

Water Rights 37-154B and 37-7822
CGB 11/10/2011

Facts and Timeline

1. 37-154 was a 10 cfs surface water right decreed in Frost for irrigation purposes. Harry Rinker applied for transfer #1735, which was approved in January 1974, splitting this right into a 9.66 cfs portion (37-154A) and a 0.44 cfs portion (37-154B). The transfer also codified 26.4 acres of irrigation under 37-154B, diverted from a headgate known as Rinker 11, which still exists as the northern diversion under 37-7822. 37-154B was utilized for irrigation on the Gimlet area prior to this land being developed for residential purposes in the late 1980s.
2. Rinker applied for a new appropriation on 3/25/1980, numbered 37-7822. The permit application requested 20 cfs for a non-consumptive recreation and aesthetic use, to be diverted to existing flood channels and returned to the river. The two points of diversion on the application were the existing Rinker 11, and a proposed new point of diversion to the south.
3. Permit 37-7822 was approved on 7/17/1980. Although the application stated that there would be no losses through the ditch system, IDWR and the watermaster had concerns about seepage and evaporation and the permit included a condition requiring that "Any water diverted under this permit that is lost between the point of diversion and point of return shall be replaced with groundwater." *How was -154B addressed as a combined use Right? Trans Use?*
4. An extension of time to submit proof was granted on 5/28/1985, extending the date to 7/1/1988.
5. On August 25, 1987, Allen Merritt and Reid Newby toured the Gimlet area to review the development of channels and ponds, about which Mr. Newby had some concern. Photographs taken by Mr. Merritt document two ponds on the ditch system. According to a memo by Mr. Merritt dated 8/31/1987, Mr. Newby indicated that in his opinion the ditch system loses water in the vicinity of the ponds, but further down water rises before returning to the river. This documentation provides evidence that the ditch and pond system was in place as of August 1987.
6. Loren Holmes wrote a memo on 10/7/1987 in which he recounts a conversation with Mr. Newby after the 8/25/1987 site tour. Mr. Newby had apparently "measured considerable loss between the inlet and outlet of this pond." Mr. Holmes' opinion was that permit 37-7822 could not be licensed until a groundwater (supplemental) supply is documented.
7. The Beneficial Use Exam for 37-7822 was performed on June 28, 1988 by Charles E. Brockway and submitted on June 30, 1988. Pertinent information in the exam documents is as follows:

- a. 37-154 was listed as overlapping with same POD and POU.
 - b. The natural channel system was gaining at the time of the exam based on the following measurements:
 - i. June 25, 1988: Inflow = 8.03 cfs, outflow = 9.94 cfs
 - ii. June 28, 1988: Inflow = 21.93 cfs, outflow = 22.27 cfs
 - c. The field examiner, acting as the applicant's representative, indicated that "If ever there were substantiated losses in the system, the 22 miners inch right [37-154B] could be used to satisfy those losses rather than require ground-water pumping." - claim is this is Recreation use at this time
 - d. The findings of the examiner relative to losses contradict those of Reid Newby; nevertheless a mitigating water right was offered up on behalf of the applicant. - NOT REQUIRED
8. The Proof of Beneficial Use submitted with the beneficial use examination indicated that water had first been turned into the project in April 1987. Note: the supporting statement for the SF-1 submitted against the disallowal of claim 37-154B gave this date as April 1988. This was a typographical error.
 9. As of 1987-1988, irrigation under 37-154B was largely or wholly diminished, as the Gimlet area was being developed into residential subdivisions. TSC 11/22/10 said 1980 subd developed in 1980+
 10. SRBA claim for 37-154B was filed on October 26, 1988. The claim lists a beneficial use of recreation, within the same system as 37-7822. The claimant states that "This is a decreed water right which has historically been used for irrigation but is presently being used for recreation and to make up for losses associated with permit 37-7822." In other words, the claimant asserts that an accomplished transfer of 37-7822 has been made. ? - No Beneficial use... at least before SRBA
 11. A license was issued for 37-7822 on November 1, 1991. Condition #6 requires the right to be non-consumptive. The requirement to replace losses with groundwater was not carried over from the permit, but instead Condition #11 on the license reads, "Upon a future determination by the Department of Water Resources that water is lost to the injury of prior right holders, the losses shall be replaced from a source acceptable to the Department."

Analysis

Why?
Proof?

Based on the above facts, there appears to be adequate evidence that 37-154B came to be utilized as mitigation for losses (if any) associated with water right 37-7822, prior to November 1987:

1. From January 1974 onward, the right was in the system as an irrigation right.) until 1980
2. Diversion in accordance with permit 37-7822 began in April 1987.) Not Established or Required

3. Department staff and the watermaster clearly believed that losses either were occurring or may occur in the future, and if so would need to be mitigated by an acceptable method.

Proven
incorrect
by CB SR Exam

4. Water right 37-154B was denoted by the applicant's representative as being not only in the system but available in whole or in part for mitigation, and was explicitly claimed as such in the SRBA.

Actually
Recreation
claimed

5. Physically, the water diverted under 37-154B was converted from irrigation, since actual irrigation was minimal once the Gimlet subdivisions got underway.

why No Trans?
Rinker has history
of following
Trans. Rules

Therefore, an accomplished transfer of the right should be recognized and the right should be recommended as a consumptive right with either recreation or mitigation as the use. The diversion rate should remain at 0.44 cfs and the annual volume of the right should be equal to the consumptive depletion of the original 26.4 acres. Using IDWR's allowance of 2.5 afa in this area, the annual volume would be $26.4 \times 2.5 = 66.0$ afa. The period of use of the right could stay at 4/15-10/31 since realistically little or no water is diverted under 37-7822 in the off-season.

CORRECTED**CORRECTED**

Page 1

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. **37-07822**

Priority: March 25, 1980

Maximum Diversion Rate: 20.00 CFS
Maximum Diversion Volume: 14,500.0 AF

It is hereby certified that SOUTH GIMLET WATER USERS ASSN INC
C/O WYMAN TAYLOR
PO BOX 2382
KETCHUM ID 83340 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated March 25, 1980; and has submitted Proof of
Beneficial Use on July 01, 1988. An examination confirms water is diverted from:

SOURCE

BIG WOOD RIVER

Tributary: MALAD RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
AESTHETIC	01/01 to 12/31	20.00 CFS	14,500.0 AF
RECREATION	01/01 to 12/31	20.00 CFS	14,500.0 AF

LOCATION OF POINT(S) OF DIVERSION:

BIG WOOD RIVER NE1/4SE1/4 Sec. 6, Twp 03N, Rge 18E, B.M. BLAINE County
BIG WOOD RIVER NE1/4SE1/4 Sec. 6, Twp 03N, Rge 18E, B.M. BLAINE County

PLACE OF USE: RECREATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N 18E 6																	
03N 18E 7	X			X									X				X

CONDITIONS OF APPROVAL

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.

copy to
37-154B

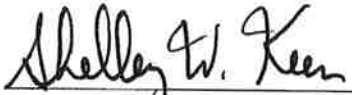
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-07822

4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or applicable Idaho law.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
6. Use of water under this right shall be non-consumptive.
7. The issuance of this right does not grant any right-of-way or easement across the land of another.
8. Measuring devices of a type approved by the Department shall be maintained at the points of diversion.
9. The Director retains jurisdiction of this right to require installation of measuring devices at the points where water returns to the Big Wood River.
10. This project shall be operated in a manner that will not conflict or interfere with the future upstream diversion of water for irrigation or other beneficial consumption.
11. Upon a future determination by the Department of Water Resources that water is lost to the injury of prior right holders, the losses shall be replaced from a source acceptable to the Department.
12. The water shall be returned to the Big Wood River at the discharge point located in lot 31, Gimlet 11 Subdivision, located within the SENE Section 7, T03N R18E B.M.
13. Water diverted under this right shall meet Idaho Water Quality Standards.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 6th day of October, 2011.

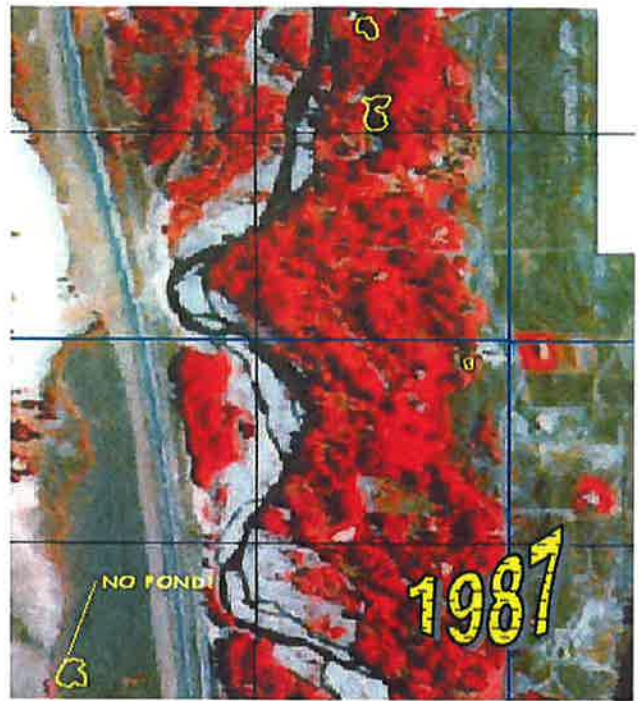
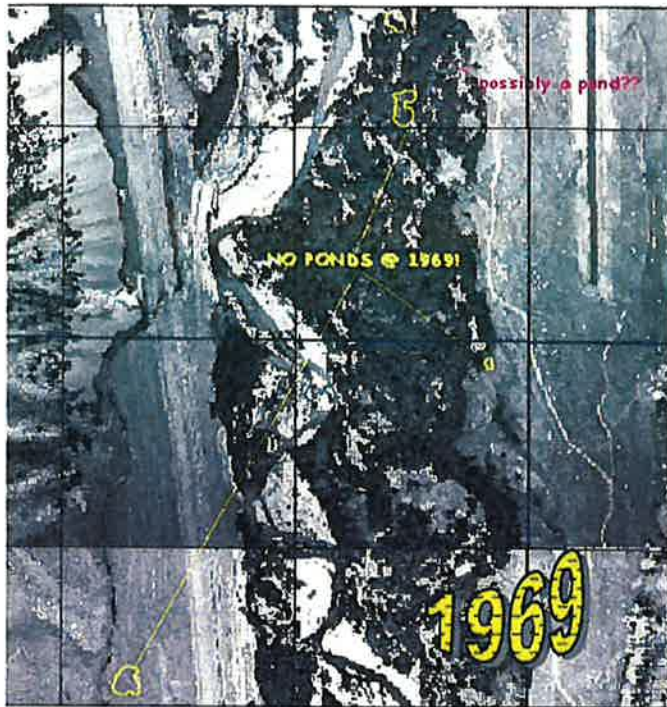

for GARY SPACKMAN
Interim Director

37-154B

1969 & 1974 imagery shows none of the claimed recreation ponds in S6 or S7

1987 & 1992 imagery shows no pond in the SWNE of S7

2004 imagery shows all 4 ponds (S6 & S7)



1974 transfer #1735: Irrigation use (recreation not identified). Changed pod and 26.4 acres of the pou.

