



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 21, 2015

USDA NRCS
DOUG HIGBEE, P.E.
2208 EAST CHICAGO ST SUITE A
CALDWELL ID 83605-4496
doug.higbee@id.usda.gov

Re: Request IDWR written confirmation regarding water rights for Pigeon property wetland project

Dear Doug:

Over the course of the last year and a half, the Idaho Department of Water Resources (IDWR) received requests for information and guidance regarding water right matters as they relate to a proposed wetland restoration project on Kristy Pigeon and/or John Prudden property adjacent to the Bruneau River approximately four miles south of Bruneau. Yesterday (8/20/15) I met with you to discuss the information to date and the current project proposal. You requested a written response from IDWR summarizing the information IDWR has provided on this matter. I offer this letter as that written response.

Enclosed are copies of various correspondence from IDWR and the property owners documenting previous communications on this matter. The contents include water right related recommendations from five IDWR water right specialists (three Water Rights Supervisors, the Water Rights Section Manager, and the Water Allocation Bureau Chief) and is available online via a water right search of the property owners right 51-60. In an effort to memorialize their previous statements and address your concerns, I recommend you read the enclosed documents in conjunction with this letter and consider all thoughts offered to date on this matter.

Overall, if I had to summarize the sentiments of all previous correspondence, I'd offer a water right is not required for this wetland restoration project unless site modification causes impoundment (diversion) of water beyond what is naturally occurring in the wetland area. During our meeting yesterday, you indicated grade control structures to maintain existing water levels replaced water control structures and associated berms originally proposed for the project (4/7/15 email map attachment). It appears you are taking measures to ensure no additional water is impounded, thus water right authorization is not required.

I hope this response satisfies your information request. Please call me at 208-334-2190 if you have any questions.

Regards,

Angela M. Grimm
Water Rights Supervisor

Enclosures

Grimm, Angie

From: Higbee, Doug - NRCS, Caldwell, ID [Doug.Higbee@id.usda.gov]
Sent: Friday, August 07, 2015 12:47 PM
To: Grimm, Angie
Subject: RE: Kristy Pigeon Wetlands Restoration Project

Hello Angie,

I need to follow through again on this for a written response to things we discussed back in April. It's my task (for NRCS processing...) to follow up with this for our documentation, and I am quite late in doing so.

Can I meet with you Wednesday afternoon at your office next week?

Thank you.

Douglas Higbee
NRCS Civil Engineer
Caldwell, Idaho
208-454-8684, ext132

United States Department of Agriculture

-----Original Message-----

From: Higbee, Doug - NRCS, Caldwell, ID
Sent: Tuesday, April 14, 2015 2:40 PM
To: 'Grimm, Angie' <Angie.Grimm@idwr.idaho.gov>
Cc: Brown, Wade - NRCS, Boise, ID <Wade.Brown@id.usda.gov>; Peppersack, Jeff <Jeff.Peppersack@idwr.idaho.gov>; kristypigeon@cox.net
Subject: RE: Kristy Pigeon Wetlands Restoration Project

Thank you for the reply, Angie.

I understand your and Mr. Peppersack's conclusion about impounding water. It's not the intent of the NRCS to interpret water rights and use liberally, but to follow the direction of IDWR as the authority on water rights. So, whatever needs to be done with this to follow IDWR determinations/interpretations will be carried through by NRCS field staff.

The water source is a natural spring area, not the Bruneau River. Irrigation rights will be used for irrigation only. Irrigation rights from the Bruneau River will not be encumbered through the wetland easement. Irrigation rights will not be used to convert existing crop ground to wetlands. Wetland restoration will only be done on existing areas that area natural wetlands. Wetlands will be supplied and restored to function only with naturally occurring high ground water areas (that are wet) and the area along the spring. Water will not be diverted from the existing wetland/spring channel to supply other areas of the property. The property seasonally floods, which is a component of the existing wetlands.

I would like to pursue this project without the need of issuing a water right to impound water in the wetland areas, which is a restoration of an existing natural wetland. I think requesting a water right for the wetlands will give the impression that the intention of the NRCS wetland restoration is to change the function of the wetland areas. I will talk about this with NRCS staff and see if a restoration effort can be done without berms and such.

You've been very helpful. Thank you.

