

Wood River Water Collaborative Meeting Minutes
12/4/19

Attendees: Keri York, Pete VanDerMeulen, Pat McMahon, Erika Phillips, Bill Hazen, Keats Conley, Mike Peterson, Ryan Santo, Larry Schoen, Peter Anderson, Kelly West, Jim Phillips, Bryan Dilworth, Grant Loomis, Carl Pendleton, Bob Simpson, Justin Stevenson, John Wright, Cooper Brossy, Kevin Lakey

Website address: <http://woodriverwater.com/>

Graciously maintained by Greg Loomis.

Surface Water Predictive Tool RFP – Keri York and Ryan Santo

- Ryan and Keri have been working on an RFP for a surface water prediction tool that would help members of the WRWC better predict surface water depending on snow pack and historical data
- This would build off the work with Ron Abramovich (NRCS) last year, and provide more confidence in predictions
- A small group including Keri York, Ryan Santo, Larry Schoen, Pat McMahon, and Peter Anderson met with Rob VanKirk to discuss the RFP, suggested edits, and questions about including groundwater
- There were questions about the 90% prediction interval in the RFP example graphs and whether or not the RFP should specify smaller prediction intervals, or do there need to be different intervals for different stream gauges
- Maybe there can be variable intervals, such as the variable exceedances for SWSIs
- Pete mentioned that Idaho Power has been working with IWRB on snow pack predictions for hydropower
- Bill Hazen has been working with Carl and the Big Wood Canal Company to predict runoff for Magic Reservoir operations, hydropower generation, and to limit spill during runoff
- Bill showed a website from the National Weather Service <https://www.noahsc.noaa.gov/nsa/> and Bill has put together a primer on using data from this website. There is a link to remote sensing data and regional snow analyses. Bill has incorporated this data into SnoTel data for BWCC predictions, and it has improved his regression models.
- Keri and Ryan will make suggested edits to the RFP, put together a list of consultants and universities to distribute the RFP to (including Dr. Florez at BSU), look into the Idaho Power/IDWR modeling, and follow up with Bill

Funding for Additional Telemetry Stations

- Ryan inquired about IWRB funding, and there are no current programs available
- There may be options with conservation of groundwater fund or water sustainability fund, or maybe EQIP
- We may be able to use some of the BOR CWMP funding, if done through a consultant
- Two additional on D45 and 4 additional on lower Little Wood would be desirable
- Keri will look into BOR funding option and contracting with Jake Robertson at Pivotrac

Use It or Lose It Primer – Peter Anderson (TU legal counsel)

- There have been questions about partial forfeiture – what if you only irrigate a portion of your acres, or only use during part of the allotted dates?
- There is a forfeiture provision in Idaho code 42-222(2) of failure to irrigate for a term of 5 years, the water right is forfeited and shall revert to a beneficial use to the state
- If water right was forfeited and reallocated, would have newer priority date, so is that really ‘maximum beneficial use’ of water?
- Purpose was to avoid water rights speculation and monopoly of water resources; to allow for the maximum benefit and use of water resources
- The 2012 IDWR administrator’s memo (attached) and Idaho Law Review by Anderson and Kraft (attached) provide information on how the state has handled forfeiture of water rights

Timing of Use

- The memo describes that water rights used for part of the irrigation season are protected from forfeiture; also resumption of a water right or an application to the water supply bank will protect the right from forfeiture during that calendar year
- Water right holders can file an application for an extension of time during the 6th year of non-use to prevent forfeiture
- IDWR doesn’t go out a look for forfeiture, so usually occurs with transfers, leasing into the water supply bank, water calls, or extensions of time

Partial Forfeiture

- A portion of a water right may be forfeited if beneficial use is reduced during the statutory period, but Supreme Court or IDWR has not made explicit ruling on:
 - If you only use half of your water amount, but continue to irrigate entire acreage as decreed, you don’t lose half of your water amount;
 - Other water right descriptors, such as the entire period of use, are not forfeited

Property Subdivision

- Forfeiture often occurs due to ignorance, for instance, during property subdivision and development.
- Under the silent deed rule – unless water rights are reserved, each new owner gets a portion. They may not know that they have the piece of the water right.

How to Avoid Forfeiture

- Sometimes water rights are forfeited when people can’t afford to maintain them or put in the water supply bank
- To avoid, use your water right(s) once every five years
- Obtain an extension of time up to an additional 5 years, must have ‘good and sufficient reason’ for extension
- Put water rights into the water supply bank

Other statutory defenses to forfeiture

- Federal crop land set-aside programs (i.e. Conservation Reserve Program)
 - Reasonably anticipated future use for municipalities
 - Water right substituted with land application of waste (dairies)
 - Compliance with a groundwater management plan
 - Non-use due to circumstances beyond control (for instance, water not available)
 - Non-use of an irrigation entity due to non-use by individual members
 - Conservation practice which maintains full beneficial use
 - Mitigation purposes approved by the Director
 - Non-use of mining water rights due to low mineral prices
- Peter is available to discuss and answer further questions about water rights forfeiture

Next meeting: mid-January, avoid IWUA conference

Potential topics: water transactions in other Idaho basins; soil moisture sensors