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June 19, 2009

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RE: Implementation of Non-Stayed Portion of Ground Water Districts' Snake River Farm Replacement Plan for 2009 and 2010

Dear Parties:

The Order in this matter dated May 15, 2009 states that, based upon Clear Springs' acceptance of the terms of the two-year partial stay, satisfaction of the remainder of the 2009 Plan, approved by the March 26, 2009 Order of the Director, shall constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years. Thus, the accepted replacement plan for 2009 and 2010 consists of the following elements:

1. The conversion of 1,060 acres above the rim from ground water to surface water irrigation.
2. Continued conversion from ground water to surface water irrigation of approximately 9,300 acres within the North Snake Ground Water District.
3. Continued participation in the Conservation Reserve Enhancement Program (CREP).

The deadline for compliance with the replacement plan was June 1, 2009. To ensure compliance with element (1) above, I requested Ms. Cindy Yenter, Watermaster of Water District 130, to conduct a field examination on June 2, 2009 of the conversion of acres above the rim from ground water to surface water irrigation. Her report of this inspection, and a follow-up inspection on June 10, 2009, is attached.

To summarize the results of the inspection, Ms. Yenter found as follows:

1. It appears that since June 1, 2009, no water has been diverted from ground water for use on the converted acres above the rim. As stated in Ms. Yenter's report, however, the Watermaster must be provided a mechanism for ensuring this status is maintained.
2. Some conversion acres have changed since the original plan was submitted. As as-built plan, showing the acres actually converted and addressing the concerns identified in Ms. Yenter's report is required.
3. It appears that there is a shortfall in the number of acres for which conversion has been conducted.

Based on the results of the Watermaster's Report, compliance with the replacement plan does not appear to have been achieved. In recognition that the inspections might not have revealed all of the compliance activities, this letter provides the Ground Water Districts with an opportunity to augment the information available to the Department. The replacement plan specified 1,060 acres, and that is the number of acres for which conversion is expected. Conversion of fewer acres is not an acceptable solution.

Please provide additional information in this regard no later than June 25, 2009, to enable the Department to view all of the facts prior to ruling on the adequacy of compliance with the replacement plan.

Sincerely,

David R. Tuthill, Jr.
Director

cf: Cindy Yenter, Allen Merritt

Attachment: Report on Implementation of Non-Stayed Portion of IGWA Snake River Farms Replacement Plan #3

**Report on Implementation of Non-Stayed Portion of IGWA Snake River Farms Replacement Plan #3**

Cindy Yenter, Watermaster, Water District 130
June 12, 2009

On June 2, 2009, in accordance with the Director's request, I conducted an initial compliance investigation of the conversion project sites. I was accompanied by Don Aardema, a North Snake GWD board member who has been providing project construction oversight. On June 10, 2009 I made a followup visit to the site. My findings are as follows:

*Deep Wells*

None of the conversion wells were in operation during either of my field visits, although the power meters I looked at all had KWH data on them, indicating they have all been used within the May billing cycle. Mr. Aardema indicated that the electrical plan called for all peripheral power connections at the deep well demand meters, including those to pivots, to be moved to the associated relift station demand meters. I found several new power poles and meters which had been installed specifically to power pivots which could not be easily powered from the relift stations. Mr. Aardema thought that power might ultimately be disconnected to the deep wells, although he could not confirm this. I contacted Lynn Carlquist about it and he indicated there is really not a firm plan regarding disabling the wells. Mr. Carlquist was adamant the wells would not be operated from this point forward. Unless the wells are completely disabled, however, I am equally adamant they must be secured in some manner so I have some confirmation that no use is occurring. I have recorded some of the kwh readings, and have inspected the pump control panels to see if there are lock-out points where a security seal might be placed. For some systems there is an isolation lock-out at the pump control, and for others there is not and the seal may have to be placed on the main electrical panel.

*Relift Ponds*

Three ponds (ponds 1-3) serving pou parcels A, B and D are fully constructed, filled, and relift booster pumps are installed. For these three ponds, a new and separate power source and demand meter has been installed at each pond. New dedicated mainline has been installed from each relift pump (some ponds have multiple pumps) to pivots and corner systems. The surface water mainline system is not connected to existing ground water mainlines. A map is attached which shows the approximate location of the new mainlines (except for new parcel E; see next paragraph). I did observe new mainline coming into one center pivot in Section 31, and the old supply line appeared to have been disconnected. I have not verified this on other systems.

