



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

April 8, 2015

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

MARK & KAREN STARK
PO BOX 3
JORDAN VALLEY ID 97910

and

L U RANCHING CO
C/O TIM LOWRY
PO BOX 132
JORDAN VALLEY ID 97910

RE: Application for Transfer No. 79399

Dear Applicants and Protestant:

In late January 2015, Steve Lester of this office presided over a prehearing conference for the protested application referenced above that resulted in a verbal understanding of a proposed settlement agreement. Prior to his retirement, Steve drafted a written version of his understanding of the proposed settlement; a copy is attached for your consideration.

Please note a few suggestions in this matter. One, you may want to consult an attorney regarding the settlement proposal. Two, a staff shortage at this office might complicate our ability to follow through with the measurement test, although I think we can meet that obligation. Finally, the settlement would be considered a private agreement not subject to enforcement by the Idaho Department of Water Resources (IDWR). The following standard condition of approval is included with water right application approvals based on such an agreement:

The diversion and use of water described in <Transfer No. xxxxx> may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.

This means future disagreements related to the agreement remain private matters between each of you. If you approve the proposed settlement, please sign it and return it to this office by May 1, 2015. Because this is shaping up to be a dry year in your area, we might need to conduct the futile call test much earlier than normal conditions would dictate.

I included a copy of the agreement for each of you. A single document signed by everyone would be preferable but is not required. I look forward to hearing from you.

Sincerely,

Jeff Peppersack
Interim Western Region Manager

Enclosure

**TRANSFER APPLICATION NO. 79399
PROPOSED SETTLEMENT AGREEMENT**

APPLICANTS Mark & Karen Stark

PROTESTANT L. U. Ranching Co.

This is a private settlement agreement between the Applicants and Protestant. The Protestant conditionally withdraws the protest against this application if the following steps are completed during the 2015 irrigation season:

- A) Protestant will notify IDWR when water gets short and there does not appear to be enough at Protestant's diversions to satisfy Protestant's right.
- B) IDWR will conduct a futile call measurement test under the following conditions and consisting of the following actions:
 - 1. Arrive on site in the morning and measure the flow in Trout Creek just above the most upstream point of diversion in NENE Section 30, Site #1 (aka Burch diversion), see attached map.
 - 2. The Applicant will be diverting water from Trout Creek at that time at Site #2 (proposed POD).
 - 3. Based on the measured velocity of water at Site # 1, IDWR will estimate the amount of time necessary for water to flow from the Applicants' proposed point of diversion, Site #2 in NENE Section 29, to Site #1.
 - 4. IDWR will move upstream to Site #2. After IDWR arrives there and upon IDWR's signal, the Applicants will cease diverting water.
 - 5. IDWR will return to Site #1, allowing more than enough time for additional flow from Site #2 (if any) to reach this site.
 - 6. IDWR will then re-measure the creek at Site #1 and calculate the difference in flow, if any.

If the second measurement at Site #1 has not increased by at least 10% (to account for measurement accuracy) under these conditions, a futile call scenario is confirmed. This means Applicants can continue diverting water when Protestant indicates there is not enough water to satisfy Protestant's rights.

If the second measurement at Site #1 has increased by at least 10% under these conditions, a futile call scenario is not confirmed. This means the Applicant's junior right must be curtailed upon notification by the Protestant that there is not enough water to satisfy Protestant's rights.

