

DEC 20 2013

DEPARTMENT OF
WATER RESOURCES

Fredric W. Price
 Water Rights Specialist
 U.S.D.I., Bureau of Land Management
 Idaho State Office
 1387 S. Vinnell Way
 Boise, Idaho 83709-1657
 (208) 373-3831 phone
 (208) 373-3839 fax
 fwprice@blm.gov

**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

IN THE MATTER OF LICENSE NO.	)	PETITION FOR RECONSIDERATION
55-13891 IN THE NAME OF QUINTANA	)	
RANCH LIMITED PARTNERSHIP	)	
	)	
_____	)	

On December 06, 2013, the Idaho Department of Water Resources ("IDWR") issued License No. 55-13891 to Quintana Ranch Limited Partnership. The United States of America, Department of Interior, Bureau of Land Management ("BLM") respectfully files this Petition for Reconsideration regarding issuance of License No. 55-13891 pursuant to the IDWR rules of procedure, IDAPA 37.01.01.740.02.

On November 19, 2013 an Application for Amendment for Licensing Purposes ("Permit Amendment") was filed with IDWR just prior to the issuance of the License on December 6, 2013. The Permit Amendment sought to change a point of diversion ("POD") and place of use ("POU"). The original Application for Permit, Amended Application for Permit, and Approved Permit previously described a POD and POU in T06S, R04W, S24, NESE (private) for stockwater purposes. The recent Permit Amendment (for licensing purposes) changed the legal description of the POD and POU to T06S, R04W, S24, SENE (BLM). There was no opportunity to review the Permit Amendment for protest purposes because the amendment was not

advertised and therefore there was no notice given to water users (See the evolution of the new POD and POU in *Exhibit 1* to the *Affidavit of Fredric W. Price*).

The new legal description describing the POD and POU is entirely owned by the BLM within the Blackbird Point Allotment. Vernon Kershner is the only authorized grazing permittee in the Blackbird Point Allotment. Further more, the construction of this stockwater reservoir on BLM has not been authorized. BLM requests that this POU be removed from the license.

BLM respectfully requests that IDWR issue an Amended License removing the POD and POU described in the T06S, R04W, S24, SENE (BLM) because Quintana Ranch Limited Partnership is not authorized to graze in this allotment.

Under state law a water right cannot be established in trespass (see *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); *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Reed v. Morton*, 480 F.2d 634 (9th Cir. 1973); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2s 1314 (1936); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); and *King v. Chamberlin*, 20 Idaho 504, 118 P. 1099 (1911)).

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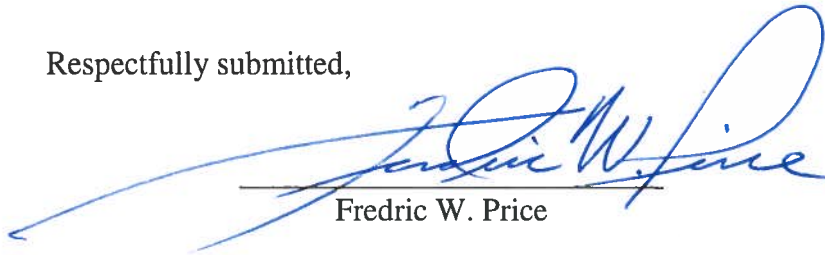
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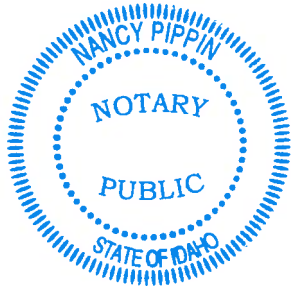
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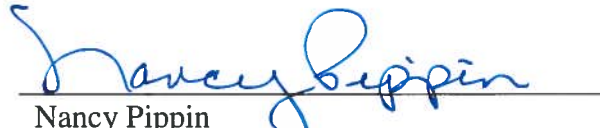
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Respectfully submitted,


Fredric W. Price

Subscribed and sworn to before me this 20th day of December, 2013.
Witnessed by my hand and official seal.




Nancy Pippin
Notary Public in and for the State of Idaho
Residing at: Mountain Home, Idaho
My Commission Expires: 09-06-2017

CERTIFICATE OF SERVICE

I HEARBY CERTIFY that on December 20, 2013, I served a true and correct copy of the foregoing **PETITION FOR RECONSIDERATION; LICENSE NO. 55-13891** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

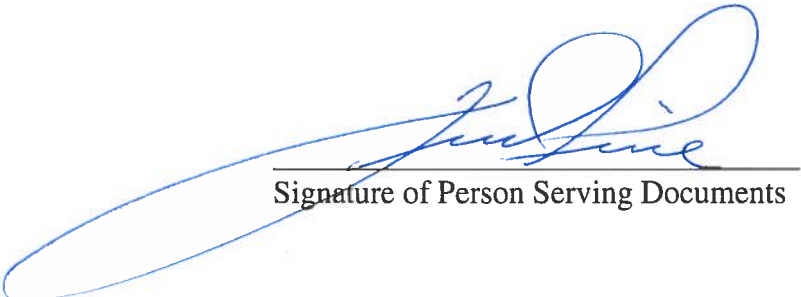
Original to:

Gary Spackman, Director
IDWR, State Office
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to:

