BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics
Hydrology
Water Resources

RECEIVED
AUG 07 2003
Department of Water Resources
Southern Region

August 7, 2003

Idaho Department of Water Resources
Attn: Jim Stanton
1341 Fillmore St, Suite 210
Twin Falls, ID 83301

Re: Notch Butte Farms – Davis North Transfers

Dear Jim:

As discussed in our meeting this week, enclosed are two transfers which shift the place of use under three rights on the Notch Butte – Davis North property. The attached narratives explain the intent of each transfer and the accompanying maps indicate the irrigated acres and intended place of use of each right.

We have included a check in the amount of $940.00 which covers the fees for both transfers. Please review the enclosed material and contact me if you have any questions or comments. I will be handling any issues with these transfers so please forward any correspondence or questions to my attention. Thank you and have a great day.

Sincerely,

Jeffrey S. Rau, P.E.

Attachment: WR Transfer Application – 37-20840
WR Transfer Application – 37-2532A & 37-2804A
Davis Warranty Deed
BLM Stipulation Agreement

Cc: John Lezamiz – Notch Butte Farms

CHARLES E. BROCKWAY, PH.D., P.E.

CHARLES G. BROCKWAY, PH.D., P.E.

2016 NORTH WASHINGTON STREET • SUITE 4

TWIN FALLS, IDAHO 83301

208•736•8543

FAX: 736•8506

Narrative in Support of Transfer
Water Right 37-20840
Prepared by Jeffrey S. Rau, P.E.
Brockway Engineering, PLLC

Transfer Intent

The intent of this transfer is to change the place of use under this right to reflect the irrigated acres under the current irrigation distribution system Davis North property of the Notch Butte Farms site. The transfer also removes irrigated acres from one quarter section located on BLM property.

The parent right to right #37-20840 is right #37-2645 which was originally for 4.26 cfs of groundwater over a place of use of 220.1 acres. A portion of the original place of use (POU) included 20.0 irrigated acres in the SE ¼ SE ¼ of Section 30, Township 06 South, Range 17 East. This quarter section is owned by the United States Bureau of Land Management (BLM) although Notch Butte Farms has historically irrigated 20 acres within this parcel. When the irrigation system was reconfigured the pivot center was inadvertently located within the property owned by BLM. During the adjudication process in this basin, BLM objected the assignment of irrigated acres under this right on BLM ground. To resolve this issue, Notch Butte Farms and BLM have entered into a stipulation agreement to allow Notch Butte to continue to irrigate and farm the remaining 12.2 acres of land on the BLM property under a Land Use Authorization. Under this stipulation agreement, parent right 37-2645 was split into right #37-20840 which contains 207.9 acres with a diversion rate of 4.02 cfs and is under the ownership of Notch Butte Farms. The remainder was placed under the name of BLM and contains 12.2 acres with a diversion rate of 0.24 cfs with the understanding under the Land Use Agreement that Notch Butte will continue to utilize this right on the land. Under the stipulation agreement, Notch Butte Farms is required to submit a transfer to remove the 8.8 acres in the SE ¼ SE ¼ of Section 30 from BLM land and place them within property owned by Notch Butte Farms.

The proposed transfer accomplishes this while shifting acres within the original POU to adapt to the reconfigured irrigation system. A total of 207.9 acres will be irrigated within the property under this right. The remainder of irrigation within the Davis North parcel will be irrigated utilizing two other groundwater rights. A transfer has been submitted concurrently to adjust the POU under Right 37-2804A and 37-2534A.

The proposed transfer does not change the point of diversion and does not create an expansion of use of the water. No mitigation is required to accomplish this transfer.

Form 1-222
12-90

Page _____ of _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 71437

RECEIVED
AUG 07 2003
Department of Water Resources
Northern Region

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of applicant Notch Butte Farms LLC Phone 208-644-1730

Post Office address P.O. Box 486 Jerome, ID 83338

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point ☒ Change place of use
   ☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes Need to remove acres listed in POU which are within land owned by BLM. Acres to be removed are not irrigated under the new pivot arrangement. Remaining acres on BLM land under BLM right 37-20841 diverted from same POD.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
37-20840	11/29/1960	4.02	Irrigation	4/15 to 10/31
				to
				to
				to

2. Total amount of water being transferred 4.02 cubic feet per second and/or 727.3 acre-feet per annum.

3. Source of water Groundwater tributary to n/a

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
2	NE	SW	NW	31	06S	17E	Lincoln	Well

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	17E	30											11.2	38			35.0		84.2
06S	17E	31	35.9	38.5			36.9	12.4											123.7

Printed 8/6/03 08:59

Total acres 207.9

Transfer No. _____

PART 1

6. General Information:

a. Description of diversion system Deep well with pump to distribution system including pivots, hand lines, & wheel lines.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

☒ Yes ☐ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer:

See attached narrative. Transfer to comply with agreement with BLM.

d. Remarks:

See attached narrative.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

_____

Form 1-222
12-90

Page _____ of _____

Transfer No._____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. 37-20840 Decreed to Notch Butte Farms, LLC

   in case of SRBA vs. _____

   dated _____ in _____ county of _____

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

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. check appropriate box below.

