



State of Idaho

DEPARTMENT OF WATER RESOURCES

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SOUTHERN REGION

May 9, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
~~Interim~~ Director

Gary and Helen DeMoss
PO Box 61
Bliss, ID 83314

Dear Mr. and Mrs. DeMoss:

The Department has recently began processing and reviewing four water right transfer applications, filed in the name of Alonzo Leavell, involving portions of groundwater right 37-7385B. As you recall, you agreed to sell a portion of this particular groundwater right to Mr. Leavell in July of 2006. During the review of Mr. Leavell's water right transfer applications, a problem was discovered relating to potential overlapping water rights and the ability to transfer groundwater right 37-7385B to other locations.

The problem specifically relates to two rights based on claims, 37-21961 and 37-21962, which were filed in the Snake River Basin Adjudication (SRBA) in November of 2006. Apparently these claims were filed to obtain additional direct flow irrigation use from Dry Creek. These claims have been reviewed and have been recommended as valid rights to the SRBA court in a recent Director's Report.

As you recall, you obtained the original Bray Lake Ranch property in 1990 and only irrigated the property with surface water diverted from Dry Creek (mostly stored in Bray Lake). In 1999, you purchased the adjacent Erkins property to the south, along with groundwater right 37-7385B, which allowed for the irrigation of 124 acres solely with groundwater. In 2003, the Department approved Transfer # 69896 that essentially combined the Dry Creek rights from the original Bray Lake Ranch property with groundwater right 37-7385B from the Erkins property into a common 808-acre permissible place of use on both properties. Only two of the Dry Creek rights, 37-2778 and 37-7754, involved with Transfer # 69896 contained direct flow irrigation use from Dry Creek with right 37-2778 allowing for the irrigation of 242 acres and right 37-7754 allowing for the irrigation of 313 acres. Transfer # 69896 contained a key condition stating...

- The direct flow irrigation use described by rights 37-7385B, 37-7754, and 37-2778 when combined shall not exceed a total annual maximum diversion volume of 2161 af at the field headgate, and the irrigation of 679 acres.

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Note that the 679 acres is the summation of the individual acre limits of the three rights (124 + 242 + 313), ensuring that the 124 acres described by groundwater right 37-7385B did not overlap the direct flow irrigation use from the Dry Creek rights, 37-2778 and 37-7754. This allows for the ability to transfer portions of groundwater right 37-7385B without proportionately reducing the direct flow components of the Dry Creek rights.

As indicated previously, there is a problem relating to rights 37-21961 and 37-21962, the new filings for additional direct flow irrigation use from Dry Creek. As currently recommended, right 37-21961 allows for the irrigation of 93 acres within the 808 acre permissible place of use created by Transfer # 69896 and right 37-21962 allows for the irrigation of 330 acres within the same 808 acre permissible place of use. Both of the recommendations for these rights contain the following condition...

- The direct flow irrigation use described by rights 37-2778, 37-7385B, 37-7754, 37-21961 and 37-21962 when combined shall not exceed a total of 679 acres in a single irrigation season.

There is no additional condition on rights 37-21961 and 37-21962 indicating that the acres described by these two rights do not overlap with groundwater right 37-7385B. Obviously, water historically diverted from Dry Creek was used on the original Bray Lake Ranch property, and not on the Erkins property, but rights 37-21961 and 37-21962 do not reflect this concept. It appears that there needs to be an additional condition on rights 37-21961 and 37-21962 limiting them to acres independent of groundwater right 37-7385B. This would allow groundwater right 37-7385B to be transferred without impacting the Dry Creek rights.

The transfer applications filed by Alonzo Leavell do not address the potential overlap between rights 37-21961 and 37-21962 and groundwater right 37-7385B. Note that when the Leavell applications were submitted claims to rights 37-21961 and 37-21962 had not yet been filed. Currently it appears that if groundwater right 37-7385B were to be transferred away, rights 37-21961 and 37-21962 would have to be proportionately reduced also. In lieu of you withdrawing the claims to rights 37-21961 and 37-21962, or you objecting to the recommendations for rights 37-21961 and 37-21962 in the SRBA (which would further delay the processing of the Leavell applications), the Department could add the following condition to Dry Creek rights 37-2778, 37-7754, 37-21961, and 37-21962 while acting upon the Leavell applications with your written permission ...

- The direct flow irrigation use described by rights 37-2778, 37-7754, 37-21961 and 37-21962 when combined shall not exceed a total of 555 acres in a single irrigation season.

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This particular condition would reflect the same combined acre limit of 679 acres minus the 124 acres covered by groundwater right 37-7385B, ensuring that the groundwater right could be transferred away without impacting the Dry Creek rights. In addition, this would most accurately reflect the historical development and use of the water (Dry Creek only on the Bray Lake Ranch property and groundwater only on the Erkins property). Note that this would still allow for the same 808-acre permissible place of use, even if all of groundwater right 37-7385B was eventually transferred away, with 555 acres authorized to be irrigated directly from Dry Creek, with the entire 808 acres being able to continue to be irrigated with storage water from Bray Lake.

In summary, with your written agreement to the addition of the condition limiting the direct flow component(s) of the Dry Creek rights to the irrigation of 555 acres, we can proceed with the processing of the Leavel applications, and hopefully this issue will be resolved and not impact any future transactions that you have involving groundwater right 37-7385B. If you have any questions, or if I can be of any further assistance, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with a large initial "C" and "S".

Corey Skinner, PE

Water Resource Engineer