

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, May 18, 2004 11:26 AM
To: 'TMSCANLAN@aol.com'
Subject: RE: arbor-scanlan.doc

Hello Terry,

Well the answers are complicated as always. You can request anything you wish on a claim. However, I would think that since the fire protection didn't exist on the original license, that it would be an extremely hard to include it on the claim. If I were the adjudication agent, I wouldn't allow it, but stranger things have happened. I would leave the fire prevention with the permit that is currently being advertised. If you include fire protection on the claim, we would need to re-consider the permit, since its only use is fire prevention. You can use every water source under your control to fight an existing fire, so I wouldn't complicate things with the fire prevention on the claim.

On a nicer note, I would not hesitate claiming or recommending the 22.3 acres if you can prove that they are irrigated. You are claiming irrigation that was originally licensed for 40 acres, so you can reduce the 40 acres to any amount you wish. I would explain that you went with the 22.3 acres due to better mapping technology, and explain the difference between the claim and second license. However, you do need to remember that we are going to be looking at the 1987, 1994, and 2000 aerial photos to confirm your calculations. If they don't match, we will go with our maps.

The diversion rate for the irrigation may be a little more gray in nature. Golf courses, schools and similar type entities have been given the ability to divert up to an inch and a half (0.03 cfs) per acre if they can show a need to irrigate only at night or part time. The limiter would be the well capacity, rate per acre, or the original licensed rate. The original licensed rate was 0.80 cfs and the well capacity at the time of the new license was 0.47 cfs, and the rate per acre would be 0.67 cfs for the 22.3 acres. So, you are probably going to be limited by the well capacity or 0.47 cfs. You could try and prove that the field exam that determined the well capacity was wrong, but it would need to be very convincing evidence to dispute an existing license. The method used to calculate the flow rate was done by a measurement of the sprinkler system, so theoretical calculations wouldn't work (measurements trump theoretical). I would ask that you show me a measurement at the time of licensing of the second right to dispute the field examiners findings. A measurement of the current system wouldn't work unless you could show that everything is exactly the same as they were at the time of licensing of the second right. I can almost bet that the pump has been rebuilt. My guess would be that you would be limited to the 0.47 cfs. You would still need to show the need for more than the standard inch per acre, since 0.47 cfs is over an inch per acre for 22.3 acres.

I hope this helps make things a little clearer. It is a very strange situation, and I feel there is wiggle room in several areas. I also have given you my opinions of the situation, which can be overruled by several individuals along the way. The best I can tell you is to put something on paper and see what happens.

Daniel A. Nelson
Senior Agent
Western Region
Idaho Department of Water Resources

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

From: TMSCANLAN@aol.com [mailto:TMSCANLAN@aol.com]
Sent: Tuesday, May 18, 2004 9:36 AM
To: dnelson@idwr.state.id.us
Subject: Re: arbor-scanlan.doc

Thanks, Dan.

5/18/2004

On a different subject, I am getting ready to send an amended transfer and an SRBA claim for the senior irrigation license to Vallivue School District for signature. Our ArcView look at the irrigated area at the School found 22.3 irrigated acres (compared to 19.4 on the junior license). I think the ArcView is more accurate, and there is nothing to suggest that they have increased irrigation since the junior license exam. Therefore, I plan to claim 22.3 acres on the senior right (the right was licensed for 40 ac). My question has to do with diversion rate. Should I claim the diversion rate listed on the junior license (0.47 cfs) or the diversion rate based on 0.02 cfs per acre (0.45 cfs). The senior right was licensed for 0.80 cfs, so there is plenty of diversion rate available. Since they like to irrigate at night, I would like to have as high of a rate as possible, but I don't want to excessively complicate the matter just to get an extra 0.02 cfs.

Also, the school has used the irrigation well for fire protection purposes for many years. Should I list fire protection on the SRBA claim also (i.e., an accomplished transfer)? Or maybe I should list fire protection on the junior license (i.e., the transfer), or maybe not bother with fire protection at all (since we have a pending permit application).

What do you think?

