

Keen, Shelley**TO FILE 37-8821**

From: Tuthill, Dave
Sent: Friday, July 22, 2005 1:53 PM
To: Shaff, Don; Keen, Shelley
Cc: Peppersack, Jeff
Subject: RE: Adjudication Claim 37-21114

I, too, agree with the direction in which you are heading, Shelley, requiring an amended claim but not a transfer. This technique provides a written claimant-approved basis for making our recommendation without requiring a transfer.

Dave

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

From: Shaff, Don
Sent: Thursday, July 21, 2005 11:10 AM
To: Keen, Shelley; Tuthill, Dave
Cc: Peppersack, Jeff
Subject: RE: Adjudication Claim 37-21114

Yes, the claim could be amended and likely should be to assure the cumulative quantity to date is reflected in the recommendation of the right. However, I don't think overlooking the extent of mitigation coming from a given right diminishes the obligation of the mitigation contributor to the mitigation benefactor and to the State.

I, too, lean against a transfer for a right both as a matter of administrative efficiency and , out on a limb, legal requirement. The nature of use does not change per se. We make a change in the record for our tracking and administrative purposes. The right holder like 37-21114 could irrigate the sacrificed land, if the holder of the new right(s) operating only with mitigation water was not to use the water in a given year. I think this contributes to why we leave a POU polygon (shape) for the mitigation at the POU of the irrigation for the contributing right.

Don Shaff
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don.shaff@idwr.idaho.gov

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

From: Keen, Shelley
Sent: Wednesday, July 20, 2005 5:11 PM
To: Tuthill, Dave; Shaff, Don
Cc: Peppersack, Jeff
Subject: FW: Adjudication Claim 37-21114

Dave and Don,

See below for a question posed by Christian Petrich and for my response to him. Do you agree that Claim 37-21114 could be amended to show that an additional 0.60 cfs (and 23 acres) are dedicated to mitigation, or would a transfer be required because there was no other administrative process and because the "change" occurred after 1987? The approvals for Permit 37-21177 and 37-8821 are very similar, except that in one case we did not say we would change Claim 37-21114, and in the other case we did.

7/22/2005

As a related note, Jeff and Gary are drafting a memo that okays changing rights to show mitigation as a purpose without a transfer if the mitigation is accomplished by non-use of water (consisten with the change to 42-223), but the memo is not done yet. Jeff indicated that Karl didn't seem to have a problem with the concept in the past, and it has been employed several times now, with no public dissent, to my knowledge.

Shelley

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

From: Keen, Shelley
Sent: Wednesday, July 20, 2005 4:58 PM
To: 'Christian Petrich'
Subject: RE: Adjudication Claim 37-21114

Christian,

A 0.08 cfs portion of Claim 37-21114 was changed to mitigation through the permit approval process for Permit 37-21177. Another 0.60 cfs of Claim 37-21114 is dedicated to mitigation for Right 37-8821, but it was not changed to mitigation because Right 37-8821 was established a few years ago, as our thinking about mitigation was evolving. Because we have taken the position at IDWR that a transfer is not required to change some of a right to mitigation if the mitigation is accomplished by non-use of water, then I think amending the SRBA claim should be sufficient to change the record. However, I want to be sure the Adjudication Bureau staff agree. Therefore, I will pursue the question a bit further and get a more definitive answer for you soon, I hope.

Shelley Keen
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-----Original Message-----

From: Christian Petrich [mailto:CPetrich@spfwater.com]
Sent: Wednesday, July 20, 2005 9:39 AM
To: shelley.keen@idwr.idaho.gov
Subject: Adjudication Claim 37-21114

Shelley,

Adjudication Claim 37-21114 is being used for mitigation at Woodside School and the Hailey High School and Woodside Elementary School. There is a note in the Conditions for Approval that states "The use remains listed as irrigation, as a transfer of nature of use has not been filed as of this date - VH." Would you recommend that we file a transfer of nature of use at this time for the acres being used for mitigation, or wait until the adjudication is complete?

Regards,
Christian

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7/22/2005

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