



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

July 10, 2007

Pioneer Ditch Company
PO Box 70
Star, ID 83669

RE: Subcase No. 63-183

Gentlemen:

Enclosed please find a document entitled "Standard Form 5 – Stipulated Elements of A Water Right" (commonly referred to as SF 5) which has a revised recommendation attached. Pursuant to the objections filed in the SRBA District Court by the United States Bureau of Reclamation and the Boise Project Board of Control, IDWR has revised its recommendation to water right number 63-183.

Please review the new recommendation, which is attached to the SF 5. If all the information is correct, please sign and date the first page of the original and **initial the changes** on the page entitled "*Idaho Department of Water Resources Recommended Water Rights Acquired Under State Law*". After you have signed and initialed the originals, please forward the original documents to attorney Al Barker at PO Box 2139, Boise, ID 83701-2139. Mr. Barker will then mail the SF 5 to the attorney for the United States Department of Justice.

If you have any questions regarding this process or the enclosed documents, please do not hesitate to call me at: 287-4814.

Sincerely,

A handwritten signature in black ink that reads "Becky J. Harvey". The signature is written in a cursive style.

Becky J. Harvey
Paralegal

/bh

Enclosures

cc via email: Jan Shurte, Western Region

Original to
J.O. on 7-6-07

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

In Re SRBA

Case No. 39576

)
)
)
)
)
)
)
Subcase No. 63-183

STANDARD FORM 5

**STIPULATED ELEMENTS OF A
WATER RIGHT**

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANT(s):

Pioneer Ditch Company

OBJECTOR(s):

USDI/Bureau of Reclamation

claimant

Date

David Gehlert

Date

Trial Attorney, General Litigation Section
U.S. Dept. of Justice

OBJECTOR(s):

Boise Project Board of Control

RESPONDENT(s):

State of Idaho

Albert P. Barker

Date

Attorney for Objector(s)

David J. Barber

Deputy Attorney General

IDWR Concurrence:
Jan Shurte Date
Adjudication Supervisor

Nicholas B. Spencer

Date

Deputy Attorney General

05/01/2007

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-183

NAME AND ADDRESS: PIONEER DITCH CO LTD
PO BOX 70
STAR ID 83669

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 25.720 CFS

This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and preceding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and preceding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1870

POINT OF

DIVERSION: T04N R01W S14 NENW Lot 3 Within ADA County

PURPOSE AND

PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MITIGATION	03/01 11/15	0.060 CFS
IRRIGATION	03/01 11/15	25.660 CFS

Diversion ~~for irrigation~~ under this water right prior to April 1 and after October 31 shall occur only as authorized by the Water District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the U.S. Department of the Army and the U.S. Department of the Interior for Flood Control Operations of the Boise River Reservoirs, dated November 20, 1953, the Water Control Manual for Boise River Reservoir dated April 1985 and any future amendments or revisions made thereto, to flood control operations pursuant to state or federal procedures or law; provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

1283.1 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

This right is limited to the irrigation of 1283.1 acres within the boundary of Pioneer Ditch Co. Ltd in a single irrigation season.

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

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

Mitigation use is for the consumptive use of water under Right 63-31890.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

WATER IS DELIVERED THROUGH THE PIONEER CANAL

The right holder shall accomplish the change authorized by Transfer 71198 within one year of the date of the approval.

THIS RIGHT IS DESIGNATED NO 49 IN THE STEWART DECREE AND THE BOISE RIVER WATER MASTERS RECORDS

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.

RIGHT NO. 63-31937 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

CERTIFICATE OF MAILING

I certify that on _____, 2007, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

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

2. Copies to:

USDI Bureau of Reclamation
US Department of Justice
Environment & Natural Resources
550 West Fort Street, MSC 033
Boise, ID 83724

Albert P. Barker
Barker, Rosholt & Simpson LLP
P.O. Box 2139
Boise, ID 83701-2139

State of Idaho
Natural Resources Division
Attorney General's Office
PO Box 44449
Boise, ID 83711-4449

Pioneer Ditch
PO Box 70
Star, ID 83669

IDWR Repository
P.O. Box 83720
Boise, ID 83720

Signature of person or attorney mailing the form

Shurte, Jan

From: Harvey, Becky
Sent: Tuesday, June 05, 2007 9:53 AM
To: Shurte, Jan
Cc: Spencer, Nick
Subject: FW: SF-5 for 63-183



June 5 07 draft
comprehensive ...

