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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

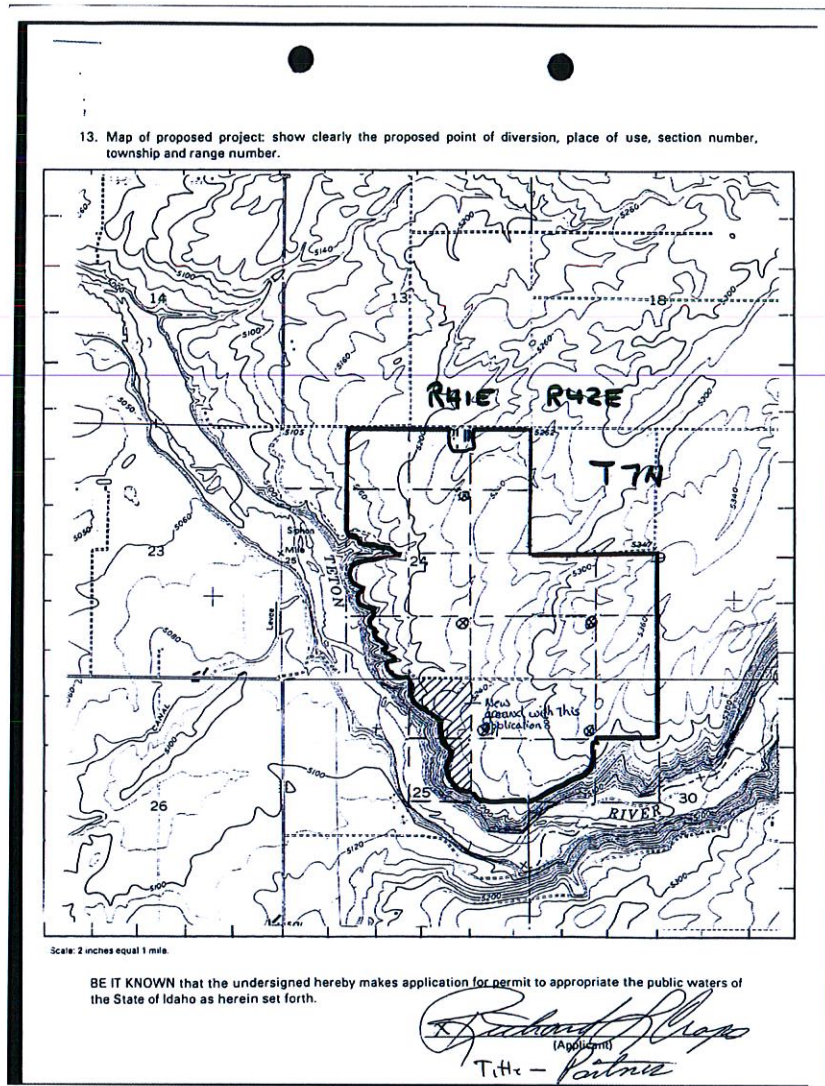
You have correctly identified that the property 22-7648 identified as its place of use is now owned by RGC Farms LLC, Juniper View LLC, Unit 2 LLC, Fromover 9 LLC, and the United States Bureau of Reclamation.

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).

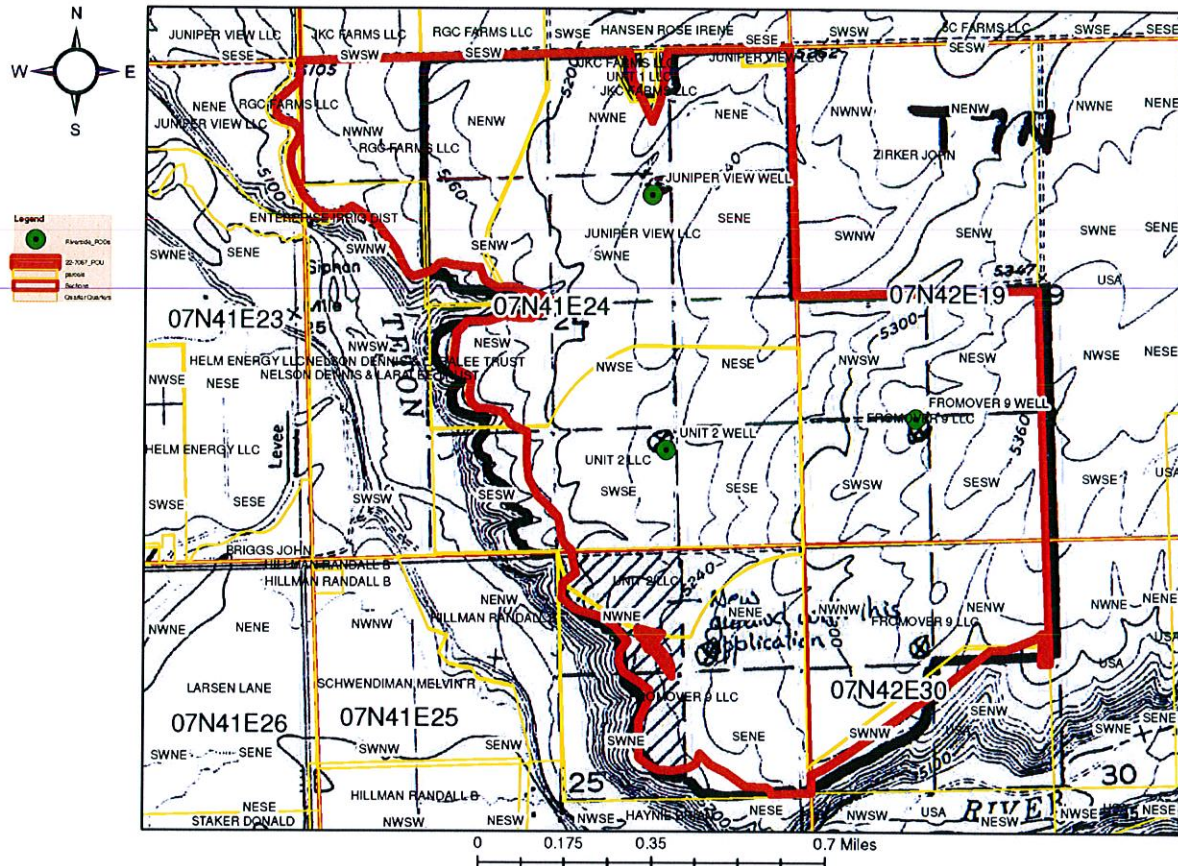
(2) Discrepancies between the proposed place of use and the place of use for existing water rights

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.

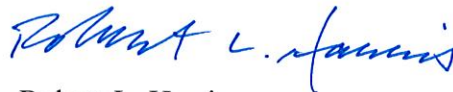
It appears that with an agreement from my clients to mitigate for 445 acre-feet, this should satisfy any injury concerns the Department has with issuing a permit for 22-7648. Additionally, I discussed with you the likelihood that my clients could obtain a legal entitlement to a close-by water right, 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.