

Keen, Shelley

From: Keen, Shelley
Sent: Friday, September 11, 2009 4:20 PM
To: 'Terry Scanlan'
Subject: JMM Dry Creek's application for permit

Attachments: App process 59 amend1.pdf



App process 59
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Terry,

As we discussed this morning, I encountered some complications when I started drafting the conditions needed to approve JMM Dry Creek's application (63-32423). Starting from the premise that a municipal water right has the potential to be 100% consumptive, I had a difficult time drafting conditions that meet two particular objectives simultaneously.

The first of the two objectives is to meet the criteria in Amended Application Processing Memo No. 59 (see attached) for approving an application in the area where IDWR presumes ground water is tributary to the Boise River upstream from Star Bridge. In this area, further depletions of ground water would injure senior surface water users. The four criteria for issuing a new permit to divert ground water in this area are:

- **No injury because of adequate mitigation.** In a change-in-nature-of-use transfer, the target would be no increase in consumption beyond your estimated historic irrigation consumptive use of 1,040 AF. (With the addition of Right 63-32266, the figure is more like 1,090 AF.) In this case, since the irrigation is not going away, and the crop pattern under the irrigation rights is likely to change to turf grass or pasture, the target will be no increase in consumptive use beyond 3.5 AF/acre. How can we authorize the diversion of 1764 AF for municipal use, but be sure it's not fully consumed?
- **The total use qualifies as an exempt domestic use under Idaho Code § 42-111.** Not applicable.
- **The use on each lot within the development will not exceed the limits for domestic use set in Idaho Code § 42-111.** There may be some opportunity to meet this criterion. IDWR has issued a number of domestic/municipal permits where the irrigation beyond half an acre per lot is met by separate irrigation water rights. The complicating factor JMM Dry Creek's proposal may be the lots receiving water only from the potable water system. If they will exceed half an acre of irrigation, you would have to demonstrate that the additional irrigation is attributable to United Water Idaho's contribution to the potable water system.
- **The ground water to be diverted is from 200 feet or more below ground surface.** Your ability to meet this criterion likely depends on aquifer characteristics.

The second of the two objectives is to prevent the municipal use from depleting the ground water resource in the Dry Creek area beyond what would be depleted if JMM Dry Creek LLC used all of its irrigation water rights to their full extent. The application materials did not demonstrate that additional depletion of the ground water in the Dry Creek area would not reduce the supply of water to prior right holders. Rather, the "Water Rights Agreement" signed by the parties suggests that the protestants are willing to take a wait-and-see position. It seems like this local water supply question could be addressed in three ways.

- The first way would be to propose a total use that would limit depletion in the Dry Creek area to the amount of water that could be depleted by full use of the irrigation rights – probably 3.5 AF/acre over 404 acres. I don't think this could be accomplished simply by limiting the total irrigation in the development to 404 acres. Exporting wastewater for treatment or treating it and discharging it into the creek would still deplete the local water supply. Therefore, your plan would also have to include returning the unconsumed wastewater to the Dry Creek basin or using the wastewater in lieu of the irrigation and municipal rights, not in addition to them. Ensuring a supply of wastewater for recharge to the aquifer could be difficult, especially if wastewater disposal options become more restrictive in the future.
- The second way would be a larger plan to return unconsumed wastewater to the local aquifer. With this idea, I wonder how to guarantee a sufficient volume of recharge is accomplished, especially if wastewater disposal options become more restrictive in the future.
- The third way would be to rely on the wait-and-see approach in the "Water Rights Agreement." This might work, but it would require IDWR to make a decision about JMM Dry Creek's affect on the Dry Creek basin ground water supply in the future. I'm not sure IDWR has the resources to commit to an interim evaluation like that.

There may be other ways to address some of these issues. I'd be glad to discuss any ideas you might have.

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