



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

December 17, 2019

RANDALL G JOHNSON PE
FORSGREN ASSOCIATES INC
350 N 2ND E
REXBURG ID 83440

RE: Incomplete Field Report for Permit 27-12155

Dear Mr. Johnson:

The Idaho Dept. of Water Resources (Department) received a field report you prepared for the City of Shelley on water right permit 27-12155. Unfortunately, this field report does not meet the standards required by the Idaho Administrative Code for Beneficial Use Examination Rules (IDAPA Rules). I will discuss in this letter the deficiencies of the field report, and the penalties that will be incurred as a result of this rejection. Due to the penalties that will occur, a copy of this letter is being sent to the City of Shelley.

All field reports received by certified water right examiners are reviewed by Department staff to ensure the report meets the requirements set forth in the IDAPA Rules. Any IDAPA rule that has not been complied with must be addressed before a water right license can be issued for this permit. You can find copies of the IDAPA Beneficial Use Examination Rules at <https://adminrules.idaho.gov/rules/current/37/370302.pdf>.

The IDAPA Rule 37.03.02.02.b states the following concerning an incomplete field report:

Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply.

The IDAPA Rule 37.03.02.55.02 state the following concerning an incomplete field report:

Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date has been approved.

Since a field exam was sent with the proof of beneficial use statement in lieu of the standard fee, the proof of beneficial use is not acceptable until the Department receives the beneficial use fee or an acceptable field exam report from a certified water right examiner. Therefore, this permit has lapsed, and the priority date will be advanced one (1) day until the Department receives the proof of beneficial use fee or an acceptable field report. We are going to allow a maximum of 30 days to resubmit a proper field report before sending out the official notice that the permit has lapsed. We will hold the existing proof of beneficial use statement to avoid the need to resubmit this form, since it was correctly filled out.

There are several things that were not done correctly in this field report. The field report did not comply with the signature requirements discussed in IDAPA Rule 37.03.02.02.a with states the following:

All field reports shall be prepared by or under the supervision of certified water right examiners or authorized department employees. Reports submitted by certified water right examiners must be properly endorsed with an engineer or geologist seal and signature. Field reports received from certified water right examiners will be accepted if the report includes all the information required to complete the report and provides the information required by Rule Subsection 035.01.

Since the field report did not include your seal in the signature area, we cannot accept this field report. The field report also appears to be a copy, which is also not acceptable. We need the original signature and seal to accept this field report.

Along with the proper signature, there are number of issues that also need to be addressed. I will address each issue and supply the IDAPA Rules that provides you with the instructions on how to properly complete the field report.

Your field examination describes a well in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ in Section 31 in Township 1 North, Range 37 East, with a note saying from IDWR Water Right Report. In the measurement section of the field report, you describe the flow meter for Well #5. Your field exam maps also show Well #5 as the well associated with this permit. According to Department records and your maps, Well #5 is actually located in Government Lot 6 (NWNESE) in Section 31 in Township 1 North, Range 37 East.

IDAPA Rule 37.03.02.035.c states the following:

A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to the place of use and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, the timing and method of storage, release, rediversion and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field examination report. Schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall also be provided in the examination report.

The purpose of the field exam report is to properly locate and describe the location of the point of diversion or points of diversion being field examined. Points of diversions in approved permits often describes proposed locations for the wells, so we count on the field examiner to properly locate the well. If the point of diversion is not in the legal description that is on the permit, then it is field examiner's obligation to list the correct the legal description and confirm that an amendment is needed to correct the permit in the licensing process.

The field examiner also needs to describe the entire system in the narrative, and how the overlapping rights are connected to the water system. The narrative in your field report did not describe the system or the other water rights and how they were related to this permit.

An important part of the field examination report is the review of the overlapping water rights and a showing by the field examiner that an additional increment of beneficial use has been established.

IDAPA Rule 37.03.02.035.01.d states the following:

Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report.

Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights.

