

Marshall, Aaron

From: Keen, Shelley
Sent: Thursday, October 23, 2008 3:59 PM
To: Marshall, Aaron
Subject: RE: Another procedural question

Aaron,

In this case the options are:

- Require the measuring device and data logger, and refuse to issue a license until they are installed. Apparently the right holders have not said that they won't comply with the condition, they just want to know how. Have you double-checked with Tim or Nick to be sure we haven't developed some standards?
- Change the condition as you have suggested. I don't think IDWR should change the requirement unless the permit holder requests it. Your previous policy question illustrates why IDWR should not change a water right without the right holder's request to do so. When they do, the requirement should be changed by order. See Beneficial Use Examination Rule 35.02.d.

Shelley

From: Marshall, Aaron
Sent: Thursday, October 23, 2008 10:29 AM
To: Keen, Shelley
Subject: Another procedural question

Shelley,

I have a question regarding the procedure to change a permit condition when issuing a license.

Permit 81-11978 was issued to Ken and Mona Duhon for non-consumptive aesthetic use with the following condition of approval: "Prior to the diversion and use of water under this right, the right holder shall install and maintain a measuring device, including data logger, at the authorized point of diversion, in accordance with Department specifications." This condition was imposed because the source is tributary to a Wild and Scenic reach of the Middle Fork Clearwater River.

Ken and Mona made documented efforts to obtain Department specifications so they could comply with this condition. However, the Department does not have any specifications and has not provided the permit holder with any direction to comply with this condition. There is no water district in this location and no watermaster to regulate diversions. This right is non-consumptive and could be considered a de minimus use, depending on the Department's definition of de minimus.

With this considered, I think it is appropriate to issue a license with the following condition (197): "Upon specific notification by the Department, the right holder shall install and maintain an acceptable measuring device, including data logger, at the authorized point of diversion, in accordance with Department specifications."

Since IDWR would only be changing, not removing, the measuring device requirement, is an order required prior to issuing the license? If so, can IDWR proceed with an unsolicited change since the permit holder has not submitted a request or petition for removal/modification of the condition?

Thanks,
Aaron