1971 mandatory permit date for surface water...doesn't appear that these ponds were developed before 1974...

At this point inclination is to disallow pending further direction from state office staff re: the ponds. Claim does not address the storage issue, volume...etc. Appears that this claim needs a storage component before a recommendation can be made.

SWNE ownership- Algis Pabarcus
NENE ownership- Scott Glenn
S6 Ownership - Greg Carr

No change of ownership has been done

Questions during noe → talk to Kelly Christensen!

8/31/11

37-154B - 522D, -523C, -899B, -919, -2152, -2507A
-20427, -20429, -20431 & -20751
TSC - SM Bilyeu

Hobday, Williams, Spencer, Kelly, Brockway, Jones
Hobday attending for Barker; Nick Spencer in for Andrea
Courtney; Kelly Christensen out w/ family

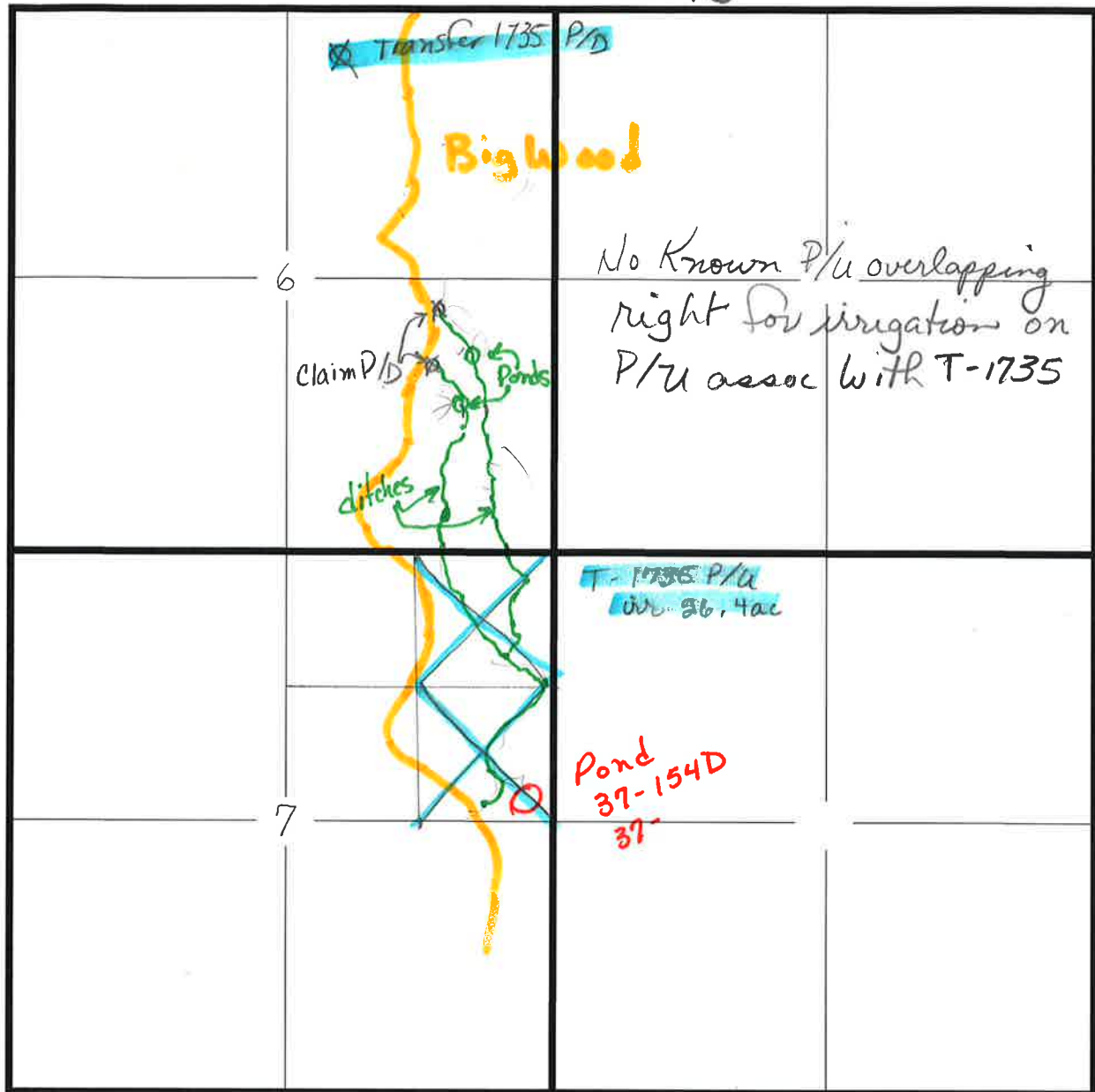
William's update - SF5s 522D, 919, 20751, 523C
signed by IDWR; Williams - sent to Hobday yesterday.
Hobday has signed; sent to Barker!!!

37-2152 - SF5 Filed.

No material issues left waiting for SF5s on
bigger remaining group.

37-154B - mitigation right-technical issues. Kelly
questioned how right became mitigation. Communication
between Kelly & Brockway. Brockway - stored history -
37-7822 permit w/ unusual condition. 1988 field exam -
no loss measured. Offered 37-154B for mitigation at that
time. License of -7822 doesn't mention Mitigation - not
unusual for that time. Accomplished transfer of use.
Kelly asking for add'l info - tough hurdle. It's been pretty
loose. 37-154B (NBS) working out kinks. NBS -
The remaining group - elements ok - Hobday expressed concerns
if 21268 needs to be added to combined use list. Hobday -
waiting for Doug. Back on in 30 days? 11:30
on Sept 28? Yes.

37-154B



26.4 ac

* note 37-7822 was licensed for 20 cb @ 7300 AF
 $20 \text{ cb} \times 1.98 \times 365 = 14,454 \text{ AF}$

Oct 6, 2008

TIM LUKE

Response to WM37

Question/Item 12: Rinker 11 & 11A Canals and Gimlet #9 Canal

Changes in the river channel have caused all of these systems to undergo major changes in headgate construction. Return flow measuring devices are being installed this year in conjunction with take out measuring devices at the newly installed head gates. Water right owners in these systems have also become accustomed to never having their water shut off because their rights are largely non-consumptive with small irrigation rights attached. Extremely dry years like 2007 prove that these systems do consume water when the water table drops low enough to prevent gaining reaches within the systems. Considerable time and resources will be dedicated to these systems in educating the water right owners of how the system will be managed in the future. The district will likely use support from the Idaho Department of Water Resources in this education process.

Background and Response:

Gimlet #9 has two water rights as follows:

Right 37-7836, 10 cfs for year-round Aesthetic and Recreation uses with a 6/4/1980 priority. The right is not specifically conditioned as non-consumptive. The right is objected to in the SRBA. The diversion appears to be a flow-through ditch that returns to the Big Wood River.

SRBA Recommendation 37-833Q, which is the same as 37-833M in the IDWR water rights database. This right is for diversion of 0.08 cfs for irrigation of 1.2 acres located in the SESE, Section 31, T4N, R18E, which is near the tail end of the Gimlet Ditch. In addition, this right is one of the saved rights from the Rockwell By-Pass decree. Certain conditions apply regarding delivery of Rockwell By-Pass rights. See the Department's letter dated March 18, 2003 to former WD37 watermaster Lee Peterson for further direction regarding delivery of Rockwell By-Pass rights (copy attached).

Rinker 11 & 11A:

Licensed right 37-7822 is diversion of 20 cfs from the Big Wood River for year-round Aesthetic and Recreation uses. The right does have a volume limit of 7,300 acre-feet, which at a continuous rate of 20 cfs, would be limited to use at about 182 days. On top of that there is permit 37-8838 for diversion of 2.50 cfs from the Big Wood River for storage use (aesthetic and wildlife) in one or more ponds at the end of the system originally constructed for 37-7822 (number and size of ponds needs to be confirmed by license field exam). Neither of these rights is included in the SRBA because the uses were developed or completed after the SRBA commencement date in 1987. Right 37-7822 is conditioned as non-consumptive. Permit 37-8838 is mitigated by rights 37-21329 and 37-21331 (formerly 37-154D and 37-577BT). Other rights diverted into same system for irrigation include 37-21330 and 37-21332 for irrigation around lower ponds. These latter two rights are limited to a combined diversion rate of 0.23 cfs and 14.3 acre-feet per year for irrigation of 4.1 acres. Right 37-7822 has not been required to be mitigated although 37-154B was claimed for that use but was disallowed in the SRBA. Objections have been filed against all of the SRBA recommendations on this system.

