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CORPORATE HEADQUARTERS

RECEIVED
MAY 2 0 2005
DEPARTMENT OF
WATER RESOURCES

May 20, 2005

Hand Delivery
Karl J. Dreher, Director
State of Idaho
Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

Re: May 6, 2005 Order Regarding Simplot Replacement Water Request.

Dear Mr. Dreher:

The above referenced Order provides, among other things, the following:

> "..that the temporary replacement plan by Simplot for water right nos. 35-8162, 35-8131 and 35-8114 is APPROVED provided that Simplot identifies four acres irrigated during 2004 described within the place of use for water right no. 35-2713 that will not be irrigated during 2005."

Simplot hereby submits this letter with attachments as further information required by the Director to verify the validity of the water rights under which the replacement water is proposed. Prior to presenting a detailed summary of the beneficial use of water right no. 35-2713, Simplot acknowledges that the Director's May 6, 2005 Order required Simplot's replacement water to be supplied by identifying 4 acres that were "..irrigated during 2004 described within the place of use for water right no. 35-2713 that will not be irrigated during 2005."

Portions of the place of use under water right 35-2713 were not irrigated during 2004 due to recent irrigation system changes. However, water right 35-2713 was put to full beneficial use during 2003, as shown in Exhibit A. In 2004, Simplot replaced the irrigation system in order to conform to the Idaho Department of Environmental Quality permitting requirements for the place of use to be utilized as an industrial land application site. Although most of the water right was beneficially used in 2004, as a result of the change in the irrigation system in 2004, a portion of the right was unused.

The proposed replacement water right has received a partial decree in the Snake River Basin Adjudication, is valid and as noted was put to full beneficial use during 2003. IDWR can verify the validity and use of the water right using its usual methods of investigation. In fact, water right no. 35-2713 has already been through this investigative process and was decreed in 2002 pursuant to the Director's recommendation (see Exhibit

Bringing Family Resources to Life

D). For these reasons, Simplot believes water right 35-2713 qualifies as replacement water even though the entire place of use was not irrigated during 2004. In that regard, Simplot has filed a Petition for Reconsideration or Clarification of Paragraph 7 of the Director's May 2, 2005 Order. Simplot believes the facts set forth in this letter support our position that Paragraph 7 of the May 2 Order should be clarified.

Exhibit A attached hereto, is a copy of an aerial photo flown in 2003 which was obtained from the Bingham County Farm Service Agency located in Blackfoot, Idaho ("FSA"). Overlaid on this image is the place of use decreed under IDWR water right no. 35-2713. After the conclusion of the 2003 irrigation season and prior to the 2004 irrigation season, overhead center pivot sprinkler systems were installed replacing the hand and wheel line sprinkler systems that were in use when the 2003 FSA photo was taken.

Exhibit B attached hereto, is a copy of an aerial photo flown during the period between June 1, 2004 and August 31, 2004. This image was obtained from the National Agricultural Imagery Program ("NAIP") data set for the State of Idaho. The place of use decreed under water right 35-2713 is also overlaid on this image. The irrigated area underneath the new center pivot sprinkler systems is clearly visible in this 2004 image. This 2004 image also shows the dry corners that were formerly irrigated in 2003 when the FSA photo was taken.

Exhibit C attached hereto, is a copy of the 2003 FSA photo which has been enhanced with overlays showing 1) the boundaries of the areas irrigated with the 2004 center pivot sprinklers and 2) the place of use decreed under 35-2713. The area irrigated using the center pivot sprinklers was estimated by the FSA using shape files drawn in ArcView, the same geographic information system used by the IDWR.

The decreed place of use within the NE¼ of Section 6 T5S R31E allows the irrigation of 131 acres. Simplot notes that the photo shown in Exhibit A indicates that area irrigated by Simplot's tenant within the NE¼NE¼ inadvertently exceeded the decreed place of use by a few acres during the 2003 season. However, after Simplot installed the center pivot sprinklers, the excess irrigated area was corrected during the 2004 irrigation season. As a result, the area irrigated during 2004 within the NE¼ was reduced to approximately 124.9 acres (6.1 acres less than the 131 irrigated acres allowed by the decree for this quarter section). The area irrigated during 2005 will remain the same as the 2004 area shown in Exhibit B which allows 6.1 acres to be available for replacement water during 2005.

Similarly, the decreed place of use within the SE¼ of Section 6 T5S R31E allows 156 acres to be irrigated. After the 2004 center pivot sprinklers were installed by Simplot, the irrigated area within the SE¼ was reduced to 126.6 acres (29.4 acres below the 156 irrigated acres decreed for this quarter section). The area irrigated during 2005 will remain the same as the 2004 area shown in Exhibit B which allows 29.4 acres to be available for replacement water during 2005.

