

## Memorandum

Date: January 28, 2010

To: File 63-31890

From: Craig L. Saxton

Re: Mitigation Conditioning for License 63-31890

During the review of permit 63-31890 for licensing, a question about mitigation conditions arose.

Question:

This is a GW permit for the LDS church. It appears that the church agreed to mitigate their consumptive use from the well, by giving up any Pioneer Irrigation District water they had through Transfer 71198.

The consumptive use of 63-31890 is mitigated under Pioneer Irrigation District right 63-183 with the following language:

"Mitigation use in the amount of 0.06 is for the consumptive use of water under Right 63-31890."

Currently, permit 63-31890 contains the following language:

"Mitigation for consumptive use of water under this right shall be provided by Right 63-00183 as approved by Transfer 71198."

Because the consumptive use is mitigated by 63-163, is there any need for additional language for future mitigation. For example, Condition 103:

"When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined."

Answer:

In order to process new applications in Western Region, the "request to process" form historically asked applicants to choose to either mitigate their consumptive use at the time the application was filed, agree to mitigate later, or demonstrate how their applied water use was non-consumptive and no mitigation was required.

In this case, the consumptive use was mitigated right up front so there is no need for additional language requiring possible future mitigation.