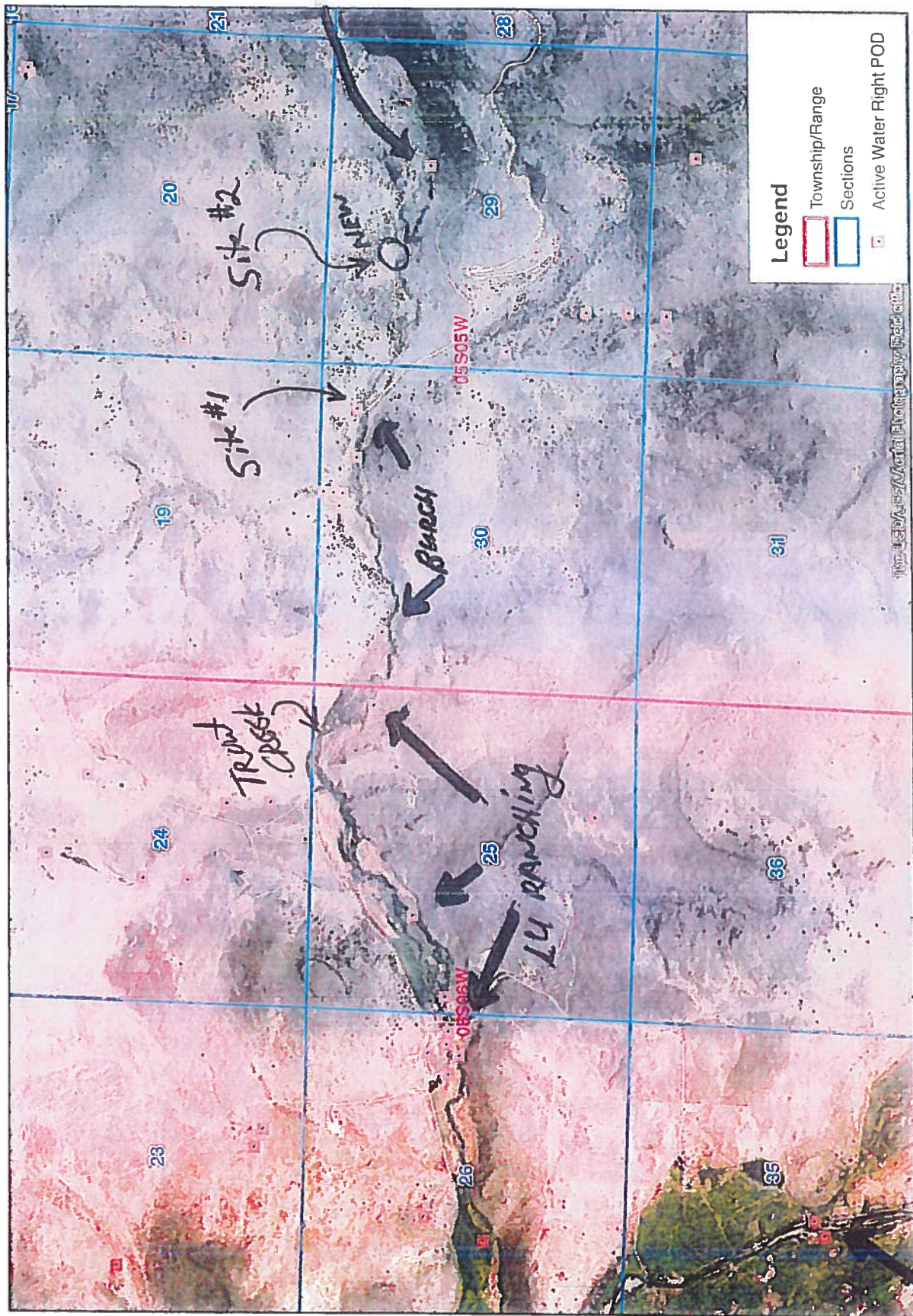
After the futile call measurement test is completed by IDWR, the protest will be considered unconditionally withdrawn at that time and IDWR will continue processing Transfer Application 79399. This agreement is subject to being superseded by future water district requirements if a water district is established by IDWR under Idaho Code Title 42, Chapter 6.

Protestant's Signature and Date

Applicant's Signature and Date

Applicant's Signature and Date

TROUT CREEK



2013 photo

← 1 mile →

SCANNED
MAY 06 2015

Jordan
CR 661