

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	ORDER DENYING PETITION
FOR TRANSFER NO. 82359 IN THE)	FOR RECONSIDERATION
NAME OF GOLDEN EAGLE RANCH)	
HOMEOWNERS ASSOCIATION INC.)	
_____)	

This matter having come before the Department of Water Resources (“Department”) as a petition to reconsider a preliminary order approving a transfer application, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On July 20, 2018, the Department issued a preliminary order (“Order”) approving Application for Transfer No. 82359 (“Transfer”) in the name of Golden Eagle Homeowners Association Inc. (“Applicant”).
2. On August 10, 2018, a representative of the Applicant (“Petitioner”) submitted a petition (“Petition”) for reconsideration of the Order. The Petition stated vague concerns about the conditions the Department placed on Water Right No. 37-23124, the changed portion of Water Right No. 37-154C.
3. The Department contacted the Petitioner requesting more information to clarify the Applicant’s reasons for the Petition. On August 14, 2018, the Department received a more detailed explanation from the Petitioner requesting modification of approval condition no. 4 for Water Right No. 37-23124 to allow a 5-day moving average for return of the water to the Big Wood River and removal of approval condition no. 7 for Water Right No. 37-23124.
4. In the document approving the Transfer, approval condition no. 4 for Water Right No. 37-23124 states:

Water for recreation and aesthetic uses delivered to the pond system is for non-consumptive flow through the ponds and will be released back to the Big Wood River at the same return rate.

5. In the document approving the Transfer, approval condition no. 7 for Water Right No. 37-23124 states:

The right holder shall install and maintain a measuring device of a type acceptable to the Department and located at the direction of the watermaster to measure waste water from Clear Creek in order to accurately regulate Right Nos. 37-153A, 37-364D, 37-2627C, 37-2632, 37-8854, 37-14260A, 37-20749, 37-22060 and 37-23124.

ANALYSIS

The Transfer authorizes diversion of 3.0 cfs of water from the Big Wood River for aesthetic and recreational flow through a series of four existing interconnected ponds and back to the river. The pond system also receives ground water for irrigation and storage uses and receives water from the Comstock Ditch, which intercepts the end flows of Clear Creek.

Approval Condition No. 4

The Petitioner acknowledges the 3.0 cfs of water for aesthetic and recreational flows authorized by the Transfer and described in Water Right No. 37-23124 must achieve an inflow and outflow balance to ensure non-consumptive use. However, the Petitioner argues the pond system cannot accomplish equal inflow and outflow as it is designed and operated. Water is pumped into the pond system from the Big Wood River and from an irrigation well, and water is pumped out of the pond system for irrigation use, creating fluctuations in the pond levels that require an average of five days for the aesthetic and recreational water to clear the system.

If the 3.0 cfs of non-consumptive aesthetic and recreation flow were to be diverted into the pond system and not leave the system within a 24-hour period, it would be stored, which is not authorized because it would enlarge the water right. Moreover, injury to holders of Big Wood River water rights will occur if the water diverted for aesthetic and recreation purposes pursuant to Water Right No. 37-23124 is not timely returned to the river. Condition no. 4 is appropriate and necessary to ensure the right holder does not enlarge the water right or injure other water right holders through the approval of the Transfer. The argument that the pond system is not currently designed to pass the aesthetic and recreation flow to the river without storing the water is not persuasive; maintaining the operational status quo is not among the Idaho Code § 42-222 criteria for evaluating a transfer application, while preventing enlargement and preventing injury are.

Approval Condition No. 7

The Applicant's pond system is complex with multiple rights, uses, and sources of water. A condition was placed on transferred Right No. 37-154C and other rights associated with the pond system when the right was decreed in the Snake River Basin Adjudication to address concerns raised by other Big Wood River water users. The condition states:

To the extent that waste water from Clear Creek enters the Golden Eagle Ranch pond system, the amount diverted under the following rights shall be reduced accordingly: Rights nos. 37-153A, 37-364D, 37-2627C, 37-2632, 37-8854, 37-14260A, 37-20749, 37-22060 and 37-23124.

During review of the Transfer application, the watermaster of Water District No. 37 ("Watermaster") requested that the Department require installation of a measuring device for the waste water entering the pond system. A measuring device would enable the Watermaster to know when to reduce deliveries pursuant to Water Rights Nos. 37-153A, 37-364D, 37-2627C, 37-2632, 37-8854, 37-14260A, 37-20749, 37-22060 and 37-23124, as required by the condition,

to accurately distribute water from the Big Wood River.

