

Memorandum

Date: December 2, 2016

From: Craig L. Saxton

RE: Review of Mitigation rights in connection with permit 37-8856

Water rights staff requested review of the adjudication files related to water right records 37-235A, 37-236, and 37-308.

Background:

On January 9, 1997¹, IDWR issued permit 37-8856 to Heath Marshall Inc., authorizing the diversion of 1.15 cfs for industrial uses. The approved permit included a condition requiring the permit holder to provide mitigation for the permitted use. Condition 11 on the permit states (emphasis added):

11. The use of water under this right is contingent upon the implementation of the following three measures to mitigate potential impacts to prior surface and groundwater rights:
 - a. **The right holder shall discontinue the irrigation of one acre within the NWSE, S13, T01N, R18E, under Rights 37-00235A, 37-00236, and 37-00308.**
 - b. The water normally diverted for the irrigation of the one acre, currently estimated by the applicant to be 0.224 cfs, shall be diverted into a gravel pit located in Sec. 13 to compensate for the annual consumption of approximately 2.5 acre feet of water under this right.
 - c. Diversion and use of water under this right may occur only if the right holder has annually diverted 2.5 AF of water to the gravel pit under rights 37-00235A, 37-00236, and 37-00308 as mitigation for the industrial use.

IDWR is in the process of confirming that the permit holder has complied with the conditions of the permit.

As part of this process, I was asked to review the file documentation for the SRBA adjudication claims that were filed in connection with water rights 37-235A, 37-236, and 37-308, including original claims and any splits of the original claims, and make a determination as to if the recommendations (and subsequent decrees) accounted for, or excluded, the 1 acre of irrigation that was to be dried up for mitigation purposes.

Review:

The mitigation plan received with the application for permit on June 20, 1996, states that rights 37-235A, 37-236, and 37-308 are used for the irrigation of 17 acres.

¹ The permit was originally issued on December 11, 1996, but was later amended and reissued on January 9, 1997.

The Mitigation Rights have historically irrigated the following lands:

TWSHP	RANGE	SECTION	1/41/4	IRRIGATED ACRES
1N	18E	13	NW¼SE¼	14.5
1N	18E	13	SW¼SE¼	2.5

The plan proposed to cease irrigation of one of the 17 acres irrigated by the three stacked rights.

On November 29, I contacted Southern region to request that all related files were scanned and available for review. I reviewed the files and constructed the timeline below:

Timeline:

April 18, 1989: Heath-Marshall Inc., filed claims:

37-235A	1 cfs	38 acres of irrigation in NWNE of section 24, T1N, R18E.
37-236	4 cfs	38 acres of irrigation in SWNE of section 24, T1N, R18E.
37-308	1.6 cfs	39 acres of irrigation in NWSE of section 24, T1N, R18E.

February 12, 1996: As a result of a field examination in connection with Transfer 4756 (later withdrawn²), Heath-Marshall Inc., files amended claims for 37-235A, 37-236, and 37-308 in order to reflect the 101 acres of land found to be irrigated³. The amended claims include 14.5 ac in NWSE of S.13.

January 9, 1997: Permit 37-8856 approved. Requirement to dry up 1 acre in the NWSE of Section 13 that is irrigated from stacked rights 37-235A, 37-236, and 37-308. 2.5 AF to be diverted to gravel pit.

February 13, 1998: Split 37-235A , 37-236, and 37-308 split due to ownership changes :

37-235A	↘	37-235C	Heath Marshall Inc	17 ac (includes 14.5 ac in NWSE S.13)
	↘	37-235D	Walker Sand & Gravel	84.0 ac
37-236	↘	37-236A	Heath Marshall Inc	17. ac (includes 14.5 ac in NWSE S.13)
	↘	37-236B	Walker Sand & Gravel	84.0 ac
37-308	↘	37-308A	Heath Marshall Inc	17 ac (includes 14.5 ac in NWSE S.13)
	↘	37-308B	Jim Walker	84 ac

Heath-Marshall Inc. retained 37-235C, 37-236B, and 37-308B which included irrigation of 14.5 ac in NWSE of S.13.

October 29, 2002: 37-235C, 37-236A, 37-308A amended by Jimmie Walker to claim 23.6 acres in NWSE (total of 27.4). At this point, we have a new owner that now claims an increase in

² See pg 35 of Water Rights Back File 37-235.

³ Per letter from Jim Stanton date January 29, 1996. See page 46 in docs for 37-236A: ADJUDICATION CLAIM FILE

historical irrigation in the NWSE of Section 13. There is no mention anywhere that 1 acre was withheld for mitigation purposes when preparing the amended claims.

Claims 37-235C, 37-236A, 37-308A were recommended and subsequently decreed to include 23.7 acres of irrigation in the NWSE of Section 13.

Conclusion:

There is no indication within the adjudication files 37-235C, 37-236A, 37-308A that 1 acre of irrigation was identified or singled out for mitigation purposes and then held out of the recommendations.