



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 10, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

KENT KLOSTERMAN
70 W 630 LN S
RUPERT ID 83350

RE: Irrigation as a beneficial use of water

Dear Kent:

I have enclosed the information that Chris Bromley sent me regarding the definition of irrigation as a beneficial use of water.

As we discussed on the phone, I recommend responding to Cindy Yenter's request for amendments by crossing out the place of use information that you think is incorrect and inserting the information you believe should be included. That way, the points of diversion can be amended, and the place of use descriptions will be the only items remaining to be resolved before the rights are licensed.

If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

Cc: Cindy Yenter, IDWR Southern Region

Keen, Shelley

From: Bromley, Chris
Sent: Thursday, September 06, 2007 11:25 AM
To: Keen, Shelley
Cc: Rassier, Phil; Baxter, Garrick
Subject: Irrigation

Shelley,

Here are some quotes out of various publications that may be helpful. The basic theme that I found was that water used for irrigation purposes should be applied to land to raise a crop, whatever that crop may be. Let me know if you have any questions.

"Irrigation is a useful purpose, and water may, of course, be appropriated for irrigation. What is contemplated by 'irrigation' appears from the following: Water increasing the growth of grass for pasturage is a beneficial purpose if turned on the land with that intent; and the water thus used may be claimed in addition to that used for crops and grain; but it is otherwise where the increase in growth of hay was merely incidental, and irrigation had not been intended, or where there was but a purposeless flooding of land." Samuel C. Wiel, *Water Rights in the Western States* 408-409 (1911)

"'Irrigation' is the spreading of water on land to materially increase the productiveness of the land for raising crops." IDWR Claim Investigation Handbook

"An appropriator's water right for irrigation purposes is not limited by the character of crops he raises The use of water by spreading over wild-hay land for the purpose of making hay, or using the land for pasture, is held to be a beneficial use and the basis of an appropriative right. Where there is evidence that wild hay and pasture lands are materially increased in productiveness by reason of application of water to them, a valid appropriation of such water may be made. The federal courts in two cases arising in Idaho and involving the same defendant, likewise recognized the irrigation of uncultivated lands on which native grasses were produced as a beneficial use of water, and allowed smaller quantities of water per acre for the pasture lands than for lands cultivated in crops. However, in one of the cases there were high-lying areas on which water was simply thrown out over sagebrush land for the purpose of producing in greater abundance the native grasses found among the sagebrush, but which were sparse and not greatly benefited by irrigation. This was not considered a beneficial use for which a prior appropriative right could be recognized." Wells A. Hutchins, *Idaho Law of Water Rights*, 5 Idaho L. Rev. 43-44 (1968).

"The principal function of the beneficial use doctrine is to prevent waste." Dan A. Tarlock, *Law of Water Rights and Resources* 5-125. "Water actually applied to a use can be nonbeneficial if the use is adjudged wasteful. This is a nonrigorous standard because waste has historically been judged by irrigation customs in the community. . . . Courts have occasionally found that large uses of water that produce modest returns in proportion to the quantity of water applied are nonbeneficial" *Id.* at 5-125-26.

9/10/2007