   ☐ Tax notice ☒ Warranty Deed ☐ Other _____

3. Source of water Groundwater tributary to n/a

4. Date of priority 11/29/1960

5. Water is used for the following purpose:

   Amount (cfs/ac-ft) 4.02 cfs for Irrigation purposes from 4/15 to 10/31

   Amount (cfs/ac-ft) _____ for _____ purposes from _____ to _____

   Amount (cfs/ac-ft) _____ for _____ purposes from _____ to _____

6. Total amount of water under right 4.02 cubic feet per second and/or 727.3 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
2	NE	SW	NW	31	06S	17E	Lincoln	Well

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
06S	17E	30											1.1	24			36	8.8	69.9
													L-4						
06S	17E	31	40	40			40	18											138

Total acres 207.9

9. Describe any other water rights used for the same purpose as described above WRt's using same POD 37-2532A 37-2804A, & 37-20841

Page _____ of _____ **PART 2** Transfer No._____

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

No If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(if the entire right is to be changed by the applicant, omit part B and C)

1. Amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   Amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   Amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. Amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   Amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   Amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

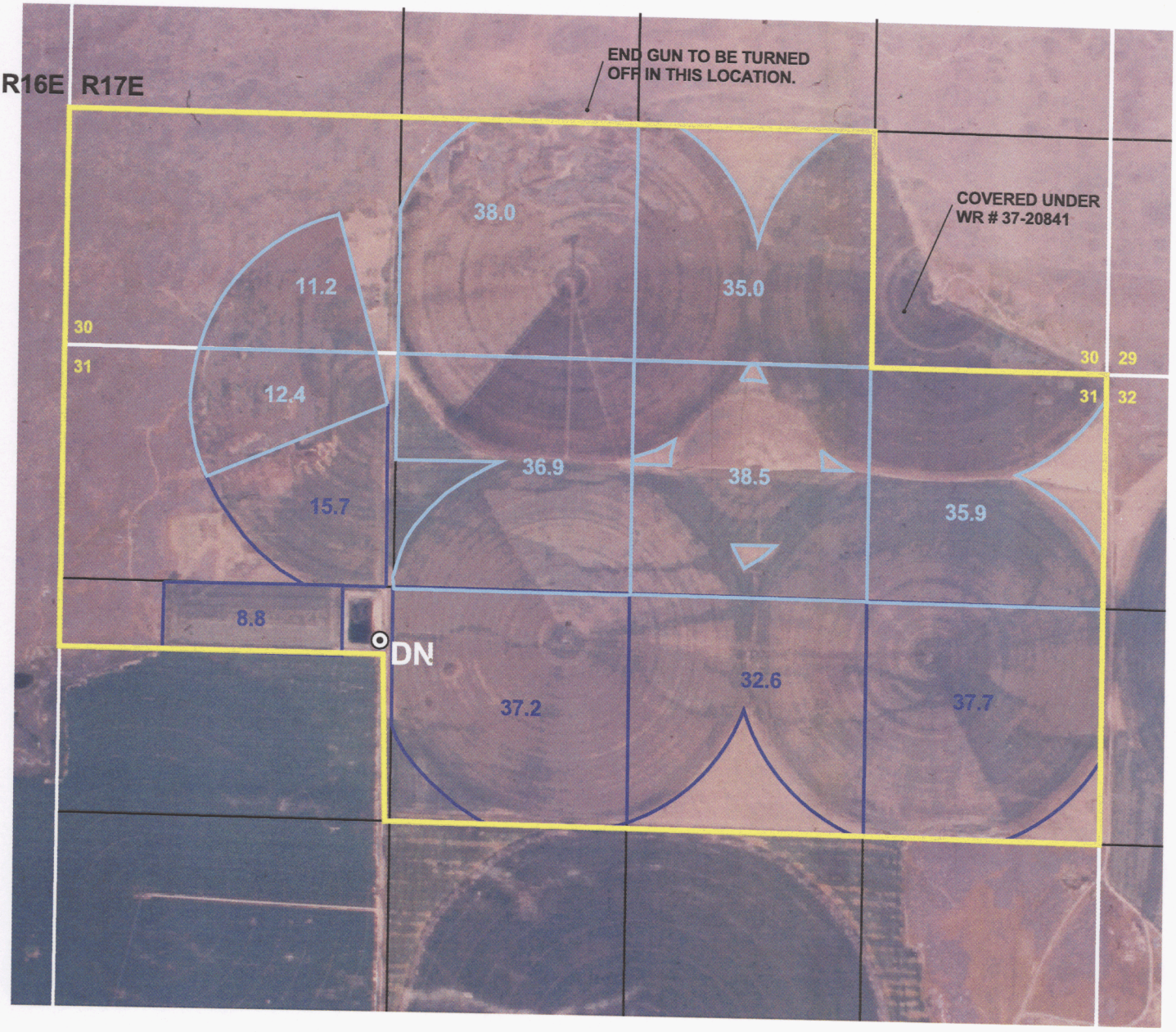
2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total acres _____



DAVIS NORTH PROPERTY
WATER RIGHT TRANSFER
FSA Aerial Photo 1990

Irrigated acres under WR # 37-2804A& 37-2532A = 132 AC.

