

Cefalo, James

From: Cefalo, James
Sent: Tuesday, May 02, 2017 5:01 PM
To: 'Rob Harris'
Cc: Lance Crapo; Cade Crapo (cadecrapo12@gmail.com); Judd Crapo; Conn Crapo (conncrapo@gmail.com)
Subject: RE: Application for Permit No. 22-7648

Rob,

Please let this email confirm that the mitigation proposed for Application 22-7648 is acceptable.

The estimated increase in consumptive use (445 acre-feet), resulting from increasing the available water right diversion rate, is derived from METRIC data for 2013 and 2016 available on the Department's website. The 445 acre-foot value is conservative to the extent it does not account for any precipitation occurring on the property during those irrigation seasons. Although other methods may result in slightly higher or lower amounts, 445 acre-feet is supported by actual consumptive use data.

I was able to speak with Bryce Contour about his estimation of consumptive use occurring under water right 22-13019. The methods he used are acceptable. I have asked him to provide a summary of his calculations for the water right record. It will be helpful to have a record of how he calculated the soil moisture content throughout the years he analyzed.

You can proceed with acquiring 170 acres of water right 22-13019, if possible. You can also proceed with completing an assignment of Application 22-7648 to the current property owners.

As we discussed this morning, the Bureau of Reclamation ground will be excluded from the permit. This reduces the overlapping acres slightly. My calculations of the number of acres of overlap between Application 22-7648 and Crapo's existing water rights (excluding the USBR land) is 797.2 acres. Bringing the 797.2 acres to a full diversion rate (0.02 cfs/acre) will still cover the expected diversion rate for the total irrigation system.

James

From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Friday, April 28, 2017 2:06 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: Lance Crapo <lcrapo@mac.com>; Cade Crapo (cadecrapo12@gmail.com) <cadecrapo12@gmail.com>; Judd Crapo <juddcrapo@aol.com>; Conn Crapo (conncrapo@gmail.com) <conncrapo@gmail.com>
Subject: Application for Permit No. 22-7648

James:

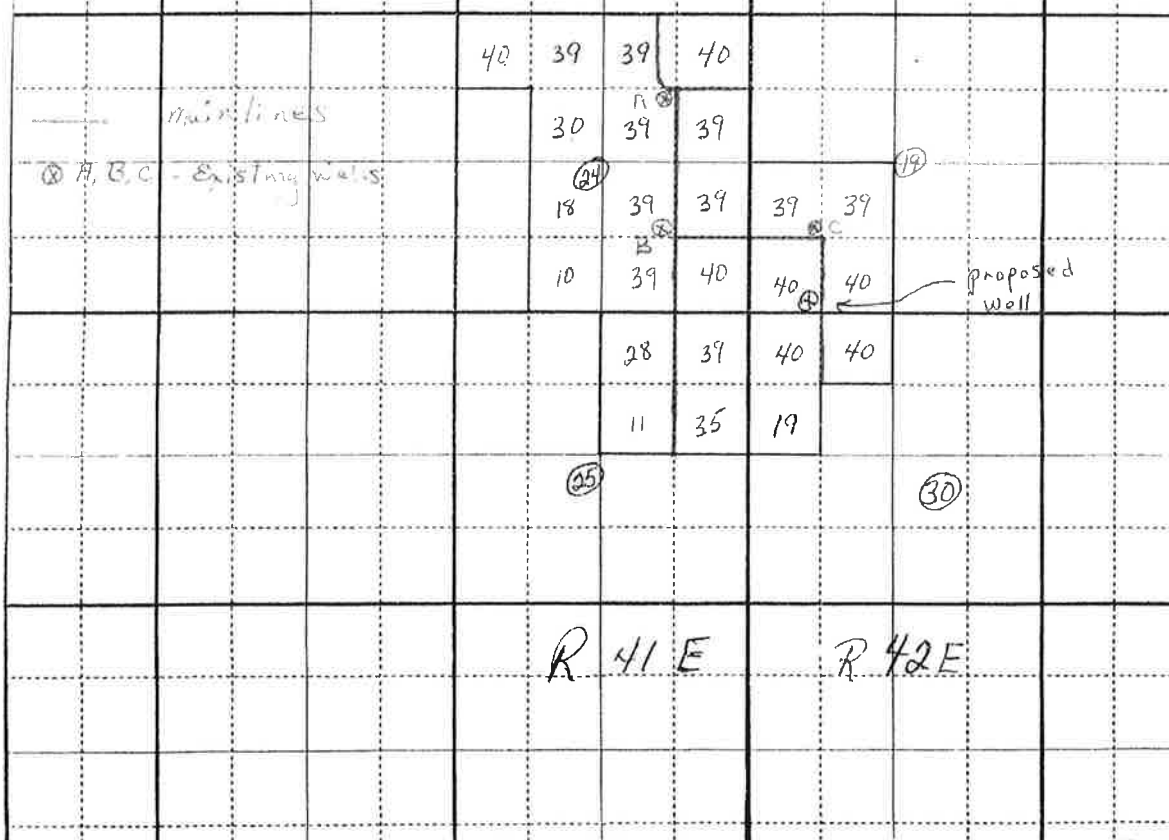
Please see the attached letter and attachment regarding Application for Permit No. 22-7648. Please confirm that you received this email.

Call me if you have any questions.



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405-0130
Phone: (208) 523-0620
Fax: (208) 523-9518
E-Mail: rharris@holdenlegal.com

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8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: *D* for *Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
7N	41E	24	40	39	39	39	39	40		30	18			10	39	39	39	40	451
		25	39	28	11	35													113
7N	42E	19									39	39	40	40					158
		30					40	40	19										99

Total number of acres to be irrigated 821

10. Describe any other water rights used for the same purposes as described above. 22-2294 & 22-7057

- Who owns the property at the point of diversion? Applicants
- Who owns the land to be irrigated or place of use? Applicants
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: This application filed to bring water up to 0.02 cfs/acre.

[Close](#)

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

5/2/2017

WATER RIGHT NO. 22-14220

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	FROMOVER 9 LLC 1910 EAST 500 NORTH ST. ANTHONY, ID 83445
Attorney	JERRY R RIGBY RIGBY ANDRUS & MOELLER CHTD 25 N 2ND E PO BOX 250 REXBURG, ID 83440 (208)356-3633

Priority Date: 05/23/1972

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	11/01	0.38 CFS	158.9 AFA
Total Diversion			0.38 CFS	

Location of Point(s) of Diversion:

GROUND WATER	SWNE	Sec. 24	Township 07N	Range 41E	FREMONT County
GROUND WATER	SWSE	Sec. 24	Township 07N	Range 41E	FREMONT County
GROUND WATER	SWSW Lt 4	Sec. 19	Township 07N	Range 42E	FREMONT County

Place(s) of use:

Place of Use Legal Description: IRRIGATION FREMONT County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
07N	41E	25		NENE	29.5		NWNE	7		SWNE	11		SENE	35
	42E	19		NESW	40	3	NWSW	37	4	SWSW	38		SESW	40
		30		NENW	35.5	1	NWNW	38	2	SWNW	16		SENW	0.5

Total Acres: 327.5

Conditions of Approval:

