

The Hearing Officer does recognize in statement of fact nos. 7 and 8 that the Wallaces claimed points of diversion that do not correspond to the properties owned by Kalinowski and Henley, and that the SRBA Court issued a partial decree for the claimed points of diversion, but then goes on in statement of fact no. 9 to continue the illusion that the claimed springs, regardless of the claimed points of diversion, are located on the Kalinowski and Henley properties. Transfer Order, p. 2. He states that “[t]he two springs diverted by Wallace and Leonard Wallace under water right no. 78-10067 are physically located in the NW1/4 of Lot 3, Section 9, T19N, R02E, on properties now owned by Henley and Kalinowski.” *Id.* Nothing in the record supports the conclusion that water right no. 78-10067 authorized, or was intended to authorize, the Wallaces to divert water from the Kalinowski and Henley properties. Mrs. Wallace, at hearing was unable to identify where the claimed springs in water right no. 78-10067 were located, and instead baldly asserted that the springs claimed were those on the Kalinowski and Henley properties.

It is also noteworthy that the Hearing Officer relied upon the notes of an Adams County planning and zoning meeting as evidence as to the actual location of the claimed points of diversion for water right no. 78-10067. Mr. Hobie Alter, who testified to being the developer of Timber Ridge Subdivision stated that he is the one who went and located the two springs with Mr. Wallace and surveyor sometime after the March 21, 1994 zoning hearing and that the location was based on the word of Mr. Wallace. He testified that he did nothing to verify that there were legal water rights located at the platted spring locations, nor did he verify that there were irrigation lines in the location of the platted irrigation easements. In fact, he testified that he probably did a lot of things wrong. Late discovered evidence entirely contradicts the Wallaces' claims that the springs on the Kalinowski and Henley properties were always the intended points of diversion for water right no. 78-10067, and in fact, bolsters the Wallaces' original claimed points of diversion for water right no. 78-10067 as located outside of the Kalinowski and Henley properties.

Only days before the hearing, while clearing brush near his property, Mr. Henley discovered developed spring works at the location of the claimed points of diversion for the original claim filed in 1988 for water right no. 78-10067. Ex. 110. Mr. Henley and Dr. Kalinowski investigated the location of the photographed spring overflow outlets, and followed the line of the disturbed ground in order to locate the approximate origins of the spring works. Henley and Kalinowski testimony. Dr. Kalinowski also took compass rose readings using GPS software and determined that the spring works are located in from T19N, R02E, S09, Lot 3 of the SENWSW, and SENWSW, the claimed points of diversion for water right no. 78-10067. Ex. 14; also see Henley and Kalinowski testimony. Subsequent investigation and discussion with the property owner adjacent to the spring works located in the claimed points of diversion for water

right no. 78-10067, Mr. Clyde Dillon, reveals that when he installed an artesian well at his property in 2000, he was contacted by Leonard Wallace and told that his new well was interfering with the Wallaces' spring water rights. *See* Attachment A. After permission was granted to visually inspect the Dillon property in the area where the points of diversion for water right no. 78-10067 are decreed, abandoned culvert pipe was located indicating developed spring works from those points of diversion. *See* Attachment B. The piped culvert corresponds to the line located by Mr. Henley and investigated by both Mr. Henley and Dr. Kalinowski, which is depicted at Exhibit 110.

The Wallaces also provided exhibit no. 3, a receipt from IDWR dated January 6, 1977, for claim to water right no. 78-4076. Ex. 3. The hearing officer took official notice of documents contained in the backfile for water right no. 78-4076. The file includes a more limited description of the 40 acre tract within which the point of diversion for the claimed spring is located, in T19N, R02E, Sec. 9. NW ¼ SW ¼, however, the map attached to the claim indicates that the claimed point of diversion, or "location of the spring" is in the same location as the claimed points of diversion for water right no. 78-10067. *See* Attachment C. It should also be noted, that water right 78-4076 was not claimed in the SRBA and was decreed disallowed in 2012. The original claimed priority date for the spring was "20 April 1950." According to the Affidavit of Leonard Wallace, "our family has used the water from the springs for as long as we owned the property and that we had an agreement easement to pipe the spring water to our property." Ex. 17, Leonard Wallace Affidavit, ¶ 5. If this is the case, then the spring and/or springs that the Wallaces have historically relied upon have never LEGALLY been located on the property owned by Kalinowski and Henley, and had never been previously claimed by them prior to the late filed transfer application.

Additionally, Mrs. Wallace, in her affidavit, testified that it was her belief “that the Department made a clerical error in describing the two points of diversions (sic) for our springs.” Ex. 17, Affidavit of Eulla “Sissy” Wallace, ¶ 8. However, under questioning Mrs. Wallace testified that all of the claim documents, as well as the documents transmitted to them from IDWR and the SRBA court, contained the originally claimed points of diversion for water right no. 78-10067, and that at no point did the Wallace family attempt to correct the claimed points of diversion before the SRBA court issued its partial decree for water right no. 78-10067. *Id.* at ¶¶ 2-7, *also see* Ex. 7.

At no time prior to the filing of the Transfer Application have the Wallaces ever attempted to lawfully appropriate the water from the springs located on the Kalinowski and Henley’s properties. That is why, when Dr. Kalinowski and the Henleys contacted the Department concerning the Wallaces’ ongoing misrepresentations as to their ownership of the springs, the Henleys and Dr. Kalinowski were finally able to make application to appropriate the water for useful purposes on their own properties. The substantial evidence in the record entirely contradicts the findings of fact made by the Hearing Officer in his Preliminary Order for Transfer no. 81039 and must be reversed.

II. The Hearing Officer Improperly Determined that the Wallaces Did Not Initiate their Water Rights in Trespass, and that they Have Legal Access to the Points of Diversion:

Mr. Wallace, in his Affidavit, testified that the property where the points of diversion for water right no. 78-10067 are located was sold to “Phil and Kenny Walters in the 1970s.” Ex. 17, Aff. of Leonard Wallace, ¶ 3. He also testified that the place of use, the Wallace property was retained by the Wallaces, however, that claim was undermined when Exhibit 22 revealed that the place of use was actually transferred back to the Wallaces from HJP Partners, on April 10, 1995. Ex. 22. HJP Partners had purchased the property from the Walters in 1993. Ex. 17, Aff. of

Leonard Wallace, ¶ 4. Mr. Wallace in his affidavit testified that “[a]lthough the location of the point of diversion was owned by the Walters, Charles Wallace used and claimed a water line easement to access the spring water through a pipeline to his property through the property owned by the Walters.” Ex. 17, Aff. of Leonard Wallace, ¶ 3. It is noteworthy that here Mr. Wallace claims only pipeline for delivery of water to the Wallace property, which would correspond to the 1977 claim to water right no. 78-4076. Further, there is no evidence in the record that the claimed easement was ever recorded or otherwise provided to the Wallaces by the Walters. Also, while it cannot be known, it is questionable whether the Wallaces owned the land at the claimed points of diversion for water right no. 78-4076 in 1977 when they were claimed.

When water right claim no. 78-10076 was filed in 1988, which the Hearing Officer noted was not based on a prior license or decree, the Wallaces did not own the land on which the claimed points of diversion were located nor did they own the land at the place of use. Nor did the Wallaces provide any evidence that they had permission or legal access to either of the claimed points of diversion for water right no. 78-10067. There is no evidence in the record that the Wallaces ever had legal authority to claim water right no. 78-10067, and they do not have the legal authority to move the points of diversion from the decreed points, where evidence demonstrates historic springs existed, to the land now owned by Dr. Kalinowski and the Henleys. The springs and surface waters that Dr. Kalinowski and the Henleys applied to appropriate in water right application nos. 78-12039 and 78-12447 are unappropriated waters, and the Hearing Officer was incorrect when he determined that the transfer would not equate to the development of a water right in trespass.

While the Constitution and laws of this state specifically recognize the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, and that such right shall never be denied, still such provisions of the Constitution and statute do not authorize a person to go upon private property

of another for the purpose of making an appropriation. The Constitution and laws of this state specifically recognize the right to divert and appropriate the unappropriated waters of any natural stream to a beneficial use, and that such right shall never be denied; but this does not mean that a person is given a right to go upon the private property of another for the purpose of making an appropriation, without the license or consent of the owner, or before such right is given by proceedings for condemnation...[I]t is the appellant's right by reason of his ownership of the land to have exclusive possession of said land, and said owner is protected against any right that is attempted to be acquired by trespass thereon in the way of an attempt to appropriate the water running across the land, and neither the respondent, nor any other person, can divert such water without entering upon and leading it across the lands of the appellant, or using the lands of the appellant in distributing the power created by the use of such water, and committing a continuous trespass.

