

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
Application for Transfer No. 81756

RECEIVED

AUG 04 2017

DEPARTMENT OF
WATER RESOURCES

August 4, 2017

1. Matter being protested

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

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).

The Transfer seeks to build two new fish propagation ponds, which is part of a project with Idaho Fish & Game. Under this Transfer, PacifiCorp is exchanging a portion (2.8 acre-feet) of water right 13-00983 that was recently released from the Water Supply Bank.

The Exchange application for Transfer No. 91756 seeks to change the point of diversion (POD), place of use (POU), and nature of use of a portion (2.8 acre-feet) of 13-00963. The applicant is seeking a new 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 new place of use is described as (T10S, R40E, S33, NENW and NWNW (private lands). 13-00963 is currently for power from storage, the exchange portion of this right will be for fish propagation. An application has been filed to hold the remainder of 13-00983 (3,987.2 acre-feet) in the Water Supply Bank.

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

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Protest of Application for Transfer No. 81756

PacifiCorp

August 4, 2017

Receipt
#C103930

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 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 # _____

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Protest of Application for Transfer No. 81756

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 Transfer No. 81756**" 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:

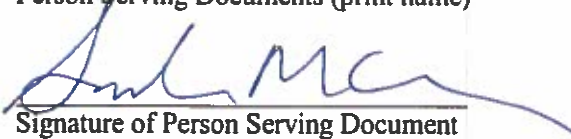
Lyle Swank, Regional Manager
Idaho Department of Water Resources
Eastern Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1700

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

Karen Kraus – 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

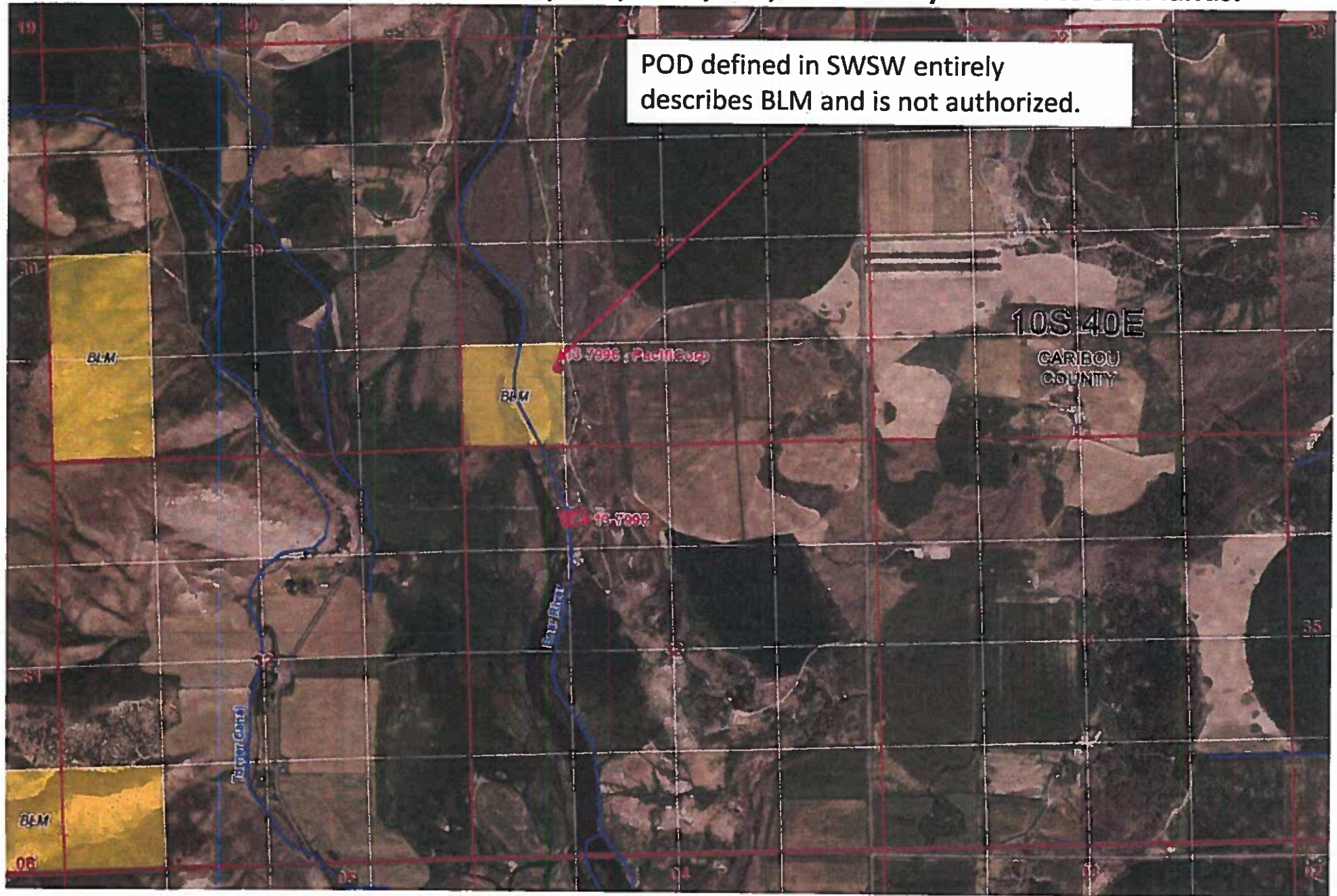
Person Serving Documents (print name)



