

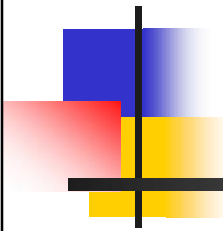
Water Resources and the Impact on Real Property



Dave Tuthill, PhD, PE

March 4, 2010





Or....

What Do *Water Rights* Have to do with *Title Insurance*??



Dave Tuthill, PhD, PE

March 4, 2010





Prediction...

Relative to property transactions in Idaho where water rights have significant value...

Change

In Title Insurance considerations is coming between now and 2014

Which Title Insurance Companies will be responsive to this change?

Disclaimer (1 of 2)

■ Q=VA

**I am not
A Title
Insurance
Person...**

Visit our World Wide Web site at: <http://www.stewart.com>

POLICY OF TITLE INSURANCE ISSUED BY

**STEWART TITLE
GUARANTY COMPANY**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused this policy to be signed and sealed by its duly authorized officers as of the date of Policy shown in Schedule A.

Stewart Jones Jr.
Chairman of the Board

Michael S. Morris
President

STEWART TITLE
GUARANTY COMPANY

Authorized Signatory
[Signature]
STEWART TITLE GUARANTY CO.
Company
Houston, Texas
City, State

MAIL - 72448

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (i) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (a) the occupancy, use, or enjoyment of the land, (ii) the character, dimensions or location of any improvement now or hereafter erected on the land, (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part, or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the performance thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. (i) Any governmental police power not excluded by (ii) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
3. (i) Rights of eminent domain unless notice of this exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
4. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
5. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal, territorial, state law, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

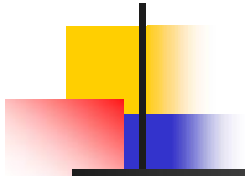
Page 1 of 2
Form No. O-9993-2320397

ALTA OWNER'S POLICY - 10-17-92



Disclaimer (2 of 2)

- This presentation does ***not*** provide answers or direction...
- It is meant to be informative and thought-provoking...
- Where this goes from here depends on you



Idaho Water Engineering

Water Solutions



Water Rights



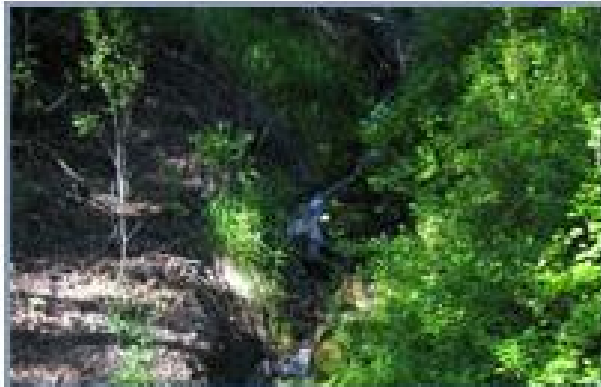
Water Delivery



Data Compilation



Expert Testimony



Stream Channel Protection



GIS Application Development



Outline

- What does water have to do with real property?
- Water distribution concepts in Idaho
- Technological aids
- Title Insurance considerations



Question...

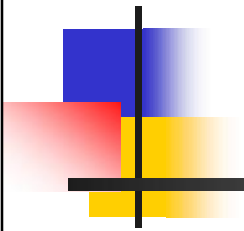
- Is a water right real property?



Title 55, Idaho Code, Section 101

55-101.REAL PROPERTY DEFINED. Real property or real estate consists of:

1. Lands, possessory rights to land, **ditch and water rights**, and mining claims, both lode and placer.
2. That which is affixed to land.
3. That which is appurtenant to land.



In Idaho the *appropriation doctrine*
is used for the delivery both
surface water rights and ground
water rights—

“first in time is first in right”

Administered by a State of Idaho
Water District
which hires a *Watermaster*

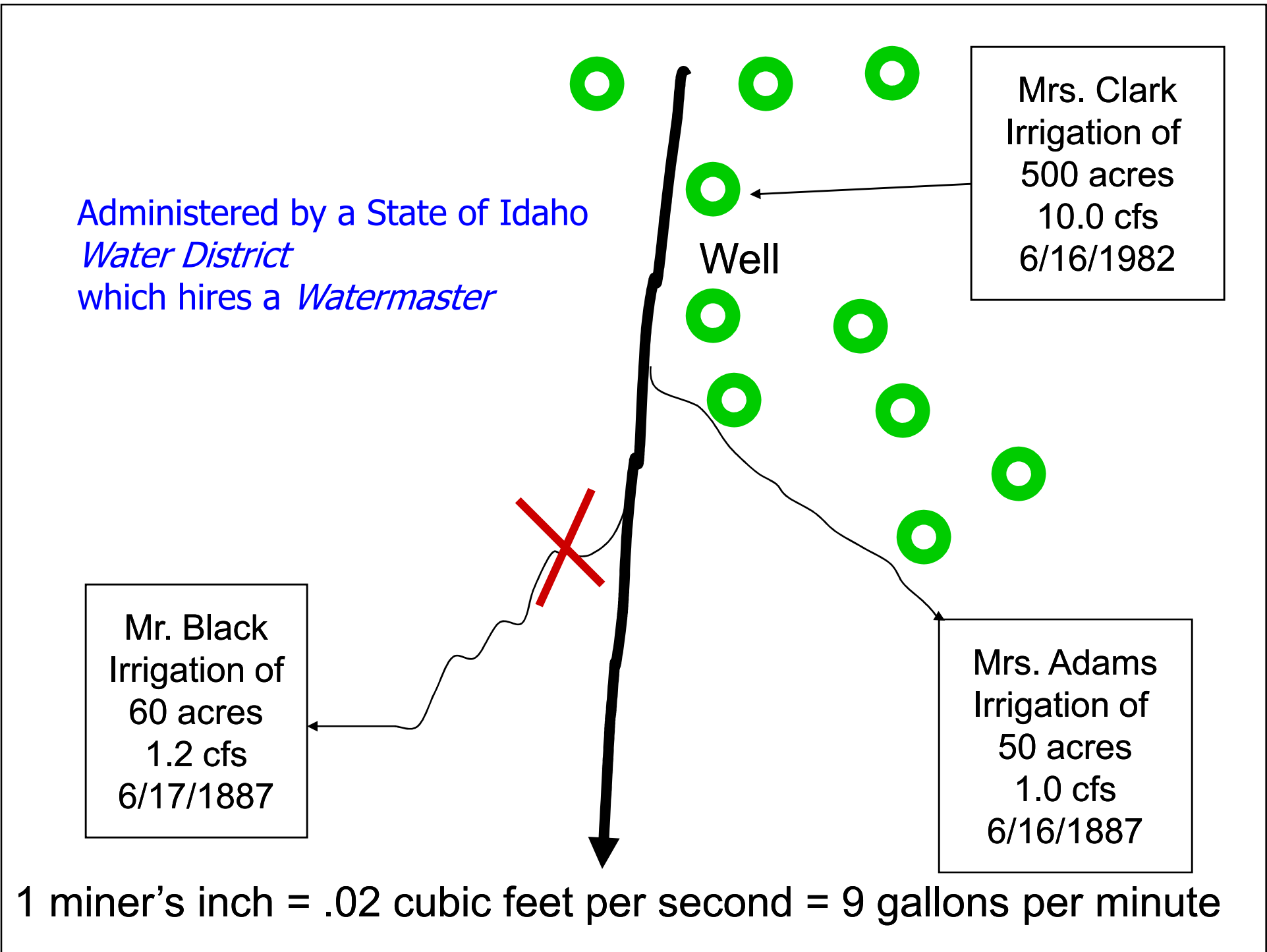
Mrs. Clark
Irrigation of
500 acres
10.0 cfs
6/16/1982

