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AUG 04 2017

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
Application for Permit No. 13-07996

August 4, 2017

1. Matter being protested

Application for Permit No. 13-07996 filed by Buffi Morris, Water Rights Administrator for PacifiCorp on behalf of PacifiCorp (involving water right 13-00963 (Exchange right under Transfer Application No. 81756)).

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

Buffi Morris on behalf of PacifiCorp ("applicant") seeks a permit to appropriate 1 cfs for two fish propagation ponds, a project with Idaho Fish & Game. This applicant is filing this permit in conjunction with Transfer No. 81756 to exchange a portion of 13-00963. The applicant is seeking a new point of diversion (POD) within a legal land description that entirely describes BLM lands (T10S, R40E, S28, NESWSW). County taxlot data confirms that the GPS location (Lat. 42.5212336, Long. -111.7942940) of the proposed POD resides on federal land.

The applicant is not authorized to develop federal land or transport water across BLM lands. The applicant has not filed an application for a Right-of-Way (ROW) to develop a water source on BLM land. The applicant is not authorized to disturb federal public land for the purposes stated in the application. Trespass on federal land is a prohibited act (43 CFR §2808.10(a)). A water right also cannot be established in trespass (See e.g., *In RE General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); citing, *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931)).

In the Innovative Mitigation Solutions case (37-22852), the application for permit was rejected by IDWR because "there is no information in the record demonstrating the Applicant has legal access to the property necessary to operate the project proposed in Application 37-22852, or authority to exercise imminent domain authority to obtain such access. Protestants are entitled to

Page 1 of 3

Protest of Application for Permit No. 13-07996
PacifiCorp
August 4, 2017

Receipt
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judgment as a matter of law that Application 37-22852 was not filed in good faith. See IDAPA 37.03.08.45.01.c.i."

The applicant has proposed a sale of T10S, R40E, S28, SWSW with BLM (IDI-037743), however the existence of a spring in the SWSW establishes a withdrawal under Public Water Reserve 107 (PWR-107) where the nature of that withdrawal precludes disposal.

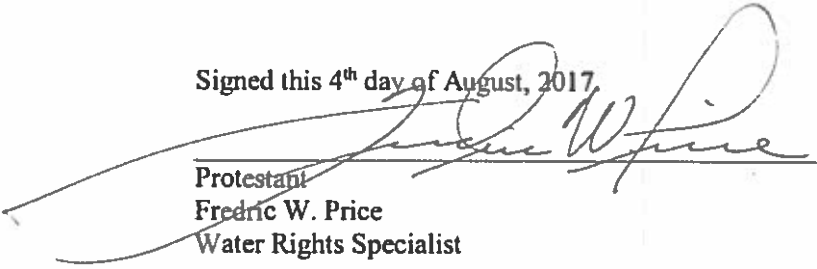
7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdraw the application; or
- 2.) Amend the application to a different water source located on private land; or
- 3.) BLM would be willing to consider a ROW, therefore the Applicant should:
 - a) Seek and obtain a new Right-of-Way ("ROW") to develop and transport 13-07996 across BLM land for fish propagation purposes.
 - b) Add the following limiting conditions to the permit:
 - i) "Prior to diversion and use of water under this approval, the right holder shall obtain authorization necessary to access the point of diversion, or place of use, or to convey water across federal lands."
 - ii) "This right does not grant any right-of-way or easement across the land of another."
 - iii) "This right is subordinate to any rights established on this water source under federal law pursuant to Public Water Reserve 107."

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 4th day of August, 2017


Protestant
Fredric W. Price
Water Rights Specialist

Attachments:

♦Maps prepared by BLM for illustrative purposes.

♦Master Title Plat: T10S, R40E.

