



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 22, 2015

Big Sky Dairy
PO Box 407
Jerome, ID 83338

Re: Ground Water Right 51-10046 - Expansion Ground Water Right in the Blue Gulch Critical Ground Water Area; Use of Ground Water not in Conformance with Authorized Ground Water Rights

Dear Gentlemen:

Water rights records on file at the Idaho Department of Water Resources ("Department" or "IDWR") indicate that Big Sky Dairy ("BSD") is the owner of the above referenced ground water right which was claimed and decreed in the Snake River Basin Adjudication ("SRBA") as an expansion right pursuant to Idaho Code § 42-1416B. An expansion right represents an expanded use of a ground water right located within a Critical Ground Water Area ("CGWA"), where the expanded use occurred after the designation of the CGWA and in violation of mandatory permit requirements. Right 51-10046 is located within the Blue Gulch CGWA and it is the only ground water expansion right in the Blue Gulch CGWA.

Idaho Code § 42-1416B requires expansion rights to be curtailed "unless the director of the Department finds that a management program exists which will, within a time period acceptable to the director, limit the average annual water withdrawals from the aquifer designated in the critical ground water area to no more than the average annual recharge to the aquifer." The director must determine whether an adequate management program exists within two years after the completion of the SRBA. The SRBA was formerly completed on August 25, 2014, through the issuance of a final unifying decree by the SRBA District Court.

Right 51-10046, authorizing irrigation of 61 acres, is an expansion of ground water right 51-2188, which is limited to 217 acres. The two rights together are limited to a combined total of 278 acres within the place of use shown on the attached map. You will note from inspection of the attached map that the actual irrigated place of use does not conform to the authorized place of use described by the rights 51-10046 and 51-2188.

Department staff also reviewed other ground water rights that BSD owns nearby and within the Blue Gulch CGWA. Review of those other rights also shows that the irrigated places of use do not conform to the authorized water rights places of use. These other water rights and irrigated areas are also shown on the attached map. Also enclosed with this letter is a Staff Memorandum describing all of BSD's water rights and irrigated acres within the Blue Gulch CGWA. You will note from review of this memo that staff concluded that the total irrigated acres by BSD is within the total number of acres authorized by your rights. Staff recommended that water right transfers be filed to correct the place of use discrepancies and

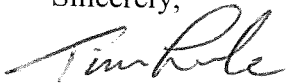
that BSD visit with IDWR concerning expansion right 51-10046 and the requirements of Idaho Code § 42-1416B .

The purpose of this letter is to notify you of the requirements of Idaho Code § 42-1416B and the fact that you are irrigating lands that may not be in conformance with your water rights. The Department may curtail the use of water under water right 51-10046 starting in 2017 in accordance with Idaho Code § 42-1416B. However, curtailment may not be necessary if you file the appropriate water right transfers and limit your total irrigated acres to avoid use of expansion right 51-10046.

The Department asks that you contact IDWR within 30 days of receipt of this notice to discuss the concerns outlined in this letter and begin the process of correcting your water rights and addressing a course of action to address any future use of expansion right 51-10046.

Please contact either Tim Luke or Rob Whitney at the IDWR State office (office listed in this letterhead), or Angie Grimm at the IDWR Western Regional office in Boise (334-2190). Staff in our regional office in Twin Falls may also be able to assist you but any water right transfer application filed with IDWR will be processed at our Western Regional office.

