

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-11619

PRIORITY: December 31, 1991

Maximum Diversion Rate: 0.11 CFS
Maximum Diversion Volume: 10.0 AF

It is hereby certified that:

DARYL M ELLIOTT PO BOX 338 IDAHO CITY ID 83631-0338

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 31, 1991, and has submitted Proof of Beneficial Use on May 08, 1996. An examination confirms water is diverted from:

SOURCE:
UNNAMED STREAM

TRIBUTARY:
ROSS FORK

and a water right has been established as follows:

BENEFICIAL USE
MINING

PERIOD OF USE
05/01 to 10/31

DIVERSION RATE
0.11 CFS

ANNUAL DIVERSION VOLUME
10.0 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM SW¼SE¼ Sec. 17, Twp 07N, Rge 06E, B.M. BOISE County

PLACE OF USE: MINING

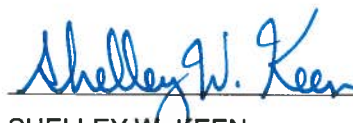
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	06E	17															X		

CONDITIONS OF APPROVAL

1. 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 No. 63.
2. 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.
3. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. Mining use is for ore testing.

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 8th day of March, 2017.

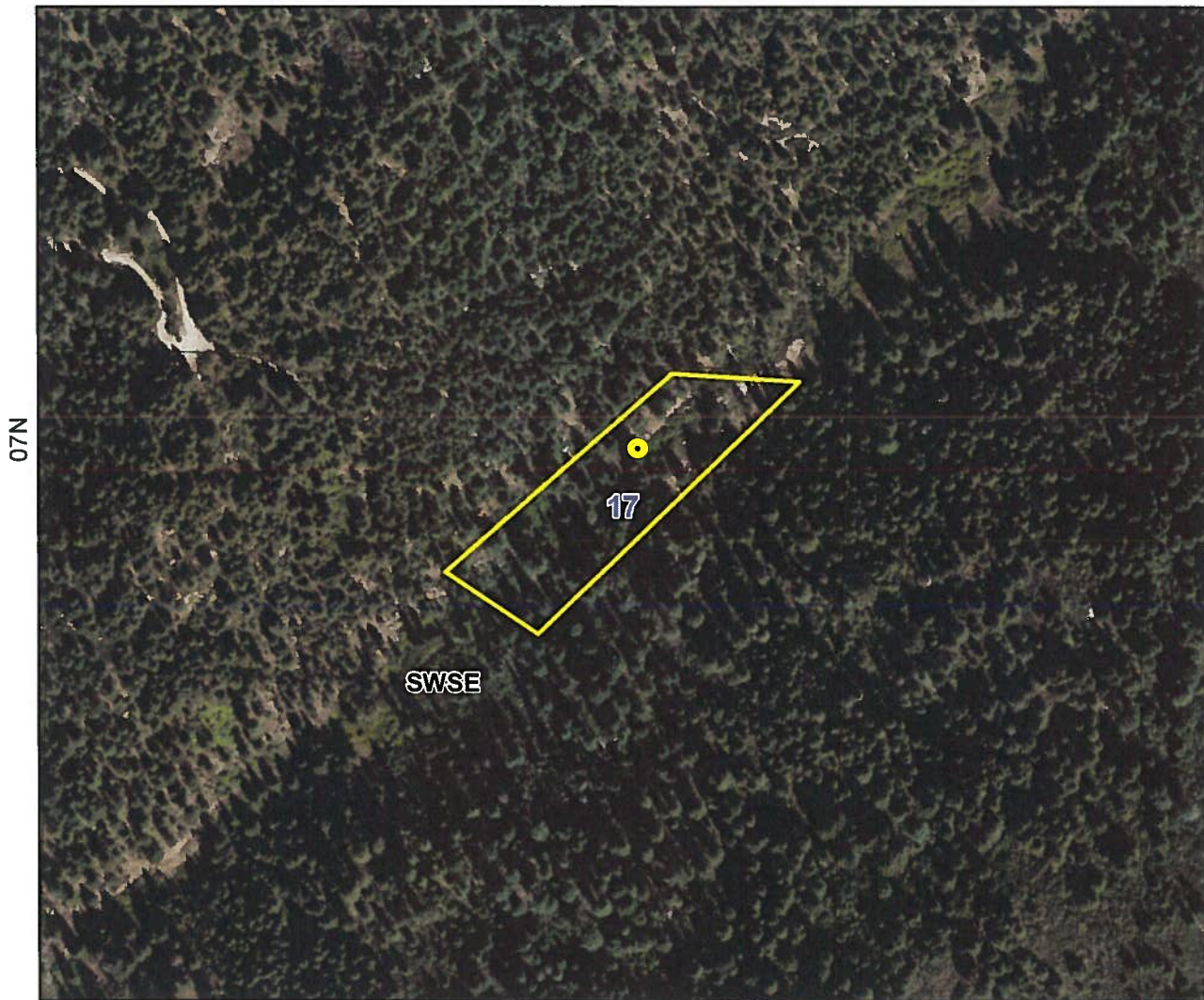


SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
63-11619

This map depicts the MINING 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.

