

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No: 37-7559

Exam Date: 6/22/1999 (see narrative)

1. Current Owner: Jim D Scarrow
3184 S 1900E
Wendell ID 83355
2. Accompanied by: Michael Fleming (see narrative)
Phone No: 208 837-6453
Address: 2672 S 1050 E, Hagerman, ID 83332
Relationship to Permit Holder: owner

3. SOURCE TRIBUTARY
UNNAMED STREAM BIRCH CREEK

B. OVERLAP REVIEW

1. Other water rights with the same place of use: None
2. Other water rights with the same point of diversion: None

C. DIVERSION AND DELIVERY SYSTEM**1. LOCATION OF POINT(S) OF DIVERSION:**

UNNAMED STREAM

NE1/4SE1/4SE1/4

Sec. 34, Twp 06S, Rge 13E, B.M.

GOODING County

Method of Determination: GPS downloaded, Trimble, metal tag A0010013

2.

PLACE OF USE: FISH PROPAGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
06S	13E	34																X	

Method of Determination:

3. X Delivery System Diagram Attached (required). Indicate all major components and distances between components. Indicate weir size/pipe as applicable.
X Map Attached Showing Location(s) of point(s) of diversion and place(s) of use (required). Scale must be 1:24,000 or greater.
X Aerial Photo Attached (required for irrigation of 10+ acres).
X Photo of Diversion and System Attached

4.

<u>Well or Diversion ID No.*</u>	<u>Motor Make</u>	<u>Hp</u>	<u>Motor Serial No.</u>	<u>Pump Make</u>	<u>Pump Serial No. or Discharge Size</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

*Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

<u>Measurement Equipment</u>	<u>Type</u>	<u>Make</u>	<u>Model No.</u>	<u>Serial No.</u>	<u>Size</u>	<u>Calib. Date</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

2. Measurements: See attached noted from Cindy

E. FLOW CALCULATIONS X Additional Computation Sheets Attached

Measured Method: See attached notes from Cindy

F. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$$

2. Volume Calculations for Other Uses:

$$5 \text{ cfs} \times 1.9835 \times 365 \text{ days} = 3619.8 \text{ AFA}$$

G. NARRATIVE/REMARKS/COMMENTS

The application was approved on March 18, 1977 in the name of Michael Fleming for fish propagation in the amount of 10.0 cfs from an unnamed stream tributary to Birch Creek. Proof was due by April 1, 1978. An extension of time was received on March 27, 1978 giving him until April 1, 1983 to submit proof. Proof was submitted on 2/10/1983 in the form of the returned post card/affidavit and the exam fees in the amount of \$200.00 were receipted on 5/14/1987 for 5 cfs. An attempt was made in April 1998 to do a field exam but he said he was waiting for the adjudication, and later in 2001 another agent tried to set up a field exam but he said at that time that his ponds were not running. He did submit some additional information from the USGS showing some discharge measurements from Birch Creek over the years ranging from 12.1 cfs in 1993 to 10.5 cfs in 2001 but these discharge flows included more than just the Fleming return flows so were not very helpful in determining his diversion rate. Cindy Hodges (Yenter) was able to meet with Mike Fleming on 6/22/1999 and took some measurements on the ponds. According to her notes, she measured from two locations; north 1.97 cfs and south 5.3 cfs for a total of 7.27 cfs. Cindy's measurements are the best and only records we have but since the exam fees were submitted for only 5 cfs, we can only license a diversion rate of 5 cfs. Her volume calculations were based on the 7.27 cfs for 207 days as 2,985 AF. I confirmed with Mr. Fleming on this date that in other years between 1983 (when proof was submitted) and 1999 (the only year we have any information on) that he did divert into the ponds year round. Lynn Babbington also leased the facility at some point for fish production, so it can be licensed at the year round volume based on the 5 cfs. (5 cfs X 1.9835 X 365 days = 3619.8 AF) Some complaints and issues with the neighbors in the past have necessitated visits by various members of the Department and a recommendation was made that this permit either be relinquished or canceled since Fleming had indicated he would probably not be raising any fish in the future. A relinquishment form was sent to Mr. Fleming but he declined to sign. (An agreement was made between the feuding parties and a stipulation was signed, a copy was found in right 37-7116 – Vernon Huff; however, the only part of the stipulation that involved Fleming was granting access to his domestic well on the Huff property.) Jim Scarrow purchased this place from Fleming and submitted an O/C in 2006. He indicated he may resume raising fish in the future and wanted to pursue this permit. I recommend the license be issued in Mr. Scarrow's name.

Have conditions of permit approval been met? ☒ Yes ☐ No

H. RECOMMENDATIONS

1. Recommended Amounts

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
FISH PROPAGATION	01/01 to 12/31	5.000 CFS	3619.8 AFA
	<u>Totals:</u>	5.000 CFS	3619.8 AFA

2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None

☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☒ Other

I. AUTHENTICATION

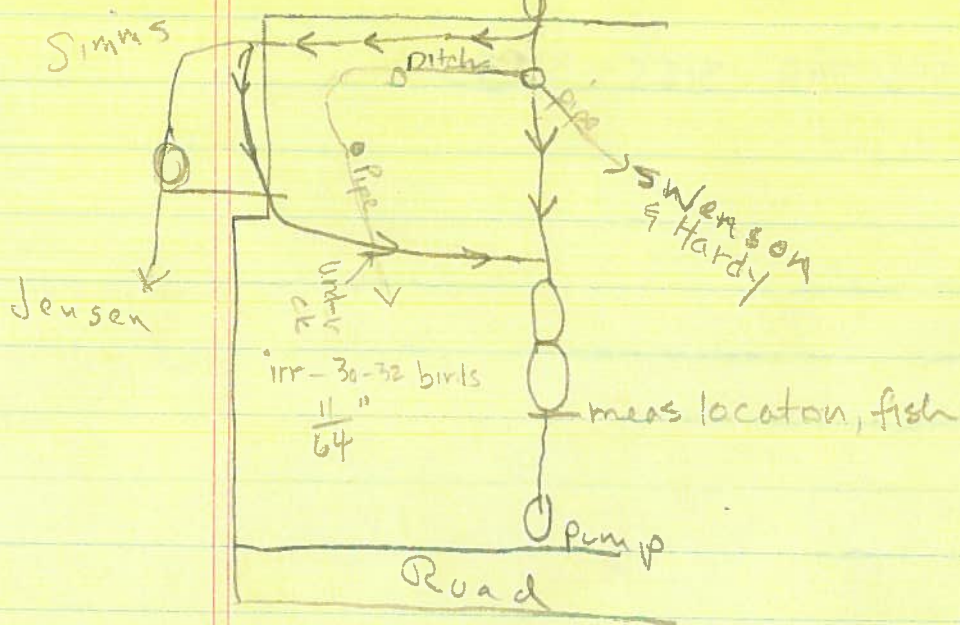
Field Examiner's Name Cindy Yenter Date 6-22-1999

