

MEMO

TO: Water Rights File
FROM: James Cefalo JRC
DATE: February 22, 2013
RE: Ownership Split for Water Right 13-969

Recently, the Department received an ownership change seeking to update the water right records for a split portion of water right 13-969. After a review of the decree, topographic maps, and various warranty deeds provided to the Department, I believe there is a logical way to split the ownership of the right. This memo is intended to identify likely errors in the existing decree and explain the reasoning behind the water right splits.

The 1920 Bear River Decree describes the water right as follows:

Entry No. 18 (Originally assigned right no. 11-275; later renumbered as 13-969)

Owners: AC Bosen, Hyrum J. Smith, Robert L. Smith, and Melvin Green

Priority Date: May 1, 1882

Point of Diversion: Smith-Vanoy Ditch, SE1/4, Section 16, T14S, R40E

Diversion Rate: 5.50 cfs

Place of Use: 300 acres

30% of the right to Hyrum J. Smith for the irrigation of

N1/2 of the SW1/4, Section 2,

SW1/4 of the SE1/4, Section 20,

and 23 acres in the NW 1/4 of the SE 1/4, Section 29, T14S, R40E

50% of the right to AC Bosen for the irrigation of

107 acres in the NE1/4 of the NE1/4, Section 21

and the SE1/4 of the NE1/4, Section 21

and the N1/2 of the SE1/4, Section 21, and

a few acres in the SW1/4 NE1/4 and NW1/4 SW1/4, Section 22

all within T14S, R40E

20% of the right to Robert L. Smith and Melvin Green for the irrigation of

31 acres in the SE1/4, Section 20, T14S, R40E

AC Bosen Portion

This portion of water right 13-969 is fairly straight-forward. The AC Bosen place of use described in the 1920 Decree contains one apparent error. The place of use includes "a few acres" in the SWNE and the NWSW of Section 22, T14S, R40E. The SWNE sits across the Bear River from the rest of the described property. It could not have been irrigated out of the Smith-Vanoy Ditch. If the legal description were changed to the SWNW and NWSW of Section 22, it creates a contiguous irrigated parcel. Maps and aerial photography confirm that this is the correct legal description for the right.

The place of use described in the 1920 Decree also contains one probable error. There are acres located in the SWNE of Section 21 that are currently and could have historically been irrigated from the Smith-Vanoy Ditch. I have chosen to include the acres down gradient of the Smith-Vanoy Ditch in my irrigated acre calculations.

The errors in the place of use description cannot be corrected through an ownership change. The current owner of the water right must file a water right transfer to correct the place of use description. The water right shape created for the right in the Department's mapping software shows the correct shape. However, the water right record cannot be updated until a transfer is approved. A remark has been added to the AC Bosen portion of the water right describing the apparent errors.

Using the Smith-Vanoy Ditch as the place of use boundary on the north and west and the Bear River as the boundary on the east and south, the number of irrigable acres within the quarter-quarters described in the decree (with the correction in Section 22) matches the decree exactly. There are 107 irrigable acres in the quarter-quarters described in Section 21. There are 12 irrigable acres within the SWNW and NWSW of Section 22. In total, the AC Bosen portion of water right 13-969 is 2.75 cfs and 119 irrigated acres.

Hyrum J. Smith / Robert L. Smith / Melvin Green

There are two apparent errors in the 1920 Decree relating to the Hyrum Smith portion of the water right. The decree describes irrigation of land in Section 2, T14S, R40E. Section 2 is generally located in the eastern cliffs forming the Oneida Narrows Canyon. There is no possible way that water from the Bear River was used in Section 2. It appears that the decree should have listed the N1/2 of the SW1/4 of Section 21. This 80-acre area includes land that lies between the Smith-Vanoy Ditch and the Bear River. For purposes of completing ownership changes for water right 13-969, the Department should assume the decree should have listed Section 21 instead of Section 2.

The 1920 Decree also describes the irrigation of 23 acres in the NWSE of Section 29, T14S, R40E. This quarter-quarter sits on the south side of the Bear River. There is no evidence in the Department's records that Hyrum J. Smith ever owned the NWSE of Section 29. Deeds provided to the Department show that Hyrum Smith owned exactly 23 acres the NWNE of Section 29. For purposes of completing ownership changes for water right 13-969, the Department should assume that the decree should have listed the NWNE of Section 29.

One of the documents available to the Department is the final court decree handling the estate of Hyrum J. Smith after his death (around 1935). All of his real property was given to his wife, Elvira. This document is helpful because it describes all of the property owned by Hyrum J. Smith at his death. Hyrum J. Smith owned the SENE, NESE, SWSE, SESE of Section 20, the SWNW; SENW, NESW, NWSW, and everything north of the Bear River in the SESW of Section 21; and everything north of the Bear River (23 acres) in the NWNE of Section 29, all in T14S, R40E.

Of particular note, in 1935, Hyrum J. Smith owned all of the ground that could be flood irrigated from the Smith-Vanoy Ditch in the SE1/4 of Section 20. This means that between the

1920 Bear River Decree and 1935, Hyrum J. Smith must have acquired the property associated with the Robert Smith/Melvin Green portion of water right 13-969.

