

Shurte, Jan

From: Spencer, Nick
Sent: Tuesday, September 27, 2011 9:59 AM
To: Shurte, Jan
Cc: Williams, Ray
Subject: RE: Message from 2083881200

Hi Jan. I want to talk to Mike Creamer to get a better idea of what in the heck Dana and he agreed to. In looking at 33354 it looks to me to be a run-of-the-mill small stockwater right without any storage component. Therefore a combined use limit that includes a storage volume makes no sense being as there is no right to store water under 33354. It looks to me that the combined quantity limiter should be confined to a combined diversion rate limit. On 32910 I also see no need for a combined diversion volume limiter with 33354 since 33354 doesn't have a storage component on it, and therefore no need for a volume limiter. I guess one can put a remark on 32910 saying that its storage volume limit is 45 AFY, but that simply duplicates the storage quantity listed under the purpose of use. It all makes no sense to me. Do you understand what on earth Dana is trying to accomplish? NBS

From: Shurte, Jan
Sent: Tuesday, September 27, 2011 8:03 AM
To: Spencer, Nick
Cc: Williams, Ray
Subject: RE: Message from 2083881200

Good Morning,

I have no problem stating it as "This right and Right No. 63-33354 are limited to a total combined diversion rate of 4.6 cfs and 45 acre feet of storage." Then, we could take out the total volume from the quantity since it is not required for surface water sources anyway.

I think this would clear up the problem and it would be clear to Departmental staff also. In the old days (like way old) we used to type the "for storage" portion into licenses to differentiate the acre foot per year total volume and the storage volume. This is the same thing except, in this case, we can just leave out the total volume with the remark being the explanation.

What do you think?

Jan

From: Spencer, Nick
Sent: Monday, September 26, 2011 6:06 PM
To: Shurte, Jan
Cc: Williams, Ray
Subject: FW: Message from 2083881200

Hi Jan. Do you have any suggestions for how to revise the W & H volume remark? Apparently the volume limiter is supposed to be a storage volume rather than a diversion volume. Let's talk before the status conference tomorrow morning at 11:00. Thanks. NBS

I think this language effectuates the intent of the parties, which, as I understand it, is to limit the combined diversion rate of the two rights to 4.6 cfs, and to limit the storage volume of the storage right to 45 AF to insure that the existing storage pond volume cannot be increased.

Is my thinking in this regard out to lunch? Please let me know what you think.

Thanks.

NBS

2011003981

RECORDED

2011 JAN 28 PM 12 18

CHRIS W. DIO

CANYON COUNTY RECORDER

CLERK
TYPE BSA FEE 91.00
Civem Property
R. M. Obendorf

AGREEMENT

This Agreement is entered into effective the 21st day of January, 2011 by and between W&H Limited Liability Company, an Idaho limited liability company ("W&H") and Gregory Obendorf and G.O. Investments, LLC a Colorado limited liability company (collectively "Obendorf") to resolve pending disputes between them concerning the use of water and water delivery facilities.

RECITALS

- A. W&H owns real property in Canyon County, Idaho adjacent to the Boise River more particularly described in Exhibit A hereto. ("W&H Property")
- B. W&H has filed certain claims in the Snake River Basin Adjudication ("SRBA"), including Amended Claim No. A63-32910 claiming 4.60 cubic feet per second ("cfs")/45 acre-feet per annum ("AFA") from a drain known locally as the Baldrige and Meadows Drain ("Drain") for year-round wildlife, wildlife storage and stock water purposes with a claimed priority date of January 1, 1970 (the "Wildlife Claim"). W&H also has filed late claims A63-33354 claiming 1.55 cfs from the Drain for stock watering with a claimed priority date of March 13, 1944, and Claim A63-33361 claiming .05 cfs from the Lower Haas Ditch for stock watering with a claimed priority date of March 13, 1944 (the "Stock Water Claims").
- C. W&H also has filed an Application for Permit No. 63-32458 ("W&H Application") with the Idaho Department of Water Resources ("IDWR") seeking to appropriate an additional 4.6 cfs/78.8 AFA of water for year-round wildlife purposes from the Drain with a priority date of September 12, 2006 for delivery to the W&H Property via the Upper Haas Ditch via a headgate and control works located on the Obendorf property ("Upper Haas Headgate").
- D. W&H also holds decreed water right Nos. 63-02611A and 63-02611B, each with a priority date of March 13, 1944 for 2.28 cfs for irrigation purposes diverted and delivered from the Drain via the Upper Haas Headgate and Upper Haas Ditch.
- E. W&H also holds water right Permit 63-12601 with a priority date of August 24, 2000 for 0.2 cfs/20AFA for year-round wildlife purposes diverted and delivered from the Drain via the Upper Haas Headgate and Upper Haas Ditch.
- F. The above-described water rights, including applications for permit, permits, licenses, claims and decrees, belonging to W&H are collectively referred to herein as the "W&H

Water Rights.” W&H also owns shares in the Haas Ditch Company for irrigation from the Lower Haas Ditch that are not the subject of this Agreement.

G. Obendorf owns real property adjacent to the W&H property, more particularly described in Exhibit B hereto (“Obendorf Property”), and has filed an Application for Permit No. 63-32460 with IDWR seeking to appropriate 6 cfs/40 acre-feet of water from the Drain with a priority date of April 5, 2005 for wildlife uses from the Upper Haas Headgate and using the Upper Haas Ditch on the Obendorf Property, and an Application for Permit No. 63-32459 seeking to appropriate 24 cfs from the Boise River with a priority date of April 5, 2005 for delivery through the Lower Haas Ditch for wildlife uses (the “Obendorf Applications”). Obendorf also has other water rights, including without limitation, from the Riverside Irrigation District and the Haas Ditch Company, that are not the subject of this Agreement.

H. Obendorf also desires to obtain a water right for the same purposes and in the same quantity as sought in Application for Permit 63-32460 to be diverted and delivered to storage and wildlife purposes from March 1 through November 15 from the Upper Haas Headgate and using the Upper Haas Ditch on the Obendorf Property. A copy of Obendorf’s proposed new permit application is attached hereto as Exhibit C. Obendorf may also desire to obtain a water right for the same purposes as sought in Application for Permit 63-32459 to be diverted from the Boise River for delivery through the Lower Haas Ditch for wildlife uses from March 1 through November 15.

I. Obendorf also intends filing: 1) a SRBA claim for a water right for wildlife and wildlife storage purposes using water diverted from the “Meadows Drain,” a tributary to the Drain, to be delivered to existing ponds on the Obendorf Property lying south of the Lower Haas Ditch, which water right would not be diverted or delivered from the Upper Haas Headgate or Upper Haas Ditch; 2) a SRBA claim for a water right for irrigation of ten acres of the Obendorf Property lying south of the Lower Haas Ditch using wastewater diverted directly from lands owned by Obendorf lying south and west from the Drain; and 3) a SRBA claim for a water right for irrigation of twelve acres of the Obendorf Property lying on both sides of the Lower Haas Ditch using water from the Drain diverted at the Upper Haas Headgate and delivered through and from the Upper Haas Ditch on the Obendorf Property. Copies of the above-described proposed SRBA Claims are attached hereto as Exhibits D, E and F respectively (the “Obendorf SRBA Claims”).

J. W&H has filed an Objection in the SRBA to IDWR’s recommendation of disallowal of its Wildlife Claim. Obendorf has filed a Response in the SRBA supportive of IDWR’s recommendation of disallowal of the Wildlife Claim and the matter currently is set for trial.

K. W&H has protested the Obendorf Applications and notified IDWR that Obendorf currently has no consent from W&H to use the Upper Haas Headgate or Upper Haas Ditch to deliver water to the Obendorf property. Obendorf has protested W&H’s Application for Permit No. 63-32458 raising as an issue, among other things, that W&H does not have an easement to

use the Upper Haas Headgate and Upper Haas Ditch to deliver the water sought by the Application.

L. W&H and Obendorf wish to resolve these various disputes between them concerning water use and use of the Upper Haas Headgate and Upper Haas Ditch on terms set forth herein.

M. The general locations of the various drains and ditches are described in Exhibit G hereto.

NOW THEREFOR, in consideration of the recitals, terms, covenants and conditions set forth herein, the parties agree as follows:

1. W&H and Obendorf will enter into a stipulated settlement by way of an SF-5 approved by IDWR allowing entry of a partial decree in the SRBA of the Wildlife Claim providing that the combined diversion rate for wildlife and stock water purposes under the Wildlife Claim and stock water claim A63-33354 is 4.6 cfs/45 AFA, and including language in substantially the following form subordinating the priority of the Wildlife Claim to the priority of Application for Permit No. 63-32460 when there is not a sufficient flow of water in the Drain to fully satisfy both:

This water right shall be subordinate to Water Right No. 63-32460. When the quantity of water necessary for the authorized beneficial use under Water Right No. 63-32460 is not available to be delivered from the source of this water right, diversions under this water right shall be limited to the extent required to supply the authorized beneficial use under Water Right No. 63-32460.

2. Obendorf shall not object to IDWR's recommendations and the SRBA's approval and partial decree of the Stock Water Claims, provided that W&H will reduce the quantity claimed for stock water under its late claim A63-33354 to 0.05 cfs, which, when combined with the Wildlife Claim, shall be limited to a total diversion rate and volume from the Drain of 4.6 cfs/45 AFA.

3. W&H shall file appropriate documents with IDWR to withdraw its protests to the now pending Obendorf Applications subject to IDWR approval consistent with the terms and conditions herein specified, and agrees not to protest the proposed applications described in Recital H above, including, without limitation, Exhibit C hereto. W&H's protest withdrawals will specifically state that a permit may be issued pursuant to such application for water right No. 63-32460 to Obendorf for 6 cfs/40 acre-feet, with a source of the Drain diverted at Upper Haas Headgate and delivered through the Upper Haas Ditch on the Obendorf Property as provided herein, and such Permit No. 63-32460 and any subsequently issued license of same, may

expressly recognize the subordination of W&H's Wildlife Claim described in Section 1 above to Permit No. 63-32460.

4. Obendorf may file the new application for permit shown in Exhibit C hereto, and provided that any permit issued has a priority date junior to September 12, 2006, W&H will not protest the new application. Obendorf may also file an Application for Permit for a water right for the same purposes as sought in Application for Permit 63-32459 to be diverted from the Boise River for delivery through the Lower Haas Ditch for wildlife uses from March 1 through November 15.

5. Obendorf may file the Obendorf SRBA Claims and, provided such SRBA Claims are recommended in substantial conformance with the elements contained in the attached Exhibits D, E and F, W&H will not object to the Obendorf SRBA Claims.

6. Obendorf will withdraw its protest to the W&H Application, subject to IDWR approval consistent with the terms and conditions herein specified.

7. Obendorf and W&H agree to share equally the cost of design and construction of any new measuring and/or control structure(s) that may be required by IDWR to allow the Watermaster to measure and deliver their respective water rights from the Drain at the Upper Haas Headgate. Upon the request of either party, one or more structures shall be designed and constructed after IDWR consultation, and as applicable, after approval from IDWR and/or U.S. Army Corps of Engineers, to allow W&H and Obendorf to accurately measure and confirm that they each are getting their authorized quantities from the Upper Haas Ditch. If IDWR recommends that accurate measurement can be obtained using only one structure, the parties will share equally in the costs and design of that measurement structure. If separate structures are recommended by IDWR for the parties' respective diversions from the Upper Haas Ditch, then W&H and Obendorf will be solely and individually responsible for designing and constructing all such measurement structures at any points measuring delivery of their individual respective water rights.

8. Obendorf agrees to take appropriate steps as necessary to ensure that the existing roadway by which W&H accesses the Upper Haas Headgate is not made impassable due to flooding or seepage resulting from Obendorf's use of water diverted at the Upper Haas Headgate.

9. Obendorf confirms W&H's existing right-of-way for the Upper Haas Headgate and the Upper Haas Ditch located on the Obendorf Property and W&H's continued right of access thereto for operation, maintenance, repair and replacement of same for delivery of water to the W&H Property under the W&H Water Rights described in this Agreement, and W&H confirms Obendorf's continued right of access to the Upper Haas Headgate and Upper Haas Ditch for the construction, operation, maintenance, repair and replacement of Obendorf's portion of the Upper Haas Headgate and Upper Haas Ditch for delivery of water to the Obendorf Property under the various Obendorf water rights, applications, permits and claims described in this Agreement.

10. W&H and Obendorf shall endeavor in good faith to implement this Agreement and shall not encourage or assist any third party in undertaking any action that either of them would be precluded from taking themselves by way of this Agreement.

11. This Agreement may be recorded by either party or produced by either party in any proceeding before the SRBA or the IDWR to confirm the parties' intent with respect to the processing of the water right claims and applications that are the subject hereof.

12. All of the obligations and covenants contained herein shall be binding on the parties hereto and their respective principals, members, managers, agents, employees, representatives, successors and assigns.

13. Each party will bear their own attorney fees and costs with respect to proceedings regarding the water right applications and/or SRBA claims that are the subject of this Agreement.

14. In the event of a breach of this Agreement by any party, the non-breaching party shall have all remedies available at law or in equity, including injunctive or other equitable relief. In any suit, action or appeal therefrom to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' and consultants' fees and disbursements, and also including reasonable attorneys' fees and costs and fees associated with any appeal of a judgment.

15. This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement

[End of text – separate signature pages follow]

W&H LIMITED LIABILITY COMPANY,
an Idaho limited liability company

By: Gerald A. Waller
Gerald A. Waller, Manager

STATE OF IDAHO)
) ss.
County of Ada)

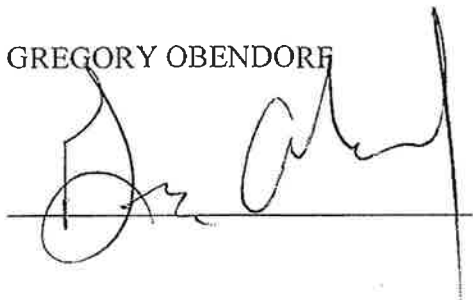
On this 6th day of January, 2011, before me, a Notary Public in and for the State of Idaho, personally appeared Gerald A. Waller, known or identified to me to be one of the members in the limited liability company of W&H Limited Liability Company, LLC and the member or one of the Managers of said limited liability company who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Katharine Creswell
Notary Public for Idaho
Residing at: Ada County
My commission expires: 3/22/16

GREGORY OBENDORF



STATE OF IDAHO)

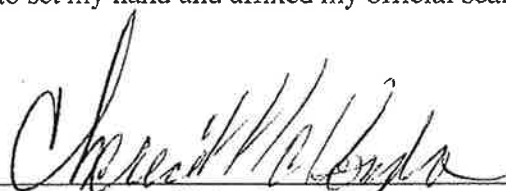
) ss.

County of Canyon)

On this 18th day of January, 2011, before me, the undersigned, a notary public in and for said county and state, personally appeared Gregory Obendorf, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Notary Public for Idaho
Residing at Paris
Commission expires 12/02/2011

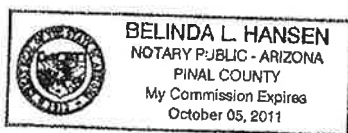
G.O. INVESTMENTS, LLC
a Colorado limited liability company

By: George Ray Obendorf
George Ray Obendorf, Manager

STATE OF ARIZONA)
) ss.
County of MARICOPA)

On this 17 day of January, 2011, before me, a Notary Public in and for the State of ARIZONA, personally appeared George Ray Obendorf, known or identified to me to be one of the members in the limited liability company of G.O. Investments, LLC and the member or one of the Managers of said limited liability company who subscribed said name to the foregoing instrument, and acknowledged to me that he executed the same in said limited liability company name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written



Belinda L. Hansen
Notary Public for ARIZONA
Residing at: Queen Creek, AZ
My commission expires: 10-5-2011

EXHIBIT A
(W&H Property Description)

Parcel I

A tract of land situated in the County of Canyon, State of Idaho to wit:

Beginning at the Northwest corner of Lot 3, Section 21, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho and running thence West on the North line of said Section 21, a distance of 1305 feet; thence South 17°10' West 250.0 feet; thence South 3°45' East 565.0 feet; thence South 16°45' East 245.5 feet; thence North 90°0' East 102.2 feet; thence South 68°30' East 295.5 feet; thence South 49°44' East 428.7 feet; thence South 56°10' East 343.0 feet; thence South 67°28' East 335.9 feet to a point 1735.25 feet South of the North $\frac{1}{4}$ corner of Section 21, Township 5 North, Range 5 West of the Boise Meridian; thence South 76°38' East 416.6 feet; thence South 63°07' East 255.3 feet; thence South 82°50' East 132.5 feet; thence North 84°55' East 271.0 feet; thence South 26°45' East 231.3 feet; thence North 89°53' East 176.3 feet; thence North 78°50' East 380.7 feet; thence South 68°25' East 546.0 feet; thence South 73°22' East 486.0 feet; to a point which is North 6°38' East 254.0 feet from the $\frac{1}{4}$ corner between Section 21 and 22, Township 5 North, Range 5 West of the Boise Meridian; thence South 82°58' East 515.5 feet; thence South 81°30' East 413.0 feet to the Southwesterly bank of the Boise River; thence continuing South 81°30' East 375.8 feet to a point on the East side of Lot 4 of Section 22, Township 5 North, Range 5 West of the Boise Meridian 81.3 feet North of the Southeast corner of said Lot 4; thence North along the East side of Lot 4 and the Northwest $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 22 to the North line of said Section 22, thence West along the North line of Section 22 and Section 21, Township 5 North, Range 5 West of the Boise Meridian to the North $\frac{1}{4}$ corner of said Section 21, which is the Northwest corner of Lot 3, Section 21, Township 5 North, Range 5 West of the Boise Meridian, Canyon County, Idaho, the point of Beginning. (Consisting of 242 acres more or less.)

Parcel II

Beginning at a point 20.0 feet East of the Northwest corner of the Southwest Quarter of Lot Six of Section Twenty-one, Township Five North, Range Five West of the Boise Meridian, thence North $2^{\circ} 55'$ East 645.0 feet; thence North $2^{\circ} 10'$ West 252.0 feet; thence North $16^{\circ} 45'$ West 12.5 feet; thence North $90^{\circ} 0'$ East, 102.2 feet; thence South $68^{\circ} 30'$ East 295.5 feet; thence South $49^{\circ} 44'$ East 428.7 feet; thence South $56^{\circ} 10'$ East 343.0 feet; thence South $67^{\circ} 28'$ East 335.9 feet to a point 1735.25 feet South of the quarter corner on the North side of said Section Twenty-one; thence South $76^{\circ} 38'$ East 416.6 feet; thence South $63^{\circ} 07'$ East 255.3 feet; thence South $82^{\circ} 50'$ East 132.5 feet; thence North $84^{\circ} 55'$ East 271.0 feet; thence South $26^{\circ} 45'$ East 231.3 feet; thence North $89^{\circ} 52'$ East 176.3 feet; thence North $78^{\circ} 50'$ East 380.7 feet; thence South $68^{\circ} 25'$ East 546.0 feet; thence South $73^{\circ} 22'$ East 486.0 feet to a point North $6^{\circ} 38'$ East 254.0 feet from the Quarter corner between Section Twenty-one and Twenty-two, Township Five North, Range Five West of the Boise Meridian; thence South $82^{\circ} 58'$ East 515.5 feet; thence South $81^{\circ} 30'$ East 413.0 feet to the Southwesterly bank of the Boise River; thence continuing South $81^{\circ} 30'$ East 375.8 feet to a point on the East side of Lot Four of Section Twenty-two, Township Five North, Range Five West of the Boise Meridian, 81.3 feet North of the Southeast corner of said Lot Four; thence South along the east side of Lot Four and Lot Three, Section Twenty-two, Township Five North, Range Five West of the Boise Meridian, to the Southeast corner of Lot Three (Northwest Quarter of the Southwest Quarter) of Section Twenty-two, Township Five North, Range Five West of the Boise Meridian; thence West along the South line of Lot Three of Section Twenty-two, and Lot Nine of Section Twenty-one, Township Five North, Range Five West

(continued on next page)

of the Boise Meridian, to a point 180.0 feet East of the Southwest corner of Lot Nine (Northeast Quarter of the Southeast Quarter) of Section Twenty-one, Township Five North, Range Five West of the Boise Meridian; thence Northwesterly 269.1 feet to a point 200.0 feet North of the said Southwest corner of Lot Nine; thence North 130.0 feet; thence West 1324.6 feet parallel to the center line of Section Twenty-one; thence North 991.5 feet to the center of Section Twenty-one, Township Five North, Range Five West of the Boise Meridian; thence 663.4 feet West along the center line of said Section Twenty-one; thence North 660 feet; thence West 640 feet to the point of beginning;

Parcel III

The Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southeast Quarter of Section 16, Township 5 North, Range 5 West, Boise Meridian, Canyon County, Idaho.

EXCEPTING from said Southwest Quarter of the Southeast Quarter:

BEGINNING at the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section 16; running thence due

South 210 feet; thence due

West 210 feet; thence due

North 210 feet; thence due

East 210 feet to the POINT OF BEGINNING.

(The end of Exhibit A)

EXHIBIT B
(Obendorf Property Description)

Lot 10 of Sec. 21, and Lot 5 of Sec. 22, and Lot 4 of Sec. 27 and the NE¼ of the NE¼ of Sec. 28;

ALSO a strip of land of uniform width off the entire South side of the NW¼ of the SE¼ of Sec. 21, said strip of land containing 10 acres;

ALSO, a tract of land in the SW corner of Lot 9 of Sec. 21, described as follows, to-wit:
Commencing at the SW corner of said Lot 9, running thence East along the South side of said Lot 9, 180 feet, thence in a NWrlly direction to a point on the West line of said Lot 9, 200 feet North of the SW corner of said lot, thence South along the West line of said Lot 9 to the SW corner of said lot, the point of beginning.

ALL of the above described land being in Twp. 5 N,R 5 W B.M.;

EXCEPTING therefrom the lands conveyed to the United States of America by deed recorded in Book 76 of Deeds, at page 535, records of Canyon County, Idaho, to which reference is hereby made, AND SUBJECT to the rights acquired by agreement recorded in Book 4 of Bonds and Agreements, at page 29, records of Canyon County, Idaho, to which reference is hereby made.

EXHIBIT C
(Obendorf Permit Application)

FORM 202 03/10 Print form on a 2 page, single-sided document

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. _____

1. Name of applicant(s) G. O. Investments, LLC Phone 208-482-7397
Name connector (check one): ☐ and ☐ or ☐ and/or

Mailing address: 24034 Batt Corner Road City Parma

State ID Zip 83660 Email: _____

2. Source of water supply Unnamed Drain which is a tributary of Boise River

3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
5N	5W	27	4	NE	NW	NW	Canyon	Unnamed Drain	

4. Water will be used for the following purposes:

Amount 6.0 cfs for Wildlife purposes from 2/29 to 11/15 (both dates inclusive)
(cfs or acre-feet per year)

Amount 6.0 cfs for Diversion to Storage purposes from 2/29 to 11/15 (both dates inclusive)
(cfs or acre-feet per year)

Amount 40.0 af for Wildlife Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

5. Total quantity to be appropriated is (a) 6.0 cubic feet per second (cfs) and/or (b) 40.0 acre-feet per year (af).

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Checkbox, pipe

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11.

For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No

e. If well is already drilled, when? _____; drilling firm _____;

Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (if irrigation only, go to item 8):

a. Hydropower; show total feet of head and proposed capacity in kW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. _____

d. Domestic; show number of households _____

e. Other; describe fully. Five ponds covering a total of 10 acres with an average depth of 4 feet are planned for wildlife

8. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	5W	22											Lt 5						
													W						
		27						Lt 4											
								W											

Total number of acres to be irrigated: _____

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 63-32460

- Who owns the property at the point of diversion? Applicant
- Who owns the land to be irrigated or place of use? Applicant
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. Source also known as Baldridge and Meadows Drain. This application covers the remainder of the year not covered on application 63-32460 for the uses described above.

12. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

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 rejection of the application or cancellation of an approval.

