

Mills, William

From: ernest carlsen [emcarlsen@gmail.com]
Sent: Thursday, January 06, 2011 1:35 PM
To: Mills, William
Subject: licensing amendment 37-8721

Bill,

Thank you for the quick response in preparing the licensing amendment for permit 37-8721. However, I do have a question about the condition which states: Water shall not be diverted under this right when flows from the Big Wood River are below established minimum stream flows. This condition could become a real concern to the Association because as you probably know, flows in the Big Wood fall below the established minimum stream flow annually, usually in the latter half of the irrigation season and into the late fall. From the perspective of administration, Indian Creek has historically been recognized as a separate stream from the Wood River. Furthermore, even if water could be directed to bypass the pond, water left in Indian Creek is intercepted by Hiawatha Canal and never reaches the river. In addition, because this right is for an on-stream pond, the Association can not prevent water from going into the pond. Given this scenario, how will this condition be administered and what action is required of the Association to comply with this condition?

Also the licensing amendment states the evaporation from the pond is 0.8 acre feet annually. This reference to evaporation from the pond in the conditions seems to imply there is a consumptive use that could impact the associations ability to keep the pond full year round. As part of my evaluation of consumptive use while preparing the pending application for permit I went to the the ET Idaho website and found that it indicates the annual evaporation for willows is greater than the evaporation from open water and consequently no mitigation was required for evaporation from the pond. You may recall from your on-site visit that the creek channel is literally lined with willows in this area. I believe this is a good indicator that a large portion if not all of the area inundated by the pond, excluding the creek channel, was covered with willows prior to the pond construction. This contention is supported by available Land Sat imagery from 1983 to 1987 which indicated a majority if not all of the area covered by the pond was originally riparian. A good example of this is the Land Sat Image dated 1984-6-23 at the following link: <http://www.photoalchemy.com/indiancreek/indian%20creek-revision2.pdf> Given this information, if evaporation must be identified in the conditions that it is also clearly stated it is not a consumptive use that requires mitigation by the Association.

Look forward to hearing from you.

Thanks
Ernie

Ernie,

In regards to your first question, I discussed your concerns with Allen Merritt and Shelley Keen, and we came to the consensus that condition #3 stating: Water shall not be diverted under this right when flows from the Big Wood River are below established minimum stream flows; will be removed from the permit as Indian Creek is intercepted by the Hiawatha Canal, and as such, doesn't currently impact minimum stream flows in the Big Wood River.

In regards to the concerns for evaporation, understand there is no mitigation requirement for this permit. I've included the evaporation component to increase the amount of water permitted under this license to ensure there is ample water to not only fill the pond, but to partially account for refill of the water lost to evaporation. This same approach was utilized in licensing water right #37-8873 for 0.9 AF owned by the Association.

I have also changed a typo in one of the conditions that read:

Wildlife storage is for one pond with a total capacity 1.6 AF. The right authorizes the annual diversion of 0.8 AF to fill the pond and 0.8 AF to replace evaporative losses from the pond.

To correctly read:

Wildlife storage is for one pond with a total capacity 0.8 AF. The right authorizes the annual diversion of 0.8 AF to fill the pond and 0.8 AF to replace evaporative losses from the pond.

Another issue that Shelley Keen brought to our attention is that I modified condition #5 as it was stated on the original permit and modification of this type of condition requires a written order. The original reads:

A measuring device and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works prior to the diversion of water under this right.

And I modified it as follows because a lockable device is unnecessary and impractical:

Upon specific notification by the Department, the right holder shall install a measuring device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.

I have attached a scanned copy of the order and will mail the original to the Association.

Additionally, I have attached a scanned copy of the second page of the Application for Amendment that reflects the changes in conditions I've discussed with you in this email. You or Ben Hoff can replace the original with this one when returning the Application for Amendment if this acceptable to you and your client.

Please feel free to contact me if you have any other questions or concerns,

Sincerely,

Bill Mills