

Digging In: Using Historical Research in Natural Resources Cases January 25, 2017

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The Role of Historian

- Design research methodology that goes beyond discovery materials
- Collect hard to find materials
- Find strong factual pattern for legal arguments
- Synthesize complex and voluminous information
- Provide context
- Assist with analyzing opposing expert reports

Select Case Types

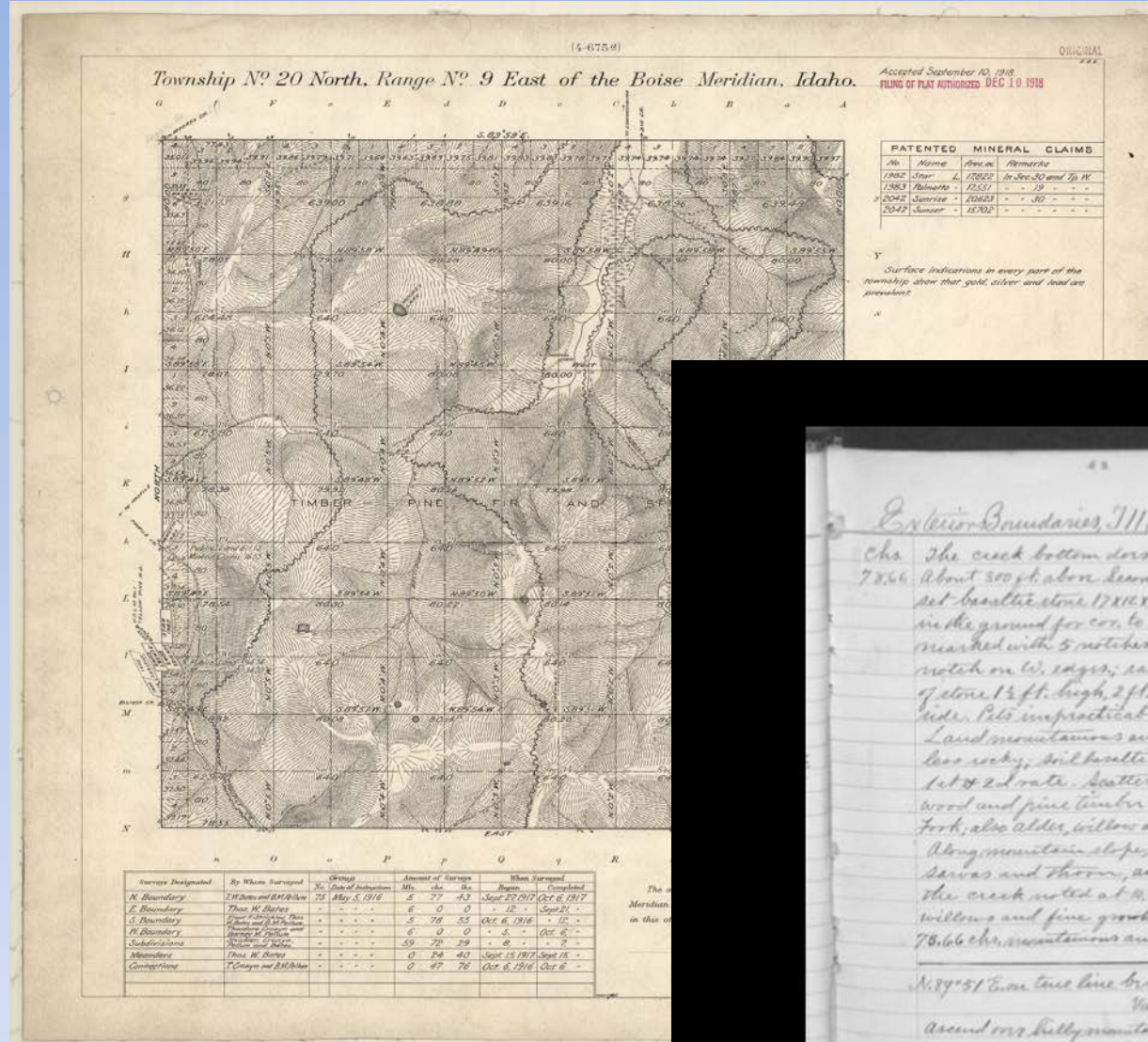
- Water Use
- Navigability
- CERCLA
- Natural Resource Use/Native American
- Water Quality
- Roads (RS2477)

Methodology: Why Not the Internet?

- On the Internet:
 - Some Bureau of Land Management Records
 - Some National Archives Records
- Not on Internet:
 - Correspondence
 - County records
 - MUCH MORE



GLO Survey Plat and Field Notes



92
927

Exterior Boundaries, T11N, R2E.

Chs The creek bottom does not overflow.
78.66 About 300 ft. above second fork,
set basaltic stone 12x10x8 ins, pins
in the ground for cor. to Secs. 5, 6, 31, 32,
marked with 5 notches on E and 1
notch on W, edges; raised a mound
of stone 12 ft. high, 2 ft. base, along
side. Pits impracticable.
Land mountainous and more or
less rocky; soil basaltic formation,
1st & 2d rate. Scattering cotton-
wood and pine timber along second
fork; also alder, willow and thorn.
Along mountain slope, scattering
sarsas and thorn, and along
the creek noted at 78.66 chs, are
willows and fine growths of aspen.
78.66 chs, mountainous and dense brush.

N. 89° 51' E. on true line Oct Secs. 5 & 32.
On 1775' E.
ascend over belly mountain slope.
82.60 Top of divide between first and second
forks of Squaw Creek about 700 ft. above
second fork, base of Sec. 32 NW.
4400 set basaltic stone 12x10x8 ins, 11 ins. in

GLO Survey Plat



National Archives

William Clark's original drawing from Lewis & Clark Expedition



10
Seattle, Washington, November 25 1904.

Major John Millis

Corps of Engineers, U.S. Army,
Seattle, Washington.

Major:

1. I have the honor to submit the following report, of a survey for a military wagon road; between Valdez and Eagle, Alaska, made during the past summer.

2. On May 16th 1904 I was relieved from my duties in local charge of the Lake Washington Ship Canal and orally instructed to immediately begin the preparations for a survey for a wagon road between Valdez and Eagle, Alaska, and for a survey of a trail from the Yukon River to Coldfoot. *Alaska.*

3. These instructions were confirmed by your letter of May 17th as follows:

United States Engineer Office

Seattle, Washington

May 17, 1904.

Mr. J. M. Clapp,

Assistant Engineer,

Fremont, Wash.

Sir:-

Confirming oral instructions of yesterday you will please take immediate charge of preparation for survey and estimate of cost of wagon road from Valdez to Fort Egbert, and for surveying and locating a military trail between Yukon River and Coldfoot, Alaska

Respectfully yours,

(signed) John Millis

Maj. Engrs.

Report on Alaska Wagon Road

Case Study #1 – RS2477 Roads

- *Parties*: State and two counties v. private land owner
- *Setting*: remote part of southwest state, forested, adjacent to historic Mexican land grants. Long history of public using the roads to access forest lands
- *Issues*: Private landowner has erected a series of gates; state and county filed a complaint

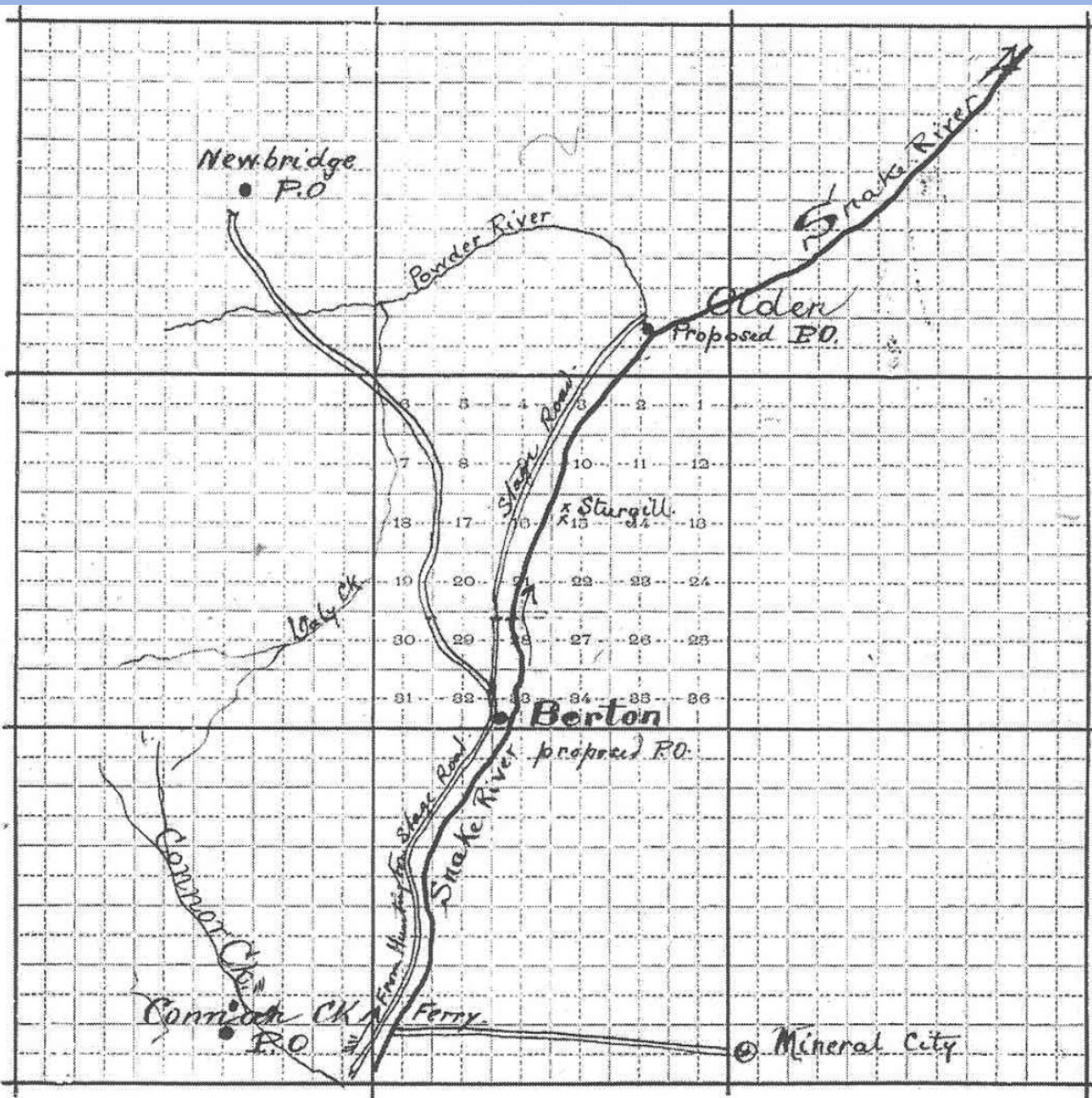
Key Historical Questions

- When were the roads first constructed?
- Did the routes change over time?
- How were they used and by whom?
- Who constructed and paid for the roads?
- Case specific:
 - Were the roads present prior to patenting?
 - Did the highway department abandon any portion of roads?

Pre-Statehood Sources

- General Land Office – surveys and patents
- Census records
- Church/mission records
- Military post records (National Archives)
- Post office records (National Archives)
- Local and regional newspapers
- Other – case dependent

Post Office Records



Chas. Dieter, the Mondak Attorney was with us Wednesday night enroute home from the Post Office located in Chas. Schafer's pasture.

Newspapers

Unique Pass Over the Little Salmon Wagon Road

"R. E. Lockwood, commissioner of the Little Salmon wagon road, has issued passes over that highway. The pass is artistically engraved and will be a treasured souvenir of the opening of the road. On the face it states it is issued to the holder "in consideration of his very worthy qualities."

The pass is countersigned by F. W. Hunt with this notation: "Very few snakes on Little Salmon, but holder is privileged to carry antidote over road when this pass is countersigned by Governor Frank W. Hunt."

The conditions of the pass follow:

"The person accepting this free pass over the Little Salmon river wagon road assumes all risk of over-enthusiasm or exaltation of soul on beholding the inspiring scenery along the route.

"He will not hold the giver of this pass responsible for excess of joy and exhillration while he, the holder, is viewing the towering mountains, the inviting forests, the dashing cataracts and foaming waterfalls, the moss-grown cliffs, the limpid streams and

soothing, shaded parks along the way.

"He is warned against allowing himself to be run over by any of the numerous herds from the ranges, and he must not fall down the shafts or lose himself in the tunnels of mines that are being developed.

"While lingering by the crystal pools of the Little Salmon he will not be wanton in sport but will catch only such 10-inch mountain trout, 20-inch rainbow trout, 4-pound white fish, or a 5 to 6-pound bull trout as his frying pan will cook without waste, or his family and friends consume. He will kill only such game and venison as will satisfy a mountain appetite and is permissible by law.

"He will reflect upon the wisdom of his state in opening this delightful route to traffic and pleasure, and will not fail to give full credit to the liberality and enterprise of the Oregon Short Line railroad and the Pacific & Idaho Northern railway for their combined contribution of \$6000 to aid the state in this work."

Post-Statehood Sources

- Federal agencies:
 - WPA, CCC, Federal Highway Administration
- State agencies:
 - Highway Bureau
 - Dept. of Public Works
 - State Wagon Road Commission
- County records
 - Roads commissioner
 - Mining records

State and County Records

- State Historical Society/Archives
- County Courthouses
- County Historical Societies



Outcome - Pending

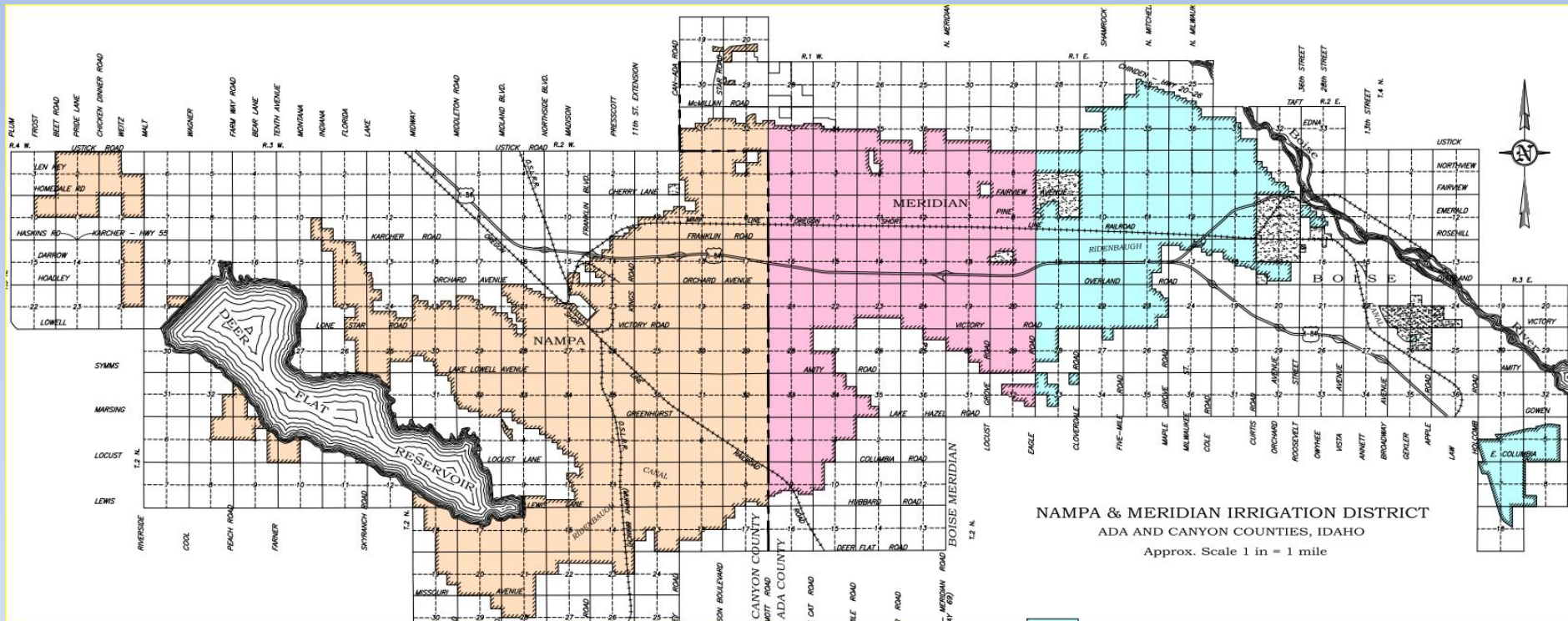
Evidence so far:

- Roads were present in pre-patent times, serving as postal routes;
- A sawmill existed in the forested area, and evidence shows that logs were transported
- Schools and homesteads were in the area and newspapers show travel between smaller and larger settlements

Case Study #2 – Waters of the U.S.

- *Parties*: Nampa & Meridian Irrigation District and the Idaho DEQ
- *Setting*: Boise River watershed
- *Issues*:
 - Clean Water Act: DEQ required to develop a water improvement plan (TMDL) for Boise River
 - Would all of the conveyances in the District be subject to strict water quality standards?
 - Were all of these drains, creeks, and canals considered “waters of the US?”

NMID Land



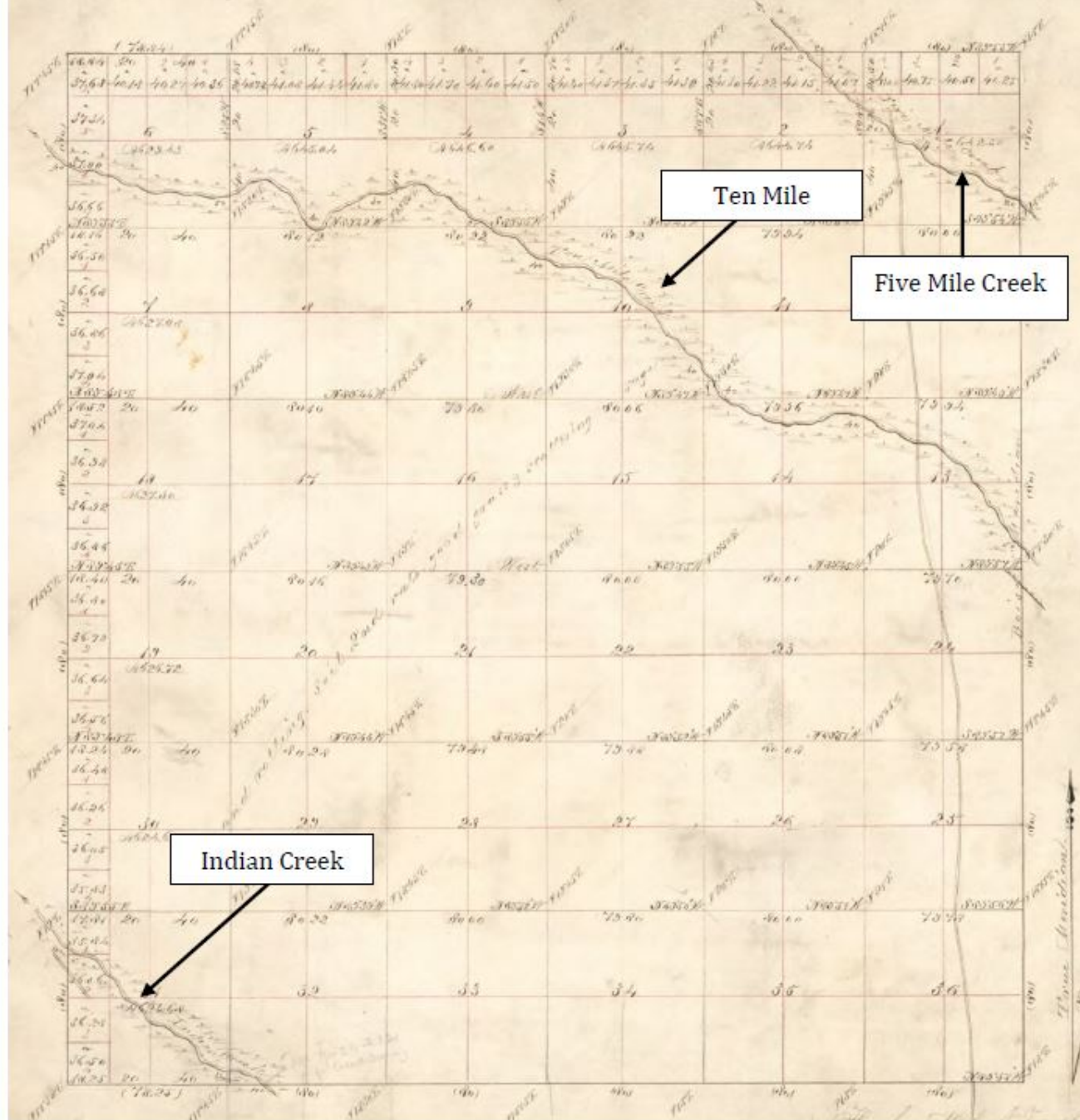
Key Historical Questions

- How did each of NMID's canals and ditches come to be?
- How did the district's facilities evolve over time?
- Did the natural features of the watershed change as a consequence of this engineering project?

Two Categories of Research: Original Character of Water and Changed Landscape

- GLO Survey Plats
- Patent files
- Bureau of Reclamation
- Idaho Statesman

Township N^o 3 North, Range N^o 1 West Boise Meridian.



Outcome

- Many “creeks” were man made, created from the engineering of the watershed
- Many drains came into existence due to an over-application of irrigation water and waterlogged lands

Final Thoughts on Methodology

- Vast amount of information and documentation
- Historians can help design a professional the research method to create a credible presentation



Helpful Sources

- www.archive.org
- www.archives.gov
- www.glorerecords.blm.gov
- www.ancestry.com – census records
- www.familysearch.org – GLO tract books
- www.ChroniclingAmerica.Loc.gov or Boise Public Library

Select SHRA Clients

- CBS Corporation
- J.R. Simplot Co.
- Idaho Power
- Several Idaho and Washington Counties
- Idaho Dept. of Lands
- Idaho Transportation Dept.
- State of Washington
- Atlantic Richfield
- Several North Dakota Counties
- Private landowners