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January 14, 2010

Re: Resolution of Protest against Voiding Permit 22-7114

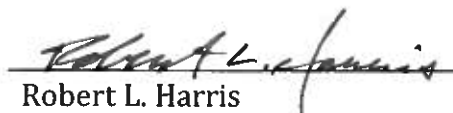
On December 4, 2008 the Department issued an order voiding permit 22-7114 because available information failed to show that the diversion works was capable of diverting more than 12.94 cfs at the time when proof of beneficial use was filed in July, 1980. On January 20, 2009, Robert L. Harris, attorney at law, on behalf of Steveco Canyon Farms, filed a Protest and Petition for Hearing.

Based on information obtained subsequent to the prehearing, Steveco Canyon Farms and the Department reached an agreement to resolve the protest. Both parties agree permit 22-7114 should be reinstated and a license issued authorizing the diversion of 2.94 cfs from Canyon Creek. License 22-7114 will have a condition limiting the total combined diversion rate to 12.94 cfs from Canyon Creek when it is diverted in combination with decrees 22-7069 and 22-7103. The place of use for license 22-7114 should be the same 2725.4 acres as decrees 22-7069 and 22-7103 with a limit of 1720 acres irrigated per irrigation season.

In June 2008, Michael Holladay, Senior Water Resource Agent, measured Steveco's pumping station on Canyon Creek and determined it has a diversion capacity of 21.65 cfs. Because the maximum combined diversion rate for decrees 22-7069 and 22-7103 plus license 22-7114 will only be 12.94 cfs, it is understood that when the system is pumping, any difference in the diversion rate and the quantity allowed under these three water rights along with any natural flow available under decrees 22-195 and 22-196 (from Canyon Creek Canal Co.) must be covered by another water right, which could include Fremont-Madison Irrigation District storage water. If the Fremont-Madison storage water is not available, then any restriction in the volume of storage water available to Steveco Canyon Farms must be reflected in a real time reduction in diversion rate or reduced volume at the pumping station. However, presuming that such storage water and Canyon Creek Canal Co. water is fully available and presuming it is equal to or exceeds the difference between 21.65 cfs and the quantity deliverable in priority under water rights 22-7069, 22-7103 and 22-7114, Steveco Canyon Farms can divert the full 21.65 cfs at its pumping station. It is therefore not necessary for Steveco Canyon Farms to possess natural flow water rights that cover the full 21.65 cfs diversion rate in order for them to divert this amount.



Ernest Carlsen
Water Resource Program Manager



Robert L. Harris
Attorney at Law