

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 65-13268

PRIORITY: August 13, 1990

Maximum Diversion Rate: 0.20 CFS
Maximum Diversion Volume: 25.2 AF

It is hereby certified that:

DAVID W HOLM 3223 NW 3RD AVE FRUITLAND ID 83619

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 13, 1990, and has submitted Proof of Beneficial Use on November 09, 1992. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
STOCKWATER	01/01 to 12/31	0.20 CFS	25.2 AF
COMMERCIAL	01/01 to 12/31	0.20 CFS	25.2 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30, Twp 08N, Rge 04W, B.M. PAYETTE County
GROUND WATER NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30, Twp 08N, Rge 04W, B.M. PAYETTE County
GROUND WATER NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 30, Twp 08N, Rge 04W, B.M. PAYETTE County

PLACE OF USE: COMMERCIAL AND STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	04W	30		X	X		X			X									

CONDITIONS OF APPROVAL

1. Commercial use is for a dairy.
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
3. The following rights are diverted through the eastern most point of diversion described above as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ quarter of Section 30, Township 08 North, Range 04 West: 65-6246 and 65-13268.

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 23rd day of March, 2017.

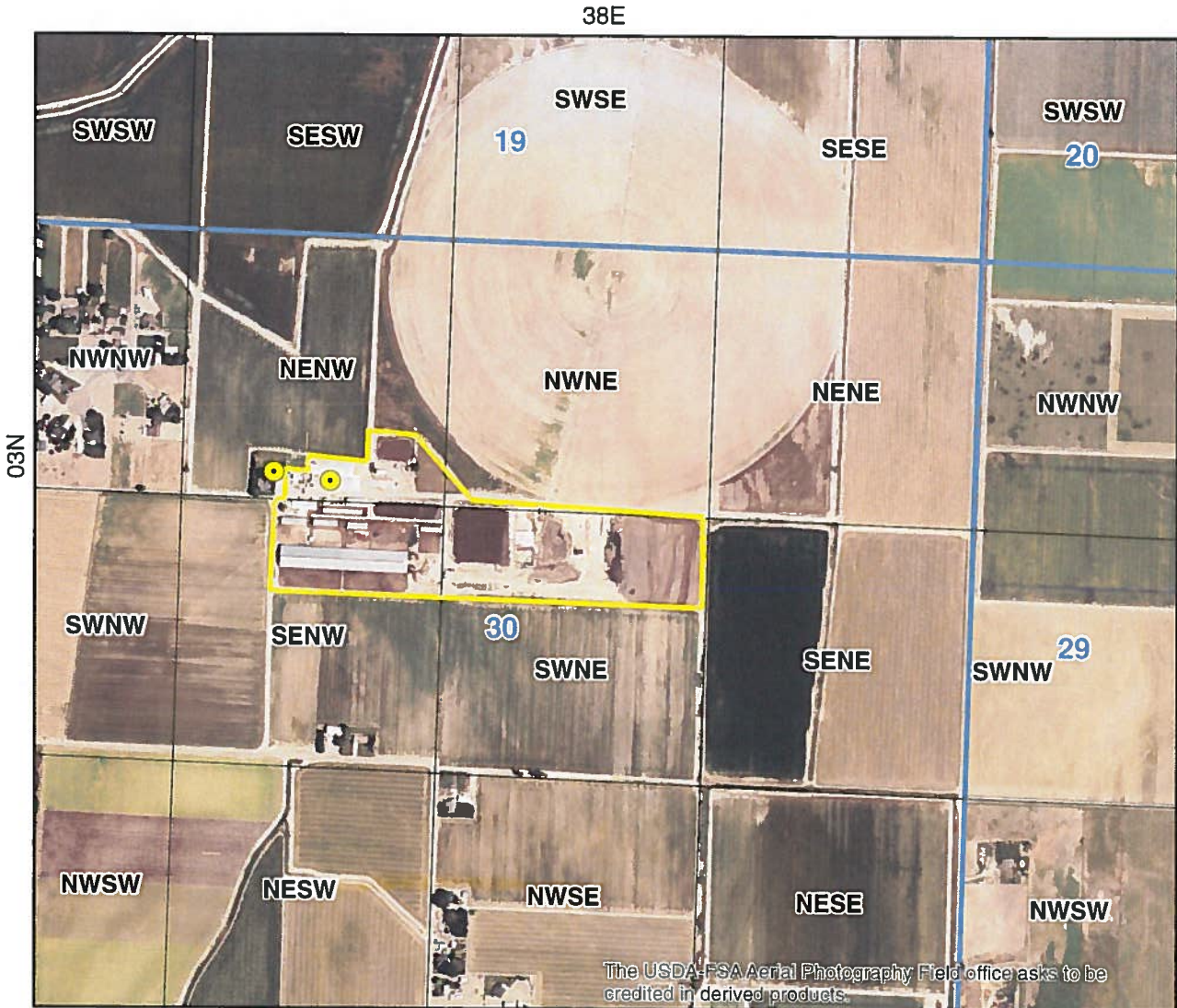


SHELLEY W. KEEN
Water Rights Section Manager

Attachment To Water Right License

65-13268

This map depicts the COMMERCIAL AND STOCKWATER 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.



- Point of Diversion
- Place of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.1 0.2 0.4 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

March 23, 2017

DAVID W HOLM
3223 NW 3RD AVE
FRUITLAND ID 83619

RE: License No. 65-13268

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources 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 the conditions of approval and remarks listed on your license. Also enclosed is a copy of the approved application for amendment.

The license 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.

Sincerely,

A handwritten signature in blue ink that reads "Pamela Skaggs".

Pamela Skaggs, Water Rights Supervisor