Regulation issues:

Gimlet #9/Right 37-7836: Although not listed as non-consumptive, it is generally considered non-consumptive and if found to reduce the quantity available for other rights, then the right should be curtailed unless some sort of mitigation is provided. The diversion for this right should have a

measuring device at the headgate from the river and a measuring device at the return flow site. The Department recommends delivering this right in 2008 as a non-consumptive use right, meaning that the right does not need to be curtailed in accordance with priority. The Department further recommends close monitoring of the measuring devices at the heading and return flow site to determine extent any losses. Regulation and/or mitigation requirements may apply in the future if any significant losses are found.

Right 37-833Q should be delivered in accordance with prior IDWR guidance on delivery of Rockwell By-pass rights. The total combined rate of diversion of rights 37-7836 and 37-833Q should not exceed 10.08 cfs. Right 37-833Q would not likely be delivered in the event of any future curtailment of right 37-7836.

The Rinker 11 & 11A system should have a measuring device at both diversions and at the discharge back to the river. If uses on these systems are found to be consumptive, then the diversions should be curtailed or mitigated. Permit 37-8838 was intended to use water already diverted by license 37-7822. Therefore, rights 37-7822 and 37-8838 when combined should not exceed a total diversion rate of 20 cfs. The total maximum diversion under these two rights and rights 37-21329, 37-21330, 37-21331 and 37-21332 shall not exceed 20.32cfs, or an annual volume of 7,317.5 acre-feet. When rights 37-21329 and 37-21331 used for mitigation are curtailed by priority then diversions under 37-8838 should cease.

37-8838
still in
PERMIT

The Department's file for permit 37-8838 shows photos of a diversion pump from the aesthetic channel going to the pond or ponds authorized under the permit. A valve and 8 inch McCrometer flow meter are installed in the pipe line that diverts water from the channel to the ponds, and a 10 inch McCrometer flow meter is shown installed in an outlet pipe where water is released from the reservoir back to the aesthetic channel. The watermaster should check whether these flow meters are operable for compliance with conditions of the permit. Calibration checks or measurements of the two meters are advisable. If the meters are operable, measurements should be recorded to check the inflow and outflow measurements of the ponds.

The Department understands the aesthetic uses from the Rinker 11 and 11A diversions are limited primarily to the irrigation season. If that is the case then the 7,300 acre-foot volume limit for right 37-7822 is probably not an issue. However, if the diversions are run longer than the standard irrigation season and the 7,300 is exceeded, then the diversions may need to be curtailed. Measurement and recording of the two diversions is therefore important to assure compliance with the water right conditions.

(Not an issue)

Vol.
Connected
= 14,500 AF

To aid WD37 IDWR staff may be available for meetings or education.

The Department encourages the installation of the measuring devices that are to be installed this year on these systems as referenced in the watermasters questions/correspondence to IDWR. The devices will help provide data regarding questions about the extent of any losses on the systems. It is important that WD37 record and report these measurements. The water district may wish to give consideration to installing continuous recorders on the measuring devices for one or two years. Additional funds collected from 2008 assessments that were to be used for a contractor and additional water delivery issues could be expended for data loggers or similar continuous recorders on these diversions and return flow sites.

FROM: Allen Merritt *AM*

DATE: February 8, 1995

TO: FILES : APPLIC. FOR PERMIT 37-08838 & TRANSFER #4520

SUBJECT: Analysis and Recommendation

Both of the above referenced applications deal with the same project. The project consists of developing ponds for wildlife & aesthetic purposes. The water proposed to be diverted is covered by application for permit 37-08838 for the non-consumptive component and application for transfer #4520 for the consumptive component. The project proposes to re-divert water from an existing man-made channel which conveys water diverted under right 37-07822.

= NO MENTION OF MITIG. OR NEED,

Based on the files it appears that possible injury to existing water rights has been mitigated.

I RECOMMEND THAT BOTH APPLICATIONS BE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

37-08838

- Add all conditions on license 37-07822 consistent with permit language.
- The ponds must be lined with either a man-made liner or an amended soil liner to minimize seepage loss from ponds.
- Rights identified on Transfer #4520 to be delivered for mitigation in connection to delivery of this right for diversion to storage. (If rights on #4520 are cut off due to priority this right shall cease diversion to storage)
- Under control of watermaster district 37.
- Approval does not grant easement to cross land of another.

Transfer #4520

- Under control of watermaster district 37.
-  Water rights to be delivered for mitigation of loss for delivery of 37-07822.
- Subject to SRBA review.

*what does this refer to?
Is 37-30029 mitig. for
37-7022?*

RECORDED

MAY 31 1995

*(Permit Backfile
37-8838)*

WATER RIGHTS EXAMINER'S REPORT-NARRATIVE
Permit No. 37-7822

Owner: Wood River Properties, Mr. Harry Rinker

Examiner: C.E. Brockway P.E.

Date: June 29, 1988

The field examination for beneficial use on Permit No 37-7822 was performed on June 25 and June 28, 1988.

The system consists of two diversions from the Big Wood River. Diversion 1, located just upstream of the Berteau residence and in the NE1/4, SE1/4, Sec 6, T3N, R18E BM and designated Rinker 11 by the watermaster, consists of a concrete structure with headwalls, a two(2) ft wide adjustable orifice, and a downstream lockable control gate. The opening of the orifice is adjustable in 1 inch increments on the stem. Some leakage occurs beneath the downstream control gate, primarily due to debris underneath the gate seat.. This leakage was estimated at 0.3 cfs on June 25, 1988. The discharge from this diversion currently flows through earthen ditch across a subdivision road and into a pond on the Berteau residence. From the pond it traverses two Gimlet subdivisions as shown on the accompanying map, and joins the flow from Rinker 11 on lot 15. There is currently a pond of approximately .3 acres recently constructed on this stream for which I can find no permit. It is the opinion of the watermaster that this pond was constructed without a permit. It does however, constitute a consumptive use and may contribute to seepage loss on this permit. The combined discharge is conveyed by natural channel under the road on lot 8 Gimlet 11 subdivision and thence returns to the Big Wood River on lot 31, Gimlet 11 subdivision in the SE1/4, NE1/4 Sec 7, T3N, R18E, BM.

Diversion 2, located in the NE1/4, SE1/4, Sec 6, T3N, R18E. BM and designated Rinker 11A by the watermaster, consists of a 42 inch corrugated metal pipe inlet with 42 inch Waterman gate. Water flows through the 42 inch pipe into a weir pool and through a 10 ft Cippoletti weir. The weir was recently raised to avoid submergence and now is a standard device. Discharge through the weir enters a recreation pond covering approximately .5 acres, thence through a wooden overflow structure and into an earthen channel. This flow then traverses through the subdivision, joining the flow from Rinker 11A, and thence returns to the river.

NOV 15 1991

Permit 37-7822 is for recreational and aesthetic purposes and has as one of the provisions of the permit, installation of an effluent water measuring device. In the event there are losses in the system, the loss was to be made up from ground-water. This stream, according to local residents and the watermaster, is a gaining stream during normal years and normal ground-water levels. In order to determine whether or not it is a gaining reach, two measurements were made of inflow and outflow. Using the weir at Rinker 11 and the submerged orifice at Rinker 11A, the inflow discharge was determined, and the effluent was measured by current meter on Lot 8 of the Gimlet 11 subdivision just upstream of the road crossing. On June 25, 1988, the inflow was measured at 8.03 cfs and the current metered outflow at 9.94 cfs for a gain of 1.91 cfs. On June 28, 1988 the inflow was 21.93 cfs and the current metered outflow was 22.27 cfs for a gain of .34 cfs. These measurements, made in a drouth period and at a time when ground-water levels are low indicate that the stream is still a gaining reach. For this reason, installation of a measuring device on the effluent of the system to substantiate system losses would be unnecessary and I am recommending that this provision of the permit be waived.

There are two other decreed rights under which water is diverted from the Rinker 11 diversion. Mr. Rinker has right 37-0154 under the Frost Decree for 22 miners inches for irrigation purposes and Mr. Berteau has a right 37-_____ for 20 miners inches. If there ever were substantiated losses in the system, the 22 miners inch right could be used to satisfy those losses rather than require ground-water pumping.

With the waiver of the effluent measuring device, all provisions of the permit have been met. I have instructed Mr. Rinker, that a permanent staff gage should be installed on the weir at the Rinker 11A diversion. The watermaster currently 'sticks' the weir.

An investigation should be made of the pond recently constructed on the channel from the Rinker 11 diversion to determine whether or not it is in violation of any statute. I believe the owner's name is Mr. Taylor.

RECEIVED

NOV 15 1988

RECEIVED

JUL 1 1988

Department of Water Resources
Southern Region Office

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

For Office Use Only
Fee Received N/A
Date 7-1-88
Receipt # N/A
Receipt by JS
Reviewed by JS
Sent to region 7-1-88
S.O.

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee or a completed field examination report prepared by a certified water right examiner who has been appointed by the department.

Permit No. 37-7822

Name(s) of Permit Holder: WOOD RIVER PROPERTIES INC

Post Office Address: P.O. BOX 7250 NEWPORT BEACH CA 92663

Telephone No. (714) 979-8300

Source of Water: BIG WOOD RIVER

Extent of Use:

Domestic _____ (number of households) Stockwater _____ (number and type of stock)

Irrigation _____ (acres) Other/Remark Recreation & Aesthetics

Total rate and/or volume for which proof is submitted 20 cts _____ acre-feet

Show the date water was first diverted and beneficially used under this permit: APR 1987

Measuring Device: Required? ☒ Yes ☐ No
Installed? ☒ Yes ☐ No

Fee enclosed \$ _____
(See License Examination Fee Schedule)
Beneficial Use Field Report attached

Flow Measurement Port: Required? ☐ Yes ☐ No
Installed? ☐ Yes ☐ No

Person to contact to accompany the Department representative during the field examination:

(Name)

(Telephone)

NOV 15 1991

(Address)

The above information is my true statement of the extent to which the above numbered permit has been developed and I relinquish any undeveloped portion of the permit to the state of Idaho.

