

Warner, Roger

From: Spackman, Gary
Sent: Wednesday, September 06, 2006 10:01 AM
To: Tuthill, Dave
Cc: Carlsen, Ernie; Swank, Lyle; Peppersack, Jeff; Warner, Roger; Holliday, Michael; Carlson, Dave
Subject: RE: Transfer of New Sweden right to Blackfoot

Dave,

I received a telephone call today from Senator Stanley Williams in the Blackfoot area ((208) 684-4932). He is inquiring about the transfer of the New Sweden water right for Jensen's Grove. I have spoken to Senator Williams several times in the past and found him to be a very affable and even spirited person. As an historical footnote, however, Williams started calling me, at the urging of Ron Carlson, shortly after the application for transfer was filed.

As I read your responses to my email below, IDWR should expect to receive an executed copy of the agreement. I've not yet seen anything here at the state office.

In addition, Eastern Region was supposed to gather delivery records. I understand that Lyle Swank requested information from Steve Burrell and Steve told me that there is no record of the right having been delivered by district 01. If the transfer is limited by the historical use, we must agree on some other method of analysis.

Finally, Eastern Region was instructed to "work up ... [a] recommendation in view of the information in the file, and in view of the concerns expressed by Gary herein." You stated: "When this is completed, let's review the information via conference call/NetMeeting, with regional staff, Water Allocation Bureau staff and myself. I see this one as a high priority."

I think we should attempt to meet and discuss the application for transfer prior to your departure. Do you have some time in the next couple of days? I or someone needs to call Senator Williams back.

Gary Spackman

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

From: Tuthill, Dave
Sent: Monday, August 21, 2006 5:45 PM
To: Spackman, Gary
Cc: Carlsen, Ernie; Swank, Lyle; Peppersack, Jeff; Warner, Roger; Holliday, Michael; Carlsen, Ernie
Subject: RE: Transfer of New Sweden right to Blackfoot

Gary, I have responded below.

Dave

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

From: Spackman, Gary
Sent: Friday, August 18, 2006 10:03 AM
To: Tuthill, Dave
Cc: Carlsen, Ernie; Swank, Lyle; Peppersack, Jeff; Warner, Roger
Subject: RE: Transfer of New Sweden right to Blackfoot

Dave,

I have a number of questions about this proposed agreement and the underlying application for transfer:

1. The agreement is unsigned. We will need an executed copy. I assume, from what Jerry wrote, that the document is being circulated for signature and will be submitted.[Tuthill, Dave] Yes, that is my understanding.

2. As you pointed out, I do not believe the conditions can be written into the transfer verbatim. As an example, seeking the consent of "the COALITION" for a subsequent transfer several decades after the approval date would be difficult.[Tuthill, Dave] See Jerry's response attached

3. The agreement does not address the enlargement issue we must consider. You said earlier that Ron

Carlson's summary of delivery cutoffs of a right bearing the priority date of the right proposed for transfer was sufficient to justify publication. Is it now sufficient to justify approval? For changes in nature of use, the transfer memo and precedent require that we limit the right to historical diversion and use. I still believe District 01 should provide delivery records of the right sought to be transferred or, if the right was delivered, but District 01 did not record the deliveries, show what water in various years would have been delivered (I suppose replacing storage) under the water right. [Tuthill, Dave] Yes, Lyle, please provide the records of delivery to New Sweden for analysis by S.O. staff.

4. What is the status of the adjudication review? Is the adjudication willing to recognize the existence of the water right? Should the transfer be delayed until the adjudication process is complete? I thought this is what we were doing recently. Holding the transfers for the adjudication review. [Tuthill, Dave] Ernie and Michael, it is my understanding that the preliminary recommendations are prepared for New Sweden. Please provide the numbers of these water rights for analysis by Roger relative to this transfer application.

The regional office should address the issues, particularly the conditions inclusion question and the enlargement question, prior to packing the application for transfer and sending it to the state office. Perhaps we should meet and discuss the issues with the appropriate IDWR staff. [Tuthill, Dave] Lyle and Roger, please work up your recommendation in view of the information in the file, and in view of the concerns expressed by Gary herein. When this is completed, let's review the information via conference call/NetMeeting, with regional staff, Water Allocation Bureau staff and myself. I see this one as a high priority.

Thanks, Dave

Gary Spackman

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

From: Tuthill, Dave

Sent: Thursday, August 17, 2006 5:14 PM

To: Rigby, Jerry (IWRB Member)

Cc: Carlsen, Ernie; Spackman, Gary

Subject: FW: Transfer of New Sweden right to Blackfoot

Jerry,

Congratulations for your efforts in developing a settlement to the objections on this transfer.

At first read the elements of the settlement appear to be reasonable. I am forwarding this document to Gary Spackman with the request that our standard staff analysis be prepared regarding this proposed transfer.

I have one question for you at this time. The agreement contemplates that the elements of the agreement will "be included in the water right ("Conditions") after transfer." Normally an agreement of this type can be referenced in our approval, but the conditions are included only if they would normally be required by IDWR. Is it a problem to have the agreement referenced in its entirety, with our conditions being more standardized and likely somewhat different?

Dave

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

From: Carlsen, Ernie

Sent: Thursday, August 17, 2006 4:56 PM

To: Tuthill, Dave
Subject: FW: Transfer of New Sweden right to Blackfoot

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

From: Jerry Rigby [mailto:[Tuthill, Dave]]
Sent: Thursday, August 17, 2006 1:22 PM
To: Carlsen, Ernie
Subject: Transfer of New Sweden right to Blackfoot

Ernie, I forgot to get with you and call Dave Tuthill re: the transfer. How would you propose contact him? Do you want to call him first and then let me know if I need to do anything. Travis tells me to expect the stipulation for withdrawal of the protest in the mail.

I'm attaching the stipulation in case that helps to nullify any concerns Dave might have about the use of this water right.

Thanks

Jerry