Well

Mr. Black
Irrigation of
60 acres
1.2 cfs
6/17/1887

Mrs. Adams
Irrigation of
50 acres
1.0 cfs
6/16/1887

1 miner's inch = .02 cubic feet per second = 9 gallons per minute



Problem

Water deliveries must consider connections
between ground water and surface water
(conjunctive administration)

if fair delivery is to be achieved



On very rare occasions...

...the planets are aligned

- Engagement of all branches of Govt
 - Legislative
 - Judicial
 - Executive
 - Idaho Water Resource Board
- Engagement of water users
 - Growers
 - Environmentalists
- Engagement of the public

The Sun



Mercury



Venus



Earth



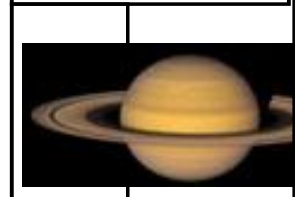
Mars



Jupiter



Saturn





Additional Drivers of Change

- Increased efficiencies of irrigation have lead to reduced deep percolation
- Increasing urbanization
- Increased recognition of instream values
- Impacts of climate change?
- And... a need to coordinate land use planning with water use planning



Inhibitors to Discussing Water Rights in Property Transactions

Historic

- Lack of buyer awareness
- Lack of determination of water rights
- Lack of regulation
- Lack of measurement
- Lack of enforcement
- Lack of economic incentive

Emerging

- Increasing awareness
- Snake River Basin Adj.
- Northern Idaho Adj.
- Adjudication enables
- Increased gaging
- Remote sensing
- Increasing water value

Value of a Water Right as a Percent of Property Value

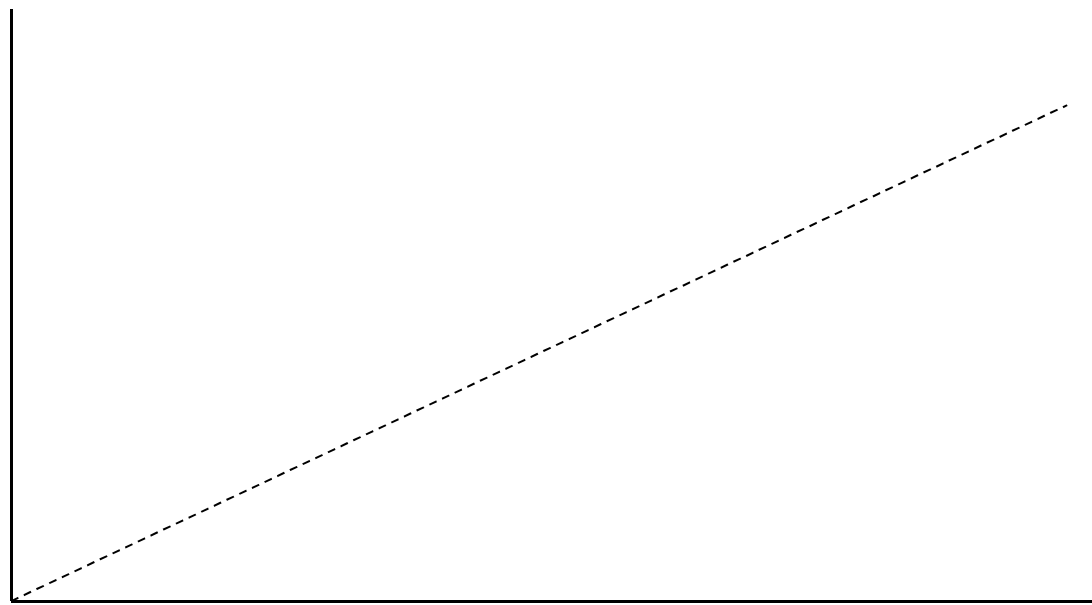
100%

0%

**Home in
A Municipal
System**

**Home with
Significant
Landscaping
With a Private
Water Right**

**Irrigated
Land**





NORTH OF KETCHUM

Boulders to Baldy view! Stunning 4.39 acre lot in prestigious North Ketchum. Flat building side, all day sun, amazing views in all directions, as well as a pond. Historic water rights may permit additional water features, or a guest house.

