

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST
Application for Permit 02-10576

July 8, 2019

RECEIVED
JUL 08 2019
WATER RESOURCES
WESTERN REGION

1. Matter being protested

Application for Permit 02-10576 filed by Desert Farms Real Estate, LLC (Dale & Jackie Van Es, Managers) and represented by SPF Water Engineering.

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

On July 8, 2019, Desert Farms Real Estate, LLC filed Application for Permit 02-10576. The application for permit seeks 2.48 cfs for stockwater (for an additional 3,200 milk cows and 1,800 replacements) from surface water (Snake River).

The applicant is seeking to use a point of diversion (POD) at an existing pump station located on private land and transport it through an existing pipeline that crosses federal land before it is used on private land. BLM issued a right-of-way (ROW) on 01/07/1988 to Dale Van Es for this pipeline under IDI-012665 for the transportation of water rights 02-10238 (09/04/1974), 02-10239 (09/04/1974), 02-10240 (12/18/1974), and 02-10241 (12/18/1974). The applicant is not authorized to transport additional water (e.g. 02-10242 (07/07/1994) or 02-10243 (07/07/1994)) across federal land through this existing facility as described in this application (02-10576): SWNE, SENE, NWSW, NESW, S22; and SESE, S21, located within T02N, R04W. The application lacks any evidence that the applicant has received authorization to access the POD or to transport this new proposed water under 02-10576 across federal land. The applicant asserts the POD is owned by Morgan & Ruthe Reche, however the County assessor information shows Symms Fruit Ranch, Inc. (G. D. Symms, President) is the landowner at the POD (RP02N04W233150).

Trespass on federal land is a prohibited act (43 CFR §2808.10(a)). A water right cannot be established in trespass (See e.g., *In RE General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); citing, *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373

(1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931)).

7. What would resolve your protest?

BLM's protest can be resolved by:

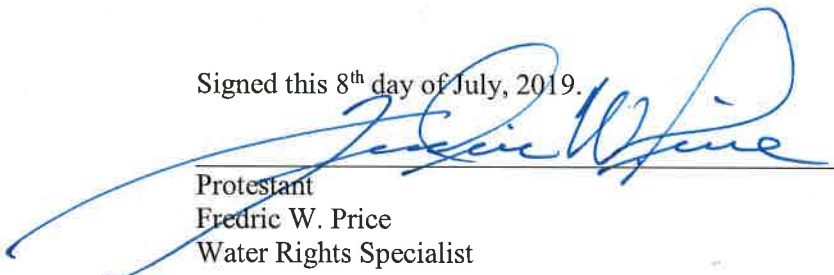
- 1.) Withdrawing the application; or
- 2.) Amend the application to a different source and/ or POD such that the route no longer crosses federal land; or
- 3.) Applicant seeks and obtains a BLM FLPMA Right-of-Way (ROW") to divert water right 02-02-10242, 02-10243, 02-10576 across BLM land; and

Add the following limiting conditions to the permit:

- i) "Prior to diversion and use of water under this approval, the right holder shall obtain authorization necessary to access the point of diversion, or place of use, or to convey water across federal lands."
- ii) "This right does not grant any right-of-way or easement across the land of another."

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 8th day of July, 2019.


Protestant
Fredric W. Price
Water Rights Specialist

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plats: T02N, R04W

FOR DEPARTMENT USE ONLY

Received by LT Date 7/8/19
Fee Paid \$25.00 Date 7/8/19 Received by LT Receipt # W047583

CERTIFICATE OF SERVICE

I certify that on July 8, 2019, I served a true and correct copy of the "**Protest of Application for Permit 02-10576**" for Desert Farms Real Estate, LLC with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Nick Miller P.E., Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705-5082

Copies to:

Shelley Keen, Administrator
Idaho Department of Water Resources
Idaho State Office
Water Management Division
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Desert Farms Real Estate, LLC
c/o Dale & Jackie Van Es
8222 Desert Drive
Marsing, Idaho 83693-8264

SPF Water Engineering LLC
c/o Lori Graves
300 East Mallard Drive, Suite 350
Boise, Idaho. 83706-6660