Terry

Nelson, Dan

From: TMSCANLAN@aol.com
Sent: Monday, May 10, 2004 7:01 PM
To: dnelson@idwr.state.id.us
Subject: Re: Vallivue School

Dan -

Thanks for a very detailed and thoughtful response. I know it takes time to provide that level of detail, and I want you to know it is appreciated. I will forward you email to the school with my recommendations. I am currently thinking that the combined transfer is the best approach. Recognizing that none of the options will meet the project schedule, I think that we should attempt to get an expedited drilling permit by characterizing the new domestic well as a replacement well. The District can agree to abandon the existing well if the transfer is not approved. The Department can request a bond for the abandonment if necessary.

Terry

5/11/2004

Nelson, Dan

From: Nelson, Dan
Sent: Monday, May 10, 2004 3:34 PM
To: Terry Scanlan (E-mail)
Subject: Vallivue School

Hello Terry,

I have reviewed your last email with Jan Shurte, Steve Lester, and John Westra. We all agreed that we would do anything we can to speed the process through as quickly as possible. In reviewing the water right files for 63-2856 and 63-10182 and the field exams for each it is obvious that the irrigation well is the same well for both rights. You mentioned that you should be able to have 3 points of diversion with the two water rights. That wouldn't be possible, since the irrigation well in 63-10182 is the same well that was used for 63-2856. Although this won't fit your replacement well theory, it does enhance your argument that 63-2856 has been the main irrigation right for the irrigation of the school. I am still surprised that the overlapping water rights were not uncovered during the licensing of 63-10182. I feel that 63-10182 should have been filed as a domestic use only, and an adjudication claim should have been filed on 63-2856 for the 19.4 acres of irrigation. The reality is that we cannot allow more than an inch of water per acre out of the same well from the same source. Therefore, the water rights are going to need to be clarified at one point or another.

It is difficult to determine which is the best path to take to clarify the water rights and add the new well for the school. The biggest issue is going to be the time factor. I came up with the following three ways to deal with this issue:

The best way to proceed would be to file the adjudication claim on 63-2856 and include it with the transfer. In the transfer, you would remove the irrigation component from water right 63-10182. The irrigation listed on 63-10182 would be covered by water right 63-2856. The transfer process would then begin the adjudication process to recommend the 19.4 acres as being covered by 63-2856. The transfer could then ask for a second point of diversion for the domestic use. This would make one clean transfer that would clear up the water rights for the school in one process. It would also probably take the longest amount of time to allow the school to complete the construction of the new domestic well.

The quickest way to get the well drilled would be to keep the current transfer as it was filed with a written statement promising to clarify the irrigation component in a second transfer. The transfer approval would be issued with a condition that would say something similar to the following:

"The irrigation component associated with this transfer must be clarified with a second transfer or relinquishment of water right 63-2856 within 12 months of the issuance of the transfer approval or the transfer approval would be considered invalid."

If you choose this path, I would recommend filing the second transfer before the first transfer has been approved, to avoid any confusion. In the long run it would take more time to go through the transfer process, but you could get the well drilled faster, because we would not need to go through the adjudication review process on the first transfer. We would save that review for the second transfer. The adjudication review process generally takes 2-4 weeks. So, with the second option, the well could probably be drilled a month earlier.

The final choice would be to relinquish water right 63-2856, and proceed with the current transfer as though it never existed. This would be the fastest way to complete the transfer process, but it would cost you the much cherished priority date for this priority date. This really isn't an acceptable choice, but I was asked to give you all the possibilities.

There are good reasons to choose any one of the above choices. The costs of filing two transfers, losing your priority date, or not making the construction deadline are all issues you will need to consider. We will do our best to work with you so we can accommodate your efforts and get the work done as soon as possible. The file is already in the expedited pile of transfers, and we will pass the expedited request onto our State Office staff when it is sent for their review. However, we are working with a very short time window. The delays we have already experienced has pushed back the approval date beyond the month of July. It is going to be very difficult to get this application approved by the end of the summer break.

If you have any question or concerns, please feel free to contact me.

Daniel A. Nelson
Senior Agent
Western Region
Idaho Department of Water Resources