

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF OWNERSHIP	)	PRELIMINARY ORDER
CHANGE SPLITS FOR WATER RIGHTS	)	CORRECTING SPLITS
<u>35-8037A AND 35-8573</u>	)	OF WATER RIGHTS

This matter having come before the Idaho Department of Water Resources ("Department") as a result of a Notice of Change of Water Right Ownership, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On August 13, 2002, Walker Land & Cattle Company ("Walker") filed a Notice of Change of Water Right Ownership, seeking to update the ownership records for a portion of water rights 35-8037A and 35-8573. Walker had purchased only a portion of land described under the water rights, therefore the water rights had to be split by the Department to complete the ownership update.

2. To support its ownership change, Walker provided two warranty deeds, tracing ownership of the subject property back to Sometimes A Great Notion Land & Cattle ("Notion"), the owner of record for the water rights at that time.

3. The property description listed on the two deeds were identical and covered:

The East half of the Northeast quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) less the East 33 feet thereof deeded to Bonneville County, the Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), and the Southeast quarter of the Northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Section 29, Township 3 North, Range 36 East, Boise Meridian, Bonneville County, State of Idaho.

Together with a portion of the water rights associated with License Nos. 35-8037A and 35-8573 proportionate to the acreages.

4. A partial decree for water right 35-8037A was issued in the Snake River Basin Adjudication on April 5, 2002. Water right 35-8037A bore a priority date of May 12, 1983 and authorized the diversion rate of 2.23 cfs, an annual diversion volume of 632 acre-feet (4 acre-feet/acre), and the irrigation of 158 acres, located in the NE $\frac{1}{4}$, Section 29, T03N, R36E.

5. The Department issued a license for water right 35-8573 on May 24, 1996. Water right 35-8573 bore a priority date of May 2, 1985 and authorized the diversion of 3.87 cfs and described a place of use of 318 acres, located in the NE $\frac{1}{4}$ and NW $\frac{1}{4}$, Section 29, T03N, R36E. Although the place of use described 318 acres, water right 35-8037A was limited to the irrigation of 270 acres (the number of acres authorized in the original permit).

6. Water right 35-8573 overlapped water right 35-8037A in the NE¼ of Section 29 and included the following condition: "Use of this right with Right 35-08037A is limited to a total combined annual diversion volume of 1272.0 af and to the irrigation of a combined total of 318 acres in a single irrigation season."

7. The Department completed the ownership changes in November 2002, splitting water right 35-8037A into 35-13437 and 35-13438 and splitting water right 35-8573 into 35-13439 and 13440. The water right splits are reflected in the following table:

Water Rights Prior to Ownership Change

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-8037A	2.23	632	158	158	0.014
35-8573	3.87	none	270	318	0.014
Total	6.1	1272	318	318	0.019

Split of 35-8037A

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13437 (Notion)	0.56	140	40	40	0.014
35-13438 (Walker)	1.67	413	118	118	0.014
Total	2.23	553	158	158	0.014

Split of 35-8573

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13439 (Notion)	2.43	none	136	160	0.018
35-13440 (Walker)	1.44	none	134	158	0.011
Total	3.87	none	270	318	0.014

Combined Water Rights - Notion (West)

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13437	0.56	140	40	40	0.014
35-13439	2.43	none	136	160	0.018
Total	2.99	560	160	160	0.019

Combined Water Rights - Walker (East)

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13438	1.67	413	118	118	0.014
35-13440	1.44	none	134	158	0.011
Total	3.11	553	158	158	0.020

8. The water right splits completed by the Department in 2002 contained two errors. First, the Department improperly reduced the annual volume of water rights 35-13437 and 35-13438 from 4.0 acre-feet per acre to 3.5 acre-feet per acre.

9. Water right 35-13437 includes 40 acres of the 158 acres authorized under water right 35-8037A and therefore should include 25.3% (40/158) of the volume authorized by the water right (632 acre-feet). 25.3% of 632 acre-feet is 160 acre-feet.

10. Water right 35-13438 includes 118 acres of the 158 acres authorized under water right 35-8037A and therefore should include 74.7% (118/158) of the volume authorized by the right (632 acre-feet). 74.7% of 632 acre-feet is 472 acre-feet.

