



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

November 11, 2010

IDAHO DEPT OF ENVIRONMENTAL QUALITY
1410 N HILTON
BOISE ID 83706

RE: APPLICATION TO LEASE ALL OF WATER RIGHTS 94-4217 AND 94-4244 TO THE WATER SUPPLY BANK

Dear Applicant:

On October 23, 2007, the Department received your applications to lease the rights above to the Water Supply Bank. We recently began reviewing those applications and have some important information.

Both 94-4217 and 94-4244 are filed with the Department as statutory claims based on posted notices. As such, there is no documentation verifying the elements of the water rights as they are listed. Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025), requires the applicant to provide evidence the water right has been recorded through court decree, permit or license issued by the Department. The rule allows a copy of the claim to be submitted if the right is included in an ongoing adjudication. In addition, Rule 25 also says leased rights may be rented provided, "...there is no enlargement of use of the water rights..."

The requirements of Water Supply Bank Rule 25 can not be met because 1) the water rights have not been verified through court decree, permit, license or adjudication, and 2) without verification of the extent of beneficial use, there is risk of enlargement of the water rights. Therefore, we are returning the applications to you.

I have been in consultation with Bob Haynes, IDWR Northern Regional Manager, and Jeff Peppersack, Interim Water Management Division Administrator, regarding your applications. If you wish to pursue these lease applications, and the water rights in general, the next step is for you to file claims in the Northern Idaho Adjudication and submit documentation demonstrating the extent of development and beneficial use of the water rights. Please contact our Northern Regional Office in Coeur d'Alene at (208) 762-2800 for assistance in filing those claims. Until the claims are filed and beneficial use verified, the Department does not have enough information to accept these rights into the Bank.

Please feel free to contact me at (208) 287-4907 if you have any questions regarding Bank matters.

Sincerely,

Monica Van Bussum
Sr. Water Resource Agent

Enclosures: Bank lease applications
C: Bob Haynes – IDWR Northern Regional Office

Water Supply Bank No. _____

Water Right No. _____

RECEIVED

OCT 23 2007

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION TO SELL OR LEASE A WATER RIGHT
TO THE WATER SUPPLY BANK

Name of Seller/Lessor Idaho Dept. of Environmental Quality Phone 208-373-0134

Post office address 1410 N. Hilton, Boise, ID 83706

1. DESCRIPTION OF WATER RIGHT:

Right evidenced by:

a. Decree No. _____ Decreed to _____ (Name)
in case of _____ vs _____
dated _____ in _____ county of _____ (Name of court)

b. License No. _____ issued by the Idaho Department of Water
Resources.

c. ~~Permit~~ No. 94-4217 & 94-4244 issued by the Idaho Department of Water
Resources.

2. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE: (If the entire right is for sale or lease, show "all" on line a. below and skip the remainder of part 2.)

a. Amount of water under right: 10.0 cubic feet per second &/or
_____ acre-feet per annum

b. Point of diversion: SE 1/4 of SW 1/4 of Section 2 Township 48N Range
2E, B.M. in Shoshone County.

Additional points SE SE, 10, 48N, R2E, Shoshone County

c. Place of use:

| TWP | RGE | SEC | N E | | | | N W | | | | S W | | | | S E | | | | Totals | |
|-----|-----|-----|-----|----|----|----|-----|----|----|----|-----|----|----|----|-----|----|----|----|--------|--|
| | | | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | | |
| 48N | 2E | 2 | | | | | | | | | | | | | | | | | | |
| 48N | 2E | 2 | X | | | | | | | | | | | | | | | | | |
| 48N | 2E | 1 | | | | X | | | | | | | | | | | | | | |
| 48N | 3E | | | | | | | | | | | X | | | | | | | | |
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If the right is for irrigation, show the number of acres for the part of the right to be put into the bank.

Total number of acres _____

3. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

a. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right. If the right is not recorded in the name of the seller/lessor, attach a copy of a change of ownership form as required by Section 42-248 or 42-1409(6), Idaho Code, together with required documentation.

