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MAR 28 2012

DEPARTMENT OF
WATER RESOURCES

Albert P. Barker, ISB #2867

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Gooding, ID

Telephone: (208) 931-1111

Attorneys for Big Wood Can

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

)

A. Subcase No. 37-21112

)

Case No. 39576

)

AFFIDAVIT OF ALBERT P. BARKER

)

IN SUPPORT OF OBJECTOR'S

)

OBJECTION AND MOTION TO

)

DISALLOW COSTS PURSUANT TO

)

I.R.C.P. 54(d)(6)

)

)

STATE OF IDAHO)

) ss.

County of Ada)

ALBERT P. BARKER, being first duly sworn upon oath, deposes and states as follows:

1. I am a duly licensed attorney with the law firm of Barker Rosholt & Simpson,

LLP, who represents the interests of Tom O'Gara; John F. Stevenson; Bill Molyneux; Pete Van

Der Meulen; Grace Eakin; Rocky Sherbine; Gerald Bashaw; Pepin Corso-Harris.

AFFIDAVIT OF ALBERT P. BARKER IN SUPPORT OF OBJECTORS' OBJECTION
AND MOTION TO DISALLOW COSTS PURSUANT TO I.R.C.P. 54(d)(6)

2. Attached as Exhibits are true and correct copies of the following documents:
- A. Skaggs Memo dated 2/22/95, available from the IDWR public records,
 - B. Transfer No. 4206, available from the IDWR public records,
 - C. Tuthill Memo dated 10/5/06, available from the IDWR public records,
 - D. Aerial photograph (1987) supplied to Marathon,
 - E. Aerial photograph (1984) supplied to Marathon,
 - F. Holmes Memo dated 10/28/93, available from the IDWR public records,
 - G. Aerial photograph (1989), available from the IDWR public records,
 - H. Aerial photograph (1987) , available from the IDWR public records,
 - I. Clelland Memo dated 10/15/93, available from the IDWR public records,
 - J. Cleland Notes dated 10/15/93, available from the IDWR public records,
 - K. Cleland memo dated 3/3/93, available from the IDWR public records,
 - L. IDWR memo dated 7/28/93, available from the IDWR public records,
 - M. Exchange of correspondence between Marathon and IDWR in 1994 regarding
resumption of use, available from IDWR public records.
 - N. Email exchange among counsel dated 6/24/2011,
 - O. Email exchange among counsel dated 3/7/2011, and
 - P.-T. Objectors' Trial exhibits regarding conveyance loss in Hiawatha Canal.

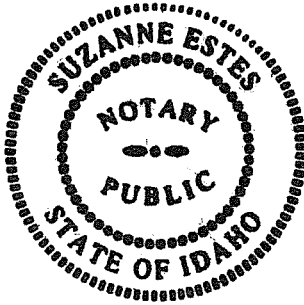
Dated this 27th day of March, 2012.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker
Attorneys for O'Gara et al.

SUBSCRIBED AND SWORN before me this 27th day of March, 20012.



Suzanne Estes
Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: 6/1/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2012, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF ALBERT P. BARKER IN SUPPORT OF OBJECTOR'S OBJECTION AND MOTION TO DISALLOW COSTS PURSUANT TO I.R.C.P. 54(d)(6)** by the method indicated below, and addressed to each of the following:

Original hand-delivered to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies mailed to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

James P. Speck
Speck Aanestad
120 East Avenue
P. O. Box 987
Ketchum, ID 83340

Albert P. Barker
Albert P. Barker

MEMORANDUM

TO: FILE A37-12818 (37-00577BN)

FROM: PAM SKAGGS/^{CB}STATE OFFICE

SUBJECT: TRANSFER NO. 4205

DATE: February 22, 1995

C. H. Hoff
2-22-95

ok

=====

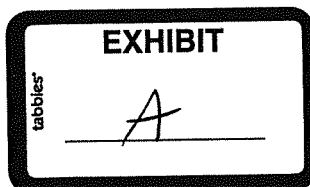
This transfer application identifies a portion of water right number 37-00577 to be transferred to a new place of use. The portion has been more closely identified as 37-00577BN and ~~a the~~ corresponding Snake River Basin Adjudication Claim A37-12818 ~~which is also~~ ^{part of} ~~represents only~~ a portion of 37-00577BN.

Review of the rights and the proposed change indicate that **no change will occur to the water right**. The transfer identifies an ownership split and specific place of use that is located within the original confines of Right No. 37-00577BN. A transfer is not required for the water right.

The SRBA Claim does need to be changed, splitting a portion of the right and transferring it to a new location. The transfer approval is prepared to change the claim only, splitting the claim into parts A and B.

There has been much review and discussion regarding the validity of the transferred right and the SRBA is recommending disallowal because the right was forfeited or abandoned. The transfer is being processed pending the conclusion of the adjudication and is subject to final disposition of the right.

Recommended conditions include watermaster control, measuring device with lockable controlling works, irrigation overlap, non-confirmation of claim, right-of-way and standard transfer conditions.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF A CLAIM TO A WATER RIGHT

TRANSFER NO. 4205
CLAIM NO. A37-12818B

RECEIVED

MAR 23 1985

This is to certify that: J PETER FITZPATRICK
CLAIRE B FITZPATRICK
C/O JAMES P SPECK ESQ
PO BOX 987
KETCHUM ID 83340

Department of Water Resources
Southern Region Office

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/15	0.11 CFS	14.0 AF

<u>SOURCE</u>	<u>TRIBUTARY OF</u>
BIG WOOD RIVER	MALAD RIVER

Priority: 03/24/1883

LOCATION OF POINT(S) OF DIVERSION: SWNW , Sec. 20, Township 03N, Range 18E
BLAINE County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02N	18E	4	NENW	2		2
03N	18E	33	SESW	2		2
Total number of acres irrigated:						4

CONDITIONS/REMARKS:

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
2. A measuring device and lockable controlling works of a type approved by this Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
3. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.
4. Approval of this transfer in no way grants any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.

EXHIBIT

tabbles

B

NOV 28 1996

TRANSFER NO. 4205
CLAIM NO. A37-12818B

CONDITIONS/REMARKS:

5. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
6. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
7. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Dated this 17th day of March, 1995.


Chief, Water Alloc. Bureau

MEMO

TO: 37-12818C & 37-12818D

From: Dave Tuthill

DATE: 10/5/06

RE: Review Notes

My review of these two files results in the following assessment:

- On 10-15-93 Steve ~~Clifford~~ Clifland recommended that these rights be found to be lost due to abandonment or forfeiture.
- On 10-28-93 Loren Holmes recommends that the S.O. conduct further review, and "if... this is sufficient to prevent a forfeiture, the transfer can be granted" (referring to Transfer # 4205).
- On 3/15/95 Transfer #4205 was issued. ~~While~~ One condition of approval is "Approval of this transfer does not preclude the opportunity for review of the ^{validity of the} water right(s) in the ongoing SRBA. This transfer refers to 437-12818B.
- IDWR subsequently split B into Cand D. Part B was for .11 cfs and 14 AF. Part C is for .057 cfs and 7.28 AF. Part D is for .05 cfs and 7.0 AF.
- See the memo in the file from Kelly Christensen dated 2/19/1999. Change these numbers to the 37-30000 series.

EXHIBIT

C

RECPOU 37-12818

 Subject POU (mouth of Quigley Canyon)
 blaine_QQ_sections

Total Area of Subject POU: 104.0
Total Irrigated Acreage: 0.0

EXHIBIT

D

1987 Aerial

tabbles

RECPOU 37-12818

 Subject POU (mouth of Quigley Canyon)
 blaine_QQ_sections

Total Area of Subject POU: 104.0
Total Irrigated Acreage: 20.2***

*** NOTE: Appears to be incidental irrigation.

12.7

7.6

EXHIBIT

E

1984 Aerial

tabbles

MEMORANDUM

DATE: 28-Oct-1993

FROM: Loren Holmes *LH*

TO: Files; Transfer 4205, Apps for permit 37-8587, 8270, 8819,
8821

SUBJECT: Final region review of files

SRBA claim A37-12818, which is a previously unrecorded split of 37-00577, is proposed to be used as the basis for mitigation plans enabling approval of the applications for permit. A .11 cfs portion of the right is proposed for transfer under transfer 4205.

The following is a summary of the proposed changes in acres and amounts of water:

Application	Acres	Q	Acres remaining	Q remaining
T4205	4	.11	99	2.61
37-08587	3	.079	96	2.531
37-08220	1	.026	95	2.505
37-08819	1	.026	94	2.479
37-08821	40	.80	54	1.679

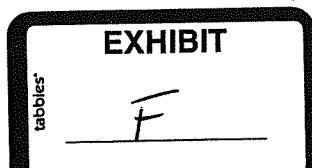
Approval of these applications will result in an untransferred remainder of A37-12818 of 1.679 cfs appurtenant to an unspecified 54 acres of the claimed place of use.

The claim has been completely reviewed by SRBA staff according to the standards set for review of claims. A claim verification report (CVR) has been completed and the claim has been recommended for disallowal based on a finding of 5 years non-use. Pertinent parts of the CVR and the reviewing agent's analysis are attached.

If water under claim A37-12818 has historically been turned into the canal, then execution of the mitigation plans will result in an actual contribution of water to the river.

If water has not been turned into the canal, then the river flows have actually been augmented by this water for some time. The mitigation plans will contribute no additional water to the river and exercise of the groundwater permits will further stress the existing conditions.

A study of historic daily flows in the Hiawatha canal documented in "Water distribution and Hydrometric Work in Water District 37" reports covering the 1970's to the present may shed some light on whether the water was turned into the canal. The region does not have a complete set of these records.



Page 2

With respect to Transfer 4205, the file supports a recommendation of denial because water has not been beneficially used on the place of use of the water right. On the other hand, if this right has been delivered by the watermaster at the Hiawatha headgate, and this is sufficient to prevent a forfeiture, the transfer can be granted.

Of course, the court may uphold the disallowal of the claim which would render this set of applications impossible. It may be necessary to hold the whole matter in abeyance until the SRBA court rules on the claim.

POOR ORIGINAL

1988
NAPP

CLAIM A37-12818 INIT SC
T. R. S. Q/Q

P/D

PHOTO NAPP 444-60 X74 SE

DT.&ID. 9-15-88

DELIVERY
IRRIGATION DITCH
ALONG THIS
EDGE OF FIELD

NON-IRRIGATED
LANDS

DELIVERY DITCHES TO THIS
POU SHOW NO EVIDENCE OF
CARRYING WATER. POU LOOKS
UNIRRIGATED IN THIS PHOTO.

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OCT 27 1994

EXHIBIT

G

POOR ORIGINAL

1987
NAPP

CLAIM A37-12818 INIT Sen

T. R. S. Q/Q

P/D

PHOTO ID. NAPP 437-11 X74SW
6-8-87

COPY IS POOR BUT PHOTO SHOWS
NO IRRIGATION. SOME RED TINT
DUE TO NATURAL WEED GROWTH
COMMON TO OTHER NON-IRRIGATED
LANDS THIS TIME OF YEAR.

NO
IRRIGATION

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EXHIBIT

H

A37-12818

Comparison of Evidences & Review

10-15-93
STEVE CLELAND

	1974	X74 OPQ irrigation not shown
ABANDONED)	1980	Plats filed to Subdivide w/ County.
	1984	Landset does not support irrigation uses
	1985	W. Master bills for Water.
(FORGOTTEN)	1986	W. Master Bills for Water.
①	1987	No Billing. Napp shows Non-irrigation
②	1988	No Billing. Napp shows Non-irrigation
③	1989	No Billing.
④	1990	Billed. 6-11 Field Exam no irrigation, no System
⑤	1991	Billed.
⑥	1992	Billed.
	1993	9-30 Field Exam - no irrigation, system reditched. 5-14 Field Exam (by Mel Schulte) no irrigation - no Delivery System.

Affidavits claim:

GREGORY MANN (OCT 1 1993)

1991 July - claims to irrigate SENW S.10 for Cattle Grazing.
Aug - claims to irrigate North of Quigley Road
for Cattle Grazing.

(replaces an earlier sworn Statement.)

No system for irrigation existed in 1990 or in 1993
to irrigate the lands in SENW. They looked the same
on both exams - unirrigated and prepared for Subd.

No cattle were grazed here either; no fences
during either exam and no cattle ~~unirrigated~~
i.e. manure, Tracks, or grazed off crops. OCT 27 1994

EXHIBIT

I

tabbles

P.205

A37-12818 review

In discussing the irrigation possibilities for lands north of Quigley Road, Mel Schulte and I compared what we had viewed on previous exams and we concluded; No irrigation system for delivery existed until our last exam in 9-30-93, At that time new ditches had been dug or cleaned. No evidence of Cattle grazing had occurred. The area was not completely fenced off from Residential areas and the signs of cattle were absent.

The crop/vegetation found growing on 9-30-93 was a mixture of local weeds, some sagebrush has started to reclaim the land, and a volunteer alfalfa crop was found. Not uncommon for alfalfa to remain growing like that due to the deep root system & gravelly soils.

Evidence does not support this affiant's statements.

AFFIDAVIT:

BURR SMITH (9-22-93)

1983

He moved to property adjacent to A37-12812 pou.

Since then has irrigated the parcel with
horses.

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See the listing on page one of this review.
Property may have been irrigated in part during 1983 as claimed. It is possible Landsat reports list a partial irrigation in 1984, but from 1987 onward to present no evidence supports this affiant's claims. Again, the place is not fenced nor are there signs of grazing by horses or cattle in this field.