11. The second error was an inconsistent split of the rate and acres from water right 35-8573. Water right 35-13439 was assigned 2.43 cfs of the 3.87 cfs authorized under water right 35-8573. This equates to 62.8% of the total authorized diversion rate. However, water right 35-13439 was only assigned 136 acres (or 50.4%) of the 270 acres authorized under water right 35-8573.

12. The deeds do not support this inconsistent split of diversion rate and acres. According to the deeds, the water rights must be split in proportion to the acreages described under the water rights. Because the water rights partially overlap, carry a combined acre limit, and were developed through a common irrigation system, splitting the water rights is a complicated task.

13. In total, the two water rights authorize the diversion of 6.10 cfs and the irrigation of 318 acres (0.019 cfs/acre). An equitable split of the water rights "proportionate to the acreages" would preserve, as close as possible, the same rate per acre (0.019 cfs/acre) for both farms. However, the Department is constrained in its calculations by the total number of acres associated with the Walker and Notion properties.

14. The split of water right 35-8037A is fairly straightforward. Walker purchased 118 acres of the 158 acres described in the water right place of use. Therefore, Walker is entitled to 74.7% of all of the elements of the water right, including diversion rate.

15. The split of water right 35-8573 is more difficult because it describes the irrigation of 270 acres within a 318 acre place of use. Neither the water rights nor the deeds clearly define what portion of the 270 acres under water right 35-8573 is associated with the Walker property and what portion is associated with the remaining Notion property.

16. In order to achieve a split of 0.019 cfs/acre for both the Walker and the Notion properties, 173 acres of water right 35-8573 must be assigned to the Notion property. However, such an assignment would be impossible. The Notion property only covers 160 of the irrigated acres authorized by the rights. Therefore, at most, the Notion property can be assigned 160 of the 270 irrigated acres under water right 35-8573 and the associated rate. The remainder of the right (110 acres) must be associated with the Walker property. Based on this limitation, the water right split should have been completed as follows:

Water Rights Prior to Ownership Change

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-8037A	2.23	632	158	158	0.014
35-8573	3.87	none	270	318	0.014
Total	6.1	1272	318	318	0.019

Split of 35-8037A

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13437 (Notion)	0.56	160	40	40	0.014
35-13438 (Walker)	1.67	472	118	118	0.014
Total	2.23	632	158	158	0.014

Split of 35-8573

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13439 (Notion)	2.29	none	160	160	0.014
35-13440 (Walker)	1.58	none	110	158	0.014
Total	3.87	none	270	318	0.014

Combined Water Rights - Notion (West)

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13437	0.56	160	40	40	0.014
35-13439	2.29	none	160	160	0.014
Total	2.85	640	160	160	0.018

Combined Water Rights - Walker (East)

Water Right	Rate (cfs)	Volume (af)	Acre Limit	Total Acres	Rate/Acre
35-13438	1.67	472	118	118	0.014
35-13440	1.58	none	110	158	0.014
Total	3.25	632	158	158	0.021

17. In 2011, Walker filed a Notice of Change of Water Right Ownership for water right 35-13439. The warranty deed provided by Walker (conveying only the water right) supported the proposed ownership change. Therefore, the Department updated its water right records accordingly.

18. In 2012, Walker filed a Notice of Change of Water Right Ownership for water right 35-13437. The quit claim deed provided by Walker (conveying only the water right) appeared to support the proposed ownership change. Therefore, the Department updated its water right records accordingly.

19. Taxlot information provided to the Department by Bonneville County indicates that Walker still owns the property described in Finding of Fact No. 3. The remaining property (which encompasses the place of use described in water rights 35-13437 and 35-13439) is no longer owned by Notion or Walker, but is currently owned by Wright Brothers Co. ("Wright") from Salt Lake City, Utah.

20. Wright has not yet filed any paperwork to update the ownership of water rights 35-13437 or 35-13439. Therefore, all water rights still list Walker as the current owner. It is not clear from the deeds available to the Department at this time whether Wright owns water rights 35-13437 or 35-13439.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code § 42-248, the Department should update its water right records to reflect the true legal ownership of water rights. Ownership records are to be updated consistent with the documentary evidence provided with an ownership change.

2. A water right is considered an appurtenance to the place of use described in the right. If a deed conveying a portion of the subject property does not describe how appurtenant water rights are to be divided, the Department will split the water rights in proportion to the number of water right irrigated acres associated with each parcel. In this case, the relevant deeds specify that the appurtenant water rights are to be split "proportionate to the acres."

