

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 1-10633

PRIORITY: February 11, 2015

Maximum Diversion Rate: 29.57 CFS

It is hereby certified that:

A & B IRRIGATION DISTRICT PO BOX 675 RUPERT ID 83350-0675

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 11, 2015, and has submitted Proof of Beneficial Use on May 11, 2018. An examination confirms water is diverted from:

SOURCE:
SNAKE RIVER

TRIBUTARY:
COLUMBIA RIVER

and a water right has been established as follows:

BENEFICIAL USE
IRRIGATION

PERIOD OF USE
03/15 to 11/15

DIVERSION RATE
29.57 CFS

LOCATION OF POINT(S) OF DIVERSION:

SNAKE RIVER NE¼NW¼ Sec. 20, Twp 10S, Rge 22E, B.M. MINIDOKA County

CONDITIONS OF APPROVAL

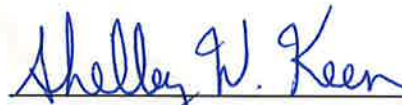
1. The boundary encompassing the place of use for irrigation under this water right is described with a digital boundary as authorized by Idaho law. The data comprising the digital boundary are stored in the electronic document management system of the Department and are incorporated into this approval by this reference. A map depicting the place of use is attached to this approval document to illustrate the place of use described by the digital boundary.
2. Place of use is for irrigation of 1,478.5 acres within the boundary of A & B Irrigation District pursuant to Section 43-323, Idaho Code.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District 01. In addition, the watermaster of State Water District 130, or its successor, shall be responsible for administering the requirement that this water right must be used in lieu of ground water rights in Water District 130.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. This right is limited to use on land with valid ground water irrigation right(s) and does not authorize irrigation of land not previously irrigated with ground water. The purpose of this right is to reduce the right holder's reliance on ground water. Therefore, the right holder shall not simultaneously apply water diverted pursuant to this right and ground water on the same land, but ground water may be used during the same growing season when water is not being diverted and used pursuant to this right.

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6. The right holder shall not divert and use water under this right if the natural flow in the Snake River is not sufficient to fill senior rights diverting from the Snake River as determined by the Watermaster of Water District 01.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
8. The point of diversion is located within the Lee Placer Claim within Section 20, Township 10 South, Range 22 East, B.M., generally located within the projected NENW.
9. This right does not grant any right-of-way or easement across the land of another.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 14th day of June, 2018.



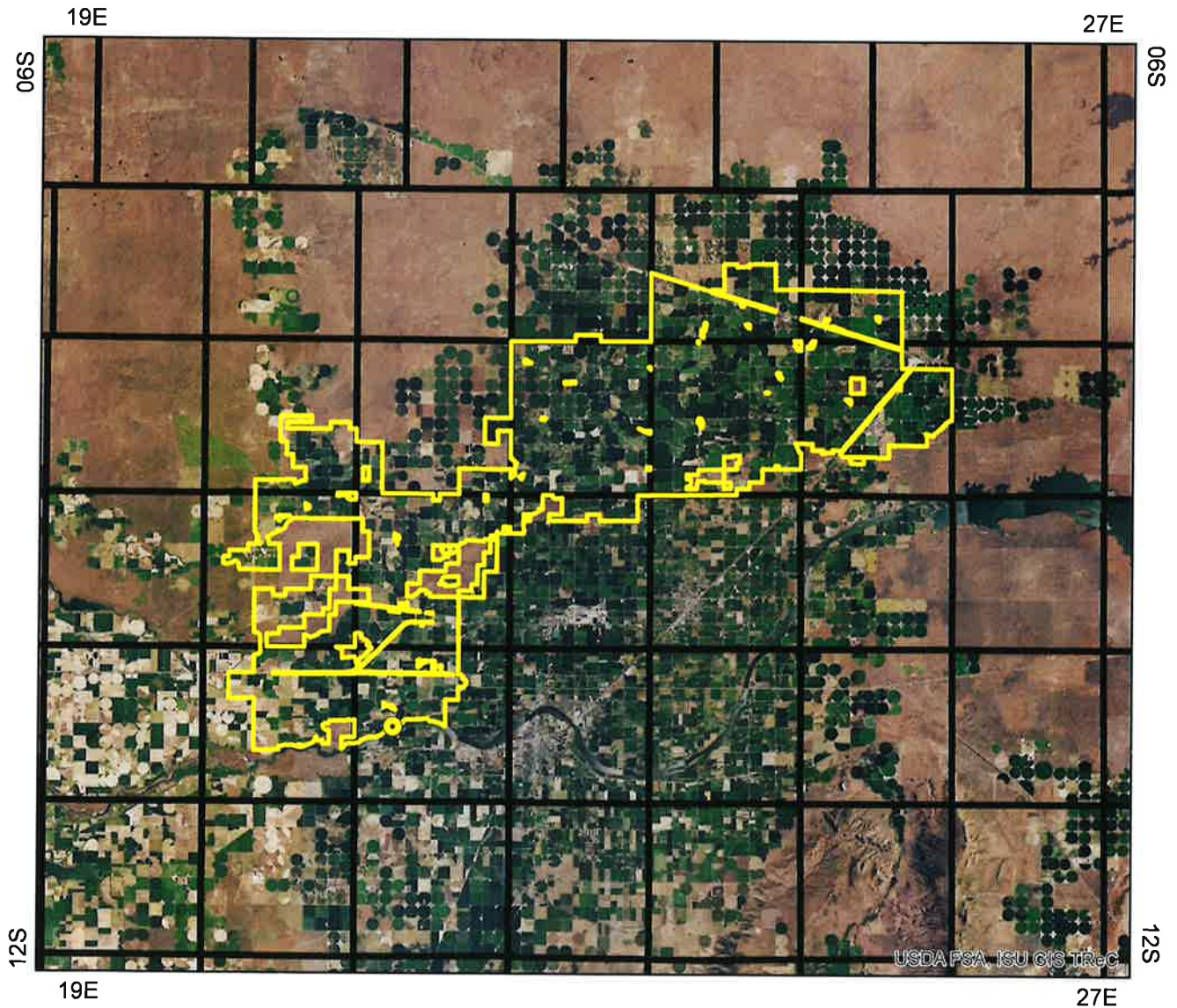
SHELLEY W. KEEN
Water Rights Section Manager