Marshall v. Niagra Springs Orchard Co., 22 Idaho 144, 147-148, 125 P. 208, 211-212

(1912)(distinguished by *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974) on other grounds relating to the power of eminent domain.) At no time when the original claim to water right no. 78-10067 was filed, nor when the transfer application no. 81039 was filed did the Wallaces have legal permission to enter the lands of another in order to develop the spring rights. Granting the Wallaces' water right transfer because pipelines are already in place would be to condone the illegal development of the springs in trespass.

Despite acknowledging at the beginning of the contested case hearing that he did not have the authority to make determinations concerning the legal access to Kalinowski and Henley properties, the Hearing Officer nevertheless then went on to find, based on a misstatement of the record, that "[s]ubstantial evidence in the record indicates that the necessary easements are already in place, which would allow Wallace to divert water from the springs." Transfer Order, p. 4. The hearing officer improperly states that "Henley and Kalinowski acknowledge that there are recorded easements running from the proposed spring points of diversion to the Wallace property." *Id.* p. 3. This is a gross misstatement of the testimony and evidence.

Both Dr. Kalinowski and Mr. Henley testified that they were given copies of the plats indicating that there were irrigation easements running across their property when they purchased their properties, but that such easements were not dedicated to the public, and no private easement burdening their properties were recorded. The Declaration of Protective Covenants, Conditions and Restrictions for Timber Ridge Subdivision, Exhibit 103, further protected and assuaged any concerns of the Henleys and Dr. Kalinowski. Section 4.16 titled irrigation easements states specifically that “[a]ccess to irrigation easements shall be limited to those Lot owners who have a point of diversion or headgate on another Lot that directly controls their water use and/or an appointed Water Master.” Ex. 103, § 4.16. *Also see* Ex. 105, p. 2 (Wallaces are not a numbered lot on the plat.) The Wallaces do not belong to the Timber Ridge Subdivision, and therefore do not benefit from the Timber Ridge CC&Rs. They are not Lot owners as that term is defined within the context of the Timber Ridge CC&Rs. Testimony of Mrs. Wallace and Mr. Alter.

The necessary easements are not in place, as erroneously found by the Hearing Officer. The platted irrigation easements do not benefit the Wallaces, as they are not Lot owners of the Timber Ridge Subdivision. There are no recorded easements benefitting the Wallace property and burdening the Kalinowski and Henley properties in favor of Wallace. The Hearing Officer’s grant of the Wallace’s transfer application results in a water right initiated in trespass, and the Hearing Officer’s determination otherwise must be reversed.

III. Granting the Wallace’s Transfer Application Results in Injury to the Earlier Filed Applications of Kalinowski and Henleys:

The Hearing Officer’s determination that the transfer will not result in injury ignores the relative priorities of the three applications, and ignores the fact that the transfer application allows the Wallaces to appropriate previously unappropriated water. It is undisputed in the

record that the two springs at issue in the transfer application were unappropriated waters at the time Dr. Kalinowski and the Henleys filed water right application nos. 78-12439 and 78-12447. “An applicant’s interest in an application for permit to appropriate water is personal property.” IDAPA 37.03.08.035.02.d. Dr. Kalinowski filed his application for water right no. 78-12439 on May 2, 2016, more than two months before the transfer application was filed. The Henleys filed their application for water right no. 78-12447 on July 12, 2016, the same day that the transfer application was filed. Approving the transfer application injures the prior filed water right applications of Dr. Kalinowski and the Henleys, and has deprived them of the only sources of irrigation water on their respective properties, in violation of Idaho Code § 42-222(1).

IV. The Hearing Officer’s Determination that there Was Insufficient Evidence of Sufficiency of Water Supply to Grant Water Right Nos. 78-12439 and 78-12447 Was In Error:

After misstating the sources of the Henleys claimed water rights as “three springs,” the Hearing Officer went on to determine that there was insufficient evidence in the record as to the sufficiency of the water supply and that it had not been proven that granting the water right would not reduce the quantity of water available to other users on Threemile Creek. He therefore rejected application no. 78-12447. The Hearing Officer rejected the Kalinowski application no. 78-12039 for the same reasons. However, there is sufficient evidence in the record demonstrating that sufficient water is available in Threemile Creek to supply the water sought by both applications, and that no other water right will be reduced by granting the rights.¹

Prior to the contested case hearing, the Hearing Officer notified the parties that he would be taking official notice of a number of water right decrees on Sewell Creek as and Threemile

¹ While the Department has an independent duty to confirm the sufficiency of water supply and to determine whether there will be a reduction in the rights of others, it is noteworthy that no downstream water right user on Threemile Creek protested these applications, especially given the abundant water right activity in this Basin over the past year.

Creek, as well as the Water District 78C delivery records for the years 2012 through 2016.² Two of the water rights which the Hearing Officer took official notice of contained in their backfiles, records related to transfer no. 80338, water right nos. 78-4130 and 78-12443. Additionally, Exhibit 12 in the record is an IDWR memorandum memorializing the results of a field visit for investigation of that transfer application. A review of the backfile for that transfer application, which the Director may take official notice of based on the introduction of Exhibit 12 and officially noticed files of the Hearing Officer, includes instantaneous discharge measurements taken above and in Threemile Creek on June 30, 2016. The flow measurements taken during the field exam, and referenced in the accompanying photos, as well as the flow meter data, indicate that there is well in excess of the 12.1 cfs of water currently appropriated in Threemile Creek available for additional appropriation. *See* Attachment E, portions of transfer application 80338 backfile. The Water District 78C delivery records contain no information concerning deliveries from Threemile Creek. The Hearing Officer's determination that there was not sufficient evidence demonstrating that the water supply will support the new appropriations was in error.

Additionally, he states that Dr. Kalinowski and the Henleys did not supply sufficient evidence that the springs are capable of supplying the water claimed from the springs. The record makes clear that both applicants were barred from making measurements of the spring discharges as a result of the Wallaces illegal diversions therefrom. In fact, the Wallaces had capped and locked the spring on Dr. Kalinowski's property. *See* Application No. 78-12439 and Ex. 10. If the springs are adequate to supply the Wallaces' ongoing illegal diversion, then they will be sufficient to supply the earlier filed applications of Dr. Kalinowski and the Henleys. Dr. Kalinowski and the Henleys cannot be punished for being improperly and illegally prevented

² The Hearing Officer notified the parties via email, and the email and attached documents do not appear in the record for the contested case. The email was sent to the parties on June 7, 2017. *See* Attachment D.

from accessing the springs on their properties in order to measure the flow rate therefrom, while the Wallaces are rewarded for years of illegal diversion initiated and continued in trespass.

CONCLUSION

The Hearing Officer ignored substantial evidence in the record in order to reach the result that he did in this action. It is possible that the Hearing Officer was concerned by the Wallace's claims that the springs are their only domestic water source, but that is not the case. The Wallaces were connected to a potable water well in April of this year. See Ex. 20, and Mrs. Wallace testimony. The substantial evidence in the record demonstrates that the Wallaces had never claimed that the springs on the Kalinowski and Henley properties were the proper points of diversion for water right no. 78-10067 until after Dr. Kalinowski and the Henleys made their applications to appropriate the water; water that the Department represented to them was unappropriated and available for appropriation. Further, there is substantial and compelling evidence in the record that there is sufficient water available for appropriation in Threemile creek and that such appropriations will not reduce the quantity of water available under other rights. For these reasons, the Director should reverse the results reached by the Hearing Officer in his Preliminary Orders for transfer no. 81039, and application nos. 78-12439 and 78-12447.

DATED this 30th day of August, 2017.

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis
Attorney for Applicants/Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2017, I caused a true and correct copy of the foregoing **KALINOWSKI AND HENLEYS' EXCEPTIONS TO PRELIMINARY ORDERS FOR TRANSFER APPLICATION NO. 81039, AND WATER RIGHT APPLICATION NOS. 78-12439 AND 78-12447** to be filed with the Idaho Department of Water Resource via Hand Delivery and a true and correct copy served upon the following parties by the indicated methods:

Served on:

Mike and Eulla Wallace
3288 Wallace Lane
New Meadows, ID 83654

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☒ Email



Shelley M. Davis

Attorney for Protestants/Applicants

ATTACHMENT A

To Whom it may Concern

My name is Clyde F. Dillon. I currently reside at 3806 Shadow Pine Cr , Timber Ridge Sub in New Meadows Idaho. In October of 2000, I contracted JRU Well Drilling to put a well on my property. We were fortunate to hit an artesian water flow. The drilling company vented the well to an appropriate location to allow it to flow. At the time, we were still living in Arizona. I was contacted a short time later by the Wallace family who reside down slope with a complaint that the water emanating from my well was effecting the water flowing to their property. I contacted my well driller to determine the problem and resolve it. He reported back to me that he had done so and insulated my well head for the winter.

