

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.*

SRBA PARTIAL DECREE 65-22184

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NAME AND ADDRESS: USDI BLM
 IDAHO STATE OFFICE
 1387 S VINNELL WAY
 BOISE, ID 83709-1657

SOURCE: PORTER CREEK
 QUANTITY: 0.02 CFS

TRIBUTARY: PAYETTE RIVER

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 06/28/1934

POINT OF DIVERSION: T07N R02E S14 LOT 1 (NWNW) (Instream Ending Point) Within Boise County
 LOT 2 (SENW) (Instream Beginning Point)

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
 Stockwater 01-01 TO 12-31 0.02 CFS
 Stockwater T07N R02E S14 LOT 1 (NWNW) LOT 2 (SWNW) Within Boise County
 SENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:
 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).