A & B Irrigation District

Attachment to Water Right License

1-10633

This map depicts the IRRIGATION place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



0 4.5 9 18 Miles

- Point of Diversion
- Place Of Use Boundary
- Townships





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E FRONT ST STE 648 PO BOX 83720 • BOISE, ID 83720-0098

Phone: (208)287-4800 • Fax: (208)287-6700 • Website: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

June 14, 2018

A & B IRRIGATION DISTRICT
PO BOX 675
RUPERT ID 83350-0675

RE: License No. 1-10633

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district.

The license is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 287-4951.

Sincerely,

Pamela S Skaggs
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, I served a true and correct copy of Water Right License No. 1-10633 by U.S. Mail, postage prepaid, to the following:

A & B IRRIGATION DISTRICT (Current Owner)
PO BOX 675
RUPERT ID 83350-0675

TRAVIS L THOMPSON (Attorney)
BARKER ROSHOLT & SIMPSON LLP
163 2ND AVE W
PO BOX 63
TWIN FALLS ID 83303-0063

WATER DISTRICT #01
LYLE SWANK (Watermaster)
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

WATER DISTRICT #130
NATHAN ERICKSON (Watermaster)
650 ADDISON AVE W STE 500
TWIN FALLS ID 83301



Darla Block
Technical Records Specialist I

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Block, Darla

From: Block, Darla
Sent: Thursday, June 14, 2018 12:56 PM
To: 'tlt@idahowaters.com'
Subject: Emailing: Signed License #01-10633.pdf
Attachments: Signed License #01-10633.pdf

Your message is ready to be sent with the following file or link attachments:

Signed License #01-10633.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

MEMORANDUM

TO: Water Right File 1-10633

FROM: Daniel Nelson – Analyst 3

DATE: May 24, 2018

SUBJECT: Licensing Review of Water Right 1-10633

The field exam report for this permit was prepared by Dave Shaw of ERO Resources. I was able to confirm the diversion rate information and the place of use information provided by Mr. Shaw. I was also able to confirm that the lands involved with this permit have been historically irrigated using ground water under the B-Division of the A & B Irrigation District (District). There are a couple of issues that need to be addressed.

Place of Use:

Typically, irrigation districts and canal companies have a general border for their water rights. However, this permit was issued with a very distinct place of use inside the normal boundary of the District. The shape file created for the permit process was useful in determining the acres associated with this conversion project, but the actual place of use for the license should reflect the A & B Irrigation District Border. I am currently working with the GIS staff to create a folder that has shape files for the surface water place of use, ground water place of use, and the conversion acres associated with this permit.

