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RECEIVED
AUG 13 2007
DEPARTMENT OF
WATER RESOURCES

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August 9, 2007

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

Dave Carlson
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Application for Permit No. 35-13542 in the name of South Interchange Properties, LLC

Dear Gentlemen:

The last letter we received in this matter was from Erin Retelle on May 4, 2007. We understand she is no longer with the Department, and since we have had conversations with both of you about this application, we are addressing this letter to both of you.

In Ms. Retelle's letter, she states: "please use the ESPA transfer spreadsheet to evaluate this mitigation proposal. . ." We did in fact use the ESPA transfer spreadsheet to evaluate the proposal for mitigation of predicted impacts on the reaches of the Henry's Fork and South Fork of the Snake River and thought we had included copies of those documents with our letter of September 26, 2006. We are enclosing copies of the September 26, 2006, letter and the charts and spreadsheets we thought we had included. We have also enclosed a map, on which we have attempted to depict the location of the acres which are proposed to be dried up under rights numbers 21-2012, 21-2034 and 21-7148.

Ms. Retelle also asked us to "include a proposal of how your client plans to measure and report water use to IDWR". The client proposes to dry up the acres as stated in our letter of September 26, 2006, and shown on the enclosed map. The client does not propose to do anything else to measure or report water use to IDWR. If you have some

specific idea in mind with respect to measurement and reporting, please explain it to us; it is not obvious to us that there is any need for measuring and reporting.

In our most recent conversations, and perhaps in some of the letters, it has been suggested that the mitigation of impacts to the two river reaches may not be sufficient mitigation for the withdrawals of groundwater. We do not believe that suggestion indicates that a proper analysis of this application and the consequences has yet been made. It does not take into account the cessation of irrigation where the South Interchange facilities are being constructed or on the land near Ashton, or the use of storage water for mitigation purposes rather than irrigation.

Assuming there is in reality a phenomenon which will occur as a consequence of diversions of water pursuant to this proposal which will result in "consumptive use" of water; that is, that a certain amount of water will truly be irretrievably lost from the surface and ground water system through such use, we wish to point out that we have already provided the best information available to show that with respect to the maximum amount of groundwater proposed to be diverted, no more than 7.4 acre feet per annum will be used "consumptively". All the rest will, after passing through the Shelley sewage treatment facility, be discharged into the Snake River. In addition, 80 acres of farmland formerly irrigated is being dried up. It has been irrigated under the New Sweden Irrigation District system, near the down gradient end of that system. We do not expect diversions from Snake River by New Sweden to be reduced as a result of this drying up, but neither do we expect additional land to be irrigated as a consequence. We think it is most reasonable to argue that the "consumptive use" of such water diverted from Snake River will be reduced by the amount which otherwise would have occurred from the irrigation of the 80 acres.

Even the extra water which will enter the Henry's Fork from the drying up of the acres under the three surface water rights to mitigate the predicted reductions in flows in that river, and the storage water which will be released from Palisades to mitigate the predicted reduction of flows in that reach of the Snake River, will, after passing through said reaches, either leak into the aquifer or remain in the river. It will not be used by the client for any further purpose. All of the former groundwater, except an annual maximum of 7.4 acre feet, will be discharged into the Snake River, and the amount of water diverted by New Sweden which will no longer be "consumed" in the irrigation of 80 acres of land will either leak into the aquifer or be discharged into the river at the end of the New

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Sweden system. Whatever water is added to or discharged into the river by virtue of this proposal with either leak into the aquifer or remain in the river. It is clear that the public and water users in general cannot be injured in any discernable or measurable way as a result of this proposal. Until notice is published and an opportunity for protests given, we will not know whether any particular individual water right holder believes his water right will be injured as a result of this application.

In our humble opinion, the mitigation we have discussed above is much more than enough to offset predicted reductions in both river flows and the aquifer which may result from pumping this proposed well. The net result will be that substantially more than 7.4 acre feet of water will be added to the rivers and aquifer.

Please let us hear from you as soon as possible. Thank you for your kind attention to this matter.

