

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest under Sections 42-203A, 42-203C, 42-211, 42-222 or 42-240, Idaho Code. The Department will also accept a timely protest completed in a different format if it contains the same information requested on this form. Each protestant must provide a separate \$25 filing fee for each application protested. The Department's Rules of Procedure (IDAPA 37.01.01) require the protestant to **send a copy of the protest to the applicant.**

1. Matter protested. Application for ☐ Permit ☐ Amendment of Permit ☒ Transfer ☐ Exchange
No. 86942,86951 (all) in the name of Rohn R Nelson and Lori A Nelson
2. Protestant's Name: Fred Payne
Address: 91 Wimpey Creek Rd
Telephone: (208) 484-1853 Email: fred@fpayne.com
3. Protestant's Representative: same
Address: _____
Telephone: _____ Email: _____
4. Basis of protest. Clearly state your objections to approval of the application and identify the applicable review criteria. See Instructions for Filing a Notice of Protest for the relevant review criteria.

See attached page 2 RELEVANT FACTS

See attached page 3 BASIS OF PROTEST, six items

(Additional pages may be attached to describe the basis of your protest.)

Identify any review criteria that are not a basis for your protest:

See attached page 4 ADDITIONAL REVIEW CRITERIA for discussion of ditch capacity, weir observations, with five (5) supporting photographs.

5. ☒ Check here if Protestant and Representative will accept service of documents by email at the email address(es) listed under Item #2 and #3 above.

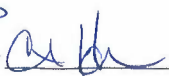
I acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter, of which I have been properly notified, the Department may issue a notice of proposed default against me in this matter for failure to appear. **I also verify that I have served a copy of this protest upon the applicant.**


Protestant's or Representative's Signature

Fred Payne
Printed Name and Title (if applicable)

10/26/22
Date

#50-2 protests

\$25.00 fee received by 

FOR DEPARTMENT USE ONLY

Receipt # E048670

Date 10/28/22

Protestant – Fred Payne, 91 Wimpey Creek Rd Salmon ID 83467
Proposed Transferor – Rohn R Nelson, 3800 E Ruth Dr Wasilla AK 99654

(Owner, the Property)
(Applicant)

RELEVANT FACTS

All Wimpey Creek water flows pass by the subject POD near LWC5 which POD serves a single ditch and lies within the property of Owner. See Photo #6; 10/26/22 in mid-creek, upstream of subject POD.

Flows diverted at subject POD reduce flows to downstream PODs and aquatic habitat on a 1:1 ratio. During low flows when diversion is less than subject ditch users permitted volume, altering the stream bed can increase diversion to potential detriment of creek ecology and injury to downstream users. Adding more subject POD users increases the chances of detrimental or injurious stream bed altering.

Applicant believes waterflows through the POD can increase. Owner informed Applicant this is not possible without significant ditch alterations and potential injury to downstream users.

Owner attempts to limit POD flows to protect rights of downstream permit holders, support Lemhi River flows and conservation while maintaining subject water rights. Ditch users Kirk Klemmer and Phil Moulton are fully supportive in this.

Owner passes subject ditch weir on all trips to or from the property. During irrigation season, water flows are observed daily and periodically adjusted at the POD. The first 200+ yards of irrigation ditch downstream from the POD are within woodlands habitat.

The POD situates within about 10 acres of wetlands and woodlands providing nesting or spawning habitat to sandhill cranes, ruffed grouse, waterfowl, steelhead, spring/summer Chinook, and bull trout.

Trout Unlimited with NOAA Fisheries rehabilitated portions of Wimpey Creek; all downstream of POD LWC5 allowing 4,830 linear feet (6.1 acres) of improved aquatic habitat, opening 1.48 miles of creek to ESA-listed and resident fish species.

Blackbear and mountain lion are transient. Three sightings of mountain lion have occurred since 2018, one in 2022 by IDFG within 75 yards of LWC5.

Additional irrigation traffic to the POD is detrimental to conservation of the referenced habitat.

