

MEMO

TO: Water Right File 74-7316

FROM: James Cefalo

DATE: September 14, 2016

RE: Licensing Review of Permit 74-7316

The Department conducted a beneficial use field exam for Permit 74-7316 on March 27, 1996. The field examiner found evidence of full development, but noted that the source, beneficial use, and place of use were slightly different than those described in the permit. These differences are the reason the water right has yet to be licensed, 20 years after the field exam was completed. The four primary issues raised in the field exam are discussed below.

Issue 1: Permit 74-7316 authorizes diversion for irrigation, fish propagation and fish propagation storage. The field examiner concluded that the pond, although developed, had not been used for fish propagation and proposed that the non-irrigation beneficial uses be changed to recreation and recreation storage.

On September 14, 2016, I contacted Gino Ottonello (now 91 years old) to discuss his use of the pond. Ottonello stated that he has had fish in the pond since the pond was originally built. There was one year (2012) where the pond got so warm that the algae took over the pond and killed the fish. He has restocked the pond since that time. Other than 2012, the pond has been stocked with fish every year since the permit was issued.

Resolution of Issue 1: Although Ottonello derives other benefits from the pond (recreation and aesthetic values), there is, and always has been, fish in the pond. The license should be issued for fish propagation and fish propagation storage. If Ottonello wishes to add the other beneficial uses to the water right, he can do so through a transfer application after the license is issued.

Issue 2: Permit 74-7316 describes the authorized source as springs tributary to the Lemhi River. The field examiner found that Ottonello had in fact captured and diverted spring water to the pond through a pipe. However, he also found that "waste water" from a waste water ditch traversing the property was diverted into the pond and then returned to the waste water ditch through the pond overflow. The field examiner does not specifically propose adding waste water as a source on water right 74-7316, but suggests that the waste water source is the primary source of water for the right.

Waste water is not an authorized source under Permit 74-7316. The waste water ditch is not hydrologically connected to the developed spring source.

Resolution of Issue 2: The license should be issued listing a single source (springs tributary to Lemhi River). Diversion of waste water must be covered under a separate water right.

Issue 3: Permit 74-7316 authorizes a diversion rate of 0.10 cfs. The field examiner measured the spring flow as 0.006 cfs. According to Ottonello, the spring flow is much higher after the up-gradient properties begin to run irrigation water. Spring flows are much higher during the summer months. The field exam was conducted in March, prior to any significant irrigation taking place on the up-gradient properties.

Resolution of Issue 3: The current field examination rules do not require a measurement for systems diverting less than 0.24 cfs. In this case, the evidence suggests that the spring flow is at times greater than the 0.006 measured by the field examiner. It is not an efficient use of resources to conduct multiple measurements of the spring to try to capture its peak flow. It is acceptable to assume that the spring can produce up to 0.10 cfs at certain times of the year if conditions are right.

Issue 4: The place of use for Permit 74-7316 only lists acres in Lot 2 (NWNE) of Section 3, T20N, R23E. The field examiner found 0.5 acres were irrigated under Permit 74-7316 in Lot 3 (NENW) of Section 3. Adding acres in Lot 3 would require a permit amendment for licensing purposes.

Ottonello explained that the acres in Lot 3 (NENW) are actually irrigated with water from a buried perforated pipe system. The perforated pipe parallels the road near the intersection of Baker Road and Lemhi Road. Ottonello said the spring water is only used on the garden area in Lot 3 if the perforated pipe system runs dry (which is rare). He does not want to amend the permit and is okay to leave the garden area in Lot 3 off of the permit. This would result in fewer acres available under the license.

Resolution of Issue 4: Ottonello does not want to amend the permit for licensing and is okay if the license is limited to acres within Lot 2 (NWNE), Sec. 3, T20N, R23E.

Summary

Based on the proposed resolution of the four issues described above, a license can be issued for water right 74-7316 without any amendment of the permit. The license will list springs tributary to the Lemhi River as the authorized source and irrigation, fish propagation and fish propagation storage as beneficial uses. The authorized rate will be based on the number of acres irrigated. The place of use will be limited to those acres located in Lot 2 (NWNE), Sec. 3, T20N, R23E consistent with the original permit.