1. R59 This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
2. U42 Place of use does not include federal public lands unless authorized in writing by the United States Bureau of Reclamation.
3. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412 (6), Idaho Code.
4. E55 Right Nos. 22-14216 and 22-14220 are limited to the irrigation of a combined total of 327.5 acres in a single irrigation season.
5. C05 Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
6. C03 Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

Dates:

Licensed Date:

Decreed Date: 07/31/2012

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 22-02294



NAME AND ADDRESS: RIVERSIDE FARMS
1908 E 500 N
ST ANTHONY, ID 83445

SOURCE: GROUND WATER

QUANTITY: 4.86 CFS
2063.00 AFY

PRIORITY DATE: 04/27/1960

POINT OF DIVERSION: T07N R41E S24 SWNE Within Fremont County
SWSE
R42E S19 LOT 4 (SWSW)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	4.86 CFS 2063.00 AFY

PLACE OF USE:	Irrigation	Within Fremont County
T07N R41E S23	NENE 3.3	
S24	NENE 39.0	NWNE 35.0
	SWNE 39.0	SENE 39.0
	NENW 39.0	NWNW 40.0
	SNNW 14.0	SENE 31.0
	NESW 24.0	SESW 5.7
	NESE 39.0	NWSE 39.0
	SWSE 39.0	SESE 39.0
S25	NENE 39.0	NWNE 28.0
	SWNE 11.0	SENE 35.0
R42E S19	NESW 40.0	LOT 3 (NWSW) 37.0
LOT 4	(SWSW) 38.0	SESW 40.0
S30	NENW 37.0	LOT 1 (NWNW) 38.0
LOT 2	(SNNW) 21.0	SENE 2.0
831.0 Acres Total		

Right Nos. 22-2294 and 22-7057 are limited to the irrigation of a combined total of 831 acres in a single irrigation season. This right is limited to the irrigation of 792 acres within the place of use described above in a single irrigation season. Place of use does not include federal public lands unless authorized in writing by the United States Bureau of Reclamation.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

April 28, 2017

VIA EMAIL ONLY

Idaho Department of Water Resources
Attn: James Cefalo
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
james.cefalo@idwr.idaho.gov

RE: *Response to Letter Dated March 29, 2017 Concerning Application for Permit No. 22-7648.*

Dear James:

This letter is a response to your letter dated March 29, 2017, which concerns Application for Permit No. 22-7648 (hereinafter, simply "22-7648"). We appreciate the time and attention you have devoted to 22-7648 and our correspondence regarding it. Consistent with our position, your letter indicated that 22-7648 will not be republished. If for any reason the Department changes its mind and determines that 22-7648 will be republished, please notify us of that decision in advance of the republication decision and provide us an opportunity to respond. As we previously described, we do not believe it is necessary to republish 22-7648 for any reason.

Your letter also requested additional evidence and/or information on three specific items for you to complete your review of 22-7648. Those three specific items are:

- (1) Legal access to the proposed points of diversion and place of use;
- (2) Discrepancies between the proposed place of use and the place of use for existing water rights; and
- (3) Reduction of the quantity of water under existing water rights.

Each of these specific items will be addressed below.

(1) Legal access

You have correctly identified that the property 22-7648 identified as its place of use is now owned by RGC Farms LLC, Juniper View LLC, Unit 2 LLC, Fromover 9 LLC, and the United States Bureau of Reclamation.

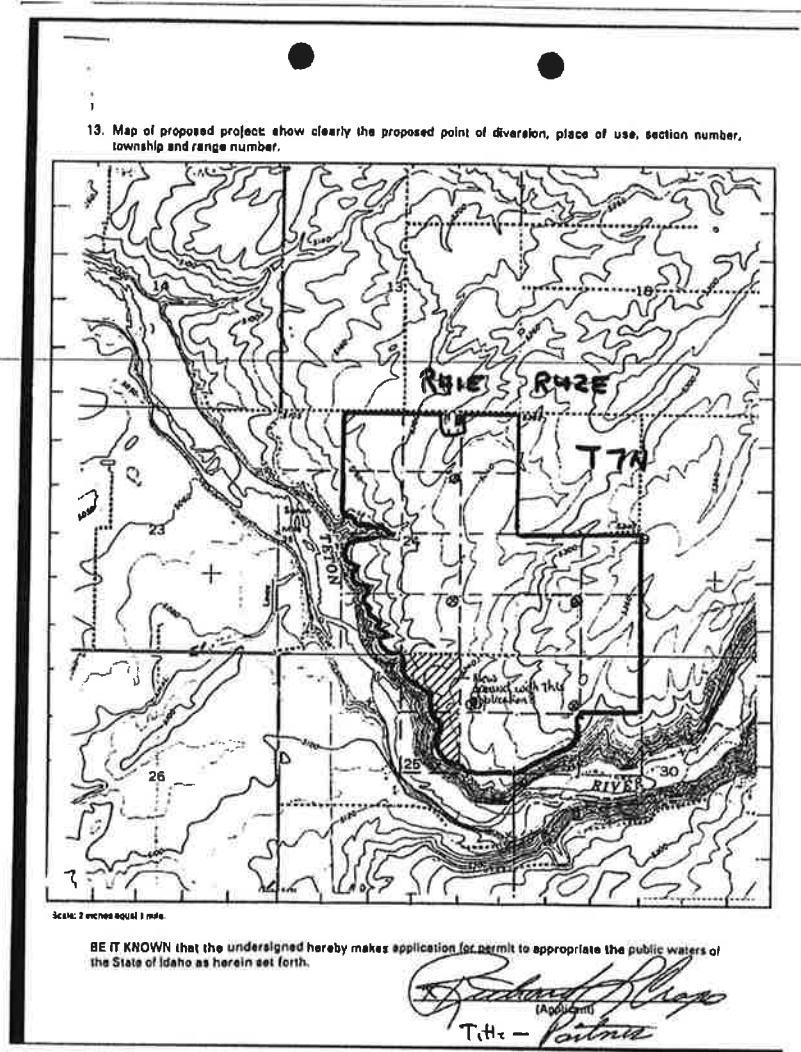
Established in 1896

Riverside Farms—the original applicant to 22-7648—is a Crapo family entity. As you know from processing other recent water right ownership changes on other properties, RGC Farms LLC, Juniper View LLC, Unit 2 LLC, and Fromover 9 LLC are all Crapo family entities that were recently formed to transfer title to certain properties from the elder Crapos to themselves and their children. You suggested that we could have Riverside Farms assign 22-7648 to the current landowners, which is what we did with Permit No. 22-7649. We will assign 22-7648 to the current Crapo entity landowners once you have confirmed that the proposed mitigation for the reduction of water under existing water rights discussed below is satisfactory to the Department.

Additionally, we have no desire to irrigate Bureau of Reclamation property under 22-7648, and request that land identified in the application that includes Reclamation property be removed from the permit for 22-7648. As a side matter, we recognize that there are two water right remnants that allow for the combined irrigation of 8.0 acres (under Water Right Nos. 22-2294 and 22-7057) which describe a place of use consisting of Reclamation property, but under the water right conditions, they are not authorized to irrigate Reclamation land unless authorized in writing by Reclamation. Riverside Farms intends to either place these water rights in the Idaho Water Supply Bank or otherwise transfer them off the property as soon as the issues surrounding 22-7648 are resolved and a permit is issued for 22-7648. We do not intend to have 22-7648 add any diversion rate to these two water rights (22-2294 and 22-7057).

