

Storms, Scott

From: Storms, Scott
Sent: Monday, April 21, 2025 2:45 PM
To: PureMagma
Cc: Miller, Nick
Subject: RE: FW: Question(s) about a "Permissible Place of Use" License or Permit

Hello Angie,

First of all, good catch on the June 15th condition, #6 on the draft that was circulated last week. That condition has become standard on new permits in basin 65, however since it was not included on the original permit for 65-13627, it should and will not be included on the final license for this right. It has been removed. Additionally, we recognized that the last draft also included the condition "Stockwater use is for 100 cattle and 6 horses". By Department standards, that condition is removed at licensing so this condition has been removed as well.

Regarding the diversion rate for the license, the standard duty of water for irrigation in Idaho is 0.02 cfs per acre, which is equivalent to an inch per acre. The original permit was for 60 acres, so $60 \text{ ac} \times 0.02 \text{ cfs/ac} = 1.2 \text{ cfs}$. Now that the license is being issued for 57.5 acres, the rate equates to $57.5 \text{ ac} \times 0.02 \text{ cfs/ac} = 1.15 \text{ cfs}$.

The new license has just been issued and will go out in the mail tomorrow, April 22, 2025. You should see this in the mail in the next few days.

Best regards,

Scott



Scott Storms
Water Resources Supervisor
IDWR Western Region
208-334-2190
Scott.storms@idwr.idaho.gov
2735 W Airport Way Boise, ID 83705

From: PureMagma <puremagmaunlimited@gmail.com>
Sent: Thursday, April 17, 2025 4:19 PM
To: Storms, Scott <Scott.Storms@idwr.idaho.gov>
Subject: Re: FW: Question(s) about a "Permissible Place of Use" License or Permit

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Thank you for sending your updated draft of the Water Right License to me to review. I did send a copy of the draft to Dylan Lawrence hoping he might remember if there was something specific that had hindered the License from being re-issued last July. (...or if it just fell through the cracks)

Admittedly, I'm slightly out of my depth on how IDWR calculates the cubic ft/sec Diversion Rate, so please correct me if necessary, but the rate on the draft you provided is still below the original permitted allotment for irrigation. Does that calculation shift based on the amount of approved acreage or is there a different reason for reducing the volumetric amount we are authorized to divert? A reduction of .05 cfs may seem miniscule, but by my (*possibly flawed*) understanding the .05 cfs x 60 sec = 3 cubic feet per minute - which [over time] quickly compounds into a massive reduction in the amount of natural flow surface water you are approving for our use. If at all possible I implore you to allow our Water Right License to retain as many of the original parameters as possible because every aspect of our buried irrigation mainline system was built to operate based on the original diversion rate allotment--including the calibration of the Seametrics flow meter we installed in March 2024.

My only other concern is regarding the newly added "Conditions of Approval" that were not included when you issued the Water Right License on April 4, 2024 (that was rescinded on May 9, 2024).

Conditions of Approval number "6" actually contains multiple "new conditions" in one paragraph. The additional requirements as cited within the sixth condition appear tailor-made and possess unwarranted punitive undertones that the initial Water Right License that was issued by you on April 4, 2024 did not convey. But for the "*erroneously included volume limitations*" and the slightly excessive acreage reduction contained in the April 4, 2024 License version, we would not be subject to these additional conditions. Our petition was filed promptly and the license was rescinded on May 9, 2024. On July 2, 2024 Nick Miller and Dylan Lawrence had a series of exchanges and Dylan requested some historical information that we provided and Nick used to increase the reduced acreage back up to 57.5 acres. To the best of my knowledge they had finalized their changes and reestablished the corrected Water Right License. I mention this distinction because to introduce new language stating: "*The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water...*" This is not language befitting a perfected Water Right License.

Neil Shippy seems like a great guy and I have contacted him regarding issues like not being able to access the flow meter data, and because of that issue, I'm considering a telemetry modification for our flow meter and Neil has proven to be very knowledgeable in that regard, but periodically pestering him (and/or any subsequent Watermaster for Dist. 65), which is markedly different than IDWR issuing a special mandate reducing our water right to a 'provisional license' that voids automatically in mid-June unless we remember to proactively renew the license annually. This clause seems a bit prejudicial and not-so-subtly infers that all accountability for IDWR never reissuing a corrected version of the Water Right License is being shifted onto me, when, if you read the attached email exchange between Nick & Dylan from last summer, how could I possibly know that Nick never successfully "*put this to bed*" based on his last email to Dylan.

Likewise, I don't believe the [separate] new requirement in Condition #6 is applicable either where it states: "*When the watermaster informs the right holder that water is not available to fill this right, the rightholder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use...*" It seems appropriate to reiterate what Dylan Lawrence wrote in our April 18, 2024 Petition for Reconsideration, "*For a natural flow water*

right from the Payette River, which is regulated by the Water District 65 watermaster, an annual volumetric limitation is not necessary for the proper administration of the water right. And, even if such limitations are necessary for the proper administration of the right, they should be based upon the Department's recognized standard duties of water for stockwatering and irrigation for this particular area of the state."

When, how and why would our water appropriation be subject to "renting of surface water" and is this after we have exhausted our annual Deadwood Reservoir water storage allotment?

The "Conditions of Approval" as affixed to the Water Right License version that you signed/issued on April 4, 2024 reflect a much more appropriate [and neutral] tenor than the newly updated draft that I received yesterday. I am hopeful that you can see the differences the way they appear to me or in the alternative provide the necessary clarification to justify modifying the conditions required for water right license approval.

My kindest regards,

Angie Heffner

On Wed, Apr 16, 2025 at 1:28 PM Storms, Scott <Scott.Storms@idwr.idaho.gov> wrote:

Hello Angie,

Attached is a draft of the license for water right 65-13627. This draft should address all matters previously discussed, including the removal of the volume limit erroneously included on the initial license issued on April 4, 2024, and subsequently rescinded by the order issued on May 9, 2024, as well include the 57.5 acres of irrigation. The Department is prepared to issue the license this Friday, April 18, 2025. If you have any questions or comments, please feel free to reach out.

Best regards,

Scott



Scott Storms

Water Resources Supervisor

IDWR Western Region

☎ 208-334-2190

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 65-13627

DRAFT

Priority: July 20, 1995

Maximum Diversion Rate: 1.15 CFS

It is hereby certified that:

DONNA HEFFNER 4811 MONTOUR RD EMMETT ID 83617 AND
DONALD D HEFFNER 4811 MONTOUR RD EMMETT ID 83617

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 20, 1995, and has submitted Proof of Beneficial Use on October 02, 1996. An examination confirms water is diverted from:

Source : PAYETTE RIVER

Tributary: SNAKE RIVER

Beneficial Use

Period of Use

Rate of Diversion

STOCKWATER

01/01 to 12/31

0.01 CFS

IRRIGATION

03/15 to 11/15

1.15 CFS

Location of Point(s) of Diversion

PAYETTE RIVER L4 (SW¼ NE¼), Sec. 21, Twp 07N, Rge 01E, B.M. GEM County

Place of Use: STOCKWATER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	01E	21		X	X L4														
07N	01E	16															X		

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	01E	21		29.2	11.3 L4														40.5
07N	01E	16															17.0		17.0

Total Acres: 57.5

Conditions of Approval

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
2. 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).
3. Stockwater use is for 100 cattle and 6 horses.
4. The issuance of this right does not grant any right-of-way or easement across the land of another.

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 65-13627

5. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.
6. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
7. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

This license is issued pursuant to the provisions of Idaho Code § 42-219. 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 _____ day of _____, 20_____.

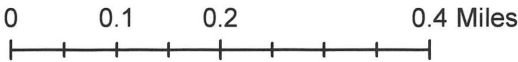
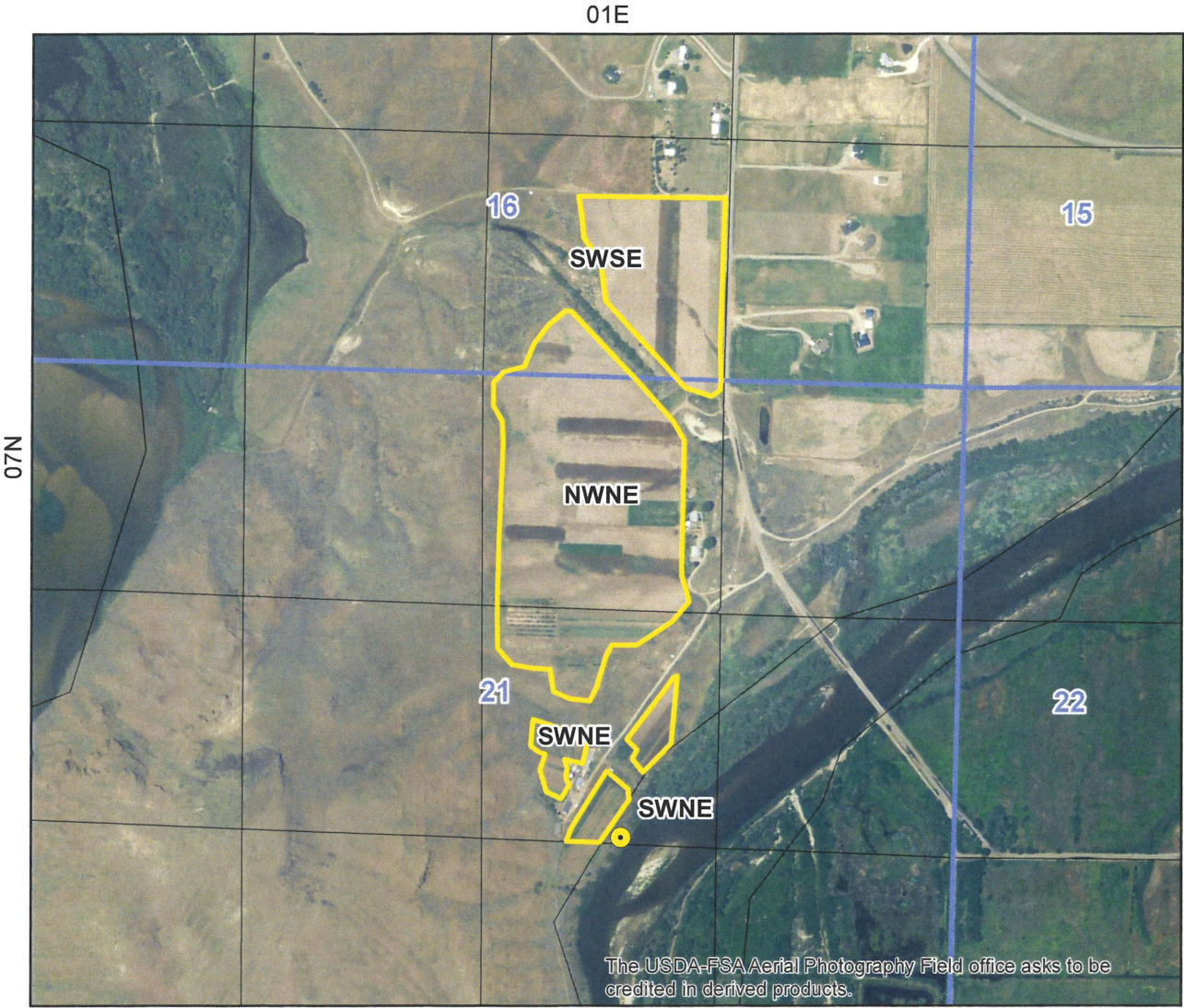
DRAFT

Nick Miller
Western Regional Manager

State of Idaho
Department of Water Resources
Attachment to Water Right
65-13627

DRAFT

This map depicts the IRRIGATION and STOCKWATER 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.



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



 Scott.storms@idwr.idaho.gov

2735 W Airport Way Boise, ID 83705

From: PureMagma <puremagmaunlimited@gmail.com>
Sent: Tuesday, April 15, 2025 6:15 PM
To: Storms, Scott <Scott.Storms@idwr.idaho.gov>
Subject: Re: FW: Question(s) about a "Permissible Place of Use" License or Permit

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Hi Scott,

I did not realize that Nick and Dylan had not solidified the 57.5 acres License re-issuing last July. Let's complete that first (to avoid any further confusion).

Here's what I recall, last Spring (on Apr 18, 2024) we filed a Petition for Reconsideration after the first Water Right License was issued, I was under the belief that Nick had addressed everything on July 2nd, but if you can send me a copy of what is currently drafted (prior to reissuing the license), I will review it beforehand. One of the items we'd mentioned in the 2024 Petition for Reconsideration was how IDWR had decreased our allotted CFS Diversion Rate (aka "Annual Volume") for both Irrigation and Stockwater. I believe those errors were resolved, but since there has been another (unexpected) timing/follow-through delay, allowing me to review the information ahead of it being reissued would be appreciated.

After I confirm that the concerns that were identified in the 2024 Petition for Reconsideration have been addressed, I know we are happy with the IDWR approved boundary locations exactly as Nick Miller identified as the original boundaries (pursuant the attachment you included, i.e., 070224_POU).

Once the primary license has finally been resolved and re-established, we can discuss my other questions regarding obtaining a second license and/or the PPU.