The Petitioner argues that the river and well pumps are operated to maintain essentially constant average water levels in the pond system, and any waste water entering the pond system automatically reduces pumping into the ponds. However, without the measuring device required by approval condition no. 7, the Watermaster cannot be sure the pumping reduction occurs in the necessary amount in real time. Pursuant to Chapter 6, Title 42, Idaho Code, the Watermaster has as duty to deliver water according to the elements and conditions of the water rights within Water District No. 37. A measuring device for the waste water entering the Applicant's pond system from the Comstock Ditch will enable the Watermaster to verify timely and accurate compliance with the conditions of the water right. Thus, approval condition no. 7 is appropriate and should not be removed.

APPLICABLE STATUTES, RULES, AND AUTHORITIES

IDAPA 37.01.01.730.02.a. states, in pertinent part:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order.

Idaho Code § 42-222 states, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code.

CONCLUSIONS OF LAW

1. Pursuant to IDAPA 37.01.01.730.02.a., the petition was received timely.
2. Pursuant to Idaho Code § 42-222 the Department can approve a transfer upon conditions.
3. Approval condition no. 4 for Water Right No. 37-23124 is necessary to prevent enlargement of the right when the proposed transfer is accomplished. Therefore, Approval condition no. 4 should not be modified.
4. Approval condition no. 7 for Water Right No. 37-23124 is necessary for the proper administration of water rights by the Watermaster of Water District No. 37. Therefore, approval condition no. 7 should not be removed.
5. The Department should deny the Applicant's petition for reconsideration to modify conditions of the approved Transfer.

ORDER

IT IS HEREBY ORDERED that the Applicant's petition to modify conditions of the Transfer is **DENIED**.

Dated this 22nd day of August, 2018.



Pamela S. Skaggs, Manager
Water Rights Section



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 22, 2018

GOLDEN EAGLE RANCH HOMEOWNERS ASSN INC
C/O SUN COUNTRY MANAGEMENT
PO BOX 1932
KETCHUM ID 83340

RE: Order Denying Petition for Reconsideration in the Matter of Transfer No: 82359
Water Right No. 37-154C

Dear Water Right Holder and other Interested Persons:

The accompanying Order Denying Petition for Reconsideration of the "preliminary order" issued on July 20, 2018 is issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4951.

Sincerely,

Pamela S. Skaggs
Water Rights Supervisor

Enclosure(s)

c:

BROCKWAY ENGINEERING PLLC C/O ZACH LATHAM
ROBERT E WILLIAMS FREDERICKSEN WILLIAMS MESERVY

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2018 I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER (ORDER DENYING PETITION FOR RECONSIDERATION)** to the person(s) listed below:

**Re: Transfer No.: 82359
Water Right No(s): 37-154C**

**GOLDEN EAGLE RANCH HOMEOWNERS ASSN INC
C/O SUN COUNTRY MANAGEMENT
PO BOX 1932
KETCHUM ID 83340**

**BROCKWAY ENGINEERING PLLC
C/O ZACH LATHAM
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301**

**ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS MESERVY
153 E MAIN ST
PO BOX 168
JEROME ID 83338**



Darla Block
Technical Records Specialist

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Skaggs, Pam

From: Charles G. Brockway <charles.g.brockway@brockwayeng.com>
Sent: Tuesday, August 14, 2018 11:42 AM
To: Skaggs, Pam
Cc: David Sias; 'Sun Country Management'; 'Zach Latham'
Subject: Golden Eagle Petition for Reconsideration T#82359

Pam,

Thank you for the telephone call last week regarding T#82359 which modified water right 37-154C and created water 37-23124. You requested that I provide additional specifics on what is being requested in the Petition for Reconsideration, including a justification for each request. I understand that the Department must dispose of the Petition within a certain number of days – approximately the end of next week. I will be out of the office the rest of the week but available to discuss this matter on Monday, August 20.

Two specific changes are requested:

1. Remove the requirement to measure inflow from Clear Creek (Condition #7 on water right 37-23124).
2. Modify Condition #4 on water right 37-23124 to read "Water for recreation and aesthetic uses delivered to the pond system is for non-consumptive flow through the ponds and will be released back to the Big Wood River in the same amount as diverted, based on a 5-day moving average."

The Golden Eagle pond system is a closed system, with the exception of an overflow on the southern-most pond back to the river. Water is pumped to the pond system from the river and from the irrigation well. Water is pumped from the southern-most pond to a community irrigation system throughout the subdivision. Water is also pumped from the southern-most pond to the ponds north of Greenhorn Road. The pond levels are held relatively constant, but fluctuations naturally occur whenever there is a change in the irrigation system pumping rate or either of the two pumping inflow rates.

