

Memorandum

Date: July 23, 2013
To: File 73-7124
From: Craig L. Saxton

Re: Question of Supplemental conditioning language for 73-7124 at licensing

Permit for 73-7124 was issued with supplemental conditioning requiring that surface water be used 1st, before diverting water under this right. The surface water right that permit 73-7124 is supplemental to is 73-2153.

The argument has been made that 73-2153 has been long abandoned and has not and cannot be used on the POU. However, 73-2153 was claimed in the SRBA as a valid water right and it was partially decreed by the SRBA court on October 20, 2009 establishing it as a valid right surface water right applicable to the place of use permitted under 73-7124.

In a memo from Roxanne Brown dated July 12, 2013, she stated that in a conversation with the current watermaster for Water District 73, Ted O'Neal, he noted that the 1959 priority date for water right 73-2153 is so junior that the right would, "...rarely (if ever) be delivered." I cannot find information in the Water District 73 backfile records that indicate at an 11.94 cfs right was ever delivered from Big Creek. However, I can't determine if 73-2153 was available and if so, for how long.

Because right 73-2153 is a valid right, permit 73-7124 will be licensed for supplement use. However, because 73-2153 is almost never available, then 73-7124 is essentially used all of the time anyway.

In the rare event that there is enough water in Big Creek to fill the 1959 priority date, my guess is that there wouldn't be irrigation at that time anyway because it would be so wet out. However, it must be noted that in the rare event that Big Creek Water under 73-2153 is available, it must be used before ground water is diverted under this right.