

Keen, Shelley

From: Keen, Shelley
Sent: Monday, November 01, 2010 1:49 PM
To: 'Steven M Spencer'
Subject: RE: Water Right Language

Steve,

I have reviewed the water right records for rights 22-683A, 22-683B, and 22-13915, and I concur with your analysis for those three rights. I would add, however, that licensed right 22-7710 also authorizes a diversion from Pole Creek in the NWSW of Section 26, T3N, R45E, and it is not affected by the 2.00 cfs combined use limitation. Because they have the same owner, rights 22-13915 and 22-7710 probably share a point of diversion.

Since rights 22-683A and 22-683B can be diverted until Oct. 31 each fall and rights 22-13915 and 22-7710 can begin diverting to storage at their full 0.33 cfs rates on Oct. 1, the authorized diversion rate among the four rights appears to be 2.33 cfs during the month of October. I say "appears to" rather than "is" because it's not clear from the record whether rights 22-13915 and 22-7710 describe the same 0.33 cfs or are additive. Since there is no combined use limit on either of them, I think it would be difficult for IDWR to limit them to a combined total of 0.33 cfs.

Also, right 22-7710 authorizes a year-round diversion of 0.05 cfs for stockwater which apparently could be diverted in addition to the 2.00 cfs combined limit for the other three rights.

Let me know if you have additional questions.

Sincerely,

Shelley Keen
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4947
shelley.keen@idwr.idaho.gov

From: Steven M Spencer [<mailto:sspencer@fs.fed.us>]
Sent: Wednesday, October 27, 2010 3:10 PM
To: Keen, Shelley
Cc: Susan M Robertson
Subject: Water Right Language

Shelley,

In a situation where water rights have 'total combined diversion rate' language it would seem that this statement would apply only to the sum of the water right diversion rates. It would not change the face of the water right such as altering any individual source, point of diversion, quantity or diversion rate.

A case in point would be water right decrees 22-00683A, 22-00683B and 22-013915, all diverted from Pole Creek in Sec 26, T3N, R45E. Each of these decrees has in the quantity element the statement:

"The rights listed below are limited to a total combined diversion rate of 2.00 cfs. Combined Right Nos: 22-682A, 22-683B, and 22-13915."

22-00683A is for 1.75 cfs diverted from the SWNWNW (Lot 4).

22-00683B is for 0.10 cfs diverted from the SWNWNW (Lot 4).

22-013915 is for 0.33 cfs diverted from the NENWSW.

If I'm interpreting things correctly:

If the full 1.85 cfs is diverted from the SWNWNW (Lot 4), (the sum of 1.75 and 0.10) then so as not to exceed the total combined diversion rate of 2.00 cfs then only 0.15 cfs could be diverted from the NENWSW.
Or if the full 0.33 cfs is diverted from the NENWSW, then only 1.67 cfs could be diverted from the SWNWNW (Lot 4) so as to not exceed the total combined diversion rate of 2.00 cfs.

That the maximum diversion rate at the SWNWNW (Lot 4) cannot exceed 1.85 cfs.
Conversely, the maximum diversion rate at the NENWSW cannot exceed 0.33 cfs.
And the sum of the diversion rates from both locations cannot exceed 2.00 cfs.

And in addition, that in no case can the total combined diversion rate of 2.00 cfs be diverted from either the SWNWNW (Lot 4) or the NENWSW.

Finally that any change to an element of a decree would require the approval of a Notice of Transfer by IDWR before such a change could be done on-the-ground.

Am I understanding things correctly?

Please contact me if you have any questions about this inquiry.

Thank you for your help.

Steve Spencer
Water Use Specialist (208) 365-7055
USDA Forest Service (208) 365-7037 FAX
1805 Highway 16, Room 5 e-mail: sspencer@fs.fed.us
Emmett, ID 83617