

## Miller, Nick

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**From:** Miller, Nick  
**Sent:** Thursday, May 09, 2024 3:43 PM  
**To:** Dylan Lawrence  
**Cc:** puremagmaunlimited@gmail.com  
**Subject:** Filing re Water Right License 65-13627 (Heffner)  
**Attachments:** 0509204\_67-13627\_Order.pdf

Mr. Lawrence,

Please find the attached order denying the petition for reconsideration and withdrawing the license for further consideration.

Please feel free to contact me if you have questions. Otherwise, I will be in touch to set up a time to get together to review the report and discuss reissuing the license.

Sincerely,

Nick Miller  
Manager, IDWR Western Region.

**BEFORE THE DEPARTMENT OF WATER RESOURCES**  
**OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT NO.       )  
65-13627 IN THE NAME OF            )  
DONALD AND DONNA HEFFNER        )  
\_\_\_\_\_)

**ORDER DENYING PETITION**  
**FOR RECONSIDERATION**  
**AND WITHDRAWING**  
**PRELIMINARY ORDER**

This matter having come before the department of Water Resources (Department) as a petition to reconsider a preliminary order issuing a license, the Department finds, concludes, and orders as follows:

**FINDINGS OF FACT**

1. On October 23, 1995, the Department approved Permit to Appropriate Water No. 65-13627 (Permit) in the name of Donald and Donna Heffner (Permit Holder). The Permit authorized diversion of up to 1.20 cfs of water from the Payette River to irrigate up to 60 acres of land and an additional 0.01 cfs of water for stockwatering purposes.
2. Proof of beneficial use was to be submitted on or before November 1, 1996, and was submitted by the Permit Holder on October 2, 1996.
3. On April 8, 2024, the Department issued a preliminary order (Order) granting a license pursuant to the Permit. The license recognized development under the Permit of 1.10 cfs to irrigate 55 acres and erroneously included annual volumetric limitations of 0.0 acre-feet each for the stockwater and irrigation components of the water right.
4. The Department issued the Order pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
5. On April 18, 2024, the Department received a Petition for Reconsideration and Request for Hearing (Petition) from the Permit Holder requesting the Department reconsider the licensed acreage and volumetric limitations on the license and requesting a hearing to, “understand the basis for the Department’s reduction of irrigated acres and to establish its irrigation practices for the Department.” Petition at 3.
6. The Permit holder has not been provided a copy of the beneficial use examination records relied on by the Department when it issued the license.
7. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

### CONCLUSIONS OF LAW

1. The Petition was filed timely.
2. The Department should withdraw the Order to remove the erroneous volumetric diversion limitations.
3. The Department should, prior to the Department issuing a corrected license for the Permit, provide an opportunity for the Permit Holder to review the beneficial use examination report and engage in informal discussions with the Department.

### ORDER

IT IS HEREBY ORDERED that the Petition is **DENIED** pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure.

IT IS FURTHER ORDERED the preliminary order issuing a license for permit number 65-13627 is **WITHDRAWN** and the Permit is **REINSTATED**.

Dated this 9<sup>th</sup> day of May, 2024.

  
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Nick Miller  
Manager, IDWR Western Region

## CERTIFICATE OF SERVICE

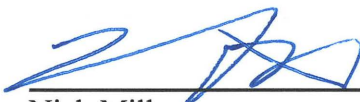
I HEREBY CERTIFY that on this 7<sup>th</sup> day of May, 2024, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

DONALD D AND DONNA HEFFNER  
4811 MONTOUR RD  
EMMETT, ID 83617  
(208) 584-3383  
puremagmaunlimited@gmail.com  
*Permit Holder*

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

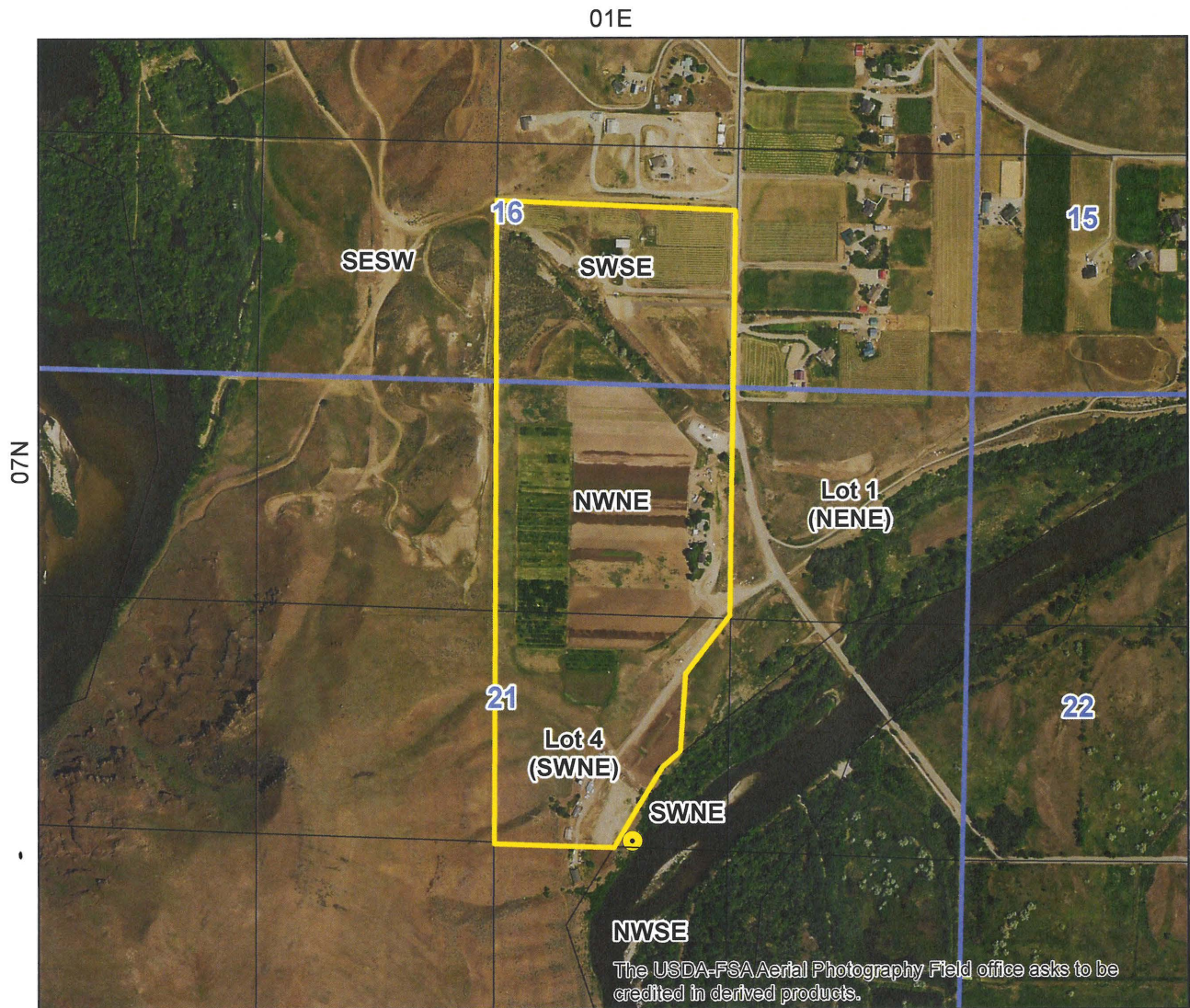
DYLAN B. LAWRENCE  
VARIN THOMAS LLC  
242 N 8TH ST STE 220  
BOISE, ID 83702-5892  
(208) 345-6021  
dylan@varinthomas.com  
*Attorney for Permit Holder*

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

  
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Nick Miller  
Manager, IDWR Western Region

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

This map depicts the 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.



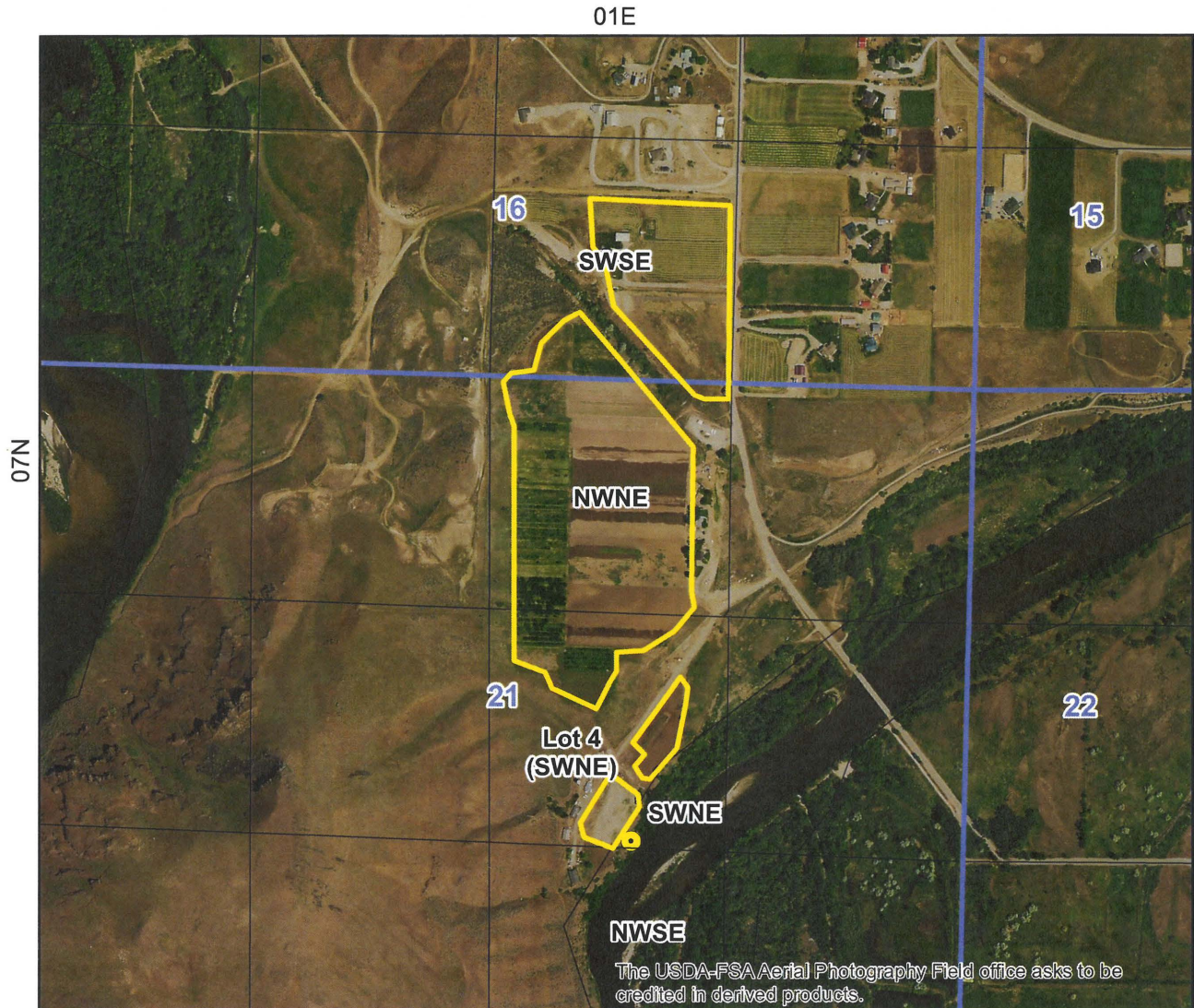
0 0.125 0.25 0.5 Miles

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



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

This map depicts the IRRIGATION 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.



0 0.1 0.2 0.4 Miles

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

