

MEMO

TO: File (Faulkner 3027)

FROM: Jo Beeman

DATE: March 24, 2003

RE: North Side Canal Shares Used in Association with Ground Water Rights
37-8812, 37-8005B, 37-8720, 37-8702 and 37-8005D

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Department of Water Resources

I have received two North Side Canal Company (NSCC) letters dated March 11 and March 17, 2003 to John Faulkner stating that NSCC shares have been transferred each year from 1993 to 2002 to sections 30 and 31, T 6 S, R 15 E, B.M. Gooding County. The holding pond in Section 31 supplies a commingled surface and ground water system for irrigation of land in sections 30 and 31, T6S, R 15 E, as well as sections 5 and 6 in T7S, R 15 E. The shares have varied each year up to a maximum of 275 shares. There were 207.13 shares in 1993, 159.06 shares in 2002. The letters are signed by Ted Diehl, general manager for NSCC.

The associated ground water rights are 37-8812, 37-8005B, 37-8720, 37-8702 and 37-8005D. Rights 37-8812, 37-8005B, and 37-8720 are held in the name of Faulkner Land and Livestock and used at place of use B. Rights 37-8702 and 37-8005D are held in the name of Sawtooth Sheep Company and used at place of use A. All of the land is within the NSCC service area. The holding pond is at the end of the NSCC line and receives canal water in excess of the recorded shares.

We have a statement in a field exam (by Jim Stanton of IDWR on October 27, 2000) for license 37-8702 that a co-mingled ground water and NSCC water system irrigates over 700 acres with 375 canal shares in combination with ground water.

The same field exam by Jim Stanton in 2000 states that, "the same well, pump and motor are in place that were described in my 1993 exam for 37-08720."

The IDWR field exam by Jim Stanton on October 7, 1993 for 37-08720 states, "System was using canal water during exam, but will probably move this to other lands now that well is available." It is this statement in 1993 that has concerned Shelley Keen at IDWR because he felt he was without information to document that canal water continued to be used between 1993 and 2000 on the two areas listed as the places of use for the five ground water rights.

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The reason these NSCC shares from 1993 are critical can be seen from the draft letter to Shelley Keen which I prepared on February 5, 2003. That letter explains how each of the five ground water rights mentioned above are primary ground water rights and are not "supplemental." Since three of the ground rights were existing licenses before they were transferred to the Faulkner/Sawtooth Sheep Co. property in Gooding County, once their use was established in 1993 (for licenses 37-8812 and 37-8005B at place of use B) and 1994 (for license 37-8005D at place of use A), each of these licenses has the legal benefit of the *Wood v. Troutt* decision in the SRBA. That is, once the transfers were completed they could go into a state of non-use and not be lost by forfeiture until five years after their partial decree by the SRBA court. This is important because the five ground water rights exceed the physical capacity of the well from which they are pumped. }

IDWR, with documentation from Mike Faulkner, accepts that the well capacity is 6.68 cfs, but the five ground water rights total 8.95 cfs. IDWR has said that with a booster pump they would allow the 6.68 cfs to be increased by .41 cfs (because of the transfer in 1995 of 37-8005D) for a total of 7.09 cfs.

However, for purposes of the legal theory using *Wood v. Troutt*, we work with the 6.68 cfs established physical capacity of the well which is the common point of diversion for the five ground water rights. If that well could produce 6.68 cfs at all times from 1993 to the present, the following discussion shows how the NSCC shares affect the legal theory.

In 1993 it would only take 6.04 cfs from the well to provide water for the three ground water rights at place of use B: license 37-8812, license 37-8005B, and permit 37-8720. Permit 37-8720 does not get the benefit of the *Wood v. Troutt* precedent because it is not claimed in the SRBA. Therefore, we assume Permit 37-8720 diverts 3.2 cfs continuously from 1993 forward. At the end of the 1993 irrigation season, licenses 37-8812 (.82 cfs for 53 acres) and 37-8005B (2.02 cfs for 111 acres) could go into a protected status of non-use pursuant to *Wood v. Troutt*. We examine information about the NSCC shares, beginning with the irrigation season in 1994, to understand whether there was canal water to irrigate the 164 acres for 37-8812 and 37-8005B, or any portion of the 164 acres not receiving ground water.

During the irrigation season of 1994, permit 37-8702 (2.5 cfs for 139 acres) and license 37-8005D (.41 cfs for 31 acres) were moved to place of use A, south of place of use B. These two water rights at place of use A plus permit 37-8720 from place of use B would require 6.11 cfs of diversions. This leaves .57 cfs during the irrigation season in 1994 for use at place of use B by licenses 37-8812 and/or 37-8005B. Since those two licenses total 2.84 cfs for 164 acres, the .57 cfs would leave 2.27 cfs of ground water use that would be served by NSCC shares. At an average of .0173 cfs to the acre, the 2.27 cfs would equal 131 acres in section 31 requiring canal water to replace ground water irrigation during 1994.

In addition, place of use A for 260 acres (37-8702 and 37-8005D) has always been 170 acres of ground water irrigation and 90 acres of surface water irrigation from NSCC

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shares. The IDWR documents for 37-8702 and 37-8005D always refer to NSCC shares for 90 acres of the 260 acre place of use.

In total, 221 acres at place of use A and B (90 canal acres and 131 ground water acres) would require canal water in 1994. Ted Diehl's letters of March 11 and March 17, 2003 establish there were 207.13 NSCC shares in 1993 and continuing shares through 2002, varying from a low of 159 to a high of 275.

In 1995, through the present, permits 37-8720 and 37-8702 could have been used within the 6.68 cfs capacity of the common well. Together these permits total 5.7 cfs. This leaves .98 cfs from 1995 forward for use among the 3 licensed ground water rights claimed in the SRBA: 37-8812, 37-8005B, and 37-8005D. Since those three licenses total 3.25 cfs for 195 acres, the .98 cfs available from the common well would still require 2.27 cfs of ground water irrigation to be replaced by canal water at place of use A and place of use B. The 2.27 cfs at an average of .0167 cfs to the acre equals 136 acres requiring canal water. In addition, place of use A for 260 acres (37-8702 and 37-8005D) has always been 170 acres of ground water irrigation and 90 acres of surface water irrigation from NSCC shares. The IDWR documents for 37-8702 and 37-8005D always refer to NSCC shares for 90 acres of the 260 acre place of use.

In total, 226 acres at place of use A and B (90 canal acres and 136 ground water acres) would require canal water in 1995 and forward. Ted Diehl's letters of March 11 and March 17, 2003 establish there were 207.13 NSCC shares in 1993 and continuing shares through 2002, varying from a low of 159 to a high of 275.

In summary, the ground water rights serve 494 acres as primary water rights. Place of use A is 260 acres of which 170 are from primary ground water rights. Place of use B is 324 acres all of which is from primary ground water rights. From 1994 to the present, 136 acres of the primary 494 ground water acres have been served by NSCC canal water, preserving 136 acres of ground water use under the SRBA precedent in *Wood v. Troutt*.

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