

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

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EPA--REGION 10

In the matter of: )  
)  
)  
Bruneau Cattle Co., ) DOCKET NO. CWA-10-2007-0016  
)  
Owyhee County, Idaho, )  
) COMPLAINANT'S AMENDED  
) PREHEARING EXCHANGE  
Respondent. )  
\_\_\_\_\_)

Pursuant to 40 C.F.R. § 22.19, and the Presiding Officer's Order of May 16, 2007, Complainant Environmental Protection Agency ("EPA") submits this Amended Prehearing Exchange. EPA respectfully reserves the right to supplement this Prehearing Exchange if necessary prior to hearing with proper notice to Respondent.

**I. WITNESSES.**

Complainant is substituting Nicholas Peak for Gary McRae. Mr. McRae no longer works for the U.S. EPA. A summary of Mr. Peak's testimony and other relevant substitutions for Mr. McRae are provided below. In addition, Complainant will call no ability to pay expert on the assertion by counsel for Respondent that Respondent will not argue inability to pay the proposed \$75,000 penalty at hearing. Email from Kevin Beaton to Mark Ryan dated August 3, 2007.

....

3. Nicholas Peak. Mr. Peak is an Environmental Protection Specialist with the EPA Region 10 Boise Office. He has inspected the Southside Canal, and he will testify regarding the

connection of the South Side Canal to the C.J. Strike Reservoir and the nature of the flow in the canal.

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## II. EXHIBITS

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16. Inspection Report by Nicholas Peak (June 29, 2007)
17. Inspection Report by Nicholas Peak (August 24, 2007)

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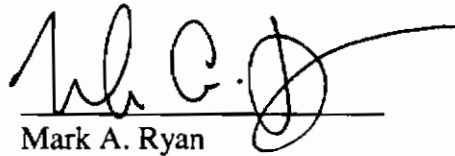
## V. QUESTIONS POSED BY PRESIDING OFFICER.

....

**6) State the factual basis, including documents, summaries of testimony, and photographs, for the assertion in paragraph 16 of the complaint that the South Side Canal, which originates outside of and passes over, across, or through Respondent's Facility and flows into the C.J. Strike Reservoir (which flows into the Snake River - an interstate water), is a navigable water as defined in Section 502(7) of the CWA, 33 U.S.C. 1362(7), and part of the waters of the United States as defined by 33 U.S.C 1362(7) and 40 C.F.R. § 122.2. Provide the information, including summaries of testimony, documents, and photographs to support the conclusion that the South Side Canal conveys pollutants from Respondent's Facility to the C.J. Strike Reservoir.**

Mr. Peak will testify regarding the South Side Canal and how it is a tributary to the C.J. Strike Reservoir, which is an impoundment of the Snake and Bruneau Rivers. The Snake River flows into the Columbia River. The Columbia River flows into the Pacific Ocean.

RESPECTFULLY SUBMITTED this 3rd day of October, 2007.

A handwritten signature in black ink, appearing to read 'M.A. Ryan', with a long horizontal flourish extending to the right. The signature is positioned above a solid horizontal line.

Mark A. Ryan  
Assistant Regional Counsel  
Region 10

CERTIFICATE OF SERVICE

I hereby certify that copies of Amended Prehearing Exchange in the Matter of Bruneau Cattle Co., Docket No. CWA-10-2007-0016, were sent to the following persons in the manner indicated:

A true and correct copy via pouch mail:

Carol Kennedy (original plus one copy)  
Regional Hearings Clerk  
EPA Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

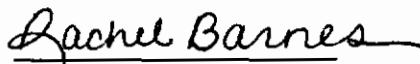
A true and correct copy by U.S. Mail to:

Honorable Spencer T. Nissen  
Administrative Law Judge  
U.S. EPA Office of Administrative Law Judges  
1200 Pennsylvania Ave. NW  
Mail Code 1900L  
Washington, D.C. 20460

A true and correct copy by hand delivery to:

Kevin Beaton  
Stoel Rives LLP  
101 S. Capitol Blvd  
Boise, Idaho 83702

Dated: October 3, 2007

  
Rachel Barnes  
Environmental Protection Agency  
Region 10

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007

**Site Address or Location:** N/A – A facility was not inspected

Southside Canal  
Cottonwood Road, North of the intersection of Cottonwood  
Road and Highway 78, Owyhee County, ID

Lat/Long: 44° 54.622' N, -115° 53.139' W

**Site Contact(s):** N/A – Contact was not made with a site representative

**Responsible Official:** N/A – Contact was not made with a responsible official

**Inspection Date:** June 29, 2007

**Inspector(s):** Nicholas Peak  
Environmental Protection Specialist

**Background:**

On the afternoon of June 29, 2007 I visited the Southside Canal to observe the canal's flow characteristics and to verify if the flow of the canal reached the C.J. Strike Reservoir.

I left Region 10's Idaho Operations Office (IOO) at approximately 10:45 am on June 29, 2007 and I was accompanied by Mark Ryan. We traveled to a location approximately 1-1.5 miles north of the intersection of Cottonwood Road and ID-71. At this location, the Southside Canal passed just north of Cottonwood Road and to the south of a boat ramp on the C.J. Strike Reservoir. Mr. Ryan and I arrived at this location at approximately 12:15 pm.

After observing the Southside Canal and taking photographs, Mr. Ryan and I returned to the vehicle and left the location at approximately 12:30 pm. The locations of the photographs are shown on the attached topographical map.

**Field Observations:**

Mr. Ryan and I walked west along the northern bank of the Southside Canal. The weather was sunny and hot, with an approximate temperature of 90-95 degrees Fahrenheit. While driving to the site, Mr. Ryan and I both observed that fields near or adjacent to the canal were being irrigated.

I took photographs 1 and 2 approximately 0.19 miles west of the location of our parked vehicle. I observed water flowing in the Southside Canal from the east to the west, or from the left to the right in both photographs 1 and 2. A cement structure had been placed in the Southside Canal at this point which narrowed the width of the canal and caused an increase in the speed of the flow at this location. I took photograph 3 from same location of photographs 1 and 2, on the north bank of the canal, looking west.