Water Right Permits Section

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**Approved License**) to the person(s) listed below:

RE: WATER RIGHT NO.

65-13268

**DAVID W HOLM
3223 NW 3RD AVE
FRUITLAND ID 83619**



Darla Block

Technical Records Specialist

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.

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 65-13268

RECEIVED

MAR 22 2017

DEPARTMENT OF
WATER RESOURCES

PRIORITY: August 13, 1990

Maximum Diversion Rate: 0.20 CFS
Maximum Diversion Volume: 25.2 AF

Comes now

DAVID W HOLM 3223 NW 3RD AVE FRUITLAND ID 83619

and represents to the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 65-13268, and requests that the permit be changed as follows:

SOURCE:
GROUND WATER

TRIBUTARY:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
STOCKWATER	01/01 to 12/31	0.20 CFS	25.2 AF
COMMERCIAL	01/01 to 12/31	0.20 CFS	25.2 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼NW¼ Sec. 30, Twp 08N, Rge 04W, B.M. PAYETTE County
GROUND WATER NE¼NW¼ Sec. 30, Twp 08N, Rge 04W, B.M. PAYETTE County
GROUND WATER NE¼NW¼ Sec. 30, Twp 08N, Rge 04W, B.M. PAYETTE County

PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	04W	30		X	X		X			X									

PLACE OF USE: STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	04W	30		X	X		X			X									

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 17 day of MARCH, 2017.


(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 65-13268

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = \$100⁰⁰ Receipted by VC # C103234 Date 3-22-17

ACTION OF THE DEPARTMENT OF WATER RESOURCES

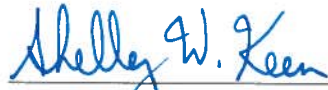
The Idaho Department of Water Resources hereby approves the above Application for Amendment for Permit No. 65-13268 with the following:

CONDITIONS OF APPROVAL

1. Commercial use is for a dairy.
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
3. The following rights are diverted through the eastern most point of diversion described above as being in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ quarter of Section 30, Township 08 North, Range 04 West: 65-6246 and 65-13268.

This amendment is issued pursuant to the provisions of Section 42-211, Idaho Code.

Signed this 23rd day of March, 2017.



