

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 47-08059

Priority: February 17, 1987

Maximum Diversion Rate: 5.34 CFS

It is hereby certified that MAGIC IRRIGATORS INC
716B E 4900 N

BUHL ID 83316 has complied with the terms and conditions of the permit,
issued pursuant to Application for Permit dated February 17, 1987; and has submitted Proof of Beneficial
Use on March 31, 1994. An examination confirms water is diverted from:

SOURCE

SALMON FALLS CREEK

Tributary: SNAKE RIVER

and a water right has been established as follows:

BENEFICIAL USE

IRRIGATION

PERIOD OF USE

03/15 to 11/15

DIVERSION RATE

5.34 CFS

LOCATION OF POINT(S) OF DIVERSION:

SALMON FALLS CREEK NE1/4SW1/4 Sec. 1, Twp 09S, Rge 13E, B.M. TWIN FALLS County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S 13E 1									39.0	31.0							70.0
09S 13E 2	33.0	41.0	40.0	39.0			39.0	39.0	38.0	40.0	31.0	40.0	35.0	28.0	35.0	34.0	512.0
	L 1	L 2															
09S 13E 3			40.0	34.0									37.0	36.0	40.0	39.0	226.0
09S 13E 10	39.0	40.0	40.0	40.0	39.0			40.0	40.0			29.0	39.0	40.0			386.0
09S 13E 11		1.0			35.0	39.0	39.0	12.0									126.0

Total Acres: 1320

CONDITIONS OF APPROVAL

1. 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).
2. 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 place of use.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 47G.
4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.

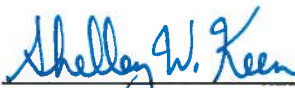
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 47-08059

5. This right does not grant any right-of-way or easement across the land of another.
6. Rights 47-2384, 47-2415, 47-8059, 47-10261, and 47-17541 when combined shall not exceed a total diversion rate of 10.34 cfs and the irrigation of 1200 acres.
7. Right Nos. 47-2384, 47-2415, 47-10261, 47-8059, 47-8060, and 47-17541 are limited to the irrigation of a combined total of 1360 acres.
8. This right is limited to the irrigation of 599 acres within the authorized place of use in a single irrigation season.
9. Right Nos. 47-2269, 47-2384, 47-2415, 47-10261, 47-8059, 47-8060, and 47-17541 are limited to the irrigation of a combined total of 8087 acres.

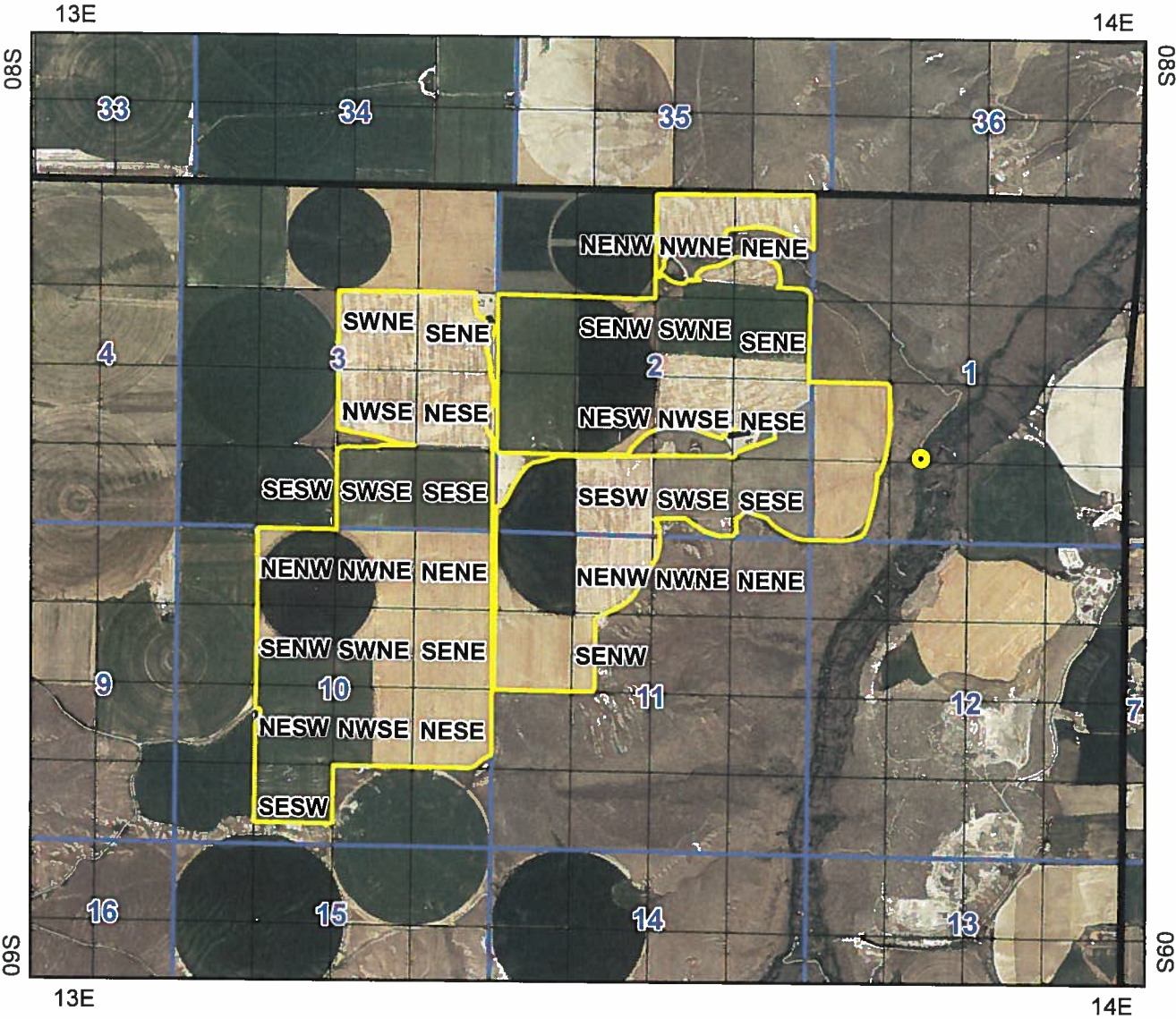
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 4th day of December, 2013.

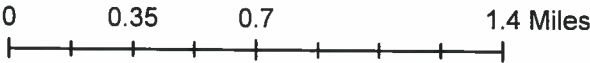

for _____
GARY SPACKMAN
Director

State of Idaho
Department of Water Resources
Attachment To Water Right License
47-8059

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.



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



RECEIVED

OCT 28 2013

DEPARTMENT OF
WATER RESOURCES

Page 1

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 47-08059

Date of Priority: February 17, 1987

Maximum Diversion Rate: 5.34 CFS

Comes now MAGIC IRRIGATORS INC

716B E 4900 N

BUHL ID 83316 and represents to the Director of 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. 47-08059, and requests that the permit be changed as follows:

Source: SALMON FALLS CREEK

Tributary: SNAKE RIVER

BENEFICIAL USE

IRRIGATION

PERIOD OF USE

03/15 to 11/15

RATE OF DIVERSION

5.34 CFS

LOCATION OF POINT(S) OF DIVERSION:

SALMON FALLS CREEK NE1/4SW1/4 Sec. 1, Twp 09S, Rge 13E, B.M. TWIN FALLS County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S 13E 1									39.0	31.0							70.0
09S 13E 2	33.0	41.0	40.0	39.0			39.0	39.0	38.0	40.0	31.0	40.0	35.0	28.0	35.0	34.0	512.0
	L1	L2															
09S 13E 3			40.0	34.0									37.0	36.0	40.0	39.0	226.0
09S 13E 10	39.0	40.0	40.0	40.0	39.0			40.0	40.0			29.0	39.0	40.0			386.0
09S 13E 11		1.0			35.0	39.0	39.0	12.0									126.0

Total Acres: 1320

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 24 day of Oct, 2013.

Kenneth P. Elkin (Vice Pres)
(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 47-08059

FOR DEPARTMENT USE ONLY

Preliminary check by DAN Fee = 10000 Received by DM # 5033599 Date 10-29-13

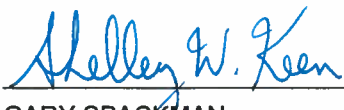
ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 47-08059 with the following:

CONDITIONS OF APPROVAL

1. 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).
2. 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 place of use.
3. Use of water under this water right will be regulated by the watermaster of State Water District No. 47G.
4. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
5. This right does not grant any right-of-way or easement across the land of another.
6. Rights 47-2384, 47-2415, 47-8059, 47-10261, and 47-17541 when combined shall not exceed a total diversion rate of 10.34 cfs and the irrigation of 1200 acres.
7. Right Nos. 47-2384, 47-2415, 47-10261, 47-8059, 47-8060, and 47-17541 are limited to the irrigation of a combined total of 1360 acres.
8. This right is limited to the irrigation of 599 acres within the authorized place of use in a single irrigation season.
9. Right Nos. 47-2269, 47-2384, 47-2415, 47-10261, 47-8059, 47-8060, and 47-17541 are limited to the irrigation of a combined total of 8087 acres.

Witness my hand this 4th day of December, 2013.

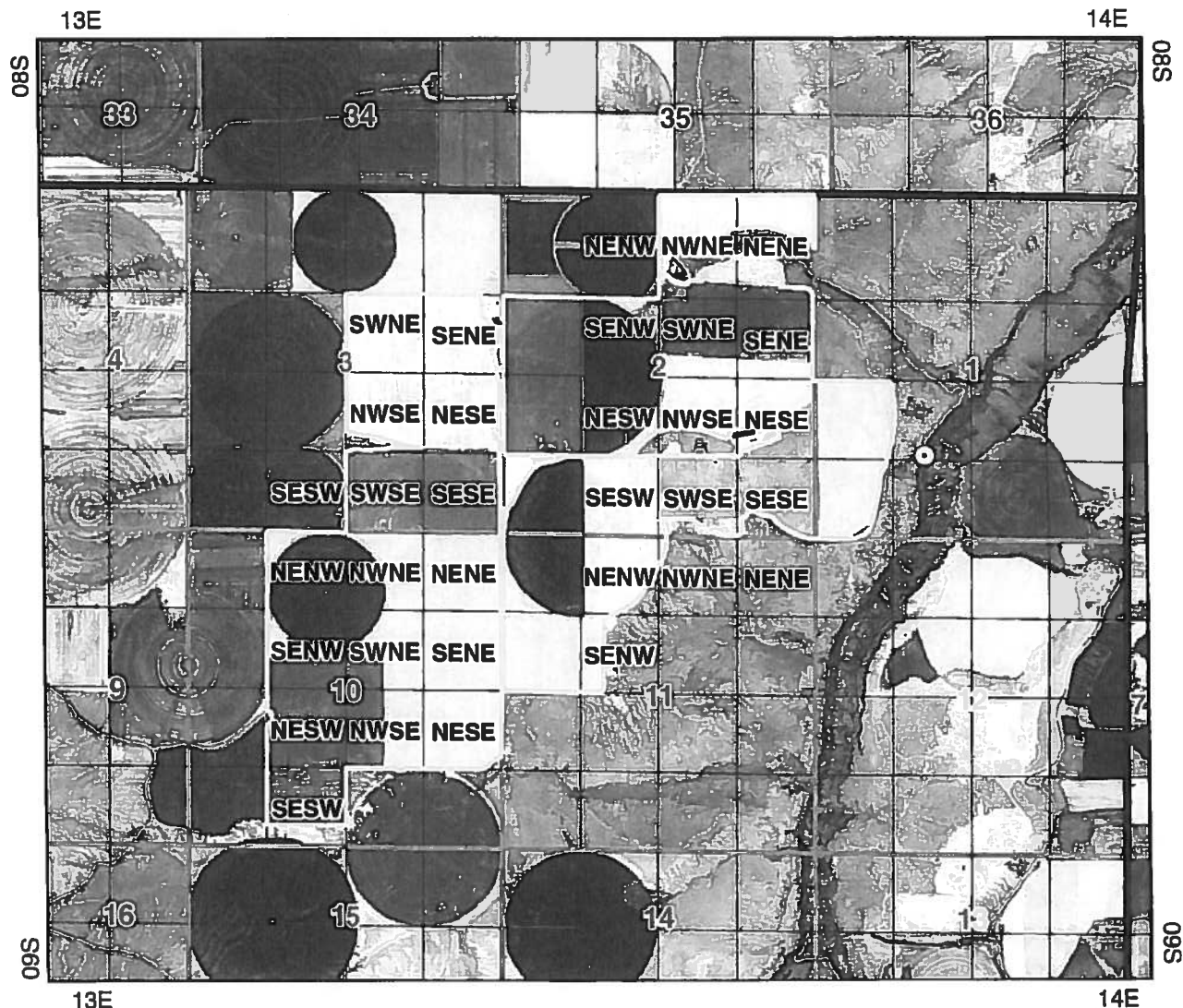

for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment To Application for Amendment

47-8059

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.



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

0 0.35 0.7 1.4 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 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 6, 2013

MAGIC IRRIGATORS INC
716B E 4900 N
BUHL ID 83316

RE: License No. 47-8059 & 47-8060

Issuance of Licenses

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right Licenses confirming that water rights have been established in accordance with your permits. Please be sure to thoroughly review the conditions of approval and remarks listed on your licenses. Also enclosed are copies of the approved applications for amendment.

