

## MEMORANDUM

**Date:** July 26, 2012  
**To:** Water Right File 37-22624  
**From:** cpalmer  
**Re:** Licensing Memo + Discussion w/ Watermaster  
+ Background Info.

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I spoke with Kevin Lakey, watermaster of WD 37, today to discuss the flows in Indian Creek. Indian Creek eventually meets up with the Hiawatha Canal. I asked Kevin if he thought flows in Indian Creek could accommodate 1 cfs year-round and he thought that it could. The field examiner recommended a diversion rate of 1 cfs and provided evidence for the flow and since the creek could apparently accommodate 1 cfs year-round for this right, I recommend licensing this right as recommended by the field examiner. It appears that all of the conditions have been met.

Full letter found in WD 37 2008  
documents: Ltr to Kevin Lakey  
re response from TIM Luke

#### **Question/Item 8: Hiawatha Canal**

The Hiawatha Canal raises multiple concerns. First and foremost, the district is unsure whether it is delivering the proper totals to the river headgate. Because of multiple transfers, splits, sales, name changes, and mitigation losses, the Watermaster is not sure if the decree book reflects the proper delivery totals to the Hiawatha Canal. There are also ponds attached to the Hiawatha Canal that are not supported by a water right. There are also issues of how to administer the Indian Creek water that enters the Hiawatha Canal. All of these issues raise concerns about whether the Watermaster is/can be given authority to administer and enforce water rights on the Hiawatha Canal. Regardless, the Water District will use considerable resources in solving these issues.

#### **Related Question from Jerry Kavka to Terry Blau:**

As the sides line up in regard to the Indian Creek Initiative one party keeps talking about "recharge". You and I discussed this issue in the past in regard to the infiltration galleries. Would there not be a water right needed to use them for recharge?

#### **Background and Response:**

Prior to man's intervention, Indian Creek was likely tributary to the Big Wood River. Indian Creek was decreed in the Frost Decree as a dry stream. Historically all the water of the creek was used for irrigation for the old ranch in the Indian Creek valley or for the water carried out of the creek valley via a pipeline to serve domestic or municipal needs for what is now the City of Hailey. At the time of the Frost Decree the Hiawatha canal intersected the creek. During the normal irrigation season any water not diverted from Indian Creek above the Hiawatha canal for irrigation or by the city has been captured by the Hiawatha canal and used down that system. No water right was claimed in the SRBA for this augmented use in the canal by the Hiawatha canal organization. However, a single SRBA claim was filed by Eccles (37-20625) for use down the Hiawatha system. This claim has been recommended for disallowal.

In more recent history water rights have been developed for ponds in the creek valley and a permit was approved for addition of a power plant on the City of Hailey's pipeline. There has also been a pond constructed at the site directly above where Indian Creek is intercepted by the Hiawatha canal and also a couple of ponds below the Hiawatha in the area of the Indian Creek drainage that are likely filled with water from the Hiawatha. None of these ponds have recorded rights but efforts to legalize these ponds are ongoing.

Historically during the non-irrigation season water was either channeled down the Hiawatha canal where it sank or was routed out through a diversion from the Hiawatha where it either sank or made it to the Big Wood. Within the last few decades the area below the Hiawatha has been subdivided and any remnants of the old Indian Creek channel has been obliterated. When the subdivision was developed below the Hiawatha canal in the historic Indian Creek drainage, drainage galleries were constructed to direct winter flows of Indian Creek into the ground to avoid flooding or keep the water out of the Hiawatha canal. These efforts in the winter were made to avoid icing and flooding through the City of Hailey and in the subdivision. There is currently no open channel to pass these winter flows to the Big Wood River and there has not been one for many years. I understand the drainage galleries are maintained by Dave Cropper, who was somehow associated with development of the subdivision and is the manager of the Hiawatha canal.

Regional manager Allen Merritt discussed this matter in the past with IDWR Water Management Administrator Norm Young. Norm's direction was that if they call for the water for recharge they need a water right, but if it is an effort to avoid flooding or drainage, they were not required to have a water right. This situation appears to be consistent or similar to other direction from Administration when creeks flood and efforts are made to channel water into areas that sink water to avoid property damage. This sort of scenario has happened in the Raft River and Goose Creek areas in the past. During those times the direction from Administration has been that if diversions from the creeks are made to avoid property damage they did not need a water right; BUT, if the purpose of the diversion is for groundwater recharge then they need a water right. Currently, no claim of water right was filed in the SRBA for recharge. No permit was ever filed for recharge. At this juncture IDWR does not need to issue an NOV for not having a water right for the drainage galleries. Arguably there probably is a benefit to the groundwater for draining the water into the ground. Hydraulically this water eventually returns to the Big Wood River below.

#### **Regulation issues:**

-IDWR needs to follow up on ponds that do not have recorded rights. *(Currently transfer T73743 and an application for permit have been filed for the pond near the site where Indian Creek water is discharged from the Hiawatha canal and Indian Creek but these applications have not been processed for various issues. The ponds further below on the Hiawatha need field review to determine if they qualify for the 24 rule exemption if they are a part of the irrigation systems serving the area.)*

-Direction from IDWR to watermaster should be made to determine if it is appropriate to diminish flows diverted from the Big Wood in a like amount as to what is intercepted by Hiawatha canal. If such direction is provided then a measuring device will be required on the creek to measure the inflow to the canal. However, before any such direction like that is given, IDWR recommends that the watermaster make observations and/or make periodic current meter measurements of the flows from the creek to the canal during the irrigation season. If the flows are significant enough, then the Department may proceed with directing the watermaster to make a reduction at the head of the canal where it is diverted from the river. Resolution to the existing disallowed claim and any future SRBA claim will bear directly on this issue.

NOTE: There currently exists an effort to rehabilitate the Indian Creek Drainage below the Hiawatha. This is known as the "Indian Creek Initiative" sponsored by Idaho Rivers United. How this impacts regulation or future water right or SRBA issues is yet to be seen.

See attachment for Hiawatha Canal list of water rights and recommended delivery rates. There are quite a few rights on the list due to splits and transfers, and an attempt was made to show the SRBA recommendations with references to the original base or parent right. This list is the best we can do until rights are partially decreed in the SRBA. Please review and discuss any questions with IDWR. We realize some rights are subject to change due to SRBA objections, pending transfers and ownership splits etc. Due to changes from original rights to recommendations, the Department cannot guarantee that the attached list is without any error and IDWR does not represent that this or any other water rights listing associated with these responses is a final determination of the water rights.