

Keen, Shelley

From: Keen, Shelley
Sent: Friday, January 29, 2016 8:57 AM
To: 'James Browitt'
Subject: RE: Permit amendment possibilities

Jim,

In response to your inquiry, I reread the management plan for the LPGWMA, and I reviewed the well driller's reports for the well associated with Permit 85-15716. In areas of Idaho that don't have the same ground water issues as the LPGWMA, I think there would be a couple of options for your clients to assist their neighbors without establishing a "new use." Those options would normally include:

- Your client could apply to amend the permit to convert some of the authorized irrigation use over to a second domestic use under one permit.
- Your client could split the permit by assigning a portion of it to the neighbors, and they could apply to amend the water use and place of use for their portion of the permit.

The difference in the LPGWMA is that new permitting activities must be consistent with the provisions of the management plan adopted in 2015. The main concern, of course, is that increased diversions from the shallow aquifers will deplete the supply available to holders of senior water rights. Consequently, the management plan requires new wells and water uses throughout most of the LPGWMA to be established in the deep regional aquifer unless the applicant can demonstrate to a clear and convincing standard that there is sufficient water available in the shallow formation to provide for the proposed use without injuring senior water rights.

Your client's well is located in the area designated "A-1" on the map of the LPGWMA. For area A-1, the plan states, "Applications for new appropriations of ground water will be limited to use from the regional aquifer." Although it was recently deepened into the regional aquifer, your client's well was not constructed to seal out the shallower water bearing formations. Commingling of water from different aquifers and continuing diversion of water from the shallower aquifers is the likely result. Consequently, increased pumping from your client's well after the neighbors' well has gone dry would likely further deplete the aquifers intended for protection. I believe this is the "new use" Keith thinks is being proposed, and I concur.

Your client or the neighbors could file an application and suggest, based on any evidence they have, that the proposal would not injure senior water rights. However, unless the evidence meets the "clear and convincing" standard stated in the management plan, the application is likely to be denied.

IDWR understands the challenging situation facing many individual well owners in the LPGWMA. Their wells are going dry, and the expense of deepening their wells into the regional aquifer is daunting. However, it's for exactly that reason that IDWR, with the advice of the advisory committee for the LPGWMA, decided to restrict activities that would further deplete the shallow aquifers and make the situations for existing well owners even more tenuous. Because of the expense of drilling, casing, and sealing into the regional aquifer, it's difficult to imagine a future in the LPGWMA that does not include more or expanded community water systems. For that reason, IDWR appreciates and encourages the willingness of your client and the neighbors to work together on a solution. IDWR will support such efforts to the extent it can, keeping in mind that preventing injury to senior water rights is a statutory mandate for IDWR.

As always, please call or email if you want to discuss the situation further.

Sincerely,

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From: James Browitt [mailto:jbrowitt@browittlaw.com]
Sent: Monday, January 25, 2016 5:44 PM
To: Keen, Shelley
Subject: Permit amendment possibilities

Hi Shelley,

As was the case the last time we chatted, this is in regard to water right in the Lewiston Plateau Groundwater Management Area. What I want know is, is it possible to amend a permit within the GMA to include a neighboring property as an emergency-circumstance place of use? Since I've received mixed responses from some of your colleagues, I figured I would defer to IDWR's definitive source.

Here's the situation: In 2008, my client on the eastern edge of the Lewiston Orchards deepened his shallow domestic-exempt well to a depth of 900 feet, casing the entire bore hole but sealing only from 200 to 240 feet, which is not in compliance with the construction standards set forth in the GMA management plan adopted in spring of 2015. My client applied for and was issued a permit, 85-15716, for which the proof of beneficial use is due on April 1. In addition to domestic use (conditions of approval state one home), the permit allocates .02 CFS for stockwater and .15 CFS for irrigation of five acres.

Like most of the people in that area, this guy's neighbor also has a shallow domestic-exempt well, and although it's still producing sufficiently, he is concerned with its long-term sustainability. So he approached my client a few months ago and asked if he would be willing to draw up an agreement that, in the case of the shallow well's failure, he could use my client's deeper well as an emergency source. That's when I was brought into the mix.

I explained to both parties that simply adding the neighbor's property as an additional place of use would likely be considered a new use, and would not be allowed due to the well's noncompliance with GMA construction standards - which Keith Franklin later confirmed. I then asked Keith about the possibility of converting a use; say take the irrigation allocation for one or two acres and amend the permit so that it is instead available for domestic use on an emergency basis. In that sense, the use would not be new, just reallocated - and would likely end up conserving water since an emergency use may never occur. Keith disagreed, saying it would still be considered a new use, and therefore the permit could not be amended thusly.

Do you agree? And if so, is there another way we could go about this? Keith said that if the neighbor's well did fail, the department would likely issue a temporary emergency-use permit, allowing the neighbor to draw from the deeper well for up to a year while rectifying the situation with his well. Although that provides some protection, my concern is that it would be on a very limited, and likely one-time, basis.

As I said above, I have run this scenario by a variety of department employees and other water-savvy individuals, and there does not seem to be a consensus response - other than you would be the person best suited to address this.

If you would care to discuss this further, I would be happy to carve out some time. I don't see this as particularly urgent, although any change obviously should be addressed while this water right is still in the permit stage.

As always, your help is greatly appreciated.

Jim

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