System Capacity:

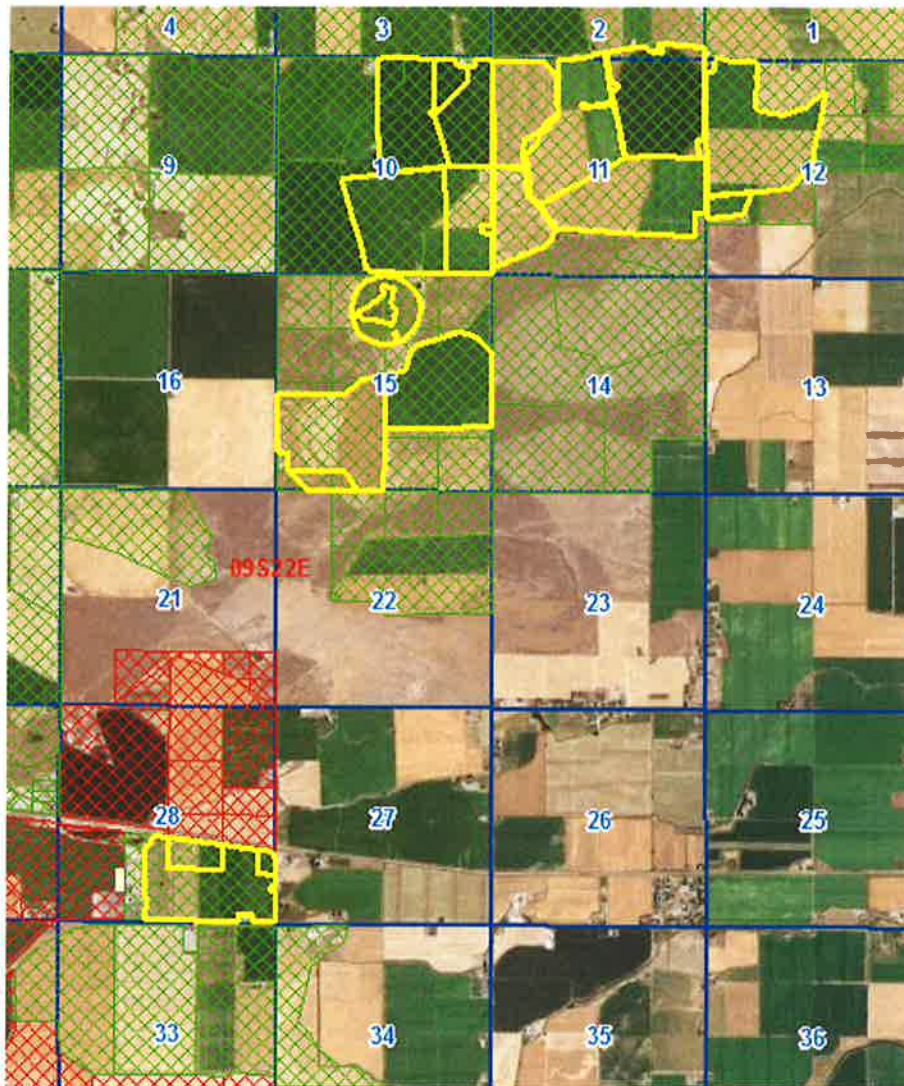
The system capacity of the new pumping plant has been measured at 87.79 cfs. The original plan for this system was divert a portion of the existing water rights through the new point of diversion to supply water from existing water rights to water users that are at the end of the A-Division. However, no water right transfer has been filed to authorize the existing water rights to be diverted through the new point of diversion. A copy of my analysis will be forwarded to the Compliance Bureau to address this issue.

Conditions:

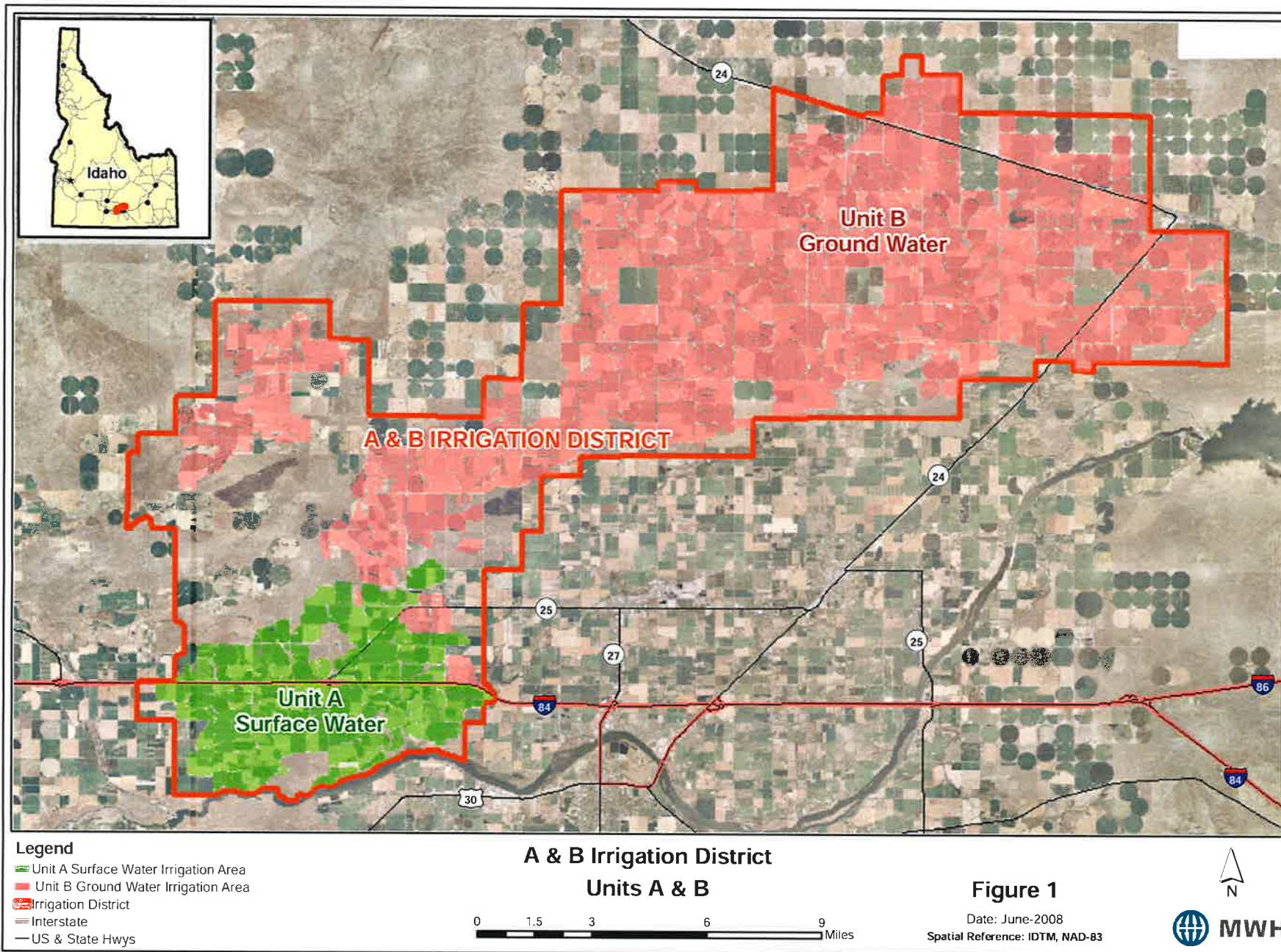
Condition 10 of the permit requested a map of the acres receiving water under this permit for each year of irrigation. The water rights examiner supplied an electronic map showing the entire area as being irrigated. A review of the Hydromet data suggests that this pumping system diverted water in 2016 and 2017. No water was diverted through the new pumping station in 2015. The Hydromet data suggests that the system was full operational and pumping a higher diversion rate than authorized by this permit. Therefore, I am assuming the all of the acres were irrigated in 2016 and 2017. Since this condition appears to have been met, it will be removed at licensing. The remainder of the conditions will be carried forward to licensing. A couple of the conditions will be re-worded to provide more clarity of the condition.

Permit 1-10633 – Confirmation of Soft Conversion acres

The aerial photo below provides a confirmation of which lands are actually associated with the soft conversion acres. The yellow border shows the lands associated with this permit. The green hatched areas is the borders of the B-Division of the A & B Irrigation District. The water source for the B-Division is totally ground water. The red hatched area is the borders of the A-Division. The A-Division has historically been served with water from the Snake River. From the information available, it appears as though the lands serviced by this permit were originally B-Division lands. Therefore, this permit increases the area that can be served with Snake River water, and can be considered to have provided an additional increment of Beneficial Use.



The shape files for the A-Division and B-Division were attained through information provided in the July 17-18, 2014, (8-14) Idaho Water Resource Board meeting materials found on the Idaho Department of Water Resources Website and various other Department records that I could find from the water right files of the existing water rights. I have included attachments with this email.



Nelson, Dan

From: Olenichak, Tony
Sent: Friday, June 01, 2018 10:35 AM
To: Nelson, Dan
Subject: RE: A&B Irrigation

Dan,

Thanks for the follow-up. I'll begin the process of changing the WD01 water right accounting to separate the two A&B diversions so that the new diversion is diverting storage whenever it is out-of-priority or when it is exceeding the 29.57 cfs when its right is in priority.