06E



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections

0 0.035 0.07 0.14 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 9, 2017

DARYL M ELLIOTT
PO BOX 338
IDAHO CITY ID 83631-0338

RE: License No. 63-11619

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.

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)

c: WATER DISTRICT #63

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 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.

63-11619

**DARYL M ELLIOTT
PO BOX 338
IDAHO CITY ID 83631-0338**

**WATER DISTRICT #63
REX BARRIE
PO BOX 767
STAR ID 83669-0767**



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.

MEMORANDUM

TO: Water Right File 63-11619

FROM: Daniel Nelson – Analyst 3

DATE: March 6, 2017

SUBJECT: Licensing Review of Water Right 63-11619

This field exam was performed by our Western Region staff. The field examiner reported that 0.11 cfs and 10 af of water was used for mining purposes in the SWSE of Section 17, Township 7 North, Range 6 East.

History and Issues:

The permit holder originally filed for a 3 points of diversion and a much large place of use. The field examiner found that the permit holder was using a much smaller operation. Aerial photography available to the Department is not sufficient to validate or dispute the findings of the field examiner, so the locations of the place of use and point of diversion will be as described in the field report.

It is difficult to tell from the photos, but it looks like the water is used to operate a rather small sluice box. I researched the web for sluice box design, and the flow didn't appear to be the major factor on a small sluice box. The major factor was the velocity of the water, which is generally accomplished by adjusting the slope of the sluice box. A flow of 50 gpm is acceptable on sluice boxes from 8 to 12 inches wide if the slope of the sluice box is correct.

The field examiner found a small pond on the property used to capture the tailings to prevent water from the mining operation from directly discharging into the stream. The pond was 6 feet by 20 feet by 6 feet deep or 720 cubic feet or 0.0165 af. At the time the permit was issued and field examined, the 24 hour fill rule included mining ponds. At a diversion rate of 0.11 cfs, this diversion rate could divert 0.2 af of water in a 24 hour period. This diversion rate could also provide 3168 cubic feet of water in an 8 hour period ($0.11 \text{ cfs} \times 60 \text{ sec/min} \times 60 \text{ min/hour} \times 8 \text{ hours/day} = 3168$). The permit holder should not be required to have a storage component on this right for the tailings pond.

Whereas the tailings pond was not mentioned in the permit, there is concern that the permit holder should have complied with IDAPA Rules 37.03.05. IDAPA Rules 37.03.05, states the following:

Mine Tailings Impoundment Structure. Any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry. (7-1-93)

The pond described in the field report stated the pond was 6 feet deep, so it would not apply to IDAPA Rules 37.03.05, and would fit within the 24 hour fill rule allowed at the time the permit was filed.

Points of Diversion and Place of Use:

The field examiner determine the point of diversion and place of use was located in the SWSE of Section 17, Township 7 North, Range 6 East. The location of the point of diversion and place of use seems reasonable. I had a difficult time locating the place of use in the aerial photography. However, Google Earth imagery suggests that some mining could have been located in the northern portion of the 40 acre tract. I drew the shape file based on the Google Earth imagery.

Diversion Rate:

The field examiner used the time fill method to determine the flow rate. A theoretical analysis confirms that a flow rate of 50 gpm is possible with the 10 feet of lift and shown in the field examiner's diagram. I believe the diversion rate is reasonable for this type of use.

Diversion Volume:

The field examiner calculated the diversion rate based on 8 hours of use per day for 134 days. This seems reasonable for this area. Therefore, I believe it is reasonable.

Overlap:

The only water right that is in this area is an instream stockwater right owned by the US Forest Service on Ross Fork Creek. This permit is on a tributary of Ross Fork Creek.

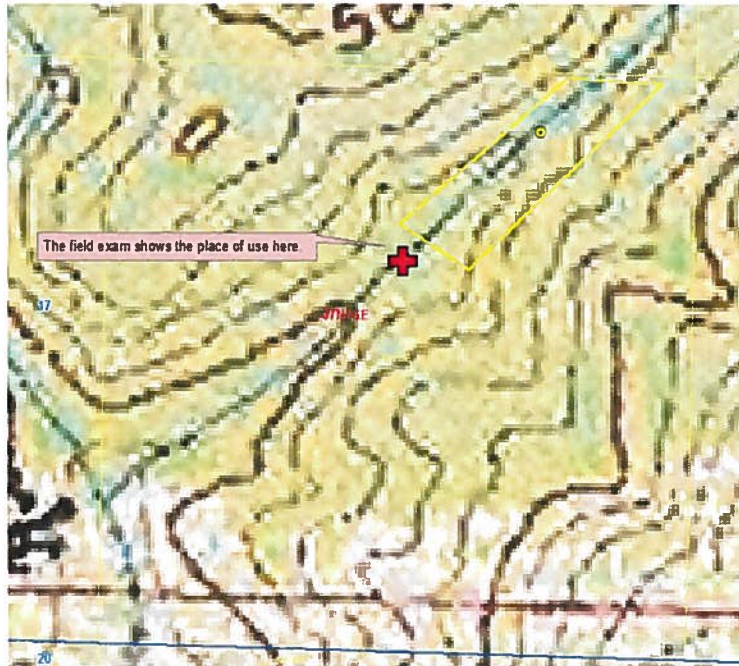
Ownership:

This permit is on US Forest Service land. The permit file doesn't show whether or not a mining claim was filed on this location, or if the permit holder had the proper permits to mine this area. However, the equipment being used seemed to be old and rusty and the established tailing ponds do suggest that the mining operation has been in place for some time.

Conditions:

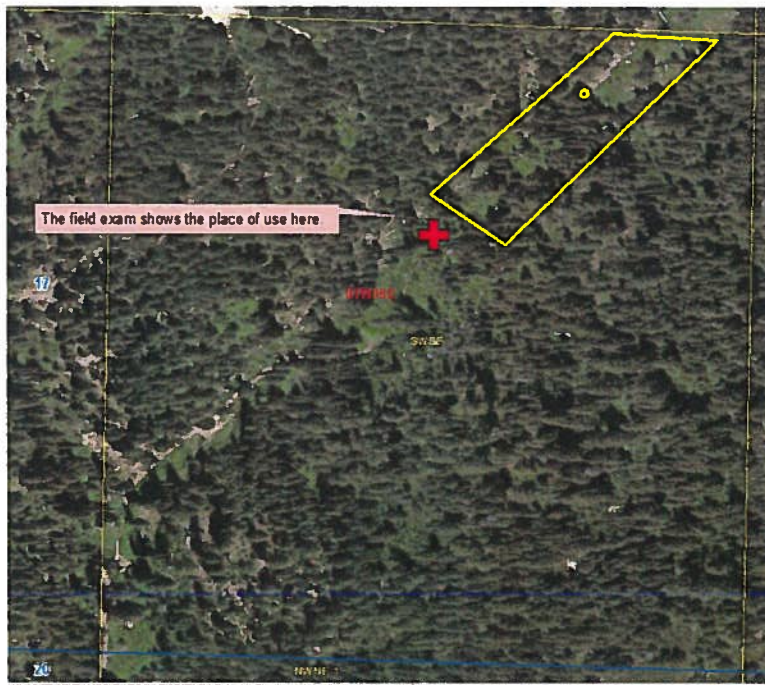
Condition 1 (005) should be changed to condition R05 as is standard. Condition R43 should be added since a measurement order has been issued for this area. Condition 2 (09E) should be removed, since the field examiner found that water is not directly injected back into the creek. The water is diverted into a small pond and the water is allowed to seep through underground flow into the creek. Condition 4 (26A) should be removed at licensing per standards. Condition 5 (004) should be carried forward to licensing.

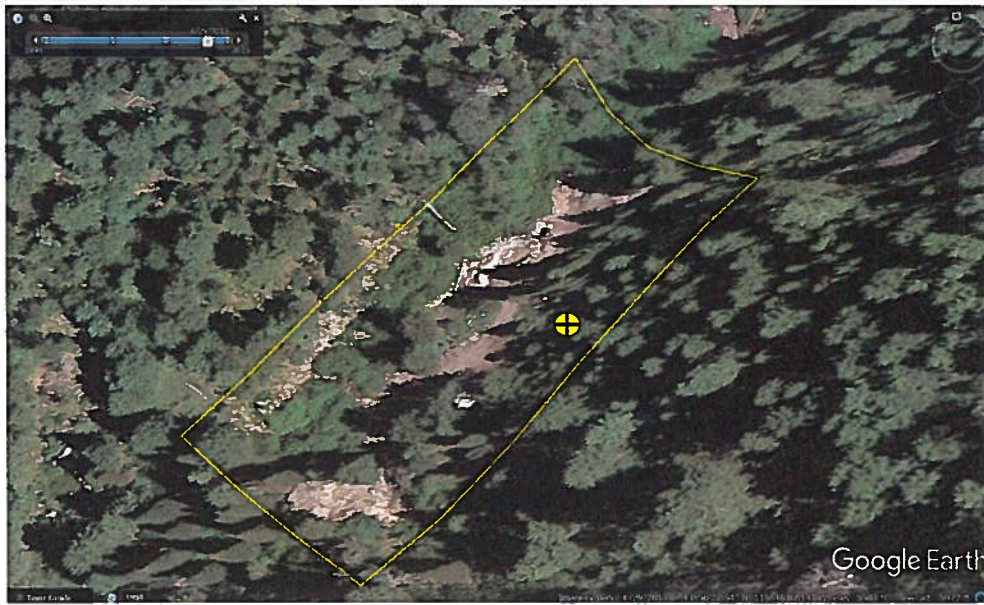
63-11619



Permit 63-11619 – Place of Use and Point of Diversion Estimation.

