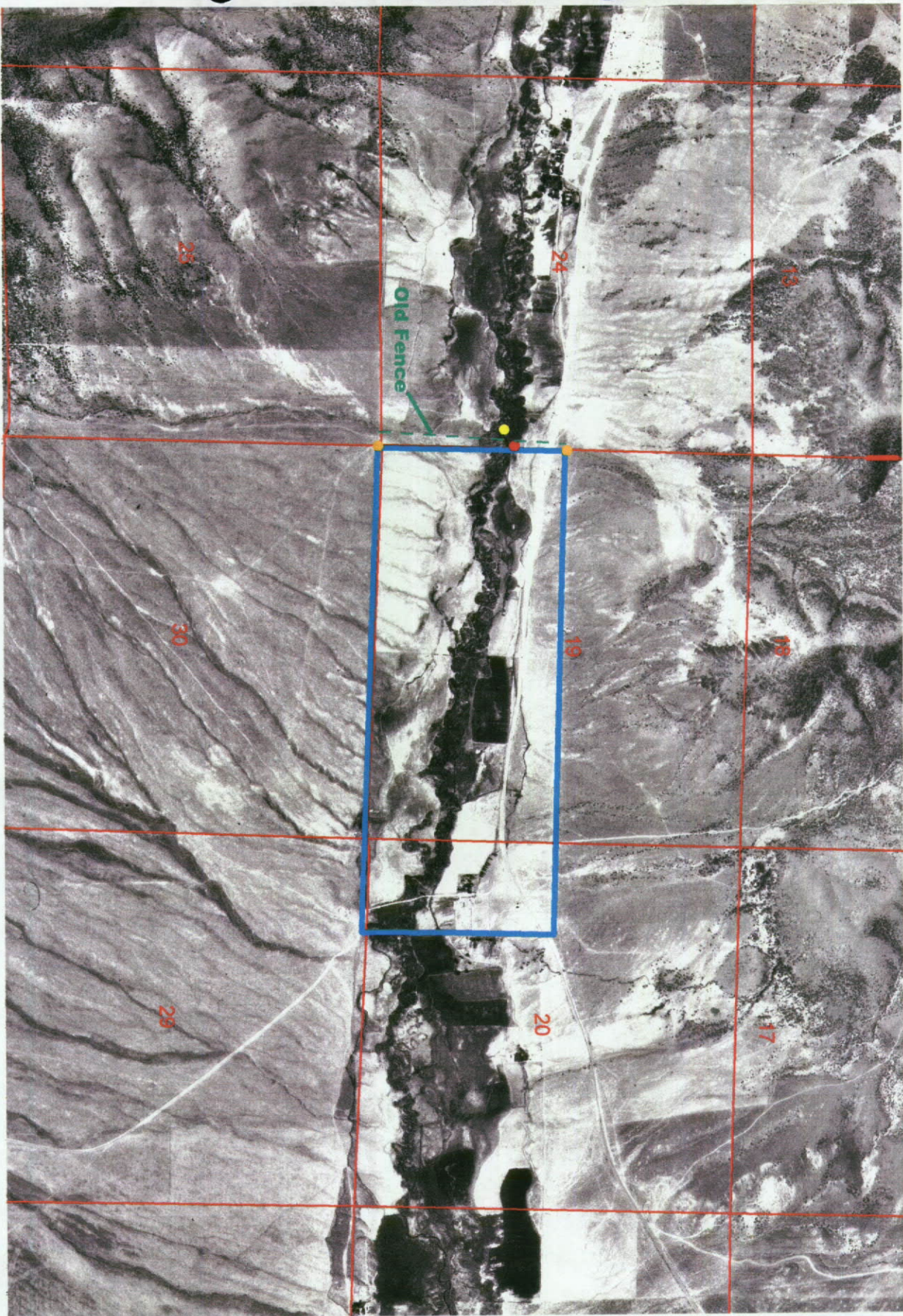


R 25 E R 26 E

T 13 S



- Kincade Irrigation
- Existing Div.
- New Struc.
- Survey Pt.
- Kincade Property

