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DEPARTMENT OF
WATER RESOURCES

MEMORANDUM

DATE: July 12, 2013
TO: Sandra Thiel, Idaho Department of Water Resources
FROM: Roxanne Brown
CC: Big Creek Ranch LLC
RE: Status of Water Right 73-2153

Background

Big Creek Ranch LLC is the current owner of water right permit 73-7124. Groundwater is delivered under the permit to a full pivot (known as Pivot 5) south of the corner where Hooper Lane meets Custer Road in the Pahsimeroi Valley. The well (Well 2) which provides water for Pivot 5 under the permit also provides water to a half-pivot north of Custer Road (Pivot 6) under water right 73-2142. The well and pivots are shown in Figure 1.

A field examination was recently completed by staff of the Idaho Department of Water Resources to confirm beneficial use developed under permit 73-7124. Water right 73-2153 (from Big Creek) overlaps the permitted place of use and is the subject of this memorandum. Water right 73-2153 is of interest to Big Creek Ranch because of their concern that the right might be used in the future and effect the flows in Big Creek, which they are actively seeking to protect through ongoing conservation projects with state and federal agencies.

Water Right Development

Jack Burstedt filed an *Application for Permit to Appropriate the Public Waters of the State of Idaho* on December 14, 1959. The application was numbered 36309 and proposed the diversion of 12.8 cfs from Big Creek to be conveyed in a 6½-mile ditch (known as the California Ditch) to the Pahsimeroi River; then an additional distance to a 640-acre place of use for irrigation. The point of diversion from Big Creek was described in the SENW, Section 11, Township 13N, Range 23E, BM. Based on the application, Permit No. 28338 was issued on December 29, 1959. A field examination of the completed project was conducted on September 11, 1968. The examiner described an approximate 6½-mile ditch from the Big Creek point of diversion to the Pahsimeroi River¹, and noted the water was then diverted from the river and

¹ The ditch is referred to as the "Burstedt Big Creek Ditch" in the *Deposition of Holder* submitted by Mr. Burstedt in 1964. In the same document, Mr. Burstedt refers to the ditch from the Pahsimeroi River to the place of use as the "Lower California Ditch".

conveyed in the California Ditch (this section is sometimes referred to as the Lower California Ditch) for an additional 6 miles to the place of use. The examiner also noted that Big Creek water was not available during the 1968 irrigation season and the land had been irrigated with groundwater that year. The point of diversion in the field report is described as it was permitted, but maps accompanying the field report do not show the point of diversion. The California Ditch is clearly shown on the field report map (see Attachment 1).