Doug Higbee

-----Original Message-----

From: Grimm, Angie [mailto:Angie.Grimm@idwr.idaho.gov]
Sent: Tuesday, April 14, 2015 2:09 PM
To: Higbee, Doug - NRCS, Caldwell, ID
Cc: Brown, Wade - NRCS, Boise, ID; Peppersack, Jeff; kristypigeon@cox.net
Subject: RE: Kristy Pigeon Wetlands Restoration Project

Doug,

Good morning! After reviewing the additional documentation provided with my manager (Jeff Peppersack), we've come to a slightly different conclusion than I previously discussed with you during our phone conversation with regard to this project. Based on the information provided, it appears the intention is to clean out vegetation as well as create berms, which will likely prevent water from flowing out of the natural wetland area. Construction of the berms and other proposed activities may provide for impoundment (diversion) of water beyond what is naturally occurring in the wetland area prior to site modification. The additional volume of water impounded (beyond that naturally occurring) would require water right authorization.

Additionally, after speaking with Wade Brown of the NRCS, it may be in your best interest to apply for water right authorization to establish a recorded priority date associated with the proposed wildlife beneficial use.

The proposed project area appears to already have at least three Bruneau River water rights associated with the land owned by Kristine Pigeon and John Prudden (51-60, 51-61 & 51-62) as well as some degree of surface water provided by the Hot Springs Ditch Company for irrigation. Attached is a letter (2_7_2014_LtrToKristyPigeon) on file sent to Kristy Pigeon about water rights in the Water Supply Bank as well as information responding to her initial inquiry regarding a possible nature of use change for water rights for the proposed wetland project. This letter is an excellent source for background information on what type of filing(s) need to be made to complete a nature of use transfer IF the Bruneau River is the source of water for the wetland project.

If the source of the wetland project water is NOT the Bruneau River, but rather a spring as Mr. Brown indicated is possible, a nature of use transfer application may not be the correct filing to seek water right authorization for this project. Additional information is necessary (confirmation of water source & quantity that may be impounded beyond that naturally occurring) before I can advise you further in this matter. Once the water source is confirmed and the use quantified, perhaps the next step would be to set up a meeting to discuss the proper course of action to pursue. I hope this information is helpful. I look forward to working with you further on this matter.

Regards,
Angie

Angela M. Grimm, P.G.
Water Rights Supervisor
IDWR - Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190 phone
(208) 334-2348 fax

-----Original Message-----

From: Higbee, Doug - NRCS, Caldwell, ID [mailto:Doug.Higbee@id.usda.gov]
Sent: Tuesday, April 07, 2015 9:59 AM
To: Grimm, Angie
Cc: Traylor, Kevin - NRCS, Nezperce, ID
Subject: Kristy Pigeon Wetlands Restoration Project

Good morning Angie

Attached to this e-mail is a 11" x 17" formatted map that explains the project we discussed on the phone last Friday. The question I posed to you dealt with an assessment for the need of water rights with our restoration efforts. The "berms" and "water control structures" planned are intended only to support existing wetland hydrology (not intended to impound more water and create new ponds). Since the construction of these items is only for the purpose of maintaining existing natural habitat, it is my interpretation that water rights are not needed. It is important I point out that if the water elevation of the naturally occurring wetlands were to be effectively increased there will be a negative impact on fields just east of the wetland. These fields also need to be properly maintained as areas to produce annual wildlife food crops. It is the intent of the NRCS to sustain the functionality of these wetlands through a perpetual wildlife easement. The "Notes" section just to the right of the map includes specific descriptors that you may find helpful in your review.

Please let me know if you have any questions. Thank you very much.

Douglas Higbee
Civil Engineer
Caldwell, Idaho
208-454-8684, ext132



Scale in Feet

0 600 1,200



Project Area

Notes:

- THIS IS NOT A DESIGN
- Property Location: Sections 5 and 8 of Township 7S, Range 6E, B.M.
- Each berm will require an estimated 500 cu.yds. of compacted fill material; approx. 20 ft. of 18" dia. CMP culvert w/canal gate or weir structure for control, and seeding application. Berm dimensions are estimated at:
 - length = 120 ft
 - top width = 8 ft
 - side slopes = 3H horizontal to 1V vertical
 - minimum freeboard = 1 ft
 - maximum height = 6 ft
- The intent of installing the berms and structures is not to increase the effective area of the wetlands, but to ensure that the existing conditions and wetland hydrology can be maintained long-term.
- Berms and control structures are part of a restoration effort to support a perpetual easement to benefit wetland and wildlife habitat.
- The berms and structures will be used to help regulate water elevations by about 1 foot or so during seasonal spring flow fluctuations. They are critical to the restoration of this wetland and ensure that periodic clearing of bullrush and cattail overgrowth does not adversely effect wetland hydrology.
- A total of 3 berms and structures are shown on this map.
- All items shown should be included under contract items for ID NRCS Practice Code 657, *Wetland Restoration*.
- The project boundary shown is an estimate of the final easement boundary.



