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ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

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NOV 30 2006

DEPARTMENT OF
WATER RESOURCES

November 28, 2006

Mr. Matt Anders
Idaho Department of Water Resources
322 E. Front St
PO Box 83720
Boise, Idaho 83720-0098

Re: Harry Rinker – Rock Creek water rights ownership changes
Project No. 128-16-1999

Dear Matt:

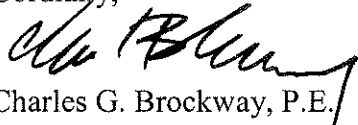
Enclosed please find ownership change forms and supporting property deeds for all of Harry Rinker's water rights on Rock Creek and tributaries, including both irrigation rights and stockwater rights from the various springs. I am sending these directly to you since you are handling the preliminary recommendations and I thought I would cut out some intermediate steps.

By my calculations, there are eight (8) rights which are decreed and are not pending in the adjudication (the small stockwater rights), so the filing fee will be \$200. Enclosed is a check for that amount.

Also included is a Notice of Error Reply with a narrative pertaining to the preliminary recommendations for these rights. I had to create a form for this since I did not receive any of the official forms sent out by IDWR; I trust this will be acceptable.

Thank you for your efforts on these water rights.

Cordially,


Charles G. Brockway, P.E.

Enc. Change of ownership forms (3)
Supporting deeds
Notice of Error Reply

Cc: Harry Rinker

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

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DEPARTMENT OF
WATER RESOURCES

NOTICE OF ERROR REPLY

Water rights: 37-627, 37-1150, 37-1151B, 37-1151D, 37-1152, 37-1212, 37-4192

Claimant: Harry S. Rinker

Prepared by Brockway Engineering, PLLC

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Place of use
Diversion rate
Disallowal of claims

2. Describe the changes you wish to make in the proposed recommendation:

See narrative below.

3. Give a brief explanation as to why you disagree with these portions:

See narrative below.

Right No. 37-627

This right was originally decreed in Frost (1909), but recommended for disallowal by IDWR on the assumption that it was superseded by 37-1152 as decreed in Brown vs. Reardon (1925). Brown re-decreed all rights on Rock Creek and Guy Creek, but omitted any reference to 37-627 which was originally decreed from Smith Creek (aka Smidt Creek).

First, mere lack of mention of a water right in a particular decree does not automatically imply that the right was intended to be superseded.

Second, 37-1152 was not decreed to the identical place of use as 37-627, as indicated by IDWR staff. Brown established 37-1152 from Rock Creek on two parcels of land, one owned by Christina Eastwood and one owned by W. W. Wallace, with an undivided one-half interest to each party. However, the Smith Creek right was originally decreed in Frost only to the land owned by Eastwood. In other words, Brown did not decree 37-1152 to the same place of use as 37-627.

Third, Smith Creek is a separate source from Rock Creek which could only have been utilized on the Eastwood property (the Wallace property is to the north and Smith Creek cannot reach it by gravity). A small impoundment just west of the road is still apparent. Smith Creek flows very sporadically, but the current land owner should be allowed to continue to utilize Smith Creek water as it has been used historically.

For these reasons, it appears likely that 37-627 was established in Frost and it may be incorrect to assume that it was superseded by Brown. It appears more likely that the omission of reference to Smith Creek in Brown has the effect of leaving the Smith Creek right unchanged. That is apparently how IDWR interpreted Brown prior to the SRBA, as the right has been carried on the IDWR database to this day, while every other Rock Creek right that was superseded by Brown was not carried on the database.

Right No. 37-1150

IDWR limited the acreage under this right to 200 acres, on the belief that the decree lists the place of use as five (5) quarter-quarters and therefore the recommendation must be limited to 200 acres. This right was decreed in Brown vs. Reardon to land owned by Daniel Reardon. On page 2 of the decree, the land to which it is decreed is listed as SE1/4 SE1/4 Section 1, N1/2 and the SE1/4 of Section 12, and the N1/2 of the NE1/4 of Section 13, all in T. 1 S., R. 17 E.

First, the decreed place of use covers 15 quarter-quarters, not 5. Second, a GIS analysis of the 1987 aerial photo by Brockway Engineering indicates that within the above place of use there are 240.4 acres irrigated, tabulated by 40-acre tract as follows:

Section	Qtr-Qtr	Acres
12	NENE	1.3
12	NWNE	10.8
12	SWNE	35.5
12	SENE	19.5
12	NENW	33.2
12	NWNW	15.5
12	SENE	12.5
12	NESE	10.6
12	NWSE	18.4
12	SWSE	20.4
12	SESE	16.5
13	NENE	19.2
13	NWNE	27.0
Total		240.4

Therefore, right 37-1150 should be recommended for 240.4 acres. Brockway Engineering can provide the ArcView shape file corresponding to the above acreage if needed.

Right No. 37-1151D

IDWR limited this right to irrigation of 350 acres, based on a GIS calculation of the acreage from the 1987 aerial photo. Brockway Engineering's independent evaluation of the acreage indicated 361.2 acres, tabulated by 40-acre tract as follows:

Section	Qtr-Qtr	Acres
14	NWNE	9.1
14	SWNE	2.0
14	NENW	10.9
14	SENE	18.9
14	NESW	15.4
14	SESW	2.6
14	NWSE	2.3
14	SWSE	22.4
23	NENE	15.0
23	NWNE	11.0
23	SENE	17.6
23	NESE	26.1
23	NWSE	0.4
23	SWSE	7.4
23	SESE	25.7
26	NENE	18.8
26	NWNE	6.0
26	SWNE	14.6
26	SENE	11.6
26	NESW	0.5
26	SESW	13.3
26	NESE	0.2
26	NWSE	34.5
26	SWSE	21.4
35	NWNE	6.6
35	SWNE	0.6
35	NENW	23.0
35	SENE	23.3
Total		361.2

Therefore, this right should be recommended for 361.2 acres. Brockway Engineering can provide the ArcView shape file corresponding to the above acreage if needed.

Right No. 37-4192

This claim was based on a statutory claim filed in 1981 by Marguerite E. Tews, the owner of the Rock Creek property at that time. In the remarks section of the statutory claim, Tews indicates that the filing was necessary to codify irrigation usage just below (south) of the southernmost area decreed in Brown vs. Reardon. That decree established

water right 37-1150 on Reardon's land which extended to the N1/2 of the NE1/4 Section 13. Tews asserts in 37-4192 prior to her acquisition of the land in 1943, irrigation water had continued southward using the same ditch system, and irrigated land within the S1/2 of the NE1/4 Section 13. Analysis by Brockway Engineering of the 1987 aerial photo indicates 32.2 acres irrigated within the S1/2 of the NE1/3 Section 13.

Because IDWR staff had no evidence of priority, the right was recommended for disallowal. Water has been used on the S1/2 of the NE1/4 Section 13 prior to 1971, and therefore a surface water right has been established by beneficial use. To disallow the entire claim for lack of priority evidence is unwarranted. The claimant is willing to attempt to justify pre-1971 usage via aerial photos and/or affidavits from prior owners if possible.

General comment – all rights

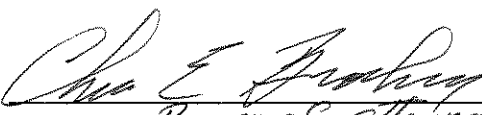
The rights were decreed in Brown vs. Reardon for the entire flow of Rock Creek. Currently and historically, the water has been distributed via earthen ditches and the land has been irrigated by gravity methods. Based on the NRCS soil survey, the predominant soil is loam or silt loam with moderate available water holding capacity, and the potential for gravel or sand layers at depth. Historic cropping has been pasture and alfalfa. The duty of water is undoubtedly greater than 0.02 cfs per acre; however, IDWR did not perform an excess flow analysis to determine the historic duty of water, even though the claimant is entitled to the maximum diversion rate that has historically been put to beneficial use. Instead, perhaps as a matter of expediency, IDWR assumed 0.02 cfs/acre for every portion of the property. The ramifications of the 0.02 cfs/acre assumption are as follows:

- 1) 37-1151D was limited to 7.0 cfs (0.02 cfs/acre on 350 acres)
- 2) 37-1152 was disallowed because it covers the same POU as 37-1151D and would therefore result in greater than 0.02 cfs/acre on the land.
- 3) 37-1150 was limited to 4.0 cfs (0.02 cfs/acre on 200 acres; acreage problem discussed above).
- 4) 37-1151B and 37-1212 combined are limited to 0.86 cfs (0.02 cfs/acre on 43 acres).

In numerous other situations, chiefly in the course of transfer applications, IDWR has utilized excess flow analyses to determine duty of water. It is unfair in this case to simply use a default value for the diversion rate, leaving the claimant with a fraction of the water that has been beneficially used on the land. IDWR should perform an excess flow analysis for the entire property, or should accept an excess flow analysis by a qualified analyst in support of these claims.

DATE: 11/29/06

SIGNATURE:


Power of Attorney

PRINTED NAME:

Charles E. Brockway

LIMITED POWER OF ATTORNEY

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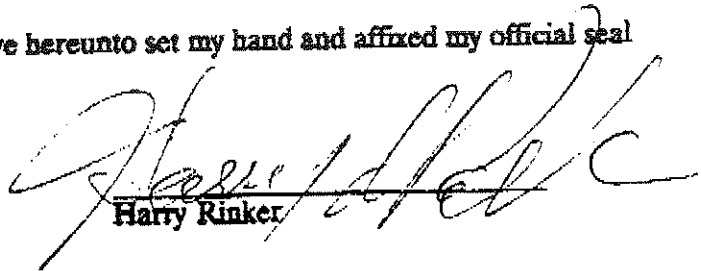
KNOW ALL MEN BY THESE PRESENTS:

NOV 30 2006

I, Harry Rinker, dba Rinker Company, hereby nominate and appoint Charles E. Brockway, of Kimberly, Idaho, as my attorney-in-fact with full authority to act for and on my behalf to undertake any and all acts or matters pertaining to any and all water rights I may own or seek to acquire in Blaine County, Idaho. Additionally, I hereby ratify and confirm any and all such acts on matters as contemplated herein.

My agent is hereby authorized to sign, seal, and deliver, as my act in deed, those said instruments of writing that may be necessary or proper to carry into execution and effect the applications and transfers above-mentioned. Further, I hereby declare that each and every application, transfer, agreement, receipt, or payment which shall be by my said agent given, made or done for the aforesaid purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by me in my own proper person; and I hereby undertake at all times to ratify whatsoever my said agent shall lawfully do or cause to be done in or concerning the said premises by virtue of these presents.

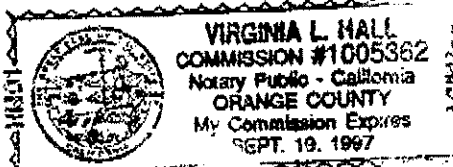
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 1st day of Sept, 1995.


Harry Rinker

CALIF
STATE OF ~~IDAHO~~)
ORANGE) ss.
County of ~~Blaine~~)

On the 1st day of Sept, 1995, before me, a Notary Public, in and for said County and State, personally appeared HARRY RINKER, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.




NOTARY PUBLIC FOR ~~IDAHO~~ CALIF.
Residing at: LAGUNA NIGUEL
My commission expires: 9/19/97

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