SHELLEY W. KEEN
Water Rights Section Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 14, 2017

DAVID W HOLM
3223 NW 3RD AVE
FRUITLAND ID 83619

RE: Water Right Permit No. 65-13268

Dear Permit Holder(s):

On March 13, 2017, we spoke on the telephone concerning the amendment for water permit 65-13268. During that conversation, we also discussed lapsed permit 65-23033, which has since lapsed and is no longer in affect. While developing lapsed permit 65-23033, you drilled a well (New Well) in the SENW quarter of Section 30, Township 8 North, Range 4 West. By allowing permit 65-23033 to lapse, you no longer have authorization to divert water from this well. In order to remedy this situation, I agreed to add this point of diversion onto the amendment of permit for water right permit 65-13268 to authorize the use from this well.

By issuing a license, the Idaho Department of Water Resources (Department) confirms the extent of development that has been established in compliance with the terms of the permit. Adding the New Well as a point of diversion for water right 65-13268 does not increase the diversion rate or volume found to have been developed under permit 65-13268. You are still limited to the diversion rate and volume found by the field examiner to have been developed prior to the date that the proof of beneficial use statement was filed stating that you had completed the development of permit 65-13268. Please see review the attached amendment form. If you agree with the amendment, please sign the amendment and return the amendment and the \$100.00 amendment fee by March 29,2017.

We also discussed in our telephone call the options you have for the growth of your dairy. We determined that you have two options. The first option is to seek to reinstate Permit 65-23033 or file for a new application for permit. I will discuss each option below:

Option #1 Reinstating permit 65-23033:

If you seek to reinstate permit 65-23033, you will to provide the following items:

- 1.) A report from a certified water right examiner as a result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on the form or forms specified by the Director of Department.
- 2.) A statement of reasonable cause for filing a late proof of beneficial use.
- 3.) A reinstatement fee of two hundred fifty dollars (\$250.00).

Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received.

Option #2 – Filing a new application for permit:

By filing a new application for permit, you would need to go back through the application for permit process. This application would be advertised and could be protested. There is no guarantee that the application for permit will be approved, and if it is approved, it could be approved with additional limiting conditions not addressed in your existing permits.

Conclusion:

Regardless of whether or not choose to file a new application for permit or reinstate you existing permit, you will essentially have the same priority date for either filing. The only advantages of reinstating the permit would be that you would not need to go through the permitting process and be open to protests of your water use, and your permit could be licensed for the amount of water you did develop during the development period. If you file a new application for permit and it is approved, you could continue to increase the size of the dairy during an new development period of 5 to possibly 10 years. If you wish to continue to increase the size of the dairy, a new application for permit may be your best option. If you are satisfied with the size of the dairy, then reinstating the permit may be you best option.

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when issued. Please review the amendment form carefully. If you concur with the information presented, please sign and return the form with the \$100.00 filing fee within 14 days or by March 29, 2017.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel A. Nelson", with a long horizontal flourish extending to the right.

Daniel A. Nelson
Analyst 3
Water Right Section
Idaho Department of Water Resources
Telephone # (208) 287-4856
Email – dan.nelson@idwr.idaho.gov

Enclosure(s): Application for Amendment with map

MEMORANDUM

TO: Water Right Permit File 65-13268

FROM: Daniel A. Nelson

DATE: March 13, 2017

SUBJECT: Correction to Amendment.

On this date, I spoke with David Holm about the amendment that I sent him on March 9, 2017. Mr. Holm and I discussed what needed to be done to move the amendment forward, and then Mr. Holm asked what he needed to do to reinstate permit 65-23033. I informed Mr. Holm that he would need to file a proof of beneficial use statement, pay a \$250 fee, and have a certified examiner submit a field report for the water use. I also told him that he could file a new permit for this use that would give him additional time to bring the dairy up to the cattle numbers he originally sought. However, a new permit would have a priority date of the date he filed the new application for permit.

Mr. Holm stated that he didn't expand the dairy as much as he had intended to do, so he didn't submit the proof statement on the second permit for this dairy. However, he did increase the number of cattle he was milking to over 1,000 head of cattle, and he did drill and is using the new well authorized by permit 65-23033. He is going to determine if he wants to file a new permit or try to reinstate the older permit.