6/25/88

Date

[Signature]

Signature of Permit Holder (and title, if appropriate)

Proof Due
7-1-88

Identification No.

37-0154

Transfer No.

~~37-0154~~ 1735STATE OF IDAHO
DEPARTMENT OF RECLAMATION

APPROVED

APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

1. Name of Right Holder Harry S. Rinker
Post office address Box 672, Ketchum, Idaho 83340
2. Right obtained by:
a. Decree to M. A. Comstock in Case of Alturas Water Company
(Name)
vs. S. C. Frost, Dated Oct 6, 1909 in 4th Judicial
(Name of Court)
Court, County of Blaine and Lincoln
b. License No. _____ issued by the State of Idaho, Department of Reclamation.
3. Source of water Big Wood River tributary to Snake River
(Name of stream or source)
4. Date of Priority December 13, 1887
5. Amount of water a. 10.0 c.f.s. and/or
b. _____ acre feet/annum
6. Water is used for Irrigation from Apr. 1 to Nov. 1
(Month, Day) (Month, Day)
7. Original location of point of diversion is SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 29,
Township 4N, Range 18E, B.M., in Blaine County;
Additional points of diversion, if any _____

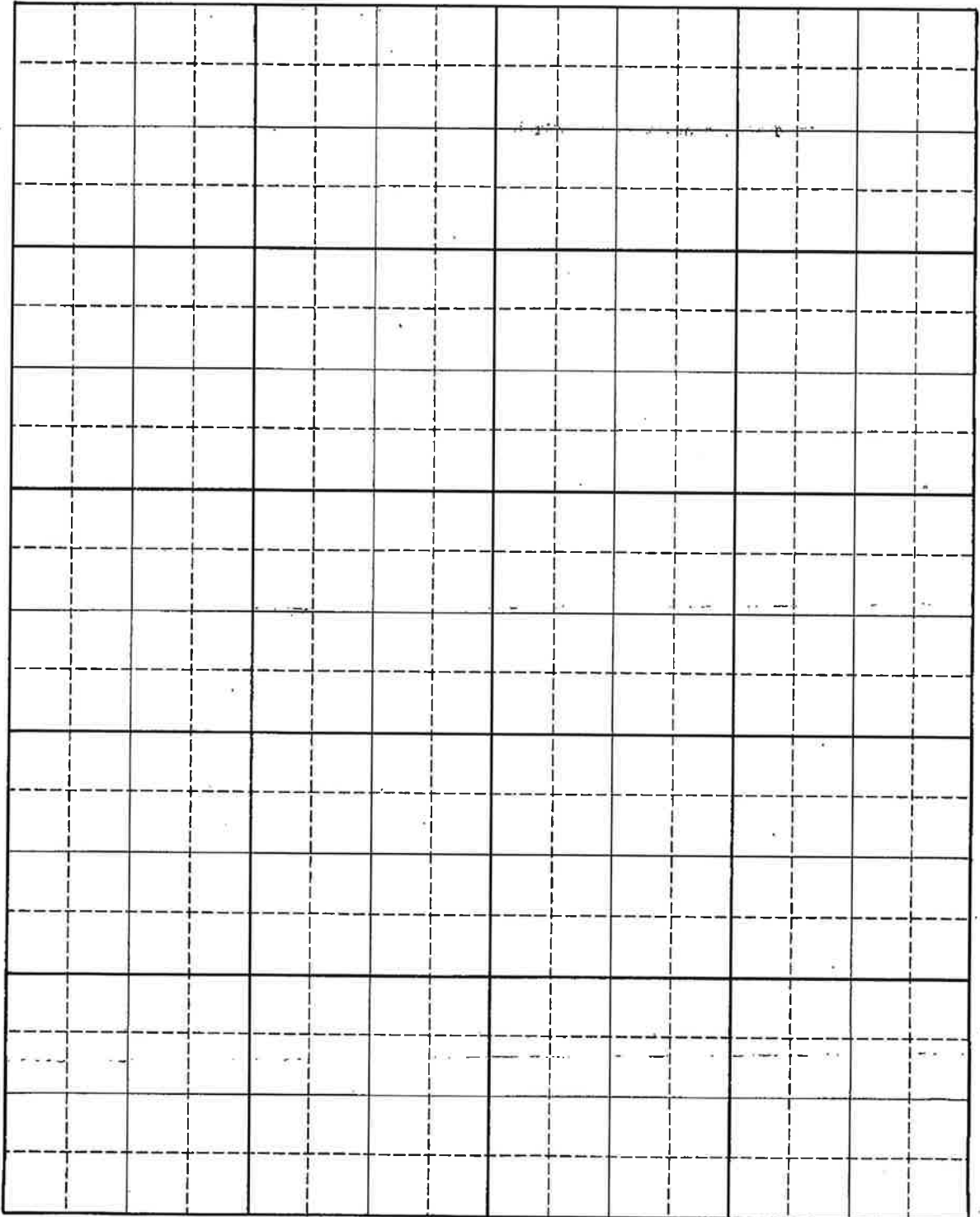
8. Lands presently irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
3N	18E	7	X	X	X	X							X			X	X	X	320
		17						X											40
		18	X	X	X	X	X			X									240

Total number of acres presently irrigated 600

MICROFILMED

SCALE: 2 inches Equal 1 Mile. Draw Plan in Ink.



9. If applicant was not the original holder of this right explain how it was acquired: _____
by right of purchase

10. CHANGE IN POINT OF DIVERSION

a. Quantity to be diverted at new point: .44 c.f.s. and/or _____ acre feet

b. New point of diversion: NW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 6, Township 3N
 _____, Range 18E, B.M.

c. Description of method of diversion and conveyance from new points of diversion: _____
Headgate, gravity flow - ditch

d. Is water to be conveyed to the lands previously irrigated? Yes X No _____
 If not, the place of use should be changed below.

e. Describe the reasons for applying for a change in the point of diversion:
Easier to receive water through own diversion point. More use of water
is obtained.

f. Do you intend to make the transfer permanent? Yes

g. Do you intend to abandon completely the old point of diversion? Yes

h. Indicate on the above plat the new point of diversion and lands to be irrigated.

11. CHANGE IN PLACE OF USE

a. Describe the new lands on which you wish to use your right.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
3N	18E	7	X			X													26.4

Total number of acres to be irrigated 26.4

b. Do you intend to make the transfer permanent? Yes

c. Are you completely abandoning the lands previously irrigated by this right? If not, explain your plans:

No. New diversion for same land

d. Describe any other water rights that you claim for the new ground upon which you wish to transfer this right:

e. Indicate on the above plat the new land to be irrigated and the point of diversion.

I hereby assert that no one will be injured by such transfer and that the change will be made at my own risk. The information contained in this application is true to the best of my knowledge.

Harry Rinker
(signature of applicant)

Subscribed and sworn to before me this 27th day of November, 19 73

Ruth S. Williams

My commission expires May 2, 1977



**ACTION OF STATE RECLAMATION ENGINEER
AND CERTIFICATE OF TRANSFER**

This is to certify that I have examined Application for Transfer of Water Rights No. 37-0154,
and said application is hereby APPROVED

1. Approval of said application is subject to the following limitations and conditions:

A measuring device of a type approved by this department shall be
permanently installed and maintained as part of the diverting works.

2. Denial of said application is for the following reasons:

Witness my hand this 21 day of January, 19 74

[Signature]
Director
Department of Water Administration

FOR DEPARTMENT USE ONLY

Received by jmm 2:30p Date 11-29-73

Protest filed by: _____ Date _____

Prelim. check by 147 Date 11-30-73

Fee received by _____ Date _____ Fee \$ 30.00

147 Approved for publication by _____
Wood River Journal
Published in _____ Dates 12-13 & 12-20-73

Hearing held _____

Watermaster Recommendation sent _____

Summary

The issues are as follows; (Note the term mitigate is being used interchangeably with recreation and no endorsement of either use is advocated)

1. Has 37-154B been forfeited for non use since 1980 and no resumption until 1988?
2. Is the assertion that there was intent to utilize that right for recreation-mitigation / mitigation prior to the actual resumption in 1988 sufficient to protect that right against forfeiture? What documentation is necessary to establish the date of intent to mitigate?
3. Groundwater for mitigation was first identified in the approved permit and again recognized in a 1987 memo by Loren Holmes.
4. Backfile for 37-7822 first identifies 37-154B as a potential mitigation right in 1988 as best as I can tell. I did not locate any historical info relating to 37-154B in that claim's backfile.
5. Assuming that the right is found to valid can any portion of the right be recognized for a consumptive use volume? What elements would be utilized in determining the consumptive use volume?
6. In 2003 South Gimlet Water Users Association Inc filed a change of ownership for 37-7822 from Wood River Properties Inc (Rinker president). If the base right changed ownership shouldn't 37-154B also have been a part of the change of ownership?

As shown on the WR database 37-154B was created through T-1735 approved in 1974 for the irrigation of 26.4 ac at 0.44 cfs. Some evidence exists that indicate the last use of this right for irrigation purposes was on or near 1980. The claimant is asserting that there was an accomplished transfer changing the nature of use from irrigation to either recreation or mitigation for a system currently licensed through 37-7822 (not a part of the adjudication process). Although the 'resumption' did not occur until after commencement in 1988 they are arguing that there was intent for an accomplished transfer prior to 1988 that would protect the right.

On page 19 of the backfile for 37-7822 and in the 1.d., Other: section in part states "(4) Any water diverted under this permit that is lost between the point of diversion and point of return to the river shall be replaced with groundwater."