Reviewer Jeanie Robertson Date 8-30-2011

6-22-99 Fleming 0900
met with Mike -

New mailing address

✓ 17826 US HWY 30
BLISS 83314



Jim Scarrow
536 5739
2128 E 3200 S

Board width = 3.6 feet (double boards)

head North .3 South .58
1.97 5.30

Some boards missing
Needs to cut new boards

photo 11

TOTAL 7.27

Site tag A0010013
fill 6062215A

location-banded to stop log upright ^{metal}

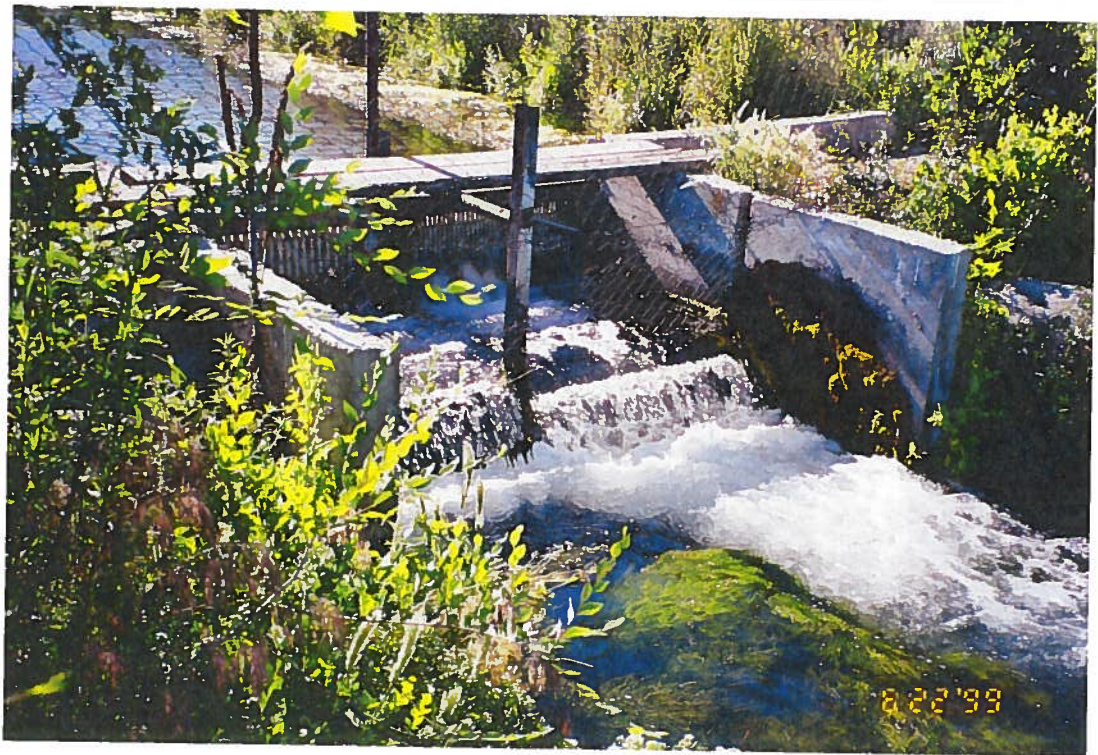
offset Q @ top of first pond

hiked up hill but could not find irr diversion.
Try from Simms place.
channel too mossy for current meter test.

370410225 FLEMING HATCHERY
DISCHARGE, CUBIC FEET PER SECOND, CALENDAR YEAR 1999
MEAN VALUES

DAY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
2	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
3	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
4	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
5	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
6	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
7	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
8	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
9	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
10	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
11	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
12	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
13	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
14	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
15	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
16	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
17	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
18	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
19	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
20	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
21	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
22	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
23	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
24	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
25	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
26	7.27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0
27	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0	0
28	7.27	7.27	7.27	7.27	7.27	7.27	0	0	0	0	0	0
29	7.27	---	7.27	7.27	7.27	7.27	0	0	0	0	0	0
30	7.27	---	7.27	7.27	7.27	7.27	0	0	0	0	0	0
31	7.27	---	7.27	---	7.27	---	0	0	---	0	---	0
TOTAL	225.4	203.6	225.4	218.1	225.4	218.1	189.0	0.0	0.0	0.0	0.0	0.0
MEAN	7.3	7.3	7.3	7.3	7.3	7.3	6.1	0.0	0.0	0.0	0.0	0.0
MIN	7.3	7.3	7.3	7.3	7.3	7.3	0.0	0.0	0.0	0.0	0.0	0.0
MAX	7.3	7.3	7.3	7.3	7.3	7.3	7.3	0.0	0.0	0.0	0.0	0.0
AC-FT	447.1	403.8	447.1	432.6	447.1	432.6	374.9	0.0	0.0	0.0	0.0	0.0

