

## Van Dyke, Nick

**From:** Luke Marchant [lmarchant@holdenlegal.com]  
**Sent:** Friday, June 22, 2012 4:14 PM  
**To:** Van Dyke, Nick  
**Subject:** Proof of Irrigation on Foster Land  
**Attachments:** DOC062212.pdf

Nick,

Attached is the report I mentioned over the phone that verifies that the land in question was irrigated in 2010. This same report was used as evidence of beneficial use for a transfer that we filed earlier this spring to make some adjustments to the place of use of these water rights.



**Luke H. Marchant**

Holden, Kidwell, Hahn & Crapo, P.L.L.C.  
1000 Riverwalk Drive, Suite 200  
P.O. Box 50130  
Idaho Falls, Idaho 83405  
Phone: (208) 523-0620  
Fax: (208) 523-9518  
Email: [lmarchant@holdenlegal.com](mailto:lmarchant@holdenlegal.com)

**Confidentiality Notice:** The information contained in this e-mail and any accompanying attachments, all of which may be confidential and/or privileged, is intended only for use by the person or entity to whom it is addressed. If you are not the intended recipient, any unauthorized use, disclosure or copying of this e-mail and its contents is strictly prohibited and may be unlawful. If you are not the intended recipient, please immediately notify the sender by return e-mail and delete the original message and all copies from your system. Thank you.



## REPORT

### ON-SITE INSPECTION OF THE SECTION 11, T04N, R35E

Conducted on September 17, 2010

BY KEITH C. WILSON

SENIOR WATER RIGHTS ANALYST - ROCKY MOUNTAIN ENVIRONMENTAL

On September 17, 2010, I accompanied Dave Chappell to Section 11, T04N, R35E, Jefferson County, Idaho. The purpose of the on-site inspection was to observe and document irrigation of the corners not directly irrigated under the three pivots. According to Mr. Chappell the irrigation of the corners was for the purpose of grazing all of Section 11 at the end of the irrigation season. To document the irrigation, GPS coordinates and photos were taken at the following locations:

| Latitude/Longitude: Degrees Decimal-minutes |               |               |          |              |
|---------------------------------------------|---------------|---------------|----------|--------------|
| Site Location                               | Latitude      | Longitude     | Photos   | Attachment # |
| 1                                           | N 43° 41.495' | W 112° 19.332 | 100_0146 | #B           |
|                                             |               |               | 100_0158 |              |
|                                             |               |               | 100_0159 |              |
|                                             |               |               | 100_0160 |              |
|                                             |               |               | 100_0161 |              |
|                                             |               |               | 100_0163 |              |
| 2                                           | N 43° 41.925' | W 112° 19.339 | 100_0147 | #C           |
|                                             |               |               | 100_0148 |              |
|                                             |               |               | 100_0149 |              |
| 3                                           | N 43° 41.925' | W 112° 18.681 | 100_0151 | #D           |
| 4                                           | N 43° 41.891' | W 112° 18.681 | 100_0153 | #D           |
| 5                                           | N 43° 41.067' | W 112° 18.181 | 100_0157 | #E           |
|                                             |               |               | 100_0156 |              |
|                                             |               |               | 100_0155 |              |
| 6                                           | N 43° 41.112' | W 112° 19.332 | 100_0164 | #E           |

These site locations are indicated on the 2009 aerial photo in "Attached A". Photos taken at these Site Locations document the inspection. Numerous photos were taken, only relevant and clear photos are included with this report.

The 2009 aerial photo in "Attachment A" appears to indicate that the corners, with a few exceptions, in Section 11, T04N, R35E, were, are, or have been irrigated. The irrigation of Section 11, T04N, R35E, is authorized under water rights 35-7192A and 35-9069 which in combination are authorized to divert 6.02 cfs and irrigate 636 acres (See "Attachment A").

During the on-site inspection, it was observed that the irrigation of the corners required the use of portable mainlines and laterals with sprinklers, as seen in some of the photos on the enclosed attachments.

At the time of the inspection, an employee told Dave Chappell that the south-east corner of Section 11 (i.e. within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , and the SE  $\frac{1}{4}$ ) had already been irrigated once and that the vegetation had already started to green up. Photos 100\_0155, 100\_0156 and 100\_0157, on "Attachment E", Site #5 (near the SE corner SE $\frac{1}{4}$ SE  $\frac{1}{4}$ ) appear to substantiate that statement.

Site #1, "Attachment B", West  $\frac{1}{4}$  corners of Section 11, T04N, R35E:

Photos 100\_0146, #100\_158, #100\_0159, #100\_0160, #100\_0161 and #100\_0163 -

A portable mainline and hand lines have been laid from the well along the field service road to the West  $\frac{1}{4}$  corner of Section 11. The hand lines were placed north and south from the West  $\frac{1}{4}$  corner Section 11, along the west section line of Section 11. Irrigation was observed in the SW $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 11, as seen in the above numbered photos.

Site #2, "Attachment C", NW corner NW $\frac{1}{4}$ NW  $\frac{1}{4}$ , Section 11, T04N, R35E:

Photos #100\_0147, #100\_0148 and #100\_0149 -

No irrigation of the NW corner NW $\frac{1}{4}$ NW  $\frac{1}{4}$ , Section 11, was observed at the time of the inspection. It is the opinion of this examiner that irrigation of the NW corner NW $\frac{1}{4}$ NW  $\frac{1}{4}$ , Section 11, could be accomplished using hand lines from the West  $\frac{1}{4}$  corner as seen in Photos #100\_158, #100\_159, and #100\_160, taken at Site #1 or from the N $\frac{1}{4}$  Corner using the portable mainline that runs in a North-South direction along the center line of Section 11, as seen in photos #100\_151 and #100\_153, taken at Site #3 and Site #4, "Attachment D".

Site #3, Site #4, "Attachment D", near the N  $\frac{1}{4}$  corner of Section 11, T04N, R35E:

Photos #100\_151 and #100\_153 -

No irrigation was observed at Site #3 or Site #4. Photo #100\_151 (Site #3) and Photo #100\_153 (Site #4), show a portable mainline that runs in a North-South direction along the center line of Section 11, towards the point of diversion. Hand lines were observed at Site #4, photo #100\_153, in a view looking East in the NW corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 11. Due to slight elevation change Site #3 and Site #4 were chosen to show that the mainline continues south towards the point of diversion and hand lines continue into the NW corner of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 11.

