

Brockway Engineering
MEMORANDUM

PROJECT: 1092-01-2009

TO: Jarrett West
SUBJECT: West Water Right 29-13835 Analysis - Preliminary
DATE: 1-12-10
FROM: Zach Latham, Charles G. Brockway

An analysis of water right 29-13835 was performed by Brockway Engineering in order to review and quantify all elements of the water right, and to identify any complications or issues that should be addressed. The right is a groundwater right which was partially decreed in the Snake River Basin Adjudication court on 3/22/2004 and is authorized to divert 0.36 cfs or 161.6 gallons per minute or 0.82 miner's inches per acre for the irrigation of 22.0 acres. The annual diversion volume is listed as 217.4 acre-feet, but this may be erroneous because the volume is also limited to 3.5 acre feet per acre or 77 acre-feet, which is the standard volume for irrigated lands in this area. Water right 29-13835 has one point of diversion, a priority date of 1/29/1960 and may be used from April 1st until October 31st of any given year. The water right may be used to irrigate any type of crop, including pasture, alfalfa hay, or others. No other water rights were found which overlap with this right.

A recent irrigation analysis was also performed using available aerial photographs (attached to this memo). The place of use or physical area defining where the water can be applied for irrigation (as determined by the Idaho Department of Water Resources) is an irregular shape and doesn't seem to correlate to the past historic or current field configuration. This is probably due in part to the history of the parent water right 29-2422 which was split twice, resulting in several water rights, one of which is now identified as 29-13835. Land immediately to the north and south of water right 29-13835's authorized place of use also appears to be irrigated. It is not known how the present irrigation system is plumbed and whether or not adjoining properties use the same irrigation system.

Based on the aerial photo evidence, it appears that the entire 22.0 acres authorized under 29-13835 were irrigated during 2004 and 2006. Only a very small portion of 29-13835 may have been irrigated in 2007 based on the Landsat photo. The right appears to have been last put to beneficial use in 2006 (although 2008 and 2009 aerial imagery was not available). If this is correct, approximately 3 years have gone by without use of this water right. Idaho law allows up to 5 years of consecutive non-use of a water right before a determination of forfeiture of the water right due to non-use can be made by IDWR. The forfeiture "clock" for a water right begins when a water right is partially decreed, which was 3/22/2004 for 29-13835, but is "reset" by actual beneficial use, i.e. irrigation. Assuming the water right was used in 2004 and in 2006, it does not appear that forfeiture of water right 29-13835 is an issue at this time.

If all or a portion of water right 29-13835 will not be used for a temporary period, the portion not used may be offered to the Water Supply Bank which is overseen by IDWR. Acceptance into the WSB of all or a portion of a water right stops the forfeiture clock, protecting the amount submitted from forfeiture, and that amount can be rented out by another party contingent upon approval by IDWR. The application process for placing a water right in the WSB is fairly straightforward, although budget constraints have led to increased delays in acceptance of rights into the bank.

The water right may also be sold to another user and permanently moved to a different location. This process involves a transfer of the water right, and is a more arduous process than the water bank. In a transfer, the burden is on the applicant to demonstrate five criteria set forth in state law: no injury to any other water user, no enlargement of use, consistent with the conservation of water resources, serves the local public interest, and will not adversely affect the local economy. These criteria involve both hydrologic and legal analyses, and depending on the specifics of the case the burden may be very light or very heavy. Generally, smaller moves are easier. You could likely transfer your right to locations in the Portneuf valley in the close vicinity of Lava Hot Springs without major complications. Other transfers involving large moves to other locations within the Portneuf drainage would need to be evaluated in terms of the hydrologic criteria to determine whether potential impact would occur on both groundwater and surface water users. Impact of groundwater pumping on hydraulically-connected surface water sources is becoming a major issue in water transfers. Some transfers would likely never be approved, such as moving to a completely different basin or highly-managed water source such as the Eastern Snake Plain Aquifer. Any transfer application is advertised and may be protested by any party.