

Lester, Steve

From: Peppersack, Jeff
Sent: Tuesday, January 24, 2006 1:07 PM
To: Lester, Steve
Subject: RE: Transfer question

Steve,

Is a transfer required? Two questions come to mind. The first; is it a replacement for an existing diversion in the same QQ? It replaces the existing diversion for the split portion, but the old diversion remains in place for the remaining portions of the right. So that's not very clear in this case. The other question; is a point of diversion being added for a water right? The transfer memo (pg 2) indicates that a transfer is required if a point of diversion is added for a water right. A point of diversion is being added, but not for the split part. That's also not very clear in this case.

We could interpret our guidance to mean any time a diversion is added to any source, where the old diversion will continue to be used by the same or other rights, then a transfer is required. That provides for the best protection to existing water rights through the application process and potential conditions to the approval. We could also interpret our guidance to mean any replacement for the specific right, within the same legal description, would not require a transfer (even if it results in an additional diversion on the source). As you noted, injury is likely not an issue in this case.

So my conclusion is that the transfer memo does not address this one very well. I think our past practice has been that any new diversion (where the old one is not being abandoned) should require a transfer. I'm pretty sure we've processed transfers for similar ground water situations, but I don't know that we necessarily required them. Perhaps the owner is best protected by filing the transfer to ensure he won't be contested at some future date.

I think either way is ok in this limited circumstance, but the owner should probably be allowed to file the transfer if he wants the benefits of an approval to ensure he is not contested later. If you decide the transfer is not required, I don't see a need for F06 and I think it could be dropped from the AJ recommendation. Past discussions with AJ staff seemed to indicate that the condition is not a necessity, but could be helpful in some circumstances.

Jeff

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

From: Lester, Steve
Sent: Tuesday, January 24, 2006 12:07 PM
To: Peppersack, Jeff
Subject: Transfer question

Jeff:

I received an application for transfer for a p/d change on the Snake River near Hammett. The right is aj recommendation 2-7172C for Newton. This was part of an older approved transfer in which multiple splits of the license used the same pump - as noted in the current aj recommendation for Newton (see conditions of approval). The applicant was told by SO aj staff that he needed to file a transfer to codify his separate pump that has been in use for the past 10 or 11 years (post-1987). This is somewhat referenced in the 1/12/06 database comment for Newton's recommended right.

Attached is the map from the transfer application (color map but scanned in b/w). The NWSW is labeled. The NESW in which the right is located is not labeled, but the 1/4-1/4 lines are clearly shown. The p/u shape corresponds to the tax lot. The recorded p/d is seen slightly to the west of the p/u. The proposed p/d is seen about midpoint along the southern border of the p/u. I plotted the 10-acre tract lines on the original application map. The proposed p/d falls within the same 10-acre tract recommended for the right (a very minor part of the new p/d circle crosses into the adjacent 10-acre tract but almost all of the new circle remains in the tract already recorded in the right).

The new point, in use for about 10 years, occurs entirely on the applicant's property. The supply of water is sufficient to prevent injury to other diversions. The p/d portion of the record is not changing. The only item changing in the aj recommendation is condition F06 about shared rights with same p/d. Right 2-7172C should not be subject to that condition since it uses a stand-alone pump.

The transfer memo does not require a transfer in this situation, as far as I can tell. Conditions of approval are not elements subject to the scope of 42-222.

My conclusion is that a transfer is not required in this case. A couple questions for you:

1) Do you agree/disagree?

2) If you agree, what mechanism should be used to delete condition F06 from this one? Seems like there should be a way to do that in the recommendation process short of a formal "change filing."

Kind of an unusual situation. Thanks for your help on this one.

Steve

<< File: 2-7172C shape.pdf >>