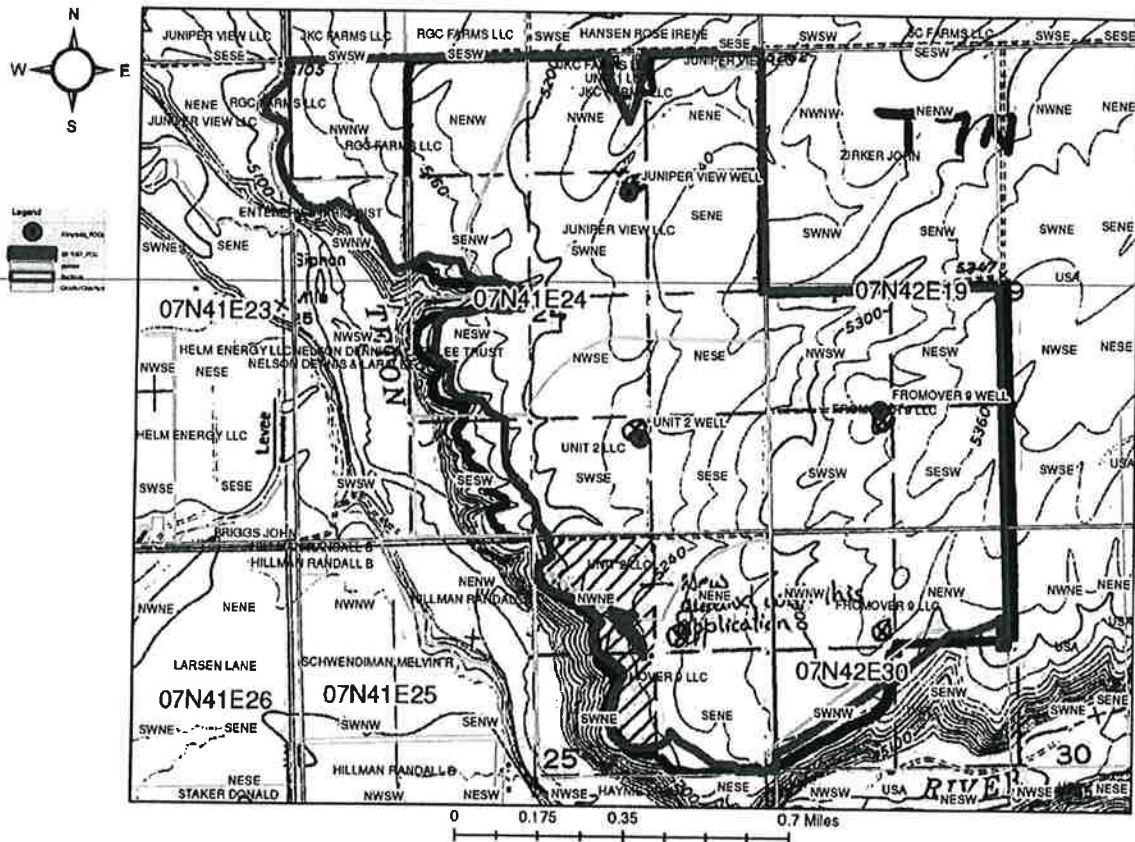
(2) Discrepancies between the proposed place of use and the place of use for existing water rights

The original application map for 22-7648 is as follows:



We have georeferenced this application map with the current shapefile for pre-split 22-2294 and 22-7057 on the below map, and the 22-7648 map and the 22-2294 and 22-7057 shapefiles are very close:

22-7648 MAP



Because the application map and current water right shapefiles are so close, we do not desire that 22-7648 be republished to exactly match or to increase the acreage proposed under 22-7648 to 831 acres. We anticipate that when 22-7648 is developed, there will be 821 actual irrigated acres because there are some pivot corners not currently being irrigated under the current water rights.

You indicate that if 22-7648 is not amended then it could only be issued for 801.7 acres and 10.42 cfs. However, the permit application was for 821 acres, and we believe that it could be issued for the full 821 acres originally requested. If the place of use ends up being developed differently than what is applied for, past Department practice has been to request execution of an application for amendment of a water right permit for licensing purposes, and this would be a method to true-up the places of use of the current farm ground and the place of use identified under

the license for 22-7648. The application for 22-7648 specifically states that its intent was to bring the diversion rate up to 0.02 cfs/acre for existing water rights, and we want to confirm that we have no desire to break out new irrigated land. Because of that desire, we believe that the permit could be issued for 821 acres, and then when a field exam is performed, the irrigated acreage will likely be less than the 831 acres authorized under the base water rights (and be closed to 821 acres) and we anticipate that an analysis will be made of actual irrigated acres in order to match it with the place of use description of 22-7568.

(3) Reduction of the quantity of water under existing water rights.

Your letter infers that it will be necessary for the Department to process 22-7648 consistent with today's water right application processing standards, including analysis of potential injury to other water rights, even though the permit for 22-7648 should have been issued in the early 1990s. Accordingly, your letter requests additional information in the form of an injury analysis based on increased consumptive use caused by diversion of water under 22-7648. This is the case even though no new irrigated acres will be developed under 22-7648.

Without waiving any legal arguments we may have concerning the position that 22-7648 should be processed under today's water right permit processing standards, my client has elected for the time being to mitigate for the consumptive use caused by the diversion of water under 22-7648. We have employed Bryce Contor of Rocky Mountain Associates, Inc. to review the information you provided and that we discussed. We appreciate your willingness to review METRIC data and provide the information that you did. As we have considered your analytical approach, and other possible approaches, we believe the calculation of an increase of 445 acre-feet in consumptive use that will result from development of 22-7648 is within a reasonable range of estimates. Provided we are able to mitigate for this amount of 445 acre-feet, we will agree to provide mitigation in an equal quantity in order for 22-7648 to be issued.

One matter that I need to clarify is that the recent pump tests of the three wells that service this farm total 7.38 cfs, but that was without a booster pump on. My clients estimate that the booster will add about 1200 gpm, meaning that the total diversion rate of the current system is anticipated to be somewhere between 10 cfs and 11 cfs. My clients do not intend to change this diversion system to increase its diversion capacity, and merely want to have the water rights diverted from these wells match their current diversion capacity. However, this clarification does not change the consumptive use analysis we discussed because it was based upon the consumptive use of water on the property irrespective of the diversion rate of water applied to the property, and therefore, this should not impact the 445 acre-foot calculation.

James Cefalo
April 28, 2017
Page 6 of 6

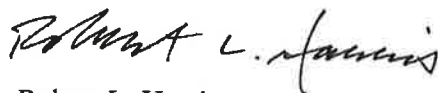
It appears that with an agreement from my clients to mitigate for 445 acre-feet, this should satisfy any injury concerns the Department has with issuing a permit for 22-7648. Additionally, I discussed with you the likelihood that my clients could obtain a legal entitlement to a close-by water right, Water Right No. 22-13019, to use for mitigation purposes. This water right is located directly east of 22-7648's place of use, and appears to be an ideal source of mitigation.

Bryce Contor has prepared the attached consumptive use analysis which concludes that, on average, the place of use for 22-13019 had a total consumptive use of 603 acre-feet per year. Like METRIC data that you utilized, Bryce's analysis did not back out precipitation data so that the comparison of consumptive use values would be based on the same premise (i.e., in order to have an apples-to-apples comparison). Based on these numbers, my clients would need to dry up 73.8% of 22-13019 ($445/603 = .738$), which equates to 170 acres of 22-13019.