Clyde F. Dillon

8/24/17

ATTACHMENT B





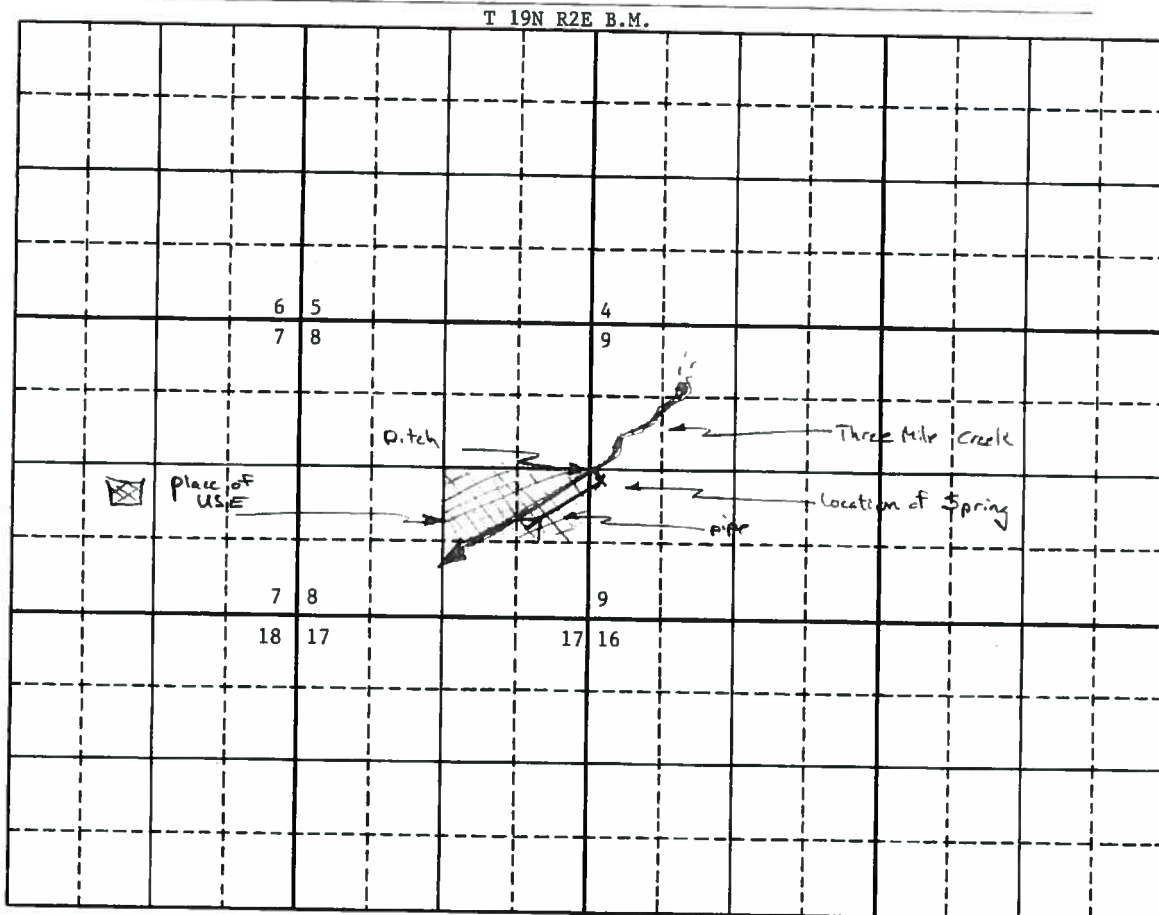






ATTACHMENT C

(8) Remarks _____



Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Valley) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Sworn to before me this 4th day of January, 1977.

Charles McCall
(Claimant)
Kathleen Lynn Kellen
Notary Public
Residing at McCall

My commission expires no definite

For Department Use Only

Received by <u>af</u>	Date <u>1-5-77</u>	Exception filed by:	Forwarded to	Date
Prelim. check by <u>af</u>	Date <u>1-5-77</u>		claimant by:	
\$10.00 fee received by <u>af</u>	Date <u>1-5-77</u>	<u>= 4.158</u>		
Approved for publication by <u>af</u>				
Published in <u>Idaho County News</u>				
Dates <u>Jan 22 - 28, 1977</u>				

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

Leader, a newspaper; that a copy of the "Notice of Claim to a W

No. 78-4076 Charles Wallace & Sons as per clipping hereto attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for two (2) consecutive weeks, the first publication of the

same being made in the issue dated January 13, 1977

and the last in the issue dated January 20, 1977 that said newspaper is of general circulation in Adams County Idaho, printed and published weekly at Council therein and that said newspaper has been continuously and uninterruptedly published in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of

said " Notice " as aforesaid.

Subscribed and sworn to before me this

day of

19

Notary Public for Idaho,
Residing at Council, Idaho

NOTICE OF CLAIM TO A WATER RIGHT

No. 78-4076

Notice is hereby given that CHARLES WALLACE & SONS, INC., Box 31, New Meadows, ID has filed a claim to a water right established by diversion and application to beneficial use of 0.2067 cubic feet per second of water from unnamed spring tributary to Three Mile Creek with the point of diversion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 9 T19N-R2E B. M., Adams County.

The water is claimed to be used from Jan 1 to Dec 31 for domestic purposes and from Apr 20 to Sept 15 for irrigation of 80 acres with a priority of April 20, 1960; the place of use is within the N $\frac{1}{2}$ SE $\frac{1}{4}$ Sec 8 T19N-R2E B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, Statehouse, Boise, Idaho, 83720.

R. KEITH HIGGINSON

Director

Published in the Adams County Leader, Council, ID on January 13, 1977 and January 20, 1977.

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JAN 21 1977

Department of Water Resources
Western Regional Office

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1-24-77
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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Section 42-225a, Idaho Code

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that Charles Wallace and Sons, Inc.
(name of claimant)
of Box 31, New Meadows, Idaho 83654, claims a right to the diversion and beneficial use of
(mailing address)
the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) unnamed spring
_____, tributary to, Three Mile creek
- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:
- | | | | | | | | | |
|--------|----------------------|-----|-------------------------------|----------------|------|-----------------|----|------------------------|
| Amount | <u>75 gpm</u> | Use | <u>irrigation</u> | Period of Use: | From | <u>20 April</u> | To | <u>15 Sept.</u> |
| Amount | <u>.04 cfs</u> | Use | <u>domestic</u> | Period of Use: | From | <u>1 Jan.</u> | To | <u>31 Dec.</u> |
| Amount | _____ | Use | _____ | Period of Use: | From | _____ | To | _____ |
| | (cfs, gpm
or a/f) | | (dom., irri.,
stock, etc.) | | | | | (both dates inclusive) |

- (3) Total quantity of water claimed: 2067 cfs cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute. (assumes 1 cfs = 450 gpm)
- (4) Priority claimed: (the date water was first applied to beneficial use) 20 April 1950
- A claim is not acceptable on a ground-water source with a priority later than March 25, 1963 or on a surface-water source with a priority later than May 20, 1971. An exception to this rule is that a claim may be filed on domestic use from a ground-water source.

- (5) A) Point of diversion: (give location of point where water is diverted from its source)
NW 1/4 SW 1/4, Sec. 9 Twp. 19N Rge. 2E B. M. County of Adams
 Additional points of diversion:

B) Describe means of diversion of water: (pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.) Give sizes and capacities; be as specific as possible. 3" pipe plus gravity; also by ditch
to adjacent Three mile creek.