Signature of Person Serving Document

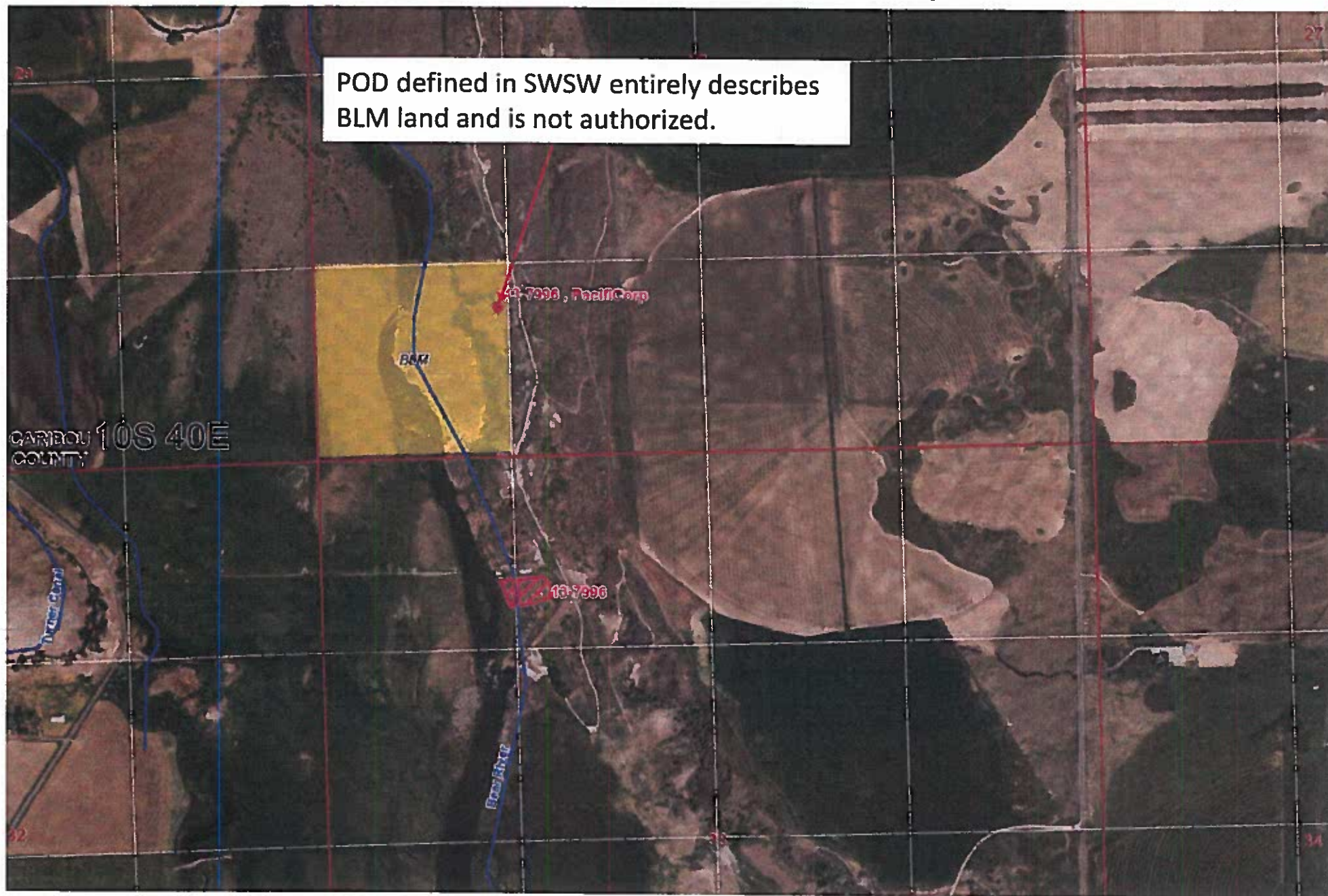
Protest: Application for Permit No. 13-07996 (PacifiCorp)