FOR DEPARTMENT USE ONLY

Received by _____ Date _____

Fee Paid \$25.00 Date _____ Received by _____ Receipt # _____

Page 2 of 3
Protest of Application for Permit No. 13-07996
PacifiCorp
August 4, 2017

CERTIFICATE OF SERVICE

I certify that on August 4, 2017 I served a true and correct copy of the "**Protest of Application for Permit No. 13-07996**" for PacifiCorp, with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Jeff Peppersack, Administrator
Idaho Department of Water Resources (IDWR)
Idaho State Office
Water Management Division,
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Copies to:

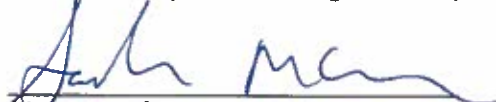
Lyle Swank, Regional Manager
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1700

ATTN Buffi Morris
PacifiCorp
1407 W. North Temple #110
Salt Lake City, Utah 84116

Karen Krause – Natural Resource Specialist
U.S., Department of the Interior,
Bureau of Land Management,
Pocatello Field Office
4350 Cliffs Drive
Pocatello, Idaho 83204-2105

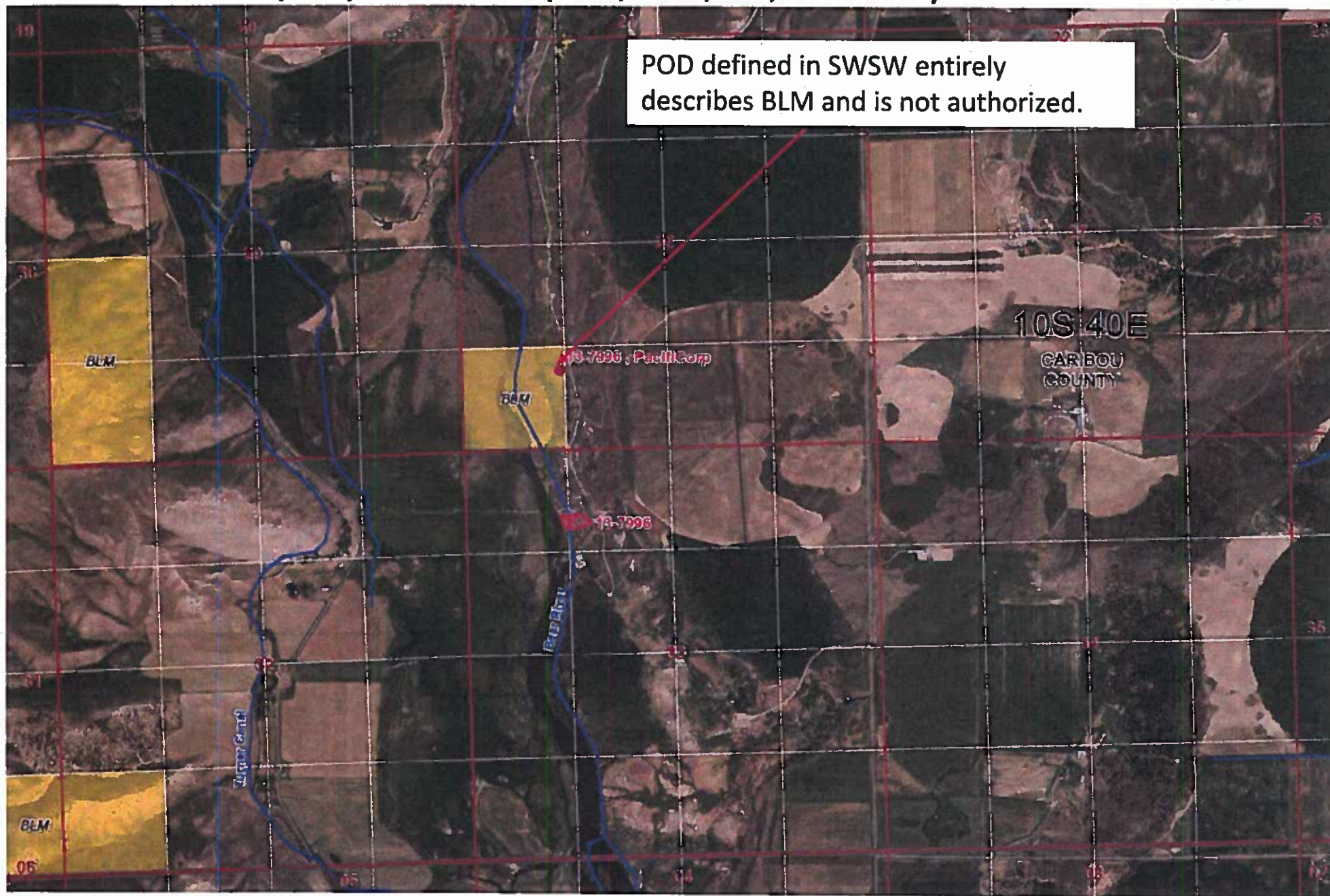
SANDRA MCCREA

Person Serving Documents (print name)

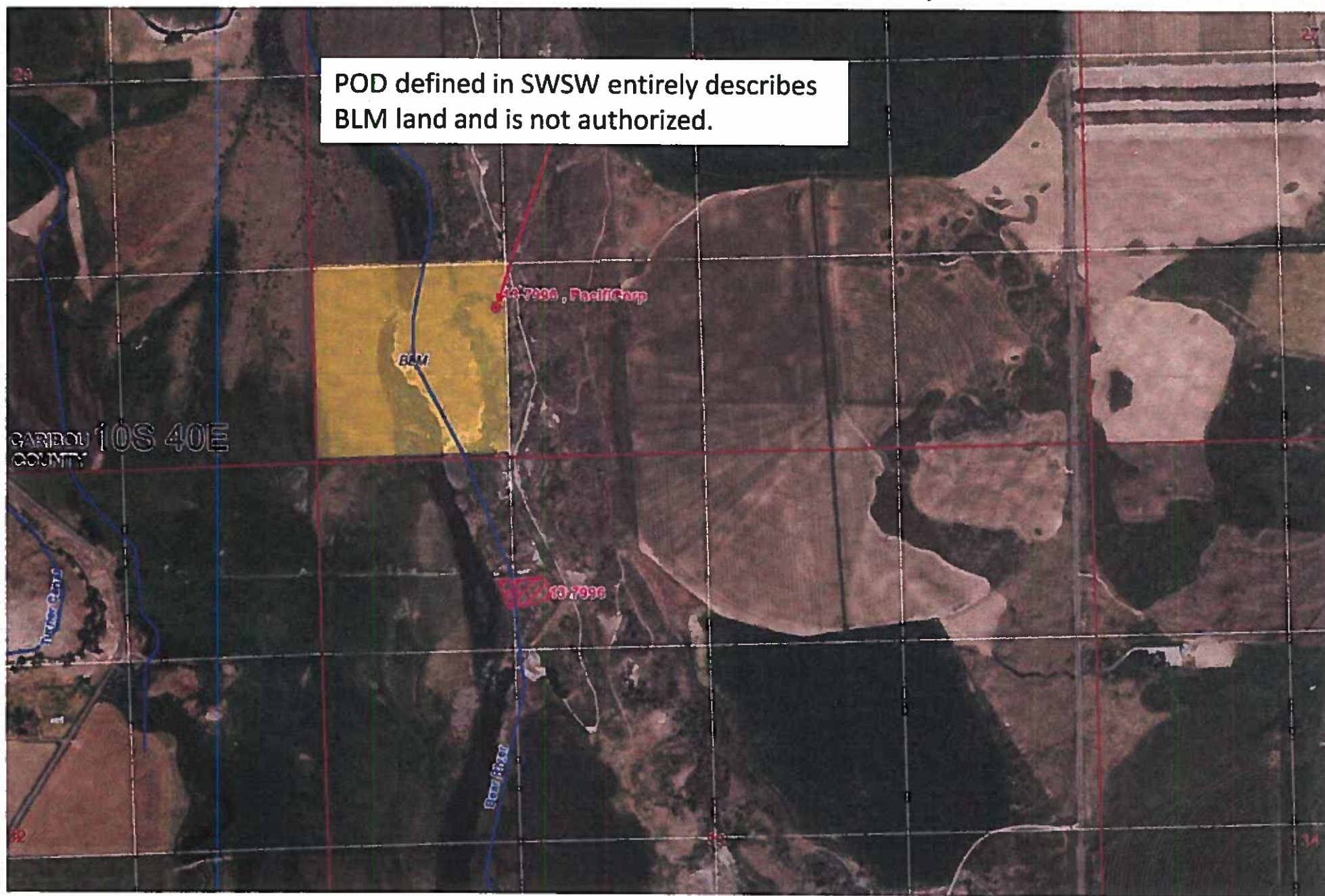

Signature of Person Serving Document

Point of Diversion (POD) described as (T10S, R40E, S28, NWSWSW) describes BLM lands.