Observation of Flow and Canal Characteristics

Southside Irrigation Canal

June 29, 2007

Photograph 3 shows dense green vegetation growing in and along the banks of the Southside Canal.

I took photographs 4 and 5 approximately 0.18 miles west of photographs 1-3 and 0.35 miles west of the location of our parked vehicle. At this location, the Southside Canal turned to the north and entered the C.J. Strike Reservoir approximately 0.02 miles to the north. I observed water flowing in the Southside Canal from the east to the west or from the left to the right in photographs 4 and 5. The flow of the Southside Canal was slowed or restricted by a buildup of branches and a log, and small pools had formed both above and below the branches and the log.

I took photographs 6-8 approximately 0.02 miles north of photographs 4 and 5, 0.20 miles west of photographs 1-3, and 0.55 miles west of the location of our parked vehicle. I observed water flowing in the Southside Canal from the south to the north or from the left to the right in photographs 6-8 and the water in the Southside Canal flowed into the C.J. Strike Reservoir at this location. Prior to entering the C.J. Strike Reservoir, the Southside Canal formed a small pool and I observed two smaller fish swimming in this pool. However, I was unable to identify the type or species of the two fish.

**Attachments:**

1. EPA Form 3560-3 - Southside Canal June 29 2007
2. ICIS-ICDS - CWA-NPDES -Southside Canal June 29 2007
3. Topographical map
4. Photographs

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Nicholas Peak

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Date

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Photograph 1: Looking south, the photograph shows water flowing in the Southside Canal. The water was flowing from the east to the west or from the left to the right in the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Photograph 2: Same location as photograph 1. Looking south, the photograph shows water flowing in the Southside Canal. The water was flowing from the east to the west or from the left to the right in the photograph.



Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Photograph 3: Same location as photographs 1 and 2. The photograph was taken looking west along the Southside Canal. The Southside Canal contained dense green grass on the banks.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



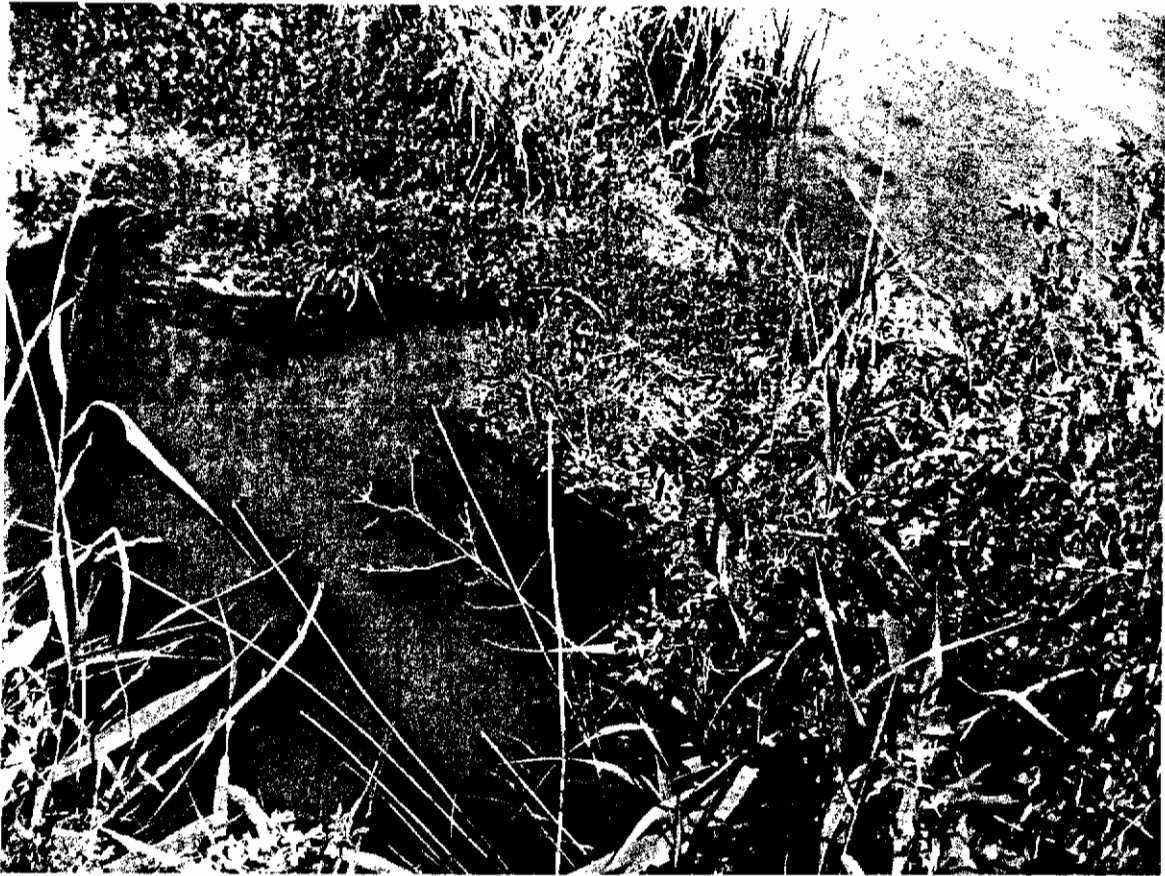
Photograph 4: Looking south, the photograph shows flowing water in the Southside Canal. The water was flowing from the east to the west or from the left to the right in the photograph. The buildup of branches and a large log caused the pooling of water both above and below the debris.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Photograph 5: Same location as photograph 4, looking east. Photograph shows flowing water in the Southside Canal. The water was flowing from the east to the west or from the top left corner to the lower right corner in the photograph. The buildup of branches and a large log caused the pooling of water both above and below the debris.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Photograph 6: Photograph shows the Southside Canal flowing into the C.J. Strike Reservoir. The water was flowing from the south to the north or from the left to the right in the photograph. Two small, unidentified fish were observed in the pool shown in the left portion of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