I believe water right 13-969 should include two additional parcels that were likely irrigated in 1920, but were not listed in the decree for Hyrum J. Smith. The acres north of the Bear River in the NENE of Section 29 appear to be contiguous land that would have also been irrigated from the Smith-Vanoy Ditch. Even though the NENE of Section 29 is not listed in the Hyrum J. Smith estate, it appears to be property owned by the Smith family. The NENE of Section 29 is listed in deeds as early as the 1950s, owned by descendants of Hyrum J. Smith.

Another parcel, the land north of the Bear River in the SESW of Section 21, was owned by Hyrum J. Smith at the time of his death. It also would have logically been irrigated by the Smith-Vanoy Ditch because it is contiguous with other portions of the Hyrum J. Smith farm. For purposes of splitting water right 13-969, I will assume that the SESW of Section 21 and the NENE of Section 29 should have been included in the 1920 decree for water right 13-969.

The total irrigated acres listed in the decree do not match up with the specific acres assigned to each of the owners. If the 119 acres associated with the AC Bosen portion of the right (which appear to be exact) are deducted from the 300 acre total, it leaves 181 acres associated with the Hyrum Smith / Robert Smith / Melvin Green portion of the right. According to topographic maps, there are only about 120 acres west of the center line of Sections 20/29 and east of the AC Bosen property that could have been flood irrigated from the Smith-Vanoy Ditch. These 120 acres includes the SESW of Section 21 and the NENE of Section 29, which were not listed in the 1920 Decree.

The Nelson Ditch diverts water from the Bear River and begins in the NENE of Section 29. Therefore, the Nelson Ditch forms the southern boundary for the Hyrum J. Smith irrigated place of use through all of Section 29.

The Hyrum J. Smith portion of the water right (assuming he acquired the Robert Smith / Melvin Green part of the right) is good for 2.75 cfs and 120 acres. Even though the 1920 Decree described 300 acres under water right 13-969, outside of the 239 acres (119 + 120) described in this memo, it is difficult to find any other acres that could have been watered from the Smith-Vanoy Ditch. 5.50 cfs on 239 acres equates to 1.2 inches per acre. The fact that the AC Bosen portion and the Smith/Smith/Green portion are so close in size is another indication that the number of acres assigned to Hyrum J. Smith is correct. The AC Bosen portion and Smith/Smith/Green portion were each supposed to represent 50% of the right.

Transfer No. 202

In 1949, the estate of Hyrum J. Smith filed an application for transfer (No. 202) seeking to change the point of diversion for a portion of water right 13-969. The ground historically irrigated out of the Smith-Vanoy Ditch is geographically split into two sections by a small ridge located close to the Bear River. Maintaining the ditch through this area was challenging. So, instead of maintaining that portion of the ditch, a pump was installed on the Bear River to supply water to the acres southwest of the ridge. The pump discharges into the existing ditch downstream of the ridge.

Transfer No. 202 moved 2.00 cfs of water right 13-969 to the new point of diversion. 2.00 cfs represents 36% of the total diversion rate (5.50 cfs) authorized under right 13-969. According to my calculations, about 85 acres of the 239 irrigable acres described above are located to the southwest of the ridge and would be supplied through the Bear River pump. This equates to 36% of the total irrigated acres. So, Transfer No. 202 seems to have identified the correct rate to move to the pump. Transfer No. 202 is further confirmation that the acreage analysis described above is correct. Transfer No. 202 did not adjust or discuss the place of use for water right 13-969.

Transfer No. 202 split water right 13-969 into two pieces, the acres irrigated from the original point of diversion and the acres irrigated from the pump installed downstream of the small ridge. Water right 13-969A is the portion upstream of the ridge. Water right 13-969B is the portion downstream of the ridge. Using the acreage totals described above and the diversion rate split from Transfer No. 202, water right 13-969 should have been split as follows (see maps):

13-969A (AC Bosen/Hyrum J. Smith)	3.50 cfs	154 acres
13-969B (Hyrum J. Smith)	2.00 cfs	85 acres

Recent Ownership Change

In 2003, Bob and Olivia Boyack filed an ownership change, seeking to update the ownership of a split portion of water right 13-969B. The Department split right 13-969B into two parts:

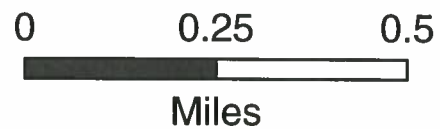
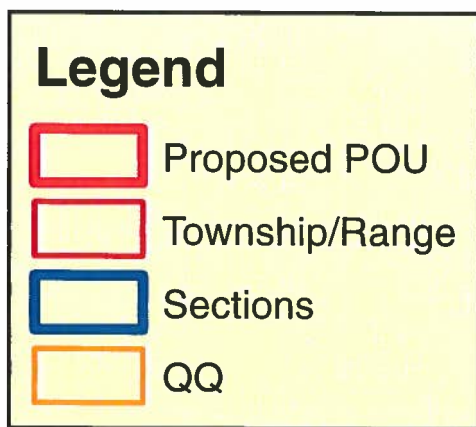
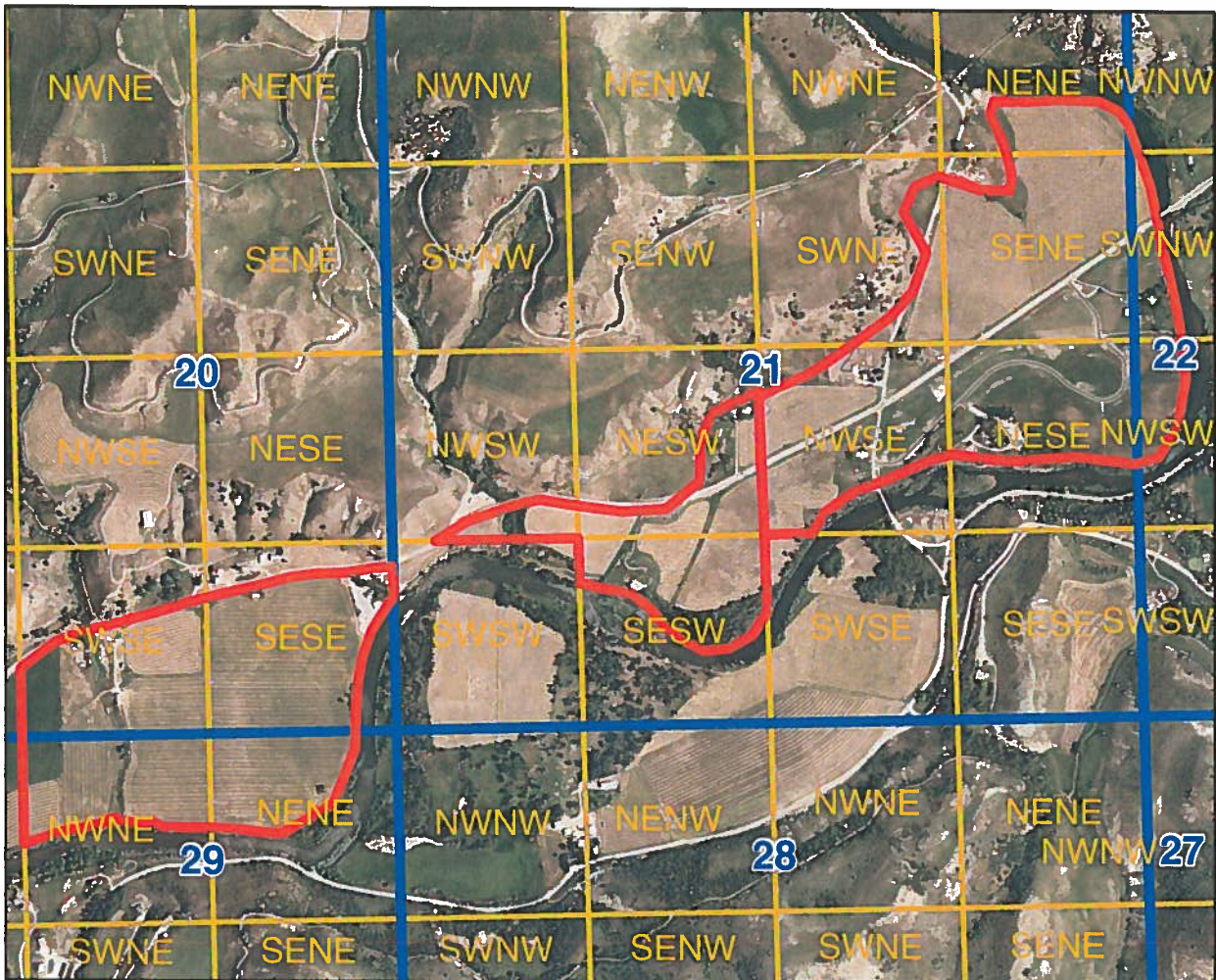
13-7631 (Bosen/Smith/Smith/Green)	1.91 cfs	acres not determined
13-7632 (Bob and Olivia Boyack)	0.09 cfs	13 acres

Since 2003, the Boyacks have obtained additional ground within the place of use for water right 13-969B. Rather than split the existing water rights into additional pieces, it makes sense to simply reapportion the amounts listed under rights 13-7631 and 13-7632 to account for the recent land acquisition. According to deeds provided to the Department, including the deed from the 2003 ownership change, Bob and Olivia Boyack currently own 67 acres within the irrigation place of use for 13-969B. The Boyack's portion of the right would be 67/85 or 78.8%. The two rights will now be apportioned as follows:

13-7631 (Estate of Hyrum J. Smith)	0.42 cfs	18 acres
13-7632 (Boyack Living Trust)	1.58 cfs	67 acres