Planning Map, Ortho View
Bruneau River Range (Kristy Pigeon)
Wetland Restoration Project
Bruneau River SWCD, WRP

Designed DRH 04/07/15
Drawn DRH 04/07/15
Checked
Approved
Title

SCANNED
AUG 21 2015



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor

GARY SPACKMAN, Director

June 19, 2014

KRISTY PIGEON & JOHN PRUDDEN
109 GREENHORN RD
HAILEY ID 83333

Re: Water Right Nos. 51-60, 51-61 and 51-62

Dear Kristy and John:

Your June 2, 2014, letter following our meeting shortly before that requested a reply from the Idaho Department of Water Resources (IDWR). Based on that good meeting and your letter, there is no need to modify your existing water rights and/or obtain additional water right approval under the following assumptions.

- Your above referenced rights are partially or completely removed from the Water Supply Bank (WSB).
- You exercise the portion of those rights removed from the WSB in conformance with the water rights. This means no change in diversion point, amount of water, type of use, period of use and place of use.
- You do not impound water diverted under your rights in a pond, wetland or other containment where the intent is a beneficial use not authorized by your rights.
- You do not impound water diverted under your rights in a regulation pond to enhance your authorized irrigation and/or stockwater uses unless the regulation pond can be filled to capacity within 24 hours by your authorized rate of flow. (Regulation ponds are sometimes used to improve irrigation operations where it is "water in/water out" in a 24 hour period during the irrigation season, an act considered part of the natural flow right instead of storage needing additional approval.)
- Finally, any irrigation under your rights should also include use of your available shares from the Hot Springs Ditch Company.

Your letter references a stockwater right from a spring and conveying your irrigation rights through the spring. That sounds odd at first glance but makes more sense in checking 51-13068, a "notice of instream stockwater diversion." That notice is unorthodox but explains how a "spring" can convey water through an unnamed stream resembling a ditch on your property. ("Notice 51-13069" is something similar just northwest of land under 51-60 through 51-62.)

Conveying your irrigation water in this manner after it has been diverted from the river should not need additional IDWR approval since (a) it only conveys authorized irrigation water to its place of use, and (b) you are not seeking more water for additional irrigation or stockwater uses.

Kristy Pigeon & John Prudden

June 19, 2014

Page 2

You would need more water right approval if your uses were outside of the parameters discussed in this letter. I hope this answers all your questions. Please let me know if you need more information in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with a large initial "S" and a distinct "L" at the end.

Steve Lester

Water Rights Supervisor

RECEIVED

JUN 04 2014

WATER RESOURCES
WESTERN REGION

Kristy Pigeon
John Prudden
109 Greenhorn Road
Hailey, Idaho 83333

June 2, 2014

Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Dear Steve:

Thank you for meeting with us last week in reference to water issues concerning our Wetland Reserve Project and field irrigation.

In discussion of the use of our Bruneau River rights #51-60, #51-61 and #51-62 you stated that an allowable use would be for irrigation of a field of approximately 6 acres, 2 acres in T7R6 Sec 8 NWNE and 4 acres in T7R6 Sec 5 SWSE. (See *enclosed map*). This water could be conveyed from the diversion point through an existing spring that flows within the place of use. In addition, our stockwater right from the spring could also be utilized during grazing periods.

We understand that any acres within the place of use under irrigation would be subtracted from rights placed in the water bank.

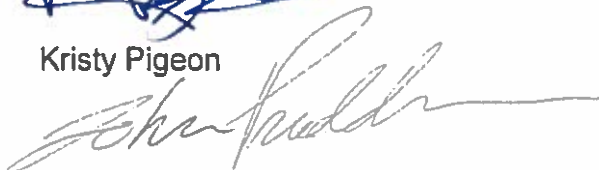
It would be greatly appreciated if you could send us your determination of our discussion pertaining to the above for our records.

Thanks again for your assistance.