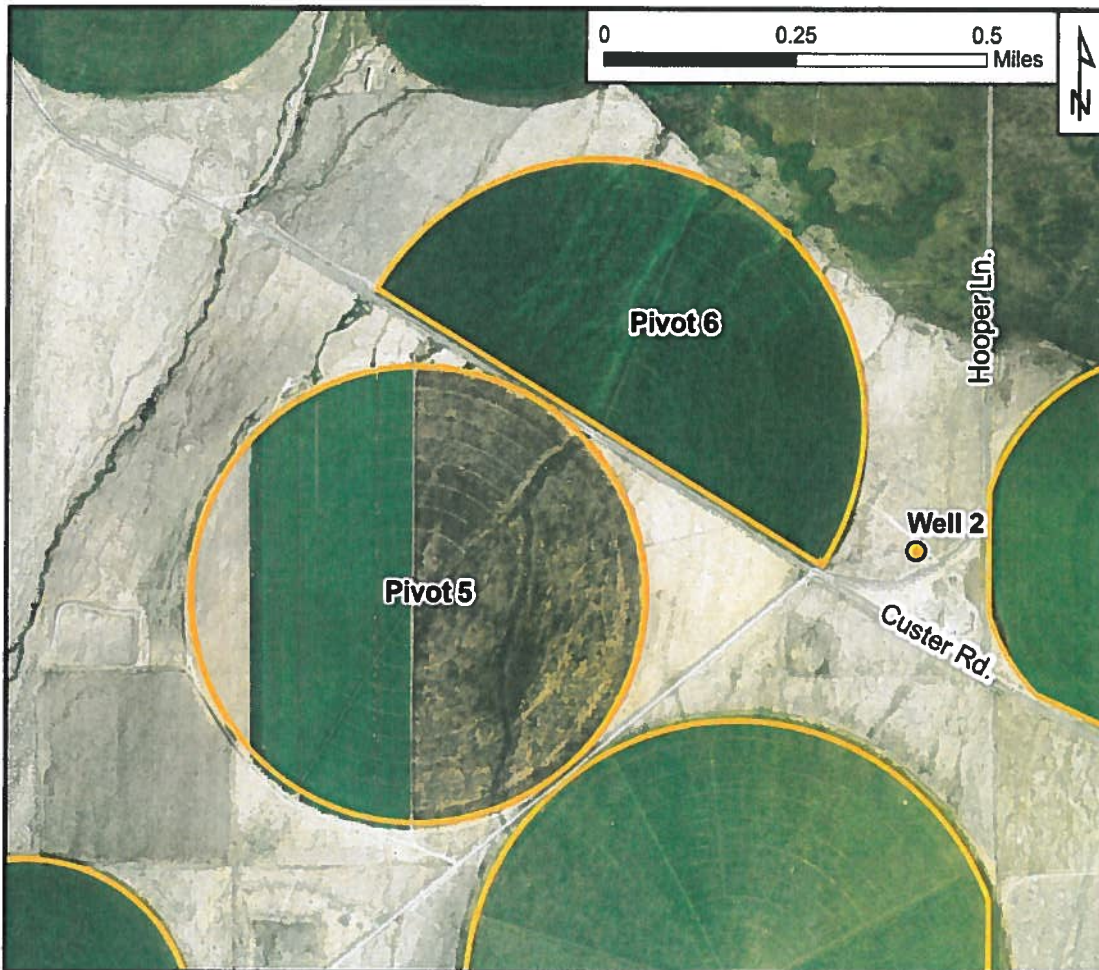


Figure 1. Well and Pivot Location (2011 NAIP Photography)

A license was issued for Permit No. 28338 on June 26, 1969 authorizing the diversion of 11.94 cfs from Big Creek for the irrigation of 597 acres. No Conditions or limitations were placed on the license. The water right was subsequently renumbered 73-2153.

Adjudication Claim and Partial Decree

We have not investigated ownership of water right 73-2153 in the period between the issuance of the license and submittal of a claim to the water right in the Snake River Basin Adjudication (SRBA). A claim was submitted in 1990 by The Aetna Casualty & Surety Company. The claim

described diversion of 12.8 cfs from Big Creek in the SESENW, Section 11, Township 13N, Range 23E for irrigation of 228 acres in the general location of the place use authorized by the license issued in 1969. No explanation was given for the reduction in irrigated area (597 acres licensed versus 228 acres claimed), but a map submitted with the claim clearly shows a ditch between Big Creek and the Pahsimeroi River, then from the Pahsimeroi River to the place of use. On the map, Big Creek water is shown entering the Pahsimeroi River in Section 35, Township 14N, Range 22E (see Attachment 2). The sketch submitted with the claim appears to show the Hamilton Ditch, rather than the California Ditch.

