

Cefalo, James

From: Cefalo, James
Sent: Monday, August 07, 2017 10:14 AM
To: 'TJ Budge'
Subject: RE: 13-2167

T.J.,

I have taken some time this morning to review the file for water right 13-2167. If you believe there was a clerical error associated with the licensed diversion rate, you can petition the department to correct the license. However, I do not see any sign of error in the file. The licensed diversion rate (0.8 cfs) is consistent with the Report of Engineer. When the field exam was conducted, A.G. Condie stated and the examiner confirmed that Condie used 42 sprinklers to irrigate the property. Condie would close a culvert to store water overnight and then irrigate (pump to sprinklers) with the stored water during the next day. Condie moved the 42 sprinklers around the property throughout the year.

The examiner reported that Condie used sprinklers with 3/16" nozzles. 3/16" sprinkler nozzles at 65 psi can produce 8.45 gallons per minute per sprinkler head. 42 sprinklers x 8.45 gallons per minute = 355 gpm = 0.8 cfs. In two places on the report, the examiner states that 42 sprinklers are used to irrigate the property. In two places on the report, the examiner notes a diversion rate of 40 inches (0.8 cfs). The storage reported by the field examiner appears to fall within the 24-hour impoundment threshold and would not need to be represented as a separate element on the license.

Based on the evidence available at this time, I believe the license was issued consistent with the beneficial use field exam. If Bob Condie believes more water has been diverted from the unnamed stream than is represented on the license, he could pursue a beneficial use claim in a future adjudication.

James

From: TJ Budge [mailto:tjb@racinelaw.net]
Sent: Wednesday, August 02, 2017 1:51 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: 13-2167

James,

I've been contacted by Bob Condie, the current owner of water right no. 13-2167. It appears the license for this water right contains a clerical error, stating 0.8 cfs instead of 3.5 cfs.

As shown in the backfile, the Application for Permit was filed in December 1952 for the diversion of 8.0 cfs to irrigate 1,280 acres. The Permit was approved in February of 1953. Proof of beneficial use was submitted in December of 1956 for 3.5 cfs and the irrigation of 340 acres. Several affidavits were submitted to verify this. The field exam was made in April of 1957. A Certificate of Completion of Works was then issued June 5, 1957, for 3.5 cfs and 335. Thus, the water right license should have been issued in these amounts.

The license was issued for 335 acres; however, the diversion rate was set at 0.8 cfs as opposed to 3.5 cfs. As you know, it would be impossible to irrigate 335 acres with 0.8 cfs, and the Certificate of Completion found 3.5 cfs applied to beneficial use.

The 0.8 cfs figure appears to be a clerical error based on a handwritten note on Report of Engineer. Notably, the Report of Engineer in use at that time did not provide a space for reporting the diversion rate, nor did the "Instructions to Examiner" call for examining the diversion rate. However, there is a handwritten note next to the Instructions that says

"Q = 8.0 cfs." There is another handwritten note on the map attached to the Report of Engineer that says "Q = 40 inches." This appears to have generated yet another handwritten note on the front of the Report that states: ".8 cfs max."

Importantly, the Report of Engineer was issued in April of 1957 whereas the Certificate of Completion of Works was issued in June of 1957 for the 3.5 cfs for which proof of beneficial use was made.

There must have been a clerical error that resulted in the license being issued for .8 cfs based on the handwritten note on the Engineer's Report as opposed to the 3.5 cfs approved in the Certificate of Completion.

We would like to have this error corrected. Let me know if I need to file something with IDWR or if it can be taken care of internally.

On a related note, I found it interesting that this water right was not issued with an "irrigation storage" component even though the Application for Permit identifies the diversion works as "Small dams (not over 8 ft. high)" and the Engineer's Report notes that the appropriators utilized a number of road and machinery crossings to impound water for irrigation. I realize that the Department's current 24 hour policy may accommodate these dams, but I believe it would be beneficial to have an actual storage component with this water right. I wonder if, at the time this Application was processed, the Department considered irrigation storage ponds of this type to be incidental to the "irrigation" beneficial use without requiring an "irrigation storage" beneficial use? If so, now that the Department typically does require a "storage" beneficial use for irrigation ponds, is there a way to amend this water right to add an irrigation storage beneficial use as set forth in the Application and the Engineer's Report?