*Acreage Shortfalls and Plan Substitutions*

There have been substitutions of some of the conversion acres that I was not aware of. The 80 Brown acres, identified as pou parcel C, and well #3, are no longer participating. Acres owned by Gary VanDyk in 9S 14E S2 have been substituted (identified on my map as parcel E, and well #8). A fourth pond is being constructed on VanDyk's property and it was not complete as of June 2, 2009. I have not been able to confirm the operating configuration from the conversion pond, other than being informed that a VFD was being installed and it would be connected at the deep well panel. The VanDyk farm contains a total of 150 irrigated acres, and 74 acres are authorized under a ground water irrigation right. Use of the well appears to be supplemental to surface water. There are 136 NSCC shares already appurtenant to the farm; the water users

contend that their existing canal pump cannot divert them all, and therefore they must use their well on more than just the 14 acres without surface water. The NSCC ditch rider I spoke to indicates that all 136 shares are called for each year, but some are allowed to flow down the ditch to another user.

The PCC which has been developed for the VanDyk well is invalid, since the existing canal booster is connected to it. The reported volumes for this well are consequently inaccurate and likely overestimate the historic diverted ground water volume. I am fairly certain there has been irrigation from ground water in excess of 14 acres, but I have no way of confirming an equivalent number of primary ground water acres converted to surface supply. I am concerned this project represents more of an enhancement of an existing surface system, than a full ground water conversion. The exact shortfall to the replacement plan is unknown, but it could be as much as 66 acres. (Brown 80 ac less VanDyk 14 non-supplemental gw acres)

Certain acres identified on the plan attachments were found to not be a part of the conversion acres. 134 acres from plan pou parcel B, in 9S 14E Sec 1 and 9S 15E Sec 6, are authorized under water rights 36-2493C from plan wells 2 and 4. These acres are not owned by Box Canyon dairy or any other plan participant, and cannot receive replacement water from any of the project conversion ponds. The Box Canyon representative that we contacted said the new owners have had no access to the wells since their acquisition of the property in about 2002. The recent NSCC list I have shows 80 shares in Section 1 and 70 shares in section 6; NSCC confirms that shares have been appurtenant to these acres for decades. IGWA will most likely assert that ground water use on these lands has not occurred from the project wells, and replacement credit should be given. However, IGWA has no contract with the land owners relevant to this replacement plan, and cannot guarantee that the landowners will not exercise their ground water rights in the future by filing a transfer to add a well. Moreover, this type of credit would amount to a "status quo credit" which IDWR has not approved in any prior replacement plan. The 134 acres must be considered a shortfall to the identified replacement plan acres.

*Existing NSCC shares and total irrigated acres within the project area*

Aside from the VanDyk property, and the excluded 134 acres in pou B, there are not significant existing NSCC shares found within the replacement plan area. There are 20 NSCC shares in SESW Sec 36 (parcel B), 20 shares in NWNE Sec 31 (parcel D), and approximately 8 shares in SE Section 35 (parcel A), under the pivot. There are additional NSCC shares in SE S35 which reside in the pivot corners. The pivot corners are owned by a separate party who is not participating in the plan but who may be the system operator. As with the other conversion projects, NSCC will credit private shares prior to delivery of replacement water.

Except where noted above in shortfalls, total irrigated acres within the pou parcels is consistent with the appurtenant ground water rights for the past 5 years, within a few acres. The pivot corner in SWSE Sec 36 contains a home which has been constructed within the past two years on part of the water right pou; this home likely has a private domestic well and a lawn was observed which did not appear to exceed the *de minimus* definition. The balance of the corner was dry. Conversion of these lands to surface water supply should result in a reduction of ground water depletions.

*Cross-Connected Wells*

I have a non-verified report from Dan Nelson that a well outside the replacement plan area may be interconnected with plan wells #2 and #4. This well is situated in NWNE Sec 36, north of

pou parcel B. Lands and water rights are owned by Tom Heida / Box Canyon Dairy, the owners of parcel B. Water rights are separate from those appurtenant in parcel B. Mr. Nelson conducted audits of GWD well measurements last year, and was told by Box Canyon that the three wells had been interconnected due to production problems with plan well #4, and that water from the north well had been used within parcel B. I have not yet inspected the pivot connections at the two pivots within parcel B which might be receiving water from the well to the north. Box Canyon will need to verify that the ground water supply line has been disconnected at both south pivots in Sec 36, and replaced with the surface supply line. Alternatively, or perhaps in addition, Box Canyon will need to identify the mainline coming in from the north well, and disconnect it. This is probably the preferred alternative since use of the north point of diversion is not authorized for the south pivots in Section 36.

