

MEMORANDUM

To: Norm Young, Hal Anderson

From: Cynthia Bridge Clark

Date: November 13, 2002

Re: **ELIGIBILITY OF SOUTH ELMORE IRRIGATION COMPANY LANDS INTO THE WATER SUPPLY BANK FOR HIGH LIFT PUMPERS PROJECT**

The first payment from the Water Supply Bank ("bank") was issued to South Elmore Irrigation Company ("South Elmore") on October 8, 2002, along with a map identifying the eligibility status (eligible, ineligible, or questionable) of the lands after preliminary review by the Department of Water Resources ("department"). The following is a summary of the eligibility evaluation, and of communications with the South Elmore water users regarding the evaluation.

Questionable or Ineligible Fields at South Elmore

Please refer to the attached map for identification of the fields, their eligibility status, and the acreage estimates compiled for the first payment to South Elmore. Note that all of the acreages listed on the map and referred to in this discussion are based on measurements made by the department using infrared satellite imagery from the 2000, 2001, and 2002 irrigation seasons. The fields identified as questionable or ineligible include (see attached map for corresponding field numbers):

1. Since the first payment was issued, 10 acres of the 96.8-acre field in section 1, T05S R06E, have been identified as ineligible based on water right authorization. The status of this field will be reported with the final payment.
2. 25.3 of the total 64.8 acres around a pivot in the NW quarter of section 10, T05S R06E have been identified as ineligible due to irrigation this year. To date, the applicant has not questioned the department's evaluation regarding this field.
3. 193.8 acres and the adjacent 70.7 acres in section 11, T05S R06E have been identified as ineligible due to irrigation this year. Property owner, Jack Post has contacted the department and intends to submit evidence documenting a one-time water use for dust control purposes.
4. 123.9 acres in section 23, T05S R06E, have been identified as ineligible since the first payment was issued. These lands do not appear to have been irrigated during the 2000 and 2001 irrigation seasons. The status of this field will be reported with the final payment.
5. 93.2 acres in section 23, T05S R06E, have been identified as ineligible. These lands do not appear to have been irrigated during the 2000 and 2001 irrigation seasons. Additionally, the southern portion of the field, in the SESW forty, is not

authorized by a valid water right. To date, the applicant has not questioned the department's evaluation regarding this field.

6. A total of 19.4 acres of a half pivot in section 22, T05S R06E, have been identified as ineligible due to irrigation this year. An additional 5.4 acres were identified as questionable pending further investigation of whether irrigation took place this year (see discussion below of landowner Sid Wing's explanation of water use).
7. 112.2 acres in section 15, T05S R06E, were identified as questionable based on water right authorization. Since the first payment was issued, 90 of the total acres have been determined to be eligible, and 22.2 acres ineligible (see discussion below of water right history and comments from Sid Wing).
8. A 121.9-acre pivot in sections 15 and 22, T05S R06E, has been identified as questionable based on water right authorization (see discussion below of water right history and comments from Sid Wing).
9. A 59.3-acre half pivot in section 22, T05S R06E, was identified as questionable based on water right authorization. Since the first payment was issued, however, the field has been determined to be eligible for payment (see discussion below of water right history).

Discussion of Water Rights Appurtenant Squaw Creek Farm's Lands

Sid Wing of Squaw Creek Farms is one of the water users in the South Elmore. Squaw Creek Farms owns four of the fields identified above as either ineligible or questionable according to the initial review (field numbers 6 through 9 above). I met with Mr. Wing and adjudication agent Ron Howerton at the State Office on October 24, 2002 to discuss the eligibility status of his lands.

I explained that evaluation of the land eligibility includes verification that (1) irrigation is authorized by a valid Snake River water right, and (2) the eligibility criteria set forth in Memorandum of Agreement ("MOA") No. 1425-02-MA-10-3460 has been satisfied. We further discussed the history and discrepancies of the water rights appurtenant to his lands.

For reference, the water rights appurtenant to these fields include:

- Water Right 2-2269: License with a priority date of February 19, 1964 for a 5645-acre place of use. Transfer no. 4881 was approved October 24, 1996, for the transfer of 100-acres, the creation of a permissible place of use of 6291 acres between rights 2-2269 and 2-2367, and a point of diversion location correction.
- SRBA Claim 2-2269: Filed on December 5, 1989 for a 5628-acre place of use. The place of use identified on the original claim differs from the licensed place of use. The place of use requested on the transfer application did not reflect any accomplished transfers that may have been identified on the original SRBA claim.