Thank you for your assistance with this. Please feel free to give me a call to discuss further if you would like.

Thanks,

T.J. Budge

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STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

REPORT OF ENGINEER

PERMIT NO. 23389

REPORT ON PROOF OF Beneficial Use and Completion of Works

A. G. Condie, Preston, Idaho

app. 8.15
Sub 12
acres 335

8 24
mar

A hand-drawn map on a grid background. At the top left, an arrow points left with the text "To Preston". Below it, an arrow points down with the text "To Downey". To the right of the "To Downey" arrow, there is a label "To U.S. Army No. 10". In the center left, the text "T. 14 S." is written vertically. At the bottom left, an arrow points left with the text "Unimproved Street". The map features several dashed rectangular areas containing numbers: one with "40 20 10", another with "40 20 10", and a third with "20 30 20 30 20 30 20 30". There are also labels for "PD", "Blgs.", "Reservoir", "Canal", "Road", "Field", "Creek", and "River". A route is indicated by a dashed line with arrows, starting from the bottom left and moving towards the top right.

$$\begin{array}{r} 150 \\ 203 \\ \hline 353 \end{array}$$

Area = 3.35 acres.

$Q = 40$ inches

Points of diversion are changed any time he desires any where along the stream, though the present points are quite well established.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO
REPORT OF ENGINEER

Permit No. 23389This proof is for Completion of Works & Beneficial Use In Water District No. _____

1. Name of applicant A. G. Condie
2. Source of water supply: Springs & seepage - drainage off own land.
SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 15., NW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 14 all in
3. Location of point of diversion: Is in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ / of Section 14 16
T. 14 S R. 39 E., B.M. County of Franklin
4. Describe works as they exist, giving dimensions and capacities of same: Application by means of
a portable sprinkler system. Power = Case tractor. 4" x 3" centrifugal
pumps. Main line = 4" al. lateral = 3" x 4" al. Sprinklers
Rainbird "40 7/8" x 3/16" 33 heads. Says he operates 42.
He has dug deep drains 6' to 8' deep for long stretches
also installed 4" tile drains to drain wet land.
5. Water is used for: Irrigation
6. State whether or not water has been turned into works of diversion: yes
7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if other than irrigation):

SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 16., NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 15., SW $\frac{1}{4}$ of Sec. 14., all in
NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 14., Twp. 14 S., Rge. 39 E., B.M.) Twp. 14 S., Rge. 39 E., B.M.

See map.

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach?
- Remarks: There are a number of road and machinery
crossings. 12" or larger culvert pipe. When he wants to
irrigate he closes a culvert and stores water over night
then sprinkles the next day sprinkling alternates over
the farm along with the crops. The summer fallow
part of the place each year.
He makes an especial point that the water is
mostly developed water. This is true so far as his
usage is concerned.

This examination was made on the Apr. 11 day of 1957(Signed) E. N. Humphrey Examiner.

23389

INSTRUCTIONS TO EXAMINERS

1. Always carefully note the location of the point of diversion and accurately plat same.
2. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
3. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
4. If any unusual conditions are discovered, make plain statement of them under remarks.
5. Always see the holder, if possible, and go over the whole ground with him and make your report only upon actual existing facts and conditions.
6. Give general characteristics of soils, topography, and crops raised.

RECEIVED
APR 16 1957

Department of Reclamation

A. G. Conkle 3/0 S 2 E.
Preston, Idaho

501 W 5th
Permit No. 23389

Examination for Completion of Works & Beneficial Use

County Franklin

14, 15, 16, - 14S. - 39E.

Q = 8.0 c.f.s.

S = Spring & unnamed streams

P.D. = Along km named stream and
springs in Secs. 14, 15, 16,
T. 14S. - R. 39E.

Use = Irrigation

3/32 x 3/16 - 53 pipes total

Filed = Dec. 12, 1952.

Due = Dec. 1, 1959

(W ext. to Dec. 1, 1957)

4" x 3" cent. pump
with on front of a

case tractor

AC 5260321

Peerless PBBX 4x8

42 total 3" x 40' al.

6 short 4"

40"

14 - 40's.