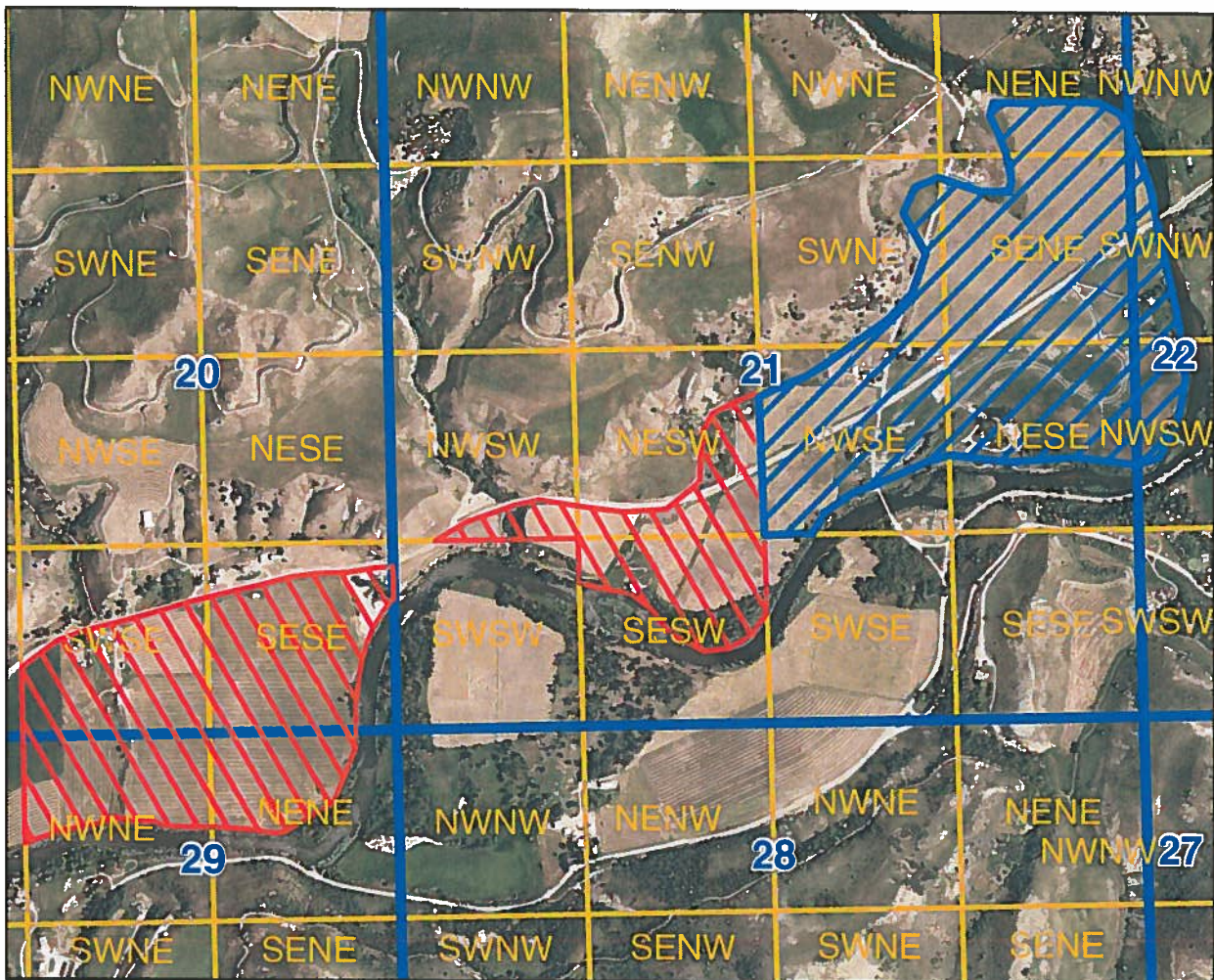
In total, the three active rights (13-969A, 13-7631, 13-7632) authorize the diversion of 5.50 cfs and the irrigation of 239 acres. Water right reports for these three water rights are attached to this memo. Transfers are needed for all of the water rights to address the place of use errors in the 1920 Decree. Any person pursuing an ownership change on 13-969A or 13-7631 in the future should file a transfer application at the same time. Bob and Olivia Boyack should file a transfer application to properly describe the place of use for water right 13-7632.