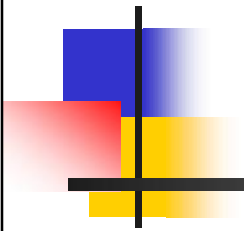
\$2,100,000 MLS#08-304832



41 Lane Ranch Road - \$2,480,000

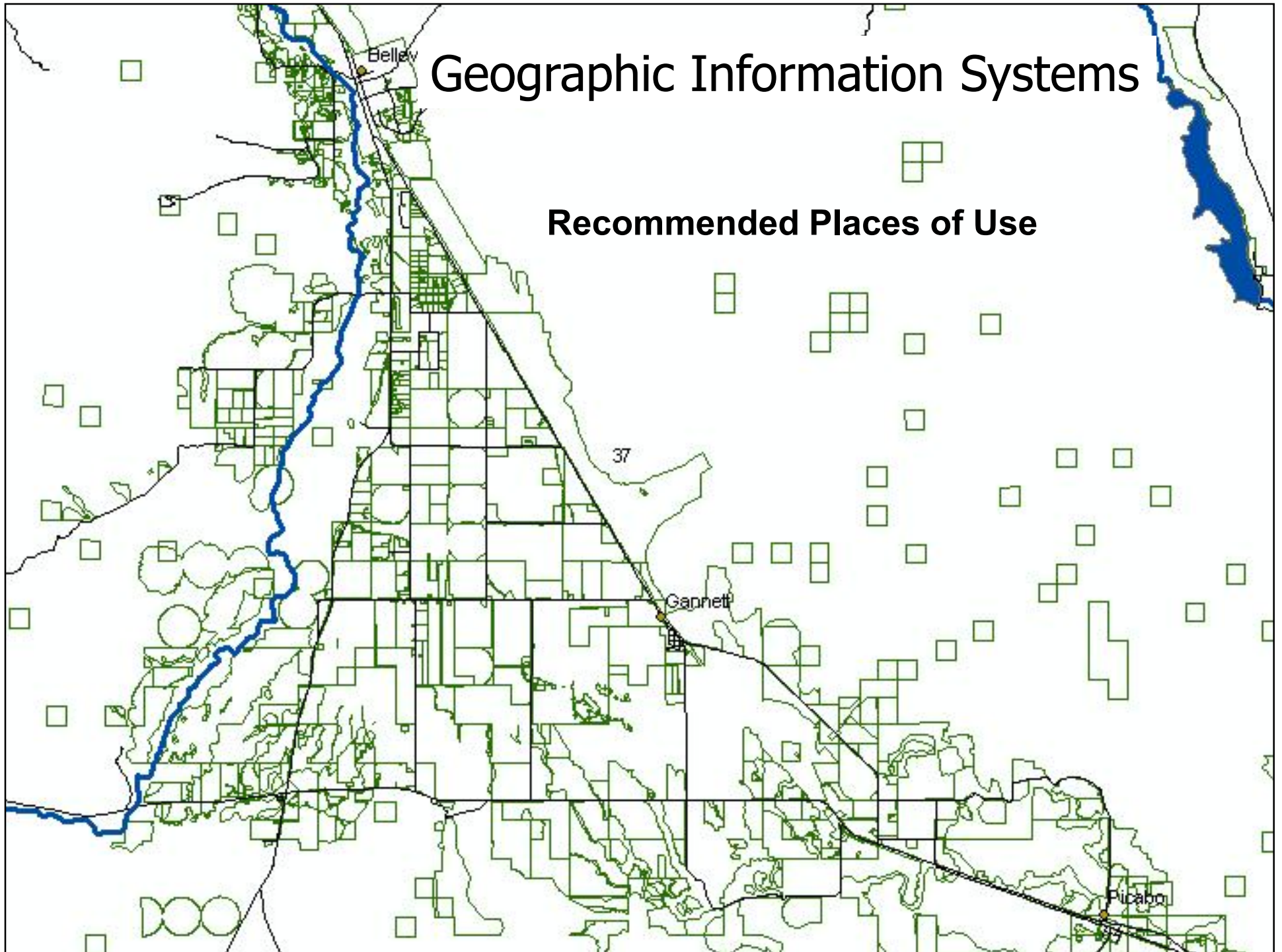
This 5 bedroom, 5 bath, office, family room, open vaulted ceiling living room, formal dining room, gourmet kitchen, and a 3 car garage is situated on a beautiful pond featuring great views of the Lane Ranch Cliffs.

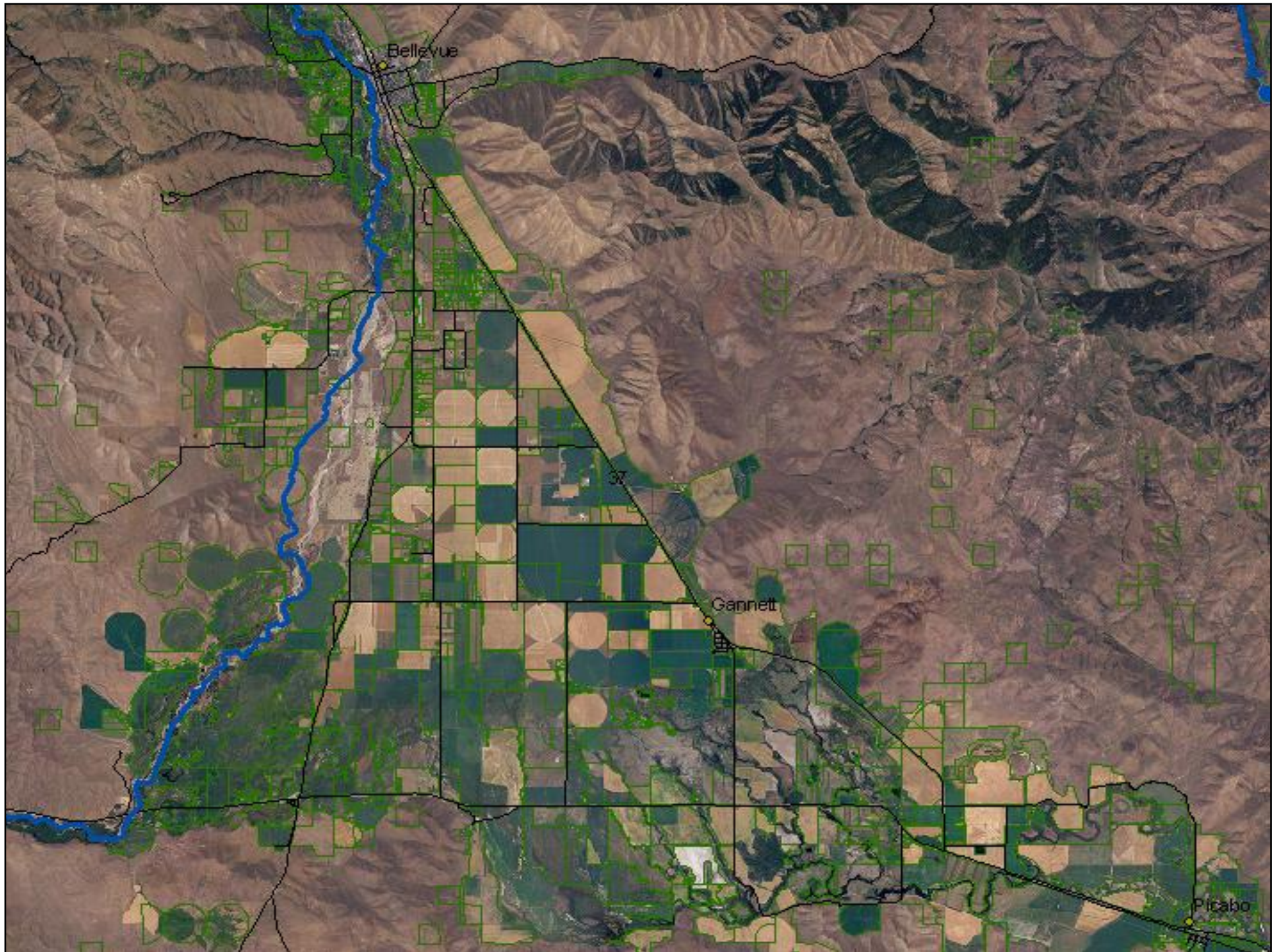
Technological Aids in Determining the Usefulness of Water Rights