Cordially,



Kristy Pigeon



John Prudden



Idaho Department of Water Resources

Water Right
51-60

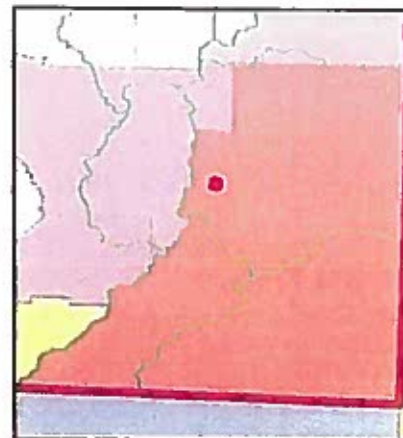
(IRRIGATION)

Point of Diversion

- Place of Use
- State Outline
- Townships
- PLS Sections
- Quarter Quarters
- Taxlots

X AREA TO BE IRRIGATED

51-60 } SAME PUB, DON
51-61
51-62



Owyhee County
IDWR Basin 51

Prepared by Lester, Steve
On May 30, 2014
2009 Aerial Photography

06E



0 0.15 0.3 0.6 Miles

Owner: John Prudden

NOTE: Only one owner is listed. There may or may not be more than this in the IDWR database.

Between Butte and P. H. Co.
P.O. EAST OF RIVER
in HOT SPINGS Ditch co.
P.O.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor

GARY SPACKMAN, Director

May 13, 2014

MATHER CAPITAL CORP ET AL
109 GREENHORN RD
HAILEY ID 83333

Re: Application for Transfer, Water Right No. 51-60

Dear Applicants:

Your application for transfer is returned because it is not acceptable as filed. It is incomplete, inaccurate and lacks the required application fee. Some but not all the application deficiencies are provided below. Due to the water right complexity to change Bruneau River irrigation rights for a wildlife project, you most likely need to seek help from a consultant with sufficient water right experience in this regard. A consultant list is enclosed for your convenience.

Some Application Deficiencies

- 1) Application Form ~ Page 1 of the form (checklist) is missing. An application printed on the back of already used and marked up paper, while commendable recycling, is not considered a department form. Page 3 is incomplete and inaccurate. Page 5 is not correct. Copies of water rights 51-61 and 51-62 are not included (see next item).
 - 2) Water Rights ~ Your 90 acres are irrigated by rights 51-60, 51-61 and 51-62 in addition to multiple rights held by the Hot Springs Ditch Company. Your three rights need to be part of the transfer. If the irrigated land to be retired has included the use of ditch company water (about 1/3 of your land?), the ditch company must be involved in the project by filing its own separate application for a similar change in use.
 - 3) Beneficial Uses and Period of Use ~ The proposed change in use is incompletely and inaccurately listed on page 3 of the application. For wildlife use, total rate of flow ("diversion to storage") and total acre feet of storage required ("wildlife storage," equals pond capacity plus refill/evaporation losses) should be listed. Increasing a surface water irrigation right period of use is presumed to be an enlargement of use and not approvable. Diversion from the river under these rights must be limited to the irrigation season. Diversion from the river in the non-irrigation season would require a new water right (Application for Permit).
- Application page 3 lacks a place of use description for the remaining irrigated acres, wildlife project land and stockwater use.
- 4) Application Fee ~ transferring your three rights totaling 1.60 cfs requires \$580. Also, changing the nature of use requires an additional \$250. The total fee is \$830 instead of \$450 you paid.

Mather Capital Corp et al
May 13, 2014
Page 2

Please file an acceptable transfer application if you wish to proceed. A full refund will be issued if you do not file an application by July 1, 2014. Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with the first name "Steve" written in a large, stylized "S" and the last name "Lester" written in a more standard cursive script.

Steve Lester
Water Rights Supervisor

Enclosure: Original Application for Transfer
 Consultant List



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

February 7, 2014

KRISTY PIGEON
109 GREENHORN RD
HAILEY ID 83333

RE: Wetland Project & Rights 51-60, 51-61 & 51-62

Dear Kristy:

I am writing in response to your 02-03-2014 letter inquiring into a possible transfer of the rights referenced above as part of a wetland development plan. I have briefly reviewed these rights and find when combined they authorize a diversion of 1.60 cfs from the Bruneau River for irrigation of 91.1 acres and small stockwater use. All of these rights are currently leased to the Idaho Water Resource Water Supply Bank (WSB) in their entirety and the acres identified as the place of use shown on the enclosed map should not be irrigated. The lease term was from 2009 thru 2014.