3. The 2002 ownership change split was in error because it did not split the two water rights in proportion to the number of water right irrigated acres associated with each of the properties.

4. The 2002 ownership change improperly reduced the total volume authorized by water rights 35-13437 and 13438. These volumes should be based on the total volume authorized by original water right 35-8037A (4 acre-feet/acre).

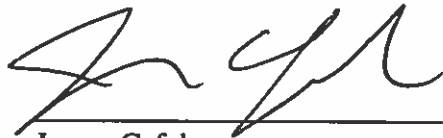
5. The 2002 ownership change assigned a disproportionate share of the available diversion rate to the Notion property. Because Notion only owned, at most, 160 acres of the 270 acres described under water right 35-8573, the maximum amount of diversion rate from water right 35-8573 that can be assigned to Notion is 59.3% (160/270) of the total diversion rate. This equates to 2.29 cfs. The revised split amounts proposed in this order represent the proper split of the available diversion rate under water right 35-8573.

6. The Department should correct the splits of the water rights to reflect the proposed revised splits described above.

ORDER

IT IS HEREBY ORDERED that the ownership splits of water rights 35-8037A and 35-8573 are CORRECTED as shown above. The corrected amounts are reflected in the revised water right reports attached to this order.

Dated this 5th day of December, 2016.



James Cefalo
Water Resources Program Manager

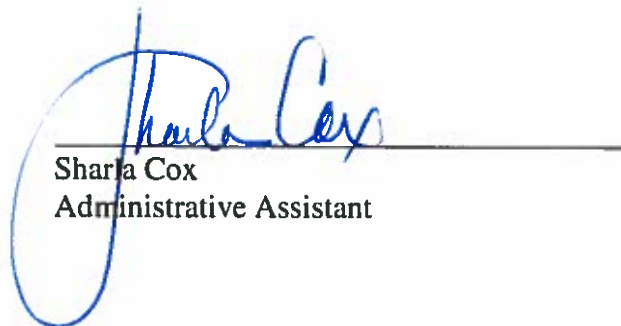
CERTIFICATE OF MAILING

I hereby certify that on the 5th day of December 2016, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER CORRECTING SPLITS OF WATER RIGHTS, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