Geographic Information Systems

Recommended Places of Use







Modeling

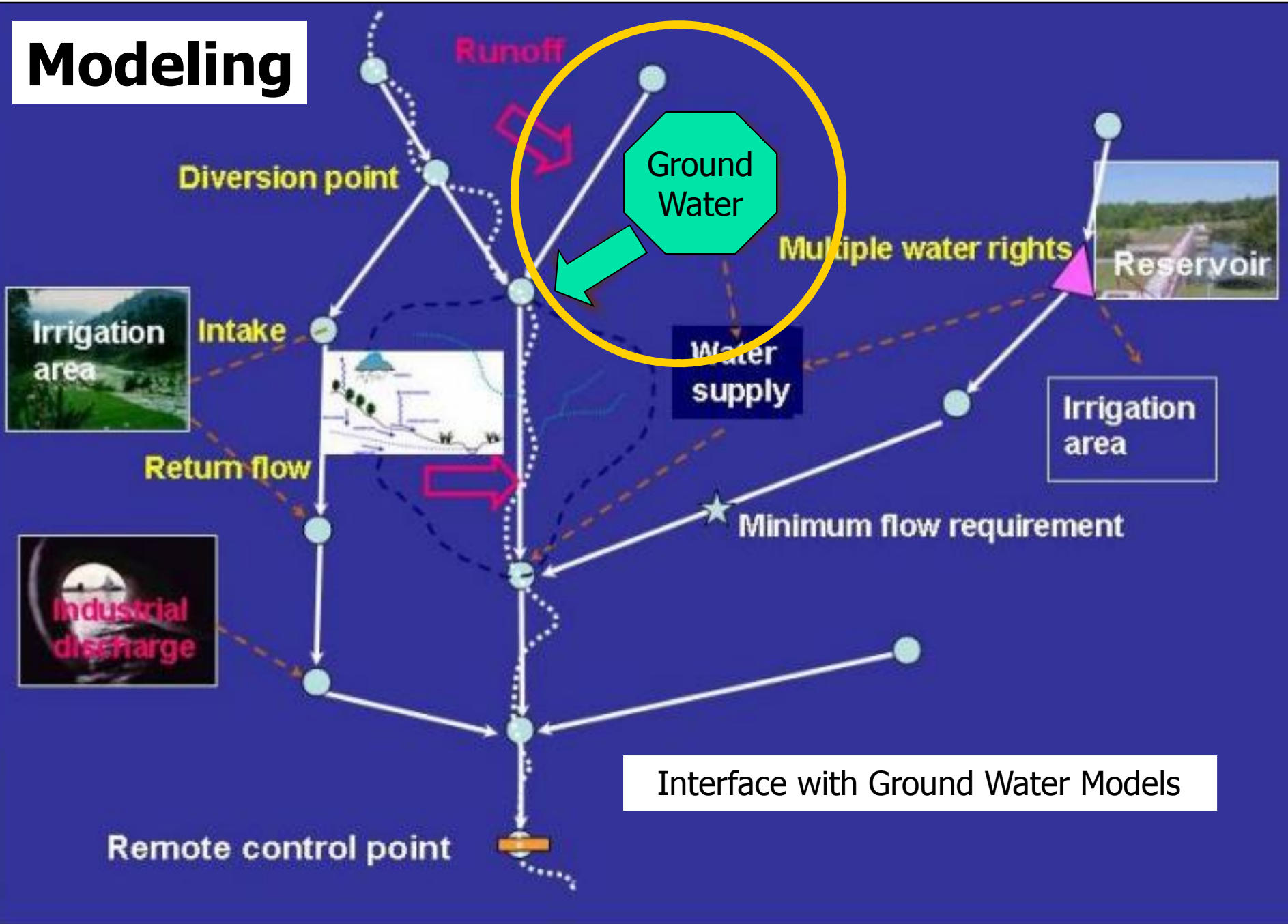
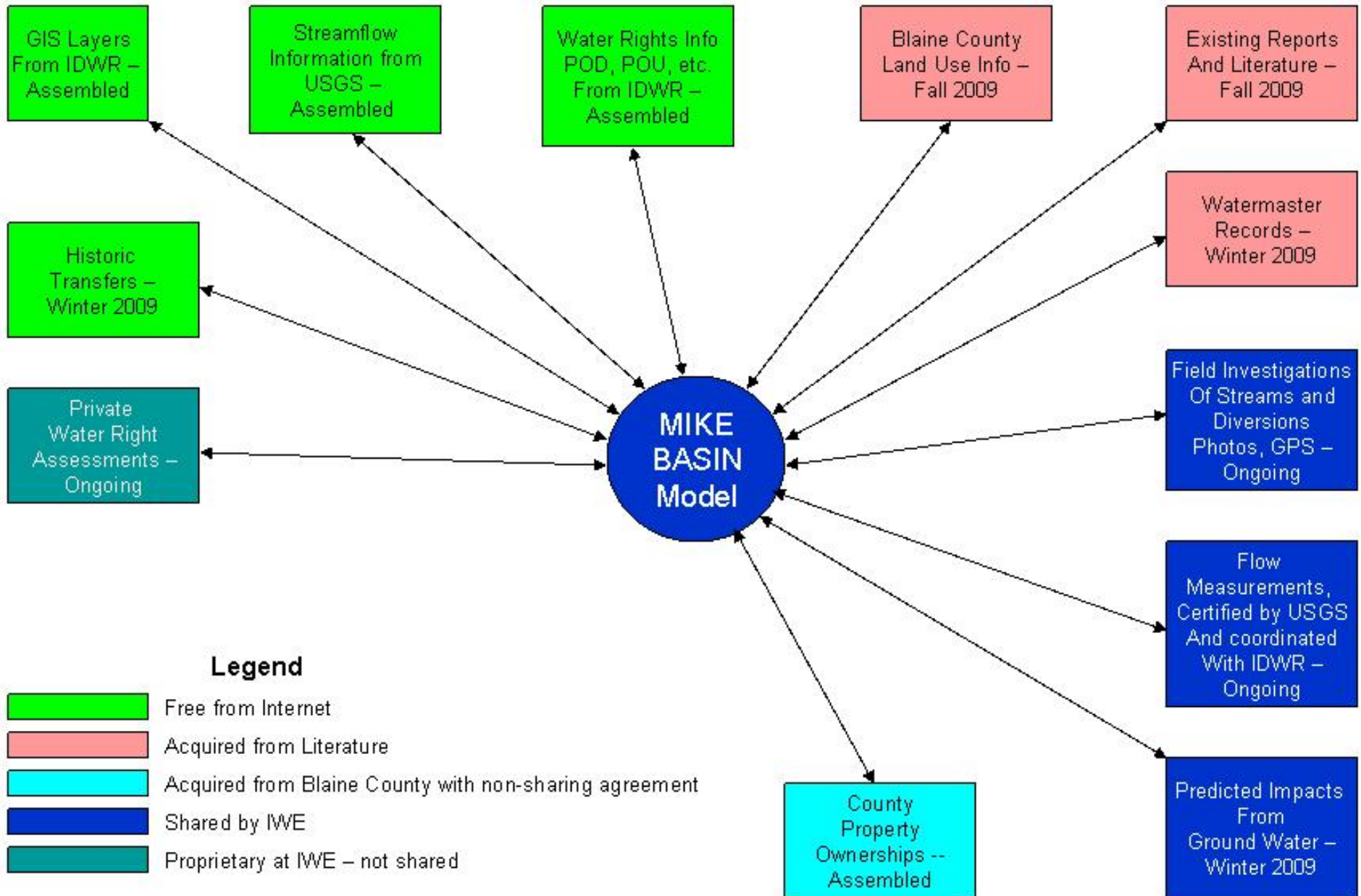
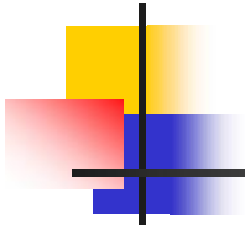


