

**Skinner, Corey**

**From:** Skinner, Corey  
**Sent:** Friday, May 02, 2008 8:16 AM  
**To:** 'charles.g.brockway@brockwayeng.com'  
**Cc:** Merritt, Allen; Peppersack, Jeff; Keen, Shelley; Skaggs, Pam  
**Subject:** RE: Transfer application - Catherine S. Dawson Revocable Trust

Chuck,

Sorry it has taken a while to get back to you on this. I have been in and out of the office the last few days. As Allen indicated in his last e-mail, we discussed this matter with state office staff during our Wednesday water right meeting on April 21<sup>st</sup>.

The currently filed transfer application proposes transferring a Big Wood River right, 37-276F, from a nearby recommended diversion point to an existing well on nearby property. The well location on the map that accompanied the transfer application appears to be about 1250 feet from the recommended diversion point for right 37-276F (on the opposite side of the river). *It is noted that in your April 17<sup>th</sup> e-mail that you indicated that there "is currently no surface diversion".* I have sent you a couple letters mentioning the requirement that in order for a transfer that proposes a change in source to be approved, the applicant must show that the two sources have a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at the proposed point of diversion in one day). As we have discussed, this requirement comes directly from the ESPA transfer memo (signed 10/30/2002). You have asked if the same criteria would apply for an Application for Permit that proposes to divert groundwater and mitigate by not diverting surface water. In this particular case you would seek to appropriate a new groundwater right from the well and propose not diverting Big Wood River right 37-276F (leave it in the river). The Department does not have such specific written guidance with regards to mitigation plan requirements for Applications for Permit compared to the 50% depletion in a 24 hour period described in the ESPA transfer memo.

During our discussion with state office staff, there were concerns related to granting an additional groundwater right on the property (whether via the Transfer or Application for Permit process). As you are aware, there are two groundwater rights, 37-7786 and 37-8574, currently appurtenant to the property involved with the currently filed transfer application. You had indicated that you suspected that right 37-7786 was erroneously recommended on this property during the Department's Basin 37 SRBA review and would be objected to based on this issue. As of today, the court's webpage does not show this particular recommendation as being objected to, so we would still be operating under the idea that the right is appurtenant to the property. Currently the two groundwater rights appurtenant to the property are summarized as follows...

- Recommendation 37-7786 in the name of Joyce Dawson with a 6/22/1079 priority for a total diversion of 0.14 cfs (0.08 cfs for domestic use for 2 homes and 0.12 cfs for the irrigation of 6.0 acres). *Note that the right allows for the irrigation of 1.0 acre in the NWNW of Section 14 and 5.0 acres within the SWNW of Section 14.*
- Licensed right 37-8574 in the name of Catherine S. Dawson Revocable Trust with a 03/13/1989 priority for a total diversion of 0.11 cfs (0.06 cfs for domestic use for 2 homes and 0.11 cfs for the irrigation of 6.0 acres). *Note that the right allows for the irrigation of 6.0 acres in the SWNW of Section 14.*

*Note that the property involved with the currently filed transfer application and the two above mentioned groundwater rights is approximately 6.7 acres in size according to Blaine County tax lot information with approximately 1.5 acres being located in the NWNW of Section 14.*

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*Also note that the recommended place of use for the Big Wood River right, 37-276F, involved with the currently filed transfer has a place of use of 7.0 acres with 2.0 acres being in the NWNW of Section 14 and 5.0 acres being in the SWNW of Section 14.*

The two currently appurtenant groundwater rights, 37-7786 and 37-8574, provide 0.23 cfs for the irrigation of approximately 6.5 total acres. Aerial photography also indicates that there appears to be at least ½ acre in unirrigable land (buildings, driveways, etc.) on the lot. As indicated previously, state office personnel expressed concerns related to granting an additional groundwater right on the property (whether via the transfer or Application for Permit process) when considering the already existing groundwater right(s) on the property. In your April 17<sup>th</sup> e-mail you indicated that the objectives for the currently filed transfer are to "protect the surface water right from forfeiture due to non-use" and to "protect 37-8574 against curtailment in a conjunctive management scenario". State office personnel suggested another possible option for your consideration...