During the site visit I also found a well within NWSE Sec 31, site tag A0003503, which is situated very close to the center of a pivot within parcel D, but which is associated with water rights used to the south of parcel D on other lands under separate ownership (Southfield Dairy). This well may or may not be interconnected with the Box Canyon wells 5, 6 and 7, and I could not tell in the field. Diversions from the well are very close to exceeding the water right limit. The use and association of this well requires further investigation.

Cross-connectivity would be a problem under the replacement plan, but might be a moot issue if dedicated mainline has in fact been installed for surface water delivery.

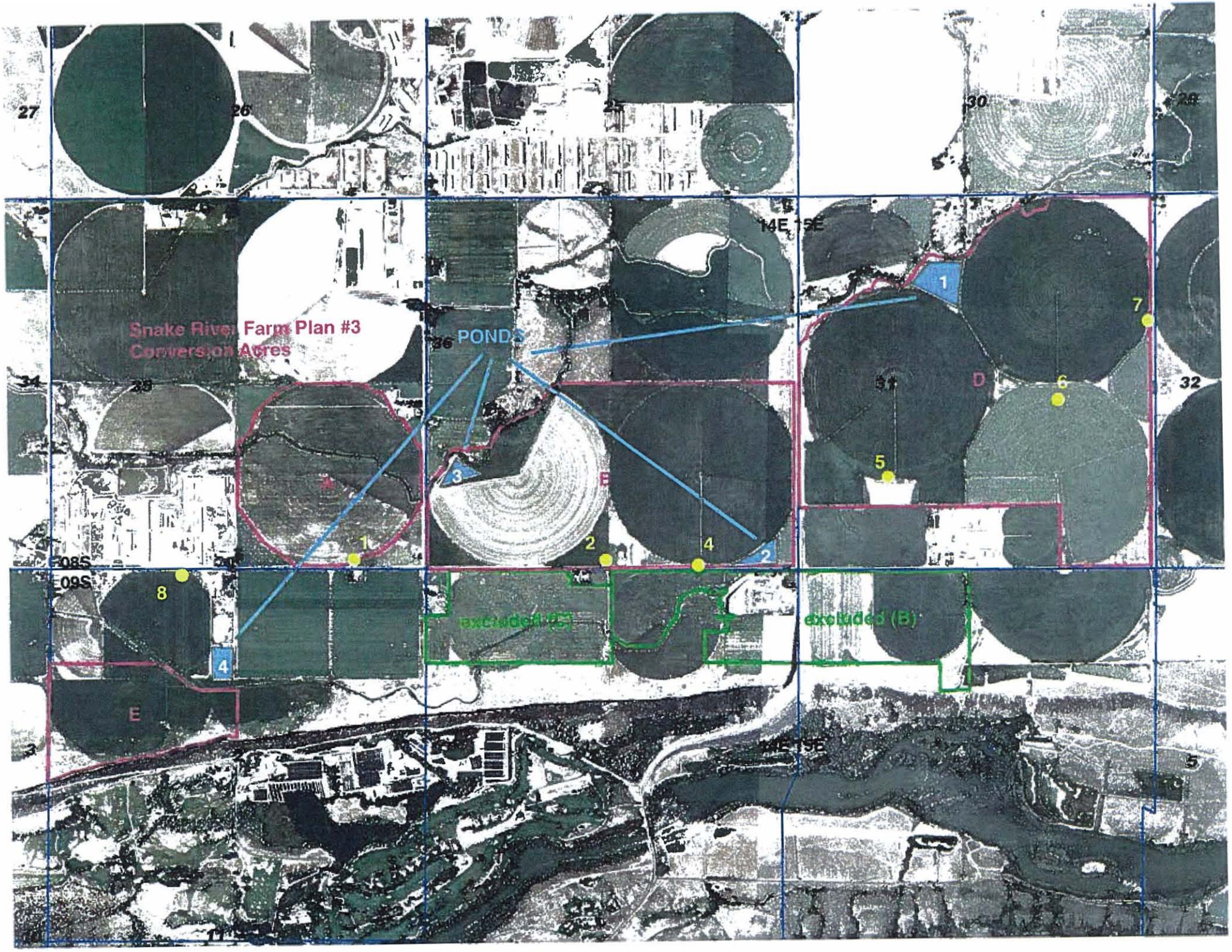
*Conclusions and remaining tasks*

The non-stayed portion of Snake River Farm Replacement Plan #3 is mostly implemented. Infrastructure is in place, but there is a shortfall of converted acres from those identified in the Plan. I have not verified the completion of Pond 4, at the VanDyk property, but I was told by Mr. Aardema that the pond was completed this past week. Due to the rain in the Magic Valley over the past two weeks, irrigation from the conversion ponds has not yet occurred to any great extent.