I'll need to do a little more research as to whether the new diversion is able to divert A&B's storage allocation or if it is restricted to only diverting rental storage assigned to it. Storage assigned to a diversion may be diverted at any rate, but the total volume diverted is limited to the amount of storage (acre-feet) assigned to the diversion. Once a diversion is out-of-priority and has exhausted the volume of storage assigned to it, the diversion is curtailed by the Watermaster.

Tony

From: Nelson, Dan
Sent: Friday, June 01, 2018 10:20 AM
To: Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>
Subject: RE: A&B Irrigation

Hi Tony,

I spoke with Shelley, and there is no way we can combine the water rights in a manner that would authorize the diversion of more than the 29.57 cfs from the new diversion through the licensing of this permit. Without filing a water right transfer to add the new point of diversion to the existing water rights, any diversion above the 29.57 cfs would be considered an illegal use of water. I am not sure how the storage rights work, but if they do not have a point of rediversion designated on the storage rights, then storage rights may be able to be diverted through the new diversion at a greater rate than the 29.57 cfs. You folks know more about the storage bookkeeping details than I do, so I will leave it up to you figure that part out.

I hope this helps.

Thank you for your help and insight on this issue. It really helped me figure this situation out.

Dan Nelson

From: Olenichak, Tony
Sent: Thursday, May 24, 2018 3:30 PM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: RE: A&B Irrigation

Dan,

Good observation. It appears Water District #1 has incorrectly assumed that 1-10633 was supplemental to 1-14 but they currently appear to be independent and should be treated separately. When the 2/11/2015 water right is in-priority,

anything diverted exceeding 29.57 cfs should be charged as a storage diversion. When the 2/11/2015 water right is out-of-priority, everything diverted at the pump should be charged as a storage diversion.

I do not know if A&B is in the process of combining the rights (because I had incorrectly assumed they had already been combined). If you are unaware of any transfer and Shelley doesn't see a way to combine the rights using a flow rate or acreage limitation, then Water District #1 needs to start treating the water rights separately and formulate a process to calculate the storage diversion at each of the two pumping stations independently of one another.

Currently, when the 4/1/1939 water right 1-14 is in priority and the combined diversions aren't exceeding 267 cfs (or exceeding 298.8 cfs when the 2/11/2015 right is in priority), then the point of diversion described in 1-10633 isn't being charged for diverting any storage.....which is incorrect if 1-14 and 1-10633 are not combined or supplemental to one another.

This problem may even run a little deeper. Do you know if A&B has contracted reservoir storage that can be used on the POU of 1-10633? They may not if A&B's contracted storage water was intended to be applied to only the acreage served by their original surface water pumps for 1-14. If that's the case, A&B may need to go through the Rental Pool procedures and pay the fees to deliver storage to the POU described in 1-10633 not covered in their storage contracts.

If you or Shelley see a way that 1-14 and 1-10633 can be combined, let me know. Otherwise, I'll start the process to get the Water District #1 accounting of water delivery changed so that the POD for 1-10633 is charged for storage when they are exceeding 29.57 cfs or when the 1-10633 priority has been cut.

Tony

From: Nelson, Dan

Sent: Thursday, May 24, 2018 2:32 PM

To: Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>

Subject: RE: A&B Irrigation

Hello Tony,

First of all, thank you again for the Hydromet data. That worked out really well.

However, I do have one question. I have gone through the data and the water rights for A&B Irrigation District, and I have a question for you. They are limited to diverting this permit (29.57 cfs) out of the new point of diversion (Hydromet diversion mpci_qj). However, it appears as though they have been diverting up to 87.79 cfs out of this diversion. Throughout most of June 2017, they were diverting 60 to 80 cfs of flow through the new diversion and didn't really start receiving storage flows until mid-July. The original Environmental Assessment stated that they were going to file a water right transfer on their original water rights to use this diversion to help out the folks on the end of the A-Division system, but I checked with Southern Region and they haven't received a water right transfer for A&B Irrigation District.

Do you know if they are in the process of filing a transfer on the existing water rights to allow them to be diverted through the new point of diversion? If they aren't working on water right transfer to add this point of diversion to the original rights, is there anything we should do as far as the licensing of this permit to ensure they only divert the permit through this diversion?

I wanted to get your thoughts on this issue before I turn this into Shelley for licensing review. I know he will question me on this, so anything you can tell me about this situation will be helpful.