

Saxton, Craig

From: Saxton, Craig
Sent: Wednesday, March 20, 2013 8:53 AM
To: 'Jeanette McIlhenny'
Subject: RE: Water Right Place of Use for 37-8696 and 37-8811
Attachments: Spackman Priority (4-17-1992).pdf; 37-8696 Permit Amendment (3-20-13).pdf; 37-8811 Draft License (3-20-13).pdf

Hey Jeanette,

Sorry it took me a bit to get back to you. I did find some answers to your questions and wanted to attach a letter so I thought I would initially get back to you by e-mail.

If I understand correctly, your question was related to how your diversion of ground water would be regulated in the event of a surface water call. In the event of a surface water users call for water, Rights 37-8696 and 37-8811 will be regulated based on the April 12, 1883 priority date. Here are a couple of example situations:

- 1) Surface water flows diminish and surface water rights are regulated on priority. As long as there is enough water to fill April 12, 1883 water rights you are mitigating with, you will be able to divert ground water under 37-8696 and 37-8811.
- 2) Surface water flows diminish and surface water rights and ground water rights are regulated conjunctively. There is enough water to fill the April 12, 1883 water rights but any wells that were drilled after 1980 need to be curtailed. Your rights 37-8696 and 37-8811 will still be delivered despite that the priority date on both rights is after 1980 because rights 37-8696 and 37-8811 are being regulated as if they had the priority date of April 12, 1883.
- 3) Pumping of your well causes direct injury to your neighbors well which has a priority date of 1980. Your rights will be regulated based on the 1990 and 1993 priority dates. This is explained in the attached letter written in 1992 by Gary Spackman:
"A person drilling a new well should not be able to interfere with a prior existing well simply because surface water mitigates for the ground water withdrawal".

So in most cases, your rights will be regulated based on the 1883 priority date. If your well was causing direct injury to your neighbors, then you would probably would have heard about it by now.

I am attaching new copies of the Application for Amendment of Permit 37-8696 and draft license 37-8811. I have a condition on each one that identifies that the water rights are within Water District 37 which I had previously left off.

Take a look and call me if you have any questions. If you are satisfied with the amendment of 37-8696, please sign the amendment and return it to this office as soon as possible.

Please let me know if you have any questions.

Respectfully,

Craig L. Saxton
(208) 287-4916
craig.saxton@idwr.idaho.gov

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322 E FRONT ST
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From: Jeanette McIlhenny [mailto:jeanettepbs@yahoo.com]
Sent: Friday, March 15, 2013 8:06 PM
To: Saxton, Craig
Subject: Re: Water Right Place of Use for 37-8696 and 37-8811

Dear Craig,
So sorry I have not gotten back with you on this licensing. I plan to call you on Monday morning if that works out for you.
Thank you,
Jeanette

From: "Saxton, Craig" <Craig.Saxton@idwr.idaho.gov>
To: Jeanette McIlhenny <jeanettepbs@yahoo.com>
Sent: Thursday, February 7, 2013 11:48 AM
Subject: RE: Water Right Place of Use for 37-8696 and 37-8811

Hello Jeanette,

I got your voicemail yesterday and I am sorry I haven't got back to you yet. I did get the information I sent you but I wanted to look it over more before I got back to you.

I have re-drawn the proposed irrigation boundary to include the area that you indicated were left off of our last proposal. I even added some other area in front of the house and expanded the boundary around the road. Overall, I am coming up with 4.7 acres. The house driveway and out buildings make up the other 0.3 acres of your 5 acre parcel and I cannot recognize that as irrigatable acreage.

I have updated the amendment for 37-8696 as well as the overlapping draft license for 37-8811 for your review. I would like to briefly explain the purpose of the amendment since I see you have requested that we do not amend permit 37-8696. First of all, this is your permit and you don't have to amend anything if you don't want to. With that said, the reason we have solicited an amendment is because 37-8696 was originally permitted for 3 acres of irrigation (attached). Since the water from 37-8696 is co-mingled with 37-8811, there is no real way to determine which 3 acres out of the total 4.7 acres are irrigated with 37-8696. Since 37-8696 and 37-8811 are both used on the same 4.7 acres, I would propose issuing the license for 37-8696 with a 4.7 acres place of use. However, in order for the department to issue a license for more than the 3.0 acres originally permitted, you need to amend the permit to reflect the 4.7 acre place of use.

If you don't want to submit the amendment, then what we will need to do is identify which 3 acres right 37-8696 is applicable to. We can do that if you would like.

Take a look and let me know what you think.

Respectfully,

Craig

From: Jeanette McIlhenny [mailto:jeanettepbs@yahoo.com]
Sent: Wednesday, January 30, 2013 9:08 AM
To: Saxton, Craig
Subject: Re: Water Right Place of Use for 37-8696 and 37-8811

Dear Craig,

Sorry this took me an extra day to send your way, I have come down with a cold. In addressing the proposed amendment to water right permit 37-8696 I would like to address the area excluded in latest draft I received via email January 23, 2013.

I have attached the original proposed boundary of irrigation sent to me by mail, the latest received by email on January 23, 2013 and my draft of irrigation. I did not address the area excluded in the proposed diagram of my irrigation as it appeared to be included in the irrigated area in the original proposed amendment sent by mail.

In the new proposed excluded boundary, the line drawn from my edge of my driveway south is an irrigated portion of my property. The yellow line is drawn through a row of 15-20' Shubert Choke Cherry bushes that were planted as small shrubs 19 years ago. Due to the size these bushes have grown, currently they do limit the span of some of the irrigation toward the barn. Those bushes along with 2 shrubs growing beside small dog kennel, an evergreen tree and grove of aspen and grasses are irrigated by underground automatic sprinklers. This area is irrigated by an underground system that runs along the west edge of the sod lawn and the last head is located directly in front of the south fence line. In addition to the underground sprinklers this area is watered by hand line heads running north and south behind barn. The excluded area of the proposed amendment is irrigated, I set temporary hot wire fence from my barn, including the area in question, and grass along south fence border and around the tree area for horse grazing.

I have used my water rights to irrigate my 5 acres over the past years since the rights were purchased and permit issued. I have continued to use my water rights to irrigate 5 acres since the beneficial use form was submitted to the Department 20-23 years ago. I hope this clarifies the use my water rights. Please let me know if you have any questions.

I respectfully request that the amendment to my water right be withdrawn and the license be issued pertinent to my 5 acres.

Sincerely,
Jeanette McIlhenny

From: "Saxton, Craig" <Craig.Saxton@idwr.idaho.gov>
To: jeanettepbs@yahoo.com
Sent: Wednesday, January 23, 2013 10:09 AM
Subject: RE: Water Right Place of Use for 37-8696 and 37-8811

Dear Jeanette,

I am sorry to bother you again. I forgot to remove a condition on the last copies of the permit amendment and draft license I just sent you. I updated the amendment and draft license and have attached them to this e-mail. You will no longer see the following condition on the attachments:

“The Director retains jurisdiction of this right to require streamflow augmentation or other action determined to be appropriate to protect prior surface water or ground water rights. Such stream flow augmentation or other action will be required only upon a determination of need and applicability by the Director.”

Please let me know if you have questions.

Thanks,
Craig

From: Saxton, Craig
Sent: Wednesday, January 23, 2013 9:52 AM
To: 'jeanettepbs@yahoo.com'
Subject: Water Right Place of Use for 37-8696 and 37-8811

Dear Jeanette,

I hope it is ok that I am contacting you by e-mail. I have been speaking with Shelley Keen and I understand you have been in contact with him regarding permits 37-8696 and 37-8811. Shelley explained to me your concern with the irrigated acreage that was proposed in the permit amendment I sent you for 37-8696 on January 8, 2013.

Shelley passed on the January 22 e-mail you sent with the drawing of the irrigation delivery system. I looked over the information and re-calculated the irrigated acreage at 4.6 acres. I thought I would just send you some information via e-mail for you to review.

I have attached 3 files:

POU For 37-8696 & 37-8811.pdf	-This the newly drawn proposed irrigation boundary
37-08696 Permit Amendment (1-23-13).pdf	-This is the updated permit amendment based on the new
place of use boundary	
37-08811 Draft License (1-23-13).pdf	-This is the draft license that would be issued at the same
time a license for 37-8696 is issued.	

If you agree with the proposed amendment and draft license, you can sign the amendment and mail it back to IDWR with the \$100 filing fee.

IDWR
PO BOX 83720
BOISE ID 83720

Please take a look at the information and give me a call @ (208) 287-4916 if you have any questions.

Respectfully,

Craig L. Saxton
craig.saxton@idwr.idaho.gov
208.287.4916