In 1985 an extension of time to file proof of beneficial use was submitted and approved to July 1, 1988 based upon extreme flood damage in 1983. This extension was for permit 37-7822. No protection against forfeiture for 37-154B was filed.

37-7822 has a March 25, 1980 priority date for recreation/aesthetic at 20 cfs and an annual volume of 7,300 af. The system is a diversion from the Big Wood River that flows through a few small ponds (probably 1 illegal) and then back into the Big Wood River. In Brockway's June 29, 1988 "Water Rights Examiner's Report-Narrative" (Pc Doc pgs 46 & 47) he identifies a 0.3 ac pond associated with the

diversion system from Rinker #11 was a pond developed independent of the permit system (paragraph 2). Brockway indicates that this pond may have a consumptive use component. In the last paragraph of that same report he indicates that that pond may be in violation of a statute and that the owner of that pond is Mr. Taylor.

In paragraph 3, a 0.5 acre pond is identified and is associated with the Rinker 11A POD system. The genesis of this pond and whether it is considered to be a part of the permit is not clearly addressed. The pond was identified as being just below the measurement device. It appears that this may be a Rinker associated pond and developed to be a part of that diversion. It is not clear just who is responsible for this pond and there are no measurements reported to determine the pond volume or any possible system loss through this pond.

In paragraph 4, (beginning on back file pg 47) Brockway discusses the argument that the channels are a gaining reach. On June 25, 1988 Brockway measured the inflow into the system as 8.03 cfs and the outflow as 9.94 cfs. On June 28, 1988 Brockway measured the inflow as 21.93 cfs and the outflow as 22.27 cfs for a gain of 0.34 cfs.

Groundwater identified as possible mitigation in an Oct 7, 1987 memo from Loren Holmes to Bob and Norm. He indicates that the Water master Reid Newby had measured considerable loss between the inlet and outlet of a pond. No documentation of the actual measurements is in the backfile. Loren further states that the permit requires groundwater to be used to make up any losses, that that the dept should not issue a license until the supplemental groundwater supply is determined. This is backfile doc Pg 55.

Backfile doc pg 57 is a memorandum from Allen Merritt to Loren Holmes dated 8-31-1987. In that memo Allen indicates that Reid Newby has observed ponds being built on this type of development. He also indicated that Reid identified the pond as sinking in this area but that further down the ditch water rises before returning to the river.

Overlapping rights

37-7822 was licensed for 20 cfs and 7,300 AF. Sufficient volume for ½ year at full rate. The owner is South Gimlett Water Users Assn. (formerly held by Wood River Properties a Rinker Co.) Delivered through the same ditch system are rights 37-154D and 37-30029 established through T-4520 and further split through T-71412.

From T-71412 rights 37-21329, 37-21331 were generated and associated with 37-8838 Steven Holtzman Trust as wildlife/ aesthetic rights. Shares the 2 PODs and ditch system but for a different POU. From T-71412 rights 37-21330 and 37-21332 were generated for Steven Holtzman Trust as irrigation rights. Again they share the 2 PODs and ditch system but for a different POU.

E-MAIL CORRESPONDENCE

From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]
Sent: Thursday, June 23, 2011 2:46 PM
To: Christensen, Kelly
Cc: Robert E. Williams
Subject: RE: 37-154B Rinker

Kelly,

Not being an attorney you can take my opinion for what it is worth. It seems to me that the accomplished transfer occurred when the right was accepted for use in an approved mitigation plan, i.e. when the permit was approved, not when it first began to be used. Normally, when a permit application is filed which needs mitigation, IDWR processes a "permit with transfer" package, so the mitigation right is changed when the package is approved. In this case, the formal transfer was simply replaced by an accomplished transfer. What's the difference? This seems obvious to me.

Chuck

From: Christensen, Kelly [mailto:Kelly.Christensen@idwr.idaho.gov]
Sent: Thursday, June 23, 2011 1:00 PM
To: Charles G. Brockway; Craig Hobdey; Albert Barker; Courtney, Andrea; rewilliams@cablone.net; Kelly, Vicki; Jones, Doug
Subject: 37-154B Rinker

Chuck, in preparing a response to your last e-mail, I reviewed the objection and the response by the Concerned Water Users and noted a possible discrepancy in the SF-1 Objection Supporting Statement. In reviewing the third paragraph I realized that it described the system as -- "water was first diverted to the channels in April 1988." A copy of the entire paragraph is included below.

In looking at this statement I would be unable to recognize this right for an unrecorded change in nature of use as, if the water was first diverted in 1988 (post commencement) A transfer through the allocations process to change the nature of use would be necessary. Also the right would have to be amended and reviewed as an irrigation right based upon T-1735.

I apologize at bringing this up at this late date

In 1980 the claimant acquired permit 37-7822 for non-consumptive recreation and aesthetic uses, to be diverted from the Big Wood River at headgates known as the Rinker 11 and Rinker 11A. These headgates were installed approximately from 1983 to 1986, with delays due to problems with erosion due to flooding. The headgates and channels authorized under 37-7822 were completed by the end of the season in 1987, and water was first diverted to the channels in April 1988. Proof of Beneficial Use was filed on June 25, 1988 along with the beneficial use field exam. Evidence supporting the above facts is contained in IDWR's file for 37-7822.

ate but I just noticed this point.

KKC

From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]

Sent: Wednesday, June 22, 2011 12:06 PM

To: Christensen, Kelly

Cc: Robert E. Williams

Subject: 37-154B

Kelly,

Here is what I would propose for this right:

Use: Mitigation (or Recreation, as long as it is recognized that this right is consumptive)

Rate: 0.44 cfs

Period: 4/15 – 10/31

Volume: $54.4 \text{ af} = 26.4 \text{ ac} \times 2.06 \text{ afa}$ (Pdef for Alfalfa from Allen & Robison, Hailey station)

Chuck

Christensen, Kelly

From: Christensen, Kelly
Sent: Thursday, May 26, 2011 11:30 AM
To: 'Robert E. Williams'; Courtney, Andrea; Kelly, Vicki; 'Albert Barker'; 'Craig Hobdey'
Subject: RE: 37-154B Rinker

As the next status conference is in June I thought that I would resend this message. We should have time to work through it before the hearing and get a SF-5 routing if there are no big issues.

Kkc



37-154B Rinker
analysis.docx

From: Christensen, Kelly
Sent: Thursday, March 03, 2011 11:31 AM
To: Robert E. Williams; Courtney, Andrea; Kelly, Vicki; 'Albert Barker'; Craig Hobdey
Subject: 37-154B Rinker

Attached is the information I provided to Chuck Brockway 1-5-2011. I had expected a reply from him regarding that e-mail but did not receive a reply. Please provide information regarding this proposal.

<< File: 37-154B Rinker analysis.docx >>

Kelly K Christensen
Sr Water Resource Agt
Boise, Western Region
(208)-334-2190

37-154B Rinker analysis

The claim was filed as year-round mitigation for a portion of licensed right 37-7822 (not a part of the adjudication process as proof of beneficial use was submitted 6-25-1988).

37-154 (10.00 cfs was split through T-1735 into parts 154A (9.56 cfs) and 154B (0.44 cfs for the irrigation of 26.4 ac in 3N, 18E, Sec 7 E½NE¼.

The system is two ditches that run through 4 40-acre tracts. Also a part of the system is two ponds, one on each ditch. One pond surface area is $\approx .3$ af and the other is $\approx .4$ af. With respect to the licensed diversion rate of 20 cfs for 37-7822 the ponds are considered to just be a part of the diversion system as they can be filled in less than 24 hours at the licensed rate.

CHANGE OF USE RATE ANALYSIS

The right was originally for .44 cfs for irrigation. The current irrigation season for this area is 200 days long. $.44 \text{ cfs} \times 200 \text{ days} \times 1.98 = 174.2 \text{ af}$

$$((174.2 \text{ af}/365 \text{ days})/1.98) = 0.24 \text{ cfs}$$

RECOMMENDATION

37-154B recreation year-round @ 0.24 cfs

When 37-154B is combined with 37-7822, they are limited to a combined diversion rate of 20.00 cfs



Christensen, Kelly

From: Christensen, Kelly
Sent: Thursday, March 03, 2011 11:31 AM
To: Robert E. Williams; Courtney, Andrea; Kelly, Vicki; 'Albert Barker'; Craig Hobdey
Subject: 37-154B Rinker

Attached is the information I provided to Chuck Brockway 1-5-2011. I had expected a reply from him regarding that e-mail but did not receive a reply. Please provide information regarding this proposal.



37-154B Rinker
analysis.docx

Kelly K Christensen
Sr Water Resource Agt
Boise, Western Region
(208)-334-2190

37-154B Rinker analysis

*to Brockway
1-5-11*

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$$((174.2 \text{ af}/365 \text{ days})/1.98) = 0.24 \text{ cfs}$$

RECOMMENDATION

37-154B recreation year-round @ 0.24 cfs

When 37-154B is combined with 37-7822, they are limited to a combined diversion rate of 20.00 cfs



37- 154B. Rinker
12-13-1887

T-4520



B 26.4ac

154 10.00cfs
344

154C 2.85cfs

BK File Pg 432 -433

T-1735

A 9.56

1973

B 44cfs
P/G = Sec 7 E 1/2 NE 1/4
26.4ac

4520

Pc Dec 125

0

C 9.34

D .22cfs

3N 18E S7 SWNE 5.6ac

T-71412

Partial
assignment

1996
T-4827

21329

21330

4.21cfs abandoned

C 5.13cfs

6' .3.4

.7

6

10

4.2 AF

AJ .22cfs.

154D mitigation
Parent Sec 7 SWNE 5.6ac

21329

21330

Pond

HOLZMAN
TRUST.

4.1ac

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 37-07822

Priority: March 25, 1980

Maximum Diversion Rate: 20.00 CFS
Maximum Diversion Volume:¹ 7300.0 AF

This is to certify, that WOOD RIVER PROPERTIES INC.

