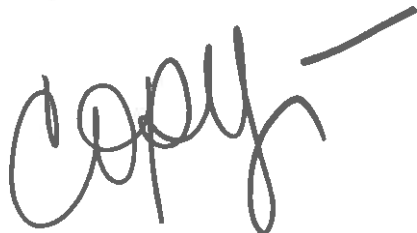


TO: JOHN WESTRA
FROM: DANIEL A. NELSON
DATE: 6/29/07
SUBJECT: CAMPBELL/MCGARY COMPLAINT



On 6/13/2007, I was asked to investigate the above complaint and perform the field exam for permit 79-14012, which is associated with this complaint. This permit was filed for domestic, stockwater, and stockwater storage. Our office has received several complaints concerning this permit, so it was decided that we should combine a complaint investigation in with the beneficial use field exam. In order to cover all of the issues, Ray Hennekey with the Idaho Fish and Game (IDFG) and Cynthia Bridge-Clark Dam Safety Specialist (IDWR) accompanied me on the field exam to review all of the issues revolving this permit.

This pond is located in the NWNE S20 T30N R2E and SWSE S17 T30N R2E, with the point of diversion being located in the NWNE. The pond is an on-stream pond. The pond created under this permit is approximately 188 ft X 130 ft X 1-3 feet deep. The pond is very shallow and most of the pond is 1ft or less. Therefore, I used the coefficient of 0.4 to calculate the depth per the Field Examiner's Handbook. I used ArcView to determine the surface area of 0.5 acres. The volume of the pond is 0.5 X 3 X 0.4 = 0.6 af. The permit was only for 0.3 af, so the owner is going to need to re-file a new application for permit for the remaining

Don Esslinger and Jennifer McGary filed the complaint concerning this pond. During my review, I discovered another pond on Mr. Esslinger's property that does not appear to have a water right. I could find no property owned by Ms. McGary, so I assume she is connected in some fashion with the Esslinger property. It appears as though this problem began when the pond was constructed over the ditch carrying water to the Esslinger/McGary pond. Any destruction of a delivery system would be an easement issue would need to be addressed in a civil court. However, without a valid water right, I am not sure that they could proceed with this type of proceeding.

→ The construction issues resulting in the dam failure in 2003 seems to have been resolved. Our Dam Safety Specialist could find nothing seriously wrong with the dam during our field visit. The dam was constructed under a water right, so there was no violations in the dam construction other than the storage reservoir was larger than what was requested in the application. There was an issue with spillway that some erosion was taking place, but all this can be remedied by redesigning the spillway. A condition can be added to the application to ensure further erosion does not occur.

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Campbell/McGary

I believe that Mr. Campbell's involvement in this complaint can be resolved by conditioning the water right to ensure that he provides adequate fish passage, and shade for the pond per recommendations made by the Idaho Fish and Game. The condition can be fashioned as follows:

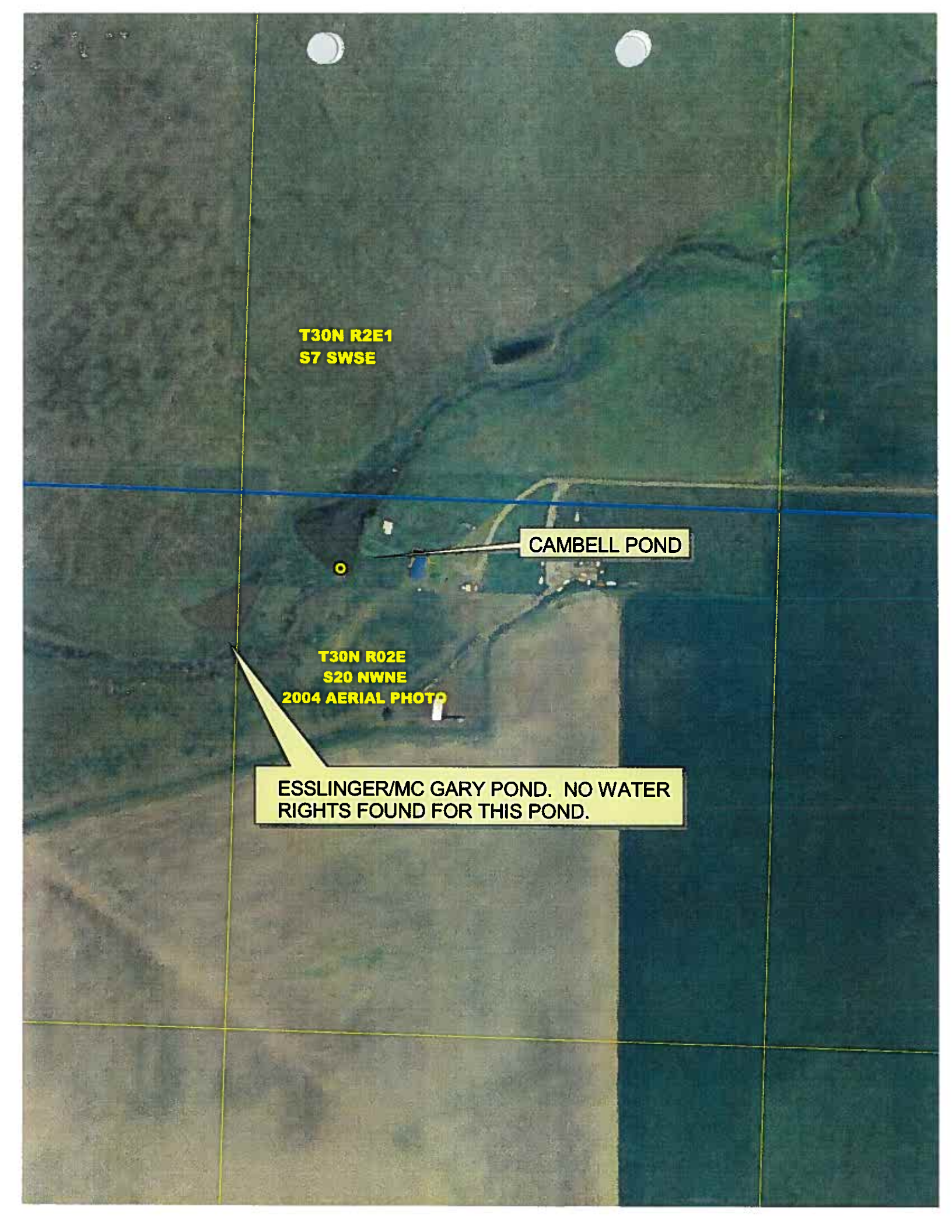
Prior to storing water each year the owner of this right must be within compliance of all Idaho Fish and Game recommendations for maintaining the fish migration and habitat for John's Creek.

The spillway for this dam must be constructed and maintained at all time to allow fish passage and to prevent any erosion of the stream banks or channel.

From what I saw during my field examination, the dam and pond fall within the standards required by the department for licensing. However, the owner will need to file a second application for permit to cover the increase in storage from the original application for permit and to cover any evaporations losses from the pond. Any damage from the failure of the dam that happened in 2003 would need to be resolved through the Civil Court process.

Unfortunately, the field investigation did reveal that Esslinger and McGary might have a pond without a valid water right. Therefore, I feel a cease and desist order should be issued until they can provide proof of a valid water right for the pond located on their property or until a valid water right is secured for the property.

PLEASE SEE FIELD EXAM FOR FURTHER MAPS, NOTES AND PHOTOS.

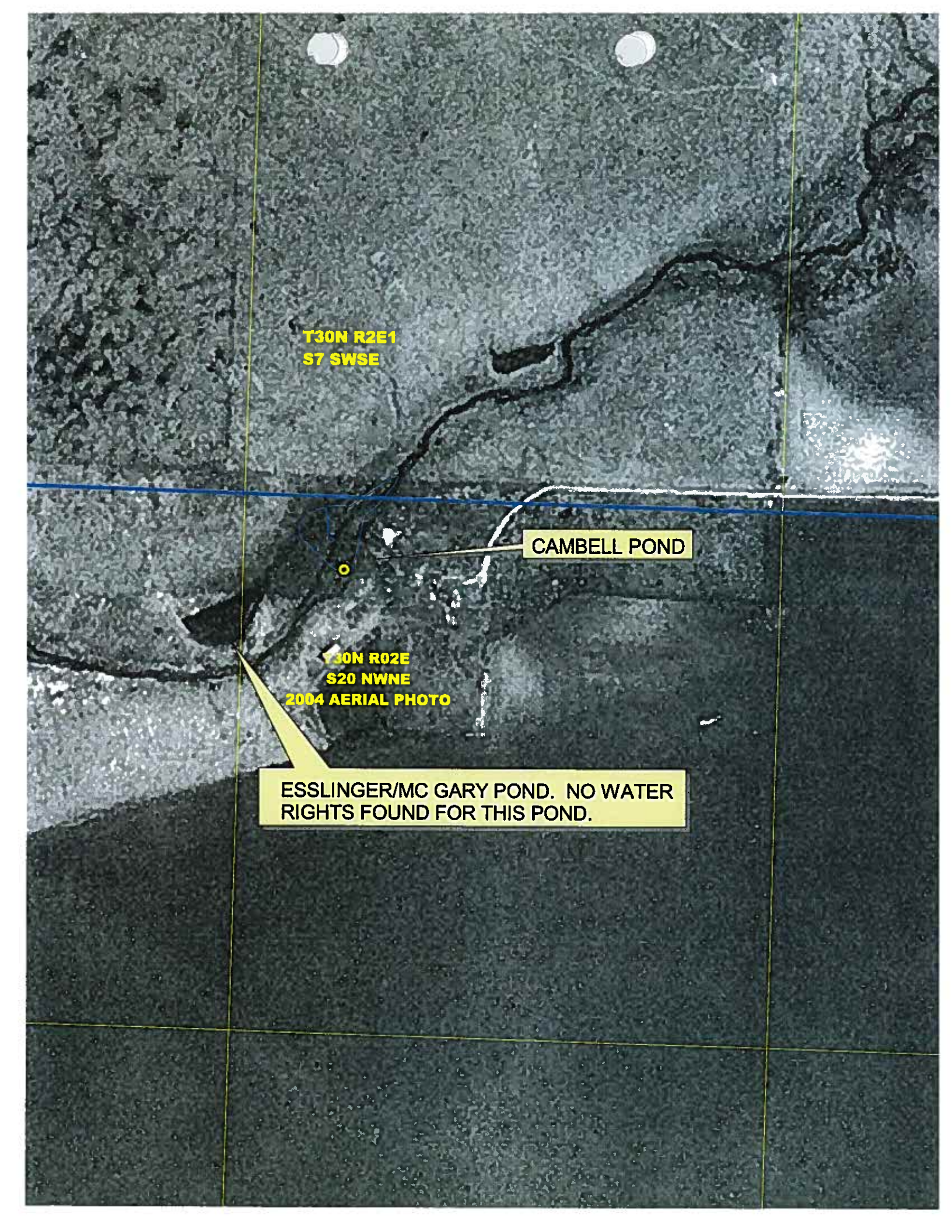


**T30N R2E1
S7 SWSE**

CAMBELL POND

**T30N R02E
S20 NWNE
2004 AERIAL PHOTO**

**ESSLINGER/MC GARY POND. NO WATER
RIGHTS FOUND FOR THIS POND.**



**T30N R2E1
S7 SWSE**

CAMBELL POND

**T30N R02E
S20 NWNE
2004 AERIAL PHOTO**

**ESSLINGER/MC GARY POND. NO WATER
RIGHTS FOUND FOR THIS POND.**