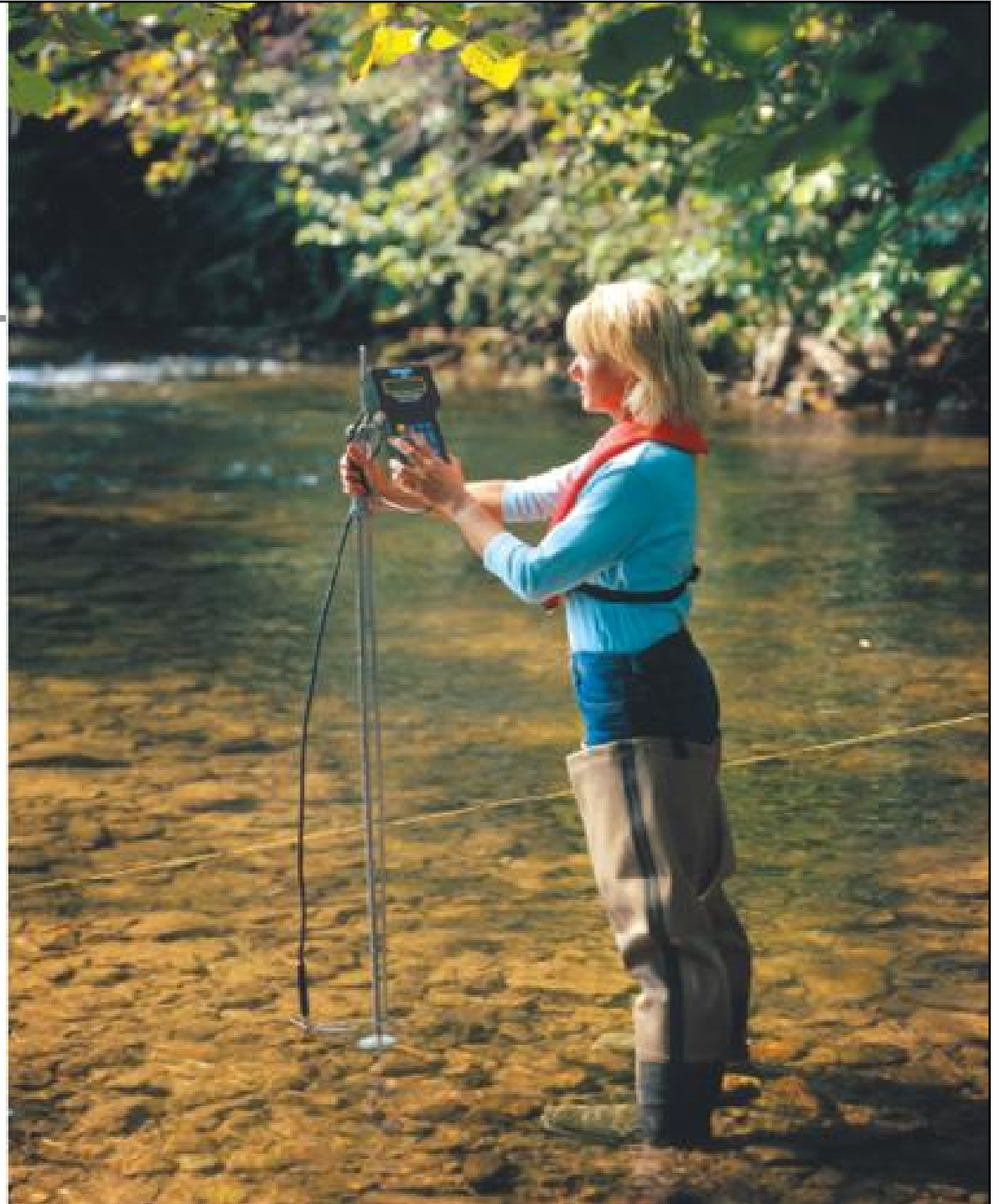
Figure 1.1 Simplified schematization of the MIKE BASIN model network

Idaho Water Engineering, LLC MIKE BASIN Model Data Sets





Streamflow Measurement



allgageusgs

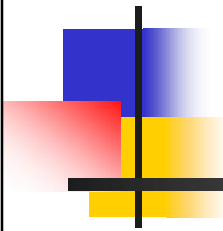
Location: 2,466,390.286 1,387,005.587 Meters