During the 2005 irrigation season, Simplot has voluntarily foregone any transfer or banking of those portions of water right 35-2713 that were not irrigated during 2004 (for a total of 35.3 acres) with the intention that these rights would be used as the source for replacement water in response to anticipated curtailment orders by the Director. Consequently, Simplot has proposed that the rights to irrigate 4 acres that were beneficially used within the NE¼SE¼ of Section 6 T5S R31E during the 2003 irrigation season be used to replace the maximum allowable volume of water that can be diverted water right nos. 35-8162, 35-8131 and 35-8114. Water right nos. 35-8162, 35-8131 and 35-8114 are subject to curtailment pursuant to the Director's April 19, 2005 Order.

With respect to the May 6, 2005 Order regarding Simplot's proposal to provide replacement water for water right nos. 35-8726, 35-10422 and 35-10427, Simplot agrees the Director's assessment of the situation. However, in the event the Groundwater District fails to provide adequate replacement water, Simplot intends to utilize its own water rights to provide replacement water for those rights curtailed during 2005.

For the orderly administration of this process and in accordance with the Director's findings, Simplot will fully comply with the Order requiring Simplot to provide water for 35-8726, 35-10422 and 35-10427 through the Aberdeen-American Falls Ground Water District. However, if the Groundwater District fails to provide water, Simplot or any other similarly situated water right holder should have the right to provide its own replacement water through exchange, water bank rental, or temporary transfer available to Bingham County water right holders due to the drought status designated for 2005.

Sincerely,

Vic Conrad
Land, Water & Asset Recovery

Enclosures

Exhibit A
(2003)

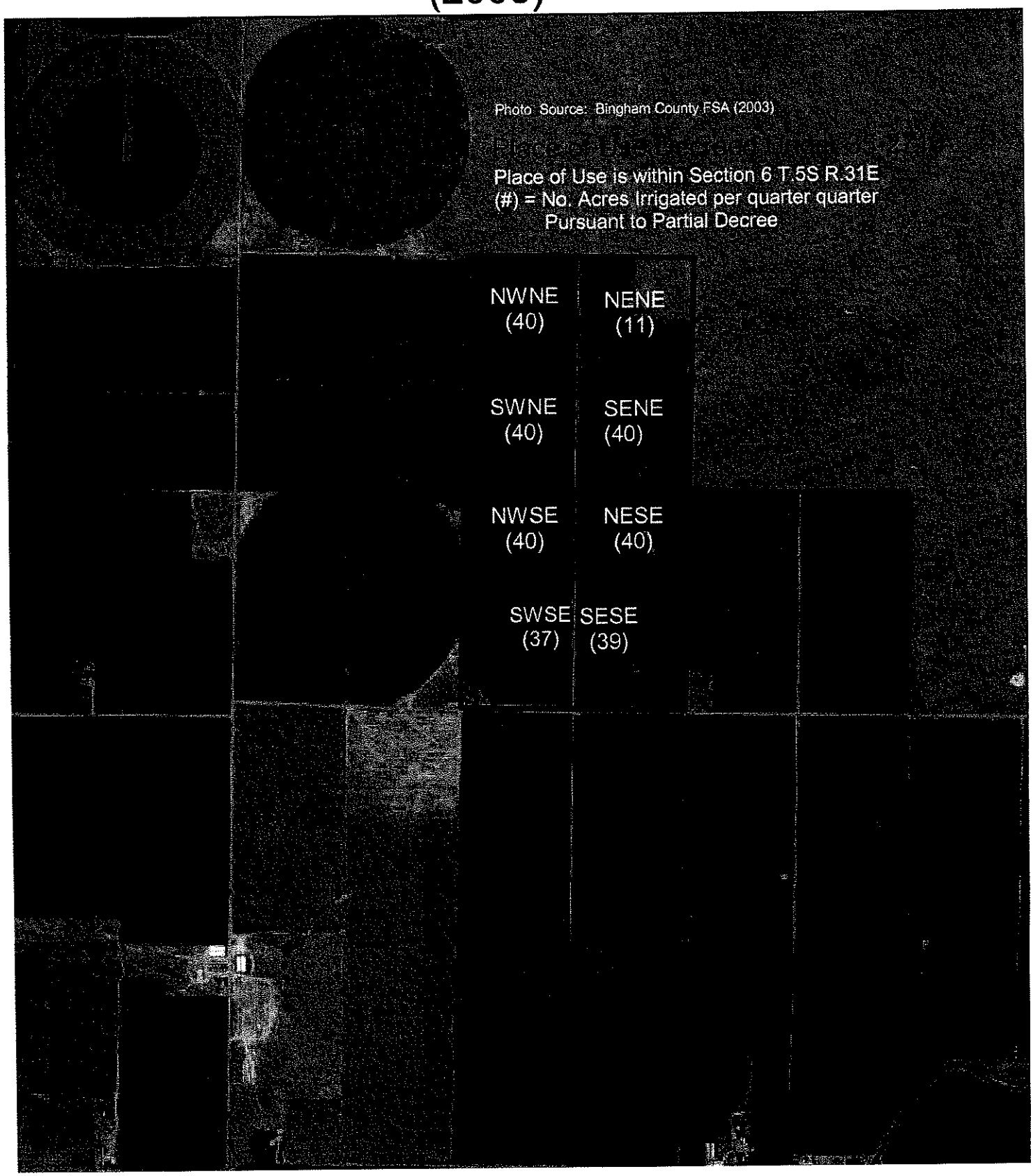

Exhibit B
(2004)

