

Westra, John

From: Andy Waldera [AJW@moffatt.com]
Sent: Wednesday, March 02, 2011 11:38 AM
To: Westra, John
Cc: Nathan
Subject: Settlers Permit No. 63-31980

John,

I am writing you in response to the Permit Approval Notice the Department issued to Settlers Irrigation District, Permit No. 63-31980. While almost all of the proposed permit looks good, permit condition number 7 gives me some concern. I was hoping that you could weigh in on the matter before the March 9 Petition for Reconsideration deadline.

The first sentence of the condition is fine. But it is the second sentence that might prove problematic for Settlers. That second sentence reads:

"The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right."

The reason why I am concerned with the above-quoted sentence is because the primary purpose of the well (drilled in 1965) is to serve a local drainage function (lower the local water table). The secondary benefit is supplemental irrigation use of the drainage water pumped on the 408.6 acre place of use served by that stretch of the McMullen Lateral. To me, the above-quoted sentence found in condition number 7 impedes (i.e., "limits," in the parlance of the proposed condition) the ability to use the well for its primary drainage purpose. Put differently, the well must be pumped to perform its primary drainage function regardless of the availability or use of surface water supplies. I do not want to run into a situation where someone could argue that Settlers' ongoing drainage use of the well conflicts with condition number 7.

Thoughts?

Thank you as always for your input. If need be, I can put this into a formal Petition for Reconsideration. Hopefully, that will not be necessary. Please let me know what, if anything, you or the Department needs from me to clean up this potential well operation conflict.

--Andy

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3/2/11 Telephonic - Andy Waldera

Parties agreed to Mr. Waldera's request. Remove 2nd sentence of condition #7. Will amend permit

OK to amend without Order < 14 days Rule of Procedure #766

J. Westra, Manager.