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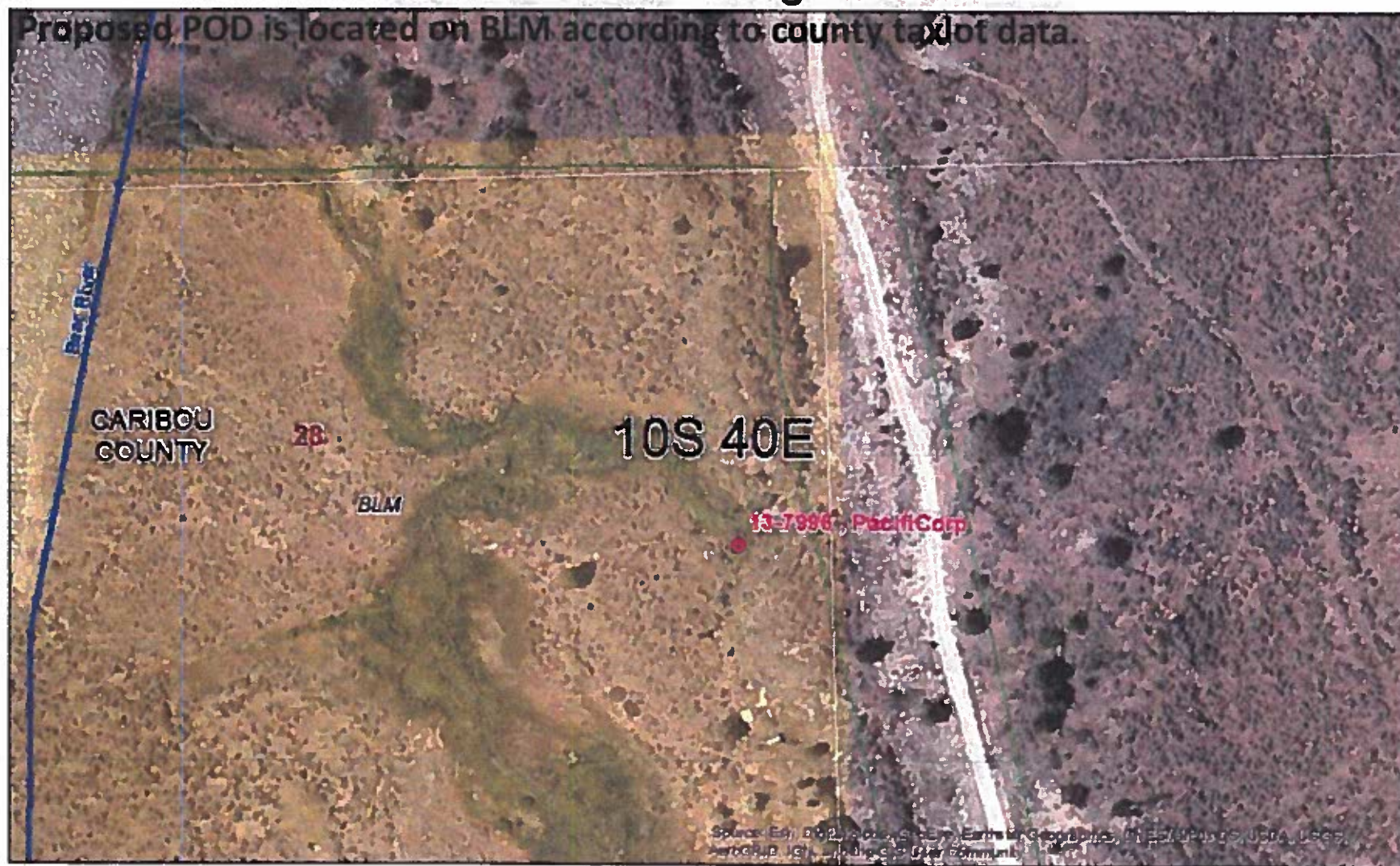
Protest: Application for Permit No. 13-07996 (PacifiCorp)
Point of Diversion (POD) described as (T10S, R40E, S28, NWSWSW) describes BLM lands.



