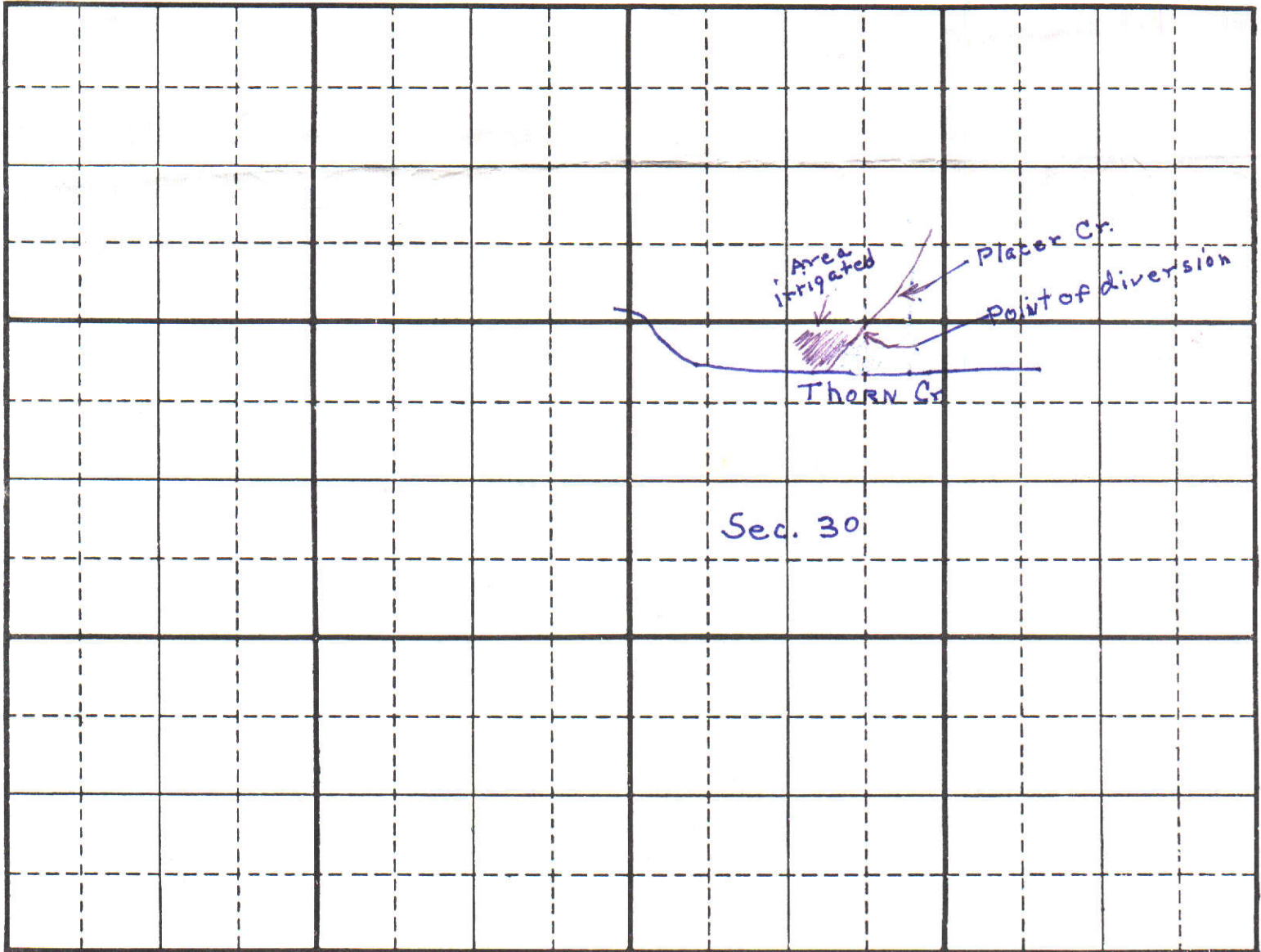


(8) Remarks See certified copy of the deposition of George Emerson attached hereto.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Ada) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Craig Marcen

Barry Marcen
Earl Chapman
Norm Chapman (Claimant)

Sworn to before me this 27th day of May, 19 83.

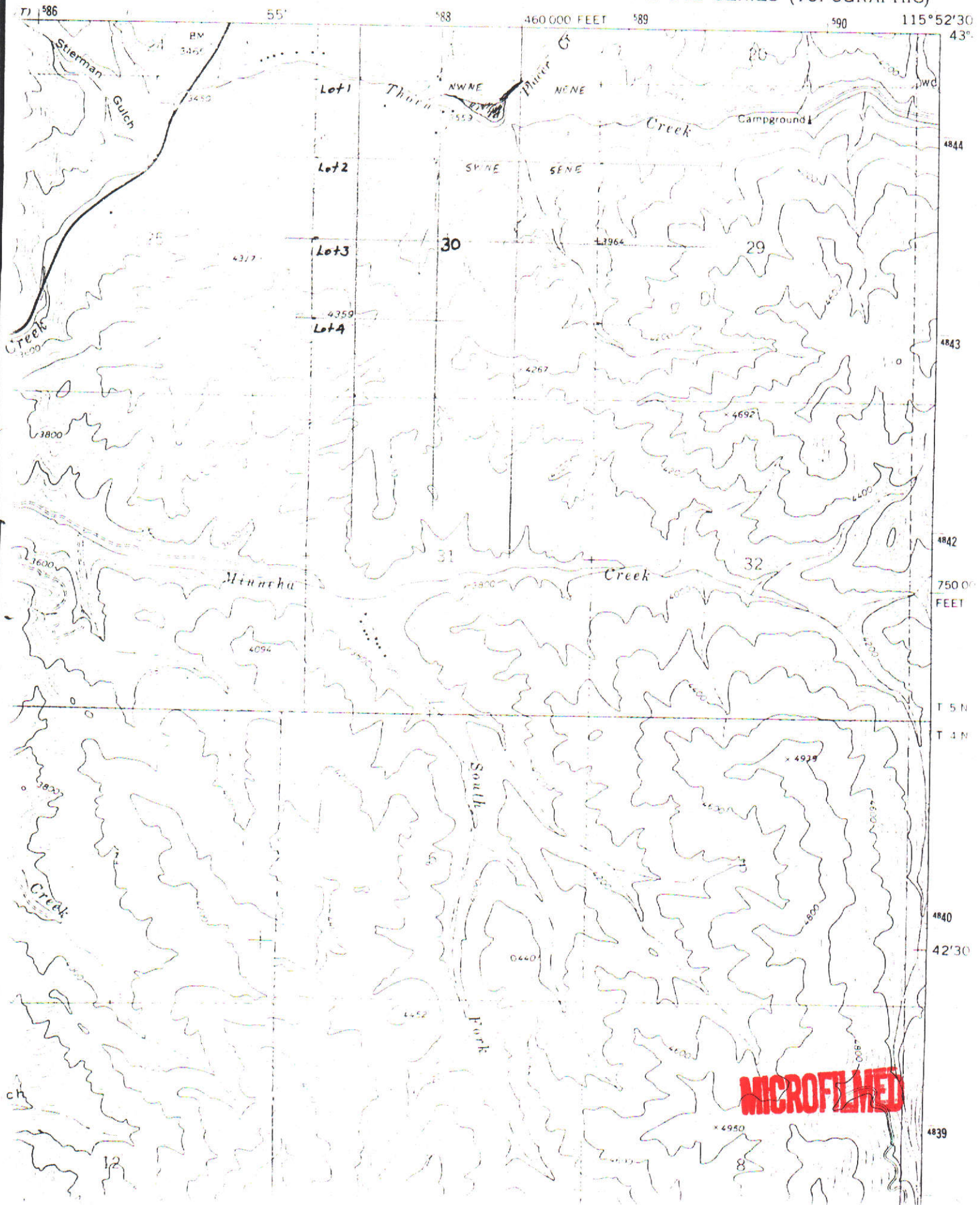
Alise L. Hoover
Notary Public for State of Idaho
Residing at Boise

