

Graves, Lori

From: Lester, Steve
Sent: Thursday, April 24, 2003 9:40 AM
To: Peppersack, Jeff; Spackman, Gary
Subject: Primary or Secondary Rights?

Gents:

This note concerns 3 ground water licenses owned by Ham: 63-8796, 63-9972 & 63-10566. The rights use the same well but serve separate acres for a turf farm. The first of those was discussed in my 4-11-03 memo regarding use of 63-8796 to mitigate for approval of Application 63-12070. Jeff, it appears you have that application file now. This email augments my memo somewhat. The email also seeks SO & Western agreement on the issue of whether the 3 licenses are primary or secondary rights. Agreement is necessary because Ham intends to sell pieces of the rights to mitigate other things, either in transfer applications or simply by retiring irrigation. Of course, transfer applications will require more rigorous analysis than non-transfer mitigation plans. But the primary/secondary answer should be the same for either approach in future filings based on portions of these 3 rights.

Jeff Fereday represents Ham and called yesterday seeking dept. confirmation in the primary/secondary issue. He said he met with Norm some time ago and reported that Norm apparently agreed all 3 rights were developed as primary ones based on the information he was provided. I doubt there is any written record of that meeting.

Here's the background:

63-8796 & 63-9972 were originally filed as apparent secondary rights to Settlers Canal water. 63-10566 was filed as stating no other rights were used, but it also sought to replace lapsed 63-8410. The latter was originally filed as apparent secondary right to Settlers Canal water.

Field exams of the 3 rights in question suggest Settlers water was present and perhaps used to a limited extent although details are inconclusive. Exam 63-10566 states canal water presented maintenance problems for the operation ("clogging"). The first 2 licenses were issued with the standard 0.02 cfs & 4.5 afa per acre when combined with all other rights. 63-10566 was licensed with a condition requiring full use of appurtenant surface water prior to using ground water.

Ham filed an affidavit with Western (presented in the spiral bound notebook replete with tabs format, the distinctive Givens Pursley touch). Ham states the 3 rights provided the only water to the turf farm. Says surface water presented too many problems to run a successful turf farm so relied solely on ground water. That is consistent with what other turf farm owners have said over the years. The land was irrigated within 5 years prior to filing SRBA claims.

I think we can clearly conclude that 63-8796 & 63-9972 can be considered primary rights under these circumstances. What about 63-10566? While it appears to be clear violation of the surface water condition of approval, the historic practice probably established a primary right. I recall other situations where we have reached a similar conclusion (general recollection without a specific precedent). We seem to "forgive much" as people present their cases. I think we can safely say 63-10566 is a primary right under these circumstances.

I seek your thoughts so we can proceed on a unified front as additional filings based on these rights trickle in. We already have 1 or 2 more filings recently received, and Fereday mentioned more on the way. Fereday is concerned that different IDWR offices will reach different conclusions and hopes to avoid that. **Please reply by Tuesday, April 29.** Western has a wr processing meeting early the next day, and it would be ideal to reach agreement by then.

Jeff, can you tell me how many acres in what qq were proposed under 63-8796 to mitigate Application 63-12070? I want to keep a record of the licenses as they are proposed for mitigation &/or transfer and neglected to record that information for 63-12070.

Thanks for your thoughts on this. Let me know if you need more information.

Steve

SCANNED
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