Quintana Ranch Limited Partnership
Tim Quintana
3876 HWY 95
Homedale, ID 83628

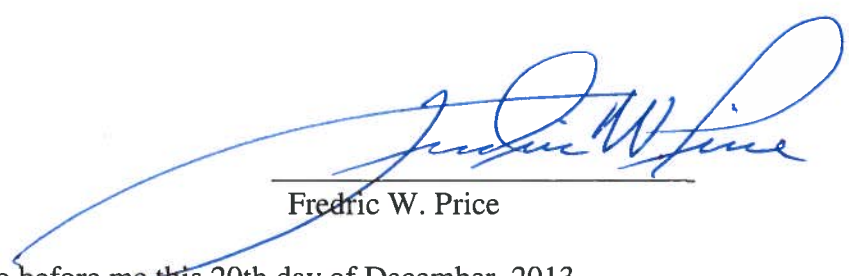
J. Allen Tarter
U.S.D. I., Bureau of Land Management
Boise District
3948 Development Ave.
Boise, ID 83705



Signature of Person Serving Documents

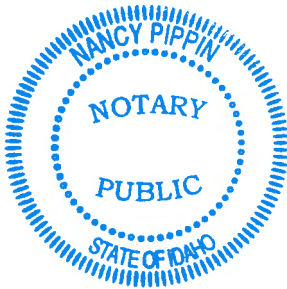
Page 1 of 3

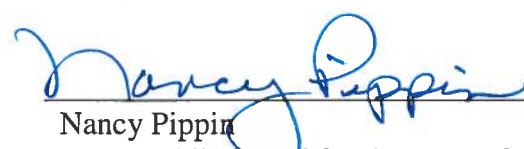
The maps included in ***Exhibit 2*** are maps that I have prepared to illustrate where the elements of License No. 55-13891 are located relative to federal public land. BLM land is shaded in yellow.



Fredric W. Price

Subscribed and sworn to before me this 20th day of December, 2013.
Witnessed by my hand and official seal.





Nancy Pippin
Notary Public in and for the State of Idaho
Residing at: Mountain Home, Idaho
My Commission Expires: 09-06-2017

CERTIFICATE OF SERVICE

I certify that on December 20, 2013, I served a true and correct copy of the foregoing **AFFIDAVIT OF FREDRIC W. PRICE; LICENSE NO. 55-13891** by placing the document in the United States Mail in Boise, Idaho, postage paid, and addressed as follows:

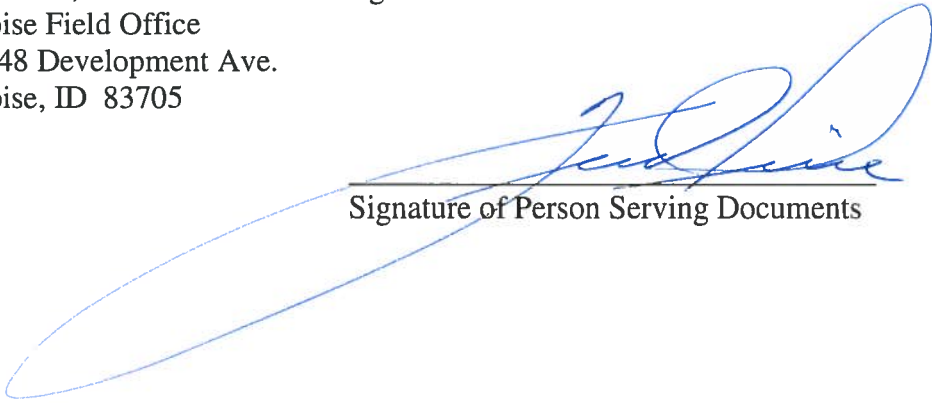
Original to:

Gary Spackman, Director
IDWR, State Office
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Copies to:

Quintana Ranch Limited Partnership
Tim Quintana
3876 Hwy 95
Homedale, ID 83628

J. Allen Tarter
U.S.D.I., Bureau of Land Management
Boise Field Office
3948 Development Ave.
Boise, ID 83705



Signature of Person Serving Documents

Exhibit 1

FORM 202 10/07

Ident. No. 55-13891

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED

DEC 05 2008

WATER RESOURCES
WESTERN REGION

1. Name of Applicant Thomas M Quintana Phone 208-387-3489
Mailing address 3824 US Hwy 95 Homedale, Idaho 83638 Email _____

2. Source of water supply Deer Creek which is a tributary of Boulder Creek

3. Location of point of diversion is Township 6S Range 4W Sec. 24, in the _____
NE $\frac{1}{4}$, SE $\frac{1}{4}$, Govt. Lot _____, B.M., Quynhe County, _____

additional points of diversion if any: 6S-4W NW NW - Section 25
NE NE

4. Water will be used for the following purposes:

Amount 20 ac-Ft for Stockwater Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)
20 Amount 1.12 for Stockwater from Storage purposes from 4/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)
Amount 1.12 for Stockwater Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

5. Total quantity to be appropriated is (a) 1.12 and/or (b) 20
cubic feet per second acre-feet per year

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source _____

(2) Dam + Reservoir for stockwater

b. Height of storage dam 8 Ft max feet; active reservoir capacity _____ acre-feet;
total reservoir capacity _____ acre-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

d. Is ground water with a temperature of greater than 85°F being sought? _____

e. If well is already drilled, when? _____; Drilling firm _____;

Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)

8. Description of proposed uses (if irrigation only, go to Item 9):

a. Hydropower; show total feet of head and proposed capacity in kW. _____

b. Stockwatering; list number and kind of livestock. 500 hd cattle

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. _____

e. Other; describe fully. _____

The Original Application for Permit described the POD in T06S, R04W, S24, NESE (private).

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
6S	4W	24																	
6		25	S																

Total number of acres to be irrigated: _____

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? None

11. a. Who owns the property at the point of diversion? Applicant
- b. Who owns the land to be irrigated or place of use? Applicant
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. _____

Dams + Reservoirs Exist.

