

MEMORANDUM

Date: October 1, 2009

To: Water Right Files 74-56 and 74-1103

From: Jeff Peppersack 

Re: Phone Conversation with James Whittaker Regarding Transfer

I spoke to Mr. Whittaker about his proposal to file another transfer to move the point of diversion and place of use under the water rights referenced above. His rights authorize irrigation in the upper reaches of Big Timber Creek and an unnamed stream. An earlier transfer (5244) was denied by final order of the Department due to enlargement and injury issues. The order found that the original place of use would continue to consume water under a portion of the acres due to natural seeps and subbing. In addition, the order found that moving the point of diversion downstream would cause injury to other users because the return flows that are relied upon by existing users would no longer be available for their diversion. Mr. Whittaker filed another transfer in 2004 (transfer 71080) for essentially the same purpose. The transfer was initially approved and then rescinded to consider the issues that were identified in transfer 5244. Mr. Whittaker ultimately withdrew transfer 71080.

In our conversation, Mr. Whittaker disputed findings from the final order for transfer 5244. I told Mr. Whittaker that the Department could only consider approval of a similar transfer if the proposal addressed the injury and enlargement concerns. We discussed the possibility of reducing acres to be transferred to ensure enlargement would not occur. In addition, we discussed the possibility of transferring only the consumptive portion of the transferred acres to ensure flows available to other users would not be diminished. Mr. Whittaker indicated that the result would not allow sufficient water for his proposed development. He said he would need to consider his options.