Ownership Split for Water Right 13-969

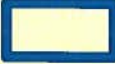


2009 Aerial Photography

Ownership Split for Water Right 13-969



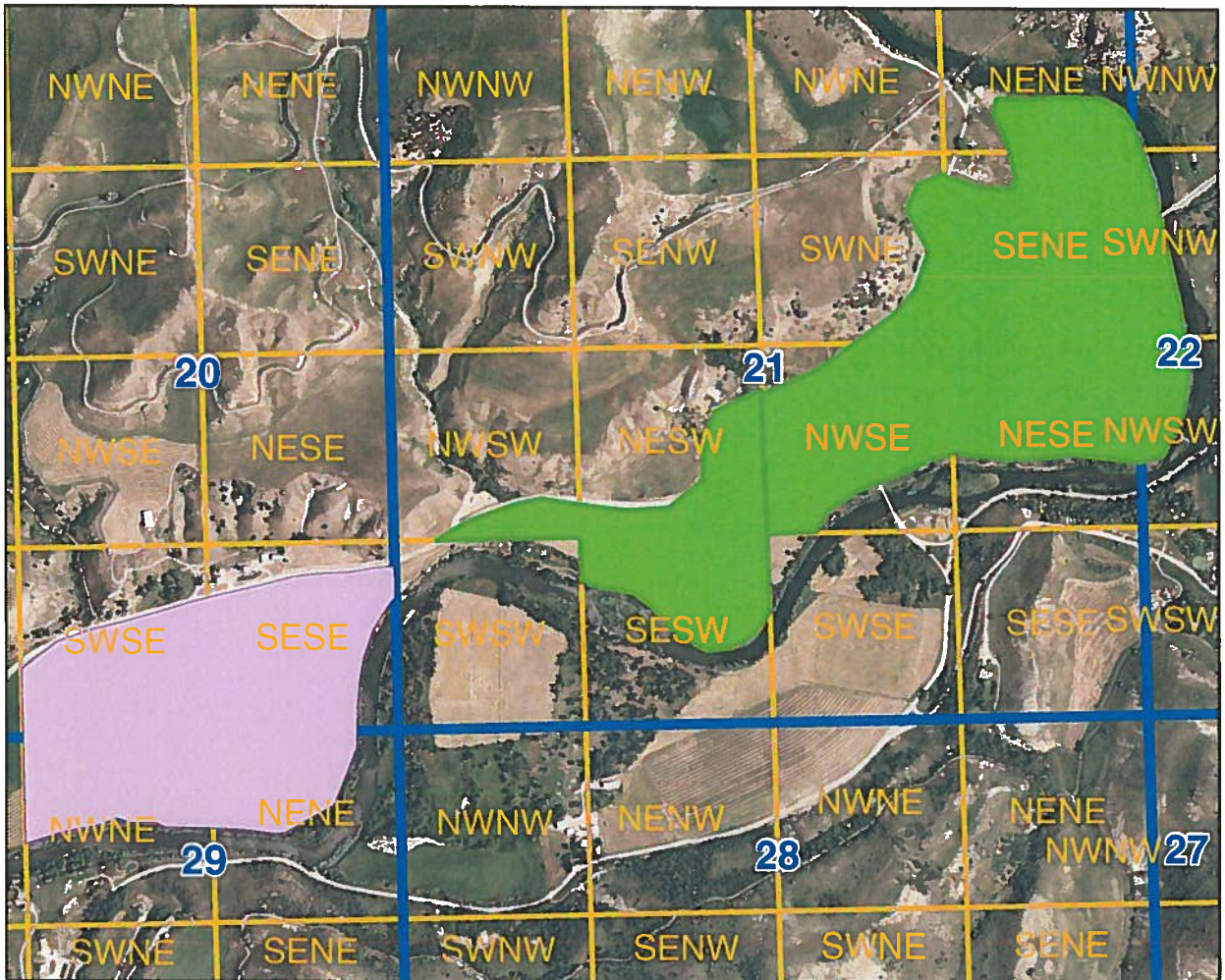
Legend

-  AC_Bosen_Portion
-  Hyrum_J._Smith_Portion
-  Township/Range
-  Sections
-  QQ

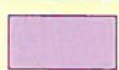
0 0.25 0.5
Miles

2009 Aerial Photography

Ownership Split for Water Right 13-969



Legend

-  13-969A
-  13-969B
-  Township/Range
-  Sections
-  QQ

0 0.25 0.5
Miles

2009 Aerial Photography

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-969A

WATER RIGHT NUMBER: 13-969A

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	A C BOSEN
Current Owner	HYRUM J SMITH

Priority Date: 05/01/1882

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BEAR RIVER	GREAT SALT LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/20 to 09/30	3.500 CFS	
	<u>Total Diversion:</u>	3.500 CFS	

Location of Point(s) of Diversion

BEAR RIVER	SE1/4	Sec. 16, Twp 14S, Rge 40E, B.M.
FRANKLIN County		

Place of Use

IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S 40E 2									X	X							
14S 40E 21	X			X									X	X			
14S 40E 22			X							X							

Conditions of Approval:

1. AC Bosen Portion: 2.75 cfs, 119 irrigated acres (E1/2 Sec 21; Sec 22).
Hyrum J. Smith Portion: 0.75 cfs, 35 irrigated acres (SW1/4 Sec 21).
13-969A Totals: 3.50 cfs, 154 irrigated acres.
2. 1920 Decree contains errors in POU description.

Comments:

1. jcefalo 2/22/2013 POU Errors

Comment: 13-969A represents the AC Bosen portion and part of the Hyrum J. Smith portion of 13-969. The 1920 Decree contains two errors in the POU description for the AC Bosen portion. The decree should list the SWNW of Section 22 rather than the SWNE of Section 22. It appears the decree should have also listed irrigated acres in the SWNE of Section 21. The 1920 Decree also contains two errors in the POU description for the Hyrum J. Smith portion. The decree should list the N1/2 of the SW1/4 of Section 21 rather than Section 2. It appears the decree should have also listed irrigated acres in the SESW of Section 21. The ArcMap shapefile in the department records is correct. However, the paper right can only be changed through a water right transfer.