There is a shortfall of up to 200 acres from the plan's proposed 1060 acres to be converted from ground water to surface water supply. The shortfall is the result of identification of acres not participating in the plan, and selection of participating acres that were not irrigated primarily with ground water.

Additional field work will be required over the next two weeks, to complete the following tasks:

- Place a security seals or locks on each project well, nos 1, 2, 4, 5, 6 and 7; or verify that the well has been otherwise disabled and cannot be used.
- Verify the kwh reading at each demand meter.
- Verify the system details at the VanDyk pond #4 and well #8, and conduct additional investigation into prior ground water use. Since this relift station may use the same demand meter as the deep well, the well and groundwater pumping plant must be locked out to ensure that ground water diversions do not occur, or the well must be disabled and the mainline disconnected.
- Verify that the Box Canyon well in NWNE Sec 36 is not connected to pivots in S1/2 Sec 36.
- Confirm that the Southfield well in NWSE Sec 31 is not used within the project area and not interconnected to Box Canyon wells.


Snake River Farm Plan #3
Conversion Acres
PONDS
excluded (B)
excluded (B)
14E 15E
14E 15E
E09S
27
26
25
30
29
34
35
36
31
32
5
A
B
D
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1
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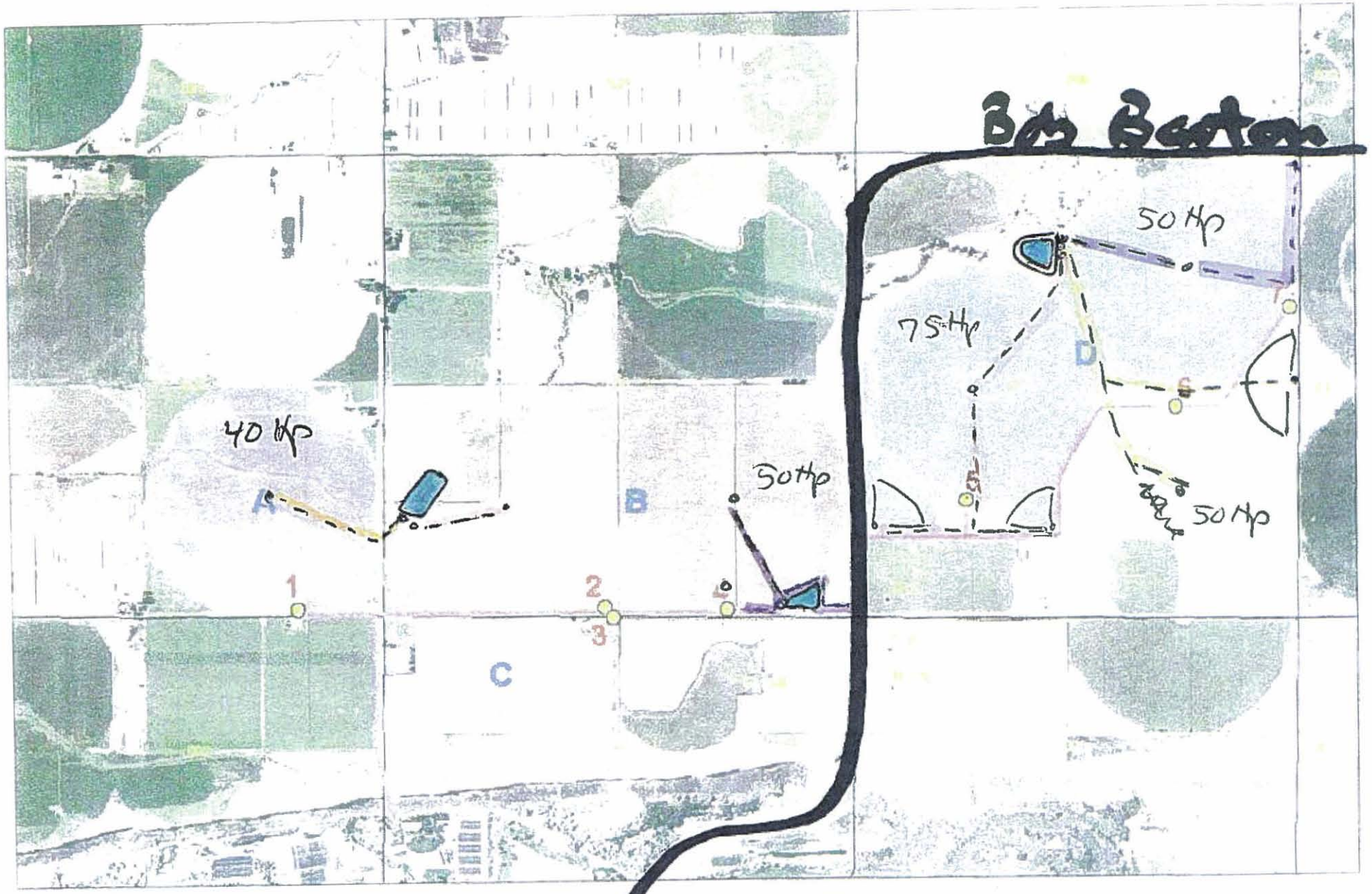


