

Henman, Christina

From: Yenter, Cindy
Sent: Tuesday, November 24, 2020 10:48 AM
To: Henman, Christina
Cc: Cefalo, James
Subject: McConnell transfer 84441

The second diversion proposed by applicant has been in use for at least several decades, as evidenced by aerial images and even the USGS topo map. The diversion was not included in the Lemhi Decree or in the SRBA partial decrees for the McConnell rights. This does not justify approval of the transfer. However, protestants upstream on Stroud Creek seem to be well aware of the ongoing use of the unauthorized diversion but were not concerned about it until McConnell made calls for water during 2020.

The downstream McConnell rights are among the most senior in the Lee Creek basin, and McConnell may call for up to 14 cfs of natural flow, until flows are not sufficient to fill 1883 priority rights. At that time, McConnell 1883 rights are subordinated to upstream 1883 right nos 74-369 and 74-370 on Left Fork Lee Creek (aka Stroud Creek). Past WD74Z watermasters have reported that delivering a full 14 cfs to McConnell has not been possible even during high flow when there is sufficient water in upper Stroud Creek that should be flowing down to Lee Creek. An investigation by WD170 over the summer of 2020 revealed that certain waters tributary to Stroud and Lee Creek were being diverted out of priority and diversions were not controlled, measured, or appropriately administered. Efforts by WD170 and IDWR to correct this resulted in a complaint about the McConnell unauthorized diversion, and ultimately a futile call by upstream water users based on the assertion that Stroud Creek is tributary to Lee creek below the lower McConnell diversion, rather than above both diversions as indicated by topographic flow lines.

I am not convinced that the lower McConnell diversion is below the historic confluence of Stroud Creek and Lee Creek. The lower diversion is below the confirmed confluence of an unidentified stream and Lee Creek. The undefined stream enters Lee Creek from the south and seems to be coming out of the Stroud Creek drainage, but does not appear to be the historic channel of Stroud Creek. Rather, it could be a side channel that developed over time and is presently conveying most of the water from Stroud Creek. The historic channel could not be definitively located. Viewed as a natural hydrologic change, the altered flow path of Stroud Creek does have the potential to affect administration of Lee and Stroud Ck water rights under the principal of futile call. However, futile call was not conclusively determined during the 2020 irrigation season, and certain upstream diversions remain out of compliance with control and measurement requirements.

WD170 does not object to the approval of this transfer adding a point of diversion. Both the existing and new POD are required to be controlled and measured pursuant to the Basin 74 measurement order. With adequate watermaster control, the diversions will be able to be appropriately administered by the watermaster of WD74Z to satisfy any transfer conditions of approval, and to protect existing diversions on Stroud and Lee Creeks.

WD Flag = 74Z

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