US MAIL - CERTIFIED

Walker Land & Cattle LLC
1070 Riverwalk Drive, Suite 200
Idaho Falls, ID 83402

Wright Brothers Co.
1978 Sheridan Road
Salt Lake City, UT 84108



Sharla Cox
Administrative Assistant

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

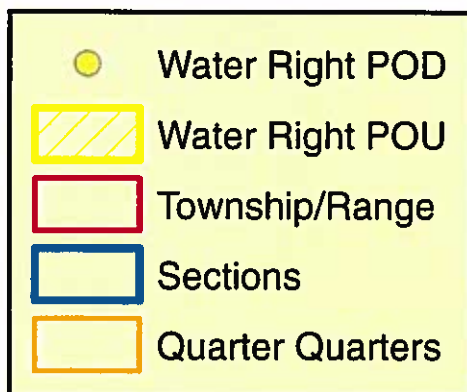
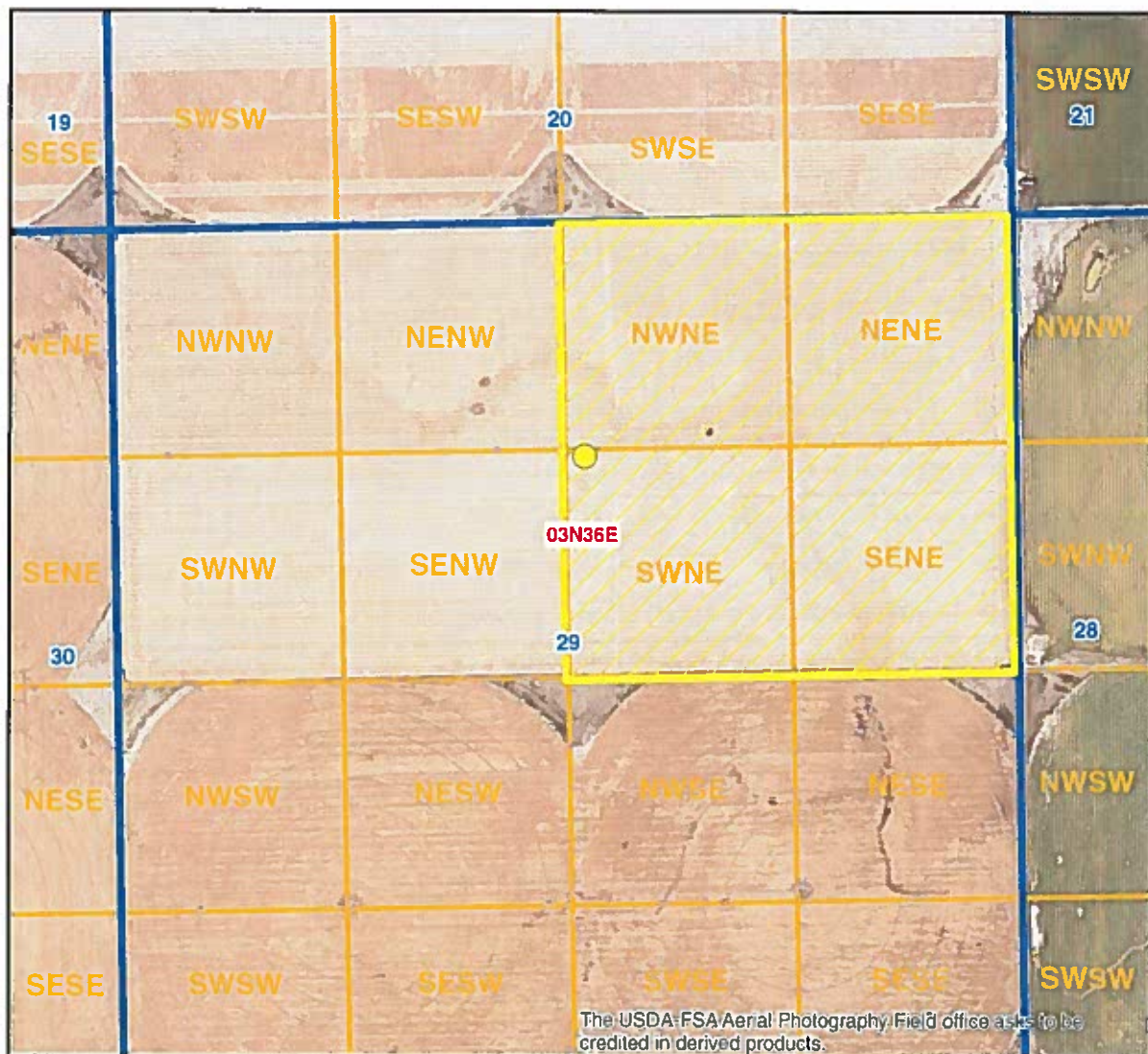
APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

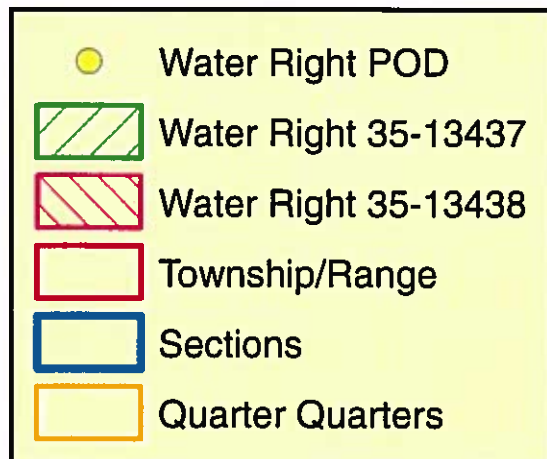
Water Right 35-8037A Before Ownership Split