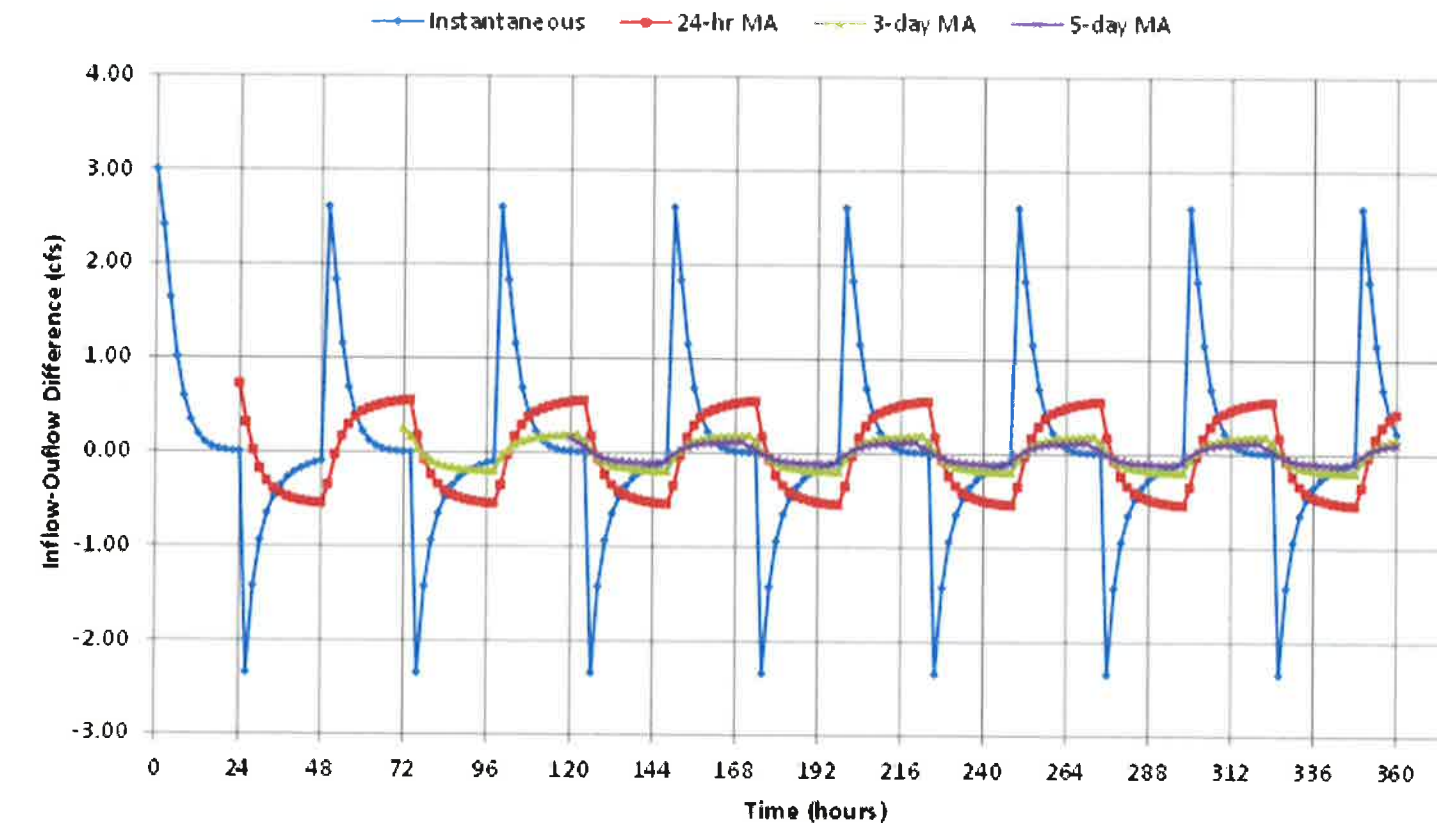
Water from Clear Creek is intercepted by the old Comstock Ditch approximately 1 mile north of Golden Eagle. A small amount of water (likely about 0.1 to 0.4 cfs) flows down the ditch and enters the uppermost pond in Golden Eagle. This flow cannot be stopped and Golden Eagle must accept it as there is nowhere else for it to go. In the SRBA, a condition was placed on the Golden Eagle water rights in an attempt to recognize this fact (Condition #6 on water right 37-23124). This condition affirms that the Clear Creek flow is "wastewater," and requires that pumping to the pond system under all irrigation rights be reduced by the amount of this inflow. The important point is that to the extent water from Clear Creek enters the pond, the amount pumped from the river and the well will automatically reduce. The irrigation demand from the pond doesn't change, and the river pump and wells pumps are operated to maintain essentially constant average water levels in the system; therefore, arithmetically there must be less diversion. In other words, there is nothing that the watermaster must regulate to administer the Clear Creek condition and Golden Eagle believes the considerable expense necessary to install a measuring device is not warranted.

