



## State of Idaho

### DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER, Governor  
GARY SPACKMAN, Interim Director

April 20, 2010

Jeff & Erin Rohlman  
3350 Big Creek RD  
New Meadows, ID 83654

Re: Water Rights from Shared Ditch

Dear Jeff & Erin:

You visited this office and had several questions the other day regarding a shared ditch diverting water from Big Creek for uses in portions of Section 5 and 32. A summary of authorized water rights for the lands in question is attached. Maps outlining some of this information are also enclosed for your convenience.

Rohlman property – Your land falls mostly in SENW, with a smaller portion in NESW, Section 5. This is shown on the map as "29" for your parcel. You own a proportional amount of the 30 acres of irrigation allocated to SENW and a proportional amount of the 23 acres of irrigation allocated to NESW under multiple water rights. This will be reflected in the ownership change you filed the other day.

Clearwater New Meadows LLC property – This property south of your land is identified as "33" on the map. That parcel includes a proportional amount of 30 acres of irrigation allocated to SENW, a proportional amount of 23 acres of irrigation allocated to NESW and all 11 acres of irrigation for SESW, Section 5.

Fair-James LLC property – This property at the north end of the land served by the shared ditch is labeled as "76." This includes irrigation of 40 acres in NESW and 37 acres in SESW, all in Section 32.

Use of water must be consistent with all the elements of water rights. This includes beneficial use, amount of water, period of use, place of use and so forth. For example, irrigation water for property at the north end of the subdivision cannot be used for any purpose at the south end of the subdivision, even if both lands are owned by the same party. Additionally, most of the irrigation rights for the site are described as permissible places of use – multiple rights, each with its individual limits, are combined into a common, larger place of use. This means each irrigator has a proportional amount of the multiple rights. This results in all the irrigators having equal priority dates.

Pond – A pond was developed at the south end of the subdivision as shown on the map. The pond is filled with Big Creek water diverted in the same ditch as the irrigation water. The pond is covered by junior permit no. 78-7377, copy enclosed. The permit authorizes diversion of water from 4/1 to 6/30 each year under a 1995 priority date. The water diverted during that period can be stored all year in the pond. The maximum diversion rate from the creek and therefore from the ditch to the pond is 0.20 cfs (10 inches or about 90 gpm).

Whitney Ranch - Fulson Ditch,  
irrigation & non-irrig pond rights  
- WO 78A -

Jeff & Erin Rohlman  
April 20, 2010  
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The permit describes the pond in NESW, Section 5. The pond was actually developed in NESW and SESW. Most or perhaps all of the pond area matches land listed for irrigation under multiple water rights. A water right not used for five consecutive years can be subject to forfeiture under some circumstances.

Water District – Water diverted from Big Creek is subject to regulation under authority delegated by the Idaho Department of Water Resources (IDWR) Director to the Big Creek Watermaster, Mr. Ed Raney. Watermaster regulation is generally limited to the headgate at the beginning of a ditch and generally does not extend down the ditch. In other words, the Watermaster generally does not regulate diversions from the shared ditch. A senior right can make a delivery call against a junior right during water shortages. Delivery calls are made to the Watermaster, the only person authorized to regulate diversions from tributary sources described by water rights within the water district (Big Creek and all its tributaries).

The Big Creek Water District is complicated by some water rights from sources outside the district (“imported water”). This includes natural flow from Goose Creek and storage water from Brundage Reservoir. Those waters are diverted in a common system and delivered to the Big Creek system via the South End Ditch. Any dispute about the timing and location of this other water with respect to natural flow of the Big Creek system would have to be settled by measurement of imported water compared to Big Creek water. In other words, a water user would have to be accountable to the Big Creek Watermaster if disputes occurred about water rights from these different sources.

Lateral Ditch Association – Three or more users sharing a ditch constitute a lateral ditch association governed under Title 42, Chapter 13, *Idaho Code*. Operational details of running an association are generally private matters between users subject to civil law instead of IDWR and/or Watermaster regulation. A successful lateral association could result in a ditch manager regulating and measuring diversions from the shared ditch after the Watermaster delivered the appropriate amount of water to the head of the ditch. The ditch manager would be responsible for curtailing the use of the ditch for the pond after June 30 each year. Absent an actively managed lateral association, it is possible that IDWR could curtail diversion from the ditch to the pond outside of the authorized period of use under 78-7377. However, IDWR resources for this type of enforcement are very limited, especially under current budget circumstances.

Trespass – Water rights generally do not authorize trespass on private property. Trespass is a civil matter not subject to IDWR regulation. Tampering with headgates owned by other people is also a civil matter. Tampering with a headgate that is regulated by a Watermaster can result in prosecution under Idaho law. Such issues are probably best referred to local law enforcement and/or to attorneys.

I hope you find this information useful. More information is available on the Internet at [www.idwr.idaho.gov](http://www.idwr.idaho.gov). Please contact me at 208-334-2190 if you have any questions.

Sincerely,



Steve Lester  
Water Rights Supervisor

Enclosure

Cc: Watermaster Ed Raney

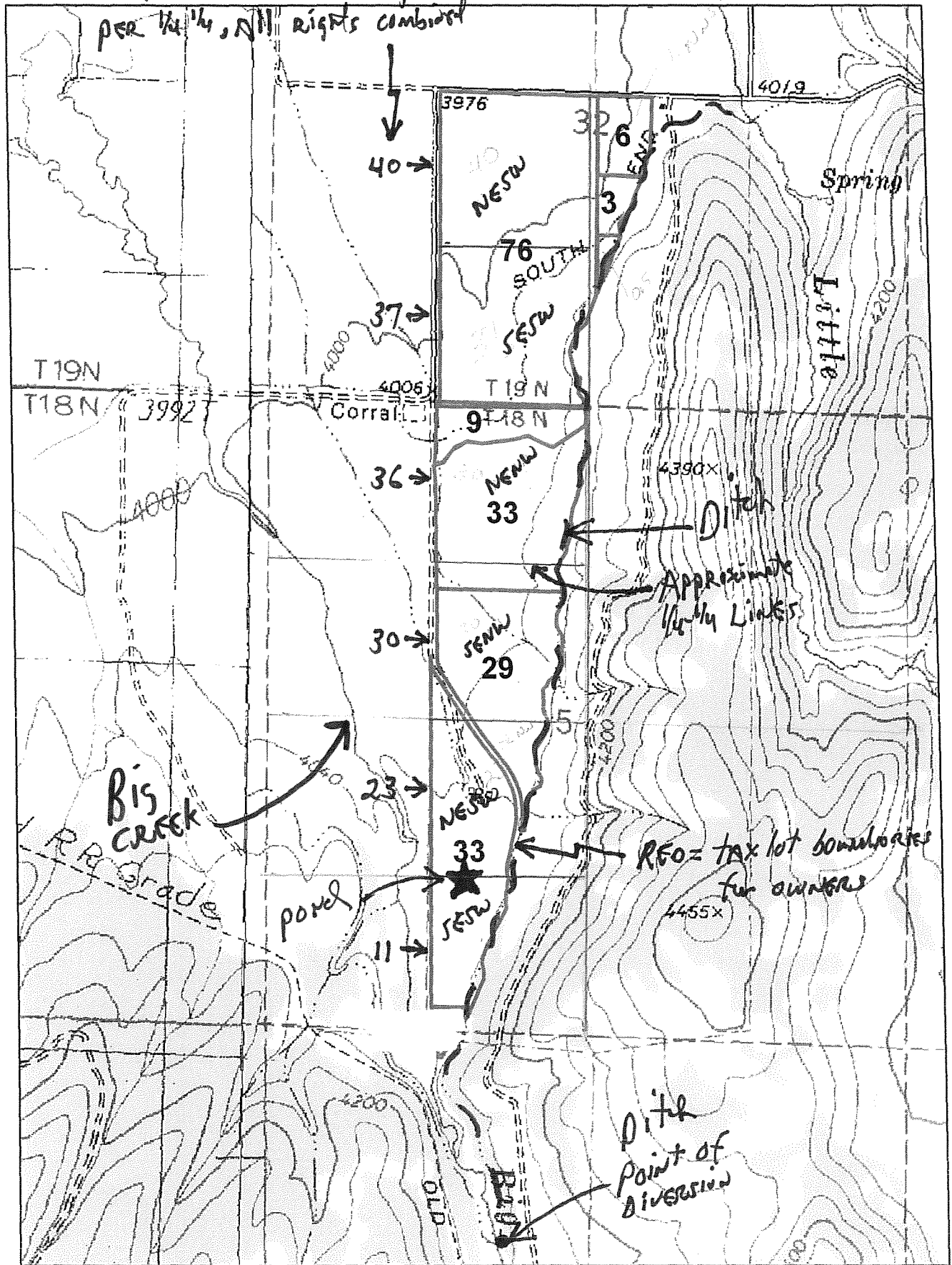
**Water Right Summary for Subdivision, Shared Ditch, listed from south to north:**

LOCATION	WATER RIGHTS	USE	ACRES
Sec. 5 SESW	78-129, 78-130, 78-131, 78-10226, Big Creek	Irrigation	11
Sec. 5 NESW	78-129, 78-130, 78-131, 78-10226, Big Creek	irrigation	23
	78-7377, Big Creek	Non-irrigation pond	N/A
Sec. 5 SENW	78-129, 78-130, 78-131, 78-10226, Big Creek	Irrigation	30
Sec. 5 NENW	78-129, 78-130, 78-131, 78-10226, Big Creek	Irrigation	36
	78-2056, Goose Creek	Irrigation	2.2
	78-2085, Brundage Reservoir	Irrigation from storage	Unknown
Sec. 32 SESW	78-129, 78-130, 78-131, 78-2016, 78-10226, Big Creek	Irrigation	37
	78-2056, Goose Creek	Irrigation	23
	78-2085, Brundage Reservoir	Irrigation from storage	Unknown
Sec. 32 NESW	78-129, 78-130, 78-131, 78-2016, 78-10226, Big Creek	Irrigation	40
	78-2056, Goose Creek	Irrigation	40
	78-2085, Brundage Reservoir	Irrigation from storage	Unknown

**Notes:**

- Right 78-10226 includes 0.02 cfs (1") for year around stockwater in the irrigation place of use served by the shared ditch.
- All above locations and adjacent lands are listed as 40 acres irrigation per  $\frac{1}{4}$   $\frac{1}{4}$  under Brundage Reservoir permit 78-7263A. This is subject to accountability to Watermaster noted in above letter. When licensed, this permit will probably have the same place of use as the older storage right from this reservoir, 78-2085. If so, the storage water will cover land below the South End Ditch for this site. These storage rights can be used anywhere within their place of use instead of being limited to specific acres per  $\frac{1}{4}$   $\frac{1}{4}$ .
- Use of Goose Creek water on some of the above lands is also subject to the same Watermaster accountability.
- Water from Brundage Reservoir and Goose Creek is delivered via the South End Ditch.
- 78-7377 is limited to diversion from the creek, and therefore from the shared ditch, from 4/1-6/30 each year. This right has a maximum diversion rate of 0.20 cfs under a 1995 priority date.

MAX # ACRES CAN irrigate  
per 1/4, 1/2, 3/4 rights combined



↑  
2  
↓

Lower Notes 4/20/10

1/4 mile

R2E



# Idaho Department of Water Resources

## Water Right 78-129 (IRRIGATION)

### Legend

- Point of Diversion
- Place of Use →
- State Outline
- Townships
- PLS Sections
- Quarter Quarters

- Big Creek Rights,  
same place of use:

78-129

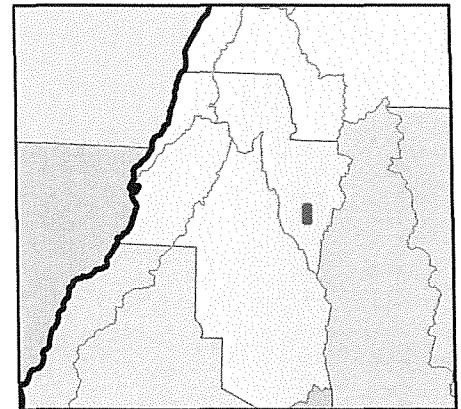
78-130

78-131

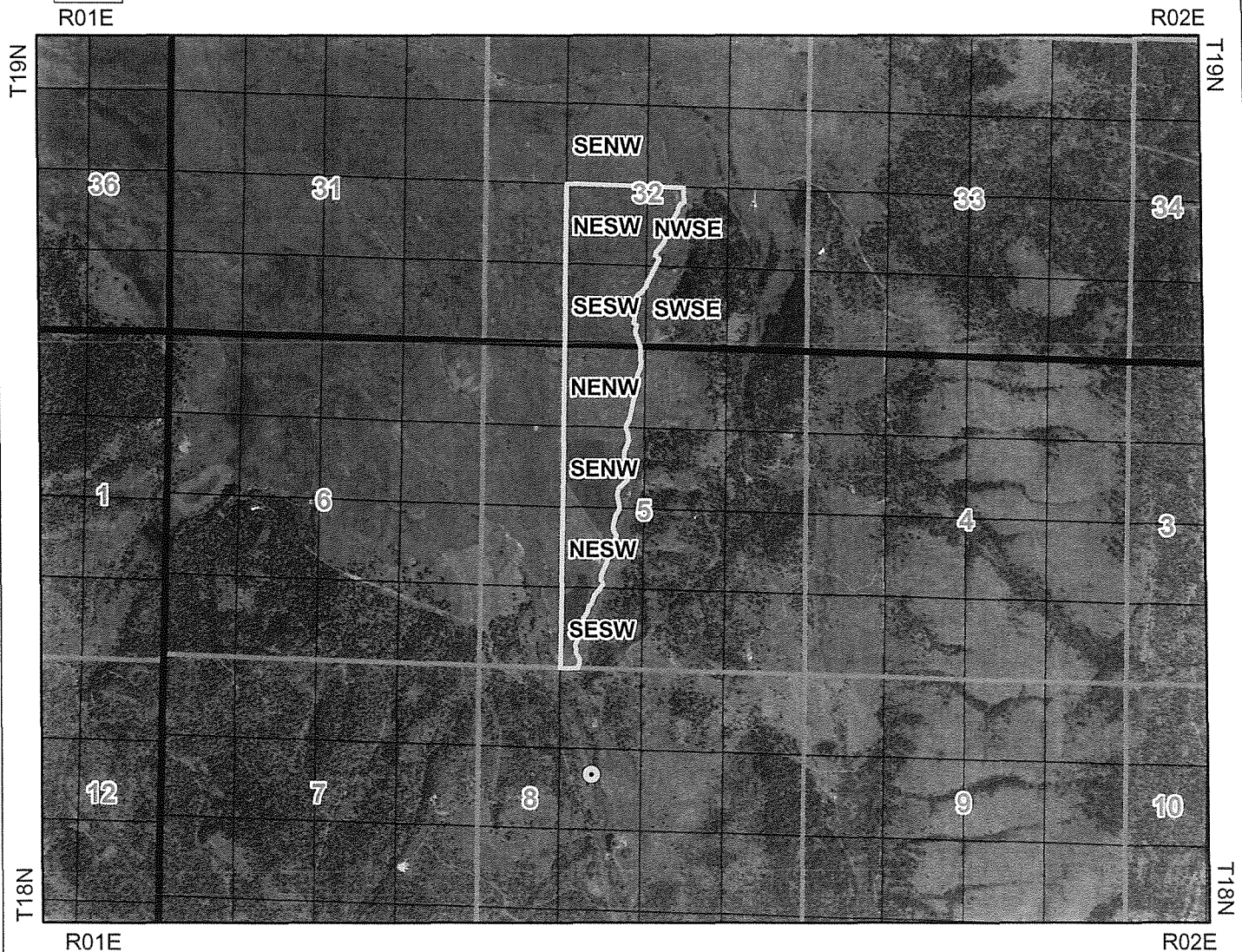
78-10226

includes .02 cfs (1")  
stockwater ALL YEAR

- combined for 188.5 acres total



Adams County  
IDWR Basin 78

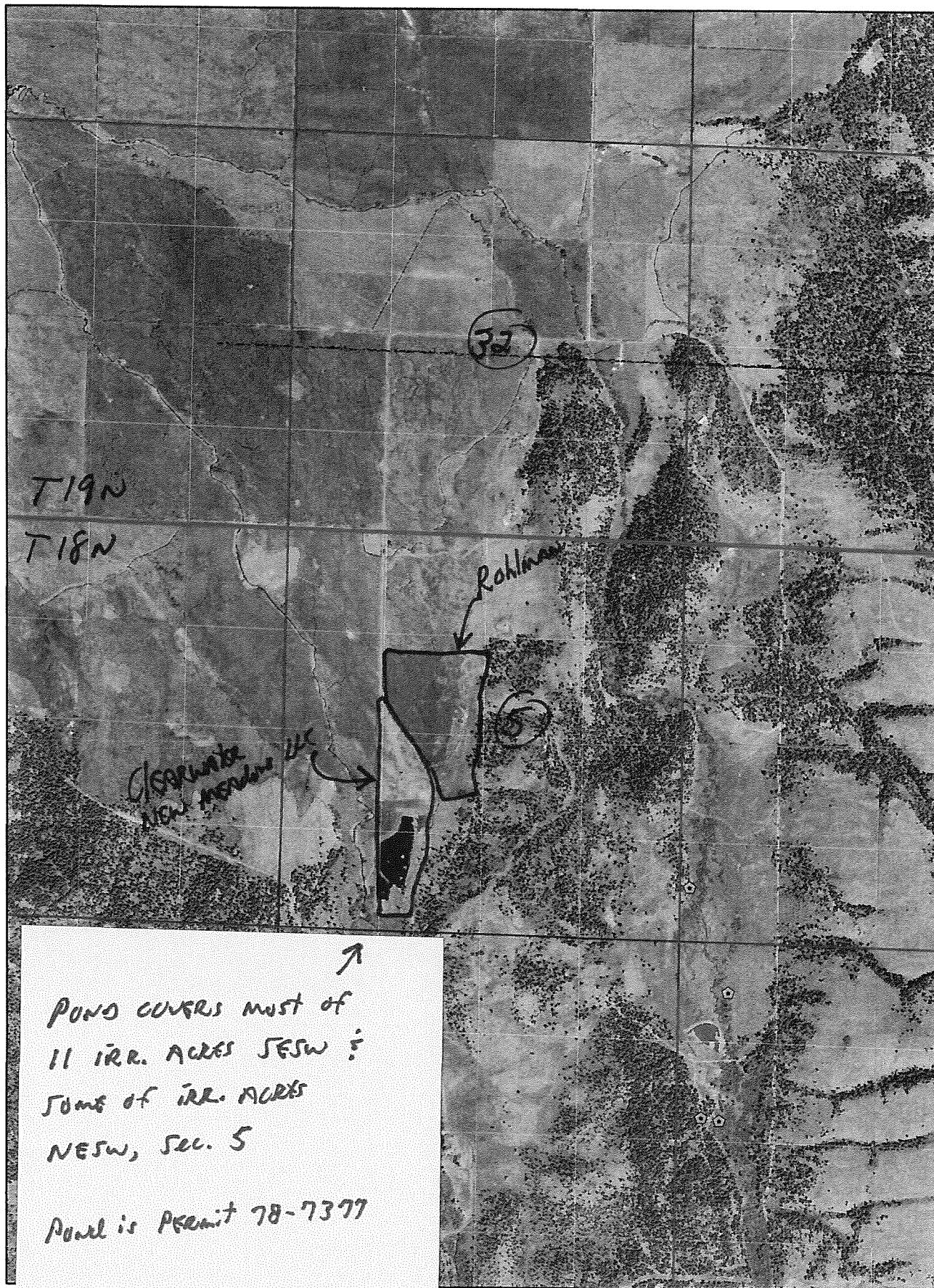


Prepared by Steve Lester  
On April 20, 2010  
2004 Aerial Photography

0 0.5 1 2 Miles



2009 Photo 18N 2E S. 5 etc



↑  
POND COVERS MOST OF  
11 IRR. ACRES SE SW &  
SOME OF IRR. ACRES  
NE SW, SEC. 5

Pond is Permit 78-7377

State of Idaho  
Department of Water Resources  
**Permit To Appropriate Water**  
NO. 78-07377

Proposed Priority: August 31, 1995 Maximum Diversion Rate: 0.20 CFS

This is to certify, that JOHNSON ROEHLER TRUST  
PO BOX 207  
NEW MEADOWS ID 83654-0207  
has applied for a permit to appropriate water from:  
BIG CREEK tributary of LITTLE SALMON RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION STORAGE	01/01 to 12/31		50.0 AF
FIRE PROTECTION STORAGE	01/01 to 12/31		50.0 AF
FIRE PROTECT. FROM STOR	01/01 to 12/31		50.0 AF
DIVERSION TO STORAGE	04/01 to 06/30	0.20 CFS	
	Totals	0.20 CFS	

LOCATION OF POINT(S) OF DIVERSION: SENW , Sec. 8, Township 18N, Range 02E  
ADAMS County

PLACE OF USE: RECREATION STORAGE

TWN RGE SEC

18N 02E 5 NESW

PLACE OF USE: FIRE PROTECT. FROM STOR, same as RECREATION STORAGE use

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before May 1, 1998.
2. Subject to all prior water rights.
3. Use of water under this right may be affected by an agreement between the protestant and the right holder.
4. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
5. Use of water under this right is subject to control by the watermaster of State Water District No. 78A.
6. A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this right.
7. The storage of water under this right is contingent upon the certification of the dam and authorization of storage per the dam safety provisions of the Idaho Code.
8. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.
9. Recreation storage under this permit shall be for non-commercial fish propagation.

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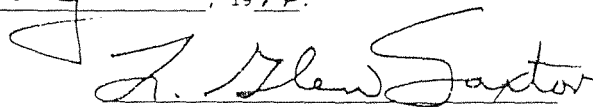
State of Idaho  
Department of Water Resources

## Permit To Appropriate Water

NO. 78-07377

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.  
Witness the signature of the Director, affixed at Boise, this

14<sup>th</sup> day of May, 1996.

  
for  
Karl J. Dreher, Director