0 0.2 0.4 Miles



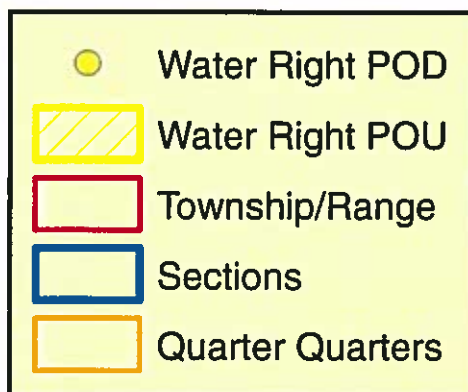
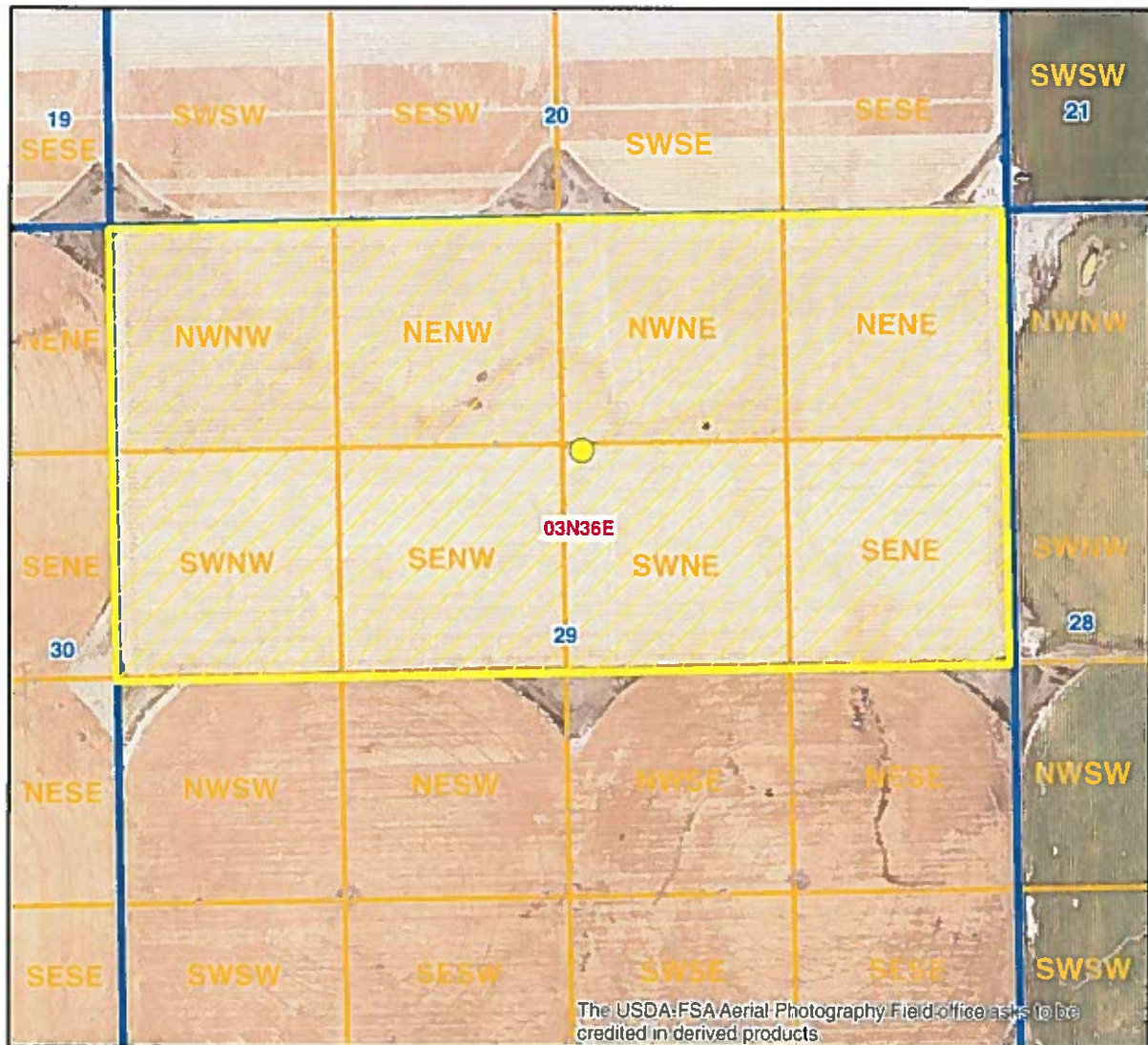
Water Rights 35-13437 and 35-13438