Point of Diversion(Spring) Location

Lat: 42.5212336 Long: -111.7942940

Proposed POD is located on BLM according to county tax lot data.

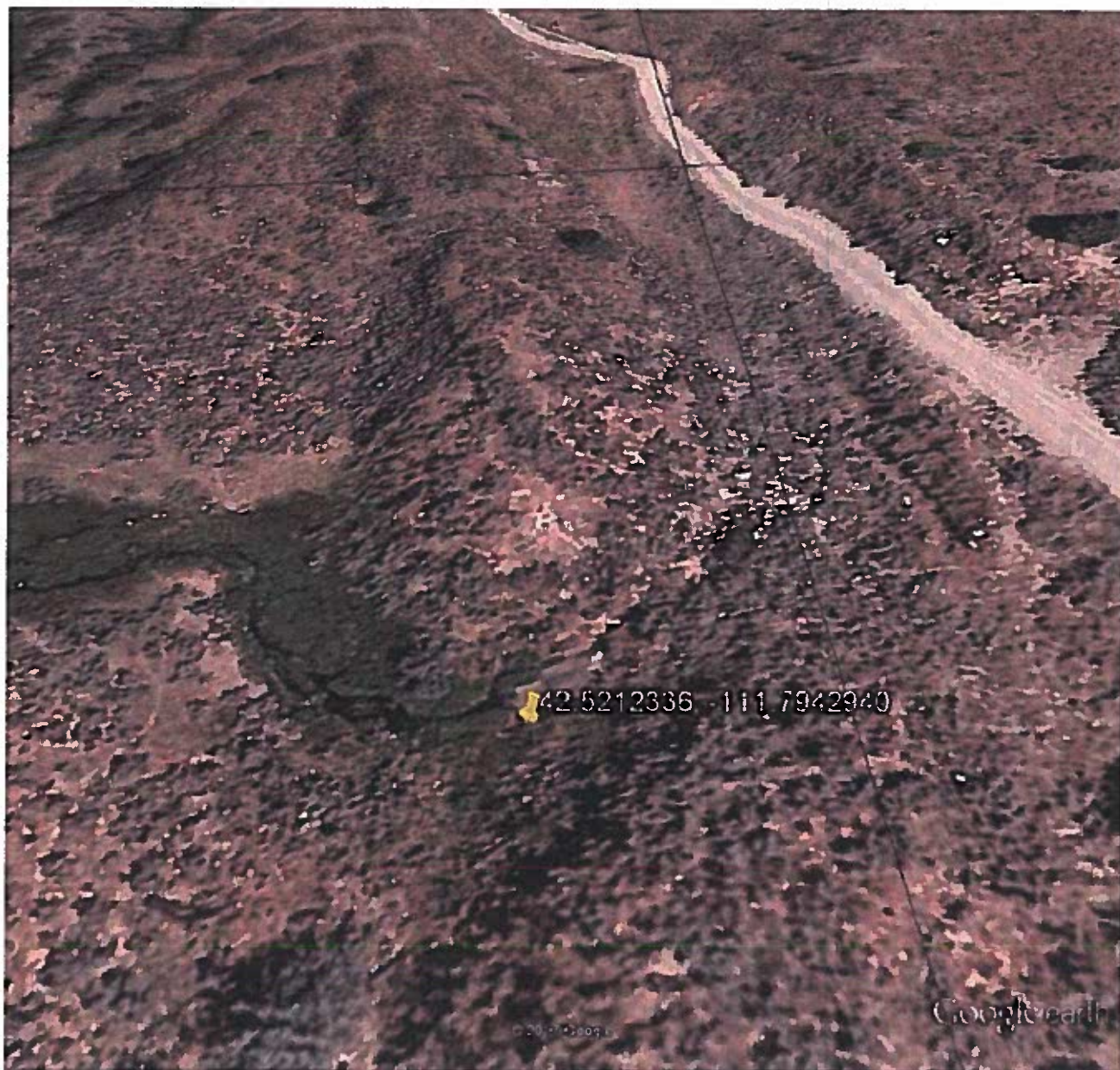


Legend

- Application For Permit Point of Diversion
