

CERTIFICATE OF SERVICE

I hereby certify that on the 9th of February, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing Notice of Joint Hearing to the persons listed below:

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MEMORANDUM

February 4, 2010

To: Allen Merritt

From: Cindy Yenter, Water Rights Supervisor & Water District 140 Watermaster 

RE: Regulation of Permissible Place of Use Systems in Water Districts, and Potential for Enlargement of Use

The concept of a common or "permissible" place of use (PPU) for irrigation is that a group of associated water rights, diverted through a common system, may be used together to irrigate a finite number of acres within a common area, without specific water rights being absolutely associated with specific acres. This memo will discuss regulation of PPU systems in a water district, and the potential for enlargement of water rights under PPU configurations, particularly during late season irrigation.

For many systems a water right PPU was created during the SRBA process when enlargement or expansion rights were recommended or decreed along with existing rights. PPU creation has also been used for other systems to allow water right flexibility and efficiency of use. It is much easier to make multiple water rights "fit" into a particular irrigation configuration if only the outer boundaries of the additive authorized acres must be identified. Where authorized irrigated acres equal PPU acres, there is little trouble in water right administration. So long as all rights are in priority, all acres may be irrigated. If some rights are curtailed, the number of acres under the curtailed water rights is determined, and the water user may choose which acres to idle.

PPU is less frequently utilized for field rotation scenarios, where a significant number of acres are left fallow each year. A excellent application of this concept would be an organic farm, where fields are fallowed in planned rotations for disease and pest control, or for nutrient replenishment. More typically, though, a large PPU is proposed because there just aren't enough water rights to irrigate all the acres. In theory, the water user will limit total acres irrigated per season, but retain the ability to move the those irrigated acres around from year to year within the common place of use, without a water right transfer being required each year.

Where PPU acres exceed authorized irrigated acres, administration of the rights is challenging. Within these systems, some acres must remain dry every year. If wetted and dry acres are changing from year to year, watermasters must regulate a moving target. Potential for enlargement of water rights and illegal water use is especially high within a large PPU. Dry fields mean lost revenue, particularly if there is an expensive center pivot irrigation system parked there. If diligent monitoring does not occur by the water district, it is very likely the entire PPU will eventually be found under irrigation.

In response to large PPU situations, IDWR has developed a water right transfer condition of use (condition 206) which requires the water user to identify to IDWR before the beginning of each irrigation season, the acres to be irrigated during that season. While this condition will help with seasonal water district regulation, it will not entirely eliminate the potential for enlargement of the water rights, particularly enlargement related to late-season irrigation on acres not irrigated in the current year. IDWR's increasingly sophisticated imaging capabilities have made it possible for watermasters to conduct current-season monitoring of irrigation compliance via aerial photo

reviews. Late-season photography is not always obtained by the agency, however, so late-season non-compliance, if it is suspected, will still have to be verified in the field. The result is that a disproportionate amount of regulatory time will be spent tracking irrigated acres under a large PPU where field rotation is contemplated.

Recently approved transfers 66132 and 66133 authorize a large PPU, and both contain transfer condition 206. In the Petition for Reconsideration of the above transfers, applicant requests permission to identify his annual irrigated acres, and then to identify additional acres to be irrigated *in the same season*, in preparation for planting and irrigation the following season. Applicant feels that so long as the annual water right volume is not exceeded, this would not enlarge the water rights. I disagree.

In Idaho, beneficial use under any water right must occur within the licensed, recommended, or decreed limits of the right, including limits for acres, rate of flow and annual diverted volume. Enlargement of a water right occurs when the historical beneficial use under the right is exceeded. The limits of a water right are not mutually exclusive. Consequently, enlargement occurs when the most restrictive limit is surpassed.

The number of authorized acres is typically the restrictive limit for any irrigation right. The water right rate of flow is based on the found system capacity, and water right volume is based on the maximum crop irrigation requirement for the area. Assuming that all acres are irrigated, maximum allowable beneficial use under an irrigation water right in any given year would be the volume of water actually required to grow a selected crop to maturity on those acres in that year, *even if that volume is less than the water right limit*. A water user does not have the right to divert the maximum volume listed on the water right if that diversion would result in enlargement of the right.

Applicant's request to pre-irrigate additional acres in a single growing season enlarges the historical beneficial use under the transferred water rights because it proposes to increase the total number of acres receiving water in a single growing season in excess of the acres allowed in the water rights. Total volume diverted is not the limiting factor.