

Spackman, Gary

From: Luke, Tim
Sent: Wednesday, November 23, 2005 2:19 PM
To: Spackman, Gary
Subject: WD29 Transfer - E. Bob Smith Ck

Gary,

I spoke with Steve Hebdon today regarding Transfer 71982, which moves several water rights from the Portneuf River to East Bob Smith Creek, a tributary to the Portneuf upstream of the point of diversion on the Portneuf. Steve provided me answers or updates to the questions we discussed earlier including:

- The rights sought to be moved under the transfer are indeed rights diverted to the Cutler Ditch, whose heading is at the old wood dam on the Portneuf along the highway below the steel bridge and just downstream of the McCammon Ditch Co. Diversion (you may remember the wood dam called the Falls - it is very visible from the highway as you head east from McCammon to Lava Hot Springs). Steve confirmed that the Cutler Ditch is still being used and is the point of diversion for the rights in question. Steve also confirmed, as I recalled, that owners of these rights and several other rights on the Cutler Ditch had investigated changing the point of diversion over to either McCammon Ditch Co or Portneuf Marsh Valley Co Canals and redivert via gravity pipe to the POU, but this has never been done and Steve is not aware of these rights being diverted anywhere else but Cutler Ditch (except that the two rights in the transfer were moved to East Bob Smith Creek the last two years under temporary drought transfer approvals). Therefore, it appears the point of diversion for SRBA partial decrees 29-13399 and 29-13401 is not correct (the correct POD for Cutler ditch is 9S 37E, Sec 21, L1, SENE).
- Steve said the condition of Cutler Ditch is not good. The users do a poor job of maintaining it. There will still be two rights remaining on Cutler Ditch if this transfer is approved, including an 1868 priority right (former Indian right) for 1.26 cfs. Steve says he can still deliver the 1.26 cfs to the Cutler after the transfer. Steve said it will actually be easier to deliver this 1.26 without the additional 0.72 cfs under 29-13401 (1868 priority right), because Steve will not have to maintain a higher level of water at the old wood diversion dam for the total 1.98 cfs. The maintenance of this higher level required further adjustments to the McCammon Ditch Co. headgate upstream and has always been a hassle and sore point with McCammon.
- Steve believes that under the temporary transfers the past two years, at least 44 acres of land under the Cutler Ditch have been dried up, but he has not mapped out or studied the POU acres closely and is not 100% certain that the acres dried up include the same 44 acres identified under the rights and transfer.
- Andrus' diversion on East Bob Smith Ck is a ways up the creek, towards the upper end of the creek. Steve said when the junior rights are deliverable at this location, the diversion can dry up the creek for about 3/4 of a mile. When he regulates or curtails the junior rights at that location, he does not really observe any gain toward the lower end of the creek. Steve believes the water sinks into the creek bottom at or below the diversion. Steve said there are some springs and seeps on the lower end of the creek that keep that end of the creek a live connection to the Portneuf. Steve does not feel that the transfer of water from the river to East Bob will have much effect on the creek or the river, and he said he had always been concerned about curtailing the Andrus' junior rights on East Bob because it usually seemed like a futile curtailment, with no additional benefit to the river.
- Steve mentioned that Andrus purchased rights 29-13399 and 29-13401 only, and not the land to which the rights are appurtenant. I am a little concerned about the status of the land from which the rights are being moved, and whether that land will continue to be irrigated, which of course would be illegal. This is not a reason for denial, but may warrant certain conditions or warnings.

Let me know if you have any further questions or if I need to contact Steve for more information.

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