You did not provide any analysis of the amount of additional water that this permit provides to this system. On November 12, 2008, water right transfer 75066 was approved which authorized the City of Shelley's water rights 27-2155, 27-4107, 27-7053, 27-12077, and 27-12078 to be diverted out of Well #1, Well #2, Well #3, Well #4, and Well #5. The result of this water right transfer limited the use of these existing water rights described in the water right transfer to 10.01 cfs and 7246 af. If this permit is diverted from one of these wells as suggested by your field report, you need to show that during the development period this permit provided a need to authorize additional use of water in addition to the 10.01 cfs and 7246 af authorized by the transfer of these existing water rights.

The first step to showing an additional need for beneficial use is to provide measurements and documentation showing that the system has the capacity to divert more than 10.01 cfs and 7246 af. I reviewed the Water Management Information System (WMIS) database for these 5 wells, and I only found one year (2018) that has information on all five of the wells. The 2019 data will not be data entered until after the first of the year, so there may be information that is still not available in the WMIS database. The annual volumes for the year 2018 provided in the WMIS database show that the volumes diverted for these wells as Well #5 = 2511.28 af, Well #4 = 150.85 af, Well #3 = 144.9 af, and Wells #1 & #2 = 88.35 af for a total volume diverted in 2018 of 2895.47 af of water delivered through the City of Shelley's water system from these five wells. The existing water rights authorize a total of 7246 af, so unless there was a significant increase in the volume of water used by the City of Shelley in 2019, it doesn't appear as though this permit provided an additional increment of volume above the amount authorized by the existing water rights.

The WMIS database also gives a diversion rate used to calibrate the flow meters. It must be noted that the diversion rates used for calibration may not depict the maximum capacity of the system. You measured a diversion rate of 1,738 cfs in Well #5. There are no diversion rate records for Well #5 in the WMIS database, so I will use your flow measurement for Well #5 even though you didn't provide adequate documentation to verify that measurement. The WMIS database does have a diversion rate used for the other 4 wells of 1,000 gpm for Well #4, 1,000 gpm for Well #3, and 612 gpm for Wells #1 and #2. The combination of these calibration diversion rates and amount you measured for Well #5 suggests that the system has a diversion capacity of 4,350 gpm or 9.69 cfs. Unless you can supply additional measurements from all 5 wells showing that total capacity of the system exceeds the 9.69 cfs amount, this permit doesn't supply an additional increment of diversion rate above the 10.01 cfs authorized by the existing water rights.

Wells 1-5 appear to have a capacity of 9.69 cfs and a total annual volume need off 2895.7 af, which is well below the diversion rate and volume for the existing water rights. Without any additional information supplied by you, it doesn't appear as though an additional increment of beneficial use has been accomplished under this permit based on the capacity of the system.

If you can provide information that the capacity of the system is above the existing water rights, then you would need to provide an analysis that shows that peak instantaneous demand for the City of Shelley is above the 10.01 cfs limitation of the existing water rights. It appears as though some of this work may have been done during the hearings for this permit, so you could rework some of that data to match current conditions. You will need to provide documented evidence that additional beneficial use has been needed and accomplished under this permit during the development period, or it cannot be licensed.

The IDAPA Rule 37.03.02.040.03 states the following concerning measurements:

Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other standard method of measurement acceptable to the Director. The field report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, the legal description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, and/or calibration information to enable the Director to check the quantity of water measured in each case.

IDAPA Rule 37.03.02.040.04 states the following:

Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except as indicated in these rules and for some diversion systems where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system.

In your field report, you didn't provide any evidence of the measurement that you made. All measurements should be accompanied by a read out of the measurement device used during the measurement over a period of time to ensure that you are measuring the actual flow in the pipe and not spikes shown on the flow meter. In your case, you should have supplied photos, a timed measurement using the totalizer, and pressure readings on the system during the measurement. Typically, we ask for an average measurement over a 10 minute period to ensure that you are not measuring spikes in the flow, and are measuring the flow during normal operating conditions.

Idaho Code § 42-219(8) states the following:

In the event that the department shall find that the applicant has not fully complied with the law and the conditions of permit, it may issue a license for that portion of the use which is in accordance with the permit, or may refuse issuance of a license and void the permit. Notice of such action shall be forwarded to the permit holder by certified mail. The applicant may contest such action by the department pursuant to section 42-1701A(3), Idaho Code.