During the inspection, no irrigation was occurring in the NE $\frac{1}{4}$  Section 11. Hand lines were observed, and the vegetation was green as evidenced in the 2009 aerial photo, "Attachment A" that would support irrigation, with this as evidence no photos were taken.

Site #5, "Attachment E", near the SE corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 11, T04N, R35E:

Photos #100\_0155, #100\_0155, and #100\_0156 -

No irrigation was occurring in the SE corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  or the S $\frac{1}{2}$ SE $\frac{1}{4}$  Section 11, at the time of the on site inspection. This observer noted that it appears that vegetation is beginning to green up in the SE corner of the SE $\frac{1}{4}$ SE $\frac{1}{4}$  Section 11. This would be consistent with the information provided that the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11 had already been irrigated. The 2009 aerial photo "Attachment A" appears to substantiate the SE corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$  and the S $\frac{1}{2}$ SE $\frac{1}{4}$  of Section 11, has been irrigated.

Site #6, "Attachment E", SW corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 11, T04N, R35E:

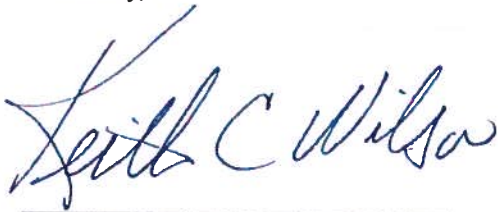
Photo #100\_164

Irrigation was occurring in the SW corner of the SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 11, as seen in Photo #100\_164.

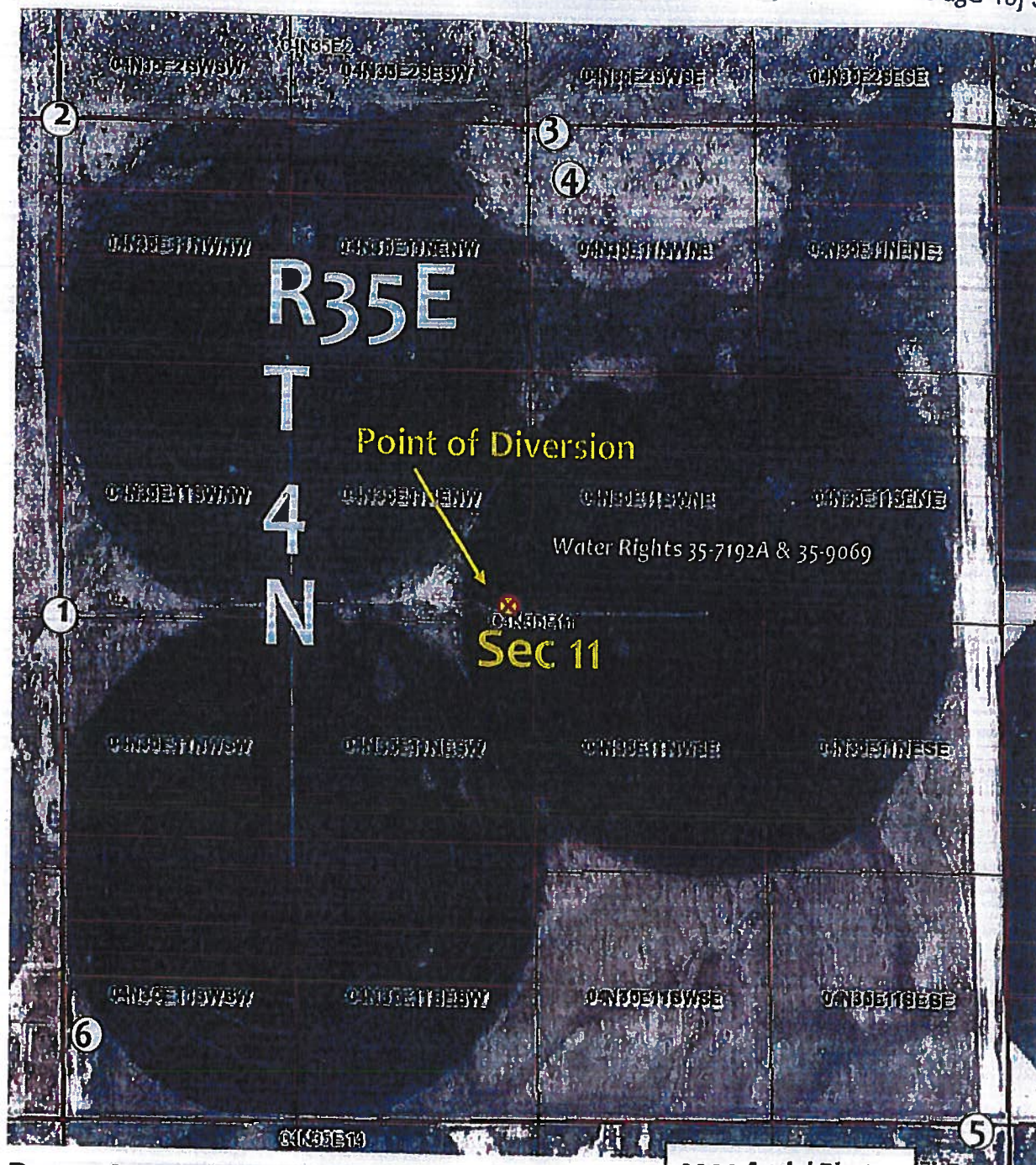
During the inspection, this examiner noted that the entire Section 11, T04N, R35E was fenced while most of the surrounding irrigated fields were not. Even though no grazing was observed at the time of the inspection, the fact that all of Section 11 is fenced would be consistent with, and would lend creditability to, the statement that Section 11 would be used for grazing purposes. Irrigating ground for grazing purposes is considered a beneficial use of a water right or rights.

The conclusion, the stated purpose of the on site inspection was to observe and document irrigation of the corners not directly irrigated under the three pivots located in Section 11, T04N, R35E. Based on the on-site inspection, the 2009 aerial photo (Attachment A), and the photo documentation (Attachments B, C, D and E), it is this examiners professional opinion that there is sufficient evidence that the ground has or was being irrigated on somewhat of a regular basis and that the water was being beneficially used.