Before we pursue obtaining 22-13019, please confirm in writing that (1) the Department agrees with the 445 acre-foot consumptive use number, and (2) agrees that drying up 170 acres of 22-13019 will mitigate for the 445 acre-feet of increased consumptive use. Once we receive confirmation on both of these items, we will immediately pursue purchase of 22-13019 from the owner of this water right and submit an assignment for 22-7648 as described above assigning ownership of this application to the current landowners. Once we obtain title to 22-13019, we will notify you accordingly, and the Department should have everything its needs to issue a permit for 22-7648.

We appreciate your attention to this matter. If you have any questions, please let me know.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.



Consumptive Use From Irrigation on the Place of Use of Water Rights 22-7163 and 22-13019 RMEA Project 17-0062

Background

Water rights 22-7163 and 22-13019 share a common place of use in Fremont County, Idaho, as illustrated in Figure 1 (attached). The combined limitations authorize diversion of 1,634.1 acre feet per year on 466.9 acres, at a diversion rate of 4.17 cfs. This report provides an analysis of the consumptive use on the tract labeled "C" in Figure 1. This tract corresponds approximately to the 229.9 acres of enlargement represented by water right 22-13019.

Two sources of data were used. Crop type data were obtained from the USDA National Agricultural Statistics Service, in Geographic Information Systems (GIS) format.¹ Data were available for 2005, 2007, 2008, 2009, 2010, 2012, 2013, 2014, 2015 and 2016. Consumptive use data were obtained from the University of Idaho's *ET Idaho* Internet site, for years 2005 through 2010 (the most recent year available).

Methods

The crop-type data were clipped to the boundaries of tract "C." The 2005 data were set aside and not used in analysis. 2005 was the first year of the data set and it appears the calibration was not correct for this location. Crops in the general area were shown with significant acreages of corn and pasture, which does not correspond with empirical understanding of the local cropping patterns. Data for the following years appeared to be reasonable and were retained for analysis, as shown in Figures 2 through 10. The indication of fallow cropland for 2015 and 2016 corresponds with the history of irrigation on the tract.

The ET Idaho data for the period were processed to find a median monthly consumptive use value for each crop type. The median values were used to replace

¹ United States Department of Agriculture (USDA), National Agricultural Statistics Service (NASS), Research and Development Division (RDD), Geospatial Information Branch (GIB), Spatial Analysis Research Section (SARS), https://www.nass.usda.gov/Research_and_Science/Cropland/SARS1a.php

missing data points, and for years after 2010. No calculations were performed for 2015 or 2016, since the parcel was not irrigated in those years.

The monthly consumptive use values were applied to crop acreages calculated using GIS, and annual sums of consumptive use volume were calculated.

Results

Table 1 shows the results obtained:

Table 1
Consumptive Use Volume
Tract C
Water Rights 22-7136 and 22-13019

Year	Consumptive Use Acre Feet
2007	551
2008	594
2009	629
2010	591
2012	619
2013	620
2014	617
Maximum	629
Median	617
Mean	603
Minimum	551

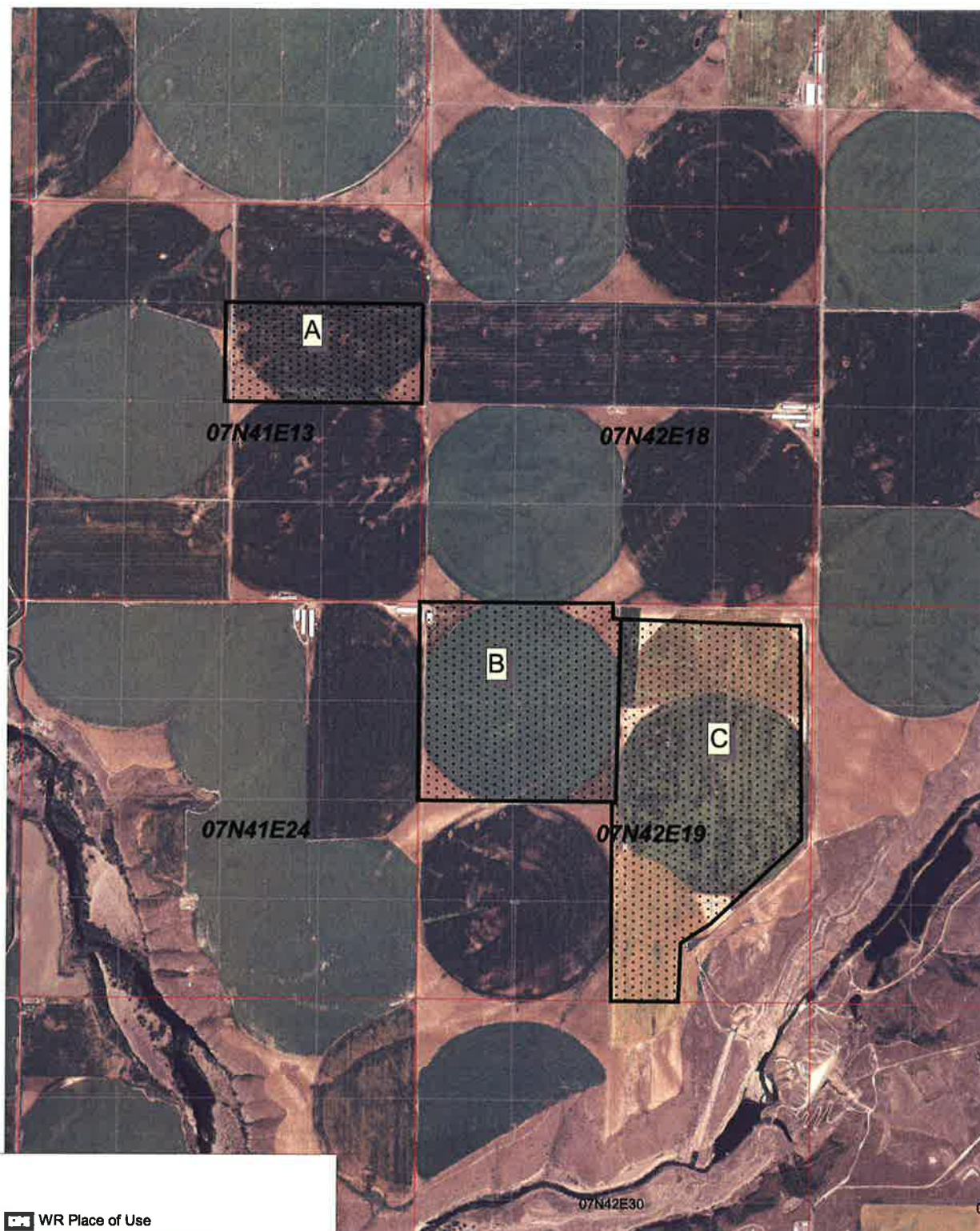
It is my conclusion that the average (arithmetic mean) consumptive use on this tract was approximately 603 acre feet per year, within the limitations of the data available. The median value was 617 acre feet, meaning that half the time the annual consumptive use was greater than 617 acre feet and half the time it was less.