- Water Right 2-2367: License with a priority date of March 22, 1965 for a 646-acre place of use. Transfer no. 4881 was approved October 24, 1996, for the transfer of 100 acres, the creation of a permissible place of use of 6291 acres between rights 2-2269 and 2-2367, and a point of diversion location correction.
- SRBA Claim 2-2367: Filed on December 5, 1989 for a 326-acre place of use. The place of use identified on the claim differs from the licensed place of use. The place of use requested on the transfer application did not reflect any accomplished transfers that may have been identified on the original SRBA claim.
- Permit no. 2-2345: Water Right Permit with priority date of January 15, 1965 and a 320-acre place of use. Proof of beneficial use was filed January 12, 1976. A licensing amendment is required to change the point of diversion prior to licensing the permit.
- SRBA Claim 2-2345: Filed on December 5, 1989 for a 160-acre place of use. The place of use identified on the claim matches the acres identified in the licensing examination, but differs from the permitted place of use. The permit will require an amendment prior to licensing. However, the permit applicant has since filed an affidavit to change the location of the place of use entirely from that identified in either the permit or the claim. It should be noted that the new place of use requested by the permit applicant, and the lands described by the permit and the claim are all authorized under water rights 2-2269 and 2-2367.
- Water Right Application 61-7735: Filed on April 29, 1997 for groundwater use on 360-acres. The application is being held pending changes in the Mountain Home Groundwater Management Area.

Field no. 6:

In the case of the half pivot in the northeast quarter of section 22, T05S R6E, the department measured a total of 59.7 acres proposed for entry into the bank. Portions of these lands (34.9 acres) were found to be eligible for payment. However, 19.4 acres were determined to be ineligible based on evidence that irrigation of the lands had taken place during the 2002 irrigation season. The final 5.4 acres were identified as questionable pending further investigation of whether they had also been irrigated this year. Mr. Wing noted that he intended to irrigate only 60 acres of the field, however the sprinkler pivot rotated further than anticipated. He stated that watering had taken place on the lands identified as ineligible and questionable, and that he would accept the findings of 34.9 acres eligible for payment.

Field no. 7:

As a result of transfer no. 4881, approved in 1996, 100 acres are authorized for irrigation in the NW quarter of section 15, T05S R06E under water rights 2-2269

and 2-2367. The field entered into the water supply bank program is measured at 112.2 acres in the NW quarter and the NWNE quarter quarter of section 15, T05S R06E. There aren't any valid water rights authorizing irrigation in the NWNE quarter quarter, and only 90 of the measured acres in the NW quarter are authorized under the transfer for irrigation (see attached map).

SRBA claims in the name of South Elmore, filed in 1989, did not recognize irrigation use in the location of this field. Moreover, 1987 NAPP photography indicates that the field was not irrigated at that time. It appears that the 1996 transfer was filed after the claims to authorize irrigation on at least a portion of this field. Transfer processing memorandum no. 15, dated June 3, 1991, indicates that an approved transfer will amend an existing SRBA claim. Therefore, the place of use defined in transfer no. 4881 amends the corresponding claims.

Mr. Wing stated that he was not concerned with the eligibility of the portion of land in the NWNE quarter quarter of section 15. He should, however, be notified of the final number of eligible acres after the reduction.

Field no. 8:

The pivot, in the SW quarter of section 15 and the NW quarter of section 22, T05W R06E, is not currently authorized by a valid water right or an SRBA claim. Sid Wing noted that his understanding when he bought the property was that transfer no. 4881 was being filed to move water rights to this field. I explained that 100-acres had been moved to cover part of field no. 7 through the transfer, and that the transfer application did not cover any of the acres associated with field no. 8.

I also noted that application for permit no. 61-7735 for groundwater use was filed by Squaw Creek Farms in 1997 for irrigation of this pivot, and adjacent lands to the south (120 acres in the SW of section 15, 160 acres in the NW and 80 acres in the N1/2SW of section 22, T05W R06E). The application is being held due to the Mountain Home Groundwater Management Area. ***Please note: none of the lands described above are covered by a valid water right. It appears that all of these lands were irrigated in 1987 and most of the lands, excluding some pivot corners, were irrigated in 2000. Due to participation in the IPCO Buyback Program, none of the lands were irrigated in 2001. However, the pivot immediately south of Field no. 8 was irrigated during the 2002 irrigation season without a valid water right.***

I explained to Mr. Wing that transfer no. 4881 was based on a change requested and approved by South Elmore Irrigation Company. Had the transfer not been filed, it might have been possible to amend the SRBA claims according to any accomplished transfers that may have occurred prior to 1987. I notified Mr. Wing that based on available information, field no. 8 would not be eligible for payment from the Water Supply Bank. We further discussed the possibility of filing a transfer to clarify the water rights for field no. 8 and the adjacent lands with the understanding that this would not satisfy the eligibility criteria for participation in the Water Supply Bank program for this irrigation season.

Additional possibilities discussed since the meeting with Mr. Wing (Steve Hannula of ERO has been researching the South Elmore water rights as Sid Wing's request, and has been in contact with the department), include filing an enlargement claim to cover lands that were served by the South Elmore Irrigation Company prior to 1987. Though the total acres irrigated with the company's water rights would increase, the diversion rate and annual volume would not change.

Please note, in filing an enlargement claim, it would be important to identify whether South Elmore water was used to irrigate the lands described. The applicant identified Mountain Home Irrigation District water as the only other water right appurtenant to the lands on application for permit no. 61-7735. There are also maps in the application for transfer no. 4881 that identify some of the lands as being in the CRP from 1989 to 1998.