James Tarter, Natural Resource Specialist
Kyle Paffett, Hydrologist
USDI-BLM;
Boise District Office
3948 South Development Avenue
Boise, Idaho 83705-5339

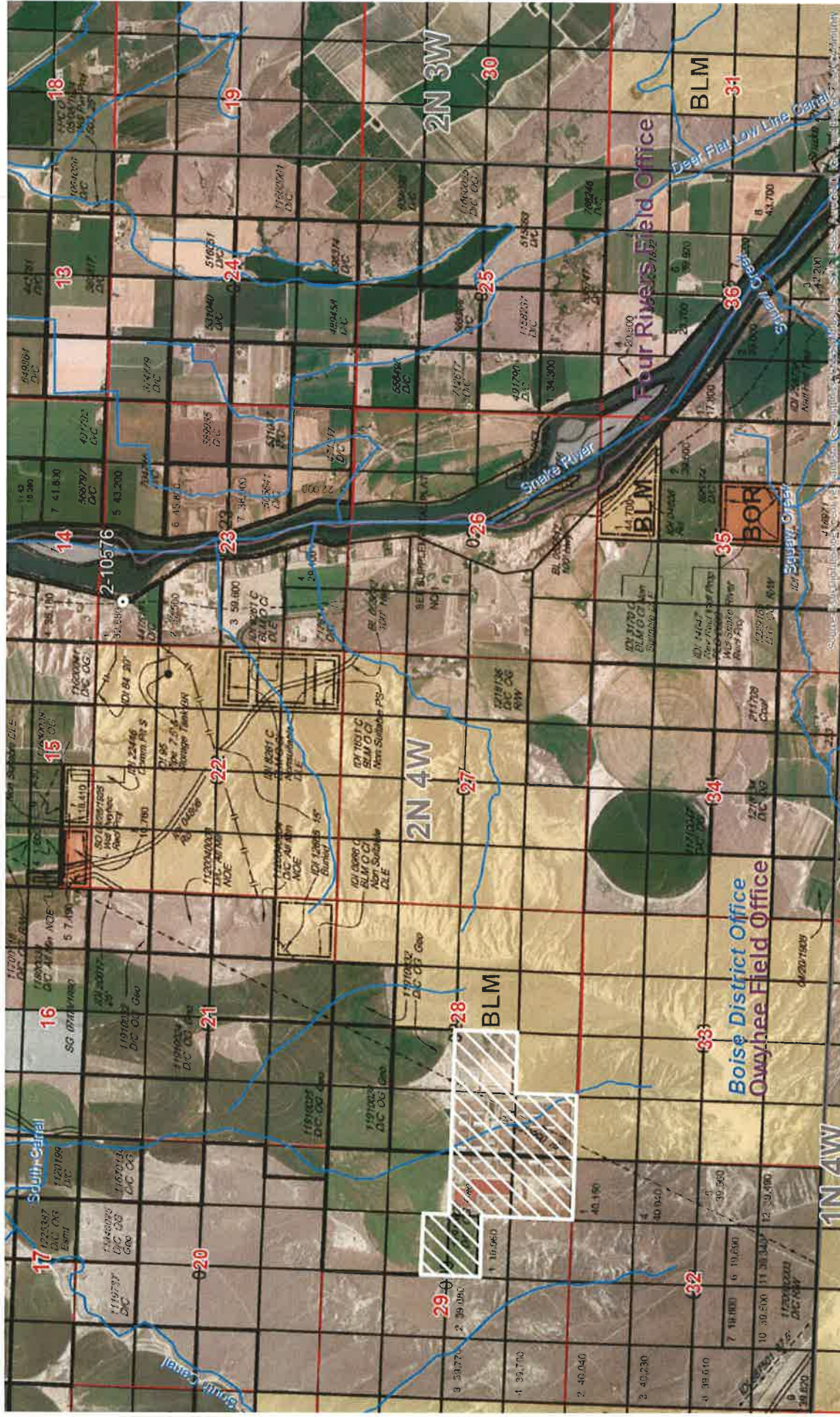
SANDRA MCLREA

Person Serving Documents (print name)