My commission expires 10/14/85

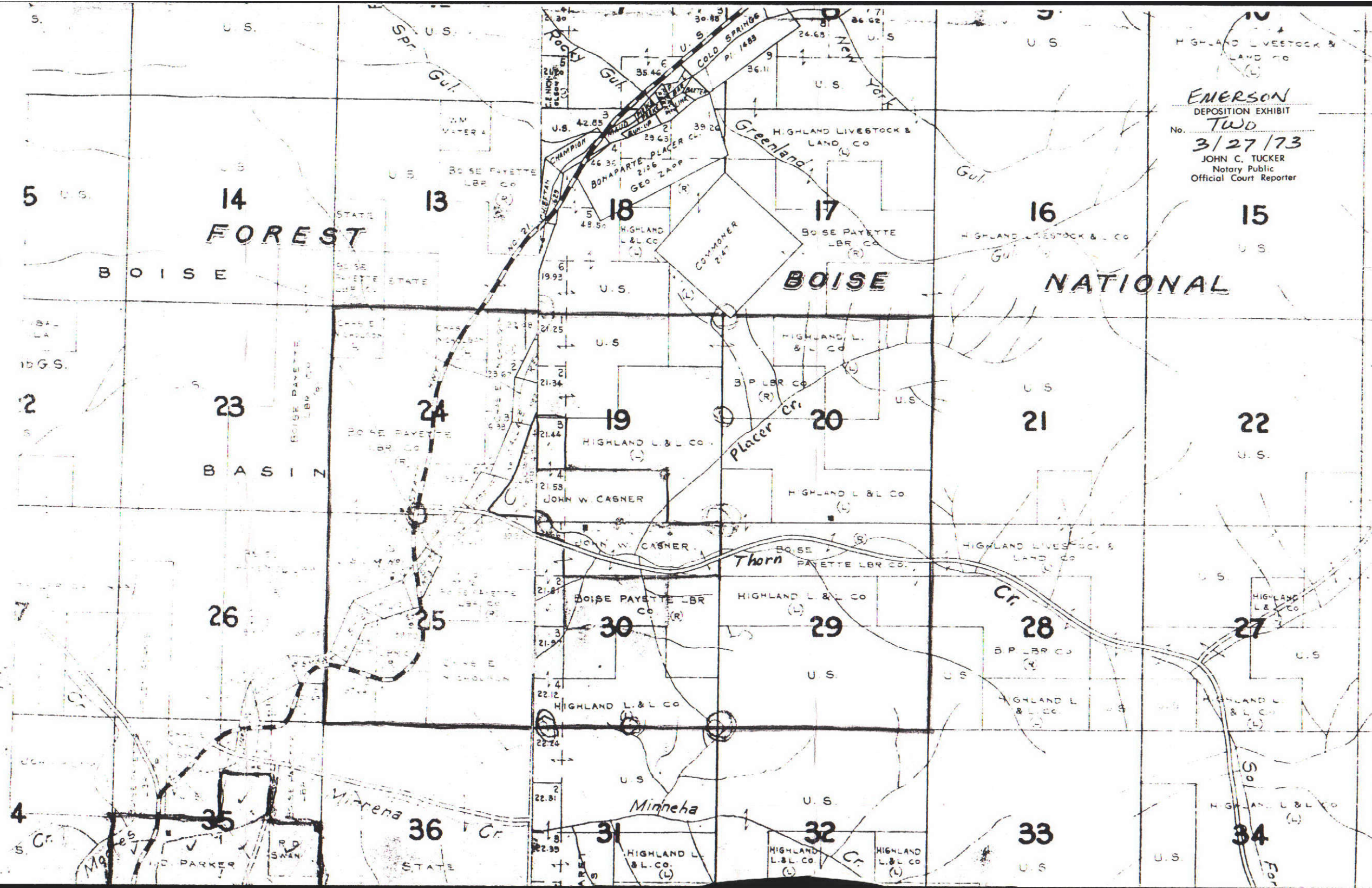
Received by SPC Date 6/6/85 Exception filed by: _____ Date _____
Prelim. check by 615 Date 6/12/85 Forwarded to claimant by: _____ Date _____
\$30.00 fee received by RP Date 6/17/83 28955
Published in the Idaho World
Dates 6/26 & 7/3/85

FOR DEPARTMENT USE ONLY

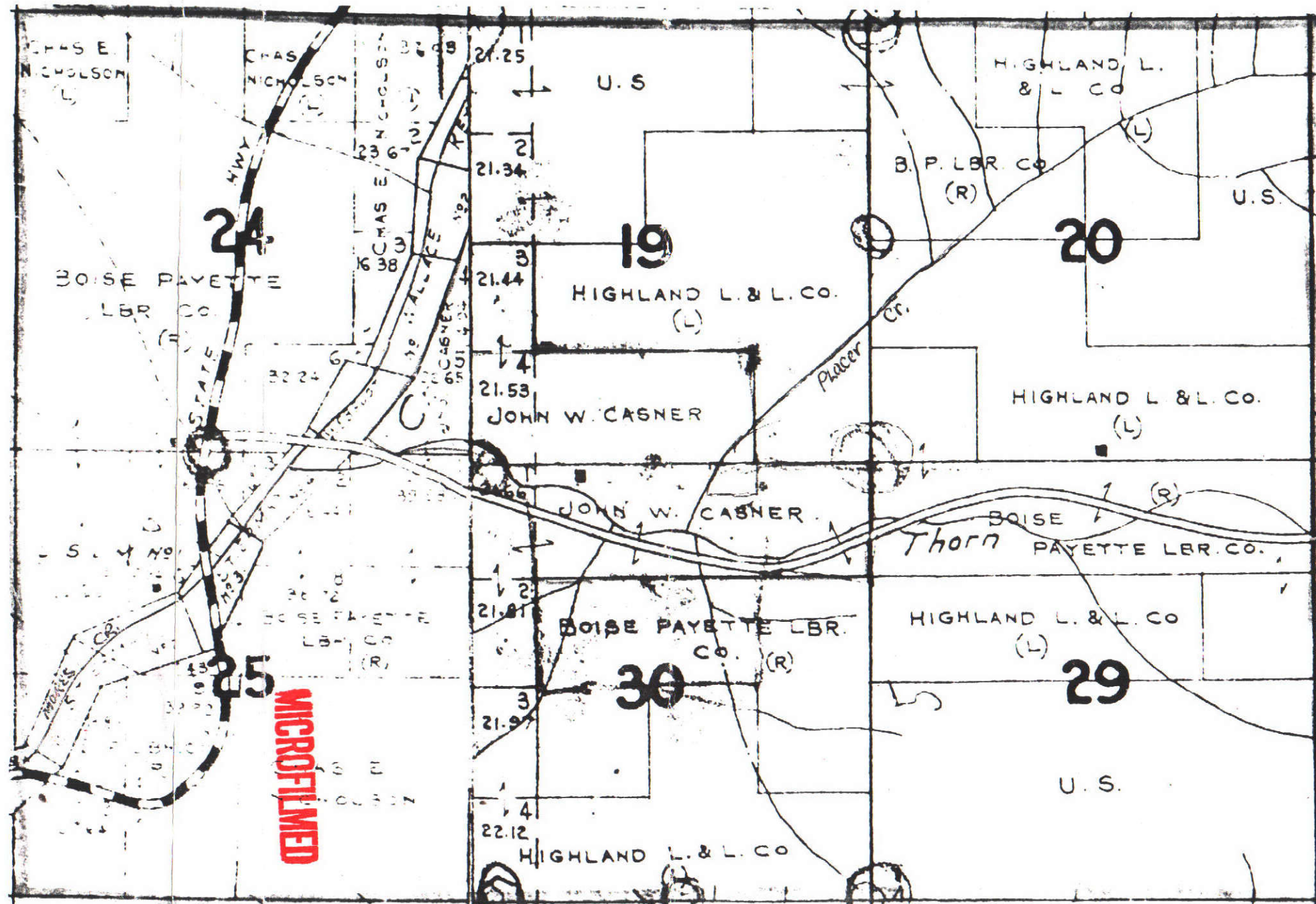
71 586 55° 583 460 000 FEET 589 590 115° 52' 30" 43°



T.5 N.
R.5 E.
B.M.
BOISE
County



EMERSON
DEPOSITION EXHIBIT
No. TWO
3/27/73
JOHN C. TUCKER
Notary Public
Official Court Reporter



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESDepartment of Water Resources
Western Regional Office

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that Horace Chapman, Earl Chapman,
Craig Marcus and Barry Marcus

(Name of Claimant)

737 N. 7th St., Boise, Idaho
(Mailing Address)83702
(Zip Code)

Telephone No. 342-3563

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) 1925

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Placer Creek ~ tributary to Thorn Creek

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs, af)	(Domestic, Irrigation, Stock, Etc.)	(Both dates inclusive) (Mo., Day)	(Mo., Day)
Quantity .5 cfs	(Use Irrigation and	Period of Use From April 1	To Nov. 1
Quantity .5 cfs	(Use domestic	Period of Use From Jan. 1	To Dec. 31
Quantity	Use	Period of Use From	To
Quantity	Use	Period of Use From	To
Quantity	Use	Period of Use From	To

- (4) .5 cfs TOTAL QUANTITY USED.
(cfs, af)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

NW ¼ NE ¼, Sec. 30 Twp. 5N. Rge. 5 E. B.M., County of Boise
Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change.
Cistern and pump and ditch

- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5N	5E	30		20															20

No. of acres 20

- B) If water is used for other than irrigation, fully describe that use, being as specific as possible:

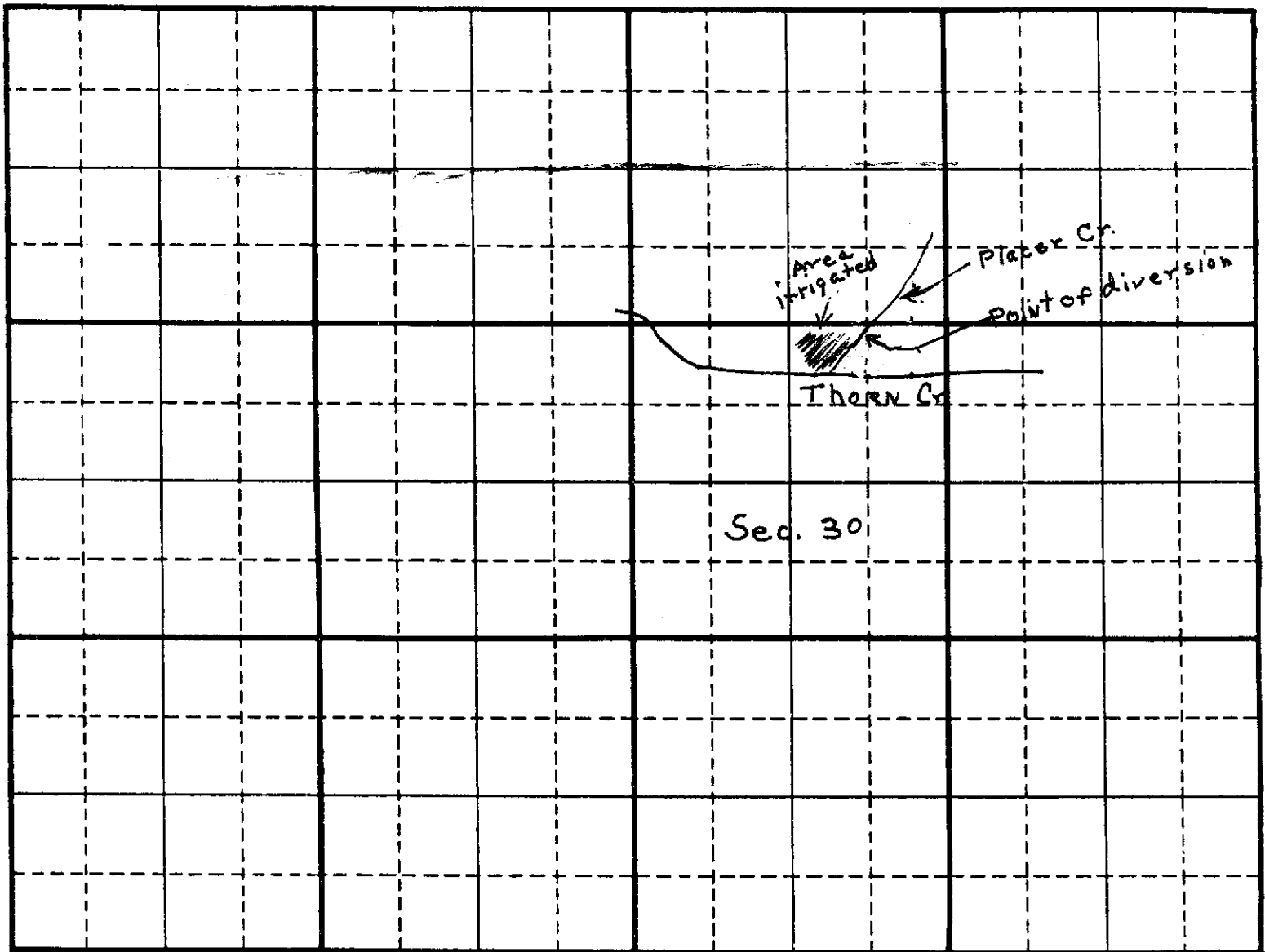
domestic - 1 house and shop

NOTE: Include here the type and number of stock watered:

- (7) If you are claiming water as a member of an organization, list name of organization:

MICROFILMED

(8) Remarks See certified copy of the deposition of George Emerson attached hereto.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Ada) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Craig Marsens *Barry Marsens*
Earl Chapman (Claimant)
Norman Chapman

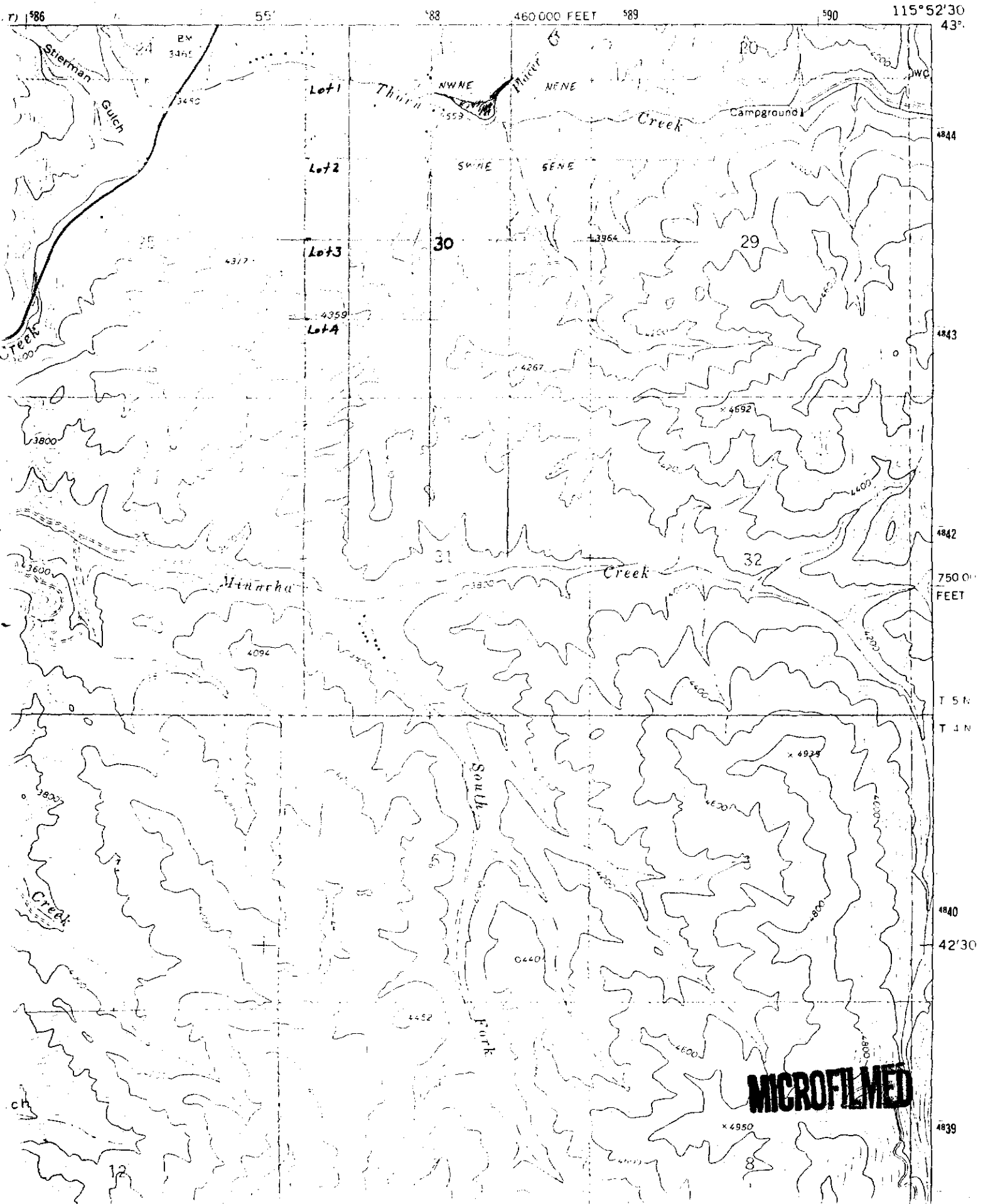
Sworn to before me this 27th day of May, 19 83.

Alise L. Hoover
Notary Public for State of Idaho
Residing at Boise

My commission expires 10/14/85

Received by SPR Date 6/6/83 Exception filed by: _____ Date _____
Prelim. check by 615 Date 6/12/85 Forwarded to claimant by: _____ Date _____
\$30.00 fee received by SP Date 6/7/83 28955
Published in the Idaho World
Dates 6/26 & 7/3/85

63-5373
DUNNIGAN CREEK QUADRANGLE
IDAHO-BOISE CO.
7.5 MINUTE SERIES (TOPOGRAPHIC)



LEGAL NOTICES

NOTICE OF CLAIMS TO WATER RIGHTS

The following claim(s) have been filed on water right(s) created by diversion and beneficial use:

63-5373 ✓ 38

CHAPMAN, HORACE

CHAPMAN, EARL

MARCUS, CRAIG &/or BARRY

737 N. 7th St., BOISE, ID 83702

Source: PLACER CREEK trib. to THORN CREEK

Priority Date: 01/01/1925

Diversion Pt: NWN Sec 30 T 05N R 05E

: IRRIGATION (0.50 CFS)

DOMESTIC (0.50 CFS)

In: NWN Sec 30 T 05N R 05E FOR 20 ACRES

Exceptions to a claim may be filed with the Director, Dept. of Water Resources, Western Region, Statehouse, Boise, Idaho 83720.

WEN DUNN, Dir.

Published in the Idaho World, Idaho City, Idaho June 26 & July 3, 1985.

STATE OF IDAHO, }

County of Boise }

Gay Opatony, being duly sworn, deposes and says: that he is the manager and principal clerk of THE IDAHO WORLD, a weekly newspaper published at Idaho City in the County of Boise and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Idaho City; that the advertisement, a copy of which is hereto attached, was published in said newspaper once a week for consecutive weeks in the entire and regular issue of every number of said paper during the period and time of publication and was published in the newspaper and not a supplement; that said paper has been established and regularly and continuously published for more than seventy-eight weeks past previous to the first publication of this notice. Such notice was published in the issue beginning with

June 26, 1985, and ending

with the issue of *July 3*, 1985.

1985.

Gay Opatony

Subscribed and sworn to before

me this 10 day of *July* 1985

Donna M. H. ...
Notary

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WRR100
63-5373

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS PROOF READING REPORT

PAGE 1
13-FEB-1986 09:28:55

01 WATER RIGHT NUMBER - 63-5373 02 OLD (D) NUMBER -

LAST NAME	FIRST NAME	ORIG. OWNER
03001 - CHAPMAN	04001 - EARL	05001 - D
03002 - MARCUS	04002 - CRAIG	05002 - D
03003 - MARCUS	04003 - HARRY	05003 - D
03004 - CHAPMAN	04004 - HORACE	05004 - C

06 ADD LINE 1 - 737 N. 7TH ST.

07 ADD LINE 2 -

08 ADD LINE 3 -

09 CITY - BOISE

10 STATE - ID 11 ZIP - 83702

12 STAGE - S STATUTORY CLAIM

13 STATUS -

SOURCE
14001 - PLACER CREEK

TRIBUTARY OF
15001 - THORN CREEK

16 DIVERSION MEANS - CISTERN, PUMP & DITCH

17 COUNTY - 15 BOISE

18 DIVERSION CAPACITY - .000

19 TOTAL DIVERSION RATE - .500

20 TOTAL DIVERSION VOLUME - .00

21 WATER DISTRICT -

----- DIVERSION POINTS -----													
TRACT	SEC	TWN	RNG	LOT	RFLG	S T R E A M I N D E X F I E L D S							
22001 - NWNE	23001 - 30	24001 - 05N	25001 - 05E	26001 -	27001 -								
				28001 - 0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0	0

29 NON-IRRIGATION USE - D/I HOME & SHOP

----- PLACE OF USE -----							
USE CODE / USE	TWN	RNG	SEC	TRACT	ACRES	LOT	
30001 - 01 IRRIGATION	31001 - 05N	32001 - 05E	33001 - 30	34001 - NWNE	35001 - 20	36001 -	
							TOTAL ACRES: 20

----- WATER USE -----					
PERIOD FROM	PERIOD TO	USE CODE / USE	DIVERSION RATE	DIVERSION VOLUME	
37001 - 0401	38001 - 1101	39001 - 01 IRRIGATION	40001 - 0.500	41001 -	0.00
37002 - 0101	38002 - 1231	39002 - 43 DOMESTIC	40002 - 0.500	41002 -	0.00

42 DECREE PLAINTIFF NAME -

43 DECREE DEFENDANT NAME -

REMARKS
44001 -

APPROVAL CONDITIONS: 45001 -

46 OTHER RIGHTS FOR SAME USE -

----- D A T E S -----				----- D A T E S -----				----- F L A G S -----			
47 PRIORITY	-	1-JAN-1925	55 LICENSE	-	63 TRANSFER/AMENDED	-					
48 PROOF DUE	-		56 APPL RECEIVED	-	64 DLE/CAREY ACT	-					
49 PROOF MADE	-		57 FIELD EXAM MADE	-	65 FLAG_1	-					
50 APPROVE/DENIED	-		58 DECREE	-	66 FLAG_2	-					

WRR100
63-5373

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHTS PROOF READING REPORT

PAGE 2
13-FEB-1986 09:28:55

- - - - - D A T E S - - - - - D A T E S - - - - - F L A G S - - - - -

51 PROTESTED -
52 HEARING -
53 VERIFIED -
54 LAST UPDATE - 12-FEB-1986

59 START WORK -
60 ORDER SHOW CAUSE -
61 DATE_1 -
62 DATE_2 -

67 FLAG_3 -

73/81/6
VERIFIED JKN

State of Idaho
Department of Water Resources

CLAIM ANALYSIS SHEET

INITIAL REVIEW BY: 6LS

Right Number 63-5383 Applicant Chapman, Marcus

NOTE: IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period.
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee.

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received. 7/12/85
- ☒ Claim published correctly. ED WOOD
301 28955 6/26 & 7/3/85
- ☒ Exceptions processed.

By 6LS Date 7/16/85

STATE OFFICE PROCESSING:

- ☒ Claim review complete.

By SC Date 7/16/85

MICROFILMED
RECEIVED
JUL 16 1985

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Western Region

Statehouse
Boise, Idaho 83720
(208) 334-2190

JULY 11, 1985

CHAPMAN HORACE
EARL CHAPMAN
CRAIG MARCUS
BARRY MARCUS
737 N. 7TH ST.
BOISE

ID 83702

RE: Claim No. 63-5373

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

DAVID B. SHAW
Western Region Supervisor

Enclosure

MICROFILMED

NOTICE OF CLAIMS TO WATER RIGHTS

The following claim(s) have been filed on water right(s) created by diversion and beneficial use:

Exceptions to a claim may be filed with the Director, Dept. of Water Resources, Western Region, Statehouse, Boise, Idaho 83720.

KEN DUNN, Dir.

Published 06/26 & 07/03/85.

MICROFILMED



State of Idaho

MAY 19 1984

DEPARTMENT OF WATER RESOURCES

WESTERN REGION, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-2190

March 16, 1984

Barry Marcus
737 N. 7th St.
Boise, ID 83702

Dear Mr. Marcus:

We have finally got around to reviewing all the Claims to a Water Right received in 1983. It was discovered, during our review of your claim, that there may be an error in the legal description for your point of diversion and place of use.

I have enclosed a map that shows section 30 and have divided the section in the correct 40 acre tracts and government lots. Please use the map to help correct the points of diversion and the 20 acres of irrigation.

Once the corrections are made please return the Claim, no additional fees are necessary. Should you have any questions please contact me.

Sincerely,

G. L. SISCO
Senior Water Resource Agent

GLS:ns

Enclosure

*Correction made
B. Marcus*

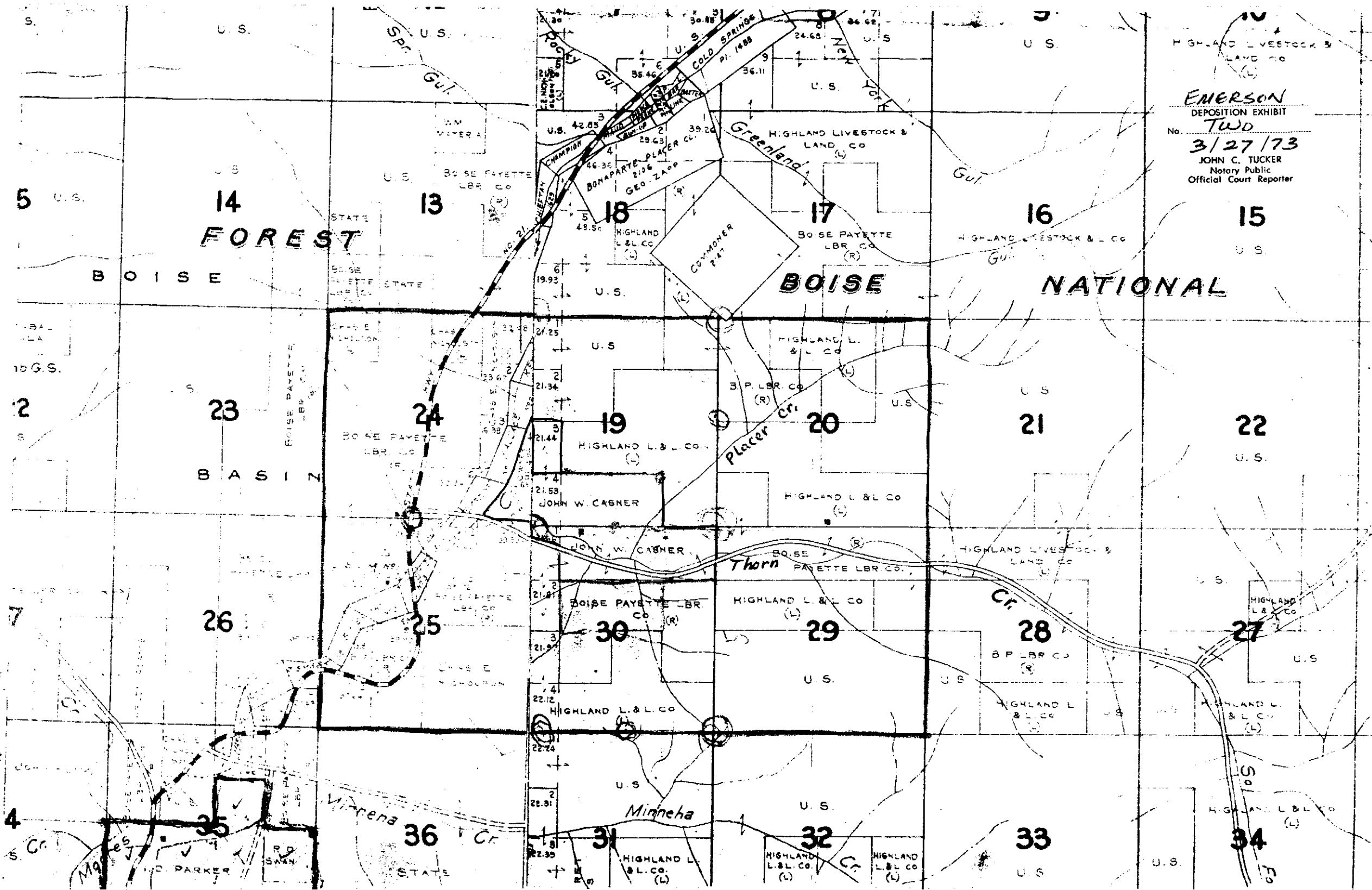
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RECEIVED
JUN 6 1985

Department of Water Resources
Western Regional Office

BOISE
COUNTY

EMERSON
DEPOSITION EXHIBIT
No. TWO
3/27/73
JOHN C. TUCKER
Notary Public
Official Court Reporter



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BOISE

In the Matter of the Application of
Bill Adams, Horace Chapman and Earl
Chapman to perpetuate the testimony
of Ralph Emerson.

) CASE NO. 870
)
) DISTRICT COURT BOISE, COUNTY, IDAHO
) Recorded in Book _____ Page _____
)

Filed OCT 8 1973 No.

ARLENE B. KOLAR, Clerk
By Arne W. Tucker DEPUTY

DEPOSITION OF GEORGE EMERSON, taken at the instance
of the Applicants, at the Law Offices of Marcus & Marcus,
625 First National Bank Building, in the City of Boise,
State of Idaho, Commencing at 10:08 a.m., on Tuesday,
March 27, 1973, before JOHN C. TUCKER, a Notary Public in
and for the State of Idaho, pursuant to stipulation by and
between counsel and in accordance with the Idaho Rules of
Civil Procedure.

APPEARANCES:

For the Applicants

MARCUS & MARCUS
by BARRY L. MARCUS, Esq.
625 First National Bank Building
Boise, Idaho 83702

For Idaho State Reclamation
Engineer R. Keith Higginson

W. ANTHONY PARK
Attorney General, State of Idaho
by NATHAN W. HIGER, Esq.
Assistant Attorney General
Statehouse
Boise, Idaho 83707

RECEIVED
JUN 6 1985

John C. Tucker

COURT AND DEPOSITION REPORTER
POST OFFICE BOX 1625, BOISE, IDAHO 83701
TELEPHONE 345-3704

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I N D E X

Examination by:

WITNESS

MR. MARCUS

MR. HIGER

GEORGE EMERSON

3

17

27

E X H I B I T S

Deposition

Page

1. Map
2. Copy of Map
3. Enlargement of Map - Showing
Casner Ranch Property

6

7

9

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1 BOISE, IDAHO, TUESDAY, MARCH 27, 1973, 10:08 A.M.

2
3
4 MR. MARCUS: This deposition is taken pursuant to the
5 Idaho Rules of Civil Procedure for the perpetuation of
6 testimony of Mr. George Emerson.

7 Are there any other stipulations that you would
8 like to make, Nathan?

9 MR. HIGER: No. We are not here to contest anything.

10 MR. MARCUS: That's fine. We can proceed, then.

11
12 GEORGE EMERSON,
13 called as a witness by and on behalf of the applicants, being
14 first duly sworn, was examined and testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. MARCUS:

18 Q. Would you state your name, George.

19 A. George Emerson.

20 Q. Where do you reside?

21 A. Idaho City, Idaho.

22 Q. How long have you lived there, George?

23 A. I have resided there for 25 years.

24 Q. What is your age now?

25 A. Seventy.

1 Q. I thought for a minute there you were going to
2 say 39.
3 A. I'm getting sensitive about my age, though.
4 Q. George, how long have you resided in Boise
5 County?
6 A. Twenty-five years.
7 Q. Are you acquainted with the area of Boise
8 County known as the Thorn Creek Area?
9 A. Yes.
10 Q. When did you first become acquainted with that
11 area?
12 A. Nineteen twenty-five.
13 Q. What is the correct spelling of Thorn Creek,
14 George?
15 A. T-h-o-r-n.
16 Q. It doesn't have an "e" in it, does it?
17 A. No.
18 MR. MARCUS: Off the record.
19 (Off-the-record discussion.)
20 MR. MARCUS: Let's go back on the record.
21 Would you mark these exhibits, please.
22 (Emerson Deposition Exhibit No. 1, map entitled
23 "Township 5 N., Range 5 E.B.M., Boise County, Idaho," and
24 Emerson Deposition Exhibit No. 2, a composite portion of
25 Emerson Deposition Exhibit No. 1, and; Emerson Deposition

1 Exhibit No. 3, a blown-up portion of Emerson Deposition
2 Exhibit No. 2, were marked for identification by the reporter.)

3 Q. BY MR. MARCUS: George, how long have you been
4 acquainted with Boise County, generally?

5 A. Since 1925.

6 Q. Is that the first time that you went into the
7 area?

8 A. Oh, no. I was in the area back in 1920. In
9 fact, I put a year in with the Forest Service back in 1920.

10 Q. In 1920?

11 A. Yes.

12 Q. Now, in 1925 was the first time that you went
13 to the Thorn Creek Area?

14 A. Up on Thorn Creek, yes.

15 Q. What did you do there?

16 A. Well, we was -- they set up a lumber company,
17 the Ten Mile Lumber Company, right there at the mouth of
18 Thorn Creek, the exact date I don't know, but about 1925.
19 Then they tried --

20 I was interested in buying stock in the lumber
21 company at the time and we went up and looked at the water
22 sources and went over the water situation at that time.

23 Q. Did you have an occasion at that time to become
24 acquainted with what is known as the Casner Ranch?

25 A. Yes, I knew where the Casner Ranch was at that

1 time.

2 MR. HIGER: Would you spell that, please.

3 THE WITNESS: C-a-s-n-e-r.

4 Q. BY MR. MARCUS: Now, I'm going to hand you what
5 has been marked Exhibit No. 1, George.

6 A. Yes.

7 Q. Can you identify that?

8 A. You mean Thorn Creek?

9 Q. Well, is this a township map?

10 A. Yes, Township 5 North, Range 5 East.

11 Q. That is in Boise County?

12 A. Right.

13 Q. Now, does that map show Thorn Creek on it?

14 A. Yes, way down there (indicating), yes.

15 Q. Does the map also show the Casner Ranch?

16 A. Yes, it does.

17 Q. What sections are the Casner Ranch in?

18 A. It's Section 30.

19 Q. Is there also some property of the Casner Ranch
20 in Section 19?

21 A. Yes.

22 MR. HIGER: Excuse me, Barry, is that 5 north and
23 5 east?

24 MR. MARCUS: Yes, 5 north and 5 east.

25 Q. BY MR. MARCUS: Right now, George, I have a

1 copy of a section of that map, including a section of the map
2 for Township 5 North, Range 5 East Boise Meridian, which I'm
3 handing to you.

4 Why don't you just take that and sit down,
5 George, and I'll refer to this copy.

6 Now, is that a copy of the map that you were
7 just looking at, Exhibit No. 1?

8 A. Yes.

9 Q. There is a portion enclosed in red. Does that
10 red portion include Sections 19 and Sections 30 in Township
11 5 North, Range 5 East?

12 A. Right, yes, it does.

13 Q. Now, within that area that is set off in red
14 ink, there is a property outlined in blue ink.

15 Is that property generally the Casner Ranch?

16 A. Generally it is, yes.

17 Q. Does that map show Placer Creek?

18 A. Yes, Placer Creek is on the map.

19 Q. What creek is Placer Creek a tributary of?

20 A. Thorn Creek.

21 Q. Placer Creek runs into Thorn Creek. Now, what
22 creek does Thorn Creek run into, George?

23 A. Thorn Creek runs into Mores Creek.

24 Q. Now, is Mores Creek shown on Exhibit No. 2,
25 George?

1 A. Yes.

2 Q. Does Exhibit No. 2 also show a state highway?

3 A. It shows Highway 21, yes.

4 Q. Is that the highway from Boise to Idaho City?

5 A. It is.

6 Q. Now, could you identify the point of confluence

7 between Placer Creek and Thorn Creek, George?

8 A. Yes, that would be in the north half of Section

9 30.

10 Q. Is that on the Casner property?

11 A. Yes. The Casner property is on the north half.

12 Q. Approximately how far upstream on Thorn Creek

13 from its confluence with Mores Creek does Placer Creek run

14 into Thorn Creek?

15 A. It would be about approximately -- let's see.

16 That would be between two and three miles.

17 Q. Let's see, George. Could you take a look at

18 Exhibit No. 1.

19 A. Not over two miles, I guess.

20 Q. Take a look at Exhibit No. 1 again. Exhibit

21 No. 1 has a scale of two inches to one mile. I have a ruler

22 here, and could you take the ruler and check out your

23 estimate distance?

24 A. Of course, Thorn Creek, it wouldn't be much

25 over a mile on this.

1 Q. About a mile?

2 A. I was confused as to the scale on that map
3 (indicating).

4 Q. Now, from your own knowledge, George, and not
5 referring to the map, is that approximately correct as to the
6 distance from the mouth of Thorn Creek to the mouth of
7 Placer Creek?

8 A. That is approximately, yes.

9 Q. In other words, it's about a mile?

10 A. About a mile.

11 Q. And at the time that you went to Thorn Creek
12 or became interested in the Thorn Creek Area, were the
13 Casners residing on Casner Ranch property, George?

14 A. That's when I first met the Casners, right.

15 Q. And where on the map would their residence
16 have been?

17 A. They had a house on the west side, a two-story
18 house, that burnt down, and the old man resided there.

19 The Jack Casner place was up here (indicating),
20 at approximately the mouth of Placer Creek.

21 Q. Placer Creek?

22 A. Yes.

23 Q. Now, I'm going to hand you Exhibit No. 3.

24 A. That's where Jack and Eph, or Ephraim, resided,
25 at the mouth of Placer Creek. That's about a mile from

1 Highway 21.

2 Q. Now, George, is Exhibit No. 3 a blown-up copy
3 of the red portion that is shown on Exhibit No. 2?

4 A. Yes. It's blown-up, apparently.

5 Q. So it is an enlarged copy?

6 A. Right.

7 Q. And is Casner Ranch property shown on Exhibit
8 No. 3?

9 A. Yes, it is.

10 Q. Is it outlined in red?

11 A. Yes.

12 Q. On Exhibit No. 3?

13 A. Yes.

14 Q. Now, taking a red pencil, could you mark on
15 Exhibit No. 3 the location of the house that you said was
16 close to Placer Creek.

17 A. It must have been pretty close to this line
18 right here (indicating), according to this scale. This
19 pencil isn't marking very good.

20 Bear in mind I have never run these lines out,
21 but this is approximate.

22 Q. No, I understand. But this is just an
23 approximation of the locations and distances.

24 Could you make the second mark on this copy
25 of Exhibit No. 3?

1 A. (Witness complied.)

2 Q. Okay. Could you hand the copy back to me,
3 please, George.

4 MR. MARCUS: Let's go off the record for just a
5 minute.

6 (Off-the-record discussion.)

7 MR. MARCUS: Back on the record.

8 Q. BY MR. MARCUS: Now, you have indicated by a
9 red dot the location of the Casner house on Placer Creek?

10 A. Approximately.

11 Q. Approximately how far upstream from the mouth
12 of Placer Creek would that house have been located?

13 A. From the mouth of Placer Creek?

14 Q. Yes.

15 A. Oh, about 300 feet, or the distance -- about
16 that distance from Thorn Creek.

17 Q. Now, George, have you had occasion to measure
18 quantities of water?

19 A. Yes.

20 Q. In what capacity?

21 A. Well, with the Reclamation Service. For 27
22 years I measured water for the Reclamation Service.

23 Q. Based upon your knowledge of Placer Creek, what
24 is the flow in Placer Creek at the high water time, at the
25 early summer?

1 A. I'd say max of about 50 inches or second foot of
2 water max.

3 Q. Fifty inches?

4 A. Yes.

5 MR. HIGER: At what time of the year?

6 THE WITNESS: Well, that would be max about, oh, the
7 1st of April, should be.

8 MR. HIGER: That's the maximum run-off of Placer
9 Creek?

10 THE WITNESS: It's variable with the seasons. This
11 year we don't have any snow, so it varies.

12 Last year it would have exceeded that, because
13 we had lots of snow.

14 Q. BY MR. MARCUS: Would you say that's an average
15 maximum flow of Placer Creek?

16 A. Of max at the spring of the year.

17 Q. What can you say about the flow of Placer Creek
18 through the summer?

19 A. Of course, I have never gotten technical, but
20 I would say it would hold up to about a minimum of 10 inches
21 of water.

22 Q. At what time of the year would that be?

23 A. The 1st of September.

24 Q. Now, George, at the time you went up Thorn Creek
25 in 1925, what can you say about the use of water from

1 Placer Creek?

2 A. Oh, they were using it for domestic and garden
3 use and some little irrigation of meadow.

4 Q. Who are you talking about?

5 A. The Casners and Eph and Jack -- or John Casner.

6 Q. How much of Placer Creek were they using at
7 that time?

8 A. They were using all of it in the summer.

9 Q. In other words, they were diverting all of the
10 flow of Placer Creek?

11 A. Yes.

12 Q. What did you say they were using it for?

13 A. They always had a big garden, and partially for
14 meadow for irrigation.

15 Q. Did they graze cattle up there?

16 A. I don't know about their livestock. I know they
17 had horses and mules.

18 Q. And they always grew some crops?

19 A. Yes, they did.

20 Q. Now, George, did they use the water from Placer
21 Creek for domestic purposes, for use in their house?

22 A. Yes.

23 Q. For drinking and other --

24 A. They used it for domestic use in their house,
25 yes, for domestic purposes.

1 Q. Can you estimate on the map, George, the points
2 of diversion, their points of diversion from Placer Creek?

3 A. To what?

4 Q. Well, could you mark on the map their point of
5 diversion? And I'm referring to Exhibit No. 3. And would
6 you mark it with a pen, maybe with an X, understanding that
7 this is just approximate.

8 A. Yes. This is approximate, because their garden
9 was out in this area here, and in part of their meadow.

10 Q. Now, could you draw a circle or outline the
11 boundaries of their meadow and garden area with a pen,
12 generally, please.

13 A. (Witness complied.) I think their house was
14 actually -- I would say probably something like that, this
15 area.

16 Q. And their point of diversion from Placer Creek
17 was upstream from their house?

18 A. Yes, a little.

19 Q. Could you make the same indications on the other
20 copy of Exhibit No. 3?

21 A. (Witness complied.)

22 Q. Now, George, in referring to the irrigated land
23 upon which they used the water from Placer Creek, approximately
24 what part of the year would that irrigation have taken
25 place?

1 A. Actually from about Good Friday, they planted
2 their garden. As early as they planted their garden, that's
3 when they started using the water for irrigation.

4 Q. When would Good Friday be?

5 A. The rule of thumb on that, about the 30th or
6 31st of March.

7 Q. Okay. Then when would that irrigation stop,
8 in the average year?

9 A. On the garden part, probably about the 15th of
10 September. But they would irrigate on the meadow until it
11 froze up, actually.

12 Q. Until it froze up?

13 A. Yes, or stormed, about the 1st of October.

14 Q. Now, if it was a dry year, would the irrigation
15 have begun earlier than that?

16 A. Possibly.

17 Q. In other words, the growing season depends
18 upon the weather?

19 A. On the season, yes.

20 Q. Now, as far as the use of the water for
21 domestic purposes, what periods during the year would water
22 have been used for those purposes?

23 A. Year round.

24 Q. In other words, they would have used the water
25 from Placer Creek for domestic purposes year round?

1 A. Year round, yes.

2 Q. Did they use that water for watering livestock?

3 A. Yes.

4 Q. Do you have knowledge of a way station that

5 was located on the Casner Ranch?

6 A. What kind of a way station?

7 Q. At that time?

8 A. What kind of a way station, a water measuring

9 station?

10 Q. No, I mean a boarding house?

11 A. I don't know about the nature of the -- what

12 the house was used for, no, at that time.

13 Q. Now, since 1925, George, have you been acquainted

14 with that Casner Ranch and Thorn Creek -- Placer Creek Area

15 up to the present time?

16 A. Yes.

17 Q. Can you say of your own knowledge whether or

18 not the water has been used out of Placer Creek from 1925

19 to the present date?

20 A. I don't know of a time that it wasn't used.

21 Q. Has that use been pretty much as you have

22 described it?

23 A. That's been used for the same purposes that I

24 previously stated, yes.