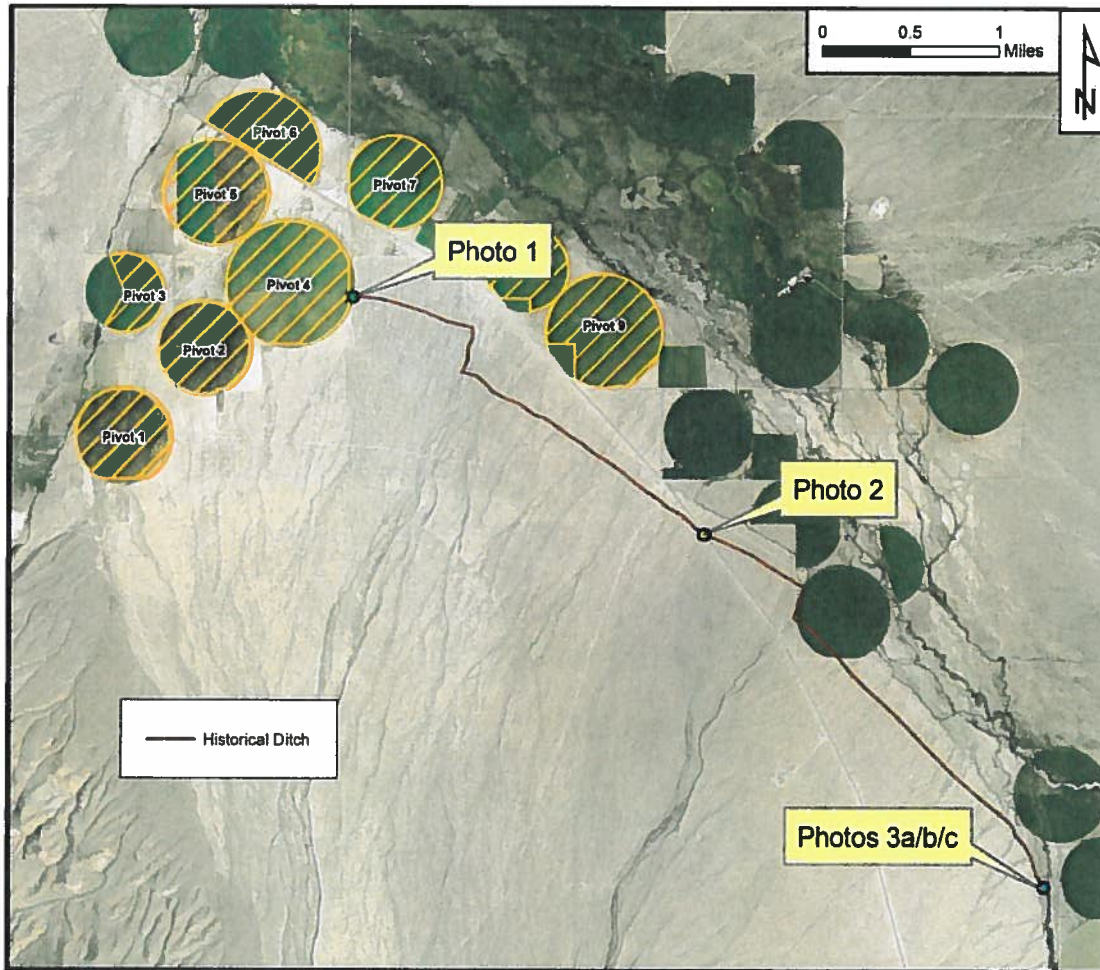


Figure 2. Location of historical ditch and photo index.

A Partial Decree of water right 73-2153 was issued October 20, 2009. The point of diversion is described in the NESW, Section 11, Township 13N, Range 23E, and the location of injection of the Big Creek water into the Pahsimeroi River is described in the NWSE, Section 27, Township 14N, Range 22E. The point of rediversion from the river is described in the SENW, Section 27, Township 14N, Range 22E. The points of diversion, injection, and rediversion in IDWR's recommendation of the claim and the resultant Partial Decree indicate the water would be conveyed in the Hamilton Ditch. The Hamilton Ditch then flows into a ditch from the Pahsimeroi River (the so-called "Furey Lane" ditch) and is conveyed to a point where a three-way split

occurs. Water to be conveyed to the Sulphur Creek Ranch site then enters the Pahsimeroi River and would have been rediverted into a ditch on the west side of the river.

The system described in the recommendation and subsequent partial decree does not include the Lower California Ditch as described in the application, permit and licensing exam for this water right. In addition, the point of diversion described is not the head of the Hamilton Ditch, although review of available aerial photography shows the outline of a ditch from the decreed point of diversion to the Hamilton Ditch and it is possible diversion was attempted at this location in the past. Upon further onsite review, it is apparent that water delivered from Big Creek in the system claimed could not reach the historical and claimed place of use without pumping. No pump system has been used, so it is unlikely water was delivered in this way.