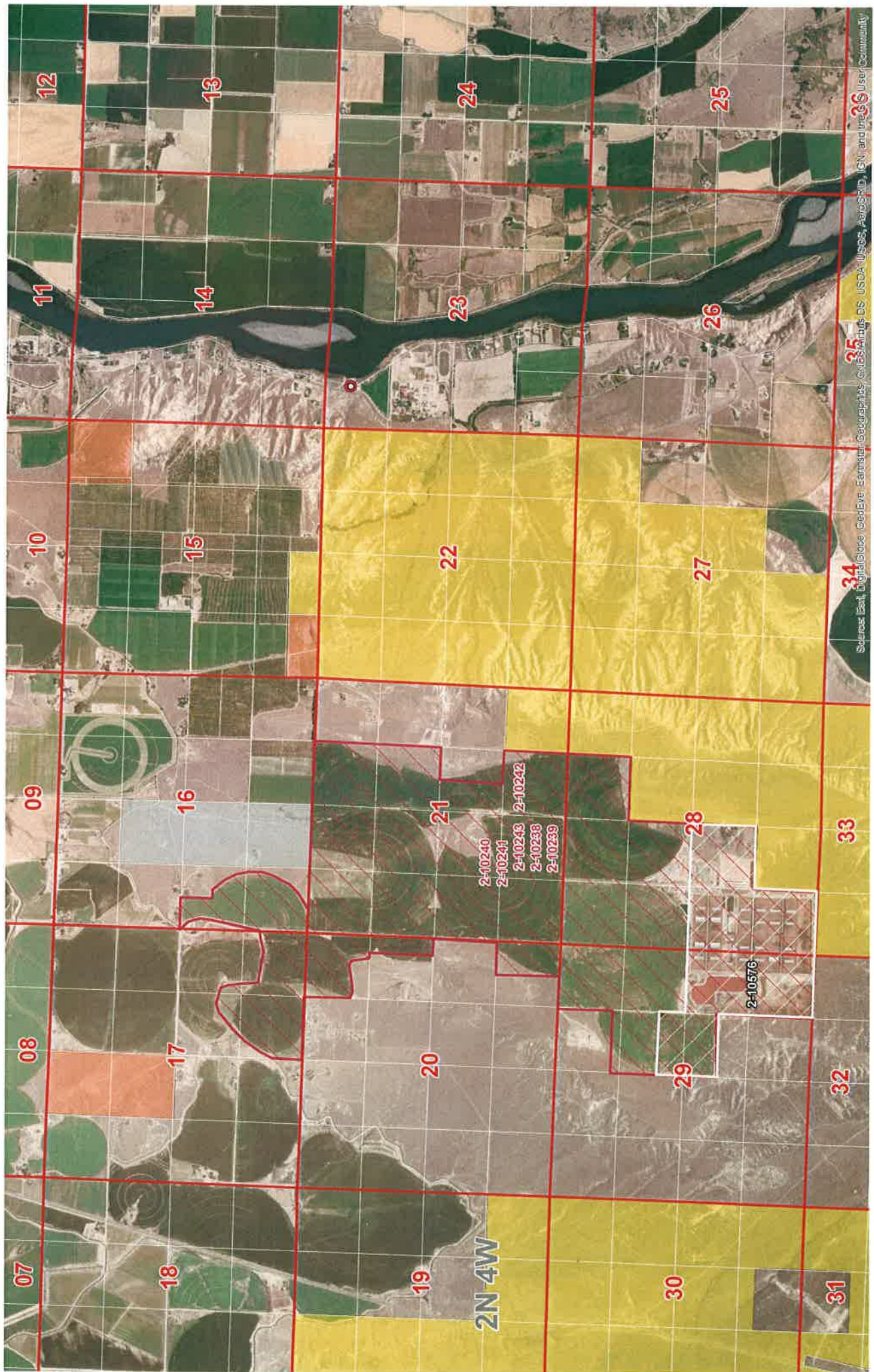
Signature of Person Serving Documents

Applicant is not authorized to divert water under this proposed right across federal land (BLM).