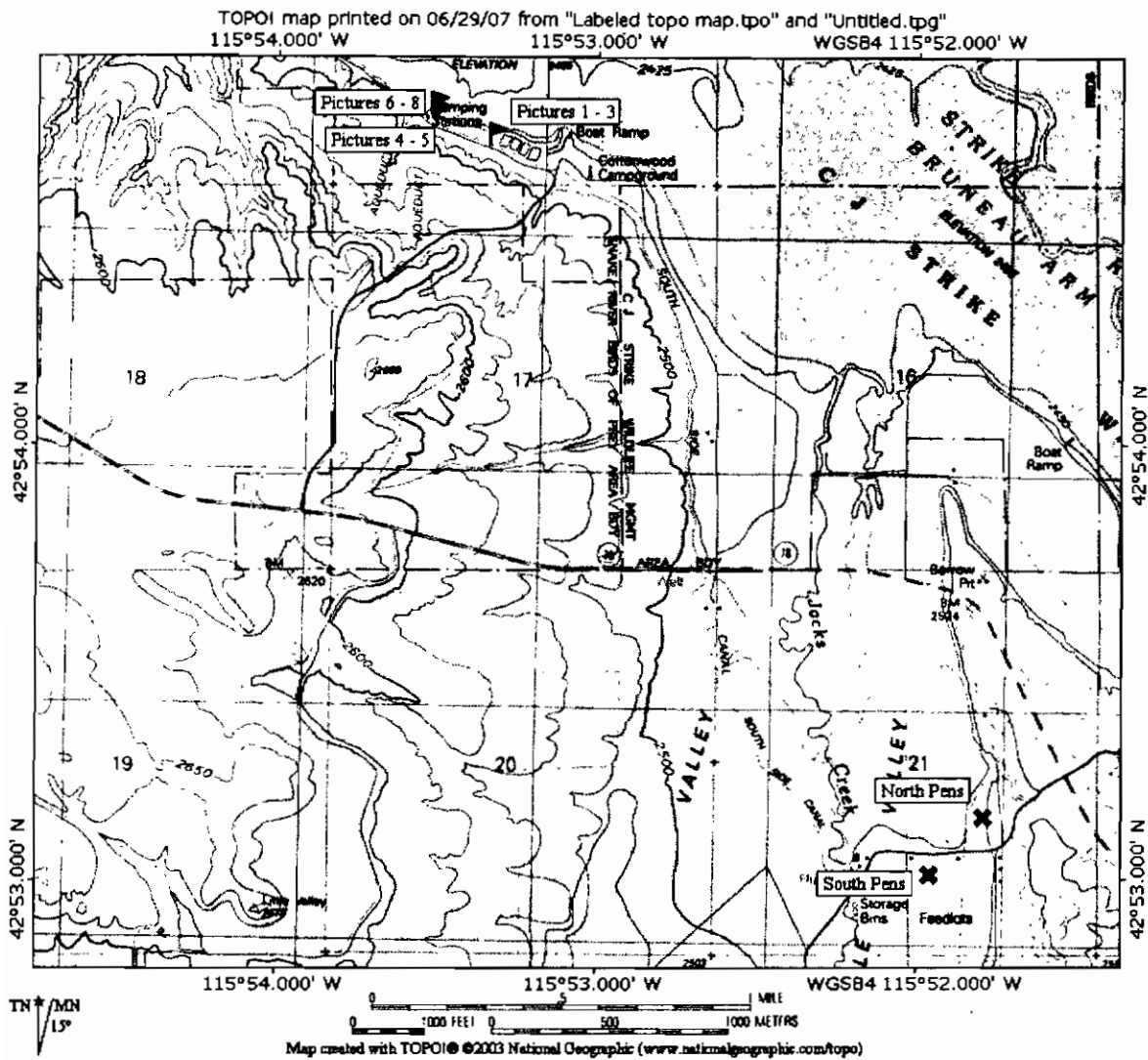
Photograph 7: Same location as Photograph 6. Photograph shows the Southside Canal flowing into the C.J. Strike Reservoir. The water was flowing from the south to the north or from the left to the right in the photograph. Two small, unidentified fish were observed in the pool shown in the left portion of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Photograph 8: Same location as Photographs 6 and 7. Photograph shows the Southside Canal flowing into the C.J. Strike Reservoir. The water was flowing from the south to the north or from the left to the right in the photograph. Two small, unidentified fish, were observed in the pool shown in the center portion of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
June 29, 2007



Topographical map showing the approximate locations of the photographs taken during the June 29, 2007 observation of the Southside Canal. In addition, the approximate locations of the North and South Pens of the Bruneau Cattle Feedlot or shown.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007

**Site Address or Location:** N/A – A facility was not inspected

Southside Irrigation Canal  
Cottonwood Road, North of the intersection of Cottonwood  
Road and Highway 78, Owyhee County, Idaho

Lat/Long: 42° 54.639' N, 115° 53.133' W

**Site Contact(s):** N/A – Contact was not made with a site representative

**Responsible Official:** N/A – Contact was not made with a responsible official

**Inspection Date:** August 24, 2007

**Inspector(s):** Nicholas Peak  
Environmental Protection Specialist



**Background:**

On the morning of August, 24, 2007, I traveled to the Southside Irrigation Canal (the canal) to observe the canal's channel characteristics and flow.

I arrived at the location of the canal at approximately 11:45 AM on August 24, 2007. The location was approximately 1.25 miles north of the intersection of Cottonwood Road and Highway 78, northwest of Bruneau, ID and near the western shore of the C.J. Strike Reservoir. At this location, the canal flows from the east to the west, and passes underneath a road connecting Cottonwood Road and a parking area and boat ramp on the C.J. Strike Reservoir. The latitude and longitude of this location is 42° 54.639' N, 115° 53.133' W and was determined using topographical mapping software.