The licenses are PRELIMINARY ORDERS issued by the Department pursuant to section 67-5243, Idaho Code. They can and will become final orders 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 208-287-4916.

Sincerely,

Craig L. Saxton
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on **December 9, 2013**, I mailed true and correct copies, postage prepaid, of the foregoing PRELIMINARY ORDERS (Approved Licenses) to the person(s) listed below:

RE: WATER RIGHT NOS.

47-8059 & 47-8060

**MAGIC IRRIGATORS INC
716B E 4900 N
BUHL ID 83316**



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.

Nelson, Dan

From: Jones, Doug
Sent: Wednesday, December 04, 2013 12:00 PM
To: Jones, Doug; Nelson, Dan
Subject: RE: Magic Waters/Irrigators

Dan,

In answer to your three questions ... 1) Yes, 6891.7 ac; 2) Yes, 601 ac; 3) Yes, 7448 ac.

NENE S11 is still on the SRBA recommendations for Magic Irrigators, but not for Magic Water 47-2269. Maybe it should have remained on 2269 but it is not on the SF-5 and it is not worth going back on – there are more acres in the PPU than may be irrigated due to acre limit. NENE S11 appeared to be irrigated in 1987 and was gerrymandered off by 1992, and is still not irrigated as of the last couple of years, so was OK to have NENE on the Magic Irrigator rights. That your junior permits exclude it is appropriate because it wasn't irrigated.

This discrepancy – and several others will need to be accommodated in the future transfer. I am not sure that this affects your combined use limit. If yours is more restrictive then it is only by several acres. What do you think?

Thanks, Dan.

Doug

From: Jones, Doug
Sent: Tuesday, November 12, 2013 3:57 PM
To: Nelson, Dan
Subject: RE: Magic Waters/Irrigators

Yeah, me too. For that I apologize, I can't figure where the old shape came from.

The area in Fred's email that I was curious on was the NENE S11 – I'll check in the morning.

Doug

From: Nelson, Dan
Sent: Tuesday, November 12, 2013 3:42 PM
To: Jones, Doug
Subject: RE: Magic Waters/Irrigators

Doug,

I can hold off until tomorrow, then I will need to let him know. If I have to make changes, Shelley needs at least a day or two to review them, and then we need to run them by Paul again for approval. The last attempt at this took at least two weeks. If we don't make any changes, I will need at least 3 days to get everything signed, draft flags removed, and scanned.

This is my fault. I shouldn't have given him a time frame, but I thought they were solid.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources

Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Jones, Doug
Sent: Tuesday, November 12, 2013 3:34 PM
To: Nelson, Dan
Subject: RE: Magic Waters/Irrigators

Don't tell him yet, ok? We have a bit of time until the end of the week.

Doug

From: Nelson, Dan
Sent: Tuesday, November 12, 2013 3:30 PM
To: Jones, Doug
Subject: RE: Magic Waters/Irrigators

OK. I will email Paul Arrington and let him know that we have to hold them. I told him I thought we would have them signed by the end of this week. Let me know as soon as you can.

Thank you.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Jones, Doug
Sent: Tuesday, November 12, 2013 3:28 PM
To: Nelson, Dan
Subject: RE: Magic Waters/Irrigators

Well I don't have the answers yet so pull the drafts and we'll look at them carefully.

Doug

From: Nelson, Dan
Sent: Tuesday, November 12, 2013 3:19 PM
To: Jones, Doug
Subject: RE: Magic Waters/Irrigators

Doug,

The licenses don't have any acres in the NWNW of Section 12, or the NESE and SESE of Section 28. The licenses are good there. My concern is for the following:

- 1.) Is water right 47-2269 is still for 6891.7 acres.
- 2.) Are water rights 47-2384, 47-2415, 47-10261, and 47-17541 for 601 acres.
- 3.) When combined are water rights 47-2269, 47-2384, 47-2415, 47-10261, and 47-17541 limited to 7,448 acres.

If these limits are not continued on to the water rights, then the licenses are in serious trouble and I need to pull them out of Shelley's office. If these limits are still in place, then I can probably have these licenses signed by the end of today or first thing tomorrow morning.

I need to know this information before 4:00 pm today. If not, then I have to pull the files out of Shelley's office now. Please let me know as soon as possible.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Jones, Doug
Sent: Tuesday, November 12, 2013 2:30 PM
To: Nelson, Dan
Subject: FW: Magic Waters/Irrigators

Look at the attachment and cross check the QQ listing against the shape in those areas.

From: Price, Fredric [<mailto:fwprice@blm.gov>]
Sent: Tuesday, November 12, 2013 1:55 PM
To: Jones, Doug
Cc: Kelly, Vicki; Gary Madenford; David L Negri (David.Negri@usdoj.gov)
Subject: Re: Magic Waters/Irrigators

Doug,

RE: Question about T09S, R13E, S11, NENE (private land)

I just finished comparing the list of POUs in the SF-5 for 47-02269 with the shapefile for 47-02269 and noticed that the shapefile includes about ~7 acres on private land within NENE, S11, T09S, R13E, however there is no POU described in the SF-5 for these acres. Should a POU be added or should these acres be removed from the shapefile (see updated pg 3 of attached maps)?

Fred

On Tue, Nov 12, 2013 at 1:40 PM, Jones, Doug <Doug.Jones@idwr.idaho.gov> wrote:

Mama Mia, mea culpa! It was correct then rendered incorrect with an inadvertent shape update. I will correct them and notify Dan Nelson ASAP. Sorry the mix up, folks.

Doug

From: Price, Fredric [mailto:fwprice@blm.gov]
Sent: Tuesday, November 12, 2013 11:25 AM
To: Jones, Doug; Kelly, Vicki
Cc: Gary Madenford; David L Negri (David.Negri@usdoj.gov)
Subject: Fwd: Magic Waters/Irrigators

----- Forwarded message -----

From: **Price, Fredric** <fwprice@blm.gov>
Date: Tue, Nov 12, 2013 at 11:19 AM
Subject: Re: Magic Waters/Irrigators
To: Paul Arrington <pla@idahowaters.com>, nick.spencer@idwr.idaho.gov

Everyone,

RE: 11-12-13, 11:30 am, Status Conference:

47-02269, 47-17540, Magic Water Co;

47-02384, 47-02415, 47-10261, 47-17541, Magic Irrigators, Inc.

Negri is out of the office until the 14th, so I won't be able to get his signature until then. In the meantime, I've been going over the SF-5s. I notice that the shapefiles still reflect the original Dir Rpts and need to be trimmed to comport with the SF-5 descriptions to remove BLM land (see attached).

Fred

On Thu, Oct 24, 2013 at 2:21 PM, Price, Fredric <fwprice@blm.gov> wrote:

ok, hehe, I'll start looking for that comb.

On Thu, Oct 24, 2013 at 2:12 PM, Paul Arrington <pla@idahowaters.com> wrote:

I see that David Negri is the last one to sign the SF5's so I will mail them to the BLM today. I will be mailing them directly to Fred Price (so he can do the checking with a fine toothed comb that Nick promised!!).

Thanks for getting this done!!

Paul L. Arrington

Barker Rosholt & Simpson LLP

195 River Vista Place, Suite 204

Twin Falls, Idaho 83301

(208) 733-0700 - telephone

(208) 404-9436 - mobile

(208) 735-2444 - facsimile

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Nelson, Dan

From: Paul Arrington [pla@idahowaters.com]
Sent: Tuesday, November 12, 2013 1:55 PM
To: Nelson, Dan
Cc: Jones, Doug; Spencer, Nick; Kelly, Vicki
Subject: RE: Updated Conditions Water Rights 47-8059 and 47-8060

Dan:

As we discussed on the phone, these conditions are ok.

Thanks for the call.

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Friday, November 08, 2013 8:54 AM
To: Paul Arrington
Cc: Jones, Doug; Spencer, Nick; Kelly, Vicki
Subject: RE: Updated Conditions Water Rights 47-8059 and 47-8060

Paul,

I forgot to send the updated condition list. Here it is.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Nelson, Dan
Sent: Friday, November 08, 2013 8:49 AM
To: 'Paul Arrington'
Cc: Jones, Doug; Spencer, Nick; Kelly, Vicki
Subject: RE: Updated Conditions Water Rights 47-8059 and 47-8060

Hi Paul,

I recalculated my numbers and you are correct the number should actually be 8,087 acres when water rights 47-2269, 47-2384, 47-2415, 47-8059, 47-8060, 47-10261, and 47-17541. I calculated the number of acres you told me as irrigated as 100 acres, when it was actually 120 acres. I apologize for the mistake. I have shown how I calculated the numbers below.

The SF5 for 47-2269 states that when water rights 47-2269, 47-2384, 47-2415, 47-10261, and 47-17541 are combined they are limited to 7448 acres.

We have found that when water rights 47-2384, 47-2415, 47-8059, 47-8060, 47-10261, and 47-17541 are combined they are limited to 1360 acres.

Water rights 47-2384, 47-2415, 47-10261, and 47-17541 when combined are limited to 601 acres. Since these four water rights are included in the condition on the SF5 for 47-2269, we have to subtract the 601 acres from the 1360 acres supplied by our licenses. This leaves 759 acres from the licenses that can be added onto the 7448 acres described in the condition on the SF5 for 47-2269 (1360 acres available – 601 acres covered by 47-2384, 47-2415, 47-10261, and 47-17541 = 759 acres).

You informed us, that 120 acres of the 1360 acres were being irrigated from 47-2269. Therefore, we also remove that 120 acre amount from the 1360 acres being added into the combined condition. This leaves 639 acres that can be added onto the 7448 acres described in the condition on the SF5 for 47-2269 (1360 acres available – 601 acres covered by 47-2384, 47-2415, 47-10261, and 47-17541 – 120 acres being irrigated using 47-2269 = 639 acres).

Taking this into account 7448 acres + 639 acres = 8087 acres when water rights 47-2269, 47-2384, 47-2415, 47-8059, 47-8060, 47-10261, and 47-17541 are combined.

If you find any problems with this math, please let me know. I apologize for the mistake in the first calculation.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Paul Arrington [<mailto:pla@idahowaters.com>]
Sent: Friday, November 08, 2013 8:10 AM
To: Nelson, Dan; Paul Arrington
Cc: Jones, Doug; Spencer, Nick; Kelly, Vicki
Subject: RE: Updated Conditions Water Rights 47-8059 and 47-8060

As I see it, the only change is that you added the remark about total irrigation of 8107 acres. Is that correct? In reviewing the maps, I this is consistent with the irrigated acreage.

If I am correct on these points, then we are ok with this change.

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Nelson, Dan [<mailto:Dan.Nelson@idwr.idaho.gov>]
Sent: Thursday, November 07, 2013 8:13 AM
To: Paul Arrington
Cc: Jones, Doug; Spencer, Nick; Kelly, Vicki
Subject: Updated Conditions Water Rights 47-8059 and 47-8060

Hello Paul,

I submitted these files for licensing, and there were a couple of tweaks that were needed to the water right conditions. They are ready to sign, but I wanted to get your approval of the new conditions before we signed the licenses. I have attached a copies of the conditions with this email.

We don't need a signature on the form. I just need an email from you saying that the conditions are acceptable to you or not. If they are acceptable, I am guessing that we can get the licenses issued within a week after we receive your approval email. If they are not acceptable, please let me know and we will see what we can do to work through the issues.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

Nelson, Dan

To: Paul Arrington
Cc: Jones, Doug; Spencer, Nick; Kelly, Vicki
Subject: Updated Conditions Water Rights 47-8059 and 47-8060
Attachments: Updated Licensing Conditions 47-8060.RTF; Updated Licensing Conditions 47-8059.RTF

Hello Paul,

I submitted these files for licensing, and there were a couple of tweaks that were needed to the water right conditions. They are ready to sign, but I wanted to get your approval of the new conditions before we signed the licenses. I have attached a copies of the conditions with this email.

We don't need a signature on the form. I just need an email from you saying that the conditions are acceptable to you or not. If they are acceptable, I am guessing that we can get the licenses issued within a week after we receive your approval email. If they are not acceptable, please let me know and we will see what we can do to work through the issues.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Scott A. Magnuson
Sarah W. Higer



195 River Vista Place, Suite 204
Twin Falls, Idaho 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

1010 West Jefferson, Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Paul L. Arrington
pla@idahowaters.com

October 24, 2013

RECEIVED

OCT 28 2013

DEPARTMENT OF
WATER RESOURCES

Dan Nelson
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

RE: *Magic Irrigators Amended Permits*

Dear Dan:

Attached are the signed originals of the Amended Applications for water rights 47-8059 and 47-8060. Please let me know if you need anything else to move forward with licensing.

Yours truly,

Paul L. Arrington

PLA/jn

Encs.

Nelson, Dan

From: Paul Arrington [pla@idahowaters.com]
Sent: Monday, August 19, 2013 9:36 AM
To: Nelson, Dan; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: RE: Magic Irrigators Licensing Recommendation

Thanks.

