

Hersley, Jean

From: Keen, Shelley
Sent: Thursday, November 08, 2018 7:31 AM
To: Hersley, Jean
Subject: FW: Water Storage Volume

Jean,

Please add the email exchange below to the water right file for 36-8318.

Thanks.

Shelley

From: Keen, Shelley
Sent: Wednesday, November 07, 2018 4:22 PM
To: 'Erick Powell' <erick.powell@brockwayeng.com>
Cc: Skinner, Corey <Corey.Skinner@idwr.idaho.gov>
Subject: RE: Water Storage Volume

Erick,

Sorry for not having responded sooner. I did discuss the matter with Tim Luke since the staff in his bureau address water distribution matters. To his knowledge, no other water district has confronted a similar set of circumstances and found a solution like the one your client is seeking. Water right 36-8318 was decreed in the SRBA, and IDWR must adhere to the SRBA Court's determination of the extent of the water right. Adding a condition, via a transfer or otherwise, to reinterpret the annual volume limit seems like it would result in enlargement of the right, which Idaho Code § 42-222 does not allow.

I'm skeptical that IDWR could approve an application for permit for flow-through water to augment the carrying water in the conveyance ditch. If all the water diverted pursuant to right 36-8318 is seeping into the ground before being stored in the ponds, the new right would be enabling the storage, which would increase the overall consumptive use. IDWR has taken a similar view of a proposal for a "nonconsumptive" right to augment the carrying water in an irrigation canal. The result would be more water reaching the irrigated fields, which would increase the overall consumption.

Another option we discussed on the phone was a transfer or an application for permit with a mitigation plan. Depending on the details, either of those might work.

Call or email if you want to discuss it more.

Regards,

Shelley

Shelley Keen
Water Allocation Bureau Chief
Idaho Department of Water Resources
Shelley.Keen@idwr.idaho.gov

From: Erick Powell [<mailto:erick.powell@brockwayeng.com>]
Sent: Wednesday, November 07, 2018 11:55 AM
To: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Cc: charles.e.brockway@brockwayeng.com
Subject: Water Storage Volume

Hi Shelley,

Several weeks ago, we discussed water right no. 36-8318. This is a wildlife storage and diversion to storage water right in the Hagerman Valley. This right was licensed and then decreed in the SRBA in 1997 with a wildlife storage volume that equals the storage estimate of the ponds reported in the license exam. Meaning that if the water right is diverted and volume measurement is taken at the headgate, the water right is only valid for a few hours before the volume is met. To further complicate the water right, the point of diversion is some distance away from the place of use, meaning that part (if not all) the wildlife storage volume measured at the POD is lost to canal seepage before it reaches the POU. The intent of the permit, license, and historic use of the water right was not to divert the pond volume at the headgate and cease diverting once the pond volume at the headgate was met.

At the end of our conversation, you indicated that you would inquire about this potential issue with others at IDWR. I wanted to follow up with you to see if you have any suggestions. Some thoughts that we had are as follows: IDWR might be able to add a condition to the water right (through the transfer process, perhaps) with language that clarifies that the volume on the water right is the actual storage volume in the pond, not a measured volume at the headgate, as observed and recorded in the license exam. Another option is that the owner could apply for a new non-consumptive wildlife right to provide the same flow rate during the period of use, and provide flow during the period of use.

Your thoughts are appreciated.

Thanks,
Erick

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