- ▨ Application For Permit Place of Use
- Tax lots

0 0.005 0.01 0.02 0.03 0.04
Miles





Google earth

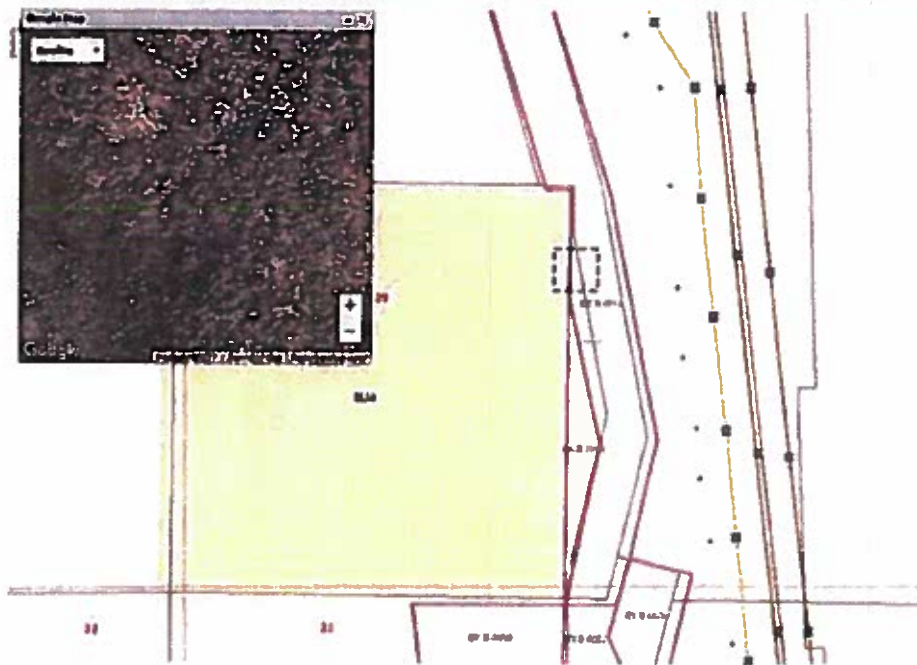
feet 80
meters 20



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Department of Water Resources
Eastern Region