Sincerely,



Keith C. Wilson  
Senior Water Right Analyst



# PHOTO LOCATIONS: Sec 11, T4N, R35E

2009 Aerial Photo

| Site Location # | Latitude/Longitude: Degrees Decimal-minutes |                | Attachment |
|-----------------|---------------------------------------------|----------------|------------|
| #1.....         | N 43° 41.495'                               | W 112° 19.332' | B          |
| #2.....         | N 43° 41.925'                               | W 112° 19.339' | C          |
| #3.....         | N 43° 41.925'                               | W 112° 18.681' | D          |
| #4.....         | N 43° 41.891'                               | W 112° 18.681' | D          |
| #5.....         | N 43° 41.067'                               | W 112° 18.181' | E          |
| #6.....         | N 43° 41.112'                               | W 112° 19.332' | E          |

WATER RIGHT NO. 35-7192A

## Water Right Report

| Owner Type    | Name and Address             |
|---------------|------------------------------|
| Current Owner | PAUL & ALICE HEYREND         |
|               | PO BOX 169, ARTOIS, CA 95913 |
|               | (530)934-3010                |

Priority Date: 11/29/1971

Basis: Decreed

Status: Active

| Source       | Tributary |
|--------------|-----------|
| GROUND WATER |           |

| Beneficial Use  | From | To    | Diversion Rate | Volume |
|-----------------|------|-------|----------------|--------|
| IRRIGATION      | 4/01 | 11/01 | 5.45 CFS       |        |
| Total Diversion |      |       | 5.45 CFS       |        |

Location of Point(s) of Diversion:

|              |      |         |              |           |                  |
|--------------|------|---------|--------------|-----------|------------------|
| GROUND WATER | SENW | Sec. 11 | Township 04N | Range 35E | JEFFERSON County |
|--------------|------|---------|--------------|-----------|------------------|

IRRIGATION Use: Acre Limit: 576

Place of Use Legal Description: IRRIGATION JEFFERSON County

| Township | Range | Section | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Acres |
|----------|-------|---------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|
| 04N      | 35E   | 11      |     | NENE  | 40    |     | NWNE  | 40    |     | SWNE  | 40    |     | SENE  | 40    |
|          |       |         |     | NENW  | 40    |     | NWNW  | 40    |     | SWNW  | 40    |     | SENW  | 40    |
|          |       |         |     | NESW  | 40    |     | NWSW  | 40    |     | SWSW  | 39    |     | SESW  | 39    |
|          |       |         |     | NESE  | 40    |     | NWSE  | 40    |     | SWSE  | 39    |     | SESE  | 39    |

Total Acres: 636

IRRIGATION Use: Acre Limit: 576

Conditions of Approval:

|    |     |                                                                                                                                                                                                                                                                                                                 |
|----|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | C18 | THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE. |
| 2. |     | USE OF THIS RIGHT WITH RIGHT NO. 35-09069 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 6.02 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 2544 AF.                                                                                                                                                 |
| 3. |     | USE OF THIS RIGHT WITH RIGHT NO. 35-09069 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 636 ACRES IN A SINGLE IRRIGATION SEASON. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 576 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.                                              |
| 4. | C05 | RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.                                                                                                                                                                                                                     |
| 5. |     | RIGHT NO. 35-09069 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.                                                                                                                                                                                                                                 |

Decreed Date: 01/31/2002

Water District Number: 120

Combined Acres Limit: 636

Combined Volume Limit: 2544 Combined Rate Limit: 6.02

WATER RIGHT NO. **35-9069****Water Right Report**

| Owner Type    | Name and Address             |
|---------------|------------------------------|
| Current Owner | PAUL & ALICE HEYREND         |
| Current Owner | PO BOX 169, ARTOIS, CA 95913 |
|               | (530)934-3010                |

Priority Date: 11/29/1971

Basis: Decreed

Status: Active

| Source       | Tributary |
|--------------|-----------|
| GROUND WATER |           |

| Beneficial Use  | From | To    | Diversion Rate | Volume |
|-----------------|------|-------|----------------|--------|
| IRRIGATION      | 4/01 | 10/31 | 0.57 CFS       |        |
| Total Diversion |      |       | 0.57 CFS       |        |

Location of Point(s) of Diversion:

|              |      |         |              |           |                  |
|--------------|------|---------|--------------|-----------|------------------|
| GROUND WATER | SENW | Sec. 11 | Township 04N | Range 35E | JEFFERSON County |
|--------------|------|---------|--------------|-----------|------------------|

IRRIGATION Use: Acre Limit: 60

Place of Use Legal Description: IRRIGATION JEFFERSON County

| Township | Range | Section | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Acres | Lot | Tract | Acres |
|----------|-------|---------|-----|-------|-------|-----|-------|-------|-----|-------|-------|-----|-------|-------|
| 04N      | 35E   | 11      |     | NENE  | 40    |     | NWNE  | 40    |     | SWNE  | 40    |     | SENE  | 40    |
|          |       |         |     | NENW  | 40    |     | NWNW  | 40    |     | SWNW  | 40    |     | SENW  | 40    |
|          |       |         |     | NESW  | 40    |     | NWSW  | 40    |     | SWSW  | 39    |     | SESW  | 39    |
|          |       |         |     | NESE  | 40    |     | NWSE  | 40    |     | SWSE  | 39    |     | SESE  | 39    |

Total Acres: 636

IRRIGATION Use: Acre Limit: 60

Conditions of Approval:

|    |     |                                                                                                                                                                                                                                                                                                                 |
|----|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | C18 | THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE. |
| 2. |     | USE OF THIS RIGHT WITH RIGHT NO. 35-07192A IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 6.02 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 2544 AF.                                                                                                                                                |
| 3. |     | USE OF THIS RIGHT WITH RIGHT NO. 35-07192A IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 636 ACRES IN A SINGLE IRRIGATION SEASON. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 60 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.                                              |
| 4. | C05 | RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.                                                                                                                                                                                                                     |
| 5. |     | RIGHT NO. 35-07192A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.                                                                                                                                                                                                                                |