0 0.2 0.4 Miles



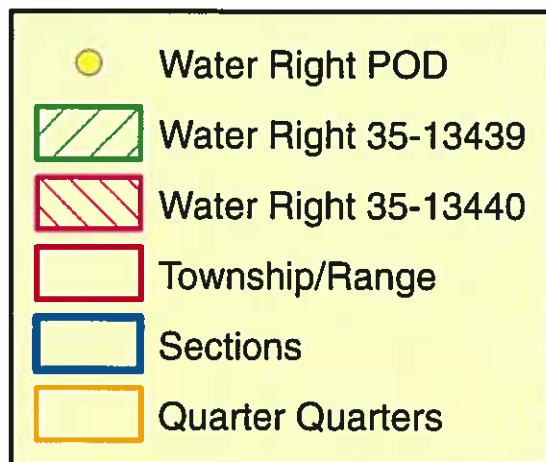
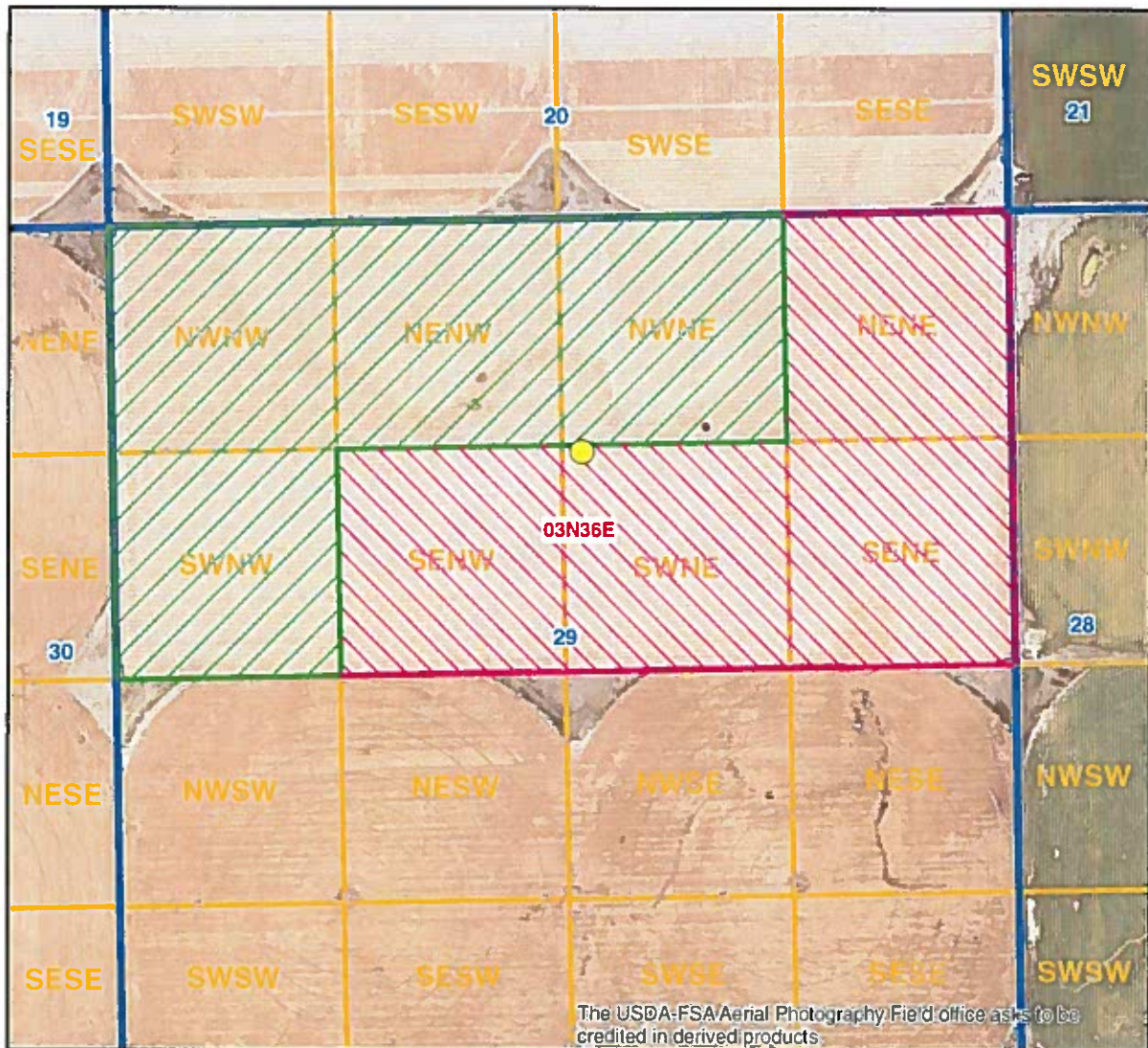
Water Right 35-8573 Before Ownership Split