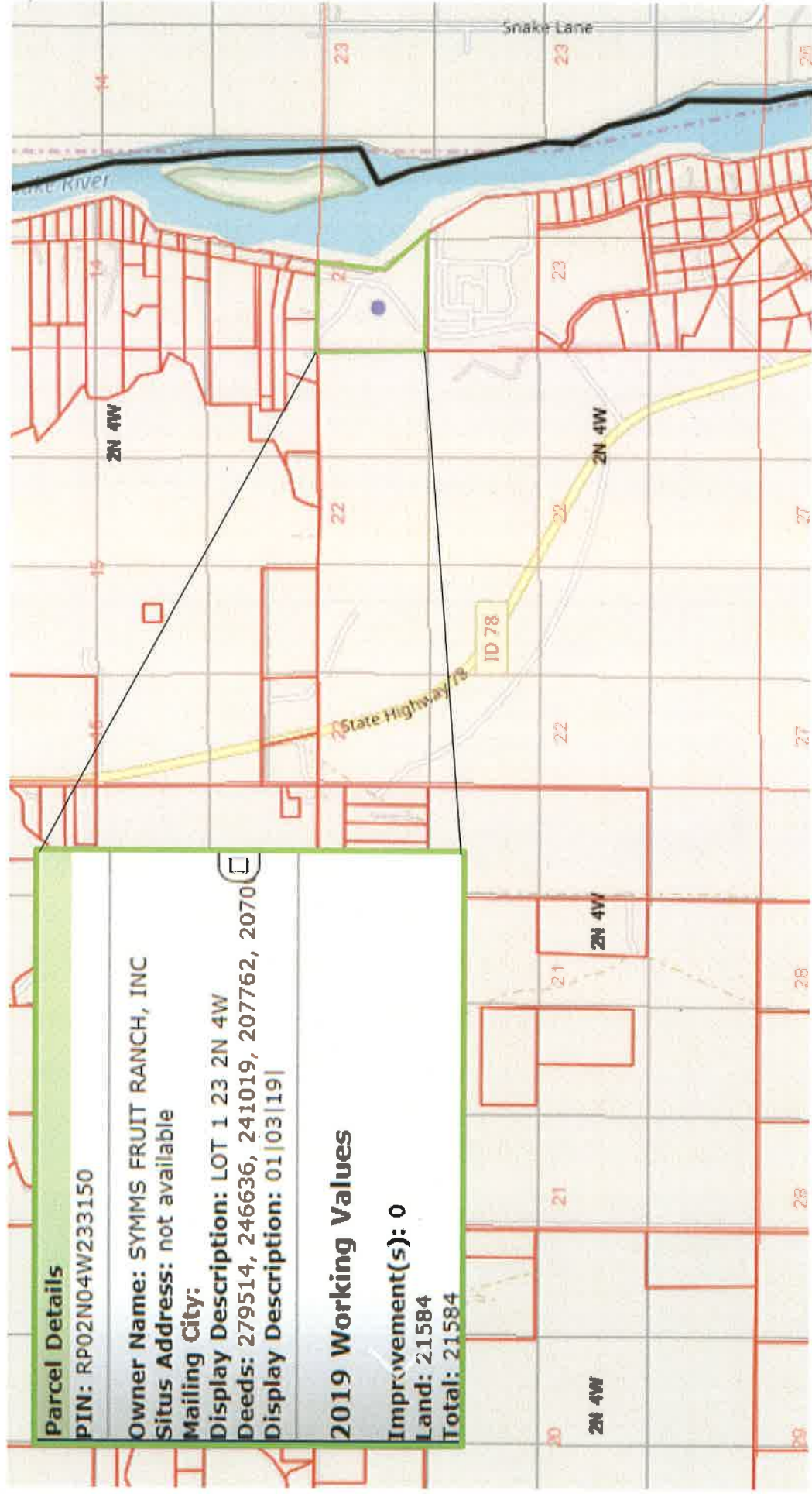
Application for Permit 02-10576 (Desert Farms Real Estate, LLC)
Applicant is not authorized to divert water under this proposed right across federal land (BLM).





Application for Permit 02-10576 (Desert Farms Real Estate, LLC)

It is unclear how Morgan and Ruthe Reche are related to the POD from the application, County Parcel Info shows Symms Fruit Ranch, Inc. as parcel owner (RP02N04W233150) With G. Dar Symms as the Agent for the business entity.