CALENDAR YEAR 1999 TOTAL CFS:1,505.0 TOTAL AC-FT: 2,985



1856
T-643

NAFF 160

21.1
HEL

2
4.9
HEL

23.8
HEL

HEL
5
3.5

2.5

2.3

54.2
2.6

2.8

1.7

9.1

7.3
NHEL

25.6
NHEL

2.6

2.6

2.6

2.6

2.6

2.6

2.6

2.6

2.6

growing in
2
9.1

2.6

15.2

1
pumped
from pond
12.3

34

2.4

4.0

3.0

3.2

1.5

1.4

1.4

1.4

1.4

1.4

1.4

1.4

1.4

1.4

6.0
N

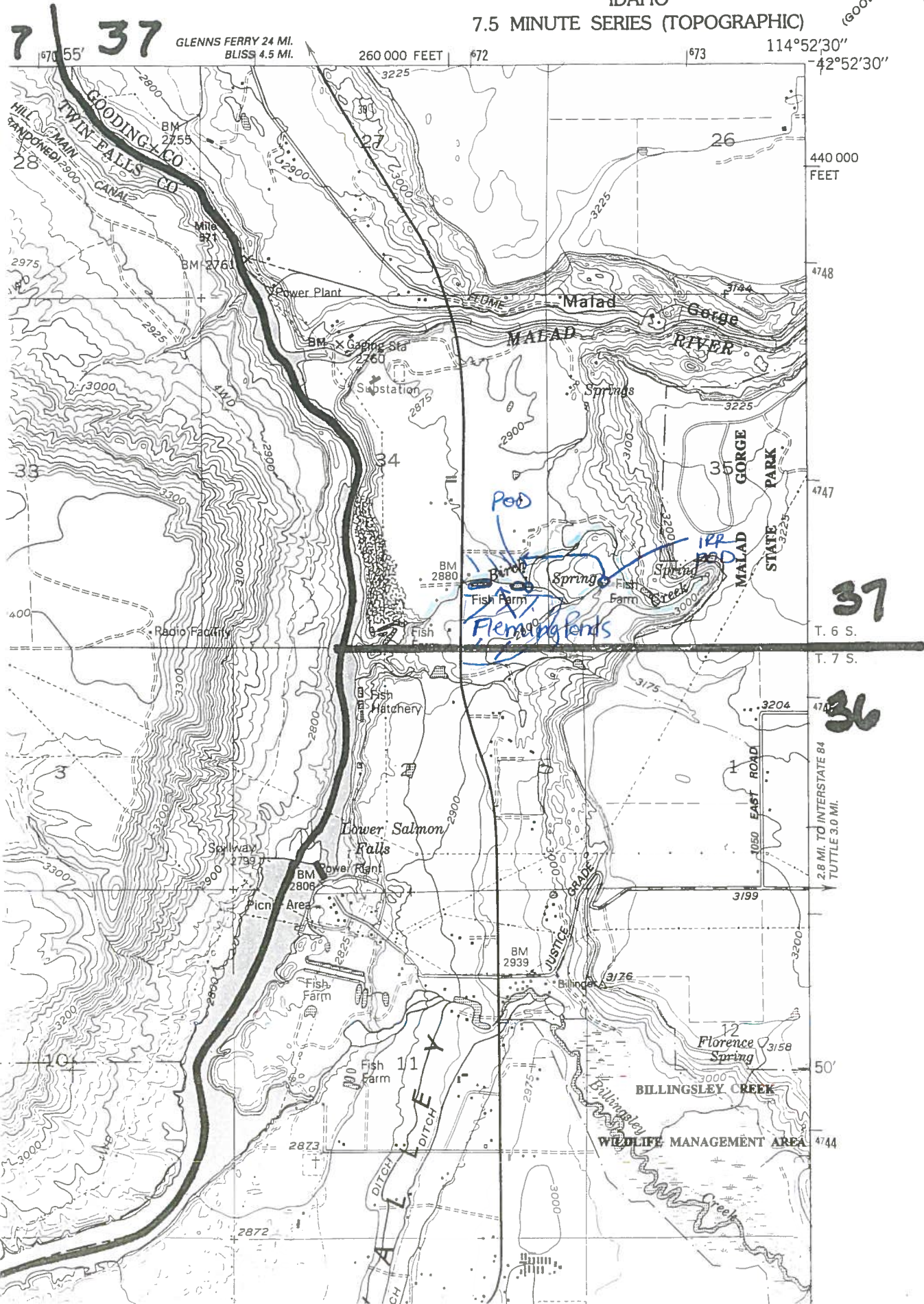
3.0
N

4.5
6

HAGERMAN QUADRANGLE
IDAHO
7.5 MINUTE SERIES (TOPOGRAPHIC)

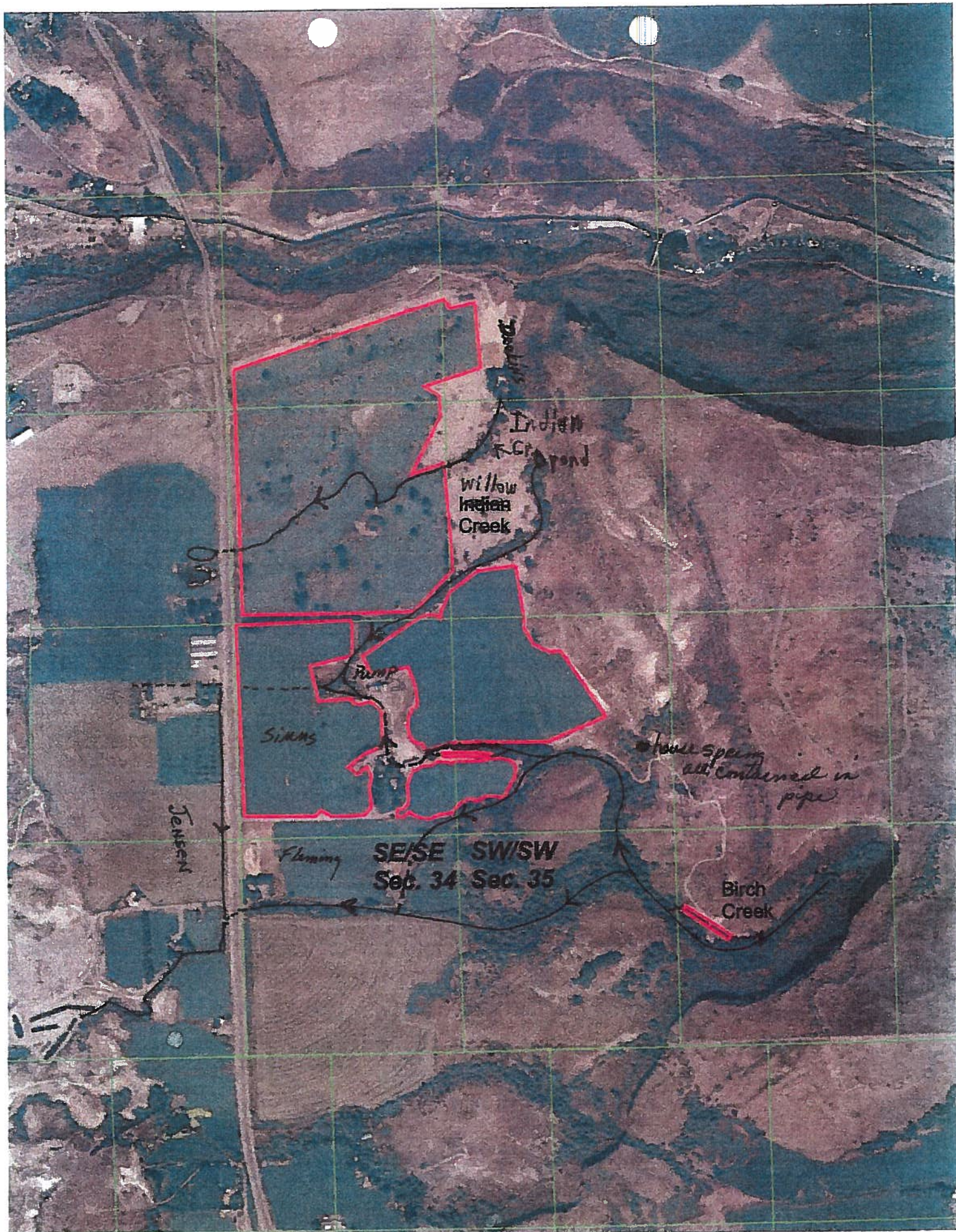
(GOODING BUTTE)