0 0.2 0.4 Miles



Water Rights 35-13439 and 35-13440



0 0.2 0.4 Miles



IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

12/5/2016

Water Right 35-13437

Owner Type	Name and Address
Current Owner	WALKER LAND & CATTLE LLC 1070 RIVERWALK DR STE 200 C/O MIKE BARNES OR TERRY WADSWORTH IDAHO FALLS, ID 83402 208-524-3341

Priority Date: 5/12/1983

Basis: Decreed

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	04/01	11/01	0.560 CFS	160.0 AF
	Total Diversion		0.560 CFS	160.0 AF

Source and Point(s) of Diversion

GROUND WATER NWSWNE Sec. 29, Twp 03N, Rge 36E, BONNEVILLE County

Place Of Use

IRRIGATION within BONNEVILLE County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	36E	29		40.0															40.0

POU Total Acres: 40.0

Conditions of Approval:

1. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

12/5/2016

Water Right 35-13438

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WALKER LAND & CATTLE LLC 1070 RIVERWALK DR STE 200 C/O MIKE BARNES OR TERRY WADSWORTH IDAHO FALLS, ID 83402 208-524-3341

Priority Date: 5/12/1983

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	11/01	1.670 CFS	472.0 AF
	<u>Total Diversion</u>		1.670 CFS	472.0 AF

Source and Point(s) of Diversion

GROUND WATER	NWSWNE	Sec. 29, Twp 03N, Rge 36E, BONNEVILLE County
--------------	--------	--

Place Of Use

IRRIGATION within BONNEVILLE County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	36E	29	39.0		40.0	39.0													118.0

POU Total Acres: 118.0

Conditions of Approval:

1. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
2. T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.

12/5/2016

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WALKER LAND & CATTLE LLC 1070 RIVERWALK DR STE 200 C/O MIKE BARNES OR TERRY WADSWORTH IDAHO FALLS, ID 83402 208-524-3341

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	2.290 CFS	
	Total Diversion		2.290 CFS	

GROUND WATER SWNE Sec. 29, Twp 03N, Rge 36E, BONNEVILLE County

IRRIGATION within BONNEVILLE County

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
03N	36E	29		40.0			40.0	40.0	40.0										160.0

POU Total Acres: 160.0

1.	X27	This right is limited to the irrigation of 160 acres within the authorized place of use in a single irrigation season.
2.	X35	Rights 35-13437 and 35-13439 when combined shall not exceed a total annual maximum diversion volume of 640 af at the field headgate, and the irrigation of 160 acres.
3.	R64	This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
4.	X36	Rights 35-13437, 35-13438, 35-13439 and 35-13440 are diverted through the point of diversion described above.
5.	R55	This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6.	R56	Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
7.	901	This right is subject to all prior water rights and may be forfeited by five years of non-use.
8.	902	Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
9.	904	This water right is appurtenant to the described place of use.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

12/5/2016

Water Right 35-13440

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	WALKER LAND & CATTLE LLC 1070 RIVERWALK DR STE 200 C/O MIKE BARNES OR TERRY WADSWORTH IDAHO FALLS, ID 83402 208-524-3341

Priority Date: 5/2/1985

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	1.580 CFS	
	<u>Total Diversion</u>		1.580 CFS	

Source and Point(s) of Diversion

GROUND WATER	SWNE	Sec. 29, Twp 03N, Rge 36E, BONNEVILLE County
--------------	------	--

Place Of Use

IRRIGATION within BONNEVILLE County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	36E	29	39.0		40.0	39.0				40.0									158.0

Right Acre Limit: 110.0

POU Total Acres: 158.0

Conditions of Approval:

1. X27 This right is limited to the irrigation of 110 acres within the authorized place of use in a single irrigation season.
2. X35 Rights 35-13438 and 35-13440 when combined shall not exceed a total annual maximum diversion volume of 632 af at the field headgate, and the irrigation of 158 acres.
3. R64 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
4. X36 Rights 35-13437, 35-13438, 35-13439 and 35-13440 are diverted through the point of diversion described above.
5. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6. R56 Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
7. 901 This right is subject to all prior water rights and may be forfeited by five years of non-use.
8. 902 Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
9. 904 This water right is appurtenant to the described place of use.