Notch Butte Property Boundary

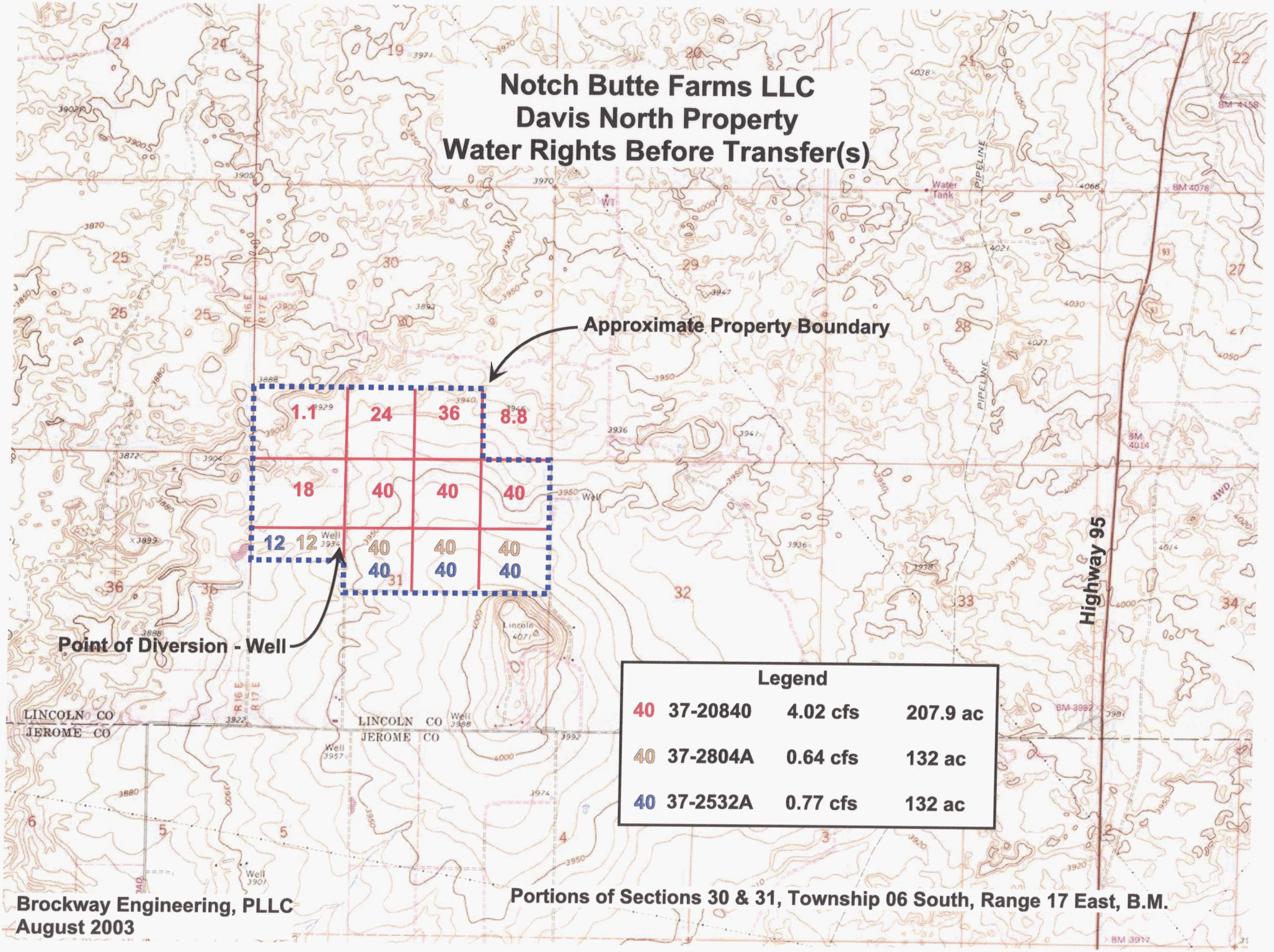
(WHITE) Section lines