2000 0 2000 4000 Feet

Cassia Creek Flood Control Project: Larry Kincade



MICROFILMED

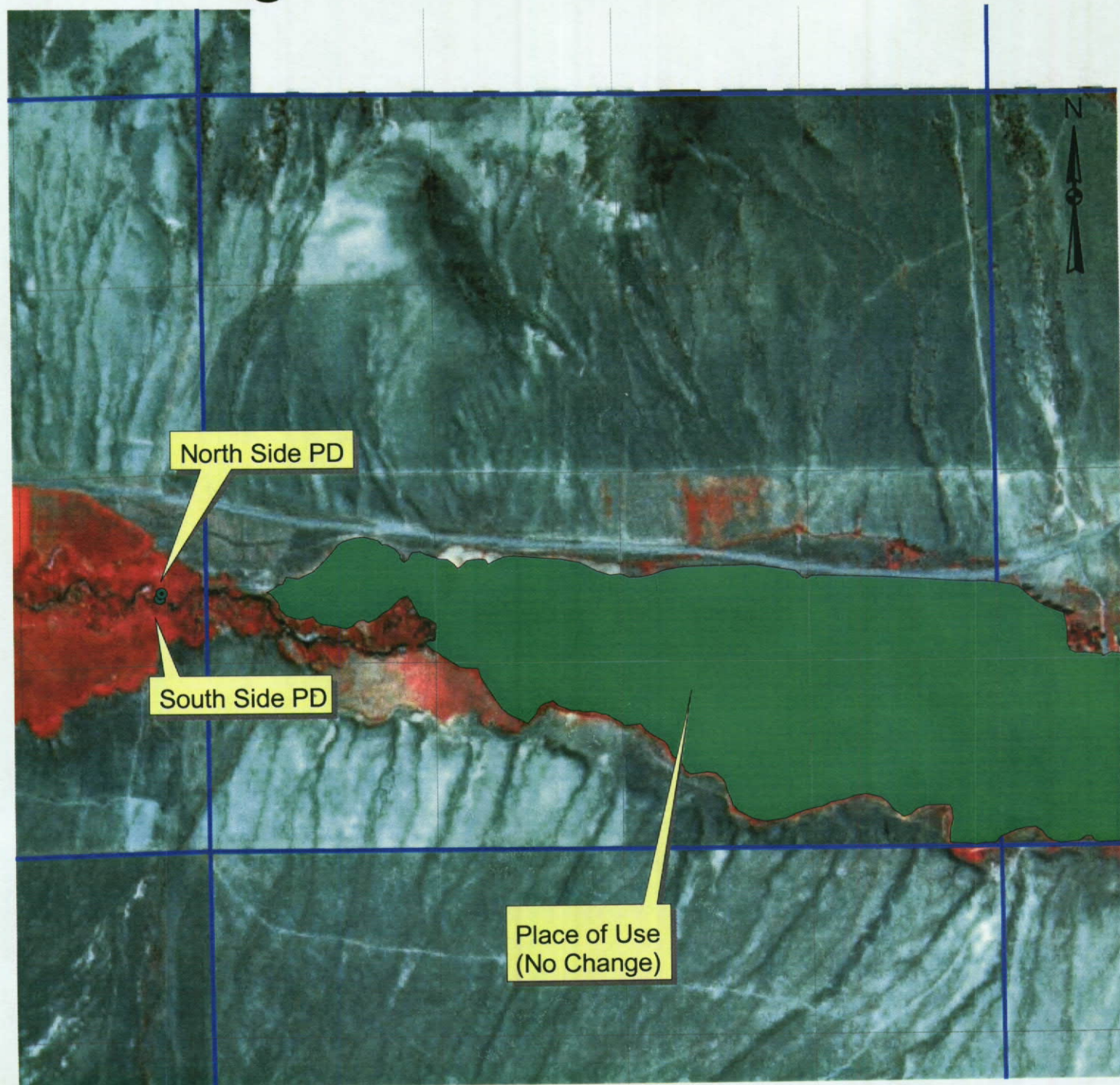
OCT 29 2003

T70491

T70491

Kincade

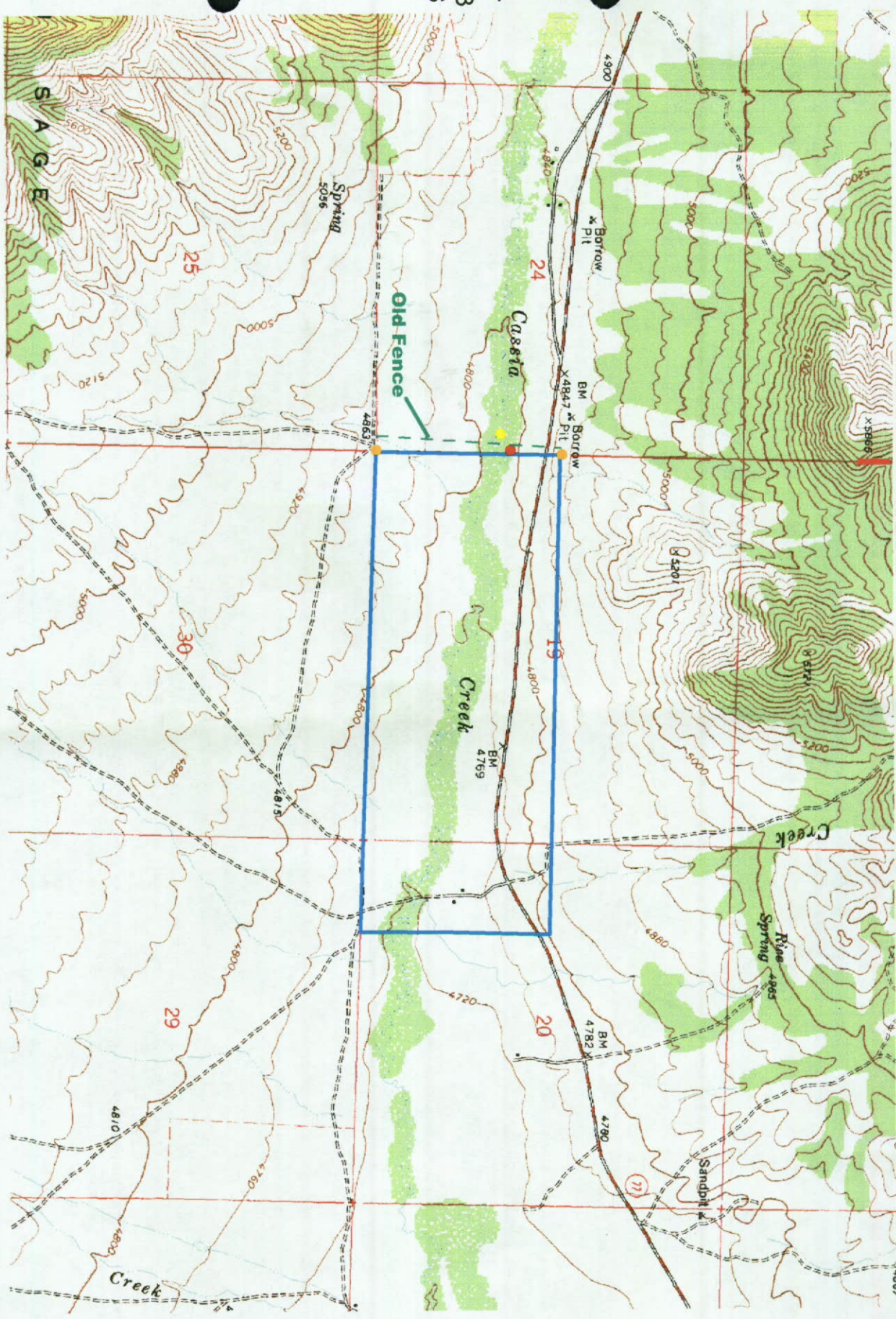
Change of Point of Diversion



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OCT 29 2003

R 25 E R 26 E

T 13 S



- Kincaide Irrigation
- Existing Div.
- New Struc.
- Survey Pt.
- Kincaide Property

2000 0 2000 4000 Feet

Cassia Creek Flood Control Project: Larry Kincaide Diversion



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OCT 29 2003

T70491

R 25 E R 26 E

T 13 S



- Kincaide Irrigation
- Existing Div.
- New Struc.
- Survey Pt.
- Kincaide Property