4319









2004

RECEIVED

JAN 11 2006

Department of Water Resources
Southern Region

RECEIVED

JAN 05 2006

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIPPlease print or type. Attach pages with additional information. Instructions are included at the end of this form.
Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
37-795	→	—	36-15094 P.D.	→	—
37-796	→	—	36-10466 P.D.	→	—
37-798	→	—	37-10993 P.D.	→	—
37-3155	→	—			—
37-7559	→	—			—

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).
OR
If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Michael J. Fleming
17826 HWY 30 Bliss, ID 83314
4. New Owner/Claimant(s) JIM D. SCARROW
Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
- New Mailing Address 3184 South 1900 East
City, State and ZIP Code Wendell, ID 83355
New Telephone Number (208) 536-5739
5. Date you acquired the property December 30, 2005

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right(s) will not be split, skip this area and proceed to item 7)		
Water Right and/or Adjudication Claim Number _____		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

7. Signature of New Owner(s) or Claimant(s)
(include title if applicable)

Jim W. [Signature]

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

For Office Use Only

Received by AM Date 1-5-06 Fee \$225.00
 Received by AM Date 1-5-06 Receipt No. C0799778
 Processed by _____ AJ Date _____ WR _____ Date _____

WARRANTY DEED

#G-34842

For Value Received

MICHAEL JOSEPH FLEMING, an unmarried man
also shown of record as Michael J. Fleming
Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

JIM D. SCARROW, an unmarried man,
Address: 3184 South 1900 East Wendell, Id 83355

Hereinafter called the Grantee, the following described premises situated in Gooding County, Idaho, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO:

Instrument # 214435
GOODING, GOODING, IDAHO
2005-12-30 03:18:31 No. of Pages: 4
Recorded for : LAND TITLE JEROME
HELEN EDWARDS Fee: 12.00
Ex-Officio Recorder Deputy *Helen Edwards*

SUBJECT TO:

All reservations in patents or deeds in the chain of title.

TOGETHER WITH all water and water rights, ditches and ditch rights used thereon or appurtenant thereto including but not limited to Water Right #37-795, #37-796, #37-3155, #37-798, 37-7559, 36-15094 36-10466 and #37-10993

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the successors heirs and assigns of the Grantee forever. The Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

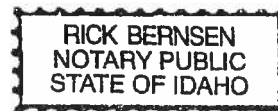
Dated: December 29, 2005

Michael Joseph Fleming
MICHAEL JOSEPH FLEMING

STATE OF IDAHO)
COUNTY OF JEROME) ss.

On this 29 day of December, 2005, before me, the undersigned, a Notary Public in and for said State, personally appeared **MICHAEL JOSEPH FLEMING**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same

Rick Bernsen
Notary Public
Residing at: Jerome, ID
My Commission expires: 7-3-05



ORDER NUMBER: G-34842

EXHIBIT A

TRACT I

TOWNSHIP 6 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 34: The South 12 rods of the SE $\frac{1}{4}$ SE $\frac{1}{4}$

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 2: That part of Lots 1 and 2 described as follows:

Beginning at the Southeast corner of said Lot 2;
Thence West along the South boundary line of said Lot, 7.8 chains to the East boundary
of the Hagerman-Bliss Highway;
Thence North along said East boundary, 6.63 chains to THE TRUE PLACE OF
BEGINNING;
Thence North 86°37' East 3.71 chains;
Thence North 70°37' East 3.34 chains;
Thence North 84°28' East 1.21 chains;
Thence South 67°22' East 1.23 chains;
Thence South 8°00' East 1.7 chains;
Thence South 36°07' East 7.6 chains to South boundary of Lot 1 of Section 2, said
Township and Range;
Thence East along the South boundary line of said Lot 1 to the Southeast corner thereof;
Thence North along the East boundary line of said Lot 1 to the Northeast corner thereof;
Thence West along the First Standard Parallel South, 27.56 chains;
Thence South on a line parallel to the East line of said Lot 2, to the said TRUE PLACE
OF BEGINNING.

EXCEPT Hagerman-Bliss U.S. Highway 30.

AND EXCEPT a parcel of land being on both sides of the center line of U.S. Highway
30 Project No. F-2361 (18) Highway Survey as shown on the plans thereof now
on file in the office of the Department of Highways of the State of Idaho, and lying
over and across the South 198.0 feet of the SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 34, Township 6
South, Range 13 East of the Boise Meridian and portion of Government Lot 2
of Section 2, Township 7 South, Range 13 East of the Boise Meridian, described
as follows:

CONTINUATION

ORDER NUMBER: G-34842

Beginning at a point being the intersection of the Easterly Right of Way line of existing U.S. Highway 30, and the North line of the South 198.0 feet of the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 34, Township 6 South, Range 13, East Boise Meridian approximately 198.0 feet North and 1295.0 feet West from the Southeast corner of said Section 34;

Thence East along the North line of the South 198.0 feet of said SE $\frac{1}{4}$ SE $\frac{1}{4}$, 25.0 feet, more or less, to a point in a line parallel with and 50.0 feet East from the center line of said U.S. Highway 30, Project No. F-2361 (18) Highway Survey;

Thence along said parallel line as follows: South 0°40'00" West, 133.0 feet more or less to a point opposite Station 219+47.57 Back equals 219+47.10 Ahead a point of spiral curvature of said Highway Survey, Southerly along a spiral curve left having a central angle of 1°52'30" a distance of 248.36 feet to a point opposite Station 221+97.10, a point of circular curvature of said Highway Survey, Southeasterly along a 3769.72 foot radius curve left, 443.0 feet more or less to a point on a Southerly boundary of the above parcel;

Thence Westerly, leaving said parallel line, along said Southerly boundary 73.0 feet, more or less, to a point in the Easterly Right of Way line of said existing U.S. Highway 30;

Thence Northerly along said existing Highway Right of Way line 810.0 feet more or less to THE POINT OF BEGINNING.

NOTE: The bearing as shown in the above exception unless otherwise noted, are from the Idaho Plane Coordinate System, based on the transverse mercator projection for the Central Zone of Idaho. To convert to geodetic bearings, a correction of 0°36'30" must be subtracted from all Northeast and Southwest bearings and added to all Northwest and Southeast bearings.

As set forth in Case no. 10316 Second Judgement and Decree of Condemnation recorded March 17, 1964, as microfilmed Instrument No. 10853.

TOWNSHIP 7 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 1: That part of Lot 4 which lies below the rimrock:

CONTINUATION

ORDER NUMBER: G-34842

TRACT II

TOWNSHIP 6 SOUTH, RANGE 13 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 35: SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Section 34: Part of the E $\frac{1}{2}$ SE $\frac{1}{4}$ more particularly described as follows:

Beginning at a point 12 rods North of the Southeast corner of Section 34;

Thence North 74 rods;

Thence West 80 rods to the West boundary line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of said Section 34;

Thence South 74 rods;

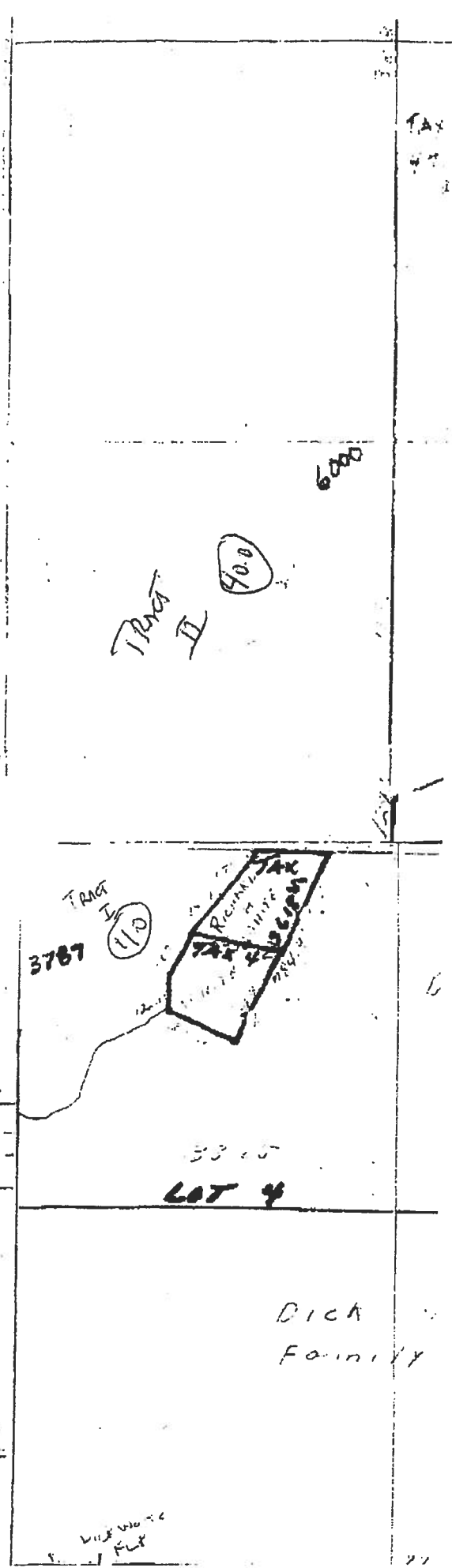
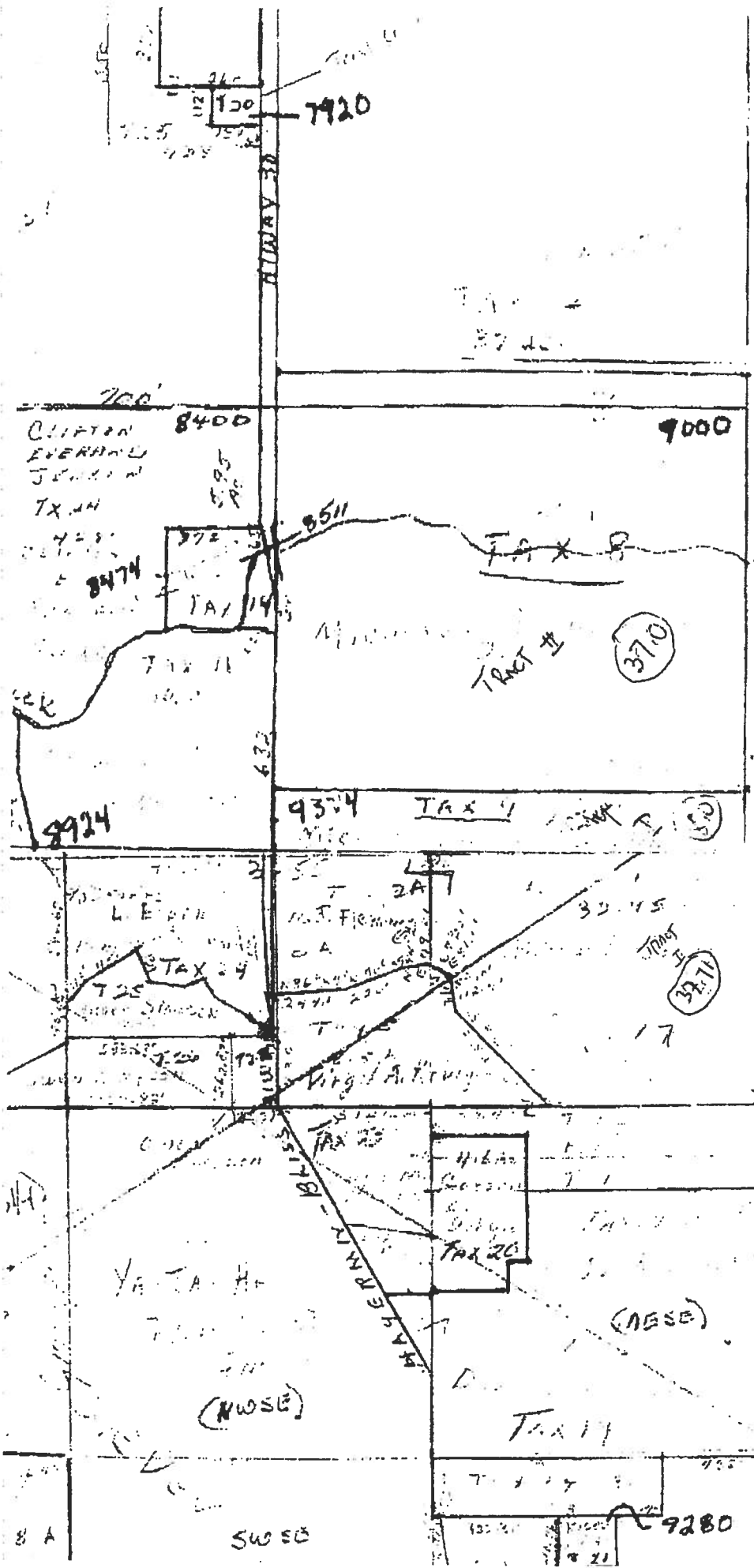
Thence East 80 rods to the place of beginning.

EXCEPT Hagerman-Bliss U.S. Highway 30.

AND EXCEPT that part for highway purposes as set forth Second Judgement and Decree of Condemnation dated March 17, 1964 recorded March 17, 1964 as microfilmed No. 10854.

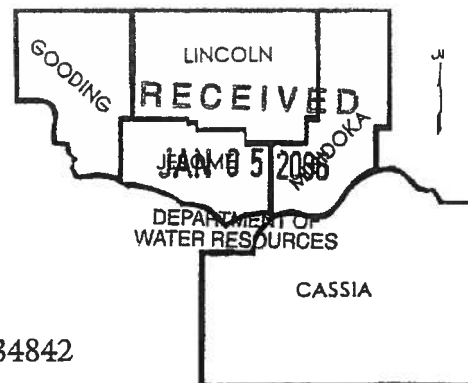
IN THE COUNTY OF GOODING, STATE OF IDAHO

End of Exhibit 'A'



Land Title and Escrow, Inc.

A FULL SERVICE TITLE COMPANY



REFER TO: G-34842

OFFICE: Jerome

December 30, 2005

Idaho Dept. of Water Resources
Attn: Karilynn Townsend
P. O. Box 83720
Boise, ID 83720-0098

Dear Karilynn:

Enclosed please find cashiers check # 61000929 in the amount of \$225.00, which represents the transfer fee due on the enclosed Change of Ownership. Also enclosed is a copy of the recorded Warranty Deed along with a copy of the plat map for your reference.

If you have any questions, please do not hesitate to contact our office at (208) 324-3357.

Sincerely,

LAND TITLE AND ESCROW, INC.

DeNene M. Dixon
Escrow Assistant

MEMO

FROM: Allen Merritt

DATE: May 8, 2001

TO: Steve Clelland

Files: 37-795, 37-796 and 37-798

SUBJECT: Fleming Rights regards Jensen Complaint

Last Friday I contacted Mike Fleming and Cliff Jensen as a result of the May 3rd letter sent to me by Cliff Jensen. I offered to arbitrate a meeting between Jensen and Fleming but ultimately it was decided that I would do a field visit on 5/8 to look over Mr. Fleming's property. At 10:00 am today I met Mike at his place and I went over the draft recommendations Steve Clelland had completed when doing the Basin 36 reviews which somewhat overlap. He indicated that Steve did not contact him when the initial investigation for the above described rights was done.

I asked him about how he viewed his water rights and he indicated that he has treated his diversions as moving back and forth on a ditch. He indicated that the only change that has been made was the change from 4 wheel-lines and 2 hand-lines to the pivot. He indicated that this was done approximately 6 or 7 years ago. He indicated the same pump that has always been there is the one being used. He indicated the pump was not modified when the pivot was added. I inspected the pump and it appears to be the same one as photographed by Steve.

In reviewing the recommendations I'm not certain why rights 37-795 and 37-796 did not include the pump as a point of diversion. The capacity of the 30 HP pump with estimated TDH of 145 ft. would be in the range of 1.3 cfs which is in the range of the total of all three rights. Further review of these rights will need to be made in Basin 37 since what Steve has done is draft. I recommend that both PD's be recommended for all the rights. A transfer appears premature at this point.

Regarding other issues expressed in Jensen's letter I asked about his operation of his fish facility and the removal of boards. He indicated that he no longer operates a fish facility. (Permit 37-7559 for fish propagation) He indicated due to the poor pricing from the processors, cost of feed, etc it was not worth messing with. He indicated he has not feed fish for several years. He indicated that he probably will not in the future and would just as soon see the creek return to its natural state. He indicated that he does utilize the lower pond as a settling basin for his pump and that he often lowers the boards to dry up the moss build up. Regarding the issue of dust from Jensen's field he indicated that when the wind blows it is a nightmare. He showed me the drifts along side the road and the covering of blow sand on items in the yard. He indicated that it gets in the house and causes much animosity between himself and Jensen.

It appears to me that mostly there are nuisance issues between these two parties and not issues of water rights. The issues of water right diversion points should be determined in the SRBA process.

I recommend that a letter be sent both parties informing them of the results of the investigation. I also propose that Flemming be sent a relinquishment form for permit 37-7559 since a field exam is pending, otherwise the permit should be cancelled.

May 10, 2001

Triple "J" Ranch
PO Box 201
Hagerman, ID 83332

Michael J Fleming
17826 US Hwy 30
Bliss, ID 83314

837-6453

RE: Complaint

Gentlemen:

As you know I conducted a field investigation on May 8th of the water uses and other associated matters on Birch Creek in Gooding County as prompted by the May 3rd letter from Cliff Jensen.

The attached memo documents my review. I have discussed this matter with Steve Clelland, SRBA agent, and conclude that:

- The diversion of water to the Fleming pivot appears to be within his rights. Current SRBA draft recommendations should be modified to make this clear. A forced transfer to add a point of diversion for the Fleming rights or issuance of a notice of violation for non-compliance to a water right is pre-mature at this time.

- The matter of release and or storage of ponded water on the Fleming property must be done in a prudent manner. For example, it is strongly recommended that release of water from the pond at the pump should be at a rate that does not cause damaging flooding of property downstream. Likewise, filling of the pond at the pump should be at a rate that does not cause damaging de-watering of the creek below the pond. Ultimately, damage caused as a result of operation of the pond is a civil matter between parties.