(see attached narrative)

b. Describe the frequency of water use under the right, or portion thereof, during the past five (5) years of use. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture. (This information is not required if a partial decree has been issued on the right within the last 5 years).

Since the closure of the Bunker Hill Smelter and the inception of the EPA Super Fund site, the water has consistently been used for dust control, compaction watering, and equipment decontamination.

- c. If the right is from a surface water source, describe the period of the year that water is typically available to satisfy the right.

Water is available all year.

- d. Describe any other water rights with the same purpose and place of use as the right, or portion thereof, offered for lease. Will the present place of use continue to receive water from any source? If so, describe.

~~To the Lessor's knowledge these are the only diversions from~~
Government Creek. The place of use will likely change.

- e. If the water right is a permit, describe the work accomplished toward developing the right.
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- f. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

4. REMARKS:

5. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale;

X For lease for a period from Indefinite to _____
(Day, month, year) (Day, month, year)

(The lease period may be shown as "indefinite", if the total duration of lease is unknown); or

_____ As a gift to the state of Idaho.

2. Show the minimum payment acceptable to the Seller/Lessor. Include the method of determining the minimum payment. The minimum payment may be shown as the "current rental rate".

Current rental rate

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer this right for sale or lease to the Idaho Water Resource Board.

The owner/lessor acknowledges the following:

1. Payment to the owner/lessor is contingent upon the sale or rental of the right from the bank.
2. While a right is in the bank, the owner of the right may not use the right even if the right is not rented.
3. A right accepted into the bank stays in the bank until the Board releases it or until the lease term expires.
4. While a water right is in the bank, forfeiture provisions are stayed.
5. Acceptance of a right into the bank does not, in itself, confirm the validity of the right or any elements of the water right.