Est. Pond Capacity: Pond #1 = 1/2 ac. surface X 4 Ft depth = 2 ac-Ft.

Pond #2 = 2 ac. surface X 4 Ft depth = 8 ac-Ft.

Evaporation = 8.75 ac-Ft.

Total 20 ac-Ft.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Thomas M. Quintana
Signature of Applicant

Thomas M. Quintana
Print Name (and title, if applicable)

For Department Use:

Received by [Signature] Date Dec 5, 08 Time 3:25 Preliminary check by _____
Fee \$ 100.00 Receipted by [Signature] Receipt No. W2037061 Date _____

Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____ Dates Published _____

RECEIVED

DEC 23 2008

WATER RESOURCES
WESTERN REGION

AMENDED

Page 1

Ident. No. 55-13891

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public water of the State of Idaho

1. Name: THOMAS QUINTANA
3824 US HWY 95
HOMEDALE ID 83628
(208)337-3489

2. Source: DEER CREEK Tributary to: BOULDER CREEK

3. Location of Point of Diversion:

#1 DEER CREEK	NE1/4SE1/4	Sec. 24, Twp 06S, Rge 04W, B.M.
OWYHEE County		
#2 DEER CREEK	NE1/4NE1/4	Sec. 25, Twp 06S, Rge 04W, B.M.
OWYHEE County		

4. Water will be used for the following purposes:

<u>Purpose</u>	<u>From</u>	<u>To</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
STOCKWATER STORAGE	01/01	to 12/31		20.0 AF

5. Total quantity to be appropriated is: 20.0 AF

6. Proposed diverting works:

POINT OF DIVERSION #1

a. Type and size of devices used to divert water from the source: (2) DAM & RESERVOIRS FOR STOCKWATER

b. Height of storage dam 8 feet;
Active reservoir capacity 2 acre-feet;
Total reservoir capacity 2 acre-feet;

c. Proposed well diameter is _____ inches;
Proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85F being sought?

e. If well is already drilled, when? _____;

Drilling Firm _____;

Drilling Permit No. _____.

The Amended Application for Permit described the POD in T06S,
R04W, S24, NESE (private).

Page 2

Ident. No. 55-13891

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public water of the State of Idaho

POINT OF DIVERSION #2

a. Type and size of devices used to divert water from the source: (2) DAM & RESERVOIRS FOR STOCKWATER

b. Height of storage dam 8 feet;

Active reservoir capacity 8 acre-feet;

Total reservoir capacity 8 acre-feet;.

c. Proposed well diameter is _____ inches;

Proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85F being sought?

e. If well is already drilled, when? _____;

Drilling Firm _____;

Drilling Permit No. _____.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 1 year(s).

8. Stockwater is for 500 head of range cattle.

PLACE OF USE: STOCKWATER STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
06S 04W 24	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S 04W 25	X												X				

9a. Who owns the property at the point of diversion? If other than applicant, describe the arrangement enabling the applicant to make this filing.

APPLICANT

9b. Who owns the land to be irrigated or place of use? If other than applicant, describe the arrangement enabling the applicant to make this filing.

APPLICANT

10. Remarks:

Dams & Reservoirs Exist. Ext. pond capacity: Pond #1 = 0.5 ac surface x 4 ft depth = 2 ac-ft

Pond #2 = 2 ac surface x 4 ft depth = 8 ac-ft

Evaporation = 8.75 ac-ft

Approximate Total of 20 ac-ft

The Amended Application for Permit described the POU in T06S, R04W, S24, NESE (private).

Page 3

Ident. No. 55-13891

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public water of the State of Idaho

11. Map of proposed point of diversion and place of use attached? [X]

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Thomas M. Quintana
Applicant

Received by Jmk Date 12-23-08 Time 10:30 am Preliminary check by JFW
Publication prepared by DB Date 2/26/09 Published in OWYHEE AVALANCHE
Publication approved DATE: Date MARCH 4 & 11, 2009