Signature of Applicant _____

Signature of Applicant _____

Print Name (and title, if applicable) _____

Print Name (and title, if applicable) _____

For Department Use:

Received by _____ Date _____ Time _____ Preliminary check by _____

Fee \$ _____ Received by _____ Receipt No. _____ Date _____

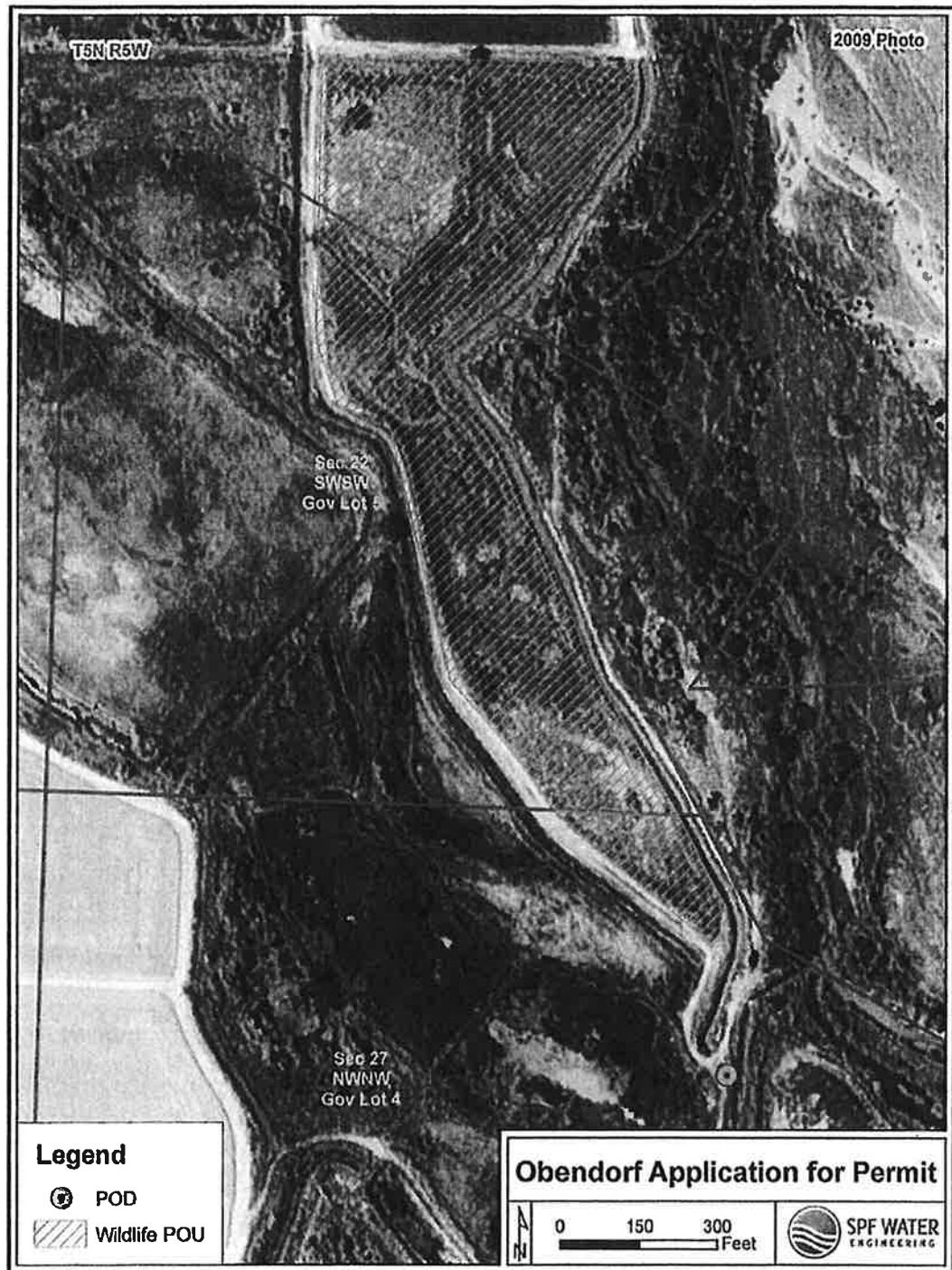


EXHIBIT D
(Obendorf SRBA Claim - wildlife ponds)

SRBA Form No.42-1409-1 (Internet 2/09)

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

**IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM**

CIVIL CASE NUMBER: 39576

Ident. Number _____
Date Received: _____
Receipt No: _____
Received By: _____

**NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) G. O. Investments, LLC Phone (208) 482-7397
Mailing Address 24034 Batt Corner Road, Parma, Idaho ZIP 83660

Street or Box City State
 2. Date of Priority (Only one (1) per claim) March 14, 1944

Month Day Year (YYYY)
 3. Source of water supply (Check one) Ground Water () or Other (✓) (a) Meadows Drain
which is tributary to (b) Boise River
 4. a. Location of Point of Diversion is: Township 5N, Range 5W, Section 27,
NW, 1/4 of NW, 1/4 Govt. Lot 4, BM., County of Canyon
- Parcel (PIN) no. _____
- Additional points of diversion if any: _____
- If available, GPS Coordinates _____
- b. If instream flow, beginning point of claimed instream flow is:
- Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4
- Govt. Lot _____, BM., County of _____
- ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4
- Govt. Lot _____, BM., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Ponds cover about 12 acres at an average depth of 2 feet.

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Wildlife purposes from 1/1 to 12/31 amount 2.5 or _____

For Diversion to Storage purposes from 1/1 to 12/31 amount 2.5 or _____

For Wildlife Storage purposes from 1/1 to 12/31 amount _____ or 24.0

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 2.5 (cfs) and/or (b) 24.0 (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) _____

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	5W	22											Lt 5						
													W						
		27						Lt 4											
								W											

Parcel (PIN) no(s). _____

Total number of acres irrigated _____

10. In which county (ies) are lands listed above as place of use located? Canyon

11. Do you own the property listed above as place of use? Yes (✓) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

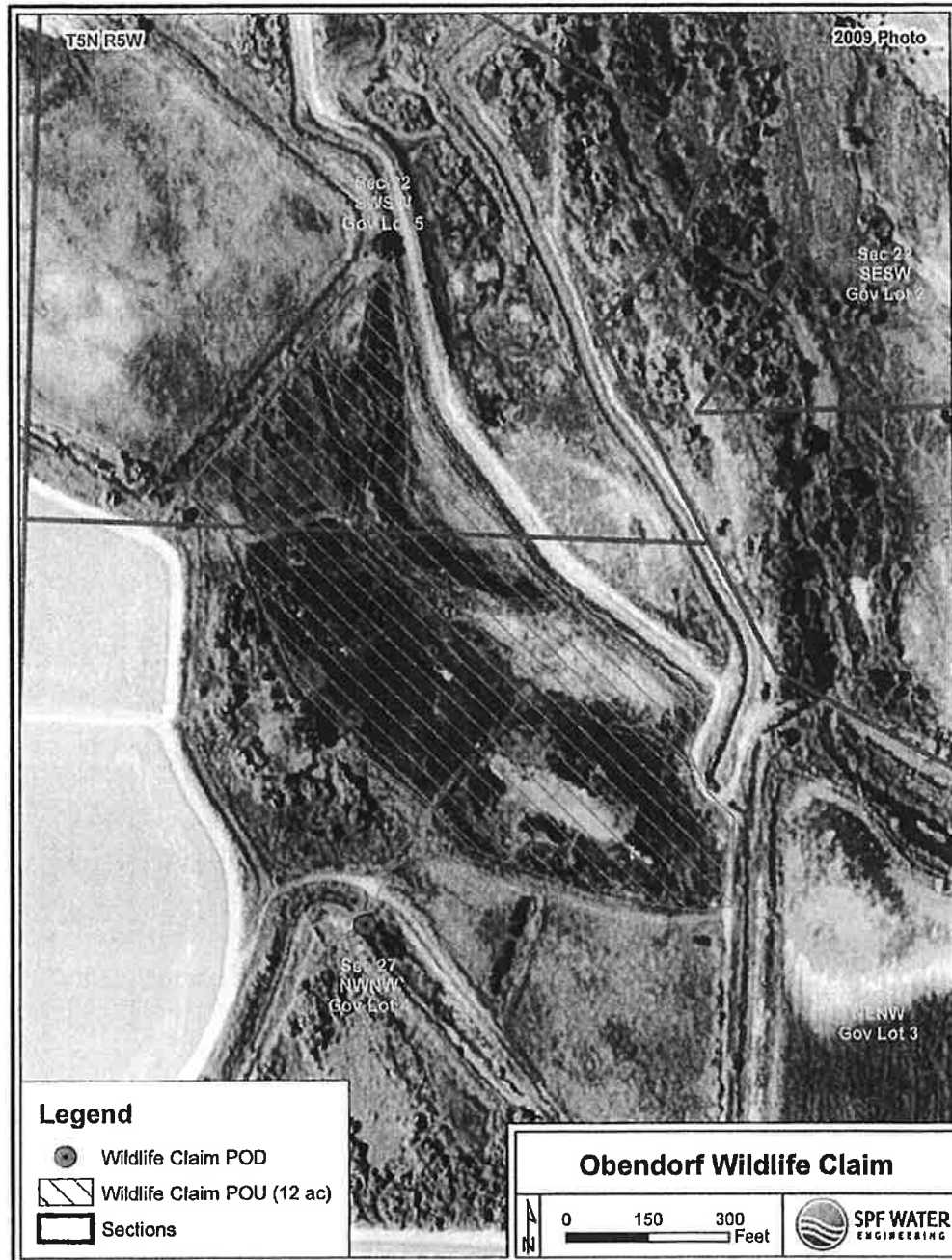
_____ or None (✓)

13. Remarks: Meadows Drain is a drain that flows through the SESE Section 28, T5N, R5W to a confluence with the "Baldridge and Meadows Drain". The confluence of the two drains is located near the boundary of the SENWNW, Section 27 and the SWNENW, Section 27, T5N, R5W. The point of diversion for this claim is upstream of the confluence of the two drains.

Last Name G. O. Investments, LLC

Identification No. _____

Map of Project: Attach aerial photograph or topographic map showing clearly the point of diversion, place of use, section number, township, and range number, unless unavailable. Otherwise sketch the elements above on the grid below.



14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication." (b.) I/We do (☐) do not (☐) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1 Aerial Photo

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Manager _____ of G. O. Investments, LLC

Title

Organization

that I have signed the foregoing document in the space below as

Manager _____ of G. O. Investments, LLC

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Dana L. Hofstetter, Hofstetter Law Office, LLC, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address Hofstetter Law Office, LLC

608 West Franklin Street, Boise, ID 83702

EXHIBIT E
Obendorf SRBA Claim - irrigation)

SRBA Form No 42-1409-1 (Internet 2/09)

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

**IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM**

CIVIL CASE NUMBER: 39576

Ident. Number _____
Date Received: _____
Receipt No: _____
Received By: _____

**NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) G. O. Investments, LLC Phone (208) 482-7397
Mailing Address 24034 Batt Corner Road, Parma, Idaho ZIP 83660
Street or Box _____ City _____ State _____
2. Date of Priority (Only one (1) per claim) March 1, 1940
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other () (a) Waste water
which is tributary to (b) Boise River

4. a. Location of Point of Diversion is: Township 5N, Range 5W, Section 21,
SE, 1/4 of SE, 1/4 Govt. Lot 10, BM., County of Canyon

Parcel (PIN) no. _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed
and as enlarged and the depth of each well: Waste water collection pond, concrete ditch

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Irrigation purposes from 3/1 to 11/15 amount 1.0 or _____
 For Diversion to Storage purposes from 3/1 to 11/15 amount 1.0 or _____
 For Irrigation Storage purposes from 3/1 to 11/15 amount _____ or 15
 For Diversion from Storage purposes from 3/1 to 11/15 amount 1.0 or _____

7. Total quantity claimed (a) 1.00 (cfs) and/or (b) 15 (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) _____

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	5W	27						Lt 4											
								5											5
		21																stg	

Parcel (PIN) no(s) _____

Total number of acres irrigated 5

10. In which county (ies) are lands listed above as place of use located? Canyon

11. Do you own the property listed above as place of use? Yes (✓) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

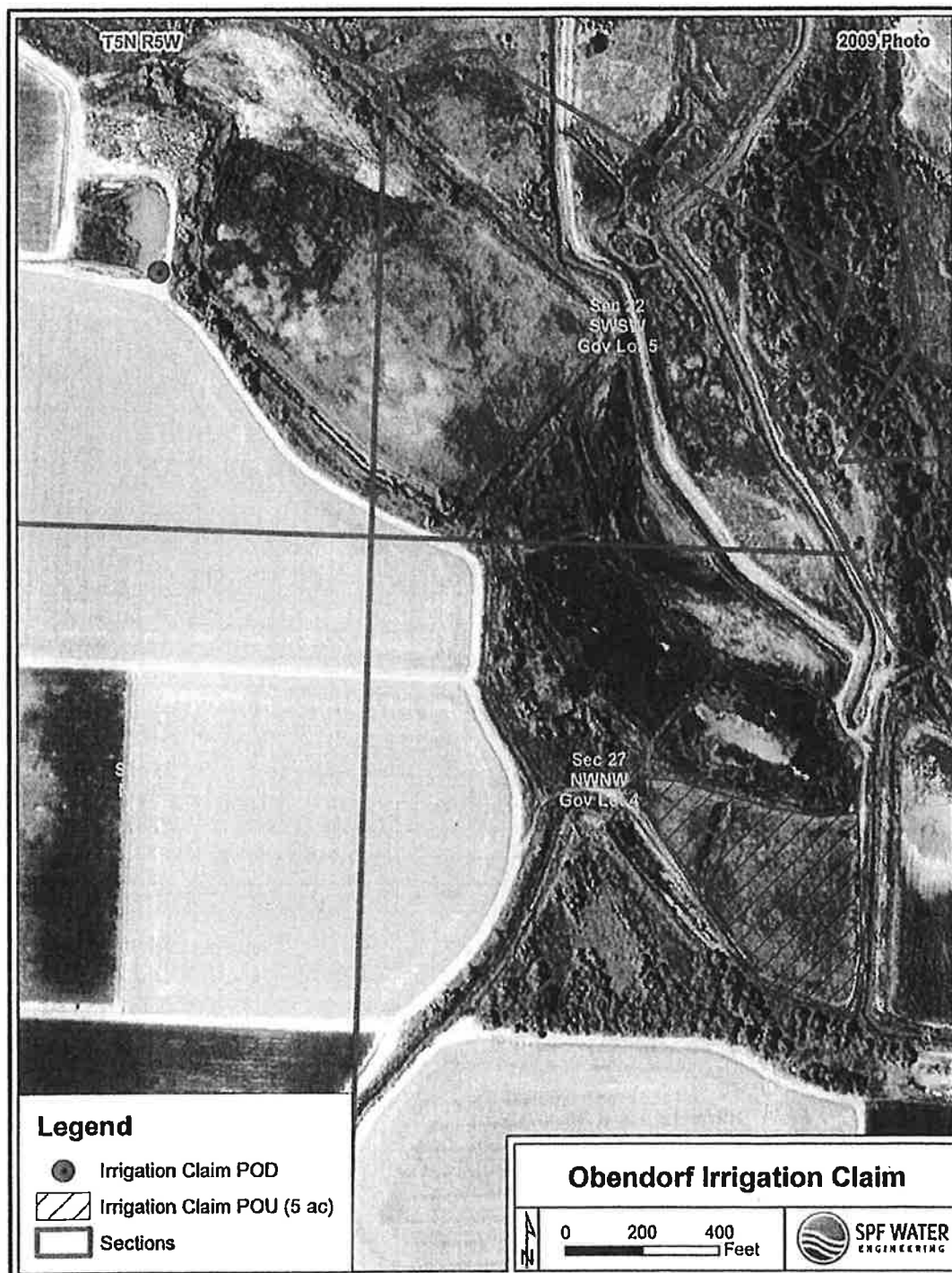
12. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None (✓)

13. Remarks: Source of water is waste water from Riverside Irrigation District irrigated lands owned by the claimant that are located west of the place of use and point of diversion for this claim.

Last Name G. O. Investments, LLC

Identification No. _____



14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication." (b.) I/We do (☐) do not (☐) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1 Aerial Photo

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Manager _____ of G. O. Investments, LLC
Title _____ Organization _____

that I have signed the foregoing document in the space below as

Manager _____ of G. O. Investments, LLC
Title _____ Organization _____

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Dana L. Hofstetter, Hofstetter Law Office, LLC, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____ Date _____

Address Hofstetter Law Office, LLC

608 West Franklin Street, Boise, ID 83702

Last Name _____ Identification No. _____

EXHIBIT F
(SRBA Irrigation Claim from Upper Haas)

SRBA Form No.42-1409-1 (Internet 2/09)

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

**IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM**

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received: _____

Receipt No: _____

Received By: _____

**NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) G. O. Investments, LLC Phone (208) 482-7397

Mailing Address 24034 Batt Corner Road, Parma, Idaho ZIP 83660

Street or Box _____ City _____ State _____

2. Date of Priority (Only one (1) per claim) March 14, 1944
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water () or Other () (a) Baldrige and Meadows Drain

which is tributary to (b) Boise River

4. a. Location of Point of Diversion is: Township 5N, Range 5W, Section 27

NW, 1/4 of NW, 1/4 Govt. Lot 4, BM., County of Canyon

Parcel (PIN) no: _____

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. _____

6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Irrigation purposes from 3/1 to 11/15 amount 1.00 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 1.00 (cfs) and/or (b) _____ (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) _____

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	5W	21																L10	
																		1	1
		22											L 5						
													11						11

Parcel (PIN) no(s). _____

Total number of acres irrigated 12

10. In which county (ies) are lands listed above as place of use located? Canyon

11. Do you own the property listed above as place of use? Yes (✓) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

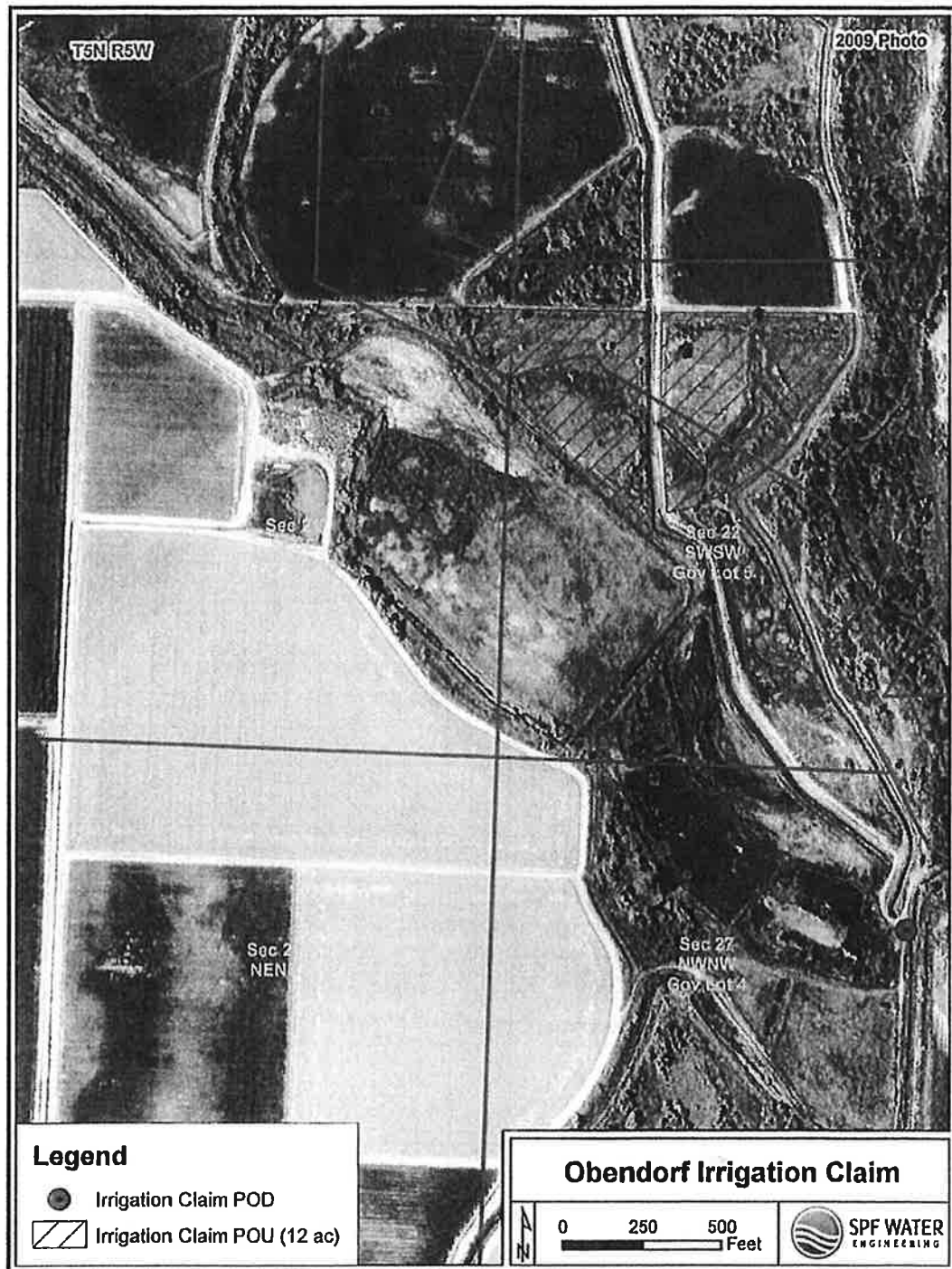
12. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None (✓)

13. Remarks: This claim includes 0.4 cfs for conveyance loss between the point of diversion and the field headgate.

Last Name G. O. Investments, LLC

Identification No. _____



14. Basis of Claim (Check One) Beneficial Use (☒) Posted Notice (☐) License (☐) Permit (☐) Decree (☐)

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number _____

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Snake River Basin Adjudication." (b.) I/We do (☐) do not (☐) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1 Aerial Photo

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

Manager _____ of G. O. Investments, LLC _____
Title Organization

that I have signed the foregoing document in the space below as

Manager _____ of G. O. Investments, LLC _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

16. Notice of Appearance:

Notice is hereby given that I, Dana L. Hofstetter, Hofstetter Law Office, LLC, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

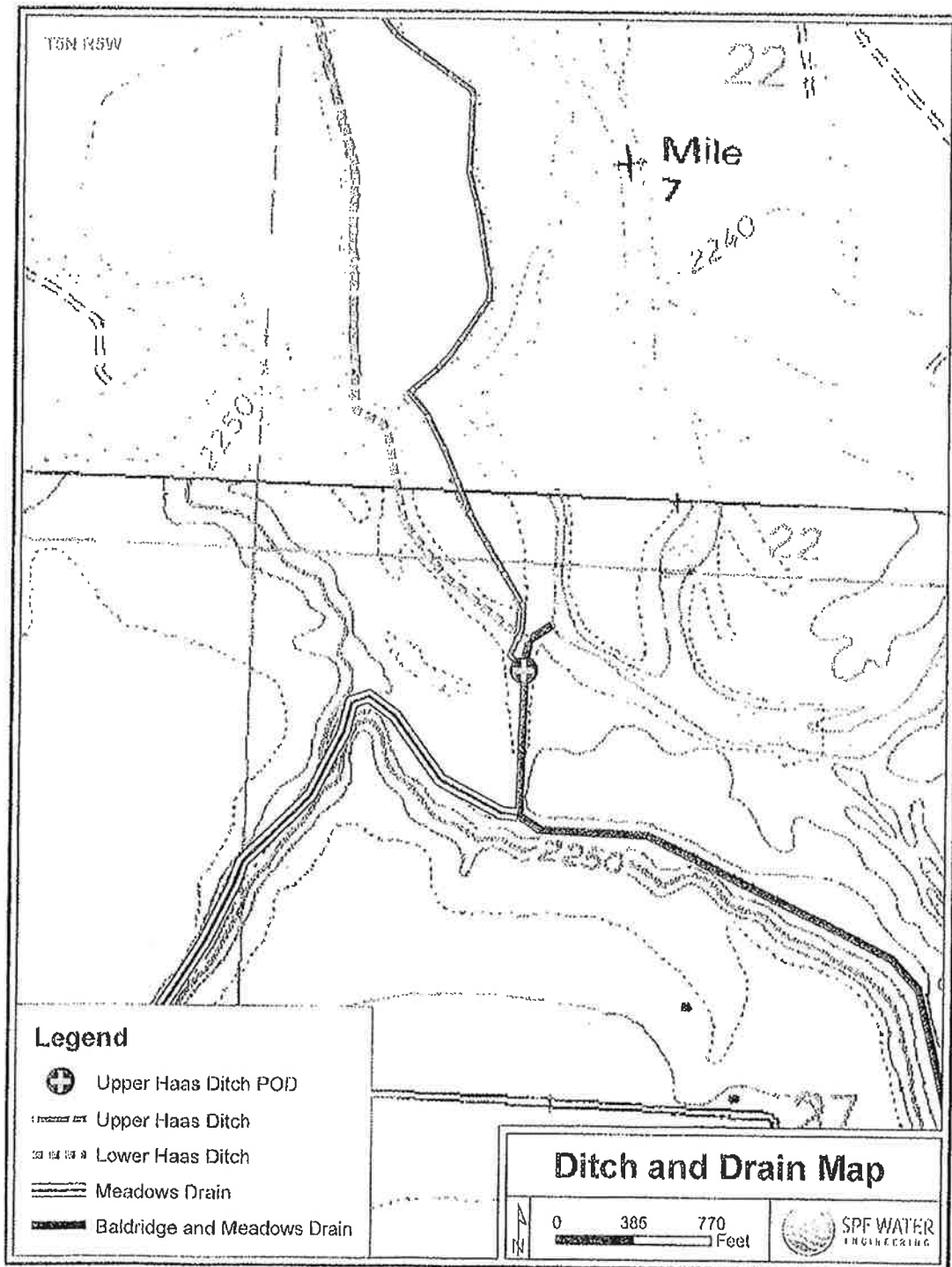
Signature _____ Date _____

Address Hofstetter Law Office, LLC

608 West Franklin Street, Boise, ID 83702

Last Name _____ Identification No. _____

EXHIBIT G
(Ditch and Drain General Location Map)



AFFIDAVIT OF SAM SMYSER

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

I, Sam Smyser, being first duly sworn upon oath, hereby depose and state as follows:

1. I am 87 years old and have lived in Canyon County, Idaho for most of my life. I am of sound mind and am personally acquainted with the matters described in this statement.

2. I am personally familiar with the Parma area. I have lived in Parma since 1928. I managed the Parma Canal Company from 1956 through 1961, and again from 1977 through 2009.

3. I am familiar with the property now known as the "Mallard Farm" located in Canyon County, Idaho. That land was owned at one time by Clint and Bertha Allen. My family lived near the Allens. We were friends and neighbors. I worked some on Clint's farm when I was a boy living at home. Homer Allen, their son, combined grain for my family before the River flooded in 1943. After the flood, the Allens did not grow as much grain.

4. Homer farmed the land. He had corn, hay, and pasture land. I helped Homer with his cattle in the 1960s and 1970s. He had fewer cattle in the late 1960s/1970s due to failing health.