Jan ~ could you please review this proposed SF 5 from the BOR and get back to me? The BLM withdrew their objection in March. Thanks.
Becky

-----Original Message-----

From: E. Gail McGarry [mailto:EMCGARRY@pn.usbr.gov]
Sent: Tuesday, June 05, 2007 9:37 AM
To: Harvey, Becky; Spencer, Nick
Cc: apb@idahowaters.com; bryce@ringertclark.com; David.Gehlert@usdoj.gov
Subject: SF-5 for 63-183

Attached is SF-5 that we have all agreed to, if you could sign and circulate.

Gail

Shurte, Jan

From: Harvey, Becky
Sent: Friday, January 19, 2007 11:25 AM
To: Shurte, Jan
Subject: FW: 63-00183; Claimant: Pioneer Ditch Co., LTD

-----Original Message-----

From: Fredric_Price@blm.gov [mailto:Fredric_Price@blm.gov]
Sent: Friday, January 19, 2007 10:16 AM
To: Harvey, Becky
Subject: Fw: 63-00183; Claimant: Pioneer Ditch Co., LTD

----- Forwarded by Fredric Price/IDSO/ID/BLM/DOI on 01/19/2007 10:15 AM

"Larry.Brown@usdo
j.gov"
<Larry.Brown@usdo
j.gov>
To "Fred_Price@blm.gov"
<Fred_Price@blm.gov> (Receipt
Notification Requested) (IPM
Return 05/23/2006 07:38
AM Requested)
cc "Nick.Spencer@idwr.idaho.gov"
<Nick.Spencer@idwr.idaho.gov>
(Receipt Notification Requested)
(IPM Return Requested),
"Vicki.Kelly@idwr.idaho.gov"
<Vicki.Kelly@idwr.idaho.gov>
(Receipt Notification Requested)
(IPM Return Requested),
"David.Gehlert@usdoj.gov"
<David.Gehlert@usdoj.gov>
(Receipt
Return Notification Requested) (IPM
Request)
Subject

RE: 63-00183; Claimant: Pioneer

Ditch Co., LTD

Who is counsel for the Boise Project Board of Control? I will forward this to David Gehlert for his comment.

-----Original Message-----

From: Fred_Price@blm.gov [mailto:Fred_Price@blm.gov]
Sent: Monday, May 22, 2006 7:04 PM
To: Brown, Larry (ENRD)
Cc: Nick.Spencer@idwr.idaho.gov; Vicki.Kelly@idwr.idaho.gov
Subject: Re: 63-00183; Claimant: Pioneer Ditch Co., LTD

Larry,

Brad Carlson (your spelling is correct) is one of three Presidents of the "Pioneer Ditch Company, Limited." I checked the Secretary of State's website for any permutation of "pioneer ditch" and there is no such entity called "Little Pioneer Ditch Co., Ltd." See attached search results. I do not believe that a Change of Ownership would be appropriate.

There are two other objections that have been filed in this subcase (BOR and Boise Project Board of Control) and resolution of those objection issues will need to be addressed in any SF-5. Both the BOR and the Boise Project Board of Control objections seek to decree the following remark under the Purpose and Period of Use element:

"Diversion for irrigation and mitigation under this right prior to April 1 and after October 31 shall occur only as authorized by the Water

District 63 Water Master and only when water is being released for flood control by the United States from the Lucky Peak Dam outlet under procedures and requirements for the Memorandum of Agreement between the

U.S. Department of the Army and the U.S. Department of the Interior for

flood Control Operations of the Boise River Reservoirs, dated November

20, 1953, the Water Control Manual for the Boise River Reservoir dated

April 1985 and any future amendments or revisions made thereto pursuant

to state of federal procedures or law; provided that any such use of

this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, as decreed in SRBA Case No. 39576."

This remark is included within the recommendations of 137 claims in the Director's Report which suggests that it is a standard remark where appropriate. The only question is whether this standard remark should be employed in this subcase.

Fred
(See attached file: 63-00183 Entity Info.pdf)

To "Larry.Brown@usdoj.gov"
<Larry.Brown@usdoj.gov>
05/22/2006 08:18 AM
"Nick.Spencer@idwr.idaho.gov"
<Nick.Spencer@idwr.idaho.gov>
(Receipt Notification Requested)
(IPM Return Requested),
"Vicki.Kelly@idwr.idaho.gov"
<Vicki.Kelly@idwr.idaho.gov>
(Receipt Notification Requested)
(IPM Return Requested)

cc "Fred_Price@blm.gov"
<Fred_Price@blm.gov> (Receipt
Notification Requested) (IPM
Return Requested)

Subject 63-00183; Claimant: Pioneer Ditch
Co., LTD

I talked to Brad Carlson "SP" the president of "Little" Pioneer Ditch Co., Ltd., who is the owner of water right number 63-00183. I pointed out to him that the name on the water right was Pioneer Ditch Co. and asked if needed to have the name changed, and he said yes. Do we need a "Change of Ownership" form or is the name of the owner on the claim for "Little Pioneer Ditch Co., Ltd.?"