ATTACHMENT TO EXCHANGE/TRANSFER APPLICATION FOR 13-963



61756

Attachment 7A

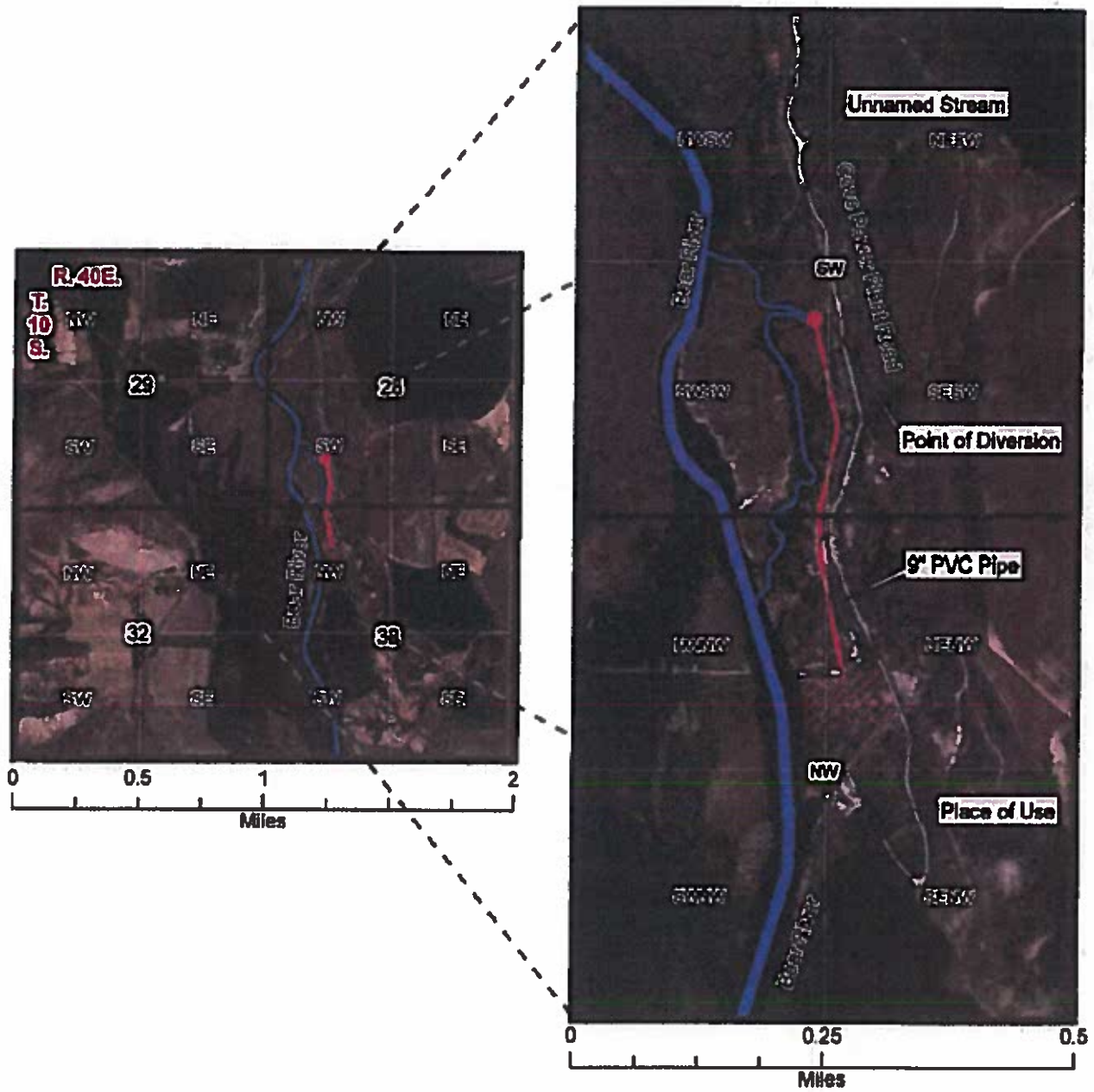




Exhibit of Unnamed Spring - Point of Diversion and Point of Use
Cove Native Fish Holding Ponds
PACIFICORP - GRACE HYDROELECTRIC PROJECT

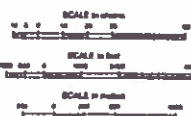


Date: 2017-03-08

817584

CARIBOU COUNTY 029
JANESVILLE DISTRICT 20C 11

MT PLAT



This site is only a graphic display of the Bureau of Labor Statistics (BLS) Bureau of Economic Analysis (BEA) and monthly survey data. Research reports on and related to this site may have been obtained by internal sampling of data in other forms of media. Data is not to be used for official representation.

The inclusion of these six additional regressors can help reduce bias, but only if the six additional regressors are the functional form for the true data-generating process.

We solemnly to make by the Bureau of Land Management. The company, including its subsidiaries or companies of these states for individual use or distribution use with other state or federal government.

BLM O 01/17/1988 Open to entry Bldg to Sec 36 FPA
Post 2 Area 193 O 01/28/1911 Post Prog 601 FPC O
04/18/1920, Post Prog 786 FPC O 12/17/1928
Sec 21 52200

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

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Page No.
T. 10
P. 02 E