It appears from the map you submitted with your letter that about 30 acres have been irrigated using shares of water from the Hot Springs Ditch Company (HSDC). The rights include a note that they are combined with water from HSDC. If these acres continue to be irrigated, you should apply for the rights to be released from the WSB or submit a new Application to Lease Water Rights to the Water Supply Bank identifying the portion that will not be irrigated. Fortunately, no enlargement of use has occurred during this lease since the rights have not been rented for use at another location.

Please advise us rather you want to release the rights or submit a new lease proposal using forms found on our website at

<http://www.idwr.idaho.gov/RulesStatutesForms/WaterRights/WaterRightForms>.

You may want to revise your lease proposal based on the portion of the irrigated acres remaining that are not used within your wetland project or irrigation with canal water. If the rights are released from the WSB they are not protected from forfeiture.

Your questions about using some portion of these rights to restore a wetland to your property would require an Application for Transfer (also found on our website) to change the nature of use of the portion of the rights necessary to meet your plans needs. The elements of a right are defined when licensed or decreed according to the authorized use of the rights. As I noted these rights are for irrigation of a common 91.1 acres and a portion of all three rights are associated with each acre. To evaluate a change in nature of use from irrigation to wildlife, aesthetic or other use we evaluate the historical consumptive use of the irrigated acres based on crop type.

In general, the standard diversion volume for this area is 4.0 af/acre and the consumptive use value is 3.0 af/acre. This is a general guide. The actual consumptive use is usually something less than the maximum standard. You can read more about change in nature of use requirements on page 29 in Transfer Processing Memo #24 at <http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/policy-memos.htm> . We have a lot of information to assist our customers with the transfer process at this location. We will also be happy to answer any questions you may have after reviewing the information.

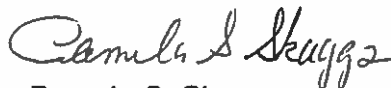
Basically you need to decide on a specific plan for the wetland to determine how much water you need from the irrigation rights to make the wetland system work properly. Once you know that, you can determine the number of irrigated acres that will need to be permanently retired based on the historical consumptive use of water that will be changed to the to the new use. This is a complex process and you may want to have a private consultant assist you.

The transfer process begins when the completed transfer application is submitted to our Western Region office for processing. The proposal will be reviewed and you may be asked for additional information if we have questions. Once review is completed, the application is advertised in the local paper to provide public notice. If there are no protests to the proposed change, the application will move forward to a final determination. If the application is protested, those must be resolved first.

Please advise us regarding the status of the rights related to the Water Supply Bank lease agreement within 14 days of this letter or we will terminate the lease and release the rights from the bank.

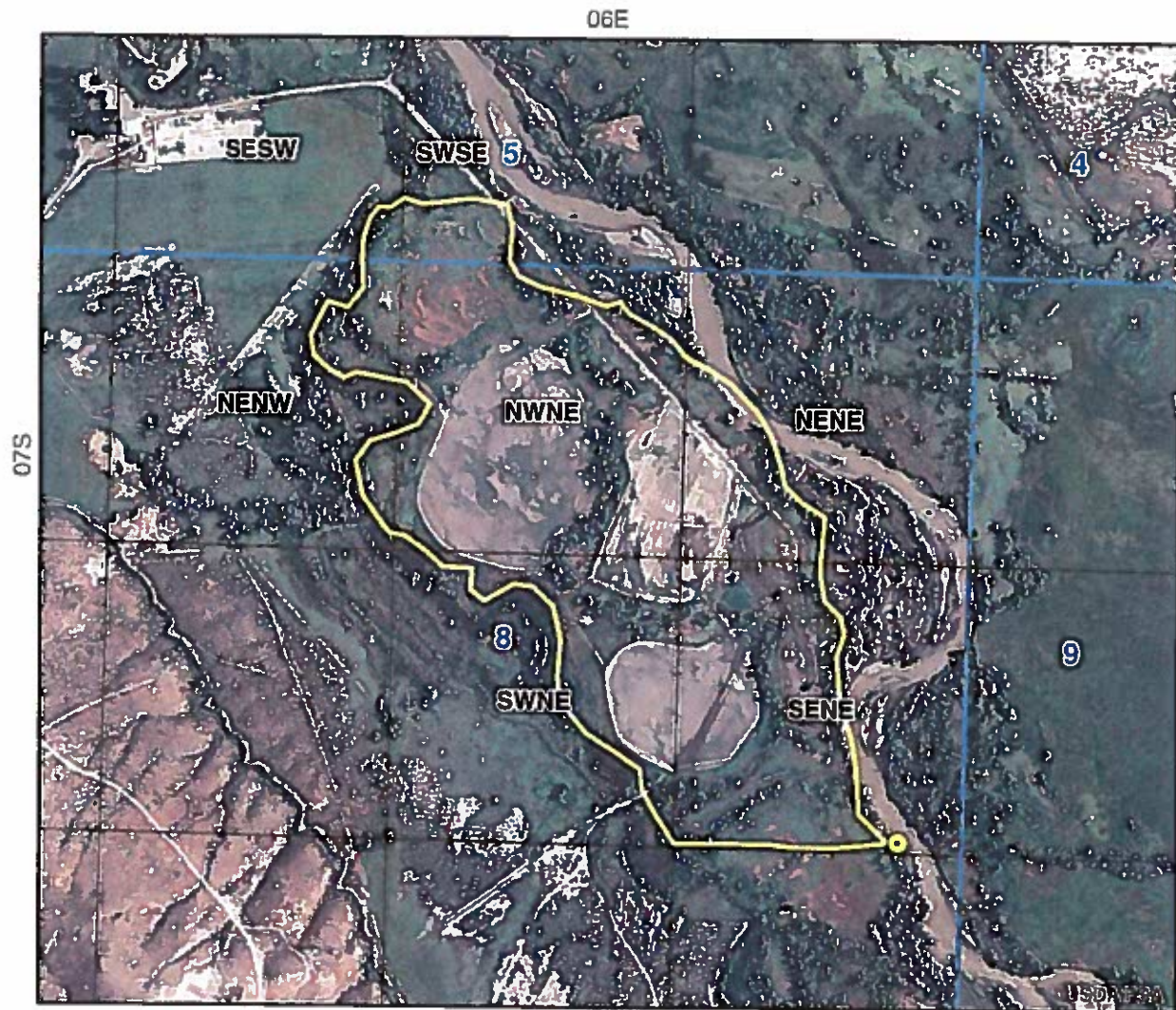
If you require additional information regarding this matter, please call me directly at (208) 287-4951, e-mail me at pam.skaggs@idwr.idaho.gov or contact me by mail, and I will be happy to assist you.

Sincerely,



Pamela S. Skaggs
Water Rights Supervisor

State of Idaho
Department of Water Resources
Water Rights 51-60, 51-61 & 51-62
Place of Use



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.1 0.2 0.4 Miles



Keen, Shelley

From: Keen, Shelley
Sent: Wednesday, February 05, 2014 4:17 PM
To: 'kristypigeon@cox.net'
Subject: Wetland Reserve Project

Kristy,

I just wanted to let you know that I received your letter about your Wetland Reserve Project. From your description, I think it is likely you will need to file an application for transfer to change some or all of your irrigation water rights to wildlife use. We will respond to you in more detail soon.

Sincerely,

Shelley Keen
Idaho Department of Water Resources
Shelley.Keen@idwr.idaho.gov
208-287-4947

Kristy Pigeon
109 Greenhorn Road
Hailey, Idaho 83333

RECEIVED
FEB 05 2014
DEPARTMENT OF
WATER RESOURCES

February 3, 2014

Shelley Keen
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

Dear Shelley,

Thanks for speaking with me today about my Wetland Reserve Project. Enclosed please find a map showing the area of concern.

Currently the spring area outlined on the map is choked with Russian Olive trees, (now considered an invasive species), and bulrush rendering it of minimal use to wildlife. There are numerous seeps and a few existing ponds along the spring. The objective of the project would be to remove invasive species and restore the wetland for the benefit of wildlife. We would like to allocate a portion of our Bruneau River water right, (#51-60, #51-61 and #51-62), for use to enhance the flow through the system. In addition, the restoration work would include a means to irrigate the 5.97 acre field circled in green on the map. Please note that the fields circled in blue are irrigated with our water right out of the Hot Creek Ditch. After the WRP is complete livestock grazing would continue to be an allowable use.