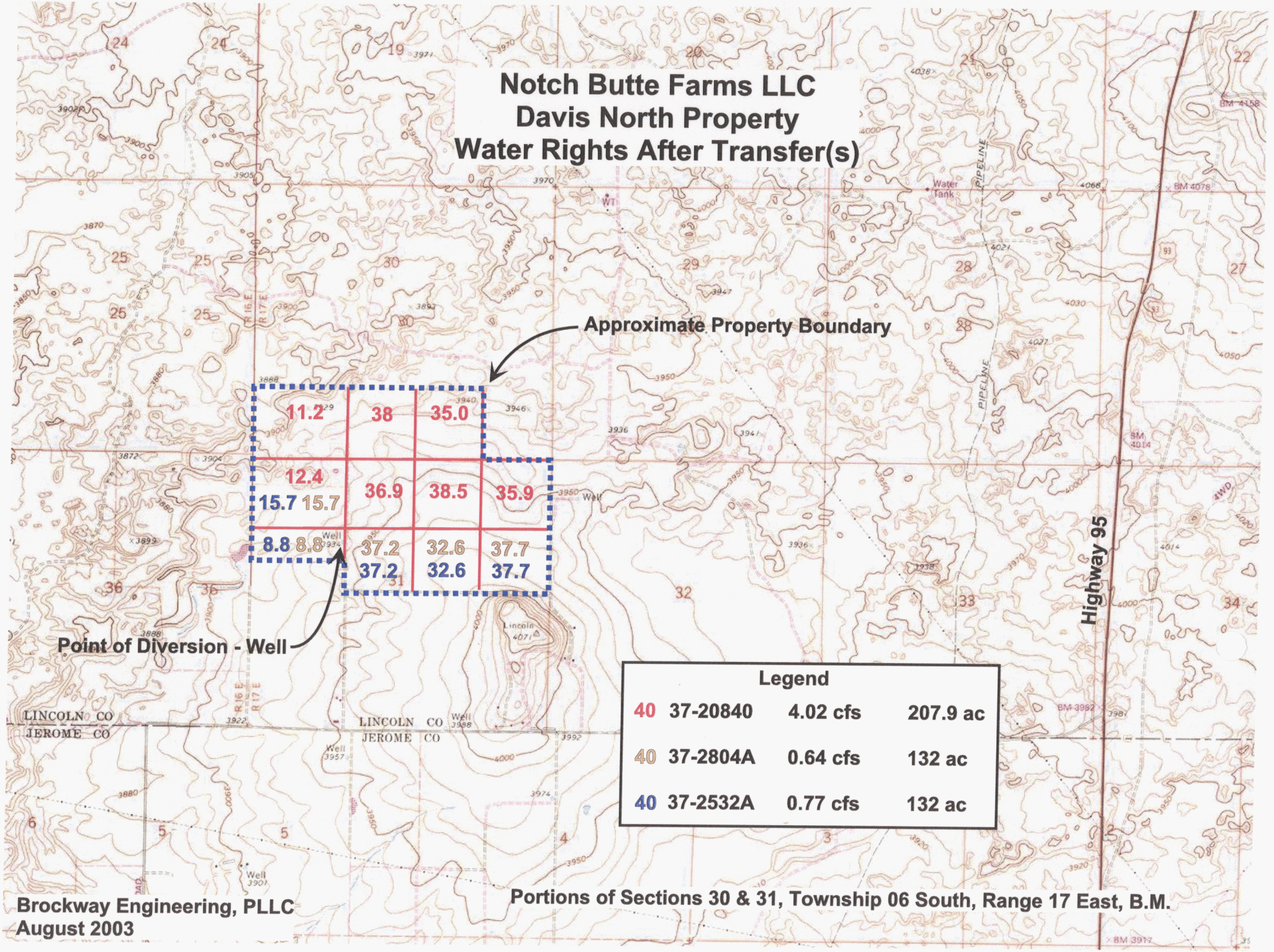
Land to be irrigated under 37-20840 = 207.9 AC.

