

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, October 31, 2017 8:25 AM
To: sking@spfwater.com
Subject: Permit 25-14425
Attachments: 25-14425 letter.pdf

Hello Scott,

I am afraid I had to return field exam and proof of beneficial use statement on 25-14425. We are required by the Idaho Administrative Code Beneficial Use Examination Rules, IDAPA, to return field exams that are not complete. Some of the things that were needed but not included in the exam were a volume for the recreation use and overlap analysis of permit 25-14404.

Another issue is that there is no evidence in the water right file that the right holder retired the 1.8 acres required to allow the filling of the pond. Until we have evidence that the 1.8 acres have been retired, we cannot issue a water right license for 25-14425. I consider this more of a clarification of the system, and not something to withhold review of the field exam, but we cannot allow a water right to be issued for flow through on a pond that hasn't followed through with the requirements that allowed the water right transfer to be approved.

I will hold the fee your client submitted for the late proof of beneficial use for 30 days or until December 5, 2017. If we don't receive a complete field exam by that date, then we will return the fee.

I am sending this email as a courtesy to allow you some additional time to correct the field exam and return it to me. I put the original field exam, proof of beneficial use, and notice of why the proof of beneficial use was late in the mail this morning. You should receive it in a couple of days.

Thank you.

Daniel Nelson
Water Right Analyst 3
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State of Idaho

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 31, 2017

SPF WATER ENGINEERS
ATTN SCOTT KING
300 E MALLARD DR SUITE 300
BOISE ID 83706

RE: Field exam report for water right permit 25-14425

Dear Mr. King:

I have reviewed the field exam you supplied for water right permits 25-14425. During my review I discovered that field exam is deficient in several areas. Until these issues are clarified, we cannot re-instate the permit and must return the field report submitted with the reinstatement request. I will discuss each deficiency below:

VOLUME OF THE RECREATION USE:

The Idaho Administrative Code Beneficial Use Examination Rules, IDAPA 37.03.02.035.02.d addresses these issues are as follows:

j. For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit. The method of determining the annual diversion volume shall be shown. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement:

- i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.)
- ii. Domestic uses as defined in Section 42-111, Idaho Code.
- iii. In-stream watering of livestock.

iv. Fire protection. (Volume is required for fire protection storage.)

v. On-stream, run-of-the-river, non-consumptive power generation uses.

vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code.

vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that do require a volume to be reported:

- (1) The permit or amended permit was approved with a volume limitation; or
- (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit.

viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.)

As you can see from the IDAPA rule shown above, all field exams reports for recreation uses require a volume for that use. Your report did not provide any volume calculations or recommendations. In order to accept this field report a volume recommendation must be included with the field report.

OVERLAPPING RIGHTS 25-14404 and 25-2020:

The Idaho Administrative Code Beneficial Use Examination Rules, IDAPA 37.03.02.035.01.d addresses these issues are as follows:

Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights

This permit has two direct overlapping rights that provide water to or through the pond that is also described in permit 25-14425. Water right permit 25-14404 is a permit for recreation use from an unnamed stream that diverts water through this pond. A water right transfer was issued on May 14, 2014, that allowed decreed water right 25-2020 diverts water into this pond for recreational storage. I will discuss each right separately below.

25-14404:

Permit 25-14404 was issued on May 14, 2014, for recreational use from an unnamed stream that diverts into the same pond as described in permit 25-14425. A Proof of Beneficial Use Statement for this permit was filed on May 11, 2015, and it claimed the permit was developed as permitted. The Department hasn't conducted a field exam on permit 25-14404. There is nothing in the field report that shows water allocated by permit 25-14404 is being used in the pond. However, the right holder states in the Proof of Beneficial Use Statement for permit 25-14404 that the water use was developed under permit 25-14404 and is diverted into the same pond associated with permit 25-14425 and decreed right 25-2020. Therefore, the interconnection between these two permits needs to be described in the field report.

25-2020:

The water usage for water right 25-2020 was described in the field report supplied by Mr. King. However, it doesn't appear as though the plan to retire 1.8 acres of irrigation that allowed the transfer to be approved was properly carried out. Part 1, Section 5d. in the application for transfer stated the following:

"1.75 acre will dried up at T02S R04E Sec 8 SW NW quarter to compensate for the evaporation and fill requirements for the new pond."

Part 1, Section 5f. of the application for transfer stated the following:

"Water right 25-2020 is currently leased to the water supply bank in its entirety"

A review of water right 25-2020 revealed that only 135 of the 269 acres were actually leased to the water supply bank prior to the water right transfer. Current records also show that no attempt has been made by the right holder to reduce the number of acres in the water supply bank by 1.8 acres. The right holder has not submitted any alternatives to retiring 1.8 acres from the water supply bank that would authorize the use of the pond according to the water right transfer. There is no evidence in the file that suggests that 1.8 acres have been retired to comply with the transfer from any other water rights or the portion of water right 25-2020 not in the water supply bank. It appears as though the right holder has not complied with terms of the water right transfer. Condition 5 of the transfer states the following:

"The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval."

The recreational use for this permit is to allow water to flow through the pond. A water right license cannot be issued for this permit until the issue concerning the retirement of the 1.8 acres allowing the storage allocated by water right 25-2020 is resolved.

CONCLUSION:

The IDAPA Beneficial Use Examination Rules 37.03.02.035.02.b states the following:

Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply.

The Department has concluded that this field report is not completed as required by the IDAPA Beneficial Use Rules. Therefore we are returning the Proof of Beneficial Use Statement and Field Report to you for completion. We cannot re-instate the permit until we receive an acceptable field exam report.

We will hold the re-instatement fee for 30 days or until December 5, 2017. If we do not receive a completed field examination report by that time, we will refund the re-instatement fee. Whereas all of the documents are being returned to you until they can be resubmitted according to the IDAPA Rules, you will need to resubmit the entire package except for the filing fee if it is received by December 5, 2017

If you have any questions or concerns, please don't hesitate to contact me.

Respectfully,



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Enclosures: Returned Field Report
 Returned Proof of Beneficial Use