Field	Value
FID	438
Shape	Point
AGENCY_CD	USGS
SITE_NO	13136400
STATION_NM	WARM SPRINGS CREEK NR KETCHUM ID
LAT_VA	434100
LONG_VA	1142500
DEC_LAT_VA	43.68323970
DEC_LONG_V	-114.41755280
COORD_METH	M
COORD_ACY_	F
COORD_DATU	NAD27
DEC_COORD_	NAD83
DISTRICT_C	16
STATE_CD	16
COUNTY_CD	013
COUNTRY_CD	US
LAND_NET_D	
MAP_NM	
MAP_SCALE_	
ALT_VA	
ALT_METH_C	
ALT_ACY_VA	
ALT_DATUM_	
HUC_CD	17040219
BASIN_CD	
TOPO_CD	
STATION_TY	YNNNNNNNNNNNNNNNNNNNN
AGENCY_USE	I
DATA_TYPES	
INSTRUMENT	
CONSTRUCTI	
INVENTORY_	
DRAIN_AREA	
CONTRIB_DR	
TZ_CD	MST
LOCAL TIME	V

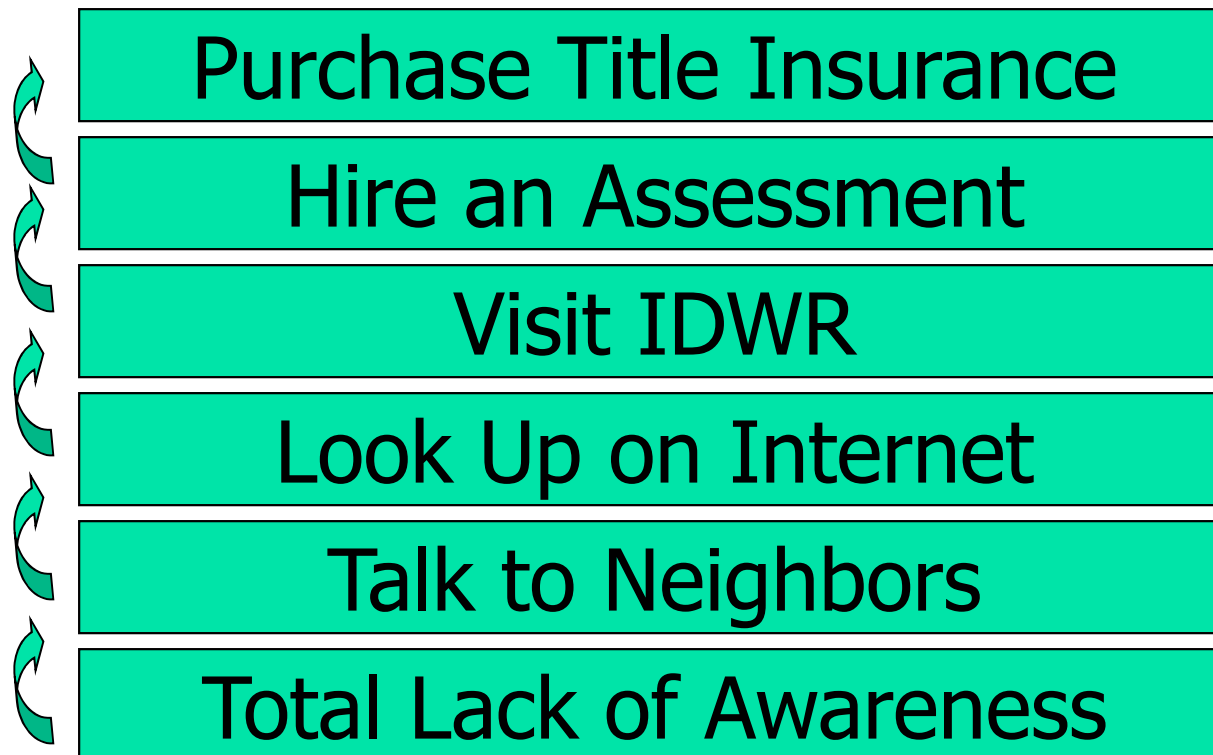
MIKE BASIN

Gaging Stations

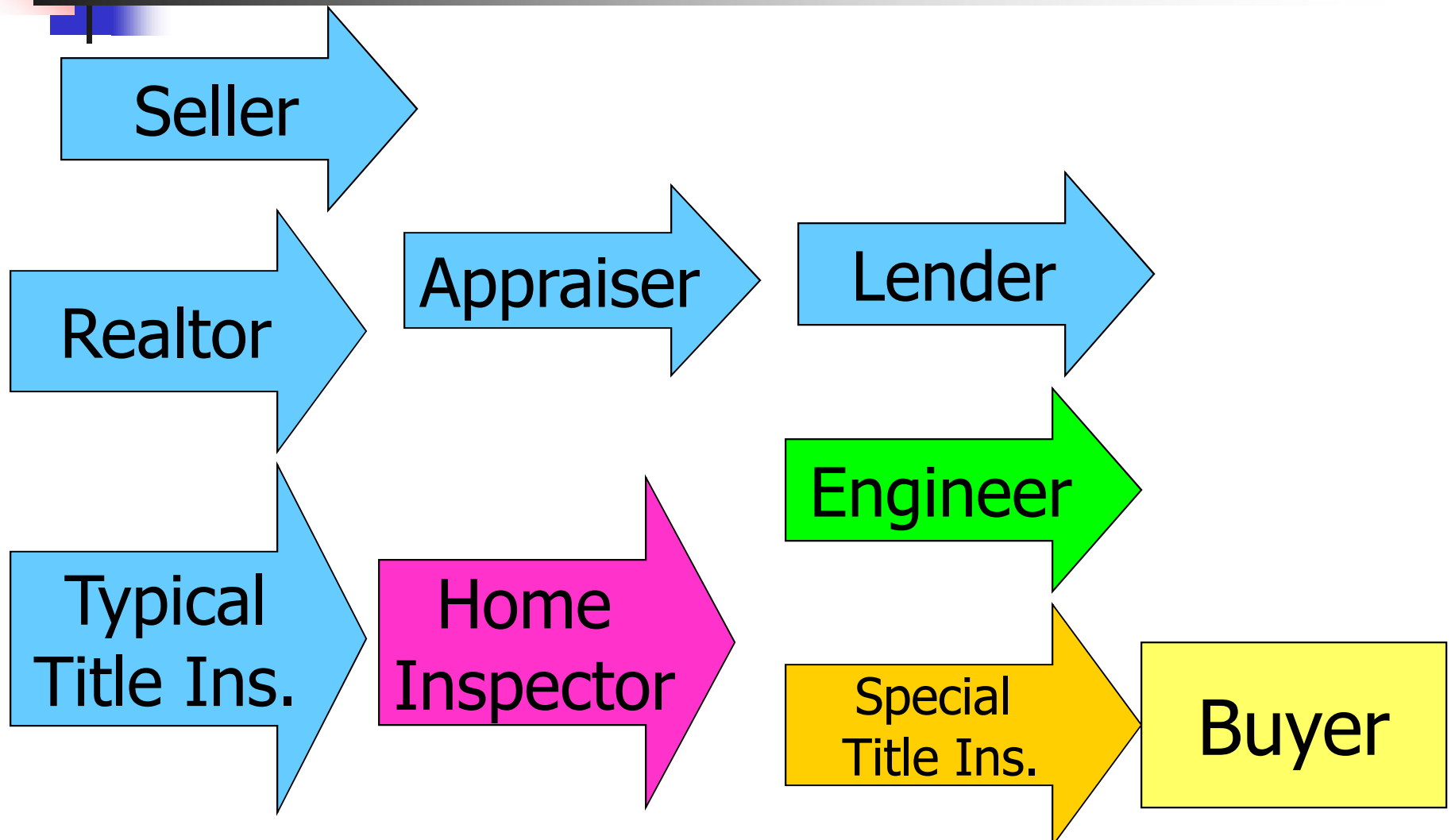
Title Insurance Considerations Relative to Water Rights



Levels of Buyer Protection Regarding Water Rights



Property Purchase When Water Rights are Important



Realtor's Water Right Survival Kit

- A Water Rights Assessment is not needed if water is provided by a:
 1. Municipal provider, or
 2. Well and the use is for irrigation of a half acre or less in conjunction with a home (for unusual uses, see Idaho Code Section 42-111)
- In all other situations a Water Rights Assessment is recommended

What Does a Water Rights Assessment Look Like?

- Background for the Engineering Water Rights Analysis
- Description of the Property
- Pre-Sale Water Quality Evaluation (Newly added)*
- Geographical Information System Depiction of the Property
- Recorded Water Rights Associated with the Property
- History of Changes Related to these Water Rights
- Availability of Water to Satisfy the Water Rights
- Other Water Rights from the Source(s) of Supply
- Applicable General Provisions
- Analysis: Distribution of Water to the Water Rights – Past
- Analysis: Distribution of Water to the Water Rights – Future
- Analysis: Recommended Actions Relative to Water Rights for this Property

* Helpful, even if a Water Rights Assessment is not required

About the Company

As new industry and urban development in the western states began prompting greater demands on water resources, Stewart Title Guaranty Company (Stewart) anticipated the need to assist people in safeguarding their water investments. Therefore, recognizing this pressing need, Stewart Title Company formed Stewart Water Information, LLC, a division of Stewart, in Denver, Colorado in the fall of 1999. From there, water rights title insurance evolved as a product reaching customers all over the United States.

Today Stewart is active in California, Colorado, Idaho, Nevada, Montana, Texas, Utah, and Washington, with business expanding every day. With a strategic plan of providing water rights information and title insurance for water rights to its customers, Stewart is recognized as the forerunner in issuing water rights title insurance in the United States.



Title That Holds Water

Now insuring water rights is as accessible as insuring a real estate investment.

"We take the guesswork out of the acquisition of water rights and safeguard your water rights investments... Inconsistencies in the title to water rights can occur just as they can with land titles. These discrepancies are, however, more likely to occur in the title to water rights due to the lack of historic attention to ownership and search method. Therefore, it is essential to confirm legal title to water rights..."

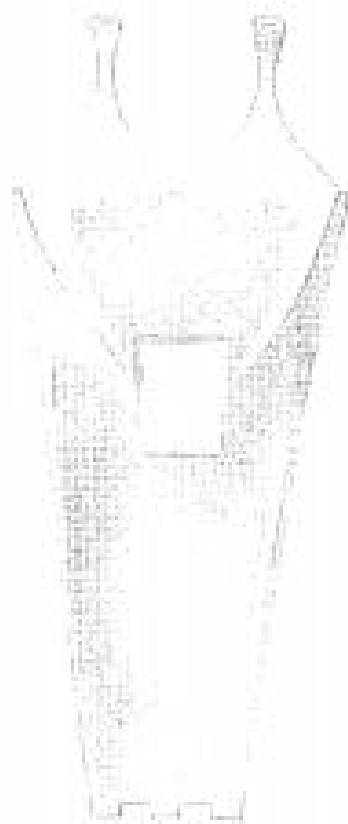


STEWART TITLE
GUARANTEE COMPANY

ESTABLISHED 1893
INCORPORATED 1908

A NAME
RECOGNIZED NATIONALLY
AS BEING
SYNONYMOUS WITH

QUALITY



Society of Guaranty

STEWART TITLE
GUARANTEE COMPANY

P.O. Box 2029
Houston, Texas 77252

POLICY
OF
TITLE
INSURANCE

CONDITIONS AND STIPULATIONS Continued
(continued and concluded from reverse side of Policy Face)

7. DETERMINATION, EXTENT OF LIABILITY AND CONFORMANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent hereinafter described.

(a) The liability of the Company under this policy shall not exceed the least of:
(i) the Amount of Insurance stated in Schedule A, or
(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy and improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPOINTMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage and there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE, REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro rata.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unimpeded by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment or account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guarantees, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters, when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, or Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at P. O. Box 2029, Houston, Texas 77252-0029.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "Insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "Insured claimant": an insured claiming loss or damage.

(c) "Knowledge" or "know": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "Land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument (f) "Public records": records established under state statutes of Data of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(4) of the Exclusions From Coverage, "public records" shall also include environmental protection laws filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "Unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Data of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is reported as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly

reserve the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals thereon, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect, lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Data of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant to permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary to the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) **To Pay or Tender Payment of the Amount of Insurance.**
To pay or tender payment of the amount of insurance under this policy together with any costs, attorney's fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) **To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.**

(i) To pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorney's fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) To pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorney's fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

(continued and concluded on last page of this policy)

POLICY OF TITLE INSURANCE ISSUED BY

STEWART TITLE GUARANTY COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.


IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused this policy to be signed and sealed by its duly authorized officers as of the date of Policy shown in Schedule A.

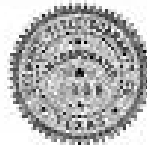

Chairman of the Board

**STEWART TITLE
GUARANTY COMPANY**


President

Countersigned


Authorized Signatory
STEWART TITLE GUARANTY CO.
Company
Houston, Texas
City, State



EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under the policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.



First American Title Company
of Mountain Home

June 30, 2005

Joe Knox
Stewart Title Guaranty Company
2 Moon Ridge Lane
Crested Butte, CO 81224

Re: Elmore County

In compliance with Idaho law, the undersigned countersigns this policy number 9993-232-0397 and consents to the attachment of this countersignature thereto.