After observing the canal and taking photographs, I returned to the vehicle and left the location at approximately 12:10 PM. The locations of the photographs are shown on the attached topographical map.

**Field Observations:**

While traveling west on Highway 78 from Bruneau, ID I observed water flowing in the canal at two separate locations where the canal flowed underneath Highway 78. The latitude and longitude of the first, or eastern location, was 42° 53.669' N, 115° 51.918' W and the latitude and longitude of the second, or western location, was 42° 53.716' N, 115° 52.692' W. The latitude and longitude of both locations was determined using topographical mapping software.

The weather conditions at the time of my arrival at the canal were sunny with an approximate temperature of 75 degrees Fahrenheit.

I observed the canal by walking west along the northern bank of the canal to the location where the canal flows into the C.J. Strike Reservoir. Photographs 1 through 3 were taken at the location where the canal flows underneath the road connecting



Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007

Cottonwood Road with the road to the boat ramp and campgrounds. At this location, I observed flowing water in the canal from the east to west, or from the top to the bottom of photograph 1, from the bottom to the top of photographs 2, and from the lower left corner to the upper right corner of photograph 3.

Photographs 4 and 5 were taken approximately 0.03 miles west from where the canal flows underneath the road, and photographs 1-3. I observed flowing water in the canal from the east to the west, or from the lower left corner to the upper right corner in photograph 4 and from the left side to the right side in photograph 5. In addition, I observed debris and/or algae being carried by the flow of the canal as shown in photograph 5.

Photograph 6 was taken approximately 0.05 miles from where the canal flows underneath the road and photographs 1-3, or 0.02 miles west from the location of photographs 4 and 5. I observed flowing water in the canal from the east to the west, or from the lower left corner to the upper right corner of photograph 6.

Photographs 7 and 8 were taken approximately 0.18 miles west of where the canal passes underneath the road and photos 1-3, or approximately 0.13 miles west of photograph 6. At this location, I observed a cement structure, which narrowed the width of canal and caused a visible increase in the speed of the water flow at this location. The flow of the water in the canal was from the east to the west or from the left side to the right side in photographs 7 and 8.

Photographs 9 and 10 were taken approximately 0.13 miles west of photographs 7 and 8 and a total of 0.31 miles west of the location where the canal flows underneath the road. I observed a rocky bottom substrate at this location and the canal appeared to be slightly wider and shallower than the previous locations documented in photographs 1-8. The rocky substrate created a riffle in the flow of the canal, as shown in photograph 10. The water was flowing in the canal from the east to the west, or from lower left corner to the upper right corner in photograph 9 and left to right in photograph 10.

Photographs 11 and 12 were taken approximately 0.05 miles west of photographs 9 and 10. I observed a buildup of debris and sticks at this location, which caused a pooling of water both above and below the debris and sticks. The two pools were connected by a small cascade of water, which caused a foamy substance to form on the surface of the lower pool. The water in the canal flowed from the east to the west or to the left side to the right side in photographs 11 and 12. The canal then turned and flowed north for approximately 0.02 miles where the canal emptied into the C.J. Strike Reservoir. Photograph 13 was taken looking north at the C.J. Strike Reservoir immediately south of where the canal emptied into the reservoir. I was unable to take a picture of the canal flowing into the reservoir due to the density of the vegetation.

**Attachments:**

1. EPA Form 3560-3 - Southside Canal August 24, 2007
2. ICIS-ICDS - CWA-NPDES - Southside Canal August 24, 2007
3. Topographical Map
4. Photographs.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007

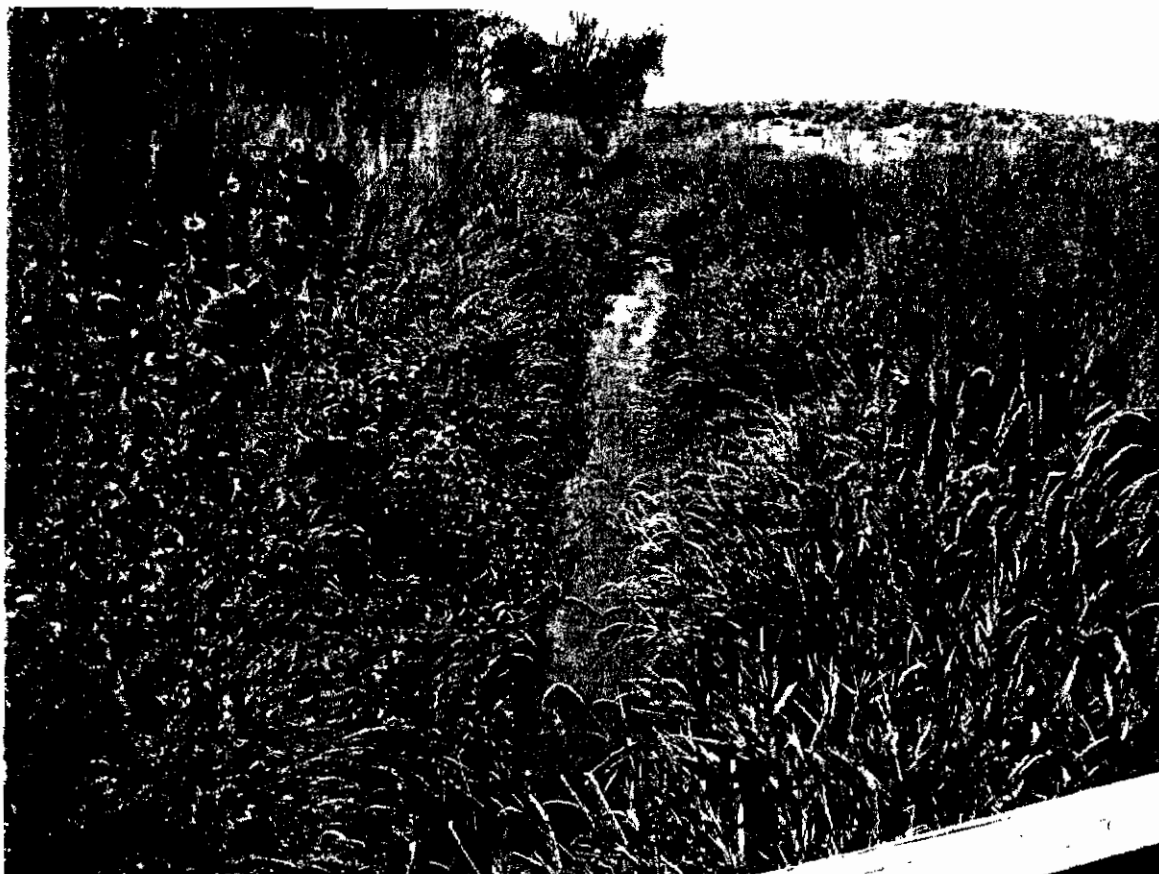
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Nicholas Peak