Recent History of Delivery and On-site Investigation

The current watermaster in Water District 73 is Ted O'Neal. Mr. O'Neal has lived in the Pahsimeroi Valley his entire life and is very familiar with the various diversions and ditches in the area of Sulphur Creek Ranch.² In a conversation with Mr. O'Neal in Spring 2011, he stated he had never seen water flowing in the Lower California Ditch (although he knew where it was). In addition, in his capacity as watermaster, he noted the 1959 priority date for water right 73-2153 was so junior that the right would rarely (if ever) be deliverable.

The current manager of Sulphur Creek Ranch (John Brown) knew the location of an old ditch in the general location of the Lower California Ditch. We traveled the length of the ditch from a point to the east of Pivot 4 to the ditch head works from the Pahsimeroi River (as shown in Figure 2). The ditch we investigated was the only ditch found in the area, and the only ditch visible on available aerial photographs. It appears this ditch is the Lower California Ditch shown in the 1968 field exam.

Photographs of the historical ditch taken on October 13, 2011 during the site visit are included as Attachment 3. Although the ditch is still visible, it is shallow and overgrown with sagebrush in several locations. Custer Rd. has been constructed over the ditch, with no evidence of a culvert. The headworks is very old and in disrepair. In addition, the river has undercut the headworks and water would not be deliverable without extensive berming. It is unlikely the headworks and ditch have been used for a very long time.

² Ted's own ranch is directly across the Pahsimeroi River from Sulphur Creek Ranch, and some of his water rights are also delivered in the Hamilton Ditch. The "three-way split" historically separated his rights from rights for Sulphur Creek Ranch, and water rights for a third property.

Summary

1. Water right 73-2153 was originally delivered in a ditch known as the Lower California Ditch.
2. The Lower California Ditch is shown on the engineer's field report in the same location as the old ditch traced by SPF and John Brown.
3. The Lower California Ditch has not conveyed water for at least 30 years, based on the memories of the current water master.
4. Custer Rd. was constructed without a culvert for the ditch.
5. Pivot 4, which eliminated any evidence of the ditch, was installed at some time before the 1992 irrigation season as evidenced by available aerial photography.
6. The Hamilton Ditch-Furey Lane ditch combination does not deliver Big Creek water to Sulphur Creek Ranch at a location where it could possibly be used to irrigate the original place of use for water right 73-2153. It is physically impossible without pumping, and such a pump station has never been in place.
7. Water developed under water right 73-2153 has not been delivered and used at any other location on Sulphur Creek Ranch for the following reasons:
 - a. The 1959 priority date is so junior that water is rarely, if ever, available in any given year, and
 - b. All areas irrigated on Sulphur Creek Ranch by water from Big Creek have sufficient senior-priority water rights, taking into account the Lower California Ditch is no longer functional and other areas of the ranch are irrigated through the Hamilton-Furey Lane ditch combination.
8. It is extremely unlikely that water right 73-2153 was ever a primary source of supply for the area described on the partial decree due to its priority date.
9. It is also unlikely that water right 73-2153 has been delivered in at least 30 years.

Given the current information, Big Creek Ranch respectfully requests that the license for permit No. 73-7124 be issued without reference to using the surface water right and they be allowed to formally abandon water right no. 73-2153 to clarify IDWR's water right records.