I have reviewed the water right permit 37-07559 records and find that a licensing exam has been attempted in the past but postponed due to non-use. Based on the conversation with Mr. Fleming I now understand the fish propagation use likely will not continue in the future. To clear the records of the department I request that the enclosed relinquishment form to Mr. Fleming be signed and returned to this office.

If either party has questions, please feel free to contact this office. If both parties are agreeable to meet together with me to discuss these matters further I will make myself available.

Sincerely

Allen Merritt, PE
Southern Region Manager

R E L I N Q U I S H M E N T

TO WHOM IT MAY CONCERN:

I hereby relinquish to the State of Idaho, all my
right, title and interest in and to Permit to Appropriate the
Public Waters of the State of Idaho, No. _____.

Signed at _____ this _____ day
of _____, 19 _____.

Permit Holder

ATTEST:

BEFORE THE IDAHO DEPARTMENT OF WATER ADMINISTRATION
OF THE STATE OF IDAHO

Re: Application No. 37-7116,

Vernon J. Huff

STIPULATION

Comes now Parry, Robertson, Daly and Larson of Twin Falls, Idaho, on behalf of the applicant, Vernon J. Huff, and Becker, Swenson and Shaw, of Gooding, Idaho attorneys for protestants E. Bud Jensen and Paul Fleming, of Hagerman, Idaho, and stipulate as follows:

1. That the protest of E. Bud Jensen and Paul Fleming is hereby withdrawn and the Department of Water Administration may issue a permit pursuant to application No. 37-7116 to Vernon J. Huff if said application meets the other requirements of the Department.

2. The undersigned request that the Department of Water Administration condition any permit issued pursuant to Application No. 37-7116 as follows:

- a. So long as the applicant utilizes the water of Birch Creek pursuant to the provisions of a permit which may be issued pursuant to application No. 37-7116, the applicant guarantees that the pipeline of E. Bud Jensen will be kept full at all times during the Irrigation season when requested by Jensen and that during Jensen's use of said water the water level will be maintained at least twelve (12) inches from the top of the headwall where the water enters Jensen's pipeline. The pipeline owned by Jensen is located in the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 34, Township 6 South, Range 13, E.B.M., Gooding, Idaho.

37 7116

- b. Applicant Vernon J. Huff will not alter the natural rock diversion of Birch Creek as previously set out in that certain agreement dated May 4, 1943, concerning the diversion at the "forks" of Birch Creek located in the Southwest Quarter of the Southwest Quarter of Section 35, Township 6 South, Range 13 East, Boise Meridian, Gooding, County, Idaho.
- c. The parties further stipulate that if the natural flows of Birch Creek ever diminish to a point where the one cubic foot of water for consumption use for irrigation purposes set out in application No. 37-7116 cannot be filled without interferences with the water right E. Bud Jensen, his successors, or assigns, Vernon J. Huff will cease consumptively using said one second foot of water covered by said application No. 37-7116 or any permit issued pursuant thereto, and the parties will then determine the respective amounts of water and the priority dates to which each are entitled to by constitutional usage in addition to the amounts set out in the decree of Swineheart v. Vader filed in Gooding County, December 19, 1971, recorded in Book 1 of Civil Judgments at page 533.
- d. Vernon J. Huff will provide access to E. Bud Jensen and Paul Fleming to their domestic well located on the property of Vernon J. Huff for the purpose of maintaining said domestic well and will co-operate if additional construction is required.

The Applicants and the Protestants agree to bind their heirs, personal representatives, their successors and assigns.

DATED: March 30, 1972.

Applicant Vernon J. Huff

Protestants E. Bud Jensen
Paul Fleming

BY James A. Parry
Parry, Robertson, Daly & Larson
P. O. Box 525
Twin Falls, Idaho 83301

BY Harry W. Shaw
Becker, Selanson & Shaw
P. O. Box 238
Gooding, Idaho 83330



Ditch To Upper
Ponds
(Looking SW)



Settling Pond
Below Lower
Pond
(Looking West)

Permit 37-7116
By Cindy Yentzen
Sept. 1999
4-9-

7/17/01

Amanda

This is the information you requested. The Fleming water is listed as the main channel and part of the time I receive it all.

Mike Fleming

17826 Hwy 30

Bliss Id

83314

RECEIVED

JUL 18 2001

Department of Water Resources
Southern Region



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Water Resources Division
P.O. Box AC
2496 Addison Ave E
Twin Falls, Idaho 83303

4/20/01

Mr. Mike Fleming
17826 Hiway 30
Bliss, Idaho 83314

Dear Mr. Fleming:

Listed below is the result of the discharge measurement made at Birch Creek on March 6, 2001.

Total.....10.5 cfs

Sincerely,

Bill Damschen
Field Office Chief



United States Department of the Interior

GEOLOGICAL SURVEY

Water Resources Division

P.O. Box AC

2496 Addison Ave E

Twin Falls, Idaho 83303

March 23, 1999

Mr. Mike Fleming
Route #1, Box 7
Hagerman, ID 83332

Dear Mr. Fleming:

Listed below is the result of the discharge measurement made at Birch Creek on March 17, 1999.

Total.....10.1 cfs

Sincerely,

Bill Damschen
Field Office Chief



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Water Resources Division
P.O. Box AC
2496 Addison Ave E
Twin Falls, Idaho 83303

March 20, 1997

Mr. Mike Fleming
Route #1, Box 7
Hagerman, Id 83332

Dear Sir:

Listed below is the result of the discharge measurement made at Birch Creek on March 18, 1997.

Total 9.82 cfs

Sincerely,

Mike Campbell
Field Office Chief



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Water Resources Division
P.O. Box AC
2496 Addison Ave E
Twin Falls, Idaho 83303

March 15, 1996

Mr. Mike Fleming
Route #1, Box 7
Hagerman, ID 83332

Dear Mr. Flemming:

Listed below is the result of the discharge measurement made at Birch Creek on March 11, 1996.

Total.....9.28 cfs

Sincerely,

Mike Campbell
Field Office Chief



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Water Resources Division
P.O. Box AC
2496 Addison Ave E
Twin Falls, Idaho 83303

March 29, 1995

Mr. Mike Fleming
Route #1, Box 7
Hagerman, ID 83332

Dear Mr. Fleming:

Listed below are the results on the discharge measurements made at Birch Creek on March 27, 1995.