April 25, 2017

Bryce A. Contor
Senior Hydrologist

Attachments: Figures



WR Place of Use
PLSS Section Lines
Section QQ

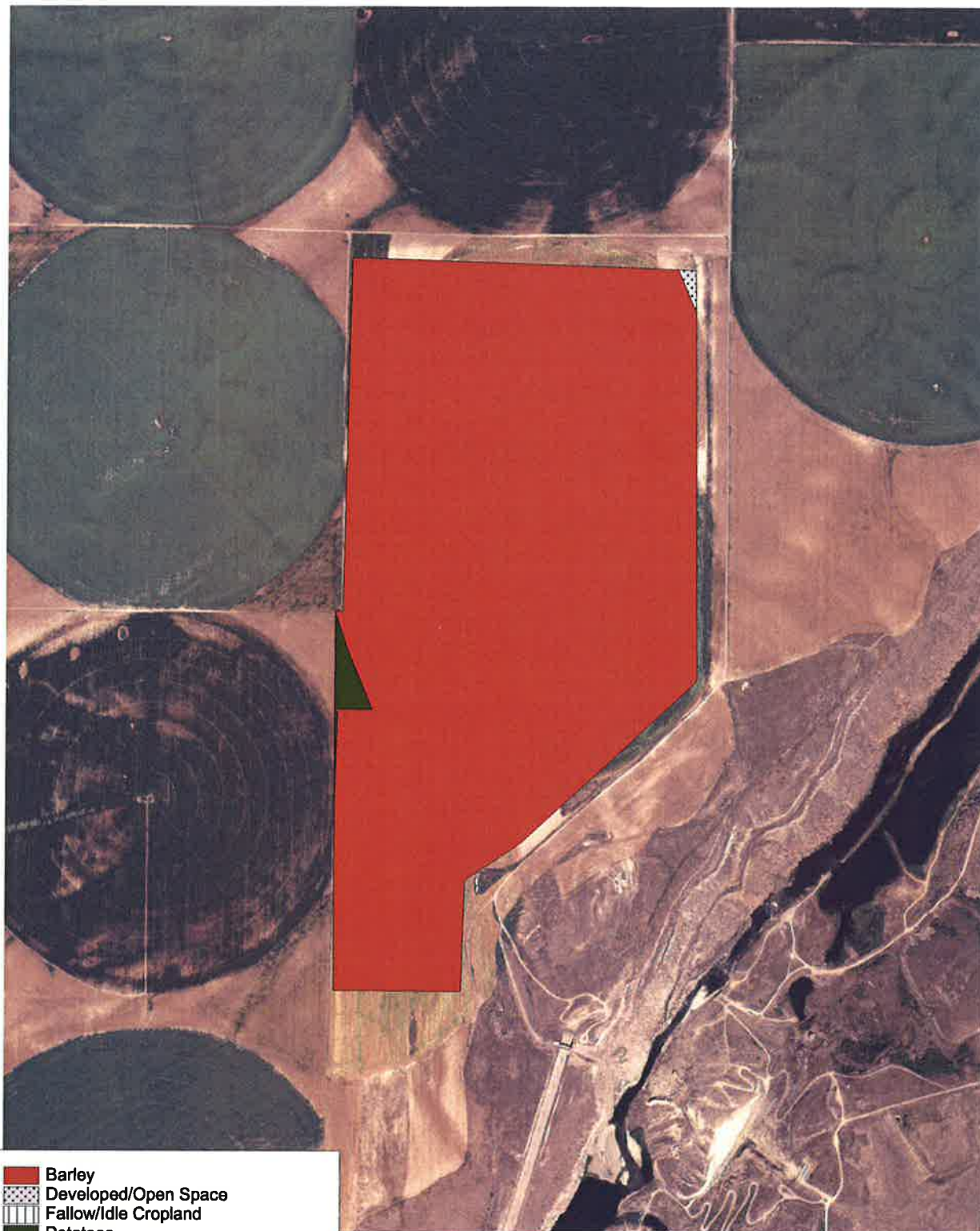


482 Constitution Way, Idaho Falls, ID 83402
208-524-2353

Figure 1: Water Right Place of Use

Consumptive Use Analysis

Project 17-0062



- Barley
- Developed/Open Space
- Fallow/Idle Cropland
- Potatoes
- Spring Wheat

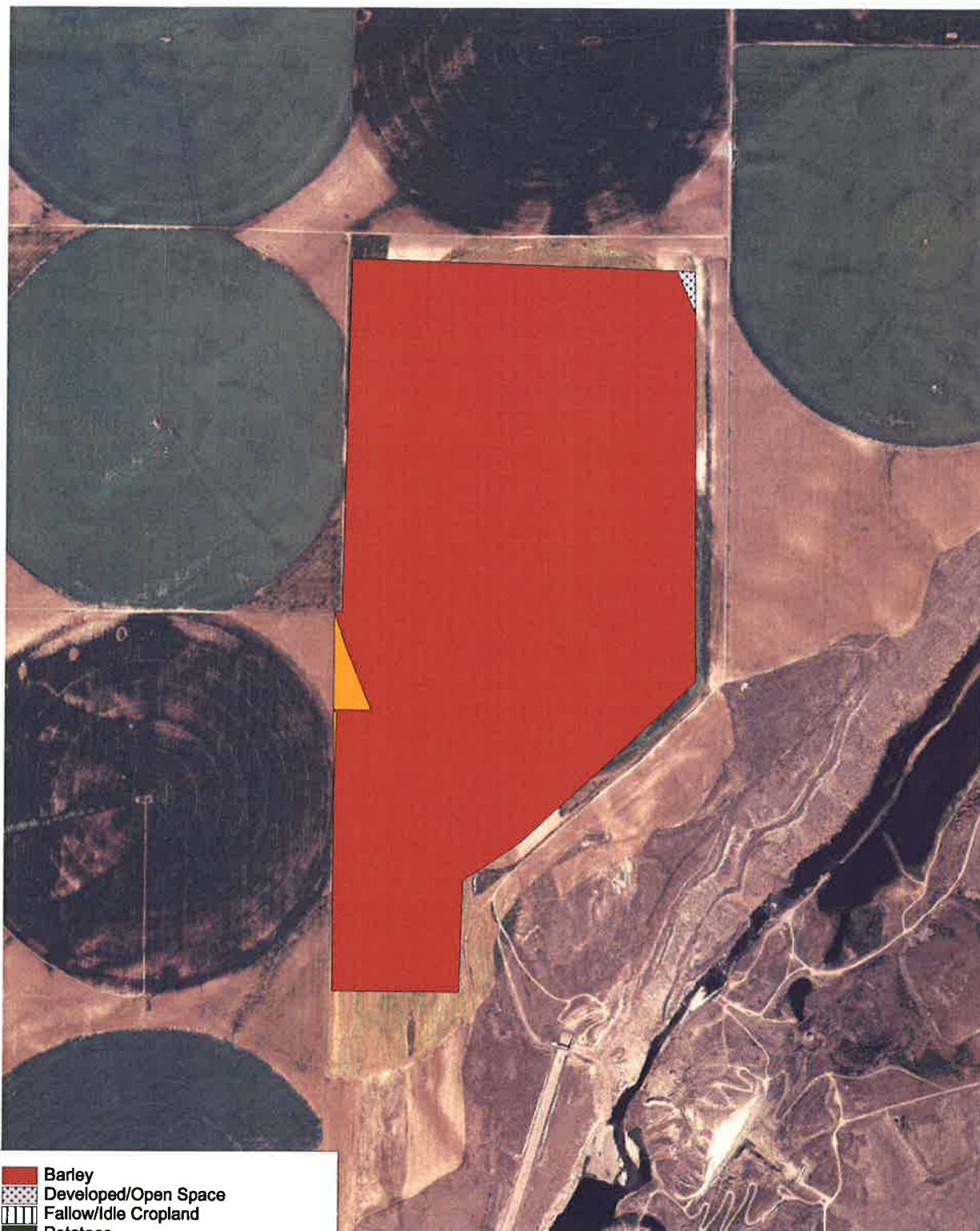


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Figure 2: 2007 Crop Mix

Consumptive Use Analysis

Project 17-0062



-  Barley
-  Developed/Open Space
-  Fallow/Idle Cropland
-  Potatoes
-  Spring Wheat