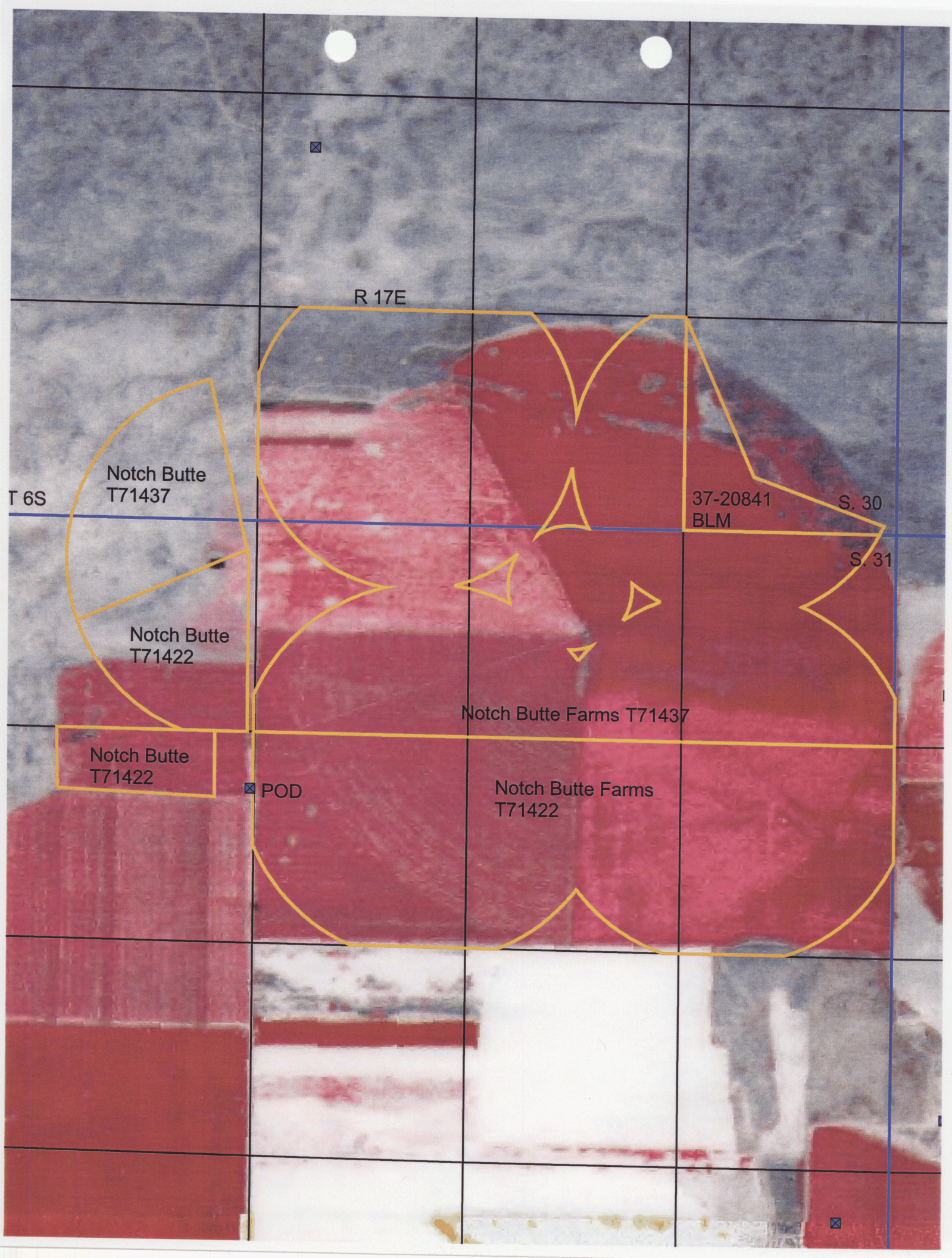
⊙ POD - Well

N

BROCKWAY ENGINEERING, PLLC.
ALR Aug. 5, 2003


Notch Butte Farms LLC
Davis North Property
Water Rights Before Transfer(s)
Approximate Property Boundary
Point of Diversion - Well
1.1
24
36
8.8
18
40
40
40
12
12
40
40
40
40
40
40
Legend
40 37-20840 4.02 cfs 207.9 ac
40 37-2804A 0.64 cfs 132 ac
40 37-2532A 0.77 cfs 132 ac
Highway 95
LINCOLN CO
JEROME CO
Portions of Sections 30 & 31, Township 06 South, Range 17 East, B.M.
Brockway Engineering, PLLC
August 2003


Notch Butte Farms LLC
Davis North Property
Water Rights After Transfer(s)
Approximate Property Boundary
11.2
38
35.0
12.4
15.7 15.7
36.9
38.5
35.9
8.8 8.8
37.2
37.2
32.6
32.6
37.7
37.7
Point of Diversion - Well
Highway 95
Legend
40 37-20840 4.02 cfs 207.9 ac
40 37-2804A 0.64 cfs 132 ac
40 37-2532A 0.77 cfs 132 ac
LINCOLN CO
JEROME CO
Portions of Sections 30 & 31, Township 06 South, Range 17 East, B.M.
Brockway Engineering, PLLC
August 2003


R 17E
T 6S
Notch Butte
T71437
37-20841
BLM
S. 30
S. 31
Notch Butte
T71422
Notch Butte Farms T71437
Notch Butte
T71422
POD
Notch Butte Farms
T71422

Page _____ of _____

Transfer No. _____

PART 3

B. CHANGES IN NATURE OF USE

1. New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

2. Quantity and quality of return flows and location of discharge:

_____

_____

3. Describe the effects on other water uses resulting from the proposed change:

_____

_____

_____

_____

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Noisy Bottle Frog LLC
R S Allen

_____
(Signature of Applicant)

Subscribed and sworn to before me this 5th day of August, 19 2003

HEATHER M. MAXSON NOTARY PUBLIC STATE OF IDAHO

Heather M. Maxson
(Notary Public)

My commission expires 2-24-09

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by JP Date 8-7-03 Protest filed by _____