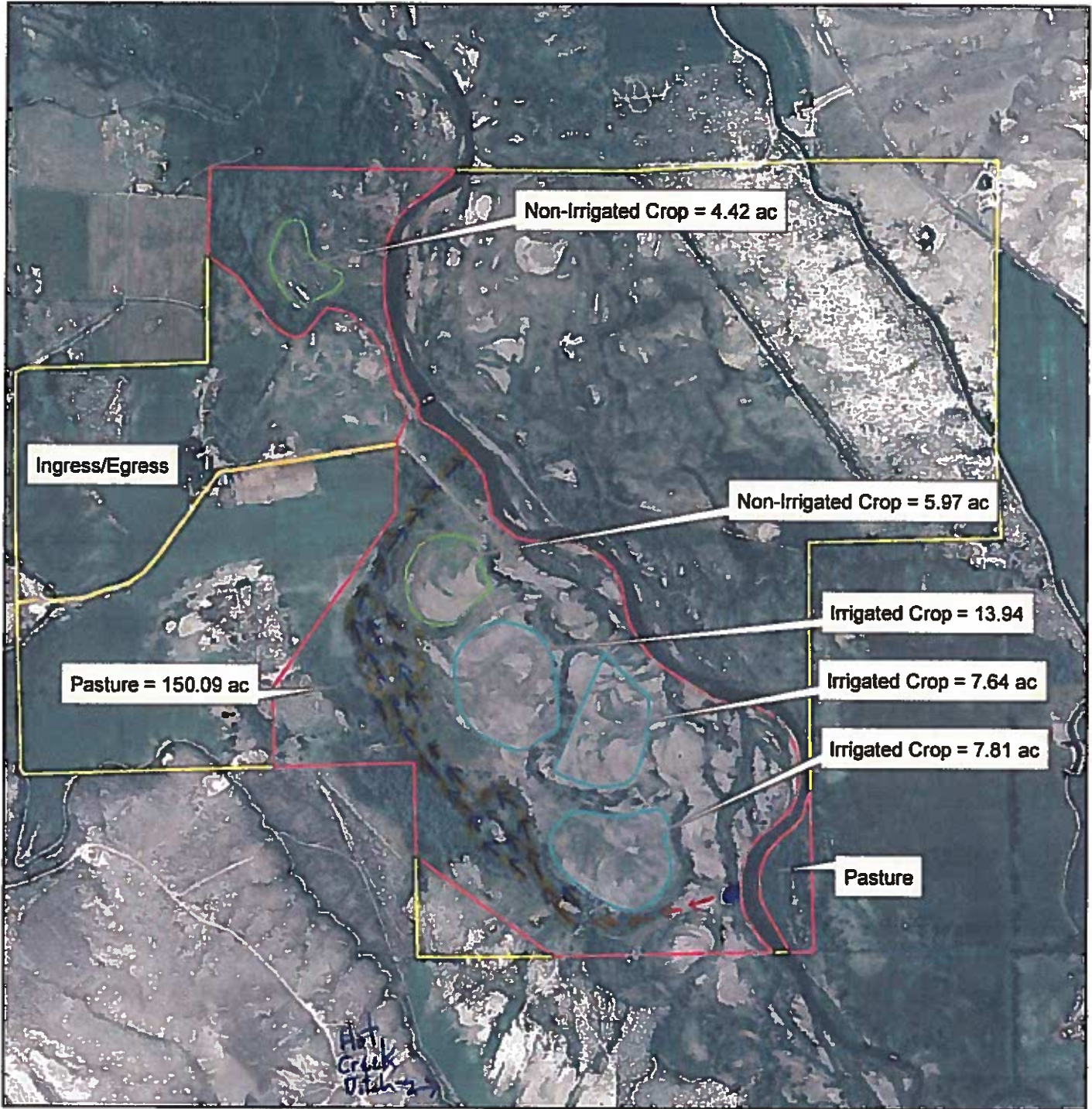
Wade Brown, Natural Resource Conservation Service, would like to meet with the IDWR to discuss this project. Your thoughts would be greatly appreciated.

With kindest regards,



Kristy Pigeon
kristypigeon@cox.net
208-788-9636

BRR Proposed WRP Acres



Legend

Brunneau River Ranch_WRP_Boundary CALCACRES

- Non-Irrigated Crop = 10.39 Total Ac.
- Irrigated Crop = 29.39 Total Ac.
- Tract
- WRP = 189.93 Total Ac. Pasture Land = 150.09 Total Ac.

→→→ Spring to be restored

● site of existing diesel pump used historically for irrigating w/ water right 51-60, 51-61, 51-62

→→→ historic ditch from pump

