



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

**901 South Stewart Street, Suite 2002
Carson City, Nevada 89701-5250
(775) 684-2800 • Fax (775) 684-2811
<http://water.nv.gov>**

November 4, 2016

WARNING NOTICE

United States Fish and Wildlife Service
911 NE 11th Ave.
Portland, Oregon 97232-4181
Certified Mail #7106 7808 0630 0064 6369

Re: Alleged Violation No. 195 Concerning Impairment to Permit 85417

Ladies and Gentlemen:

I. INTRODUCTION

On July 21, 2016, the Nevada Division of Water Resources (Division) received a Request to Investigate an Alleged Violation concerning the United States Fish and Wildlife Service's (USFWS) possible illegal diversion of all the water from the Carson Slough around the point of diversion of Permit 85417 within the Ash Meadows National Wildlife Refuge. Permit 85417 is owned by Ministerio Roco Solida Iglesia (Solida) and was filed to change the point of diversion and manner of use of water claimed under Proof of Appropriation No. V-10092, which claimed an 1887 priority date for stock water.^{1,2}

The USFWS has multiple water rights on file with the Office of the State Engineer that are within the Ash Meadows National Wildlife Refuge (Refuge). These water rights include Permits 53597, 53599 through 53613, 53615, 53617 through 53620, 53623 through 53625, 53636 through 53642, 54249 through 54259, 62294 and 65320.³ The USFWS stated its intent in acquiring the aforementioned permits was, as practicably as possible, to re-establish historic natural drainage patterns and wetlands within the Refuge. All of the permits were issued for wildlife purposes with priority dates between 1886 and 1974.⁴

¹ File No. 84417, official records in the Office of the State Engineer.

² File No. V-10092, official records in the Office of the State Engineer.

³ In addition, USFWS previously held Permit 53643 – its only right on the Carson Slough, which was cancelled on January 31, 1996.

⁴ Where USFWS' permits range in priority dates from 1886 to 1974, all of its rights, except 53636, which changed Proof of Appropriation V-01256 claiming an 1886 priority date, are junior to Solida's Permit 85417.

On September 27, 2016, the Division conducted a field investigation on the claim of upstream diversion around the point of diversion of Permit 85417.⁵ A copy of the field investigation is enclosed. The field investigation observed the redirection of water on Nye County Assessor Parcel Number (APN) 021-301-03, owned by the United States of America. Furthermore, the Carson Slough, which had conveyed water to the point of diversion of Permit 85417, was observed to have been filled in on Nye County APN 021-311-20, owned by the United States of America, near the property line of Nye County APN 021-311-10, owned by Solida (Solida Parcel).

In addition to the observations described above, historical imagery and mapping provides additional support for the historical flow and recent complete redirection of water along the Carson Slough. A survey plat map for Township 17 South, Range 50 East, M.D.B.&M., signed by the Department of the Interior, General Land Office Commissioner on February 18, 1882, identifies a single stream on the map referred to as a "Brook." **Attachment A.** The Brook crosses the SW¼ SW¼ of Section 21, Township 17 South, Range 50 East, M.D.B.&M., the same 40 acres as Nye County APN 021-311-10, the Solida Parcel.

A dependent resurvey plat map by the Department of the Interior, Bureau of Land Management from 1965 shows the Carson Slough, whose source of water shares some of the same sources of water of the Brook referenced on the map from 1882, crossing the Solida Parcel. **Attachment B.** The Carson Slough splits in Section 29 and connects to a water feature referred to as "DAM," and the second split connects to a water course originating from Section 28, which is also referred to as a "DAM." The "DAM" in Section 28 collects water from the Rogers Spring in Section 15 and Longstreet Spring in Section 22. Aerial imagery obtained from Google Earth, the EarthExplorer website of the United States Geological Survey, indicates that since at least 1948, water has been redirected and altered by prior users of the Carson Slough, but not until after September 2010 has water been completely redirected from the Carson Slough's path through the Solida parcel and the point of diversion of Permit 85417.⁶

II. ALLEGED VIOLATION(S)

The State Engineer has determined pursuant to NAC Chapter 532 that the USFWS is in violation of the terms of its permits/certificates as follows:

NRS § 533.085 states: "[N]othing contained in this chapter [533] shall impair the vested right of any person to the use of water, nor shall the right of any person to take and use water be impaired or affected by any of the provisions of this chapter where appropriations have been initiated in accordance with law prior to March 22, 1913."

⁵ Field Investigation of Alleged Violation 195, filed in Alleged Violation Case No. 195, official records in the Office of the State Engineer.