Application for Permit 02-10576 (Desert Farms Real Estate, LLC)

It is unclear how Morgan and Ruthe Reche are related to the POD from the application, County Parcel info shows Symms Fruit Ranch, Inc. as parcel owner (RP02N04W233150) and G. Dar Symms as the Agent for the business entity.

Symms Fruit

Business Search

Form Info

Symms Fruit Ranch, Inc. (102590)
General Business Corporation (D)

Status

Active-Good Standing

Filing Date

03/19/1958

Agent

G. DAR SYMMS

Request Certificate

Request Certificate

Filing Type

General Business Corporation (D)

Status

Active-Good Standing

Formed In

IDAHO

Term of Duration

Perpetual

Principal Address

N/A

Mailing Address

14068 SUNNYSLOPE RD
CALDWELL, ID 83607-9358

Initial Filing Date

03/19/1958

AR Due Date

03/31/2020

Registered Agent

Noncommercial
0001170
G. DAR SYMMS
14068 SUNNYSLOPE ROAD
CALDWELL, ID 83607

View History

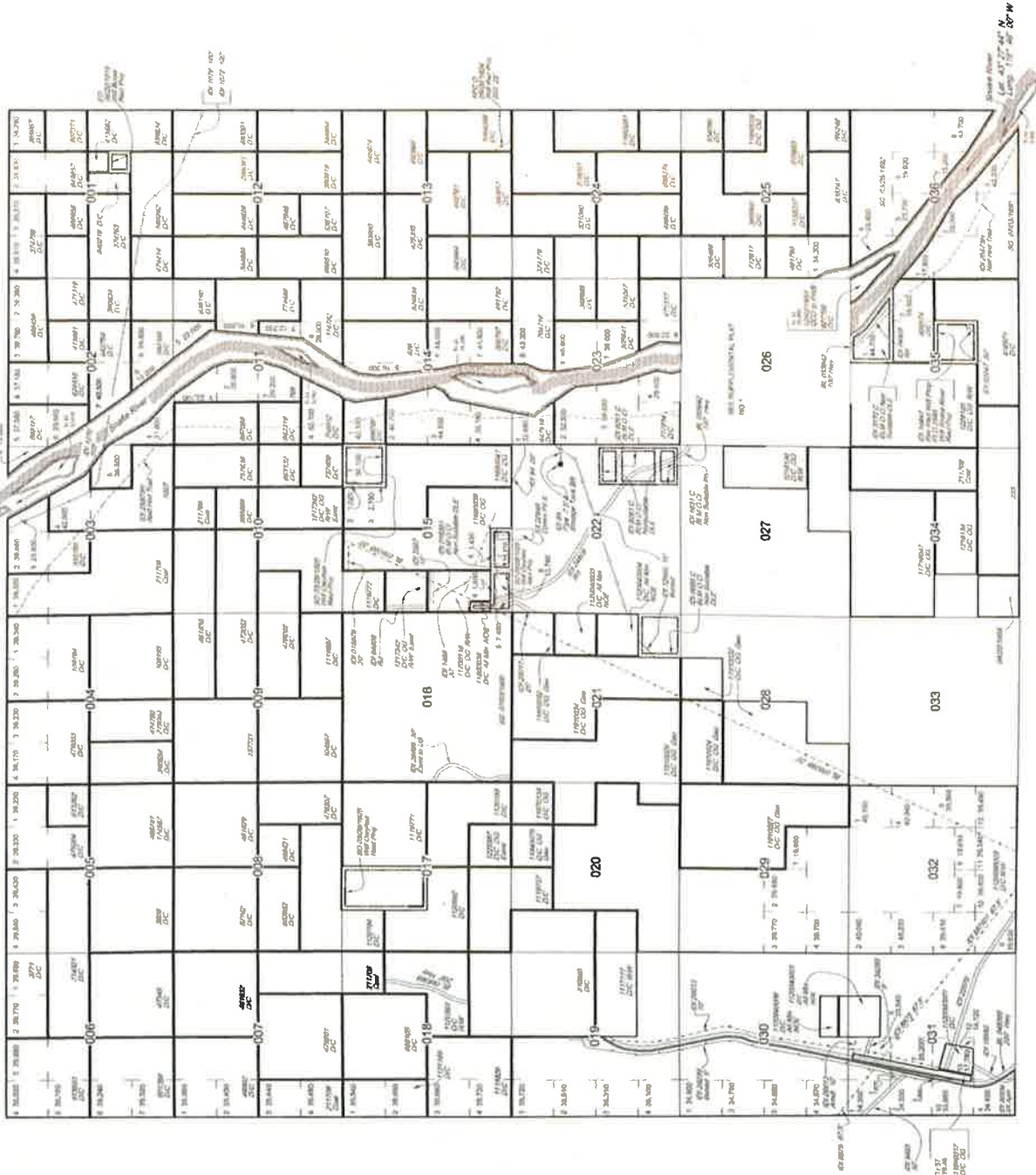
TOWNSHIP 2 NORTH RANGE 4 WEST OF THE BOISE MERIDIAN, IDAHO

BOISE DISTRICT SEC. 3

OWYHEE COUNTY 073 CANYON COUNTY 027

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MT PLAT



U.S. Bureau of Land Management - Idaho State Office
1500 N. Lincoln Blvd., Boise, Idaho 83725
(208) 378-6000

Boise District Office
1500 N. Lincoln Blvd., Boise, Idaho 83725
(208) 378-6000

DISCLAIMER:
This map is a graphic representation of the Bureau of Land Management's (BLM) best available information. It is not a legal document. The BLM does not warrant the accuracy or completeness of the information shown on this map. The information shown on this map is for informational purposes only and should not be used for legal or financial purposes. The information shown on this map is subject to change without notice. The information shown on this map is not a guarantee