

MEMO

TO: File 98-7771 and 98-7829

FROM: Cherie Padilla

DATE: August 8, 2011

RE: Petition for Reconsideration Evaluation

There are three requests that F&W Service requested through their petition:

1. Modify condition #3 on permit 98-7771 and #5 on 98-7829
to:
Claim 98-4113 and rights 98-7366, 98-7771 and 98-7829 when combined shall not exceed a total diversion rate of 16.99 cfs. OR
Claim 98-4113 and rights 98-7366 and 98-7771 when combined shall not exceed a total diversion rate of 15.23 cfs.
2. Modify condition #5 on permit 98-7771 and #6 and #7 on 98-7829:
to:
Wildlife storage is for wildlife use and wetland ^{habitat} enhancement, including initial filling of wetlands and replacement of losses caused by evapotranspiration, seepage and evaporation.
3. And finally modify the maximum diversion volume allowed under 98-7829 from 850 afa to 1271 afa.

Request #1 cannot be approved for a few reasons. First, when evaluating a combined limit between water rights, the diversion rate under a statutory claim does not go towards the final limit. A statutory claim is unconfirmed and therefore cannot be validated through a condition of approval. Consequently, if the diversion rate capacity of the two pumps is 16.99 cfs, a limit is not needed since the authorized diversion rates for 98-7366, 98-7771, and 98-7829 is 11.99 cfs which is less than the limit.

At this point the question is; is a limit necessary because the pumps produce less than 11.99 cfs? When I initially licensed these rights, I was under the impression that the 2 pumps on the system were operated independently of one another and were not being run at the same time. In their petition, the F&W Service clarify that the pumps are operated at the same time, thereby increasing the diversion rate at a given moment. I agree that the limit is faulty and will be modified as follows:

98-7771

The river pump data supplied by F&W Service indicates that the largest amount diverted during the development period from the "du" pump is 8.24 cfs and from the field examiner's findings, we know the "old" pump is capable of producing 6.99 cfs for a total of 15.23 cfs. Because the capacity of the system is greater than the authorized diversion rate of 98-7366, 98-7771 and 98-7829 no limit is necessary.

98-7829

During the development period for this permit, the "old" pump and the "new" pump were in place. Per the river pump data submitted by the right holder both pumps, at the most, diverted a total of 13.65 cfs (see 9/15/04). This total is more than the maximum diversion rates for all three rights that divert from this PD so a combined limit is not necessary.

Request #2 is approved because “wildlife storage” can be more concisely described without undermining any department policies, etc.

Request #3 is not approvable because the right holder is hinging their request on department findings that the required volume for the POU of 98-7829 is 1271 af. This estimation did not account for overlapping right 98-7366 that has a volume of 1657.9 af.

Further, a caveat that was listed below my evaluation of the volume requirement was overlooked. The diversion rate can only provide 895.6 afa based on a season of 150 days. While the season is technically 365 days, records from the applicant indicate that the pumps are not “on” year round, instead the records appear to show 150 days worth of pumping.

In conclusion, insufficient data was submitted in order to change the volume on the original license of 850 afa.