Decreed Date: 01/31/2002

Water District Number: 120

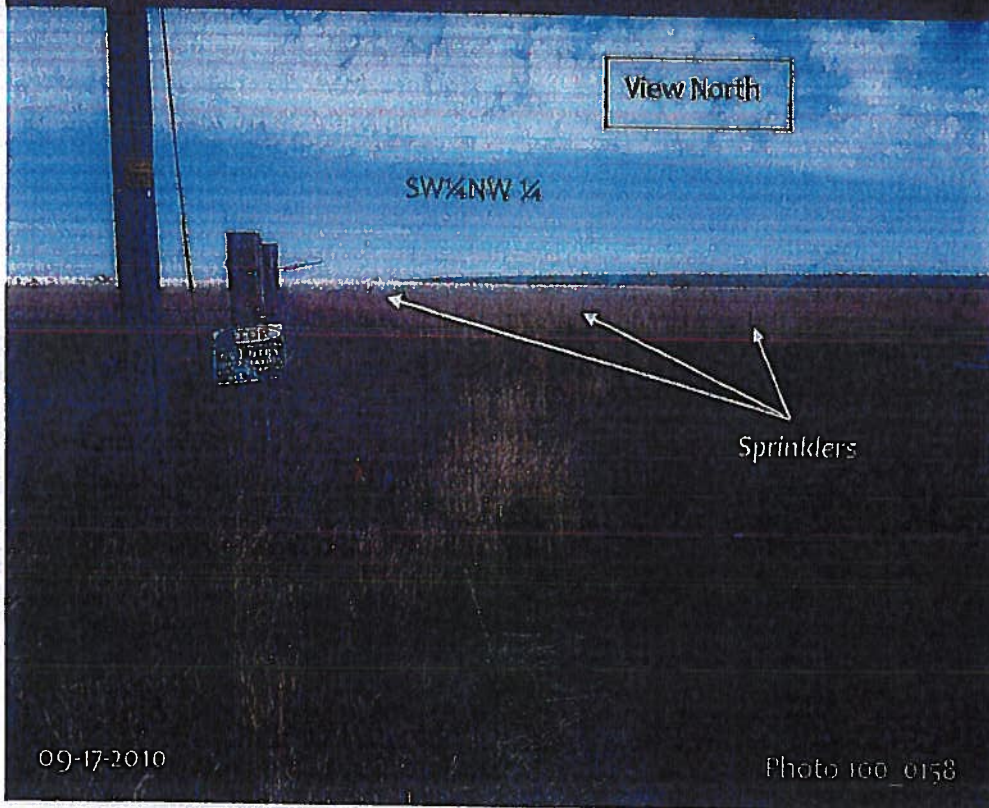
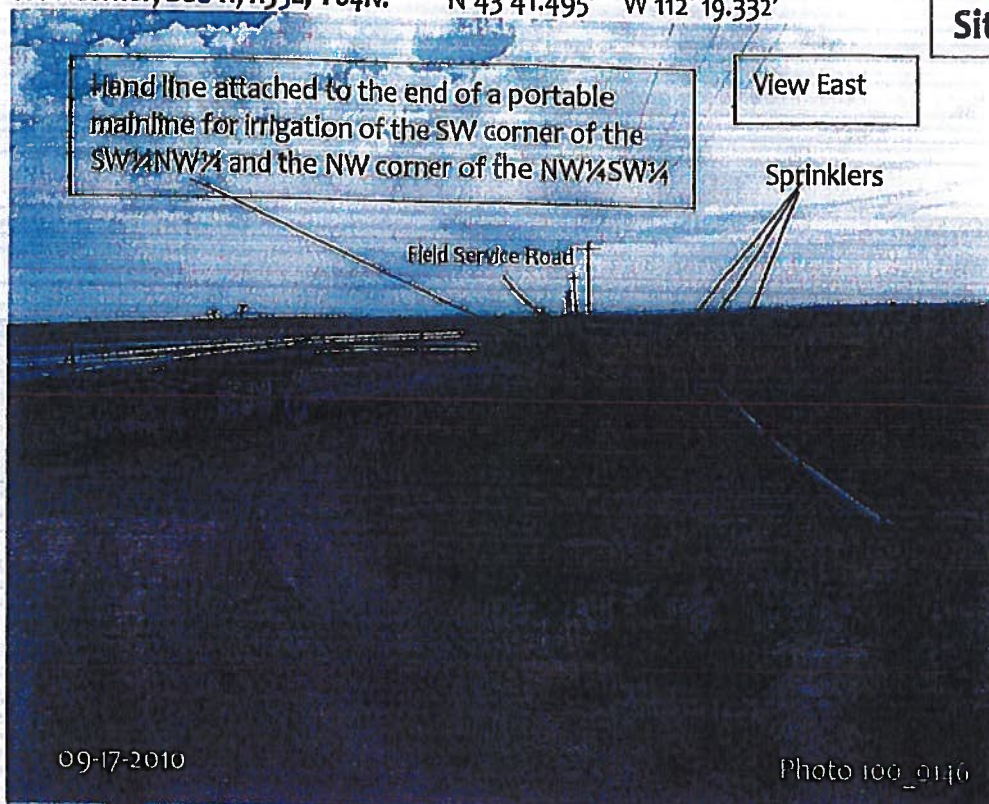
Combined Acres Limit: 636

Combined Volume Limit: 2544 Combined Rate Limit: 6.02

W $\frac{1}{4}$  Corner, Sec 11, R35E, T04N:

N 43° 41.495' W 112° 19.332'

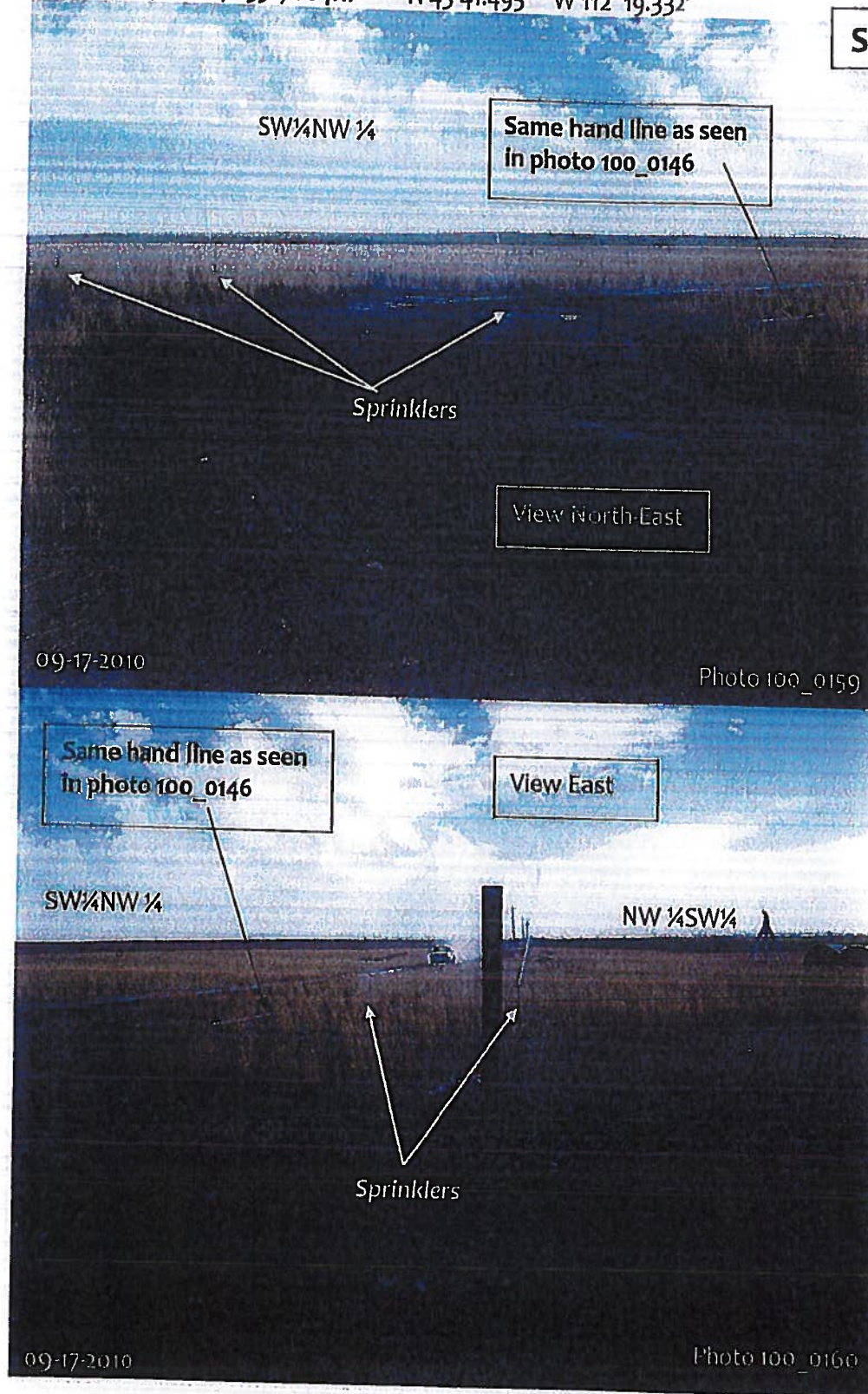
Site Location #1



W $\frac{1}{4}$  Corner, Sec 11, R35E, T04N:

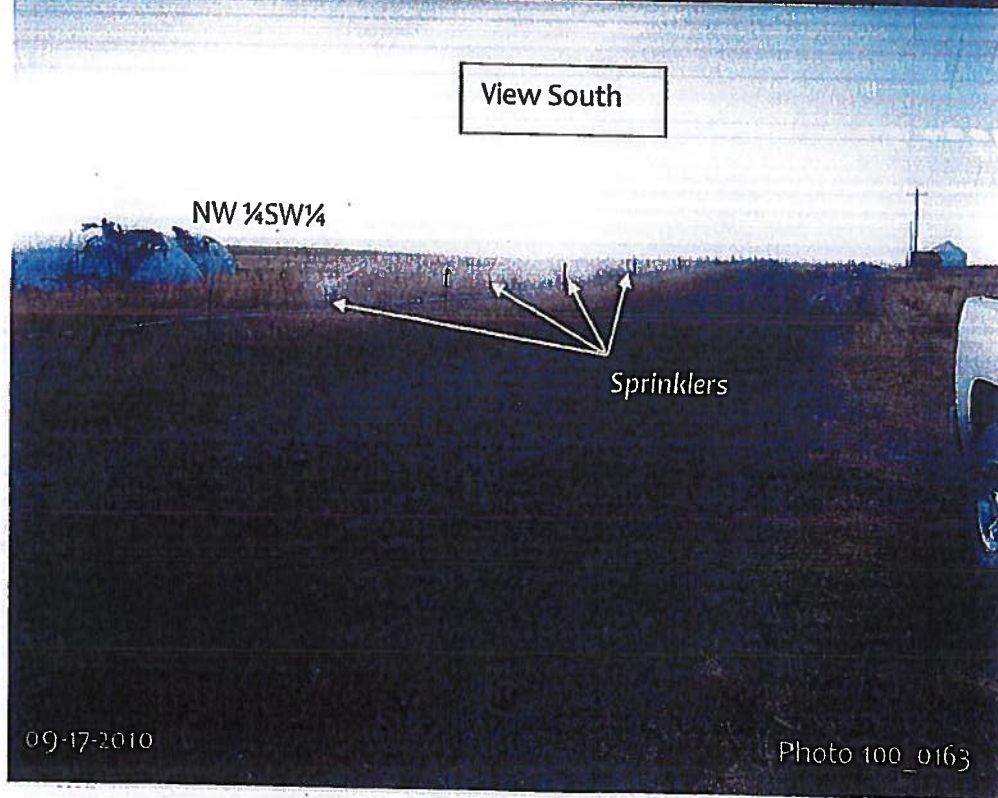
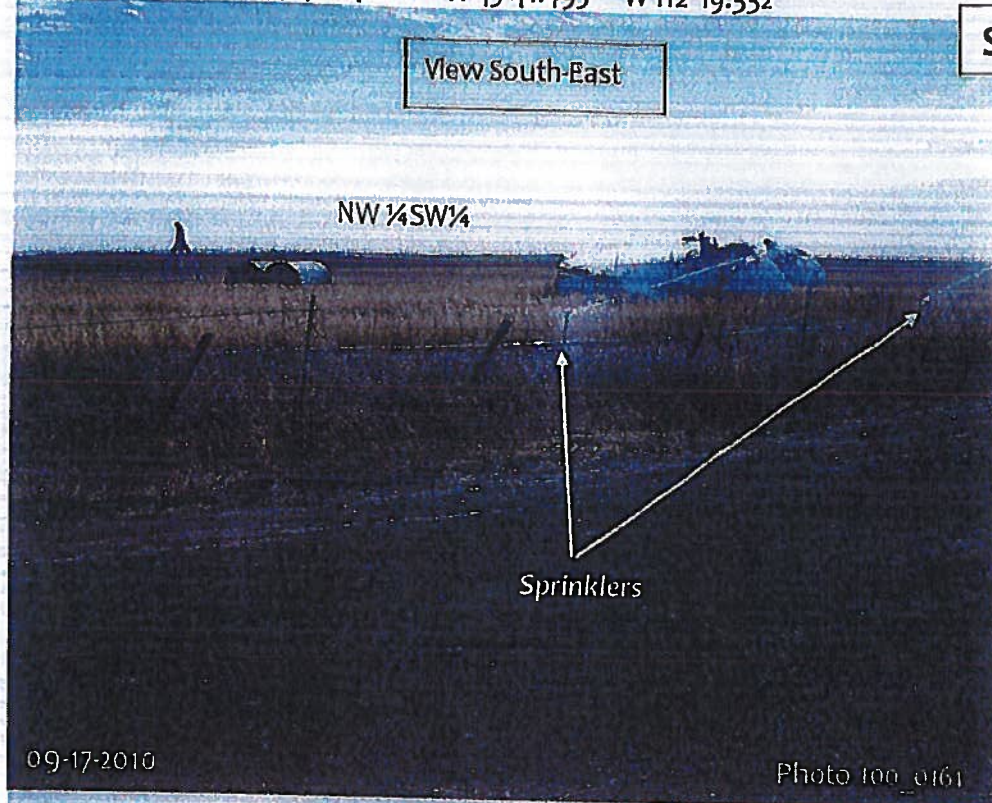
N 43° 41.495' W 112° 19.332'