Prelim. check by _____ Fee $250.50 #26047 _____

Receipted by JP Date 8-13-03 _____

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date

Watermaster recommendation requested on _____ Recommended for [ ] Approval [ ] Denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

WARRANTY DEED

#JL-30889

Instrument # 2020048
COUNTY, JEROME, IDAHO
1-04 04:00:08 No. of Pages: 4
Recorded for : LAND TITLE & ESCROW
CHERYL WATTS Fee: 12.00
Ex-Officio Recorder Deputy

For Value Received

WILLIAM ERNEST DAVIS and GWENDOLYN L. DAVIS, husband and wife
aka GWENDALYN L. DAVIS

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

NOTCH BUTTE FARMS, an Idaho limited liability company
Address: P.O. BOX 389, TWIN FALLS, ID 83303

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

SEE EXHIBIT "A" ATTACHED HERETO:

STATE OF IDAHO
COUNTY OF LINCOLN 171937
Recorded at the request of
LAND TITLE & ESCROW
JAN - 4 2002
at 52 minutes past 4 P M
recorded by Helen Jackson Dep.
Fee: 12.00 Return to: Above
By hand.

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

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 incumberances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: **January 4, 2002**

William Ernest Davis
WILLIAM ERNEST DAVIS

Gwendalyn L. Davis
GWENDOLYN L. DAVIS

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 4th day of **January, 2002**, before me, the undersigned, a Notary Public in and for said State, personally appeared **WILLIAM ERNEST DAVIS and GWENDOLYN L. DAVIS**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Notary Public
Residing at: Jerome
My Commission expires: 12-07

RICK BERNSEN
★ NOTARY PUBLIC ★
STATE OF IDAHO
RESIDING AT JEROME, ID
MY COMMISSION EXPIRES 12-2007

EXHIBIT "A"

Order Number: JL-30789

PARCEL NO. 1

TOWNSHIP 6 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN, JEROME COUNTY, IDAHO

Section 30: Lot 4, SE¼SW¼, SW¼SE¼

Section 31: Lot 1, NE¼, E½NW¼, the North 438.52 feet of Lot 2

PARCEL NO. 2

TOWNSHIP 7 SOUTH, RANGE 17, EAST OF THE BOISE MERIDIAN, JEROME COUNTY, IDAHO

Section 5 and 8: A parcel of land described as follows:

Beginning at a point on the North boundary of and 2,417 feet East of the Northwest corner of Section 5, hereby designated as Point No. 1;
Thence South 0°49' West, a distance of 319.4 feet;
Thence South 86°35' West, 435 feet;
Thence South 26°20' West, 645 feet;
Thence South 58°40' East, 160 feet;
Thence South 64°41' West, 300 feet;
Thence South 6°02' East, 685 feet;
Thence South 11°9' West, 390 feet;
Thence South 74°02' East, 125 feet;
Thence South 43°50' East, 315 feet;
Thence South 11°39' West, 178.9 feet, hereby designated as Point No. 2;
Thence North 89°01' West, 97.74 feet;
Thence South 0°59' West, 153 feet;
Thence North 73°59' East, 350 feet, hereby designated as Point No. 3;
Thence South 29°59' West, 250 feet;
Thence South 14°01' East, 254 feet;
Thence South 77°01' East, 118 feet;
Thence South 34°59' West, 255 feet;
Thence South 6°01' East, 258 feet;
Thence South 61°31' East, 195 feet;
Thence South 11°57' West, 368 feet;
Thence South 68°43' East, 365 feet;
Thence North 88°17' East, 500 feet;
Thence South 15°02' East, 725 feet;
Thence South 36°42' East, 420 feet;
Thence South 84°04' East, 245 feet;

-Continued-

Thence South 12°04' East, 435 feet;
Thence South 38°24' East, 434.5 feet, more or less, to the East boundary of the SW¼NE¼ of Section 8, hereby designated as Point No. 4;
Thence Northerly along the East 16th line of Sections 8 and 5 to the North boundary of Section 5;
Thence Westerly along the North boundary of Section 5 to THE POINT OF BEGINNING.

TOGETHER WITH an undivided 70% interest in and to said well, pump, and other appurtenances and to the water rights from said well located near the East boundary of Lot 2 of Section 5, Township 7 South, Range 17, East Boise Meridian, in common with Howard Duncan and Carma A. Duncan, husband and wife, their heirs and assigns, as set forth in an agreement dated and filed February 12, 1958 in Book 161 of Agreements, Bonds and Contracts, at Page 563, records of Jerome County, Idaho.

AND an undivided interest in and to a well, cistern and pressure system and water right for domestic water supply located in the NE¼SW¼ Section 5, Township 7 South, Range 17, East Boise Meridian, in common with Howard Duncan and Carma A. Duncan, their heirs and assigns, as set forth in the agreement dated February 21, 1958 and filed April 23, 1958 in Book 161 of Agreements, Bonds and Contracts at Page 573, records of Jerome County, Idaho.