P.O. BOX 7250

NEWPORT BEACH CA 92663

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated March 25, 1980; and has submitted Proof of Beneficial Use on July 1, 1988. An examination indicates that the works have a diversion capacity of 21,900 cfs of water from:

BIG WOOD RIVER

tributary to SNAKE RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
RECREATION	01/01 to 12/31	20.00 CFS	7300.0 AF
AESTHETIC	01/01 to 12/31	20.00 CFS	7300.0 AF
	Totals	20.00 CFS	7300.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NESE , Sec. 6, Township 03N, Range 18E
BLAINE County

PLACE OF USE: RECREATION
TWN RGE SEC

03N 18E	6	NESE	SESE
	7	NENE	SENE

PLACE OF USE: AESTHETIC, same as RECREATION use

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.

NOV 15 1991

State of Idaho
Department of Water Resources**WATER RIGHT LICENSE**

WATER RIGHT NO. 37-07822

CONDITIONS/REMARKS:

5. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
6. Use of water under this right shall be non-consumptive.
7. The issuance of this permit in no way grants any right-of-way or easement across the land of another.
8. Measuring devices of a type approved by the Department shall be maintained at the points of diversion.
9. The Director retains jurisdiction of this right to require installation of measuring devices at the points where water returns to the Big Wood River.
10. This project shall be operated in a manner that will not conflict or interfere with the future upstream diversion of water for irrigation or other beneficial consumption.
11. Upon a future determination by the Department of Water Resources that water is lost to the injury of prior right holders, the losses shall be replaced from a source acceptable to the Department.
12. The water shall be returned to the Big Wood River at the discharge point located in lot 31, Gimlet 11 Subdivision, located within the SENE Section 7, T03N R18E B.M.
13. Water diverted under this right shall meet Idaho Water Quality Standards.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 15th
day of NOVEMBER, 1991.

Acting for

R. Keith Higginson, Director

NOV 15 1991

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 37-154B V1

WATER RIGHT NUMBER: 37-154B V1

<u>Owner Type</u>	<u>Name and Address</u>
Attorney	ROBERT E WILLIAMS FREDERICKSEN WILLIAMS MESERVY 153 E MAIN ST PO BOX 168 JEROME, ID 83338 (208)324-2303
Representative	CHARLES E BROCKWAY C/O BROCKWAY ENGINEERING 2016 N WASHINGTON ST #4 TWIN FALLS, ID 83301
Current Owner	HARRY S RINKER PO BOX 7250 NEWPORT BEACH, CA 92658-7250 (714)879-8300

Priority Date: 12/13/1887
Basis: Decreed
Status: Disallowed

Source
BIG WOOD RIVER

Tributary
MALAD RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
RECREATION	1/01 to 12/31	0.440 CFS	
	<u>Total Diversion:</u>	0.440 CFS	

$.44 \text{ cfs} \times 200 \text{ days} @ 1.98 = 174.24 \text{ AF}$
 $(174.24 \text{ AF} / 365 \text{ days}) (1.98) = .24 \text{ cfs}$

Location of Point(s) of Diversion

BIG WOOD RIVER NE1/4SE1/4 Sec. 6, Twp 03N, Rge 18E, B.M.
BLAINE County

Place of Use

RECREATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	18E	6													X				X
03N	18E	7	X		X														

Conditions of Approval:

1. P15 Change in use, insufficient evidence of date of change: This is included for a claim that is proposed to be disallowed because use of the water right was changed without prior IDWR approval and the claimant did not submit sufficient evidence from which the date of the change could be determined. The date of change is necessary to determine if the right may be claimed as changed without prior IDWR approval, and if the change will result in injury to other water right holders.
2. P05 Change in use; insufficient evidence of date of change.

Comments:

1. akriwox 1/10/2007 DISALLOWED

Comment: Not enough information to recommend this claim at this time. Ponds do not appear on aerial imagery until after 1974, in fact one of the ponds isn't there until after 1992. Transfer in 1974 was for irrigation, no recreation use was addressed. Also appears to be a need for a storage component with this recreational pond usage.

Date Filed: 1/15/2008 Objection Status: Active

*System complete APR of 87
Per proof of Beneficial use for
37-1822.
Assuming accomplished transfer
from irr to (irr season) to recreation
year round use. @ irr rate
there would be an enlargement
of use.*

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 37-154B

WATER RIGHT NUMBER: 37-154B

<u>Owner Type</u>	<u>Name and Address</u>
Representative	CHARLES E BROCKWAY C/O BROCKWAY ENGINEERING 2016 N WASHINGTON ST #4 TWIN FALLS, ID 83301
Attorney	ROBERT E WILLIAMS FREDERICKSEN WILLIAMS MESERVY 153 E MAIN ST PO BOX 168 JEROME, ID 83338 (208)324-2303
Current Owner	HARRY S RINKER PO BOX 7250 NEWPORT BEACH, CA 92658-7250 (714)879-8300

Priority Date: 12/13/1887

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
BIG WOOD RIVER	MALAD RIVER	1/01	12/31	0.440 CFS	
<u>Total Diversion:</u>				0.440 CFS	

Location of Point(s) of Diversion

BIG WOOD RIVER NE1/4SE1/4 Sec. 6, Twp 03N, Rge 18E, B.M.
BLAINE County

Place of Use

RECREATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	18E	6													X				X
03N	18E	7	X			X													

Conditions of Approval:

- DESCRIPTION OF EXISTING DIVERSION WORKS: CONCRETE HEADGATE WITH CORRUGATED METAL PIPE AND GATE (RINKER 11A) OR CONCRETE STURCTURE WITH SLIDE GATE (RINKER 11). DITCHES CARRY WATER THROUGH EXISTING RECREATIONAL POND SOUTH THROUGH SUBDIVISION AND THENCE RETURNED TO BIG WOOD RIVER.
CLAIMANT OWNS LAND AT DIVERSION POINTS AND POND BUT NOT THE ENTIRE LENGTH OF DITCH.
THIS IS A DECREEED WATER RIGHT WHICH HAS HISTORICALLY BEEN USED FOR IRRIGATION BUT IS PRESENTLY BEING USED FOR RECREATION AND TO MAKE UP FOR LOSSES ASSOCIATED WITH PERMIT 37-7822.
THIS 22 MINERS INCH RIGHT HAS BEEN ERRONEOUSLY CLAIMED UNDER A37-00154 BY GOULD & RINKER
- R01 A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 37-154B

WATER RIGHT NUMBER: 37-154B

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	HARRY S RINKER BOX 672 KETCHUM, ID 83340
Original Owner	M A COMSTOCK

, ZZ

Priority Date: 12/13/1887

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u> _____ <u>To</u> _____	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	/ to /	0.440 CFS	
	<u>Total Diversion:</u>	0.440 CFS	

Location of Point(s) of Diversion

BIG WOOD RIVER	SE1/4SE1/4	Sec. 6, Twp 03N, Rge 18E, B.M.
BLAINE County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
03N	18E	7	X			X													

Conditions of Approval:

1. R01 A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.
2. P/D DESCRIBED AS NWNE S6 T3N R18E IN TRANS. 1735.
PRESENT P/D DETERMINED FROM WATERMASTER.
AC. IRRIG. = 26.4.

Remarks:Comments:

RECEIVED

NOV 15 2007

Department of Water Resources
Adjudication Bureau

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 37-154B

(Insert water right number)

Case No. 39576)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Harry S. Rinker

Address: P.O. Box 7250

Newport Beach, CA 92658

Daytime Phone: (714) 979-8300

Name & Address of Attorney, if any:

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Harry S. Rinker

Address: P.O. Box 7250

Newport Beach, CA 92658

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☒ **Name and Address**
Should be: As claimed
2. ☒ **Source**
Should be: As claimed
3. ☒ **Quantity**
Should be: As claimed
4. ☒ **Priority Date**
Should be: As claimed
5. ☒ **Point of Diversion**
Should be: As claimed
6. ☒ **Instream Flow Beginning and Ending Point**
Should be: As claimed
7. ☒ **Purpose(s) of Use**
Should be: Recreation and mitigation
8. ☒ **Period of Year**
Should be: As claimed
9. ☒ **Place of Use**
Should be: As claimed
10. ☐ **I object because:**
☐ This water right should not exist.

☒ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTIONS(S):** See attached supporting
statement.

SF-1 Objection Supporting Statement
Water Right No. 37-154B
Harry S. Rinker

IDWR recommended this water right for disallowal based on insufficient evidence of change of use. Information in IDWR files demonstrates that this right was moved to the Rinker 11 and Rinker 11A headgates and the use changed to recreation by accomplished transfer. The history and documentation is as follows:

In 1974 via Transfer No. 1735, 0.44 cfs of the base right 37-154 was split off and moved to a point of diversion in the NWNE Section 6, T3N, R18E for irrigation of 26.4 acres. Evidence of this fact exists in the IDWR file for 37-154.

In 1980 the claimant acquired permit 37-7822 for non-consumptive recreation and aesthetic uses, to be diverted from the Big Wood River at headgates known as the Rinker 11 and Rinker 11A. These headgates were installed approximately from 1983 to 1986, with delays due to problems with erosion due to flooding. The headgates and channels authorized under 37-7822 were completed by the end of the season in 1987, and water was first diverted to the channels in April 1988. Proof of Beneficial Use was filed on June 25, 1988 along with the beneficial use field exam. Evidence supporting the above facts is contained in IDWR's file for 37-7822.

Although no immediate requirement for mitigation of consumptive losses was placed on either the permit or the license for 37-7822, it was always the intent of the claimant to utilize 37-154 for recreational purposes and/or to provide mitigation water (since it is a consumptive right) in case the Department required it in the future (see condition #11 on the license for 37-7822). 37-154B was to be used for this purpose as indicated in the beneficial use field exam and on the SRBA claim submitted for 37-154B. This water right was moved to the Rinker 11 and Rinker 11A headgates by accomplished transfer prior to November 19, 1987. The evidence provided above documents that these headgates and channels were installed and operating well before this date and that 37-154B was being used at these locations.