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Monday, August 19, 2013 9:34 AM
To: Paul Arrington; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: RE: Magic Irrigators Licensing Recommendation

Paul,

I will get the revised applications to you as soon as I can. I have a few pressing matters that I need to take care of first, but I will try to get them to you before the end of this week.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Paul Arrington [mailto:pla@idahowaters.com]
Sent: Monday, August 19, 2013 9:18 AM
To: Nelson, Dan; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: RE: Magic Irrigators Licensing Recommendation

Dan & Doug:

I think we are there.

Doug: Can you prepare SF5's for the SRBA stuff?

Dan: Can you get me the revised applications?

Thanks,

Paul L. Arrington
Barker Rosholt & Simpson LLP

(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Nelson, Dan [<mailto:Dan.Nelson@idwr.idaho.gov>]
Sent: Tuesday, July 30, 2013 7:29 AM
To: Paul Arrington; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: FW: Magic Irrigators Licensing Recommendation

Paul and Doug,

Our agency went through some major computer renovations yesterday, so I am concerned that you may not have received this message. Supposedly, everything is now under control. I wanted to make sure you received the message, so I am resending the message this morning.

If you receive this message, could you please send me a quick email letting me know you received it? I would really appreciate it.

Thank you.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Nelson, Dan
Sent: Monday, July 29, 2013 10:10 AM
To: 'Paul Arrington'; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: Magic Irrigators Licensing Recommendation

Paul and Doug,

With the information that both of you have supplied, I believe I have completed my licensing memo and licensing recommendations. I have attached my memo with my recommendations to this email. The recommendations that I give in the memo are my idea of how the system works, so I am willing to work through any changes that are necessary. I have worked through this a bit with Shelley Keen, so he has aware of what is proposed. He withheld any comments until we were at a place where I could send out the needed amendment of permit forms.

Originally, I thought we could get away with only one amendment of permit on water right 47-8060, but with the amount of ground needed to be covered under water right 47-8059, I am afraid we will need amendments on both permits.

I look at these recommendations as a starting point, so please give me any comments that you may have. If we need another meeting to go over them, I would be happy to meet with you both.

Thank you for your help and patience.

Daniel A. Nelson

Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, July 30, 2013 7:29 AM
To: 'Paul Arrington'; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: FW: Magic Irrigators Licensing Recommendation
Attachments: licensing memo.docx

Paul and Doug,

Our agency went through some major computer renovations yesterday, so I am concerned that you may not have received this message. Supposedly, everything is now under control. I wanted to make sure you received the message, so I am resending the message this morning.

If you receive this message, could you please send me a quick email letting me know you received it? I would really appreciate it.

Thank you.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Nelson, Dan
Sent: Monday, July 29, 2013 10:10 AM
To: 'Paul Arrington'; Jones, Doug
Cc: Spencer, Nick; Kelly, Vicki
Subject: Magic Irrigators Licensing Recommendation

Paul and Doug,

With the information that both of you have supplied, I believe I have completed my licensing memo and licensing recommendations. I have attached my memo with my recommendations to this email. The recommendations that I give in the memo are my idea of how the system works, so I am willing to work through any changes that are necessary. I have worked through this a bit with Shelley Keen, so he has aware of what is proposed. He withheld any comments until we were at a place where I could send out the needed amendment of permit forms.

Originally, I thought we could get away with only one amendment of permit on water right 47-8060, but with the amount of ground needed to be covered under water right 47-8059, I am afraid we will need amendments on both permits.

I look at these recommendations as a starting point, so please give me any comments that you may have. If we need another meeting to go over them, I would be happy to meet with you both.

Thank you for your help and patience.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources

MEMORANDUM

TO: Water Right Files 47-8059 and 47-8060

FROM: Daniel Nelson – Staff Hydrologist

DATE: July 22, 2-13

SUBJECT: Suggested Licensing Recommendations and Explanations

I have been asked to review the water rights 47-8059 and 47-8060 for licensing purposes. These licenses were originally held for licensing until the decrees for the overlapping water rights had been issued. A request was made for me to proceed with licensing of these water rights. In order to properly license these two water rights, I have had to depend on approval of both the Snake River Basin Adjudication (SRBA) staff and the water right owner to ensure they are accurate, since the decrees have yet to be issued. Therefore, I will email a copy of this email to both the owner and the SRBA staff to ensure these licenses are accurate to the decreed water rights.

Each water right will be discussed separately with the proposed conditions.

47-8059:

Water right permit 47-8059 was issued for 6.00 cfs to irrigate 746 acres within Sections 1, 2, and 11 of Township 9 South, Range 13 East. The point of diversion is located in the NESW of Section 1 Township 9 South, Range 13 East.

The field examiner found that system has a capacity of 10.34 cfs for the diversion in Section 1. The field examiner also found that the this system could supply irrigation to 1320 acres within Sections 1, 2, 3, 10, and 11 of Township 9 South, Range 13 East.

Currently, water rights 47-2384, 47-2415, 47-10261, and 47-17541 are also diverted from this point of diversion for a combined limit of 5.00 cfs for 601 acres. In an email from the applicant's attorney, Paul Arrington, the applicant has Magic Water Company water for 120 acres in the SWNW and NWSW of Section 2 and the NESW of Section 10.

The maximum that can be allotted to water right 47-8059 is the capacity of the system minus the existing water rights combined diversion rate or 5.34 cfs.

10.34 cfs capacity – 5.00 cfs combined limitation = 5.34 cfs for water right 47-8059

This water right should only cover the acres not already covered in the 1320 acre place of use.

1320 acres found irrigated
- 601 acres from 47-2384, 47-2415, 47-10261, and 47-17541 (at 0.008 cfs per acre)
- 120 acres of Magic Water Company (at 0.02 cfs per acre)
599 acres that can be served by water right 47-8059 (at 0.009 cfs per acre)

By licensing water right 47-8059 this way, 47-8059 can provide a similar coverage of water per acre that was allowed under the existing water rights 47-2384, 47-2415, 47-10261, and 47-17541. The existing water rights 47-2384, 47-2415, 47-10261, and 47-17541 allowed a rate per acre of 0.008 cfs/acre (5.00 cfs / 601 acres = 0.008 cfs per acre), and water right 47-8059 at 599 acres will provide a rate per acre of 0.009 cfs/acre (5.34 cfs / 599 acres = 0.009 cfs/acre).

I recommend that this right be licensed for 5.34 cfs for 599 acres within the 1,320 acre permissible place of use shown on the attached map for water right 47-8059.

In order to make this work properly, we will need combined conditions. The combined conditions will be as follows:

Rights 47-2384, 47-2415, 47-10261, 47-8059, and 47-17541 when combined shall not exceed a total diversion rate of 10.34 cfs and the irrigation of 1200 acres.

Rights 47-2269, 47-2384, 47-2415, 47-10261, 47-8059, 47-8060, and 47-17541 when combined shall not exceed the irrigation of 1320 acres within the place of use described above.

47-8060:

Water right permit 47-8060 was issued for 3.00 cfs to irrigate 746 acres within Sections 1, 2, and 11 of Township 9 South, Range 13 East. The point of diversion is located in the SENE of Section 2 Township 10 South, Range 13 East.

The point of diversion for this water right is the same point of diversion described in the Magic Water Company's water rights. The original measurements for the Magic Water Company's system suggest that there is more than adequate water to supply all of Magic Water Company's water right and this water right also.

The field examiner also found that the this system could supply irrigation to 1320 acres within Sections 1, 2, 3, 10, and 11 of Township 9 South, Range 13 East. Evidence was supplied by the owner's attorney that an additional 40 acres found in the SENE of Section 26, Township 8 South, Range 13 East, could have been irrigated under this right, since there are no other rights that cover this ground. I agree that this 40 acres could be irrigated under this right, so the total place of use for this right can be 1360 acres.

Since water right 47-8059 allowed reasonable coverage for all of the acres within the 1320 acres on the main farm, water right 47-8060 would only supply supplemental type of water for these lands. During the June 27, 2013 meeting with the owner, he stated that he often uses this water right on the shoulder seasons to provide water before Magic Water Company water was officially turned into the canal, this water right can cover the 120 acres supplied by Magic Water Company. Therefore, it is reasonable to allow the maximum of 746 acre that can be allowed under this water right for the entire 1320 acres of the Magic Irrigator's farm. This water right will provide full coverage for the 40 acres in Section 26, for a total place of use of 1360 acres.

I recommend that this right be licensed for 3.00 cfs for 746 acres within the 1,360 acre permissible place of use shown on the attached map for water right 47-8060.

In order to make this work properly, we will need combined conditions. The combined conditions will be as follows:

Rights 47-2269, 47-2384, 47-2415, 47-10261, 47-8059, 47-8060, and 47-17541 when combined shall not exceed the irrigation of 1360 acres within the place of use described above.

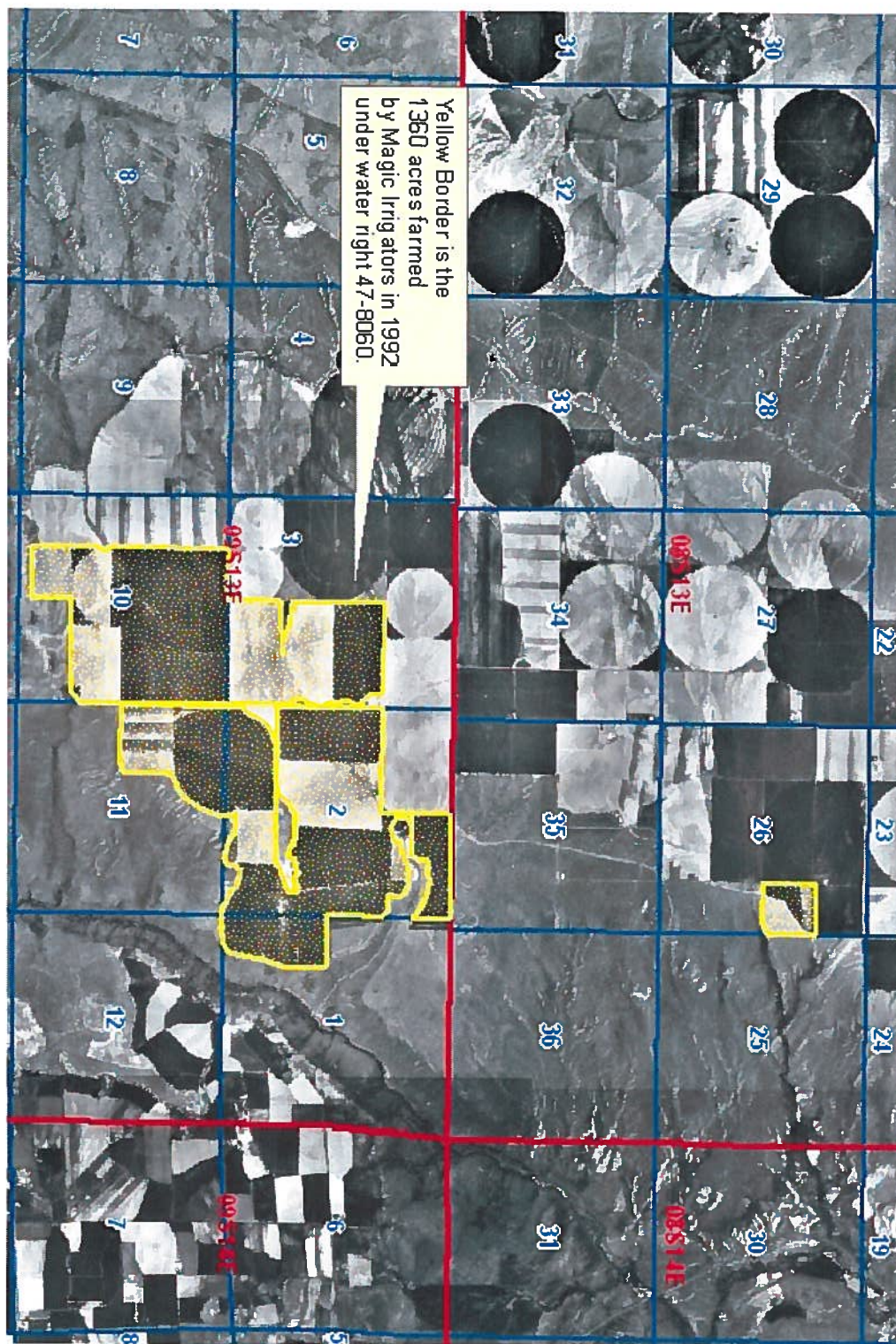
In order to make this recommendation work, I am hoping that the place of use for water right 47-2269 in the name of Magic Water Company only shows the 120 acres described in Mr. Arrington's email. It does appear as though Doug Jones has corrected his recommendation for water rights 47-2384, 47-2415, 47-10261, and 47-17541 to a place of use within the 1320 acre permissible place of use described in water right 47-8060. If these recommendations are done this way, then I feel it is reasonable to recommend these water rights in this manner.

This memo will be sent to Mr. Arrington and Mr. Jones to ensure that this recommendation will meet the needs of Magic Irrigators. If it doesn't meet their needs, then I will sit down with the owner and the SRBA staff to work out a way to satisfy everyone's needs.