Since permit 65-13268 requires an amendment anyway, it was decided that we could add the new well onto this permit to avoid a water right transfer down the road to add this well onto water right 65-13268. This addition of the new well will not add additional diversion rate of volume to the permit, so there shouldn't be an issue. This will also allow him to continue to divert water out of that well if needed.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 09, 2017

DAVID W HOLM
3223 NW 3RD AVE
FRUITLAND ID 83619

RE: Water Right Permit No. 65-13268

Dear Permit Holder(s):

The Idaho Department of Water Resources (Department) is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit.

The examiner who verified your water use reported that certain elements of the permit has been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

The application for permit you submitted and the permit approved by the Department allowed the development of the dairy in the NENW quarter of Section 30 in Township 8 North, Range 4 West. The permit allowed a single point of diversion or well to be used for the dairy. The location of the point of diversion/well was also in the NENW quarter of Section 30 in Township 8 North, Range 4 West.

Based on the examiner's report, the dairy was developed with 2 wells in the NENW quarter of Section 30 in Township 8 North, Range 4 West, and the place where the dairy was actually developed was located in the SENW quarter and the NENW quarter of Section 30 in Township 8 North, Range 4 West.

A review of historic and current aerial imagery, confirms that the dairy/feedlot that existed prior to the permit being filed and approved has always been in both the NENW and SENW of Section 30. Therefore, it appears as though the application for permit was filed with the incorrect place of use. All of the dairy facility south of what appears to be a county road or driveway is actually in the SENW of Section 30. Current imagery also shows that the dairy has been expanded over the years to include the NWNE and SWNE of Section 30. I have included a map with this letter showing the footprint of dairy/feedlot in 1987 and the dairy footprint in 2015.

The enlarged footprint of the dairy and the use of 2 points of diversion/wells cannot be covered in the license issued for this permit without the permit first being amended to include the second well and the correct place of use. Fortunately, the amendment can change the place of use to include all of the lands currently being used for the dairy operation. This prevents you from deal with various compliance issues that might arise in the future.

The permit will still be limited to the diversion rate and diversion volume originally developed by the permit and described the field report for the dairy. In order to increase the rate of diversion or volume used for this dairy, you will need to file another application for permit. Apparently, you did file a water right permit (water right permit 65-23033) to expand the water use in the dairy, but you did not file the needed proof of beneficial use statement required, and that permit lapsed on July 2, 2016 and is no longer in affect.

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when issued. Please review the amendment form carefully. If you concur with the information presented, please sign and return the form with the \$100.00 filing fee within 14 days or by March 24, 2017.