-154B > BU Exam
decreases this Mit.
(Cond #11) is Needed?
-H2O moved to Rinker
11-11A
headgates? Prior to 11/19/87
but previous Permit. says
"No water until April 88"
* If a yr-old Right it should
have been available to
divulge in Fall '87?
Acc. Trans. is based on
Actual Div. - not intent
(as w/ Permits)

WATER RIGHTS EXAMINER'S REPORT-NARRATIVE
Permit No. 37-7822

for Claim 37-154B
Rinker
37-7822 Backfile
Pg 48 → 49

Owner: Wood River Properties, Mr. Harry Rinker

Examiner: C.E. Brockway P.E.

Date: June 29, 1988

The field examination for beneficial use on Permit No 37-7822 was performed on June 25 and June 28, 1988.

The system consists of two diversions from the Big Wood River. Diversion 1, located just upstream of the Berteau residence and in the NE1/4, SE1/4, Sec 6, T3N, R18E BM and designated Rinker 11 by the watermaster, consists of a concrete structure with headwalls, a two(2) ft wide adjustable orifice, and a downstream lockable control gate. The opening of the orifice is adjustable in 1 inch increments on the stem. Some leakage occurs beneath the downstream control gate, primarily due to debris underneath the gate seat.. This leakage was estimated at 0.3 cfs on June 25, 1988. The discharge from this diversion currently flows through earthen ditch across a subdivision road and into a pond on the Berteau residence. From the pond it traverses two Gimlet subdivisions as shown on the accompanying map, and joins the flow from Rinker 11 on lot 15. There is currently a pond of approximately .3 acres recently constructed on this stream for which I can find no permit. It is the opinion of the watermaster that this pond was constructed without a permit. It does however, constitute a consumptive use and may contribute to seepage loss on this permit. The combined discharge is conveyed by natural channel under the road on lot 8 Gimlet 11 subdivision and thence returns to the Big Wood River on lot 31, Gimlet 11 subdivision in the SE1/4, NE1/4 Sec 7, T3N, R18E, BM.

Diversion 2, located in the NE1/4, SE1/4, Sec 6, T3N, R18E. BM and designated Rinker 11A by the watermaster, consists of a 42 inch corrugated metal pipe inlet with 42 inch Waterman gate. Water flows through the 42 inch pipe into a weir pool and through a 10 ft Cippoletti weir. The weir was recently raised to avoid submergence and now is a standard device. Discharge through the weir enters a recreation pond covering approximately .5 acres, thence through a wooden overflow structure and into an earthen channel. This flow then traverses through the subdivision, joining the flow from Rinker 11A, and thence returns to the river.

NOV 15 1991

Permit 37-7822 is for recreational and aesthetic purposes and has as one of the provisions of the permit, installation of an effluent water measuring device. In the event there are losses in the system, the loss was to be made up from ground-water. This stream, according to local residents and the watermaster, is a gaining stream during normal years and normal ground-water levels. In order to determine whether or not it is a gaining reach, two measurements were made of inflow and outflow. Using the weir at Rinker 11 and the submerged orifice at Rinker 11A, the inflow discharge was determined, and the effluent was measured by current meter on Lot 8 of the Gimlet 11 subdivision just upstream of the road crossing. On June 25, 1988, the inflow was measured at 8.03 cfs and the current metered outflow at 9.94 cfs for a gain of 1.91 cfs. On June 28, 1988 the inflow was 21.93 cfs and the current metered outflow was 22.27 cfs for a gain of .34 cfs. These measurements, made in a drouth period and at a time when ground-water levels are low indicate that the stream is still a gaining reach. For this reason, installation of a measuring device on the effluent of the system to substantiate system losses would be unnecessary and I am recommending that this provision of the permit be waived.

gaining
streams
=
NO Loss
to Mitig.

There are two other decreed rights under which water is diverted from the Rinker 11 diversion. Mr. Rinker has right 37-0154 under the Frost Decree for 22 miners inches for irrigation purposes and Mr. Berteau has a right 37-_____ for 20 miners inches. If there ever were substantiated losses in the system, the 22 miners inch right could be used to satisfy those losses rather than require ground-water pumping.

← If?

With the waiver of the effluent measuring device, all provisions of the permit have been met. I have instructed Mr. Rinker, that a permanent staff gage should be installed on the weir at the Rinker 11A diversion. The watermaster currently 'sticks' the weir.

if not - then
what?

An investigation should be made of the pond recently constructed on the channel from the Rinker 11 diversion to determine whether or not it is in violation of any statute. I believe the owner's name is Mr. Taylor.

RECEIVED

NOV 15 1991

CURRENT METER CALCULATIONS

GIMLETW1

GIMLET WATER DIVERSION-H. RINKER PERMIT NO 37-7822

JUNE 25, 1988

EFFLUENT UPSTREAM OF ROAD ON LOT 8 GIMLET 11

OTT METER 47966*

C.E. BROCKWAY

SECT.	DIST.	DEPTH	REV .6XD	REV	TIME SEC	ANGLE CORR.	VEL1	VEL2	AVG VEL	DELTA AREA	DELT Q	SUM Q
1	1.4	0.20	0	0	50	1	0.00	0.00	0.00	0.00	0.00	0.00
2	2.0	0.45	22	22	50	1	0.41	0.41	0.41	0.20	0.04	0.04
3	3.0	0.70	71	71	50	1	1.23	1.23	1.23	0.58	0.47	0.51
4	4.0	0.90	98	98	50	1	1.69	1.69	1.69	0.80	1.16	1.67
5	5.0	1.00	98	98	50	1	1.69	1.69	1.69	0.95	1.60	3.28
6	6.0	1.00	111	111	50	1	1.91	1.91	1.91	1.00	1.80	5.07
7	7.0	1.10	117	117	50	1	2.01	2.01	2.01	1.05	2.05	7.13
8	8.0	1.10	54	54	50	1	0.94	0.94	0.94	1.10	1.62	8.75
9	9.0	1.00	26	26	50	1	0.47	0.47	0.47	1.05	0.74	9.49
10	10.0	0.90	11	11	50	1	0.24	0.24	0.24	0.95	0.34	9.82
11	11.0	0.70	0	0	50	1	0.06	0.06	0.06	0.80	0.12	9.94

*CALIBRATION

FOR N(REV/T)<.68 V= 0.7872 *N + 0.062

FOR N(REV/T)>.68 V= 0.8496 *N + 0.020

SEE LOOKUP TABLE L9.N12

AVG VELOCITY 1.17 FPS
 AREA 8.47 SQ FT
 DISCHARGE 9.94 CFS

INLET DISCHARGE
 RINKER 11A 7.73 CFS
 RINKER 11* 0.30 CFS

TOTAL INFLOW 8.03 CFS

GAIN(LOSS) 1.91 CFS
 *EST LEAK THROUGH
 CLOSED GATE

RECEIVED
 NOV 15 1991

CURRENT METER CALCULATIONS

GIMLETW2

GIMLET WATER DIVERSION-H. RINKER PERMIT NO 37-7822

JUNE 28, 1988

EFFLUENT UPSTREAM OF ROAD ON LOT 8 GIMLET 11

OTT METER 47966*

C.E.BROCKWAY

SECT.	DIST.	DEPTH	REV .6XD	REV	TIME SEC	ANGLE CORR.	VEL1	VEL2	AVG VEL	DELTA AREA	DELT Q	SUM Q
1	0.5	0.00	0	0	50	1	0.00	0.00	0.00	0.00	0.00	0.00
2	1.0	0.40	0	0	50	1	0.00	0.00	0.00	0.10	0.00	0.00
3	2.0	0.75	45	45	50	1	0.78	0.78	0.78	0.58	0.23	0.23
4	3.0	1.15	115	115	50	1	1.97	1.97	1.97	0.95	1.31	1.54
5	4.0	1.22	147	147	50	1	2.52	2.52	2.52	1.19	2.66	4.20
6	5.0	1.28	149	149	50	1	2.55	2.55	2.55	1.25	3.17	7.37
7	6.0	1.33	165	165	50	1	2.82	2.82	2.82	1.31	3.51	10.87
8	7.0	1.40	177	177	50	1	3.03	3.03	3.03	1.37	3.99	14.87
9	8.0	1.42	138	138	50	1	2.36	2.36	2.36	1.41	3.80	18.67
10	9.0	1.39	76	76	50	1	1.31	1.31	1.31	1.41	2.58	21.25
11	10.0	1.10	7	7	50	1	0.17	0.17	0.17	1.25	0.92	22.17
12	11.0	1.04	0	0	50	1	0.00	0.00	0.00	1.07	0.09	22.27
13	11.3	1.00	0	0	50	1	0.00	0.00	0.00	0.31	0.00	22.27

