MEMORANDUM

TO: Water Right Files 63-33141 and 63-34046

FROM: Angie Hansen AH

DATE: January 17, 2023

RE: Analysis of Irrigation Beneficial Use Documented in Certified Water Right Exam

Analysis

On 11/17/2022 the Idaho Department of Water Resources ("IDWR") received the Statement of Completion for Submitting Proof of Beneficial Use ("Proof") with a Certified Water Right Examiner Field Exam for Water Right Permit Nos. 63-33141 and 63-34046 ("*Exam*") in the name of Mellin Properties Limited Partnership ("Permit Holder"). The *Exam* recommends 1.00 cfs and 306 afa (acre-feet per annum) for irrigation of 68 acres for each permit. Both permits utilize the same well, diverting a total of 2.00 cfs for irrigation of a single 136-acre pivot. Permit no. 63-33141 authorizes irrigation of the pivot's north half and permit no. 63-34046 authorizes irrigation of the pivot's south half.

Idaho Code § 42-219(1) states, in pertinent part:

> Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license corresponding to the beneficial use. Such license shall state… the quantity of water that may be used, which in no case shall be an amount in excess of the amount that has been beneficially applied.

IDWR must decide if the use stated in the *Exam* is a beneficial use of water for irrigation purposes before issuing licenses. Idaho statutes and rules do not define irrigation beneficial use. Generally, IDWR considers the application of water above and beyond natural precipitation required for growth of agricultural crops and other vegetation to be an irrigation beneficial use of water. IDWR typically confirms irrigation beneficial use by analyzing permit development period aerial imagery. In this case, NAIP imagery from 2013, 2015, 2017, 2019, and 2021 shows the Permits' place of use was not irrigated during those years of the development period. Extensions of time to submit proof of beneficial use on file for these permits further support the conclusion irrigation did not occur prior to 2022.

Since IDWR can not rely on aerial imagery alone in this case, IDWR must explore other available evidence. In the *Exam* (pg 6), the certified water right examiner states:

> During the field exam, the owner provided an invoice from Valley Agronomics, LLC. This invoice dated September 29, 2022, shows that Mellin Farms LLC purchased 20,000 pounds of wheat seed. This seed was broadcast and lightly disked in the field and visible during the field exam. Seeds from this crop have begun to sprout. Photographs were provided to HDR by the owner showing a complete irrigation cycle.

The *Exam* supplies evidence that wheat seed was planted at the Permits' place of use between 11/29/22 and 11/3/22. The Exam further states that the owner completed an "irrigation cycle". The examiner does not say what he meant by "irrigation cycle." Considering IDWR received Proof on 11/17/22, less than two months after the wheat seed was purchased and planted, I assume "irrigation cycle" does not mean an irrigation season.

If "irrigation cycle" refers to a single rotation of the pivot, i.e. one application of water to the planted wheat seed, IDWR must decide if that is an irrigation beneficial use or simply spreading of water without benefit. During seed germination, it is critical to keep seeds moist. Given how unseasonably hot last October was in the Boise/Kuna area, its likely any extra water applied to the planted seeds was beneficial to the seeds' germination.

When licensing a water right, IDWR must not only determine if the water use was beneficial, but also the quantity of water beneficially applied per Idaho Code § 42-219(1). It is IDWR's practice to issue irrigation water right licenses for various crops and other vegetative growth without confirming the crop type, full extent of crop viability, or economic value. Ground water right licenses for irrigation use are not specific to the crop grown or limited to the volume of water diverted and applied during the permit development period. Rather, IDWR licenses a standard volume of water based on the Idaho region where the irrigation use occurs. The standard volume of water is based upon the volume of water needed to grow alfalfa, one of the more water intensive crops grown in Idaho. Standardizing the volume of water licensed gives farmers needed flexibility to rotate crops and adjust to economic factors as needed.

IDWR's Beneficial Use Rules (IDAPA 37.03.02) supports this practice. Beneficial Use Rule 035.01.j. (IDAPA 37.03.02.035.01.j.) states, in pertinent part:

> For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period of the permit… For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules…

The Exam recommends the standard headgate volume for the area of 4.5 afa for the 136 acres planted where water application occurred. This volume recommendation is consistent with IDAPA 37.03.02.035.01.j. and IDWR's standard practice.

Conclusion

IDWR should consider the application of water documented in the *Exam* beneficial to the wheat seed during germination. The *Exam* volume recommendations are consistent with applicable rules and IDWR's standard practice.

Hansen, Angela

From: Conrad, Vic <Vic.Conrad@simplot.com>
Sent: Thursday, January 5, 2023 1:41 PM
To: Hansen, Angela
Subject: RE: Water Right Permit 63-33141.

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Angie:
Thank you for taking the time to discuss this with me. If you will please include me on further correspondence as an "interest party" for IDWR Permit nos. 63-33141 and 63-34046.

Thank you.
Vic

From: Conrad, Vic
Sent: Thursday, January 5, 2023 9:20 AM
To: Hansen, Angela <Angela.Hansen@idwr.idaho.gov>
Subject: Water Right Permit 63-33141.

Angie:
Can you describe for me how the IDWR intends to respond to this proof that was filed?

<< File: 2022-Nov-14 Field Exam 63-33141 (Mellin).pdf >>