Magic Irrigator's Place of Use for Water Right 47-8059



Magic Irrigator's Place of Use for Water Right 47-8059



Nelson, Dan

From: Paul Arrington [pla@idahowaters.com]
Sent: Thursday, July 25, 2013 2:18 PM
To: Nelson, Dan
Cc: Jones, Doug; Paul Arrington
Subject: RE: Magic Irrigators

The overlap acres are the 80 acres in SWNW and NWSW of Section 2, and 40 acres in NESE of Section 10.

They try to get 1 inch per acre, but that depends on the weather and water supply.

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Monday, July 22, 2013 3:12 PM
To: Paul Arrington
Cc: Jones, Doug
Subject: FW: Magic Irrigators

Paul,

I sent the message below without finishing it up. All I needed to do was sign it and let you know that before I can license these water rights I will need to know how many of the 1320 acres were irrigated using Magic Water Company water rights. I have to get this passed through my supervisors, and they want that information tied down before we issue a license.

Typically, we won't issue license until the decrees are finalized, so this is a rare case where we are issuing the licenses first. I need a little help to get this done, so please do your best to find out the amount of water being delivered to this property from Magic Water Company. If not, I may only be able to license those acres not found by Doug Jones as being covered by a water right. I would like to give them as much water and diversion rate as I possibly can. Without this information, I will only be able to give them a limited rate.

I hope this helps.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

From: Nelson, Dan
Sent: Monday, July 22, 2013 2:33 PM

To: 'Paul Arrington'
Subject: RE: Magic Irrigators

Paul,

There are approximately 1320 acres being irrigated on lands that are owned by Magic Irrigators at the location of water rights 47-8059 and 47-8060. The 1320 acres are the acres shown in the green border of the map that I sent you. The existing water rights on this ground do not appear to supply a full inch to the acre. Therefore, permits 47-8059 and 47-8060 can be licensed on the lands that haven't been covered by a water right, and the lands that are currently covered by a water right up to 0.02 cfs or one inch per acre or the maximum amount allowed by the permit. This will increase the diversion rate per acre allowed on the 1320 acre place of use.

Water rights 47-2384, 47-2415, 47-10261, and 47-17542 when combined allow for the irrigation of 601 acres from the private diversion in the NESW quarter of Section 1, Township 9 South, Range 13 East. When the field exam was done in 1996, water from the private diversion in section 1 could not be delivered outside the green borders on the map. Therefore, water rights 47-2384, 47-2415, 47-10261, and 47-17542 will be bound to water right 47-8059 in a combined use condition. Water right 47-8059 is also diverted from the private diversion. 47-8059 can cover the new ground being irrigated, and add an additional rate per acre for the 601 acres under water rights .

Water right 47-8060 is diverted from the Magic Waters Diversion in Section 2. Therefore, it will be tied to lands within the green border that are covered by Magic Water Company water rights. I can cover the acres not irrigated with this right and add an additional amount of water on these lands to bring the total rate of diversion on the ground covered by Magic Water Company up to a maximum of 0.02 cfs per acre, but to do that, I need to know how many acres and at what rate of diversion of Magic Water Company water rights were delivered to this property.

The difficult part about doing these water right licenses without the decrees being issued is the determination of the amount of water that is supplied by each water right and how it is used. Therefore, without this information, I really can't license these water rights. I need something that tells me how many of the 1320 acres is being irrigated by the water rights 47-2384, 47-2415, 47-10261, and 47-17542 and many of the 1320 acres are being irrigated by Magic Water Company water rights. Without this information, I can't move forward with licensing.

From: Paul Arrington [<mailto:pla@idahowaters.com>]
Sent: Monday, July 22, 2013 2:02 PM
To: Nelson, Dan
Subject: FW: Magic Irrigators

Dan:

I have not been successful in getting a hold of my clients to answer your questions. Does the below email from Doug resolve your question? Are you still waiting to hear from me?

Paul L. Arrington
Barker Rosholt & Simpson LLP
(208) 733-0700 - telephone
(208) 404-9436 - mobile

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From: Jones, Doug [<mailto:Doug.Jones@idwr.idaho.gov>]
Sent: Monday, July 22, 2013 1:35 PM

To: Paul Arrington
Subject: Magic Irrigators

Paul,

Dan Nelson let me know, and I verified, that I had included too much land in the Magic Irrigator's place of use. I need to knock out the N1/2NW Sec 2 (govt los 3 & 4) owned by Maurice Eckert & Sons. This will facilitate Dan's completion of the licenses and should not affect the values in the various recommendations other than in combined use limits. I am making the changes and be poised to develop and route the ADRs for the SF-5s.

Doug

Nelson, Dan

From: Nelson, Dan
Sent: Monday, July 15, 2013 3:18 PM
To: Jones, Doug
Subject: Magic Irrigators Question
Attachments: Overlap issues map.pdf

Hello Doug,

I received the information from Paul Arrington we requested, and I am trying to work through the overlap issues. This is what I found so far. Magic irrigators has recommended rights 47-2384, 47-2415, 47-10261, and 47-17541.

Water right 47-17541 has a condition that limits water rights 47-2384, 47-2415, 47-10261, and 47-17541 to a combined total of 601 acres when combined. The only shape file I could find in the recommendation layer was for water right 47-17541, and it covers 104 acres of land not owned by Magic Irrigators, so I am not sure that shape file is correct. Water rights 47-2384, 47-2415, and 47-10261 don't have a shape file in the recommendation layer.

Water rights 47-2384, 47-2415, and 47-10261 have the same place of use description as Magic Water's water right 47-2269, which shows a place of use of 7382.8 acre PPU. There is a condition that limits water rights 47-2269, 47-2384, 47-2415, and 47-10261 to combined total irrigation of 7430.6 acres. I am interested in how they can irrigate 47.8 acres more than the listed PPU, but I will leave that one up to you to figure out.

According to the past notes written by Monica, I am assuming that either all of the 601 acres under water rights 47-2384, 47-2415, 47-10261, and 47-17541 directly overlap the two permits I am working on, or that the 601 acres minus the 104 acres on the other owner's property for a total of 497 acres overlap the property I am working on.

As you can see, I am a bit confused. I really don't feel comfortable making a recommendation on the license without having any idea where water rights 47-2384, 47-2415, 47-10261, and 47-17541 are being used. All of these rights list the Section 1 diversion, so they are not being delivered by the canal. Therefore, I believe they are actually limited to the acres found in the 47-8059 field exam, since those were the only acres that point of diversion could have delivered water to in 1996 when the field exam was done.

If my assumptions are correct, then when water rights 47-2384, 47-2415, 47-10261, 47-17541, and 47-8059 are combined, they would be limited to the 1320 acre permissible place of use that they could supply water to in 1996. Am I way far off?????

Could you please give me your thoughts on this? I could use the help. Any guidance you can give me will be appreciated. I hope you are feeling better, I tried to call you today, but you was out sick.

Dan Nelson

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)

Nelson, Dan

To: Paul Arrington
Cc: Jones, Doug
Subject: RE: Magic Waters
Attachments: Magic Irrigators 1992 irrigation.pdf

Hello Paul,

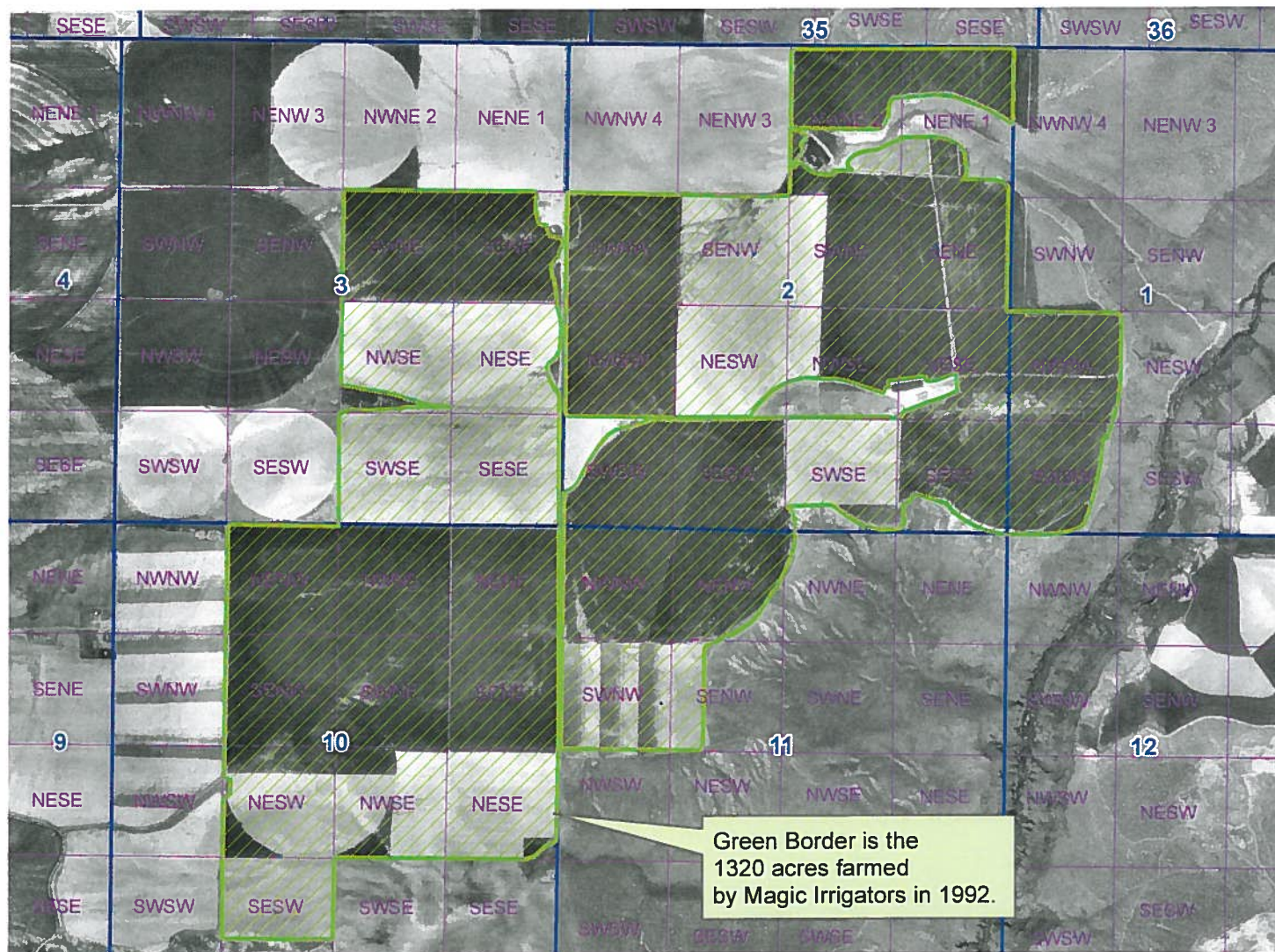
I received your documentation, and it looks pretty good to me. I have started working on the file, and ran into some confusion over how much of this ground is irrigated by Magic Water Canal Company. I have attached a map of just the lower property for reference. I need to know how many shares of Magic Water Canal rights are on this property, and the number acres and rate of diversion each share supplies. In other words, I need to know how many acres of the ground outlined in green on the map is irrigated from the Magic Water Company's water rights, and what diversion rate is diverted to irrigate those acres covered by Magic Water Company's water rights.

If Magic Water Company water only supplies a portion of the Farms water, then I will also need to know which acres these rights irrigate.

Any help that you can give me will really be appreciated. Thank you for time and patience.

Respectfully,

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)



Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Sarah W. Higer
Scott A. Magnuson



Paul L. Arrington
pla@idahowaters.com

195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

1010 W. Jefferson St., Suite 120
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

July 10, 2013

RECEIVED

JUL 12 2013

DEPARTMENT OF
WATER RESOURCES

Daniel A. Nelson
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Permit No. 47-8060 (Magic Water Company, Inc.)*

Mr. Nelson

Thank you for meeting with my clients and myself to discuss a possible amendment to Permit No. 47-8060, in the name of Magic Water Company, Inc. Although there are actually 2 permits, during our meeting we decided that there are not sufficient facts to warrant an amendment to 47-8059.

Proof of beneficial use for Permit No. 47-8060 was submitted on April 1, 1994. Our effort was two-fold: (1) show development occurring on Magic Water's lands after the filing of Magic Water's claims in the SRBA but before the filing of proof of beneficial use; and (2) for any such acres, identify how water was delivered to the property in question.

As to the first task, our research has revealed that 40 acres meet this criterion. The 40 acres are located in the SWNW Section 26, Township 8S, Range 13E. Development of this property prior to the proof of beneficial use date is established through **Attachment A** and **Attachment B**. **Attachment A** is an affidavit from Pat Elkin – who has been the President of Magic Water since 1972. He testifies that the property in question was irrigated prior to 1994. In fact, **Attachment B** is a crop map from 1993 and shows that the property in question was planted in barley and wheat in 1993.

As to the second task, **Attachment C** and **Attachment D** show how water is delivered to the above property. Water is originally diverted from Salmon Falls Creek to the Magic Water property. **Attachment C** shows the portion of the Magic Water Canal that runs to the north side of the Magic Water Property. The canal terminates at a pond located in the northwest quarter of Section 22. **Attachment D** then shows how the water has been delivered from the pond to the fields in question. Essentially, the water is delivered through a pipeline from the pond to the field.

