MEMO

FROM: Allen Merritt DATE: July 2, 2009

TO: Application for Transfer 73969 filed in the name of Rohe
Application for permit 37-22385 filed in the name of Rohe

SUBJECT: Review and Recommendation for approval

Both of these applications are related and need to be evaluated together.

The transfer proposes to move a water right currently used for irrigation of 1.0 acre of land and associated stockwater use diverted from the Big Wood River into the Hiawatha canal at a rate of 0.11 cfs. The right is recommended under 37-21956 in the name of David and Linda Cropper. The Croppers are selling the entire right to Rohe. The transfer proposes to move the right up river and divert the water for irrigation of 0.9 acres (0.02 cfs) from a pond (Rohe pond) adjacent to the river filled naturally from ground water directly connected to the Big Wood River. The transfer also proposes to provide a flow rate into the pond to make up for the evaporation or the consumptive component of use in the Rohe pond (0.01 cfs) identified as recreation use. The transfer also identifies the remaining portion of the right (0.08 cfs) to be continued to be diverted into the Hiawatha for mitigation for the move and mitigation for potential injury to users in the Hiawatha.

Application for permit 37-22385 provides for year round non-consumptive volume of water contained or stored in the Rohe pond that is naturally filled by ground water connected to the river which is filled year round.

These applications were advertised and protested by the Big Wood Canal Company by their attorney Craig Hobdey. After a pre-hearing conference held on 3/27/2009 the BWCC withdrew their protest pursuant to a letter dated the same date. The withdrawal was predicated on any approval being conditioned such that diversion from the Rohe pond for irrigation use would be under the control of the watermaster of WD37 and that the diversion works have a meter and lockable control valve.

Pursuant to the purchase agreement from Cropper (Note that Dave Cropper manages the Hiawatha Canal) it is agreed that 20% of the right should be left in the Hiawatha to mitigate injury to other users for the removal of water in the canal. (Note the transfer proposes to leave 0.08 cfs or 73% in the canal; 20% would be more like 0.02 or 0.03 cfs.)

Note that this right, as recommended, has an objection filed by Cropper in the SRBA. The basis of objection is that the address is not correct and the recommendation does not include recreation as claimed. These issues should be moot if the transfer is approved. Cropper has been advised he may need to withdraw the objection for the transfer to be finalized.

Initial review of the transfer based on comments from Planning concluded that the impact on the Water Resource Boards (WRB) minimum in-stream flow (MIF) rights would be insignificant and

the transfer could be approved as several others have been approved. More recent review of the potential impacts of transfers on the MIF rights by the WRB resulted in the WRB becoming more actively involved and the filing of protests on various pending transfers. The opportunity for the WRB to file protests on these applications has passed. Whether protested or not the potential injury to the WRBs MIF rights needs to be addressed.

In reviewing the potential injury of this transfer, it is logical that the injury can only occur within the reach of the river the water is being moved. This reach would be from the Hiawatha diversion to the area of the pond. This reach is covered by the WRBs MIF rights (37-7919 for 70 cfs and 37-8307 for 119 cfs) totaling 189 cfs. Although these rights may require installation of measuring devices by future order of the director, there currently only exists the Hailey gauge within the MIF reach which is below the reach of potential impact.

Review of the Hailey gauge finds that during a significant period of the irrigation season (4/15 to 10/31) the MIF rights are always met. Review of watermaster records and Hailey gauge records for the period of 2000 to 2005 finds that the right being moved (priority 3/24/1883) is normally cut approximately on the average of 10 days after the gauge at Hailey drops below 189 cfs. To estimate the flow in the reach of potential impact the watermaster was consulted and further review of the delivery records was made. To estimate the flow in the subject reach, significant daily diversion amounts upstream of the gauge to the pond were added to the Hailey gauge daily amounts. The East Fork contribution estimated by the watermaster for the critical period (mid July to mid August) was subtracted from the Hailey gauge amounts. Non-consumptive diversions which flow in and out of the river in a short segment of the river were ignored. Ground water contributions to the river were estimated to be negligible during the critical period. An excel spreadsheet was created incorporating the various daily estimates and daily delivery amounts. Based on this analysis it is estimated that the subject reach on average would drop below the 189 cfs approximately 3 days after the Hailey gauge drops below 189 cfs. This is estimated to be on average 7 days prior to when the right would normally be cut based on priority. This small window of time would impact the MIF rights by 0.03 cfs. This amount is relatively insignificant but could be addressed by special conditioning on any approval if desired. The excel spreadsheet that was created to analyze this impact to the WRBs MIF rights can be found at:

\\A012\backfile\WaterRights\Transfers\SOUTHERN REGION\Pending Transfers\73969 Rohe

Other considerations:
The 0.08 cfs intended to be continued to be diverted in the Hiawatha canal would be deliverable in priority regardless of curtailment to avoid injury to MIF rights at the Rohe pond. The rate of the diversion at Hiawatha canal could be reduced on approval to 0.03 cfs with 0.05 cfs left in river un-diverted if necessary to provide additional mitigation to MIF rights yet still meet the needs of the 20% for Hiawatha canal mitigation and sales agreement. Not clear if this change would mitigate MIF but may provide additional water in a portion of the MIF area that may not normally be there if transfer was not approved.

I recommend approval of these applications with conditions that address the impact or injury on the MIF rights. I have drafted conditions which are currently included in workflow for these applications. Due to the lack of extensive records the analysis made is based on a relatively short

period of time and may have some significant assumptions included. I request that planning, hydrology and administration review this analysis and make any necessary adjustments including modification of any conditions of approval. I am forwarding the files for final review to the state office.