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



Protest: Application for Permit No. 13-07996 (PacifiCorp)

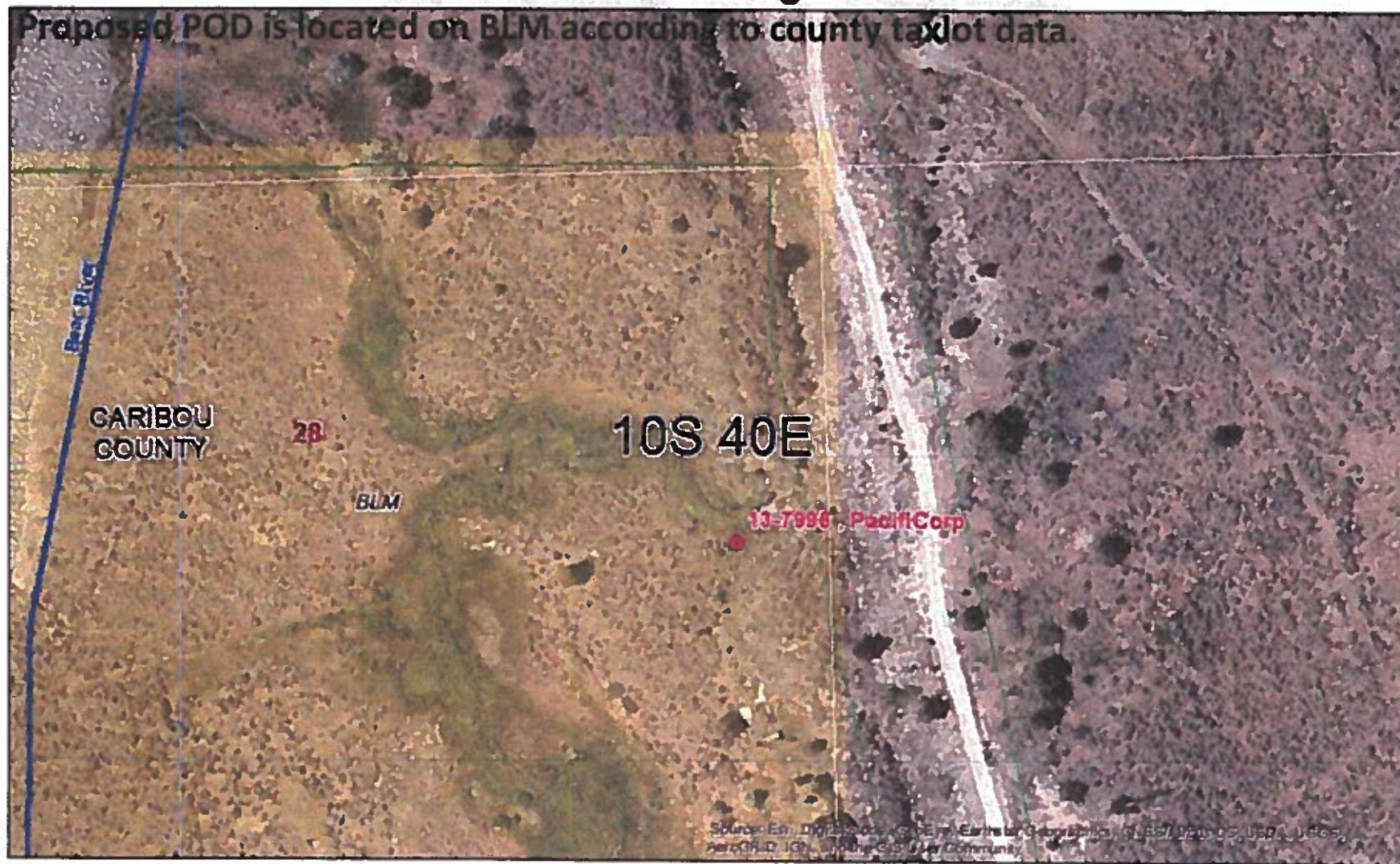
Point of Diversion (POD) described as (T10S, R40E, S28, NWSWSW) describes BLM lands.



