

Saxton, Craig

From: Christensen, Kelly
Sent: Wednesday, July 27, 2011 3:37 PM
To: Padilla, Cherie; Keen, Shelley; Courtney, Andrea; Kelly, Vicki
Cc: Saxton, Craig
Subject: RE: 37-7822 possible license error

Rinker is claiming 37-154B as an unrecorded transfer for recreation/mitigation for this system. I feel that I am bound to point the volume issue out to Brockway (his consultant) and I can virtually guarantee that they would then request a corrected license regardless of what the end result for 37-154B is.

Do you want me to inform the claimant that they should request a corrected license?

kkc

From: Padilla, Cherie
Sent: Wednesday, July 27, 2011 3:30 PM
To: Keen, Shelley; Christensen, Kelly
Cc: Saxton, Craig
Subject: RE: 37-7822 possible license error

License 37-7822 Findings

I will take you through my review process but the short answer is, yes I think that license 37-7822 was issued with an incorrect volume.

- Is there a volume limit on the permit? NO
- Is there a condition on the permit that limited the volume? NO
- Is there something in the application that leads me to believe that the volume should be smaller than the diversion rate can provide? NO
- Does the field examiner recommend a volume? NO
- Does the field examiner comment on a volume at all? NO
- Is there something in the field exam's narrative that mentions a smaller season than year round? NO
- Can the diversion rate of 20 cfs provide for 14,479.6 afa? YES
- Does the diversion rate of 20 cfs x 365 = 7300? YES
- When the license was issued, was it dept practice to not use a conversion factor of 1.9835? No, I found a sampling of 4 other licenses that were issued from 1990-1992 for aesthetic or recreation uses. Each of those rights were licensed with a volume that was equal to rate x 365 x 1.9835.
- Should the license be re-issued with a larger volume based on dept error? Perhaps.

Hopefully that is helpful. Please let me know if there is anything else I can do at this time.

Cherie

From: Saxton, Craig
Sent: Wednesday, July 27, 2011 1:03 PM
To: Padilla, Cherie
Subject: FW: 37-7822 possible license error

Hey Cherie,

When you get a chance, could you look into this and let Shelley and Kelly know what you think?

Thanks,
c

From: Keen, Shelley
Sent: Wednesday, July 27, 2011 11:36 AM
To: Saxton, Craig
Cc: Christensen, Kelly
Subject: FW: 37-7822 possible license error

Craig,

When you have a chance, could you or someone from your staff look at this issue and report back to me and Kelly.

Thanks.

Shelley

From: Christensen, Kelly
Sent: Monday, July 25, 2011 9:15 AM
To: Keen, Shelley; Courtney, Andrea; Kelly, Vicki
Subject: 37-7822 possible license error

On June 20 Just before I went on vacation and now followed by your vacation I had e-mailed you a concern I had on the volume issued for this right. It appears that there was a math error made in calculating the volume recommended for this right. Now that everybody is rested I am following up on this issue.

June 20 e mail;

I was just organizing my notes and noticed that the overlapping right (not a part of AJ) 37-7822 appears to have problems. It was licensed for 20 cfs and 7300 AF.

If we recognize 154B for some volume (to be determined) I would think that the two rights would be limited to a combined 20 cfs and the 7300 AF.

The problem is that $20 \text{ cfs for } 365 \text{ days} * 1.98 \text{ af/day} = 14,454 \text{ af}$ not the licensed value of 7,300.

$20 * 365 = 7,300.$

I would like to communicate with Brockway regarding allocations position regarding the volume issue for that right in the fairly near future.

I am in the process of working with Brockway Engineering on the recommendation for 37-154B which they are claiming should be considered as a consumptive use for mitigation or recreation use associated with the system as licensed for 37-7822. Andria has discussed the consumptive use issue with Jeff and it was suggested that Brockway Engineering should provide calculations supporting their position. The application for permit indicated that if there were losses requiring mitigation that it would be made up from groundwater. It is possible that Brockway is hanging his hat on license condition 11 (below) to support the position that the department has accepted 37-154B as an unrecorded transfer for mitigation/recreation use. I do not know yet. What are your thoughts regarding the use of a groundwater source vs 37-154B for that use? An alternative perspective is, is a future determination of 'loss to the injury of prior right holders' sufficient to recognize an unrecorded transfer for 37-154B?

11. Upon a future determination by the Department of Water Resources that water is lost to the injury of prior right holders, the losses shall be replaced from a source acceptable to the Department.

Kelly