

Memorandum

Date: January 10, 2011

To: File 11-7051

From: Craig L. Saxton

RE: Review - Reinstatement of permit 11-7051

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In previous discussions with Shelley Keen, he expressed concern about reinstating permit 11-7051 without conducting a field exam immediately after the reinstatement to ensure that there is not a misunderstanding in which the reinstatement is interpreted as authorization to continue to develop the irrigation system to the extent of that permitted. With that in mind, I feel we need to respond to Mr. Nelsons request for reinstatement soon so he isn't wondering what is going on with his request. I believe there is enough evidence to reinstate the permit in part, even if resources do not permit IDWR to conduct a licensing field exam immediately after reinstatement.

Acres:

Per my request, Lee Nelson submitted FSA maps that support that beneficial use of water to irrigate 49 acres was established prior to the end of the development period for 11-7051. The 49 acres found are in addition to that found during the licensing field exam conducted for 11-7025 on August 6, 1974. 11-7025 diverts water from the same well that is permitted under 11-7051.

Irrigation: 40 acres NENW S.14
 7 acres SWNW S.14
 2 acres SENE S.15
 49 acres total

In addition to the 49 acres supported by Lee Nelson's documentation, the licensing field exam conducted on August 6, 1974 for 11-7025, identified 10 irrigated acres that were not permitted under 11-7025, but were irrigated. A January 6, 1975 letter from the Department to the permit holder at the time, stated that the additional 10 acres would be licensed under 11-7051 when a license was issued. The additional acres found are listed below:

Irrigation: 5 acres NWSW S.14 (outside of the permitted POU for 11-7051)
 4 acres SENE S.15
 1 acre NESE S.15 (outside of the permitted POU 11-7051)
 10 acres total.

With GIS mapping, the 4 acres found in the SENE S.15 would be more accurately described as being 2 acres in the SENE S.15 and 2 acres in the SWNW S.14

Therefore, we have evidence of 59 acres irrigated in addition to that licensed under 11-7025. 6 of the 59 acres found were outside of the permitted POU for 11-7051.

The 59 acres that were irrigated within the development period for 11-7051, but are not licensed under right 11-7025 are described as follows (see attached GIS Map):

40 acres NENW S.14
9 acres SWNW S.14
5 acres NWSW S.14 (outside of the permitted POU for 11-7051)
4 acres SENE S.14
1 acre NESE S.15 (outside of the permitted POU 11-7051)
51 acres total.

If permit 11-7051 was reinstated, how can we cover the 5 acres that are irrigated in the NWSW S.14 and the 1 acre irrigated in the NESE S.15 that were not permitted under 11-7051? The way to do this is to reinstate 59 acres within the original permitted place of use for 11-7051, and then at the time of licensing, issue an amendment. I propose reinstating permit 11-7051 with the following land list:

40 acres NENW S.14
10 acres SWNW S.14
9 acres SENE S.15
59 acres total.

Domestic use:

The licensing field exam for 11-7025 verified domestic use that was not permitted or licensed under 11-7025 but was permitted under 11-7051.

Domestic use: 2 Homes

Diversion Rate:

No additional diversion rate above that which was licensed under 11-7025 can be verified at this time. The licensing field exam conducted on August 6, 1974 for 11-7025, found system capacity to be 1.97 cfs and a licensed issued for the fully permitted rate of 2 cfs.

However, Mr. Nelson did state that the previous owner of the system restricted the water flow via a valve at the pump prior to his purchase of the property. Mr. Nelson says that when he purchased the property, he opened the valve fully and replaced the main line with larger size and heavier, higher pressure, pipe. Receipts submitted by Mr. Nelson do support that 20K was spent on a sprinkler system in 1977.

Because of this, I think there is enough evidence to support reinstating the permit with a diversion rate equal to 1 inch per acre which is the duty that the permit was originally issued for.

Conclusion:

My recommendation is to reinstate the permitted acres to only that which can be supported by historical documentation. Despite that additional diversion rate above that measured in the August 6, 1974 field exam cannot be verified by historical documents, I think there is enough evidence to support reinstatement of diversion rate of one inch per acre. Because Mr. Nelson states that all he changed (during the development period) was the mainline pipe, when a field exam is conducted, we should find that the system is still running on a 75 HP Newman motor as described in the August 6, 1974 field exam. If, at the time the field exam is conducted we find that the system is significantly different than that described in the 1974 field exam, at licensing we will have no option but to limit the use of 11-7025 and 11-7051 to 2.0 cfs as measured in 1974.

However, if the system is the same as that described in the 1974 field exam for 11-7025, but produces more than 2.0 cfs, at licensing we might be able to support recommending diversion rate which when combine with 11-7025 would exceed the 2.0 cfs measured in 1974.

I recommend reinstating permit 11-7051 with the following elements:

Domestic Use: 0.04 cfs (two homes internal use only)

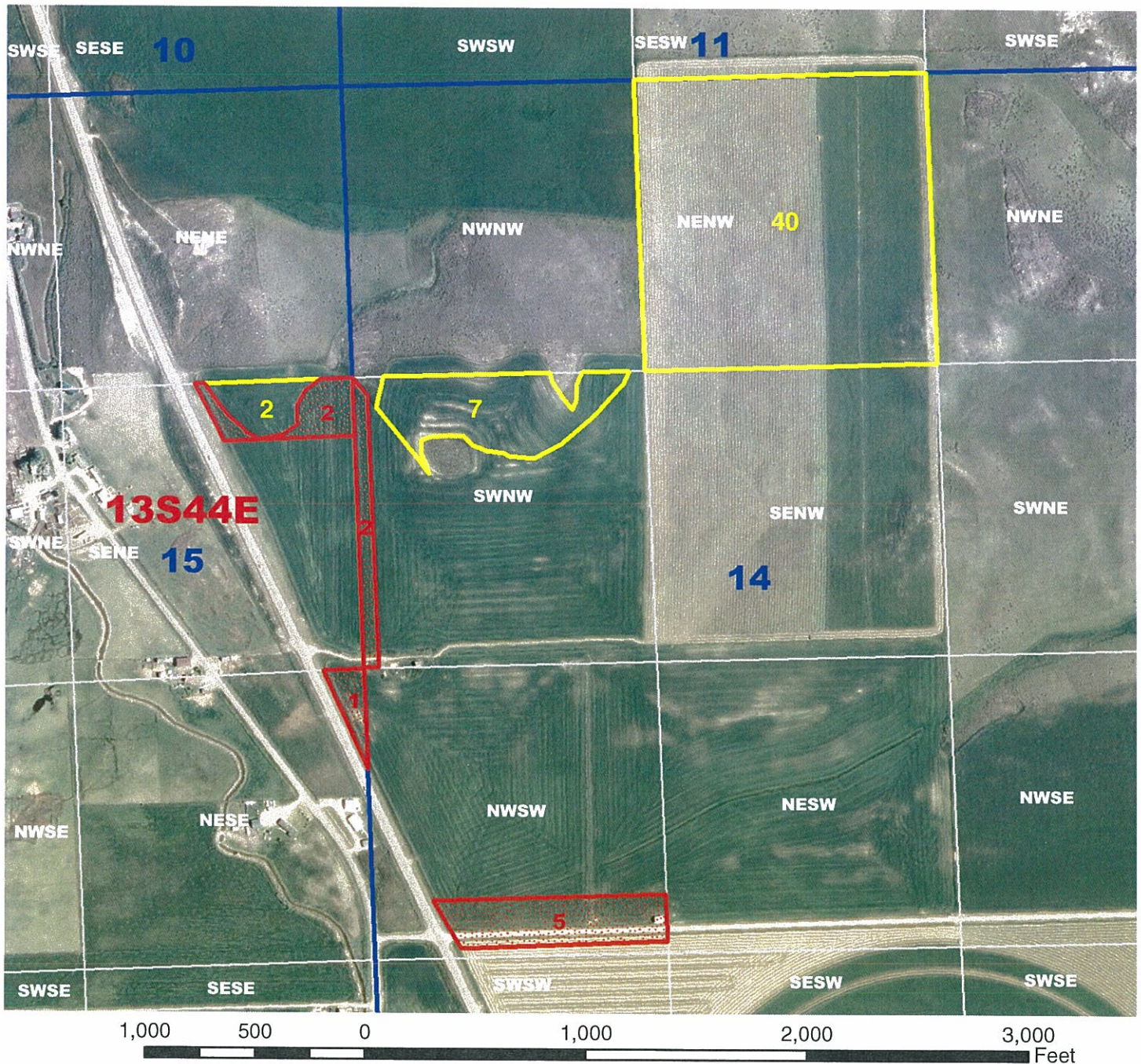
Irrigation: 1.18 cfs (one inch per acre for 59 acres)

Total: 1.26 cfs

Permit Reinstatement Review 11-7051

Attachment to January 14, 2011 Memo

POU Distribution



Legend

- Extra_10_Acres
- 11-7051_Draft_POU
- Township/Range
- Sections

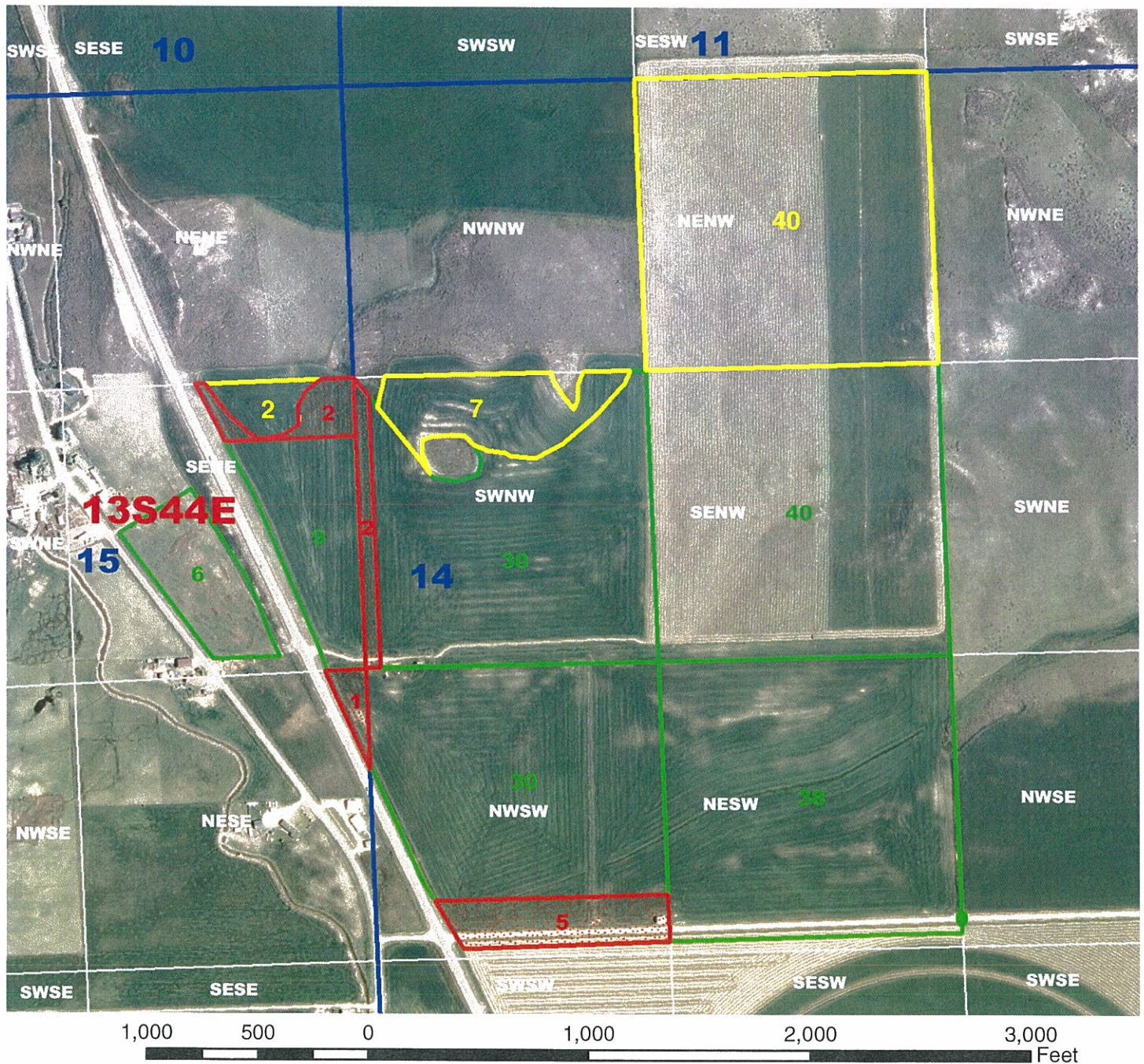
This shows the irrigated POU evidenced to have been irrigated within the authroized development peroid for 11-7051.



Permit Reinstatement Review 11-7051

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POU Distribution



Legend

- Extra_10_Acres
- 11-7051_Draft_POU
- 11-7025_Lic_POU
- Township/Range
- Sections

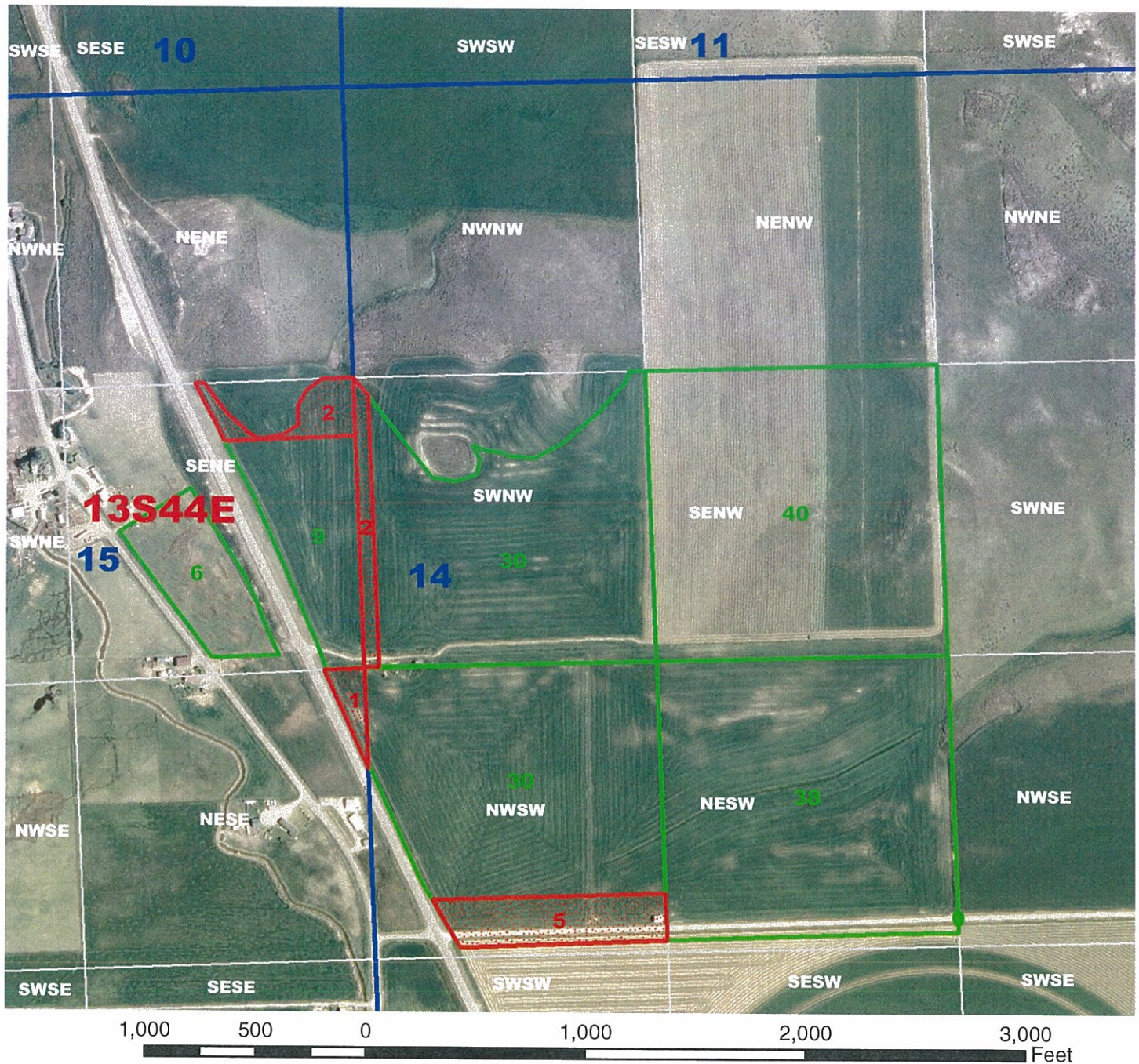
**This shows the POU for both
11-7025 and 11-7051
after 11-7051
is reinstated.**



Permit Reinstatement Review 11-7051

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POU Distribution



Legend

- Extra_10_Acres
- 11-7025_Lic_POU
- Township/Range
- Sections

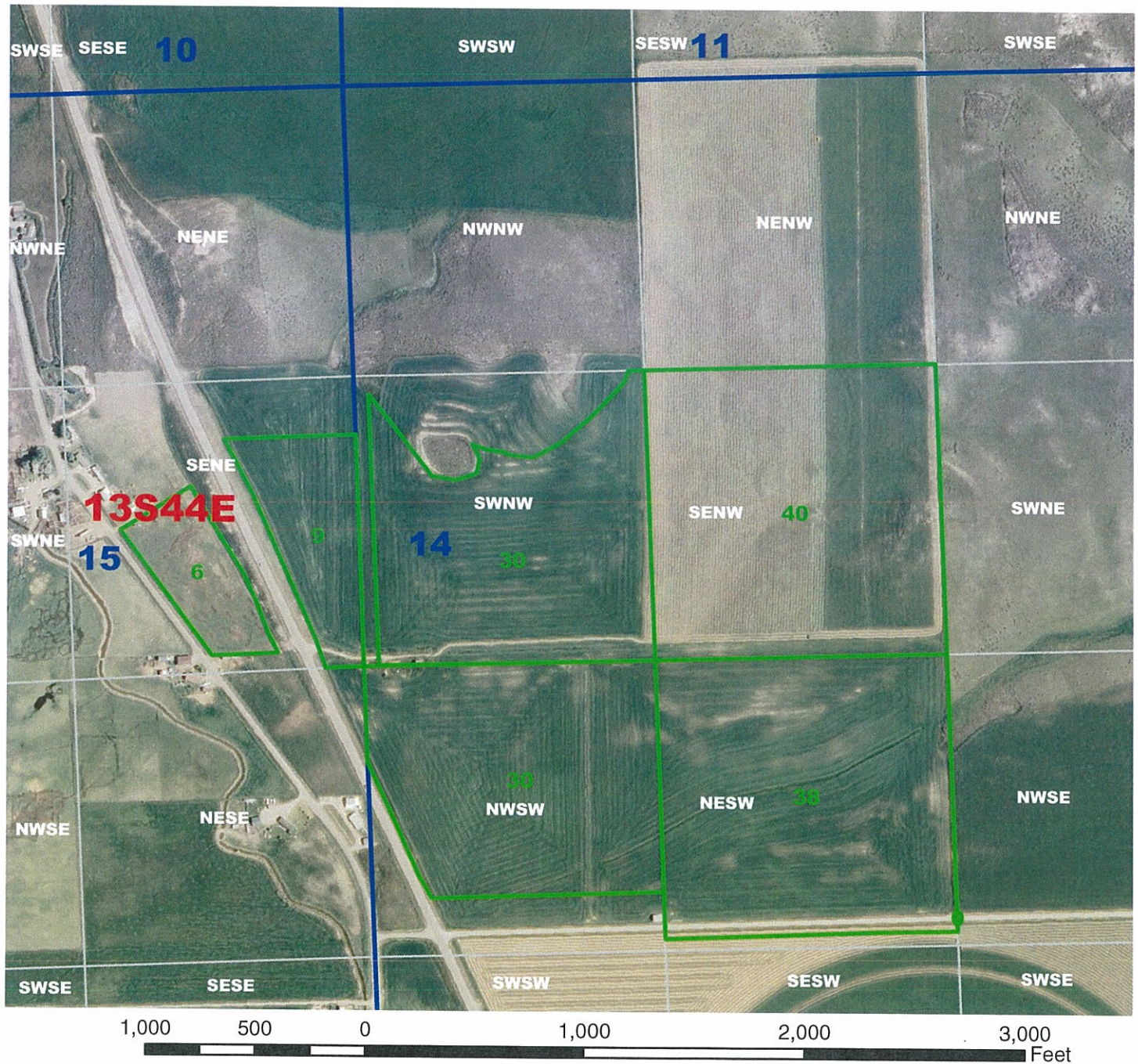
This shows the irrigated POU found by the field examiner in 1974.



Permit Reinstatement Review 11-7051

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POU Distribution



Legend

- 11-7025_Lic_POU
- Township/Range
- Sections
-

Licensed POU for 11-7025



Prepared by Craig L. Saxtor
January 14, 2011
2009 NAIP Photography

11-7025

January 6, 1975

Mr. J. Weston Martineau
Route #1
Montpelier, ID 83254

Dear Mr. Martineau:

Your December 27th letter contesting the issuance of a water right license on your Permit No. 11-7025 has been reviewed, and the facts you set forth agree essentially with our records.

However, at this time, we are proposing to license only Permit No. 11-7025, on which you requested the irrigation of 153 acres. Therefore, this license cannot be issued for the irrigation of more than the permitted 153 acres.

The examiner found that you were irrigating at least ten more acres, but these acres will be included when a license is issued on your Permit No. 11-7051. You have until March 1, 1979, to complete your project and irrigate the 65 acres of land included under this permit.

We hope this explains the current status of your two permits, and the reason the license is proposed for the irrigation of 153 acres of land.

If you still disagree with our findings, please let us know within 10 days, or we will issue the license as proposed in our December 23, 1974, letter.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jg

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