2000 0 2000 4000 Feet



Cassia Creek Flood Control Project: Larry Kincaide



MICROFILMED

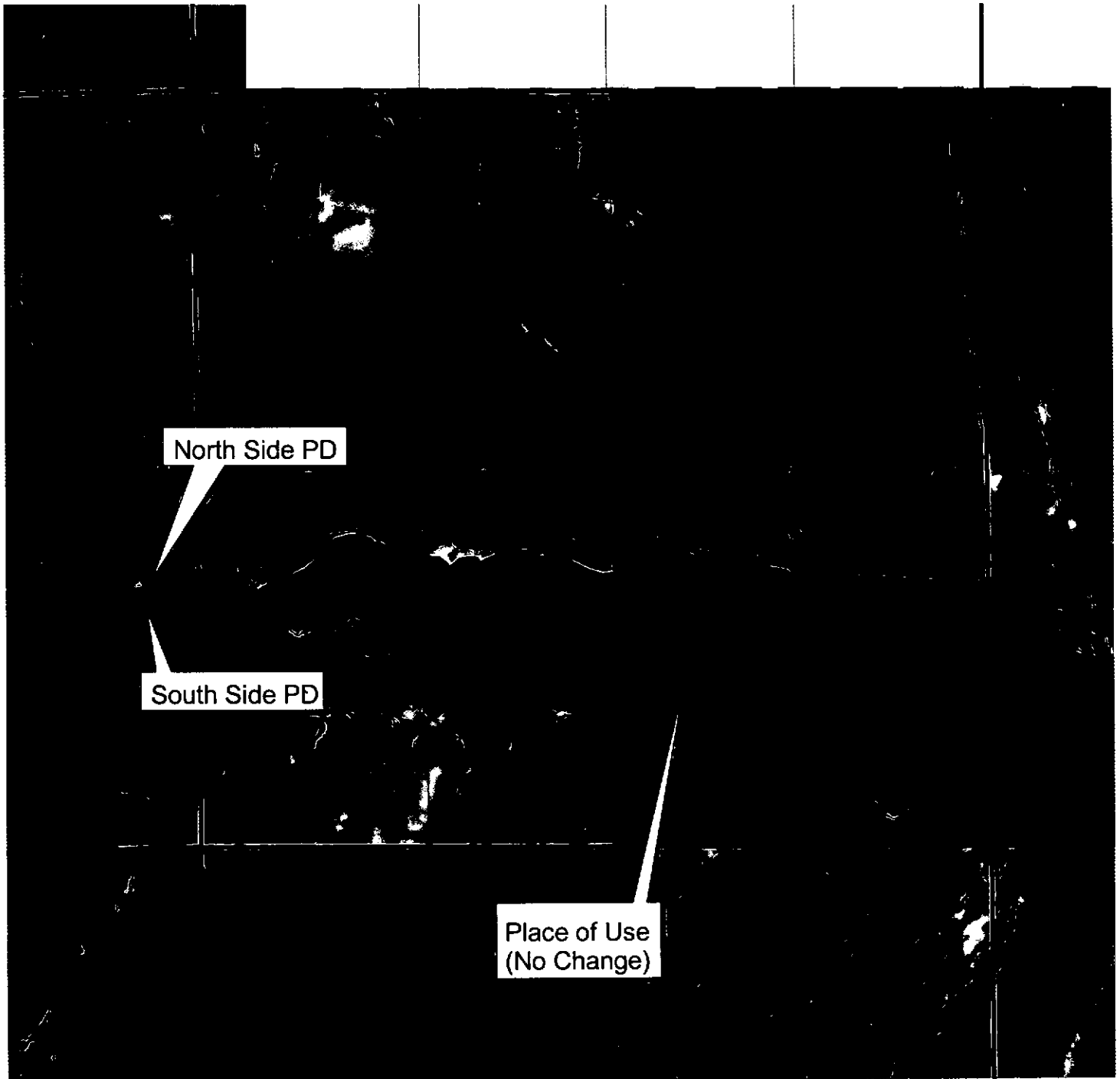
OCT 29 2003

T70491

T70491

Kincade

Change of Point of Diversion

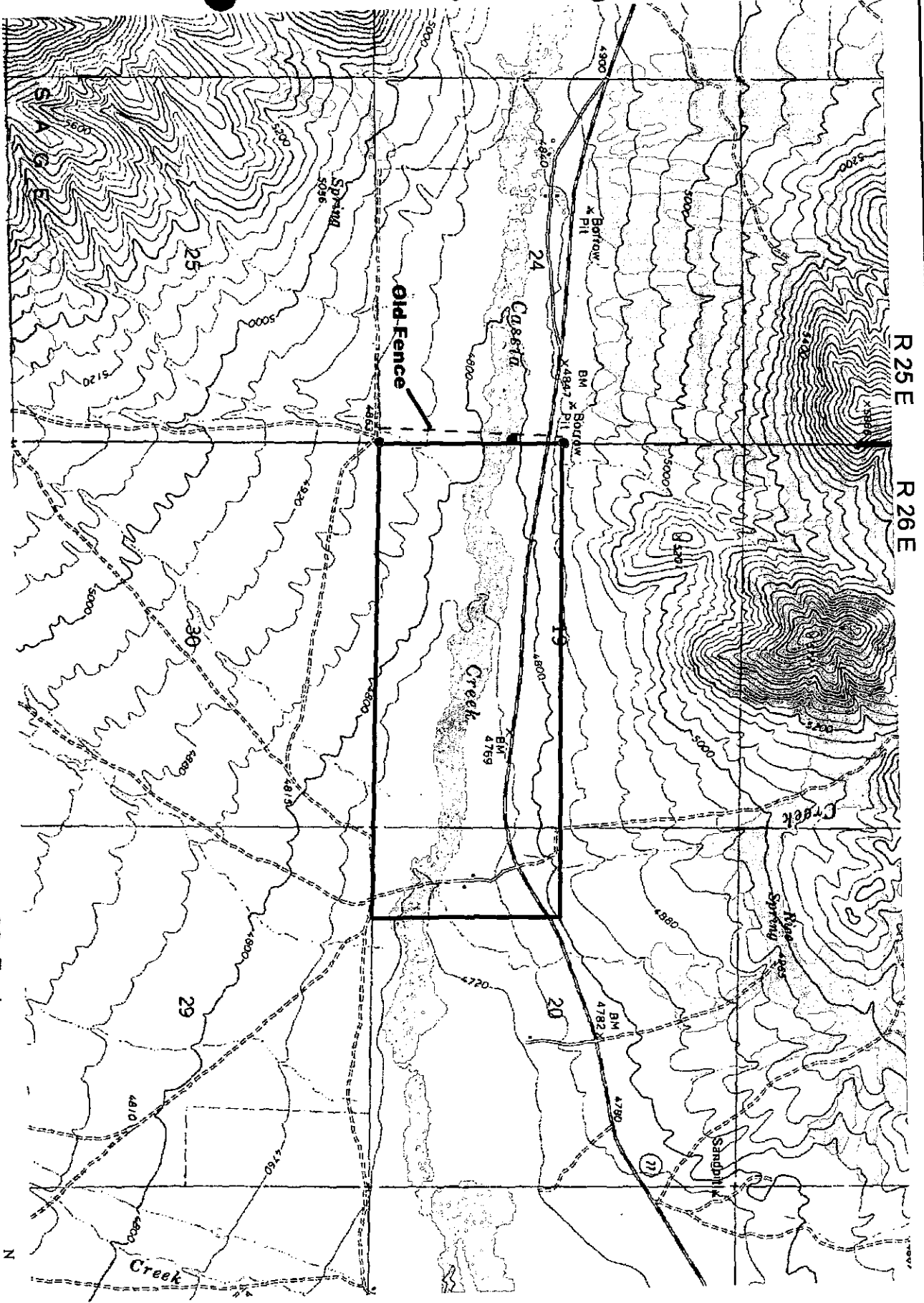
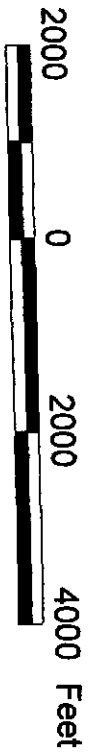


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OCT 29 2003

- Existing Div.
- New Struc.
- Survey Pt.
- Kincade Property

Cassia Creek Flood Control Project: Larry Kincade Diversion



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OCT 29 2003

T70491

PD

6/28/2002

43 - 476 ,24

43 - 70B ,26

43 - 71B ,26

43 - 73B 1.31

43 - 68 1.88

43 - 74B .16

4.11 cfs

Long Kierde

645 - 2346

4.11

177.4

205

3.55

MICROFILMED

OCT 29 2003

T70491

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 43-00068

NAME AND ADDRESS: DARLENE KINCADE
LARRY KINCADE
1781 E HWY 77
MALTA, ID 83342

SOURCE: CASSIA CREEK TRIBUTARY: RAFT RIVER
QUANTITY: 1.88 CFS

WHEN COMBINED THE FOLLOWING RIGHTS SHALL PROVIDE NO MORE
THAN .02 CFS PER ACRE. COMBINED RIGHT NOS. 43-68, 43-70B,
43-71B, 43-73B, 43-74B, 43-476, AND 43-7139.

PRIORITY DATE: 04/30/1872

POINT OF DIVERSION: T13S R26E S19 LOT 3 (SENWSW) Within Cassia County
LOT 3 (SNNWSW)

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE | PERIOD OF USE | QUANTITY |
|-------------------------------|----------------|----------------|----------|
| | Irrigation | 04-01 TO 10-31 | 1.88 CFS |

| PLACE OF USE: | Irrigation | Within Cassia County |
|---------------|-------------------|-----------------------------|
| | T13S R26E S19 | NESW 21.0 LOT 3 (NWSW) 11.0 |
| | | SESW 7.8 NESE 17.0 |
| | | NWSE 19.0 SWSE 26.0 |
| | | SESE 33.0 |
| | S20 | NWSW 5.6 SWSW 37.0 |
| | 177.4 Acres Total | |

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 177.4 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS. 43-68, 43-70B, 43-71B, 43-73B, AND
43-476.

USE OF THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION
OF A COMBINED TOTAL OF 187.6 ACRES IN A SINGLE IRRIGATION
SEASON. COMBINED RIGHT NOS. 43-68, 43-70B, 43-71B, 43-73B,
43-74B, 43-476, AND 43-7139.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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OCT 29 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 12, 2003

LARRY KINCADE
DARLENE KINCADE
1781 E HWY 77
MALTA ID 83342

RE: Transfer No.: 70491 - Water Rights 43-68, 43-70B, 43-71B, 43-73B,
43-74B, 43-476 - Transfer Approval Notice

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's homepage on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.


Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

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OCT 29 2003

If you have any questions, please contact me at 208-327-7940.

Sincerely,

for 
Jeff Peppersack, Manager
Water Rights Permits Section

JP:klt

Enclosure(s)

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OCT 20 2003

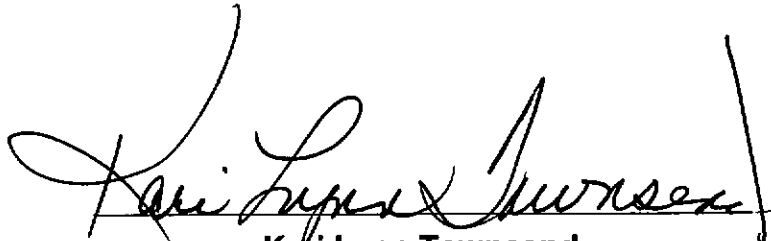
CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2003 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 70491

WATER RIGHTS 43-70B, 43-73B, 43-476, 43-68, 43-71B, 43-74B

**LARRY KINCADE
DARLENE KINCADE
1781 E HWY 77
MALTA ID 83342**



**Kari Lynn Townsend
Secretary**

MICROFILMED

OCT 29 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 12, 2003

TOM HUTCHISON
WATERMASTER
PO BOX 1380
ELBA ID 83326

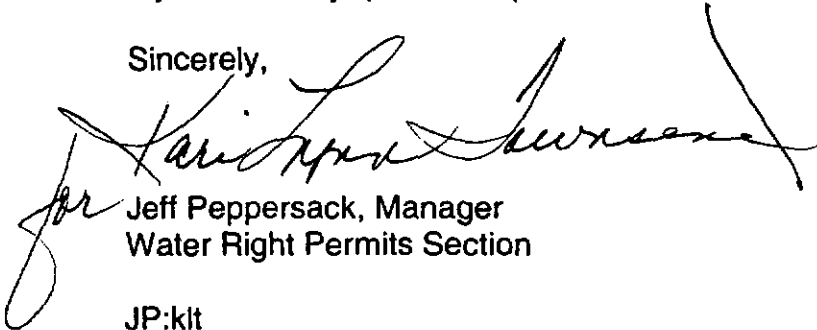
RE: TRANSFER OF WATER RIGHTS 43-68, 43-70B, 43-71B, 43-73B, 43-74B,
43-476 - (Transfer 70491)

Dear Tom:

Enclosed is a copy of the recently approved Transfer of Water Right for the above referenced water rights (Transfer 70491) in the names of Larry Kincade and Darlene Kincade.

If you have any questions, please call me at 208-327-7940.

Sincerely,



for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

MICROFILMED

OCT 29 2003

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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OCT 29 2003

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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OCT 29 2003

Conditions:**GROUNDWATER:**

DRILLING PERMIT - 046
 DP upgrade req'd Y N (contact GW)

WMD - North/East/West
 ≤ 0.24 cfs/5 acres - No MD
 > 0.24 cfs/5 acres - 067

WMD

≤ 0.24 cfs/5 acres - No MD
 > 0.24 cfs/5 acres - 01M or 01Q

SURFACE WATER:

WD R05
 ≤ 0.20 cfs/others - R02, 01P or No MD
 > 0.20 cfs R43

WD, SPRINGS/SINK, INACTIVE WD & REST OF STATE
 ≤ 0.24 cfs/5 acres - No MD
 > 0.24 cfs/5 acres - 01M or 01Q

STANDARD SEASON _____ to _____ (use X61 if extended season)

STANDARD VOLUME _____ af/ac

CONSUMPTIVE USE VOLUME _____ af/ac

SUPPLEMENTAL
SUPPLEMENTAL
WITHIN ESPA

- 065-104 (where irrigation is the only use)
- 100-105 (where there are other uses besides irrigation)
 - 113-114-116 (mitigation)
 - 115 (meas. Device for non-irrig uses or new irrig systems)
 - 131 (existing irrig systems)

USES:

STORAGE - 18C-R02-01P-18B-NA
 IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)
 > 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)
 Volume only - R58/R59/R60/R61
 STOCKWATER - R37 (all BLM/USFS)
 MINING- 054-106
 FISH PROP - 029 (70's basins only)-007-122-106
 HEAT/COOL - R07 (injection well)
 FIRE PROT. - 077
 DAIRY - 082 (zoning if a concern)-106-WD8

USES:

POWER - 17H-17K (+uses)-025-106
 MUNICIPAL
 Restricted area - 022-075 RAFN - 007-109-X64
 Irr., GW supp to SW - 102
 DOMESTIC
 Surface water - WB5 (Big Wood or Boise above Star Bridge)
 - 27A (Payette River)
 >1 in restricted area - 070-071-075 (no parks/common areas, etc)
 Irr use listed separate - WB5

MISC CONDITIONS/REMARKS:

- T07 - 1 yr to develop
- T08 - comply or rescind
- T17 - >1 pd, measure all (use w/ WB4)
- T18 - Special T17 & R43 combined - multiple pds in WD

Protested - 020-X19
 Water Quality - 106-R07

X27 - Number of acres/season in ppu
X35 - Combined totals of multiple rts
 083 - replaces C11 (enlargement rights)

- X49 - measure p/d's (source chg'd to orig trib)
- X51 - 2+ yrs to develop
- X53 - Use ltd to orig. source availability
- X54 - forfeited ac/rate (used rarely)
- X55 - (transfer shrinks total water to less ac)
- 004 - no right-of-way
- X58 - pending claim (statutory or AJ b/u claim)
- X61 - extended irr season
- X62 - replaces N11 and N13
- X63 - replaces C12
- WB4 - + p/ds, cfs & afa (used with T17)
- WD8 - land application of waste water
- 01Q - used instead of 01M when there's another meas. Cond (i.e. T17 & 01M)

Apply one to chg'd & unchg'd
rts that are subject to SRBA:

- T09 - on-going SRBA (no Dir Rpt yet)
- T19 - replaces C18 (if at Directors Report or Partial Decree stage)
- T20 - use only on unchg'd rts not subject to SRBA

OTHER CONDITIONS/REMARKS:

Initial Allocation Review by AD
 SRBA Review Completed by N/A
 Regional Manager Review by AD

Date 3/28/03
 Date 3/28/03
 Date 5/1/03

Comments:

**SOUTH IDAHO PRESS
BURLEY, IDAHO
AFFIDAVIT OF PUBLICATION**

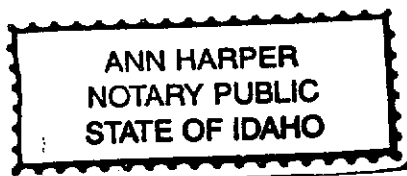
County of Cassia)
) ss
STATE OF IDAHO)

Ruth Anne Holmes, being first duly sworn, deposes and says that she is the Legal clerk of the South Idaho Press, a daily newspaper published at Burley, Idaho, in the county aforesaid and that the paper is of general circulation therein. Deponent further states that the printed notice attached hereto was duly published according to law in the regular editions of the South Idaho Press for 2 consecutive week(s), commencing with the issue dated April 10, 2003 and ending with the issue dated April 17, 2003

Ruth Anne Holmes

STATE OF IDAHO)
COUNTY OF)
Cassia)

On this 17th day of April in the year of 2003 before me, a Notary Public, personally appeared Ruth Anne Holmes, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.



