

Minutes for the Water Transfer Working Group Meeting March 30, 2009 1:00 PM

Attendees: Dave Brown, Stuart Crane, Bill Ferry, Chuck Garner, Ken Hasbrouck, Teresa Hauser, Margo Hines, Stan Isley, John Kirk, Paul LaRiviere, Chris Lynch, Jim Milton, Tim Reiersen, Tom Ring, Mark Schuppe, Ron Van Gundy, Sara Watkins, Breean Zimmerman, and Jeff Slothower on phone.

Chuck Garner opened the meeting with the first agenda item for the approval of the previous meeting minutes from February 19, 2009. The minutes were approved with the corrections provided by Tom Ring.

The second item on the agenda was the previous proposal 2009-08 Shaw.

Mark Schuppe summarized that this proposal approved by Benton County Conservation District (Benton CCD) to move a water right from Kittitas Co. to Benton Co., had been reversed by Ecology. Benton CCD has asked for clarification on the Conditional Final Order (CFO) as to the Naneum Creek water right being supplemental or additive to the KRD water. The court has ruled that the water right is supplemental; that decision has been appealed by the water right applicant. Currently, Ecology has been in discussions for a possible settlement.

Tim Reiersen, representing the water right applicant, presented some modifications to the current application for comment from the WTWG. First, the applicant has agreed to reduce the total acres from 160 to 45 acres for a total of 2.75 acre feet of consumptive use. Second, the applicant has offered a map to show the fallowed 45 acres. Third, the applicant will have a provision to curtail water diversion if Naneum Creek water is unavailable. And, finally, the applicant has agreed to place the water in the Trust. It was made clear by the WTWG that as a proposal under settlement litigation/appeal, the group cannot provide comment or commit to the above modifications to the water right application. Tom Ring did point out that in the last meeting the group agreed that fallow land would be acceptable (45 acres); however the map will need to show that the designated fallow acres are clearly defined as irrigable land. Tom R. also suggested that since the original water right transfer proposal was fundamentally flawed and under litigation, drop the appeal and submit a new water right transfer to the WTWG with the consumptive use calculations, the map showing fallow acres, and with the curtailment provision when Naneum Creek water is unavailable. Although, Tim R. shared his willingness to sit down with attorneys and their clients to assure them that the current application would be a good transfer, the WTWG would not commit to discussing the application 2009-08 because of pending litigation. Tim R. indicated that speed/timing was an issue for his client which made him reluctant to the idea of a new application because it would need a public notice. Ecology responded 'no, not normally' to Tim's question if a seasonal change application would need a public notice.

Jeff Slothower noted that a question remains about whether the fallow land is within the boundaries of the Kittitas Reclamation District's irrigable acreage. If so, even this reduced transfer proposal may not be approvable.

Mark S. didn't see an objection to the WTWG reviewing a seasonal change/transfer application with the above provisions once the current appeal is withdrawn. The interested parties will discuss the seasonal application issue with their respective attorneys and will indicate their availability when a special WTWG meeting could be called if a seasonal application with the above provisions is presented.

The third item on the agenda is new proposal 2009-10 Payne/USBR.

Bill Ferry summarized this water right transfer occurs because of the desire to remove the last water user on Greer Ditch via Fogerty Ditch, from the ditch to a ring well. As part of the proposal, the applicant has requested to include the NW1/4NW1/4 (approx. 1 acre) and the NW1/4SW1/4 (approx. 24 acres) to the existing place of use located within the SW1/4NW1/4 (approx 15 acres) all located in S. 14, T. 17 N., R. 18 E.W.M. for a total of 40 acres irrigated to describe the correct and historical place of use because it is believed that the description was accidentally omitted from the authorized water right. Tom R. noted that as of this moment in time, the valid place of use for the water right is what is in the CFO and this group has no legal right to opine what is in the CFO. Bill F. commented that is the reason why Payne/USBR is using Ecology's administrative process to modify the place of use. Stan Isley suggested that a ministerial change might work on a CFO, but an administrative change of place of use process through Ecology might also work.

Brean Zimmerman thinks Ecology does have the authority to make a POU change based on RCW 90.03.380, pointing out there will be no increase in ACQ, or impairment to existing water rights. She concluded by saying 40 acres of irrigation and 160 acre-ft/yr was authorized through the court and these two components of the water right will not change.

Tom R. noted that before this group can give it thumbs up or down the question of valid place of use needs to be addressed with the Acquavella Court. Once that is accomplished then bring it back, Tom R. sees no reason why this group can't give it a thumbs up.

The fourth item on the agenda is the box checklist: all present agreed that the box checklist as written is approved.

The next scheduled WTWG meeting will be held on Monday, April 20, @ 1pm in the Yakima Field Office.