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

[illegible]

Total No. of acres 80

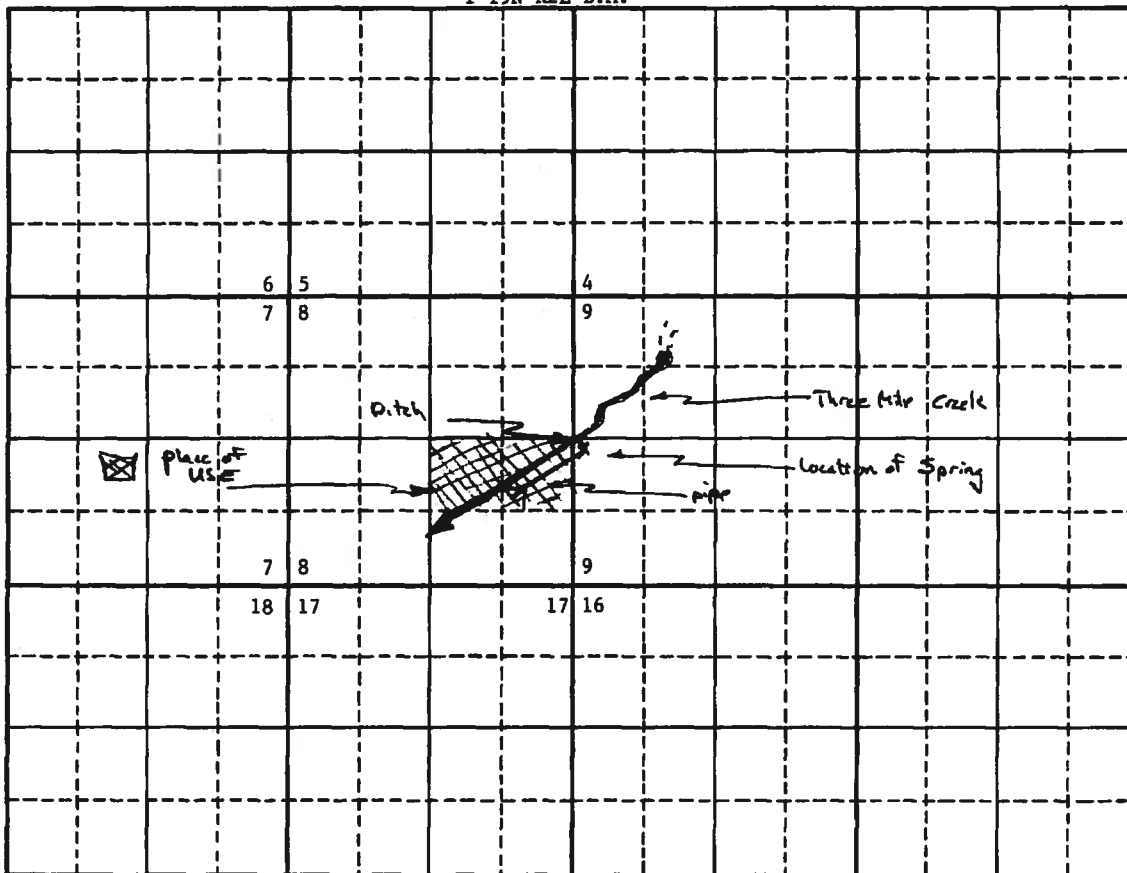
- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible: Household
domestic use on portion of NE $\frac{1}{4}$ of SE $\frac{1}{4}$.

- (7) If you are claiming water as a member of an organization, list name of organization: As President of
Charles Wallace and Sons, Inc.

MICROFILMED

(8) Remarks _____

T 19N R2E B.M.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
) ss.
County of Valley)

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiants knowledge.

Charles Wallace
(Claimant)

Sworn to before me this 4th day of January, 19 77 (Claimant)

Notary Public
Residing at McCall

My commission expires no definite

For Department Use Only

Received by M Date 1-5-77 Exception filed by: _____ Forwarded to _____ Date _____
Prelim. check by R. W. H. Date 1-5-77 _____ claimant by: _____
\$10.00 fee received by M Date 1-5-77 26158 _____
Approved for publication by M 1-24-77 _____
Published in Groomer County Leader _____
Dates 1-15-77 to 2-1-77 _____

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State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, depose and say that I am the publisher of The Adams County

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No. 78-4076 Charles Wallace & Sons as per clipping hereto attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for two (2) consecutive weeks, the first publication of the

same being made in the issue dated January 13, 1977

and the last in the issue dated January 20, 1977 that said newspaper is of general circulation in Adams County Idaho, printed and published weekly at Council therein and that said newspaper has been continuously and uninterruptedly published in said county during a period of more than seventy-eight consecutive weeks prior to the first publication of

said "Notice" as aforesaid.

Subscribed and sworn to before me this

day of . 19 .

Notary Public for Idaho,
Residing at Council, Idaho

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Notice is hereby given that CHARLES WALLACE & SONS, INC., Box 31, New Meadows, ID has filed a claim to a water right established by diversion and application to beneficial use of 0.2067 cubic feet per second of water from unnamed spring tributary to Three Mile Creek with the point of diversion in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec 9 T19N-R2E B. M., Adams County.

The water is claimed to be used from Jan 1 to Dec 31 for domestic purposes and from Apr 20 to Sept 15 for irrigation of 80 acres with a priority of April 20, 1950; the place of use is within the N $\frac{1}{4}$ SE $\frac{1}{4}$ Sec 8 T19N-R2E B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, Statehouse, Boise, Idaho, 83720.

R. KEITH HIGGINSON

Director

Published in the Adams County Leader, Council, ID on January 13, 1977 and January 20, 1977.

Department of Water Resources
Water Rights Section
Boise, Idaho

OK
1-24-77
y

MICROFILMED

Affidavit of Publication

State of Idaho, County of Adams, ss:

I, Bert J. Rogers, being first duly sworn upon my Oath, do
pose and say that I am the publisher of The Adams County

Leader, a newspaper; that a copy of the " Notice of Claim to a Water Right "

No. 78-4076 Charles Wallace & Sons as per clipping
hereto attached, was published in the regular and entire issue
of said newspaper, and not in any supplement thereof, for
two (2) consecutive weeks, the first publication of the
same being made in the issue dated January 13, 1977

and the last in the issue dated January 20, 1977
that said newspaper is of general circulation in Adams County
Idaho, printed and published weekly at Council therein and
that said newspaper has been continuously and uninterrupted-
ly published in said county during a period of more than sev-
enty-eight consecutive weeks prior to the first publication of

said " Notice " as aforesaid.

Subscribed and sworn to before me this

day of . 19 . .

Notary Public for Idaho,
Residing at Council, Idaho

ed with daughter and family, Mr.
and Mrs. Lee Phillips and son
Dale in Fairbanks and open
New Years in Seldovia with
daughters and family, Mr. and Mr.
Dick Freeman.
Mr. and Mrs. Ken Johnson re-
turned home Saturday from a 2
and a half week visit with the
son and wife, Mr. and Mrs. Leroy
Johnson in New Orleans. The
four Johnsons traveled to the At-
lantic and a visit to Cape Ken
next month and toured th-

Department of Lands
Western Regional Office

OK
1-24-77
y

MICROFILMED

WATER RIGHT NUMBER 78-4076

PAGE 136

10/05/79

WATER RIGHTS EDIT REPORT

ACT
ION

N OWNER LAST NAME - CHAPMAN KATHLEEN A SUEB INC.

N ADDRESS LINE 1 - P.O. BOX 31

N SOURCE - SPRING

N STAGE - STAFFY CLN

N DIVERSION POINT - NWSW 09 19N 02E

N FROM - 04-20 TO - 09-15 USE - IRRIGATION

N FROM - 01-01 TO - 12-31 USE - DOMESTIC

N USE - IRRIGATION

N USE - DOMESTIC

CITY - NEW MEADOWS

TRIBUTARY OF - INTERMITTENT CREEK

PRIORITY - 04-20-1950

USE DIV. RATE - .1700CFS

USE DIV. RATE - .0400CFS

PLACE OF USE - TWN 19N R1G 02E SEC 08 TRACT NESE

PLACE OF USE - T2N 19N R1G 02E SEC 08 TRACT NESE

STATE - ID ZIP CODE - 83654

COUNTY - ADAMS TOTAL DIV. RATE - .2100CFS

AC 40 TRACT NWSE

AC 40

3/79

IDENT. NO. 78-4076

I D A H O D E P A R T M E N T O F W A T E R R E S O U R C E S

WATER RIGHT DATA ENTRY LOG

[illegible]

WATER RIGHT ANALYSIS FORM

- DATA ENTRY -

Identification No. 1 78-4076
 Old No. _____ New No. _____

Record

1. Original Owner: Charles Wallace & Sons Inc.

Present Owner: _____

2. Address: P.O. Box 31

3. City: New Meadows State: ID Zip: 83654

4. A. Source of Water: spring

B. Tributary of: Threemile Creek

5. A. Stage (A,P,L,D,S,J): S

B. Status (D,L,R,C,A,I,F - leave blank if valid):

C. Priority Date: 4-20-1950

D. County: 03

E. Total Diversion Rate: .21

F. Total Diversion Volume:

G. Transfer/Amendment (P,T of A or blank):

H. Water District:

I. DLE/Carey Act (D,C or blank):

J. Right Basis (for adjudication claims A,B,C only):

	Tract	Sec.	Twp.	Rge.	Gov't Lot Rediv.
6. A. Point of Diversion	<u>NW 1/4</u>	<u>9</u>	<u>19N</u>	<u>2E</u>	

7. Period of Use, Use, Diversion Rate/Volume:

from 4-20 to 9-15 for A purposes. Amount .17
 (cfs or ~~AC~~ ft³/yr)

from 1-1 to 12-31 for D purposes. Amount .04

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

from _____ to _____ for _____ purposes. Amount _____

10379

[illegible]

9. A. Decree Name:

B. Decree Date:

10. Remarks: A.

B.