Receipt No. W037081

Date: See Original

Received by: See Original

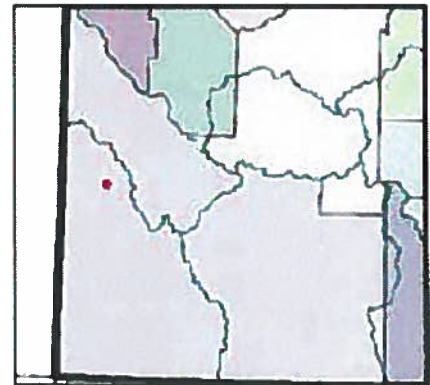


Idaho Department of Water Resources

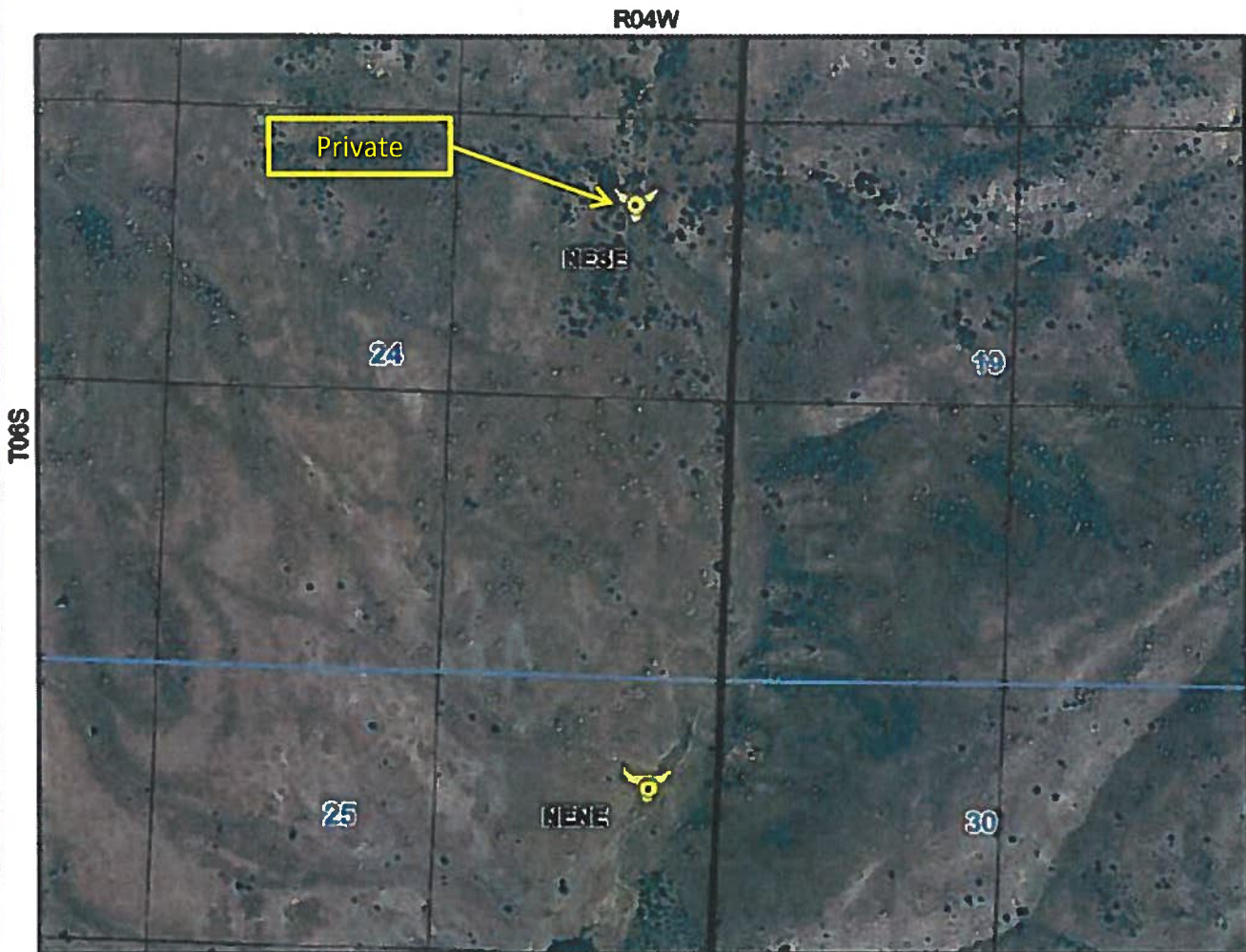
Application
55-13891
(STOCKWATER STORAGE)

Legend

- Point of Diversion
- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters



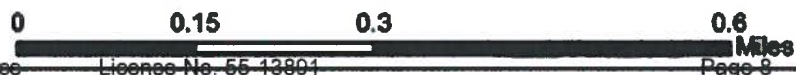
Owyhee County
IDWR Basin 55



Prepared by Angie Grimm
On December 10, 2008

2004 Aerial Photography

Exhibit 1, Affidavit of Fredric W. Price



License No. 55-13891

Page 8

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 55-13891

Priority: December 05, 2008

Maximum Diversion Volume: 20.0 AF

This is to certify, that **THOMAS QUINTANA**
3824 US HWY 95
HOMEDALE ID 83628

has applied for a permit to appropriate water from:

Source: DEER CREEK **Tributary:** BOULDER CREEK

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
STOCKWATER STORAGE	01/01 to 12/31		20.0 AF

LOCATION OF POINT(S) OF DIVERSION:

DEER CREEK	NE1/4SE1/4	Sec. 24, Twp 06S, Rge 04W, B.M., OWYHEE County
DEER CREEK	NE1/4NE1/4	Sec. 25, Twp 06S, Rge 04W, B.M., OWYHEE County

PLACE OF USE: STOCKWATER STORAGE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
06S 04W 24													X				
06S 04W 25	X																

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 30, 2010**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. This right does not grant any right-of-way or easement across the land of another.
5. Stockwater use is for 500 range cattle.
6. Storage if for two (2) ponds not to exceed a total capacity of 10 acre feet and a total surface area of 2.5 acres.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 13th day of April, 20 09.


 JOHN WESTRA, Western Regional Manager

Page 1

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 55-13891

RECEIVED

NOV 27 2013

DEPARTMENT OF
WATER RESOURCES

Date of Priority: December 05, 2008

Maximum Diversion Rate:

Maximum Diversion Volume:

7.7 AF

Comes now QUINTANA RANCH LIMITED PARTNERSHIP
C/O TIM QUINTANA
3876 HWY 95
HOMEDALE ID 83628

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 55-13891, and requests that the permit be changed as follows:

Source: DEER CREEK

Tributary: BOULDER CREEK

BENEFICIAL USE

STOCKWATER STORAGE

PERIOD OF USE

01/01 to 12/31

ANNUAL VOLUME

7.7 AF

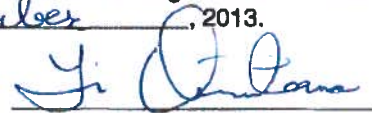
LOCATION OF POINT(S) OF DIVERSION:

DEER CREEK → SE1/4NE1/4 Sec. 24, Twp 06S, Rge 04W, B.M. OWYHEE County
DEER CREEK SE1/4NE1/4 Sec. 25, Twp 06S, Rge 04W, B.M. OWYHEE County

PLACE OF USE: STOCKWATER STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
06S 04W 24	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
				X													
06S 04W 25	X			X													

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 19 day of November, 2013.



