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JOHANATHON S. BYINGTON
DAVE BAGLEY
CAROL TIPPY VOLYN
THOMAS J. BUDGE
CANDICE M. MCHUGH

July 3, 2008

RECEIVED

JUL 03 2008

Department of Water Resources
Eastern RegionDave Carlson
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-6105*Re: Application for Transfer of Water Right Nos. 11-7597 & 11-7601
The Retreat at Bear Lake, LLC (Black Bear Resort)*

Dear Dave:

Please find enclosed an original and one copy of Application for Transfer of Water Right Nos. 11-7597 and 11-7601. Please file the original and conform stamp and return the copy in the enclosed envelope.

The purposes of this Application are (a) to update IDWR records to reflect the correct place of use of water right no. 11-7597 and (b) to create a shared place of use for water right nos. 11-7597 and 11-7601, both of which have historically been delivered through the Nuffer Ditch to irrigate lands within what is currently known as the Four Pines Ranch (f/k/a Sorenson Ranch).

I previously submitted on behalf of The Retreat at Bear Lake, LLC ("The Retreat") a Notice of Change in Water Right Ownership of water right numbers 11-924, 11-925, 11-929 and 11-930. The enclosed Application for Transfer relates to the ownership change of water right numbers 11-924 and 11-929 which were split as follows:

Parent Right	Split Rights	Owner	CFS	Acres
11-924	11-7597	Ola Transtrum	11.5	154.3
	11-7598	The Retreat	3.5	345.7
11-929	11-7600	Ola Transtrum	1.05	52.5
	11-7601	The Retreat	0.35	17.5

The primary purpose of the Application is to correct the split of water right number 11-924. That water right originally provided 15 cfs for the irrigation of 500 acres on the old Ola Transtrum Ranch near Pegram, Idaho. Water right number 11-924 was split in fact prior to 1950 in conjunction with a division of the Transtrum Ranch. Though no ownership change or transfer was filed, the deed history shows that the portion of the Transtrum Ranch that became known as the Sorenson Ranch (a/k/a Four Pines Ranch) retained an 11.5 cfs portion of water right number 11-924. Accordingly, the recent change in ownership filed by The Retreat resulted in 11.5 cfs being retained by The Retreat for use on the Four Pines Ranch. We agree with the recommended diversion rate of 11.5 cfs, but we disagree with the allocation of only 154.3 irrigable acres to the Four Pines Ranch.

While the deed history expressly conveys 11.5 cfs to Sorenson Ranch, the deeds are silent as to irrigated acres. By pro-rating acreage congruent with the split of the diversion rate, the Sorenson Ranch would receive 11.5 cfs for the irrigation of 383.3 acres. As shown in the above table, however, Cherie Padilla recommended only 154.3 acres to The Retreat. Her calculation pro-rated acreage based on the decreed place of use of water right 11-924 rather than upon the diversion rate which was provided for in the deed history.

The pro-ration of irrigated acreage based on the decreed place of use is problematic for a few reasons. First, the decree defined the place of use only to the nearest quarter-section regardless of the number of acres actually irrigated in the quarter-section. Second, the decree contains multiple errors.¹ With respect to water right number 11-924, the decreed place of use includes some lands that are incapable of being irrigated while excluding other lands that have always been irrigated, as can be seen on the map attached to this letter as Exhibit A.² Third, the effect of splitting water right 11-924 based on the decreed place of use creates an unrealistic result. As shown in the above table, the recommended split provides The Retreat with 11.5 cfs for the irrigation of only 154.3 acres (0.07 cfs/acre) while leaving Ola Transtrum with 3.5 cfs for the irrigation of 345.7 acres (0.01 cfs/acre). Fourth, watermaster records indicate the irrigation of far more than 154.3 acres at the Sorenson Ranch.³ In speaking with Cherie about this matter, she agreed that the Sorenson Ranch likely used the 11.5 cfs to irrigate far more than 154.3 acres, but explained that a transfer application would have to be filed to correct the split of water right 11-924 to reflect actual water use. Thus, the enclosed Application.