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

Sincerely,



Daniel A. Nelson

Analyst 3

Water Right Section

Idaho Department of Water Resources

Telephone # (208) 287-4856

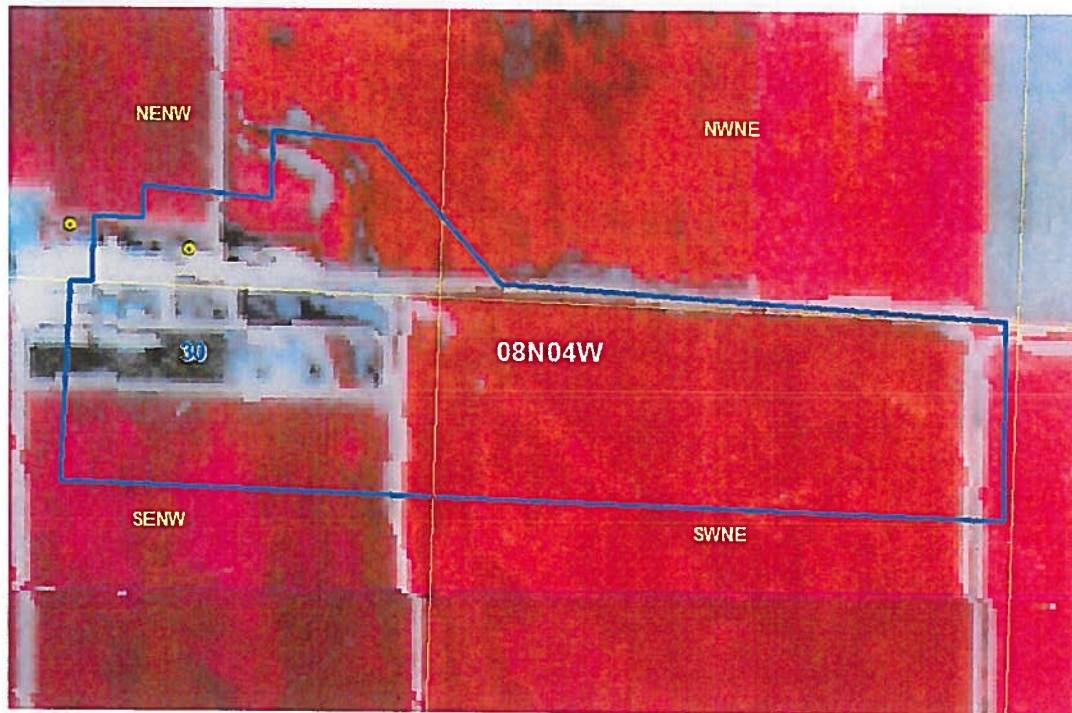
Email – dan.nelson@idwr.idaho.gov

Enclosure(s): Attachment showing 1987 and 2015 aerial photos
 Application for Amendment with map

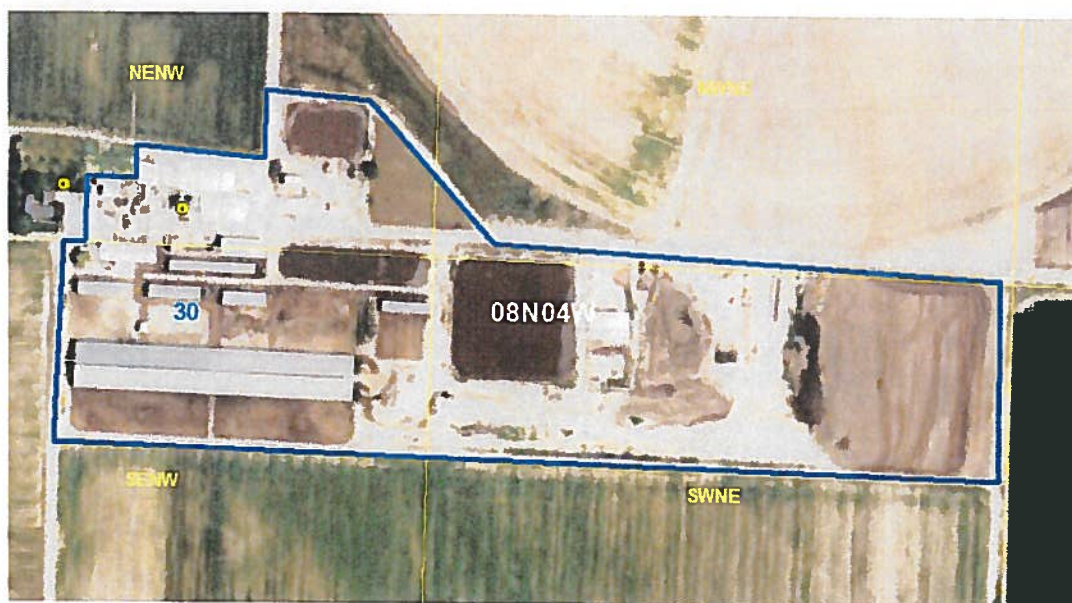
Permit 65-13268 Amendment Attachment:

The application for permit and water right permit issued as permit number 65-13268, stated that place of use was only in the NENW of Section 30, Township 8 North, Range 4 West. The following 1987 aerial photo shows the location of the dairy as being in the NENW and SENW of Section 30. The blue border shows the current footprint of the dairy. The bottom aerial photo is from 2015 that shows the latest footprint of the dairy.