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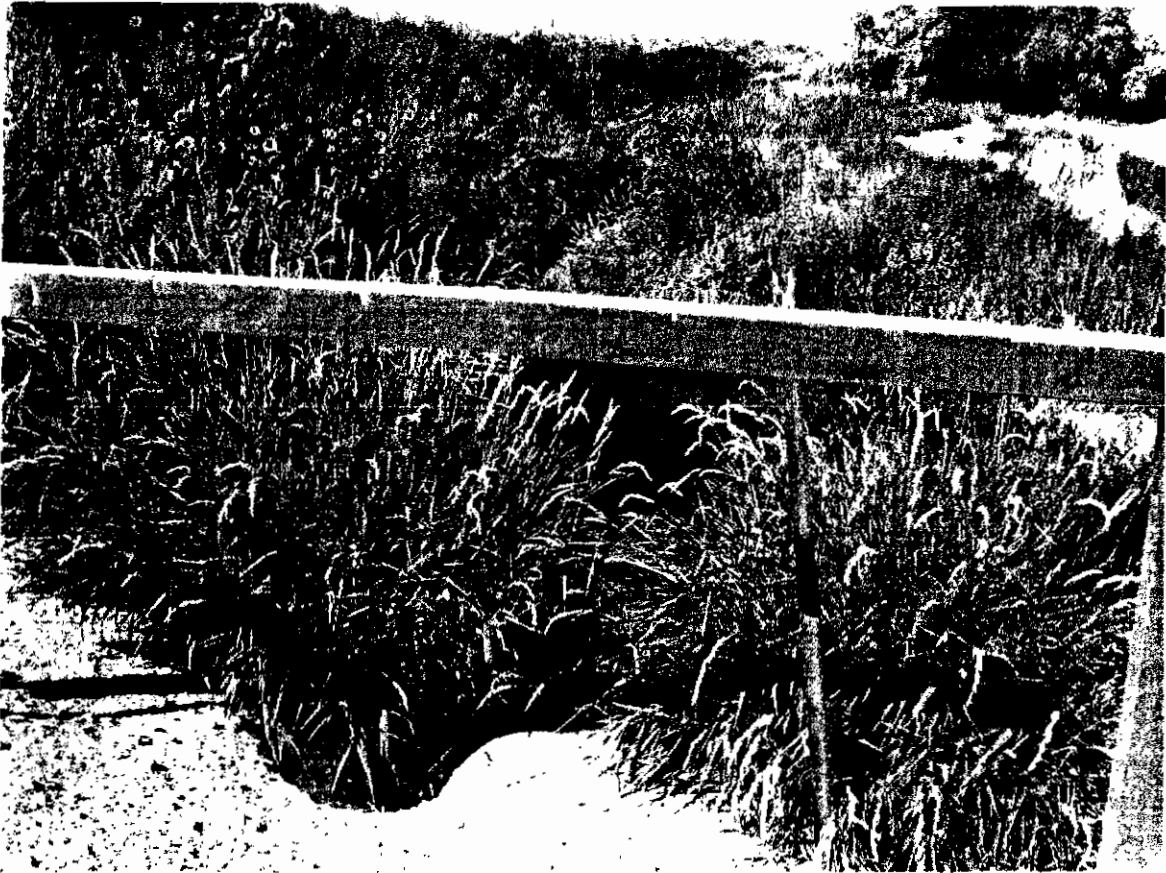
Date

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 1: Looking east at the location where the canal flowed underneath the road connecting the boat ramp to Cottonwood Road. The flow of water in the canal was from the east to the west or from the top to the bottom of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 2: Looking west at the location where the canal flowed underneath the road connecting the boat ramp to Cottonwood Road. The flow of water in the canal was from the east to the west or from the bottom to the top of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 3: Looking west at the location where the canal flowed underneath the road connecting the boat ramp to Cottonwood Road. The flow of water in the canal was from the east to the west or from the lower left corner to the upper right corner of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 4: Looking west, the flow of water in the canal was from the east to the west or from the lower left corner to the upper right corner of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 5: Looking south, the flow of water of water in the canal was from the east to the west or from the left to the right in the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 6: Looking west, the flow of water in the canal was from the east to the west or from the lower left corner to the upper right corner of the photograph.



Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 7: Looking southwest, the flow of the water in the canal was from the east to the west or from the left to the right in the photograph. The concrete structure narrowed the width of the canal at this location.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



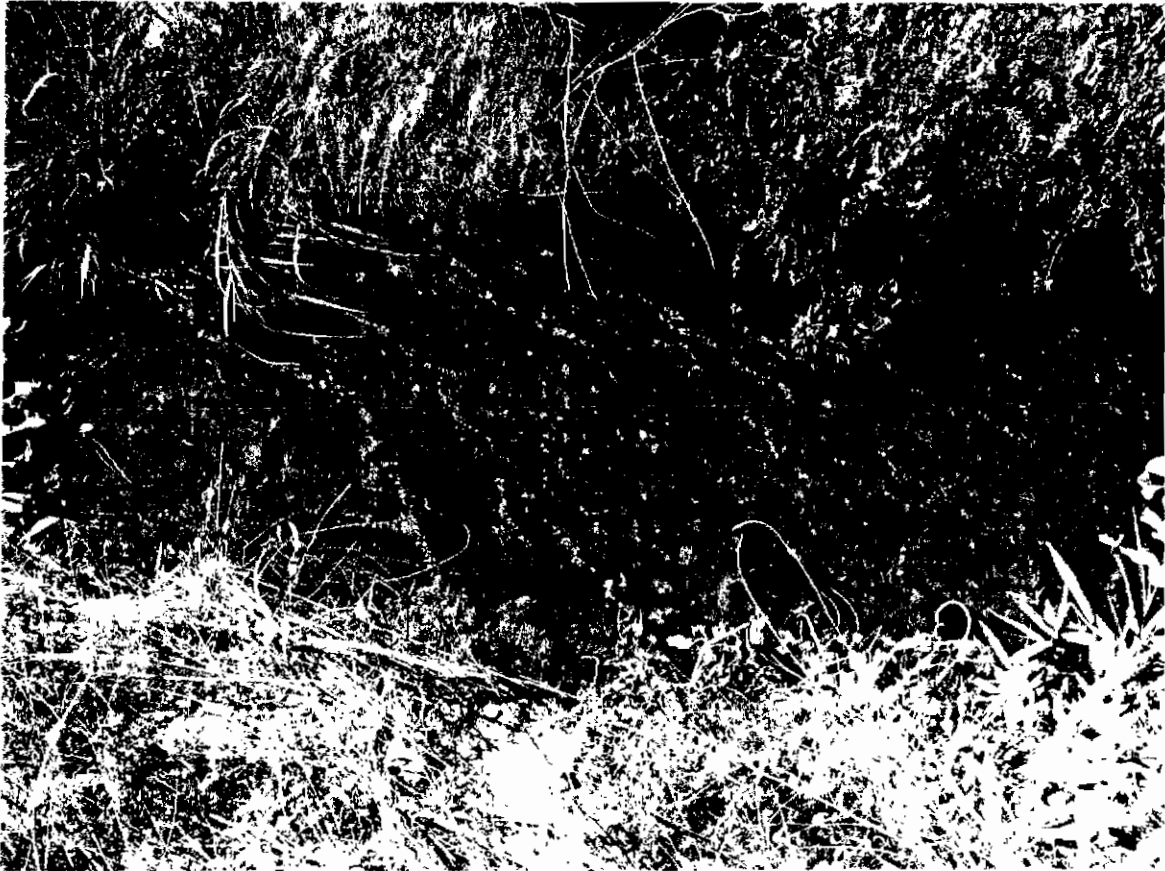
Photograph 8: Looking southwest, the flow of the water in the canal was from the east to the west or from the left to the right in the photograph. The concrete structure narrowed the width of the canal at this location.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



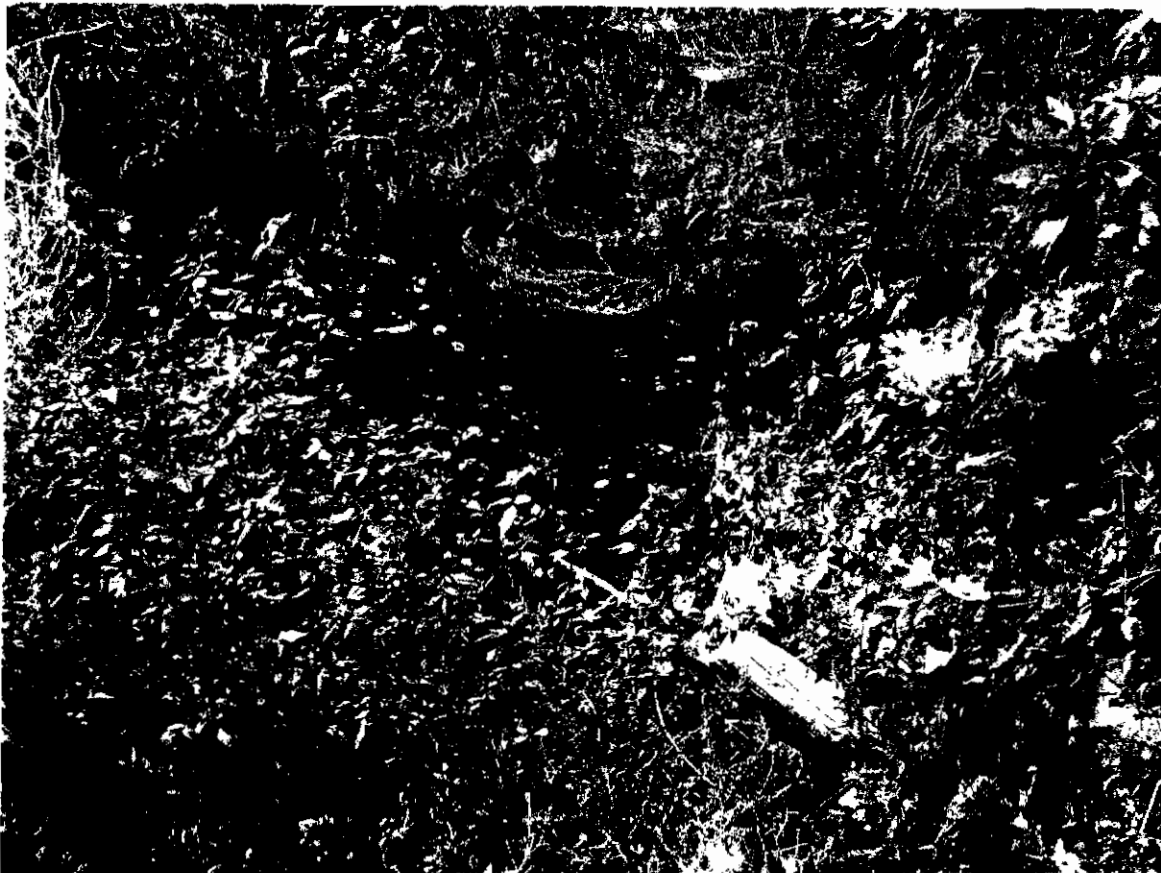
Photograph 9: Looking west, the flow of water in the canal was from the east to the west or from the lower left corner to the upper right corner of the photograph.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