The above shows the place of use and point of diversion mark made by the field examiner on the topo maps. The photo below shows the same location using the 2011 esri imagery. As you can see, it is difficult to define the exact location of the mining operation. However, I feel the Google Earth maps give the best indicator of the location of the mining operation.

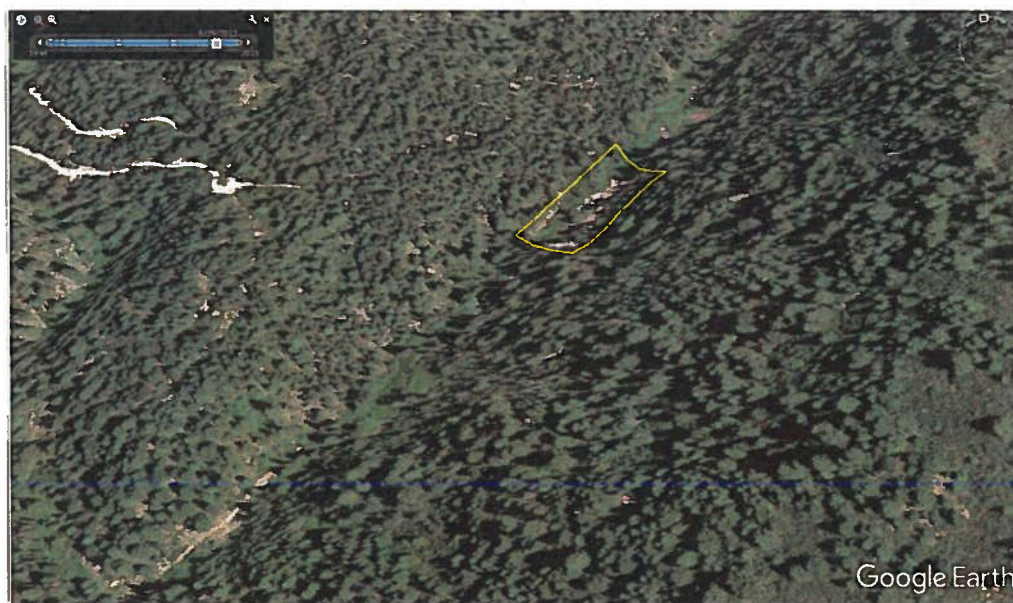




Permit 63-11619 – Place of Use and Point of Diversion Estimation.

The above Google Earth imagery shows the same place of use as is marked in my ArcMap image. This is the only place I can see any kind of construction type work happening. It looks like there is a yellow dozer and a black truck at the top of the picture, and what could be a white trailer or building in the middle of the picture. There also appears to be an area of disturbed earth at the bottom of the photo as well. This is the location that I put the place of use. I place the point of diversion in the middle of this area in the area of the creek.

The Google Earth image below show the stream bottom down to the edge of the 40 acre tract. This imagery shows that there isn't much activity in this area.





Permit 63-11619 – Place of Use and Point of Diversion Estimation.

The above 1998 aerial imagery shows what appears to be some small buildings or trailers at the top of the place of use and a road that appears to head up the hill to what could be a small mine shaft. This image is the year after the field examiner visited the site, so I feel this is the location of the mining operation.

The 2013 imagery from ArcMap shows the road up the hill again and the location of where the vehicles were in the Google Earth photos. There is a white spot there that could be a vehicle.



THEORETICAL HORSEPOWER EQUATION WORKSHEET (cjh 1/92)

Water Right No.: 63-11619
 Reviewer: Dan Nelson
 Date of Review: 3/6/2017

P/D No.:

PUMP HORSEPOWER
 BOOSTER HORSEPOWER
 PUMPING LEVEL
 DISCHARGE PRESSURE
 RATE OF FLOW (cfs)

Scenario 1
1.5
0
10
31
0.11
51

The above calculates the formula =

$$Q = \frac{8.8 * (\text{Efficiency}) * \text{hp}}{\text{depth to water} + 2.31 * (\text{psi}) + \text{friction}}$$

Assumptions: %70 efficiency.
 No Friction

Examiners Notes:

The field examiner stated that she measured the diversion rate using the time fill method at 50 gpm. The diagram in the field report shows 10 feet of lift. This would allow approximately 31 psi at the discharge, which should have been suitable for this type of mining operation.