Daniel Nelson
July 10, 2013
Page 2

Please review the attached information. Feel free to give me a call to discuss.

Sincerely,



Paul Arrington

cc: Clients
Doug Jones

Exhibit A

COPY

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 103
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

RECEIVED

APR 01 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Attorneys for Magic Water Company, Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 47-8059 & 47-8060

In the name of Magic Irrigators, Inc.

AFFIDAVIT OF KENNETH P. ELKIN

KENNETH P. ELKIN, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 and state the following based upon my personal knowledge.
2. My address is 4900 North 716A East, Buhl, Idaho. I am the Vice President of Magic Irrigators, Inc. and have held this position since 1988. In addition, I am the President of Magic Water Company, Inc. ("MWC") and have held this position since 1972. As such, I am familiar with the operations of these companies – including the development and use of water by these companies.

AFFIDAVIT OF KENNETH P. ELKIN

1

4/1/13

3. Both Magic Irrigators and MWC run farming operations near Buhl, Idaho. The operations are adjacent to each other, as identified on the map, included as ATTACHMENT A, hereto. In some instances, the water usage overlaps between the operations.

4. Both Magic Irrigators and MWC filed a number of claims in the Snake River Basin Adjudication ("SRBA"), including 47-2269 (MWC) and 47-2384, 47-2415, 47-10261 and 47-17541 (Magic Irrigators). These claims are pending in the SRBA and are referred to herein as the "SRBA Water Rights."

5. In addition, Magic Irrigators filed Applications for Permit for water rights 47-8059 and 47-8060. Through these applications, Magic Irrigators sought to obtain a water right for additional ground that had been developed.

6. These applications were both filed on February 17, 1987. Proof of beneficial use was due on April 1, 1994.

7. By 1992, Magic Irrigators has developed several acres outside of the place of use of the SRBA water rights. The Map, included as ATTACHMENT B, shows the Magic Irrigators and MWC operations in 1992. The acreage outlined in green was being irrigated at that time.

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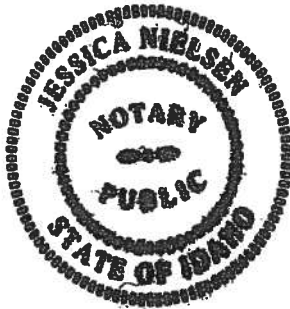
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 28 day of March, 2013.

Kenneth P. Elkin
KENNETH P. ELKIN

STATE OF IDAHO)
) ss.
County of Twin Falls)

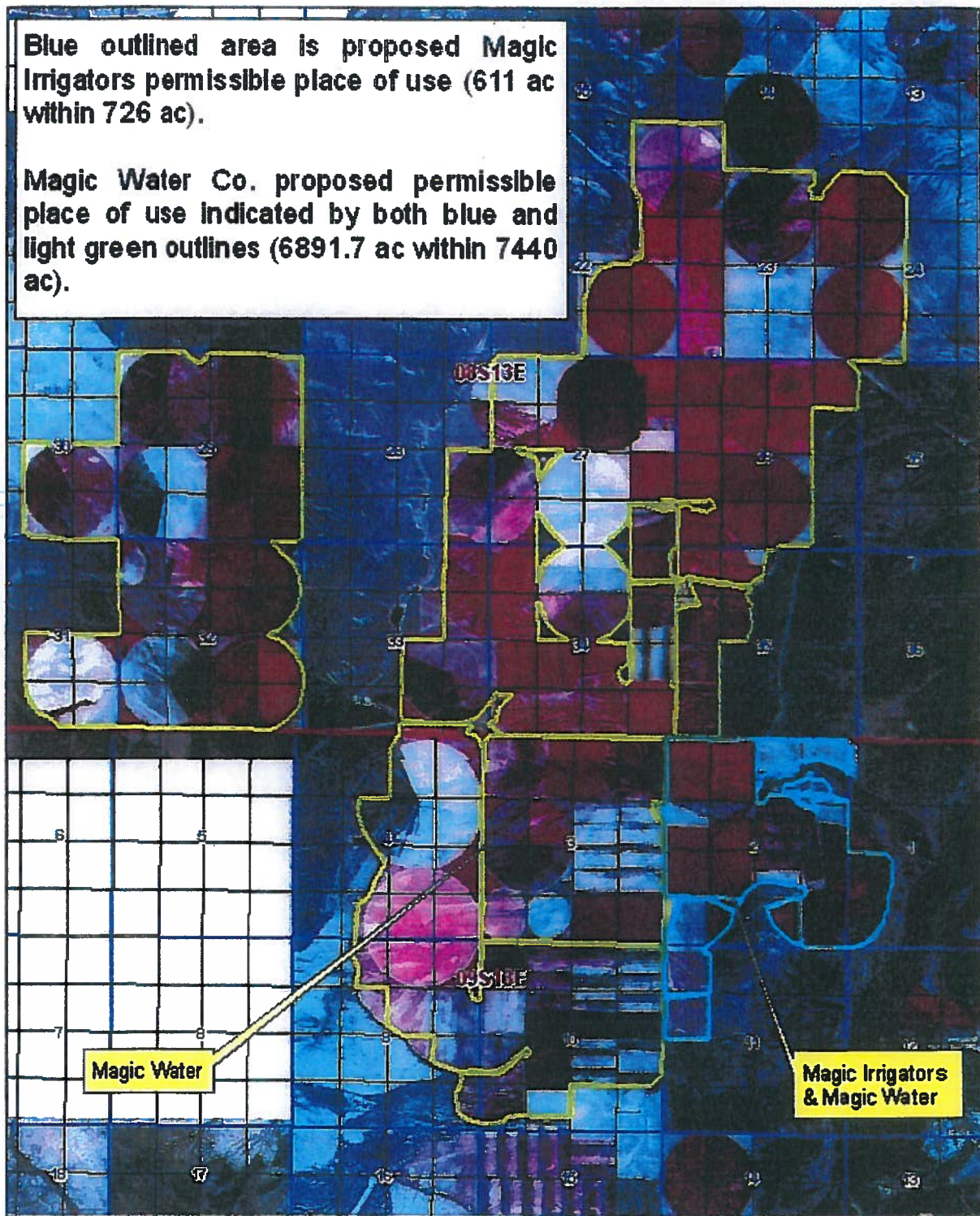
On this 28 day of March, 2013, before me, a Notary Public for said County and State, personally appeared KENNETH P. ELKIN, known or identified to me the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same



Jessica Nielsen
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
My commission expires: 4/3/18

Blue outlined area is proposed Magic Irrigators permissible place of use (611 ac within 726 ac).

Magic Water Co. proposed permissible place of use indicated by both blue and light green outlines (6891.7 ac within 7440 ac).



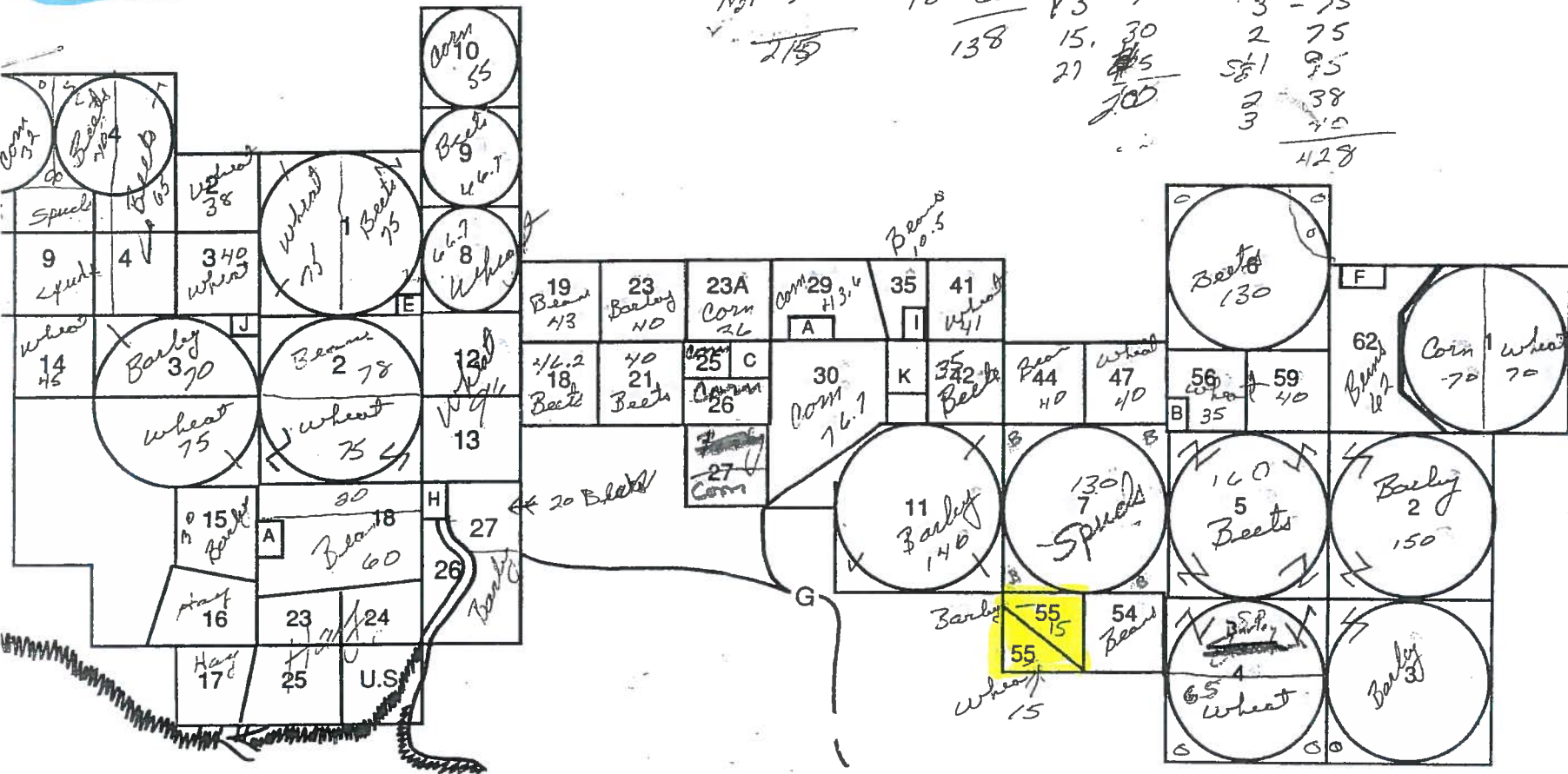
**Magic Water Co. and Magic Irrigators
proposed place of use boundaries.**



Exhibit B

43

9-75 74 10 50 18 60 138 13-30 5 5 45 83-70 15 30 21 15 100 10-60 14-45 3-75 2 75 5 1 95 2 38 3 40 128

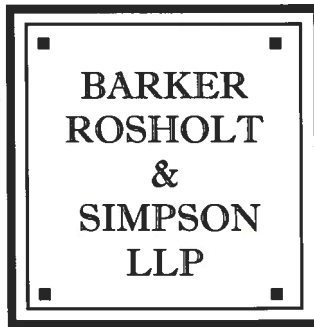


- Main Farmstead
- Pat & Armand House
- Corrals
- Mike & Ron's House
- Rocky's House
- Pat's Big Pond
- Main Road & Mail Boxes
- Herzinger Pond
- Cellar
- Beet Dump
- Big Pond by Cellar

	Corn	Wheat	Beans	Barley	Beets	Spuds
ABC	50 1-70	N 1/2 1-70	62-62	2-150	5-160	7-120
	29 43.6	E 1/4 45	5 35	3 130	6-130	
	30 76.7	56 33	44 40	W 1/4 80	18 46.2	
	23A 36.	59 40	35 10.5	11-144	21 40.	
	10 55	55 15	19 43	83-40	9 66.7	
		47 40			12 35	
		41 41				
	25-14	12-13-96		55-15		
	26-25	8-66.7		67-30		
(3)	27-30	466.7		50		
	350				477.9	

Exhibit C

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Scott A. Magnuson
Sarah W. Higer



195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
(208) 733-0700 telephone
(208) 735-2444 facsimile

1010 W. Jefferson St., Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

RECEIVED

APR 01 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

April 1, 2013

Via Hand Delivery

Doug Jones
Idaho Dept. of Water Resources
Southern Regional Office
1341 Fillmore St., Ste. 200
Twin Falls, Idaho 83301

Re: *Magic Irrigators Application for Permit Nos. 47-8059 & 47-8060*

Dear Mr. Jones,

Attached, please find the *Affidavit of Kenneth P. Elkin* regarding the above referenced matter.

It is my understanding that you will review this information and contact the State Office Permit Section to find out who will be reviewing it now that Monica is no longer with IDWR.

Should you have any questions, please contact our office at (208) 733-0700.

Thank you,


Jessica Nielsen
Assistant for Paul L. Arrington

Attachment
PLA/jn

SCANNED

APR 03 2013

RECEIVED

APR 01 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 103
P.O. Box 485
Twin Falls, Idaho 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Magic Water Company, Inc.

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 47-8059 & 47-8060

In the name of Magic Irrigators, Inc.

AFFIDAVIT OF KENNETH P. ELKIN

KENNETH P. ELKIN, being first duly sworn upon oath, deposes and states as follows:

1. I am over the age of 18 and state the following based upon my personal knowledge.
2. My address is 4900 North 716A East, Buhl, Idaho. I am the Vice President of Magic Irrigators, Inc. and have held this position since 1988. In addition, I am the President of Magic Water Company, Inc. ("MWC") and have held this position since 1972. As such, I am familiar with the operations of these companies – including the development and use of water by these companies.

AFFIDAVIT OF KENNETH P. ELKIN

SCANNED

APR 03 2013

3. Both Magic Irrigators and MWC run farming operations near Buhl, Idaho. The operations are adjacent to each other, as identified on the map, included as **ATTACHMENT A**, hereto. In some instances, the water usage overlaps between the operations.

4. Both Magic Irrigators and MWC filed a number of claims in the Snake River Basin Adjudication ("SRBA"), including 47-2269 (MWC) and 47-2384, 47-2415, 47-10261 and 47-17541 (Magic Irrigators). These claims are pending in the SRBA and are referred to herein as the "SRBA Water Rights."

5. In addition, Magic Irrigators filed Applications for Permit for water rights 47-8059 and 47-8060. Through these applications, Magic Irrigators sought to obtain a water right for additional ground that had been developed.

6. These applications were both filed on February 17, 1987. Proof of beneficial use was due on April 1, 1994.

7. By 1992, Magic Irrigators has developed several acres outside of the place of use of the SRBA water rights. The Map, included as **ATTACHMENT B**, shows the Magic Irrigators and MWC operations in 1992. The acreage outlined in green was being irrigated at that time.

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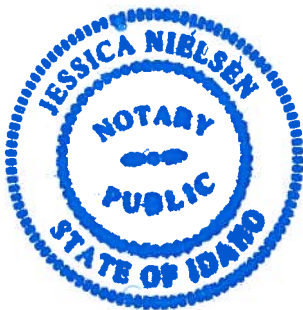
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 28 day of March, 2013.

Kenneth P. Elkin
KENNETH P. ELKIN

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 28 day of March, 2013, before me, a Notary Public for said County and State, personally appeared KENNETH P. ELKIN, known or identified to me the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same



Jessica Nielsen
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls,
My commission expires: 4/3/18

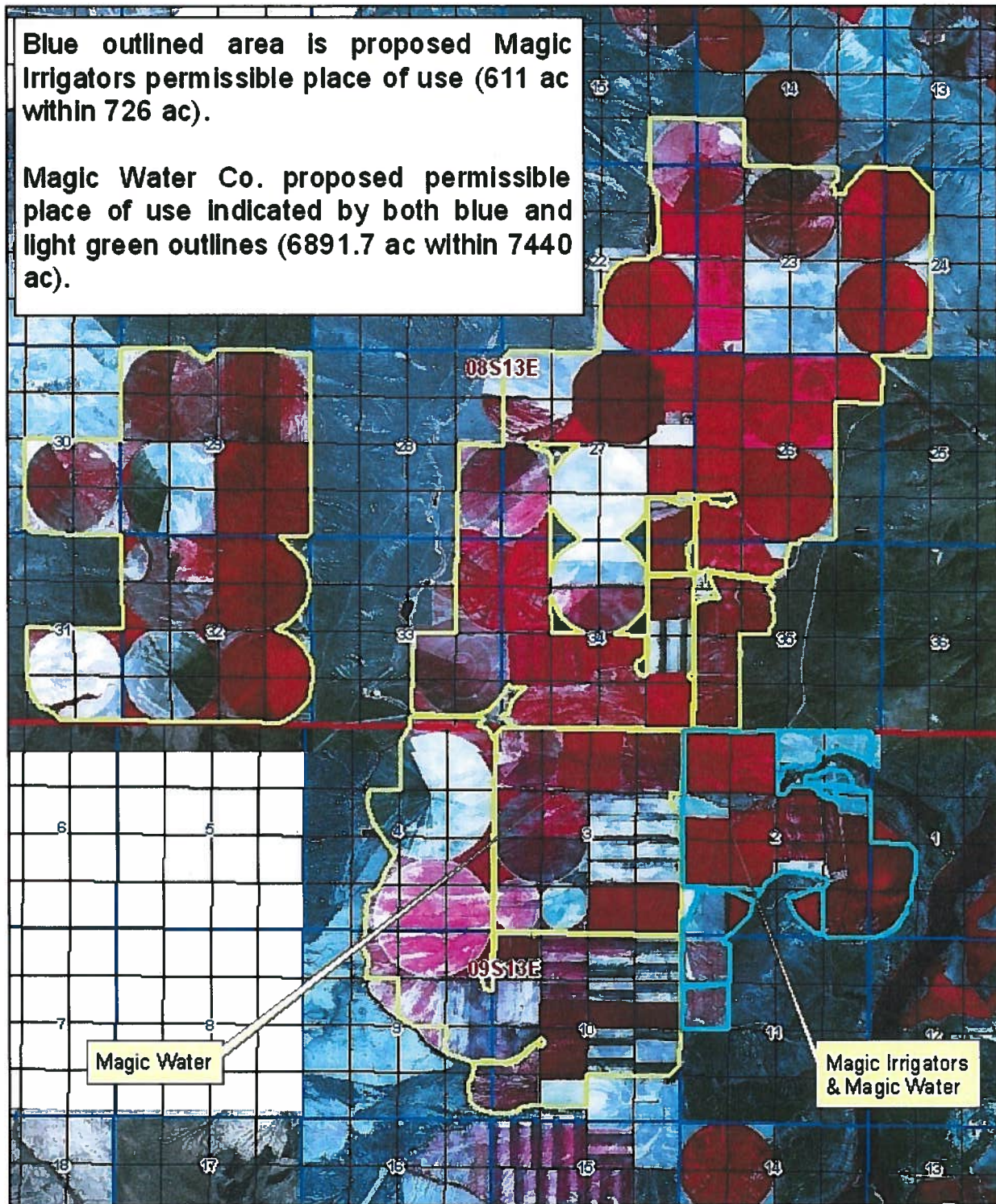
Attachment A

SCANNED

APR 03 2013

Blue outlined area is proposed Magic Irrigators permissible place of use (611 ac within 726 ac).

Magic Water Co. proposed permissible place of use indicated by both blue and light green outlines (6891.7 ac within 7440 ac).



**Magic Water Co. and Magic Irrigators
proposed place of use boundaries.**

SCANNED

APR 03 2013

D.Jones
10/2012

Attachment B

SCANNED

APR 03 2013



SCANNED
APR 03 2019

MEMORANDUM

TO: Files 47-8059 and 47-8060

FROM: Monica Van Bussum

RE: Licensing amendments for 47-8059 and 47-8060

DATE: June 18, 2010

This memo supersedes my memo of November 17, 2009, and will further refine reasoning behind some decisions made while licensing 47-8059 and 47-8060.

I received a phone call this morning from Renea Ridgeway, paralegal for the Office of the Attorney General. She asked us to move toward licensing these outside of pending objections in the SRBA.

Place of Use

These water rights share the same priority date and POU. They were permitted for 746 acres from Salmon Falls Creek through two different PODs. I based my review of the POU on 1992 imagery since the field exams were done in 1994. In my review, I found 648 acres of irrigated ground within the permitted POU. Of those 648 acres, 476.2 acres had previously been licensed under water rights 47-2269, 47-2384, 47-2415 and recommended under SRBA claim 47-10261. That left 171.8 acres that had not previously been licensed.

47-2269, 47-2384 and 47-2415 were claimed and are undergoing a recommendation revision in the SRBA. The current POU shared by all is 7382.8 acres and is described as a permissible place of use (PPU). 47-2269 is recommended for 94.56 cfs and 6891.7 acres within the PPU. 47-2384 is recommended for 2.36 cfs and 205 acres within the PPU. 47-2415 is recommended for 2.64 cfs and 230 acres within the PPU. The duty of water for each of these rights comes out to around 0.01 cfs per acre, or one-half of a miner's inch per acre. 47-10261 is recommended for 2.14 cfs and 107 acres within the PPU, the duty of water being around 0.02 cfs per acre, or one miner's inch per acre.

Given this PPU information, it appears there are 7331.9 acres of the PPU covered at one-half of a miner's inch per acre.

47-8059 and 47-8060 share PODs with the overlapping water rights. 47-8059 shares the same POD as 47-2384, 47-2415 and 47-10261. 47-8060 shares the same POD as 47-2269. If 47-2269, 47-2384, 47-2415 and 47-10261 share PODs with the two permits in question, it stands to reason all these water rights would be able to serve the same POU. However, not all of the acreage to be recommended under 47-8059 and 47-8060 is included in the PPU for the overlapping rights. With POU objections pending in the SRBA, to change the POU for this license would set the PPU for the overlapping water rights. It is best to recommend these rights aside from the PPU and allow the water users to file a transfer for the PPU once the objections are resolved.

POD and Diversion Rate

It appears we should amend the PODs for 47-8059 and 47-8060. 47-8059 was permitted for a POD in T9S R13E Sec 1 NESW. 47-8060 was permitted for a POD in T10S R13E Sec 2 SENE. It appears both should have been permitted to include both PODs. The reasoning goes back to calculation of the diversion rate.

476.2 of these acres had previously been recommended in the SRBA at 0.014 cfs per acre, leaving 0.006 cfs/ac required to bring these up to the standard duty of 0.02 cfs/ac (see attached calculation spreadsheet). If we bring the 476.2 acres up to the IDWR standard of 0.02 acres, we would need an additional 2.86 cfs ($476.2 \text{ ac} * 0.006 \text{ cfs/ac} = 2.86 \text{ cfs}$). The remaining 171.8 acres of irrigation under these rights would need a full 0.02 cfs per acre since they had previously been unlicensed, so we would put 3.44 cfs on those acres ($171.8 \text{ ac} * 0.02 \text{ cfs/ac} = 3.44 \text{ cfs}$). 2.86 cfs added to 3.44 cfs gives a total diversion rate of 6.29 cfs. 47-8059 was permitted for 6 cfs and 47-8060 was permitted for 3 cfs, for a total of 9 cfs.

Each system has a capacity for these rights commensurate with what was permitted. However, how do we divide the diversion rate between the two rights and still allow the water user optimal flexibility? The best way to do this is to attach both PODs to both rights and limit them to a combined total of 6.29 cfs.

The system capacity for these PODs is 10.34 cfs, as noted in the field exam in 47-8059.

Annual diversion volume

The last question in licensing these must come from calculating the annual diversion volume. IDWR has two ways of calculating volume. Our general policy is to calculate each way and recommend the lesser of the two.

$$246 \text{ days in irrigation season} * 1.9835 * 8.2 \text{ cfs} = 3977.7 \text{ AFA}$$

or

$$648 \text{ ac} * 4 \frac{\text{af}}{\text{ac}} = 2592 \text{ AFA}$$

In this case, I would recommend an annual diversion volume of 2590 AFA.

Objections in the SRBA

Per a phone conversation with Renea Ridgeway, the SRBA is waiting for licensing on these, so I must move forward without taking into account the SRBA objections for POU.

Possible conditions

It appears most of the standard conditions are acceptable in this case. I have already updated conditions in the draft license for trust water and the standard condition for 0.02 cfs per acre and 4.0 afa

per acre. There may need to be a limiting condition for these to authorize a combined total of 648 acres of irrigation within the PPU. There also should be a combined limit on diversion rate of 6.29 cfs.

This spreadsheet looks at differences between the permits, draft licenses and estimated acreages from the 1994 field exam for 47-8059 and 47-8060 (mvanbussum 6-18-2010)

Section	QQ	Permits 47-8059 and 47-8060	Draft licenses 47-8059 and 47-8060	1994 field exam	#ac covered by overlaps	Difference
1	NWSW	40	39	39	38	1
	SWSW	40	31	31	27	4
2	NENE	53	33	33	13	20
	NWNE	53	43	40	7.8	35.2
	SWNE	40	40	40	39	1
	SENE	40	40	39	39	1
	SENW	40	40	40	31	9
	NESW	40	40	37	38	2
	SWSW	40	32	31	32	0
	SESW	40	40	40	16	24
	NESE	40	40	35	40	0
	NWSE	40	40	34	27	13
	SWSE	40	33	34	18	15
	SESE	40	32	33	40	
11	NENW	40	34	35	1.4	32.6
	NWNW	40	39	39	39	0
	SWNW	40	39	39	38	1
	SENW	40	13	12	0	13
	Total:	746	648	631		171.8

Analysis of duty of water

	cfs	ac	cfs/ac	
47-2269	94.56	6891.7	0.01	
47-2384	2.36	205	0.01	
47-2415	2.64	230	0.01	
47-10261	2.14	107	0.02	
	101.7	7382.8	0.014	
			0.006	Remaining cfs/ac needed to get to 1" per acre

Conclusions: 171.8 acres outside POU covered by the PPU. Those acres are need to be covered at 0.02 cfs/ac.
Other acres (648-171.8=476.2) need to be covered at 0.006 cfs/ac.