¹ The letter I sent you previously with the Notice of Change in Water Right Ownership identifies a number of errors in the Terrell Decree.

² It should also be noted that the IDWR Water Right Report for 11-924, which is based on the Terrell Decree, contains a transcription error. The Report erroneously includes the SENW Sec. 2 in the place of use while excluding the SESW Sec. 2. This can be seen by comparing the Water Right Report for 11-924 with the Terrell Decree for water right 11-924, copies of which are attached to this letter as Exhibit B, including for your convenience a map showing the place of use according to each.

³ Watermaster records show an annual diversion of approximately 2000 acre-feet into the Nuffer Ditch. Of that amount, 44.6% (892 ac-ft) is delivered to Four Pines Ranch. The diversion of 892 acre-feet indicates that far more than 171.8 acres (154.3 acres under 11-7597 + 17.5 acres under 11-7601) are irrigated at the Sorenson Ranch.

As evidence of historic water use at Four Pines Ranch, the Application for Transfer includes copies of Farm Service Agency (FSA) crop reports for the years 2003 and 2004. Both Reports show 554.7 total irrigated acres at the Four Pines Ranch.⁴ These reports were submitted to the FSA by the prior owner of the Ranch and provide evidence of water use at the Ranch prior to its acquisition by The Retreat. In contrast with the 554.7 acres shown in the crop reports, the ownership change recommended by Ms. Padilla would provide water for the cumulative irrigation of only 426.4 acres (11-7597: 154.3 ac; 11-7601: 17.5 ac.; 11-7599: 224.6 ac.; 11-930: 30 ac.) Thus, in recent years there were approximately 128.3 more acres irrigated at the Four Pines Ranch there would be authorized based on Ms. Padilla's recommended split of water right number 11-924.

We also interviewed Berdean Black who ran the Sorenson Ranch in the late 1950s and early 1960s. Mr. Black has a good memory of the irrigation practices at the Ranch and provided an Affidavit detailing the same. The lands that Mr. Black recalled irrigating amount to approximately 580.3 total acres, with 322.49 acres irrigated from the Nuffer Ditch and 257.85 from the Sorenson Ditch as shown on the map attached to his Affidavit.⁵

The enclosed Application for Transfer provides for the cumulative irrigation of 322.5 acres via the Nuffer Ditch consistent with the Affidavit of Berdean Black. The 322.5 acres are divided between water right numbers 11-7597 and 11-7601 which are delivered through the Nuffer Ditch. Since water right 11-7601 provides for the irrigation of 17.5 acres, water right 11-7597 must provide the remaining 305 acres. Thus, the Application provides for the irrigation of 305 acres under water right number 11-7597. While this is less than the 383.3 acres that would be authorized if acreage was pro-rated based on the split of the diversion rate, The Retreat agrees that the proposed transfer must be consistent with actual water use at the Ranch.

In addition to correcting the split of water right 11-924, the enclosed Application seeks to create a shared place of use for water right numbers 11-7597 and 11-7601. Both rights are delivered through the Nuffer Ditch to the same lands within the Four Pines Ranch. A shared place of use more accurately reflects actual water use and delivery practices at the Ranch.

We appreciate your prompt attention to this matter. Please publish notice of this Application as soon as possible. If any questions arise please contact me directly.

Best Regards,



THOMAS J. BUDGE

⁴ Rex Payne of the Bear Lake County FSA office explained that crop reports for The Four Pines Ranch are limited because the Ranch was taken into receivership for many years and because older records are archived in Seattle, WA, and cannot readily be obtained.

⁵ K. Rigby, deceased, ran the Ranch after Mr. Black, but eventually lost the Ranch to the Farmers Home Administration. Due to the long-term possession of the Sorenson Ranch by the FHA, we have not identified any other living persons that ran the Ranch and can attest to the historic irrigation practices at the Ranch.

