

MEMORANDUM

DATE: September 27, 2007

TO: Gary Spackman

FROM: Shelley W. Keen

RE: Irrigated Acreage

Right holder Kent Klosterman disagrees with the number of acres recommended on the license for Right 36-8432. Field examiner Cindy Yenter reported 261 acres of irrigated cropland served by this water right. Mr. Klosterman told me that a crop has been grown on only 261 acres. However, he reported that he sprinkled water on the pivot corners in the W $\frac{1}{2}$ SW $\frac{1}{4}$, Section 34, T6S, R24E, one fall prior to submitting proof of beneficial use in order to prepare the ground for tilling. He intended to grow crops the next spring. There is some evidence that the pivot corners were tilled in the past but no evidence, as Mr. Klosterman agrees, that a crop was ever grown on the corners.

Mr. Klosterman asserts that applying water to soften the soil should count as irrigation regardless of whether a crop was subsequently grown on the land. Mr. Klosterman told me that he thinks IDWR should issue a license for 266 or 267 acres of irrigation.

Earlier this month deputy AG Chris Bromley researched the definition of irrigation. His response is in the file, and I have shared it with Mr. Klosterman. Mr. Bromley found that in the SRBA IDWR defined irrigation as "the spreading of water on land to materially increase the productiveness of the land for raising crops." This is only place that he or I could find a definition of "irrigation" prepared by or for IDWR. Mr. Bromley also quoted case law that seems to support the necessity of producing crops for a beneficial use to have been established. Because the definition and supporting case law seem to require "productiveness" and "raising crops", I am forwarding the license for signature with a place of use of 261 acres. Please let me know if I should do otherwise.