

Miller, Nick

From: Dylan Lawrence <dylan@varinthomas.com>
Sent: Friday, July 12, 2024 8:54 AM
To: Miller, Nick
Subject: Re: Filing re Water Right License 65-13627 (Heffner)

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Nick, thanks for that confirmation and the explanation of the step-down and priority dates. That is helpful. I will confer with the Heffners and get back to you.

Dylan

Dylan Lawrence

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On Thu, Jul 11, 2024 at 1:18 PM Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Dylan,

Your understanding is correct. We do process new applications for permit from the Payette River and the priority date tends to go from "all on" down to 1938 in one step because Black Canyon has a 1,200 cfs water right with a 9/19/1938 priority date. So, I'm not sure there is much difference between a 1995 and a 2024 priority right.

Nick.

From: Dylan Lawrence <dylan@varinthomas.com>
Sent: Friday, July 05, 2024 11:04 AM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Re: Filing re Water Right License 65-13627 (Heffner)

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Hi Nick. Thanks for taking such a detailed look at this.

Before I forward this along to the Heffners, I'm hoping you can confirm my understanding of the status of water availability and administration on the Payette. If the Heffners believe they are irrigating, or could irrigate, more than the 57.5 acres, is there any reason they couldn't just apply for a new permit for the difference? My understanding is that there is still water available for appropriation. Also, I have this general impression from some email exchanges with Ron Shurtleff a few years ago that there's not a huge difference between a 1995 priority date and a 2024 priority date, because there is a much bigger and more important priority date cutoff cliff sometime in the early 1900s.

Is this sounding right? I know the Heffners are interested in a permissible place of use. Perhaps the ability to file applications for any irrigation above 57.5 acres and to gain a permissible place of use would be acceptable to them.

Anyway, your thoughts appreciated.

Thanks again,

Dylan

Dylan Lawrence

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On Tue, Jul 2, 2024 at 6:43 PM Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Hi Dylan,

I decided to take some time today and (hopefully) put this to bed. I have attached a revised draft POU that includes 57.5 acres. See the table of acreages and description of each QQ below.

TWP	RGE	SEC	QQ	Permit	P1992	P2004	License	Proposed
07N	01E	16	SWSE	16	17.8	17	17	17
		21	NWNE	30	33.1	29.2	28	29.2
			SWNE L4	14	8.5	10.3	10	11.3
Total				60	59.4	56.5	55	57.5

SWSE Section 16. The permit authorized 16 acres of irrigation in this tract. Both the 1992 image and the 2004 image show more than that was irrigated (17.8 and 17.0 acres, respectively). The difference is a strip of land running at about a 45-degree angle on the SW side of the area marked "A". I do not know when that strip of land ceased to be irrigated – sometime after 1992 and before 2004. Nevertheless, this exceeds the acreage authorized by the permit.

NWNE Section 21. The permit authorized 30 acres to be irrigated in this tract. The 1992 image appears to show 33.1 acres, while the 2004 image appears to show 29.2 acres. This area is shown as areas "B" and "D" on the attached maps. The differences between 1992 and 2004 are:

- 1) about 2.8 acres on the western edge. In the 1992 image it continues to the QQ boundary, but appears to have been reduced by 2004.
- 2) about 1.1 acres on the eastern edge. It is clear in the photo you provided with your last email (1996-07-04 photo.pdf) that the land to the north of the house was not being irrigated in 1996).

SWNE Lot 4 Section 21. The permit authorized 14 acres in this tract. The 1992 image seems to show only 8.5 acres irrigated within the areas "E", and "F", while the 2004 image seems to show that the area "E" has been reduced, "F" has been altered, and "G" and "H" are clearly irrigated in 2004. I am recommending 11.3 acres in this tract based on the following observations:

- 1) In the 1996 photo you provided, it is clear that portions of area "E" on the SW and W sides are not being irrigated, consistent with the 2004 image. This appears to be approximately 0.75 acres. I realize this is possibly due to a fire or some special circumstance, but it appears this area has remained unirrigated ever since. Given that information, I interpret the area that was irrigated within area "E" in 1996 to be 6.5 acres, consistent with that shown in the 2004 image.
- 2) Area "F" is a combination of an approximately 1-acre area that appears to be irrigated in the 1992 photo and a 0.6-acre area that is clearly irrigated in the 2004 photo. I included both areas because I interpreted the drawing on the lower left of the 1998 field examination "map" to represent this area. Also, the 1996 photo you provided does show irrigation west of the blue silo and that provided some context to the 1998 field exam photo showing the booster pump location that also shows irrigation occurring in that area.
- 3) Areas "G" and "H" total 3.2 acres. Although it is not clear the area is irrigated in the 1992 image, it is clearly irrigated in the 1996 photo you provided. Also, a diagram on the 1998 field exam document describes a line going to the "lower fields below the home, between the home and river", so I assume these lands were being irrigated in 1998 as well.

I will address each of the four considerations you list below in order:

Regarding your consideration "1)" below, I assume you are referring to the notes in the field report. The land currently irrigated in the SWSE that we excluded (based on the 2017 evaluation) is an area on the western end of Lynch's property that is not irrigated in either 1992 or 2004 and did not appear to be irrigated until approximately 2009. That ground was clearly not developed during the development period for the permit and so we cannot license that acreage. The lands I am attempting to identify are those that were irrigated during the 1996 development period. The lands we had excluded based on the 2004 imagery are largely what is in question since those lands might or might not have been irrigated during the development period. The information you have provided has gone a long way in

helping clear some of that up as discussed above. Note also that we did not exclude lands that were clearly irrigated in 1992 and 2004, but are no longer irrigated, such as the roads and house areas on Lynch and Duarte's properties.

Regarding "2)", the 1998 field examination documents are clearly not prepared as a final report and do not specifically contain any recommendation as to acreage. The map attached to your email appears to have been prepared in 1995, likely as part of the application processing, but it may have been modified during the 1998 field examination. It is unclear.

Regarding "3)" I have provided the maps and images I have used to determine the acreages. As stated above, I arrive at 29.2 acres in this tract.

Regarding "4)" This is the "acre or two" I mentioned in my earlier email. I have added that garden area as described in the discussion on Area "F".

In conclusion, I hope that I have related to you the reasoning I am inclined to recommend a total of 57.5 acres based on the available information. I am ready to issue the revised license as soon as I hear back that you agree with this recommendation.

Nick.

From: Dylan Lawrence <dylan@varinthomas.com>
Sent: Monday, May 27, 2024 3:02 PM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Re: Filing re Water Right License 65-13627 (Heffner)

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Nick,

Thanks for the attachments; those are helpful. I have reviewed those materials and commiserated with

2004 Imagery and proposed POU



The USDA-FSA Aerial Photography Field office asks to be credited in derived products.

1992 Imagery and proposed POU

SESW

SWSE

16

A

SESE

C

B

NENW

D

NWNE

NENE 1

07N01E

21

E

NENE

SENE 4

SESW

SWNE 4

F

H

SENE

SWNE

SENE 9

NESW 5

NWSE 5

NWSE

NESW

U.S. Geological Survey (USGS)