

Lester, Steve

From: Tuthill, Dave
Sent: Friday, April 29, 2005 5:00 PM
To: Peppersack, Jeff; Lester, Steve
Cc: Hamlin Nygard, Susan; Spencer, Nick
Subject: RE: Take 2 - FW: SRBA coordination for transfer of 63-9276

Gents, I finally took some time to review this matter. Here are some thoughts:

1. I understand your comment, Steve, that "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." However, we now consider the law of the case (in the SRBA) to be dictated by an Idaho Supreme Court case, *Beus v. City of Soda Springs* (1940). This case provides a powerful protection against forfeiture for municipalities. This, and a western-states-wide great and growing cities doctrine, were the bases for Karl's direction for us to not find forfeiture on city-held municipal water rights. Thus, we will be recommending this right to be valid.

2. You are right, Steve, that the POU for this city is not city-wide. It appears that we should recommend the place of use in this transfer as requested.

I am open to other takes on this information. I have the SRBA claim in my office. Steve, thanks for preparing this one prior to the Director's Report -- I would like for our recommendation to match the transfer.

Dave

-----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.