AFFIDAVIT:

CLINT STENNETT (9-15-93)

1983, 84, 85

Says he farmed & irrigated the property North of Bingley Road. also pastured horses there.

Evidence supports some possible irrigation on parts of this parcel in Landsat of 1984.

No ~~ways~~ information on 1983 or 1985.

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P. 4 of

A37-12818

AFFIDAVIT:

GEORGE MANN (9-7-93)

1991	July	{ same as the first affidavit, except ← change in date on the August entry from 1993 to 1991. }
1993	Aug	

Raises the question of the validity of
"sworn statements" by affiant

Summary:

The history of this right is pretty clear and is supported by the evidence available at this time of Review.

In 1974 when the downstream rights on Hiawatha Canal were abandoned, this place became the last delivery on the ditch. A reduced flow in the Canal made economical use of this land and water impractical. (See CVR page 10 for analysis.) Finally, in 1980 the Deerfield Plots were filed to Subdivide this property. Some partial use occurred around 1983 & 84. By 1987 no use was being made of

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5 of 5

437-12818

the water for irrigation and the Water Master never billed for its use until 1990. All the evidence during this time confirms the non-use of water for irrigation on this property.

The Billing of Water Master for these rights doesn't support its use in 1990, 91 or 92.

It has been my experience with water users that they believe merely paying the assessment to the Water Master will insure continued validity of their rights. This belief is reinforced by water masters also. (Dale Mizer mentioned this to me during our conversation of this area and its rights.)

My personal field exam in 1990 on June 11th would have followed 3 years of non use on these lands as indicated by the evidence shown. In Sept 30 1993 when I returned for a followup look at the same property, the conditions and appearance of the property had not changed it remained unirrigated.

Only in 1993, when mitigation uses appear for this right, are any efforts made to develop the irrigation system. But the efforts aren't complete since the right is not wanted for irrigation.

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Recommend: Disallowed by Forfeiture/Abandonment

Steve Callahan 10-15-93

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES x 0.02 CFS/ACRE = CFS
(Taken from P/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = 257.5 AF/A

ACRES x CONSUMPTIVE VOL. AF/A FOR AREA =

TOTAL CONSUMPTIVE USE AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES x DIVERSION VOL. AF/A FOR AREA =

TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

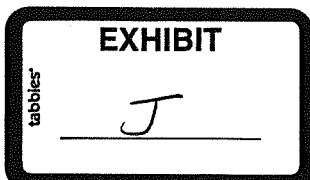
SEE ATTACHED SHEET? Y() N()

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

1b. CALCULATIONS

$$\frac{2.72 \text{ cfs}}{103 \text{ Ac.}} = 0.026 \frac{\text{cfs}}{\text{Ac.}}$$

$$= 1.32 \frac{\text{in}}{\text{Ac}}$$



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May need to run a Hubble analysis on this system.
This Field is now the last place on the ditch, a ditch claimed by
other upstream and the downstream to be heavy on conveyance loss.
When the place downstream, Windward area, was taken out of production
in 1974 the flow in the Canal was reduced. Without those additional
flows, this rate of 1.32"/acre may not have been sufficient to sustain
an economical crop. This led to the move of the land a water as found.

See 10-15-93

CITY OF HAILEY
ABBOTT, WILLIAM G.
CROCKER, G. F.
YOUNG, MARTIN

A37-00296 /

37-00004 /
37-00901 /
37-00921 /

TOTAL ACRES A37-12818

103.00

123.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y () N (X)

123.00

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE Y

FIELD EXAMINER

PRESUMPTION FLAG:

REMARKS:

No irrigation found at field site on 6-11-90. No irrigation system in place either land is being prepared for subdivision.

OPQ X74 dated 7-24-74 shows questionable irrigation note. Data not appear to match similar irrigated ground in the area.

NAPP PHOTO X74 (SE) #444-60 dated 7-15-88 shows no irrigation and matches the color & texture of other non-irrigated lands in the plot known to be unirrigated.

RECOMMENDATIONS:

TOTAL ACRES:

REVIEWED BY:

See me use found

DATE:

10-15-93

NAPP PHOTO X74 (SW) #437-11 dated 6-8-87 lands described again appear unirrigated.

* Use of this right on the lands described, for irrigation purposes, is not supported by the evidence obtained at this point of the review. Water was available but does not appear to be used for irrigation lands claimed. See 3-31-93

See memo dated 3-31-93 w/ Petersen & Mares

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OCT 27 1994

INTER-DEPARTMENT MEMO

TO: GLEN SAYTONSUBJECT: A37-12818FROM: STEVE CLELLANDDATE: 3-31-93

Here is the information you asked for. In brief, nothing has been found to support the use of this claim as a valid water right. On the contrary, ~~that~~ all the maps I have access to indicate non-irrigation of these lands. If you need more let me know.

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OCT 27 1994

* Sent Copies of CVR pages 6 & 7 + Memo of 3-31-93
See

☒ For your information☐ Response required

Steve Clelland
signature

EXHIBIT

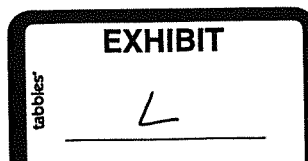
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K

ANALYSIS SUMMARY---A37-12818
PACESETTER DEVELOPMENT CO.
JULY 28, 1993

1. The claim is for irrigation of 103 acres and a diversion of 2.72 cfs of Big Wood River water delivered through the Hiawatha Canal with a 3-24-1883 priority.
2. The right claimed is a portion of the originally decreed W. T. Riley right.
3. Pacesetter Development Co. sold the subject property and assigned the water right to Marathon Partners c/o Edmund E. Dumke in September 1992. A change of ownership is on file.
4. Portions of the right have been proposed as part of mitigation plans for the following, pending applications:
 - a. Application for Transfer--n/o J. Peter Fitzpatrick and/or Claire B. Fitzpatrick. Proposes to dry up 4 acres and transfer .11 cfs.
 - b. Application for Permit 37-08587--n/o Gregg Sturtevant. Proposes to dry up 3 acres and exchange .079 cfs for a groundwater right to irrigate 3.74 acres with .11 cfs.
 - c. Application for Permit--n/o Rod Thornton. Proposes to dry up one (1) acre and exchange .026 cfs for a groundwater right to irrigate one (1) acre with .026 cfs.
 - d. Application for Permit--n/o Keith Friedly. Proposes to dry up one (1) acre and exchange .026 cfs for a groundwater right to irrigated one (1) acre with .026 cfs.
 - e. Application for Permit--n/o Blaine County School District. Proposes to dry up 40 acres and exchange .80 cfs for a groundwater right to irrigate 40 acres with .80 cfs.
5. The right subject to A37-12818 is administered by Water District #37. The water master's records indicate Pacesetter Development Co. was billed for 1985 and 1986, not billed for 1987, 1988 and 1989, and billed for 1990, 1991 and 1992.
6. A field exam on June 11, 1990 found no irrigation of land nor a delivery system in place to most of the P/U.
7. A field exam on May 14, 1993 found no irrigation of land nor a delivery system in place to most of the P/U.
8. NAPP photo X74(SW) #437-11 dated 6-8-87 reveals that the subject land appears not to be irrigated.

NAPP photo X74(SE) #444-60 dated 9-15-88 reveals that the subject land appears not to be irrigated.



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9. Water may have been turned into the delivery ditch from the Hiawatha canal but application of the water to the land subject to the claim is very questionable. Application of water for irrigation purposes is not supported by the field exams conducted and the NAPP photos described in #8 above.

10. The evidence currently available does not support recommending claim A37-12818 as a valid water right.

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M E M O R A N D U M

TO: L. GLEN SAXTON
CHIEF, WATER ALLOCATION BUREAU

FROM: NICHOLAS B. SPENCER *NBS*

RE: TRANSFER APPLICATION NO. 4205 AND RELATED APPLICATIONS
FOR NEW PERMIT INVOLVING WATER RIGHT NO. 37-12818

DATE: AUGUST 16, 1994

Following discussion with Phil Rassier concerning the procedural posture of the above-referenced transfer file, I am returning it to you for further action as you deem proper. Phil and I have agreed that since action in the SRBA has been stayed by Judge Hurlbutt and the transfer application is now purely a matter for the allocations side of the department, it is now appropriate for me to cease my involvement in the matter.

The purpose of this memorandum is to provide you a detailed summary of the history of telephone conversations and correspondence that has occurred between Jim Speck and myself since I was assigned to the file last November. I also am attaching copies of some of the letters that Jim and I exchanged. However, I am not including all of those letters because Phil believes that under the new state Administrative Procedures Act this transfer already falls within the definition of a "contested case". Therefore we believe that I ought not detail to you my legal analysis of the resumption of use defense to forfeiture that Jim has raised, since to do so might potentially put the department at risk of Jim alleging that the department has improperly prejudged the case before it has been formally submitted to you for decision.

As you will remember, this file came to adjudications last fall because of adjudications' initial determination that water right number 37-12818 would be recommended for disallowal in the SRBA on the ground of forfeiture for nonuse. By letter dated November 4, 1993, you informed Jim Speck that because of that recommendation for disallowal you would not allow the water right to be used for mitigation. You indicated that you would hold the transfer application in abeyance for twenty days to allow Jim to provide the department with additional information showing that the recommendation for disallowal was in error. Jim thereafter submitted three affidavits, which were critiqued by Steve Clelland and found by him to be insufficient to cause him to reverse his recommendation of disallowal. Messrs. Speck and Slette thereafter complained to Clive Strong in the Attorney



General's office. I was brought in at that juncture to arrange for a fact finding hearing, as provided for in the adjudication statutes, to flesh out the facts regarding whether the right had indeed been forfeited for nonuse. From that point the chronology of events is as follows:

1. After I discussed the procedural alternatives--first with Phil Rassier and then with Jim Speck--Jim and I determined that we were moving into uncharted territory with so many procedural questions and potential pitfalls that we abandoned the proposal to have a fact finding hearing. Instead, we decided to do mutual depositions: I would depose his fact witnesses and he would depose Mel Schulte and Steve Clelland. **[NOTE, see my letter of January 13th and Jim's letter of January 19th, both attached.]**

2. However, before the depositions were scheduled Jim called to tell me that he had found two additional fact witnesses who would swear out affidavits regarding the diversion of the water right in question in 1991. One of these, the local water master, would attest that he had delivered the right into the Hiawatha Canal. The second, an attorney whose property adjoins the parcel in question would attest that in the summer of 1991 he had helped clear out brush from the culvert under the road separating the lower from the upper parcel for the purpose of getting water across to the lower parcel. **[NOTE that although Jim has described the substance of what these affiants would testify to, he has not yet provided us the affidavits, presumably because he and I subsequently got involved in wrestling over the resumption of use defense to forfeiture, discussed below.]**

3. In discussing the legal significance of these affidavits I pointed out to Jim that even assuming that he were able to establish that water had been diverted onto the subject property in 1991, this in and of itself did not constitute a complete defense to forfeiture since part of the concern of Messrs. Schulte and Clelland was that they had seen no evidence of beneficial use of the water. This led to a rather intense telephone debate between us as to what constituted "beneficial use" of water. I followed up on this phone conversation with a letter listing the Idaho cases of which I was aware that discussed and defined what constituted beneficial use. And since I also had asked Steve and Mel to provide me with a list of questions they wanted answered/information they needed in order to make an informed determination as to whether, assuming a diversion of water in 1991, such diversion constituted beneficial use of the water, I also enclosed this material in my letter to Jim. **[NOTE, see letter of February 25th, and attachments. Jim also has not provided the information requested by Mel and Steve, also presumably because of our intervening debate over the resumption of use defense.]**

4. Instead of responding to the beneficial use concerns I had raised, Jim wrote me a few weeks later to inquire into the department's position regarding the resumption of use defense to forfeiture. In that letter he asserted in essence that since the irrigation use of the water had been resumed, that resumed use ought to constitute a defense to forfeiture, obviating the need to pursue any further the inquiry into whether the right in question had been diverted to beneficial use in 1991. **[NOTE, see letter of April 8th, attached.]** I initially responded to this inquiry by phone. I pointed out that because the resumption of use defense was being raised in a number of objections to claims recommended for disallowal in Basin 36 (including claims of Acequia, Inc., and the Estate of Rosemary Haley, both of which are also clients of Jim's) that the adjudication bureau was going to review its policies regarding that defense as well as the its interpretation of the relevant case authorities.

5. Before this meeting could be held, Judge Hurlbutt's stay of proceedings in the SRBA and the gag order on the department both intervened. Accordingly, I was only able initially to respond that the department could not discuss his Basin 36 objections, and needed clarification from the court as to whether we could further discuss the present matter. **[NOTE, see my letter of May 13th and his response of May 16th, both attached.]**

6. Once we received clarification on the gag order I informed Jim that the department could continue to address the present matter because, even though all adjudication proceedings had been stayed, the department's interpretation of the gag order was that the order was not intended to limit the allocations side of the department. I reiterated that we were going to review the resumption of use defense. **[NOTE, see my letter of May 19th.]**

7. Jim responded by telephone to make sure that, based upon its interpretation of the Judge's order clarifying the gag order, the department was comfortable with continuing discussions about the present matter. During the course of that conversation he briefly noted that--assuming for argument's sake the right had not been used during the period 1987-1991-- he was pursuing additional inquiry concerning why it had not been used.