In your field report, you stated that all of the conditions of the permit had been met. Condition 10 of the permit states the following:

Each year, the right holder shall deliver 90 acre feet of storage water, rented through the Water District 01 Rental Pool, to Jensen's Grove to mitigate for its ground water withdrawals. Approximately 30 acre-feet shall be delivered to Jensen's Grove in the spring and approximately 60 acre-feet shall be delivered to Jensen's Grove in the summer.

Condition 11 of the permit states the following:

Each year, on or before December 31, the right holder shall submit a report to the Department including Water District 01 records showing that Snake River Valley Irrigation District delivered to Jensen's Grove, on behalf of the right holder, 90 acre feet of water rented by the right holder from the Water District 01 Rental Pool in the current calendar year during times when the City of Blackfoot's water right 1-181C could not be delivered because of priority cuts on the Snake River.

In my review of this file, I did not find any of the reports required under condition #11 of this permit. I also contact Water District 01, and they have no record of any water rented and delivered to Jensen's Grove. Without these reports showing that water was rented and delivered to Jensen's Grove to mitigate the use of this water, this permit cannot be licensed, and will subject to being voided.

Prior to licensing a permit, the Department is required to review all of the evidence available to determine if a permit should be licensed or not. We are bound by Idaho Code to ensure that all the evidence provided is adequate to issue a water right license. I have included a portion of Idaho Code to show what criteria we are required to follow when licensing a water right permit.

Idaho Code § 42-219(1) states the following:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use. Such license shall

state the name and post-office address of such user, the purpose for which such water is used and the quantity of water which may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. A license may be issued to a municipal provider for an amount up to the full capacity of the system constructed or used in accordance with the original permit provided that the director determines that the amount is reasonably necessary to provide for the existing uses and reasonably anticipated future needs within the service area and otherwise satisfies the definitions and requirements specified in this chapter for such use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

For the reasons mentioned above, we are returning this field exam report for completion. Please make the above corrections. We will hold the proof of beneficial use form for 30 days, and then we will return that form with the lapse notice if we have not received an acceptable field report or the proof of beneficial use fee. Once the lapse notice is sent, the procedures in Idaho Code §42-218a will be in effect. If it has been determined that there has been no additional increment of beneficial use developed, I have included a relinquishment of permit form if the City of Shelley wishes to relinquish this permit.

If you have any questions, please don't hesitate to contact me.

Respectfully;



Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Email: dan.nelson@idwr.idaho.gov
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

Enclosures Returned Beneficial Use Exam Report
 Relinquishment of permit

Cc City of Shelley
 101 S Emerson Ave
 Shelley ID 83274

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

RECEIVED

NOV 27 2019

DEPARTMENT OF
WATER RESOURCES

A Beneficial Use Field Report is prepared by a water right examiner as the result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with a permit during the development period authorized by the permit and any extensions of time previously approved.

A. GENERAL INFORMATIONPermit No. 27-121551. Owner City of ShelleyPhone No. 208-357-3390Current address 101 S Emerson Ave Shelley, ID 832742. Examiner's name Randall JohnsonEXAM DATE November 6, 20193. Accompanied by Justin JohnsonEmail cityshop@cablone.netAddress 101 S Emerson Ave Shelley, ID 83274Relationship to permit holder City Public Works DirectorPhone No. 208-681-33924. Source Groundwatertributary to NA**B. OVERLAP REVIEW**1. Other water rights with the same place of use 27-4107, 27-12077, 27-12078, 27-2155, 27-7053