Sincerely,



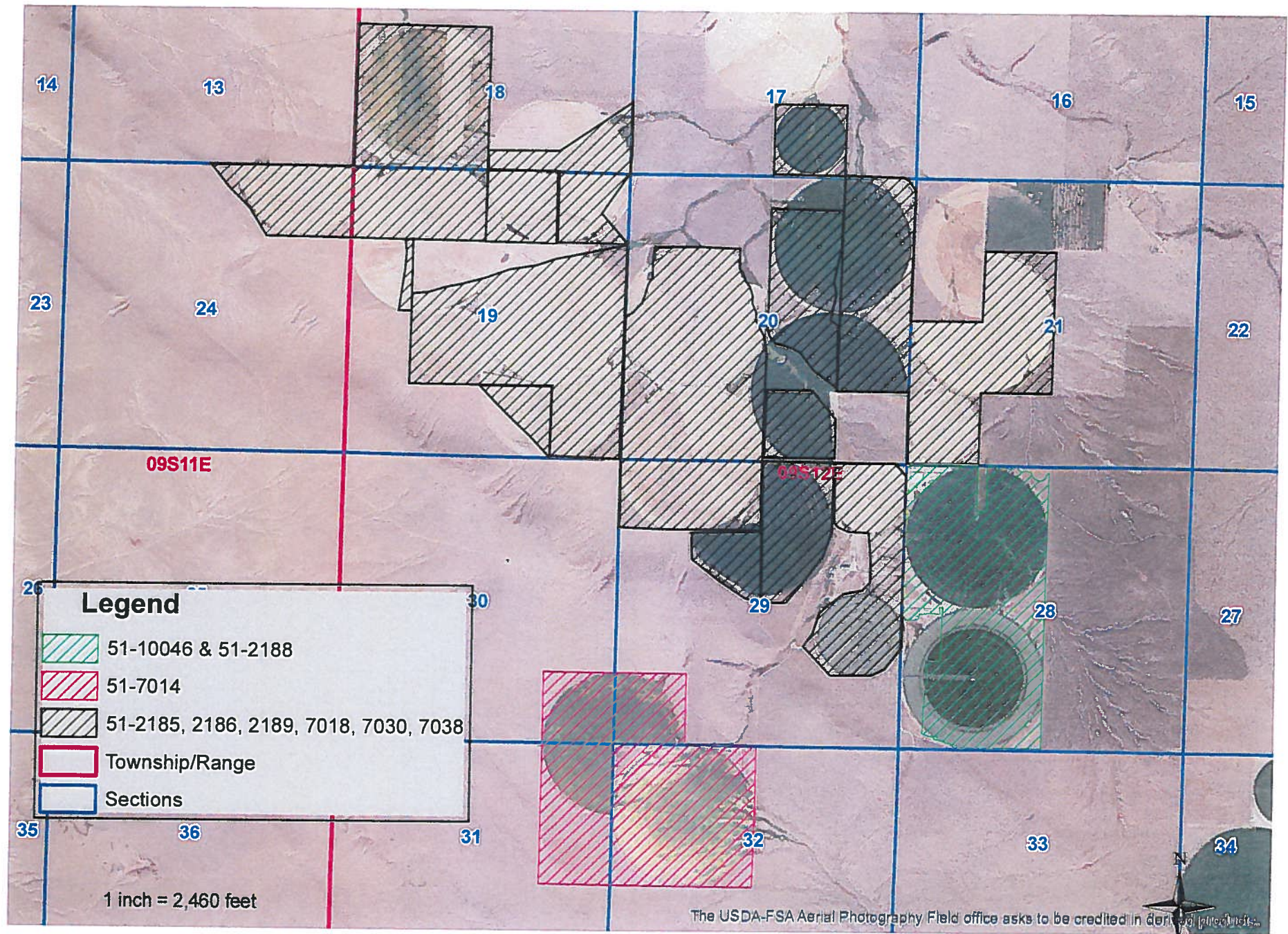
Tim Luke

Water Compliance Bureau Chief

Encl: Map of BSD Ground Water Rights and Irrigated Areas
IDWR Staff Memorandum, December 11, 2014

- c. Angie Grimm, IDWR Western Region Office
- Rob Whintey, Water Compliance Coordinator, IDWR
- Allen Merritt, IDWR Southern Region Manager

Big Sky Dairy - Blue Gulch CGWA



MEMORANDUM

TO: Rob Whitney & Tim Luke

FROM: Angie Grimm 

DATE: December 11, 2014

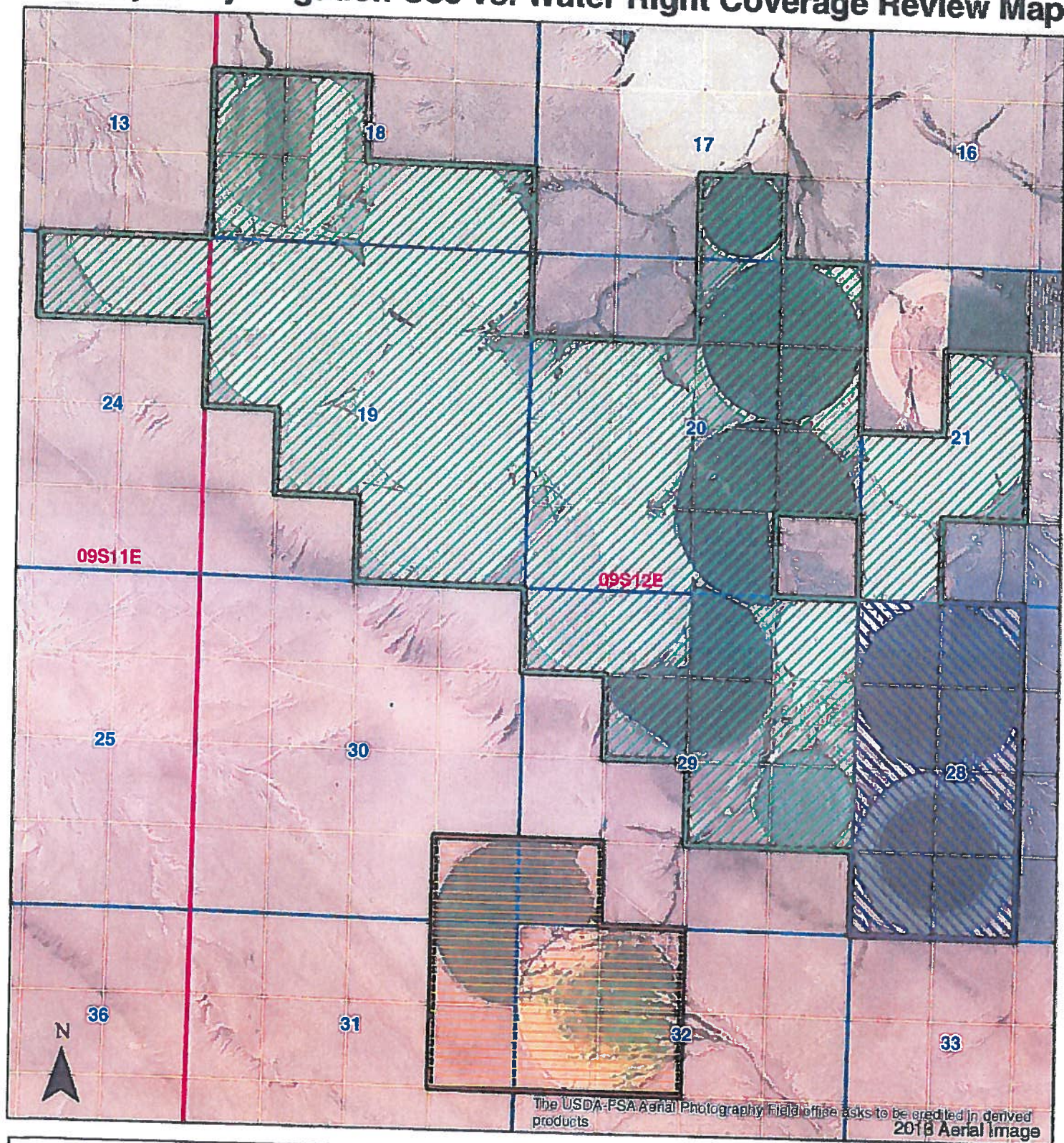
RE: Big Sky Dairy Irrigation Water Use vs. Water Right Coverage Review