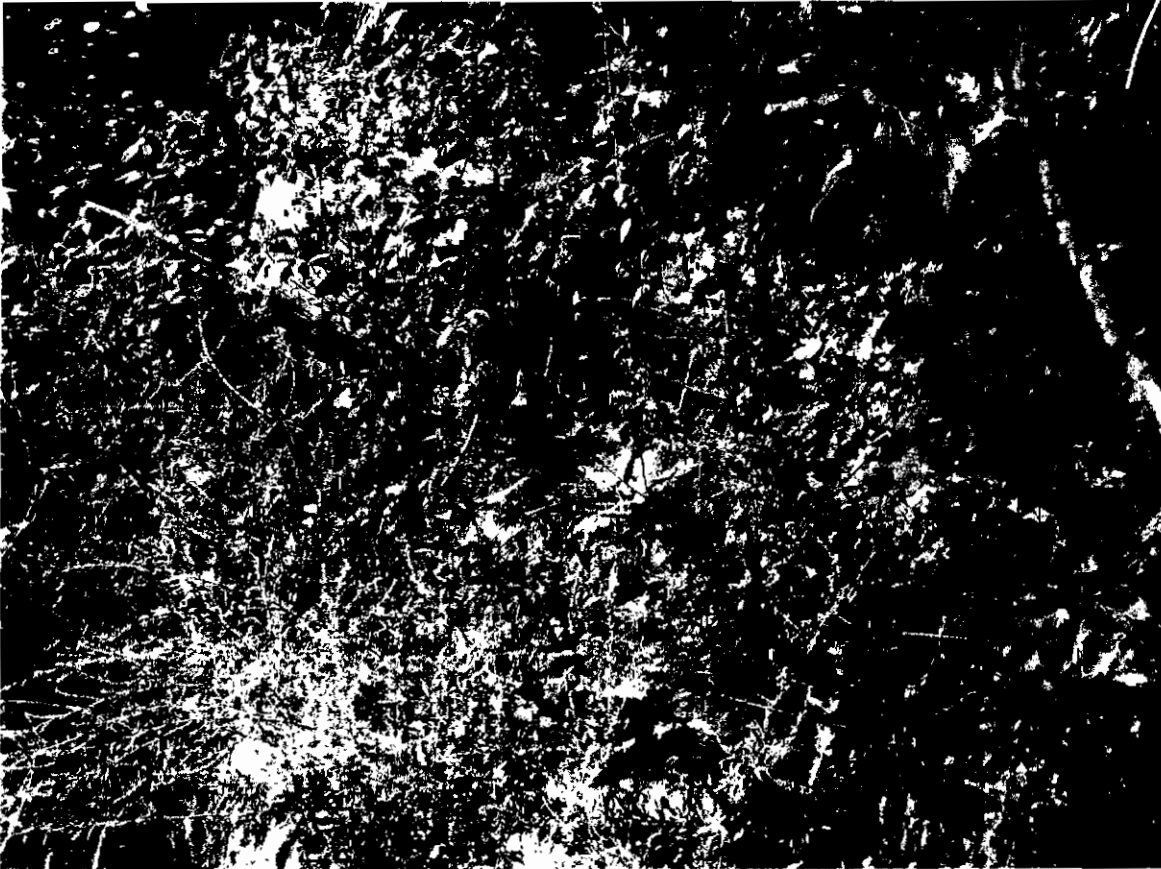
Photograph 10: Looking south, the flow of water in the canal was from the east to the west or from the left to the right in the photograph. Note the rocky bottom substrate causing a riffle in the flow of the canal.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



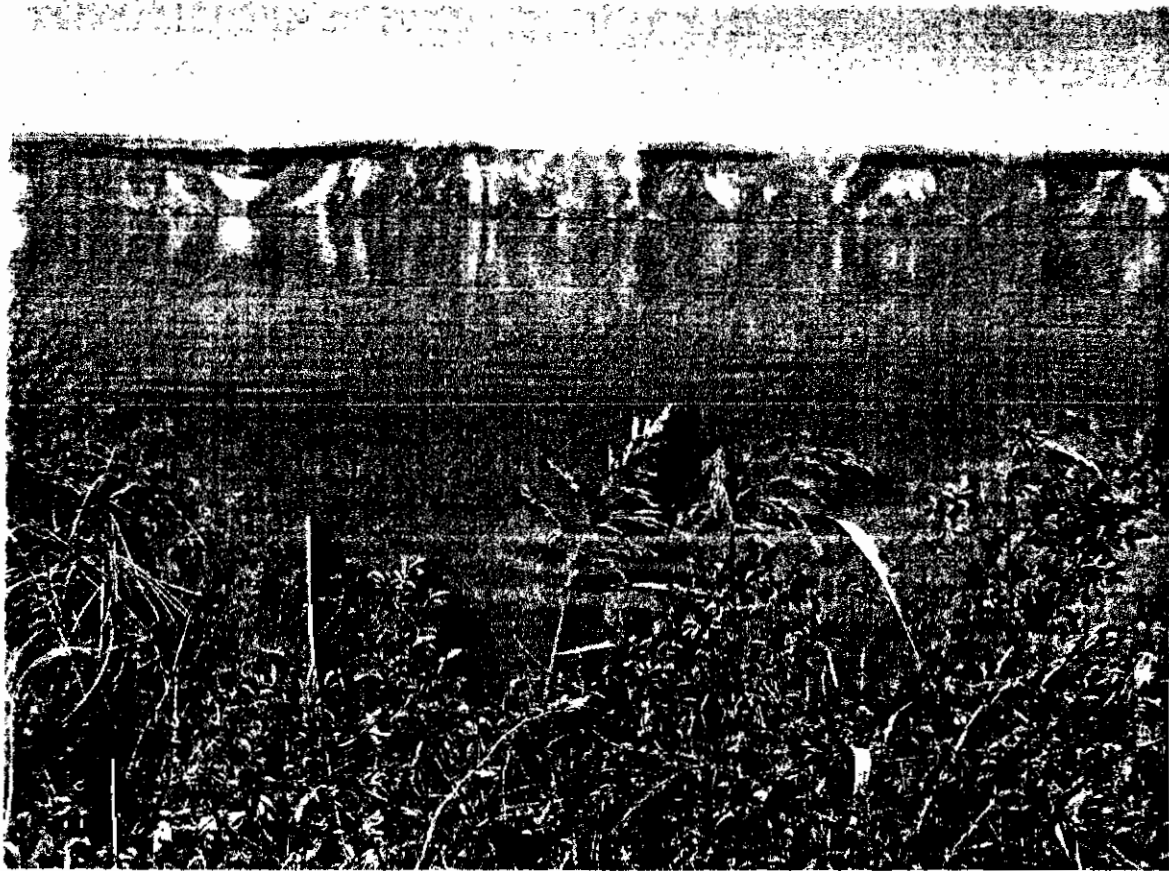
Photograph 11: Looking southwest, the flow of the water in the canal is from the east to the west or from the top left corner to the lower right corner in the photograph. The buildup of branches and debris caused pools to form above and below the branches and a small cascade between the upper and lower pools.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