Sections 5 and 8: A parcel of land described as follows:

Beginning at the Southwest corner of Section 5;
Thence Northerly along the West boundary of said Section to a point approximately 2876.0 feet South of the Northwest corner of said Section 5;
Thence South 89°03½' East, 397.04 feet;
Thence South 73°09½' East, 179.89 feet;
Thence South 53°53' East, 123.13 feet;
Thence South 88°42' East, 253.95 feet;
Thence North 59°51' East, 66.75 feet;
Thence South 30°09' East, 20.0 feet;
Thence North 77°41' East, 780.40 feet;
Thence North 73°59' East, 350.0 feet;
Thence South 29°59' West, 250.0 feet;
Thence South 14°01' East, 254.0 feet;
Thence South 77°01' East, 118 feet;
Thence South 34°59' West, 255.0 feet;

-Continued-

Thence South 6°01' East, 258.0 feet;
Thence South 61°31' East, 195.0 feet;
Thence South 11°57' West, 368.0 feet;
Thence South 68°43' East, 365.0 feet;
Thence North 88°17' East, 500.0 feet;
Thence South 15°02' East, 725.0 feet;
Thence South 36°42' East, 420.0 feet;
Thence South 84°04' East, 245.0 feet;
Thence South 12°04' East, 435.0 feet;
Thence South 38°24' East, 434.5 feet, more or less, to the East boundary of the SW¼NE¼ of said Section 8;
Thence Southerly along said East boundary approximately 602.5 feet to the Southeast corner of said SW¼NE¼ of said Section 8;
Thence Westerly along the quarter line to the West quarter corner of said Section 8;
Thence Northerly along the West boundary of said Sections 8 and 5 to THE POINT OF BEGINNING.

TOGETHER WITH an undivided 63.8% interest in and to a certain well, pump, motor and electrical equipment, and other appurtenances, power line and water right therein, located near the North boundary of SE¼SW¼ of Section 5, Township 7 South, Range 17, East Boise Meridian, as per Agreement with C. R. Duncan recorded in Book 161 Page 563, Jerome County records.

AND TOGETHER with easements for road and ditch purposes as set forth in Warranty Deed dated January 22, 1958, recorded February 7, 1958 in Book 163 Page 134 as Instrument Number 134539 and Warranty Deed dated January 22, 1958 and recorded February 7, 1958 in Book 163 Page 137 as Instrument Number 134540, Jerome County records.

EXCEPTING THEREFROM a parcel of land located in the NW¼ and the W½NE¼ of Section 8, described as follows:

Beginning at the Southwest corner of said NW¼, Section 8;
Thence North 0°21'58" West a distance of 2145.54 feet along the Westerly boundary of said NW¼;
Thence South 89°50'45" East a distance of 3985.82 feet to a point on the Easterly boundary of said W½NE¼;
Thence South 0°18'27" East a distance of 2139.40 feet along the Easterly boundary of said W½NE¼ to the Southerly boundary of said W½NE¼;
Thence North 89°56'02" West a distance of 3983.59 feet along the Southerly boundary of said W½NE¼ and said NW¼ to THE POINT OF BEGINNING.
Subject to the rights of a public road which affects the Westerly 25.00 feet thereof.

END OF EXHIBIT "A"

To: Jeff Rau
Fr: Mary Olson
8/4/03 2:00pm
6 pages

Names of Parties Filing Document:

UNITED STATES OF AMERICA

NOTCH BUTTE FARMS, LLC

Attorneys' Names and Addresses:

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural
Resources Division

LARRY A. BROWN
Attorney, U.S. Dept. of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, Idaho 83724
Ph.: (202) 305-0435 FAX: (202) 305-0274

JOHN T. LEZAMIZ
Hepworth, Lezamiz & Hohnhorst, Chtd
P.O. Box 389
Twin Falls, Idaho 83301
Ph: (208) 734-7510
FAX: (208) 734-4115

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	)	Subcase Number: 37-02645
	)	
Case No. 39576	)	**STIPULATION TO RESOLVE THE**
	)	**UNITED STATES' OBJECTION**

The United States of America and Notch Butte Farms, LLC (hereinafter "Claimant") agree and stipulate to resolve the United States Department of the Interior, Bureau of Land Management's (hereinafter "BLM") objection to the above-captioned Subcase as follows:

//

//

//

STIPULATION

1. The parties agree that the place of use described in the recommendation for Water Right Number 37-02645 as T.06S., R.17E., Section 30, SESE (21.0 acres) is public land.[1]

2. The Claimant stipulates and agrees to apply for a transfer pursuant to I.C. § 42-222 to remove 8.8 acres from the place of use that describes public land in the recommendation for Water Right Number 37-02645, and transfer that 8.8 acres to private land. Such transfer shall be filed with the Idaho Department of Water Resources (hereinafter "IDWR") within thirty (30) days of the date this Stipulation is filed with the Snake River Basin Adjudication (hereinafter "SRBA") District Court. The BLM agrees, by this stipulation, to allow the water to be transferred off of public land. Claimant agrees and stipulates that Claimant shall not assume title to any places of use which describe public land pursuant to such transfer. All costs incurred for seeking such transfer shall be borne by Claimant.

