

MEMORANDUM

TO: Files 2-2240, 2-2431, 63-361, 63-8389, and 63-9807

FROM: Daniel Nelson – Staff Hydrologist

DATE: February 4, 2014

SUBJECT: Combined Conditions

Mark McDonough called during on a office day call to ask how many acres he could irrigated with water rights 2-2240, 2-2431, 63-361, 63-8389, and 63-9807 (McDonough Rights). I was asked to research the water rights to determine the number of acres that can be irrigated with the McDonough Rights. In my review, I discovered the following conditions:

3. E55 Right Nos. 2-68, 63-361, 63-8389 and 63-9807 are limited to the irrigation of a combined total of 231 acres in a single irrigation season.
5. E51 Right Nos. 2-68, 63-361, 63-8389 and 63-9807 are limited to a total combined diversion rate of 4.62 cfs.

In reviewing the water right and adjudication files, I couldn't find any form overlap between the McDonough Rights and water right 2-68. The McDonough Rights and 2-68 do not share a point of diversion and do not share a common place of use. The McDonough Rights and 2-68 are actually several miles apart and completely different systems. I spoke with Jan Shurte of our adjudication staff who worked on water right 2-68, and she was not aware of the McDonough Rights or the condition including water right 2-68.

I spoke with Michael Ciscell who did the recommendations for the McDonough Rights, and discovered that Mr. Ciscell had combined limitations in the data base that says when the McDonough Rights are combined they are limited to 231 acres and 4.62 cfs. 4.62 cfs is an inch or 0.02 cfs per acre for the 231 acres. Mr. Ciscell's data entry into the database does not include water right 2-68. In review of Mr. Ciscell's notes in the adjudication file, he does not mention water right 2-68 anywhere in the file. Mr. Ciscell and I also checked the GIS or digitized acres for the shape file created for this farm, and found 228 acres covered by shape files.

Jeff Peppersack in 2004 did a review of the water rights for the Water Supply Bank. Mr. Peppersack wrote a memo dated July 27, 2004 that reviews the water rights and the overlapping acres. This memo suggests that when all of the rights are combined they are limited to a total of 226.3 acres.

CONCLUSION:

In my review of this situation, I feel Mr. Ciscell copied the combined condition into the adjudication record and neglected to change water right number 2-68 to 2-2240 and 2-2431. I also think Mr. Ciscell didn't get the combined acreage correct. I feel Mr. Peppersack's review is

much more concise and address the overlap. There is no discussion in the adjudication file of the overlapping water rights and how Mr. Ciscell came up with the 231 acres. The total acres digitized is less than the 231 acres Mr. Ciscell entered into the file, so I am more comfortable using Mr. Peppersack's 226.3 acre conclusion.

I have spoken to Carter Fritschle concerning this issue. Mr. Fritschle believes the 231 acres could have come from a rounding issue. He agrees that this condition should be fixed. Mr. Fritschle informed me that he would prefer that Mr. McDonough make the final decision on whether or not the combined acres should be 226.3 or 231. Mr. Fritschle told me that the adjudication staff would petition the court to do an error correction on the water right if Mr. McDonough agreed to the process. All Mr. Fritschle needed was confirmation from Mr. McDonough on the number of acres that should be listed in the combined use. The error correction process would not cost Mr. McDonough any money, and it would be handled entirely by Department staff with very little effort on Mr. McDonough's part.

FOLLOW-UP:

On 2/19/2014, Mr. McDonough came into our office and met with staff. During this meeting Mr. McDonough stated he felt the 226.3 acre combined acre amount would be the best way to correct the combined condition. This condition will state that when 2-2240, 2-2431, 63-361, 63-8389, and 63-9807 are combined they will be limited to a total irrigation of 226.3 acres. Mr. McDonough agrees to this change per his signature below:

Date February 19, 2014

Mark A. McDonough
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