

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: June 30, 2006

RE: Approval of Application 78-12245

This application for a minor amount of water for limited lawn irrigation created quite a stir in the local community. The Elk Creek-Little Elk Creek area continues to be a hot spot in Western Region, combining old and new conflicts – Pitts v. Baum, Al Givens, recent complaints against illegal diversions and so on. Future filings for surface water in this area should be closely scrutinized.

The recent prehearing conference for Application 78-12245 lead to a conditional withdrawal of protest (please review settlement agreement attached to amended application). The agreement is a variation of the “6/15 cutoff” idea used in other areas. The applicant can divert water to fill an off-stream pond outside of the irrigation season. The pond will be sized to provide enough water, including losses, for up to ½ acre of lawn irrigation.

The settlement was almost derailed upon the filing of the amended application discussed in the settlement. Based on the prehearing conference, the amended version should include a pond at an excavated site instead of one with a dam. Adding a dam would imply storing miscellaneous runoff in addition to water from the creek – an expansion not covered in the original filing or part of the settlement. My 6/20/06 letter to the parties highlighted this problem. The applicant decided to use a site without a dam based on his reply received 6/26/06 (returned the amended application without a cover letter). He crossed out all information in application item 6b. The proper step would have eliminated the reference to a dam but kept a 2 af storage capacity in item 6b. It is acceptable to treat the application as if it stated that.

The applicant must use a control valve on the 4” mainline to shut off the diversion during the irrigation season. This must be clearly visible to neighbors (right-of-way along creek for convenient checking, according to protestants). The applicant must install another valve close to the P/D for a 5-gallon bucket measurement to reassure folks that only 0.02 cfs is being diverted. These controls and the irrigation season curtailment should remain in place unless replaced by watermaster controls in the future. Regulation under a water district can replace the “6/15 cutoff” approach outlined by the settlement agreement.

The applicant installed a 4” diversion pipeline. It remains disconnected from the creek pending application approval. The protestants unexpectedly did not make much of an issue over the size of the pipe at the prehearing conference. Additional uses from the pipeline are expected with more filings eventually (one pending at Western, not data entered yet). The 4” pipe can be used if properly regulated.

The application was amended 6/1/06 as part of the settlement process. The amended version does not require re-advertising. The priority was advanced due to the slight expansion in the amended version (season of use, total amount of water). The 6/26/06 return of the amended application does not affect priority, fees or legal notice issues.

The application could be described as irrigation instead of domestic, but it hardly seems worth it to worry about that. Allow the flexibility for domestic use under the “42-111” umbrella.

The 4 af pond capacity is based on the diversion volume for about ½ acre of lawn in the area plus pond losses during warmer months (1/2 acre needs about 1.5 af diversion volume, double that for assumed losses, add a bit for comfort and call it 4 af).

Conditions of approval are suggested below. Condition #7 derives from condition #4 in Yeamans lapsed permit 65-22766 (inactive water district, cutoff date per hearing). Implementing the suggested conditions should be helpful as other filings are considered in the future.

Application 78-12245 Proposed Conditions of Approval

- 1) Standard conditions.
- 2) One year to file proof.
- 3) No right-of-way, easement or trespass.
- 4) Condition 121 for possible future mitigation – normally might not apply to “42-111” use but probably good to include here since clearly consumptive and Little Elk Creek is probably a good fishery habitat.
- 5) Subject to IDFG fish-screening requirements – same reason as above.
- 6) Storage includes fill/maintain pond located away from any naturally flowing stream or any drainage (cannot build on-stream pond). A dam is not authorized as part of the storage system.
- 7) Condition 01J for controllable/measurable diversion works but modified as follows per settlement agreement (lockable diversion n/a at this time):

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and adjustable diversion works that are acceptable to IDWR. These controls shall include a main valve on the pipeline plus a faucet valve on the pipeline suitable for a 5-gallon bucket measurement. The controls shall be close to the point of diversion at the creek for convenient access and inspection by parties to a protest settlement agreement and to their successors in interest. The purpose of these controls is to ensure that only 0.02 cfs (9 gpm) is diverted during authorized periods under this right.

- 8) The right holder shall not divert water from the creek from July 1 through October 31 during any period when a watermaster is not regulating diversions of water from Little Elk Creek. Diversion from the creek shall be subject to watermaster approval regardless of any date restrictions during any period when a watermaster is regulating diversions from this source.

9) Water can be withdrawn from the storage pond to irrigate up to ½ acre of lawn from April 1 through October 31 (standard irrigation season for the local area).

NOTE

**The preliminary order should also be sent to the group protestants c/o Joel Chambliss.
The protest information needs to be updated again upon the final order.**

The application file has been scanned to PowerDocs to facilitate State Office processing.