ATTACHMENT 1 – Report of Engineer (1968), Field Examination Map

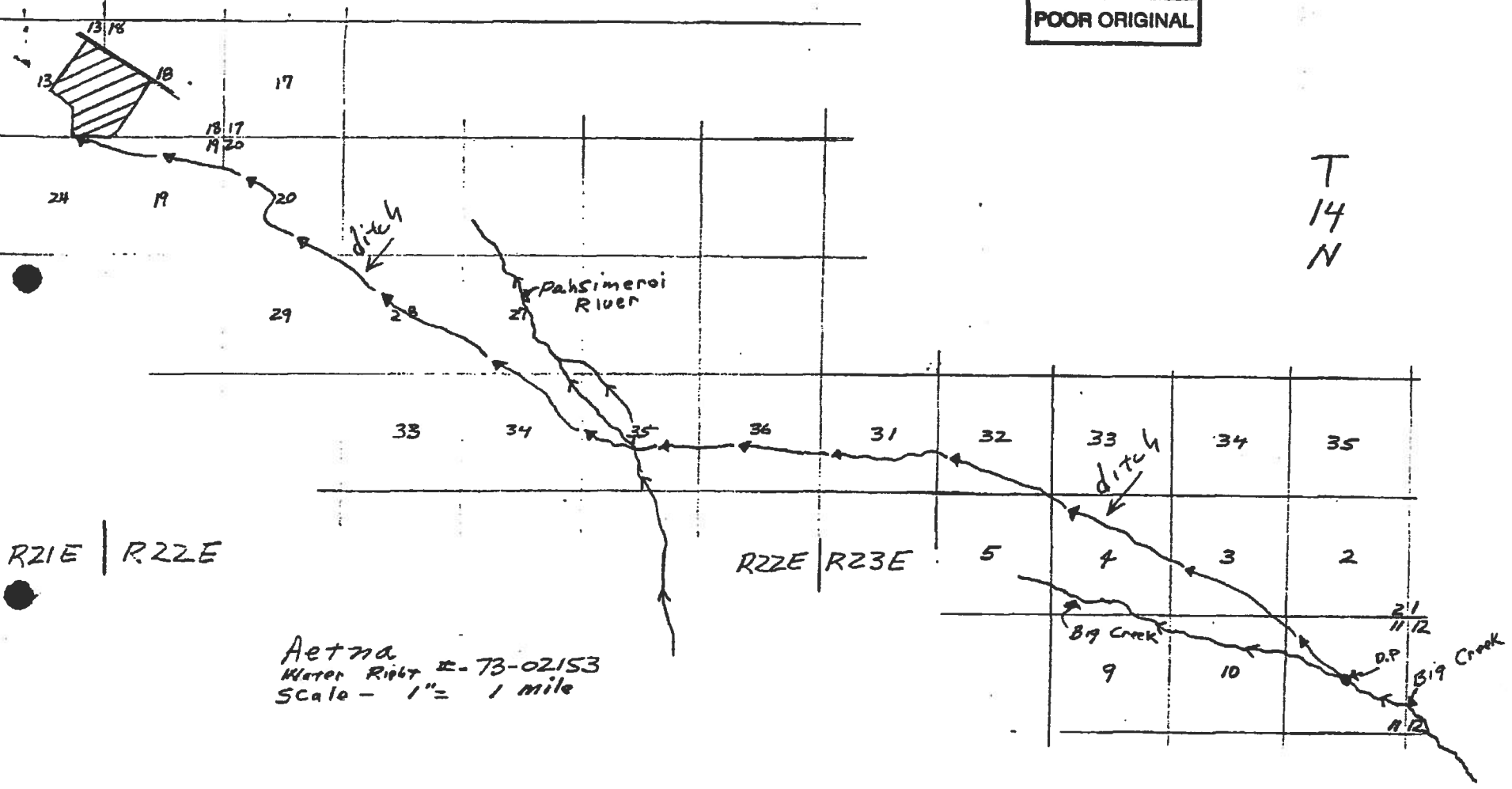
ATTACHMENT 2 – Sketch Submitted with SRBA Claim

R21E | R22E

R22E | R23E

POOR ORIGINAL

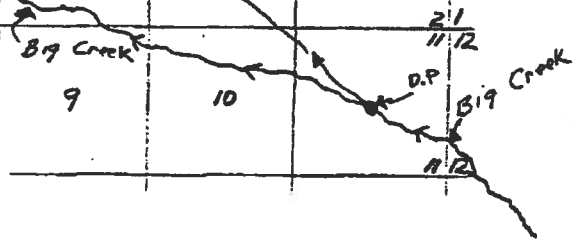
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R21E | R22E

R22E | R23E

Aetna
Water Right #73-02153
Scale - 1" = 1 mile



ATTACHMENT 3 – Photographs



Photo 1. Looking east from Pivot 4



Photo 2. Looking northeast from the edge of Custer Rd.