Photo Source: NAIP (2004)

Place of Use is within Section 6 T5S R31E
(#) = No. Acres Irrigated per quarter quarter
Pursuant to Partial Decree

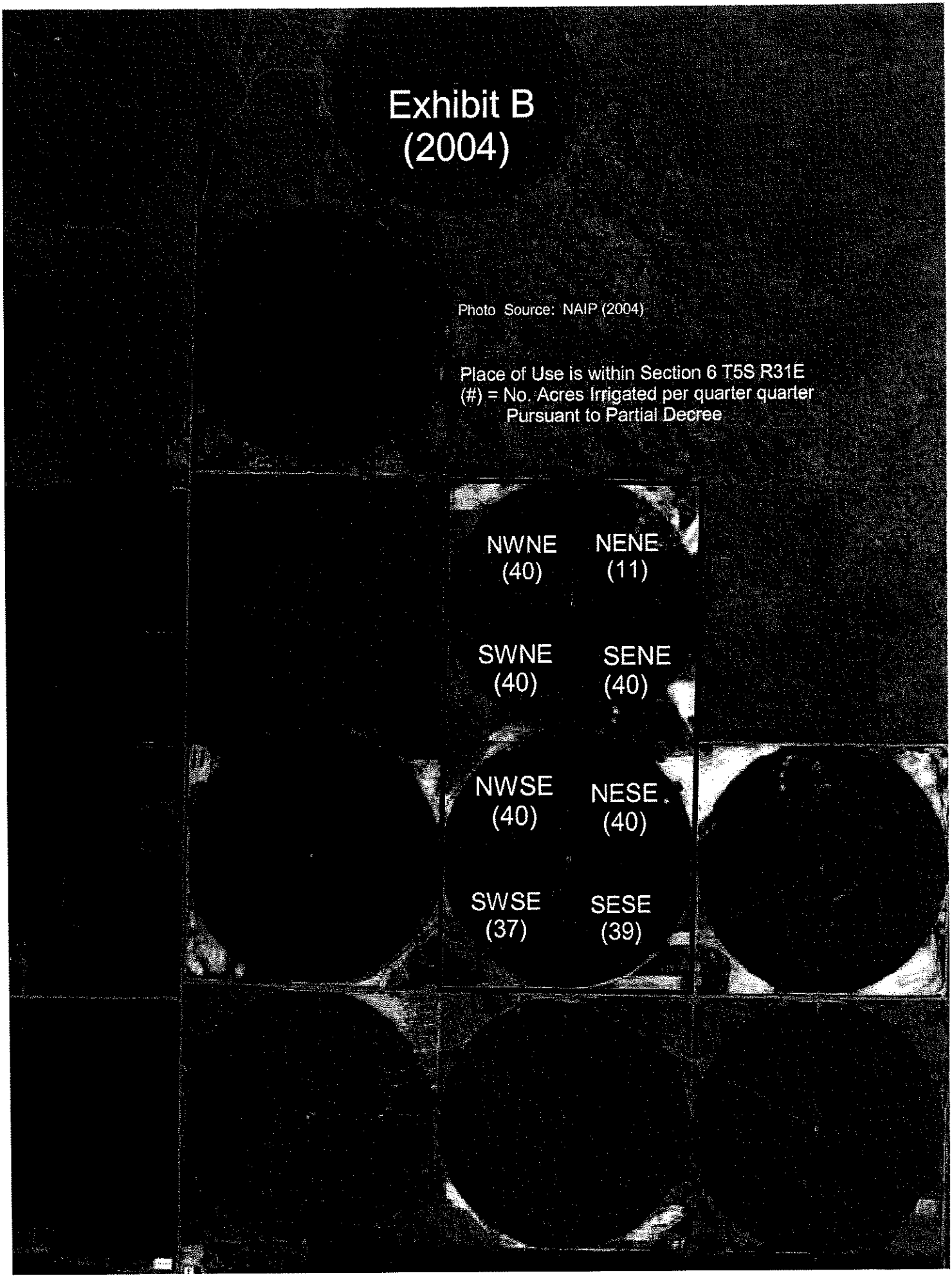

Exhibit C
(2003 Image with 2004 Overlay)