Exhibit 2
Over-the-Rim
Delivery Plan Schematic

Wells for Over-the-Rim Delivery

Pipeline Alignments

Proposed

Alternative

POU A

POU B

POU C

POU D

amec

N

Mitigation Plan #3, 6.12.09
Review of Water Rights and Wells

| Plan Well # / POU | WMIS # | Site ID | PLS | Meas Method | Last Test | Meas Comments | Water Right No. | Rate | Volume | WR Acres | Total Ac | Rate Limit | Vol Limit | Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 100468 | A0001689 | 08S14E35 SWSESE | 2 | 2005 | shown as one condition, pivot w/ endgun, 850 gpm, same condition measured twice and averaged in at 5%. 2007 vol 372 AF qual 1. | 36-2426 | 1.47 | 312 | 78 | 124 | 1.47 | 496 | Pivot w/ corners irrigated - exceeds water right acres. wr notes 20 ac canal shares. Meas flow exceeds wr rate. Diverted vol OK. |
| A | | | | | | | 36-10044 | 0.55 | 184 | 46 | 124 | 1.47 | 496 | |
| | | | | | | | System total | | | | **124** | **1.47** | **496** | 150+ acres irrigated, some parcels in NESE / SESE may be irrigated w/ domestic wells. 40 canal shares appurtenant w/in 160, corners owned by Connor. |
| 2 | 100472 | A0001521 | 08S14E36 SESESW | 2 | 2005 | shown as one condition but describes combination with other wells for multiple pivots. 650 gpm, 2007 div 56 AF qual 1. | 36-2228A | 1.58 | | 114 | 121 | 2.42 | 484 | wr notes canal shares, 4.28 cfs limit with 2228B, 2249B, 2493B, 2493C, 7957B & 7682 |
| 4 | 100473 | A0001510 | 08S14E36 SESWSE | 2 | 2007 WWC, 2008 IDWR audit | wwc meas and idwr audit not entirely consistent. idwr verifies that system runs in combination with surface water, but not on the same demand meter. Meas flows 1000-1400 gpm. 2007 div 478 AF, qual 2 but should be 4 or 5. | 36-7597A | 0.7 | | 114 | 121 | 2.42 | 484 | stacked right, canal shares, 4.28 cfs limit |
| B | | | | | | | 36-8276 | 0.14 | | 7 | 121 | 2.42 | 484 | *must use full allotment of sw*; 4.28 cfs limit |
| | | | | | | | 36-2228B | 0.4 | | 79 | 79 | 1.58 | 316 | canal shares, 4.28 cfs limit |
| | | | | | | | 36-7597B | 1.18 | | 79 | 79 | 1.58 | 316 | stacked right, canal shares, 4.28 cfs limit |
| | | | | | | | 36-2493B | 0.36 | 80 | 20 | 78 | 1.56 | 312 | canal shares, 4.28 cfs limit |
| | | | | | | | 36-7682 | 1.24 | 232 | 58 | 78 | 1.56 | 312 | canal shares, 4.28 cfs limit |
| | | | | | | | 36-2493C | 2.38 | 536 | 134 | 134 | 2.38 | 536 | canal shares, 4.28 cfs limit; acres not included in conversion, not owned by BoxCanyon, using canal water, 150 shares. |
| | | | | | | | System total | | | | **278** | **4.28** | **1112** | acres/volume do not include 2493C. All acres irrigated <2005, 270 acres irr 2005-2009. 20 NSCC shares in SESW Sec 36. |
| 3 | 100825 | A0003643 | 09S14E1 NENENW | 2 | 2004 | has old flowmeter, NSG using pcc. last meas 662 gpm on wheel lines. 2007 vol 303 AF, qual 1, seems high and qual probably not appropriate. multiple demand loads possible. Reported 2007 QM vol 78 AF; old Grainland has not been tested. | 36-4046 | 1.6 | 320 | 80 | **80** | **1.6** | **320** | acres not included in conversion |