of the accuracy or completeness of the information shown. The information shown on this map is for informational purposes only and should not be used for legal or financial purposes. The information shown on this map is subject to change without notice. The information shown on this map is not a guarantee of the accuracy or completeness of the information shown.

SCALE:
1 inch = 1 mile
1 centimeter = 100 meters

Legend:
Public Right of Way
Sewer
Water
Sole Right of Way

INDEX TO SEGREGATED TRACTS	
TRACT NO.	OWNER NAME
001	BLM
002	BLM
003	BLM
004	BLM
005	BLM
006	BLM
007	BLM
008	BLM
009	BLM
010	BLM
011	BLM
012	BLM
013	BLM
014	BLM
015	BLM
016	BLM
017	BLM
018	BLM
019	BLM
020	BLM
021	BLM
022	BLM
023	BLM
024	BLM
025	BLM
026	BLM
027	BLM
028	BLM
029	BLM
030	BLM
031	BLM
032	BLM
033	BLM
034	BLM
035	BLM
036	BLM

BL 048812 a Water Irrigation Dist (Add of Contg)
08/17/1916 affects land in
Sec 13

Pres 2418 07/25/1940 444 Sable River RWR, all
lands in Sable River

BL 042811 Genl Irrigation Dist (Add of Contg)
08/17/1916 affects land in
Secs A, B, 10, 15
Secs 17 to 20 and
25 26 27 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

See Cadastral Survey dated 08/02/2011 to identify
Sable River lands transferred to the State of Idaho
by decree CIV 87-6476-S-BLM
Sec. 2, 56 (Federal Island)
Sec 36, 60A, 61A

See Cadastral Map approved 07/25/2017 for official
survey affecting legal subdivisions

Sec 17

Sec 35, Lot 1

Sec 35, Lot 1

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS REFER TO INDEX OF MISCELLANEOUS DOCUMENTS	
FILE NO.	CONTINGENT/ACQUISITION/REVENUE/BLM
COMPARISON YEAR	BLM
LAST UPDATED	03/22/2011
DATE OF	03/22/2011
POSTED TO PUBLIC RECORDS	03/22/2011
PUBLIC LAND SURVEY SYSTEM NAME	BLM
BLM COORDINATES	UTM 48Q UTM 48Q
OTHER	UTM 48Q UTM 48Q
NOTES	
JOB PLATS	

2 N
4 W