2. jcefalo 2/22/2013 Decree Split

Comment: Water right 13-969A is made up of two parts. The AC Bosen portion is good for 2.75 cfs and the irrigation of 119 acres in the E1/2 of Section 21 and the SWNW and NWSW of Section 22. The Hyrum J. Smith portion is good for 0.75 cfs and the irrigation of 35 acres in the SW1/4 of Section 21.

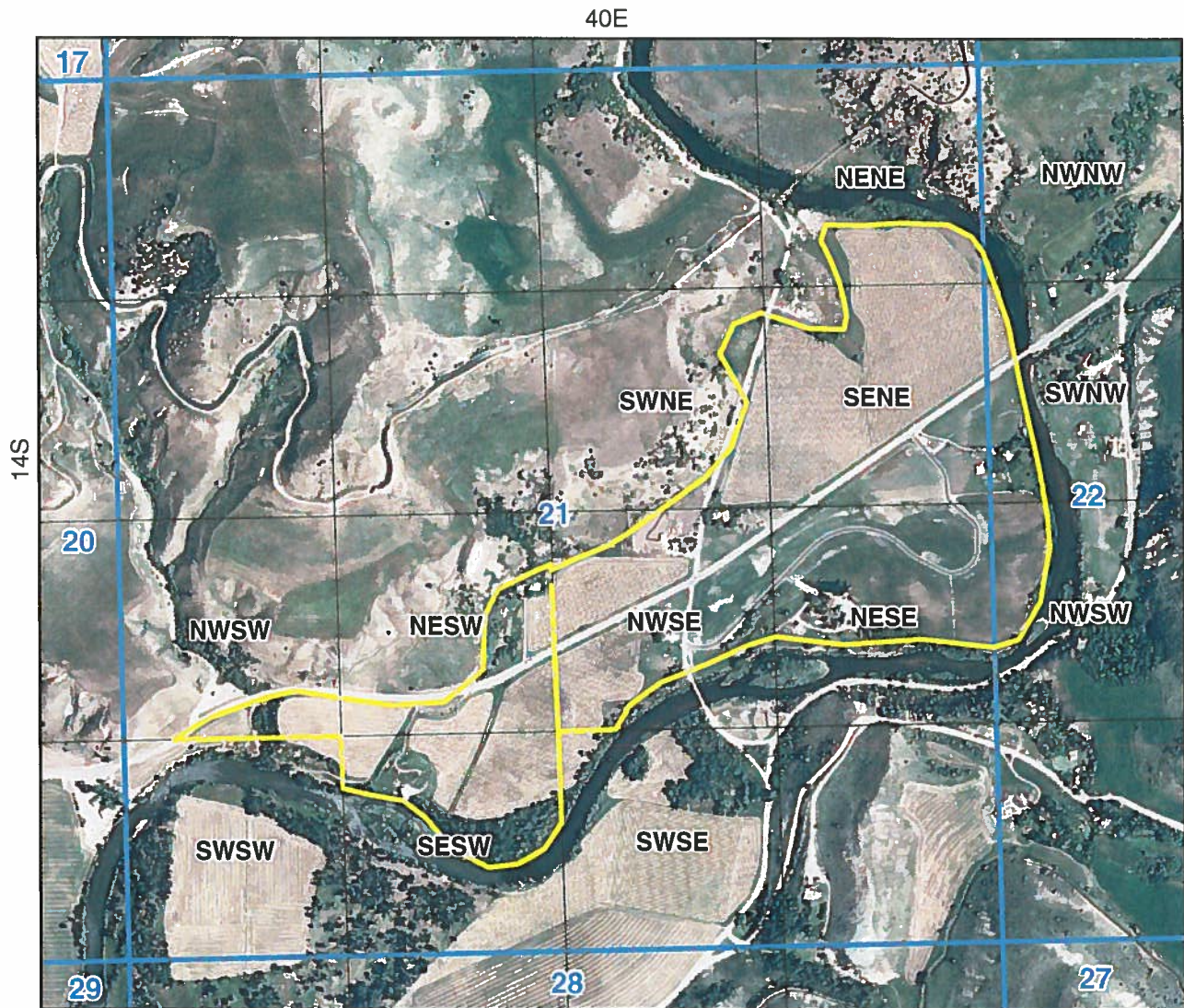
State of Idaho
Department of Water Resources

Water Right

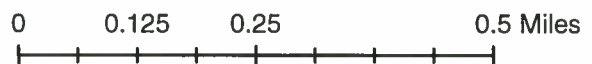
13-969A

Place of Use Boundary for A C Bosen / Hyrum J. Smith

February 22, 2013



-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters



IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-7631

WATER RIGHT NUMBER: 13-7631

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	HYRUM J SMITH

Priority Date: 05/01/1882

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BEAR RIVER	GREAT SALT LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/20 to 09/30	0.420 CFS	
	<u>Total Diversion:</u>	0.420 CFS	

Location of Point(s) of Diversion

BEAR RIVER	SW1/4SW1/4	Sec. 21, Twp 14S, Rge 40E, B.M.
FRANKLIN County		

Place of Use

IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
14S 40E 20	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	13.5
14S 40E 29																	4.5

Total Acres: 18

Conditions of Approval:

1. POU error in 1920 Decree. NWSE Sec 29 should likely be NWNE Sec 29.
2. This right was part of the Hyrum J. Smith portion of water right 13-969.
3. Transfer No. 202 changed POD to SWSW of Sec 21, T14S, R40E.