3. Upon the filing of a Notice of Completed Administrative Proceeding for the transfer described in paragraph 2, above, with the SRBA District Court, the parties agree and stipulate to execute and file with the SRBA District Court Standard Forms 5 that "split" Water Right Number 37-02645 into two new water rights where the Claimant shall hold title to Water Right Number 37-20840 that shall describe places of use located on private land; the BLM shall hold title to Water Right Number 37-20841 that shall describe places of use located on public land; and Water Right Number 37-02645 shall be dismissed with prejudice. The parties agree and

---

[1]In this Stipulation, the term "public lands" means "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership . . . ." 43 U.S.C. § 1702(e).

stipulate that any partial or final decree of Water Right Number 37-20840 shall not contain places of use that describe public land. The BLM agrees and stipulates that it shall not seek to sell or otherwise transfer Water Right Number 37-20841, except as specified in paragraph 5, below.

4. Within fifteen (15) days of the date this Stipulation is filed in the SRBA District Court, Claimant agrees and stipulates to apply for a Land Use Authorization for irrigated agricultural use of that portion of public land described in paragraph 1 not included in the transfer described in paragraph 2. Claimant recognizes that there is no guarantee or promise implied or inferred by this Stipulation that the BLM will approve or grant said application for land use authorization. Claimant further agrees that no right, title, interest, or economic expectation of use accrues to the Claimant due to the use of public land for agricultural purposes.

5. If, for whatever reason, the BLM denies Claimant's application for a land use authorization, terminates Claimant's land use authorization, or Claimant's land use authorization expires and is not renewed, then BLM agrees to allow water used on the public land described in paragraph 1, and described in Water Right Number 37-20841, to be transferred off of public land, then confer title of Water Right Number 37-20841 to the Claimant, pursuant to I.C. § 42-222. Claimant must apply for said transfer within forty five (45) days of any BLM decision denying Claimant's application for land use authorization or terminating Claimant's land use authorization, or within forty five (45) days of the expiration of the land use authorization. Claimant agrees and stipulates that Claimant shall not assume title to any places of use which describe public land pursuant to such transfer. All costs incurred for seeking such transfer shall be borne by Claimant.

6. The parties agree and stipulate that if the transfers described in paragraphs 2 and/or 5 are not filed with IDWR within the defined time periods, or water that is the subject of the transfers described in paragraphs 2 and/or 5 is not successfully transferred off of public land upon completion of the transfer, the water that is the subject of such transfers shall be deemed forfeited after five (5) years. The United States shall be released and held harmless from loss, injury, damage and/or reduction in value of water rights should Claimant's application for land use authorization be denied, Claimant's land use authorization be terminated, Claimant's land use authorization expire and not be renewed, or the IDWR does not allow transfer of all, or of any portion, of the water that is the subject of the transfers described in paragraphs 2 and/or 5 and the use of such water is deemed forfeited.

7. The parties agree that nothing in this stipulation forecloses future administrative or judicial action by the United States in relief of, or as a consequence of, the unauthorized use of the public land described as a place of use in the recommendation for Water Right Number 37-02645, including, but not limited to, actions for past rent, rehabilitation of used land, or trespass. The parties further agree that nothing in this stipulation limits the discretion of BLM's Authorized Officer to impose additional conditions within any land use authorization that may be issued by BLM.

8. This stipulation comprises the entire agreement and no promise, inducement, or representation other than herein set forth has been made, offered, and/or agreed upon, and the terms of this stipulation are contractual and not merely a recital.

9. This stipulation has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation. The parties agree that no offers and/or

compromises made in the course thereof shall be construed as admissions against interest. This stipulation does not create a precedent for settlement of any other disputes or objections.

10. All parties agree to bear their own costs and attorney fees.

CLAIMANT:
NOTCH BUTTE FARMS, LLC

_____ DATED: 7/14/03
JOHN T. LEZAMIZ
Of Attorneys for Claimant

OBJECTOR:
UNITED STATES OF AMERICA

_____ DATED: 7/16/03
LARRY A. BROWN FWP
Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on July 17, 2003, I served a true and correct copy of fore-going **STIPULATION TO RESOLVE THE UNITED STATES' OBJECTION: SUBCASE NUMBER 37-02645** upon the following individuals by placing the document in the United States Mail in Washington, D.C., postage paid, and addressed as follows:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

253 Third Avenue North
Twin Falls, ID 83301

Copies to:

U.S. Department of Justice
General Litigation Section
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83720-0098

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

John T. Lezamiz
Hepworth, Lezamiz & Hohnhorst, Chtd.
P.O. Box 389
Twin Falls, ID 83301

Signature of Person Serving Document