⁶ EarthExplorer website can be accessed at <http://earthexplorer.usgs.gov>.

NRS § 533.460 provides that the unauthorized use of water to which another person is entitled, or the willful waste of water to the detriment of another, shall be a misdemeanor, and the possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using or diverting it.

NRS § 535.050 provides that the State Engineer has the right, power and authority to order the removal of any dam, diversion works or obstruction that has been placed in any stream channel or watercourse when the dam, diversion works or obstruction has not been legally established and recognized through a valid claim of vested right, by decree of court or by a permit issued by the State of Nevada.

Although the USFWS stated its intention in acquiring its aforementioned permits was to re-establish historic natural drainage courses within the Refuge, Attachments A and B demonstrate that the source of water in the Carson Slough historically traversed the Solida Parcel (APN 021-311-10). The State Engineer concluded in Ruling No. 6348 that Ministerio Roca Solida Iglesia Cristiana has provided evidence sufficient to establish that the claim of vested right under Proof of Appropriation V-10092 on the Solida Parcel is plausible, including diversion and beneficial use of water from the Carson Slough having a priority date of 1887.⁷ The State Engineer approved USFWS's junior permits subject to existing rights, and on the condition that no other rights on the source be affected by USFWS' permits. Considering the observations of the field investigation by the Division and Attachments A and B, the State Engineer has determined that USFWS is in violation of the terms of its permits by failing to ensure a conveyance system that will provide a continuous diversion of 0.003 cfs of water to the point of diversion of Permit 85417.

III. ACTION REQUIRED

The United States Fish and Wildlife Service is hereby ordered to cease the full and complete diversion of surface water to and through Nye County APN 21-331-10 (the Solida Parcel) to ensure the permitted 0.003 cubic feet per second of water with a period of use of January 1 to December 31 of each year can and will be available to be diverted at the point of diversion of Permit 85417.

The goal of the Division of Water Resources is to conserve, protect and manage Nevada's valuable water resources in a fair and equitable manner by administering and enforcing Nevada water law. Failure to take corrective action will result in this matter being referred for additional action available to the State Engineer under Nevada Administrative Code Chapter 532. Possible penalties for noncompliance can include (Nevada Revised Statutes § 534,193):

1. payment of an administrative fine not to exceed \$10,000 per day for each violation;
2. replacement of not more than 200% of the water used, wasted, or diverted; and/or
3. payment of the costs of the proceeding, including investigative costs and attorney's fees.

⁷ Ruling No. 6348, dated June 14, 2016, official records in the Office of the State Engineer.

Please advise this office **in writing within 90 days of this notice** when you have taken the above described corrective actions. If you have any questions regarding this letter or need further assistance in how you can correct the alleged violation, please contact me at (775) 684-2862.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Pyeatte Jr.', with a stylized flourish at the end.

Thomas C. Pyeatte Jr., P.E.
Compliance and Enforcement

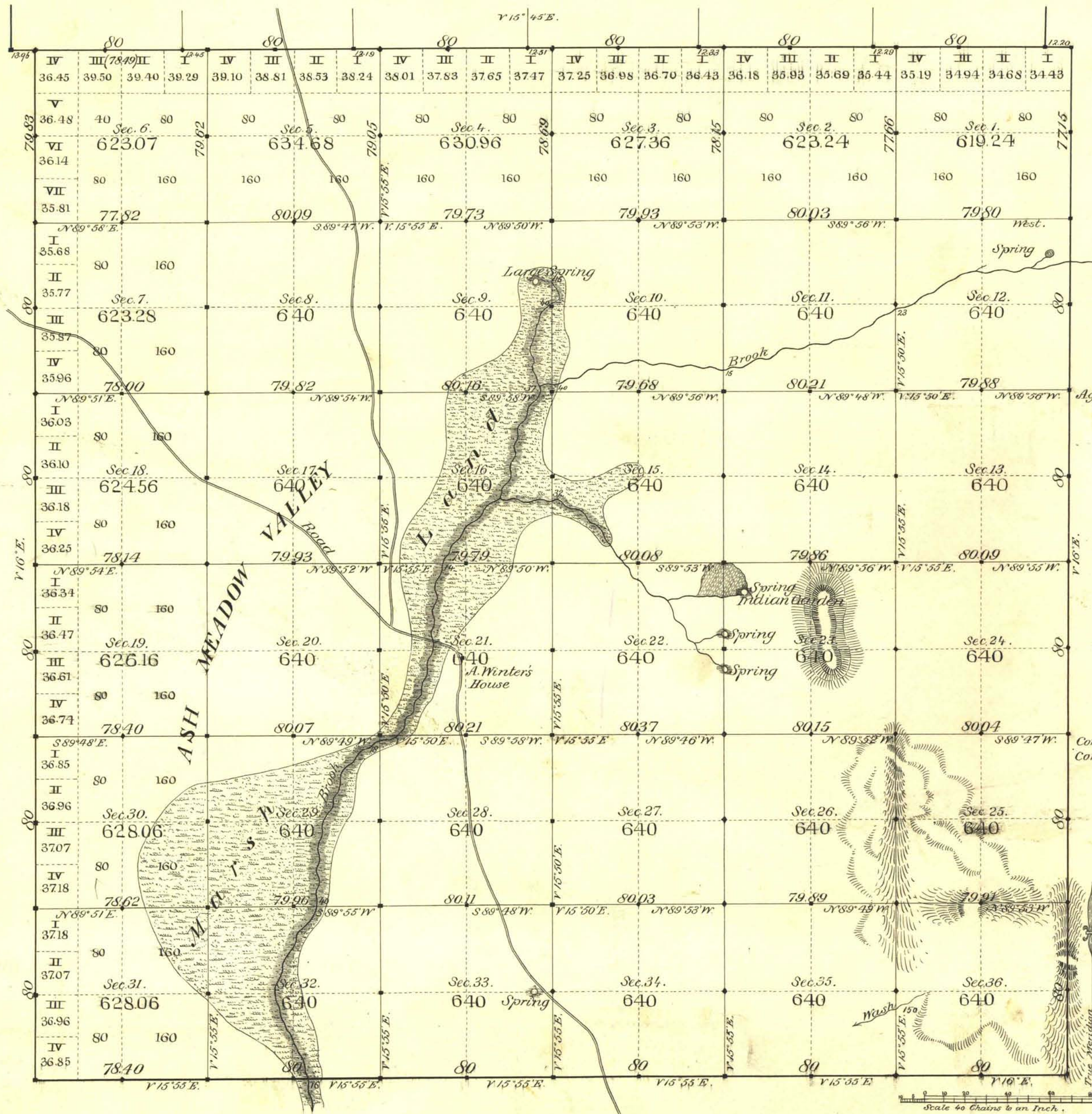
TP/jm

Attachments: *A and B*

Enclosure: *Report of Field Investigation of Alleged Violation 195*

cc: Richard Grimes, Supervisory Realty Specialist, USFWS, E-mail
Pastor Victor Fuentes, Ministerio Roca Solida Iglesia Christiana, E-mail
Tom Driggs, Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson, Regular mail
Jason King, E-mail
Rick Felling, E-mail
Kelvin Hickenbottom, E-mail
John Guillory, E-mail
Edmund Quaglieri, E-mail
Mark Beutner, E-mail

TOWNSHIP N^o 17 SOUTH RANGE N^o 50 EAST MOUNT DIABLO MERIDIAN



Aggregate Area of Public Land surveyed 22888.67 Acres

Filed at local office, Eureka
May 22 1882 - See '1882'-43028

Commenced December 6th 1881
Completed " 12th "

Department of the Interior
General Land Office
February 16, 1887
I certify that the above plat is a true copy of the official
plat of survey of Township N. 17 South of Range N. 50 East
M. D. M. Nevada, on file in this Office.

W. J. Sparks
Commissioner

Subdivisions not noted run with a Variation of 16° East.

Scale 40 Chains to an Inch.

Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys	When Surveyed
Township Lines	E. A. Carter	April 21 st 1881	M. 23 Chs. 75 Ips. 38	1881
Subdiv ^{ed} black & blue	"	"	56 - 64 - 06	December "
Convergency	"	"	2 - 79 - 91	"
			61 77	"

No. 128

The above Map of Township N. 17 South of Range N. 50 East of
Mt. Diablo Meridian is strictly conformable to the field
notes of the survey thereof on file in this Office which have been examined and approved.

