

MEMORANDUM

DATE: August 4, 2009

TO: Water Right File 37-8252

FROM: Shelley W. Keen^{SWK}

RE: Water Right 37-8252 -- non-consumptive use condition

Standard approval condition 027, which appears on Water Right License 37-8252, says, "Use of water under this right shall be non-consumptive." IDWR has applied approval condition 027 to water right permits, licenses, and transfer approvals for non-consumptive water uses for at least 20 years. Identifying non-consumptive water rights has a number of purposes:

- It indicates why mitigation is not required for certain new water rights in moratorium areas.
- It indicates which water rights cannot result in the consumption of water now or after a change in nature of use.
- It indicates water rights that may not have to be regulated by priority in a curtailment scenario because they do not deplete the amount of water available to holders of senior water rights.
- It indicates which water rights are subject to special assessment and voting provisions in water districts pursuant to Idaho Code § 42-605A.

When reviewing an application for a new water right, a water right to be licensed, or a transfer application, IDWR staff members must determine whether the authorized water uses are non-consumptive. IDWR has usually considered non-consumptive water uses to be those that return all the diverted water to a natural water body, either through a direct flow to a surface water body or through seepage into the ground. Under some circumstances, a water right could be considered consumptive to the source, even if the water is returned to a natural water body. For example, water diverted from a stream, conveyed out of basin, and then returned to a non-tributary source would be considered consumptive to the original stream or basin.

Nearly every water use is consumptive to some extent. Some water uses are considered non-consumptive, however, because the fraction of water evaporated is so small as to be negligible. In other cases, the authorized water use is not more consumptive than the water in its natural state. For example, routing water through a canal or ditch and back into the source stream, often for aesthetic or wildlife purposes, could be considered non-consumptive if the amount of water evaporating from the canal or ditch is not likely to be more than would evaporate if the water continued to flow in the source stream.

IDWR usually considers storage water rights to be consumptive uses, even when the impoundment is for aesthetic, recreation, or wildlife purposes. Impounding water slows its velocity, exposes it to the atmosphere, and causes a significant portion of the water to evaporate.

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For off-stream diversions, however, it can be difficult to discern when the velocity of water is slowed to the point of impoundment. In other words, how slowly must the water flow in a canal or ditch to be considered an impoundment, and thus a consumptive use? To answer this question, IDWR employs a rule-of-thumb that an off-stream basin is not storage if it can fill in less than 24 hours and it allows water to pass through to a natural surface water body thereafter. When licensing Water Right 37-8252, IDWR did not consider the 0.9 acre foot "pond" identified in the field exam to be an impoundment because the authorized diversion rate of 2.0 cfs would fill it in less than 24 hours and the water would continue down the man-made channel and back to the source stream thereafter.