3.44 cfs for 171.8 acres at 0.02 cfs/ac

2.86 cfs for 476.2 acres at 0.006 cfs/ac

6.29 Total needed to put all acres at 0.02 cfs/ac, so this needs to be the combined cfs limit

Saxton, Craig

From: Jones, Doug
Sent: Wednesday, April 03, 2013 8:23 AM
To: Saxton, Craig
Subject: RE: Magic Irrigator's 47-8059 -8060

Wellll, he didn't send an amendment or two. I think they want IDWR to generate a "licensing amendment" then they can sign it. One problem I see is that to 40 acres they want to add is owned by a different, but related, entity a mile away. 1 of the 2 permits can reach it in connection with 47-2269.

How about I scan these and have them profiled, then send the original affidavit and maps up to you to put with the permanent file?

Doug

From: Saxton, Craig
Sent: Wednesday, April 03, 2013 8:15 AM
To: Jones, Doug
Subject: RE: Magic Irrigator's 47-8059 -8060

Hey Doug,

I just looked at these files yesterday morning before you e-mailed. They were in the pile Monica gave me before she left called, "Misc Licensing Stuff".

Go ahead and send the amendments my way and I will add them to the files. Interestingly enough, Monica had solicited amendments for the permits in 2010. I am curious how close the amendments Paul Arrington sent in are to what Monica found.

Anyway, I assume we are still to sit on issuing a license for these until we reach SRBA resolution for the overlapping rights? I see the trial date is set for 8/26/13 so I had put a reminder to pull these files for review sometime in September 2013.

Thanks,
Craig

From: Keen, Shelley
Sent: Tuesday, April 02, 2013 1:24 PM
To: Saxton, Craig
Cc: Jones, Doug
Subject: FW: Magic Irrigator's 47-8059 -8060

Craig,

See below for a message from Doug. File inventory says you have these on 6-month call-up. Can you have someone in your group work with Doug to get licenses issued?

Thanks.

Shelley

From: Jones, Doug
Sent: Tuesday, April 02, 2013 12:39 PM
To: Keen, Shelley
Subject: Magic Irrigator's 47-8059 -8060

Shelley,

These were assigned to Monica for licensing and there were some draft licenses prepared. These were held while SRBA work was completed so there would be coherent conditions between them.

It turns out that there were some other acres, outside the permitted area, that were irrigated and the owners are interested in pursuing a licensing amendment to capture them.

I have received a submittal from Paul Arrington, attorney for claimant, that includes an affidavit and maps along these lines. These need to go to the reviewing agent and since I understand Monica has transferred to DEQ could you direct me to the appropriate agent?

Thanks,

Doug

PS There may be some issues with the request.

Memorandum

Date: April 2, 2013

To: File 47-8059 and 47-8060

RE: Status of licensing 47-8059 and 47-8060

This memo is intended to summarize the status of moving forward to issue licenses for 47-8056 and 47-8060.

It looks like the POU permitted under the above mentioned permits overlaps with SRBA claims/recommendations 47-2384, 47-2415, & 47-10261 and SRBA enlargement claims/recommendations 47-17540 and 47-17541. The reason we haven't issued licenses for 47-8059 and 47-8060 is because we won't understand the nature of the overlap among the rights until the issues pending in the SRBA reach resolution.

As of this date, there is a trial set for 8/26/13.

Van Bussum, Monica

From: Ridgeway, Renea
Sent: Thursday, July 29, 2010 10:26 AM
To: Jones, Doug; Van Bussum, Monica; Spencer, Nick
Subject: RE: 47-8059 and 47-8060

Ok then – keep us posted. I was just going off the notes from the initial hearings. Looks like we got the ball rolling again and that is a good thing. Thanks!

Renea Ridgeway
Paralegal
Office of the Attorney General
Natural Resources Division
Idaho Department of Water Resources
(208) 287-4814 office
(208) 287-6700 fax

From: Jones, Doug
Sent: Thursday, July 29, 2010 10:17 AM
To: Van Bussum, Monica; Ridgeway, Renea; Spencer, Nick
Subject: RE: 47-8059 and 47-8060

Monica speaks accurately; however, complicating the reviews are the new applications for permit and especially the 2 late claims! I feel I need to get with Paul Arrington and perhaps Elkin/Eckert to figure what is going on.

Doug

From: Van Bussum, Monica
Sent: Thursday, July 29, 2010 9:41 AM
To: Ridgeway, Renea; Spencer, Nick
Cc: Jones, Doug
Subject: 47-8059 and 47-8060

Hi Renea and Nick,

A few weeks ago Renea asked that I put 47-8059 and 47-8060 on the fast track to being licensed because licensure could mean resolution for several SRBA objections. Doug and I have been in regular correspondence since then and do not believe these can be licensed independent of the SRBA process. Doug and I will continue to collaborate on licensing and resolving the SRBA objections. Hopefully these can be licensed in the next few months. Please let me know if you have any questions.

Monica

Van Bussum, Monica

From: Van Bussum, Monica
Sent: Thursday, March 31, 2011 7:52 AM
To: Jones, Doug
Cc: Ridgeway, Renea
Subject: RE: Message from 2085435098 (47-8059 and 47-8060 Magic Irrigators)

I spoke with Arman Eggert (spelling that phonetically) yesterday and let him know we will not issue the licenses until the SRBA stuff is resolved. He asked how to get it moving along and I said the SRBA has to move first. He didn't let me know his plans but I imagine you will get some pressure from him or Travis Thompson, who I think is his attorney.

Monica

From: Jones, Doug
Sent: Wednesday, March 30, 2011 11:53 AM
To: Van Bussum, Monica
Cc: Ridgeway, Renea
Subject: RE: Message from 2085435098 (47-8059 and 47-8060 Magic Irrigators)

I think the late claims have been processed by the court, so now we get to review and recommend them. The outcome could affect the objection resolution so there is no progress to report.

Doug

From: Van Bussum, Monica
Sent: Wednesday, March 30, 2011 10:42 AM
To: Jones, Doug
Cc: Ridgeway, Renea
Subject: FW: Message from 2085435098 (47-8059 and 47-8060 Magic Irrigators)

Hi Doug,

I got a phone call from this man at Magic Irrigators (47-8059 and 47-8060) and he wants to know about the license being approved. I had previously spoken with him and with our legal staff and said we would not issue the license until the SRBA issues are resolved. Can you give me an update? Thanks!

Monica

From: Unified Messaging System - A025
Sent: Tuesday, March 29, 2011 8:32 AM
To: Van Bussum, Monica
Subject: Message from 2085435098

Per phone w/ D. Jones, 7/28/2010:

He is going to get w/ reps of Magic Irr &
Magic Water

- discuss enlargement claims, which Doug says are for acres already claimed in SRBA
- discuss POU

Then he & I are going to get together & figure out a way forward.

Per phone D Jones 8/11/2010 11am

he will get in touch w/ Magic Irr & Magic Water

29-13942

Monica,

Yesterday you didn't seem convinced that we had the correct set of conditions on 47-8059 and 47-8060 to prevent enlargement. Consequently, I decided to take a harder look. Is the understanding described below accurate?

	<u>REC</u>	<u>LIC</u>
47-2269	6891.7	6891.7
47-2384	205.0	205.0
47-2415	230.6	230.0
47-10261	107.0	0 100.0
	<u>7433.7 acres</u>	

- The recommended PPU is only 7382.8 acres.
- The recommendation for 47-2384 says the combined limit for the four rights is 7403.6 acres.

~~What is the actual PPU size?~~ What is the actual PPU size? Do the permits really add 171.8 new acres, or is it some other number? It seems like we would need combined use limits like:

$$7382.8 \text{ (or } 7403.6 \text{ or } 7433.7) \text{ acres} + 171.8 \text{ acres (or whatever)} \\ = 7554.6 \text{ (or whatever) for all 6 rights.}$$

I'm not sure we can license these until we know how much of the total irrigated acres the SRBA will cover.

For the POD review, 3 PODs are being recognized in the SRBA recommendations.

			Rate
47-2269	SENE, 2	SENE, 2	94.56
47-2384		(47-8060) NESW, 1	2.36
47-2415		NESW, 1	2.64
47-10261		NESW, 1	2.14
		(47-8059)	101.7

If 94.56 cfs is diverted from the POD in the SENE, 2 - as would be allowed pursuant to the recommendation - that leaves 10.34 cfs of capacity from the two remaining PODs (see Jim's field report) to be allocated among the remaining rights.

10.34
 - 2.36 47-2384
 - 2.64 47-2415
 - 2.14 47-10261

3.20 cfs of rate developed beyond the existing rights.

∴ our total among all 6 rights should be:

$$101.7 + 3.20 = 104.9 = 94.56 + 10.34$$

★ We may need to meet with the SRBA reviewer and perhaps legal staff, to coordinate.

Shelley 7/20/2010



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 www.idwr.idaho.gov

C.L. "DUTCH" OTTER
Governor

Gary Spackman
Interim Director

July 21, 2011

MAGIC IRRIGATORS INC
716B E 4900 N
BUHL ID 83316

Re: Trust Water Term Review for Water Right No. 47-8059

Dear Water Right Owner:

Water right records of the Idaho Department of Water Resources indicate that you are the owner, represent the owner, or have a security interest in a water right or permit based on an appropriation of "trust water" pursuant to Section 42-203C, Idaho Code (see <http://www.legislature.idaho.gov/idstat/Title42/T42CH2SECT42-203C.htm>). Trust water consists of flows of water in the Snake River and its surface and ground water tributaries between Swan Falls Dam and Milner Dam that are in excess of the minimum stream flows established at the Murphy U.S.G.S. gauging station on the Snake River near Swan Falls. The State of Idaho holds Snake River hydropower water rights exceeding the minimum flows "in trust" and these rights are subordinated to other uses, including your water right, pursuant to state law and subject to the conditions set forth in your water right.

Snake River flows at the Murphy gauge have diminished over time. Therefore it is necessary to determine whether continued use of trust water rights may jeopardize the established minimum flows in the future.

One of the conditions of approval of your water right provides that the right is subject to a term review to determine availability of water and to reevaluate the public interest. The term on your water right may have recently expired or will expire in the coming years. The purpose of this letter is to inform you that your right will be reevaluated to determine if trust water is available for diversion and if your continued use of trust water remains in the public interest pursuant to Section 42-203C, Idaho Code.¹

The Department will contact you when review of your right is to begin. The Department does not anticipate beginning reevaluation until after the Snake River Basin Adjudication workload and other priorities are mostly completed. At that time, you will be asked to provide information expressing your intent to continue the beneficial use of trust water and other information providing details of the status of your water right.

¹ If you are the owner of a water right permit subject to a stay in development by order of the Department, or if your permit has not been developed for other reasons, this letter does not change the status of your permit and the term review described in this letter will still apply.

SCANNED

AUG 04 2011

Trust Water Term Review Notice

July 21, 2011

Page 2

If you seek to continue diverting trust water under your right, you are not required to do anything at this time. The Department will include your right in a review of trust water availability and the public interest for future allocation of trust water. Depending on the Department's determination of water availability and to ensure that the minimum flows at the Murphy gauge are sustained, mitigation will likely be required to continue diverting water under your right. For example, mitigation might be accomplished through the assessment of a fee on trust water rights that would finance a state action such as storage acquisition to provide replacement water to sustain the minimum stream flows. Please note that this mitigation requirement may be in addition to any mitigation that you may already be providing for this right due to delivery calls associated with the East Snake River Plain Aquifer. You will have opportunity to request reconsideration and/or appeal the Department's decision as provided under Idaho law and rules of the Department.

If you do not wish to continue diverting trust water, you may formally abandon your water right and avoid the term review process and possible future mitigation requirements. A form is available to document an abandonment of a water right on the Department's website at www.idwr.idaho.gov.

If you have questions about the term review process, please contact one of the offices of the Department of Water Resources:

- State Office in Boise 208-287-4800
- Western Region Office in Boise 208-334-2190
- Southern Region Office in Twin Falls 208-736-3033
- Eastern Region Office in Idaho Falls 208-525-7161

Sincerely,



Jeff Peppersack, P.E.
Chief, Water Allocation Bureau

SCANNED

AUG 04 2011



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 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

Gary Spackman
Interim Director

July 21, 2011

MAGIC IRRIGATORS INC
716B E 4900 N
BUHL ID 83316

Re: Trust Water Term Review for Water Right No. 47-8060

Dear Water Right Owner:

Water right records of the Idaho Department of Water Resources indicate that you are the owner, represent the owner, or have a security interest in a water right or permit based on an appropriation of "trust water" pursuant to Section 42-203C, Idaho Code (see <http://www.legislature.idaho.gov/idstat/Title42/T42CH2SECT42-203C.htm>). Trust water consists of flows of water in the Snake River and its surface and ground water tributaries between Swan Falls Dam and Milner Dam that are in excess of the minimum stream flows established at the Murphy U.S.G.S. gauging station on the Snake River near Swan Falls. The State of Idaho holds Snake River hydropower water rights exceeding the minimum flows "in trust" and these rights are subordinated to other uses, including your water right, pursuant to state law and subject to the conditions set forth in your water right.

Snake River flows at the Murphy gauge have diminished over time. Therefore it is necessary to determine whether continued use of trust water rights may jeopardize the established minimum flows in the future.