1987 aerial Photo



2015 Aerial Photo



MEMORANDUM

TO: Water Right File 65-13268

FROM: Daniel Nelson – Analyst 3

DATE: March 8, 2017

SUBJECT: Licensing Review of Water Right 65-13268

This field exam was performed by our Western Region staff. The field examiner reported that 0.20 cfs and 25.2 af of water was used for commercial and stockwater purposes in a dairy. The field examiner found 2 points of diversion in the NENW of Section 30, Township 8 North, Range 4 West, and the place of use was found to be in the NENW and SENW of Section 30, Township 8 North, Range 4 West.

History and Issues:

The permit holder originally filed for one point of diversion and a place of use in the NENW of Section 30, Township 8 North, Range 4 West. The original application was for a 1,000 cow dairy. Apparently the dairy was originally supposed to be on the north side of the county road, but it looks like the milking parlor and cattle pens were constructed on the south side of the county road, thus putting the place of use in SENW of Section 30. Review of 1980 aerial photography confirms that the dairy was in place long before the permit was filed, and that it had always been on the south side of the county road.

The agent completing the field report doesn't appear to have been the person who did the initial field examination. The report speaks to a field examination that was done in 1993, but the field report was signed in 2006. It also appears as though the agent completing the field report did not visit the site, which is a common practice for some of the older field reports and exams.

Current aerial photos suggest that the dairy may have grown, since the initial field examination, but most of that growth appears to be dairy lagoons, silage pits, and dairy waste compost piles that don't require any fresh water from the wells. The actual footprint of the dairy has not changed very much at all since 1987 except for a barn on the south end of the dairy that was built prior to 2009. This barn appears to be used for cover for the cattle from the weather. The major change was the addition of waste lagoons and manure compost piles on east side of the dairy. In order to license this permit, an amendment is needed to correct the place of use. With the amendment, it only makes sense to include the entire footprint of dairy as it currently exists to avoid any compliance issues in the future.

Overlapping Water Rights:

Water right 65-6246 is a domestic and stockwater right for 200 head of range cattle. This right was decreed in the Snake River Basin Adjudication (SRBA) as a domestic right limited to 13,000 gallons per day. The well for 65-6246 is used as a supplemental/backup well for the dairy, but the field examiner stated that water right 65-6246 was not used in the dairy, and was used additional beef cattle and the home. I couldn't find any other corrals other than those attached to the Dairy, so I am not sure where those cattle are located. |

Permit 65-23033 was issued on July 18, 2006, to expand the dairy to 5,000 head of dairy cattle. Permit 65-23033 lapsed on July 2, 2016, and a lapsed notice was sent on July 7, 2016. No response to the lapsed notice has been received. Therefore, permit 65-23033 should no longer be considered as a valid water right.

There is another domestic right in the same 40 acre tract, but is for another individual. I was unable to find the owner of this right, so this water use could have been abandoned. The irrigation use on the farm is covered by Noble Ditch Company and Lake Reservoir Company water rights.

Points of Diversion:

The field examiner found 2 points of diversion in the NENW of Section 30, Township 8 North, Range 4 West. The permit holder drilled a new point of diversion for the dairy under this permit, but used the old well described in water right 65-6245 as a backup well. The field examiner stated that both wells were used during the development period, so both wells should be included on the license. The field examiner stated that 65-6245 was not used in the dairy, so it supposedly has its own separate use. I couldn't find any other corrals that could be used for 65-6245, but it is a domestic right that was decreed in the SRBA, and it is limited to 13,000 gallons per day. Therefore, it shouldn't be an issue. An amendment will be required to correct the place of use, so we will include both wells on this permit and subsequent license through the amendment. The system was using both wells during the development period, so there shouldn't be any issues with including the second well.

Place of Use:

As mentioned above, the footprint of the dairy has expanded a little bit since proof of beneficial use was filed. However, the majority of the expansion has been in the same two 40 acre tracts. There is portion of the expansion that goes into the neighboring 40 acre tract to the east. This eastern expansion appears to be sewage lagoons, silage pits, and manure compost piles. None of that area would require fresh water usage directly from the wells, but it should be included on the water right license. The dairy water use will be limited to the 500 head of cattle that were milked during the development period, so this shouldn't be an issue. I recommend that the license should recognize a place of use in the NENW, NWNE, SWNE, and SENW.