On November 20, 2014, Tim Luke requested Western Region staff coordinate with Rob Whitney to review water right coverage for an area of irrigated acres on land owned by Big Sky Dairy within the Blue Gulch CGWA. In response, I volunteered to research the water rights and 2013 aerial imagery of irrigated land to determine any place of use discrepancies. The following summarizes my findings:

- Big Sky Dairy property within T09S R11E Section 24 and T09S R12E Sections 17, 18, 19, 20, 21, 28, 29, 30, 31, and 32 reviewed.
- Found three different systems authorized by ground water rights;
 - System #1 rights 51-2185, 51-2186, 51-2189, 51-7018, 51-7030, and 51-7038.
 - System #2 rights 51-2188 and expansion right 51-10046.
 - System #3 right 51-7014.
 - See attached map for generalized POU shape of 40 acre-tracts authorized within each system.
- System #1:
 - Each water right within this system describes a unique POU.
 - Irrigation of 1,580 total acres authorized.
 - Irrigation of ~ 1,588 acres occurring within the POU per 2013 aerial imagery.
 - Irrigation is greater than authorized in certain 40 acre-tracts, less than authorized in other 40 acre-tracts, and overall ~8 acres greater than authorized.
- System #2:
 - Right 51-2188 authorizes irrigation of 217 acres within a 278 acre PPU.
 - Expansion right 51-10046 authorizes irrigation of the additional 61 acres within the same 278 acre PPU.
 - Irrigation of 278 total acres authorized.
 - Irrigation of ~263 acres occurring within the POU per 2013 aerial imagery.
 - Irrigation is greater than authorized in certain 40 acre-tracts, less than authorized in other 40 acre-tracts, greater than the 217 acres authorized by the non-expansion right, but overall is less than the total number of acres authorized within the PPU.
- System #3:
 - Right 51-7014 authorizes irrigation of 320 acres.

- Irrigation of ~232 acres occurring per 2013 aerial imagery.
- Irrigation is occurring within the 40 acre-tract limits of the authorized POU.
- Conclusions:
 - Total irrigation occurring on Big Sky Dairy property is within the total number of acres authorized by all nine water rights. However, the irrigation is not occurring according to the described POU for each system.
 - Based on information found in the field exam for right 51-7018, it appears much of this land was converted from gravity irrigation to pivot irrigation during the period for 1990 through 2011. The rights were adjudicated based on use prior to this conversion period. POU discrepancies noted during licensing and adjudication of the rights (specifically 51-7018, 51-7030, and 51-7038) were discussed with the water right owner. Filing of a transfer application was anticipated once the rights were decreed, but no filing has been received.
- Recommendations:
 - Transfer application(s) should be filed to correct POU discrepancies for the rights. Determination of the interconnectivity of each system and between systems will dictate the nature and number of transfer applications necessary.
 - Discuss expansion right 51-10046 with the water right owner to address any issues regarding continued use following issuance of the SRBA Final Unified Decree per I.C. § 42-1416B.

Big Sky Dairy Irrigation Use vs. Water Right Coverage Review Map



The USDA-PSA Aerial Photography Field office asks to be credited in derived products
2018 Aerial Image

Legend

- | | | | |
|---|------------------------|---|----------------|
|  | System #1 |  | Township/Range |
|  | System #2 |  | Sections |
|  | System #3 | | QQ |
|  | Big Sky Dairy Property | | |

0 0.125 0.25 0.5 0.75 1 1.25 Miles