

Merritt, Allen

From: Swank, Lyle
Sent: Tuesday, June 09, 2009 3:14 PM
To: Merritt, Allen
Cc: Olenichak, Tony; Spackman, Gary; Tuthill, Dave; Yenter, Cindy; Burrell, Steve; Baxter, Garrick; Rassier, Phil; Carlsen, Ernie
Subject: FW: SWID Water Right

Allen,

From Tony's analysis, the proposed SWID diversion application should be treated similar to any other new water right permit for water from the Snake River and tributaries. It would be a valid water right when we are spilling water past Milner and/or filling 2/17/2009 water rights. Any other way appears to me to be a water right expansion, water spreading or both.

This would also complicate the Minidoka Return Flow Credit calculation, and I am probably as surprised as Allen that it was not protested by TFCC and NSCC and others. Up to 60 cfs diversion of BID wastewater is a very significant quantity of water to be rediverted. I agree with Tony that we may need to discuss this with other parties of the Minidoka Credit Settlement Agreement.

This application shows the inherent problems of any return flow credit whether a fixed number or a variable.

Lyle

From: Olenichak, Tony
Sent: Monday, June 08, 2009 6:03 PM
To: Swank, Lyle
Subject: RE: SWID Water Right

Lyle,

This application presents an administration dilemma. The point-of-diversion is located on a small tributary (or drain) approximately 1/8 of a mile upstream from where the tributary (or drain) enters the Snake River. The point at which the tributary (or drain) enters the Snake River is located approximately 5 miles downstream from the City of Burley in the Minidoka-to-Milner reach on the south side of the river. The question is: **Should the new SWID diversion described in Application 45-14183 be allowed to divert BID water that otherwise would return to the river without any adjustment to senior water rights that depend on the gain in the Minidoka-to-Milner reach?**

If the new diversion is not included in the computerized water accounting, then it would appear to me that Twin Falls (TFCC) and North Side (NSCC) Canals may want an adjustment to the Minidoka Return-Flow Credit. The current agreement requires TFCC and NSCC to transfer 14,500 ac-ft of storage to MID, BID, and AFRD#2 in exchange for the return-flows from MID and BID. Application 45-14183 proposes to divert up to 60 cfs of BID wastewater that otherwise would return to the river. This could significantly affect the amount of gain in the Minidoka-to-Milner reach. However, I don't think Water District #1 can deduct this amount from the storage owed by TFCC and NSCC that's described in the Minidoka Credit Settlement Agreement. All parties described in the agreement would need to agree on a new settlement changing the amount of storage transferred from TFCC and NSCC.

Reductions to return-flows in the Minidoka-to-Milner reach sometimes affects natural-flow rights of other entities in addition to TFCC and NSCC. To protect all senior water rights, the new point-of-diversion and water right would need to be added to the water-right accounting under the assumption that everything diverted by the new SWID diversion would return to the river. If this were the case, SWID would only be allowed to divert natural flow when the 2/17/2009 priority was being filled. When the priority was not being filled, the new SWID diversion would be diverting storage. *Note: SWID may also have the option of adding this new point-of-diversion to their existing 77.9 cfs of 2/6/1895 priority (1-00023) limited to a total annual volume of 6,725 ac-ft, and they could also divert their storage or rental from this new point-of-diversion.*

If it was decided by IDWR that this new SWID diversion should be added to the Water District #1 accounting to protect all existing senior rights, this would result in the new diversion being measured and regulated by Water District #1, only allowing SWID to divert water under its own priority water-rights or to divert storage water. The source for 45-14183 would then need to be changed from "wastewater" to UNNAMED TRIBUTARY TO SNAKE RIVER.

If the intent of the application is to divert only BID water and not be subject to priorities of the Snake River, there wouldn't be any reason for Water District #1 to measure the diversion and include it in its water-right accounting. However, this would significantly lower the gains in the Minidoka-to-Milner reach and would affect many senior natural-flow rights.

Tony

From: Swank, Lyle
Sent: Monday, June 01, 2009 2:51 PM
To: Olenichak, Tony
Cc: Carlsen, Ernie
Subject: SWID Water Right

Tony,

This afternoon I received a phone call from Allen Merritt. Allen thought there would be a lot of protests to a water right 45-14183 filed SWID to pump return flow from the tail end of Burley I.D. to a pond, and pump to SWID. There have been no protests, but he did receive comments from Cindy about water measurement devices needed and he is also concerned about the potential effect on the downstream water supply and timeliness of the pumping vs. the storage of water in the pond.

I would like you to review and provide comments for this application. The comments might need to include data loggers and preventing injury to water rights. The MID return flow issue might also need to be addressed.

Thanks,
Lyle

Merritt, Allen

From: Tuthill, Dave
Sent: Tuesday, June 09, 2009 4:16 PM
To: Swank, Lyle; Merritt, Allen
Cc: Olenichak, Tony; Spackman, Gary; Yenter, Cindy; Burrell, Steve; Baxter, Garrick; Rassier, Phil; Carlsen, Ernie
Subject: RE: SWID Water Right

Allen,

When SWID first told me about this idea last year, my response was "Diverting the water from this location is no different relative to water rights than diverting directly from the Snake River." According to this perspective, I have made some comments below. The bottom line is that I concur with the assessments made by Tony and Lyle.

