

MEMORANDUM

TO: Water Right File 75-14490

FROM: Daniel Nelson – Staff Hydrologist

DATE: July 16, 2015

SUBJECT: Licensing Review of Water Right 75-14490

This field exam was performed by Certified Field Examiner Kieth Wilson of Rocky Mountain Environmental Inc. Mr. Wilson reported that 1 acre was and limited the diversion rate to 0.03 cfs. Mr. Wilson calculated an annual volume of 3.5 af, but this is a surface water right, so no volume will be needed. There are a couple of issues that need to be addressed. Each will be addressed below:

Property Ownership and Proof Of Beneficial Use:

This permit was originally filed by Gary and Billey Spath. On September 15, 2014, the Department received a change of ownership for this permit from James and Kathy Smith. An Assignment of Permit form was sent to the new owner's. On September 30, 2015 a notice Proof Due letter was sent to the Spaths, but a copy of the letter was not forwarded to the Smiths. On December 8, 2014, a lapse notice was sent to the Spaths, and no copy of the lapse notice was sent to the Smiths. On January 29, 2015, an Assignment of Permit was received from the Smiths putting the ownership of the permit into their name.

On February 9, 2015, the Smiths submitted a Proof of Beneficial Use form. On March 9, 2015, The Department sent a Proof Deficiency Letter, stating that the proof of beneficial use was submitted more than 60 days after it was due, and a process that was needed to re-instate the permit including the need for a certified field examiner's field report with the proof. With the documents submitted for late proof, the owner gives a narrative that explains that Mr. Spath had passed away, and that there was confusion between their real estate agent and the Department's procedures. It appears from the aerial photography and confirmation from the watermaster that this property was irrigated in 2013 and has been irrigated since that time.

Point of Diversion:

Mr. Wilson correctly located the point of diversion of Bills Ditch on the map and in the report as the NWSW quarter of Section 36, Township 23 North, Range 22 East. The location of the point of diversion for Bills Ditch matches the Departments records for the location of the point of diversion for Bills Ditch. The permit states the point of diversion is located in the SWSW quarter of Section 2, Township 22 North, Range 22 East. This location was identified by the field examiner as the point where water is diverted out of Bills Ditch or the point of re-diversion.

The application for permit was originally filed with the point of diversion described as being in the NWSW quarter of Section 36, Township 22 North, Range 22 East. Corrections were made to the application for permit changing the point of diversion to the SWSW quarter of Section 2, Township 22 North, Range 22 East (the legal description was written in pencil without being initialed). I could find no date of when the changes were made to the application. On August 10, 2009, an amendment was sent out by the Department, and was returned by the applicant on August 14, 2014. The amendment shows the point of diversion in the SWSW quarter of Section 2, Township 22 North, Range 22 East. The permit was subsequently issued with the legal description as being in the SWSW quarter of Section 2, Township 22 North, Range 22 East.

All of the applications and the permit list the source of the water Freeman Creek tributary to Carmen Creek. Freeman Creek doesn't flow into any of the legal descriptions listed on the application, corrected application, amendment, or the permit. The point of diversion that was listed on the corrected application, amendment, and the permit was the point where water is diverted out of Bills Ditch. The correct location for the point of diversion of Bills Ditch and the permit should be NWSW quarter of Section 36, Township 23 North, Range 22 East as described by Mr. Wilson in the field exam report.

Freeman Creek does not flow any further south than Township 23 North, so the Township listed on the application, the 2 amendments, and the permit are all incorrect. There appears to have been some confusion between the point of diversion from the ditch and the point of diversion from Freeman Creek. A review of a topographical map clearly shows the legal descriptions and the location of Freeman Creek. Unfortunately, with this error, an amendment is needed to correct the legal description for this permit before licensing can move forward.

Acres and Place of Use:

Mr. Wilson determined that the number of acres irrigated was 1 acre. I recreated his shape file and came up with the same results. I agree with his acre determination and the shape file determined by Mr. Cooper.

Diversion Rate:

Mr. Wilson calculated the diversion from Bills Ditch with a maximum pipe flow of 2.02 cfs. The system diverts water from the ditch by siphon into two small storage tanks. The water from the storage tanks is either pumped out for irrigation purposes, and any overflow from the storage tanks is diverted back into Bills Ditch.

Mr. Wilson determined the flow from the storage tanks based on a sprinkler calculation that provided 0.035 cfs. The pump theoretical calculation shows the pump can divert 0.10 cfs. The permit allowed 0.04 cfs for 2 acres of irrigation. Mr. Wilson recommended that the system be limited to a diversion rate of 0.03 cfs for 1 acre of irrigation, which fits within the Department's current standards for irrigation under 5 acres. The permit should be licensed for 0.03 cfs.

Volume:

This is an irrigation right with an established headgate requirement of 3.5 acre feet per acre limitation. It has been established that 1 acre is irrigate, so the volume of 3.5 af recommended by Mr. Cooper seems reasonable. However, this is an surface water irrigation right, and according the Beneficial Use Rules, we do not include a volume for surface water irrigation rights. No volume will be recorded on the license. There will be the standard condition that limits the use to 0.03 cfs and 3.5 af at the field headgate.

Overlapping Water Rights:

Water rights 75-4315, 75-10389, 75-10630, 75-2123, 75-4005A, 75-4305, 75-4334, 75-14240, 75-14726, and 75-14727 are all diverted into Bills Ditch, and share the same point of diversion. Water rights 75-10389 and 75-14450 are in the same 40 acre tract, but they appear to be on the north side of the property associated with this water. Therefore, I don't see any further issues with overlapping water rights.

Conditions:

Condition 7 (029) and 8 (26A) will be removed at licensing. Condition 6 (01H) will be changed to R02. The remainder of the conditions will be carried over to licensing.