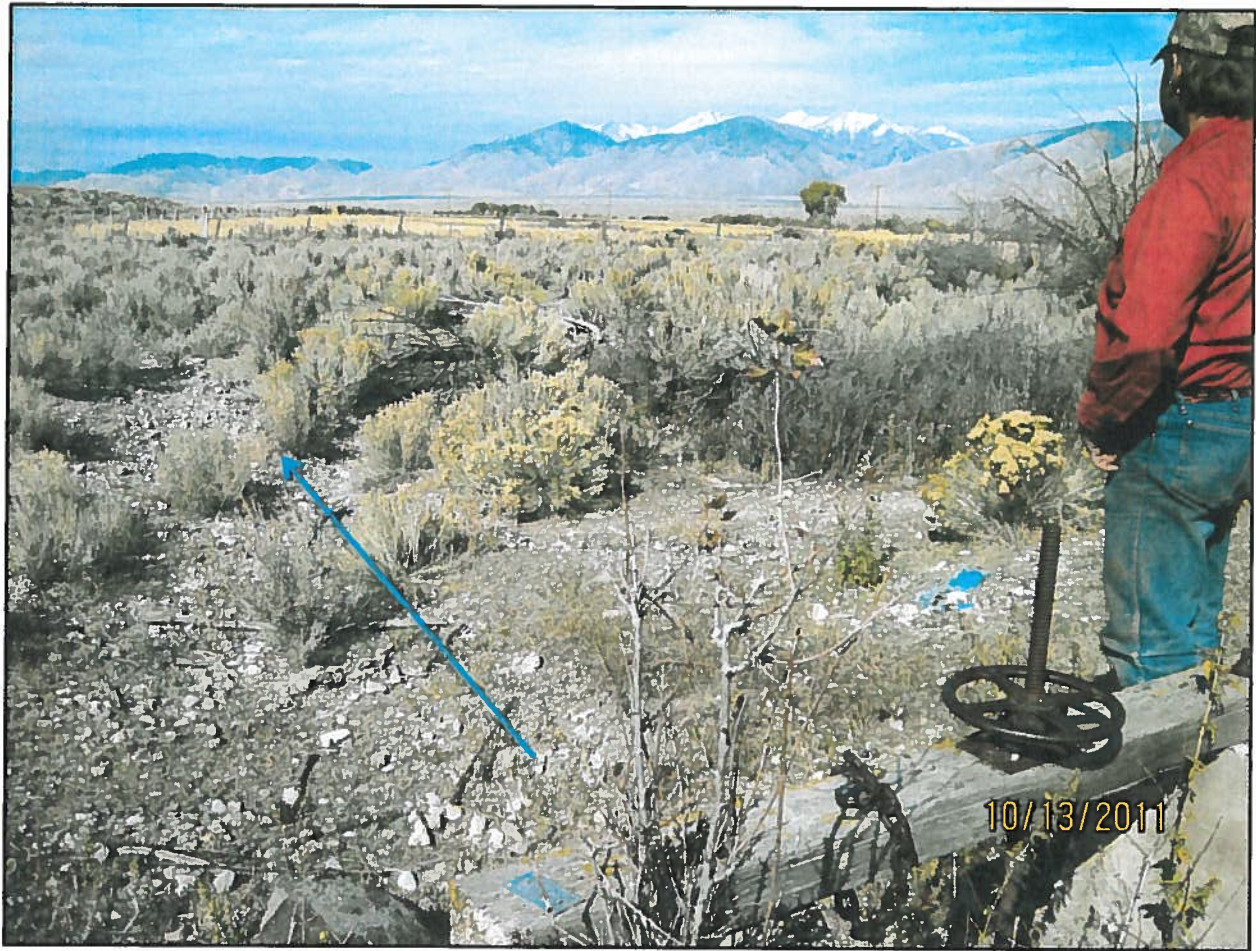


Photo 3a. Looking northwest from the historical headworks



Photo 3b. Historical headgate from the Pahsimeroi River



Photo 3c. Pahsimeroi River at the historical headgate.