Ann Harper
Notary Public for Idaho
Residing at: Burley, Idaho
My commission expires: 9-14-2007

Cost of Publication 51.48
Affidavit Fee 5.00
Total Cost 56.48

OK MB
4/22/03

RECEIVED

APR 21 2003

Department of Water Resource
Southern Region

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APR 22 2003

**03-149
NOTICE OF PROPOSED CHANGE
TO WATER RIGHTS**

Notice is hereby given that an Application for Transfer has been filed with the Idaho Department of Water Resources for changes to water rights within Cassia County: **LARRY & DARLENE KINCADE**, 1781 E HWY 77; MALTA ID 83342 filed Application No. 70491 on 3/27/03. The transfer proposes to change the points of diversion for six decreed rights totalling 4.11 cfs to two proposed headgates on either side of Cassia Creek which will be located at a proposed check dam on Cassia Creek approximately 500 feet upstream of the current points of diversion. The site of the proposed check dam is approximately 2 miles south and 5 and 1/4 miles west of Malta, Idaho. For specific details regarding the application(s), please contact IDWR Southern Regional Office at 208-736-3033 or visit www.idwr.state.id.us with detail provided under "New Water Right Applications". Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Protests against approval must be filed with IDWR, Southern Region, 1341 Fillmore St.-Suite 200; Twin Falls, ID 83301 with a protest fee of \$25.00 for each application on or before April 28, 2003. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director
Published in the South Idaho Press on
April 10 and 17, 2003.

01-99

State of Idaho
Department of Water Resources

RECEIVED

APR - 3 2003

Department of Water Resources
Southern Region

RECOMMENDATION OF WATERMASTER

Application No: 70491

Applicant's Name: Larry Kincode

Watermaster's Recommendation:

- a) ☒ I do not oppose approval of this application.
- b) ☒ I do not oppose approval of this application if it is conditioned as

follows: _____

- c) ☐ I oppose approval of this application for the following reasons:

- d) Additional Comment: _____

Dated this 3rd day of April, 2003

Water District No: 43-C

Tommy J. Smith
Watermaster's Signature

Use reverse side of page if you need more space.

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OCT 29 2003

NOTICE OF PROPOSED CHANGE TO WATER RIGHTS

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Karl J. Dreher, Director

Published in the South Idaho Press on 4/10 & 4/17/03.

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OCT 29 2003

ADM
OK

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET-STE# 200
TWIN FALLS ID 83301

Phone: 736-3033

Fax: 736-3037

April 3, 2003

ATTN KAY MOORE
SOUTH IDAHO PRESS
230 E MAIN ST
BURLEY ID 83318

Dear Ms. Moore:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues).

If you cannot publish the notice on the proposed dates, please contact us immediately at 736-3033.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Sincerely



Mary A. Baldwin
Administrative Assistant

MICROFILMED

OCT 29 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 2, 2003

TOMMY HUTCHISON WATERMASTER
WATER DISTRICT # 43-C
PO BOX 1380
ELBA ID 83326

Re: Application for Transfer of Water Right No. 70491 - Larry Kincade

Dear Mr. Hutchison:

Enclosed is a copy of an Application for Transfer of a Water Right within your District, and Watermaster's Recommendation Form.

Section 42-222 of the IDAHO CODE requires that the watermaster must be advised of proposed changes in water rights in the water district and must notify the Department of his recommendation on the application.

Please complete the enclosed recommendation form and return to this office.

Regional review of an unprotested application can be completed as soon as the final protest period is past; therefore, your prompt response to this request is appreciated.

If you have any questions about an application, please contact this office or the applicant.

Very truly yours,

Mary A. Baldwin
Administrative Assistant

Enclosure(s)

MICROFILMED
OCT 29 2003

MEMORANDUM

Date: March 27, 2003
To: Transfer 70491
From: ameritt
Re: evaluation of sufficiency of application

Evaluation of Sufficiency of Information Submitted

This transfer proposes to move the points of diversion upstream to a new site (one on north side and one on south side of proposed check dam). The old points of diversion will be abandoned. It is reported on of the old check dams will remain in the creek to prevent flushing of the silt built up behind it. It is proposed a fish ladder will be installed in this structure.

Authority to File:

The applicant is the owner of record for the recently partially decreed rights.

Water Right Validity:

All rights involved have been partially decreed in 2002.

Injury to Other Water Rights:

Does not appear to be an issue.

Enlargement of Use:

Does not appear to be an issue unless new lands developed with new delivery ditches but that does not appear to be the intent.

Local Public Interest:

Change in PD will allow for Cassia Creek Flood Control District to utilize the new diversion system to convey water to proposed settlement areas during times of flooding to prevent flood damage in and around Malta. Although the Flood Control District is not the applicant they initially proposed this transfer to facilitate their efforts.

No adverse Public Interest identified.

Use/Conservation of Water Resources:

No issue identified.

Review of the applications finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

Other issues:

Site of new diversion is on neighbor's property.

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OCT 29 2003