

Saxton, Craig

From: Saxton, Craig
Sent: Friday, February 24, 2012 10:32 AM
To: 'Ann Pool'
Subject: 4514107: MVCP LLC
Attachments: 67-7706 Ex in-stream stock right.pdf

Hello Ann,

Per our conversation on Tuesday this week, I looked into the possibility of amending 45-14107 to add in-stream stockwater as a purpose of use. Unfortunately, this would be viewed as an enlargement of the water right so that option isn't going to pan out.

I have attached an example license for in-stream stockwater for your reference. This will just give you an idea of how we would write one up.

You were wanting to know how to explain why IDWR couldn't recognize all of the place of use as valid POU. Let me outline some points that might help.

- 1) Permit 45-14107 identifies 3 points of diversion where water is diverted from the natural water course into ditches or pipes.
 - a. IDWR can recognize the open delivery ditches or the places the water is diverted to as valid places of use (POUs).
 - b. QQ's that were excluded from the POU land list on the amendment I sent you were QQ's that I could not verify water was diverted to for stockwater use.
 - i. There might be water flowing through those QQ's from natural streams or runoff, but there is no evidence that your clients delivery system diverts water from the natural channel to those excluded QQ's.
- 2) In-stream stockwatering is where the stock drink directly from the natural water course and water is not actually diverted. You might say that the stock themselves are the diversion points.
 - a. In-stream stockwater use is exempt from the permit requirements. See Idaho Code 42-113
 - b. Your clients stock can drink from the streams without a water right.
 - i. However, they can file a new permit for in-stream stock if they want.

I know you are out for a little while so look things over when you get back. How about you get back to me by March 12 with any additional questions or concerns and we can try to wrap this up. If I don't hear from you then I will send a letter setting a deadline to submit the amendment or provide additional evidence supporting additional places of use.

Thanks,

Craig

From: Ann Pool [mailto:ann.pool@brockwayeng.com]
Sent: Wednesday, February 15, 2012 3:57 PM
To: Saxton, Craig
Subject: RE: MVCP LLC Question

Thank you Craig, very much for this additional information. I will look into it, and look at the wording and maps through your eyes and see if I cannot find your answers from our group.

Saxton, Craig

From: Ann Pool [ann.pool@brockwayeng.com]
Sent: Tuesday, February 21, 2012 10:21 AM
To: Saxton, Craig
Subject: RE: MVCP LLC Question

Good Morning Craig,

I've tried calling several times and your lines are busy, or the long distance lines are busy now for over 2 hours... a busy day!

After going over your email response again, I've come to your final summary that I think is our hang up on QQ's for POU:

"So to summarize, in order to pursue adding additional QQ's as valid POU, I need to see how water is diverted and conveyed to the POU for stockwater use. I. "

cannot recognize in-stream stock where the creek naturally flows through a QQ, but is not diverted there"

Our client feels that where ever the stream flows, is a potential POU for 'range cattle', therefore listed in our POU on the application is the open stream channels for each stream. We're not sure why you cannot recognize the in-stream use...

As for the POU's you've identified as 'upstream' from the POD, I'll have to confer with our draftsman for elevations. My understanding was that the streams meandered through these QQ's with gravity flow and were represented in all the POU areas we listed. Having not been to the site, I need to visit with our client, our draftsman and the Field Examiner.

Please give us a little more to research these areas of question on the application.

Thank you for your additional reasons/conclusions for not recognizing in-stream stock use...

Ann

From: Saxton, Craig [mailto:Craig.Saxton@idwr.idaho.gov]
Sent: Wednesday, February 15, 2012 4:02 PM
To: Ann Pool
Subject: RE: MVCP LLC Question

Thank you. I really appreciate your willingness to work through this.

Craig

From: Ann Pool [mailto:ann.pool@brockwayeng.com]
Sent: Wednesday, February 15, 2012 3:57 PM
To: Saxton, Craig
Subject: RE: MVCP LLC Question

Thank you Craig, very much for this additional information. I will look into it, and look at the wording and maps through your eyes and see if I cannot find you answers from our group.

As I mentioned, I'll be gone with family needs, so it may be next week or the week after when I get back with you. Your time and help is greatly appreciated,

As I mentioned, I'll be gone [redacted] family needs, so it may be next week or the week after when I get back with you. Your time and help is greatly appreciated,

Ann

From: Saxton, Craig [mailto:Craig.Saxton@idwr.idaho.gov]

Sent: Wednesday, February 15, 2012 3:52 PM

To: Ann Pool

Subject: RE: MVCP LLC Question

Hello Ann,

I am sorry for the lack of communication on what I could recognize as POU for a diverted stockwater right. The information you submitted was complete. The reason I omitted some of the QQ's from the POU in the amendment I sent out is because I didn't have evidence showing how the water could get to all of the QQ's identified as a place of use in the beneficial use field exam and supplemental information.

The permit is for diverted stockwater and the narrative in the field examination report says the diversion from the three creeks are open channel and the cattle drink from the ditches. It further goes onto say that all three creeks flow into buried pipes which convey the water to a central pond from which it is pumped to areas with the place of use.

When evaluating the place of use, in order to recognize anything uphill from the POD's as part of the POU, I needed to see how the water could have been pumped to it from the central collection pond (or other means if it is pumped directly out of the POD).

Item 2 on the letter dated January 18, 2012, requested information showing, **"...how the water diverted from the points of diversion is conveyed through each of the QQ's identified as part of the POU."** The letter dated February 1, 2012 from Charles E. Brockway responded by saying, **"The water diverted from the POD's and conveyances are described in the Narrative and attached pictures."** Unfortunately, the narrative and attached pictures didn't answer all of the questions.

Therefore, I made the assumption that the stock water could possibly be pumped (from the central collection pond) to any ground that is irrigated as there would be a diversion system in place. In addition, 45-14107 identified most of the irrigated ground as part of its POU so that supported including it as part of the POU for 45-14107. I tried to include any QQ where I could see ditches from the POD's running through it.

What I excluded from the POU is ground that is upstream from the POU which didn't have evidence supporting that water could be pumped to it. I did not include QQ's which despite having a stream run through it, didn't have a POD or system to deliver the water through it. Another way of saying this is just because a stream ran through a QQ, doesn't mean I can include it as part of the POU. If this were an instream stock right then we could include all the QQ's that Antelope Creek, Lunch Creek and Dayley Creek run through, but because this is diverted stockwater, I can only include QQ's that water is specifically delivered to/through.

If water is piped to the omitted QQ's or there are other ditches that run through the omitted QQ's that I missed, I am certainly open to changing the POU description to accurately describe the beneficial use. It is just that without information supporting it, I cannot recognize, or defend, including QQ's as part of the diverted stockwater POU when I don't know how the water could get there.

So to summarize, in order to pursue adding additional QQ's as valid POU, I need to see how water is diverted and conveyed to the POU for stockwater use. I cannot recognize in-stream stock where the creek naturally flows through a QQ, but is not diverted there.

Please feel free to contact me if you have questions or if I have missed this information in the field examination report already submitted.

Respectfully,

Craig

From: Ann Pool [<mailto:ann.pool@brockwayeng.com>]

Sent: Wednesday, February 15, 2012 2:42 PM

To: Saxton, Craig

Subject: MVCP LLC Question

Hello Craig,

I just received your letter back to us, regarding continued conflicts in the POU for water right 45-14107.

I apologize for being in the middle of an application in progress for some time, but I do not see why there are still questions on the POU for 45-14107. I have attached the map created after the beneficial use field exam, and find it to be representative of the water right.

The following Township/Range/Sections and QQ's have been omitted by IDWR on the Application for amendment received today in the mail:

T12S R24E S4 NWNW and SWNW

T12S R24E S5 NENE, NWNE SENE and SWSE

T12S R24E S8 SWSW

May I ask of you to please let me know what documents you are referring to and maps, that you are referencing, so I can look at the same documents. If you can attach them to a reply email, that would be most helpful. I'd like to get this resolved for the Searle's at MVCP LLC.

I will be out of the office from tomorrow until next Tuesday on family business. If you don't hear a reply from me, this is why. Your help is greatly appreciated on this permit application.

Ann

Ann Pool

Hydrologic Technician

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