Anyway, we negotiated a settlement where T1N, R1W, Sec. 17, Lot 7 (now Lot 9) (NWSE) would be deleted from the digital boundary of the place of use. This POU was not part of the original claim. Also, please remove this POU from IDWR's claim data.

Please prepare an appropriate SF-5 that resolves BLM's objection and changes the owner to "Little Pioneer Ditch Co., Ltd. Signature is be Brad Carlson, President, Little Pioneer Ditch Co., Ltd. Fred: If necessary, also prepare a change of ownership form to change the name to "Little Pioneer Ditch Co., Ltd."

Due 3/20/07

Shurte, Jan

From: Shurte, Jan
Sent: Friday, March 02, 2007 3:15 PM
To: 'Fredric_Price@blm.gov'; 'Larry.Brown@usdoj.gov'
Cc: Harvey, Becky; Favreau, Danielle
Subject: RE: 63-03170; Claimant: Vander Stelt Dairy

Fred & Becky,

Sandy has completed correcting all 3 rights to match the transfer previously approved. The stock water pou in the SWSW, S. 35, T2N, Rge. 1W has been left out of 63-3170 & 63-8087. 63-3093 was for irrigation only and did not include stock water. The other two water rights 63-18592 & 63-18594 were decreed in 2000 and I do not believe anything can be done about them at this time. The decrees were issued in 2/2000 and the transfer approved in 5/2000 which did include the SWSW, S35, T2N R. 1W. It did not appear to be protested and was approved, however, if you wish to speak further with the allocations staff you could contact Shelly Keen.

On another subject I (with help from Danielle Favreau) am putting together the large places of use for 63-183, Pioneer Ditch Co. (aka Little Pioneer Ditch Co.) to delete Lot 7 (now known as Lot 9 (NWSE), S17, T1N, R1W) to handle BLM's settlement portion of this right although there are other objections. On the Pleasant Valley Irrigation Co. it looks like we need to delete the SESE, S. 19, T2N, R2E. Removing it from the claim data is not necessary since it will not be decreed and the recommendation is the only one to be decreed. It does not matter the claim has that 1/41/4 on it - it will not give the claimant any further ground. As far as the stock water place of use goes, it was claimed in the 5 1/41/4's you spoke of. Mel put it on only 63-329B and it was also claimed on all the others. It appears to me that he meant to put it on all of the others, however, the large place of use data entry wiped it out. If you would like we can put those 5 1/41/4's on as a part of the settlement - which you may have already done. Otherwise we do assume it covers the entire place of use for irrigation as it is listed with no pou.

On Farmer's Union Ditch Co. it appears we need to delete the NWSW, S26: SESW, SESE, S27, NESE, NWSE, S31, T5N, R1W as a part of the large place of use. Please let us know on all of these if it is the entire 1/41/4, a portion or if it is a snapping issued.

If you agree with this memo we should be able to settle these prior to the hearings. We will complete the changes and send you a CD of the large places of use to go with the SF5's for signature as soon as we hear from you.

Thank you for your patience in this time of transition for the Department.

Jan Shurte
Water Rights Supervisor
Adjudication Section
Western Region
(208) 334-2190

-----Original Message-----

From: Fredric_Price@blm.gov [mailto:Fredric_Price@blm.gov]
Sent: Friday, March 02, 2007 12:16 PM
To: Harvey, Becky; Spencer, Nick; Shurte, Jan
Cc: larry.brown@usdoj.gov
Subject: Fw: 63-03170; Claimant: Vander Stelt Dairy

WILL WITHDRAW
OBS. LOT OK.
GAVE
NEW CD & FRED WILL
DO SF 5
SAME

STOCK
WATER
→
put on
APPROX
KE.
OK

No change
in total acres
on any of
these.