The application for permit only described the NENW, so an amendment will be needed to cover the remaining tracts where the current dairy is located. Please see the attached maps that show the expansion of the dairy from 1987 to 2015. I have marked the recommended place of use and the points of diversions on the maps. These maps clearly show that permit didn't properly described the place of use, and an amendment would have been needed even if you didn't take the expansion into account.

Diversion Rate:

The field examiner used theoretical analysis calculations to determine the flow rate for the two wells. I agree with the method used and the total dynamic head calculated by the field examiner. I would have liked a measurement of the system, but at the time of the field exam, we didn't measurement equipment that could adequately determine the flow rate of the system other than the time fill method. Therefore, I recommend that a diversion rate of 0.20 cfs as approved in the permit be the limiting factor for the diversion rate. The well capacity does appear to exceed the amount allowed by the permit.

Diversion Volume:

The field examiner requested and received a Daily Fresh Water Requirement sheet for the dairy for 1993. This requirement sheet was based on the water use during the development period. This information seems complete and I agree that the dairy requires 25.2 af of water per year to operate the dairy. The commercial use appears high, but high commercial water use is typical in dairies that have a sprinklers in their holding pen for cow prep. Due to the pumping and water usage costs, many dairies have ceased using these systems in exchange for hand prep of the cows, which does a much better job with much less water usage.

Ownership:

The permit holder is still the owner of the property according to our tax records. Therefore, there are no issues with ownership.

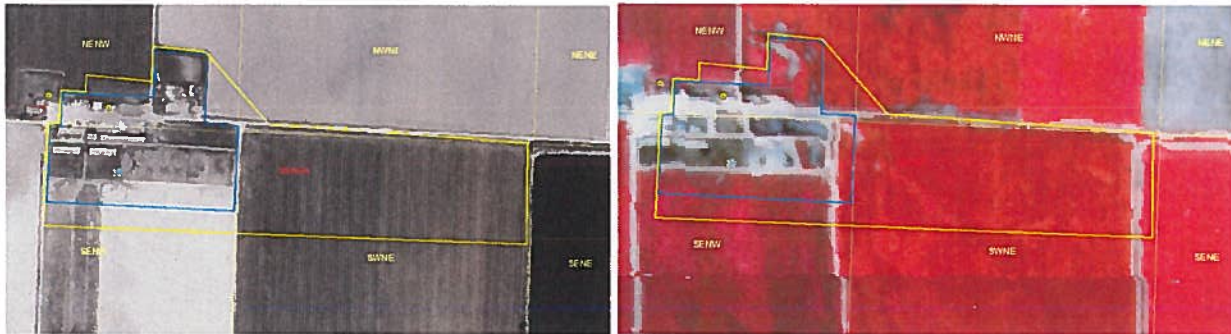
Conditions:

The only condition that should be carried forward to licensing is condition X01 clarifying the commercial use. I am adding in condition 01M and F06. These conditions are explanatory conditions, so they would not cause any additional compliance.

Permit 65-13268 Review Memo



The 2015 image above left shows the current dairy footprint. The yellow border shows the current footprint of the dairy, and the blue border shows the area the field examiner recommended as the place of use. The borders are the same in all four of these photos. The 2004 image above right shows the aerial photo the field examiner used to draw the borders of the dairy.



The 1992 image (above left) shows the dairy footprint after the proof of beneficial use was filed. It was smaller than the place of use recommended by the field examiner, and smaller than the current dairy footprint. The 1987 image (above right) shows the dairy prior to the permit being filed. It is clear from the 1987 image that dairy was in place long before the permit was filed in 1990.

The footprint of the dairy has grown over the years, but the 1987 suggests that the permit was filed in error. Whereas an amendment was necessary regardless of the growth of the dairy over the years, it only seems reasonable to include all of the 40 acre tracts the dairy occupies in 2015 to ensure there will not be a compliance issue once the license is issued.