8. I subsequently reviewed the case of Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), the leading case regarding the scope of the department's authority to consider in a transfer proceeding the resumption of use defense to forfeiture. I discussed the case in detail with both John Homan and Phil Rassier. Thereafter I met with Dave Shaw, Lynne Krogh, and Marci Sterling to discuss the various ramifications of resumption of use defenses raised in various objections to recommendations for disallowal of claims in Basin 36.

9. After this meeting I responded in writing to Jim regarding his resumption of use defense. In that letter I also requested that he provide the department with any information he should find concerning two other defenses to forfeiture implicated by his investigation into why the right had not been used. [NOTE, see letter of May 25th, attached. Jim has not yet provided any information to the department regarding why the right wasn't used, and whether the circumstances of nonuse might give rise to the two other forfeiture defenses.]

10. Jim responded to my May 25th letter with a letter containing a detailed critique of my reading of the Jenkins case. [NOTE, see June 6th letter from Jim Speck, attached.]

11. Before I had had the opportunity to respond to his June 6th letter, Jim called me to inquire as to who the appropriate people in the department were to discuss the temporary use of a City of Hailey municipal right for mitigation in order to secure the department's permission to drill a well for "temporary" use on the Wood River Sports Complex. (If you remember, I discussed this briefly with you at the time. After talking to Phil and you I called Jim back to give him your name and Phil's. As you predicted, he apparently did not call you, preferring instead to talk to Phil and to Norm. Norm has since met with people in Hailey regarding this matter, but I have not heard what its current status is.)

12. On August 10th I faxed to Jim a ten-page response to his June 6th letter critiquing my analysis of the Jenkins case. This August 10th letter is the one that Phil and I are particularly concerned that you not be privy to in order that your ultimate determination on the pending transfer application and applications for permit not be "contaminated" by it. In that letter I expressly stated that the views expressed therein were my own, and not the official position of the department. I also informed Jim that I would not be sharing that letter with any of the administrators who ultimately might need to render decision on the pending applications. I told him that since the matter was now purely one for allocations I was ceasing my involvement in it, and that Phil Rassier and/or John Homan would be handling the legal end of it from this point forward. And I suggested that it now was appropriate for him to provide the department with the factual information that had previously had been requested. [NOTE, see the final five paragraphs of the August 10th letter, attached.]

Finally, please note that all the attached letters are photocopies. I will keep the originals in my file should they be needed for any purpose in the future. If this memo raises any matters you'd care to discuss with me, please feel free to do so.

All that having been said, I need to emphasize at this juncture that the analysis I have detailed above is my own interpretation of the position the department likely would take. It is not the department's formal ruling on your resumption of use defense to forfeiture.

The transfer application and the four applications for permit--all four of which propose using the water right in question for mitigation--presently are before the department for consideration; but, per Glen Saxton's letter of November 3, 1993, the department has been holding them in abeyance pending your being afforded full opportunity to submit additional information in response to the forfeiture concerns the department has raised.

Generally the department does not rule on individual factual or legal issues piecemeal. Rather, it prefers to address all concerns at one time in deciding whether to approve or deny any given application. Thereby, if an application is denied, all concerns raised by the applicant are preserved for review and reconsideration at the same time during the course of any subsequent administrative review proceeding that the applicant might seek. Therefore, I have not shared this letter, or discussed its substance, with the administrators who ultimately will render either the initial determination on the applications in question, or who will render the decision in any subsequent formal administrative review proceedings, should such be undertaken.

AUGUST 10 LETTER

HOGUE, SPECK & AANESTAD

A PROFESSIONAL ASSOCIATION
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October 18, 1994

RECEIVED

OCT 21 1994

VIA FACSIMILE 208/327-7866

Department of Water Resources

L. Glen Saxton, Chief
Water Allocation Bureau
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83720-9000

Re: Marathon Partners - Portion of Water Right No. 37-00577 (SRBA Claim
No. A37-12828) Applications for Permit No. 37-08587, 37-08819, 37-08820,
and 37-08821 and Application for Transfer No. 4205

Dear Mr. Saxton:

Thank you for your letter of October 7, 1994, which we received on October 12, 1994. My clients and I appreciate the Department's interest in completing the processing of the above-referenced Applications. In my June 6, 1994, letter to Nick Spencer I set forth our legal argument on the defense of resumption of use to statutory forfeiture. Mr. Spencer replied by letter of August 10, 1994 wherein he disagrees that the presumption of use defense is available in this case. The unstated result of Mr. Spencer's analysis is that the resumption of use defense is NEVER available to a water user on an over appropriated stream such as the Big Wood River. Carried further, this must mean the Department's position is that once a water right in the Big Wood River drainage is not used for a period of five (5) consecutive years (unless any of the non-use is due to a reason beyond the control of the water user) that water right is lost by forfeiture notwithstanding any resumption of use of that right in the sixth year or any year thereafter. Needless to say, if this approach is consistently applied by the Department in evaluating the SRBA Claims and in future transfer proceedings, the impact on current water uses in the Big Wood River Valley will be tremendous!

Mr. Spencer noted that his letter represents his opinion and not necessarily the position of the Department in this transfer proceeding. Accordingly, I specifically request the resumption of use defense be evaluated in the approval process for the above-referenced Applications.

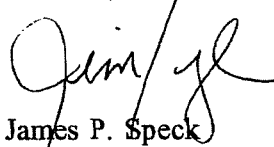
It is my understanding that the sole issue in these proceedings is whether or not Marathon Partners' water right was forfeited as a result of non-use for the period from 1987 through 1991. In 1992, this water right was cut for the rest of the irrigation season on July

L. Glen Saxton, Chief
Water Allocation Bureau
Idaho Department of Water Resources
October 18, 1994
Page 2

14. Therefore, it may not have been an economically viable option to irrigate the land in question that season. In 1993, the year of Marathon Partners first irrigation season, use of the water right was resumed. We have previously submitted affidavits (Gregory Mann and Burr Smith) asserting use of the water on the property in question during this time frame (1987-1991). In particular, Mr. Mann has stated under oath that he used the water right to irrigate on both sides of Quigley Road during the 1991 irrigation season. From prior correspondence and conversations with Mr. Spencer, I understand the Department accepts the statement by Mr. Mann that the water right was used on the lands in 1991, but questions whether or not the use was a "beneficial use" necessary to avoid a claim of non-use. Mr. Spencer sent me a list of questions concerning this issue to be answered by the person involved with the water use in 1991. I will have answers to these questions, in affidavit form, submitted by November 1, 1994. Please let me know immediately if this is not sufficient action to avoid the preliminary order proposed by your October 7, 1994 letter.

Sincerely yours,

HOGUE, SPECK & AANESTAD, P.A.



James P. Speck

JPS:jl

cc: Ed Dumke (w/ enclosure)
Gregg Sturtevant (w/ enclosure)
Rod Thornton (w/ enclosure)
Keith Friedly (w/ enclosure)
Dr. Peter Fitzpatrick (w/ enclosure)
Larry Lloyd (w/ enclosure)

HOGUE, SPECK & AANESTAD
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June 6, 1994

VIA FACSIMILE - 1-208-327-7866

Mr. Nicholas B. Spencer
Idaho Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720-9000

Re: SRBA Claim No. A37-12818 - Blaine County School District (the "District"),
et al.

Dear Nick:

Thank you for your letter of May 25, 1994. This correspondence is directed at the pending Applications for Permit Nos. 37-08587 (Gregg Sturtevant), 37-08819 (Keith Friedly), 37-08820 (Rod Thornton), and 37-08821 (the District) and Application for Transfer No. 4205 (Fitzpatrick), each of which involves a portion of the water right claimed in the SRBA by Marathon Partners as A37-12818.

I must respectfully disagree with your analysis of the defense of resumption of use to an action for statutory forfeiture of a water right pursuant to I.C. § 42-222. Although this defense was described and discussed in several other cases (e.g. Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937); Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009 (1944); Wagoner v. Jeffery, 66 Idaho 455, 162 P.2d 400 (1945)), Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952), is the controlling decision for the present case. In Boyer, Boyer sought to transfer the point of diversion approximately 18 to 20 miles downstream and to change the place of use from lands within the Big Lost River Irrigation District to lands outside the Irrigation District's boundaries of 10.88 cfs of decreed water rights from the Big Lost River with priority dates from June 1, 1888 to May 10, 1897. Protests were filed by the Big Lost River Irrigation District and the Three-In-One Ditch Company asserting, among other grounds, that Boyer had forfeited these water rights by non-use for more than five years under I.C. § 42-222. The State Reclamation Engineer granted the change finding, in part, that the transfer will not result in any injury whatsoever to any water right claimed or owned by any other person. The evidence showed non-use for a period of 30 or 40 years, but a resumption of use (on lands other than the decreed place of use!) prior to the assertion of any claim of forfeiture. The Idaho Supreme Court held Boyer's water rights had not been forfeited, stating as follows:

Forfeitures are abhorrent and all intendments are to be indulged

Mr. Nicholas B. Spencer
June 6, 1994
Page 2

against forfeiture. Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50; Idaho Farms Co. v. Northside Canal Co., D.C., 24 F.Supp. 189.

The correct rule was thus, in essence, announced in Carrington v. Crandall, 65 Idaho 525, 147 P.2d 1009:

'Although statutory abandonment of a water right has occurred, forfeiture is not effective if, after five-year period original owner or appropriator resumes the use of the water prior to claim of right by a third party. (I.C.A., sec. 41-216)' now Section 42-222, I.C.

and similarly in Wagoner v. Jeffery, 66 Idaho 455, 162 P.2d 400.

No one claims this particular decreed water by adverse possession and clearly, so far as this proceeding is concerned, it was in part at least used by respondent on some of his Arco lands before it was claimed it had been forfeited. (emphasis added).

73 Idaho at 159-60. Therefore, if after five or more consecutive years of non-use, a water right holder resumes use of all or even just a portion of his water right before a third party claims that water right by adverse possession or asserts a claim that it has been forfeited, statutory forfeiture of the water right pursuant to I.C. § 42-222 is avoided.

Boyer is very similar to the present case. In 1946, when Boyer filed his application for transfer, there were rights on the Big Lost River with priority dates junior to all or at least some of the rights owned by Boyer. In all likelihood, the Big Lost River was then fully appropriated. Thus, these junior priority rights would have "moved up the ladder of priority" if the Court had determined that Boyer's senior rights were forfeited. Nonetheless, the Supreme Court upheld the resumption of use defense and held Boyer's water rights had not been lost through statutory forfeiture.

Jenkins v. State Department of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982), is NOT a resumption of use defense case! The Court specifically noted that Jenkins had not raised this defense. Moreover, there was NO evidence of resumption of use of Jenkins Cottonwood Creek water right.¹ The Court stated the resumption of use defense as follows:

¹ After the hearing, the Director had found that Jenkins' Cottonwood Creek water right had not been used for "the previous 18 years". 103 Idaho at 386. The Supreme Court noted that "the record is devoid of any evidence to indicate that any of the established defenses would be applicable even if argued." Id. at 389. Specifically, the Court noted that clear and convincing evidence indicated Jenkins had not used the Cottonwood Creek right between 1961 and 1979, and protests to his application for transfer asserting forfeiture were filed in 1978.

Mr. Nicholas B. Spencer
June 6, 1994
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[I]f use of the water right is resumed after the five year period, but before any third parties make a claim in the water, then the courts will decline to declare a forfeiture. Application of Boyer, 73 Idaho 152, 248 P.2d 540 (1952) (other cites omitted) (emphasis added).

Id. at 389. Under Jenkins, the Department is required to determine whether or not a water right which is the subject of an application for transfer has been forfeited. This is a "preliminary step" in the determination of whether or not other water rights will be injured by the proposed transfer. Id. at 387. In other words, the question of forfeiture is first resolved. If five or more consecutive years of non-use are established, available defenses must be examined. Injury to other users is NOT a factor in evaluating the defense of resumption of use to a forfeiture challenge. The analysis of the impact of a proposed resumption of use pursuant to the transfer on junior appropriators is only performed IF the water right is found to have been forfeited. Thus, the Court in Jenkins noted that ordinarily forfeiture is determined in a separate proceeding, but where protesters to a proposed transfer allege the water right has been forfeited, the Department must first determine if that is the case. Then,

If a water right has indeed been lost through abandonment or forfeiture, the right to use that water reverts to the state and is subject to further appropriation. (cites omitted). Other parties may then perfect a water right in those waters. (cites omitted). Hence a person making a subsequent appropriation will be injured by resumption of the abandoned or forfeited water right. If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost (cites omitted) and the junior appropriators move up the ladder of priority. If a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. (emphasis added).

Id. at 387-88. The issue of junior water rights "moving up the ladder of priority" is only reached if the senior water right is first found to have been forfeited.

In virtually every Idaho water right forfeiture case, there is a statement to the effect that forfeitures are "abhorred by the courts" or "not favored". Therefore, forfeiture of a water right must be established by clear and convincing evidence. The law of forfeiture of water rights in Idaho does not preclude the use of the defense of resumption of use on fully appropriated streams. There must be some intervening claim to the water right in question by a third party such as adverse possession or the assertion of forfeiture prior to the resumption of use of all or some portion of the water right. The mere fact that junior water rights exist on the same stream (even a fully appropriated one such as the Big Lost River in Boyer) does not constitute the "claim of right by a third party" necessary to defeat the defense of resumption of use.