(Signature)

Page 2 of 3

Page 2

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 55-13891

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = \$100.00 Received by: HP # : C098015 Date: 11/27/2013

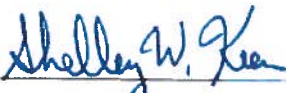
ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 55-13891 with the following:

CONDITIONS OF APPROVAL

1. This right does not grant any right-of-way or easement across the land of another.
2. Right 55-13891 authorizes the diversion of 5.4 acre-feet of water to fill the two (2) reservoirs and 2.3 acre-feet for the replacement of losses caused by seepage and evaporation.

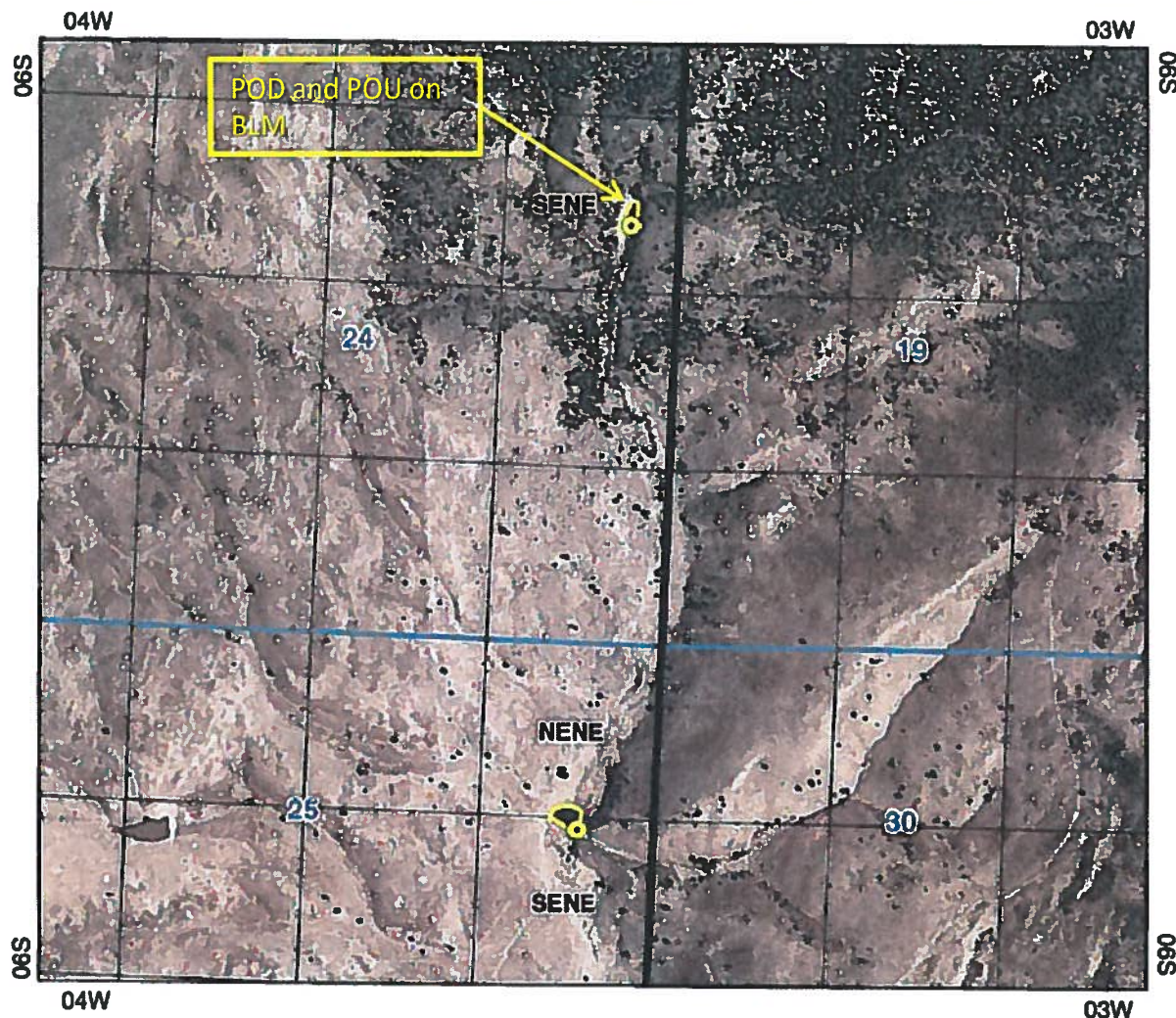
Witness my hand this 6th day of December, 2013.


for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources**Attachment For Amendment To Water Right License**

55-13891

This map depicts the STOCKWATER STORAGE place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.15 0.3 0.6 Miles



State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 55-13891

Priority: December 05, 2008

Maximum Diversion Volume: 7.7 AF

It is hereby certified that QUINTANA RANCH LIMITED PARTNERSHIP
C/O TIM QUINTANA
3876 HWY 95
HOMEDALE ID 83628 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated December 05, 2008; and has submitted Proof of
Beneficial Use on August 03, 2009. An examination confirms water is diverted from:

SOURCE

DEER CREEK

Tributary: BOULDER CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL DIVERSION VOLUME</u>
STOCKWATER STORAGE	01/01 to 12/31	7.7 AF

LOCATION OF POINT(S) OF DIVERSION:

DEER CREEK	SE1/4NE1/4	Sec. 24,	Twp 06S,	Rge 04W, B.M.	OWYHEE County
DEER CREEK	SE1/4NE1/4	Sec. 25,	Twp 06S,	Rge 04W, B.M.	OWYHEE County

PLACE OF USE: STOCKWATER STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S 04W 24				X													
06S 04W 25	X																

CONDITIONS OF APPROVAL

1. This right does not grant any right-of-way or easement across the land of another.
2. Right 55-13891 authorizes the diversion of 5.4 acre-feet of water to fill the two (2) reservoirs and 2.3 acre-feet for the replacement of losses caused by seepage and evaporation.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 6th day of December, 2013.