Field no. 9:

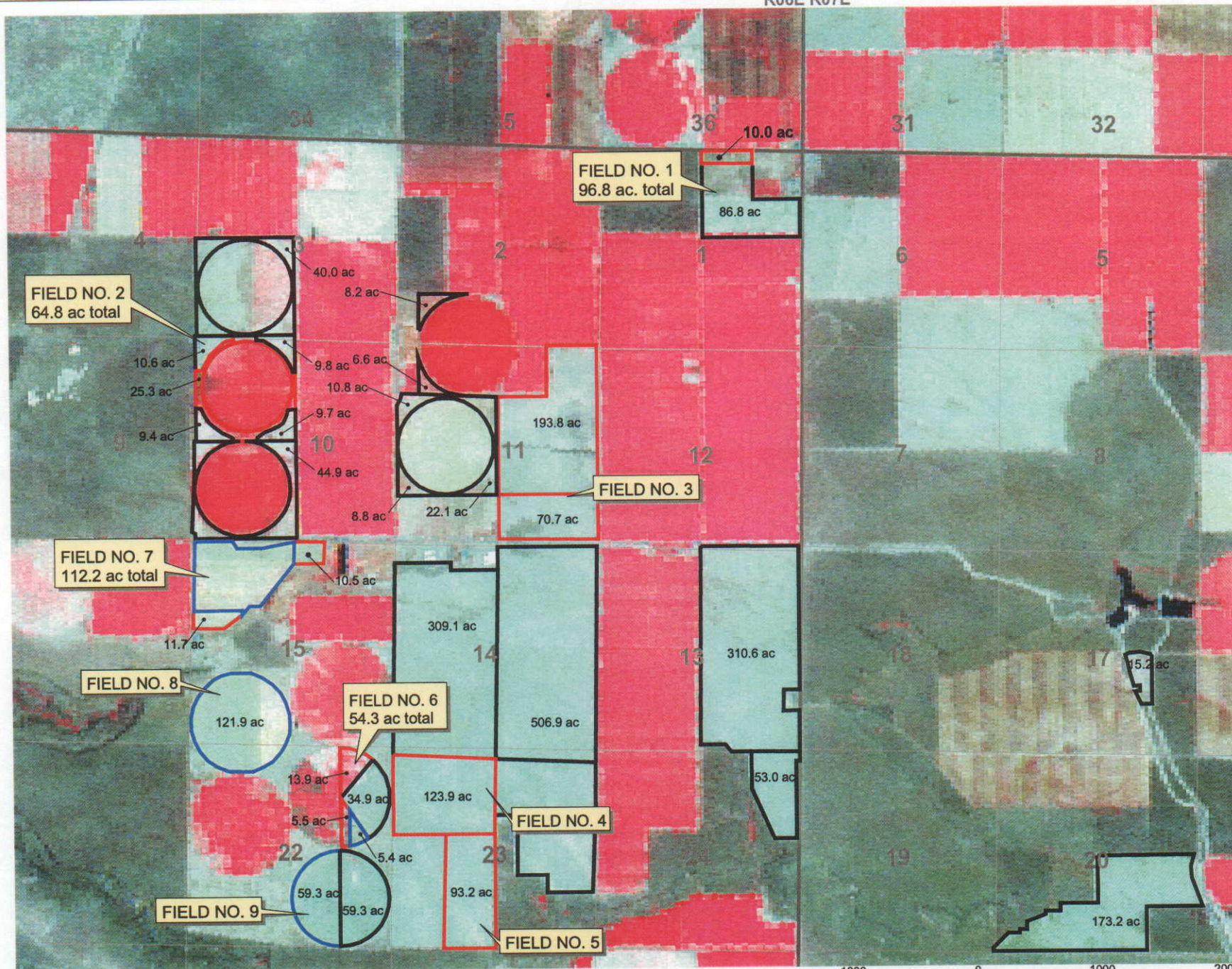
The 59.3-acre half pivot in the SE quarter of section 22, T05S R06E, was identified as questionable at the time of the first payment because there was a discrepancy between the licensed water rights 2-2269 and 2-2367, permit no. 2-2345, and the corresponding claims. Given that the transferred rights now represent the claims, the field will be identified as eligible for the final payment.

After discussing the status of each field, Sid Wing stated that he would like to pursue further review of the eligibility of field no. 8. I told him that I would communicate his concerns to my supervisors. He asked that I inform him of any additional possibilities, as he would like to notify his attorneys and ERO Consultants of his situation and of the status of South Elmore's water rights with respect to his lands. Since that time, Steve Hannula, of ERO Consultants has been researching South Elmore's water rights and has communicated with me regarding this recent review.



R06E R07E

T04S
T05S



Imagery: July 26, 2002



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South Elmore Irrigation Company

Acreage Estimates for Rental of Water from High-Lift Pumps from the Snake River to the Water Supply Bank

Prepared: November 8, 2002

1000 0 1000 2000 Meters

- ELIGIBLE
- INELIGIBLE
- QUESTIONABLE
- Township/Range Lines
- Section Lines