

**Cooper, Jeff**

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**From:** Charles G. Brockway [charles.g.brockway@brockwayeng.com]  
**Sent:** Wednesday, February 18, 2009 11:29 AM  
**To:** Cooper, Jeff  
**Cc:** peter@petersturdivant.com; Charles E. Brockway; Merritt, Allen  
**Subject:** Peter Trust T#75052

Jeff,

In response to your letter dated February 4, 2009 and our telephone conversation this morning:

Currently, surface water flows in a ditch southward across Flying Heart Road, and into a pond on the applicant's property. Water is pumped from this pond to irrigation. Water supply from this source has been insufficient for several years. The proposed additional POD will be a pump station at the river, which will deliver water into the same pond south of the road, thence pumped to irrigation. The river pump will be used as a supplemental source when the gravity flow from north of the road is insufficient.

Water right 37-8249 is a right for aesthetic storage in the same pond south of the road. A dedicated well for this water right is located right next to the pond, and pumps water directly to the pond. This well and water right are not related to the irrigation activities, other than the fact that they are appurtenant to the same pond.

You also indicated that there was a possibility the Department might reduce the diversion rate under 37-22255 from 2.85 cfs since this rate is greater than 1 miners inches per acre. I do not understand the rationale for this in that the applicant is doing nothing more than adding a point of diversion. I assume it is because the irrigation currently takes place by sprinkler methods. This right is a decreed right and has been recommended at 2.85 cfs by the Department. The Department had a full and complete opportunity to determine whether this amount of water was required historically or currently. I would further draw your attention to I.C. 42-223(9) and 42-250. It seems clear that these statutes expressly prohibit the Department from reducing the diversion rate simply because the water user has implemented a more efficient irrigation practice. Reducing the diversion rate would be a taking – it would reduce the value of the water right and would prohibit the applicant from ever reverting to gravity irrigation methods, even though these methods have been used historically and are accepted methods by the State. The applicant's position is that any reduction in flow rate or any other component of this recommended right is not acceptable. I would request that the Department simply add the point of diversion and leave the rest of the right alone.

Thanks for your work on this, Jeff. Please contact me if you need any additional information.

Cordially,  
Chuck

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