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DEPARTMENT OF
WATER RESOURCES

Gary Spackman, Director
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720

Dear Director Spackman:

On March 16, 2011, FED Agribusiness LLC ("FED") received authorization via Transfer No. 77057 to add a point of diversion to Water Right No.'s 45-2626 and 45-2374. Thereafter, drilling commenced and progressed on this new point of diversion located within the SESESE of Section 34, T. 11 S., R. 20 E.B.M., but resulting tests showed a temperature slightly above the State's Low Temperature Geothermal Resource Well threshold as set forth in Idaho Code § 42-230(a)(1), and further development was consequently halted. However IDWR staff at the Southern Regional Office ultimately reasoned that water could be diverted from the so-called "hot well" if it were combined with active water rights that also produced "grandfathered" hot water.

The points of diversion for Water Right No.'s 45-2626 and 45-2374 are located roughly two miles south of the hot well. Both of these water rights originally produced hot water and both were approved as "grandfathered" hot water rights. Department staff therefore agreed that water from these two rights could be transferred to the hot well provided that an Eastern Snake River Plain Aquifer (ESPAM) "run" demonstrate no injury to other users. Following IDWR staff suggestions, FED retained assistance to conduct an injury analysis using the ESPAM transfer tool version 3.1.

Upon commencement of the analysis, it became apparent that all of the wells associated with the transfer are located outside of the ESPA as defined by IDAPA 37.03.11.050.01 (see attached map). Since this boundary, commonly referred to as the Garabedian boundary, is used to define the common groundwater area in other matters such as the Rangen water call, FED questions the need for an ESPAM analysis in determining injury in its application. Furthermore, IDWR's Form 222 instructions entitled "Instructions for Filing an Application for Transfer of a Water Right" references a map that applies the ESPA boundary according to the Garabedian line.

Via email communication, Jeff Peppersack of the IDWR state office explained: "For conjunctive management delivery calls in the ESPA, the Common (Garabedian) GW boundary is still in effect pursuant to the rules. Transfers are processed based on the ESPA model boundary" (see attached email). FED considers this a double standard. FED requested documentation or

specific reasoning as to why a double standard exists and was directed to the Clear Springs Foods' *Petition to Amend Rule 50 of the Conjunctive Management Rules*. No definite answer was found in the documentation associated with the petition and FED continues to question the existence of a justifiable basis that can pass judicial review for requiring an ESPAM analysis in this case.

FED maintains that since the Garabedian boundary is currently the conjunctive management standard, transfers should be processed using this same boundary as set forth in IDWR's Form 222, thereby avoiding what otherwise appears to be an arbitrary, unjust, and otherwise irregular application of IDWR policies and procedures. FED also maintains that IDWR should base its determinations of "injury" or "no injury" on the same standard that it applies in making such decisions on water delivery calls.

For the reasons set forth above, FED hereby petitions IDWR to forego the ESPAM analysis in determining existence of injury in this unduly protracted application which has now remained unresolved for over three years. If you will please take timely action to address our concerns, we will appreciate it and thank you for your prompt attention.

Very truly yours,

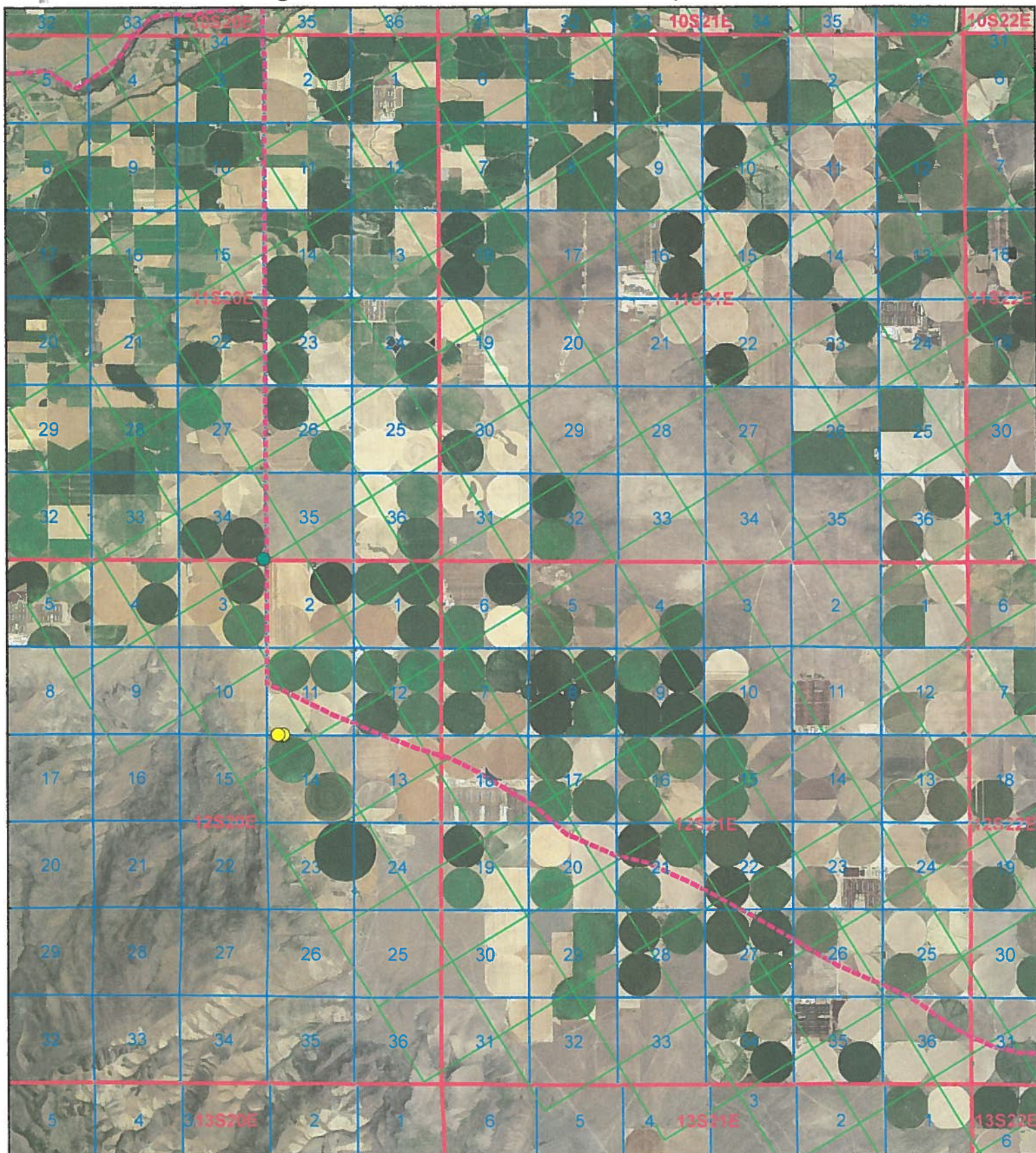


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FED Agribusiness Water Right Transfer



2013 NAIP Basemap.
Created by Jaxon Higgs WWC Inc.

- To Well
- From Wells
- ESPA Boundary
- ESPAM Active
- Township/Range
- Sections