10/18/07
Date

Toni Hardesty
Signature Toni Hardesty, Director

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Preliminary check by _____

Watermaster recommendation requested on _____ Received _____

Recommended for _____ approval _____ denial by _____

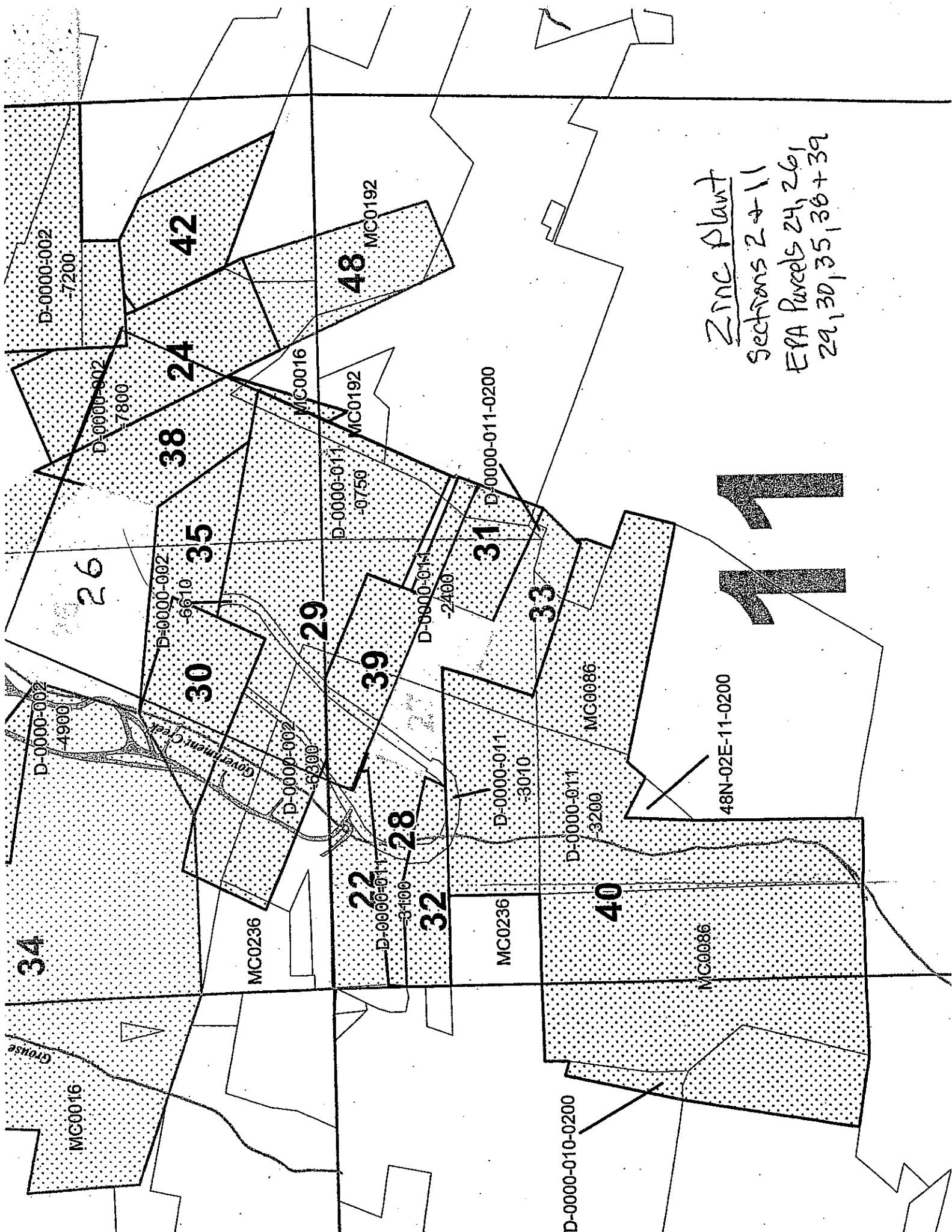
OWNERSHIP NARRATIVE

The Idaho Department of Environmental Quality received title to the benefited properties described in the water right claims from the United States of America through three separate deeds dated September 17, 2003; September 9, 2004; and September 11, 2007 (copies attached). These were conveyances of properties ceased by EPA from Bunker Limited Partnership (Pintlar), as part of the CERCLA action creating the Silver Valley Super Fund site. Under federal law, these properties were transferred upon request to the State of Idaho represented by DEQ. The EPA identified the properties as parcels.

The benefited property identified on the water right claims as the B.H. Zinc Plant would be located within EPA Parcels 24,26,29,30,35,38 & 39 (see attached highlighted map). DEQ took title to these parcels through a combination of the September 17, 2003, and the September 9, 2004 deeds.

The benefited property identified on the water right claims as the B.H. Smelter would be located in a portion of EPA Parcel 9 (see attached highlighted map). A vast majority of this area was excluded from the Parcel 9 description in the September 9, 2004 deed because it comprised what is known as the Smelter Closure Area (SCA) and required mutually agreeable performance standards before the conveyance could occur. These matters were eventually resolved, and the SCA was conveyed to DEQ in the September 11, 2007 deed. It is this issue that delayed DEQ in filing a change of ownership for the water rights.

The benefited property identified in water right 94-4244 as the Mill and Mine would be located in EPA Parcel 4 and a portion of EPA Parcel 5 (see attached highlighted map). These were conveyed to DEQ in the September 17, 2003 deed. Since receiving title to EPA Parcel 4, DEQ has deeded it to the City of Kellogg.



Zinc Plant
 Sections 2 + 11
 EPA Parcels 24, 26, 29, 30, 35, 36 + 39

11

48N-02E-11-0200

D-0000-010-0200

MC0236

MC0086

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MC0086

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MC0192

MC0016

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D-0000-002-7200

Grorse

Government Creek

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D-0000-002-4900

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D-0000-002-6610

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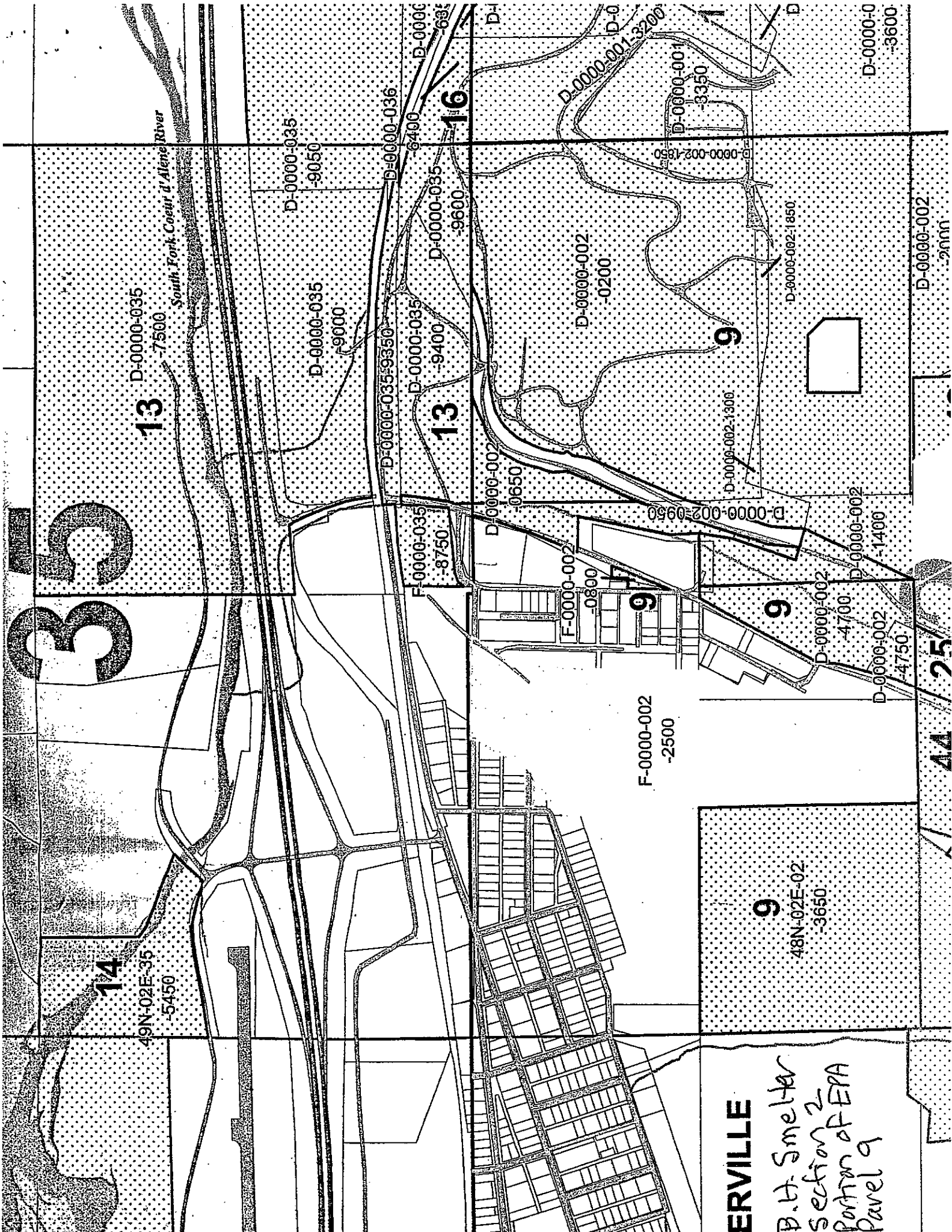
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MC0016

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-7500

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South Fork Coeur d'Alene River