Shelley W. Keen
for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment To Water Right License

55-13891

This map depicts the STOCKWATER STORAGE place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.

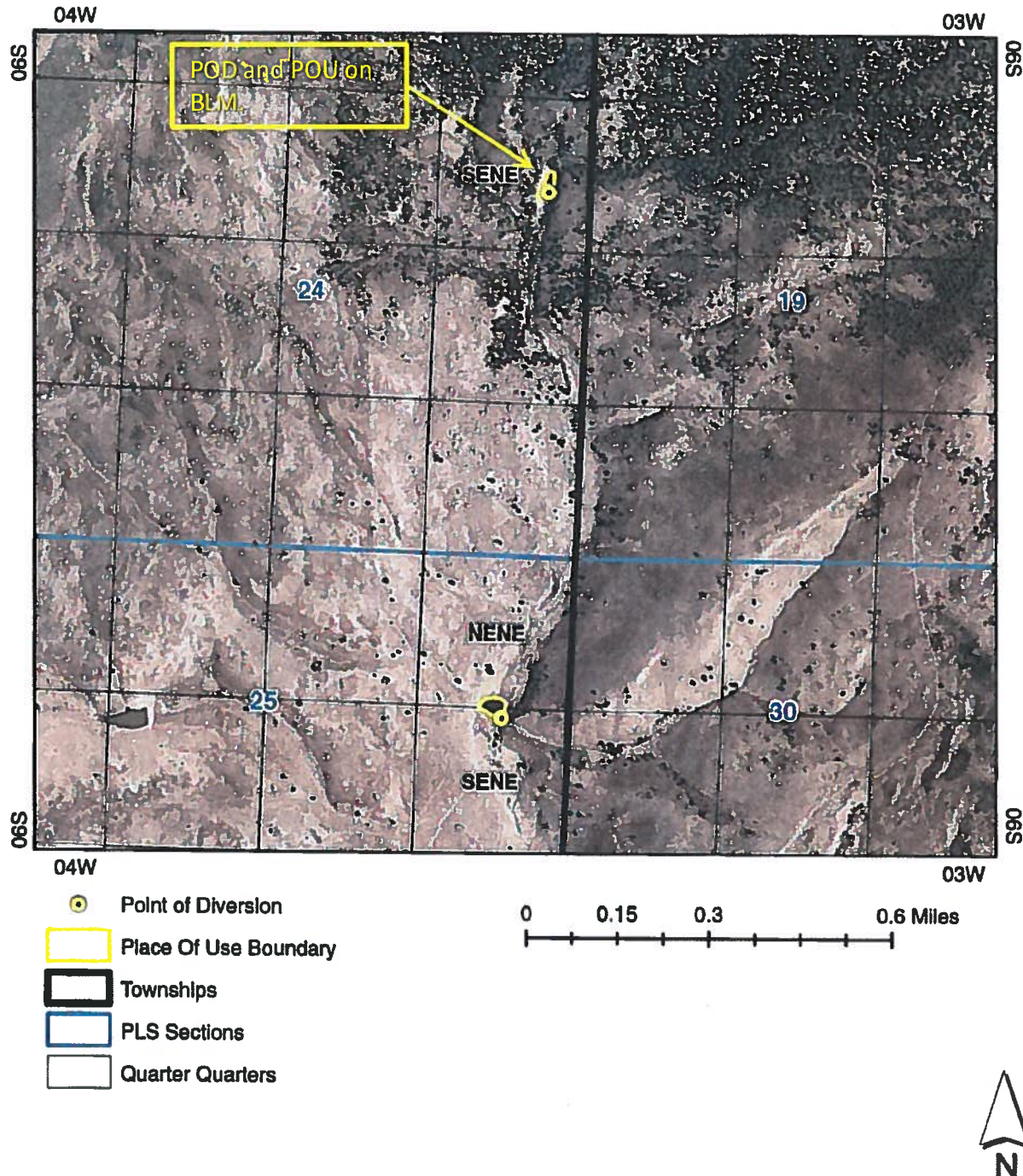
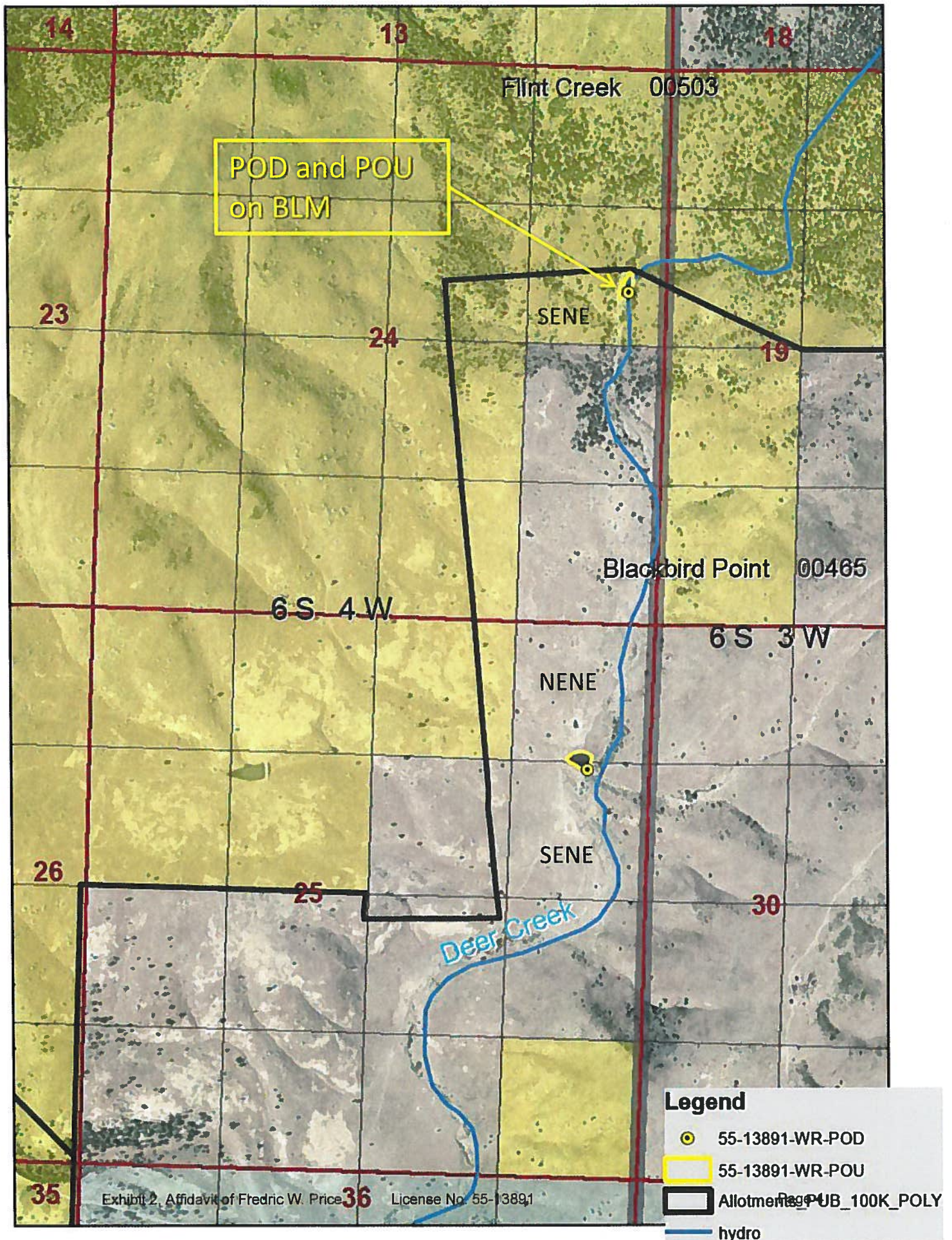
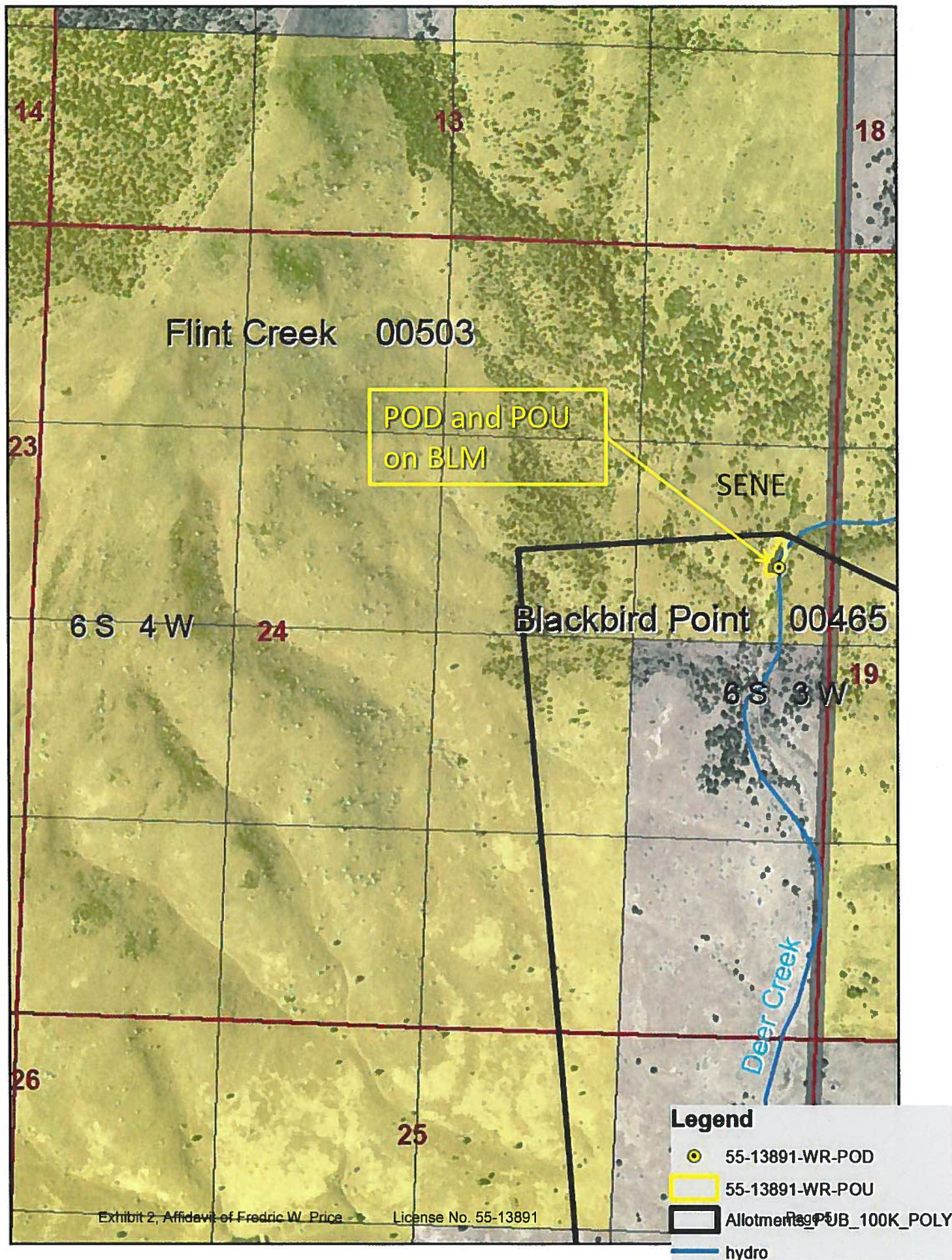