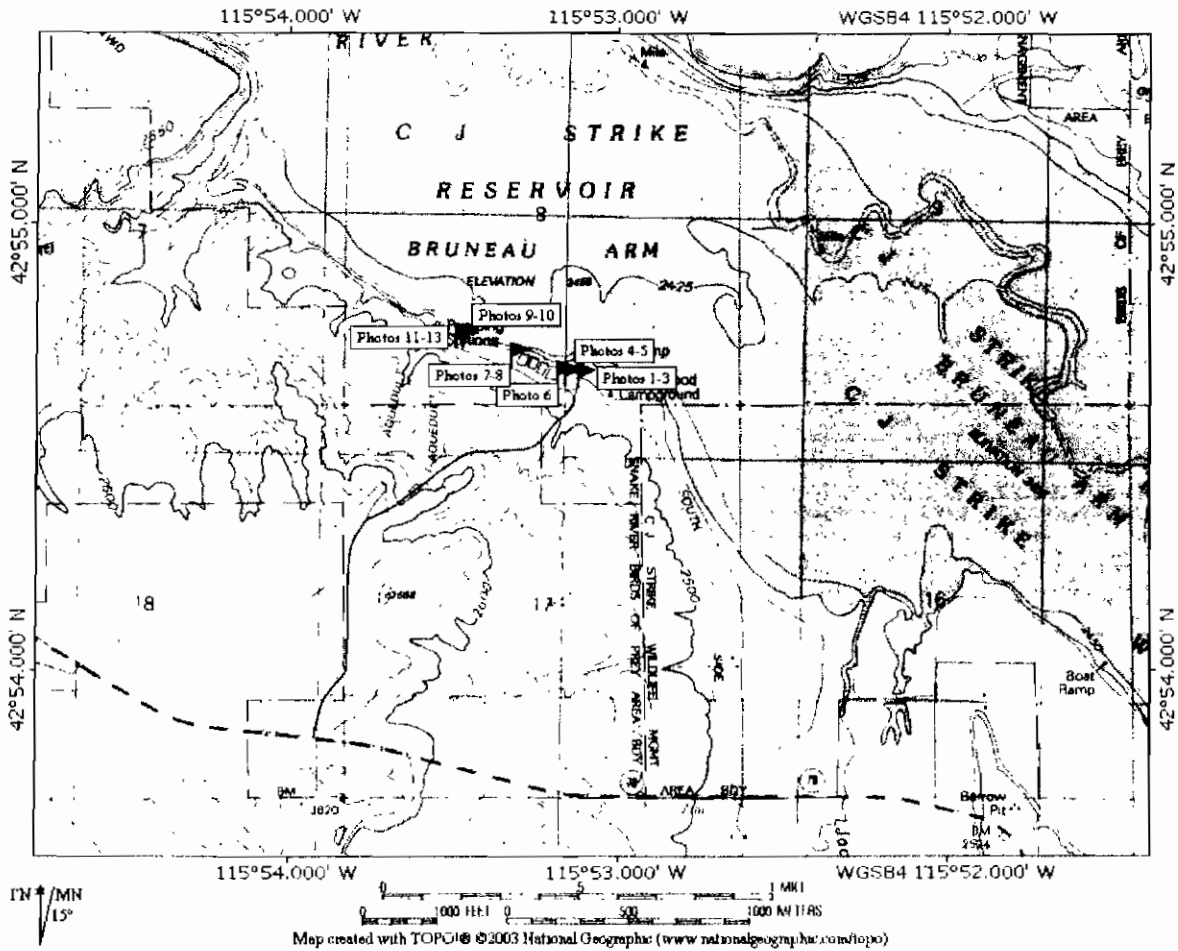
Photograph 12: Looking southwest, the flow of the water is from the east to the west or from the top left corner to the lower right corner in the photograph. The buildup of branches and debris caused pools to form above and below the branches and a small cascade between the upper and lower pools.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Photograph 13: Looking north, the C.J. Strike Reservoir. The photograph was taken immediately south of where the canal flowed into the C.J. Strike Reservoir.

Observation of Flow and Canal Characteristics  
Southside Irrigation Canal  
August 24, 2007



Topographical map showing the approximate locations of the photographs taken on August 24, 2007.