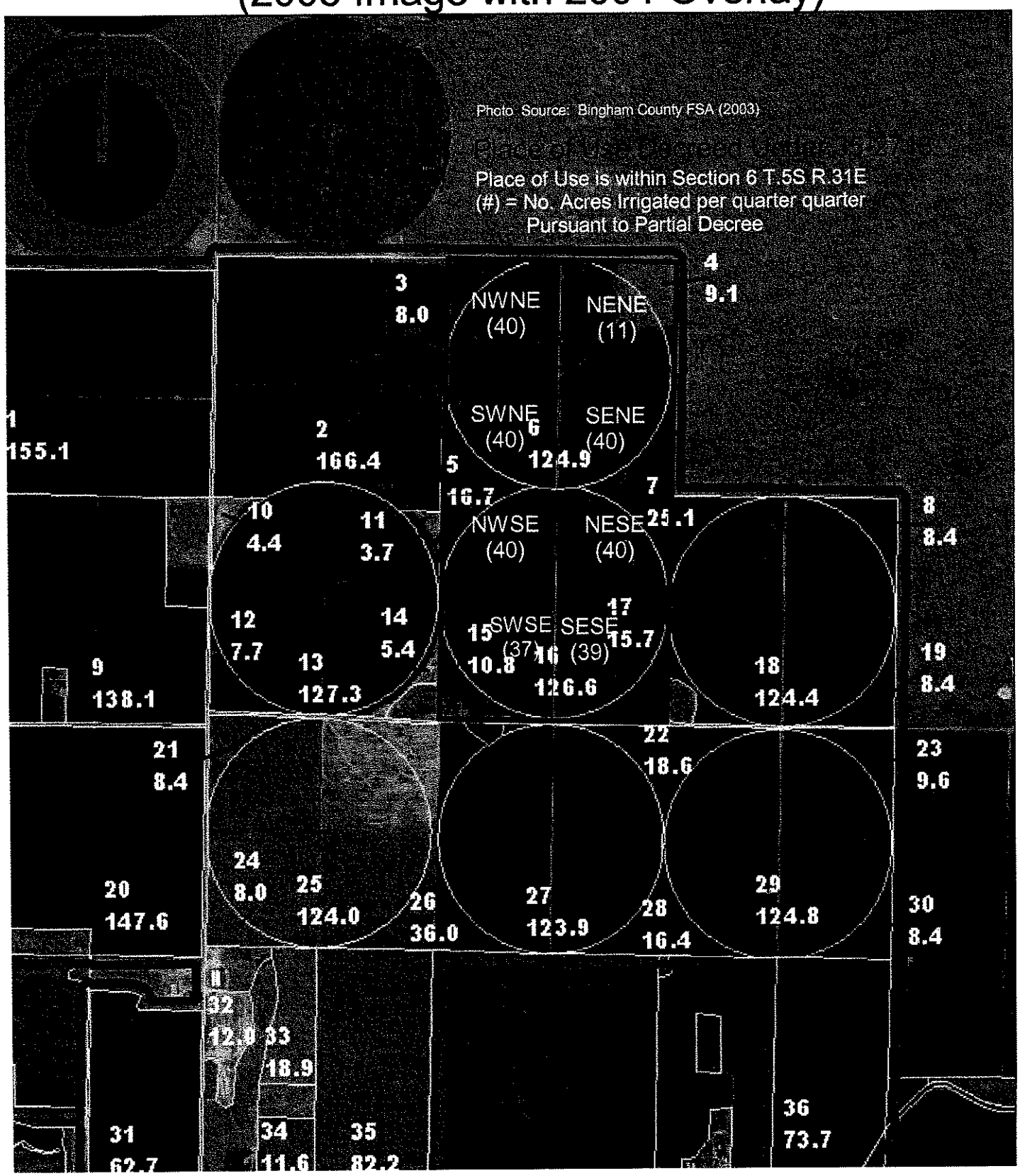

EXHIBIT D

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	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 35-02713

DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
FEB 15 2002
By _____ Clerk
Deputy Clerk

NAME AND ADDRESS: PRATT FARMS INC
1356 S 3000 W
ABERDEEN, ID 83210

SOURCE: GROUNDWATER

QUANTITY: 4.90 CFS
1148.00 AFY

PRIORITY DATE: 05/10/1962

POINT OF DIVERSION: T05S R31E S06 SESWSE Within Bingham County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Irrigation	04-01 TO 11-01	4.90 CFS 1148.00 AFY

PLACE OF USE: Irrigation Within Bingham County

T05S R31E S06	NENE 11.0	NWNE 40.0
	SWNE 40.0	SENE 40.0
	NESE 40.0	NWSE 40.0
	SWSE 37.0	SESE 39.0

287.0 Acres Total

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication