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Apr 18, 2024

DEPARTMENT OF  
WATER RESOURCES

Dylan B. Lawrence, ISB No. 7136  
Varin Thomas LLC  
242 N. 8<sup>th</sup> Street, Suite 220  
P.O. Box 1676  
Boise, Idaho 83701-1676  
Telephone: (208) 345-6021  
Facsimile: (866) 717-1758  
dylan@varinthomas.com

Attorneys for Donald D. Heffner and Donna Heffner

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                                      |   |                            |
|--------------------------------------|---|----------------------------|
| IN THE MATTER OF WATER RIGHT         | ) |                            |
| LICENSE NO. 65-13627                 | ) |                            |
|                                      | ) |                            |
| In the name of Donald D. Heffner and | ) | <b>PETITION FOR</b>        |
| Donna Heffner                        | ) | <b>RECONSIDERATION AND</b> |
|                                      | ) | <b>REQUEST FOR HEARING</b> |
|                                      | ) |                            |

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Pursuant to Idaho Code Sections 42-1701A and 67-5243 and Rule 730 of the Department's Rules of Procedure, IDAPA 37.01.01, the Licensee of the above-referenced water right, through undersigned counsel of record, hereby files this Petition for Reconsideration and Request for Hearing related to the license issued by the Department on April 8, 2024. Licensee disagrees with two aspects of the Department's action, as follows:

First, Licensee does not agree with designating the “Annual Volume” for the stockwater and irrigation uses as “0.0 AF.” This could be read to imply that the Licensee is not authorized to divert any water under this water right. While Idaho Code Section 41-1411 resides within the chapter of the Idaho Code governing water right adjudications, it is often cited as establishing the standard elements of a water right. Paragraph (2)(c) of that statute contemplates annual volumetric limitations on water rights “as necessary for the proper administration of the water right.”

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.

Second, the basis for the Department’s reduction of irrigated acreage from the 60 acres authorized in the permit to 55 acres is unclear. Notably, the permit for this water right was issued in 1995, and the permit holder submitted proof of beneficial use to the Department in 1996, claiming 60 acres of irrigation. However, counsel for the Licensee is unable to locate a beneficial use field exam (BUFE) report in the water right backfile available online.

Therefore, Licensee requests a hearing to understand the basis for the Department’s reduction of irrigated acres and to establish its irrigation

PETITION FOR RECONSIDERATION AND REQUEST FOR HEARING – 2 –

practices for the Department. If a beneficial use field exam has not been performed relatively recently, Licensee could potentially prepare a beneficial use field exam report as an exhibit for the hearing. If the Licensee and Department agree regarding the results of the BUFE report, perhaps a hearing will not be necessary.

DATED THIS 18th day of April, 2024.

Varin Thomas LLC

By:   
Dylan B. Lawrence  
Attorneys for Licensee

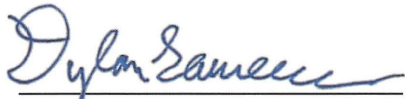
## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2024, I caused to be filed with the Department and served a true and correct copy of the foregoing by email, addressed to the following:

Idaho Department of Water Resources  
322 E. Front Street  
Boise, Idaho 83702  
[file@idwr.idaho.gov](mailto:file@idwr.idaho.gov)

Lynne Evans  
Scott Storms  
Idaho Department of Water Resources  
2735 W. Airport Way  
Boise, ID 83705  
[Lynne.Evans@idwr.idaho.gov](mailto:Lynne.Evans@idwr.idaho.gov)  
[Scott.Storms@idwr.idaho.gov](mailto:Scott.Storms@idwr.idaho.gov)

Neil Shippy (Watermaster)  
Water District #65  
102 N. Main St.  
Payette, Idaho 83661-2522  
[neil.waterdistrict65@gmail.com](mailto:neil.waterdistrict65@gmail.com)



Dylan B. Lawrence

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

WITHDRAWN

**Priority:** July 20, 1995

**Maximum Diversion Rate:** 1.10 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

| <u>Beneficial Use</u> | <u>Period of Use</u> | <u>Rate of Diversion</u> | <u>Annual Volume</u> |
|-----------------------|----------------------|--------------------------|----------------------|
| STOCKWATER            | 01/01 to 12/31       | 0.01 CFS                 | 0.0 AF               |
| IRRIGATION            | 03/15 to 11/15       | 1.10 CFS                 | 0.0 AF               |

**Location of Point(s) of Diversion**

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

**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  |    | 28.0 | 10.0 |    |    |    |    |    |    |    |    |    |    |    |      |    | 38.0   |
|     |     |     |    |      | L4   |    |    |    |    |    |    |    |    |    |    |    |      |    |        |
| 07N | 01E | 16  |    |      |      |    |    |    |    |    |    |    |    |    |    |    | 17.0 |    | 17.0   |

Total Acres: 55.0

**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  |    |        |

**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. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. 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.

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

WITHDRAWN

5. 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 4<sup>th</sup> day of April, 2024.

  
\_\_\_\_\_  
SCOTT STORMS  
Water Rights Supervisor