


Memorandum

To: File, Water District 13T

From: Tim Luke

Date: July 13, 2001 

Re: Field Inspection of Gem Valley Farms Wells and Visit with Chad Neibaur regarding wells in Section 20, T9S, R40E: Use of Rights and Diversions not in Conformance with Water Rights

On July 3, 2001, Gem Valley Farms filed two Temporary Change Applications with the department involving certain water rights and ground water diversions in the Bancroft-Lund area. One of the two applications, TC-13-02, sought authorization to connect a well in the SWSW of Section 20 (known as the Deep Well) with two wells in the NENW of Section 20 (known as the Hansen Wells), all in T9S, R40E. The second application involved adding a point of diversion and existing well to other wells and rights for systems separate from those in Section 20. This latter application incorrectly identified the water rights and points of diversion and places of use. Gem Valley submitted a revised application on July 6 and IDWR approved it on the same day. Application TC-13-02 was denied on July 6.

The change requested on application TC-13-02 was sought because the Hansen wells allegedly could not provide an adequate source of water for the land that is normally irrigated by those wells, which is about 264 acres. The Deep well is limited to irrigation of no more than 309 acres under certain transfers approved in 1996. Gem Valley filed a transfer in 1999 to formally connect the wells in section 20 and create a permissible place of use under all the rights served by the three wells in Section 20. The transfer was protested by several neighboring users and then later withdrawn based on agreement with Gem Valley that Gem Valley would not physically connect the Deep well with the Hansen wells thereby assuring that no more than 309 acres could be irrigated from the Deep well. The transfer, No. 5545, was approved in May, 2000 subject to the agreement between Gem Valley and the protesters. Gem Valley disconnected the mainline between the Deep well and the Hansen wells just before the 2000 irrigation season.

On July 5 I called Gem Valley owner Chad Neibaur to advise him of the errors associated with his second temporary change application. I also advised him that the state office was reviewing the applications because Harold Jones was on leave July 5 and 6 and because there were indeed concerns about the applications. I advised that Harold had faxed both applications to Boise on July 3.

On July 6, 2001, IDWR denied Temporary Change Application TC-13-02. A copy of the denied application was sent to Chad Neibaur of Gem Valley via facsimile along with a cover letter and certain

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explanatory information for preliminary orders. The department's facsimile machine record shows the material was successfully transmitted on July 6 at 5:08 p.m. I called Chad Neibaur's cell phone and residence on July 9 to advise him about the denial of Application TC-13-02 and the approval of the second temporary change application that he submitted on July 3. I received no answer on his cell phone but left a message at his residence regarding the status of both applications.

On the evening of July 10, 2001, I made a field inspection of the Deep well and Hansen wells and observed that the mainline from the Deep well was connected to the mainlines from the Hansen wells. A valve installed on the line connecting the Deep well with the Hansen wells was observed in the open position and water from the Deep well mainline appeared to be going to the pivots that are normally served by the Hansen wells. All of the Hansen center pivots (two 120-acre pivots and one mini-pivot) were on at the time of my visit on July 10 (approximately 5:30 p.m.). Also, two of the three center pivots (all normal size pivots) normally served by the Deep well were on. I observed the same pivots operating on the morning of July 11.

On the morning of July 11, I visited with Chad Neibaur near his shop. I questioned Chad about the connected pipe between the Deep well and Hansen wells. He said that he had the wells connected on Saturday, July 7. He said he assumed that IDWR was going to approve the temporary change application and allow the wells to be connected. He said he had not received the faxes that I sent to him on July 6 even though I had confirmation from my machine that it had transmitted successfully. He said something about a message on his machine indicating an attempted fax but that the documents never actually came through. He said he learned of the denial on Monday, July 9 after speaking with Harold Jones from the IDWR regional office in Idaho Falls. Despite this news, the wells remained interconnected and the Deep well was used to irrigate the Hansen place of use. During our visit, Neibaur complained that IDWR was taking too long to decide on application TC-13-02. He was also critical of the procedure that required him to file and work with Idaho Falls then have the application reviewed and denied by staff at Boise even though I had personally told him a week earlier that Idaho Falls was reviewing and processing most to the applications. I had reminded him at that time however that the region does consult and/or send some applications to Boise when there are particular questions or concerns. I also advised that there might be concerns regarding this application due to the past problems, agreements and transfers associated with the wells in Section 20 but that he should file the application anyway.

During our conversation on July 11, I advised Neibaur that he should reverse the action he took on connecting the wells in Section 20. He responded by saying that he should not be expected to burn up and ruin a potato crop. He indicated that he needed to continue to use the Deep well to maintain or save his crops. He said he could not understand the department's decision and felt it was wrong since the Hansen rights and well are senior rights and that he should have the opportunity to use one of his junior priority wells to assist his senior rights. I briefly reviewed with him the past decisions, transfer conditions, agreements and previous NOV's that limited the Deep well to 309 acres. I explained that it was difficult for IDWR given the area concerns and problems, as well as the past history on the Deep well, to remove the limitation on that well. I advised that IDWR would have to send a Notice of Violation and that he should prepare to address subsequent monetary penalties for connecting the wells

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without authorization and continued diversion of water from the Deep well system to the Hansen system.

On July 12 I contacted the watermaster and advised him of my findings and conversation with Neibaur on July 10-11. The watermaster said he had driven by the Hansen pivots earlier on July 12 and noticed that these pivots were off. I directed the watermaster to make periodic inspections of the wells and interconnected lines and valves, and note what pivots are on and served by the wells. I also asked that he record these observations and the dates that they are made.