A proposed mitigation plan could be submitted to the Department in an attempt to protect right 37-8574 against possible future curtailment. The Department would not act on this mitigation plan, but would file the proposal in the 37-8574 water right file, where it could be acted upon in the event of a future call or conjunctive management scenario involving right 37-8574. With regards to protecting Big Wood River right 37-276F against potential forfeiture, the right is currently protected as a recommended right awaiting partial decree in the SRBA. However, upon issuance of the decree, the right could be placed in the water supply bank for protection from forfeiture.

Hopefully this addresses the items outlined in your April 17<sup>th</sup> e-mail, and makes you aware of our discussions related to this particular matter. If you have any questions, or would like to further discuss this matter, feel free to contact us at your convenience.

Corey

**From:** Merritt, Allen  
**Sent:** Monday, April 28, 2008 2:08 PM  
**To:** 'Charles G. Brockway'; Skinner, Corey  
**Subject:** RE: Transfer application - Catherine S. Dawson Revocable Trust

Corey brought this up and we discussed it internally and I thought was going to respond. He is out today but back tomorrow.

**From:** Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]  
**Sent:** Monday, April 28, 2008 2:00 PM  
**To:** Skinner, Corey; Merritt, Allen  
**Subject:** FW: Transfer application - Catherine S. Dawson Revocable Trust

Corey & Allen,  
 Have there been any discussions on this?  
 Chuck

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**From:** Charles G. Brockway  
**Sent:** Thursday, April 17, 2008 1:42 PM  
**To:** 'Corey Skinner'  
**Cc:** 'Allen Merritt'; 'Jeff Peppersack'; 'Shelley Keen'  
**Subject:** Transfer application - Catherine S. Dawson Revocable Trust

Corey,

I received your letter dated April 11, 2008. By way of this e-mail, I would like to open a discussion with you, Allen, Jeff, and Shelley regarding this proposed transfer. As proposed, the transfer would convert surface right 37-276F from a surface water source (Big Wood River) to a groundwater source (existing well). Irrigation from the existing well is occurring under water right 37-8574, which is overlapping with 37-276F. There is currently no surface diversion. The objectives are twofold: 1) protect the surface right from forfeiture due to non-use, and 2) protect 37-8574 against curtailment in a conjunctive management scenario. Obviously, one option is to simply begin using the surface water – this is an option Mr. Dawson is exploring – but he would prefer to continue using the well as the source.

In your letter dated January 18, 2008, you indicated that for a change in source, the two sources must have a direct and immediate connection such that at least 50% of the depletion at the well occurs in the river within 24 hours. I understand that this comes from the ESPA transfer memo. I have completed some preliminary analytical calculations and determined that the well would need to be located within about 200 feet of the river in order to meet this criterion.

As I indicated in my letter dated January 3, 2008, the hydrologic connection between surface water and groundwater at this location is demonstrably very intimate and there are no river diversions within the reach where all of the well depletion is sure to occur. For this reason, I do not see the justification in this case for imposing an arbitrary criterion such as 50% in 24 hours.

I happened to find out (today) that IDWR approved in 2005 a new permit for the Blaine County School District (37-21177), which was mitigated by leaving a certain amount of a surface right in the river which had previously been diverted at the Hiawatha Canal. There is no indication in the file that calculations or modeling were performed to quantitatively demonstrate the location, timing, and magnitude of the depletion in the river. Certainly, the "50% in 24 hours" criteria was not met in this case since the well is far from the river.

In 2001, IDWR approved two similar permit/mitigation applications submitted by Brockway Engineering (T#66101 and T#69165/Permit#37-20400). In these cases, IDWR required actual quantitative evaluation of the timing and location of the impact, so we ended up actually creating a small groundwater model. Why was this not required for permit 37-21177?

Are there different criteria for a permit with mitigation as opposed to a transfer from surface water to groundwater? Depending on the circumstances, the two structures might be exactly the same from a hydrologic standpoint. I was under the impression that the same criteria would apply. In what circumstances will IDWR require a quantitative river impact evaluation?

If the criteria for a permit with mitigation are less restrictive, I believe a simple option for the Dawson property would be to propose a mitigation plan for 37-8574 which consists of leaving 37-276F in the river (transfer of 37-276F from irrigation to mitigation?). This would protect the surface right from forfeiture due to non-use, and would protect 37-8574 against curtailment in a conjunctive management scenario.

Mr. Dawson is now evaluating his options, and needs to make a decision quickly prior to the irrigation season. Please let me know your thoughts at your earliest convenience.

Thank you!  
Chuck

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