



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

July 23, 2020

ERO RESOURCES CORP
ATTN DAVE SHAW
4001 E MAIN ST
EMMETT ID 83617

RE: Field exam report for water right permit 63-32366

Dear Mr. Shaw:

I have reviewed the field exam you supplied for water right permit 63-32366. During my review I discovered that field exam is deficient in several areas. Due to the number of issues involved, I am required to reject this field report. I will discuss each deficiency below:

The Idaho Administrative Code Beneficial Use Examination Rules, IDAPA 37.03.02.035.c states the following:

A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to the place of use and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, the timing and method of storage, release, rediversion and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field examination report. Schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall also be provided in the examination report.

Your report did not include any information on the maximum and average pond depths, or how you calculated the volume for each pond. In Section D, part 2, of the report, you do mention updated design documents for the subdivision dated 1-21-2019, but you did not submit those documents with the field report. These documents are not in any of the records associated with the water rights for this permit holder. We cannot verify information if the documents are not available to us. We will need the maximum and average depth of each of the ponds and how you came up with the volume you recommended in the field report. I recommend that you use the "Storage: Pond Loss Calculation" spreadsheet supplied on the Department's website at <https://idwr.idaho.gov/forms/water-rights.html>.

The application for permit states that water from the Thurman Mill Ditch Company (TMDC) and Warm Springs Ditch Company (WSDC) will be delivered to one of the ponds. None of the maps you supplied showed the conveyance system. I am still not sure whether water from the two water delivery companies enter one or more of the ponds, or if there is a place where excess water is diverted out of the pond(s). A system diagram that shows the conveyance systems or some sort of explanation is needed to verify the use.

The Idaho Administrative Code Beneficial Use Examination Rules, IDAPA 37.03.02.035.01.e states the following:

If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities.

If water is returned to a public water source, then we do need to know where and how the water is diverted into that source. This can also be shown in the system diagram.

The Idaho Administrative Code Beneficial Use Examination Rules, IDAPA 37.03.02. 035.d states the following:

Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights.

You did not provide any analysis of the seepage and evaporation losses associated with the ponds to see if they were within the authorized amounts mitigated through water right transfers 73900 and 73930 for the TMDC and the WSDC. Once again, you could use the "Storage: Pond Loss Calculation" spreadsheet to assist you with this analysis. This also raises a concern on whether all of the 12 ponds are being filled with shallow ground water, since there is a suggestion that some of the ponds may have seepage losses.

The Idaho Administrative Code Beneficial Use Examination Rules, IDAPA 37.03.02.035.01.f states the following:

The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner.

Condition 4 of the permit states the following:

Water bearing zone to be appropriated is from 1 to 28 feet.

Without the maximum pond depths as mentioned above, we cannot confirm or verify that this condition has been met.

Condition 8 of the permit states the following:

Transfers 73900 and 73930 when combined authorize the diversion of an annual total of 78.5 acre-feet to be use for the replacement of losses caused by seepage and evaporation.

As mentioned above, there was no analysis of the seepage and evaporation losses, so there in no way to verify if this condition has been satisfied, or if some of the ponds are not being filled with shallow ground water.

Condition 6 of the permit states the following:

The 7 ponds established by storage of water under this right shall not exceed a total capacity of 533 acre-feet or a total surface area of 23 acres.

Your field report shows 12 ponds for this subdivision. There has been no amendment to the original permit to authorize more than 7 ponds, so it appears as though the use developed is in violation of the conditions of the permit. **We can do a licensing amendment if we can determine through the field report that the surface area and volume originally sought in the permit has not been exceeded the original permit limitations as long as the amendment complies with the standards set forth by Idaho Code §42-240B.**

CONCLUSION:

Idaho Code §42-219 (1) states the following in part:

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license corresponding to the beneficial use. Such license shall state the name and post office address of such user, the purpose for which such water is used and the quantity of water that may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied. For permits held by a municipal provider for reasonably anticipated future needs, a license may be issued incrementally for an amount corresponding to the beneficial use demonstrated to the satisfaction of the department in each incremental statement of completion showing proof of beneficial use submitted pursuant to section 42-204(4), Idaho Code, which amount, together with any previously licensed portion of said permit, shall not exceed the initial quantity authorized under the permit. The final incremental license at the end of the planning horizon shall be issued for an amount corresponding to the beneficial use. The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

The IDAPA Beneficial Use Examination Rules 37.03.02.035.02.b states the following:

Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply.

The Department has concluded that this field report does not provide the information needed to confirm that the conditions of the permit have been met, nor is there adequate information to determine if a licensing amendment can be used to change the condition that limits the number of ponds from 7 ponds to 12 ponds. The Department has also determined that the field report is not completed as required by the IDAPA Beneficial Use Rules. Therefore, we are returning the Proof of Beneficial Use Statement and Field Report to you for completion. A copy of this letter will be also be sent to the permit holder, since there water right is involved. The permit holder could also file a standard amendment according to Idaho Code § 42-204B for the additional ponds actually developed if they choose to correct the record prior to refileing proof of beneficial use.

The "Proof of Beneficial Use Statement of Completion" form for this permit is not required to be submitted until December 1, 2021. Therefore, there will be no penalties or adjustments of the priority date until after the December 1, 2021, deadline to submit the proof of beneficial use statement.

If you have any questions or concerns, please don't hesitate to contact me.

Respectfully,



Daniel Nelson
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Idaho Department of Water Resources
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Fax (208) 287-6700 (attn: Dan Nelson)

Enclosures: Returned Field Report
 Returned Proof of Beneficial Use

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