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Figure 3: 2008 Crop Mix

Consumptive Use Analysis

Project 17-0062



-  Barley
-  Developed/Open Space
-  Fallow/Idle Cropland
-  Potatoes
-  Spring Wheat



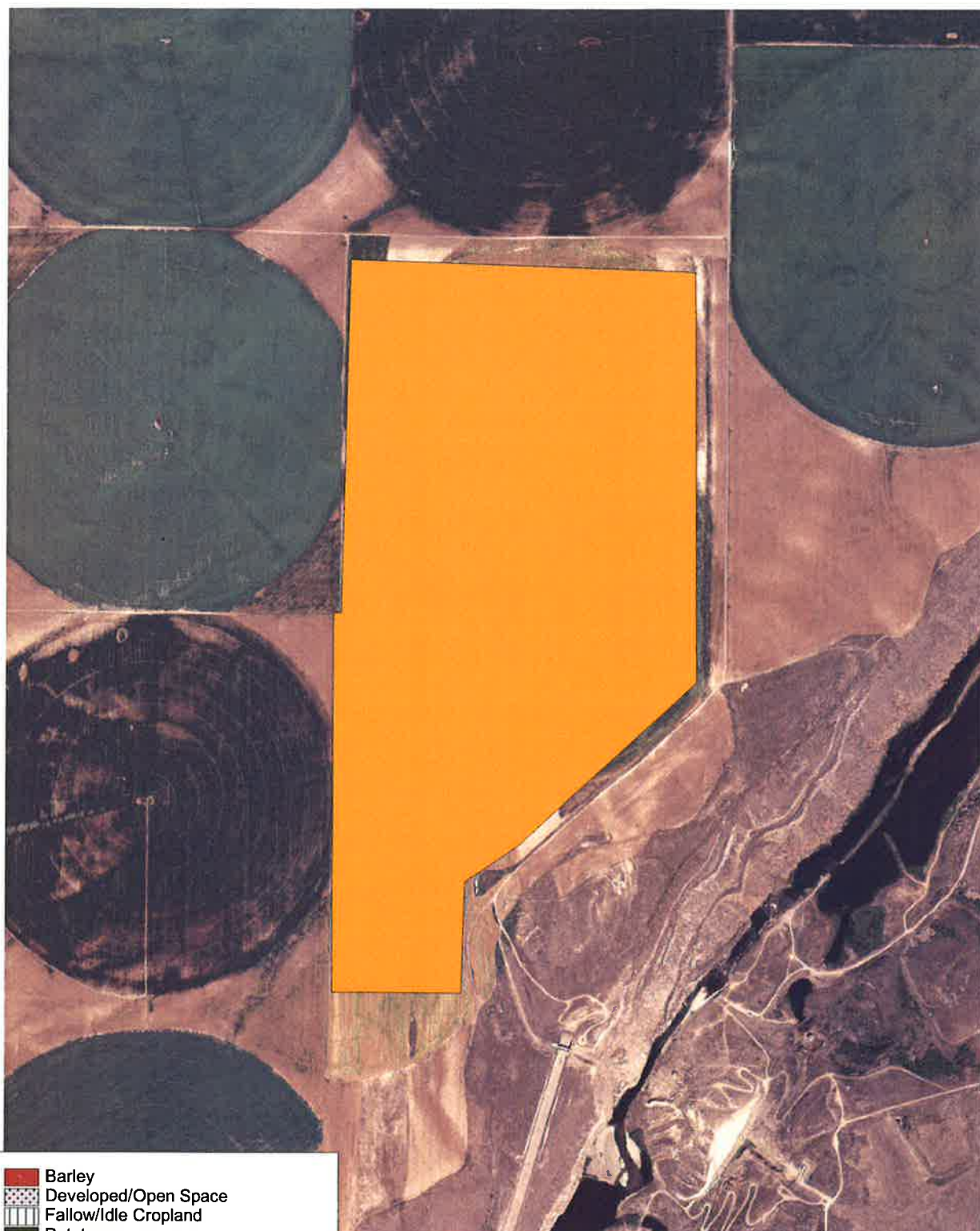
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Figure 4: 2009 Crop Mix

Consumptive Use Analysis

Project 17-0062



-  Barley
-  Developed/Open Space
-  Fallow/Idle Cropland
-  Potatoes
-  Spring Wheat

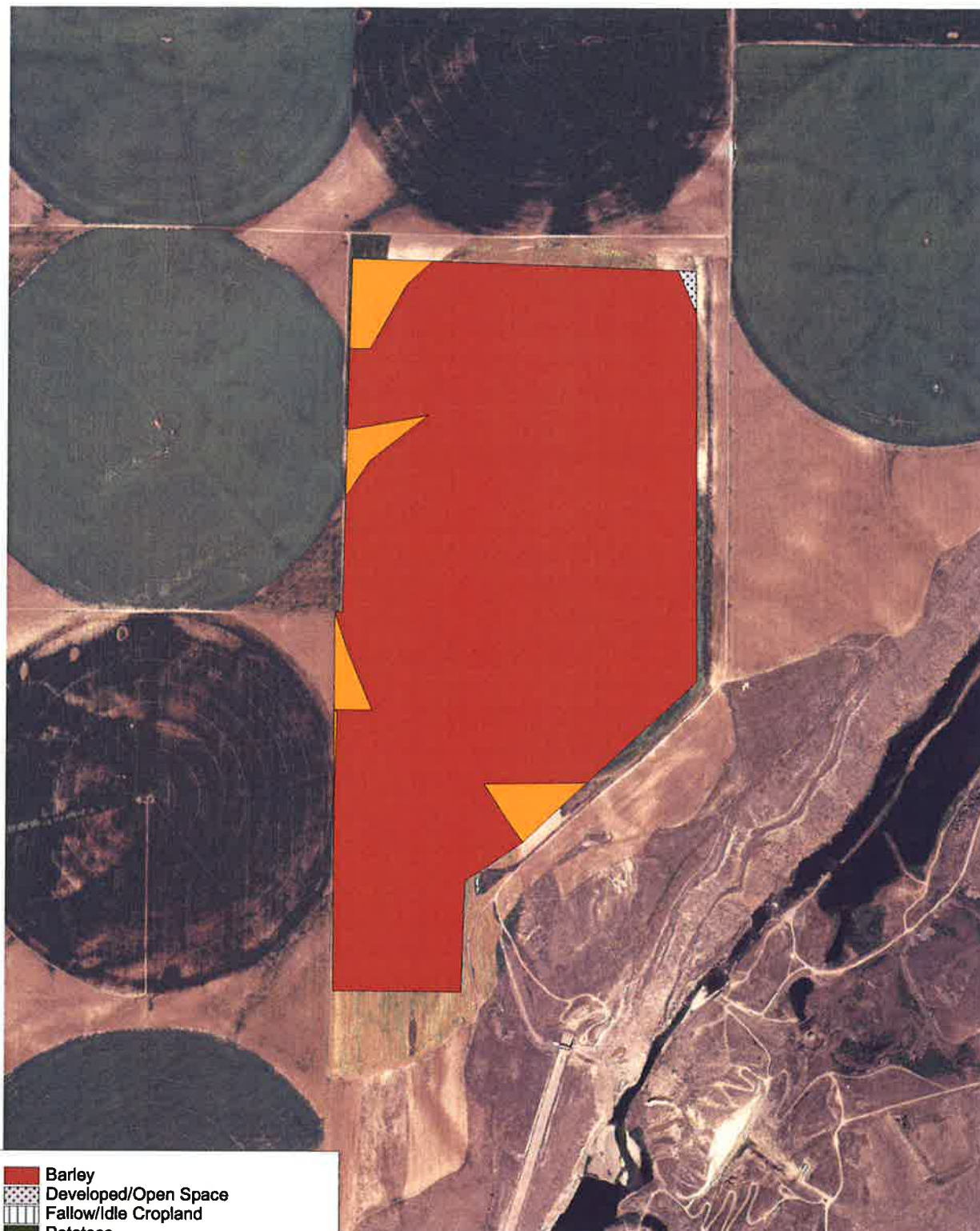


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Figure 5: 2010 Crop Mix

Consumptive Use Analysis

Project 17-0062



- Barley
- Developed/Open Space
- Fallow/Idle Cropland
- Potatoes
- Spring Wheat

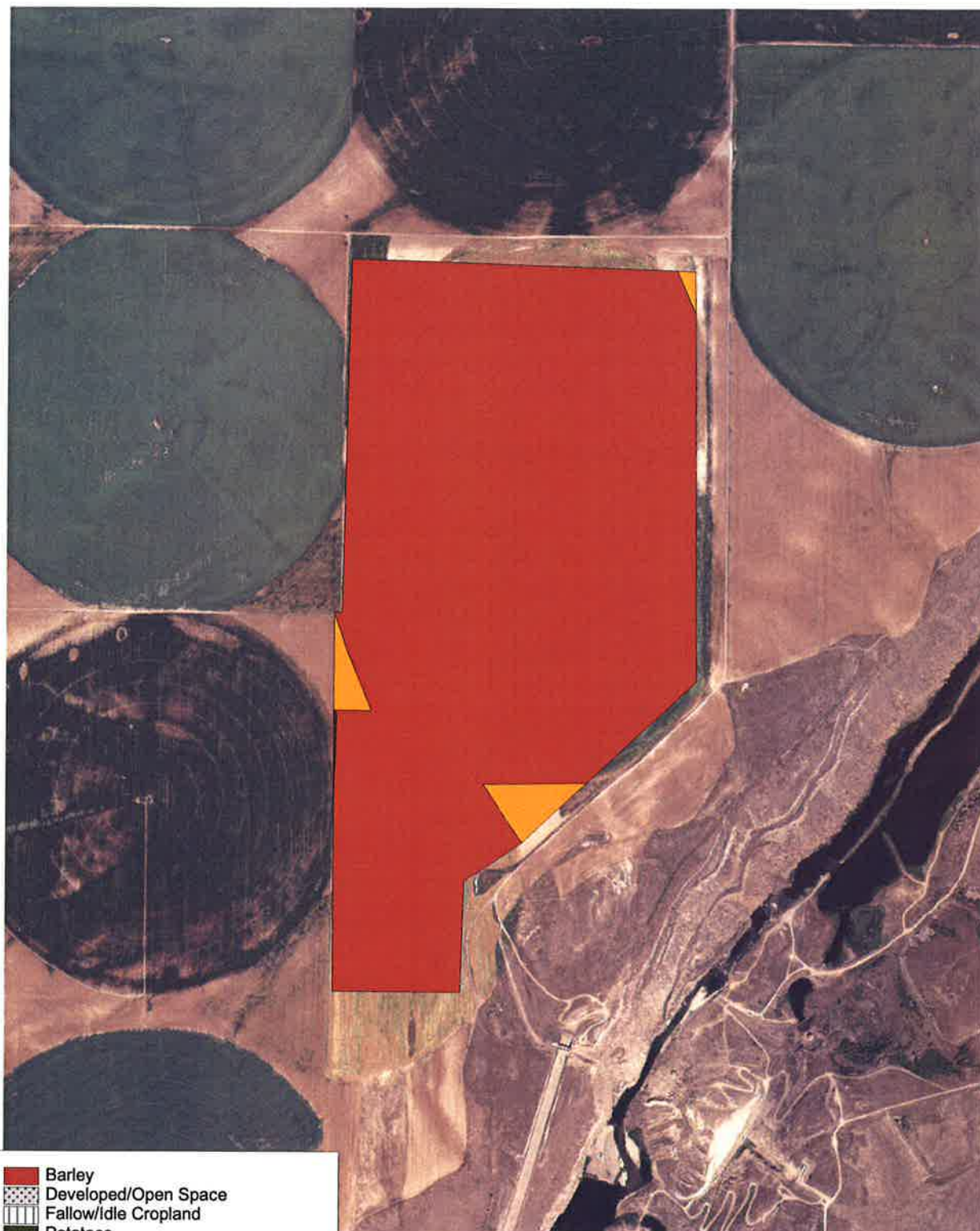


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Figure 6: 2012 Crop Mix

Consumptive Use Analysis

Project 17-0062



-  Barley
-  Developed/Open Space
-  Fallow/Idle Cropland
-  Potatoes
-  Spring Wheat



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Figure 7: 2013 Crop Mix

Consumptive Use Analysis

Project 17-0062



- Barley
- Developed/Open Space
- Fallow/Idle Cropland
- Potatoes
- Spring Wheat



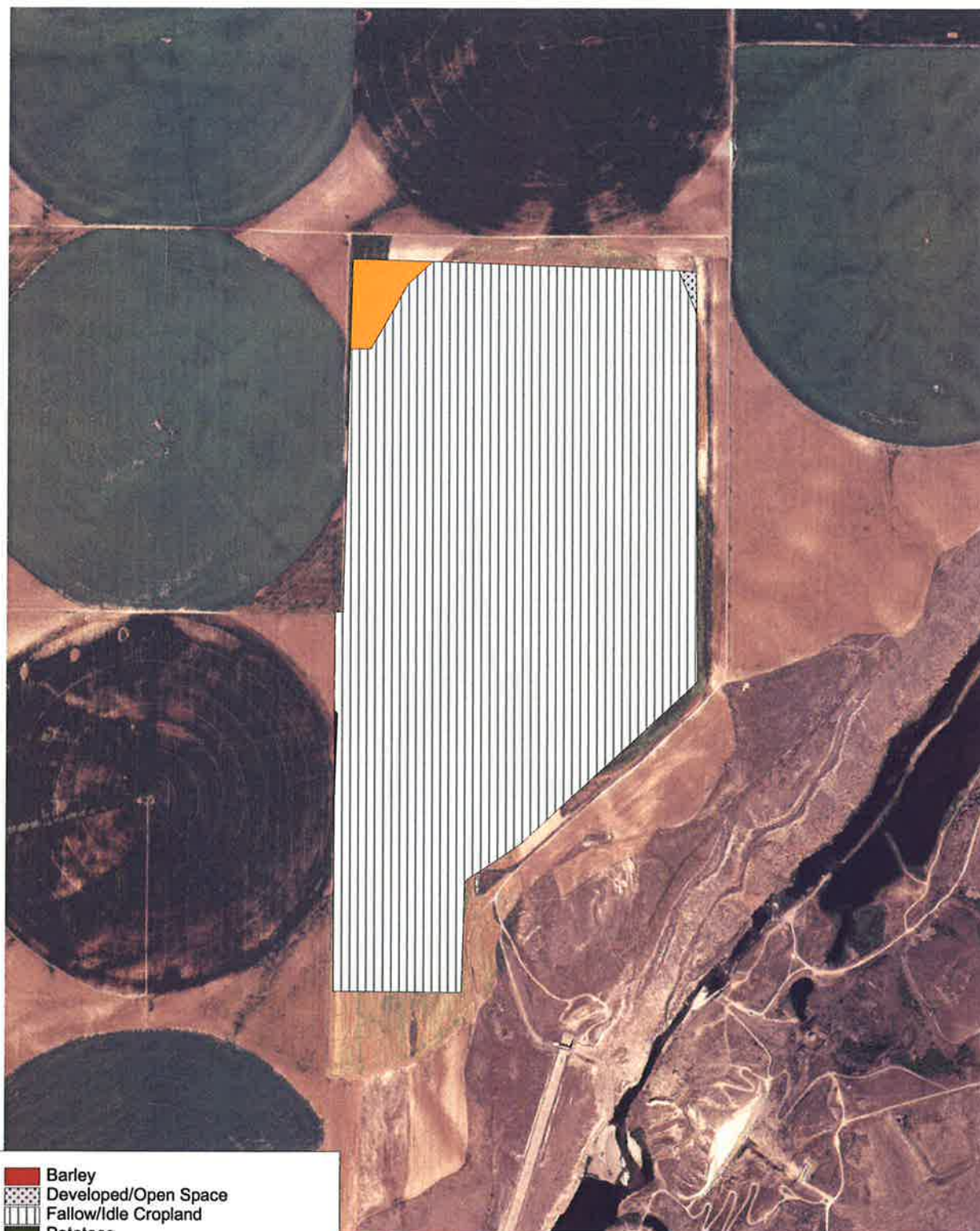
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ASSOCIATES, INC.

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208-524-2353

Figure 8: 2014 Crop Mix

Consumptive Use Analysis

Project 17-0062



-  Barley
-  Developed/Open Space
-  Fallow/Idle Cropland
-  Potatoes
-  Spring Wheat

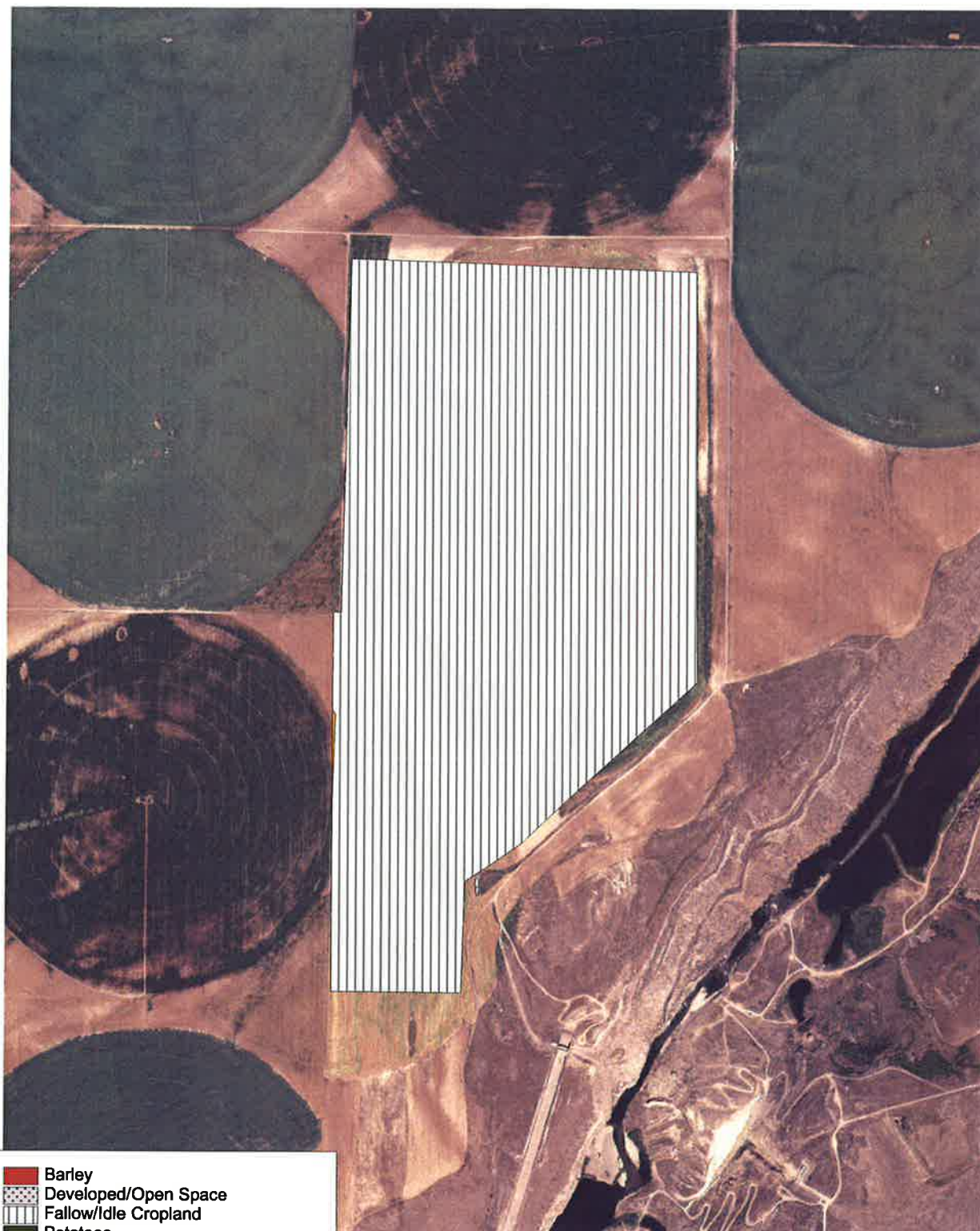


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Figure 9: 2015 Crop Mix

Consumptive Use Analysis

Project 17-0062



-  Barley
-  Developed/Open Space
-  Fallow/Idle Cropland
-  Potatoes
-  Spring Wheat



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Figure 10: 2016 Crop Mix

Consumptive Use Analysis

Project 17-0062