

MEMORANDUM

Date: 12/01/2023
To: WRs No. 65-22762 & 65-22553
From: Bob Howe
Re: Basin 65 General Provisions Item 3 & Condition C20

SUMMARY

The Payette Adjudication was conducted to inventory existing water rights for the Payette River water system, with a cutoff date of October 18th, 1977. Item 3 of the Basin 65 General Provisions, referred to as the Separate Streams Provision states that, for the purpose of water distribution in the Payette River Drainage Basin, surface water rights appropriated on or before October 18th, 1977, and from 12 sources listed in the provision are not considered junior to water rights from the Payette River, and will be administered separately. Condition code C20 was created for use on rights meeting these criteria. I have reviewed the backfiles and adjudication documents for rights 65-22762 & 65-22553 to find if and why condition C20 is currently listed on the rights.

In the case of right 65-22553 both the decree and right identify the source as the Payette River, and we have no documentation how condition code C20 was added at the recommendation. The partial decree for 65-22553 identifies the source for the right as the Payette River tributary to the Snake River. The condition code first appears on the right at the adjudication recommendation. Additionally, no other water rights from the Payette River have the condition on them, including 65-22552 (sibling to right 65-22553). The Basin 65 General Provision No. 3 lists the sources for rights with separate administration, which does not include the Payette River. Additionally, right 65-22553 is not found in Attachment A or the amended Attachment A of the Basin 65 General Provisions, which lists the rights to be administered separately from all other water rights in Basin 65. It seems likely that C20 was added in error during the recommendation data entry.

Regarding right 65-22762, on September 16th, 2005, Attny Dana Hofstetter requested that rights 65-22616, 22617, 22762 and 65-22589 be added to the partial decree list and administered as being from a separate source pursuant to Basin 65 General Provision No. 3. On November 7th, 2005, condition C20 was added to the right with a comment in AdHoc, stating "Added separate streams language per Chris Bromley and request from Dana Hofstetter." However, on March 17th, 2006, the SRBA court denied the request, stating "IDWR has not recommended this water right for separate administration", citing that stock water rights are not eligible for separate administration. In conclusion, on August 8th, 2006, the SRBA court recommended right 65-22762 be issued without separate administration. Condition C20 was added prematurely and should be removed to reflect the adjudication recommendation.

CONCLUSION

After review of the right backfiles and Basin 65 General Provision 3, rights 65-22762 and 65-22553 do not meet the criteria for separate administration as stated in the provision. Condition C20 can and will be removed from rights 65-22762 and 65-22553.