Total 10.3 cfs

Sincerely,

Mike Campbell
Field Office Chief

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. { Washington _____
District _____

Birch Creek near Hagerman, Idaho

DATE	Party	Rated	Measurements
April -1 1950	WIT-RPT.	G	main channel 0.54 c.f.s. diversion to west 1.12 c.f.s. (Est.) diversion .02 c.f.s. (Est.) minus surface flow 9.68 Spring flow 9.48 c.f.s.
March 27 1951	JRS-JEC	G	main channel 9.01 c.f.s. W. middle diversion 0.84 c.f.s. diversion canals. (dry) surface flow 9.85 c.f.s. Spring flow 9.85 c.f.s.
Apr. 18 1952	JRS BMC	G	Main channel 7.57 W. Div. 1.05 Canals Dry Surface flow " Total 8.62 cfs
Apr. 11, 1953	JRS JF		Main Channel 9.13 W. Div 0.76 other Div 0.68 10.6 No surface flow
Apr 2 1954	JRS TNL		Main Channel 9.75 Div 0.46 10.21 Minus surface flow 0.1 10.11
Apr 7 1955	JRS TNL		Main Channel 6.24 W. Div 2.03 Ditch 0.49 8.76

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. { Washington -----
District -----

Birah Cr nr Hagerman, Ida

Apr 10 1956	JRS	KOR	Main Channel	2.96
			Canal	1.26
			Middle Channel	1.02
			West Div	2.01
			Total	12.25
Apr 9 1957	JRS	ECH	Main Channel	8.07
			West Div	1.75
			Rest Dry	—
			Total	9.82
Apr 8 1958	JRS	TNL	Main Channel	7.38
			West Div	1.94
			Other Div	0.0
			Total	9.32
Mar 29 1959	JRS	TNL	Main Channel	5.56
			West Div	2.76
			Other	0.58
			Total	8.90
Mar 30 1963	JRS	SC	Main Channel	6.33
			West Div	1.77
			Div. Canal	0.30
			Leakage	0.30
			Total	8.70 CFS
Apr 10 1964	JRS	SCC	Main Channel	8.42
			West Div	0.85
			Total	9.27

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. { Washington
District

Birch Creek nr Hagerman, Idaho

Apr 2 1965	JRS	SCC	Main Channel	2.96	
			Div #1	.75	
			#2	1.45	
			#3	3.61	
			#4	.45	
				9.69	
			Surface flow	0.00	
			Total Spring	9.69	CFS
April 8, 1966					
			Main Channel	4.36	
			West Div	4.30	
				8.66	
Mar. 24 1967	ELY	MLJ	Main channel	7.01	
			West Div	2.97	
				9.98	
Mar. 30 1968	ELY	WAH	Main channel	4.34	
			West Div	5.08	
				9.42	
Apr. 14 1969	ELY	BLO	Main channel	2.33	
			West Div.	4.48	
			West ditch	2.15	
			East ditches	0	
				8.96	cfs
Mar. 29 1970	ELY	BLO	Main channel	8.50	
			West Div	0	
				8.50	cfs

File No. _____

MAR 31 1971		Main Channel	7.04
		West Div.	3.12
			10.2
MAR 30 1972		MAIN CHANNEL	6.12 ¹
		WEST DIV	4.44
			10.56 cfs
MAR 25 1974		MAIN Channel	5.47
		Div.s.	3.39
			8.76
MAR 20 1975	SCC	Main Channel	6.78
		Div.s.	2.19
			8.97
MAR 8 1976	MA	Main Channel	6.33
		West Div	3.15
			9.48
FEB 28 1977	SCC	Main Channel	5.69
		West Div.	2.94
			8.69 cfs

File No.

Date		Location	Main Channel	West Div.	Total
Nov 4, 1977			6.53	2.04	8.57
Mar. 27, 1978			5.26	2.56	7.82
Mar 26, 1979			6.58	3.49	9.07
Mar 24, 1980			8.96	0	8.96
Nov. 7, 1980	TRK & WHL		0	6.52	6.52 fs
		not Total flow	500	3/16/81	
Mar 9, 1981	500		5.22	3.71	8.93
March 1, 1981			Total		8.93

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No.

Birch Creek at Hagerman, ID

Mar 23, 1982		Main channel	4.77
		West Div	3.68
			8.45
Mar. 14, 83 FWY		Main channel	5.29
		Diversion	3.16
		Total	8.47
Mar 15, 1984	FWY	Main channel	5.73
		West Div	3.67
		TOTAL	9.40
Nov. 12, 1984	JB	Main channel	11.8
		West Div.	1.1
		Total	11.9
Mar. 22, 1985	FWY-114	Main channel	3.59
		Bypass	.53
		W. Diversion	3.86
		Total	7.98
Nov. 15, 1985		Combined flow	9.99

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. 13-1351

Birch Creek near Hagerman, Id

Mar 19, 1986							Main channel	5.07					
							West Div.	4.46					
								9.53					
Nov. 4, 1986			RLB				MAIN CHANNEL	7.47					
							WEST DIV.	2.95					
								10.42					
March 16, 1987			RLB-TSB				Main Channel	6.96					
							West Div.	2.61					
								9.57					
Nov 2, 1987			TB, KL				main channel	6.60					
							West Diversion	3.10					
								9.70					
March 21, 1988			RLB				Main Channel	6.86					
							West Diversion	3.49					
								10.4					
Nov. 7, 1988			TB, LD				main channel	11.52					
							West Diversion	0.06					
								11.58					
MAY. 20, 1989			TB, KLN				main channel	6.47					
								2.22					
								8.69					

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

File No. 13-13.51.00

Birch Creek near Hagerman, Idaho

Date	By		
Nov 7, 1989	KLH, TSB	MAIN CHANNEL	DIY
		WEST DIVERSION	13.1
			13.1
March 5, 1990	KLH	MAIN CHANNEL -	1.29
		WEST DIVERSION -	8.23
			9.32
Nov 7, 1990	KLH, CLR	MAIN CHANNEL -	1.29
		WEST DIVERSION	13.2
		- DITCH INFLOW -	2.5
			15.2
March 18, 1991	KLH, MAN	MAIN CHANNEL =	4.60
		WEST DIVERSION =	10.10
		- DITCH INFLOW =	3.1
			17.4
MARCH 3, 1992	MAN, JBF	MAIN CHANNEL =	3.70
		WEST DIVERSION =	9.08
		- DITCH INFLOW =	8.13
			9.25
#47 MARCH 10, 1993	KLH, JBF	MAIN CHANNEL =	3.57
		WEST DIVERSION =	10.3
		- DITCH INFLOW =	1.77
			12.1 cfs