Surveyor General's Office
Virginia City, Nevada
February 18th 1882

E. A. Pawley
Sur. Gen. Nev.

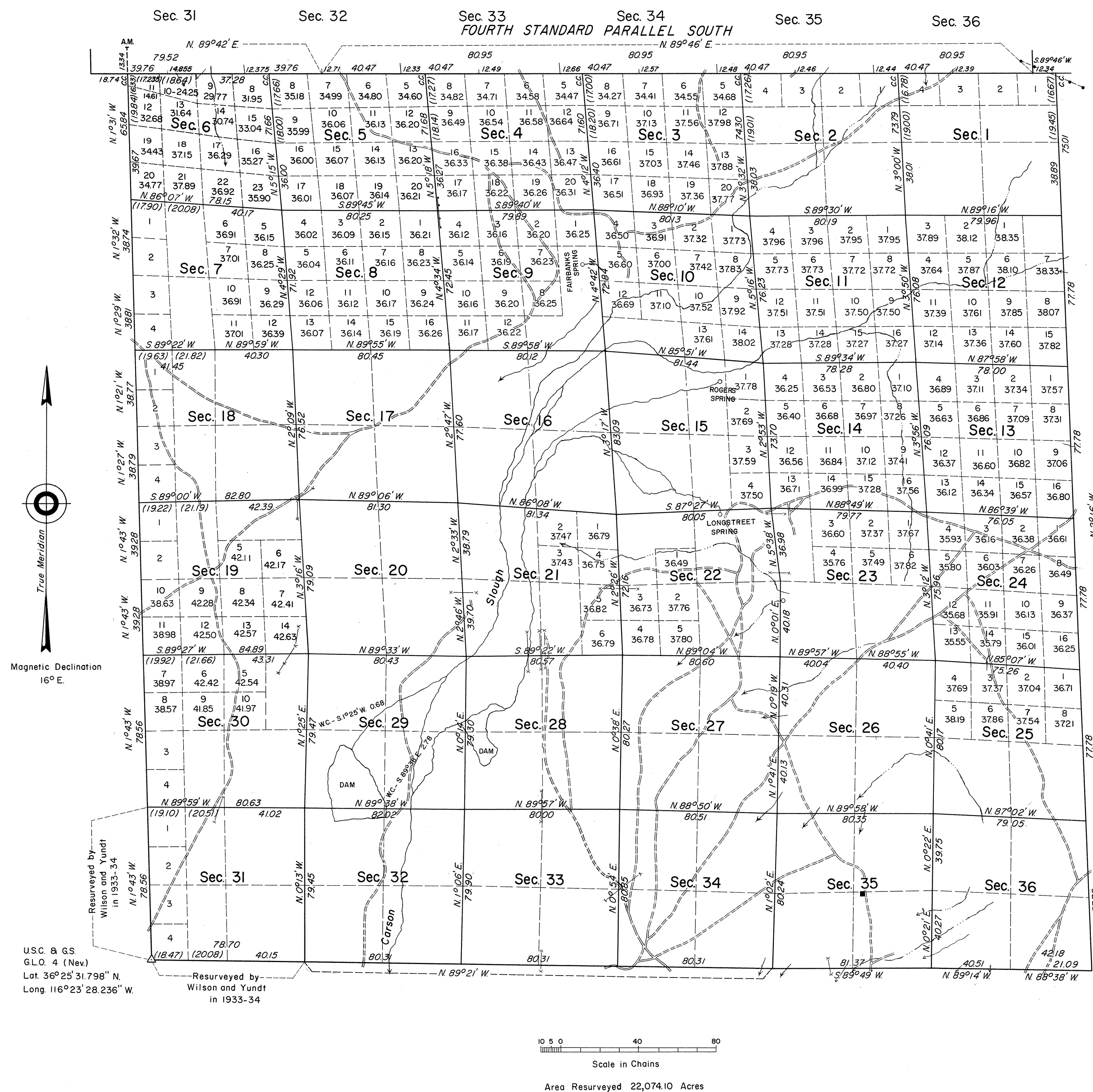
ORIGINAL

OFFICIALLY FILED
NEVADA LAND OFFICE

10:00 AM 9/20/1965

TOWNSHIP 17 SOUTH, RANGE 50 EAST, OF THE MOUNT DIABLO MERIDIAN, NEVADA

DEPENDENT RESURVEY



History of the earlier surveys is contained in the field notes.

This plat represents a dependent resurvey of the Fourth Standard Parallel South, through R. 50 E., the east boundary, portions of the south and west boundaries and the subdivisional lines of T. 17 S., R. 50 E., Mount Diablo Meridian, Nevada, designed to restore the corners in their true original locations according to the best available evidence. Lottings and areas (except as indicated hereon) are as shown on the plat approved February 18, 1882.

This resurvey was executed by Horace G. Parker, Cadastral Surveyor, March 6, 1963, to April 25, 1963, under Special Instructions dated February 14, 1963, for Group No. 408, Nevada.

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D. C. August 25, 1965

This plat is strictly conformable to the approved field notes, and the survey, having been correctly executed in accordance with the requirements of law and the regulations of this Bureau, is hereby accepted.

For the Director

Acting Chief, Division of Engineering