5. I hunted along the Boise River and in the adjacent fields in the Parma area for many years. I shot my first goose on Clint Allen's land when I was a boy. I hunted many times on the Allen property.

6. I remember there being a lot of ducks on the Allen property. I recall that the Allen land was always wet and marshy when we hunted there. There were cattails and sloughs. There may have been ponds. The land was wet during the fall when we hunted and was wet in the spring.

7. There were ditches running through the marshy areas on the Allen farm along the River. Before the flood in about 1943, there was the Island High Line Ditch north of the Allen farm and ditches on the Allen farm. After the flood the area was diked, ditches were repaired, and other ditches were made. There was always water in the ditches, sloughs, and marshy areas when we hunted, throughout the hunting season. We used to jump ducks on the sloughs and ditches on the Allen farm. I remember hunting there in the snow.

8. The area on and around the Allen farm was always good hunting, for ducks, geese, and other birds such as pheasant and bobwhite quail. The wet areas, sloughs and ditches attracted many ducks. Clint, and then Homer, diverted water through the ditches for cattle in the winter and the diverted water ran through the sloughs too. The ducks used the water in the ditches, sloughs and wet areas. Homer was not a hunter, but allowed a lot of people to hunt on his land.

9. I have voluntarily provided this statement because I want to. I have reviewed this statement and have made all changes and corrections that I feel are necessary. This statement accurately reflects my knowledge and recollection about the Mallard Farm property.

I understand that I am signing this affidavit under oath before a notary public. I swear under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NAUGHT.

Dated this 25th day of January 2010.

Subscribed and sworn to before me this ____ th day of January, 2010.

[S E A L]

Notary Public for Idaho
Residing at _____
My Commission Expires _____

4711849_2.DOC



By _____ Date _____ Client _____ Sheet _____ of _____
Chkd By _____ Description _____ Job No _____

I understand that I am signing
this affidavit under oath before a
notary public. I swear under penalty
of perjury that this statement is
true and correct to the best of my
knowledge and belief.

Further the affidavit saith naught
Dated this 25th day of January 2010.

Liam Snyder

Subscribed and sworn to
before me this 25th day of January 2010.



Lori Graves
Residing at Boise ID
My commission expires
5/6/2015

AFFIDAVIT OF GARY BARTLES

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

I, Gary Bartles, being first duly sworn on oath, hereby depose and state as follows:

(1) I am 52 years old and have lived in Idaho all of my life. I have personal knowledge of the facts and matters described in this affidavit.

(2) My grandparents, Homer and Lucille Allen owned the "River Bottom" property now known as the "Mallard Farm". My parents, Sandra and Dale Bartles, moved to Parma around 1964 when I was seven years old. I lived there for eight years until I was fifteen.

(3) I spent a lot of time on my grandparent's property while growing up and have many fond memories. I recall helping my grandfather feed and tend livestock (pigs as well as a small cow-calf operation) year round as well as farm in the summer. I do not recall any provision for providing the livestock with water beyond what was available on the property year round.

(4) I recall their being water in the drains and ponds on the River Bottom lands year round. I recall in early spring (estimate early April 1971), two friends and I stranded a 1956 Chevy pick-up in attempting to cross a slew on the north east quadrant of the property. We ended up walking home because we drove through some standing water and flooded the engine with enough water to short out the distributor. I remember at least one occasion where we (a group of friends and family) fished for bull frogs in the ponds during the summer with bamboo poles using red felt cloth as bait. (To my recollection the only time I've ever had frog legs). Another

time (at the far southeast end of the property) I remember one side of a cement check structure in a ditch had collapsed and was obstructing incoming water flows. My grandfather wanted the incoming water to flow freely, without being checked up, so he blew up the structure with dynamite and I recall cement going "everywhere".

(4) I enjoyed hunting the River Bottom property in the fall and winter for ducks and pheasants. I recall the property having as good of hunting as any place we frequented. Flowing water diverted through the property made for good hunting. My father was a local banker and I recall many occasions where he invited his customers and colleagues to hunt the property. Over the years many people hunted on the property, including family and friends.

FURTHER THE AFFLIANT SAITH NAUGHT.

DATED this 1 day of April, 2010.

[Signature]

SUBSCRIBED AND SWORN to before me this 1 day of April, 2010.



Lori Graves

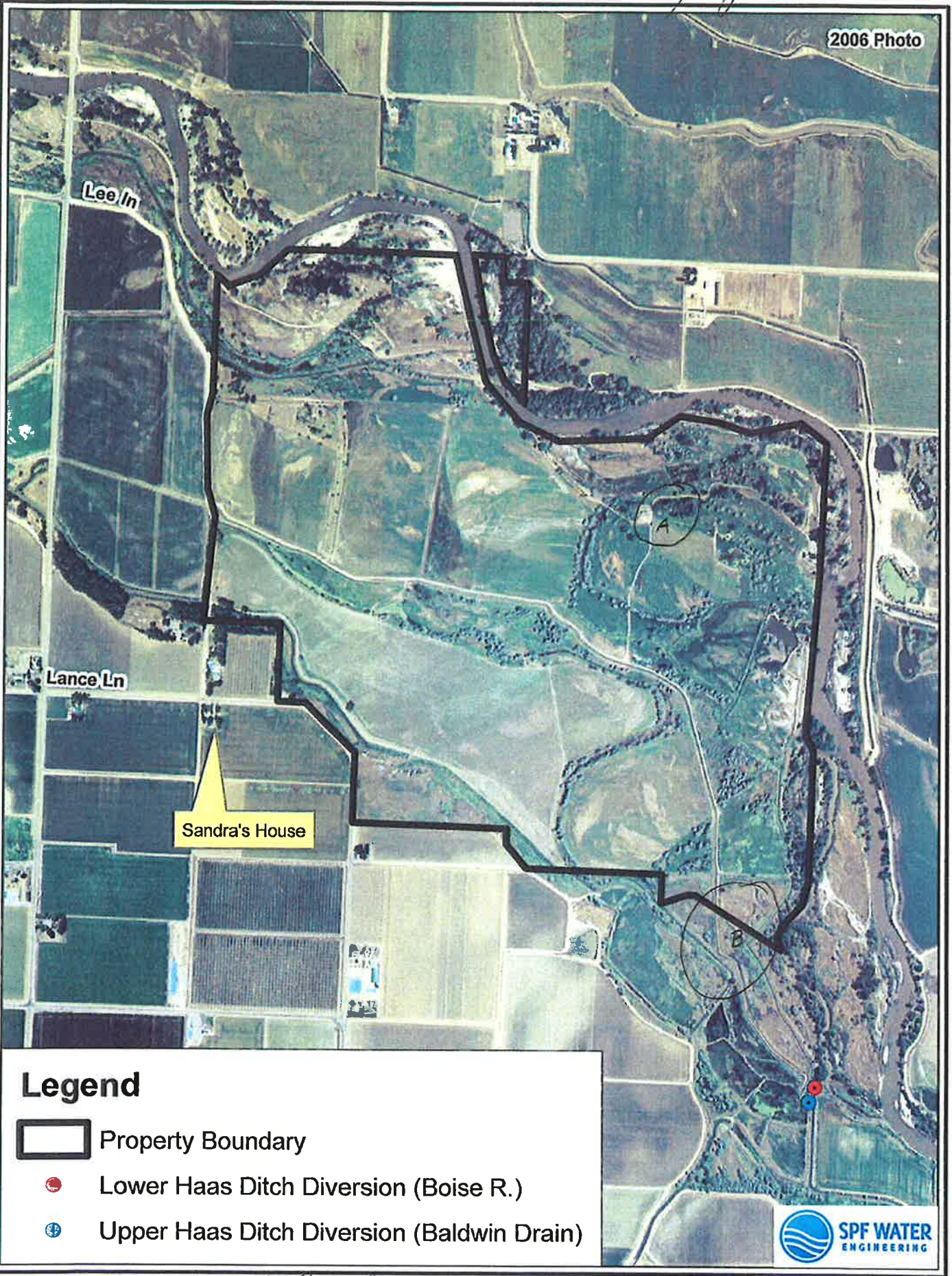
Notary Public in and for the State of Idaho

Residing at: Baino

My Commission Expires: 5/6/2015

Yang 7.1.10

2006 Photo



A. Area of stranded pick-up
B. Area of blown up check structure

AFFIDAVIT OF DALE BARTLES

STATE OF CALIFORNIA)
) ss:
COUNTY OF RIVERSIDE)

I, Dale Bartles, being first duly sworn on oath, hereby depose and state as follows:

- (1) I was married to Sandra Allen Bartles for 24 years. We lived in Parma from 1964 to 1970. I have personal knowledge of the facts and matters described in this affidavit.

- (2) I helped my father-in-law, Homer Allen, work cattle (feed, vaccinate, sort, brand etc.) on his property now known as the "Mallard Farm".

- (3) We rotated the cattle throughout Mallard Farm in the summer and winter to different pastures and feeding grounds. The cattle had to have water available year round. I remember flowing water diverted throughout the property by way of headgates, ditches and sloughs.

- (4) Besides working cattle, I enjoyed hunting the property in the fall and winter with family and friends. The hunting was always very good.

FURTHER THE AFFIANT SAITH NAUGHT.

DATED this 26 day of March, 2010.

Wane Sautter

SUBSCRIBED AND SWORN to before me this ____ day of March, 2010.

Notary Public in and for the State of California

Residing at: _____

My Commission Expires: _____

State of California)
County of RIVERSIDE)

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On MARCH 26 2010 before me, VINCENT PICARONE Notary Public,
(here insert name and title of the officer)

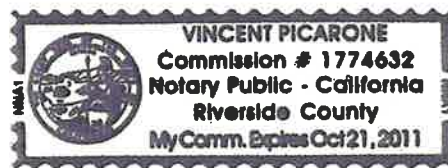
personally appeared DALE EDWARD BARTLES

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the
State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document
titled/for the purpose of REMEDY

containing 2 pages, and dated MARCH 26 2010

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s)

Title(s)

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other:

representing:

Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

☒ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # 49 Entry # 3

Notary contact:

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐

AFFIDAVIT OF GEORGE M. DILLEY

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

I, George Dilley, being first duly sworn on oath, hereby depose and state as follows:

(1) I am 68 years old and have lived in Idaho all of my life. I have personal knowledge of the facts and matters described in this affidavit.

(2) I live at 26341 Lee Lane, Parma, Idaho in the home I grew up in that my grandparents built in 1906. My next door neighbor is Sandra Allen, who also lives in the home she grew up in. My grandparents purchased a portion of the Dilley property from Charlie Allen, Sandra's great grandfather in 1900 and moved here in 1903. We have been friends and neighbors with the Allen's ever since. I cherish the memories I have growing up on this farm.

(3) When I was born in 1941, Clint and Bertha Allen owned the property now known as the "Mallard Farm". We referred to this property as the "River Bottom" land. In the 1950's, Clint and Bertha retired and moved to town (Parma). Their son Homer and his wife Lucille then took over the farm.

(4) The Dilley's and Allen's farmed and raised cattle. As neighbors, we would trade labor and share farm equipment. Together, we vaccinated and dehorned cattle and harvested hay. Clint and Homer would rotate their cattle on their pasture lands year round and they also raised pigs. We had a small dairy and raised dairy cows.

(5) My family's property is located on the west side of Lee lane, adjacent to the former Allen property. We receive irrigation water from a drain ditch and (lower) Haas Ditch that flow onto our property from the former Allen property. The drain ditch flows year round, but not the Haas Ditch because it is shut off from the Boise River in the fall. When growing up, I remember every spring we would rebuild the coffer dam in the Boise River for the Haas Ditch. The dam was located near the southeast end of the Allen's River Bottom lands and consisted of straw bales, steel posts and woven wire fence. One year my job was to drive a team of Belgium draft horses, pulling a hay rack full of straw bales, into the river for the dam. We had to use horses because a tractor would have gotten stuck. When necessary, we would also clean the Haas Ditch in the spring, before water was diverted from the river, by dragging a "V" down the ditch using five or six tractors. We have old film footage of this event.

(6) I loved hunting and camping on the River Bottom lands during my childhood. The northeast end of the River Bottom lands was my favorite place because of all the cottonwoods, willows, cattails, etc. In the summer, we would pack up firewood, hot dogs and sleeping bags, hitch a utility trailer on the back of the tractor, and drive down to the River Bottom and camp. During the winter, we would build a duck blind on the south bank of the Boise River, next to the River Bottom land, and hunt ducks and geese. The vegetation, flowing water and corn stubble attracted lots of water fowl. I remember the morning sky used to be black with ducks and geese. There was always flowing water in the River Bottom sloughs and drain ditches allowing us to fish for crayfish, crappie, carp and frogs. I loved all the adventures I had on the Allen's River Bottom property while growing up.

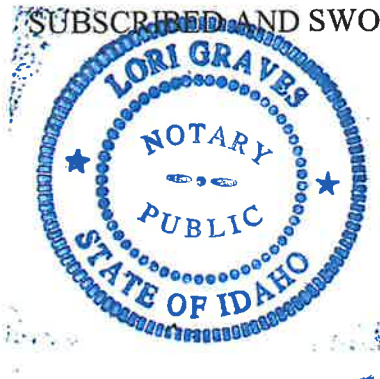
(7) I have voluntarily provided this statement. I have reviewed this statement and for accuracy and have made all changes and corrections that I feel are necessary.

FURTHER THE AFFIANT SAITH NAUGHT.

DATED this 30 day of March, 2010.

George M Dilling

SUBSCRIBED AND SWORN to before me this 30 day of March, 2010.



Lori Graves

Notary Public in and for the State of Idaho

Residing at: Bonanza

My Commission Expires: 5/6/2015

AFFIDAVIT OF SANDRA ALLEN BARTLES

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

I, Sandra Allen Bartles, being first duly sworn upon oath, hereby depose and state as follows:

1. I am 70 years old and have lived my entire life in Idaho and most of it in Canyon, County. I have personal knowledge of the facts and matters described in this statement.

2. I am personally familiar with the Parma area, and have lived at my current home located at 27729 Lance Lane, Parma, Idaho 83660 since my family moved to this house when I was about ten years old. My home previously was owned by my parents, Homer L. Allen and Lucille C. Allen, both now deceased.

3. I am familiar with the property now known as the "Mallard Farm" located in Canyon County, Idaho. We referred to this property as the "River Bottom." The River Bottom was owned at one time by Clint and Bertha Allen, who were my grandparents, and before that by my great-grandparents. When my grandfather died, my father Homer acquired the property. To my recollection they always had a hired man who assisted with the irrigating and other farm tasks. I remember riding my horse on the River Bottom land when I was young and working the cattle for my father.

4. My grandfather and father both grew corn on the River Bottom, and had pastures there too. They both raised cattle and pigs on that land. My father kept approximately 100 head of cattle, running a cow/calf operation there year-round. I remember my parents did their calving there in the winter/spring. My father kept cattle on the River Bottom through the 1960s and until about the time he decided to sell the land.

5. My father's health caused him to cease working the farm sometime in the late 1960s (he had two hip replacements). My father officially sold off his farm equipment and contracted with Raymond Abbott to run the farm on a share crop basis. At this time he started phase out of the cattle and hog business using family and hired help as necessary. This would have been in the late 1960s to early 1970s. I recall that he had cattle on the River Bottom up until 1971, right before he decided to sell the land.

6. Ditches and a slough were present on the River Bottom all of the time my family owned the land. The slough ran across the land and was lined with cattails. There was water in the slough and in some of the ditches year-round. My family kept water in the ditches and slough in the winter for watering the cattle and some flooding of the pastures. The area around the slough was vegetated with cattails for as long as I can remember. The water was channeled through the ditches, the slough, some fields, and eventually returned to the Boise River. When the water was high the ditches would be full and the slough would run into nearby land and fields. The area near the slough was always a wet marshy land with cattails and similar vegetation.

7. My father and other family members hunted on the River Bottom when his health was good. He allowed others to hunt there too. Neighbors and many people from Boise duck hunted there. In the fall, many people stopped in to get permission to hunt ducks and geese in the River Bottom land and along the Boise River. My father would tell them where the cattle were and give them permission. If the family was hunting on a particular day, he would not let others hunt on that day. Many people hunted on the River Bottom lands during the time my father owned the property.

8. The corn fields and the ditches, slough and wet areas (with year round water) attracted ducks and geese. My grandfather and father both kept water running in the slough and some of the ditches would have had water in them year-round for watering the cattle. The water created marshy areas, and with the corn fields the farm attracted waterfowl and other wildlife. Many ducks and geese used the fields and the water in the ditches, sloughs and wet areas.

9. I have voluntarily provided this statement because I want to. I have reviewed this statement and have made all changes and corrections that I feel are necessary. This statement accurately reflects my knowledge and recollection about the River Bottom land (now known as the Mallard Farm).

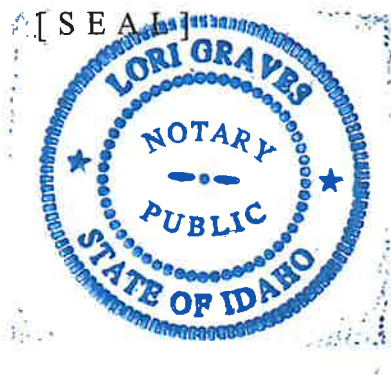
I understand that I am signing this affidavit under oath before a notary public. I swear under penalty of perjury that this statement is true and correct to the best of my knowledge and belief.

FURTHER THE AFFIANT SAITH NAUGHT.

Dated this 29 day of March 2010.


Sandra Allen Bartles

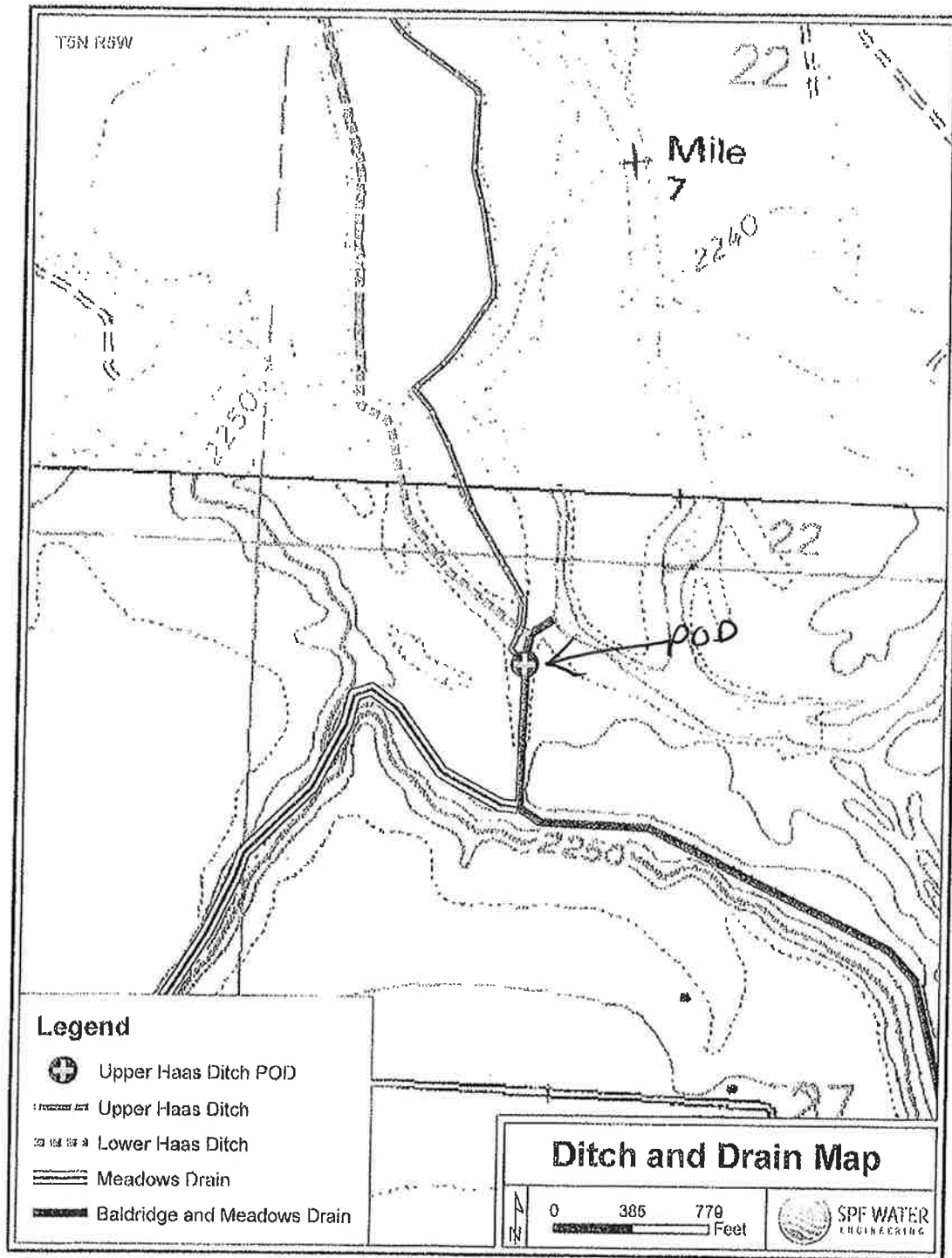
Subscribed and sworn to before me this 29 th day of Mar, 2010.



Lori Graves
Notary Public for Idaho
Residing at Boise
My Commission Expires 5/6/2015

4738849_1.DOC

EXHIBIT G
(Ditch and Drain General Location Map)



DATE:

OBJECTION NOTES:

Mtg held on 11-25-09. Went over all paperwork. If more info is submitted for all the wildlife's priority date issues, then we may be able to work with this. However, information is sketchy & can be looked at either way. Was the wildlife use intended at 1970 or had it been incidental to the area. Claimants will submit more information. Dana & Dendry has responded as it will be a matter of all the evidence submitted. Next status conference ~~on~~ → actually on initial hearing on 1-5-2010.



TECHNICAL MEMORANDUM

TO: Michael Creamer
FROM: Terry Scanlan, P.E.
RE: Baldrige and Meadows Drain Measurement
DATE: March 3, 2010

SPF JOB: 645.0010

On March 3, 2010, I measured flow in the Baldrige and Meadows Drain between the headgates for the Upper Haas Ditch and Lower Haas Ditch. The measurement point was the upper edge of the concrete sill on the check structure used for backing up water to divert into the Upper Haas Ditch. At the time of the measurement, the boards in the check structure had been pulled.

Flow was measured using a pygmy current meter and an AquaCalc Pro measurement totalizer. Average flow depth ranged from approximately 0.50 to 0.55 across the sill. Section width (between the steel frame for the check boards) was 8.4 feet. Twenty vertical sections were measured, and the total flow rate was 14.28 cfs. Measurement conditions were very good. The accuracy of this measurement should be within 10 percent or less. A print out of the measurements is attached.

<CSV>

AquaCalc Pro (tm) by JBS Instruments (c)2002

S/N:,000000C292CC

Firmware Version:, AQP-1V1.1.3

File Version:, V1.5

Gage ID:, 03/03/10 12:41
 User ID:, SPF WATER
 Meter name:, SPF PYGMY
 Meter id:, AR2072
 Meter type:, PYGMY
 Meter Standard:, SAE
 Meter Revs/Pulses:, 1/1
 Meter Const.S1:, 0.9604
 Meter Const.O1:, 0.0312
 Meter Const.C1:, 0.0000
 Meter Const.S2:, 0.0000
 Meter Const.O2:, 0.0000
 Meter Const.C1:, 0.0000
 Meter Const.S3:, 0.0000
 Meter Const.O3:, 0.0000
 Beg Time:, 03/03/10 12:42
 End Time:, 03/03/10 13:08
 Meas Time:, 0.43
 Section Diff:, 14.28
 Beg Gage height:, 0.00
 End Gage height:, 0.00
 Beg Staff height:, 0.00
 End Staff height:, 0.00
 Estimated Q:, 0.00
 Adjusted Q:, 0.00
 Measure time:, 40
 Measure standard:, SAE
 Measure equipment:, TopSet Rod
 Sounding Weight:, NA
 Measure ice:, No
 Flood Measurement:, No
 Flood Coef:, 0.00
 Max Vertical Q:, 5%
 Percent Slope:, 0.0000
 Measure Start at:, REW
 Vertical Count:, 20
 Section Velocity:, 3.14
 Section Width:, 8.40
 Section Area:, 4.54
 Section Q:, 14.28
 Section Diff:, 14.28
 Section Pct Err:, 0.0%
 Section Quality:, na
 Section WetPerim:, 8.81
 Section Hyd Rad:, 0.52
 Section Manning:, 0.0000
 Section Chezy:, 0.0000

VERT	DIST	TDPTH	IDRFT	EDPTH	OBS	TIME	REVS	HA	HC:VF	METH	CLOCK	MVEL	OVEL	VVEL
1,	0.03,	1.90,	0.55,	0.00,	0.55,	E,					12:43,			0.00,
2,	0.17,	2.00,	0.55,	0.00,	0.55,	o6,	40.11,	101,	0,	1.00,	1.00,	12:44,	2.45,	2.45,
3,	0.28,	2.50,	0.55,	0.00,	0.55,	o6,	40.29,	116,	0,	1.00,	1.00,	12:46,	2.80,	2.80,
			0.77,	5.4%,										

Flow 3.3.10.txt

4,	3.00,	0.55,	0.00,	0.55,	o6,40.12,	106,	0,	1.00,	1.00,	12:47,	2.57,	2.57,	2.57,
	0.28,	0.71,	5.0%,										
5,	3.50,	0.55,	0.00,	0.55,	o6,40.27,	118,	0,	1.00,	1.00,	12:48,	2.85,	2.85,	2.85,
	0.28,	0.78,	5.5%,										
6,	4.00,	0.55,	0.00,	0.55,	o6,40.20,	123,	0,	1.00,	1.00,	12:50,	2.97,	2.97,	2.97,
	0.28,	0.82,	5.7%,										
7,	4.50,	0.55,	0.00,	0.55,	o6,40.26,	132,	0,	1.00,	1.00,	12:51,	3.18,	3.18,	3.18,
	0.28,	0.87,	6.1%,										
8,	5.00,	0.55,	0.00,	0.55,	o6,40.06,	136,	0,	1.00,	1.00,	12:52,	3.29,	3.29,	3.29,
	0.28,	0.91,	6.4%,										
9,	5.50,	0.55,	0.00,	0.55,	o6,40.15,	139,	0,	1.00,	1.00,	12:54,	3.36,	3.36,	3.36,
	0.28,	0.92,	6.4%,										
10,	6.00,	0.55,	0.00,	0.55,	o6,40.00,	144,	0,	1.00,	1.00,	12:55,	3.49,	3.49,	3.49,
	0.28,	0.96,	6.7%,										
11,	6.50,	0.55,	0.00,	0.55,	o6,40.08,	142,	0,	1.00,	1.00,	12:56,	3.43,	3.43,	3.43,
	0.28,	0.94,	6.6%,										
12,	7.00,	0.55,	0.00,	0.55,	o6,40.09,	142,	0,	1.00,	1.00,	12:58,	3.43,	3.43,	3.43,
	0.28,	0.94,	6.6%,										
13,	7.50,	0.55,	0.00,	0.55,	o6,40.16,	138,	0,	1.00,	1.00,	12:59,	3.33,	3.33,	3.33,
	0.28,	0.92,	6.4%,										
14,	8.00,	0.55,	0.00,	0.55,	o6,40.11,	133,	0,	1.00,	1.00,	13:00,	3.22,	3.22,	3.22,
	0.28,	0.88,	6.2%,										
15,	8.50,	0.55,	0.00,	0.55,	o6,40.15,	136,	0,	1.00,	1.00,	13:02,	3.28,	3.28,	3.28,
	0.28,	0.90,	6.3%,										
16,	9.00,	0.55,	0.00,	0.55,	o6,40.05,	139,	0,	1.00,	1.00,	13:03,	3.36,	3.36,	3.36,
	0.28,	0.93,	6.5%,										
17,	9.50,	0.50,	0.00,	0.50,	o6,40.08,	138,	0,	1.00,	1.00,	13:04,	3.34,	3.34,	3.34,
	0.25,	0.83,	5.8%,										
18,	10.00,	0.50,	0.00,	0.50,	o6,40.11,	131,	0,	1.00,	1.00,	13:06,	3.17,	3.17,	3.17,
	0.17,	0.55,	3.9%,										
19,	10.20,	0.50,	0.00,	0.50,	o6,40.01,	137,	0,	1.00,	1.00,	13:07,	3.32,	3.32,	3.32,
	0.08,	0.25,	1.8%,										
20,	10.30,	0.00,	0.00,	0.00,	E,					13:08,			0.00,
	0.00,	0.00,	0.0%,										

□

ERO Resources Corp.
3314 Grace Street
Boise, ID 83703-5836
(208) 373-7983
Fax: 373-7985
Denver • Boise • Durango
www.erosources.com
eroboise@erosources.com

May 25, 2007

Mr. Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RE: Applications for Permit 63-32459 and 63-32460

Dear Mr. Lester,

Please accept the following letter as a response to your March 2, 2007 letter to Ray Obendorf c/o Dana Hofstetter that seeks additional background information pursuant to Appropriation Rule 40.05 for the subject applications for permit.

Ray Obendorf (applicant) has filed for two permits:

- 1) 63-32459 seeking 24 cfs from the Boise River during the non-irrigation season for wildlife and,
- 2) 63-32460 seeking 6 cfs and 40 ac-ft from an unnamed drain during the non-irrigation season for wildlife and storage. (The unnamed drain listed in 63-32460 may be known as the Meadows Drain.)

Application 63-32459 – Boise River

Rule 40, Item c(iii) – describe the location(s) to the nearest $\frac{1}{4}$ $\frac{1}{4}$ of section for return flows to a named body of water (Boise River), and describe how the proposed system will operate to minimize impacts on other water rights from the proposed source. Provide credible information that the diversion ditch (Haas Ditch) can carry the requested amount of water without modifying the ditch capacity. Specify if work will include enlargement of an existing diversion on the Boise River and/or enlargement of an existing point of return flow to the river.

Return Flow

Water diverted from the Boise River (24 cfs) (Photo 1) will enter the Haas Canal through the existing diversion works (Photo 2, 3, and 4), then be diverted into the East End Drain through a proposed headgate (Photo 5) and check structure in the Haas Canal. A check structure to be constructed in the East End Drain will create a pond of approximately 4 acres. The water leaving the pond will follow the East End Drain (Photo 6) and enter the Boise River in the NWNE Section 1 T5N, R6W (see Figure 2). The distance between the point of diversion and where the water returns to the river is approximately 6.6 miles along the course of the Boise River.

The flow path of the East End Drain may be slightly shorter due to a more direct routing, but may have a slower velocity due to a smaller wetted perimeter relative to the river and a flatter slope because of drops and of following contours. As explained in the following discussion, minimal impacts to Boise River water users will occur within the 6.6 mile reach between the point of diversion and the point of return.

Discharge measurements of the Boise River (USGS Station 13213000, near Parma) have a period of record that dates back to 1971. Of the data on record, the Boise River near Parma has the following characteristics:

Table 1. Discharge Summary of the Boise River near Parma (USGS 13213000)

Month	Average Monthly Flow (cfs)	Minimum Daily Flow (cfs)
November	1021	593
December	1079	580
January	1443	556
February	1968	590
March	2407	187

The 24 cfs sought represents 2.4% of the average monthly flow rate in November (1021 cfs) and 4.3% of January's minimum flow (556 cfs). It is likely that during very low flow conditions as in March 1990, 1992 (187 cfs), and 1977 that the diversion works would not function due to low water levels. The amount of water proposed to be diverted is a small percent of the normal discharge of the Boise River.

Operations to Minimize Impact

Under the Application, the water will be diverted during the non-irrigation season. The demand on the Boise River during the non-irrigation season is significantly less than during the irrigation season. This project is located near the confluence of the Boise River and the Snake River where the Boise River has already collected essentially all of the return flows that will come from the watershed and has significant flow (see Table 1). This portion of the Boise River is unregulated, even during the irrigation season during dry years.

The diversion facilities for the Haas Canal at the Boise River will not be altered. The existing and historically used diversion works will be used to route water from the Boise River into the Haas Canal (Photo 1, 2, 3, 4, and 5). The only modification required is the installation of a new headgate and a check structure in the Haas Canal approximately 500 feet below the Haas Canal headgate to route the water into the proposed pond at the head of the East End Drain. Drainage from the adjoining field to the southwest of the proposed pond along with the surrounding lowlands is the start of

the East End Drain. The proposed pond along the East End Drain will be operated as a flow through pond. The applicant recognizes that the primary purpose of the facilities and will defer at all times to the irrigation use.

The modification proposed to the East End Drain is the installation of a check structure to raise the elevation of the ponds water level. The checks will be removed at the beginning of the irrigation season. As shown in Photo 6, the East End Drain is a deep and wide drain that, according to visual estimates, has significantly more capacity than 30 cfs as proposed in the two applications. The East End Drain currently flows year-round, with minor amounts of water at the head in the spring as shown in Photo 6 and increasing flows along its pathway. The total flow and capacity at the tail of the drain was not measured during my field visit (4-10-07), but was observed to carry a significant flow with remaining freeboard for more capacity.

Other Water Rights

A search of existing water rights using IDWR's online electronic database show that in T5N, R5W, of the 50 recommended water rights with a point of diversion from the Boise River, two identify year-around use for stockwater (63-203D and 63-204D); no other water rights were identified in the Boise River that had winter use. The water rights involving the Haas Canal and the unnamed drain (Meadows Drain) are summarized in Table 2.

Table 2. Summary of Water Rights with Point of Diversion in the NW Section 27 T5N, R5W and Conveyed by the Haas Canal or Meadows Drain

Name	Water right Number	Basis	Priority	Source	Diversion Rate	Use
Mallard Farms	63-202A	Claim/Decree	6/1/1878	Boise River	5.3/overlap with 172A	Irrig
Haas Ditch	63-202B	Recommended	6/1/1878	Boise River	8.8/overlap with 172B	Irrig
Mallard Farms	63-172A	Claim/Decree	6/1/1868	Boise River	5.3	Irrig
Haas Ditch	63-172B	Recommended	6/1/1868	Boise River	8.54	Irrig
Mallard Farms	63-2611A	Recommended	3/13/1944	Meadows Drain	2.28	Irrig
W&H Partner.	63-2611B	Recommended	3/13/1944	Meadows Drain	2.28	Irrig
Mallard Farms	63-12601	Permit	8/24/2000	Waste thru Haas	0.2	Wildlife

Mallard Farms	63-32458	Application	9/12/2006	Meadows Drain	4.6	Wildlife
Obendorf	63-32459	Application	4/5/2005	Boise River	24	Wildlife
Obendorf	63-32460	Application	4/5/2005	Meadows Drain	6	Wildlife

The only existing non-irrigation season water right downstream of the proposed headgate on the Haas Canal is water permit 63-12601. Water right 63-12601 specifies 0.2 cfs; flow will be left in the Haas Canal to fully satisfy that water right permit.

Application for Permit 63-32226 in the name of Classen & Co LLC, seeks 1.03 cfs wildlife water from the East End Drain, however, the point of diversion is downstream from Obendorf's project, so water entering the East End Drain will help satisfy Classen's efforts.

Based on the water rights listed in Table 2, the subject water right applications will not impact existing water rights of the Boise River, the Haas Canal, or the East End Drain.

Capacity of Diversion Works

The headgate at the start of the Haas Canal along with the Haas Canal itself is large enough to carry the requested 24 cfs as supported by the Boise River water master's data for the Haas Canal (station ID 13212938) where 24 cfs has been recorded as the peak discharge in 1986 (see Attachment A).

The capacity is further supported by my observations made in the field. The Haas Canal at the point where the applicant wishes to install a headgate to the proposed pond is 11 feet wide and is approximately 2 to 2.5 feet deep (Photo 3, 4, and 5).

During my field visit, laser level points along the water surface of the Haas Canal showed a slope of approximately 0.00073. Using these values with Manning's Equation, the calculated velocity is near 2.1 feet per second, resulting in a potential capacity of 42 cfs. The uncertainties involved with determining the slope leads me to believe the calculated Manning's velocity is too high and therefore the flow to be something less than 42 cfs. The canal however, certainly is large enough to carry 24 cfs.

Rule 40, Item d(i) -- *establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. For example, why is 24 cfs required for the project? Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative.*

24 cfs

The diversion rates sought in the two applications for permit are based on two parameters: 1) fully utilizing the existing facilities available to supply water and 2) to operate the ponds to maximize waterfowl habitat.

First, 24 cfs is the historical peak diversion rate in 1986 as evident in the Haas Canal diversion record in IDWR's electronic database of the Boise River (Attachment A), which establishes a certain range of water elevations in the conveyances. These elevations dictate the elevation of the control structures and of the proposed ponds. The applicant does not want to alter any existing structures, so to attain the design depths and elevations, the same diversion rates used in the irrigation season will be used in the non-irrigation season.

The second parameter behind the diversion rates is to optimize the available water for waterfowl habitat including; reducing the potential for ice buildup in the conveyances. The requested flow rates are intended to keep the water velocity sufficiently high to prevent complete freezing, which could result in backing up of water and flooding of areas not intended. In the Army Corps of Engineers publication titled "*Engineering and Design - Ice Engineering*" (publication number EM 1110-2-1612, October 30, 2002), "sheet ice" is said to form in slow-moving river reaches where the flow velocity is less than 1.5 ft/sec. During cold weather, the fringes of the proposed ponds will likely freeze, but the intentions of the diversion rate is to maintain some portion of the pond with a sufficient velocity to prevent a complete ice layer.

Storage

The pond proposed along the East End Drain will encompass 4 acres. The design depth of pond will average approximately 2 feet. The total volume for the pond is 8 ac-ft. The diversion rate of 24 cfs can provide 48 ac-ft in a 24-hour period. Therefore, no storage component is necessary with application for permit 63-32459.

Wildlife Use

The applicant has had other successful wildlife ponds that testify to his ability to design wildlife areas. Greg Obendorf, the applicant's son, has worked with Andy Ogden of the Southwest Regional Office of Idaho Fish and Game Department on other projects to ensure a quality wildlife habitat. Mr. Ogden will be consulted for this project as well. During my field visit on April 10, 2007, I talked with a nearby farmer who was telling stories of how there are more ducks that fly into Obendorf's ponds than into the Fort Boise Wildlife Management Area. Regardless of the accuracy of his story, his perception is that Obendorf creates successful wildlife habitat.

Specifically, water diverted from the Boise River will be routed into an area along the East End Drain and will be checked up to form a shallow pond. This pond will be formed following the irrigation season and will provide a resting area for migratory waterfowl. There will be collateral benefits to songbirds, fur-bearing mammals, deer, and non-game species. The remote location of this pond will prevent harassment from the general public. The applicant has a unique position to this project by being able to farm and develop the wildlife habitat. By working with Idaho Fish and Game biologists, the applicant's intention is to establish permanent habitat, such as food plots. This pond will be maintained until the beginning of the irrigation season at which point diversions to the pond will cease and the checks removed.

Wetland vegetation and riparian vegetation should have an increased opportunity to establish to provide cover, resting areas, and feed for waterfowl and resident wildlife.

These applications for permit are therefore not speculative, but rather designed according to existing diversion works and feasibility of success.

Rule 40 item g – *Send a comment letter to the Canyon County Commissioners. Provide IDWR with a copy of your letter and of any written correspondence*

A copy of the letter sent to Canyon County is attached. Copies of any responses will be provided to IDWR when received.

Application 63-32460 – Unnamed (or “Meadows”) Drain

Rule 40. Item c(iii) – *describe the location(s) to the nearest ¼ ¼ of section for return flows to a named body of water (Boise River), and describe how the proposed system will operate to minimize impacts on other water rights from the proposed source. Provide credible information that the diversion ditch can carry the requested amount of water without modifying the ditch capacity. Specify if work will include enlargement of an existing diversion on the Boise River and/or enlargement of an existing point of return flow to the river.*

The diversion facilities to be used by this application have historically been used to deliver irrigation water. The proposed project is an extension of the delivery of water into the non-irrigation season. Water will be diverted from the unnamed drain (Meadows Drain) (Photo 7) by placing check boards into the existing check structure. The water level in the drain will rise and begin flowing down the Upper Ditch (Photo 8). A headgate and check structure installed along the Upper Ditch (Photo 9) will allow water to enter the ponds. An outlet (Photo 10) and siphon (Photo 11) will convey the outflow from the ponds across the Haas Canal and will discharge into lowlands along the East End Drain. The water will then flow to the East End Drain (Photo 6). The East End Drain discharges into the Boise River in the NWNE Section T5N, R6W (see Figure 2). There are five interconnected ponds (see Figure 1).

As listed in Table 1, water right permit 63-12601 identifies 0.2 cfs of waste water for wildlife uses. Waste water from the Meadows Drain will be allowed past the check structure to then enter the headgate for the Haas Canal, which is the conveyance used by 63-12601.

The 63-32460 application for permit (Obendorf) is senior to Mallard Farms' Application for Permit 63-32458 from the Meadows Drain.

Capacity of Diversion Works

The capacity of the Meadows Drain is sufficient to carry the requested 6 cfs into the Upper Ditch. At the time of my field visit on April 10, 2007 the Meadows Drain was flowing approximately 12 inches over an 8.5 feet wide contracted rectangular weir, which is approximately 27 cfs. Photo 7 shows the drain when looking upstream from the Haas Canal headgate. This high flow rate is the result of irrigation water already

being used in the area. During the non-irrigation season, the drain is locally known to flow year-around at a rate of no less than 6 cfs.

Water in the Meadows Drain can be checked so as to route water into the Upper Ditch (Figure 1). Although the Upper Ditch was empty at the time of the field visit, there was evidence of a high water mark along the banks. The Upper Ditch is approximately 10 feet wide at the water line and approximately 3 feet deep (see Photo 8). During the field visit, laser level points along the trickling water surface in the Upper Ditch showed a slope of approximately 0.0011. Using these values with Manning's Equation, the calculated velocity is near 3.6 feet per second, resulting in a potential capacity of 96 cfs. However, the uncertainty in the slope measurement is large and may not be representative of conditions when water is actually in the ditch. It is my opinion that the actual capacity is much lower than calculated. Regardless of the uncertainty of the parameter values, the Upper Ditch can carry 6 cfs and no enlargement will be needed.

The changes proposed including the headgate and the check structure will not affect the capacity of the ditch.

Rule 40, Item d(i) – *establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. For example, why are 6 cfs and 40 ac-ft of storage required for the project? Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative.*

The same ideas discussed for 63-32459 are applicable for 63-32460. The amount of water sought is based on the capacities of the existing structures and an effort to prevent a complete freeze of the ponds. By maximizing the flow through the existing structures, the potential for ice build-up is reduced.

The elevation of the ponds is controlled by the elevation of the existing structures, which are set to supply the irrigation season water. By using the existing structures and hence the design capacities, the least amount of modifications are needed.

This project seeks to utilize the available water to maximize the waterfowl habitat.

Storage

The ponds identified in 63-32460 cover approximately 10 acres in area (see Figure 1). The 18-inch headgate installed along the Upper Ditch (Photo 9) is set such that the top of the headgate is level with the high water line. The invert of the headgate is set level to the bottom of the pond. Therefore, the pond depth near the headgate is likely to be between 1 to 1.5 feet deep. Excavations within the pond area will create a depth of up to four feet. Using an area of 10 acres and an average depth of 4 feet results in 40 ac-ft of storage, which is what the application for permit seeks. The diversion rate of 6 cfs can only generate 12 ac-ft in a 24 hour period; therefore the storage components are included in the application for permit. Water trapped in the ponds at the beginning of the irrigation season will be retained in the ponds as long as possible and not allowed to drain through the outlet. Therefore the year-around season of use for storage is needed. No water will be diverted into the ponds during the irrigation season.

Rule 40. Item d(iii) – provide credible information that the proposed amount of water is available from the proposed source during the non-irrigation season.

The applicant's son has indicated that the unnamed drain (Meadows Drain) flows year-around. During my field visit on April 10, 2007, there was approximately 27 cfs flowing in the drain. The applicant indicated that irrigation water was already in the system at that time and the discharge observed was primarily return flows. However, when the irrigation water is out, the drain still functions to convey the shallow ground water built up during the irrigation season. The applicant indicated that the drain maintains at least 6 cfs throughout the winter, hence his desired diversion rate.

The applicant is fully aware that the water he is seeking is drainage water and the source is a function of upstream practices and seasonal fluctuations.

Rule 40. Item g – Send a comment letter to the Canyon County Commissioners. Provide IDWR with a copy of your letter and of any written correspondence.

A copy of the letter to the County is enclosed (Attachment B). Copies of any responses will be provided to IDWR.

Lastly, in your letter, you identified that item 6b of the application remained blank and that the application needs to be amended. The height of storage dam is will be less than 10 feet. As described above the depth of the pond will range from 2 to 4 feet, so the berms surrounding the land will also range from 2 to 4 feet plus an additional 1 to 2 feet for a freeboard. The active reservoir capacity and the total reservoir capacity is estimated to be 40 ac-ft. If this information is insufficient, please contact either Dana Hofstetter or myself to coordinate the applicant to come to your office to manually add the changes.

Regards,



Steven R. Hannula, P.E., P.G.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 63-32467

Conditions of Approval:

1. 196 The right holder shall install or construct straight lengths of conduit or ditch that will accommodate devices for measuring the entire flow of water being diverted in connection with this right and the entire flow of water being returned to the source stream in connection with this right. If the right holder uses conduit, the straight length(s) of conduit shall be at least ten times the diameter of the conduit and shall be above ground or otherwise easily accessible.
2. Any obstruction in the Boise River channel for diversion of water under this right must provide for watercraft and fish passage. The right holder must bypass sufficient flows in the Boise River at the point of diversion to accommodate watercraft navigation and fisheries values in the Boise River downstream of the diversion. The quantity of the bypass flow may be established in the future by the filing of a petition with the Department to establish the bypass flows and subsequent proceedings as described in the Department's Rules of Procedure.
3. 26A 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 the permit holder had no control.
4. Subsequently approved permits based on earlier-in-time applications may reduce the amount of water available for appropriation under this right and may result in a reduction of the quantity found to be beneficially used at the time of licensing of this right.
5. This right shall be junior and subordinate to future water rights authorizing the diversion and use of water from the Boise River and its tributaries, including ground water, for consumptive uses, except that this right shall not be subordinate to future water rights for similar wildlife, recreation and/or aesthetic uses.
6. Water diverted under the wildlife flow component of this water right shall be returned to the Boise River.
7. 004 This right does not grant any right-of-way or easement across the land of another.
8. 01R When notified by the Department, the right holder shall install and maintain measuring devices of types acceptable to the Department at the point of diversion and at the point of return to the source stream.
9. Wildlife Storage is for up to 6 ponds, natural swales, and/or agricultural fields that will be flooded. The total water storage shall not exceed 63 surface acres and a volume of 181.5 afa.
10. This right does not authorize the diversion and use of water released from Lucky Peak Reservoir for stream flow maintenance purposes in connection with Water Right 63-3618.
11. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
12. 121 The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
13. 106 Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
14. Wildlife use is for habitat improvement during the non-irrigation season.
15. This right shall be junior and subordinate to future minimum instream flow water rights that may be established for the Boise River and its tributaries.

Remarks:

Music, Vicky

From: Music, Vicky
Sent: Wednesday, March 25, 2009 10:19 AM
To: 'Lori Graves'
Cc: Shurte, Jan
Subject: RE: W & H SRBA Claim 63-32910

Lori – The recommendation will be submitted to the court in the next Late Claim DR. Craig Saxton handles the filing of these. Per my correspondence with him earlier this month, Craig expects the next report to be filed June 2. I suggest you check with Craig the middle of May. After the filing, the deadlines will be posted on the SRBA Court webpage.

Vicky Music

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Tuesday, March 24, 2009 12:12 PM
To: Music, Vicky; Shurte, Jan
Subject: FW: W & H SRBA Claim 63-32910

From: Lori Graves
Sent: Tuesday, March 17, 2009 9:57 AM
To: 'vicky.music@idwr.idaho.gov'; 'jan.shurte@idwr.idaho.gov'
Cc: Terry Scanlan
Subject: RE: W & H SRBA Claim 63-32910

I am sorry we could not come to an agreement. Please let me know when you plan to submit your recommendation to the court so that we can file a timely objection. Thank you.

From: Music, Vicky [mailto:Vicky.Music@idwr.idaho.gov]
Sent: Friday, March 13, 2009 2:28 PM
To: Lori Graves
Cc: Shurte, Jan
Subject: RE: W & H SRBA Claim 63-32910

Hi Lori-

Both Jan and I have reviewed the file again and the photographs and affidavits you sent to me in 12/2008, from Gerald Waller and Allan Humphries. She and I agree that the additional information does not provide sufficient evidence to change the recommendation of this claim from disallowed. First, the affiants knowledge dates back to the mid-1980s which does not establish a lawful surface water use. The affidavits do not provide evidence to overcome the evidence provided by the aerials that this area is naturally marshy, prone to flooding due to its proximity to the Boise River, and has been to some degree cultivated. Nor does it meet the standard for a wildlife right set by the SRBA decision in Basinwide Issue 91-12.

3/25/2009

Vicky

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Friday, March 13, 2009 8:00 AM
To: Music, Vicky
Subject: W & H SRBA Claim 63-32910

Vicky,

Can you please let me know the status of this claim with regards to your review and/or schedule? Thanks.

Lori Graves
Water Rights Specialist
300 E. Mallard, Ste 350
Boise, ID 83706
208.383.4140 x219
fax 208.383.4156
e-mail lgraves@spfwater.com
www.spfwater.com

3/25/2009

DEC 26 2008

WATER RESOURCES
WESTERN REGION

December 23, 2008

Vicky Music
IDWR Western Region Office
2735 Airport Way
Boise, ID 83705

Subject: SRBA Claim No. 63-32910

Dear Vicky,

Enclosed in support of disallowed claim 63-32910 are notarized statements from Gerald Waller and Allan Humphries, managers of W & H, LLC, and photographs of the claimed place of use. The general location of each photo is indicated on a 2006 aerial photo of the subject wildlife area also enclosed.

The enclosed statements and photographs describe the nature of wildlife use that occurs on the property and how water from Baldrige Drain has been, and continues to be, intentionally diverted throughout the year for development of optimal wildlife habitat.

Please let me know if you have any questions. We look forward to meeting with you if necessary.

Sincerely,



Lori Graves
Water Rights Specialist

Cc: Gerald Waller, Allan Humphries

Enclosures

SPF file number: 645.0010

Statement of Gerald Waller Regarding Use of Water Right Claim 63-32910

I, Gerald Waller, am one of the managers of W & H Limited Liability Company (W & H). Allan Humphries is the other manager of W & H.

W & H owns adjacent properties in Canyon County, Idaho, known as Mallard Farms and the Walker Farm. I first became familiar with these properties in approximately 1980 through my association with Ward Williamson, one of the previous owners of Mallard Farms. I hunted on the property at that time, and observed water being intentionally diverted from the Baldrige and Meadows Drain, through the Upper Haas Ditch, to flood portions of the property to create shallow water habitat areas. These shallow water habitats are highly attractive to waterfowl as loafing, feeding, and roosting areas. In fact, Allan Humphries and I were so impressed with the effectiveness of the habitat created by the diverted water, that we purchased 2/3 of Mallard Farms in approximately 1984 from Jerry Bower and Larry Williams. We (as W & H) subsequently purchased the remaining 1/3 of Mallard Farms in approximately 2004 from Ward Williamson. W & H also purchased the adjacent Walker Farm in approximately 2000 from Norm Walker.

The Mallard Farms and Walker Farm properties function as a working farm and year-round wildlife habitat. Portions of the property are actively irrigated for pasture or row crops during the summer, and then flooded for habitat in the fall and winter. Over the years, we have entered into agreements with USDA-Natural Resources Conservation Service (NRCS) and Idaho Fish and Game Department (i.e., IDF&G HIP) to convert

portions of the property previously used for seasonal grazing into year-round habitat for waterfowl.

From the beginning of our ownership of Mallard Farms, we managed the water with Ward Williamson (as Ward had done previously) to maximize spring, fall, and winter habitat for waterfowl. During the fall months each year, the improved habitat attracts waterfowl which provides recreational opportunities for hunting for owners and friends. After hunting season ends each January, the flooded areas provide valuable resting areas for both local and migratory wildlife. In spring and early summer, the diversions of water create waterfowl nesting and rearing habitat. Given that there are large numbers of migratory wildfowl in the area from late fall through spring, we flood as much land as possible because the large number of birds require a greater amount of optimum habitat. Correspondingly, in the summer and early fall, when the smaller populations of local waterfowl are present, a smaller flooded area is adequate. Flood irrigation of pasture areas provides incidental habitat during late spring, summer, and early fall.

In the months of October through March (except during periods of extremely low temperatures when open water is freezing), we have diverted all available water flow from the Upper Haas Ditch into the claimed place of use for habitat purposes. For example, during late summer and early fall when irrigation demands decrease, any available excess water is diverted to these habitat areas to attract waterfowl. We like to begin diversions in September, prior to the start of waterfowl season (which is typically the first Saturday in October). Our diversions to habitat in the springtime will decrease

as irrigation demands begin in April. Diversions during summer months are intermittent, depending on available water supply. During mid- summer, all of the available water is often needed for irrigation purposes.

Depending on weather, farm management considerations, and other factors, we will flood various areas at different times during the year. The location of flooding can also change from year-to-year. For example, what we refer to as the “old Mallard Pond” (which is actually more of a vegetated area with little open water) on the Mallard Farms property was historically flooded during the fall and winter. We now preferentially flood it during the spring because it provides excellent nesting habitat.

The diverted water is directed to various locations through ditches. The ditches have been in place since at least the mid to late 1940s (following the last major flood on the Boise River). Older concrete and metal gates and pipes, that were likely installed many decades ago, are still visible on the property (see photo of concrete structure marked 1952). However, we have gradually replaced these with screw-type or slide-type head gates at the ditch turn-outs.

Within the areas that we flood, water depths typically range from 0 to 12 inches, except in small areas of semi-permanent or permanent ponds where water depths can reach more than 3 feet. In our experience, the ducks that we attract prefer shallow water that is less than 6 inches deep for feeding. However, the birds will also make use of the deeper water areas, particularly when the shallow water areas are not available.

We have excavated several permanent ponds on the property. The permanent ponds were developed after we purchased the property, and provide open-water habitat during summer months when available water is used for irrigation. We obtained an approved water-right permit (63-12061) for storage of 20 acre feet in the permanent ponds in 2001. Prior to development of the permanent ponds, the existing ponds on the property were seasonal, and were filled when sufficient water was available during fall, winter, and spring.

The areas that were intentionally flooded each year during the non-irrigation season when I first became acquainted with the property are shown on the attached figure. The area shown is approximately 45 acres. There have been times when this entire 45-acre area was flooded at the same time, but typically some portions were wet and other portions were dry. Since we acquired the property in the mid 1980s, additional areas have been flooded. Most of the flooding has been intermittent, with the exception of permanent ponds that we have excavated since 1984 and a few small areas of permanent wetlands supplied from ground water. We flood as much land as possible with the available water supply, and actively manage the water for optimum habitat.

To my knowledge, water has been diverted into this area during the non-irrigation season for many years. A former neighbor, Joe Dilly, told me that as a boy he hunted

ducks in flooded areas on the property during fall and winter months. That hunting likely occurred in the 1950s when his family owned adjacent property.

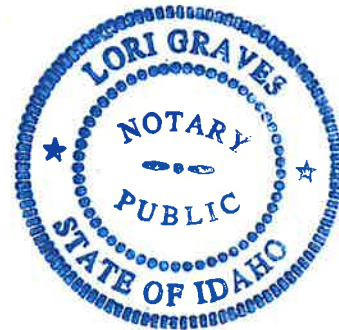
Gerard G. Waller
(Signature)

Subscribed and sworn before me this 17th day of Dec, 2008.

Lori Graves
(Signature of Notary)

Residing at Boise

My commission expires 6/18/2010



Statement of Allan Humphries Regarding Use of Water Right Claim 63-32910

I, Allan Humphries, am one of the managers of W & H Limited Liability Company (W & H). Gerald Waller is the other manager of W & H.

W & H owns adjacent properties in Canyon County, Idaho, known as Mallard Farms and the Walker Farm. I first became familiar with these properties in approximately 1980 through my association with Ward Williamson, one of the previous owners of Mallard Farms. I hunted on the property at that time, and observed water being intentionally diverted from the Baldrige and Meadows Drain, through the Upper Haas Ditch, to flood portions of the property to create shallow water habitat areas. These shallow water habitats are highly attractive to waterfowl as loafing, feeding, and roosting areas. In fact, Gerald Waller and I were so impressed with the effectiveness of the habitat created by the diverted water, that we purchased 2/3 of Mallard Farms in approximately 1984 from Jerry Bower and Larry Williams. We (as W & H) subsequently purchased the remaining 1/3 of Mallard Farms in approximately 2004 from Ward Williamson. W & H also purchased the adjacent Walker Farm in approximately 2000 from Norm Walker.

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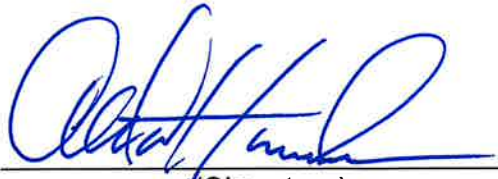
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We have excavated several permanent ponds on the property. The permanent ponds were developed after we purchased the property, and provide open-water habitat during summer months when available water is used for irrigation. We obtained an approved water-right permit (63-12061⁶⁰¹) for storage of 20 acre feet in the permanent ponds in 2001. Prior to development of the permanent ponds, the existing ponds on the property were seasonal, and were filled when sufficient water was available during fall, winter, and spring.

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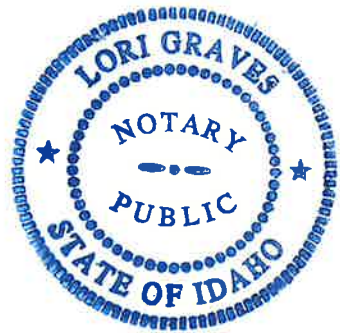

(Signature)

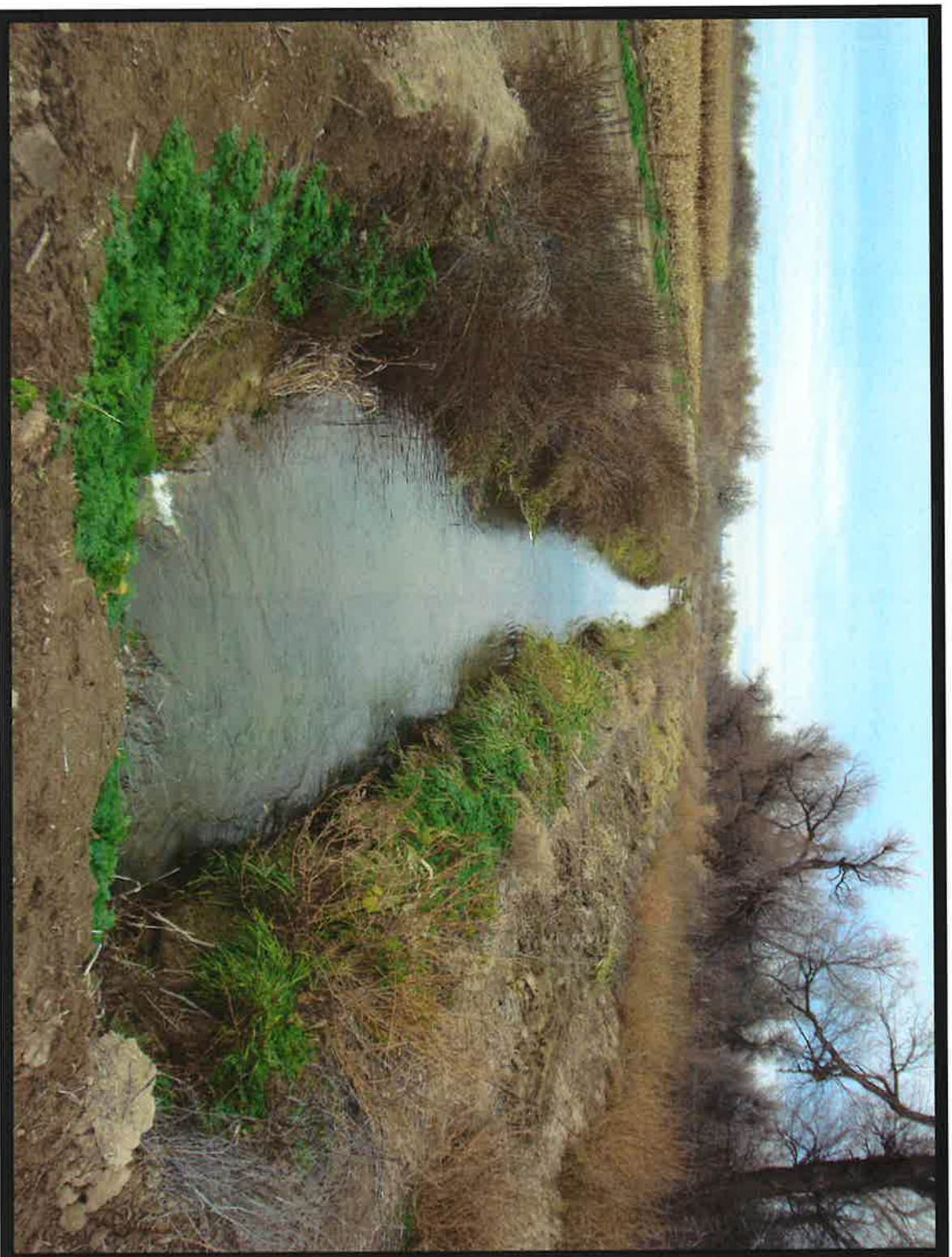
Subscribed and sworn before me this 17th day of Dec, 2008.


(Signature of Notary)

Residing at Boise

My commission expires 6/18/2010





1. Upper Haas Ditch Diversion Point (Looking North Towards Mallard Farm)



2. Ditch Controlling Works



3. Ditch Controlling Works



4A. Old Mallard Pond Wetted Area



4B. Old Mallard Pond Wetted Area



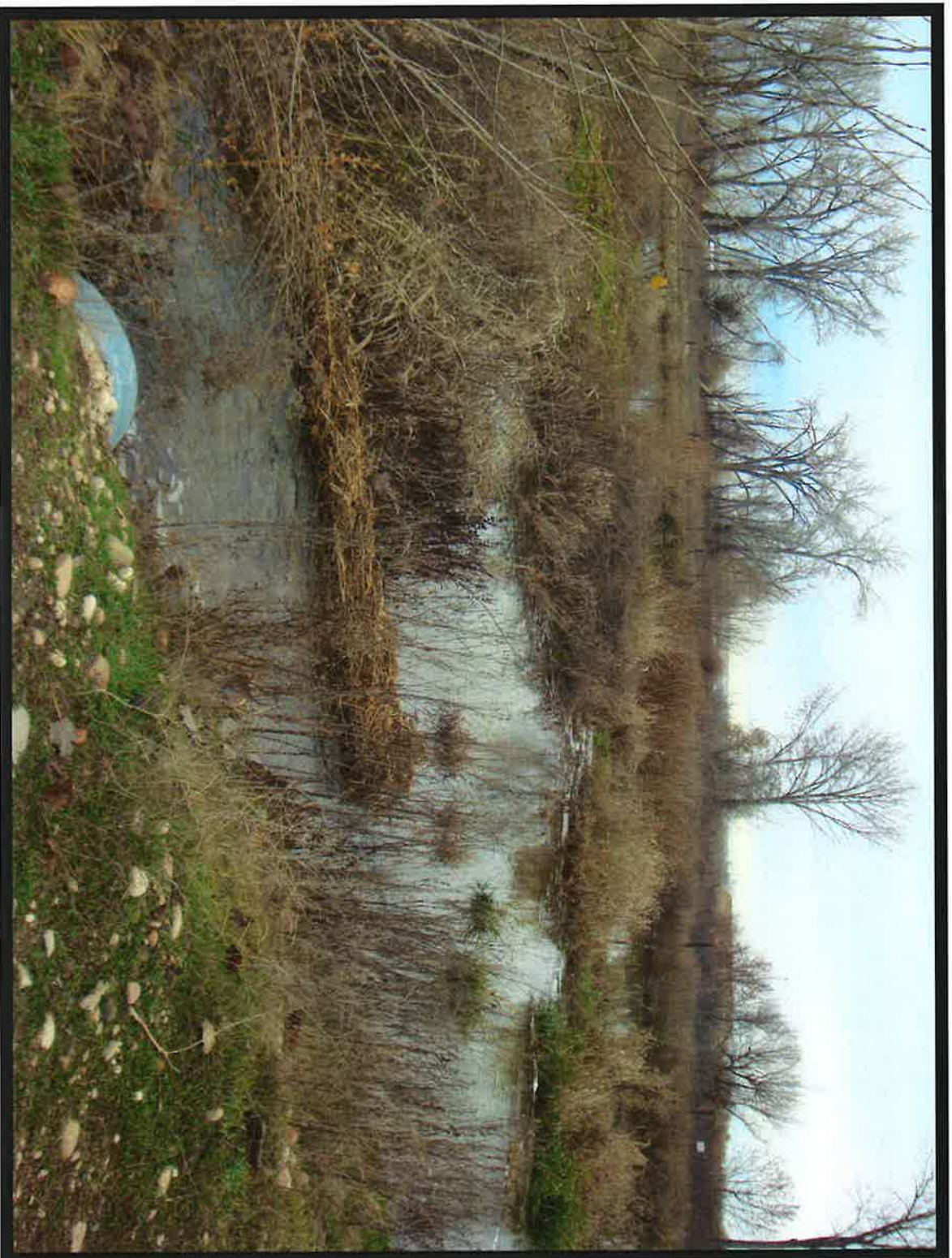
4C. Old Mallard Pond Wetted Area



5A. Ditch Controlling Works



5B. Ditch To Eagle Pond Wetted Area



6A. Eagle Pond Wetted Area



6B. Eagle Pond Wetted Area



6C. Eagle Pond Wetted Area



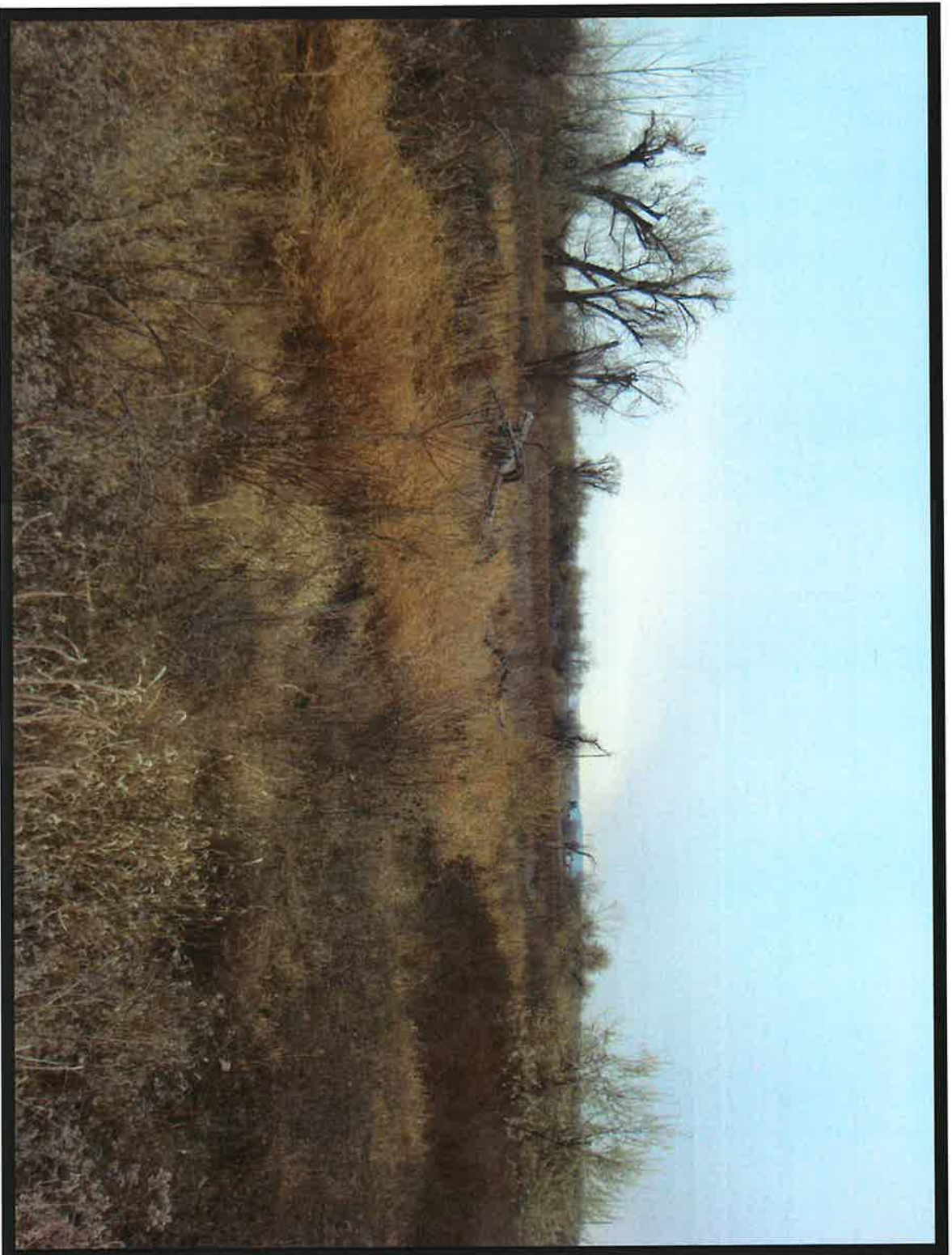
6D. Eagle Pond Wetted Area



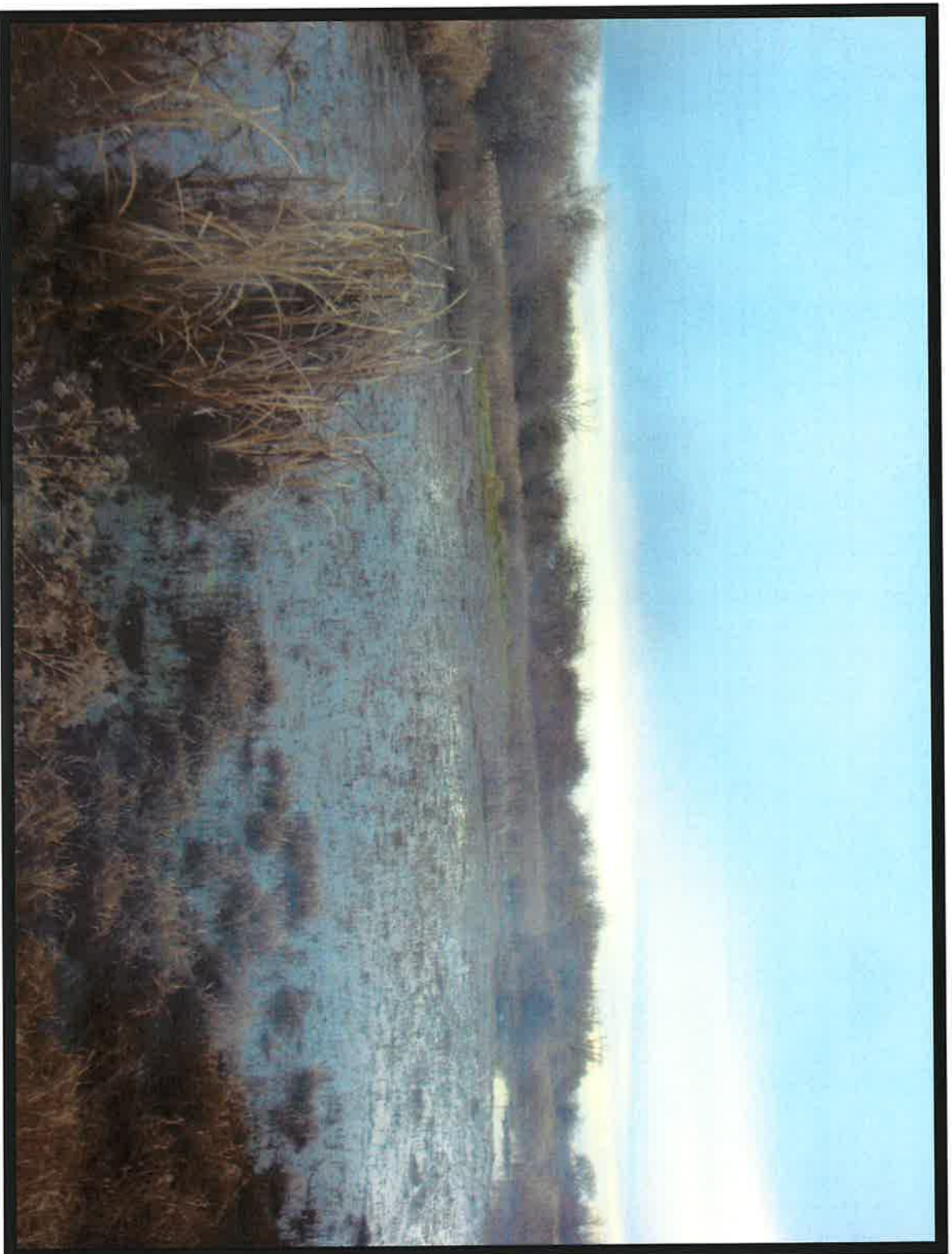
7A. Ditch Controlling Works For Mud Pond Wetted Area



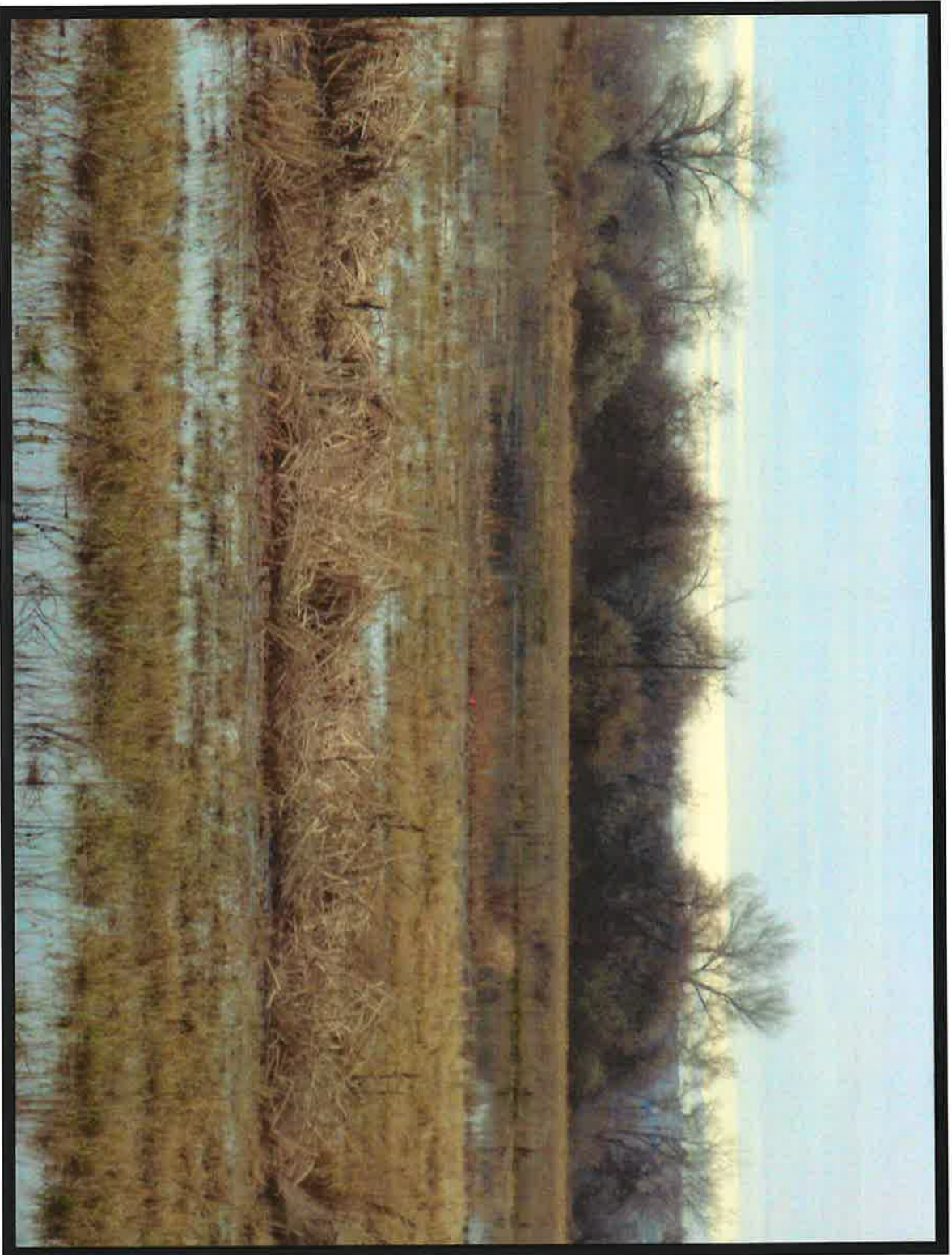
7B. 1952 Diversion Structure



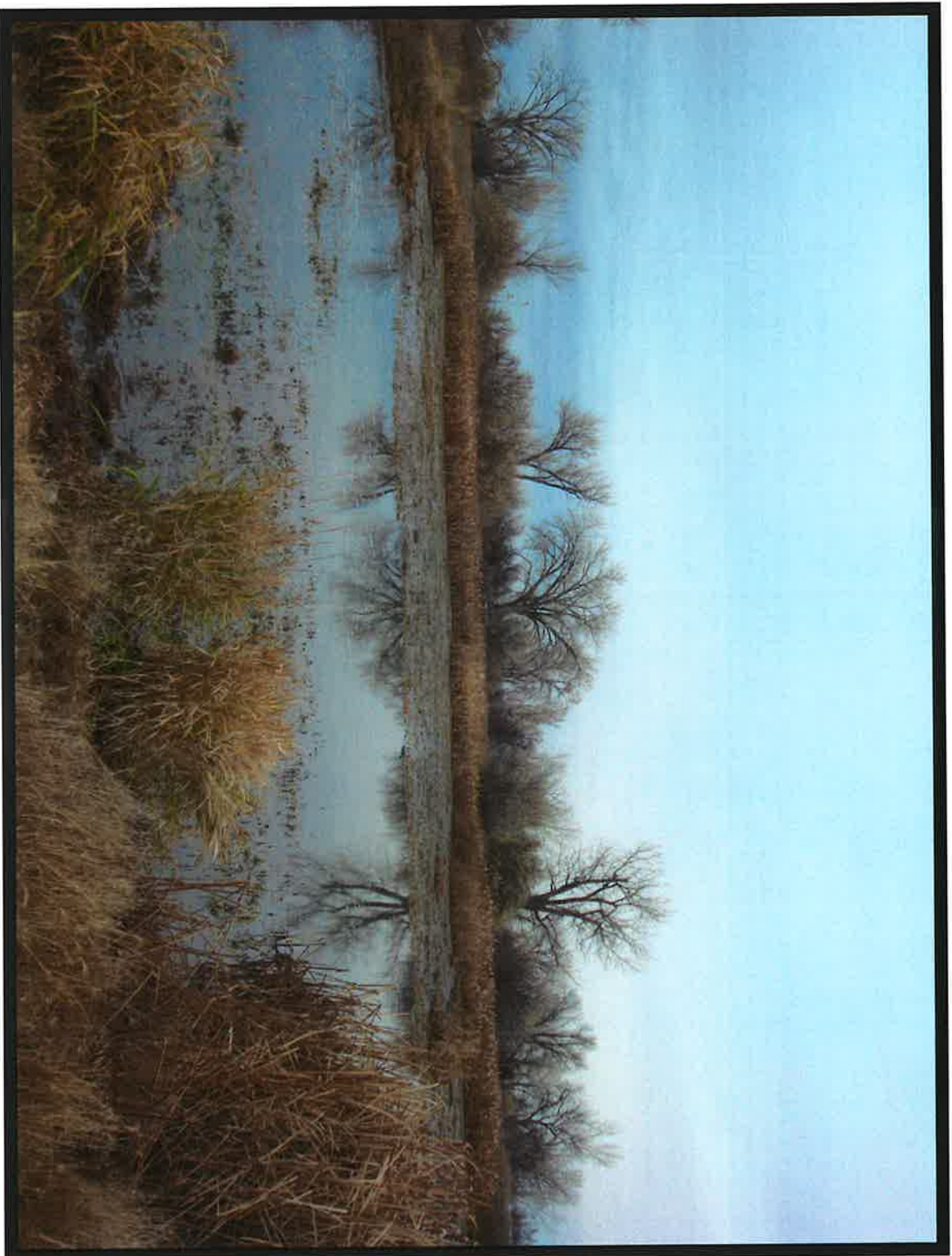
8A. Mud Pond Wetted Area



8B. Mud Pond Wetted Area



8C. Mud Pond Wetted Area



8D. Mud Pond Wetted Area



8E. Overflow From Mud Pond Wetted Area Towards Beaver Pond Wetted Area



9A. Beaver Pond Wetted Area



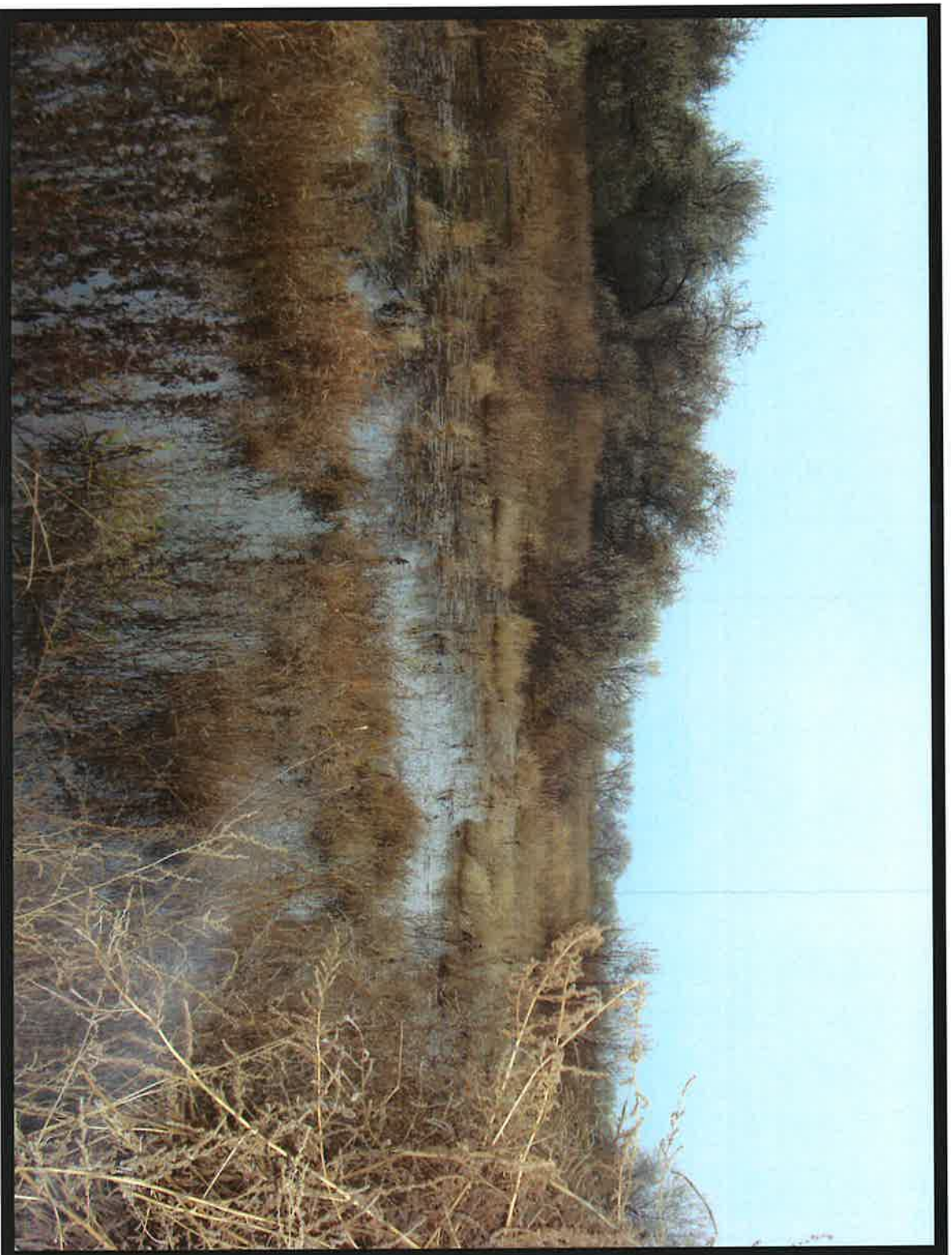
9B. Beaver Pond Wetted Area



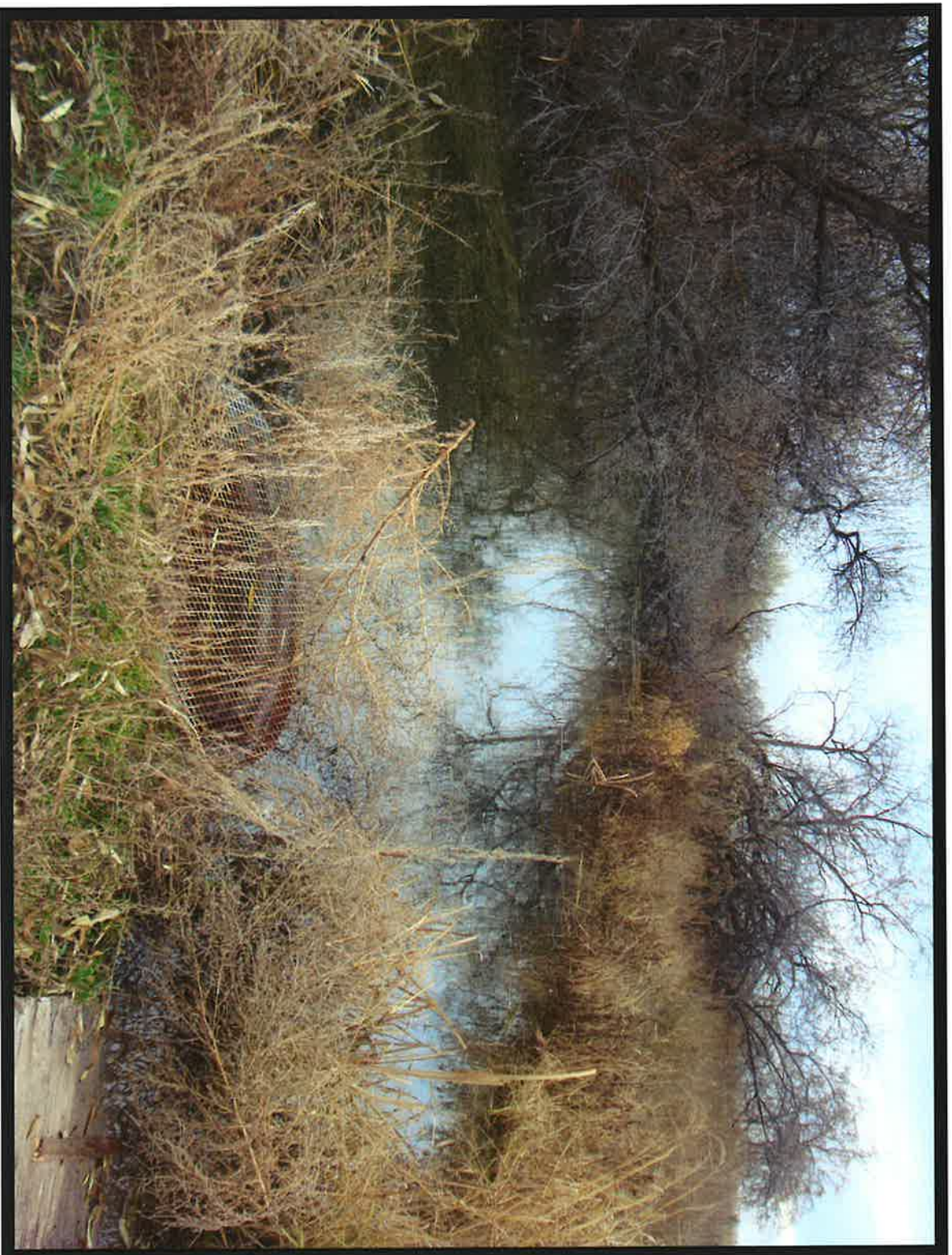
10. Ditch Controlling Works For Teal Blind Wetted Area



11A. Teal Blind Wetted Area



11B. Teal Blind Wetted Area



11C. Overflow Drain For Teal Blind Wetted Area



Typical Season Flooding



Typical Season Flooding

Music, Vicky

From: Music, Vicky
Sent: Friday, November 07, 2008 4:34 PM
To: 'Lori Graves'
Subject: RE: 63-32910
Attachments: 63-32910 W & H.pdf; SRBA BW12 wildlife.pdf

Hi Lori –

Attached is my recommendation, memo to the claim file, and SRBA info re wildlife.
 Vicky M

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Thursday, October 23, 2008 8:53 AM
To: Music, Vicky
Subject: RE: 63-32910

Thanks for your time Vicky.

From: Music, Vicky [mailto:Vicky.Music@idwr.idaho.gov]
Sent: Wednesday, October 22, 2008 1:38 PM
To: Lori Graves
Subject: RE: 63-32910

Hi Lori –

Per Craig it appears that the next Late Claim DR will be filed with the Court at the end of Nov 2008. I have reviewed the claim, aerials, the overlapping files and app for wildlife permit, and cannot find that the water was diverted for wildlife use since the claimed priority date. I have more information but am not prepared to discuss here because other projects are of a higher priority. When I make the recommendation, in the next 2 weeks, I will scan and email to you the SRBA ruling on wildlife that is pertinent here as well as any memo that will be included in the claim file. Perhaps we can talk more then.

Thanks –
 Vicky Music

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Monday, October 20, 2008 8:58 AM
To: Music, Vicky
Subject: FW: 63-32910

From: Lori Graves
Sent: Wednesday, October 15, 2008 9:21 AM
To: 'Music, Vicky'

11/7/2008

Subject: RE: 63-32910

In an effort to save time regarding a future objection to the recommendation, can you tell me why it was disallowed and what type of additional information we can provide? Thanks Vicky.

From: Music, Vicky [mailto:Vicky.Music@idwr.idaho.gov]
Sent: Wednesday, October 15, 2008 9:01 AM
To: Lori Graves
Subject: RE: 63-32910

No, it will be recommended disallowed.

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Wednesday, October 15, 2008 8:55 AM
To: Music, Vicky
Subject: RE: 63-32910

Is it recommended as filed?

From: Music, Vicky [mailto:Vicky.Music@idwr.idaho.gov]
Sent: Wednesday, October 15, 2008 8:25 AM
To: Lori Graves
Subject: RE: 63-32910

Hi Lori –

IT will be reported in the next late claim report to the Court, though I don't know if the date of that report has been established yet. Sometimes they do 2 late DR reports yearly; one in the spring [this claim was filed too late for that one] and one in the fall. When I hear if a report will be filed this fall, I will let you know. Vicky

From: Lori Graves [mailto:LGraves@spfwater.com]
Sent: Tuesday, October 14, 2008 12:15 PM
To: Music, Vicky
Subject: 63-32910

Hey Vicky,

When you get a chance, could you please let me know the status of claim 63-32910 in the name of W & H Partnership. Thanks Vicky.

Lori Graves
Water Rights Specialist
300 E. Mallard, Ste 350
Boise, ID 83706
208.383.4140 x219
fax 208.383.4156
e-mail lgraves@spfwater.com
www.spfwater.com

11/7/2008

Memorandum

April 14, 2008

To: File 63-32910
From: Craig L. Saxton

RE: Typo in Place of Use Description

63-32910 was granted by the court on 3-18-08. My initial review of the claim found that there appeared to be a typo in the claimed PLS for the POU.

The legal description on the claim is T5S, R5E. Looking at the point of diversion claimed as well as the map provided with the claim, it appears that the legal description should have been claimed as T5N, R5W.

I contacted Lori Graves at SPF Engineering as it appeared she helped prepare the claim. She contacted me by phone and confirmed that the Township and Range for the claimed place of use should be T5N, R5W.

Because of this is simply a data entry error and the intent was to claim a POU in T5N, R5W, the agent preparing the recommendation should prepare the recommendation so it reflects the correct township and range.

Saxton, Craig

From: Saxton, Craig
Sent: Monday, March 31, 2008 2:06 PM
To: lgraves@spfwater.com
Subject: 63-32910 W&H Limited Liability Co - Late SRBA claim
Attachments: 63-32910.pdf

Hey Lori,

How are things going?

I am going through the late claims that were approved by the court on 3-19-08. I see your tracks on 63-32910 and I have some questions.

It appears the POD is claimed at: 5N, 5W, S27
Yet the POU is claimed at: 5S, 5E, S22
But the map seems to show POD and POU at: 5N, 5W, S22 (combination of the first two).

Could you confirm if there is an error? And if there is, would you like to get me an amended claim, or would you like me to do it?

I have attached the PDF with the original claim so you can see what I am looking at.

Thanks Lori.

Craig

4/14/2008

Claim No(s). 63-32910

Claim No(s). 63-32910

[illegible]



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

April 2, 2008

W & H LIMITED LIABILITY COMPANY
504 N PHILLIPPI ST
BOISE ID 83706

RE: Snake River Basin Adjudication (SRBA)
Late Notice of Claim to a Water Right #63-32910

Dear Claimant:

The Notice of Claim to a Water Right you filed was received from the SRBA Court recently. I have enclosed receipt #C086377 for the filing fees you paid. Please retain the receipt for your records.

Your Notice of Claim will be investigated and reported to the Court in a future supplemental Director's Report. Please contact me at 208/287-4916 if you have any questions.

Sincerely,

Craig L. Saxton
Water Rights Supervisor
Adjudication Bureau

CLS:ss:state

Enclosure:

Receipt Referenced Above

SCANNED

APR - 2 2008

Saxton, Craig

From: Saxton, Craig
Sent: Monday, March 31, 2008 2:06 PM
To: lgraves@spfwater.com
Subject: 63-32910 W&H Limited Liability Co - Late SRBA claim
Attachments: 63-32910.pdf

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How are things going?

I am going through the late claims that were approved by the court on 3-19-08. I see your tracks on 63-32910 and I have some questions.

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But the map seems to show POD and POU at: 5N, 5W, S22 (combination of the first two).

Could you confirm if there is an error? And if there is, would you like to get me an amended claim, or would you like me to do it?

I have attached the PDF with the original claim so you can see what I am looking at.

Thanks Lori.

Craig

3-31-08:

Lori Graves called back and said POD Location is correct But POU is 5N, 5W S.22. Leave claim as is but fix error in REC. No Amended claim needed. This was obvious TYPO, and map is accurate.

C. Saxton

3-31-08

Field Exam Date 7/17/08

Desktop review/vum

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT

Prior to Field Exam

- na
- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
 - ☒ Check fees paid
 - ☐ Well logs (if needed)
 - ☒ Copy of topo or NAPP
 - ☐ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
 - ☐ Check POD & POU overlap, see below – include overlapping right for exam
 - ☒ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is complete

Claim No(s) 63-32910

Owner: W&H Ltd. Liability Co. Phone No. 323-7767

Current Address:

- ☒ No change NAME IS THE SAME
- ☐ NEW OWNER
- ☐ No change Address
- ☐ NEW ADDRESS
- ☐ How long owned property?

Accompanied by: na

PRIORITY DATE

- ☒ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: 1-1-1970

(If priority date, based on your exam, seems questionable, explain below.)

see memo in file

Source: Tributary to

- ☒ No Change –SAME SOURCE
- ☐ Source found is different than claimed:

POINT OF DIVERSION

- ☒ No change
- ☐ POD found is different than claimed:
- ☐ If different, when did POD change?

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

same as 63-2611A & B**OVERLAP REVIEW**Other water rights with the same point of diversion: 63-2611A & B

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

yes, it would be an expansion of the current uses**WATER USES**

- ☐ No change
- ☐ Different Uses

Use _____ From _____ To _____ Amount _____ CFS _____ AFA _____

Use _____ From _____ To _____ Amount _____ CFS _____ AFA _____

Use _____ From _____ To _____ Amount _____ CFS _____ AFA _____

TOTAL VOLUME – Groundwater onlyNA

- ☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA _____
- ☐ Changes found, the new total is, Amount _____ CFS _____ AFA _____
- ☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

NON-IRRIGATION USES:

- ☐ No change
- ☐ Changes Exam found: Domestic # of homes _____ Stock # _____
- Types _____ Additional comments: _____

PLACE OF USE:

- ☐ No Change
- ☐ Changes shown below:

there was a typo in the claim - range should be 5W, not 5E. will be treated as clerical error. see memo in file by Chris Saxton.

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: 03-2611A & B

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: _____

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size

FLOW MEASUREMENTS:

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

Disallowed - no pta found

- (1) Claimed 63-2611 A & B - 11 Genesed, split but now owned by same entity.
- (2) 63-32910 PODS & POU same as 63-2611 A & B
- (3) Aerials for 1987, 1992, 2000, 2004 ²⁰⁰⁶ show that the area in the map attached to the claim have never been flooded for wildlife.
- (4) The claim was filed in 2008 so only have to look back 5 years.
- (5) Claimed area is close to river, swampy, small natural ponding
- (6) Claim mirrors app for permit 63-32456 (9/2006) & 63-12601 (8/2000) permit (7) claim states pond over flows - not a diversion.

AFTER EXAM THE FILE SHOULD CONTAIN:

- aerials -
n/a (
- ☒ Completed claim checklist
 - ☐ Photographs of POD's and POU
 - ☐ GPS readings
 - ☐ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: ^{desktop} 7/11/08

FIELD EXAMINER: Wick LITTLE

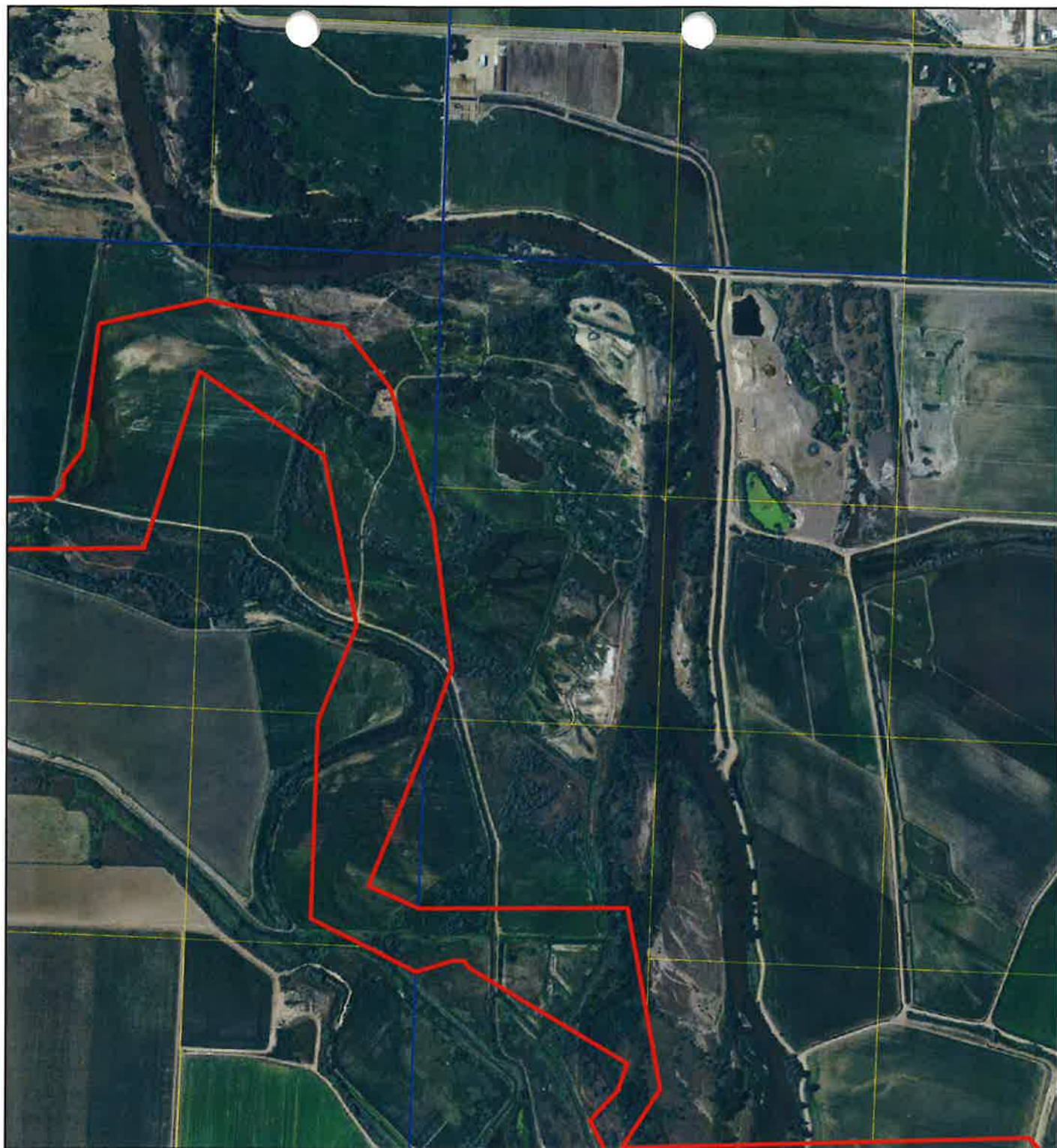
(8) see memo in file



0 0.05 0.1 0.2 0.3 0.4 0.5 0.6 Miles

late claim 63-32910- filed by W&H LLC. 1987 aerial of general area of
claimed place of use





0 0.05 0.1 0.2 0.3 0.4 0.5 0.6 Miles

late claim 63-32910- filed by W&H LLC. 2004 aerial of general area





0 0.05 0.1 0.2 0.3 0.4 0.5 0.6 Miles

late claim 63-32910- filed by W&H LLC. 2006 aerial of general area of
claimed place of use





0 0.05 0.1 0.2 0.3 0.4 0.5 0.6 Miles

late claim 63-32910- filed by W&H LLC. 1992 aerial of general area of
claimed place of use



IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 63-12601

WATER RIGHT NUMBER: 63-12601

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MALLARD FARMS ROCKY MTN PIZZA HUTS INC 504 N PHILLIPPI BOISE, ID 83706 (208)344-5784

Priority Date: 08/24/2000

Basis:

Status: Active

<u>Source</u>	<u>Tributary</u>
WASTE WATER	BOISE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
WILDLIFE STORAGE	01/01	12/31		20.00 AF
DIVERSION TO STORAGE	01/01	12/31	0.200 CFS	
	<u>Total Diversion:</u>		0.200 CFS	

Location of Point(s) of Diversion

WASTE WATER	L4 (NE1/4NW 1/4NW 1/4)	Sec. 27, Twp 05N, Rge 05W, B.M.
CANYON County		

Place of UseWILDLIFE STORAGE Within CANYON County

T05N R05W S21 Lot 8 NENE	T05N R05W S22	NWNW
T05N R05W S22 Lot 4 SWNW		

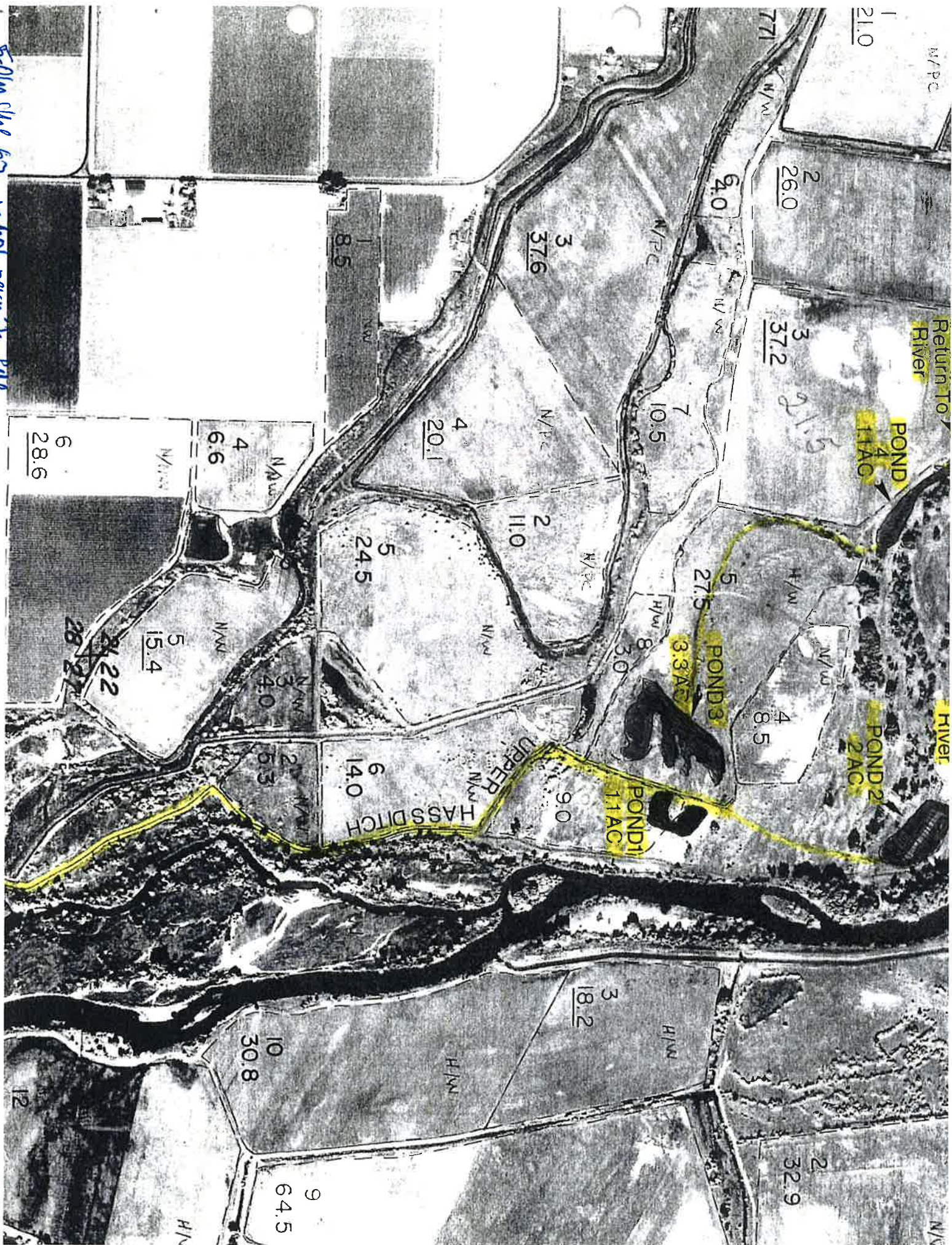
application states source is from the meadows & Baldridge drain into upper Hads Ditch

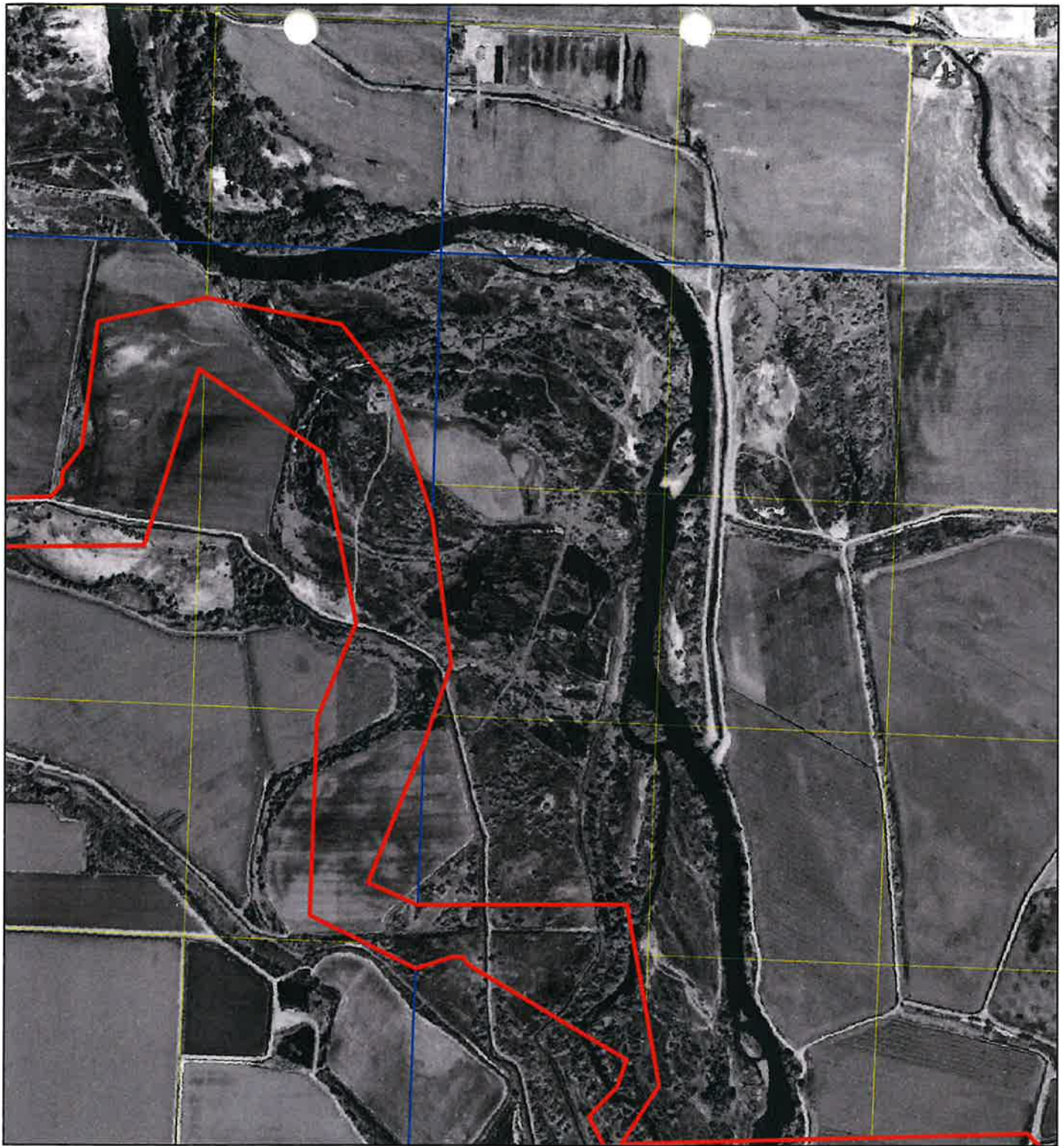
Conditions of Approval:

1. 01J Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
2. 26A 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.
3. 121 The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
4. R04 Use of water under this water right will be regulated by the watermaster of State Water District No. 63.
5. X57 Approval of this permit does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

Remarks:

Return to River





0 0.05 0.1 0.2 0.3 0.4 0.5 0.6 Miles

late claim 63-32910- filed by W&H LLC. 2000 aerial of general area of
claimed place of use





IDAHO DEPARTMENT OF WATER RESOURCES

Water Application Report 63-32458

WATER RIGHT NUMBER: 63-32458

Owner Type Name and Address
 Current Owner W & H PARTNERSHIP LLC
 DBA MALLARD FARMS
 504 N PHILLIPPI ST
 BOISE, ID 83706
 (208)323-7767

Representative SPF WATER ENGINEERING LLC
 C/O LORI GRAVES
 600 E RIVER PARK LN STE 105
 BOISE, ID 83706
 (208)383-4140

*Overlapping permit
 same uses, POU
 ~ POU*

Priority Date: 09/12/2006

Basis:

Status: Active

Source Tributary
 UNNAMED DRAIN BOISE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
WILDLIFE	01/01 to 12/31	4.600 CFS	
DIVERSION TO STORAGE	01/01 to 12/31	4.600 CFS	
WILDLIFE STORAGE	01/01 to 12/31		78.80 AF
<u>Total Diversion:</u>		4.600 CFS	

Location of Point(s) of Diversion

UNNAMED DRAIN L3 (NE1/4NW1/4) Sec. 27, Twp 05N, Rge 05W, B.M.
 CANYON County

Place of Use

WILDLIFE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	05W	21	X	X	X	X	X			X					X	X			
			L 2	L 3	L 7	L 8	L 4			L 6					L 9				
05N	05W	22						X	X			X							
									L 4			L 3							

WILDLIFE STORAGE

Twp	Rge	Sec	NE	NW	SW	SE
-----	-----	-----	----	----	----	----

IDAHO DEPARTMENT OF WATER RESOURCES
Water Application Report 63-32458

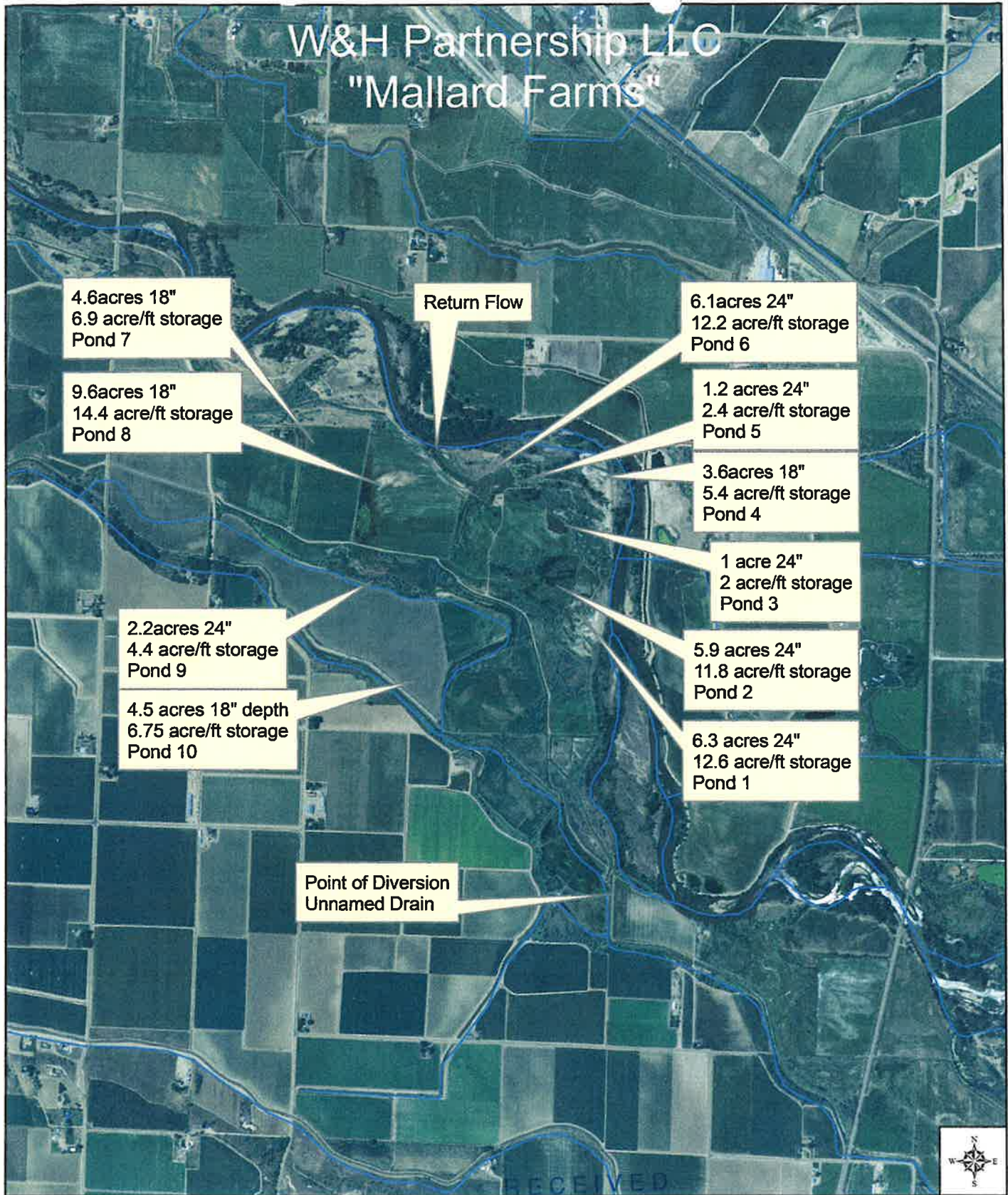
		NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
05N 05W 21		X	X	X	X	X			X					X	X			
		L 2	L 3	L 7	L 8	L 4			L 6					L 9				
05N 05W 22							X	X			X							
								L 4			L 3							

Conditions of Approval:

Remarks:

Comments:

Water Supply Bank:



Location Map

Township 5N, Range 5W, Sections 21 & 22

JUN 11 2007

WATER RESOURCES
WESTERN REGION

Wetlands Northwest LLC

Office: 208-375-5373

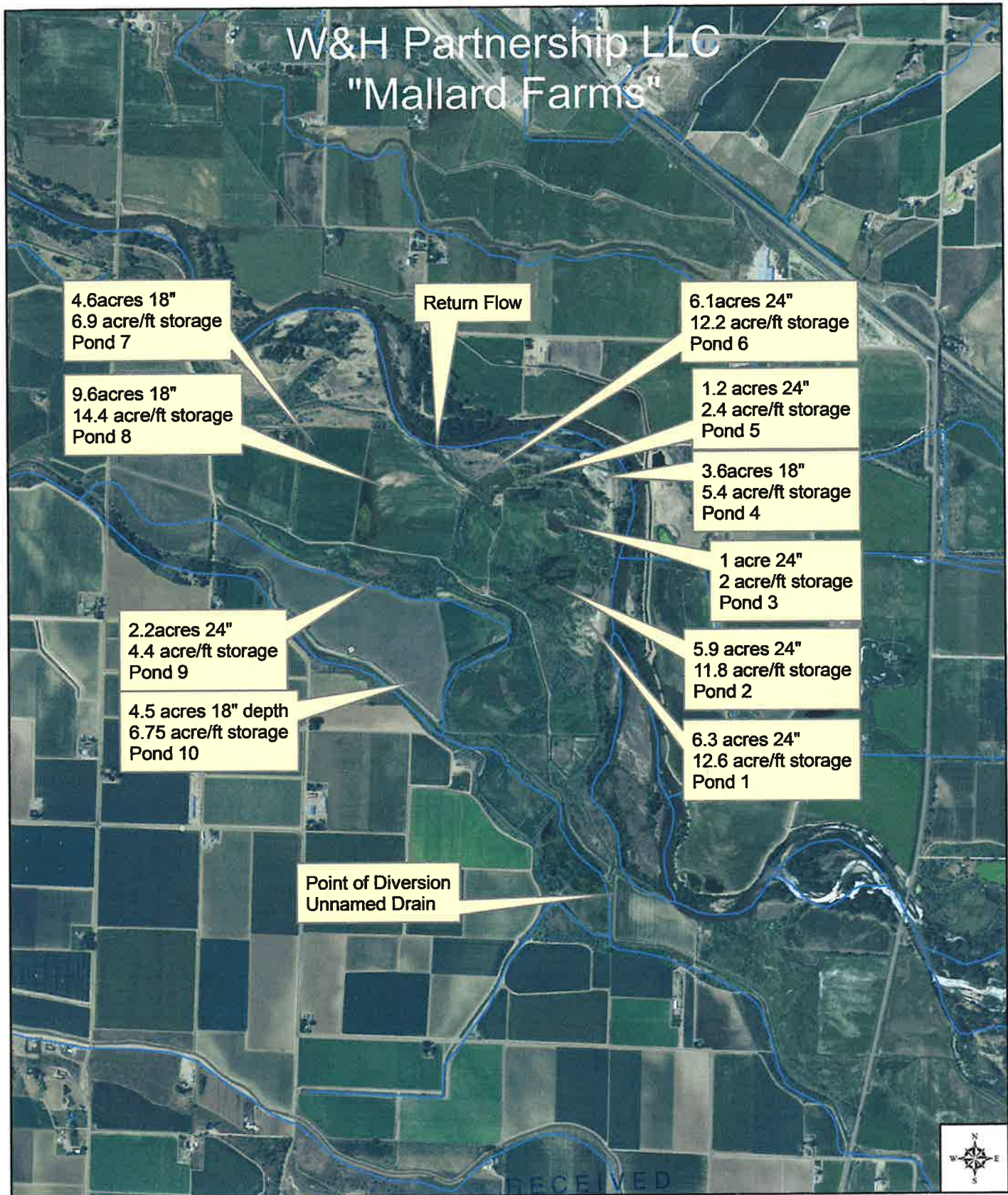
Fax: 208-375-2552

Email: gary.howard@wetlandsnorthwest.com

Canyon County, Idaho

identical to map #1 but typed pond #'s &
added return flow point at river

63-32458 map 292



Location Map

JUN 11 2007

Wetlands Northwest LLC

Office: 208-375-5373

Fax: 208-375-2552

Township 5N, Range 5W, Sections 21 & 22

**WATER RESOURCES
WESTERN REGION**

Email: gary.howard@wetlandsnorthwest.com

Canyon County, Idaho

*identical to map #1 but typed pond #'s &
added return flow point AT RIVER*

63-32458 map 2 of 2

MEMORANDUM TO CLAIM FILE

TO: CLAIM FILE NO. 63-32910
FROM: VICKY L MUSIC, SR WATER RESOURCE AGENT, IDWR / WESTERN REGION
SUBJECT: CLAIMS REVIEW – BASIS FOR DISALLOWAL
DATE: 11/7/2008

This beneficial use claim was filed December 10, 2007 by W & H Ltd. Liability Co. The claimed priority date is 1/1/1970, the uses are diversion to storage [4.6 cfs], wildlife [4.6 cfs] and wildlife storage [45 afa], and the source is the Baldrige and Meadows Drain trib to the Boise River.

In Item # 5 of the claim, "Description of diverting works" the claim states "water is diverted from the drain in Upper Haas Ditch, which fills a pond that overflows and floods surrounding fields." In Item 14, "Remarks", the claim states, "Water is diverted from the Baldrige and Meadows Drain into a ditch, also known as the Upper Haas Ditch, that carries water to the SWNW, Section 22, T5N, R5W, where it is continuously discharged to flood 45 acres 1 foot deep for wildlife purposes. A 2006 NAIP Photo was used to determine the point of diversion from the drain."

The claimant provides as proof of beneficial use an affidavit by a prior owner of the property, Ward Williamson, and 2 letters dated 1989 from Harold Noack, attorney for Mallard Farms. One of the letters is to Gerald Waller, Rocky Mountain Pizza Huts (Jerry Waller, a partner in Mallard Farms) and the second letter is to James Johnson, water resource board. The letters memorialize a conference held at IDWR in October 1989 regarding ponds and wildlife use on Mallard Farms with IDWR personnel and Mallard Farms.

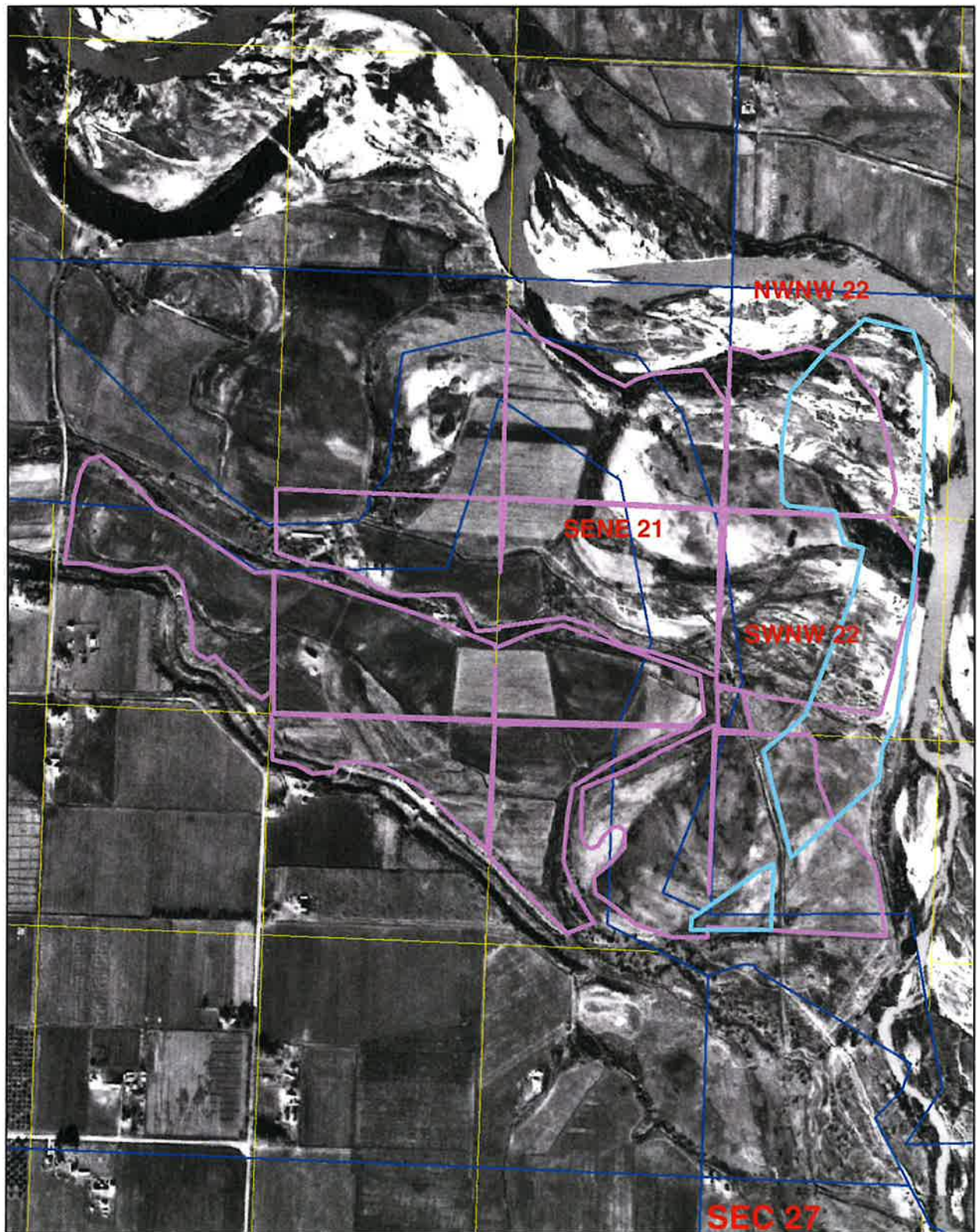
I recommended this claim as disallowed because, in spite of the affidavit and the conference regarding wildlife use, I cannot confirm the wildlife use. I reviewed aerial photographs of the claim place of use for the following years: 1939, 1981, 1987, 1992, 2000, 2004 and 2006. Without exception, the aerials confirm that the wildlife use has never existed as claimed. The claimed place of use, though marshy, clearly shows evidence of cultivation, some natural vegetation associated with the marshy areas near the Boise River, discrete ponds, canals and farm roads, all features that would not be evident if the 45 acres had been flooded year round and used for wildlife for the past 38 years.

The letters provide no evidence that a diversion was developed for wildlife and that 45 acres were flooded all year round for wildlife use. The affidavit provided is contradicted by the aerial evidence.