First American Title Company

By: Susan Hickerson
Its Vice-President

In compliance with Idaho law, the undersigned countersigns this policy number 9963-232-0397 and consents to the attachment of this countersignature thereto.

Twin Falls Title and Escrow Company

A handwritten signature in black ink, appearing to read "Jarrod T. Ball", is written over the company name and extends to the right.

By: Jarrod T. Ball
Its Vice-President

ALTA OWNER'S POLICY
SCHEDULE A
(REVISED 11/11/2005)

Order Numbers:

ID200500273	ID200500320	ID200500363	ID200500405
ID200500275	ID200500323	ID200500368	ID200500408
ID200500278	ID200500324	ID200500369	ID200500412
ID200500279	ID200500326	ID200500371	ID200500414
ID200500280	ID200500327	ID200500374	ID200500418
ID200500283	ID200500347	ID200500375	ID200500419
ID200500285	ID200500348	ID200500377	ID200500421
ID200500288	ID200500352	ID200500379	ID200500422
ID200500290	ID200500353	ID200500381	ID200500423
ID200500291	ID200500354	ID200500395	ID200500429
ID200500311	ID200500355	ID200500402	ID200500430
ID200500314	ID200500362	ID200500404	ID200500431
ID200500315			

Policy Number:

9993-232-0397

Date of Policy: June 30, 2005 at 10:22:27 am, Twin Falls County

June 30, 2005 at 2:12 pm, Elmore County

Amount of Insurance: \$34,575,000.00

1. Name of Insured:

State of Idaho, Idaho Water Resource Board

2. The estate or interest in the land described or referred to in this Policy and covered herein is:

Water Rights

3. Title to the estate or interest in said land is at the effective date hereof vested in:

State of Idaho, Idaho Water Resource Board

4. The land referred to in this Policy is described as follows:

See "Exhibit A" attached hereto

**ALTA OWNER'S POLICY
SCHEDULE B**

Order Numbers:

Policy No: O-9991-2320397

ID200500273	ID200500320	ID200500363	ID200500405
ID200500275	ID200500323	ID200500368	ID200500408
ID200500278	ID200500324	ID200500369	ID200500412
ID200500279	ID200500326	ID200500371	ID200500414
ID200500280	ID200500327	ID200500374	ID200500418
ID200500283	ID200500347	ID200500375	ID200500419
ID200500285	ID200500348	ID200500377	ID200500421
ID200500288	ID200500352	ID200500379	ID200500423
ID200500290	ID200500353	ID200500381	ID200500423
ID200500291	ID200500354	ID200500395	ID200500429
ID200500311	ID200500355	ID200500402	ID200500430
ID200500314	ID200500362	ID200500404	ID200500431
ID200500315			

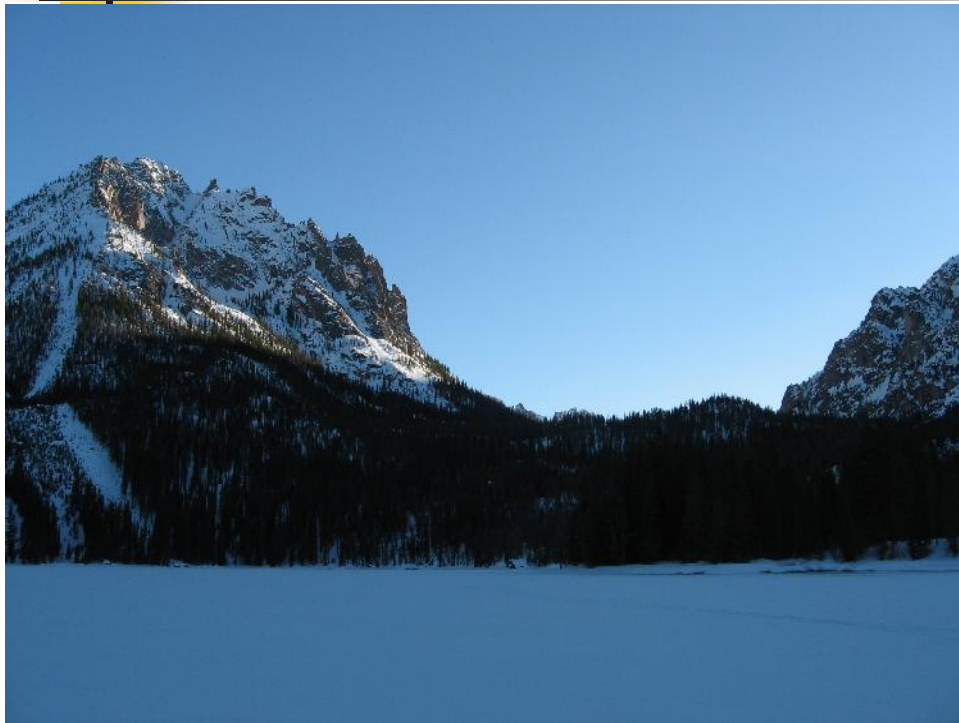
This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

1. Unpatented mining claims, or reservations or exceptions in patents, or an act authorizing the issuance thereof.
2. Any physical aspect of the water including but not limited to: availability, existence, utility, recoverability, source, quality, condition, potability, chemistry or other characteristics of water, if any, lying on, under or over the land or lands or that may be produced therefrom.
3. Lack of priority of the water right and/or that the water right will be in priority to be diverted at all times.
4. Terms, conditions, stipulations, and obligations contained in water right license no. 2-7353 filed as instrument number 365991 in the records of Elmore County, Idaho and filed as instrument number 2005-009873 in the records of Twin Falls County, Idaho.
5. Terms, conditions, stipulations, and obligations contained in water right license no. 2-2268 and subsequent documents describing changes to the original water right as recorded in the records of Elmore County, Idaho: 365992, 365993, 365994, 365995, 365996, and 366645; and as the following instrument numbers in the records of Twin Falls County, Idaho: 2005-009868, 2005-009869, 2005-009870, 2005-009871, 2005-009872, and 2005-012073.
6. Lack of a right of access to, and use of, the place of use and the point of diversion.
7. Terms, conditions, provisions and obligations contained in paragraphs 2 and 5, and all subparagraphs thereof, of the Asset Purchase and Sale Agreement dated May 10, 2005. A memorandum of said agreement was recorded on June 30, 2005, as Instrument No. 2005-014018, Twin Falls County and as Instrument No. 367297, Elmore County.



Summary

- Water Rights are becoming increasingly important in property transactions
- Change is coming to title insurance considerations relative to water
- How this change evolves in Idaho is up to you...



208-378-1513
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