Exhibit 2

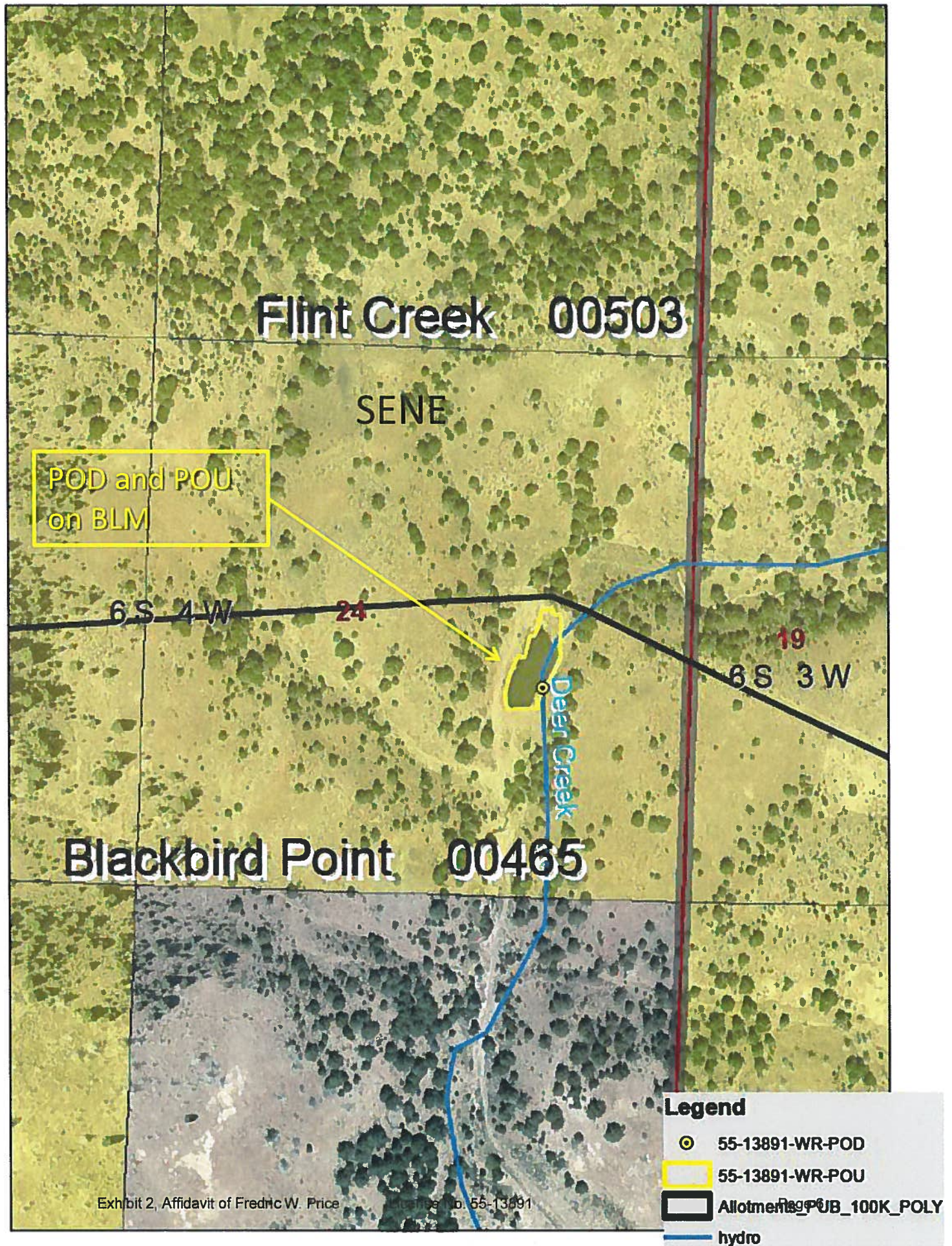
55-13891 Quintan Ranch Limited Partnership



55-13891 Quintan Ranch Limited Partnership



55-13891 Quintan Ranch Limited Partnership



OWYHEE COUNTY 073
BOISE DISTRICT SEC. 3

MT PLAT

[illegible]

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

FILE REF:	DDSR0608ACTHATTBTR009
CONVERTED TO:	5270200Z
LAST UPDATED:	18M72007
QACG AC:	August 1, 2007
POSTED TO PUBLIC RECORDS:	BY:
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BLM DCCN ACCOUNT:	04827000
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 11N, NAD 1983
NOTES:	
USER PLAT IS:	

T. 0 S
R. 4 W