On the aerial layouts attached to this memo, I added the places of use for irrigation rights 63-2611A & B. These are irrigation rights claimed by the current owners which overlap most of the 63-32910 claimed place of use. Again, this information contradicts the current claim.

Claimant also has a permit for 63-12601 [filed 8/2000] and an application for permit 63-32458 [filed 9/2006], both for the same uses, same place of use, same point of diversion.

Last, SRBA Special Masters Report and Recommendation (SMRR) for Basinwide Issue 12, issued in 1996, addressed wildlife uses. Attached are pages 7-10 of that ruling. The pertinence of the ruling is that the Special Master ruled that a water right is not intended to either document or quantify natural occurrences. In this situation, the diversion was developed for irrigation, the claimed place of use is a naturally marshy area, and there was no diversion developed for wildlife.



**CLAIM 63-32910 - 1939 AERIAL OF OVERLAPPING RIGHTS 63-2611 A & B
PLACES OF USE [IN PURPLE] AND 63-32910 PLACE OF USE [LT. BLUE].**



W53
1981 aerial



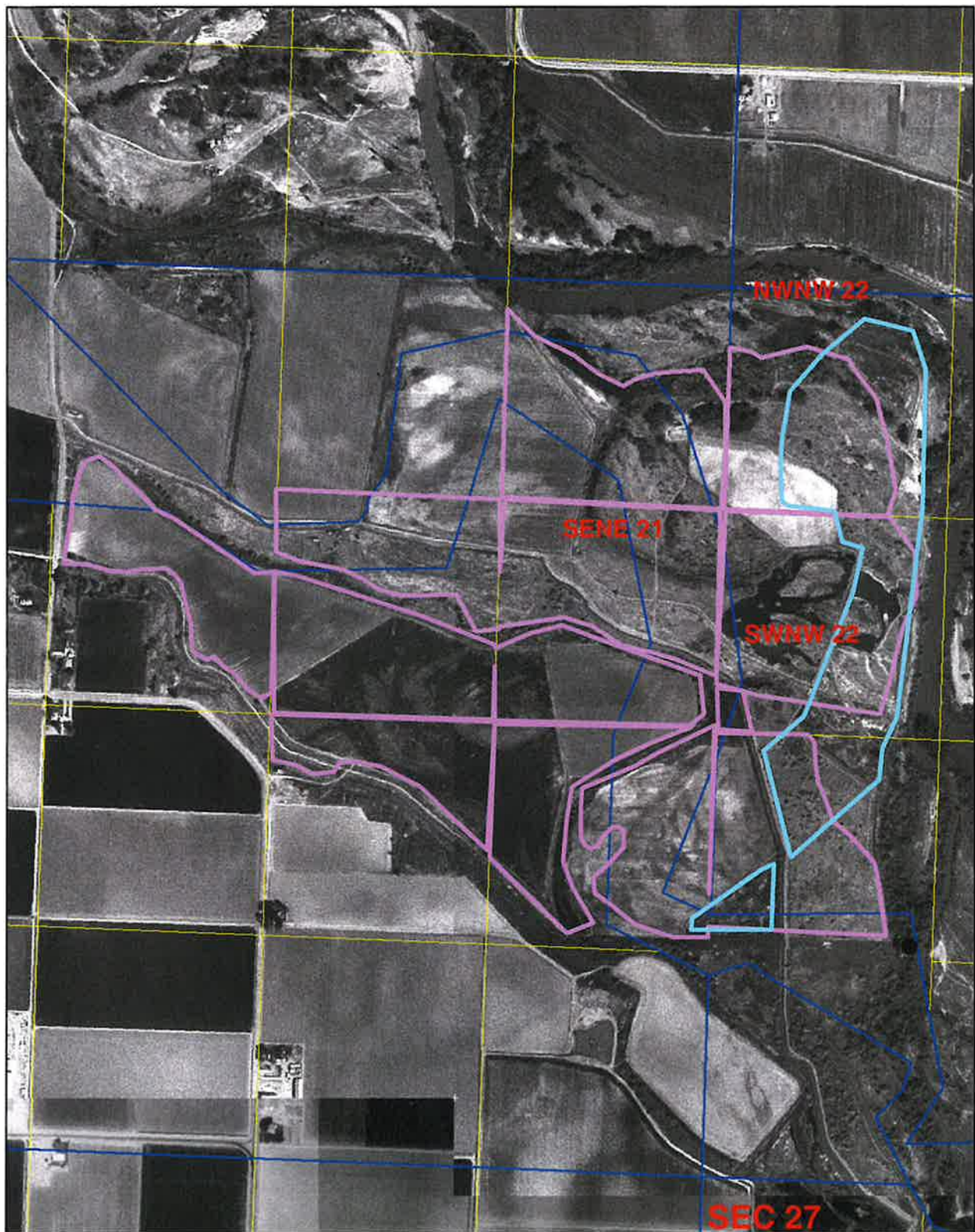
QUADRANGLE LOCATION

Of These Maps Can Be Obtained
Inneville Blue Print, Boise Idaho

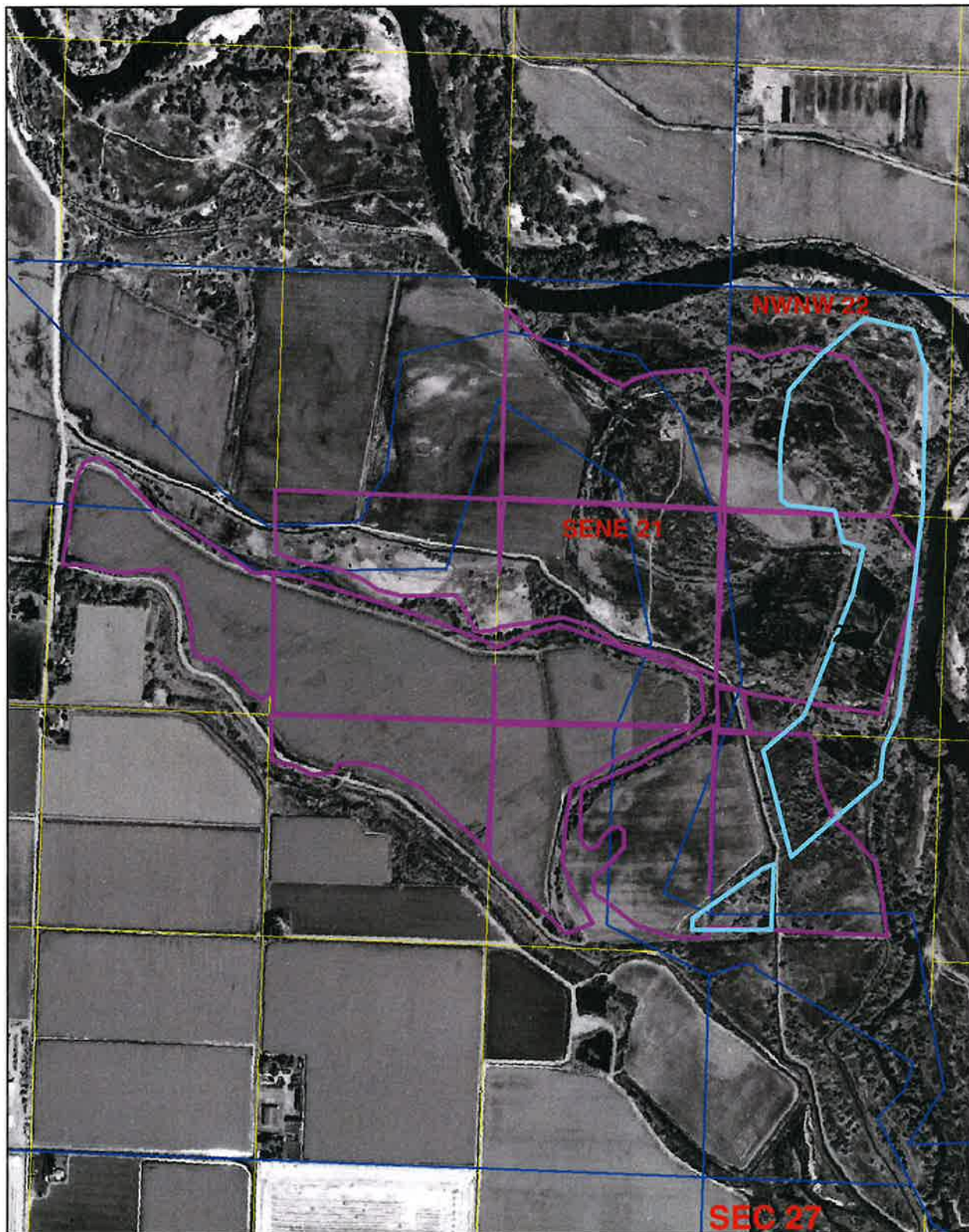
MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
BY U. S. GEOLOGICAL SURVEY, MENLO PARK, CALIF. 94025



**CLAIM 63-32910 - 1987 AERIAL OF OVERLAPPING RIGHTS 63-2611 A & B
PLACES OF USE [IN BLACK] AND 63-32910 PLACE OF USE [LT. BLUE].**

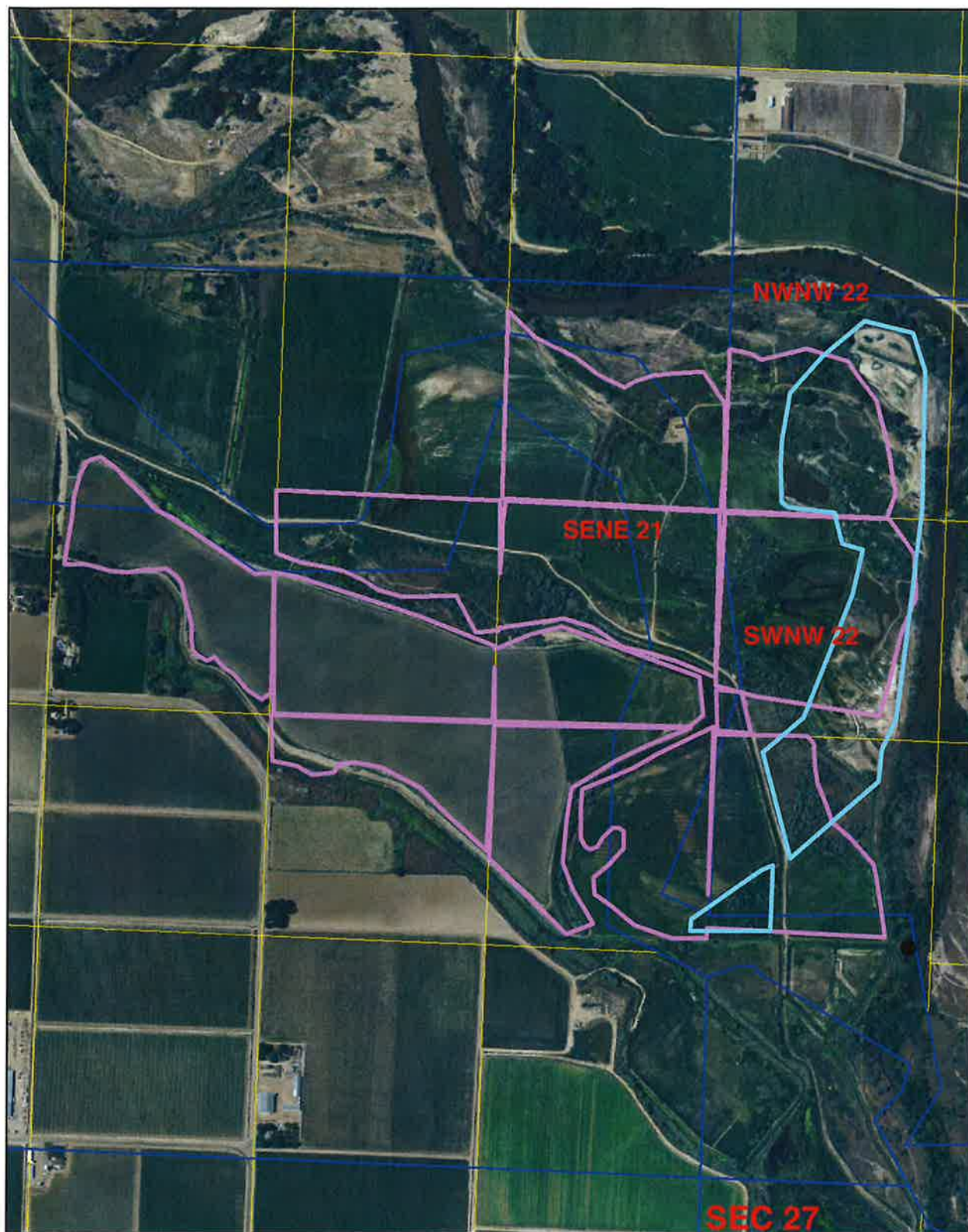


**CLAIM 63-32910 - 1992 AERIAL OF OVERLAPPING RIGHTS 63-2611 A & B
PLACES OF USE [IN PURPLE] AND 63-32910 PLACE OF USE [LT. BLUE].**

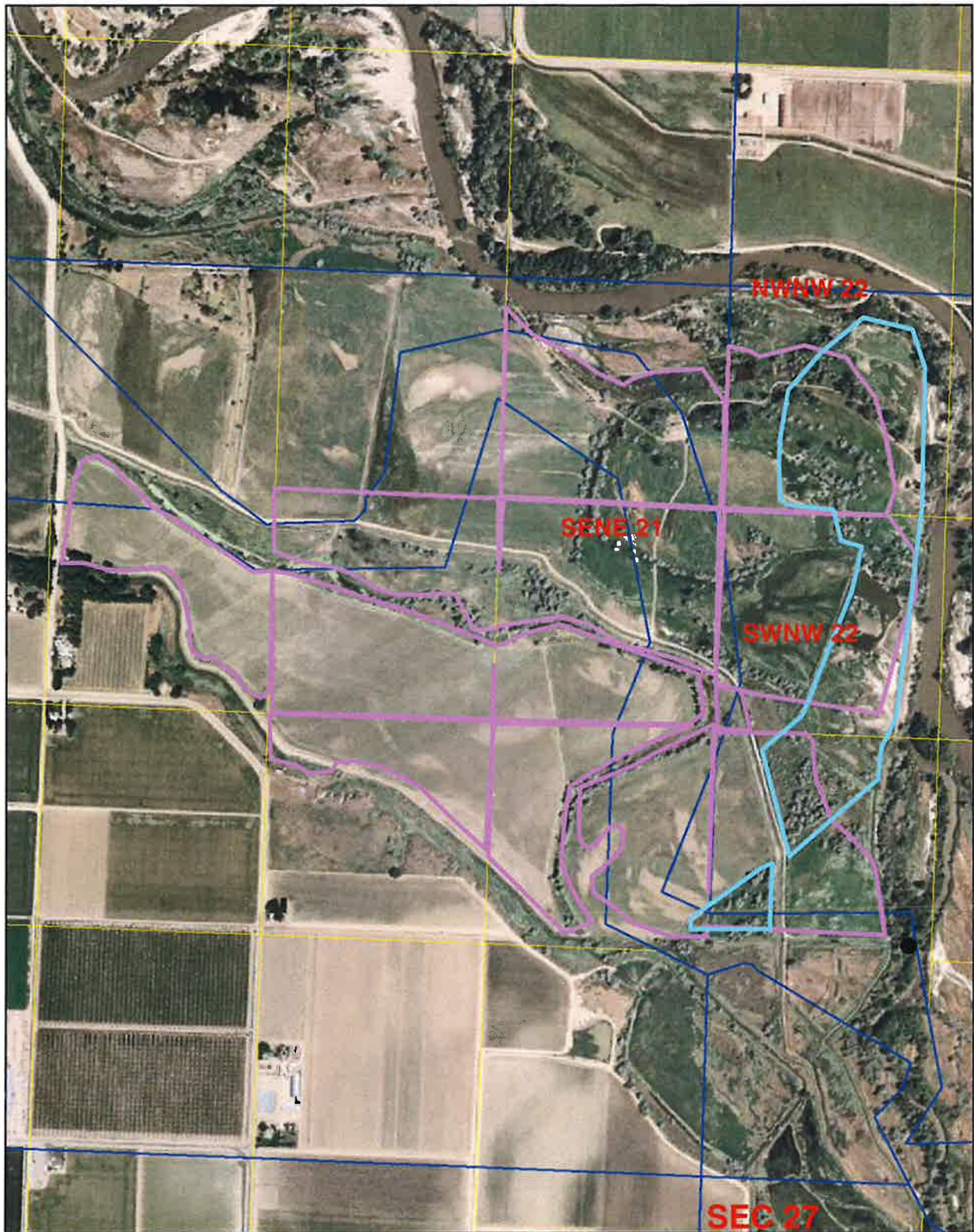


2000

CLAIM 63-32910 - 1992 AERIAL OF OVERLAPPING RIGHTS 63-2611 A & B
PLACES OF USE [IN BLACK] AND 63-32910 PLACE OF USE [LT. BLUE].



**CLAIM 63-32910 - 2004 AERIAL OF OVERLAPPING RIGHTS 63-2611 A & B
PLACES OF USE [IN PURPLE] AND 63-32910 PLACE OF USE [LT. BLUE].**



**CLAIM 63-32910 - 2006 AERIAL OF OVERLAPPING RIGHTS 63-2611 A & B
PLACES OF USE [IN PURPLE] AND 63-32910 PLACE OF USE [LT. BLUE].**

along with other variables, was used to arrive at a diversion rate which attempted to recognize the actual and historic use for a particular stockwater right. During the hearing on this matter, IDWR abandoned number of stock in favor of capping stockwater uses to 13,000 gallons per day for all livestock and wildlife uses regardless of actual historic use. *See*, Section D, *infra*. Under this method of determining quantity, the parties and IDWR agreed that it is not necessary to include the number of stock as a remark to quantity or purpose of use. The court concurs with this agreement.

Additionally, the inclusion of number of stock would result in an inaccurate decree. Assuming the number of stock were to be included in a decree for a particular right, IDWR was asked if it would be necessary for the right holder to seek an I.C. § 42-222 transfer whenever the number and/or type of stock changed. In response, David Shaw testified that it would not be necessary to obtain a transfer. Tr., p. 21, L. 15 - p. 22, L. 2. Under these circumstances, the number and/or type of stock actually using a particular water right may not be the same number and/or type of stock decreed for a particular right. As a result, any decree including the number and/or type of stock would be inaccurate. The court cannot decree inaccurate provisions.

For all these reasons, the number of stock cannot be included in the final decree.

D. The Quantity Used in Cubic Feet Per Second for a *De Minimis* Claim under I.C. § 42-1401A(12) Involving a Diversion May be Based on Any Hourly Rate so Long as the Amount is Capped to a Quantity Not to Exceed 13,000 Gallons Per Day.

Prior to the hearing in this matter, BLM, the State and Simplot disagreed as to whether diversion rate should be determined on a two-hour basis or some other time period. IDWR determined quantity assuming a two-hour rate of diversion for every type of stockwater diversion facility. IDWR considered two hours a reasonable rate of diversion for any given facility. Exhibit 4, at 13. The United States correctly pointed out that a two-hour diversion rate extended over 24 hours would exceed the 13,000-gallons-per-day limit on "stock watering use" defined by I.C. § 42-1401A(12). To solve this problem, the parties and IDWR agreed that diversion rate could be determined at a rate other than two hours and that it was not necessary to include stock as a remark to quantity or purpose of use. Tr., p. 27, Ll. 9-25. IDWR recommended, the parties agreed and the court concurs that quantity element for *de minimis* claims involving diversions

should be decreed as follows: claimed rate not to exceed 13,000 gallons per day. In cases where a claim was made assuming a 24-hour diversion rate and that rate does not reflect the actual diversion rate for a particular facility, the diversion rate should be decreed as follows: actual diversion rate not to exceed 13,000 gallons per day.

The agreement reached by the parties and IDWR covered claims involving diversions under I.C. § 42-1401A(12). Under that statute, there is a cap on use of 13,000 gallons per day. As previously stated, in-stream livestock claims are not covered by I.C. § 42-1401A(12). The result is that the 13,000-gallons-per-day limit on water use described under I.C. § 42-1401A(12) does not apply to in-stream livestock claims. Since I.C. §§ 42-1409(1)(c)(i) and 42-1412(6) require the court to decree "a rate of flow in cubic feet per second" for in-stream flow claims, the inquiry of how to quantify in-stream flow claims remains to be decided. None of the parties addressed how to quantify in-stream livestock claims. Therefore, the issue of how to quantify in-stream claims is not properly before the court and will not be addressed.

E. Under a State-Based Appropriation, a Water Right Which Includes Wildlife as a Purpose of Use Can Be Perfected Only Where There is a Diversion Accompanied with an Intent to Use the Water for Wildlife Purposes.

Many of the stockwater claims filed by the United States include wildlife as a purpose of use. For most of these claims, the water right has been recommended without wildlife as a purpose of use. In response, the United States argues as follows: (1) a wildlife use can exist without a diversion and (2) a wildlife purpose of use exists as an incidental use to any stockwater claim. The State and Simplot argue that a wildlife purpose of use can exist only where there is a diversion for that intended purpose.

The first inquiry is whether wildlife can be included as a purpose of use without a diversion under either a constitutional or statutory appropriation claim.⁴ Generally, a constitutional claim is perfected by compliance with the following requirements: (1) intent to divert, (2) diversion and (3) application of water to a beneficial use. *Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 680, 619 P.2d 1130 (1974) (quoting 78 AM.JUR.2D *Waters* § 321 (1975)). In *R.T. Nahas Company v. Huler*, 106 Idaho 37, 674 P.2d

⁴

The United States is claiming rights to stock/wildlife under a constitutional method of appropriation. Tr., p. 74, Ll. 19-23.

1036 (Ct.App. 1983), the Idaho Court of Appeals created an exception to the diversion requirement for stockwater claims. "We conclude that, for purposes of watering stock, no diversion from a natural watercourse should be required to establish a constitutional appropriation of water." *Id.* at 44. amended portion

In citing *Hulet*, the United States attempts to apply the statutory definition of "stock watering use" under I.C. § 42-1401A(12), which includes the term "wildlife," to the *Hulet* court's use of the term "stock." The facts in *Hulet* were limited to cattle. The issue in *Hulet* was limited to a decision as to whether a rancher could obtain a water right for cattle without a diversion. Neither the facts nor the issue before the court addressed wildlife. The exception to the diversion requirement was limited to "stock." Since the statutory definition of "stock watering use" under I.C. § 42-1401A(12) did not exist at the time *Hulet* was decided, the only reasonable interpretation of "stock," given the issue and facts presented, is "all the animals . . . kept and used on a farm; livestock."⁵ WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY UNABRIDGED 1791 (2nd ed. 1979).

Furthermore, in citing *Hulet* for the proposition that a wildlife use may be obtained without a diversion, the United States overlooks one very crucial distinction. In *Hulet*, it is clear that the rancher intended to water his stock from the stream in question. The intent to apply water to a beneficial use was accompanied with the physical act of placing cattle near the water source. In this case, the United States is asking the court to accept the proposition that a water right for wildlife exists where there is no diversion or intent to apply water to a beneficial use. Such an interpretation would render the constitutional method of appropriation meaningless. Under that theory, a water right is obtained any time wildlife happens upon a water source and drinks. If the court accepted the United States' position, given the abundance of wildlife in Idaho, then every landowner appurtenant to water would have a water right for wildlife.

For a statutory claim, "[a] permit may be issued, but shall not be required for appropriation of water for the in-stream watering of livestock." I.C. § 42-113. Webster's Dictionary defines "livestock" as "[d]omestic animals kept for use on a farm or raised for sale and profit." WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY UNABRIDGED 1059 (2nd ed. 1979). Under

the plain and ordinary words of the statute, it is clear that I.C. § 42-113 does not create an exception to the diversion requirement for wildlife.

The second inquiry is whether a wildlife use can exist as an incidental use where the diversion is for stock purposes. The United States alleges that where water is diverted for stock, the purpose of use also includes wildlife even if the person or entity that diverted did not specifically intend wildlife as a purpose of use. The United States relies upon I.C. § 42-1401A(12) which reads as follows: "'stock watering use' means the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen thousand (13,000) gallons per day." I.C. § 42-1401A(12) (emphasis added). Interpreting I.C. § 42-1401A(12) in the conjunctive, the United States argues that any diversion for stock also includes wildlife as a purpose of use. As pointed out by the State and Simplot, I.C. § 42-1401A(12) is correctly interpreted in the disjunctive. One may divert for stock or wildlife. The use of the right depends on the reason for the diversion. If the user diverts for stock purposes, then the right is limited to stock. If the user diverts for wildlife purposes, then the right is limited to wildlife. A user could divert for multiple purposes in which case those multiple purposes would be recognized.

The fact that water rights may not include wildlife as a purpose of use does not mean that wildlife will go thirsty. The State best summarized the use of water by wildlife as follows:

Obviously, wildlife drink from stream and water systems. In all likelihood, wildlife consumed the water in Idaho streams for thousands of years before the advent of the prior appropriation doctrine. The mere fact that wildlife may continue to do what it has always done does not, in itself, give rise to a water right. Water rights exist to prioritize the right to use limited resources. By definition, the exercise of a water right contemplates volitional conduct on the part of the party. A water right is not intended to either document or quantify natural occurrences.

State's Reply Brief, at 6.

In summary, the court concludes that a wildlife right under either a constitutional or statutory claim can be perfected only where there is a diversion accompanied with an intent to use the water for wildlife purposes. Absent these factors, a wildlife right can be obtained should the United States establish a reservation for that purpose. "[R]eserved rights, unlike state created appropriative rights, do not depend upon diversion from the stream and application to beneficial