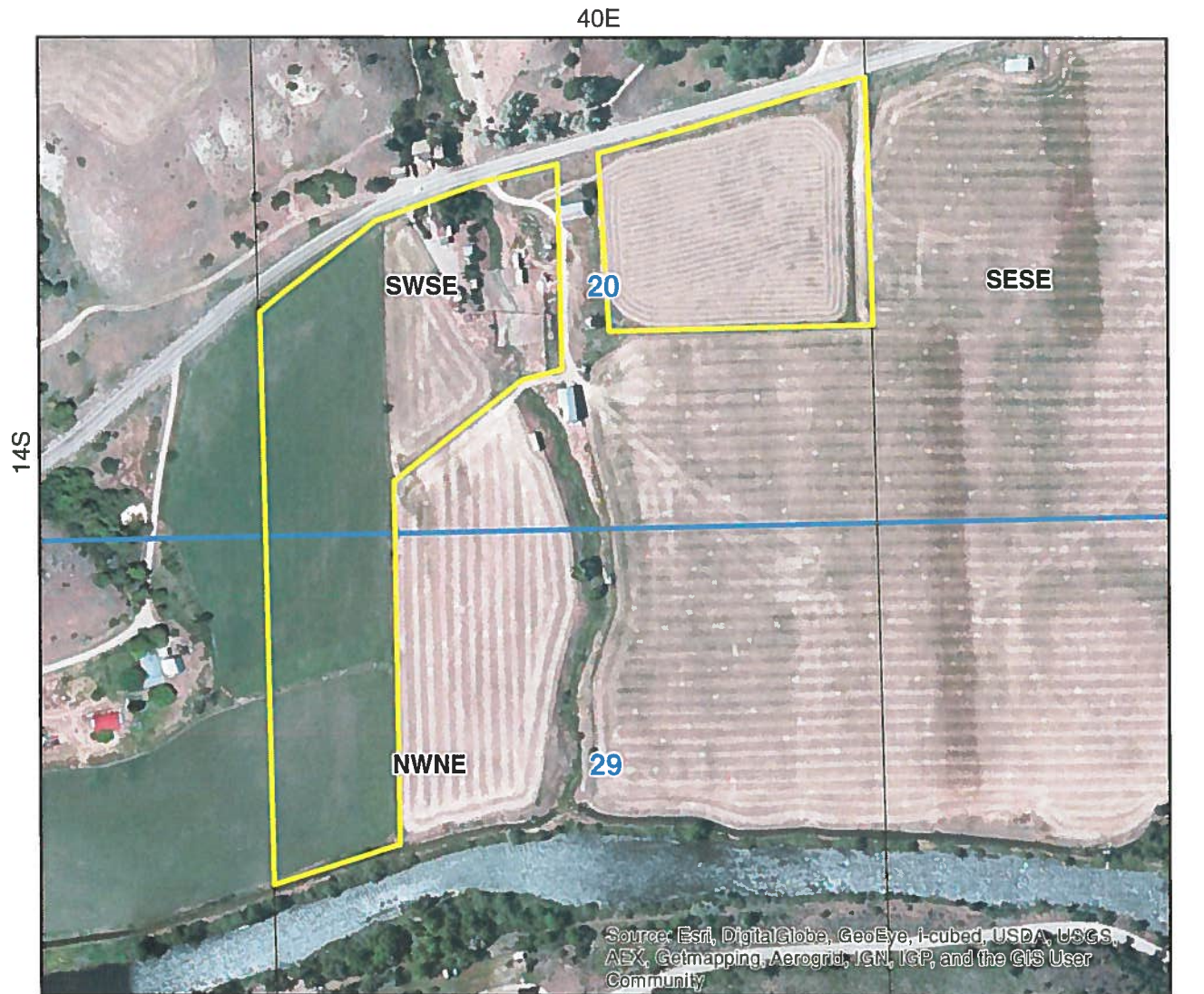
State of Idaho
Department of Water Resources

Water Right

13-7631

Water Service Area Boundary for Hyrum J Smith

February 22, 2013



-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.05 0.1 0.2 Miles



A horizontal scale bar with tick marks at 0, 0.05, 0.1, and 0.2 miles.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 13-7632

WATER RIGHT NUMBER: 13-7632

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ROBERT & OLIVIA BOYACK LIVING TRUST 3168 E HWY 36 PRESTON, ID 83263 (208)852-0448

