

Marshall, Aaron

From: Marshall, Aaron
Sent: Thursday, December 17, 2009 2:19 PM
To: Jordan, Blake
Cc: Cox, Sharla
Subject: RE: Transfers 75974 & 75975 - Sauer

Blake,

Since your email reply, I've had some opportunity to discuss use of the ESPA model spreadsheet with Mat Weaver. I've come to the conclusion, and I think Mat has too, that it may be necessary to use the model differently for transfers than the way I usually simulate Water Supply Bank transactions. Ideally we would be able to adjust the time-steps in the model depending on the situation; but, we don't have that flexibility just yet. Without going into exhaustive detail, I concur with you that in most cases transfers should be evaluated for impact to river reaches by distributing the annual volume equally over each of the three trimesters.

Thanks for your explanation of Transfer 75975 regarding the applicants intent to consolidate the water right. I agree that the change will not enlarge the water right.

In both transfers, 75974 and 75975, we have evidence that the portion of the rights proposed to be transferred have not been used for more than 5 consecutive years. Our current guidance from the AG's Office supports the conclusion that portions of these rights should be forfeited. The applicant has not provided any information to support an exception or defense to forfeiture as described in Idaho Code § 42-223. However, I think we have some options to present the transfer applicant and we should give them the opportunity to choose how we proceed. In the case of both transfers, the applicant could **a)** withdraw the transfer application so we don't find forfeiture of a portion of the right, **b)** identify different acres to be transferred that have not incurred a consecutive 5-year period of nonuse, in which case, the transfer may be approved but we would still find forfeiture of a portion of the right, **c)** provide evidence to support a defense to forfeiture, or **d)** provide no additional information, in which case, we should deny the transfer application and find forfeiture of a portion of the water right. Please notify the applicant of their options and let them know we will take action on the application if we don't receive their response within 30 days. I'll be glad to help you construct the letter if you would like.

Aaron

From: Jordan, Blake
Sent: Wednesday, December 02, 2009 12:27 PM
To: Marshall, Aaron
Subject: RE: Transfers 75974 & 75975 - Sauer

Aaron:

I agree with you that the acres proposed to be changed under these water rights as decreed forfeiture issues. However, the proposed new place of use has been irrigated without a water right which would result in a violation. For the past few years when dealing with violation issues, we have allowed water users to transfer water rights from irrigated land or land that has been dry for more than five years to cover land that has been irrigated without a water right. These transfers need to be submitted in order to resolve the violation issues. So in this violation circumstance, forfeiture is not an issue.

ESPA Analysis: Keith Wilson ran the model the same way we always run the model. The majority of the ESPA analysis we receive are simulated the same way as Keith's analysis and are accepted. We equally distribute the volume over the 3 trimester period to avoid the "fat line syndrome". We encourage consultants and applicants who have to run the ESPA model to equally distribute the volume over the 3 trimester period when possible.

The consolidation from 5 acres to 3.1 acres isn't something new. The biggest concern we would have would be enlargement issues, and it appears there is no enlargement of a water right. The applicant is giving up 1.9 acres along with the volume associated. Though they are getting a higher cfs/acre flow rate at the proposed new place of use, they are not exceeding .02 cfs or 3 af/acre.

Blake

From: Marshall, Aaron
Sent: Tuesday, December 01, 2009 1:40 PM
To: Jordan, Blake
Cc: Cox, Sharla
Subject: RE: Transfers 75974 & 75975 - Sauer

Blake,

I reviewed applications for transfer 75974 and 75975, the application attachments, your review memoranda, and satellite imagery of the lands allegedly irrigated under the portions of the rights involved in the transfers. My observations and questions are outlined below for each transfer application.

Transfer 75974

Please review the ArcMap project I saved in the same folder as your review memo, backfile\Water Rights\Transfers\EASTERN REGION\Pending Transfers\75974 – Sauer. True color imagery shows that the 6 acres authorized for irrigation under right 32-2140E and proposed to be transferred were not irrigated in 2004 and 2006. Infrared imagery shows that this land was not irrigated in 2002, 2006, 2007, 2008, and 2009. While we have a time gap in this imagery, the information available clearly does not establish that these 6 acres have been irrigated within the previous consecutive five-year period. Transfer Memo No. 24, page 21, states that “the Department must determine that a right, or portion thereof, proposed to be transferred is valid and has not been lost by forfeiture or partial forfeiture.” Based on the available information, we cannot determine that this portion of the right is valid. Please ask the applicant to provide documentation, within 30 days, demonstrating that this portion of the right has been used within the previous consecutive five-year period.

As a side note, I agree that it is unlikely that other water rights will be injured by the proposed change. I completed my own simulation of the proposed change and found negligible impact to modeled reaches of the Snake River. However, I strongly disagree with Keith Wilson's use of the model. He simulated 7.0 acre-feet of water used under this portion of the right in each trimester for irrigation purposes. I highly doubt the right was used for irrigation during the winter trimester, and if it was, the use was unauthorized and not a beneficial use for irrigation. It would be a more accurate simulation of actual use with 7.0 acre-feet ($\frac{1}{3}$) in the spring trimester and 14.0 acre-feet ($\frac{2}{3}$) in the summer trimester. Please keep a close eye on how consultants use the transfer model spreadsheet.

Transfer 75975

I have the same concerns about forfeiture of the portion of right 32-2127D involved in transfer 75975 as described above. Please ask the applicant to provide documentation, within 30 days, demonstrating that this portion of the right has been used within the previous consecutive five-year period.

I'm not sure what the applicant is trying to accomplish by “changing” 5 acres of this right but only “moving” 3.1 acres. We must maintain proportionality between all elements of a water right when split. If the applicant would like to move 3.1 acres, the corresponding rate is 0.04 cfs and the corresponding volume is 9.3 acre-feet...unless I'm misguided. Do you understand the applicant's intent with this proposal? I certainly do not.

Please let me know if the applicant provides additional information to demonstrate that the portions of these rights have not been forfeited due to nonuse and we can continue our parallel review process.

Thanks,
Aaron

From: Skaggs, Pam
Sent: Monday, October 19, 2009 4:10 PM
To: Marshall, Aaron
Cc: Cox, Sharla
Subject: 75974 & 75975 Sauer - First Look

<< Message: 75975 Sauer - FIRST LOOK >> << Message: 75974 Sauer - FIRST LOOK >>
Aaron,

Here are a couple of transfers for parallel review. Please take a look, reply to Blake (cc Sharla) & let me know if you have any questions.

Pam

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