C.

D.

E.

11. Other Uses (Non-irrigation explanatory information):

12. Other Rights for Same Use:

13. A. Proof Due Date:

B. Date Permit Approved or Denied:

C. Protested Date:

D. Hearing Date:

E. Old Number:

F. Proof Made (P or blank):

G. Field Exam Made (P,R,F or blank):

H. Conditions of Approval: _____

14. Diversion Means (brief narrative):

DEPARTMENT OF WATER RESOURCES
- STAFF ANALYSIS -

Item Initial Date

Claim

Application No. _____

- ☒ Source
- ☒ Point of Diversion
- ☒ County
- ☒ Quantity of Water and Period of Use
- ☒ Description of Diverting Works
- ☒ Time required for B/U of water
- ☒ Place of Use or Acres Irrigated
- ☒ Map
- ☒ Signature
- ☒ Fee

____ Pre-permit exam
____ Adjudication Claim
____ Dam Construction
____ Papers Sent

(1) RWH 1-5-77

In form to receipt

(2) _____

Send Copies to:

- ☐ Idaho State Health Department
- ☐ Idaho Fish and Game Department
- ☐ Bureau of Land Management

(3) _____

- ☐ Request Special Use Permit from U.S.F.S.
- ☐ Request Easement from B.L.M.
- ☐ Request Information from Applicant

(4) RWH 1-5-77

In form for advertising

(5) _____

Platted on Map No. _____

(6) _____

Located within Water District No. _____

(7) _____

Critical groundwater area: yes _____ no _____

(8) _____

Groundwater levels: N/A

_____ Declining, _____ Stable, _____ Increasing

(comment) _____

(9) _____

Other rights on the same place of use

(10) _____

Comments: _____

(11) af ok

Affidavit of Publication received (date) 1-24-77

(12) _____

Final date for protests N/A

Protests received: yes _____ no ☒

(13) _____

All requested information received from agencies or applicant: yes _____ no _____

(14) _____

Action recommended:

☒ Approve _____ Deny

_____ Proposed Priority

_____ Reason for Reduction _____

NO Measuring device required

See attached sheet for other conditions of approval

_____ No special conditions for approval

(15) District W

By WHA Date 2-7-77

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WESTERN DISTRICT — ANNEX 3

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2190

January 7, 1977

Re: Notice of Claim to a Water Right No. 78-4076 - Charles Wallace & Sons

Adams County Leader
Council,
Idaho 83612

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear in the bill:

"I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

Sincerely,

(Signature of Claimant)

Bill Submitted
1-24-77
[Signature]

MICROFILMED

NOTICE OF CLAIM TO A WATER RIGHT

No. 78-4076

Notice is hereby given that CHARLES WALLACE & SONS, INC.,
Box 31, New Meadows, ID
has filed a claim to a water right established by diversion and application
to beneficial use of 0.2067 cubic feet per second ~~XXXXXX~~ of water
from unnamed spring tributary to Three Mile Creek
with the point of diversion in the NW 1/4 Sec 9 T19N-R2E R.M., Adams
County.

The water is claimed to be used from Jan 1 to Dec 31
for domestic purposes and from Apr 20 to Sept 15 for irrigation of 80
XXXXXX acres
with a priority of April 20, 1950;
the place of use is within the N 1/4 Sec 8 T19N-R2E R.M.

Any exception to this claim of water right may be filed with the Idaho
Department of Water Resources, Statehouse, Boise, Idaho, 83720.

R. KEITH HIGGINSON

Director

Published in the Adams County Leader, Council, ID
on January 13, 1977 and January 20, 1977.

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WESTERN DISTRICT — ANNEX 3

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2190

January 6, 1977

Charles Wallace & Sons, Inc.
Box 31
New Meadows, ID 83645

Gentlemen:

Enclosed is your Receipt No. 6158 in the amount of \$10.00
for Claim to a Water Right No. 78-4076 which was received in this
office on January 5, 1977.

Sincerely,

RITA BENDELE
Senior Clerk

RB

Enclosure

MICROFILMED

If you have any
questions regarding the
information on this water
right claim, please
contact our office.

Bill Killen
634-7348
McCall

MICROFILMED

**WILLIAM M. KILLEN
LAWYER**

**OFFICE 634-7118
RESIDENCE 634-7348**

**P.O. BOX 1388
MCCALL, IDAHO 83638**

ATTACHMENT D

Shelley Davis

From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Wednesday, June 07, 2017 2:30 PM
To: Mike & Sissy Wallace; Shelley Davis
Subject: Official Notice Documents
Attachments: Threemile Creek Rights.pdf; Seawell Creek Rights.pdf; WD78C Records.pdf

Dear Parties,

Pursuant to Rule 602 of the Department's Rules of Procedure, a hearing officer can take official notice of technical information, records or data within the possession of the Department. During the hearing I will take official notice of certain water rights on Threemile Creek and Seawell Creek. Attached are water right reports showing the elements of those rights. I will also take official notice of the 2012-2016 delivery records from Water District 78C (Goose Creek). Copies of those records are attached. These water district records can also be found at <https://idwr.idaho.gov/water-rights/water-districts/search.html> . Enter 78C in the "District Number" field to search the records for that water district. I will bring extra copies of all of these documents to the hearing.

Thanks,

James Cefalo
Water Resources Program Manager
IDWR Eastern Region
(208) 525-7161

ATTACHMENT E

Site Visit
Transfer 80338
6/30/16

3-6: Point of Diversion

2

1

7-12: "Injection" point

Diversion point on
Threemile to smaller ditch

13

POU

Spring #1 (Kalinowski)

Spring #2 (Henley)

14: Proposed re-diversion

Re-entry of water into Threemile Creek

0 0.2 0.4 0.6 Miles

DITCH 1 Flow Meter Data (Connection Ditch below Seawell Creek)

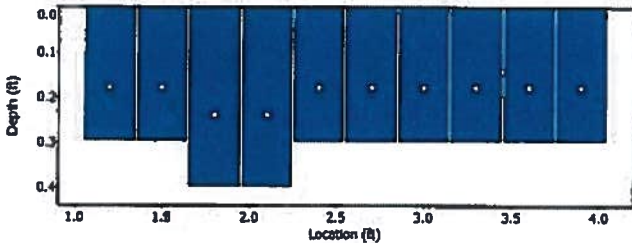
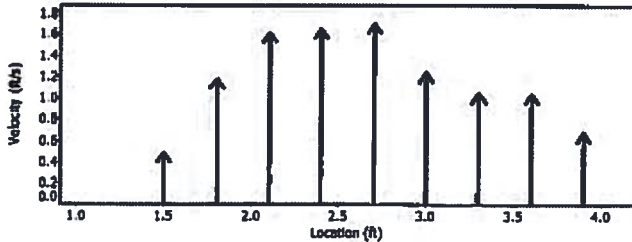
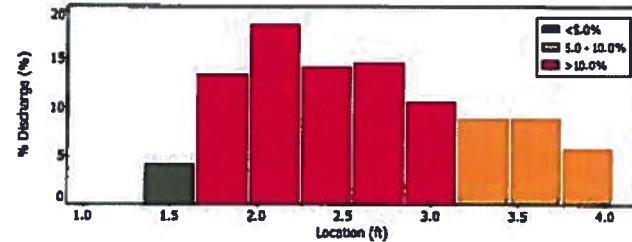
Discharge Measurement Summary

