

MEMORANDUM

TO: Gary Spackman
FROM: Pam Skaggs 
SUBJECT: Review of Transfers 73969 & 75337 Conditions
DATE: April 22, 2011

Issue

Transfer 75337 (Gould) is protested and the parties may propose to resolve their issues through an agreement that would include similar conditions that were used for approved Transfer 73969 (Rohe). You asked for review and comment on the applicability of the Rohe type conditions on the Gould transfer proposal.

Review & Comparison of Transfers

- The Rohe & Gould transfers are similar in size, location and questions of impact to the Big Wood River (BWR). Both transfers result in a place of use (POU) within NE, Sec 6, T03N, R18E just over a ½ mile apart.
- Rohe transferred an 1883 BWR right and Gould is proposing to transfer a 1974 ground water right point of diversion (POD) to a location adjacent to the upper BWR. Department reviews of other recent actions in this area have identified a connection between ground water diversions and the BWR creating concerns of potential injury to BWR rights. Both transfers shift the potential impact of the surface and groundwater diversions upstream on the BWR.
- The original POD & POU for Rohe were adjacent to the river within the minimum stream flow (MSF) reach of Rights 37-7919 & 37-8307. The original POD & POU for Gould is more than a mile from the river also within the same MSF rights lower reach. The approved Rohe & proposed Gould POD & POU are near the river within the upper portion of this MSF reach. The effects of the Gould transfer may injure the MSF rights and junior BWR right holders that may be required to curtail use to provide water for the MSF rights.
- Rohe moved POD & POU about 3 miles north, while Gould proposes to move the same about 16 miles north. The Gould transfer being a greater distance could impact a larger number of BWR right holders.
- The approved Rohe POD from ground water tributary to BWR is a pump in a small pond about 1/16th mile from the river, while the Gould proposed PODs are two wells located about 1/8th mile from the river.

Review & Intent of Rohe Conditions

Special conditions were created to address the potential injury created by moving the POD of the Rohe BWR right 3 miles upstream within a MSF reach. Without additional gages or an accounting model, calculating injury exactly is difficult for technical staff and evaluations are based on known facts and statistical analysis. The applicant and the protestants agreed that potential injury should be addressed in order to approve the application. Review and analysis resulted in the following condition to address potential injury and protestants' concerns:

To prevent injury to water rights 37-7919 and 37-8307 held by the Water Resource Board for minimum stream flow on the Big Wood River the 0.02 cfs allowed for irrigation use from ground water authorized by transfer 73969 shall be subject to curtailment 3 days after flows at the Hailey gauge drop below 189 cfs or curtailed by priority, whichever occurs first. The Director retains jurisdiction to modify the condition of use authorized by transfer 73969 to prevent injury to other users as may be required based on future studies or the addition of gauges on the Big Wood River.

This Rohe condition maintains the MSF rights' full rate of 189 cfs in relation to the diversion of the 1883 BWR right from the groundwater source at the new location. The Gould transfer would appear to create a similar potential injury to the BWR and MSF rights with essentially a new ground water diversion of relative size and location to the Rohe right near the river in the upper reach of the MSF rights. Until a more defined calculation of effects is available potential injury should be addressed to avoid impacts in this broader manner.

The portion of the condition relating to curtailment by priority was appropriate for the BWR right, but would not be appropriate for the Gould ground water right since Basin 37 does not currently manage sources conjunctively. The right could be subordinated to senior BWR rights when analysis of the exact effects can be more accurately defined in the future. The right would need to be subject to the Watermaster of Water District 37 to allow for control and curtailment of diversion at the wells 3 days after the flows at the Hailey gage drops below 189 cfs. The Rohe condition should be modified as follows assuming assignment of application and reduction to 0.03 cfs and 1.5 acre irrigation:

To prevent injury to water rights 37-7919 and 37-8307 held by the Water Resource Board for minimum stream flow on the Big Wood River the 0.03 cfs allowed for irrigation use from ground water authorized by transfer 75337 shall be subject to curtailment 3 days after flows at the Hailey gauge drop below 189 cfs or curtailed by priority, whichever occurs first. The Director retains jurisdiction to modify the condition of use authorized by transfer 75337 to prevent injury to other users as may be required based on future studies or the addition of gauges on the Big Wood River.

The following injury condition applied to the Rohe approval relates to the evaporative losses of the pond authorized under related Permit 37-22385 and is not appropriate for the Gould transfer:

The 0.01 cfs portion of this right listed as mitigation use shall remain undiverted to compensate for the evaporation losses necessary to maintain the pond authorized under right 37-22385 and to mitigate potential injury to rights 37-7919 and 37-8307.

The Rohe right prior to transfer allowed 0.11 cfs for 1 acre of irrigation, while diversion by pump directly from the pond would only allow 0.03 cfs (0.08 cfs left in canal for conveyance), split to cover irrigation and mitigation uses. Department standards require a minimum amount of 0.01 cfs that could be identified as mitigation use to compensate for losses from the 0.1-acre pond instead of a proportional split of 0.003 cfs. The mitigation condition includes potential injury to the MSF rights giving credit for the other 0.007 cfs of the 0.01 cfs, but was not calculated as part of the injury review as far as I could see. Separate mitigation was not recommended by technical review.

Also, the injury condition related to the portion of the irrigation use left in the Hiawatha canal is not appropriate for this ground water diversion. The remaining portion of the ground water right will continue to be diverted from the original well without any injury from the proposed change.

Recommendation

- The primary injury condition addressing the MSF rights should be included with minor change noted above.
- In addition to the prevention of injury to the MSF rights and its junior rights, Big Wood Canal Company (BWCC) has requested additional mitigation use as included in the Rohe approval. As noted above mitigation use was related to the pond losses in the Rohe approval and appears to be unmerited in this case.
- Other standard Water District conditions R05 (Subject to Water District) and R02 (lockable device) are recommended to allow watermaster control those times the MSF rights are not being met.
- Standard transfer conditions X61, R67, T07, T08 & T19 are also recommended.