Priority Date: 05/01/1882

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BEAR RIVER	GREAT SALT LAKE

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/20 to 09/30	1.580 CFS	
	<u>Total Diversion:</u>	1.580 CFS	

Location of Point(s) of Diversion

BEAR RIVER	SW1/4SW1/4	Sec. 21, Twp 14S, Rge 40E, B.M.
FRANKLIN County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14S	40E	20															10.0	28.0	38.0
14S	40E	29															15.0		15.0

Total Acres: 53

Conditions of Approval:

1. Place of use should include 14 acres in the NENE of Sec 29, T14S, R40E. This QQ was not identified in the 1920 Decree and can only be added to the POU designation through a transfer application.
2. Total irrigated acres authorized under this right, including the acres that should be in the NENE of Sec 29, is 67 acres.
3. Transfer No. 202 changed POD to the SWSW of Sec 21, T14S, R40E.
4. POU error in 1920 Decree. NWSE Sec 29 should likely be NWNE Sec 29.

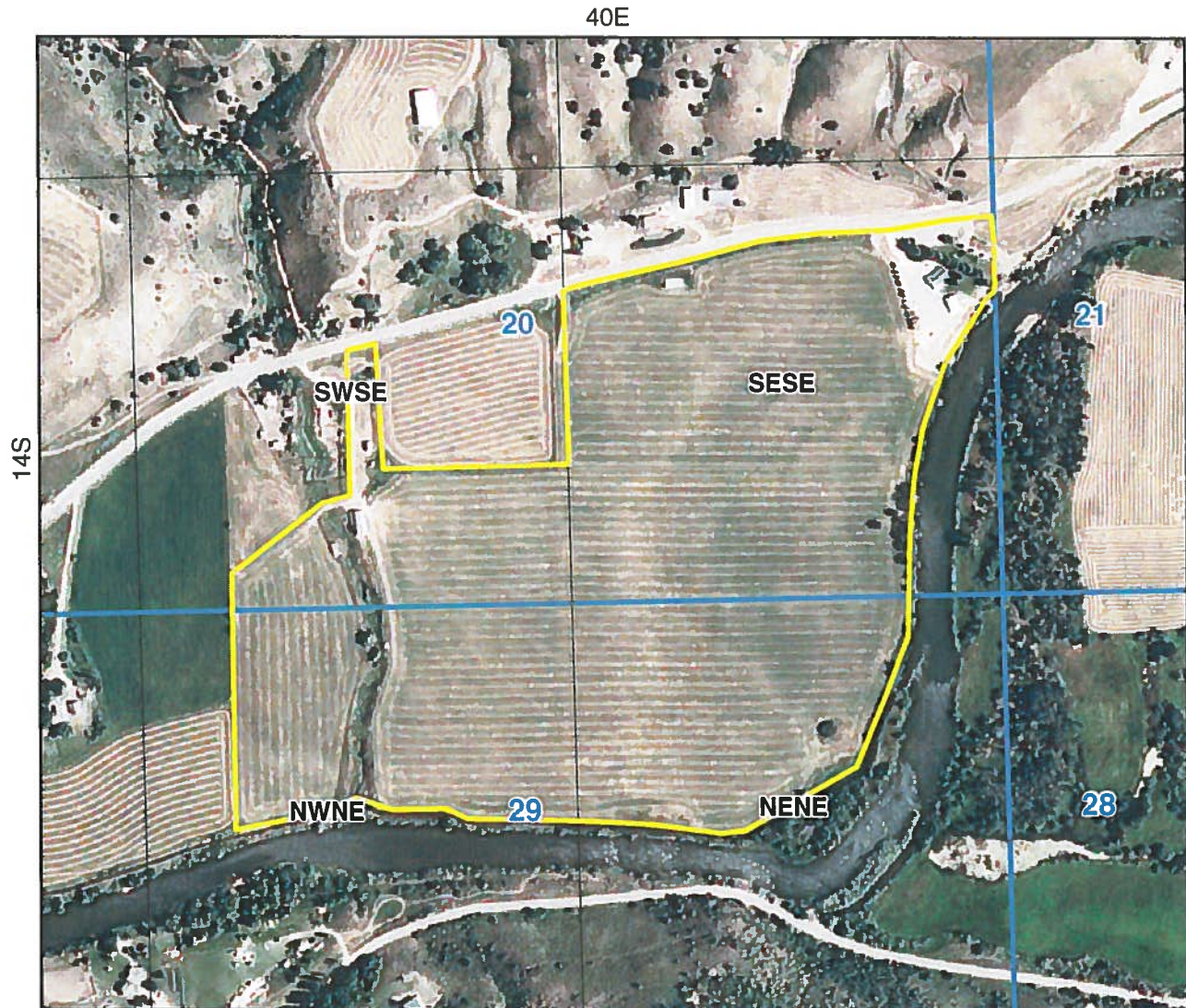
State of Idaho
Department of Water Resources

Water Right

13-7632

Water Service Area Boundary for Robert & Olivia Boyack Living Trust

February 22, 2013



-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.05 0.1 0.2 Miles

