

Cefalo, James

From: Cefalo, James
Sent: Tuesday, April 09, 2019 2:05 PM
To: Rob Harris; askinner@silverstar.com
Subject: Application for Transfer 82856 (Soda Springs)
Attachments: Draft Transfer Approval 82856.pdf; Withdrawal Form.pdf

Rob,

Attached is the draft transfer approval to present to the City Council. The season of use for water right 11-994 is described as January 1st to December 31st.

The year-round season of use is supported by two documents:

- 1) In 1966, the City filed Application for Transfer 1076 proposing to change the nature of use for water right 11-994 from irrigation to domestic/culinary. The City had acquired water right 11-994 from the Finch family. The application was protested by other water users on Formation Spring Creek (Farrell Panting, Don Panting and Grace Rutledge) and an administrative hearing (or some sort of conference) was held on May 5, 1966. The file for water right 11-994 includes a summary of that proceeding, which states: "Farrell Panting felt that the water loss to the land, as they keep it on the year around, would not be compensable as it helped to keep up the water table. He said they could be wrong on this and he also stated that the Finch water had also run the year around."
- 2) In 1986, the City filed Application for Permit 11-7356, seeking a permit to divert additional water from Formation Spring. The application was protested by most, if not all, of the water users on Formation Spring Creek (Claude Jeppsen, Farrell Panting, Dale Panting, Elmus Panting, Marjorie Beins and Jack Christensen). The protests were settled through a Stipulation. Paragraph 4 of the Stipulation includes the following: "The Protestants also will not seek abandonment or forfeiture of the year-round use of 5.5 cfs under an 1889 priority date for domestic and culinary purposes (Decree, water right no. 11-0994, Transfer Order No. 1076, owned by the City) and waive all objections and protests to the same and agree to the specification of this water right as a year-round water right for municipal purposes, not including hydropower, with an 1889 priority date."

These documents show that the other was users on Formation Spring Creek consider water right 11-994 to be a year-round right. These acknowledgements, by water users who would be directly impacted by any enlargement of use under water right 11-994, helps alleviate any concerns the Department may have with confirming the year-round season of use. I propose approving Transfer 82856 with a year-round season of use. Please note Condition 3 of the draft approval, which states that "Municipal use under this right does not include hydropower generation." The protestants to Application 11-7356 felt it was important to include this limit on the City's year-round municipal use. I would guess that the protestants did not object to the city diverting drinking water during the winter, as needed, but did not want the City's diversion to be a constant 5.5 cfs diversion to generate power, regardless of drinking water demand in the City. This condition would not prevent the City from pursuing a separate, non-consumptive power right from Formation Spring in the future.

Application 11-7356 is still pending before the Department. At this point, I don't see how the application can be approved without mitigation. Even though Formation Spring is not directly tributary to the Bear River, ground water and surface water are considered to be interconnected throughout the entire Bear River basin. Therefore, any new depletion could impact flows in the Bear River. The Bear River is fully appropriated during the summer months. Before Application 11-7356 could be approved, the City would have to demonstrate that the new diversion would not reduce the quantity under existing water rights or would need to provide mitigation for the new depletions. It has been over thirty years since the application was filed. I would recommend withdrawing the current application. The City could reapply if it ever needs additional water. The City would still have to demonstrate no injury to existing rights or provide mitigation for any future application. Of course, the simplest way for the City to acquire additional water would be to

purchase existing rights from Formation Spring. Any purchased water right from Formation Spring Creek could be transferred to the City's new well. Attached is the Department's Withdrawal of Application form.

Please let me know if there are additional concerns or when we can proceed with the transfer approval.

James Cefalo
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