Sincerely,

Angie Heffner

On Tue, Apr 15, 2025 at 1:03 PM Storms, Scott <Scott.Storms@idwr.idaho.gov> wrote:

Hello Angie,

I am writing to respond to your email from March 28, 2025, regarding licensing of permit 65-13627. According to this email, it appears you would like the Department to move forward with issuing the license for 57.5 acres as shown on the attached map, with a PLS description as follows:

TWP	RGE	SEC	QQ	Proposed
07N	01E	16	SWSE	17
		21	NWNE	29.2
			SWNE L4	11.3
Total				57.5

As mentioned in your quote from Dylan Lawrance, you could also file for a new permit to cover any additional acres at any point. Once the license is issued, you can also file a Transfer in order to move the acres of irrigation around, or to create a Permissible Place of Use. Just to reiterate, the license must be issued first before any transfer application can be submitted in order to make changes to the right.

Once the license is issued you do have 14 days to submit a petition for reconsideration if you do not agree with the way the elements of then right and the conditions read, however I hope that discussing these matters ahead of issuing the license will avoid such a petition.

We have the license drafted and ready to issue. If you agree with the acres discussed above, please respond within the next seven (7) days and we can issue the license.

Best regards,

Scott



Scott Storms

Water Resources Supervisor

IDWR Western Region

☎ 208-334-2190

✉ Scott.storms@idwr.idaho.gov

2735 W Airport Way Boise, ID 83705

From: PureMagma <puremagmaunlimited@gmail.com>

Sent: Thursday, March 27, 2025 3:18 PM

To: Adamson, Jared <Jared.Adamson@idwr.idaho.gov>

Subject: Question(s) about a "Permissible Place of Use" License or Permit

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Hi Jared,

Last year there was finally plenty of forward momentum regarding my parents Irrigation License (Permit) No. 65-13627 (which is technically now just my Mom's and the Estate of Donald Heffner). Obviously, having Dylan Lawrence as our legal counsel made a huge difference by helping me better understand water law and manage everything. I credit him completely for all the positive improvements we've made.

You likely also remember that we have been contending with the two neighbors who moved to Idaho from Washington and California after 2020 who filed water right ownership claims against my mother's Permit to Appropriate Water in December of 2022; which on December 8, 2023, on behalf of IDWR you subsequently reversed their water right splits and your letter advised Lynch and Duarte's attorney that water right disputes had to either be adjudicated or resolved through a Quiet Title proceeding. They don't have actual legal standing to prevail should they attempt either of the required actions (as our *literal* water law expert exhaustively explained) Sadly that didn't stop Ysursa from spending all of 2024 pretending that IDWR's reversal was caused by some technicality we created (regardless of your letter's straightforward explanation) and instead Ysursa acted as if his clients water right claims were still "valid" repeatedly met with Dylan to make outlandish demands (under the guise of "contract negotiations") essentially he was just causing us to rack up a massive amount of legal expenses (In 14 months we paid Dylan close to \$20K) and I finally had to let Dylan go last August for being waaaaay too nice to them and indulging their continued antics instead of saying, "*Stop bothering us and tell it to a judge!*"

Anyway, I'm attaching a copy of an email that Dylan Lawrence sent me last summer where he summarized most everything he was managing perfectly. In the email he mentions two "options" and I would like to know if you can help me find and fill-out the proper documents to accomplish Option 2 which he describes as:

We could accept the license at 57.5 acres of irrigation, then file a permit application for any additional irrigation over and above that amount, even if it is over 60 acres. We could also file an application requesting a "permissible place of use" (PPU). This would establish the entire Heffner property as an authorized place of use, with the ability to "move" your irrigation around the property from year to year. If you wanted to change irrigated acres from one year to the next, all you would have to do is notify IDWR in advance.

Last summer I was hesitant to proceed with "Option 2" because we were getting overwhelmed. But Dylan was always right (because he IS a literal expert in Idaho Water

Law) and we do have some irrigation water usage "issues" that do need to be resolved and because you have already experienced plenty of the melodrama (that WE are in the process of curing through our Torts Law Expert, Kevin Dinius), I'm hoping that if you understand what Dylan Lawrence was talking about in "Option 2" can you help me navigate the correct paperwork and obtain the PPU permit as we move into this 2025 irrigation season?

Finally, in case you are hesitant to assist (because of the surrounding drama) I'm attaching my parents copies of the documents that Alliance title was required to collect when my parents actually sold those land parcels in 2005 & Jan 2006. I'm making this information available to you for your peace of mind of knowing that my parents actually did retain their irrigation water rights and Lynch/Duarte won't be able to legally reinstate their splits without obtaining permission from my Mom (which is very unlikely).

Sincerely,

Angie Heffner