

MEMO

TO: Water Right File 13-7925

FROM: James Cefalo

DATE: July 5, 2017

RE: Permit Review – Permit Conditions

On September 29, 2014, Steve and Rena Cann ("Cann") filed Application for Permit 13-7925. Cann amended the application on November 19, 2014, reducing the proposed diversion rate, reducing the number of irrigated acres, and better defining the proposed project. Application 13-7925 proposes to divert 0.32 cfs from waste water for the irrigation of 16 acres.

Application 13-7925 proposes diverting waste water from the now-abandoned Upper Canal of Cub River Irrigation Company ("CRI"). In 2014, CRI constructed a pipeline to serve the patrons on the Upper Canal. CRI no longer needed the canal and conveyed its easement for the canal to Franklin County, which now maintains the canal for storm water drainage and flood control purposes.

Cann proposes to divert water out of the Upper Canal at a pump site on their property. They provided two letters to demonstrate legal access to pump site on the canal. One letter, dated March 4, 2016, is from CRI to Cann. It states: "Your request to continue pumping from [the Upper Canal] is certainly ok with [CRI] but you must understand that we will have absolutely no jurisdiction over the abandoned alignment and will NOT deliver water into the upper canal for any reason." The other letter, dated August 22, 2016, is from Franklin County Commissioners to Cann. It states: "Franklin County approves your request to continue using the abandoned upper Cub River canal as an irrigation structure to divert your waste water streams for use on your acreage located at 1644 S. State Street. This is with the understanding the structure will be a run-off collection area and needs to flow freely when needed for periods of heavy rainfall."

The Cann property is already covered by water right 13-7025B which bears a priority date of July 21, 1971 and authorizes the diversion of 0.09 cfs from an unnamed stream for the irrigation of 19 acres. The unnamed stream (which appears to be a waste water ditch) flows into the Upper Canal just north of the Cann property. Water right 13-7025B includes all of the acres on the Cann property south of the Upper Canal and encompasses buildings, roads and waste ground. Application 13-7925 only proposes 16 irrigated acres. It generally covers the same acres as water right 13-7025B, but excludes the buildings, roads and waste ground.

Historically, the CRI Upper Canal conveyed water from east to west through the farm ground immediately south of Preston. The Upper Canal terminated at the CRI Lower Canal and was used to augment the supply of water to the southern part of the CRI delivery area. Now that the Upper Canal has been abandoned by CRI, portions of the canal have been filled in and farmed over.

On June 29, 2017, IDWR agent Dennis Dunn conducted a field investigation of the Upper Canal. Dunn observed water flowing in the canal at the Cann property. He estimated the flow to be 0.1 cfs. Dunn followed the canal to see where the water went. The Upper Canal was filled in and farmed over beginning at Lat. 42° 2' 58.2" N, Long. -111° 53' 38.6" W. At this location, the water in the canal is routed into a ditch heading straight east. In approximately ½ mile, the ditch flows into the CRI Lower Canal at Lat. 42° 2' 58.3" N, Long. -111° 53' 0.0" W. Dunn confirmed that the water in the Upper Canal still flows into the CRI Lower Canal.

On July 3, 2017, I contacted Don Baldwin, president and registered agent of CRI, to discuss the Cann application. Baldwin confirmed that water from the Upper Canal flows into the Lower Canal at the location described above. He also confirmed that CRI uses that water, in addition to water diverted under its recorded water rights, to supply irrigation water to its patrons. I asked Baldwin whether the March 4, 2016 letter from CRI to Cann was intended to waive any water rights CRI may have to the waste water source. Baldwin said that was not the intent of the letter. It was merely sent to address the question of legal access to the canal. Baldwin said CRI might file a beneficial use claim for waste water in a future adjudication. CRI will not take any action on claiming a waste water right for the Upper Canal until an adjudication. In other words, the company does not plan on filing a statutory claim under Idaho Code § 42-243.