Dave

From: Swank, Lyle
Sent: Tuesday, June 09, 2009 3:14 PM
To: Merritt, Allen
Cc: Olenichak, Tony; Spackman, Gary; Tuthill, Dave; Yenter, Cindy; Burrell, Steve; Baxter, Garrick; Rassier, Phil; Carlsen, Ernie
Subject: FW: SWID Water Right

Allen,

From Tony's analysis, the proposed SWID diversion application should be treated similar to any other new water right permit for water from the Snake River and tributaries. It would be a valid water right when we are spilling water past Milner and/or filling 2/17/2009 water rights. Any other way appears to me to be a water right expansion, water spreading or both.

DRT: I agree.

This would also complicate the Minidoka Return Flow Credit calculation, and I am probably as surprised as Allen that it was not protested by TFCC and NSCC and others. Up to 60 cfs diversion of BID wastewater is a very significant quantity of water to be rediverted. I agree with Tony that we may need to discuss this with other parties of the Minidoka Credit Settlement Agreement.

DRT: Perhaps this will not change the Minidoka Return Flow Credit if it is treated as a new 2009 water right that can be satisfied during the summer months only with high water or storage.

This application shows the inherent problems of any return flow credit whether a fixed number or a variable.

Lyle

From: Olenichak, Tony
Sent: Monday, June 08, 2009 6:03 PM
To: Swank, Lyle
Subject: RE: SWID Water Right

Lyle,

This application presents an administration dilemma. The point-of-diversion is located on a small tributary (or drain) approximately 1/8 of a mile upstream from where the tributary (or drain) enters the Snake River. The point at which the tributary (or drain) enters the Snake River is located approximately 5 miles downstream from the City of Burley in the Minidoka-to-Milner reach on the south side of the river. The question is: **Should the new SWID diversion described in Application 45-14183 be allowed to divert BID water that otherwise would return to the river without any adjustment to senior water rights that depend on the gain in the Minidoka-to-Milner reach?**

DRT: No -- this is not BID water -- it is a new appropriation.

If the new diversion is not included in the computerized water accounting, then it would appear to me that Twin Falls

(TFCC) and North Side (NSCC) Canals may want an adjustment to the Minidoka Return-Flow Credit. The current agreement requires TFCC and NSCC to transfer 14,500 ac-ft of storage to MID, BID, and AFRD#2 in exchange for the return-flows from MID and BID. Application 45-14183 proposes to divert up to 60 cfs of BID wastewater that otherwise would return to the river. This could significantly affect the amount of gain in the Minidoka-to-Milner reach. However, I don't think Water District #1 can deduct this amount from the storage owed by TFCC and NSCC that's described in the Minidoka Credit Settlement Agreement. All parties described in the agreement would need to agree on a new settlement changing the amount of storage transferred from TFCC and NSCC.

Reductions to return-flows in the Minidoka-to-Milner reach sometimes affects natural-flow rights of other entities in addition to TFCC and NSCC. To protect all senior water rights, the new point-of-diversion and water right would need to be added to the water-right accounting under the assumption that everything diverted by the new SWID diversion would return to the river.

DRT: Yes.

If this were the case, SWID would only be allowed to divert natural flow when the 2/17/2009 priority was being filled.

DRT: Yes.

When the priority was not being filled, the new SWID diversion would be diverting storage.

DRT: Yes.

Note: SWID may also have the option of adding this new point-of-diversion to their existing 77.9 cfs of 2/6/1895 priority (1-00023) limited to a total annual volume of 6,725 ac-ft, and they could also divert their storage or rental from this new point-of-diversion.

DRT: I agree.

If it was decided by IDWR that this new SWID diversion should be added to the Water District #1 accounting to protect all existing senior rights, this would result in the new diversion being measured and regulated by Water District #1, only allowing SWID to divert water under its own priority water-rights or to divert storage water. The source for 45-14183 would then need to be changed from "wastewater" to UNNAMED TRIBUTARY TO SNAKE RIVER.

DRT: Yes.

If the intent of the application is to divert only BID water and not be subject to priorities of the Snake River, there wouldn't be any reason for Water District #1 to measure the diversion and include it in its water-right accounting. However, this would significantly lower the gains in the Minidoka-to-Milner reach and would affect many senior natural-flow rights.

DRT: This is not the case.

Tony

From: Swank, Lyle
Sent: Monday, June 01, 2009 2:51 PM
To: Olenichak, Tony
Cc: Carlsen, Ernie
Subject: SWID Water Right

Tony,

This afternoon I received a phone call from Allen Merritt. Allen thought there would be a lot of protests to a water right 45-14183 filed SWID to pump return flow from the tail end of Burley I.D. to a pond, and pump to SWID. There have been no protests, but he did receive comments from Cindy about water measurement devices needed and he is also concerned about the potential effect on the downstream water supply and timeliness of the pumping vs. the storage of water in the pond.

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Lyle