Date Generated: Tue Jul 5 2016

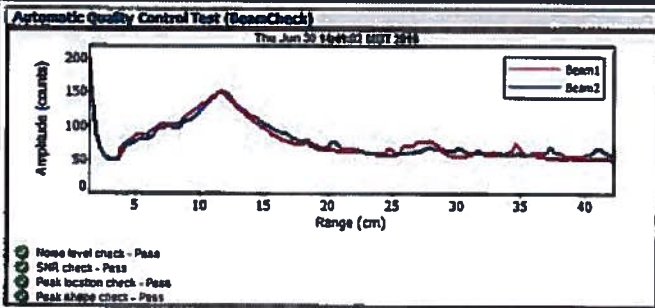
File Information				Site Details	
File Name	DITCH1.WAD			Site Name	DITCH1
Start Date and Time	2016/06/30 14:43:58			Operator(s)	DH
System Information		Units (English Units)		Discharge Uncertainty	
Sensor Type	FlowTracker	Distance	ft	Category	ISO
Serial #	P4553	Velocity	ft/s	Accuracy	1.0%
CPU Firmware Version	3.7	Area	ft ²	Depth	0.5%
Software Ver	2.30	Discharge	cfs	Velocity	2.9%
Mounting Correction	0.0%			Width	0.2%
				Method	2.7%
				# Stations	4.2%
				Overall	5.9%
Summary					
Averaging Int.	20	# Stations	12		
Start Edge	LEW	Total Width	3.302		
Mean SFR	43.3 dB	Total Area	0.960		
Mean Temp	52.07 °F	Mean Depth	0.291		
Disch. Equation	Mid-Section	Mean Velocity	1.0884		
		Total Discharge	1.0451		

St	Clock	Loc	Method	Depth	%Depth	MeanD	Vel	Correctd	MeanV	Area	Flow	%Q
0	14:43	0.00	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0
1	14:44	1.50	0.6	0.300	0.6	0.120	0.0000	1.00	0.0000	0.000	0.0000	0.0
2	14:45	1.50	0.6	0.300	0.6	0.120	0.0000	1.00	0.0000	0.000	0.0000	0.0
3	14:47	1.80	0.6	0.450	0.6	0.180	1.0000	1.00	1.0000	0.180	0.1800	17.3
4	14:48	2.10	0.6	0.450	0.6	0.180	1.0000	1.00	1.0000	0.180	0.1800	17.3
5	14:49	2.40	0.6	0.300	0.6	0.120	1.0000	1.00	1.0000	0.120	0.1200	11.5
6	14:51	2.70	0.6	0.300	0.6	0.120	1.0000	1.00	1.0000	0.120	0.1200	11.5
7	14:52	3.00	0.6	0.300	0.6	0.120	1.0000	1.00	1.0000	0.120	0.1200	11.5
8	14:53	3.30	0.6	0.300	0.6	0.120	1.0000	1.00	1.0000	0.120	0.1200	11.5
9	14:54	3.60	0.6	0.300	0.6	0.120	1.0000	1.00	1.0000	0.120	0.1200	11.5
10	14:54	3.90	0.6	0.300	0.6	0.120	0.6821	1.00	0.6821	0.080	0.0814	7.8
11	14:54	4.20	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0

Rows in italics indicate a QC warning. See the Quality Control page of this report for more information.



St	Loc	%Depth	Message
1	1.50	0.6	SNR (26.4) is different from typical SNR (43.3)
2	1.50	0.6	Boundary QC is Fair; possible boundary interference
3	1.80	0.6	Boundary QC is Fair; possible boundary interference
4	2.10	0.6	High number of splashes
5	2.40	0.6	High standard error: 0.170
6	2.70	0.6	High standard error: 0.164



DITCH 3 Flow Meter Data (Connection Ditch above confluence)

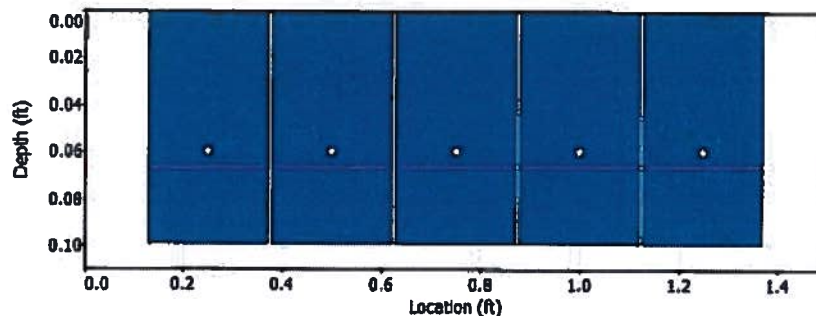
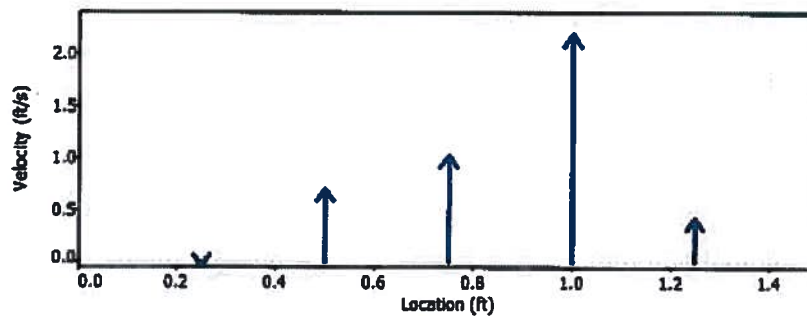
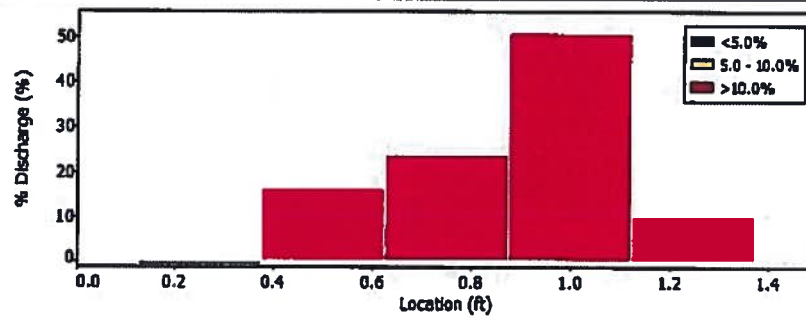
Discharge Measurement Summary

Date Generated: Tue Jul 5 2016

File Information		Site Details	
File Name	DITCH3.WAD	Site Name	
Start Date and Time	2016/06/30 16:12:43	Operator(s)	DM
System Information		Units (English Units)	
Sensor Type	FlowTracker	Distance	ft
Serial #	P4553	Velocity	ft/s
CPU Firmware Version	3.7	Area	ft ²
Software Ver	2.30	Discharge	cfs
Mounting Correction	0.0%	Discharge Uncertainty	
Summary		Category	ISO Stats
Averaging Int.	20	Accuracy	1.0% 1.0%
Start Edge	LEW	Depth	0.9% 0.0%
Mean SNR	50.1 dB	Velocity	4.2% 37.4%
Mean Temp	50.50 °F	Width	0.3% 0.3%
Disch. Equation	Mid-Section	Method	4.5%
		# Stations	7.8%
		Overall	10.6% 37.5%
# Stations	7		
Total Width	1.500		
Total Area	0.125		
Mean Depth	0.083		
Mean Velocity	0.8637		
Total Discharge	0.1080		

Measurement Results													
St	Clock	Loc	Method	Depth	%Dep	MeanD	Vel	CorrFact	MeanV	Area	Flow	%Q	
0	16:12	0.00	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0	
1	16:12	0.25	0.6	0.100	0.6	0.040	-0.0522	1.00	-0.0522	0.025	-0.0015	-1.2	
2	16:13	0.50	0.6	0.100	0.6	0.040	0.7096	1.00	0.7096	0.025	0.0178	16.4	
3	16:13	0.75	0.6	0.100	0.6	0.040	1.0348	1.00	1.0348	0.025	0.0259	24.0	
4	16:14	1.00	0.6	0.100	0.6	0.040	2.1939	1.00	2.1939	0.025	0.0549	50.8	
5	16:15	1.25	0.6	0.100	0.6	0.040	0.4324	1.00	0.4324	0.025	0.0109	10.0	
6	16:15	1.50	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0	

Rows in *italics* indicate a QC warning. See the Quality Control page of this report for more information.