25 Q. And to the same extent as you previously stated?

1 A. Yes.

2 MR. MARCUS: I don't think I have any other questions.

3

4

CROSS-EXAMINATION

5 BY MR. HIGER:

6 Q. Mr. Emerson, do you know Mr. Bill Adams or
7 Horace Chapman and Earl Chapman?

8 A. Yes, I do.

9 Q. Who are they?

10 A. Well, they are ranchers and farmers in the
11 immediate area.

12 Q. Idaho City?

13 A. Yes, Thorn Creek Area.

14 Q. The same area as around the Casner Ranch?

15 A. Yes.

16 Q. They adjoin the Casner Ranch?

17 A. I don't know, really.

18 Q. Are you familiar with Ernest Wassler, Claude
19 Marcus, Harry Burningham, David Nordling, Roy Watkins,
20 Howard Sandy Sims, and several others. Are you familiar
21 with those people?

22 A. No.

23 Q. You don't know any of those?

24 A. No.

25 Q. Now, you say you were with the Bureau of

1 Reclamation for about 27 years?

2 A. I was with the Bureau of Reclamation three years

3 and the Boise Reclamation Project 24 years.

4 Q. Okay.

5 A. It's the same project.

6 Q. Okay. And you said that the water in Placer

7 Creek ran about 50 inches in April and about 10 inches in

8 September. Did you go up there every year?

9 A. I didn't measure it, no.

10 Q. Were you up there every year?

11 A. No, I wasn't up there every year.

12 Q. Well, I mean the 50 inches, is that your estimate

13 of what you thought was in the creek?

14 A. That's my estimate, yes.

15 Q. And it could have been more than that or it

16 could have been less than that?

17 A. It could have been more or less, yes.

18 Q. Now, did you use an eyeball measurement or did

19 you use any technical means of measuring the stream?

20 A. I just used eyeball measurement.

21 Q. Of course, after several years of doing that,

22 you can get to where you can pretty well do it, can't you?

23 A. You can get to where you can pretty well estimate

24 it, yes.

25 Q. Now, you said that the Casners were using all

1 of the water of Placer Creek in the summer. Now, does that
2 mean that was all of the ten inches? Was the creek going
3 dry below their point of diversion, or was there some water
4 passing all the time?

5 A. They hit a loose gravel formation down there
6 that it sometimes didn't quite reach the creek, but that was
7 below their place.

8 Q. Well, did you estimate how much water might have
9 been going down past their point of diversion?

10 A. No, I didn't.

11 Q. Could you now? Was there one or two inches of
12 water, or three?

13 A. I never checked it. All I know is what was
14 being diverted on to the garden, that they were actually
15 using. I never checked below what they were actually using.

16 Q. But you were at their point of diversion?

17 A. Yes.

18 Q. You must have looked downstream from there.
19 All I'm interested in, was there any water going downstream
20 below their point of diversion?

21 A. Well, I didn't look. I don't know.

22 Q. Now, when you say that they were using it all
23 during the summer, you can't be positive that they were
24 using all that water?

25 A. No one uses water when it isn't necessary.

1 Q. Well, no, I realize that, but I mean when they
2 were diverting. I know they don't divert every day to irrigate
3 their garden or meadow, but when they were diverting, were
4 they using all of the water out of the creek or --

5 A. That would be subject to the stream flow, the
6 necessity.

7 Q. But you don't know if they were letting some
8 pass?

9 A. No, I don't.

10 Q. So there very well could have been some going
11 downstream and they might not be using all of the water?

12 A. I don't know of any going downstream from there.

13 Q. Now, you said they were growing some crops?

14 A. Yes.

15 Q. What kind was it? Was it just a meadow that
16 you were referring to and the garden?

17 A. They always had a big garden.

18 Q. About how big an acreage, a half acre?

19 A. Oh, they had at least an acre of garden. They
20 raised cabbage and made sauerkraut.

21 Q. About how big was the meadow area that they
22 were watering?

23 A. I'm not too sure about the area of the meadow.

24 Q. Was it about another acre?

25 A. No, it was more than an acre.

1 Q. Now, how was the water diverted from the stream?

2 A. Oh, just by a little canvas. It was easy to
3 divert it from one ditch to another.

4 Q. How far did the water have to go before it
5 reached their area of the garden and the meadow?

6 A. From the point of diversion?

7 Q. Yes.

8 A. Not very far; not over a hundred feet. I
9 never had an occasion to check below the garden. I went
10 over their garden many times. They were always very proud
11 of it. In fact, they gave me stuff out of there.

12 MR. MARCUS: Off the record.

13 (Off-the-record discussion.)

14 Q. BY MR. HIGER: What time of the year did you
15 go up to the Casners annually, approximately?

16 A. I never made any regular visits. I went up
17 there just on occasion.

18 Q. Every other year or every two or three years, or
19 what?

20 A. Just whenever I was so inclined; I mean, for
21 no particular purpose.

22 Q. I'm not trying to do anything to anybody here,
23 Mr. Emerson. I'm just trying to get things pinned down so
24 we know what is happening, and if you can give me some dates,
25 it would be helpful, you know, some of the years, the length

1 of time you have gone up there.

2 A. Well, since I have lived up there the last 25
3 years. I was in there every year for the last 25 years.

4 Q. Every year for the last 25 years?

5 A. Yes, on occasion I would go up there.

6 Q. So at least the last 25 years you were up there
7 at least once a year?

8 A. Yes, at least once a year.

9 Q. And would I be correct in assuming that it wasn't
10 necessarily the same time every year?

11 A. No, not necessarily.

12 Q. But during the last 25 years, every time you
13 have been up there there has been some water used out of
14 Placer Creek for the Casner Ranch?

15 A. Yes.

16 Q. And that was for the purposes you have described?

17 A. Yes.

18 Q. Now, when you are saying that the water was
19 being used from, say, April 1 until October 1 for the garden
20 and the meadow, this is your estimate?

21 A. Just an estimate based on, depending on the
22 seasons.

23 Q. Now, were there any other ranchers up Placer
24 Creek that were diverting water?

25 A. I don't know.

1 Q. You didn't go any further than the Casner Ranch?
2 A. No, that's as far as I am familiar with water
3 *diversion* conversion, because we were very close friends in years past.
4 *G.T.* Q. Did you hear Mr. Casner talk about anybody else
5 that was diverting water on Placer Creek?
6 A. No, we didn't discuss that.
7 Q. In other words, you weren't up there in an
8 official capacity; you were just up there as a friend of the
9 Casners?
10 A. That's right.
11 Q. Do you know of any other diversions below the
12 Casner place on Thorn Creek?
13 A. No, I never --
14 Q. I mean, did you see any as you drove up? You
15 would have had to have driven by them as you drove up.
16 A. There could have been some; I don't know.
17 Q. Okay. Now, as far as you know, the Casner Ranch
18 was using water in 1925 from Placer Creek?
19 A. Yes.
20 Q. You don't know about any time before that;
21 correct?
22 A. No, that's the first time I was ever up there,
23 in 1925.
24 Q. Now, as a man that has dealt with water for a
25 good number of years, would you estimate or be able to

1 estimate about how much water they were using -- not diverting
2 -- but how much they were using?

3 A. At what particular time?

4 Q. Well, at any time; say April, May, and June,
5 when they were actually using the full 50 inches of water --
6 or 40 or 30?

7 A. They were only using what was necessary in
8 early spring of the year.

9 Q. Well, now, in the summer you said they were
10 probably diverting --

11 A. At the time that the runoff, what we call the
12 runoff period, the surface snow -- after the runoff was over,
13 they used practically all the water, as far as I know. They
14 needed all the water in Placer Creek.

15 Q. Do you know whether or not they diverted any of
16 this spring runoff, or did they just let it run on down the
17 creek?

18 A. Oh, nobody can use all of the spring runoff,
19 because it amounts to flood conditions in the spring runoff.

20 Q. I take it that Placer Creek -- I'm not
21 familiar with it -- is not a very large creek if 50 inches
22 would be a flood?

23 A. Yes, 50 inches would be a max in my opinion.

24 Q. Now, would it be safe to say or assume that the
25 Casners were probably using ten inches of water all year

1 round?

2 A. At least.

3 Q. Now --

4 A. There was part of the season they were using
5 all they could get out of Placer Creek.

6 Q. That would be late in the summer, I would take
7 it?

8 A. Well, after the spring runoff, they probably
9 utilized all the water on the garden and the meadow.

10 Q. Do you know whether or not they had any conflict
11 with any other water users up there?

12 A. I never heard of any.

13 Q. Now, to the best of your knowledge, the
14 Casners used that water continuously for the last 25 years
15 every year? Do you know of any year, or any --

16 A. No, I don't know of any year that they didn't
17 use it.

18 Q. Was there ever a period for five years that
19 they didn't use the water?

20 A. No.

21 Q. And each one of these years would probably be
22 the same amount, to the best of your knowledge?

23 A. That would be in my opinion.

24 Q. Now, as far as the livestock, you say you
25 think it was a few mules and horses that you are talking

1 about?