The IDFG/IDWR POD access road passes within < 25 yards of Owner's home entrance. Other stakeholders including ditch users do not have easement to use this road. An ATV trail at the north boundary of the property allows ditch and POD access without invading Owner's privacy. Use of the road vs the ATV trail has been a point of contention between ditch users and Owner.

Additional traffic on the road is an invasion of Owner's privacy and is a taking. If further trespass occurs, Owner may install a gate with locked access to road easement holders only.

Applicant accessed the POD without notice to or permission of Owner. Additionally, Applicant accessed the property of ditch user Phil Moulton (Pratt Creek Ranches) without notice or permission.

Applicant illustrates a predisposition to trespass.

Protestant – Fred Payne, 91 Wimpey Creek Rd Salmon ID 83467

(Property Owner, Owner)

Proposed Transferor – Rohn R Nelson, 3800 E Ruth Dr, Wasilla AK 99654

(Applicant)

BASIS OF PROTEST

I object to diversion of additional water flows at the POD LWC5 headgate as such represents potential injury to downstream users (low flow periods) and a detriment to established conservation efforts.

I object to additional ditch work needed to increase and maintain flows contemplated by the transfer.

I object to additional human pressure on unique habitat near the confluence of Wimpey Creek and the Lemhi River.

I object to invasion of privacy and potential for trespass already illustrated by Applicant.

Applicant has water available via other PODs and is seeking transfers as a matter of preference, not need. If granted, transfers will lessen flows across all aquatic habitat improvements and spawning areas. See Restoration Treatment Overview provided by Trout Unlimited, attached. I object to these transfers as they negatively impact overall utility of Wimpey Creek ecology.

I protest IDWR enabling such to happen via allowing the proposed transfers.



Fred Payne, Owner
Protestant

Protestant – Fred Payne, 91 Wimpey Creek Rd Salmon ID 83467 (Property Owner, Owner)
Proposed Transferor – Rohn R Nelson, 3800 E Ruth Dr, Wasilla AK 99654 (Applicant)

ADDITIONAL REVIEW CRITERIA

Ditch Capacity - Seepage/subbing impact on POD access road

Since acquiring the property in 2018, water from the ditch pooling on the access road has been an issue. Initially we thought this was a 'subbing' issue and compacted the ditch for better sealing. The ground is clay saturated. This helped but the road is wet every year from the ditch. Recently we noticed it was a function of high flows and weed blockage creating seepage. The issue is not resolved, further work is needed. Pictured ditch weed growth is annual and requires significant work to clear.

Additional flows or water demand will compound the problem.

Photo #1 – Ditch far right, leakage on road at far left; see site map for pictures 1-3 location.

Photo #2 – Standing water alongside road, prior to August 13 2022 ditch work

Photo #3 – Owner in the ditch in background, backhoe tracks sliding on saturated hillside

Photo #4 – Site map including Owner property RP21N23E354802

Photo #5 – Subject ditch weir scale on 10/26/22

Ditch Capacity - Weir observations, ditch at capacity

From constant weir observations from 2018 through 2022 of the subject POD I note the following:

Average flow rate for an irrigation season	.75 – 1.0 cfs
High water flows	1.5 – 1.9 cfs; usually 6 weeks +/-
Ditch user Kirk Klemmer total permits	.10 cfs
Ditch user Phil Moulton (Pratt Creek Ranches)	1.10 cfs
Ditch user Fred Payne (Protestant)	.22 cfs
total	1.42 cfs

As seen above, for most of the irrigation season, exercise of each user's right is met by cooperation of the other users. Photo #5 illustrates this; the high flow line of solid rust lies at 1.75 cfs; the average line of rust and suspended sediment mineralization lies at 1.0 cfs.

As is illustrated in photos #1-3, flows can exceed ditch capacity in spots even where significant berms exist. The ditch requires regular substantial maintenance to deliver permitted flows.

In the woodlands ditch area, Owner inserted > 10 yards of gravel/clay mix into the ditch with a ramming compactor, temporarily easing other subbing issues. The ditch undercuts numerous trees. Further work is need. The ditch 'ecology' is not stable, even on an annual basis.

Adding other users is problematic, compounding ditch maintenance and rights exercise to the detriment of existing ditch users.