Site Location #1



W $\frac{1}{4}$  Corner, Sec 11, R35E, T04N: N 43°41.495' W 112°19.332'

Site Location #1



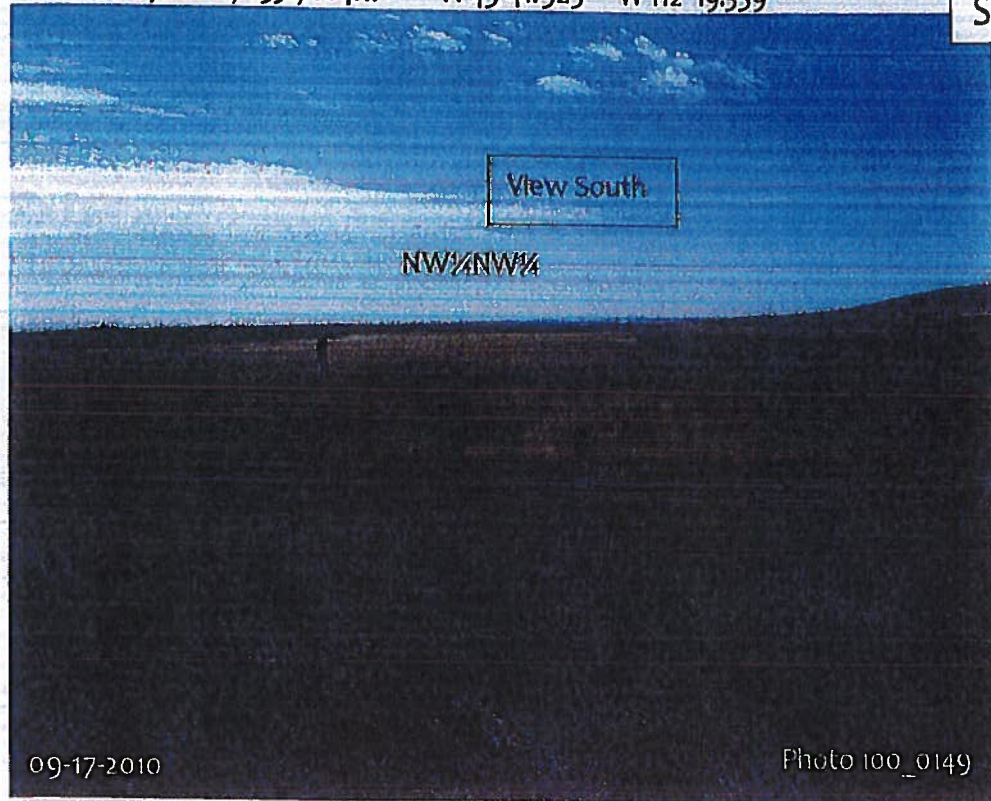
NW Corner, Sec 11, R35E, T04N: N 43° 41.925' W 112° 19.339'

Site Location #2



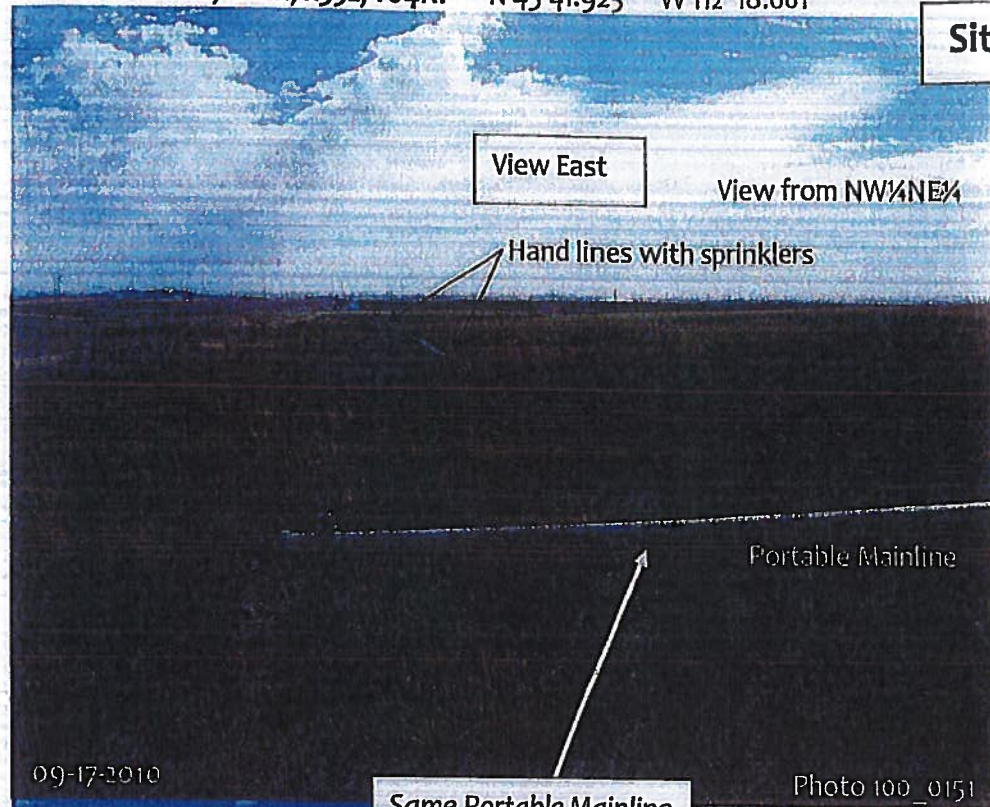
NW Corner, Sec 11, R35E, T04N: N 43°41.925' W 112°19.339'