Mr. Nicholas B. Spencer
June 6, 1994
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In the present case, assuming arguendo no use from 1987 through 1992, Marathon Partners resumed use of all of its water right in 1993. No third party has made a claim of adverse possession to this water right, nor did anyone assert the right had been forfeited prior to this resumption of use. The defense of resumption of use applies to this case and the water right has NOT been forfeited. In the absence of forfeiture, there is no injury to other water rights nor is there an enlargement in use of this water right by the use of portions of the water right in the mitigation plans proposed by the District, Sturtevant, Thornton and Friedly or the transfer of place of use of a portion of the water right requested by Fitzpatrick. The District and my other clients are entitled to the approval of their respective applications.

Sincerely yours,

HOGUE, SPECK & AANESTAD

A handwritten signature in cursive script, appearing to read "Jim", written in dark ink.

James P. Speck

JPS/j

cc: clients



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 25, 1994

VIA FACSIMILE TRANSMISSION

James P. Speck, Esq.
HOGUE, SPECK & AANESTAD
120 East Avenue
Ketchum, Idaho
FAX NO. (208) 726-0752

Re: SRBA Claim No. A37-12818/ Transfer Application No.
4205, et al.

Dear Jim:

This letter will follow up on our prior letters and telephone conversations, addressing in particular the issue of whether the doctrine of resumption of use is available as a defense against forfeiture.

First, it does not appear likely that on the factual record as presently developed IDWR would determine that the water right in question, if forfeited, has been revived by resumption in use. Resumption in use only revives the original water right if the right can be revived without injury to intervening junior appropriators. In Jenkins v. State Dept. of Water Resources, 103 Idaho 384, 388, 647 P.2d 1256 (1982) the Idaho Supreme Court expansively defined the term "injury". The Court pointed out that when the senior right is forfeited, all junior rights move up one place in the order of priority; and that if the senior right is subsequently revived, the resulting displacement of the juniors one place back down the priority order in and of itself constitutes injury. Therefore, on an overtaxed stream such as the Big Wood River, it would be virtually impossible for a senior right to be revived without a resulting injury to juniors. If IDWR were to recognize the revival, it would have to do so only in a manner to prevent that injury. Such prevention likely would be accomplished by treating the right as being in effect a new appropriation with a priority date as of the date the use was resumed. Such a junior priority date would be of little use to your clients.

Therefore I assess the situation with this water right as follows. I presume that the additional affidavits you have discussed with me--once submitted--will establish that water was diverted onto both the upper and lower parcels during July and

James P. Speck, Esq.
May 25, 1994
Page 2

August, 1991. The issue thereby becomes a question of what beneficial use, if any, was made of the water that was diverted. IDWR's two water agents who each independently field examined the property will testify that they observed no evidence of beneficial use. The aerial photography and the agents' own observations do, in my estimation, establish a prima facie case of five years non-use or lack of beneficial use. My reading of the case law is that, while the showing of beneficial use necessary to rebut a prima facie showing of forfeiture necessarily is minimal since forfeiture must be proved by clear and convincing evidence, the beneficial use must at least be more than simply diverting some water onto the ground for purpose of avoiding forfeiture.

Thus I think the question that still needs to be answered before IDWR can approve this transfer is what beneficial use was made of the water that was diverted.

However, there are also two defenses to forfeiture that may come into play. To make an informed decision regarding this transfer application IDWR would be very much interested in learning what the facts are regarding the following:

1. You stated to me in one of our telephone conversations that the watermaster would swear out an affidavit to the effect that he delivered the water right in question into the Hiawatha Canal during the 1991 irrigation season, and if I remember correctly, also during the 1990 irrigation season. If the watermaster delivered the right into the canal, and if in fact the right were not actually diverted onto the property and used during any time that it was being delivered into the canal, the question that naturally arises is what happened to the water? Did somebody else use it, and if so, under what circumstances? I ask these questions because the five year forfeiture clock does not run while the water right is being beneficially used by a third party with the permission of the water right owner. See Zezi v. Lightfoot, 57 Idaho 707, 68 P.2d 50 (1937). The permission given to the third party by the water right owner can be verbal. Reynolds Irrigation District v. Sproat, 70 Idaho 217, 214 P.2d 880 (1950). IDWR takes the position that the permissive use doctrine articulated in Zezi v. Lightfoot requires an identifiable third party to whom the water right owner gives express permission; it is not good enough to merely leave the water in the ditch and presume that somebody else thereby is using it. (If that were sufficient by itself, such a rule would in effect abolish the doctrine of forfeiture. However, the courts have to my knowledge never addressed the issue of whether there are circumstances in which implied consent by the water right owner is sufficient to establish permissive use by a third party sufficient to avoid forfeiture.) If your inquiries reveal

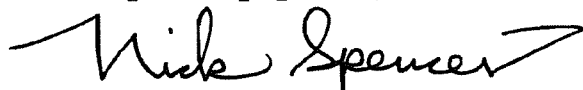
James P. Speck, Esq.
May 25, 1994
Page 3

that at any time during the period 1987-1991 this water right was being used by somebody else with the permission of the water right owner, such use would eliminate the five years continuous non-use necessary for forfeiture.

2. A second concern about which IDWR would like additional information is why the water right apparently was not used from at least 1987 forward. One item of evidence that lends support to a finding of forfeiture is that at some point in the past the properties downstream from the two parcels in question were subdivided and the ditch apparently was filled in. As a result the water right at issue here became the last right on the ditch. Because the downstream rights were no longer being delivered, less water would have been turned into the ditch. With less head coming down the ditch it presumably would have been more difficult to divert the entire right out onto the two parcels. While this situation augments a finding of forfeiture, it also raises a question as to whether the doctrine of impossibility may be raised as a defense to forfeiture. If it were physically impossible to divert the entire quantity of the right out of the ditch, then this might be a defense to forfeiture of at least that portion of the right that could not be diverted. However, this in turn raises the question of whether the water right owner would thereby be under a duty to use due diligence in modifying his diversion works to permit delivery of the entire right. In any event this is an avenue that I believe merits further exploration by you or your clients.

I raise these two additional areas of concern because IDWR does not wish to act upon an incomplete factual record. While IDWR has statutory duties to perform, and cannot approve a transfer of all or any part of a right that has been forfeited, it certainly does not want deny a transfer on the basis of an erroneous determination of forfeiture. Therefore I would be very much interested in hearing what additional information you might have on the points addressed above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Spencer", with a long horizontal stroke extending to the right.

NICHOLAS B. SPENCER
Deputy Attorney General

Albert Barker

From: Jim Speck [jim@speckandaanestad.com]
Sent: Friday, June 24, 2011 11:24 AM
To: hobdeycraig@gmail.com; Albert Barker
Cc: 'Clelland, Steve'; 'Kelly, Vicki'; 'Spencer, Nick'; 'Ed Dumke'
Subject: RE: RE: RE: 37-21112 (Marathon Partners)

Al,

Our position is that the amount delivered at the Hiawatha HG, which is to be memorialized in the partial decree, can be justified by either the amount required on the field for flood irrigation or by conveyance losses or both. My client agrees there are conveyance losses in the canal. However, an acknowledgement of that in the SF5 is completely unnecessary and he will not agree to include one.

Jim

-----Original Message-----

From: Albert Barker
Sent: Friday, June 24, 2011 9:58 AM
To: Jim Speck; hobdeycraig@gmail.com
Cc: Clelland, Steve; Kelly, Vicki; Spencer, Nick

Jim-

Just so I understand your position, the basis of the IDWR recommendation is conveyance loss and your client is unwilling to acknowledge any conveyance loss in the right?

Albert P. Barker
Barker Rosholt & Simpson LLP
(208) 336-0700

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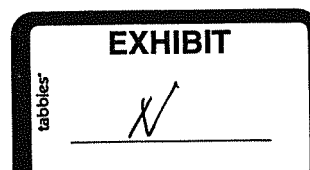
-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Thursday, June 23, 2011 10:24 AM
To: hobdeycraig@gmail.com; Albert Barker
Cc: 'Clelland, Steve'; 'Kelly, Vicki'; 'Spencer, Nick'
Subject: RE: RE: 37-21112 (Marathon Partners)

Al & Craig,

My client will not agree to this or any other remark regarding conveyance loss. As I have said before, the property was entirely flood irrigated at the time the SRBA commenced. My client has installed a pivot but continues to flood irrigate the corners. I am confident an excess flow analysis for flood irrigating the 53 acres will result in an on-field requirement of at least the 1.34 in/acre that my client is entitled to have delivered into the Canal. The switch to sprinkler irrigation after the commencement of the SRBA does not affect the parameters of the water right to be decreed.

Jim



-----Original Message-----

From: Albert Barker

Sent: Wednesday, June 22, 2011 10:37 AM

To: Spencer, Nick; Jim Speck; hobdeycraig@gmail.com

Cc: Clelland, Steve; Kelly, Vicki

Since this was the basis for the Department's recommendation, how about a remark that states:

"The right includes conveyance loss in the Hiawatha Canal, which is diverted from the Big Wood River 4.6 miles from the property."

We don't have to identify the amount of conveyance loss.

Albert P. Barker

Barker Rosholt & Simpson LLP

(208) 336-0700

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From: Spencer, Nick [mailto:Nick.Spencer@idwr.idaho.gov]

Sent: Tuesday, June 21, 2011 5:14 PM

To: Jim Speck; Albert Barker; hobdeycraig@gmail.com

Cc: Clelland, Steve; Kelly, Vicki

Subject: 37-21112 (Marathon Partners)

Gentlemen: Following our last settlement meeting I canvassed my coworkers in an attempt to find examples of conveyance loss remarks that might satisfy the needs and concerns of the parties to this subcase.

Unfortunately I was unable to find anything that I think would be useful here. NBS

Albert Barker

From: Jim Speck [jim@speckandaanestad.com]
Sent: Monday, March 07, 2011 10:26 AM
To: 'Craig Hobdey'; Albert Barker
Cc: 'Spencer, Nick'; steve.clelland@idwr.idaho.gov; edumke@mac.com
Subject: RE: RE: Marathon Partners - 37-21112

Al & Craig,

This MAY be acceptable if it is only an explanatory remark and there is no requirement that this amount be nothing but conveyance loss. We will have to carefully review any suggested remark.

Jim

-----Original Message-----

From: Albert Barker
Sent: Monday, March 07, 2011 9:39 AM
To: Jim Speck; Craig Hobdey
Cc: Spencer, Nick; steve.clelland@idwr.idaho.gov

Jim-

Craig and I talked. We would propose that, in lieu of a field headgate remark, a remark be included which recognizes, as the Department has stated, that 0.34 inches per acre is an reasonable/appropriate conveyance loss for this particular right. The Department has done this on other rights, so they may have some preferred language.

Albert P. Barker
Barker Rosholt & Simpson LLP
(208) 336-0700

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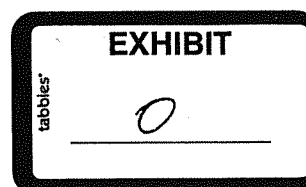
-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Tuesday, March 01, 2011 11:10 AM
To: Albert Barker; 'Craig Hobdey'
Cc: 'Spencer, Nick'; steve.clelland@idwr.idaho.gov; edumke@mac.com
Subject: Re: Marathon Partners - 37-21112

Al & Craig,

You both signed SF5's for the Phillips and Knight water rights without asking for any field headgate remark. The POU's for those rights and the recommended POU for the Marathon Partners right are shown on the attached. The duties of water for those rights at the Hiawatha headgate are 2.38 in/A and 1.94 in/A, respectively, whereas the recommendation for 37-21112 is 1.34 in/A.

Jim



James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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WATER RIGHTS SHEET
BEACH OM

REACH

OWNER

5/1/1881	3/24/1883
----------	-----------

Su

6/30/1

9/18/11

5/1/18

671/18

107/261

07/17/00

4/30/16

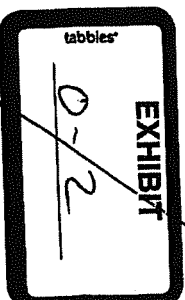
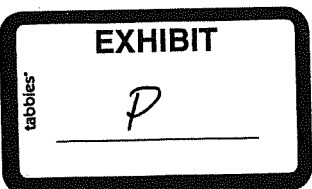
WATER

01/11/19

111100

1000

"

[illegible]

15	Johnson	24	0.48	
	Hickey	24	0.48	
	Phillips	24	0.48	
	Reach Sum =			1.440
16	Wilcox	41	0.82	
	Reach Sum =			0.820
17	Savaria	24	0.48	
	Atyle	2.5	0.05	
	McGraw	7.5	0.15	
	Reach Sum =			0.680
18	Cord (Cutler)	200	4	
	Reach Sum =			4.000
19	Grabher	55	1.1	
	Reach Sum =			0.824
20	Dunkle	72.5	1.45	
	Samson	5	0.1	
	Reach Sum =			1.550
21	Mizer	5	0.1	
	Hennessy	5	0.1	
	Reach Sum =			0.200
22	City of Hailey	142.9	2.858	
	Reach Sum =			2.858
				22.721

WATERMASTER DELIVERY TO HIAWATHA CANAL

Year	May	June	July	Aug	Sept	
2000	23	36	27	14.5	22.5	
1999	22	29	44	35	33	
1998	28	37	33	24	46	
1997	36	46	28	30	38	
1996	18	61	72	36	38	
1995	43	35	46	31	34	
1994	43	49	11	3	3	
1993	41	48	40	31	31	
1992	45	41	21	2	3	
1991	17	51	48	30	28	
Average	31.6	43.3	37	23.65	27.65	Average for July & August 32.64

Note that July thru Sept 2000 the Eccles right was in the water bank.
 Watermaster records indicate less water delivered but adjustment have
 been made to show diversions as if Eccles water remained in Hiawatha during
 this period. Actual Watermaster records show: July 20; Aug ... 11; Sept ... 19.
 Note that Eccles = Flying Hat Ranch

CONVEYANCE LOSS - WORSTELL

NAME OF DITCH:

Hiawatha Ditch with liner
Before moving Cutler to Dry Lot

BY:

adm

DATE:

04/18/08

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)	DELIVERY LOSS MINUS HIAWATHA RIGHTS FOR LOSS
Decree	900	24.0	10.00	2.73	0.00	22.72	0.1201	0.00	30.27	0.00
1	1910	18.0	3.00	1.30	2.88	22.72	0.0574	0.51	27.54	0.13
2	450	18.0	3.00	0.31	0.04	19.84	0.0155	0.01	23.36	0.00
3	480	18.0	3.00	0.33	0.02	19.80	0.0165	0.00	23.01	0.00
4	430	18.0	3.00	0.29	0.02	19.78	0.0148	0.00	22.66	0.00
5	1770	15.0	0.00	0.00	2.02	19.76	0.0000	0.45	22.35	0.12
6	730	15.0	0.00	0.00	1.45	17.74	0.0000	0.33	20.33	0.08
7	490	15.0	0.00	0.00	0.05	16.29	0.0000	0.01	18.88	0.00
8	1820	15.0	0.00	0.00	0.00	16.24	0.0000	0.00	18.83	0.00
9	1470	15.0	1.50	0.42	0.62	16.24	0.0257	0.15	18.83	0.04
10	4500	14.0	1.28	1.02	0.24	15.62	0.0652	0.08	17.79	0.02
11	680	12.0	1.00	0.10	2.17	15.38	0.0067	0.70	16.54	0.18
12	970	12.0	1.00	0.15	0.04	13.21	0.0111	0.01	14.26	0.00
13	350	12.0	1.00	0.05	0.13	13.17	0.0040	0.05	14.08	0.01
14	440	12.0	1.00	0.07	0.66	13.04	0.0051	0.23	13.89	0.06
15	1860	12.0	1.00	0.28	1.44	12.37	0.0228	0.53	13.16	0.14
16	530	12.0	1.00	0.08	0.82	10.93	0.0073	0.31	11.44	0.08
17	490	12.0	1.00	0.07	0.68	10.11	0.0074	0.26	10.54	0.07
18	460	12.0	1.00	0.07	4.00	9.43	0.0074	1.55	9.78	0.40
19	820	10.0	1.00	0.10	0.82	5.43	0.0191	0.33	5.71	0.09
20	650	7.0	0.66	0.04	1.55	4.61	0.0082	0.64	4.78	0.17
21	1260	4.0	0.66	0.04	0.20	3.06	0.0137	0.09	3.20	0.02
22	2900	4.0	0.66	0.10	2.86	2.86	0.0338	1.32	2.95	0.34
TOTALS	26360			7.55	22.72		0.3419	7.55		1.95

REACH = SECTION OF CHANNEL
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS
 AVE WIDTH = AVERAGE TOP WIDTH OF WATER SURFACE IN REACH
 SEEPAGE = SOIL SEEPAGE RATE OF REACH
 WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD
 DELIVERY = TOTAL DELIVERIES IN REACH
 DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)
 LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT
 DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY;
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 IF MULTIPLE RIGHTS WITHIN REACH, DELIVERY LOSSES SHOULD BE
 PRORATED BASED ON SIZE OF DELIVERY FOR EACH RIGHT WITHIN REACH
 FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

WATER RIGHTS SHEET									
OWNER									
REACH	5/1/1881	3/24/1893	Sum 1881 & 83	6/30/1884	9/18/1885	5/1/1886	6/1/1886	11/26/1886	5/1/1888
Loss	Loss	Loss	Loss	Loss	Loss	Loss	Loss	Loss	Loss
1	Valley Club	144.4	2.91	5.603	100			140	37.5
2	Scherer	2	0.04	2.888					
3	Pullen	1	0.02	0.040					
4	Richmond	1	0.02	0.020					
5	Hibbard	101	2.02	2.020					
6	Davis	38	1.45	1.450					
7	Rinker		0.05						
8	State of Idaho Mizer		0	0.050					
9	Pigeon	20	0.4	159.5					
10	Coyote Bluff Inc	10.8	0.216	40.5					
11	Bodner		0						
12	Kennedy/Kirby	2	0.04	0.616					
13	Marlin	2	0.04						
14	Alfs	2	0.04						
15	Clifford	2	0.04						
16	Sherfer	2	0.04						
17	Rice	2	0.04						
18	Cropper	50.4	1.008	0.240					
19	EMR-Halley LP	42	0.84						
20	Nelson	3	0.06						
21	Tierney	13	0.26						
22	Bazovsky	2	0.04	2.168					
23	Koonce	3.16	0.0632	0.040					
24	Hanson	3.54	0.0708	0.134					
25	Red Devil Mt Homeowners Assn	24	0.48						
26	Kukurni	2.65	0.053						
27	Britkman	3.26	0.0652						
28	Brown	3.25	0.065						
29	Reach Sum =		0.863						

EXHIBIT

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EXHIBIT

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tabbles

15	Johnson	24	0.48	
	Hickey	24	0.48	
	Phillips	24	0.48	
		Reach Sum =		1.440
16	Wilcox	41	0.82	
		Reach Sum =		0.820
17	Savaria	24	0.48	
	Argyle	2.5	0.05	
	McGraw	7.5	0.15	
		Reach Sum =		0.680
18	Cord (Cutler)	200	4	
		Reach Sum =		4.000
19	Grabher	55	1.1	
		Reach Sum =		0.824
20	Dumke	72.5	1.45	
	Samson	5	0.1	
		Reach Sum =		1.550
21	Mizer	5	0.1	
	Hennessy	5	0.1	
		Reach Sum =		0.200
22	City of Hailey	142.9	2.858	
		Reach Sum =		2.858
				22.721

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1998	28	37	33	24	46	
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1996	18	61	72	36	38	
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Average	31.6	43.3	37	23.65	27.65	Average for July & August 32.64

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 Note that Eccles = Flying Hat Ranch

CONVEYANCE LOSS - WORSTELL

NAME OF DITCH: Hiawatha Ditch with liner
After moving Culvert to Dry Lot

BY: adm DATE: 04/18/08

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)	DELIVERY LOSS MINUS HIAWATHA RIGHTS FOR LOSS
Decree	900	24.0	10.00	2.73	0.00	22.72	0.1201	0.00	30.27	0.00
1	1910	18.0	3.00	1.30	6.52	22.72	0.0674	1.16	27.54	0.30
2	450	18.0	3.00	0.31	0.04	16.20	0.0190	0.01	19.72	0.00
3	480	18.0	3.00	0.33	0.02	16.16	0.0203	0.00	19.37	0.00
4	430	18.0	3.00	0.29	0.02	16.14	0.0182	0.00	19.02	0.00
5	1770	15.0	0.00	0.00	2.02	16.12	0.0000	0.47	18.71	0.12
6	730	15.0	0.00	0.00	1.45	14.10	0.0000	0.34	16.69	0.09
7	490	15.0	0.00	0.00	0.05	12.65	0.0000	0.01	15.24	0.00
8	1820	15.0	0.00	0.00	0.00	12.60	0.0000	0.00	15.19	0.00
9	1470	15.0	1.50	0.42	0.62	12.60	0.0332	0.17	15.19	0.04
10	4500	14.0	1.28	1.02	0.24	11.98	0.0850	0.08	14.15	0.02
11	680	12.0	1.00	0.10	2.17	11.74	0.0088	0.79	12.90	0.20
12	970	12.0	1.00	0.15	0.04	9.57	0.0154	0.02	10.62	0.00
13	350	12.0	1.00	0.05	0.13	9.53	0.0056	0.05	10.44	0.01
14	440	12.0	1.00	0.07	0.66	9.40	0.0071	0.26	10.25	0.07
15	1860	12.0	1.00	0.28	1.44	8.73	0.0323	0.61	9.52	0.16
16	530	12.0	1.00	0.08	0.82	7.29	0.0110	0.36	7.80	0.09
17	490	12.0	1.00	0.07	0.68	6.47	0.0115	0.30	6.90	0.08
18	480	12.0	1.00	0.07	0.36	5.79	0.0120	0.16	6.14	0.04
19	820	10.0	1.00	0.10	0.82	5.43	0.0191	0.39	5.71	0.10
20	650	7.0	0.66	0.04	1.55	4.61	0.0082	0.75	4.78	0.19
21	1280	4.0	0.66	0.04	0.20	3.06	0.0137	0.10	3.20	0.03
22	2900	4.0	0.66	0.10	2.86	2.86	0.0338	1.52	2.95	0.39
TOTALS	26360			7.55	22.72		0.4115	7.55		1.95

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FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

HIAWATHA CANAL

P.O. Box 1604 • Hailey, ID 83333

April 23, 2008

RECEIVED

APR 28 2008

DEPT. OF WATER RESOURCES
SOUTHERN REGION

IDWR Southern Region
Attn: Allen Merritt
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380

Re: Transfers: (37-21130, 37-21137 and 37-21139)
Applicant: Dry Lot, LLC

Dear Allen:

The purpose of this letter is to advise the Idaho Department of Water Resources (IDWR) that the "Hiawatha Canal Water Users' Association of Lateral or Laterals" (Hiawatha) has no objection to the transfers of the aforementioned water rights.

Based on our discussions, we understand that IDWR will require the Applicant, Dry Lot, LLC, to leave in the Hiawatha Canal 0.19 cfs as conveyance loss, representing the amount of water necessary to prevent injury to down-canal water users who might be affected by the transfers. Hiawatha suggests that the 0.19 cfs of water be given a separate water right number in the name of the "Hiawatha Canal Water Users' Association of Lateral or Laterals" for "mitigation" purposes.

By agreeing to this conveyance loss, Hiawatha agreed to the Worstell analysis on the condition that the transfers involved movement within the Canal. Hiawatha, at this time and without analyzing further data, does not agree that the same analysis might apply to transfers of water outside of the Canal.

Hiawatha appreciates the opportunity of being consulted on these transfers. Thank you.

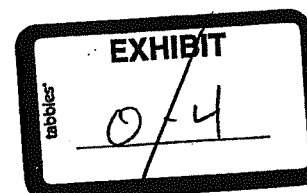
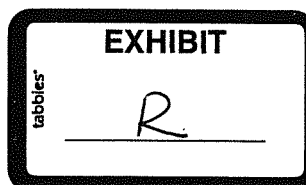
Sincerely,

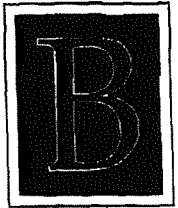
HAEMMERLE & HAEMMERLE, P.L.L.C.


Fritz X. Haemmerle

FXH: fxh
cc: client

Charles E. Brockway, Brockway Engineering, PLLC
2016 Washington St., Suite 4
Twin Falls, ID 83301





BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

April 23, 2008

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301

Re: Dry Lot LLC Transfer Application: Hiawatha Canal Loss Mitigation

Dear Allen:

Thank you for your help in evaluating the Hiawatha Canal Losses relative to the transfer of the Cutter water rights upstream in the canal. Based on your updated seepage allocation spreadsheets which now include the effect of lining of several reaches of the canal, an estimate of the additional loss which will be mitigated by the Valley Club Homeowners Association was determined.

Using your spreadsheet titled WORSTELL: Hiawatha Canal with liner, Before moving Cutter to Dry Lot, and the spreadsheet titled WORSTELL: Hiawatha Canal with liner, After moving Cutter to Dry Lot, my analysis indicates that 0.19 cfs of the 3.64 cfs should be left in the canal below the Valley Club diversion (reach #1) to mitigate for negative impacts to downstream water users. This calculates to 5.2% of the 3.64 cfs which will remain in the canal. This value results in a change from the estimated mitigation requirement submitted with the transfer application since the initial estimate was based on previous spread sheets which were not revised for canal lining and recent transfers out of the canal.

This calculation is based on the following:

Reach	Delivery loss minus Hiawatha Rights for loss-cfs	Delivery loss minus Hiawatha Rights for loss-cfs	Delivery loss minus Hiawatha Rights for loss-cfs
	After transfer	Before Transfer	Difference
1	.30	.13	.17
18	.40	.04	.36
Difference			.19

I believe this mitigation discharge is consistent with prior determinations by IDWR and provides an equitable adjustment to insure that no injury occurs to existing water rights in the canal. Whether or not the 0.19 cfs is determined to

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APR 24 2008
DEPT. OF WATER RESOURCES
SOUTHERN REGION

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

EXHIBIT

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EXHIBIT

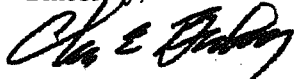
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be a water right held by the Hiawatha Canal Co. for seepage mitigation or is treated in some other fashion by IDWR will not affect the operation of the Valley Club HOA project.

I believe that the Hiawatha Canal personnel are in agreement with the proposed mitigation and you should be receiving a letter to that effect from the Company shortly.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Brockway", written over the typed name.

Charles E. Brockway, P.E.

Cc: Woody Friedlander
Fritz Haemmerle
Dave Cropper
Jim Speck

Hiawatha Recommended 1983

Right ID	Priority Date	Rate(cfs)	Volume(acf)	Source	Water Use(s)	Owner(s)	Version	Source Ia App ID
606775	1881-05-01	0.02		BIG WOOI IRRIGATION		PULLEN, ANNE W (Current); PU	1	wrAdjudicationRecommendation
594699	1881-05-01	2.02		BIG WOOI AESTHETIC STORAGE, DIVE		THE VALLEY CLUB INC (Current)	1	wrAdjudicationRecommendation
606776	1881-05-01	0.76		BIG WOOI IRRIGATION		COTTONWOOD CREEK INVEST	1	wrAdjudicationRecommendation
553699	1883-03-24	0.09	3.5	BIG WOOI IRRIGATION		THE CROSS CREEK TRUST (C	1	wrAdjudicationRecommendation
553818	1883-03-24	0.1		BIG WOOI IRRIGATION		SULLIVAN, COLLEEN R (Current)	1	wrAdjudicationRecommendation
555614	1883-03-24	0.13	20.8	BIG WOOI IRRIGATION		WILLARD, MICHAEL E (Current)	1	wrAdjudicationRecommendation
310160	1883-03-24	0.04		BIG WOOI IRRIGATION, STOCKWATER		BAZOVSKY, JOHN (Current)	1	wrAdjudicationRecommendation
310161	1883-03-24	0.04		BIG WOOI IRRIGATION		THE JEFFREY K RICE FAMILY T	1	wrAdjudicationRecommendation
590677	1883-03-24	0.48		BIG WOOI IRRIGATION		RED DEVIL MOUNTAIN HOMEO	1	wrAdjudicationRecommendation
354153	1883-03-24	0.04		BIG WOOI IRRIGATION		KENNEDY, THOMAS A (Current)	1	wrAdjudicationRecommendation
610575	1883-03-24	0.04		BIG WOOI IRRIGATION		ELIZABETH MATHIEU REVOCAL	1	wrAdjudicationRecommendation
605736	1883-03-24	2.74		BIG WOOI MITIGATION		HIAWATHA CANAL WATER USI	1	wrAdjudicationRecommendation
310202	1883-03-24	1.4		BIG WOOI IRRIGATION, MITIGATION		EGGLES, ELYN HAT RANCH L	1	wrAdjudicationRecommendation
313624	1883-03-24	0.9		BIG WOOI IRRIGATION		BERNHAGEN-CROPPER, LINDA	1	wrAdjudicationRecommendation
617913	1883-03-24	1.2		BIG WOOI IRRIGATION		THE VALLEY CLUB INC (Current)	2	wrAdjudicationRecommendation
617916	1883-03-24	1.69		BIG WOOI IRRIGATION, RECREATION		THE VALLEY CLUB INC (Current)	2	wrAdjudicationRecommendation
606746	1883-03-24	0.69		BIG WOOI IRRIGATION		COTTONWOOD CREEK INVEST	1	wrAdjudicationRecommendation
606749	1883-03-24	0.1	5.3	BIG WOOI AESTHETIC STORAGE, DIVE		WILLARD, MICHAEL E (Current)	1	wrAdjudicationRecommendation
606751	1883-03-24	0.04		BIG WOOI IRRIGATION, MITIGATION		THOMAS-STEWART FAMILY TR	1	wrAdjudicationRecommendation
617049	1883-03-24	2.86		BIG WOOI MUNICIPAL		CITY OF HAILEY (Current)	2	wrAdjudicationRecommendation
310333	1883-03-24	0.1		BIG WOOI IRRIGATION		GORMAN, DONNA F (Current); C	1	wrAdjudicationRecommendation
606278	1883-03-24	0.23		BIG WOOI IRRIGATION		COYOTE BLUFF HOMEOWNER	1	wrAdjudicationRecommendation
606296	1883-03-24	0.36		BIG WOOI IRRIGATION		RICHMOND, LINDA (Current); RI	1	wrAdjudicationRecommendation
607115	1883-03-24	0.02		BIG WOOI IRRIGATION		CLARK, JOHN H (Current)	1	wrAdjudicationRecommendation
225171	1883-03-24	0.04		BIG WOOI DOMESTIC		HENRICUS P BEEKWILDER FAI	1	wrAdjudicationRecommendation
310371	1883-03-24	0.26		BIG WOOI IRRIGATION		HIAWATHA CANAL WATER USI	1	wrAdjudicationRecommendation
607168	1883-03-24	0.15		BIG WOOI MITIGATION		HIAWATHA CANAL WATER USI	1	wrAdjudicationRecommendation
607169	1883-03-24	0.02		BIG WOOI MITIGATION		MIZER, MARY M (Current)	1	wrAdjudicationRecommendation
310406	1883-03-24	0.1		BIG WOOI IRRIGATION		ARGYLE, JANET LEE (Current)	1	wrAdjudicationRecommendation
346478	1883-03-24	0.05		BIG WOOI IRRIGATION		KUKURIN, JIM (Current); KUKUF	1	wrAdjudicationRecommendation
607176	1883-03-24	0.06	7.28	BIG WOOI IRRIGATION, MITIGATION		MARIANA S PAEN TRUST (Curr	1	wrAdjudicationRecommendation
607177	1883-03-24	0.05	7	BIG WOOI IRRIGATION		PASSOVOY, SUSAN J (Current)	1	wrAdjudicationRecommendation
606045	1883-03-24	0.06		BIG WOOI IRRIGATION		BRODERICK, LISA M (Current); I	1	wrAdjudicationRecommendation
606047	1883-03-24	0.07		BIG WOOI IRRIGATION		CAT TRACK SELECT LLC (Curre	1	wrAdjudicationRecommendation
606036	1883-03-24	0.07		BIG WOOI IRRIGATION		ALAN D BILLER AND NANCY T I	1	wrAdjudicationRecommendation
606043	1883-03-24	0.07		BIG WOOI IRRIGATION		CHESNEL, CONNIE (Current); C	1	wrAdjudicationRecommendation
590632	1883-03-24	0.04	10.5	BIG WOOI MITIGATION		WILLIS, WALTER BRUCE (Curre	1	wrAdjudicationRecommendation
558877	1883-03-24	0.28		BIG WOOI AESTHETIC, RECREATION,		DRAPER, PRISCILLA A (Current)	1	wrAdjudicationRecommendation
566488	1883-03-24	0.09		BIG WOOI IRRIGATION		GRABHER, ELMAR (Current); GI	1	wrAdjudicationRecommendation
571473	1883-03-24	0.19		BIG WOOI IRRIGATION		BURDICK, HENRY (Current); BU	1	wrAdjudicationRecommendation
571474	1883-03-24	0.05		BIG WOOI IRRIGATION, MITIGATION		RINKER, HARRY S (Current)	1	wrAdjudicationRecommendation
569751	1883-03-24	0.13	30.8	BIG WOOI IRRIGATION		EVANS, JANET (Current); EVAN	1	wrAdjudicationRecommendation
606318	1883-03-24	0.06		BIG WOOI IRRIGATION				

606315	1883-03-24	BIG WOOI IRRIGATION	RASOR, ERIC N (Current); RASC	1	wrAdjudicationRecommendation
607290	1883-03-24	BIG WOOI IRRIGATION	MYLNAR, JOAN (Current); MYLN	1	wrAdjudicationRecommendation
605836	1883-03-24	BIG WOOI IRRIGATION	WILCOX, LORRAINE (Current); I	1	wrAdjudicationRecommendation
606030	1883-03-24	BIG WOOI IRRIGATION	KOSS FAMILY LTD PARTNERSH	1	wrAdjudicationRecommendation
607463	1883-03-24	BIG WOOI IRRIGATION	MARATHON PARTNERS LLC (C	1	wrAdjudicationRecommendation
605940	1883-03-24	BIG WOOI MITIGATION	THORNTON, C ROD (Current)	1	wrAdjudicationRecommendation
606004	1883-03-24	BIG WOOI IRRIGATION, MITIGATION	BLAINE COUNTY SCHOOL DIST	1	wrAdjudicationRecommendation
605945	1883-03-24	BIG WOOI MITIGATION	STURTEVANT, GREGG K (Curre	1	wrAdjudicationRecommendation
606077	1883-03-24	BIG WOOI MITIGATION	MILEY, JOHN (Current)	1	wrAdjudicationRecommendation
606132	1883-03-24	BIG WOOI AESTHETIC	IRRIGATION, RIPHILLIPS, EVELYN (Current); PH	1	wrAdjudicationRecommendation
606131	1883-03-24	BIG WOOI AESTHETIC	IRRIGATION, R ROSEKRANS, KATHLEEN B (C	1	wrAdjudicationRecommendation
606129	1883-03-24	BIG WOOI AESTHETIC	IRRIGATION, R KNIGHT, CAROL (Current); KNIG	1	wrAdjudicationRecommendation
606168	1883-03-24	BIG WOOI IRRIGATION	OLD CUTTERS INC (Current)	1	wrAdjudicationRecommendation
570360	1883-03-24	BIG WOOI IRRIGATION	OLD CUTTERS INC (Current)	1	wrAdjudicationRecommendation
570364	1883-03-24	BIG WOOI IRRIGATION	OLD CUTTERS INC (Current)	1	wrAdjudicationRecommendation
600204	1883-03-24	BIG WOOI IRRIGATION	SAVARIA, ADELE S (Current); S	1	wrAdjudicationRecommendation
600206	1883-03-24	BIG WOOI IRRIGATION	BAILEY, JILL (Current); BAILEY,	1	wrAdjudicationRecommendation
600208	1883-03-24	BIG WOOI IRRIGATION	ALLRED II, JACKSON W (Curre	1	wrAdjudicationRecommendation
601952	1883-03-24	BIG WOOI IRRIGATION	NORTHBRIDGE V SUBDIVISION I	1	wrAdjudicationRecommendation
603173	1883-03-24	BIG WOOI IRRIGATION	EMB-HAILEY LP A CALIFORNIA	1	wrAdjudicationRecommendation
603175	1883-03-24	BIG WOOI IRRIGATION	NORTHBRIDGE VI SUBDIVISION	1	wrAdjudicationRecommendation
607760	1883-03-24	BIG WOOI IRRIGATION, STOCKWATER CROPPER, DAVID (Current); CR	1	wrAdjudicationRecommendation	
610132	1883-03-24	BIG WOOI IRRIGATION, STOCKWATER JOHNSON, CHARLES M (Curre	1	wrAdjudicationRecommendation	
610185	1883-03-24	BIG WOOI IRRIGATION, STOCKWATER HICKEY, LOUISE (Current); HIC	1	wrAdjudicationRecommendation	

CONVEYANCE LOSS - WORSTELL

04/18/08

NAME OF DITCH: Hiawatha Ditch with liner BY: adm DATE: 04/18/08
Before moving Cutter to Dry lot

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)	DELIVERY LOSS MINUS HIAWATHA RIGHTS FOR LOSS
Decree	900	24.0	10.00	2.73	0.00	22.72	0.1201	0.00	30.27	0.00
1	1910	18.0	3.00	1.30	2.88	22.72	0.0574	0.51	27.54	0.13
2	450	18.0	3.00	0.31	0.04	19.84	0.0155	0.01	23.36	0.00
3	480	18.0	3.00	0.33	0.02	19.80	0.0165	0.00	23.01	0.00
4	430	18.0	3.00	0.29	0.02	19.78	0.0148	0.00	22.66	0.00
5	1770	15.0	0.00	0.00	2.02	19.76	0.0000	0.45	22.35	0.12
6	730	15.0	0.00	0.00	1.45	17.74	0.0000	0.33	20.33	0.08
7	490	15.0	0.00	0.00	0.05	16.29	0.0000	0.01	18.88	0.00
8	1820	15.0	0.00	0.00	0.00	16.24	0.0000	0.00	18.83	0.00
9	1470	15.0	1.50	0.42	0.52	16.24	0.0257	0.15	18.83	0.04
10	4500	14.0	1.28	1.02	0.24	15.62	0.0652	0.08	17.79	0.02
11	680	12.0	1.00	0.10	2.17	15.38	0.0067	0.70	16.54	0.18
12	970	12.0	1.00	0.15	0.04	13.21	0.0111	0.01	14.26	0.00
13	350	12.0	1.00	0.05	0.13	13.17	0.0040	0.05	14.08	0.01
14	440	12.0	1.00	0.07	0.66	13.04	0.0051	0.23	13.89	0.06
15	1860	12.0	1.00	0.28	1.44	12.37	0.0228	0.53	13.16	0.14
16	530	12.0	1.00	0.08	0.82	10.93	0.0073	0.31	11.44	0.08
17	490	12.0	1.00	0.07	0.68	10.11	0.0073	0.26	10.54	0.07
18	460	12.0	1.00	0.07	4.00	9.43	0.0074	1.55	9.78	0.40
19	820	10.0	1.00	0.10	0.82	5.43	0.0191	0.33	5.71	0.09
20	650	7.0	0.66	0.04	1.55	4.61	0.0082	0.64	4.78	0.17
21	1260	4.0	0.66	0.04	0.20	3.06	0.0137	0.09	3.20	0.02
22	2900	4.0	0.66	0.10	2.86	2.86	0.0338	1.32	2.95	0.34
TOTALS	26360			7.55	22.72		0.3419	7.55		1.95

