

Merritt, Allen

From: Merritt, Allen
Sent: Thursday, December 04, 2008 4:13 PM
To: 'Kathryn Goldman'; 'Jim Speck'; 'leebrown@cox.net'
Cc: Blau, Terry; Peppersack, Jeff; Keen, Shelley; Spackman, Gary
Subject: RE: Hulen Pond
Attachments: Mitigation_Plan_Evaluation_Checklist.pdf

Katherine and Jim,

After our discussion this morning I talked with Jeff Peppersack regarding the situation and my understanding of your desires. Jeff is the Water Allocations Bureau Chief.

We reviewed the historical photos and the other factors such as your desire not to maintain diversion works etc.

Jeff and I are comfortable at this time with considering the following approach:

- Processing an on-stream storage application for permit. Use would likely be "Storage for Recreation"
- To process the application a mitigation plan must be provided that addresses any potential injury to other water users.

-Elements of the mitigation plan:

- Would likely identify a very senior water right that is normally deliverable all irrigation season.
- Acres irrigated under the right used for mitigation will need to be taken out of production.
- The mitigation right would account for filling the volume of the pond, evaporation from the pond and any shrink charged for moving mitigation water up or down the river.
- Address any other factors unseen at this point in time but identified later.
- Other mitigation ideas not identified here that you come up with might be considered.
- The mitigation right would be modified in the permit approval and not need to be included in a transfer application.

As you know any application for permit is subject to protest and further review by IDWR. Approval cannot be guaranteed.

If no water right is sought, any future SCA permit request to maintain the pond must be mitigated in some fashion.

If a water right is sought and approved as on-stream storage as proposed here; IDAHO Code 42-3806 provides an exemption to the state's SCA permitting requirements and allows reasonable alterations of the stream to maintain use of the water. (Terry would need to weigh in on this to determine what exempt alteration is reasonable. This could be outlined in a condition of approval of any WR permit.)

This approach avoids the diversion headgate and diversion works issue you are trying to avoid but it also does not identify a diversion rate to the pond as part of the right. The maintenance of a flow in the side channel to the pond after high water would hinge on what might be reasonable to maintain the recreational value of the pond and is likely up for interpretation. F&G has historically had issues with these similar types of scenarios so you might want to consult with them about this approach to air out their concerns before you go too far down this road. Note that F&G protested application 37-8916 (Monroe), still unresolved, which attempts to maintain a pond on a side channel of the Big Wood River.

Attached is a mitigation check list you might be interested in ...

12/4/2008

Good Luck,

Allen

From: Kathryn Goldman [mailto:kgoldman@woodriverlandtrust.org]
Sent: Thursday, December 04, 2008 10:44 AM
To: Merritt, Allen; Jim Speck
Subject: another map

This one shows the river is the current location of the side channel.

Kathryn Goldman | Project Coordinator

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12/4/2008