2 A. Yes.

3 Q. No cattle of any significant amounts?

4 A. There could have been. I don't know about any.

5 Q. Could you estimate about how many head of
6 livestock they were watering, 5, 10, 15?

7 A. No, I wouldn't estimate. I just remember
8 seeing horses and mules.

9 Q. Would I be safe in saying probably no more
10 than 15?

11 A. Probably not.

12 Q. Probably not more than 15?

13 A. I don't -- it would be an estimate.

14 Q. Now, the Casners, or some descendants of them,
15 have always lived on this ranch?

16 A. As far as I know, as far as to my knowledge.

17 Q. Where was the Ten Mile Lumber Company located?

18 A. At the mouth of Thorn Creek, at the mouth of
19 Thorn Creek as it joins Mores Creek, at the confluence.

20 Q. Did the lumber company take water out of Thorn
21 Creek?

22 A. Yes.

23 Q. Do you have any idea how much?

24 A. No, I don't. That was my first trip up there
25 before I bought stock. I went up and got acquainted with

1 the water situation.

2 Q. Now, to the best of your knowledge, the Casners
3 haven't used that water in any other place other than the
4 garden and the meadow?

5 A. And domestic.

6 Q. Yes, and domestic; is that right?

7 A. That's right.

8 Q. Did they divert water from any other stream in
9 the area for any other property, to your knowledge, say, from
10 Thorn Creek?

11 A. They diverted -- I think they used some from
12 Thorn Creek on the upper part of their meadow for a little
13 while, but I don't --

14 Q. But you don't know how much?

15 A. I don't know how much.

16 Q. You don't know where they diverted or how much?

17 A. No, I never saw the point of diversion.

18 MR. HIGER: I don't have any other questions.

19
20 REDIRECT EXAMINATION

21 BY MR. MARCUS:

22 Q. Now, George, you mentioned that 1925 was the
23 first time that you were acquainted with the use of water
24 out of Placer Creek.

25 Can you say whether or not that use has been

1 continuous since 1925?

2 A. No, Barry, I couldn't say continuous. I was
3 just up there on occasion.

4 Q. But was there ever any five-year period since
5 1925?

6 A. I never went five years without going up there.
7 I would say that there was never a time that there was a
8 five-year period that they didn't use the water.

9 Q. All right. Now, you estimated the flow in
10 Placer Creek from 50 inches down to 10 inches?

11 A. It might have diminished down lower than that.

12 Q. Yes.

13 A. In the dry season, depending on the season.

14 Q. And that's an estimate of the average flow of
15 Placer Creek?

16 A. That would perhaps be my opinion of an average.

17 Q. Now, George, did the Casners use that 50 inches
18 when it was actually flowing 50 inches?

19 A. I never knew of any going on down below, but
20 I didn't check it that close.

21 Q. In other words, am I correct in saying that the
22 Casners used all of the water that was in Placer Creek from
23 the time that they began irrigating?

24 A. I think generally speaking they used most of
25 the water.

1 Q. In other words, you are not testifying that the
2 Casners only used ten inches out of Placer Creek?

3 A. No, I had no reason to measure the stream flow,
4 only just by sight, observation, what I observed.

5 Q. But you did observe that when they were using
6 the water out of Placer Creek, they were using all of the
7 water?

8 A. At any time that I observed it, they were
9 using all of the water.

10 MR. MARCUS: I don't have any other questions.

11 MR. HIGER: I have nothing.

12 (The deposition concluded at 11:00 A.M.)

13 --oOo--
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2
3 VERIFICATION

4 STATE OF IDAHO,)
5 County of Ada) ss.

6 I, GEORGE EMERSON, being first duly sworn on my
7 oath, depose and say:

8 That I am the witness named in the foregoing
9 deposition, consisting of pages numbered 1 to 29, inclusive;
10 that I have read the said deposition and know the contents
11 thereof; that the questions contained therein were propounded
12 to me; that the answers to said questions were given by me,
13 and that the answers as contained therein (or as corrected
14 by me therein) are true and correct.

15
16 George Emerson
17 GEORGE EMERSON

18 Subscribed and sworn to before me this 10th day
19 of July, 1973, at Boise, Idaho.

20
21 Benny L. Marcus
22 NOTARY PUBLIC for the State of Idaho

23 Residing at Boise, Idaho.

24 My commission expires 6/77.
25

REPORTER'S CERTIFICATE

STATE OF IDAHO,)
) ss.
County of Ada.)

I, JOHN C. TUCKER, a Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of the said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 13th day of April, 1973.

John C. Tucker
JOHN C. TUCKER, Notary Public in and for the State of Idaho.

My commission expires 2-1-74.

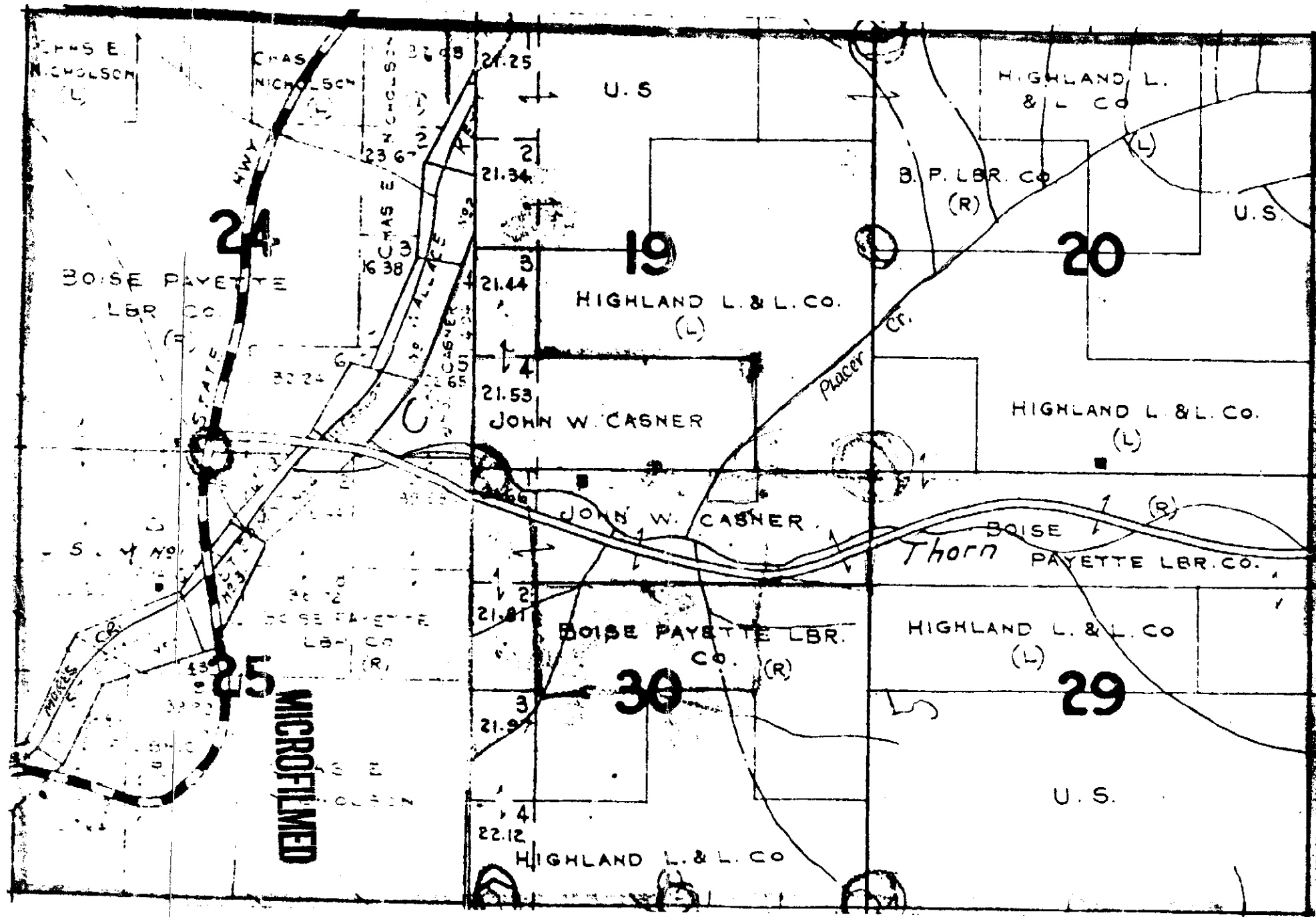
State of Idaho)
County of Boise) ss.
I hereby certify that the foregoing instrument is a full true and correct copy of the original on file in this office.
Dated April 20 1973
Arlene C. Kolar
Clerk
Deputy

JOHN C. TUCKER
COURT & DEPOSITION REPORTER

3/27/73
JOHN C. TUCKER

JOHN C. TUCKER

Notary Public
Official Court Reporter



63-5373

CHAPMAN HORACE
CHAPMAN, EARL
MARCUS, CRAIG &/or BARRY

737 N. 7TH ST., BOISE, ID 83702

Source: PLACER CREEK trib. to THORN CREEK

Priority Date: 01/01/1925

Diversion Pt: NWNE Sec 30 T 05N R 05E

Use: IRRIGATION	(0.50 CFS)
DOMESTIC	(0.50 CFS)

In: NWNE Sec 30 T 05N R 05E FOR 20 ACRES

MICROFILMED