REACH = SECTION OF CHANNEL
LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS

WIDTH = AVERAGE TOP WIDTH OF WATER SURFACE IN REACH

SEEPAGE = SOIL SEEPAGE RATE OF REACH

WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD

DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)

DELIVERY LOSS = TOTAL DELIVERIES IN REACH

LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT

DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY;

IF MULTIPLE RIGHTS WITHIN REACH, DELIVERY LOSSES SHOULD BE

PROPORTED BASED ON SIZE OF DELIVERY FOR EACH RIGHT WITHIN REACH

FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

CONVEYANCE LOSS - WORSTELL

NAME OF DITCH:		Hiawatha Ditch with liner	BY:	adm	DATE:	04/18/08				
		After moving Cutter to Dry Lot								
REACH	LENGTH (FT)	AVE WIDTH (FT)	SHEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVERY (CFS)	DELIVERY LEFT (CFS)	LOSS FACTOR	DELIVERY LOSS (CFS)	FLOW (CFS)	DELIVERY LOSS MINUS HIAWATHA RIGHTS FOR LOSS
Decree	500	24.0	10.00	2.73	0.00	22.72	0.1201	0.00	30.27	0.00
1	1910	18.0	3.00	1.30	6.52	22.72	0.0574	1.16	27.54	0.30
2	450	18.0	3.00	0.31	0.04	16.20	0.0190	0.01	19.72	0.00
3	480	18.0	3.00	0.33	0.02	16.16	0.0203	0.00	19.37	0.00
4	430	18.0	3.00	0.29	0.02	16.14	0.0182	0.00	19.02	0.00
5	1770	15.0	0.00	0.00	2.02	16.12	0.0000	0.47	18.71	0.12
6	730	15.0	0.00	0.00	1.45	14.10	0.0000	0.34	16.69	0.09
7	490	15.0	0.00	0.00	0.05	12.65	0.0000	0.01	15.24	0.00
8	1820	15.0	0.00	0.00	0.00	12.60	0.0000	0.00	15.19	0.00
9	1470	15.0	1.50	0.42	0.62	12.60	0.0332	0.17	15.19	0.04
10	4500	14.0	1.28	1.02	0.24	11.98	0.0850	0.08	14.15	0.02
11	680	12.0	1.00	0.10	2.17	11.74	0.0088	0.79	12.90	0.20
12	970	12.0	1.00	0.15	0.04	9.57	0.0154	0.02	10.62	0.00
13	350	12.0	1.00	0.05	0.13	9.53	0.0056	0.05	10.44	0.01
14	440	12.0	1.00	0.07	0.66	9.40	0.0071	0.26	10.25	0.07
15	1860	12.0	1.00	0.28	1.44	8.73	0.0323	0.61	9.52	0.16
16	530	12.0	1.00	0.08	0.82	7.29	0.0110	0.36	7.80	0.09
17	490	12.0	1.00	0.07	0.68	6.47	0.0115	0.30	6.90	0.08
18	460	12.0	1.00	0.07	0.36	5.79	0.0120	0.16	6.14	0.04
19	820	10.0	1.00	0.10	0.82	5.43	0.0191	0.39	5.71	0.10
20	650	7.0	0.66	0.04	1.55	4.61	0.0082	0.75	4.78	0.19
21	1260	4.0	0.66	0.04	0.20	3.06	0.0137	0.10	3.20	0.03
22	2900	4.0	0.66	0.10	2.86	2.86	0.0338	1.52	2.95	0.39
TOTALS	26360			7.55	22.72		0.4115	7.55		1.95

REACH = SECTION OF CHANNEL

LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS

WIDTH = AVERAGE TOP WIDTH OF WATER SURFACE IN REACH

SHEPAGE = SOIL SHEPAGE RATE OF REACH

WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD

DELIVERY = TOTAL DELIVERIES IN REACH

DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)

LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT

DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY;

IF MULTIPLE RIGHTS WITHIN REACH, DELIVERY LOSSES SHOULD BE

PROPORTED BASED ON SIZE OF DELIVERY FOR EACH RIGHT WITHIN REACH

FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

Narrative in Support of Water Right Permit, Transfer and Mitigation Plan for Irrigation

Valley Club Home Owners Association Inc.
Hailey, Idaho (Dry Lot LLC)

Charles E. Brockway, P.E.
Brockway Engineering, PLLC.

Revised
July 16, 2009

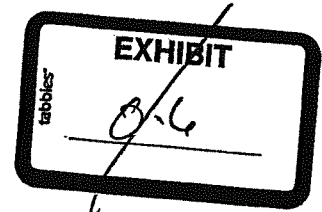
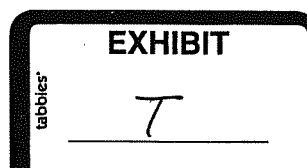
Dry Lot LLC was formed by certain members of the Valley Club Homeowners Association to purchase water rights and file the necessary applications subject of this narrative for their benefit.

The Valley Club Home Owners Association represents owners of the 99 lots in the Valley Club Subdivision in Blaine County Idaho. The subdivision was established in early 1990's and currently has residences on 40 lots (Figure 1). The Association holds two ground water right permits 37-8613A and 37- 8810 which provide in-house, irrigation, and fire protection water to all lots. The permit components are shown on Table 1.

Table 1 Water Right Permits-The Valley Club Home Owners Association Inc.

Right No.	Priority Date	Proof Date	Use	Diversion Rate cfs	Irrig Acres	Diversion
37-8613A	4/4/1990	5/2/1996	Irrigation & Domestic	0.98 Irrig. 0.50 Domestic	49.5 acres-limit 0.5 acres/residence	2 wells
37-8810	5/3/1993	8/18/1998	Domestic & Fire Protection	0.4 Domestic 3.4 Fire Protection	Domestic is for 99 units, clubhouse/restaurant and recreation center	2 wells

The two wells are located at the north end of the subdivision in the SWNWNW Sec 28 T3N R18E and pump into a looped distribution system. Drillers' logs for both wells are shown in Appendix A. Combined capacities of the two wells are adequate to provide the additional irrigation requirements contemplated under



this plan. Based on the two existing water right permits, the allowable irrigated acreage from the system is 49.5 acres with each residential lot limited to 0.5 acres irrigated. The Owners Association (through Dry Lot, LLC) proposes to provide irrigation water wherever possible to each lot owner up to an average of 0.78 acres or a total irrigated acreage associated with the residential lots of 77 acres. Since the current permits allow irrigation of 49.5 acres, the Valley Club Owners Association is desirous of securing water rights to allow an additional 27.5 acres of irrigation within the place of use of the domestic system but not limited to any certain acreage per lot. An application for permit for additional irrigation of 27.5 acres within the subdivision is being submitted with a ground water recharge mitigation plan utilizing surface water rights from the Big Wood River.

Dry Lot LLC has entered into an agreement with Old Cutters to purchase 27.5 acres of water rights 37-21130, 37-21137, and 37-21139 from the Big Wood River all with priority dates of 3/24/1883 and with a permissible place of use of 66 acres. The water right numbers for the above purchased water rights have been changed by IDWR to 37-22313, 37-22318 and 37-22323. Analyses of records of the Watermaster District 37 indicate that this priority right has been cut 16 times in the period 1948 through 2004 or 28 percent of years with the right in priority on average until September 15, average of about 153 days. The earliest it has been cut is July 1, as seen in Appendix B.

These water rights are decreed in the Snake River Basin Adjudication and water under these rights is diverted from the Big Wood River and conveyed through the Hiawatha Canal. The Hiawatha Canal conveys some 30 cfs of Big Wood River water rights to users adjacent to and south of the Valley Club property. A pumping plant located on the Hiawatha Canal is owned and operated by the Valley Club and used to divert Big Wood River water rights to the Valley Club Golf Course and amenities. It is proposed to utilize this pumping plant and pipeline to divert and convey the newly acquired Big Wood River water rights acquired by Dry Lot LLC, currently conveyed in the Hiawatha Canal, to infiltration areas near the north end of the Valley Club Subdivision to mitigate for additional ground water extraction for irrigation of the additional 27.5 acres. All irrigation of the lots on the Valley Club Subdivision will be served from the two existing wells owned by the Valley Club Owners Association. Locations of the Hiawatha Canal, pump diversion, pipeline and proposed infiltration basins are shown on the aerial photograph, Figure 2.

Driller's logs for the two Valley Club Home Owners Association wells indicate sand gravel and clay media to a depth of 140 feet with static water levels of 64 to 71 feet below ground surface. Pumping tests indicate pumping levels of 79 to 84 feet for a discharge of 507 to 657 gpm. An irrigation well owned by the Valley Club Inc (golf course) adjacent to the two municipal wells is 180 feet deep with sand, gravel and clay throughout the profile. The discharge for this well (locally

called the Mizer well) was reported by the driller to be 1800 gpm with a pumping level of 88 feet, as seen in Appendix A.

The Theis equation was used to quantify the additional aquifer drawdown resulting from pumping a maximum of 0.52 cfs from a single well to satisfy the additional peak daily consumptive irrigation requirements. Evaluation of the Theis equation resulted in aquifer drawdown equal to 0.75 feet at a distance of 1000 feet from the well after continuous pumping for 40 days. This analysis is shown in Appendix A.

Alternate infiltration basin locations are proposed for the project. Field infiltration tests have been performed on the northern basin sites which indicate that the design infiltration rates are suitable for the native soils. Final location for the infiltration basins is pending final arrangements with Valley Club on use of facilities. Dual infiltration basins near the north end of the project and near the middle of the project as shown on Figure 2 are proposed. Water supplied from the pumping plant on the Hiawatha Canal through the pipeline will be delivered either to the northernmost basins on the Valley Club Homeowners property (Figure 2) or to the southern infiltration site directly from the pipeline (Figure 2). The infiltration basins will be subsurface galleries with perforated pipe distribution systems and not open ponds. Water will be pumped from the pipeline or the northern Valley Club pond to two or four infiltration basins. The sustainable infiltration rate for the infiltration basins is estimated at a minimum of 1.5 ft/day through a substrate of at least 18 inches of select filter sand. Based on an annual calculated infiltration requirement of 96.3 acre feet, and an infiltration period of 153 days, the average infiltration of the basins would be 0.63 acre feet per day or an average discharge of 0.32 cfs (144 gpm). With an infiltration rate of 1.5 ft/day, the basin wetted area required would be 0.42 acres or 18,300 square feet. The two sets of two proposed basins would be approximately 80 x115 feet each in size and located at least 500 feet from any existing wells.

If the northern site is utilized as the primary site, a pump from the Valley Club upper pond to the northern infiltration basins would be designed for a maximum discharge of 200 gpm. The lower (southern) set of basins would be served directly from the Valley Club pipeline. A totalizing flow meter is required on the Valley Club Inc. pumping system from the Hiawatha Canal and a meter with instantaneous readout and totalizer would be installed on the pipeline to the infiltration basins with monthly reporting to ascertain the volume infiltrated. Flow meters are currently installed on Valley Club Owners Association two existing domestic wells and total volumes pumped are documented to assure compliance with water rights.

The goal of the water right acquisition is to assure that an additional 27.5 acres can be irrigated anywhere on the subdivision and that each lot owner has the opportunity to irrigate, if he or she desires, a total of 0.78 acres. Each lot owner may irrigate up to 0.5 acres from the original two water rights. The additional

27.5 acres of irrigation allowed by the proposed permit and transfer can be allocated by the Owners Association any place within the authorized place of use which includes all lots and common area in the subdivision. In addition, the Association would like to assure that the full additional 27.5 acres could be irrigated for the full irrigation season even though the 3/24/1883 priority water right is not available for the full irrigation season. This mitigation plan proposes to assure that an adequate volume of water is replaced in the aquifer from the 3/24/1883 water right to mitigate the additional use on the 27.5 acres after the cutoff date to the end of the irrigation season. This plan is based on the seasonal consumptive irrigation requirement on the new acres for the latter part of the irrigation season with no expansion of the water right discharge or volume.

At total buildout of the subdivision, there will be 99 residences with a maximum irrigated turf area within the place of use of an average of 0.78 acres per lot or 77 acres. Current ground water rights allow the irrigation of 99 lots at 0.5 irrigation acres or 49.5 acres. The additional irrigated acreage is therefore 27.5 acres at full buildout.