Regarding Condition #4 on 37-23124, it is understood that an inflow and outflow balance must be achieved in order to ensure that the 3.0 cfs of recreation and aesthetic water is being used non-consumptively. However, the wording of the condition as written, if taken strictly, would mean that the inflow and outflow rates must be equal at all points in time. This is an impossible requirement to meet since the return occurs via an overflow at the end of a large pond, so storage effects cannot be ignored. When the river pump is activated to deliver the 3.0 cfs of non-consumptive water, there will be a period of time when outflow is less than inflow due to the change in storage that must occur in order to effect the outflow. The reverse will be true when the pumping stops. This problem will not just occur during pump startup and shutdown since the pumping rate under 37-23124 may frequently change, and every time a change is made there will be a lag in the change in outflow. There is no reasonable way to constantly monitor the outflow and continuously adjust it to exactly ensure that outflow rate equals inflow rate at all times.

To illustrate this, a reservoir simulation was made for the lowest pond using the storage-indication method, assuming a pumping rate of 3.0 cfs for 24 hours, then zero for 24 hours, and repeating indefinitely. The pond has a surface area of 2.71 acres and the hydraulics of the outflow are such that a 3.0 cfs flow requires a head increase of about 0.5 feet. The inflow-outflow difference for instantaneous, 24-hour, 3-day, and 5-day averaging periods was simulated. The graph below shows the results, which indicate that a 5-day averaging period is needed to ensure that the inflow-outflow difference is less than 5% of the pumping (0.15 cfs).

Thank you for your consideration of this matter.

Cordially
Chuck



Charles G. Brockway, Ph.D., P.E.
 Brockway Engineering, PLLC
 2016 Washington St. North, Suite 4
 Twin Falls, ID 83301
 (208) 736-8543
 charles.g.brockway@brockwayeng.com

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

AUG 06 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION

RECEIVED

AUG 10 2018

DEPARTMENT OF
WATER RESOURCES

August 3, 2018

Mr. Corey Skinner
Idaho Department of Water Resources
650 Addison Ave W Ste 500
Twin Falls ID 83301-5858

VIA E-MAIL (hard copy to follow)

Re: Petition for Reconsideration T#82359

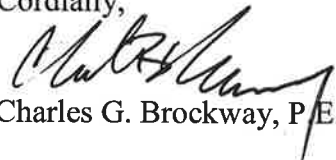
Dear Corey:

On behalf of Golden Eagle Ranch Homeowners Association, Inc. please consider this letter as a formal Petition for Reconsideration of Transfer No. 82359 pertaining to water rights 37-154C and 37-23124.

Issues of concern include the efficacy of flow measurement on the wastewater from Clear Creek, the accuracy of measuring inflow and outflow rates for the non-consumptive portion of the right, and other concerns with the conditions placed on the right by the Department.

Please let me know if you have some time next week to discuss this matter.

Cordially,


Charles G. Brockway, P.E.

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

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

cc: David Sias
John Fry, Sun Country Management

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

Skaggs, Pam

From: Skinner, Corey
Sent: Friday, August 03, 2018 2:22 PM
To: Skaggs, Pam
Subject: FW: Petition for Reconsideration of Transfer No. 82359
Attachments: Scan080332570.pdf

Pam,

I received this petition today. This is for one of the transfers processed in the state office. I will let Chuck know that I forwarded the petition to you.

Corey

From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]
Sent: Friday, August 03, 2018 12:02 PM
To: Skinner, Corey <Corey.Skinner@idwr.idaho.gov>
Cc: David Sias <dksias@cs.com>; 'Sun Country Management' <sunco1007@cox-internet.com>
Subject: Petition for Reconsideration of Transfer No. 82359

Corey,

Please see attached.

Thanks,
Chuck

Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, PLLC
2016 Washington St. North, Suite 4
Twin Falls, ID 83301
(208) 736-8543
charles.g.brockway@brockwayeng.com

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Hydraulics

Hydrology

Water Resources

August 3, 2018

Mr. Corey Skinner
Idaho Department of Water Resources
650 Addison Ave W Ste 500
Twin Falls ID 83301-5858

VIA E-MAIL (hard copy to follow)

Re: Petition for Reconsideration T#82359

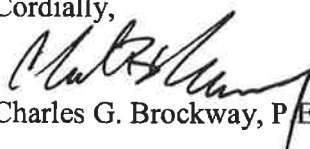
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Please let me know if you have some time next week to discuss this matter.

Cordially,


Charles G. Brockway, P.E.

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cc: David Sias
John Fry, Sun Country Management

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Attachment to 8-3-2018 email from Corey Skinner