

Nelson, Dan

From: Nelson, Dan
Sent: Monday, June 06, 2011 11:50 AM
To: 'Greg Sullivan'
Cc: Van Bussum, Monica; Yenter, Cindy
Subject: RE: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Greg,

I received your email, and I will try to answer your questions the best that I can. I have copied this email to Monica and the watermaster of Water District 130, to allow them to correct or elaborate on my answers.

When we review Water Supply Bank leases and rentals, we review each lease or rental on its own merit. There are circumstances that we can work with our clients to make a Water Supply Bank lease or rental work when initially it was thought that we couldn't make it work at the beginning of the process. We are willing to do that with the Notch Butte water rights. Once a water right transfer has been approved to correct the issues with the ground being irrigated outside of the water right borders, we will be more than happy to work with you and your client to put any excess portions of the water right into the Water Supply Bank. Each Water Supply Bank review has different circumstances involved with it, so to make a blanket statement without having a specific file or application in front of me would be careless and unethical. Therefore, I will only speak about the file I currently have in front of me, which is the Notch Butte file.

Unfortunately, at this point, there is significant information to show that at least 18 acres are currently being irrigated outside of the water right's borders. If these 18 acres are included as part of the water right, then there would at least 13 acres being irrigated over the amount allowed by the water right. Any way that you look at this water right and the excess acres being irrigated, there does appear to be a very strong possibility that a Notice of Violation could be issued for this situation. I don't have the authority to issue a Notice of Violation, but it is clear from my research that there is a very strong possibility that a Notice of Violation could be issued if a water right transfer isn't submitted in very near future to resolve this situation. From what I can see from the LandSat aerial photos, the irrigation system hasn't changed that much since the water rights were decreed in 2001.

The long and the short of the situation is that the Water Supply Bank process does not allow us to change water right borders, reduce the acreage of a water right due to partial forfeiture, or issue Notices of Violation. If our staff does determine that a water right would require one of these procedures to clarify the water rights, then we are required to return that application until those procedures have been completed before accepting them into the Water Supply Bank. We have in the past used the Water Supply Bank to move valid water rights to a new location while a water right transfer was being processed to make that move permanent. However, the water right has to be a valid water right with no enlargement or forfeiture issues. If we find possible enlargement issues and/or forfeiture issues we are required by Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) to return the Water Supply Bank application.

Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) is not a new rule, and the portions dealing with forfeiture and enlargement were last updated on July 1, 1993 by the Idaho Legislature, so we are not doing anything that hasn't been required to be done since at least 1993. The only advice that I can give you is to get the water right transfer submitted as quickly as possible to resolve any enlargement or forfeiture issues. After the transfer is completed, submit a Water Supply Bank lease for the excess portions of the water right that were involved in the water right transfer. I am sorry, but that is the best that we can do at this point and time.

I haven't been able to speak with Monica about maintaining the 2009 submittal date, but I am assuming that it would be highly unlikely. Whereas, there are issues of possible forfeiture, irrigation outside the bounds of a water right, and/or enlargement, it would be very difficult to approve a water bank lease retroactively for a use of water outside of the limits set by the water right. The water right transfer will provide the acres that we can work with, so forfeiture

shouldn't be an issue if the water bank lease is filed immediately after the transfer approval. If the water bank lease is submitted immediately after the water right transfer, I would expect it to move to front of the backlog, so the transfer review can be used in the Water Supply Bank review. I will double check with Monica when I can catch up to her, and get back with you, so I can give you a more reliable answer.

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
(208) 287-4856

From: Greg Sullivan [mailto:greg.sullivan@brockwayeng.com]
Sent: Friday, June 03, 2011 4:45 PM
To: Nelson, Dan
Cc: Van Bussum, Monica
Subject: RE: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Dan,

Let me try to understand.

Any water right that is currently irrigating outside of its POU cannot have a water bank lease application accepted into the bank? Is this based on a percentage of acres compared to the total acres available under the water right or is there a set number of acres that cannot be outside of the POU?

Does this also include water rights that are currently accepted into the Water Bank or only the lease applications that have not yet been processed?

If a transfer was pending for a water right. Could acres under the water right be accepted into the Water Bank as long as the lease acres are within the current POU?

What is the procedure if a 100 acres portion of water right was accepted into the Water Bank and then a transfer is filed to change the POU to exclude the 100 acre of land?

Thanks for update. I know that Notch Butte is wanting to create one large PPU with all of these water rights and others in the area. This transfer would resolve the "out of the POU" issue for all of the submitted lease applications. However, the transfer has not been filed and will likely take a long time to be processed. Is there any way to retain the 2009 acceptance date for the lease applications?

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, ID 83301
Office: 208-736-8543
Fax: 208-736-8506

From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Friday, June 03, 2011 3:01 PM
To: Greg Sullivan
Cc: Van Bussum, Monica
Subject: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

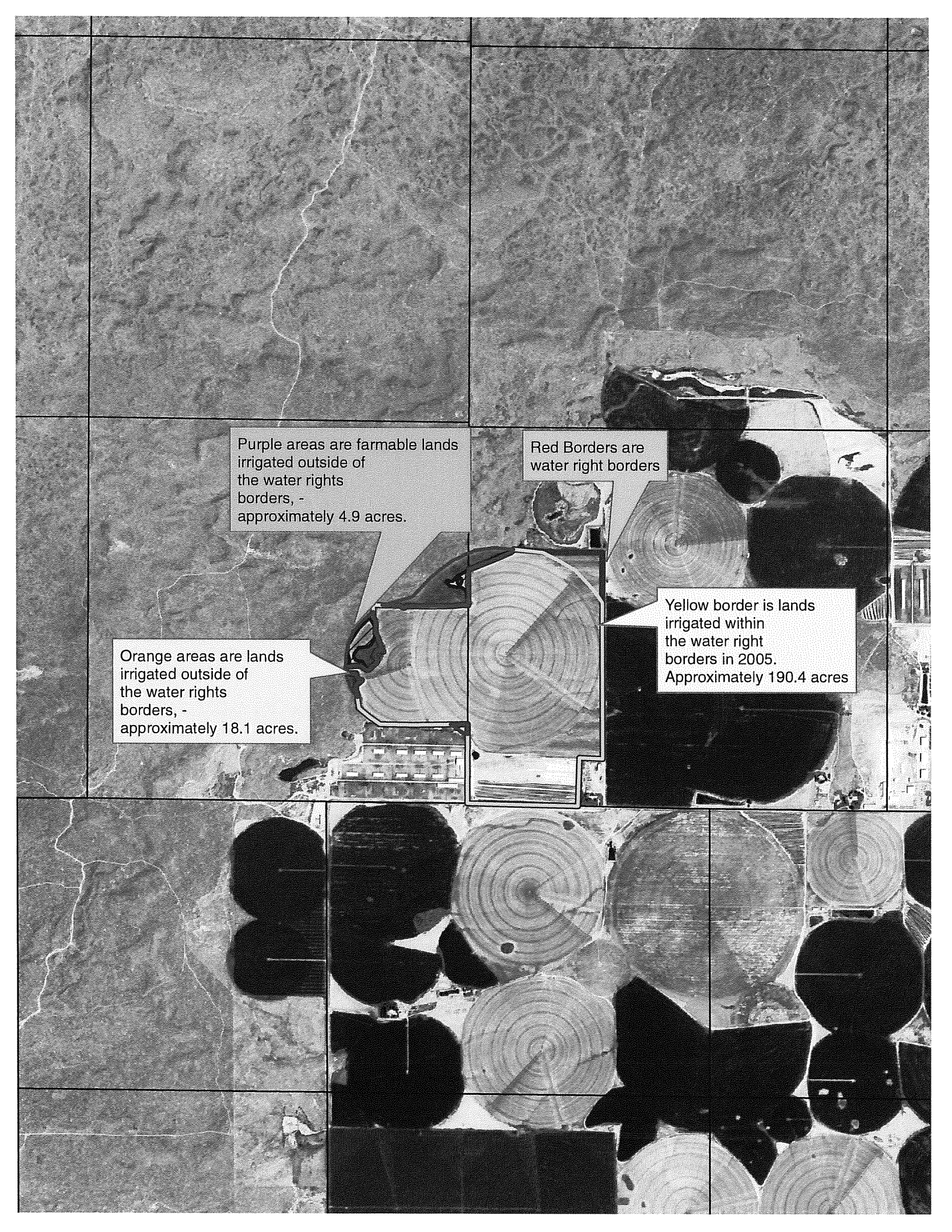
Hello Greg,

I wanted to contact you as soon as I could about some additional information that I have just received. I sent a copy of the of the Water Supply Bank lease for water rights 37-20810, 37-20812, 37-20814, and 37-20816 to the watermaster for comments. In the watermaster's review, the watermaster voiced some concern over land being irrigated outside of the water right borders. Any land outside of the borders of a water right that is irrigated whether that land is farmable or not can be subject to a Notice of Violation. I have spoken to my superiors concerning this matter, and we have determined that as long as there is a possibility of a Notice of Violation, we cannot move forward with a water bank lease.

Therefore, I will not need the map I requested on May 25, 2011 for the ground described in water rights 37-20810, 37-20812, 37-20814, and 37-20816. The only way that the issue concerning the land being irrigated outside of the water right boundary can be properly dealt with is to file a water right transfer to correct the current place of use. The Water Supply Bank does not have the administrative authority do deal with a Notice of Violation or possible forfeiture of water rights, so the only way that we could approve a water right lease on this property would be after a water right transfer had been approved and the current validity of the water rights are established.

I apologize for not discovering this information prior to my May 25, 2011 letter, and I am also sorry for any inconvenience this may have caused. Hopefully, the watermaster caught this discrepancy prior to you beginning work on the map. We will be formally be returning these Water Supply Bank Leases within the next couple of weeks.

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
(208) 287-4856

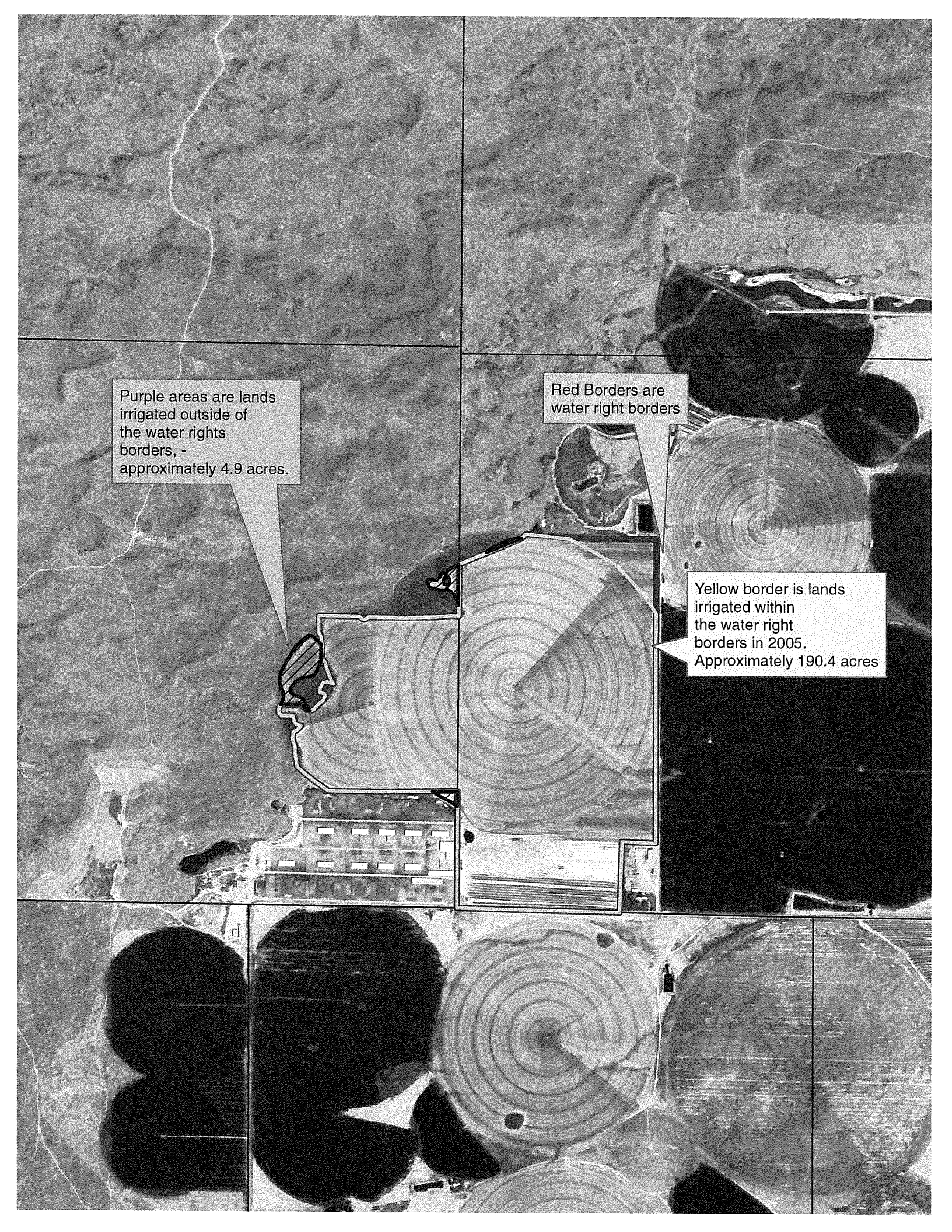


Purple areas are farmable lands irrigated outside of the water rights borders, - approximately 4.9 acres.

Red Borders are water right borders

Orange areas are lands irrigated outside of the water rights borders, - approximately 18.1 acres.

Yellow border is lands irrigated within the water right borders in 2005. Approximately 190.4 acres



Purple areas are lands irrigated outside of the water rights borders, - approximately 4.9 acres.

Red Borders are water right borders

Yellow border is lands irrigated within the water right borders in 2005. Approximately 190.4 acres

Nelson, Dan

From: Nelson, Dan
Sent: Monday, June 06, 2011 11:50 AM
To: 'Greg Sullivan'
Cc: Van Bussum, Monica; Yenter, Cindy
Subject: RE: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Greg,

I received your email, and I will try to answer your questions the best that I can. I have copied this email to Monica and the watermaster of Water District 130, to allow them to correct or elaborate on my answers.

When we review Water Supply Bank leases and rentals, we review each lease or rental on its own merit. There are circumstances that we can work with our clients to make a Water Supply Bank lease or rental work when initially it was thought that we couldn't make it work at the beginning of the process. We are willing to do that with the Notch Butte water rights. Once a water right transfer has been approved to correct the issues with the ground being irrigated outside of the water right borders, we will be more than happy to work with you and your client to put any excess portions of the water right into the Water Supply Bank. Each Water Supply Bank review has different circumstances involved with it, so to make a blanket statement without having a specific file or application in front of me would be careless and unethical. Therefore, I will only speak about the file I currently have in front of me, which is the Notch Butte file.

Unfortunately, at this point, there is significant information to show that at least 18 acres are currently being irrigated outside of the water right's borders. If these 18 acres are included as part of the water right, then there would at least 13 acres being irrigated over the amount allowed by the water right. Any way that you look at this water right and the excess acres being irrigated, there does appear to be a very strong possibility that a Notice of Violation could be issued for this situation. I don't have the authority to issue a Notice of Violation, but it is clear from my research that there is a very strong possibility that a Notice of Violation could be issued if a water right transfer isn't submitted in very near future to resolve this situation. From what I can see from the LandSat aerial photos, the irrigation system hasn't changed that much since the water rights were decreed in 2001.

The long and the short of the situation is that the Water Supply Bank process does not allow us to change water right borders, reduce the acreage of a water right due to partial forfeiture, or issue Notices of Violation. If our staff does determine that a water right would require one of these procedures to clarify the water rights, then we are required to return that application until those procedures have been completed before accepting them into the Water Supply Bank. We have in the past used the Water Supply Bank to move valid water rights to a new location while a water right transfer was being processed to make that move permanent. However, the water right has to be a valid water right with no enlargement or forfeiture issues. If we find possible enlargement issues and/or forfeiture issues we are required by Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) to return the Water Supply Bank application.

Water Supply Bank Rule 25 (also known as IDAPA 37.02.03.025) is not a new rule, and the portions dealing with forfeiture and enlargement were last updated on July 1, 1993 by the Idaho Legislature, so we are not doing anything that hasn't been required to be done since at least 1993. The only advice that I can give you is to get the water right transfer submitted as quickly as possible to resolve any enlargement or forfeiture issues. After the transfer is completed, submit a Water Supply Bank lease for the excess portions of the water right that were involved in the water right transfer. I am sorry, but that is the best that we can do at this point and time.

I haven't been able to speak with Monica about maintaining the 2009 submittal date, but I am assuming that it would be highly unlikely. Whereas, there are issues of possible forfeiture, irrigation outside the bounds of a water right, and/or enlargement, it would be very difficult to approve a water bank lease retroactively for a use of water outside of the limits set by the water right. The water right transfer will provide the acres that we can work with, so forfeiture

shouldn't be an issue if the water bank lease is filed immediately after the transfer approval. If the water bank lease is submitted immediately after the water right transfer, I would expect it to move to front of the backlog, so the transfer review can be used in the Water Supply Bank review. I will double check with Monica when I can catch up to her, and get back with you, so I can give you a more reliable answer.

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
(208) 287-4856

From: Greg Sullivan [mailto:greg.sullivan@brockwayeng.com]
Sent: Friday, June 03, 2011 4:45 PM
To: Nelson, Dan
Cc: Van Bussum, Monica
Subject: RE: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Dan,

Let me try to understand.

Any water right that is currently irrigating outside of its POU cannot have a water bank lease application accepted into the bank? Is this based on a percentage of acres compared to the total acres available under the water right or is there a set number of acres that cannot be outside of the POU?

Does this also include water rights that are currently accepted into the Water Bank or only the lease applications that have not yet been processed?

If a transfer was pending for a water right. Could acres under the water right be accepted into the Water Bank as long as the lease acres are within the current POU?

What is the procedure if a 100 acres portion of water right was accepted into the Water Bank and then a transfer is filed to change the POU to exclude the 100 acre of land?

Thanks for update. I know that Notch Butte is wanting to create one large PPU with all of these water rights and others in the area. This transfer would resolve the "out of the POU" issue for all of the submitted lease applications. However, the transfer has not been filed and will likely take a long time to be processed. Is there any way to retain the 2009 acceptance date for the lease applications?

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, ID 83301
Office: 208-736-8543
Fax: 208-736-8506

From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Friday, June 03, 2011 3:01 PM
To: Greg Sullivan
Cc: Van Bussum, Monica
Subject: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Hello Greg,

I wanted to contact you as soon as I could about some additional information that I have just received. I sent a copy of the of the Water Supply Bank lease for water rights 37-20810, 37-20812, 37-20814, and 37-20816 to the watermaster for comments. In the watermaster's review, the watermaster voiced some concern over land being irrigated outside of the water right borders. Any land outside of the borders of a water right that is irrigated whether that land is farmable or not can be subject to a Notice of Violation. I have spoken to my superiors concerning this matter, and we have determined that as long as there is a possibility of a Notice of Violation, we cannot move forward with a water bank lease.

Therefore, I will not need the map I requested on May 25, 2011 for the ground described in water rights 37-20810, 37-20812, 37-20814, and 37-20816. The only way that the issue concerning the land being irrigated outside of the water right boundary can be properly dealt with is to file a water right transfer to correct the current place of use. The Water Supply Bank does not have the administrative authority do deal with a Notice of Violation or possible forfeiture of water rights, so the only way that we could approve a water right lease on this property would be after a water right transfer had been approved and the current validity of the water rights are established.

I apologize for not discovering this information prior to my May 25, 2011 letter, and I am also sorry for any inconvenience this may have caused. Hopefully, the watermaster caught this discrepancy prior to you beginning work on the map. We will be formally be returning these Water Supply Bank Leases within the next couple of weeks.

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
(208) 287-4856

Nelson, Dan

From: Greg Sullivan [greg.sullivan@brockwayeng.com]
Sent: Friday, June 03, 2011 4:45 PM
To: Nelson, Dan
Cc: Van Bussum, Monica
Subject: RE: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Dan,

Let me try to understand.

Any water right that is currently irrigating outside of its POU cannot have a water bank lease application accepted into the bank? Is this based on a percentage of acres compared to the total acres available under the water right or is there a set number of acres that cannot be outside of the POU?

Does this also include water rights that are currently accepted into the Water Bank or only the lease applications that have not yet been processed?

If a transfer was pending for a water right. Could acres under the water right be accepted into the Water Bank as long as the lease acres are within the current POU?

What is the procedure if a 100 acres portion of water right was accepted into the Water Bank and then a transfer is filed to change the POU to exclude the 100 acre of land?

Thanks for update. I know that Notch Butte is wanting to create one large PPU with all of these water rights and others in the area. This transfer would resolve the "out of the POU" issue for all of the submitted lease applications. However, the transfer has not been filed and will likely take a long time to be processed. Is there any way to retain the 2009 acceptance date for the lease applications?

Greg Sullivan
Brockway Engineering
2016 North Washington Street, Suite 4
Twin Falls, ID 83301
Office: 208-736-8543
Fax: 208-736-8506

From: Nelson, Dan [<mailto:Dan.Nelson@idwr.idaho.gov>]
Sent: Friday, June 03, 2011 3:01 PM
To: Greg Sullivan
Cc: Van Bussum, Monica
Subject: Water Bank Leases 37-20810, 37-20812, 37-20814, and 37-20816

Hello Greg,

I wanted to contact you as soon as I could about some additional information that I have just received. I sent a copy of the of the Water Supply Bank lease for water rights 37-20810, 37-20812, 37-20814, and 37-20816 to the watermaster for comments. In the watermaster's review, the watermaster voiced some concern over land being irrigated outside of the water right borders. Any land outside of the borders of a water right that is irrigated whether that land is farmable or not can be subject to a Notice of Violation. I have spoken to my superiors concerning this matter, and we have determined that as long as there is a possibility of a Notice of Violation, we cannot move forward with a water bank lease.

Therefore, I will not need the map I requested on May 25, 2011 for the ground described in water rights 37-20810, 37-20812, 37-20814, and 37-20816. The only way that the issue concerning the land being irrigated outside of the water right boundary can be properly dealt with is to file a water right transfer to correct the current place of use. The Water Supply Bank does not have the administrative authority to deal with a Notice of Violation or possible forfeiture of water rights, so the only way that we could approve a water right lease on this property would be after a water right transfer had been approved and the current validity of the water rights are established.

I apologize for not discovering this information prior to my May 25, 2011 letter, and I am also sorry for any inconvenience this may have caused. Hopefully, the watermaster caught this discrepancy prior to you beginning work on the map. We will be formally be returning these Water Supply Bank Leases within the next couple of weeks.

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
(208) 287-4856