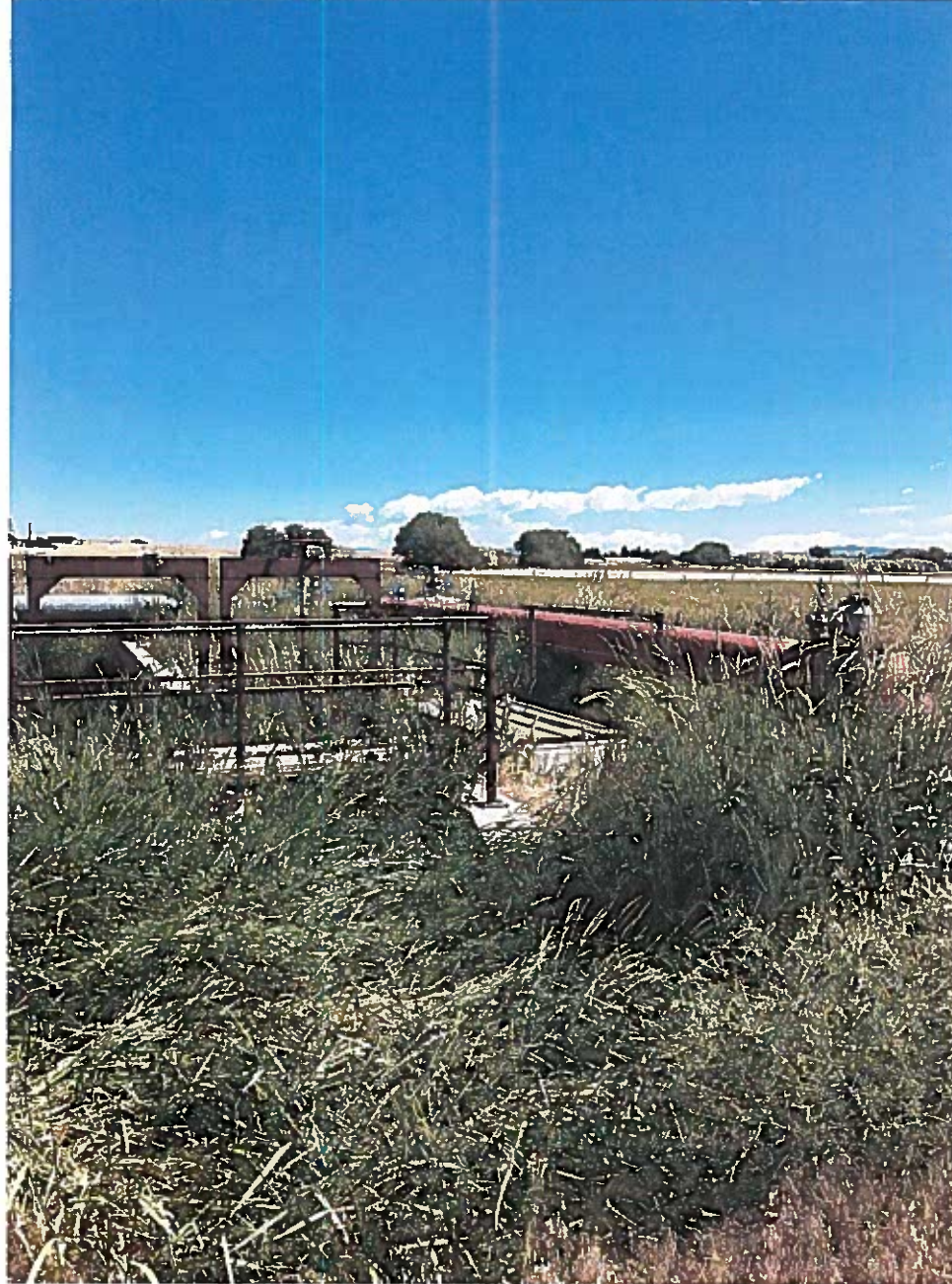
If CRI were to file a beneficial use claim for a waste water right from the Upper Canal, there is a reasonable chance such a claim would be successful. The Upper Canal historically has captured waste water flows from irrigation occurring to the north of the Upper Canal. This waste water has been distributed to CRI patrons for use throughout the company's service area. If such a right exists, it would likely bear a senior priority date and would exceed the current waste water flows in the Upper Canal. With the proliferation of sprinkler irrigation in the area, waste water flows have been greatly diminished.

If CRI were to obtain a senior decreed water right for the waste water supply in an adjudication, there would be little or no water remaining for the irrigation system proposed by Cann. If, on the other hand, CRI does not claim the waste water flow, there would be sufficient water to satisfy the Cann project. The wastewater does not return to the Bear River, but gets incorporated into the CRI delivery system.

It is important to put Cann and any other future owners of Permit 13-7925 on notice that the permit may be rendered obsolete because a possible senior claim to the water by CRI. The following condition would achieve that goal:

Diversion of waste water under this right is from the Upper Canal, which has been abandoned by Cub River Irrigation Company. This right is subject to any senior water right for the use of waste water from the Upper Canal claimed by Cub River Irrigation Company and decreed in a future adjudication.

06/29/2017 10:57:17 • 12T VM 26018 55645 • 42°2'57" N, 111°53'38" W • T 10° N / MILS 0173



06/29/2017 10:58:25 • 12T VM 26033 55659 • 42° 2' 58" N, 111° 53' 37" W • T 249° W / MILS 4418



Untitled Map

Write a description for your map.

South

Google earth

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4000 ft



Application 13-7925 (Cann)