Site Location #2



Near N ¼ Corner, Sec 11, R35E, T04N: N 43°41.925' W 112°18.681'

Site Location #3



Same Portable Mainline

Near N ¼ Corner, Sec 11, R35E, T04N:  
N 43°41.891' W 112°18.681'

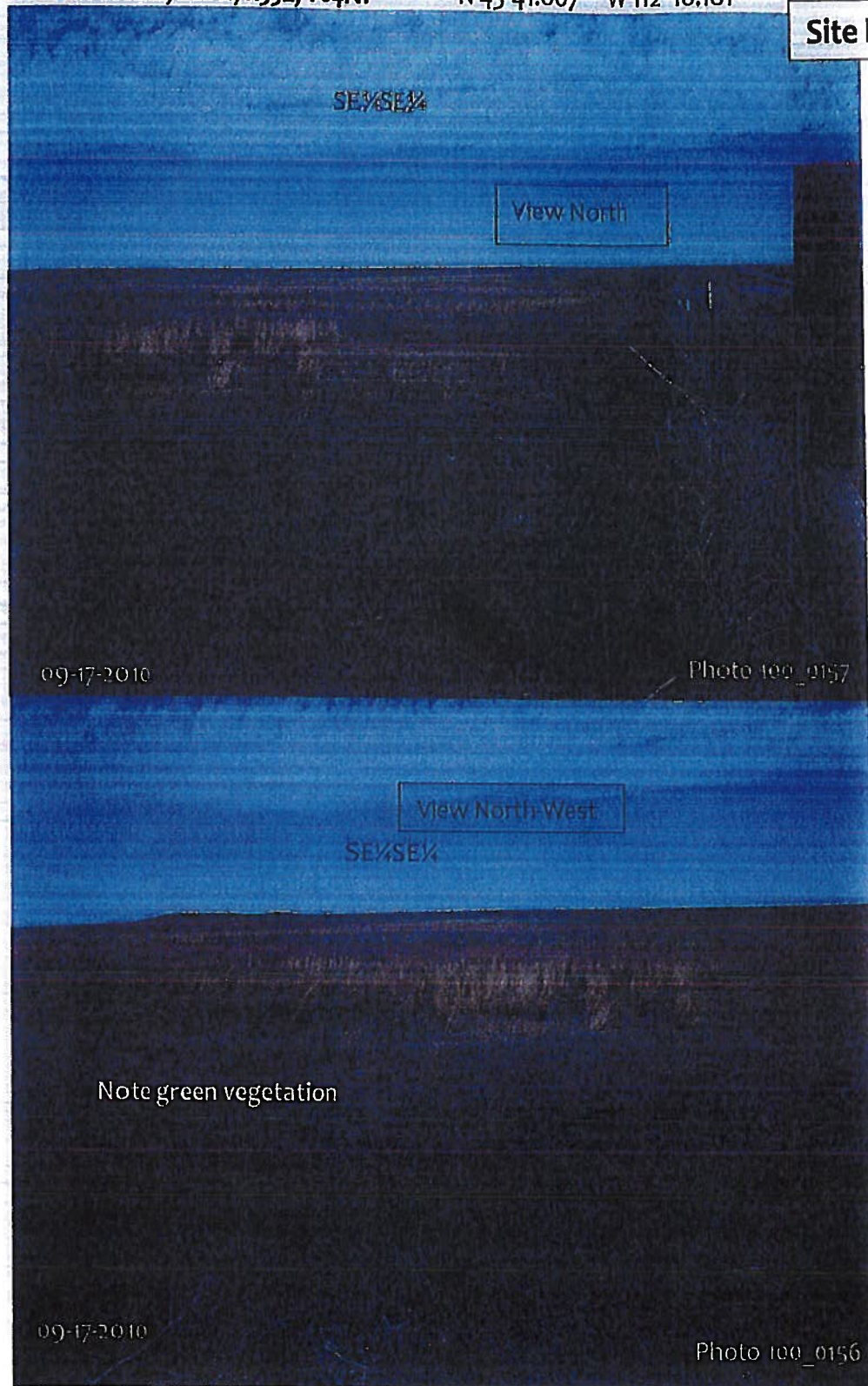
Site Location #4



Near SE Corner, Sec 11, R35E, T04N:

N 43° 41.067' W 112° 18.181'