Point of Diversion(Spring) Location

Lat: 42.5212336 Long: -111.7942940

Proposed POD is located on BLM according to county taxlot data.

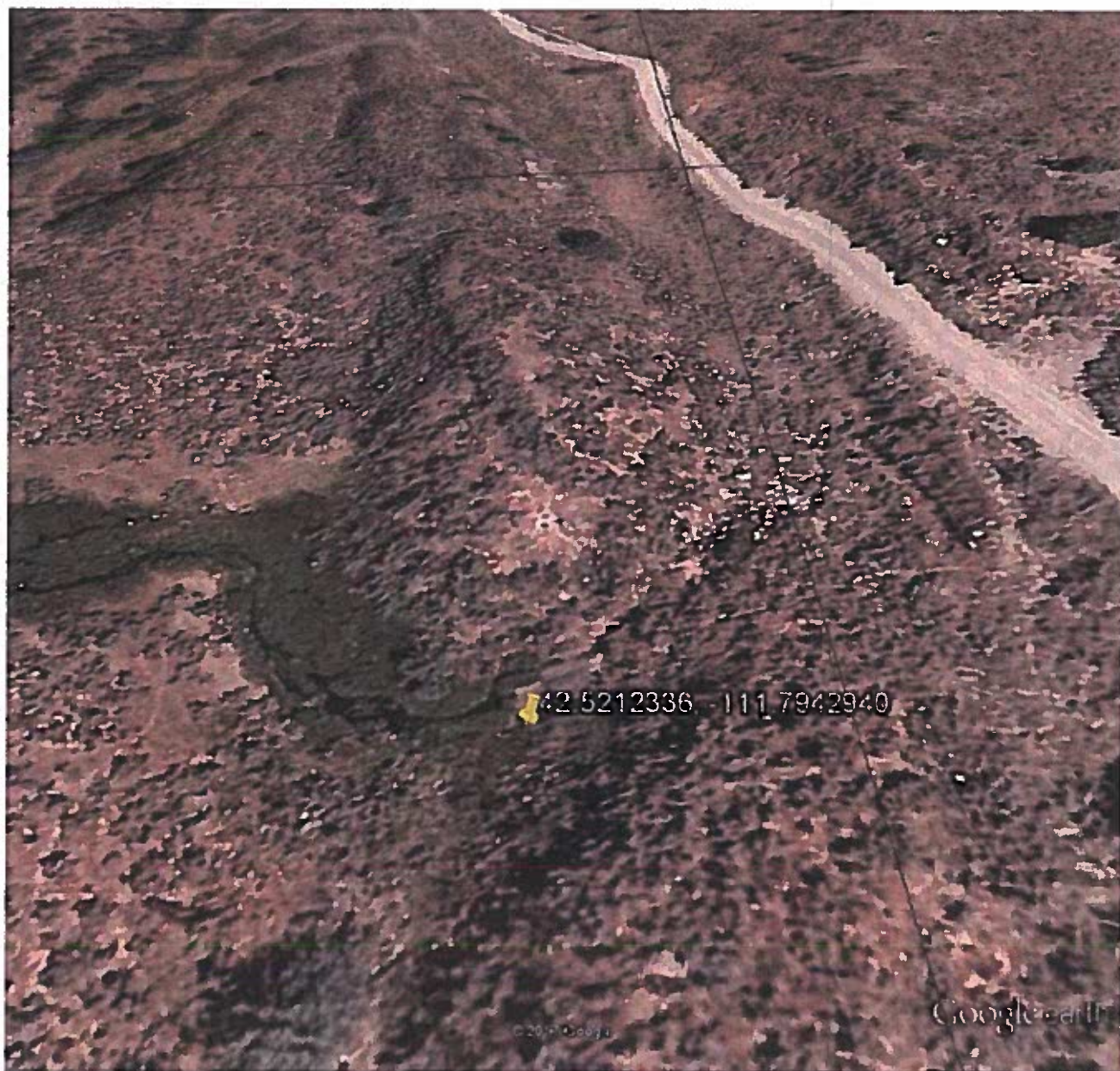


Legend

- Application For Permit Point Of Diversion
- ▨ Application For Permit Piece Of Use
- Taxlots

0 0.005 0.01 0.02 0.03 0.04 Miles





Google earth

feet 80
meters 20

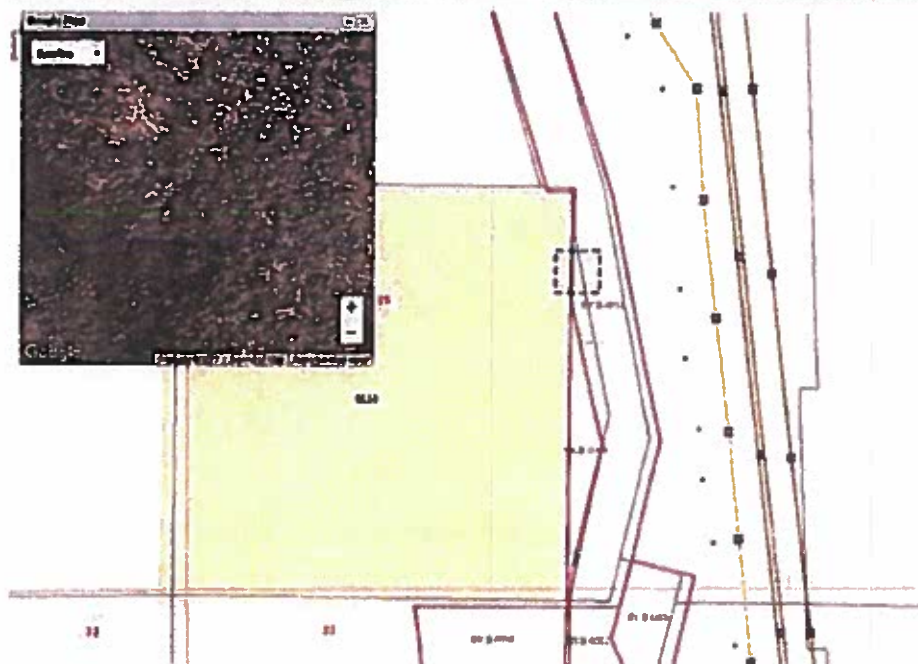
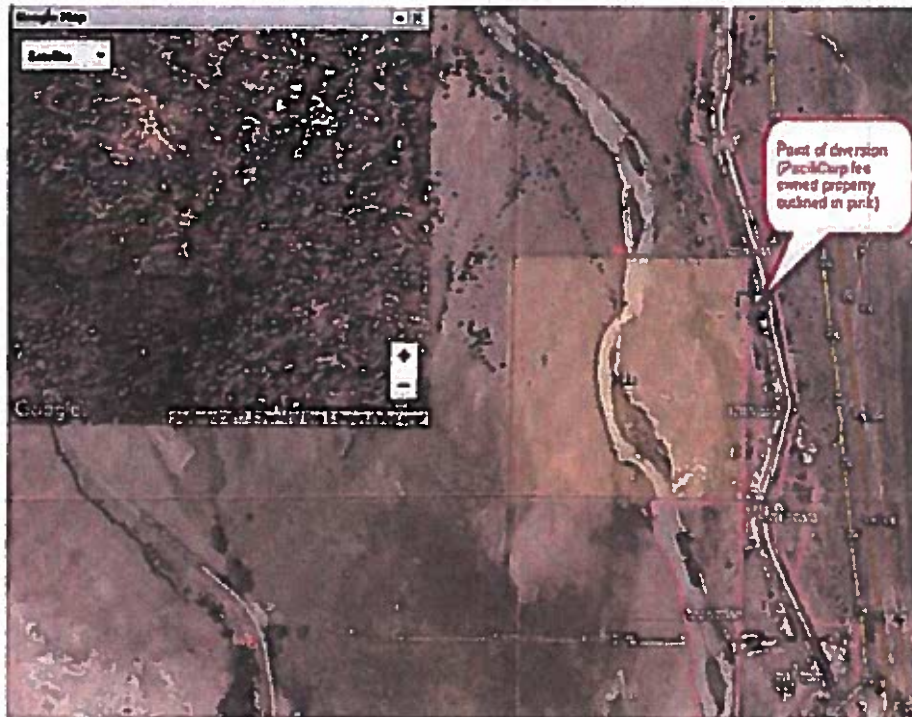


