

Memo

TO: M. VanBussum, C. Yenter, R. Whitney

FROM: C. Knowles

DATE: 8/2/2012

RE: Water right 41-7029A and 41-7029B investigation under Water Supply Bank rental

On July 31, 2012 I visited the property of Steve Benson owner of the above reference water rights to investigate the inquiry as to the status of water use under these rights. Under this use there are two sets of fish rearing ponds (located in the NENE of 09S 29E section 29 Part A lower ponds and NWSE of 09S 29E section 28 Part A upper ponds). Currently there is an active WSB rental agreement in place that is for Fish Propagation out of Fall Creek for Part A. Water for both rights is spring fed and conveyed in Fall Creek above Mr. Benson's upper fish facility (concrete raceways and service buildings) which are under part B of water rights reference above. The second facility downstream is earthen ponds with a variety of head gates and conduits including bypass type channels to manage water in these ponds under part A of the rights. At the time of my visit the upper ponds were dry and unused and according to Mr. Benson won't be used unless the fish market and costs associated with raising fish changes and becomes more economical. However the lower ponds did have a small amount of water in one pond with a few sturgeon in the pond (< 10). The diversion canal out of the creek did have approximately 5-7 cfs running to these ponds with some of the water just spilling back into the creek adjacent to the pond with the sturgeon.

Changes in Fall Creek that allow the water user to divert water into the lower ponds also limits the check structure in passing all the water back to the creek in times of non use, therefore some of the water is still going down the head race ditch and back into the creek unused approximately 1300 feet below the check structure in the creek. Although leakage can occur at this diversion the user is diverting water under Part A of the water right.

It appears that the WSB rental should be for Part B or the upper raceways and the lower Part A right is being beneficially used. I recommend Mr. Benson correct the water supply bank rental to reflect the upper ponds or Part B rented to the WSB. With the diversion of water to the lower facility or Part A, this would be considered beneficial use under Idaho Code and would be protected from forfeiture due to non-use.