

Lester, Steve

From: Lester, Steve
Sent: Friday, June 06, 2003 4:11 PM
To: Spackman, Gary
Subject: Delivery of instream stockwater right

Gary:

Since you have been involved in the MacKenzie deal for 65A water district, I thought I'd run this by you.

District 65B has a somewhat similar situation although not controversial. BLM has a partial decree for 0.02 cfs instream stock use on lowest part of the creek (close to mouth below all homes). It has a priority senior to Dovel's upstream domestic right. Dovel sometimes has diverted his domestic right at his home (using return flows downstream from last headgate receiving a delivery upstream from Dovel)

I assume the instream stock right is like any other right: cannot be honored during shortages unless a call for water is made. If that assumption is correct, Dovel can divert a junior domestic right based on return flows. But if the instream right must be honored even though not called for delivery, the Dovel domestic case becomes more complex. He could continue to divert that right if water would not reach the instream use portion of the creek (futile call)

Even a call for delivery of the instream use would be subject to the futile call filter.

My take is that the instream right should be ignored during shortages unless a call for delivery of that right is made. At that point, it can be determined if the call is futile or not.

Your thoughts?

Steve

*BLM instream stock
right & last 2 ~~feet~~
QQ of Porter ck.*

