

MEMORANDUM

December 17, 2007

TO: Nick Treasure, SCC
Neeley Miller, IDWR
Charlene Jakicic, FSA

FROM Cindy Yenter, IDWR

RE: Kent Klosterman CREP application file 067-2044

Mr. Klosterman visited my office this morning for the purpose of filing a water right transfer application for water right no. 36-8432. This right was recently licensed for 261 acres which were not consistent with Mr. Klosterman's recent CREP offer. Specifically, the water right acres included certain rock outcroppings which do not meet FSA eligibility requirements, and the water right acres excluded pivot corners which had been historically irrigated under wheel lines but which have not been irrigated since the pivot installation in 2002. I was not able to include the pivot corners in the license due to a limitation on total developed acres, and the timing of development.

Mr. Klosterman has proposed in his application for transfer, a change in place of use for 36-8432 to include approximately 277 "permissible place of use" (PPU) acres, with total irrigation limited to 261 acres (map attached). This water right configuration is typically used when the landowner wants to practice land rotation within a farm tract without filing repeated water right transfers. In this case, Mr. Klosterman hopes that the PPU, if approved, will allow the water right reviewers to approve the pivot corners for CREP by "pushing" the authorized water right acres out to the corners, and by not counting the rock outcroppings. I am not entirely comfortable with this approach, but it may be acceptable given that the entire place of use will be idled anyway.

Pivot corners within SW Sec 34 have not been irrigated since 2002 but were enrolled in mitigation while the acres were still technically authorized under the permit 36-8432, which originally was written to cover the entire south half of section 34. The pivot corners were enrolled in the Magic Valley GWD set-aside program in 2004 and a portion of the pivot acres included in both the 2005 and 2006 MVGWD mitigation plans. Since those acres were dropped from the license, and could now be added back in as part of an authorized PPU via the transfer, I was not sure how IDWR would (or could) apply the mitigation credit to the changed place of use. In the end I feel we may have to give the benefit of doubt because the acres were mitigated in good faith, and because the license was not issued in a timely manner (proof was filed in 1994). In any event the approved CREP offer can be no more than the 261 acre license limit.

I did not guarantee to Mr. Klosterman that the transfer, if approved, would resolve all water right issues or automatically authorize the CREP offer – that will ultimately depend on the configuration of the CREP offer, any mitigation credit limits, and the final water right review. I did indicate that I would prepare this memo and distribute it, in order to document the details of the case and provide some background for future review.

When Mr. Klosterman has a new CREP offer on file, please notify me so that I can place an expedited request on his transfer processing.