July 3, 2008
Page 4 of 4

Enclosures

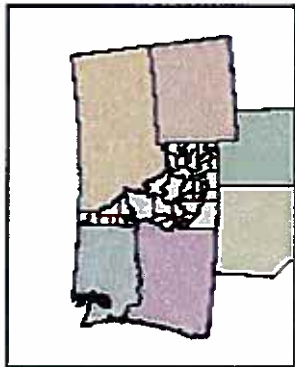
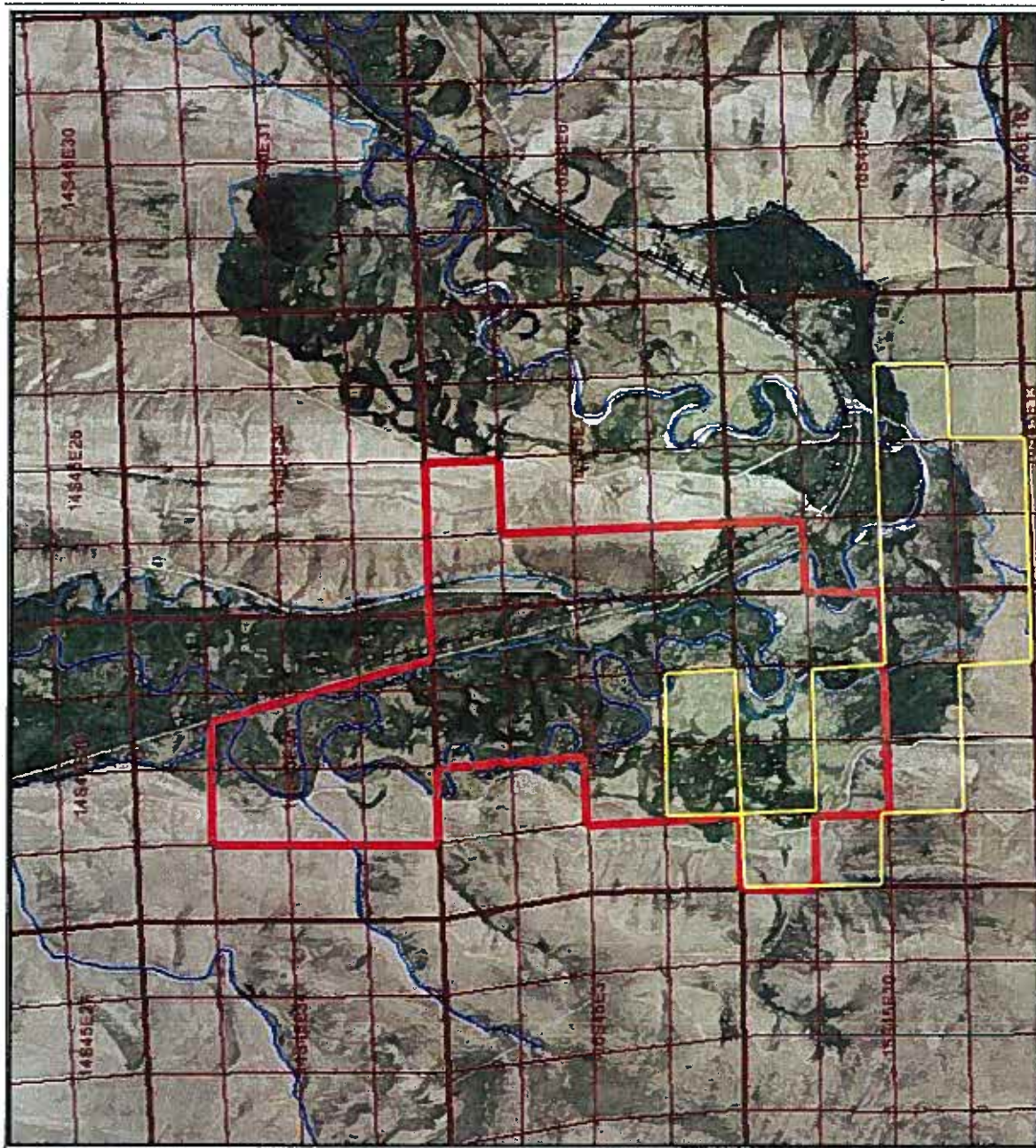
cc: The Retreat at Bear Lake, LLC d/b/a Black Bear Resort
Brad Auger, Project Manager
Lance Anderson, Project Engineer

EXHIBIT A

**Water Right No. 11-924
Map of Decreed Place of Use**

Water Right 11-924 (Decree)

Created: February 29, 2008



- Legend**
- Railroads
 - Major Roads
 - Interstate
 - U.S. Highway
 - State Highway
 - Other
 - Lakes
 - Major Rivers
 - Rivers
 - Canals
 - Ditches
 - Short segments
 - Streams
 - PLS - Section
 - PLS - quarter quarter
 - Cities
 - Counties
 - state
 - High Res. NAIP (2008)
- = Four Pines Ranch
- = WR No. 11-924



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EXHIBIT B

**Water Right Report 11-924
Excerpt from Terrell Decree**

GEORGE PARKER:

45-4 (Parker Municipal Spring Co.)

- 11 1943 1877-April 15th, what is designated in this decree as a "Meadow Right".
April 15th - July 1st, .3 cubic feet per second.
July 1st - September 30th, .2 cubic feet per second.

- 11 1943 1883-April 15th, what is designated in this decree as an "Agricultural Right", 1.2 cubic feet per second.
11 1943 1884-April 15th, what is designated in this decree as an "Agricultural Right", .2 cubic feet per second.

All of said waters to be diverted from Bear River by means of the Kent-LaRoos Ditch out of Castle Slough, the same being a branch of Bear River, at a point near the Northeast corner of the Northeast Quarter of Section 2, Township 14 South, Range 44 East of the Boise Meridian, to be used upon 80 acres of land, described as follows, to-wit:

W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 35, Township 13 South, Range 44 East, B. M., in Bear Lake County, State of Idaho, containing 80 acres.

EDWARD LAROCCHI:

45-5 (Parker Municipal Spring Co.)

- 11 1943 1877-April 15th, what is designated in this decree as a "Meadow Right".
April 15th - July 1st, 2.25 cubic feet per second.
July 1st - September 30th, 1.5 cubic feet per second.

- 11 1943 1883-April 15th, what is designated in this decree as an "Agricultural Right", .5 cubic feet per second.
11 1943 1884-April 15th, what is designated in this decree as an "Agricultural Right", .1 cubic feet per second.

All of said waters to be diverted from Bear River by means of the Kent-LaRoos Ditch out of Castle Slough, the same being a branch of Bear River, at a point near the Northeast corner of the Northeast Quarter of Section 2, Township 14 South, Range 44 East of the Boise Meridian, to be used upon 105 acres of land, described as follows, to-wit:

The SE $\frac{1}{4}$ of NW $\frac{1}{4}$, and NE $\frac{1}{4}$ of SE $\frac{1}{4}$ and 25 acres in the NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 3, Township 14 South, Range 44 East of Boise Meridian, in Bear Lake County, Idaho.

OLA TRANSTROM:

45-7 # V

- 11 1943 1877-April 15th, what is designated in this decree as a "Meadow Right" (Sawyer Ditch) (2)
April 15th - July 1st, 15 cubic feet per second.
July 1st - September 30th, 10 cubic feet per second.

All of said waters to be diverted from Bear River by means of the Sawyer Ditch at or near a point where the South line of the Southeast Quarter of Section 51, Township 14 South, Range 45 East of the Boise Meridian intersects Bear River, to be used upon 100 acres of land described as follows:

NE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12; SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 11; SW $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of SW $\frac{1}{4}$, Section 2, Township 15 South, Range 45 E.B.M. } W&D 1-73-46

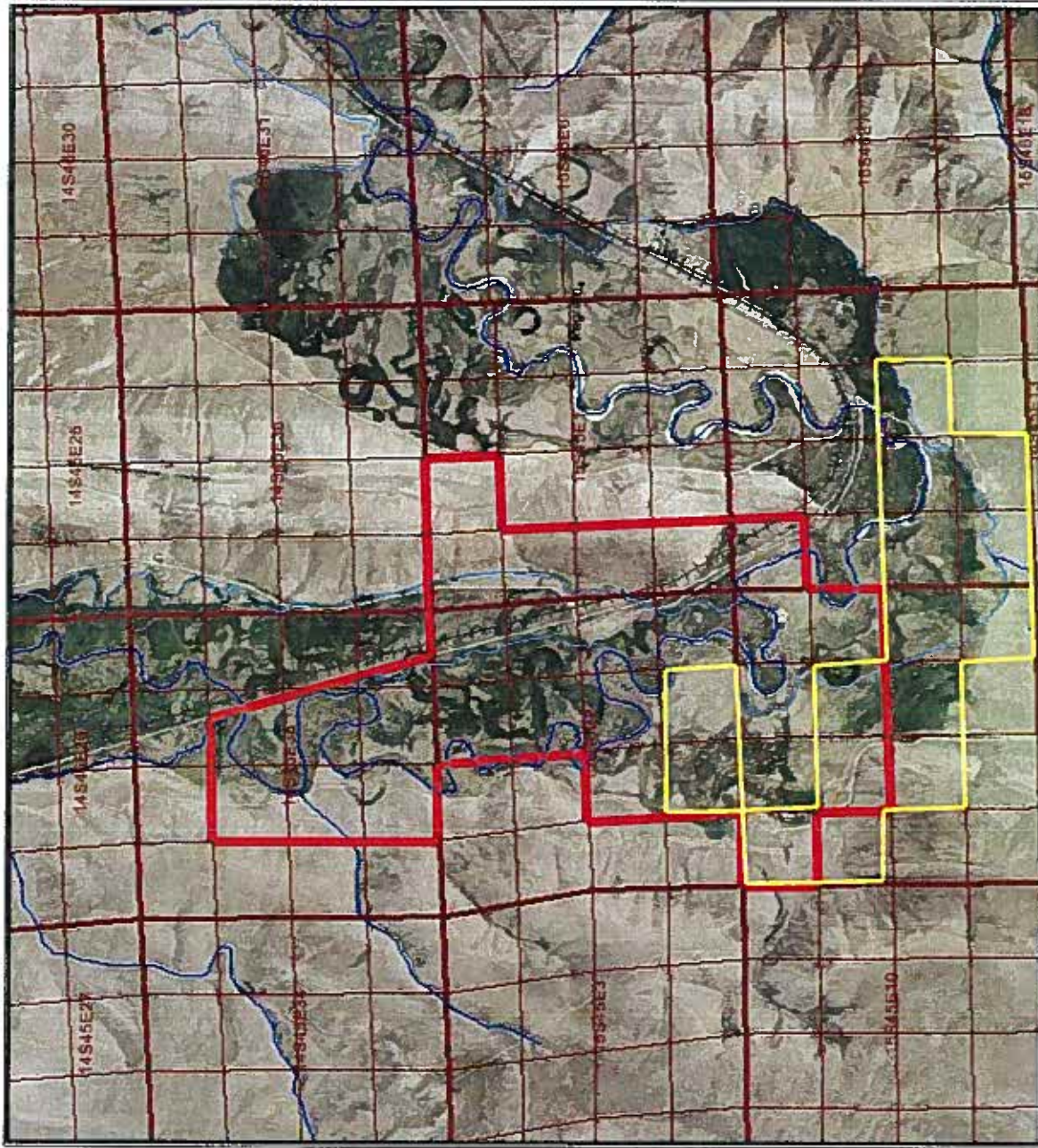
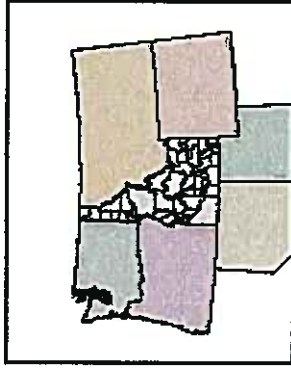
- 11 1943 1877-April 15th, what is designated in this decree as a "Meadow Right" (Sawyer Ditch) (2)
April 15th - July 1st 12 cubic feet per second.
July 1st - September 30th, 8 cubic feet per second. # 1 x-1

All of said waters to be diverted from Bear River by means of ditches on each side of the river at or near the Northeast Corner of the Northeast Quarter of the Northeast Quarter of Section 11, Township 15 South, Range 45 East of the Boise Meridian, to be used upon 100 acres of land described as follows, to-wit:

SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 2; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 35; SE $\frac{1}{4}$ of SE $\frac{1}{4}$, NE $\frac{1}{4}$ of SE $\frac{1}{4}$, SE $\frac{1}{4}$ of NE $\frac{1}{4}$, NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Section 26; NW $\frac{1}{4}$ of SW $\frac{1}{4}$, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, NW $\frac{1}{4}$ of NW $\frac{1}{4}$ in Section 14, Township 15 South, Range 45 E. B. M. 1996

Water Right 11-924 (Decree)

Created: February 29, 2008



- Legend**
- Highways
 - Railroads
 - Major Roads
 - Interstate
 - U.S. Highway
 - State Highway
 - Other
 - Lakes
 - Major Rivers
 - Rivers
 - Creeks
 - Streams
 - Swampy areas
 - Shrubs
 - PLS - Section
 - PLS - quarter quarter
 - Cities
 - Counties
 - State
 - High Res. NAIP (2006)
- = Four Pines Ranch
- = WR No. 11-924

Prepared by the ArcGIS Map Server at:



Idaho Department of Water Resources
1320 S. State Street, 2nd Floor
Boise, Idaho 83720-0098
Ph: (208) 287-4800
www.idwr.idaho.gov

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WATER RIGHT NO. 11-924

[illegible]

				NWNW			SWNW			SENW				
				NESE			NWSE			SWSE			SESE	
		12		NESW			NWSW			SWSW			SESW	
				NWSE										

Place of Use Legal Description: IRRIGATION BEAR LAKE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
15S	45E	2		SENW										
				SWSE										
		11		SWNE										
				NWNW			SWNW			SENW				
				NESE			NWSE			SWSE			SESE	
		12		NESW			NWSW			SWSW			SESW	
				NWSE										

Conditions of Approval:

1. MEADOW RIGHT. P/D NUFFER DITCH. P/U AC. IRR. 500.

Dates:

Licensed Date:

Decreed Date: 03/07/1924

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 11

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

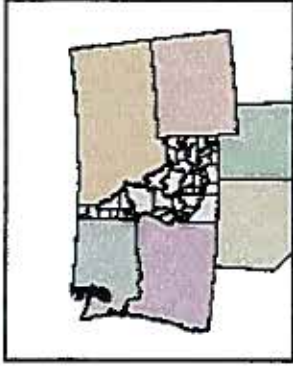
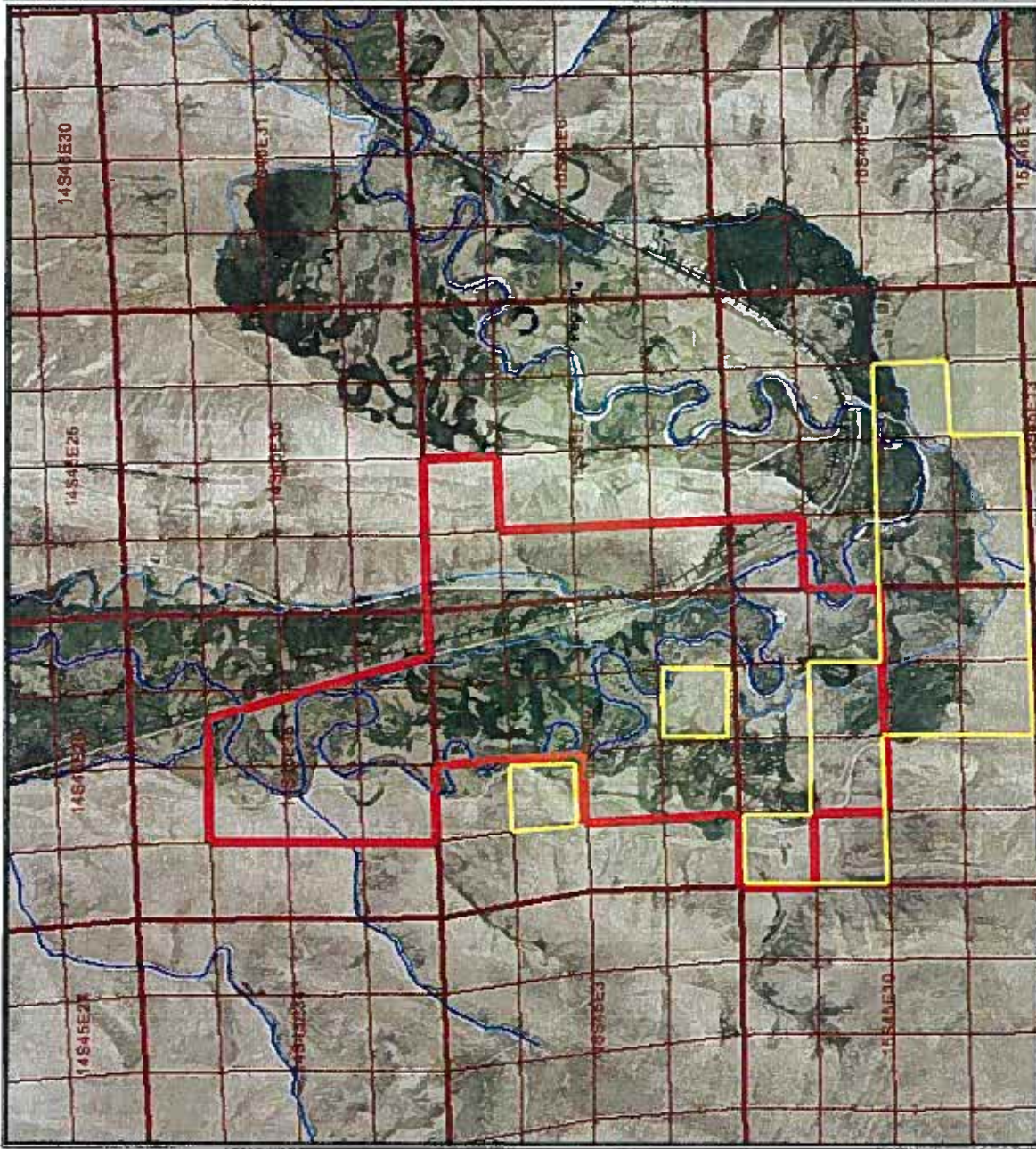
Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:



- Legend**
- Railroads
 - Major Roads
 - Interstate
 - U.S. Highway
 - State Highway
 - Other
 - Lakes
 - Major Rivers
 - Rivers
 - Creeks
 - Rivers
 - Streams
 - PLS - Section
 - PLS - quarter quarter
 - City
 - County
 - State
 - High Res. NAIP (2006)
- = Four Pines Ranch
 = WR No. 11-924

Prepared by the ArcMap Map Server at:



Idaho Department of Water Resources
 1221 East Front Street, P.O. Box 83750
 Boise, Idaho 83720-0008
 Ph: (208) 287-8800
 www.idwr.idaho.gov

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