One of the conditions of approval of your water right provides that the right is subject to a term review to determine availability of water and to reevaluate the public interest. The term on your water right may have recently expired or will expire in the coming years. The purpose of this letter is to inform you that your right will be reevaluated to determine if trust water is available for diversion and if your continued use of trust water remains in the public interest pursuant to Section 42-203C, Idaho Code.¹

The Department will contact you when review of your right is to begin. The Department does not anticipate beginning reevaluation until after the Snake River Basin Adjudication workload and other priorities are mostly completed. At that time, you will be asked to provide information expressing your intent to continue the beneficial use of trust water and other information providing details of the status of your water right.

¹ If you are the owner of a water right permit subject to a stay in development by order of the Department, or if your permit has not been developed for other reasons, this letter does not change the status of your permit and the term review described in this letter will still apply.

SCANNED

AUG 04 2011

Trust Water Term Review Notice
July 21, 2011
Page 2

If you seek to continue diverting trust water under your right, you are not required to do anything at this time. The Department will include your right in a review of trust water availability and the public interest for future allocation of trust water. Depending on the Department's determination of water availability and to ensure that the minimum flows at the Murphy gauge are sustained, mitigation will likely be required to continue diverting water under your right. For example, mitigation might be accomplished through the assessment of a fee on trust water rights that would finance a state action such as storage acquisition to provide replacement water to sustain the minimum stream flows. Please note that this mitigation requirement may be in addition to any mitigation that you may already be providing for this right due to delivery calls associated with the East Snake River Plain Aquifer. You will have opportunity to request reconsideration and/or appeal the Department's decision as provided under Idaho law and rules of the Department.

If you do not wish to continue diverting trust water, you may formally abandon your water right and avoid the term review process and possible future mitigation requirements. A form is available to document an abandonment of a water right on the Department's website at www.idwr.idaho.gov.

If you have questions about the term review process, please contact one of the offices of the Department of Water Resources:

- | | |
|--|--------------|
| • State Office in Boise | 208-287-4800 |
| • Western Region Office in Boise | 208-334-2190 |
| • Southern Region Office in Twin Falls | 208-736-3033 |
| • Eastern Region Office in Idaho Falls | 208-525-7161 |

Sincerely,



Jeff Peppersack, P.E.
Chief, Water Allocation Bureau

SCANNED

AUG 04 2011

MEMORANDUM

TO: Files 47-8059 and 47-8060
FROM: Monica Van Bussum
RE: Diversion rate limits for 47-8059 and 47-8060
DATE: July 23, 2010

This memo appends my memo of June 18, 2010. In that memo, I recommended a combined diversion rate limit of 10.34 cfs for water rights on these PODs. Shelley Keen expressed some reservation this rate limit would unfairly limit diversion from additional PODs associated with other rights. I had additional opportunity to discuss this situation with Shelley and we are going to keep a diversion rate limit, but one slightly different from that suggested in my previous memo.

Three PODs are being recognized in the SRBA recommendations for the overlapping rights:

Claim No.	POD PLS	POD PLS	POD PLS	Diversion Rate
47-2269	SENE, Sec 2	SENW, Sec 2 (shared with 47-8060)		94.56
47-2384			NESW, Sec 1 (shared with 47-8059)	2.36
47-2415			NESW, Sec 1 (shared with 47-8059)	2.64
47-10261			NESW, Sec 1 (shared with 47-8059)	2.14
			Total:	101.7 cfs

If all 94.56 cfs is diverted from the POD in the SENE of Section 2, as would be allowed pursuant to the recommendation, that leaves 10.34 cfs from the two remaining PODs (per Jim Stanton's field report of June 13, 1996) to be allocated among the remaining rights.

10.34	
-2.36	47-2384
-2.64	47-2415
-2.14	47-10261
3.2	cfs - rate developed beyond existing rights

Therefore, the total among all the rights should be:

$$101.7cfs + 3.20cfs = 104.9cfs = 94.56cfs + 10.34cfs$$

I recommend a combined annual diversion rate limit for 47-2269, 47-2384, 47-2415, 47-8059, 47-8060 and 47-10261 of 104.9 cfs.

WA

RECEIVED

JUL 06 2010

DEPARTMENT OF
WATER RESOURCES

June 24, 2010

Monica Van Bussum
Sr. Water Resource Agent
State of Idaho Department of Water Resources
322 East Front Street
P.O. Box 87320
Boise, Idaho 83720-0098

Re: Permit Nos. 47-8059 & 47-8060

Dear Ms. Van Bussum

Magic Irrigators, Inc. has requested that I comment on the following conditions imposed on the above permits for approval:

"A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this permit."

As a matter of course and as part of my duties as Water Master for Water District 47G, I check daily the water works delivery and diversion works for above permits since other water rights and pump stations are near these.

In addition, the permits listed above have their own separate pumps and respective electrical panels. The electric panels have locking devices and can be locked at any time I require them to be locked. In addition, the respective pumps have been measured as to how much water that can be pumped. They are not designed to pump any more water than what has already been measured. And the respective pumps can be measured anytime I want them measured to ensure the pump design has not been changed to pump more water than what they are designed for. Accordingly, a measuring device and lockable controlling works for these two permits are already in place, have been in place since their installment and I check the water flows daily for other water rights that are nearby.

Accordingly, I confirm the condition for these two permits listed above, have been met. I'm assuming the field report simply failed to mention them.

Sincerely


Charles Runyon, Water Master
Water District 47G

June 24, 2010

Monica Van Bussum
Sr. Water Resource Agent
State of Idaho Department of Water Resources
322 East Front Street
P.O. Box 87320
Boise, Idaho 83720-0098

W.R.
RECEIVED

JUL 06 2010

DEPARTMENT OF
WATER RESOURCES

Re: Permit Nos. 47-8059 & 47-8060

Dear Ms. Van Bussum

Thank you for your letter dated June 21, 2010 regarding the permits listed above. You state in your letter the following:

"A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this permit."

The permits listed above have their own separate pumps and respective electrical panels. The electric panels have locking devices and can be locked at any time the Water Master requires them to be locked. In addition, the respective pumps have been measured as to how much water that can be pumped. They are not designed to pump more than what has already been measured. And the respective pumps can be measured anytime the Water Master so desires.

We are attaching a letter from the Water Master of District 47G confirming that the existing permits already meet the requirements as stated above.

We appreciate that you contacted us on this matter and wish to extend our further assistance, if need be, to get both of these permits issued for the use developed, on a timely basis.

Sincerely

Kenneth P. Elkin (Pres)
Armand M. Eckert

Armand M. Eckert, Secretary
Magic Irrigators, Inc.
(208) 543-5098 office
(208) 308-7774 cell
(208) 543-4993 fax
armand@safelink.net

Attachment (1)



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

June 21, 2010

MAGIC IRRIGATORS INC
716B E 4900 N
BUHL ID 83316

RE: Permit Nos. 47-8059 and 47-8060

Dear Applicant:

I am reviewing the above referenced permits so we can issue licenses for the use developed. In a review of our file I notice I do not have sufficient information that you have complied with a condition of the permit approval. The condition I am referring to is on your permit as follows:

- A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to diversion of water under this permit.

The field exam conducted in 1998 does not specifically mention the presence of a measuring device or a lockable controlling works. We must resolve this issue before a license can be issued. Pursuant to Section 42-219(6), Idaho Code, if the conditions of approval on a permit are not complied with, we may issue an order voiding the permit or issue a license for only a portion of the uses developed under the permit. You have a couple of options that you can take to resolve this problem. You can submit documentation that you have complied with this condition and our examiner was not informed of the compliance at the time of the exam; install the lockable device as required on your permit; or request removal of this requirement from your permit. If you request removal of the requirement you should also submit documentation that this request would be acceptable to the watermaster of Water District No. 47G.

We will withhold further action on this permit for 30 days from the date of this letter in order to allow you time to respond. If we do not receive a response from you within this time period we will assume you are not interested in pursuing a water right license and will take action as suggested above.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,

Monica Van Bussum
Sr. Water Resource Agent

Van Bussum, Monica

From: Van Bussum, Monica
Sent: Tuesday, November 17, 2009 2:18 PM
To: Jones, Doug; Clelland, Steve
Cc: Spencer, Nick; Ridgeway, Renea
Subject: 47-8059 and 47-8060 (Magic Irrigators)

Hi folks,

As you all know, I'm preparing for maternity leave. I had hoped to get these licensed before I left, but it doesn't look like that will happen. I do want to make sure you all have my memo regarding licensing so you can see where the rights currently stand. Let me know if you have any questions. Steve or Doug, please let me know once you complete the shape for the POU for the overlapping contested rights. I will base the amendment on that shape.

By the way, I do not have a specific last day before leave. I plan on working as long as I can.

Monica



47-8059 47-8060
amend memo (11...

MEMORANDUM

TO: Files 47-8059 and 47-8060

FROM: Monica Van Bussum

RE: Licensing amendments

DATE: November 17, 2009

I had prepared draft licenses for 47-8059 and 47-8060. After discussing these at length with Shelley Keen and Craig Saxton, it looks like the water user needs to file amendments for each. This memo serves to document my expectation of the amendments and possible elements and conditions for the resulting water rights once we get the amendments finalized.

Place of Use

These water rights share the same priority date and POU. They were permitted for 746 acres from Salmon Falls Creek through two different PODs. I based my review of the POU on 1992 imagery since the field exams were done in 1994. In my review, I found 648 acres of irrigated ground within the permitted POU. Of those 648 acres, 485.2 acres had previously been licensed under water rights 47-2269, 47-2384, 47-2415 and recommended under SRBA claim 47-10261. That left 162.8 acres that had not previously been licensed.

47-2269, 47-2384 and 47-2415 were claimed and are undergoing a recommendation revision in the SRBA. The current POU shared by all is 7382.8 acres and is described as a permissible place of use (PPU). 47-2269 is recommended for 94.56 cfs and 6891.7 acres within the PPU. 47-2384 is recommended for 2.36 cfs and 205 acres within the PPU. 47-2415 is recommended for 2.64 cfs and 230 acres within the PPU. The duty of water for each of these rights comes out to around 0.01 cfs per acre, or one-half of a miner's inch per acre. 47-10261 is recommended for 2.14 cfs and 107 acres within the PPU, the duty of water being around 0.02 cfs per acre, or one miner's inch per acre.

Given this PPU information, it appears there are 7331.9 acres of the PPU covered at one-half of a miner's inch per acre.

47-8059 and 47-8060 share PODs with the overlapping water rights. 47-8059 shares the same POD as 47-2384, 47-2415 and 47-10261. 47-8060 shares the same POD as 47-2269. If 47-2269, 47-2384, 47-2415 and 47-10261 share PODs with the two permits in question, it stands to reason all these water rights would be able to serve the same POU. Hence, it appears we should amend permits 47-8059 and 47-8060 to cover the PPU since they can be delivered via the same system.

POD and Diversion Rate

It appears we should also amend the PODs for 47-8059 and 47-8060. 47-8059 was permitted for a POD in T9S R13E Sec 1 NESW. 47-8060 was permitted for a POD in T10S R13E Sec 2 SENE. It appears both

should have been permitted to include both PODs. The reasoning goes back to calculation of the diversion rate.

As I stated previously, 485.2 of these acres had previously been recommended in the SRBA at 0.01 cfs per acre. If we bring the 485.2 acres up to the IDWR standard of 0.02 acres, we would need an additional 4.9 cfs ($485.2 \text{ ac} * 0.01 \text{ cfs/ac} = 4.852 \text{ cfs}$). The remaining 162.8 acres of irrigation under these rights would need a full 0.02 cfs per acre since they had previously been unlicensed, so we would put 3.3 cfs on those acres ($162.8 \text{ ac} * 0.02 \text{ cfs/ac} = 3.3 \text{ cfs}$). 4.9 cfs added to 3.3 cfs gives a total diversion rate of 8.2 cfs. 47-8059 was permitted for 6 cfs and 47-8060 was permitted for 3 cfs, for a total of 9 cfs. Each system has a capacity for these rights commensurate with what was permitted. However, how do we divide the diversion rate between the two rights and still allow the water user optimal flexibility? The best way to do this is to attach both PODs to both rights and limit them to a combined total of 8.2 cfs.

Annual diversion volume

The last question in licensing these must come from calculating the annual diversion volume. IDWR has two ways of calculating volume. Our general policy is to calculate each way and recommend the lesser of the two.

$$246 \text{ days in irrigation season} * 1.9835 * 8.2 \text{ cfs} = 3977.7 \text{ AFA}$$

or

$$648 \text{ ac} * 4 \frac{\text{af}}{\text{ac}} = 2592 \text{ AFA}$$

In this case, I would recommend an annual diversion volume of 2592 AFA.

Objections in the SRBA

Because agents are still working to resolve the POU description issue in the SRBA, I have elected not to contact the water users regarding the amendments until resolution is achieved. It seems pointless to solicit amendments when the POU/PPU is not clearly defined.

Possible conditions

It appears most of the standard conditions are acceptable in this case. I have already updated conditions in the draft license for trust water and the standard condition for 0.02 cfs per acre and 4.0 afa per acre. There may need to be a limiting condition for these to authorize a combined total of 648 acres of irrigation within the PPU. There also should be a combined limit on diversion rate of 8.2 cfs.

➤ Per phone with Renea Ridgeway, SRBA is waiting for licensing on these. Will move forward with amendment. MVB 6-18-2010