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48N-02E-35
-5450

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D-0000-035
-9050

D-0000-035
-9000

D-0000-035
-9400

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F-0000-035
-8750

F-0000-002
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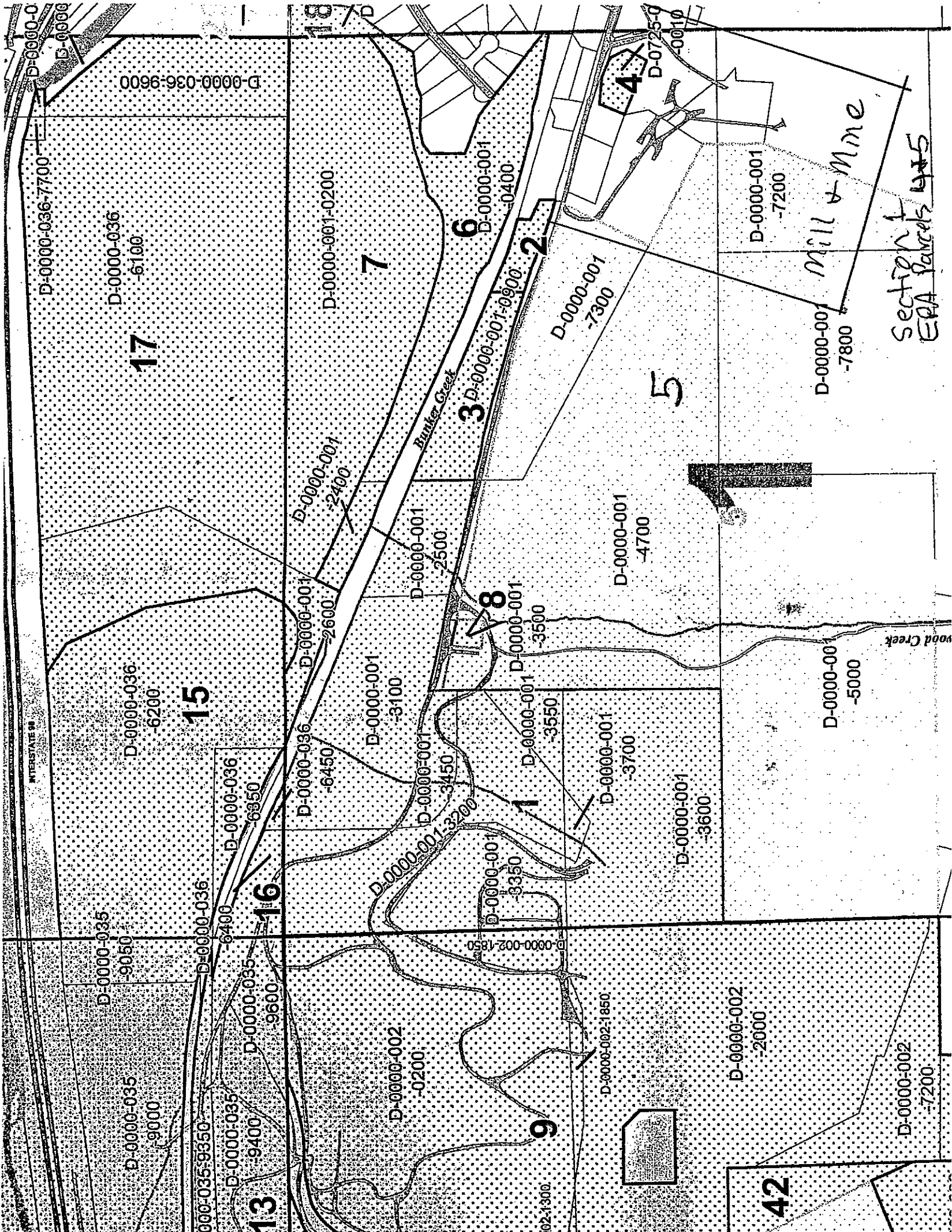
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ERVILLE

B.H. Smelter
Section 2
Portion of EPA
Parcel 9



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D-0000-001-0200

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002-1300

D-0000-001-0400

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D-0000-001

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D-0000-002

D-0000-002-1850

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D-0725-0

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Mill & Mme

Section 1
EPA Parcels 445

Wood Creek

Bunker Creek

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