Quality Control			
St	Loc	%Dep	Message
1	0.25	0.6	High angle: -1.79
2	0.50	0.6	SNR (39.3) is different from typical SNR (50.1)
3	0.75	0.6	Boundary QC is Good; possible boundary interference
4	1.00	0.6	High differences in beam SNR: 58.4, 47.7
5	1.25	0.6	High standard error: 0.143

DITCH 4 Flow Meter Data (Connection Ditch above confluence, below DITCH 3)

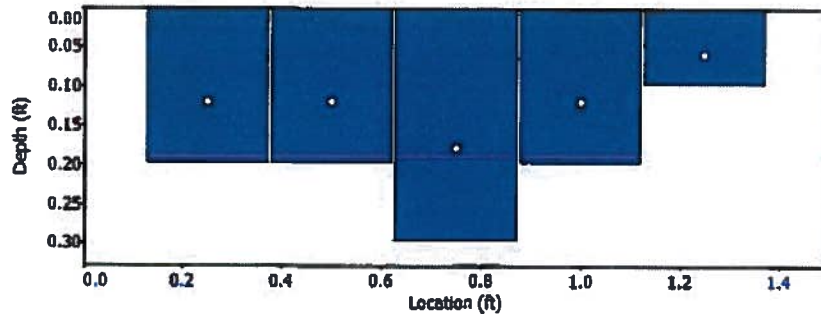
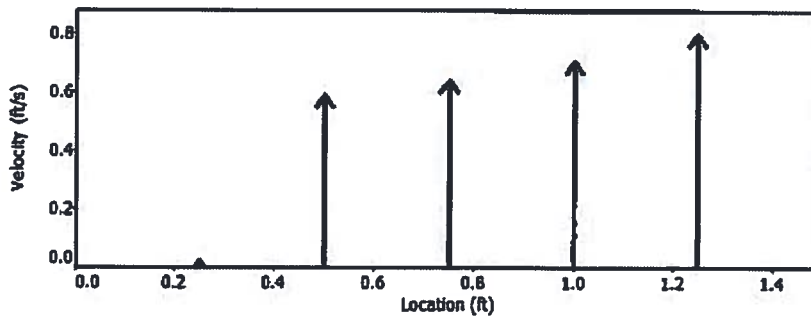
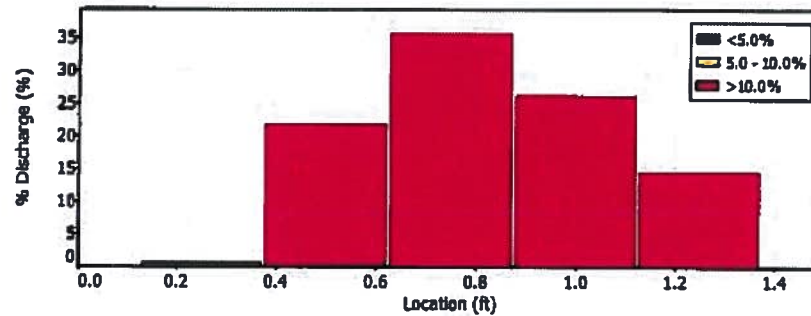
Discharge Measurement Summary

Date Generated: Tue Jul 5 2016

File Information			Site Details	
File Name	DITCH4.WAD		Site Name	
Start Date and Time	2016/06/30 16:18:49		Operator(s)	DM
System Information			Units (English Units)	
Sensor Type	FlowTracker		Distance	ft
Serial #	P4553		Velocity	ft/s
CPU Firmware Version	3.7		Area	ft^2
Software Ver	2.30		Discharge	cfs
Mounting Correction	0.0%			
Discharge Uncertainty				
Category	ISO	Stats		
Accuracy	1.0%	1.0%		
Depth	0.8%	13.5%		
Velocity	2.4%	10.6%		
Width	0.3%	0.3%		
Method	3.9%			
# Stations	7.8%			
Overall	9.1%	17.2%		
Summary				
Averaging Int.	20	# Stations	7	
Start Edge	LEW	Total Width	1.500	
Mean SNR	48.0 dB	Total Area	0.250	
Mean Temp	50.43 °F	Mean Depth	0.167	
Disch. Equation	Mid-Section	Mean Velocity	0.5394	
		Total Discharge	0.1349	

Measurement Results												
St	Clock	Loc	Method	Depth	%Dep	MeasD	Vel	Correct	MeanV	Area	Flow	%Q
0	16:18	0.00	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0
1	16:20	0.25	0.6	0.200	0.6	0.080	0.0272	1.00	0.0272	0.050	0.0014	1.0
2	16:20	0.50	0.6	0.200	0.6	0.080	0.5932	1.00	0.5932	0.050	0.0297	22.0
3	16:21	0.75	0.6	0.300	0.6	0.120	0.6440	1.00	0.6440	0.075	0.0437	32.6
4	16:22	1.00	0.6	0.200	0.6	0.080	0.7100	1.00	0.7100	0.050	0.0355	26.3
5	16:23	1.25	0.6	0.100	0.6	0.040	0.8018	1.00	0.8018	0.025	0.0201	14.9
6	16:23	1.50	None	0.000	0.0	0.0	0.0000	1.00	0.0000	0.000	0.0000	0.0

Rows in *italics* indicate a QC warning. See the Quality Control page of this report for more information.



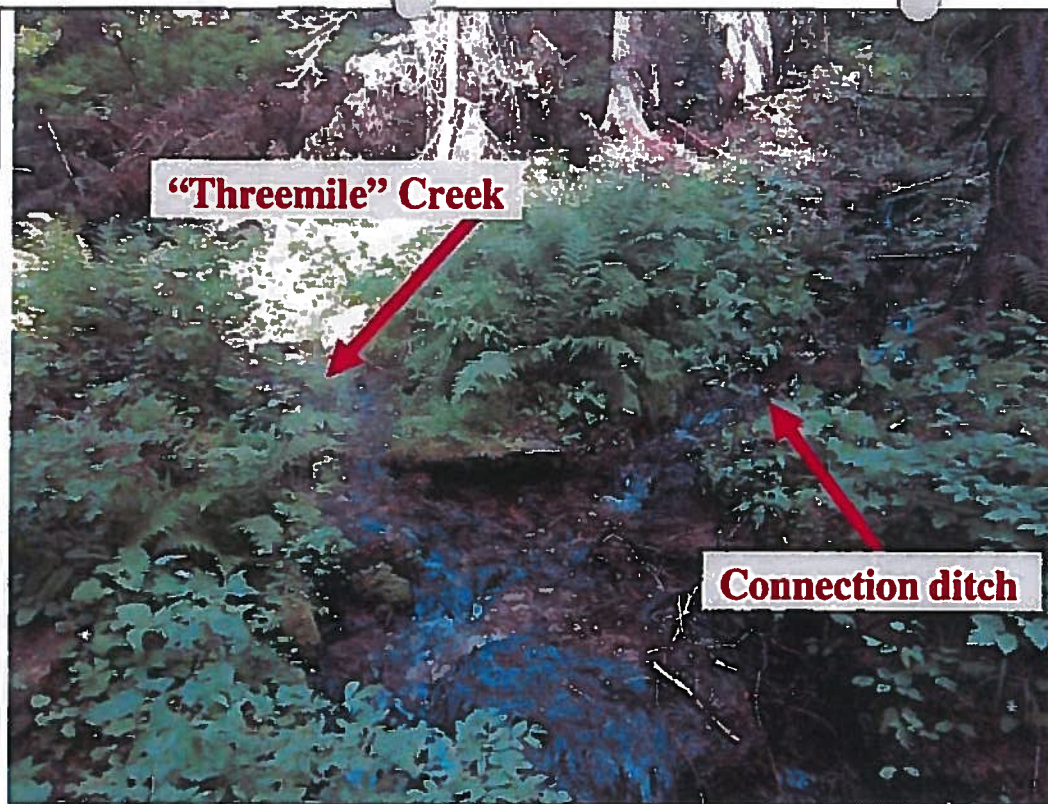
Quality Control				Message
1	0.25	0.6	High number of spikes: 3	
2	0.50	0.6	SNR (37.7) is different from typical SNR (48.0)	
3	0.75	0.6	High standard error: 0.030	
4	1.00	0.6	High standard error: 0.036	
5	1.25	0.6	Boundary QC is Good; possible boundary interference	



5. Seawell Creek after the diversion



6. Looking downstream on connection ditch. Location of flow measurement (approximately 1.0 cfs. See attached "Ditch 1" flow meter data)

