

Palmer, Cherie

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Friday, May 18, 2012 11:19 AM
To: Palmer, Cherie
Subject: RE: 69-07102
Attachments: 63-31973 Partial Decree 030410.pdf

Cherie,

The thoughts I have with respect to licensing 69-07102 stem from experience in the SRBA.

While permit 69-07102 appears to be a duplicate of decree 69-10279 there are two fundamental differences.

First, 69-10279 was filed in the SRBA as a federal reserved water right.

Second, 69-07102 was filed with the Department during the SRBA. At that time, early 1990s, the Court, the AG and the Federal Government, were all learning how to deal procedurally with the volume of claims in the SRBA based on federal law. That was the basis to request delaying the license process of 69-07102. It took several years and as you can see 69-10279 wasn't decreed until 2003. There were some continuing adjustments throughout the years and the way the most recent federal reserved water rights were decreed under agreement with the AG, was that each federal reserved water right would have a companion water right based on state law. It was possible to have 'used in conjunction' language on both decrees.

My suggestion with respect to 69-07102 and 69-12079 is to leave decree 69-12079 as it is. It is correct as to the point in time it was decreed.

Proceed with licensing of 69-07102. If there is an amendment that the FS needs to file we would do that. The license could be issued with the 'used in conjunction' language used with the last group of federal reserved water rights, something to the effect that: "This water right is used in conjunction with 69-10279 and is limited to a total combined diversion rate of 0.02 cfs. The quantity of water under this water right shall not exceed 13,000 gallons per day."

An example of this is attached, 63-31973 is the water right reserved under federal law and 63-33043 is the water right acquired under state law. I realize this is SRBA business. However, it may be practical as well as applicable to mirror with respect to licensing 69-07102, having the license reflect the most current outcomes with respect to federal reserved water rights.

I have lots more history and background that I could share and that you could then verify through Carter and the SRBA legal staff.

If this is something the Department might be able to consider please let me know.

Thank you.

From: Lester, Steve [<mailto:Steve.Lester@idwr.idaho.gov>]
Sent: Tuesday, May 15, 2012 8:14 AM
To: Palmer, Cherie
Cc: Spencer, Steven M -FS
Subject: FW: 69-07102

Hi Cherie:

Appears you are working on this one per barcode inquiry. Please contact Steve Spencer about his request. Thanks.

SL