

MEMORANDUM

TO: Shelley Keen *shk To File*
FROM: Monica Van Bussum
DATE: June 14, 2010
RE: Removal of locking device condition on water right 75-14607

This memorandum is in response to your email of April 23, 2010, suggesting I research and make a recommendation on removing the condition requiring the right holder to install a lockable device.

The diversion is a ½-hp pump placed in a bucket which is then placed in Jesse Creek. The water user then irrigates 1.9 acres of lawn and garden with the system. The bucket is placed in the creek when in use and removed when not in use. The water user has requested we waive the lockable device condition, which we have done so in other areas.

You asked me to research three areas: the Wild & Scenic stipulation language, if the right holder has something in place that will work, and to contact his watermaster.

Wild & Scenic stipulation

The applicable language of the Stipulation depends on how this right is viewed. Page 5 of the stipulation states, "IDWR will condition each water right permit or license issued after the effective date of this Stipulation for non-de minimis water right upstream from the ending point of the Wild and Scenic River as set forth in this Stipulation to require that each diversion is equipped with lockable controlling works, a measuring device, and a data logger or other suitable device..." Page 6 of the stipulation states, "IDWR will require installation of lockable controlling works and measurement devices for any existing diversion if it is determined that the water right holder is refusing or failing to comply with IDWR's or the watermaster's instructions and will pursue appropriate civil enforcement action as provided in Idaho Code."

We are using conditions 01H (R02 in licensing), 196, 197, 198 and R05 to implement the Wild & Scenic stipulation. 01H is the applicable condition regarding the locking device. 75-14607 was permitted with this condition.

IDWR has knowledge this diversion has been in place 20+ years. The water use was filed on in the SRBA, but was objected to. As part of the objection resolution process, the current owners agreed to withdraw their SRBA claim and file an Application for Permit. If this water use is considered an existing diversion, the language on page 6 applies and IDWR should request the installation of a measuring device if it is determined necessary to bring the right holder into compliance.

Does the right holder have something in place?

The diversion structure is easily removed from the creek bed with minimal entry to the applicant's property. The applicant does not have something in place where the watermaster can prevent turning

on of the pump. However, a small system like this would lend itself easily to an alternative means of preventing use, such as chaining the diversion works to a tree to prevent its placement in Jesse Creek.

Input from watermaster

Fax from Greg Lowell, watermaster for Water District 75A (Jesse Creek), dated June 14, 2010, says the water users do not need a lockable device.

Recommendation

Based on the statement of the watermaster, in addition to the long history of water use and the ease with which the diversion structure is removed from the channel and potentially can be barred from the channel, it is my recommendation we waive the permitting condition.