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MAY 24 2017

Department of Water Resources
Eastern Region

ATTACHMENT TO EXCHANGE/TRANSFER APPLICATION FOR 13-963



81756

Attachment 7A

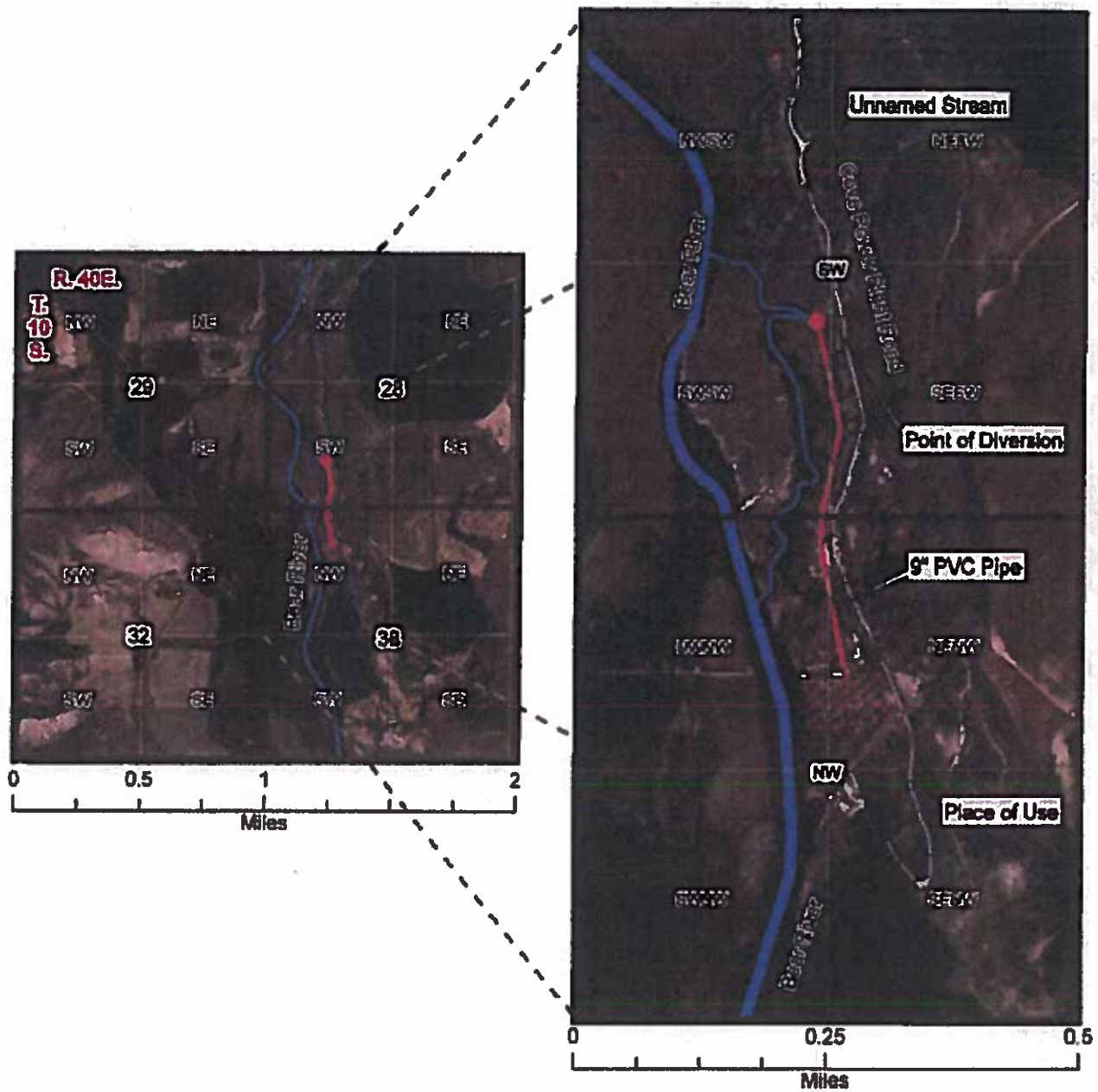




Exhibit of Unnamed Spring - Point of Diversion and Point of Use
Cove Native Fish Holding Ponds
PACIFICORP - GRACE HYDROELECTRIC PROJECT

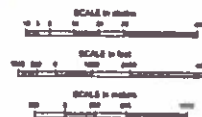


Cardno
Date: 2017-03-08

81750

CARIBOU COUNTY 029
JANUARY 5 DISTRICT REC'D

END OFS DISTRICT REC 13



DECLARATION

This post is only a graphic display of the Bureau of Land Management's (BLM) Report of Title and boundary survey data. Please do not rely on this graphic until they have been checked by your manager or over a plan table of some. Reply is collecting survey to get information.

The author states in boldface: "I am not a scientist, but I am not a politician either." And the repeated phrase "I am not a scientist" is repeated throughout the text.

The company is listed by the Division of Land Management. The company, reliability, in compliance with the terms of the license and use of the company are not subject to any government.

MT PLAT

[illegible]

BLM 0 01/17/1986 Closed to entry July to Sep 24 FFA
 Part 2 Reg. 193 EO 07500/1911 Part 193 601 FPC 0
 04/18/1928, Part 193 FFA FPC 0 12/17/1938
 See 31: 5899

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

FILE #2A	C:\PROJECTS\B-1\B-1001.Dwg	
COMPILED BY	20140828	PT: LPS
LAST UPDATED	20140828	DT: LPS
QAC# 21	QAC# 22	
POSTED TO PUBLIC RECORDS	October 13, 2015	
	BY:	
PUBLIC LAND SURVEY SYSTEM (PLS)		
NAD 83/2011 ADJUSTED	Interim	
OTHER	NA	
PROJECTED COORDINATE SYSTEM	UTM ZONE 18N, NAD 83	
NOTES:		
USE PLATS		

Design Office
 T. 90 8
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