

↙ This copy for 78691
original in 63.11700 -R

To: Steve Lester 
From: Nick Van Dyke 

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This memo addresses the timeline and major points regarding the history of 63-11700, recent splits of the right, and some discussion regarding the recently filed petition for reconsideration on approved transfer 78691. Transfer 78691 involved a child record of 63-11700. The petition brings into question whether or not 63-11700 was licensed correctly, in particular the inclusion of 77 acres in the NE¼ of Sec 16 T4N R5W.

- Application filed March 6, 1992. Application listed 149 acres in Sec 9 and 39.5 acres in Sec 10, both in T4N R5W, for a total irrigation amount of 185.5 acres. Rate requested was 3.77 cfs, or an inch per acre.
- Permit approved January 16, 1996. The permit was approved as applied for, in both amounts and acre locations. Proof due date set at May 1, 1996.
- Proof filed April 8, 1996. 3.77 cfs and 188 acres filed on.
- The field examination was conducted October 21, 1999. This appears to be where the additional acres in the NE¼ of Sec 16 T4N R5W came about (below in highlight). The examiner found the following place of use (note it varied slightly from 77 acres):

			NE				NW				SW				SE				
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N	05W	9	38.3			39.0									34.7			37.2	149.2
04N	05W	10								36.0									36.0
04N	05W	16	35.0	5.0	8.0	27.7													75.7

- The examiner noted “this permit is for 185.5 acres within a permissible place of use of 260.9 acres.” The examiner makes the following statement in the last paragraph of the report’s narrative “The second direction the water from the culvert travels is east to a re-lift pump. The re-lift pump sends the water south across the road to a cement ditch that irrigates the fields in the NE¼ of section 16.”
- A licensing amendment was issued December 19, 2001. The licensing amendment described the place of use for 63-11700 as shown below. There were some minor tweaks to what the field examiner found; this is ultimately where the exact 77 acres in the NE¼ of Sec 16 T4N R5W originate.

[illegible]

Analysis/Timeline of Water Right 63-11700

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- License for 63-11700 issued December 19, 2001. The license reflected the field exam/licensing amendment, authorizing 3.77 cfs on 185.5 acres, within a permissible place of use of 261 acres.

Split History of 63-11700:

- February 3, 2011 ownership change received splitting 63-11700 into parts 63-33475 (Batt, original owner) and 63-33476 (Crookham, new owner). Warranty deed showed property was conveyed December 24, 2010. The ownership split was initially done incorrectly but later corrected thru the related licensing work of 63-11866 (63-11866 partially overlaps 63-33475 and 63-33476). See Kelly Christensen's September 11, 2012 letter in 63-11866 file for further explanation. More discussion on 63-11688 below.
- Transfer 78691 filed July 3, 2013 to split off a portion of 63-33475 from Batt ownership to new applicant Obendorf Malheur Farms. This involved only the 36 acres appurtenant to the SENW of Section 10 T4N R5W of 63-33475's authorized place of use (a transfer filing was needed because a new well was to be drilled).

Discussion on Petition for Reconsideration:

- The petition states the 77 acres in the NE¼ of Section 16 T4N R5W were incorrectly added to 63-11700 during licensing, as further evidenced by the licensing of 63-11688. The petition indicates since 63-11700 and 63-11688 both have 1992 priorities, the 77 acres should be considered removed from 63-11700 (and therefore corresponding splits) and awarded solely to 63-11688. Review of the water right records shows this reasoning to be in error:
 - Though 63-11688 has a 1992 priority date, this permit was issued as a temporary permit, which expired at the end of the 1994 irrigation season. The full permit was not issued until April 12, 2009, and proof was submitted until May 20, 2009
 - At the time the field examination was conducted in the fall of 1999, the field examiner correctly noted that 63-11688 was an application (supported by Glen Saxton's 1994 order designating 63-11688 as a temporary permit only and proof of beneficial use was filed in 2009). The only developed beneficial use within the NE¼ of Section 16 T4N R5W, at the time of field examination, would have been under 63-11700.
 - Though the permit for 63-11700 excluded the NE¼ of Section 16 T4N R5W, the examiner found the delivery system could accommodate this ground. The examiner's recommendation and subsequent license accurately describe the right as 185.5 acres within a 261 acre place of use.
 - In light of this, it is inappropriate to assume a full irrigation coverage of the authorized 36 acres in the SENW of Section 10 T4N R5W as the petition argues, because 63-11700 was developed as a permissible place of use. Therefore the prorated split amounts of approved transfer 78691 should be considered correct.