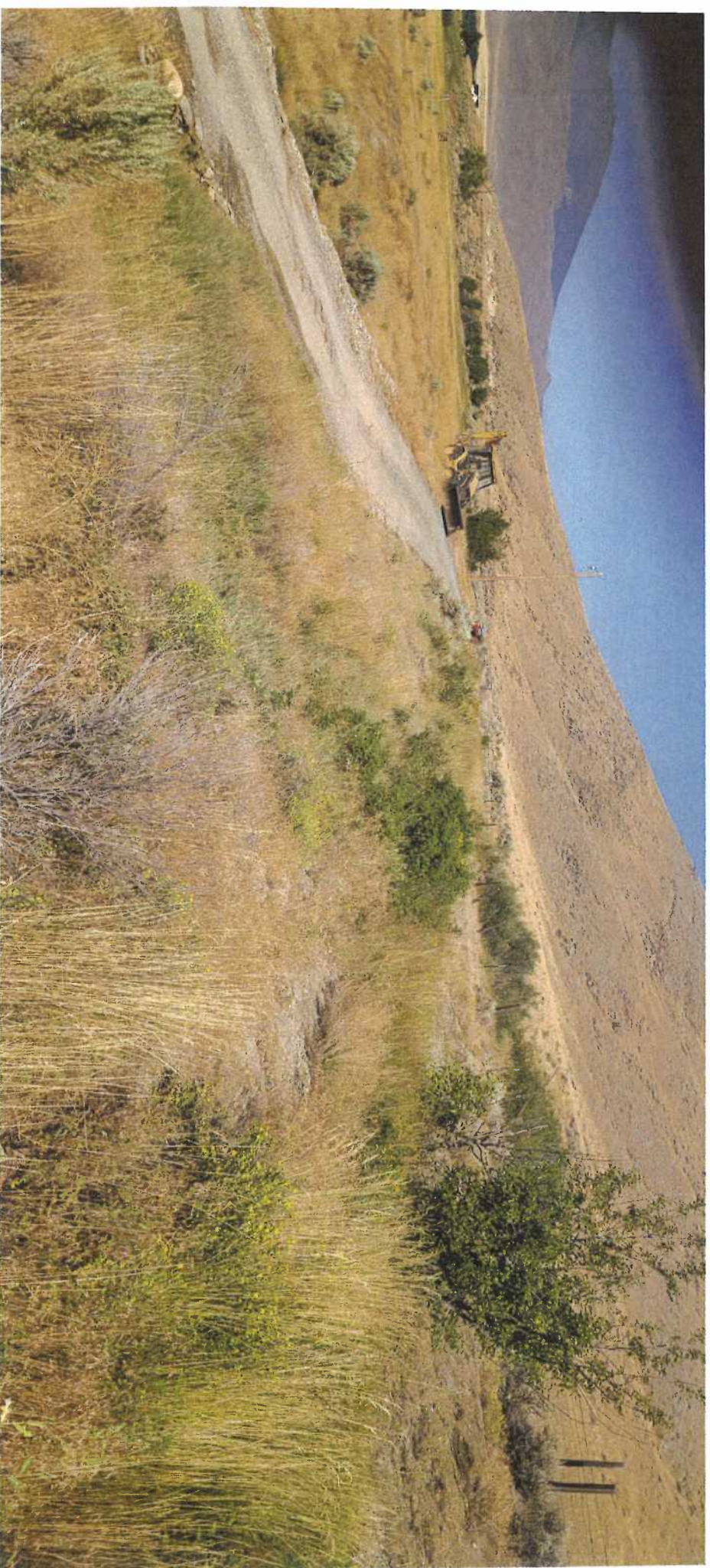


Photo #1



Photo #2



Photo #3



Photo #4

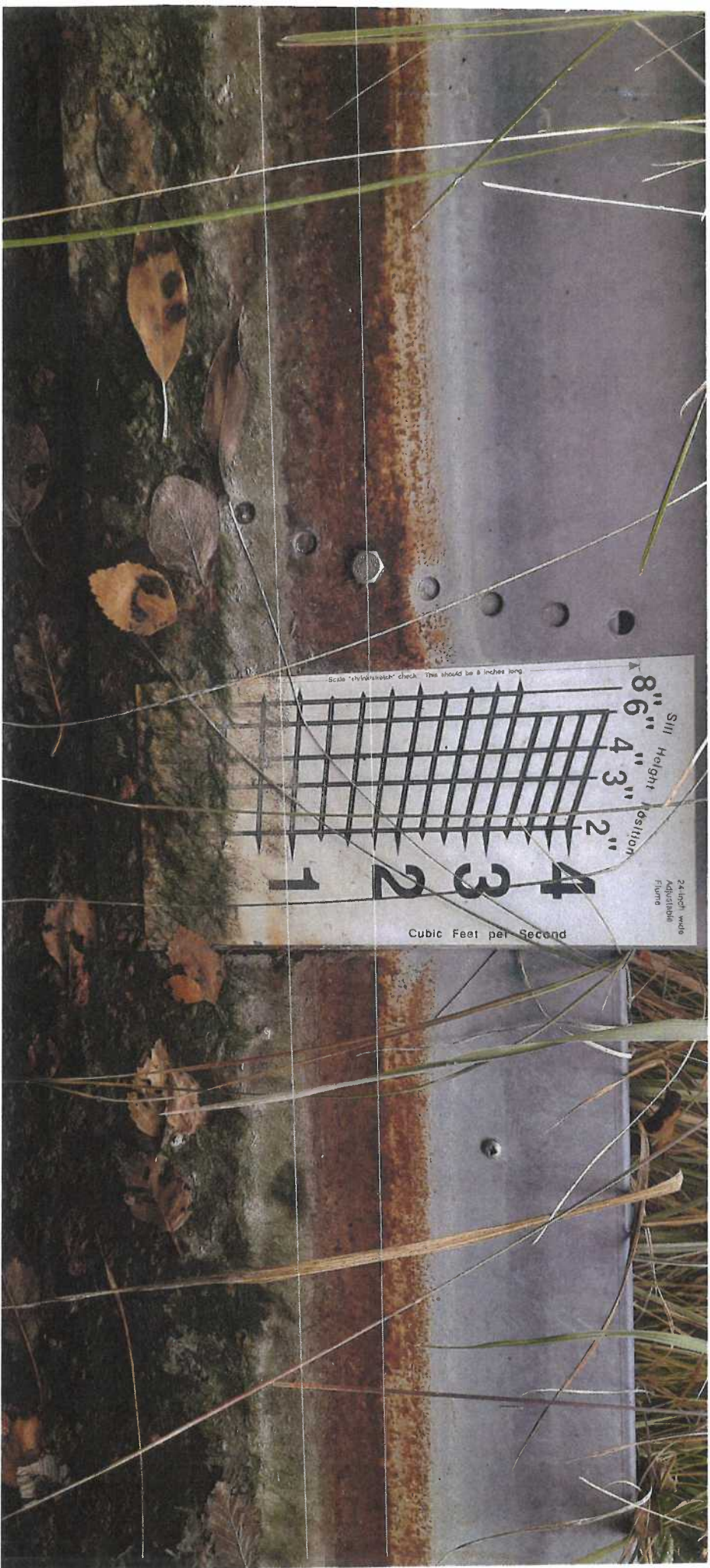


Photo #5

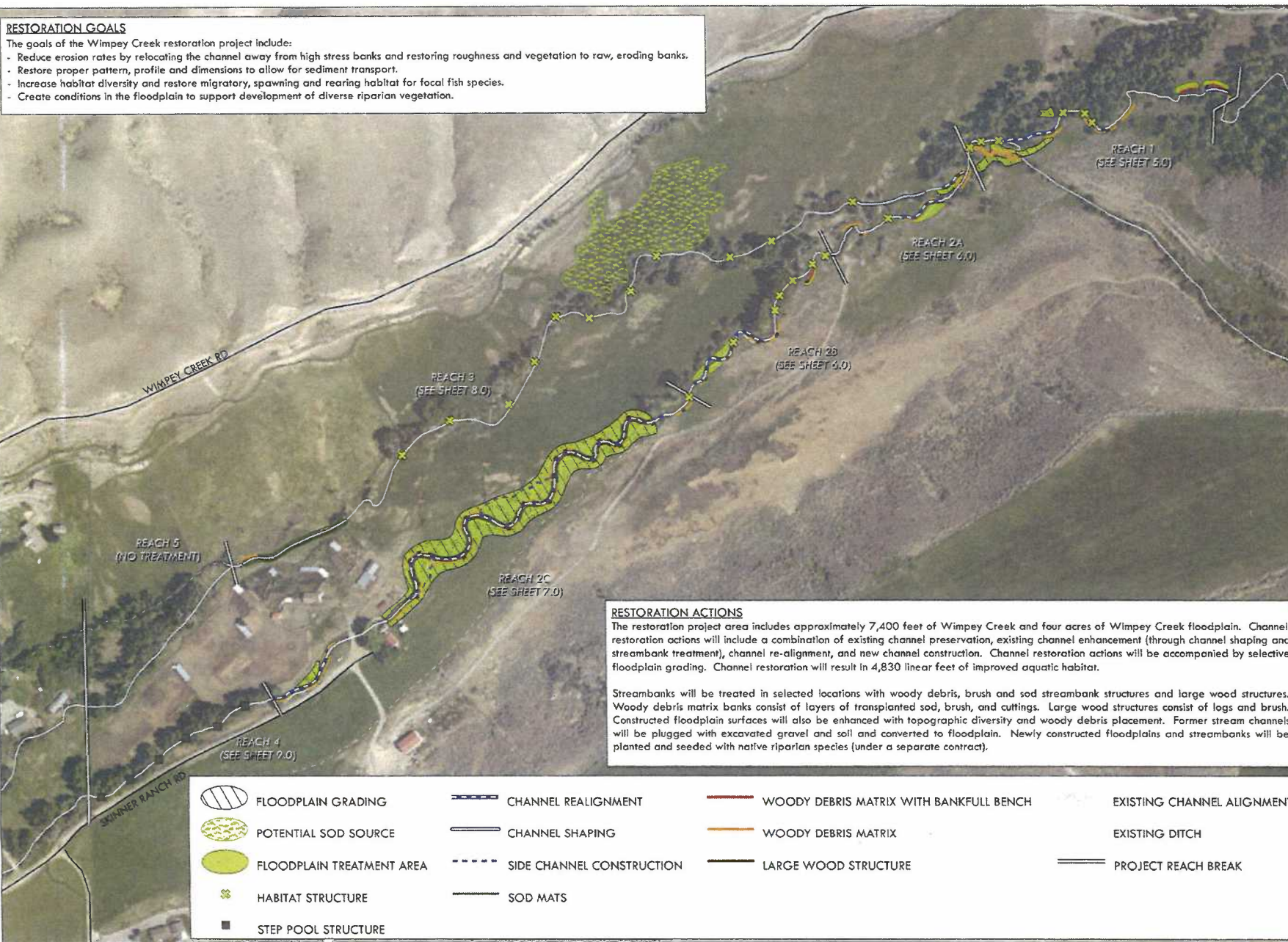


Photo #6

RESTORATION GOALS

The goals of the Wimpey Creek restoration project include:

- Reduce erosion rates by relocating the channel away from high stress banks and restoring roughness and vegetation to raw, eroding banks.
- Restore proper pattern, profile and dimensions to allow for sediment transport.
- Increase habitat diversity and restore migratory, spawning and rearing habitat for focal fish species.
- Create conditions in the floodplain to support development of diverse riparian vegetation.



Count Environmental Consulting, Inc.



DATUM: North American Datum 1983
PROJECTION: Idaho State Plane Central
UNIT: U.S. Feet

DATA SOURCES:
USDA NARS, 2015 (imagery)

0 100 200 Feet



RESTORATION TREATMENT OVERVIEW

WIMPEY CREEK RESTORATION PROJECT
LEMHI COUNTY, IDAHO

SHEET
3.0

RESTORATION TREATMENT OVERVIEW