2. Other water rights with the same source and point of diversion _____

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

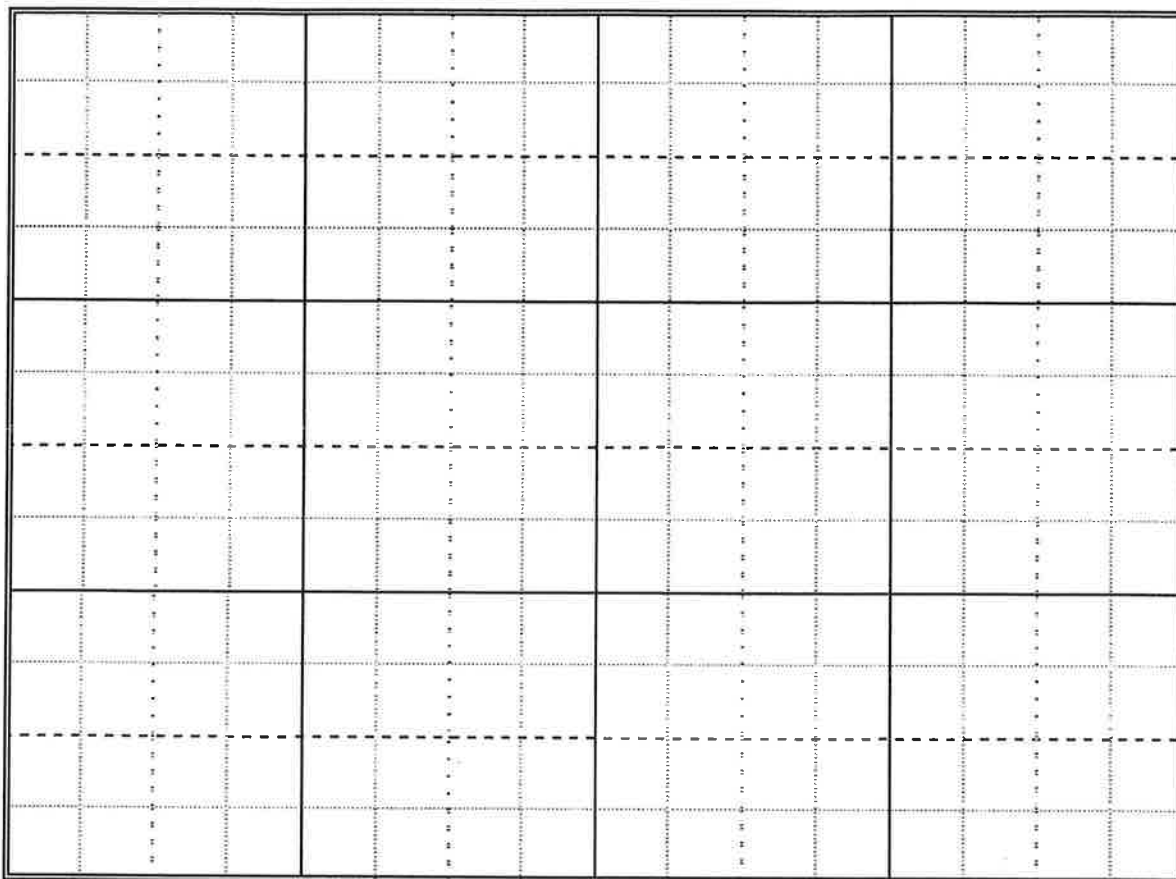
Ident. No.	Gov't Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Method of Determination/Remarks
		NE	SW	SE	31	01N	37E	Bingham	from IDWR Water Right Report

2. Place(s) of Use:

Method of determination Service area of the City of Shelley municipal water system

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe diameter (inside), as applicable. Use the space provided or ☒ see attached.



Scale: 1" = _____

- ☐ Copy of USGS Quadrangle attached showing location(s) of point(s) of diversion and place(s) of use (**required**)
☐ Aerial photo attached (required for irrigation of 10+ acres)
☐ Photo of diversion and system attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
Well - 5	Hitachi	150	G2838902H	Fairbanks Morse	814657539 (8" discharge)

*Code to correspond with no. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Flow Meter	Magnetic	Ultramag	880003032	E12-03427	12"	May 2013*

2. **Measurements:** _____

The Ultramag flow meter that is a component in the Well 5 well house piping system was used to determine flow rate from the diversion point. This meter is on the IDWR list of approved meters. Measured flow rate was 1738 gpm (3.87 cfs).

Has the permit holder met all conditions of permit approval, including any mitigation requirements and/or measuring device installation requirements? ☒ Yes ☐ No If no, what must be done to meet the permit requirements?