| C | | | | | | | | | | | | | | |
| 5 | 100540 | A0003548 | 08S15E31 SWNESW | 2 | 2007 | condition = one pivot and endgun. 2 meas were made on same condition, w/in 10%. avg 1163 gpm. 2007 vol 466AF, qual 3. | 36-16256 | 0.88 | 222 | 55.5 | 444 | 8.65 | 1776 | sum of individual rate and vol exceeds system limits. |
| 6 | 100539 | A0003549 | 08S15E31 NENWSE | 2 | 2007 WWC, 2008 IDWR audit | not sure all conditions are being measured, or wwc is not properly describing them. IDWR audit conditions w/in 10% and overall close to the earlier meas. IDWR flows 900 gpm.. 2007 vol 326 AF qual 3. | 36-16258 | 0.46 | 90.2 | 22.5 | 444 | 8.65 | 1776 | |
| 7 | 100537 | A0003550 | 08S15E31 NESENE | 2 | 2008 WWC, 2008 IDWR audit | wwc conditions not completely described. idwr conditions w/in 10% and total pcc w/in 10% of earlier pcc. 900 gpm avg meas. 2007 vol 268 AF qual 2. | 36-16260 | 0.28 | 53.5 | 13.4 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16262 | 0.1 | 29.3 | 7.3 | 444 | 8.65 | 1776 | |
| D | | | | | | | 36-16264 | 0.54 | 109 | 27.2 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16266 | 0.36 | 110.7 | 27.7 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16268 | 0.75 | 170.1 | 42.5 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16270 | 0.59 | 113 | 28.3 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16272 | 0.91 | 382.5 | 281.3 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16274 | 0.29 | 57.8 | 14.5 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16276 | 0.29 | 54.5 | 13.6 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16278 | 0.86 | 176.6 | 44.1 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16280 | 0.08 | 27.6 | 6.9 | 444 | 8.65 | 1776 | |
| | | | | | | | 36-16282 | 0.26 | 52.8 | 13.2 | 444 | 8.65 | 1776 | enlargement |
| | | | | | | | 36-16284 | 2.54 | 948.8 | 237.2 | 444 | 8.65 | 1776 | |
| | | | | | | | System total | | | | **444** | **8.65** | **1776** | 430 acres irrigated 2005-2009, 435 acres irr <2005, all acres irr <1987. 20 NSCC shares in NWNE S31 |
| 8 | 100286 | A0003642 | 09S14E02 NWNENW | 1 | 2007 WWC | Developed PCC is invalid. last wwc test showed 85 Kw demand for 75 HP pump. owner confirms that canal pump has always been connected to demand meter. new pond VFD will also be on the demand meter. old badger meter not working. | 36-7319 | 1.11 | 240 | 60 | 74 | 1.39 | 296 | system supplemental to NSCC |
| E | | | | | | | 36-7454 | 0.28 | 56 | 14 | 74 | 1.39 | 296 | |
| | | | | | | | System total | | | | 74 | 1.39 | 296 | These acres replaced Parcel C. Total farm 144 ac, only 58 irr w/in wr pou since 2005. 136 NSCC shares in NW1/4 and SWNE. |
| | | | | | | | WR Total | | | | **920** | **15.79** | **3680** | |