

Saxton, Craig

From: Saxton, Craig
Sent: Thursday, June 26, 2003 1:32 PM
To: 'rcb@racinelaw.net'
Subject: Corwin Pat Whitworth SRBA Recommendations 29-02034B, 29-00298B, and 29-00311B

Dear Mr. Budge,

Thanks for addressing the issues for Pat Whitworth's SRBA recommendations so quickly. Since we have been having problems catching each other on the phone I thought I would drop you a quick E-mail to address some of the issues you brought up in you June 23, 2003 letter.

29-00298B and 29-00311B:

I recommended both points of diversion (POD) and the entire place of use on both 29-00298B and 29-00311B. I feel that the intention of the decree and the later transfer 2570 intended the rights to be overlapping. This will give Mr. Whitworth the flexibility to use both POD's to divert for stockwatering purposes as lower flows in the creek start to cause water rights to be curtailed.

You addressed the question of adding the condition "PURSUANT TO A CALL IN TIMES OF SCARCITY, THIS RIGHT IS SENIOR TO WATER RIGHTS DIVERTED FROM RAPID CREEK AND TRIBUTARIES" to rights 29-00298B and 29-00311B. This condition is not applicable to the above mentioned rights because these rights were included in the 1906 Rapid Creek decree. At the time of the Rapid Creek decree, rights 29-00298 and 29-00311 were decreed with the source as the North Fork of Rapid Creek. Later Transfer 2570 signed in 1981 defined the source for these two rights as Rapid Creek trib to the Portneuf River as it currently exists. The difference with Mr. Whitworth's Jackson creek right is that it was not included in the decree. The fact that it wasn't included in the decree, has a priority date that dates into the decree, and the evidence that Mr. Whitworth submitted, supports that Jackson Creek at that time might not have been tributary to Rapid Creek. But there doesn't seem to be a question that Rapid Creek has always been trib to the Portneuf river. Thus the above condition was not added to the recommendations (attached).

Note that since 29-00298B and 29-00311B only had one POD defined in TR 2570, and accomplished change in POD remark was added to the recommendations. In addition, since TR 2570 defined the purpose of use as irrigation, an accomplished change in purpose of use remark was added to the recommendations.

29-02034B:

In your letter you stated that you felt the source should be recommended as Rapid Creek trib to the Portneuf. IDWR has to recommend the source and tributary as it is. The source is Jackson Creek and at this time it is tributary to Rapid Creek. Because evidence indicates that Jackson Creek was not historically trib to Rapid Creek is why we added the previously mentioned condition because at that time it could have been regulated separately from the Rapid Creek rights. But at this time we need to recommend the source as it exists.

Please feel free to drop me a line if you have any questions.

Thanks again for your quick attention to these matters. It makes things easier as the deadline for basin 29 approaches quickly.

Respectfully submitted,

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