Yours very truly,



Kent W. Foster

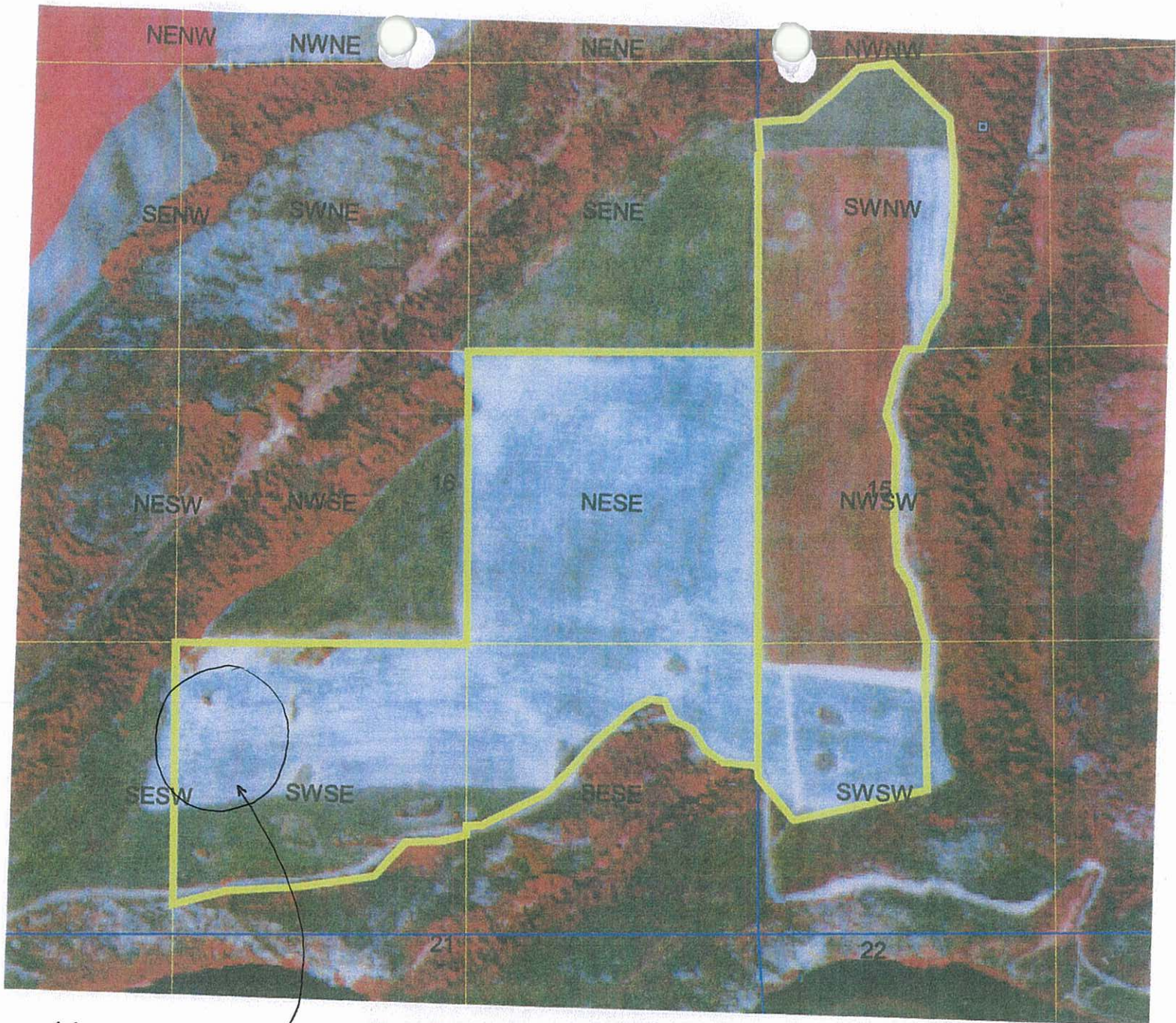
Enclosures

21-7148

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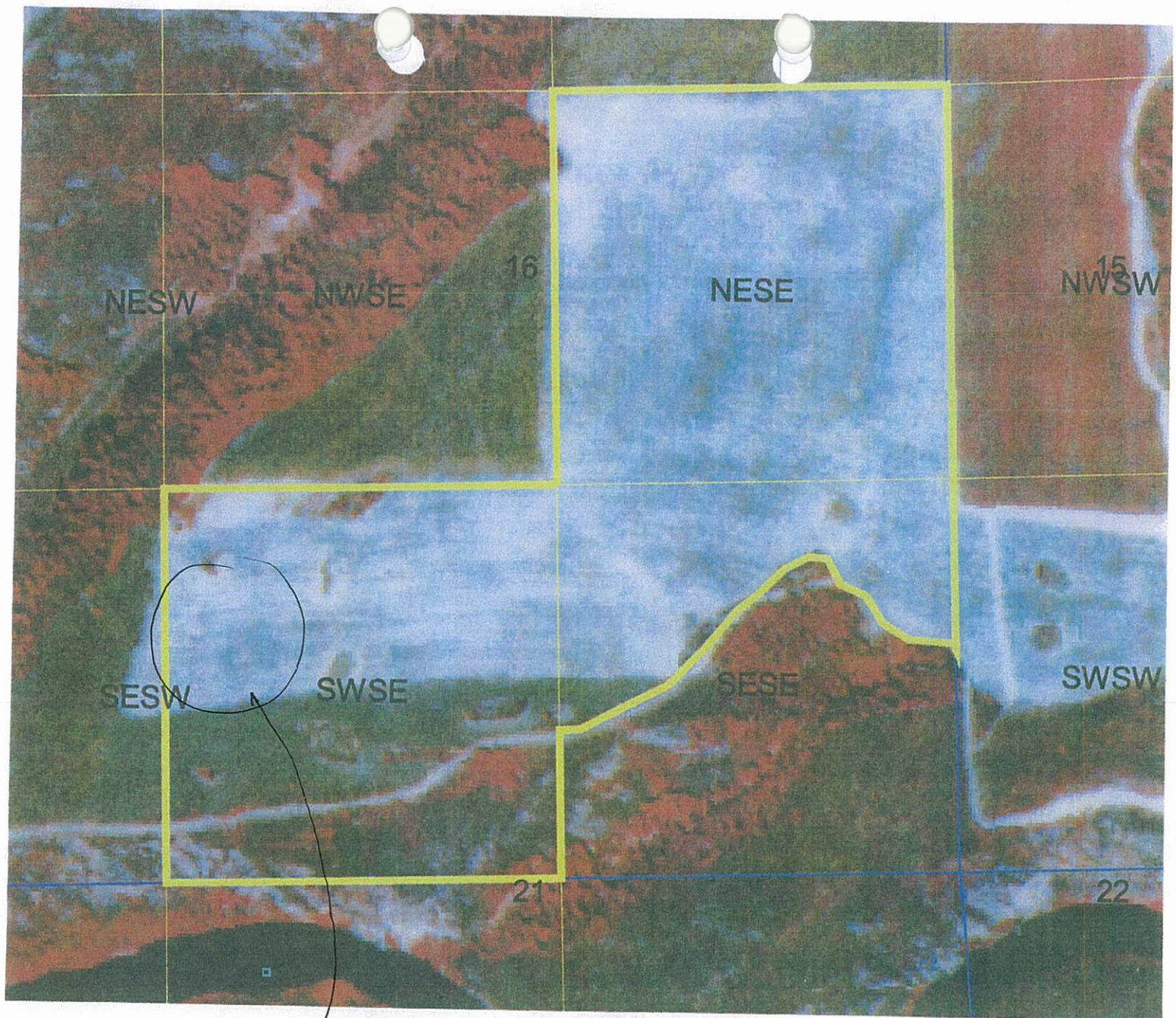


AREA WHERE ACRES WILL BE DRIED UP



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21-02012
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