



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

February 6, 2012

DAN & ROSE MULLER
10604 JOHNSTON LN
MELBA ID 83641

Re: Water Right No. 57-278

Dear Dan and Rose:

The Idaho Department of Water Resources (IDWR) is returning your ownership change information and check #3483 for \$25 regarding the above referenced water right as explained below.

Chronology

1987 – Deed from Steiner to Muller, for land in Section 1, most of SWNW, together with all water rights etc.

1988 – Muller adjudication claim #57-278, 26 acres in Section 1, SWNW.

1997 – Ownership change filed by Hook. Change from Muller to Hook for several water rights, including 57-278. Ownership change included 1995 deed from Muller to Hook for Section 1, all of Government Lot 2 (NWNE) and eastern portion of Government Lot 3 (NENW). Attachment to deed added pumps and associated equipment along with several water rights, including 57-278. Attachment stated "and the following water rights ... 57-278" etc. Deed could be interpreted to mean (a) that list of rights to the extent rights are attached to land in Lots 2 and 3 described by the deed (so 57-278 excluded since that right not in those lots), or (b) list of rights is in addition to land described by the deed (so 57-278 included).

IDWR assumed interpretation "b" and processed ownership change from Muller to Hook. Claim #57-278 was updated to show Hook as current owner. In hindsight, this might have been an error, although the information is not conclusive in that regard.

2002 – SRBA Court decreed right 57-278 to Hook, see enclosed decree. Also see Map #1 generated today from IDWR database. Decree and map confirm right 57-278 is in Section 1, SWNW.

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2010 – County tax lot information available to IDWR shows Kevin Smith as the owner of the land described by right 57-278, see Map #2. I added Lots 2 and 3 conveyed to Hook in 1995 to this map (cross-hatch area) for illustration purposes.

IDWR Conclusions

Right 57-278 was clearly decreed for 26 acres in SWNW. IDWR might or might not have erred in processing the ownership change from Muller to Hook, depending on a final legal determination of the wording in the deed attachment. IDWR is not aware of any final determination in that regard. Despite the owner listed on the decree, right 57-278 is real property presumed to be attached to land in SWNW. The right is presumably owned by current land owner Smith absent a legal determination that the right was withheld from the land when Smith bought the property.

IDWR cannot process an ownership change in your name for this water right without clear evidence that you either (a) own the right but not the land, or (b) own the 26 acres described by the right.

Otherwise, Smith should file an ownership change for this right as required by IC § 42-248. Please call me at 334-2190 if you have any questions. IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Smith is also welcome to contact me for more information.

Sincerely,



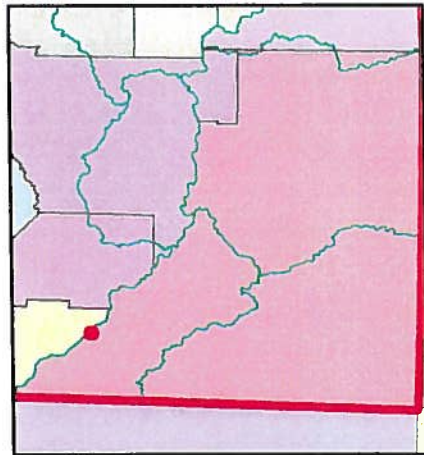
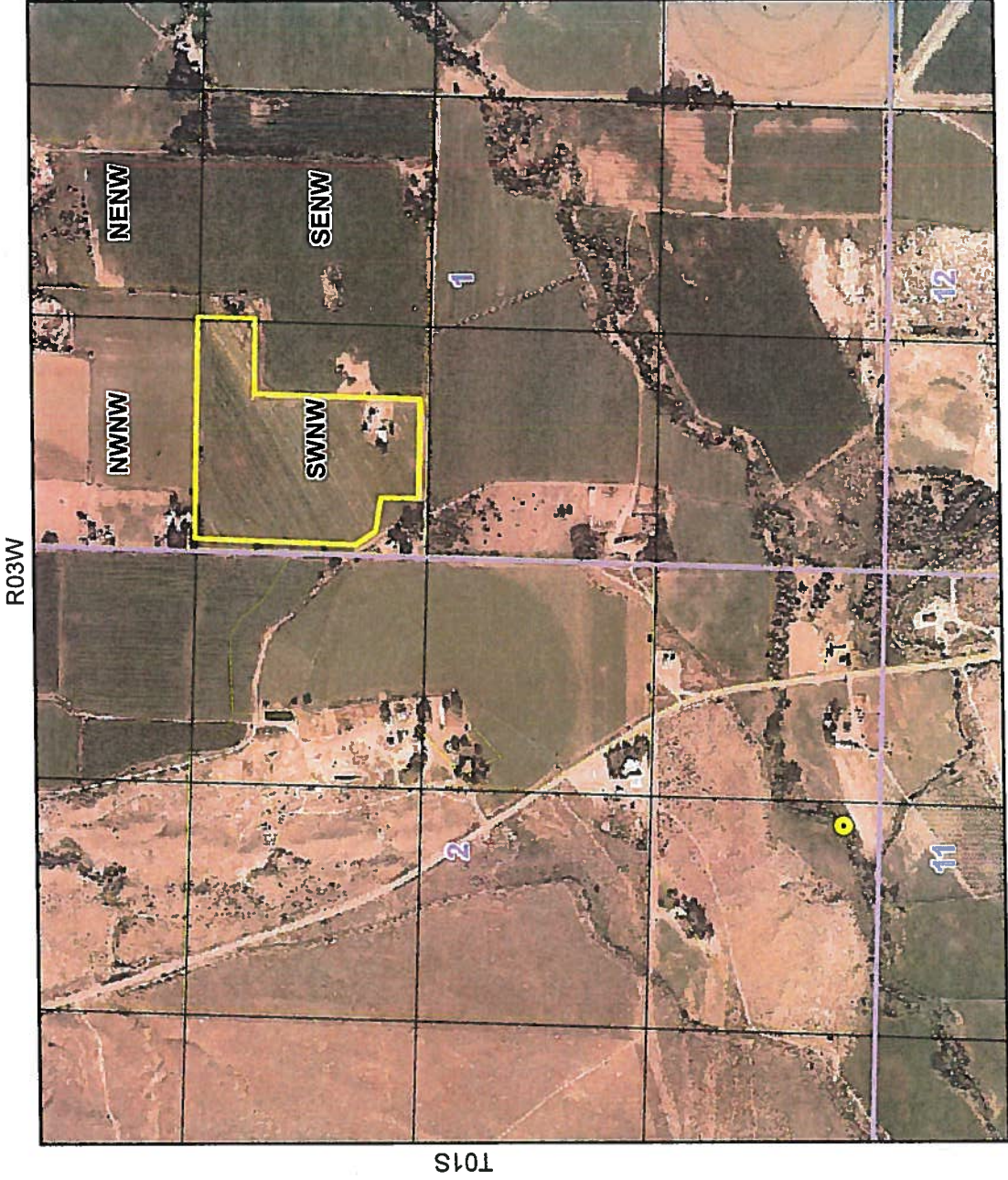
Steve Lester
Water Rights Supervisor

Enclosures

cc: Kevin Smith (with enclosures)



**Water Right
57-278
(IRRIGATION)**



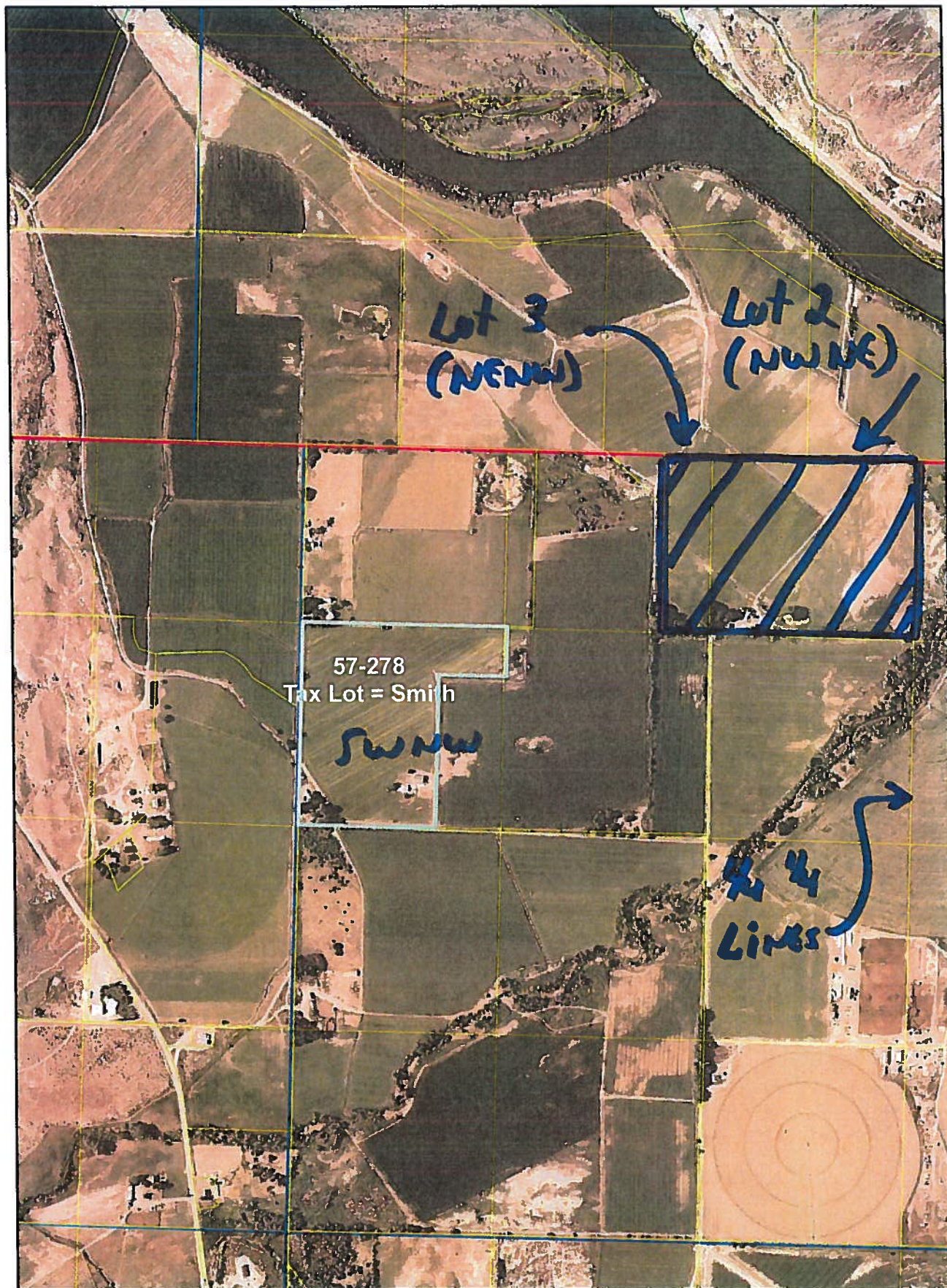
**Owyhee County
IDWR Basin 57**

Prepared by Lester, Steve

2009 Aerial Photography

map #1





MAP # 2