AVG VELOCITY 1.83 FPS
 AREA 12.17 SQ FT
 DISCHARGE 22.27 CFS

*CALIBRATION

FOR N(REV/T) < .68 V= 0.7872 *N + 0.062

FOR N(REV/T) > .68 V= 0.8496 *N + 0.020

SEE LOOKUP TABLE N9.P12

INLET DISCHARGE
 RINKER11A 16.83 CFS
 RINKER 11 5.10 CFS

TOTAL INFLOW 21.93 CFS

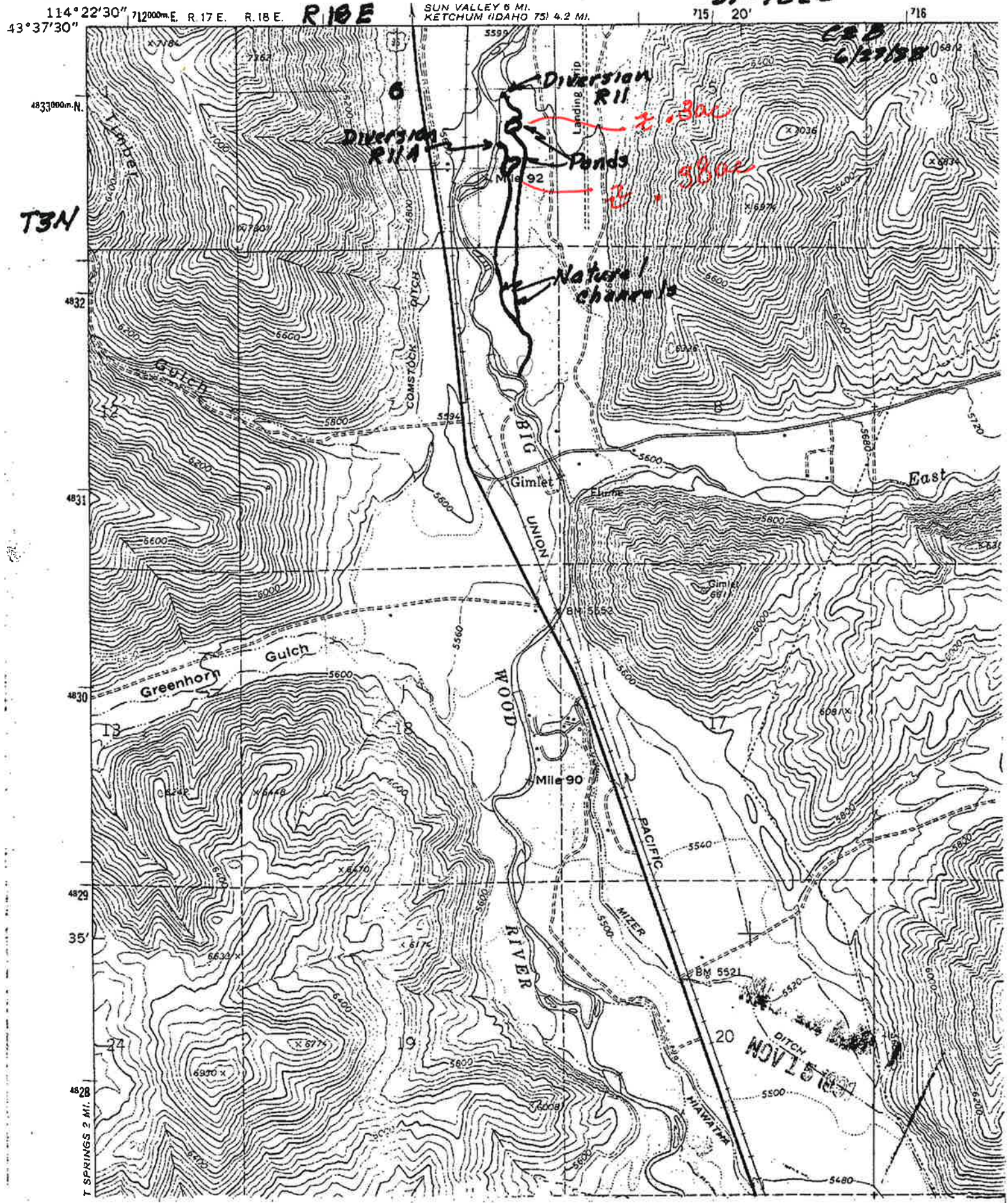
GAIN(LOSS) 0.34 CFS

NOV 15 1988

7 1/2 NW
11 BUTTE

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

Wood River Properties
37-7822



37-154B

Jim Speck call

6/19/12 1:30 pm

irrigation claim? 1988 ?
Amended to Rec.

- Settlement issue:

"ceased in 1980"

- can we show this to Jim?

yes,
this is ok

— F/U notes —

Claim 10/26/88 for Recr.

(hand written claim by CB, SR)

*Never claimed as irrig.!

1980 Forfeit statement made
in 11/22/10 notes by KKC

6/21/12 (met w/ Andrea to discuss
Speck call & new email.)

→ Scan & Send a copy of the '1980' notes
to Speck - it is in file Records for Claim.

email → to Speck - copy of '1980' note
& relay info of Required Claim
amendment.

79
June 22, 2011

Pinker (Andrig) Williams.
37-154B - discussions with Dept.

20624 etc Simons Cr.

Holiday. question

899B - source = B.W. ? G.W.

recognize 899 as a Flood right.

Doug - rt holder shall make use of all
surface rights and water modify rmt to
point to G.W. right 21268. (not a part of
SRBA)

Williams Simons Cr. thinks other right owners
should be O.K. to go with earlier Priority date
Williams to make contact.

Status Conf. Aug 31 @ 10:00 AM.

ORIGINAL

Pg 2/
Mar 2, 2011

Rinker States Conf
GP-2. 37-919^{1940 minority date} 20751, 522D, 523C
Williams. AL ? on rec.
3719 needs a little work.

independent claims

20624

154B

2152

154B transfer offered up as mitigation
Williams to ck with Brockway

37-2152 - should be ready to go
SF-5 ready to go Andria signed

20624 Samoss Cr.

sent info to S.O. subordinate to Shoemaker
earlier date. for shoemaker rights?

Nick - Steve looking at info & Amended
claims are needed.

37-1198 - 37-1200 other claims needing Amendment
1202 22582 Diff Amend claims due.

Mar 18 deadline to submit ~~late~~ Amended claim
to Dept.

Nick want ADR due Apr 28

obj May 20

Resp June 10.

Apr. 6, Shoemaker vacated / now combined with 20624
on June 22 @ 10 AM.

20624
1198
1200
154B
2152

ORIGINAL

Pg 1/
Mar 2, 2011

Rinker Status Conf.

(9) Brigitte Bilgrew, Nick. Craig, Rob Williams Speck
Al,

Court ★ (37-539 → FGH13K) June 22 @ 9:30

house cleaning SF-5 Lang

685C - Silver Creek Farms chg lang delete "owner
shall not permit" add pond shall → Remove)

shoe maker coop. (owner shall install)

add shaft gauge shall be installed

take out of "out of naked eye"

gp1. 37-899B, 2507A, et al 2427, 2429, 2431 Doug's/Andria

gp2. 37-919, 20751, 522D, 523C.

GP1 notes Q on 899B re saved water right delivered independently
client accept that right Flood right 1940 right.
with same P/u as other rights.

Remaining 4 rights - issue shapefile, Ck ji & Doug
working on. should be resolved. 2507A & W right
2126 & GW related rd. WM proposed subordinated
language, Re Speck's clients southern part
of on Speck Client property. WM to do Quit claim
2507 to Jim's client.

Total dw rate (surf.) remarks use language
when sprinkler limit to —.

Speck O.K., Hobday O.K., Barker O.K.

ok
37-21268

Nov 22, 2010

37-154B.

Early 80s Rinker owned all of Simlett
Put in 2 Hd gates 11 & 11A.
Ditches went through property

Permit app for 37-7822, Rinker offered
154B as mitigation

No longer used for irr since around 1980.

1. Option - mitigation leave in river
2. " - rec - reduced rate up round, limit to 20 cfs.

~~Kevin~~
irr right plus 20 cfs if return to river = 20 cfs everything
OK

Rob/Chuck Jr to route a proposal.

Nov 22
Notes

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 37-154B

WATER RIGHT NUMBER: 37-154B

<u>Owner Type</u>	<u>Name and Address</u>
Representative	CHARLES E BROCKWAY C/O BROCKWAY ENGINEERING 2016 N WASHINGTON ST #4 TWIN FALLS, ID 83301
Original Owner	M A COMSTOCK , ZZ
Attorney	ROBERT E WILLIAMS FREDERICKSEN WILLIAMS MESERVY 153 E MAIN ST PO BOX 168 JEROME, ID 83338 (208)324-2303
Current Owner	HARRY S RINKER PO BOX 7250 NEWPORT BEACH, CA 92658-7250 (714)879-8300

Priority Date: 12/13/1887

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
BIG WOOD RIVER	MALAD RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
RECREATION	1/01 to 12/31	0.440 CFS	
	Total Diversion:	0.440 CFS	

Location of Point(s) of Diversion

BIG WOOD RIVER NE1/4SE1/4 Sec. 6, Twp 03N, Rge 18E, B.M.
BLAINE County

Place of Use

RECREATION

[illegible]

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 37-154B

Conditions of Approval:

1. DESCRIPTION OF EXISTING DIVERSION WORKS: CONCRETE HEADGATE WITH CORRUGATED METAL PIPE AND GATE (RINKER 11A) OR CONCRETE STURCTURE WITH SLIDE GATE (RINKER 11). DITCHES CARRY WATER THROUGH EXISTING RECREATIONAL POND SOUTH THROUGH SUBDIVISION AND THENCE RETURNED TO BIG WOOD RIVER.
CLAIMANT OWNS LAND AT DIVERSION POINTS AND POND BUT NOT THE ENTIRE LENGTH OF DITCH.
THIS IS A DECREED WATER RIGHT WHICH HAS HISTORICALLY BEEN USED FOR IRRIGATION BUT IS PRESENTLY BEING USED FOR RECREATION AND TO MAKE UP FOR LOSSES ASSOCIATED WITH PERMIT 37-7822.
THIS 22 MINERS INCH RIGHT HAS BEEN ERRONEOUSLY CLAIMED UNDER A37-00154 BY GOULD & RINKER
2. R01 A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

Remarks:

Comments:

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
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SubCase:

SubCase Number: 37-154B
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date:
Attorney Assigned:
Adjudication Agent: akriwox
Basis of Claim: Decreed
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 1/15/2008 Objection Status: Active
Date Filed: 11/14/2007 Objection Status: Active

Water Supply Bank: