



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 17, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

ROBERT L. HARRIS
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
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P.O. BOX 50130
IDAHO FALLS, ID 83405-0130

RE: Natural Guardian Water Right Permits 21-7190 and 21-7133

Dear Mr. Harris:

I have reviewed the documents submitted by your office on behalf of Natural Guardian for licensing of the permits referenced above. Rather than reproducing your entire letter, I have quoted only the fragments that you had highlighted as needing clarification, in this letter and I have followed those fragments with my response. Hopefully this compression will not add to the complexity.

21-7190

We request that you summarize for us how the department came up with the 3.35 cfs value

Water right permit #21-7190 has two, separate, pumped systems. The eastern pump site is also known as site 3 in the field exam. The western pump site is also known as site 2 on the field exam and the field exam includes theoretical calculations for both east and west systems. We chose to use measured values instead of theoretical values because they were more representative of the actual beneficial use.

For the eastern system, an in-line flowmeter was used to take flow measurements. An instantaneous reading of 657 gpm (1.46 cfs) was used for the diversion rate. For the western system, the sum of the sprinkler head discharge, 1.89 cfs., was used for the diversion rate. The total diversion rate for 21-7190 is the sum of the east and west systems (1.46+1.89) 3.35 cfs.

We request that you describe your analysis as to the acres calculated, as it appears that there is some discrepancy in some of the quarter-quarter sections.

I began the analysis of irrigated acres by locating areas where farmed land and irrigation lines were in close proximity. Farmed areas where irrigation lines did not or could not reach were excluded from further consideration.

Arc view calculates the acreage based on shapes selected for use. I created the ArcView shapes which define the irrigated areas for 21-7190. I attempted to duplicate the shapes defined by the field examiner and verified them with archival ArcView aerial photography.

In a second review of the shapes, a true-up of the acreage based on tax-lot or section boundaries was made. In that second round review, I found that some of the irrigated acreage did not belong to the permit holder. I verified with the Department of Lands that a lease agreement was in place and to which quarter-quarters the lease was attached.

There is a small projection error when comparing data from different sources. Knowing that, I re-drew some of the edges of the irrigation shapes to fit the ownership and section boundary projections.

My tax lot source identifies Natural Guardian as the owner of SE1/4 Section 8. As a consequence, I wasn't concerned that an irrigated shape for 21-7190 bled into that section. However, so that the shapes attached to this water right are not confused with other Natural Guardian property, I am willing to redraw the irrigated shape in question so that it does not cross the Section 8 boundary.

I also reviewed the images in our scanned document backfiles of these water rights and compared them with the vault file documents that I used for my analysis. I frequently referred to two field exam maps with color highlights of the irrigated areas and the irrigation mainlines. I found that the scanned, black and white, backfiles version available to you was not nearly as informative. So that you have the access to the same quality of information as I have had, I have attached copies of these color-highlighted maps.

21-7133

We request that you describe your analysis as to the acres calculated, as it appears that there is some discrepancy between the two documents.

The procedure for creating the shapes for this file is the same as I described above for 21-7190.

We therefore request that you explain the 321- acre place of use for irrigation storage.

This is entirely my error. I have drafted only a few documents with this software. I was warned that there might be some legacy fields embedded in the application that wouldn't make sense in some contexts. This is one of them. I failed to notice the total acreage for the place of use for irrigation storage field. I didn't clear it properly from the document before I printed it. Thank you for bringing it to my attention. I am attaching a revised copy of the Application for Amendment, Water Right No. 21-07133

We request that you explain the basis for this maximum diversion volume.

There was no plan in the application for permit which outlined a cyclic fill and spill operation of the reservoir, so my volume was based on a one-time fill and use. Storage capacity is the limiting factor for this permit and the maximum diversion volume was based on the field examiner's estimate for the storage volume of the reservoir, 20 AF.

I spoke to IDWR's Sonny Hornbaker, (Resource Protection Bureau - Dam Safety) about this impoundment and have reviewed the documents that they have in their archive. Dam Safety personnel have a trip planned for that area in the next couple of weeks and Mr. Hornbaker has offered to make a survey of the storage area behind this dam. They will need to have the reservoir completely drained and as dry as possible in order to make the measurements. If your clients are interested in having the storage capacity for this dam established more precisely and are willing to modify operation of the irrigation system to accommodate an empty reservoir, then I will make arrangements with Mr. Hornbaker to have this dam added to their schedule.

Possibility of Combined Place of Use for 21-7190 and 21-7133

Please inform us if this is possible and something that the Department would consider. If not, please inform us why it would not be possible.

Based on the field exam, the two places of use are entirely independent of each other. They are irrigated by separate mainlines which are operated as separate entities. Combining the places of use would require an application for transfer.

Assignment of Permit

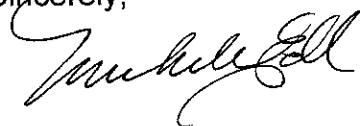
Please inform us if this document is adequate for the Department's purposes

I have seen the backfile documents where A21-7190 and A21-7133 were assigned to Mr. Vandersloot from Valley Bank. However, our database still has Valley Bank as the permit holder and I understood that an assignment of adjudication claims would not simultaneously accomplish an ownership change. I have discussed this with my superiors and in conclusion, we believe that the assignment documents that were sufficient for the adjudication process will also be sufficient for our processing. I will make the changes in the Department's database that are necessary to give Mr. Vandersloot ownership of water right permits 21-7190 and 21-7133.

In order to complete the licensing process, the Department needs to receive signed Application for Amendment documents. I am sending a corrected Application for Amendment for 21-7133 in the mail today and I will hold further processing of your file for 30 days beginning 9/17/07. If we haven't heard from you within that time, the Department will take appropriate action.

Please feel free to contact this office if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michele Edl", written in a cursive style.

Michele Edl
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