

EUREKA_025

Jake Tibbitts

From: Jake Tibbitts
Sent: Tuesday, April 25, 2017 10:06 AM
To: Evenson, Ronald (Rudy)
Cc: John Ruhs; Clutter, Stephen; J.J. Goicoechea; Steve Bradhurst
Subject: RE: Follow-ups from CNRWA presentation last Friday, 3/31/17
Attachments: BLM Stipulation Agreement.pdf; V03033.pdf; V03174.pdf; V02982.pdf

Thanks, Rudy. I have a few things for BLM's consideration.

BLM's claims for a vested right

My question was not specific to the BLM claims in Diamond Valley and I never asserted that the 66 PWR claims were claiming 1848 as a priority. I pointed out that in addition to the PWR claims BLM has many claims of vested right in Eureka County and statewide with many claiming a priority of 1848 under the Treaty. My question was under what authority can BLM file vested claims whatsoever? A quick search of the State Engineer database shows that in addition to the hundreds of PWRs 107 filed, over 450 vested claims have been filed by BLM statewide. A few of example claims are attached. One is even a well in Diamond Valley that wasn't constructed until the 1940s and to be a vested right for groundwater, the well must have been in place and used prior to 1939.

PWRs 107

It is interesting to see the PWR checklist because many of the PWRs that we are aware cannot be checked off on that sheet. Also, many of the filed PWRs, including the recent ones in Diamond Valley assert that the claim is for wildlife, riparian vegetation, and wild horses. PWRs 107 can only be asserted on domestic and stockwatering purposes. We have multiple, documented examples of BLM asserting un-adjudicated PWR claims as "rights" and requiring certain projects to develop mitigation outside of the involvement of the State Engineer and asserting seniority over other vested claims or permits (i.e, stockwater and irrigation) on federally administered lands precluding maintenance efforts and access of others of these waters. I have attached a 2001 letter from BLM where BLM states "providing water for wild horses...is also consistent with the BLM's Public Water Reserve on the water sources identified herein." Recently, Battle Mtn. BLM asserted the same that PWR 107 claims in Fish Creek HMA are for watering wild horses when these rights, if valid, are only for domestic and livestock watering purposes. I have also attached the agreement between BLM and General Moly as the basis for BLM to remove it's protests of General Moly's water rights. The basis of BLM's protests were on the potential to affect PWRs 107. The EIS for the Mt. Hope Project referenced this agreement and requires mitigation by General Moly. We argue that many of the PWRs claimed would not meet the standard of being a PWR 107 if adjudicated. Primarily since nearly all of them have a prior vested claim by others, there are mineral claims within the 40 acre withdrawal area, and they are not "important water holes" that threaten monopolization by private interests. We have also seen BLM use a claimed PWR as leverage against ranchers that the rancher does not have the "sole" right on a spring. And we have seen some claimed PWRs fenced off completely with no access whatsoever to livestock and domestic use unless a public individual wanting to use the water for domestic use climbs the fence to access the water. This is counter to the purpose of the PWR which was for use by livestock, not exclusion of use by livestock. I hope you can see how many of us see this as a water grab full of inequity with BLM extorting ranchers and mines using a "right" that they may not truly have.

BLM Protest and Settle to Acquire Water Rights

BLM protested SNWA's water rights applications and settled under the agreement. I will not comment on that process as I was not involved. However, I was involved in the General Moly (GMI) issue and there are many corollary's here that we believe are improper. The agreement already referenced and attached was developed without the involvement of the State Engineer. Under the mitigation requirements listed on page 12, item 2 of the Stipulation, GMI agreed to "augment, replace or provide an alternative source of water suitable to meet BLM needs" if BLM water rights are adversely impacted. Even if these sources were found to be valid PWR 107s, "important water holes" replaced or provided alternative sources of water is against the intent of PWR 107. The agreement also required GMI to "jointly share" both certificated and vested stockwatering rights for wild horses (page 13, item 6) and for BLM to obtain a shared, certificated water right on these sources for wild horses. What is most egregious is the use of vested stockwatering rights for wild horses and the requirement for GMO to sign over part of the vested right to BLM. We argue that is improper and unlawful for a vested right for stockwater to be used for a wild horse water right especially given wild horses were not protected pre-1905 and the vesting of the right was not for wild horses. We see this as extortion by BLM to obtain unneeded water rights and allowing additional wild horse use in areas where horses historically did not use much.

BLM should do what is right and review all of their water rights filings statewide and withdraw those vested claims that are questionable or unjustified. BLM should also review all of their PWR 107 claims statewide and withdraw those that do not meet the primary purpose or minimal need of PWR 107. BLM must also stop asserting rights on waters where it is obvious BLM's right would not stand if adjudicated.

Thanks for considering these comments.

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From: Evenson, Ronald (Rudy) [mailto:revenson@blm.gov]
Sent: Wednesday, April 05, 2017 3:26 PM
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Cc: John Ruhs <jruhs@blm.gov>; Clutter, Stephen <sclutter@blm.gov>
Subject: Follow-ups from CNRWA presentation last Friday, 3/31/17

Hi Steve and Jake,

Once again, thanks for inviting BLM to present at the Central Nevada Regional Water Authority board meeting last Friday in Carson City. It was a great opportunity for BLM Nevada State Director John Ruhs to speak to current and past county commissioners and discuss the BLM's mission, priorities, and current direction.

John asked me to send along the following information in response to some of the specific questions that were asked at the meeting. Please feel free to call or email me directly if you have further follow-ups. Thanks!

1. Jake Tibbitts asked for the checklist BLM uses for PWR 107s as well as its source (is it from an IM, a handbook or what?)

The attached checklist was developed in 1983 by BLM Nevada State Office pursuant to BLM Instructional Memorandum 83-454, issued April 12, 1983, and BLM Nevada Instructional Memorandum NV 83-331, issued June 30, 1983, "Public Water Rights 107 Identification and Criteria."

2. Jake also asked about the basis for the 66 vested rights that BLM has claimed in Diamond Valley, dating back to the Treaty of Guadalupe Hidalgo in 1848.

When the state engineer began adjudicating Diamond Valley water claims in the 1980s, the BLM submitted 66 claims (in 1985 and 1994) for Federal Reserve water rights under PWR 107 authority based on the 1926 executive order. A few of these claims had to have their locations revised in the most recent round that is still under consideration by the state engineer's staff, but the basis for the claims was never listed as anything other than the 1926 PWR 107 order. If you have a more specific reference to a BLM water claim listing 1848, we would be happy to research that claim for you.

3. Jake also noted that Eureka County wants BLM to address the fact that oftentimes when mining projects are being considered, companies will negotiate settlements with BLM for PWRs that may not have been adjudicated yet, whereas the mining companies do not give the same consideration to (equally unadjudicated) vested claims owned by private individuals who have not yet filed upon them.

Regarding any BLM discussions with mining companies over projects with potential impacts on water sources, we would need to have more specifics on particular cases in order to address questions about whether or how a mining company entered a PWR withdrawal area without BLM revoking the withdrawal. As far as water rights held by private entities, if there are impacts to third party water rights, BLM would need to disclose the impacts through the NEPA process and suggest mitigation measures, but BLM can't require mitigation. The company and the water right holder need to work out how impacts would be mitigated. If the water rights are vested claims that have not yet been filed with NDWR, then it can be difficult for anyone to even know that there is a vested use on a source that could be impacted. That user would need to come forward and let the BLM and the mining company know that they are using a water source that could be potentially impacted by the activity.

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