

November 17, 2003

Brian Barels

Comments and recommendation for considerations by the Surface Water Transfer Subcommittee

Surface Water Transfer Modifications (11-14-03)

- 1) Recommend adding definitions for "type of use" and "purpose of use".
- 2) 46-290 (3)(f)(ii) – This section states, "the proportion of the intentionally stored water that is consumed will be no greater than the proportion of the incidentally stored water that was consumed prior to the change". This language does not seem to hit the mark – there is no way that an irrigation district/PP & LD can control consumption of stored groundwater. Should this be removed? Or is the test really whether returns to the river are not diminishing the supply to downstream appropriator?
- 3) 46-290 (5) – 1st sentence – Recommend rewording line 3 – "if the purpose of such transfer or change is a) for the beneficial purpose as defined in (3) above or b) to augment"... Or as an alternative – change the sentence to read "A transfer of or change in purpose may also be approved if the purpose is to (a)".
- 4) 46-290 (7) – line 4 and 5 – delete the words "and if the point of diversion will remain at the same location after the transfer".
- 5) 46-291 (1) – line 7 – insert the word "or" before (ii).
- 6) 46-291 (2) – last paragraph – delete the words "on property tax revenues in that county and" – The property taxes should remain the same with temporary transfers and this factor should not individually prevent permanent transfers.
- 7) Question – how do we deal with the transfer or change in purpose and use if the water right is not quantified. For example – in quantity and timing? Should it be part of the application?
- 8) 46-294 (4) – It does not appear that the transfers provided for this section can get the "quick" approval provided by section (1) – do we want them to be able to?
- 9) Page 7 – Section ____, should the department file copies of permanent transfers as well as temporary transfers?

Surface Water Adjudication Statute Modifications (11-08-03)

- 1) 46-229.03 (3) - should the notices for unknown owner/address also be placed on the departments website?
- 2) 46-290.04 (2) and (3) – Section (3(a) seems to allow an indefinite time for inadequate supply. Should Section (2) be merged with Section (3(a) as appropriate?
- 3) 46-229.04 (4) and (5) – I would recommend changing Section (5) to 15 years and adding Section (4) to (5) as new item (g) – This is to provide consistency in the dates for similar actions.
- 4) 46-229.04 (6) – To the sentence which begins “The district or company” (line 8) add to the end of the sentence “or other purpose or use in accordance with 46-290”.

Surface Water Cleanup

- 1) 46-2112
 - A. Add DNR website to the notice list.
 - B. Eliminate the sentence “If a request for a hearing is made it shall be accompanied by a description of the evidence that would be proposed for introduction by or on behalf of that person on the hearing”. There is likely no way this “evidence” can be prepared in 6 weeks of notice. Also, in requesting a hearing on transfers the “evidence” is not regarded.
- 2) 46-230
 - A. Move Section (1) to 46-229.
 - B. My notes from the 10-02-03 draft show that Section (2) is to apply only to rindividual users, not those served by an irrigation district oo PP & ID.