

Lester, Steve

From: Peppersack, Jeff
Sent: Tuesday, March 29, 2005 5:55 PM
To: Lester, Steve
Subject: FW: Take 2 - FW: SRBA coordination for transfer of 63-9276

One more item I forgot to mention is the change in point of diversion from geothermal to cold water wells. Is this a separate aquifer or are they connected in some way? I think that will need to be addressed.

Jeff

-----Original Message-----

From: Peppersack, Jeff
Sent: Tuesday, March 29, 2005 5:51 PM
To: Lester, Steve; Tuthill, Dave
Subject: FW: Take 2 - FW: SRBA coordination for transfer of 63-9276

Steve,

I think the forfeiture question is an appropriate question, but I'd like to clarify the dates for consideration. I think we need to be looking at the period from licensing to the date the claim was filed (1982 to 1989). So, if the right was used in 1985, for example, then forfeiture would not be a question because there would be no five year period of non-use. Since the City of Boise did not acquire the right until 1995, we would need to know if Boise Water Corp. discontinued use of the right in 1984 or earlier.

Your other question about describing the type and place of use is also a good question. We need to keep in mind that just because the City is a municipality it doesn't mean they are automatically considered a municipal provider (must provide water for municipal purposes within a service area) and it doesn't mean that all their uses of water should be described as municipal (contemplates multiple users within a service area?). The use they are proposing has a very limited boundary, and is not part of a greater service area with a common distribution system. I think the use would be more accurately described as irrigation/recreation/aesthetics with a specific place of use.

I realize that the definitions in 42-202B are subject to different interpretations, especially when each definition is separately applied. Dave, I would be interested in the AJ perspective since municipal rights were the subject of much discussion for City of Pocatello and others.

Jeff

-----Original Message-----

From: Lester, Steve
Sent: Monday, March 28, 2005 11:57 AM
To: Peppersack, Jeff
Cc: Tuthill, Dave
Subject: Take 2 - FW: SRBA coordination for transfer of 63-9276

Jeff:

I'm sorry ... forgot to put your name in this so it only went to Dave at first.

Steve

-----Original Message-----

From: Lester, Steve
Sent: Monday, March 28, 2005 11:53 AM
To: Tuthill, Dave
Subject: SRBA coordination for transfer of 63-9276

Dave and Jeff:

I am seeking your help with parallel processing of this backlogged transfer application in time for the Director's Report for Ada County. The claim is bar-coded to Dave. The application was advertised without protests prior to advent of parallel processing. All the remains is approval process coordinated with State Office. Application information has been scanned to PowerDocs - see Transfer 69327 if necessary.

For purposes of this email, all you probably need to review is transfer page 1, map & applicant's remarks addressing more than 5 years of non-use ... see attached.

This is a municipal license claimed in SRBA. Previously owned by United Water, it was conveyed to City of Boise about 1995. Transfer includes sufficient ownership change information. License covered the Gamble Well behind Camels Back Park.

City filed transfer to move the right to the cold water well on Warm Springs Golf Course (same well as in Dan Nelson's recent conversations with Dave & Shelley about licensing Quarry Park irrigation permit for municipal use). Transfer lists municipal use but for a discrete supplemental irrigation plus recreation/aesthetic P/U at the golf course.

My guess is that claim is poised for recommendation for municipal use within United Water service area to reflect 1987 use.

What about validity of the right? I don't have any information about b.u. in the 1980s beyond the following comments: Licensed 4/1982, commencement 11/1987, claimed 6/1989. Presumed valid upon licensing, 5 years after licensing is 5/1987, forfeiture tolled by date claimed. Need information about b.u. between May & November 1987 to support SRBA recommendation? That sounds pretty picky but guess that is technically correct for transfer processing standards.

City argues forfeiture n/a for municipal use. Not sure that is a foregone conclusion. Municipal use can be defended against forfeiture based on a right that incorporates approved *reasonably anticipated future needs (rafn)* in a *planning horizon* (like United Water seeks with IMAP). But 63-9276 is not such a right - it's a "regular" municipal right. If the applicant's argument were correct, United Water would not need IMAP to protect the total quantity of its water rights over a 50 year planning horizon.

I recall some discussion with Paul Philbrook in mid-1990s about forfeiture regarding a prolonged period of non-use when UW & City were negotiating over this right. The discussion was prior to adoption of the tolling of forfeiture by claim so we were talking about use in the 1990s, not the 1980s. That's probably why City included the forfeiture discussion in the application. However, I still am seeking clarification from City about when/how long the period of nonuse occurred to make the application more clear.

So it appears to come down to determining:

- 1) Does the right remain valid through late 1987 for purposes of making a SRBA recommendation?
- 2) Assuming yes for #1, how should P/U be described in transfer approval to be consistent with how this municipal right should eventually be recommended for the City in SRBA? Municipal vs. non-municipal? Service area (don't enter P/U) vs. just golf course (do enter P/U)? How does the fact that City does not have and probably will not have a distribution system for a broader service area factor into this? Seems like that should matter but does it?

Would you mind discussing this between the two of you so we can arrive at a solution consistent with parallel WR & AJ processes? Based on your agreed-upon reply, I can wrap up the transfer details ... review memo & draft approval ... for continued parallel processing. This would allow transfer approval in time for Ada County Director's Report.

Thanks for your help. Please let me know if you need more information.

Steve



63-9276
transfer.pdf