The full season consumptive irrigation requirement (Pdef) for the 27.5 additional irrigated acres on the Valley Club Subdivision is estimated at 27.5 acres x 1.96 ac ft/acre or 53.9 acre feet for the full 183 day season. The seasonal irrigation diversion requirement from ground water assuming a flood irrigation efficiency for turf of 56% is 96.3 af/ year for the 27.5 acres. Since the average length of time the 3/24/1883 right is in priority is 153 days out of the 183 days in the established irrigation season, the additional consumptive irrigation requirement to extend the season from 153 days to 183 days is 0.162 ac ft/acre or $0.162 \times 27.5 = 4.5$ acre feet and the additional diversion requirement, assuming an irrigation efficiency of 56%, to extend the season is $4.5 / 0.56 = 8.0$ acre feet. Total required diversion of ground water including extension of irrigation for the full 183 day extended season is 96.3 acre feet. By operating the infiltration system at the minimum design discharge of 0.32 cfs for 153 days, from April 15 through September 15, approximately 96.3 acre feet will be added to the aquifer. Since the 96.3 acre feet of irrigation diversion assumes a low (56%) irrigation efficiency, the 96.3 acre feet recharged to the aquifer will be equal to or less than the required diversion. If a more efficient method of irrigation such as sprinkler irrigation is employed, which is probable, and then the irrigation efficiency would be raised to 75%, lowering the irrigation diversion requirement to 71.9 acre feet. This is a reasonable factor of safety to assure that the irrigation season consumptive irrigation requirement of 53.9 acre feet and the total ground water diversion of up to 96.3 acre feet for the extended season are adequately mitigated. The maximum groundwater diversion value for flood irrigation through the season of 96.3 acre feet is equal to the infiltration volume of 96.3 acre feet; there is no net temporal impact on the aquifer. The infiltration volume exceeds the diversion requirement throughout the irrigation season. Since the ground water diversion points and infiltration basins for the north set of basins are approximately 700 feet apart the local effect on the aquifer will be minimal. Recharge using the

lower (southern) set of infiltration basins will not impact the late season aquifer levels significantly since the volume expected for late season extension is only 8.0 acre feet. Pumping of the extended season volume of 8.0 acre feet is not expected to significantly impact any local ground water diversions. The proposed place of use for the recharge water made available by the recently purchased water rights 37-21130, 37-21137, and 37-21139 will consist of the entire subdivision as shown in Appendix E. This place of use consists of 219.2 acres and the total allowed irrigation including existing and new water rights is 77 acres.

The annual volume of recharge through the mitigation project will be phased to match the buildout rate of the residences within the subdivision and a mitigation schedule for each year of the planned phases would be prepared and submitted to IDWR as required. Any portion of the water right diverted for mitigation but not utilized in the recharge project can be returned to the Hiawatha Canal through the Valley Club golf course stream system to mitigate seepage losses in the Hiawatha which may impact existing down stream canal water users.

A maintenance program for the infiltration basins will be developed after final design and followed to assure that infiltration rates are maintained. This program will include maintenance of perforated pipe infiltration capacity and media renovation.

The place of use of the water rights purchased for ground water mitigation is located on the Old Cutters property approximately three (3) miles south of the new proposed place of use on the Valley Club Subdivision, Figure 2.

The water rights purchased by Dry Lot LLC for mitigation of aquifer pumping require moving the diversion upstream in the Hiawatha Canal approximately 3.4 miles. The historical loss in this reach of the Hiawatha has been shared by water right holders with deliveries throughout the length of the canal. Recently (2006) a 4350 foot length of the Hiawatha Canal was rehabilitated by the Valley Club Inc. and lined with a membrane to reduce seepage. An analysis of seepage losses in the Hiawatha was performed by the IDWR Twin Falls Regional Office in conjunction with a previous transfer. This analysis shows that, with the recent lining of part of the canal, moving a total diversion of 1.66 cfs allowed under the Old Cutter's water rights upstream to the Valley Club Inc diversion will require 0.09 cfs (rounded to 0.1 cfs) to remain in the canal to make up the additional impact to down-canal water users. The spreadsheets showing the IDWR analysis are included in Appendix D.

A ground water model of the Big Wood River Valley aquifer from the East Fork downstream to the City of Bellevue was developed by Brockway Engineering PLLC to evaluate the changes in ground water levels and Big Wood River reach gain as a result of the proposed aquifer recharge and extraction mitigation plan. This model is a MODFLOW aquifer flow model and is fully described in the Final

Report : " Development of a Ground Water Flow Model for the Big Wood River Aquifer: East Fork to Bellevue". The report is appended to this application. Simulation of the ground water system changes effected by the proposed project are fully described in the report. "Evaluation of the Impact of the Proposed Dry Lot, LLC Water Right Applications Using a Big Wood River Aquifer Groundwater Model". This report shows that the proposed ground water recharge and extraction project impact on aquifer water levels and river reach gains is minimal or zero.

Dry Lot LLC also entered into a *Water Rights Use Agreement* with the Big Wood Canal Company (BWCC) to resolve BWCC's protest. Pursuant to the agreement, Dry Lot voluntarily agreed to reduce its rate of diversion from the Big Wood River under the purchased water rights by 0.5 cfs. Therefore, 0.5 cfs will remain in the river to increase flows past the Hiawatha Canal headgate. The increased flows in the river will provide additional mitigation to surface water rights on the Big Wood River.

The proposed transfer includes 1.66 cfs of irrigation water rights. Subtracting 0.10 cfs to be left in the Hiawatha Canal and 0.50 cfs to be left in the Big Wood River, results in 1.06 cfs available for recharge by the using the Valley Club Owners Association. The average flow rate necessary for full mitigation by recharge is 0.32 cfs, well below the 1.06 cfs available.

Appendix D
Hiawatha Canal Data

Appendix D.1

Before moving Cutler to Dry Lot

CONVEYANCE LOSS - WORSTELL

NAME OF DITCH: Hiawatha Ditch with liner
 Before moving Cutler to Dry Lot
 FLOW TO BE MOVED: 1.66 CFS

BY: A. Merritt DATE: 04/18/08
 Rev BY: GEP DATE: 07/16/09

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVER (CFS)	DELIVER LEF FACTOR (CFS)	LOSS FACTOR (CFS)	DELIVERY LOSS (CFS)	FLOW (CFS)	DELIVERY LOSS MINUS HIAMATHA RIGHTS FOR LOSS
Decree	900	24.0	10.00	2.73	0.00	22.72	0.1201	0.00	30.27	0.00
1	1910	18.0	3.00	1.30	2.88	22.72	0.0574	0.51	27.54	0.13 Reach moving to
2	450	18.0	3.00	0.31	0.04	19.84	0.0155	0.01	23.36	0.00
3	480	18.0	3.00	0.33	0.02	19.80	0.0165	0.00	23.01	0.00
4	430	18.0	3.00	0.29	0.02	19.78	0.0148	0.00	22.66	0.00
5	1770	15.0	0.00	0.00	2.02	19.76	0.0000	0.45	22.35	0.12
6	730	15.0	0.00	0.00	1.45	17.74	0.0000	0.33	20.33	0.08
7	490	15.0	0.00	0.00	0.05	16.29	0.0000	0.01	18.88	0.00
8	1820	15.0	0.00	0.00	0.00	16.24	0.0000	0.00	18.83	0.00
9	1470	15.0	1.50	0.42	0.62	16.24	0.0257	0.15	18.83	0.04
10	4500	14.0	1.28	1.02	0.24	15.62	0.0652	0.08	17.79	0.02
11	680	12.0	1.00	0.10	2.17	15.38	0.0067	0.70	16.54	0.18
12	970	12.0	1.00	0.15	0.04	13.21	0.0111	0.01	14.26	0.00
13	350	12.0	1.00	0.05	0.13	13.17	0.0040	0.05	14.08	0.01
14	440	12.0	1.00	0.07	0.66	13.04	0.0051	0.23	13.89	0.06
15	1860	12.0	1.00	0.28	1.44	12.37	0.0228	0.53	13.16	0.14
16	530	12.0	1.00	0.08	0.82	10.93	0.0073	0.31	11.44	0.08
17	490	12.0	1.00	0.07	0.68	10.11	0.0073	0.26	10.54	0.07
18	460	12.0	1.00	0.07	4.00	9.43	0.0074	1.55	9.78	0.40 Reach moving from
19	820	10.0	1.00	0.10	0.82	5.43	0.0191	0.33	5.71	0.09
20	650	7.0	0.66	0.04	1.55	4.61	0.0082	0.64	4.78	0.17
21	1260	4.0	0.66	0.04	0.20	3.06	0.0137	0.09	3.20	0.02
22	2900	4.0	0.66	0.10	2.86	2.86	0.0338	1.32	2.95	0.34
TOTALS	26360			7.55	22.72		0.3419	7.55		1.95

BEFORE THE DRY LOT LIC MOVE
 SHARE OF LOSS =
 $\frac{1.55}{4.00} * (0.40)$
0.166 CFS

METHOD OF DETERMINATION FROM A. MERRITT, IDWR

REACH = SECTION OF CHANNEL
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS
 AVE WIDTH = AVERAGE TOP WIDTH OF WATER SURFACE IN REACH
 SEEPAGE = SOIL SEEPAGE RATE OF REACH
 WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD
 DELIVERY = TOTAL DELIVERIES IN REACH
 DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)
 LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT
 LOSS FACTOR = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY;
 REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH;
 IF MULTIPLE RIGHTS WITHIN REACH, DELIVERY LOSSES SHOULD BE
 PRORATED BASED ON SIZE OF DELIVERY FOR EACH RIGHT WITHIN REACH
 FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

Appendix D.2

After moving Cutter to Dry Lot

CONVEYANCE LOSS - WORSTELL

NAME OF DITCH: Hiawatha Ditch with liner
 After moving Cutter to Dry Lot
 FLOW TO BE MOVED: 1.66 CFS

BY: A. Merritt DATE: 04/18/08
 Rev BY: GEP DATE: 07/16/09

REACH	LENGTH (FT)	AVE WIDTH (FT)	SEEPAGE (FT/DAY)	WORSTELL LOSS (CFS)	DELIVER (CFS)	DELIVER LEF FACTOR (CFS)	LOSS (CFS)	DELIVERY LOSS (CFS)	FLOW (CFS)	DELIVERY LOSS MINUS HIAMATHA RIGHTS FOR LOSS
Decree	900	24.0	10.00	2.73	0.00	22.72	0.1201	0.00	30.27	0.00
1	1910	18.0	3.00	1.30	4.54	22.72	0.0574	0.81	27.54	0.21 Reach moving to
2	450	18.0	3.00	0.31	0.04	18.18	0.0169	0.01	21.70	0.00
3	480	18.0	3.00	0.33	0.02	18.14	0.0181	0.00	21.35	0.00
4	430	18.0	3.00	0.29	0.02	18.12	0.0162	0.00	21.00	0.00
5	1770	15.0	0.00	0.00	2.02	18.10	0.0000	0.46	20.69	0.12
6	730	15.0	0.00	0.00	1.45	16.08	0.0000	0.33	18.67	0.09
7	490	15.0	0.00	0.00	0.05	14.63	0.0000	0.01	17.22	0.00
8	1820	15.0	0.00	0.00	0.00	14.58	0.0000	0.00	17.17	0.00
9	1470	15.0	1.50	0.42	0.62	14.58	0.0287	0.16	17.17	0.04
10	4500	14.0	1.28	1.02	0.24	13.96	0.0730	0.08	16.13	0.02
11	680	12.0	1.00	0.10	2.17	13.72	0.0075	0.73	14.89	0.19
12	970	12.0	1.00	0.15	0.04	11.55	0.0127	0.01	12.60	0.00
13	350	12.0	1.00	0.05	0.13	11.51	0.0046	0.05	12.42	0.01
14	440	12.0	1.00	0.07	0.66	11.38	0.0059	0.24	12.23	0.06
15	1860	12.0	1.00	0.28	1.44	10.71	0.0263	0.56	11.50	0.14
16	530	12.0	1.00	0.08	0.82	9.27	0.0087	0.32	9.78	0.08
17	490	12.0	1.00	0.07	0.68	8.45	0.0088	0.28	8.88	0.07
18	460	12.0	1.00	0.07	2.34	7.77	0.0090	0.97	8.12	0.25 Reach moving from
19	820	10.0	1.00	0.10	0.82	5.43	0.0191	0.36	5.71	0.09
20	650	7.0	0.66	0.04	1.55	4.61	0.0082	0.68	4.78	0.18
21	1260	4.0	0.66	0.04	0.20	3.06	0.0137	0.09	3.20	0.02
22	2900	4.0	0.66	0.10	2.86	2.86	0.0338	1.40	2.95	0.36
TOTALS	26360			7.55	22.72		0.3685	7.55		1.95

METHOD OF DETERMINATION FROM A. MERRITT, IDWR

REACH = SECTION OF CHANNEL
 LENGTH = LENGTH OF REACH, THE CHANNEL CAN BE DIVIDED INTO EQUAL LENGTH REACHES
 OR ACTUAL LENGTHS BETWEEN DELIVERY POINTS

AVE WIDTH = AVERAGE TOP WIDTH OF WATER SURFACE IN REACH

SEEPAGE = SOIL SEEPAGE RATE OF REACH

WORSTELL LOSS = CONVEYANCE LOSS IN REACH BASED ON WORSTELL METHOD

DELIVERY = TOTAL DELIVERIES IN REACH

DELIVERY LEFT = SUM(DELIVERIES OF CURRENT AND REMAINING REACHES)

LOSS FACTOR = WORSTELL LOSS/DELIVERY LEFT

DELIVERY LOSS = SUM(LOSS FACTORS OF CURRENT AND PREVIOUS REACHES) X DELIVERY;

REPRESENTS THE LOSSES ASSIGNED TO THE DELIVERIES IN THE REACH;

IF MULTIPLE RIGHTS WITHIN REACH, DELIVERY LOSSES SHOULD BE

PROPORTIONED BASED ON SIZE OF DELIVERY FOR EACH RIGHT WITHIN REACH

FLOW = TOTAL FLOW AT BEGINNING OF EACH REACH

BEFORE THE DRY LOT LLC MOVE

SHARE OF LOSS =

$$\frac{1.66 * (0.40)}{4.54}$$

0.076 CFS

IMPACT DUE TO CHANGE:

$$0.166 \text{ CFS}$$

$$0.076 \text{ CFS}$$

$$0.090 \text{ CFS}$$