F. FLOW CALCULATIONS☐ Additional computation sheets attached

Measured Method:

Not Required. Flow read directly from Ultramag meter display

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

 $V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____ $V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____ $V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$ _____

2. Volume Calculations for Other Uses:

Totalized water use as of Nov 6, 2019 = 502,667,933 gallons (1543 AF) to date. Extrapolating to year end:

1543 AF /10 months * 12 months/year = 1852 AF for the year. Note that this is for all water rights that divert from this location. Volume allowed is 7246 AF for water rights 27-4107, 27-12077, 27-12078, 27-2155, 27-7053 and 140 AF for water right 27-12155. Total allowable diversion is 7386 AF.

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Municipal	01/01	12/31	3.34	140
Totals:			3.34	140

2. Recommended Amendments

☐ Change P.D. as reflected on page 1☒ Add P.D. as reflected on page 1☐ None☐ Change P.U. as reflected on page 1☐ Add P.U. as reflected on page 1☐ Other**I. AUTHENTICATION**

Field Examiner's Signature



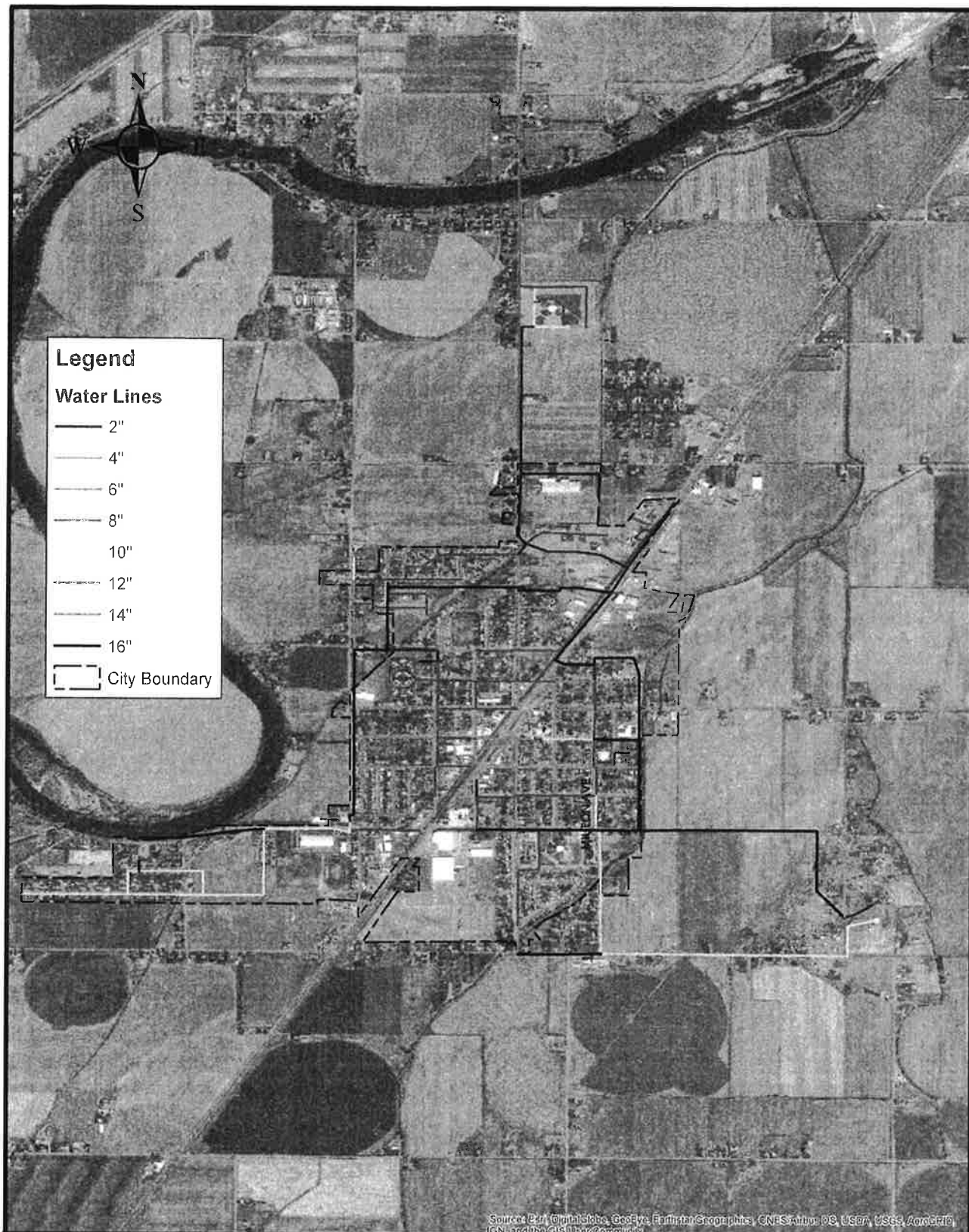
Date

11/22/19

SEAL

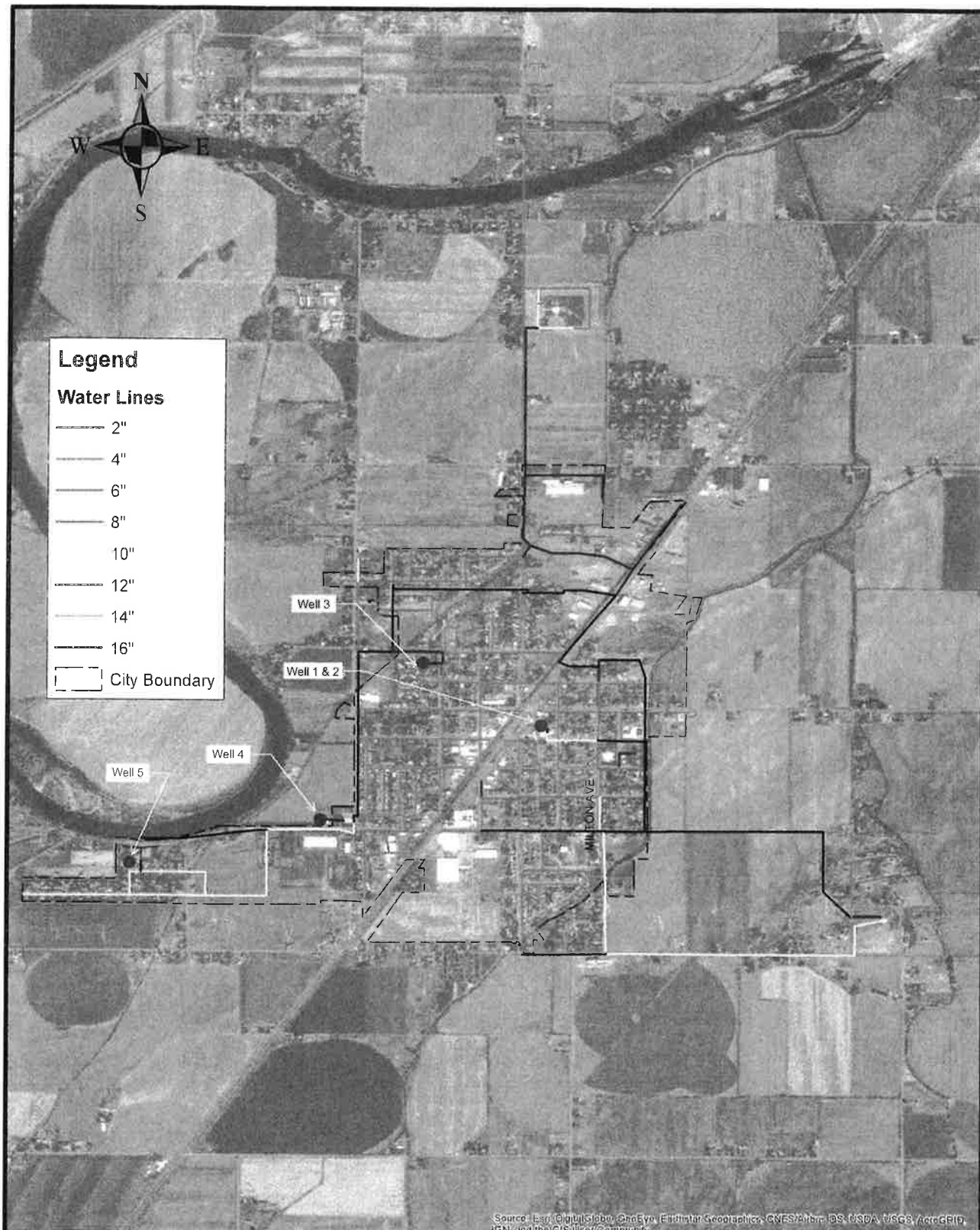
Reviewer

Date

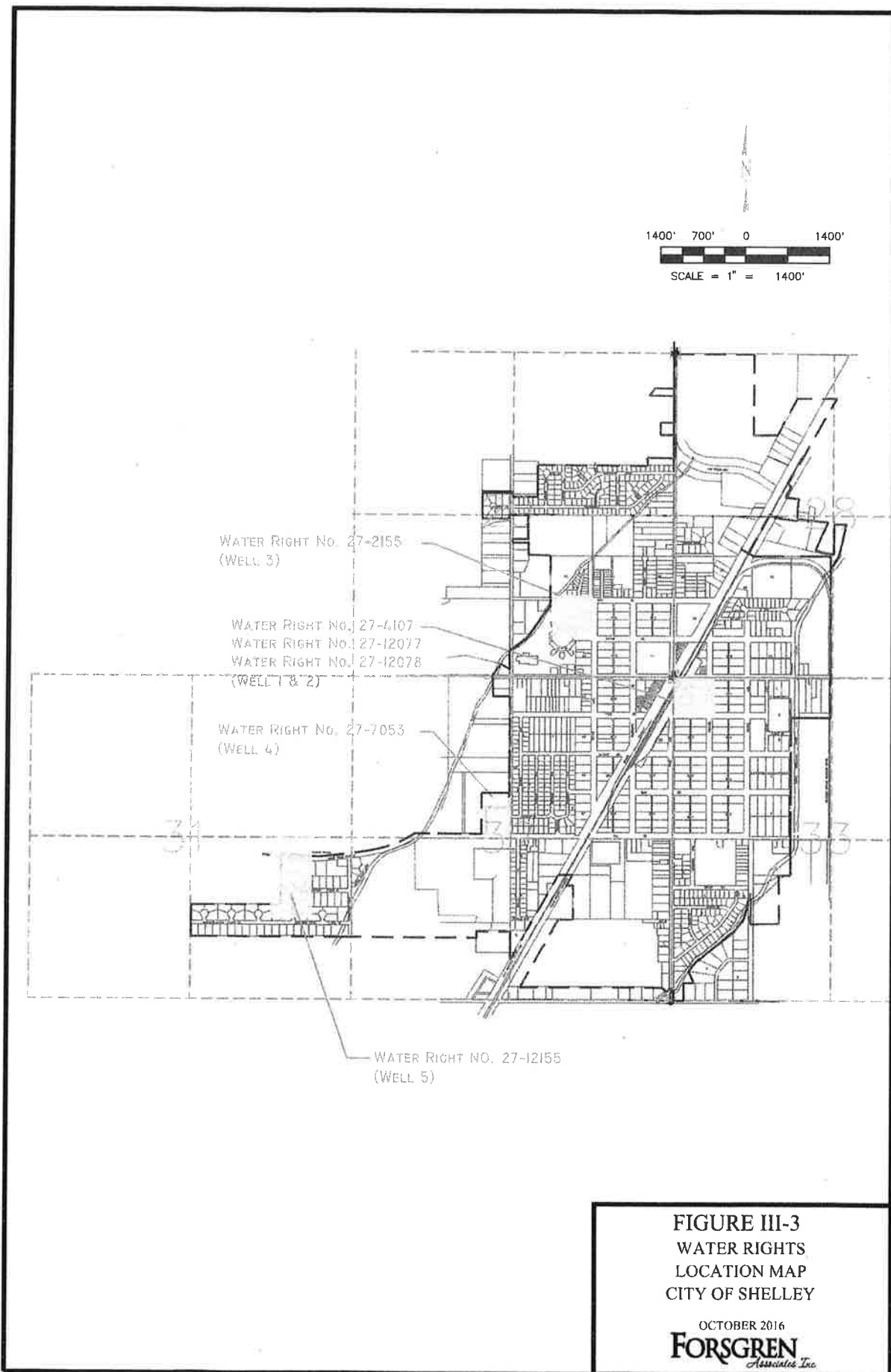


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNRS/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

	DATE October 2016	SITE City of Shelley, ID	Figure III-11
		TITLE EXISTING WATER SYSTEM	



	DATE APRIL 2019	SITE City of Shelley, ID	Figure 1
		TITLE WATER SYSTEM SERVICE AREA	



Nelson, Dan

From: Nelson, Dan
Sent: Monday, December 16, 2019 11:45 AM
To: Olenichak, Tony
Subject: RE: City of Shelley Permit 27-12155 Condition

Thank you for the information Tony. I appreciate the information.

Dan Nelson

From: Olenichak, Tony
Sent: Monday, December 16, 2019 9:36 AM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: RE: City of Shelley Permit 27-12155 Condition

Dan,

I'm not aware of the report being sent to WD01. I also don't see that any storage was rented/leased through the WD01 Rental Pool by the City of Shelley this year. The "report" should include the supplier of the leased storage along with the dates and amounts the rented storage is/was to be delivered to Jensen Grove. WD01 should be able to honor the request for delivery as long as the rental storage is properly obtained through the WD01 Rental Pool Procedures.

Be aware for future reference.....the current WD01 rental procedures provide that all rental leases and information must be submitted with the appropriate fees to WD01 on or before December 1st (not December 31st) of the year the rental storage is to be delivered....which shouldn't be a problem because the permitted condition says the 90 AF must be delivered during the spring and summer.....so the rental storage should have been properly obtained before that time of year.

Tony

From: Cefalo, James
Sent: Friday, December 13, 2019 1:56 PM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>; Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>
Subject: RE: City of Shelley Permit 27-12155 Condition

Dan,

Anything filed with Eastern would have been scanned to the water right file. If there are no reports in the file, then the reports were not filed with Eastern. It is possible, but unlikely, that the reports were filed with WD01. Tony will be able to confirm whether the storage transactions have been completed every year.

James

From: Nelson, Dan
Sent: Friday, December 13, 2019 1:50 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>
Subject: City of Shelley Permit 27-12155 Condition

Hello James and Tony;

I am currently reviewing a field report submitted by certified water right examiner Randall G. Johnson, PE of Forsgen Associations, Inc. for the City of Shelley' permit 27-12155. This particular permit has 2 conditions that resolve the protests against the application for permit. The conditions in question are the following:

Each year, the right holder shall deliver 90 acre feet of storage water, rented through the Water District 01 Rental Pool, to Jensen's Grove to mitigate for its ground water withdrawals. Approximately 30 acre-feet shall be delivered to Jensen's Grove in the spring and approximately 60 acre-feet shall be delivered to Jensen's Grove in the summer.

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The State Office files don't have any of these reports. Mr. Johnson stated that they have complied with the conditions of the permit, but we have no records that confirm these conditions have been met. I was wondering if they sent the reports to your office. If they did, could you send them to me, so I can put them in the formal file for these rights. If not, then please let me know and I will start the process to determine what needs to be done to move forward with the situation,

Thank you both, and I hope you both have a great holiday.

Dan Nelson

Nelson, Dan

From: Nelson, Dan
Sent: Friday, December 13, 2019 2:02 PM
To: Cefalo, James
Subject: RE: City of Shelley Permit 27-12155 Condition

James,

That is kind of what I thought, but I had to ask anyway. Thank you for the information.

Dan

From: Cefalo, James
Sent: Friday, December 13, 2019 1:56 PM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>; Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>
Subject: RE: City of Shelley Permit 27-12155 Condition

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Dan Nelson