Shurte, Jan

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Sent: Friday, January 19, 2007 11:25 AM
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*Need to
discuss
1/19/07
ph Daniell*

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<Vicki.Kelly@idwr.idaho.gov>
(Receipt Notification Requested)
(IPM Return Requested)

cc "Fred_Price@blm.gov"
<Fred_Price@blm.gov> (Receipt Notification Requested) (IPM Requested)

Return

Subject 63-00183; Claimant: Pioneer Ditch Co., LTD

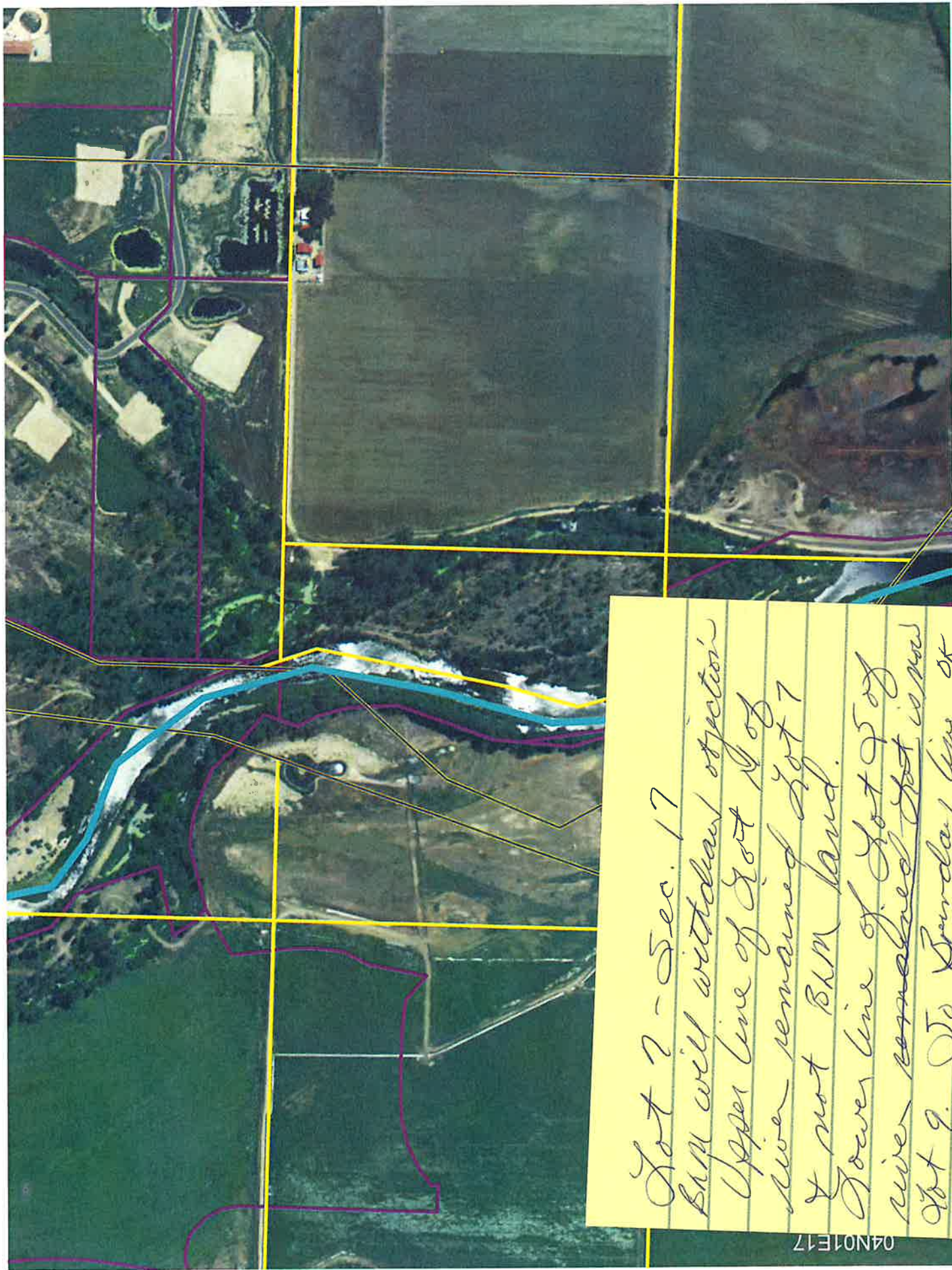
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← DANIELLE THINKS 4N

?
deleted
ADA co.
tapped data
show Lot 2?

Please prepare an appropriate SF-5 that resolves BLM's objection and changes the owner to "Little Pioneer Ditch Co., Ltd. Signature is be Brad Carlson, President, Little Pioneer Ditch Co., Ltd. Fred: If necessary, also prepare a change of ownership form to change the name to "Little Pioneer Ditch Co., Ltd."



Lot 7 - Sec. 17
BAM will withdraw objection
Upper line of Lot 15 of
river remained Lot 7
& not BLM land.
Lower line of Lot 15 of
river ~~remained~~ Lot 15 was
Lot 9. To Sunday line ok.