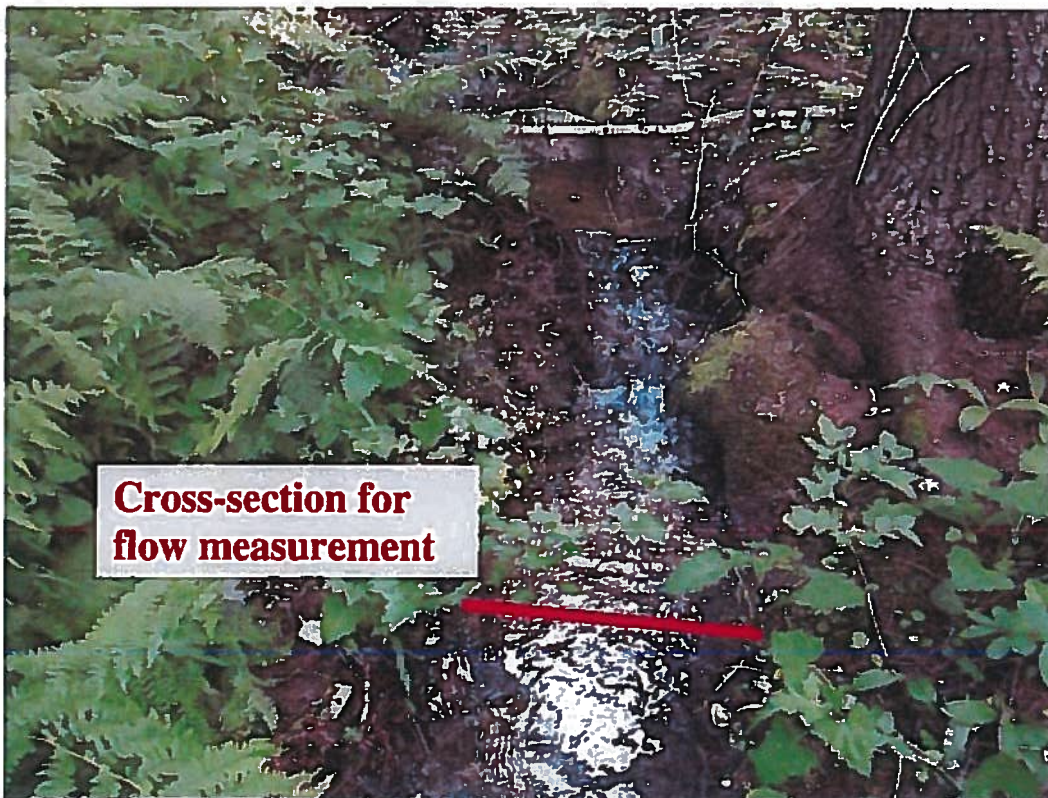


7. Looking upstream to confluence with 'Threemile Creek*' and connection ditch (the "injection point")

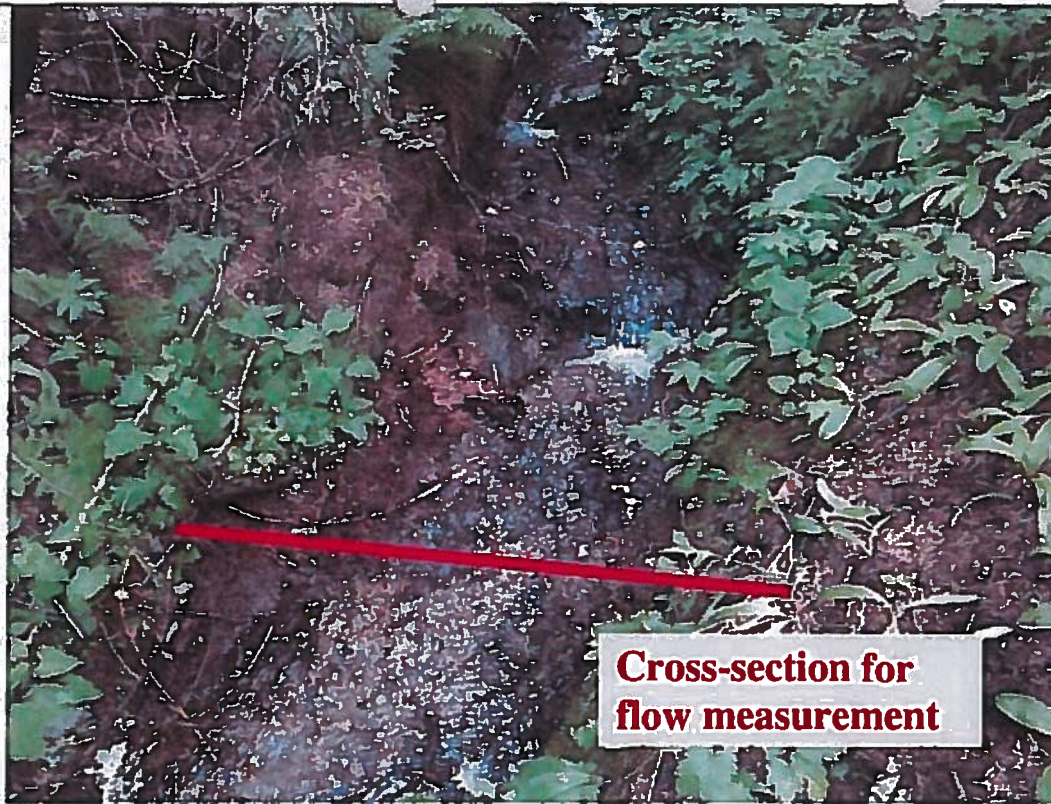
Coordinates:**
N 45.009692
W -116.203296

*Note: After comparing coordinats with DRG map, found that this was not actually Threemile Creek, but rather an unnamed intermittent stream that later connects to Threemile Creek.

**Note: coordinates are not exact. Was unable to get a 3D or 2D differential on GPS unit. Coordinates were taken slightly upstream of connection ditch on Anderson Reservoir Road)



8. Location of second flow measurement on connection ditch, slightly above confluence with Threemile Creek (approximately 0.135 cfs. See attached "Ditch 4" flow meter data. Difficult to take accurate flow measurement due to steep and shallow nature of channel)



9. Location of third flow measurement on connection ditch, slightly above second flow measurement location in picture #8 (approximately 0.105 cfs. See attached "Ditch 3" flow meter data. Difficult to take accurate flow measurement due to steep and shallow nature of channel)

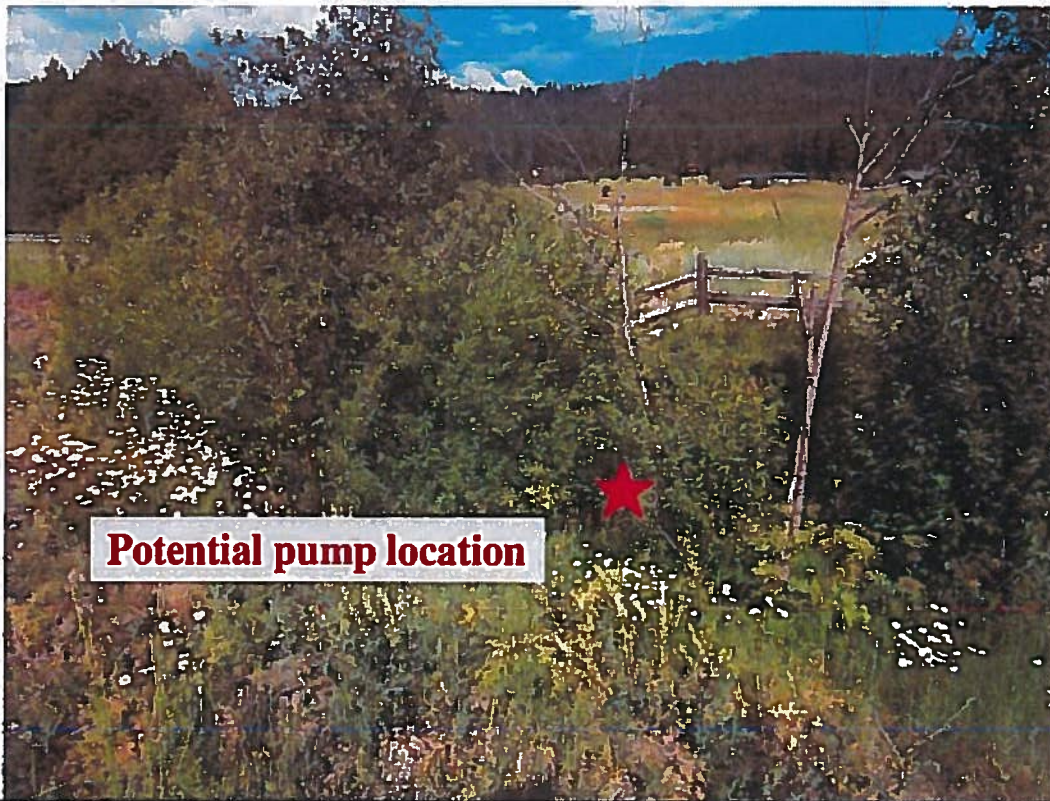


10. Looking upstream on connection ditch slightly below Anderson Reservoir Road.



13. Headgate on Threemile Creek near Kalinowski property. Controls water flowing into ditch that flows through Kalinowski and Wallace property before reconnecting to Threemile Creek on Schaetzel/Birch property.

Coordinates:
N 44.999385
W -116.22809



Potential pump location

14. Potential location of new point of diversion proposed in transfer 80338.

Coordinates:
N 44.996999
W -116.232851