

Memorandum

Date: April 1, 2011

To: File 45-7678

From: Craig L. Saxton ↙↘↗

Re: Overlap analysis of water right record 45-216

I conducted a review of overlapping rights for 45-7678. On 3-31-11, Cherie Padilla, Shelley Keen and I discussed the fact that an overlap review finds 45-216 and 45-308A on the same POU as described in 45-7678 and that 45-216 is not claimed in the SRBA. The question was whether we should include 45-216 in the overlapping remarks on license 45-7678.

Since 45-216 isn't claimed in the SRBA, it will be lost after the final decree is issued. Water right 45-308B has been partially decreed in the SRBA for 0.50 cfs.

Analysis:

- 45-308B has an older priority date than 45-216. In the SRBA, 45-308B was claimed at one inch per acre. Had 45-308B been recommended at one inch per acre, there would be no benefit to claiming 45-216. That said, 45-308B was actually recommended at 0.017 cfs per acre so if 45-216 were a valid water right, it could provide some benefit.
- I conducted a search for all water rights with Marsh Creek as the source with the priority date of 4/12/1892 which is the priority date of 45-216. The result list included 14 results (including 45-216). Of those results, 5 did not have an old decreed water right number. Meaning that 5 of the water rights were identified with a "new 10,000 series number" that would indicate the records could represent splits of the old decreed rights, or combinations of old decreed rights. I looked into each of the 5 records that had the "10,000 series" numbers to see if it was a split or combination of 45-216. None were. The point of this exercise was to see if 45-216 was claimed and recommended under a different water right number.
- I checked the pedigree to see if 45-216 was identified as being split or combined into another water right number. There is no pedigree data under either the WR records or the AJ records for 45-216.
- I searched water master delivery records by spot checking delivery records ranging from 1991 thru 2009. None of the records show delivery of water right 45-216. In addition, the current owner of the property described in the POU for 45-216 and 45-308B is Kevin Banner. The water master delivery records show 45-308B as delivered to Kevin Banner, but they do not show 45-216 as being delivered to Mr. Banner.

Conclusion:

Even if Mr. Banner decided to file a late claim for 45-216 in the SRBA, he would have a very difficult time proving beneficial use of the water when the water master delivery records do not show that it has been delivered for at least 20 years.

Evidence indicates that 45-216 is no longer a valid water right and should not be included in overlapping remarks for license 45-7678. In addition, I do not see a reason to solicit an SRBA claim for 45-216 when there is no evidence that 45-216 is being, or has recently been, put to beneficial use.