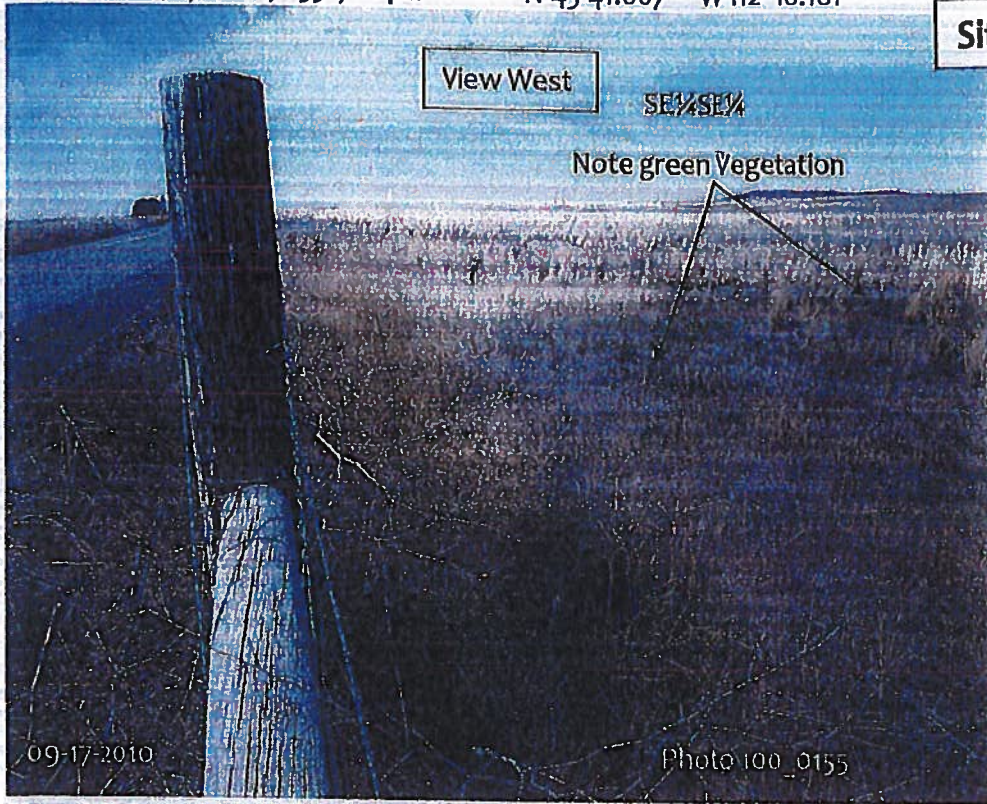
Site Location #5



Near SE Corner, Sec 11, R35E, T04N:

N 43° 41.067' W 112° 18.181'

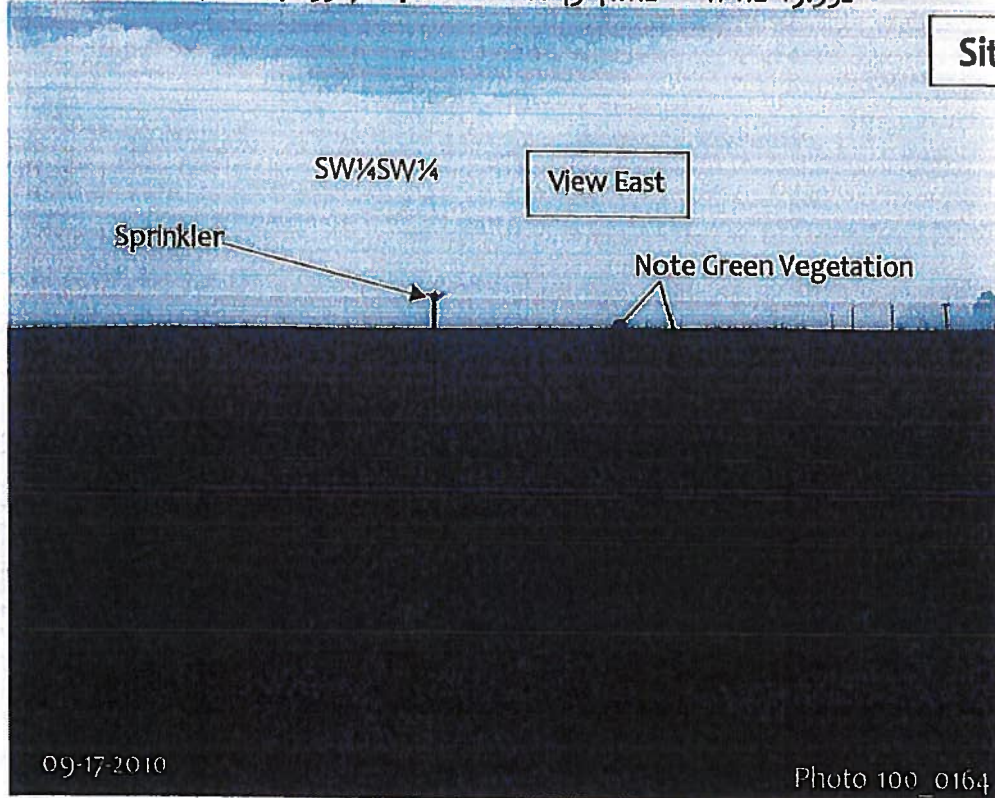
Site Location #5



Near SW Corner, Sec 11, R35E, T04N:

N 43° 41.112' W 112° 19.332'

Site Location #6



**Van Dyke, Nick**

---

**From:** Luke Marchant [lmarchant@holdenlegal.com]  
**Sent:** Wednesday, June 20, 2012 11:35 AM  
**To:** Van Dyke, Nick  
**Subject:** Ray CLement WB Lease  
**Attachments:** Ray CLement WB Lease.pdf

Nick,

Attached is the map you requested. Do not hesitate to contact me or Rob if you need anything else.

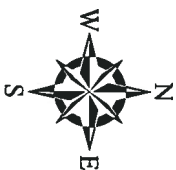


**Luke H. Marchant**

Holden, Kidwell, Hahn & Crapo, P.L.L.C.  
1000 Riverwalk Drive, Suite 200  
P.O. Box 50130  
Idaho Falls, Idaho 83405  
Phone: (208) 523-0620  
Fax: (208) 523-9518  
Email: [lmarchant@holdenlegal.com](mailto:lmarchant@holdenlegal.com)

**Confidentiality Notice:** The information contained in this e-mail and any accompanying attachments, all of which may be confidential and/or privileged, is intended only for use by the person or entity to whom it is addressed. If you are not the intended recipient, any unauthorized use, disclosure or copying of this e-mail and its contents is strictly prohibited and may be unlawful. If you are not the intended recipient, please immediately notify the sender by return e-mail and delete the original message and all copies from your system. Thank you.

# CLEMENT WATER BANK APPLICATION



**Legend**

- From Well
- WSB Lease Acres
- Sections
- Quarter Quarters

2011 NAIP Photo



Prepared by:  
Luke H. Marchant  
06/20/2012

