

MEMORANDUM

Date: December 29, 2004
To: Transfer 71059
From: Corey Skinner
Re: Evaluation of Sufficiency of Information Submitted

This transfer is part of a package of eighth transfer applications submitted by Brockway Engineering involving parts of the old Chapman Ranch, owned by John Chapman, located just north of Hailey. Historically the ranch consisted of about 314 total acres of land, and had been owned by the Chapman family for many years. About 166 acres of the ranch is located on the west side of Highway 75 and about 148 acres of the ranch is located on the east side of Highway 75. Portions of the ranch were irrigated with surface water from the Big Wood River (parts of rights 37-521, 37-522, and 37-523) and groundwater (rights 37-2640 and 37-2507). The surface water was diverted from the Purdum Slough (side channel of the Big Wood River) through the Purdum Ditch for irrigation of land west of the highway and from the Big Wood River via the Hiawatha Canal and the Purdum Slough via the Osborn Canal for irrigation of land east of the highway. The groundwater was diverted from a well located on the east side of the Highway and was apparently used to irrigate land east and west of the Highway.

In April of 1990, Harry Rinker purchased 140 acres of the 166 acres located west of the highway and he also purchased about 132 acres of the 148 acres located east of the highway. However, the deeds conveying the property from Chapman to Rinker specified specific amounts of water rather than appurtenances. The amounts of water specified in the deeds was not proportional to the amount of land sold, but has been reflected via ownership changes in the SRBA database. In September of 1992, the Department approved two transfers (#3901 and # 3902) that split off portions of the groundwater rights (37-2640 and 37-2507) and made them appurtenant to the property owned by John Chapman west of the highway. This left untransferred portions (37-2640B and 37-2507B) appurtenant to the remaining land (most of which was purchased by Rinker). All of right 37-2507B is appurtenant to land east of the highway, and right 37-2640B is appurtenant to other land located east and west of the highway. In addition, the three overlapping surface rights (parts of rights 37-521, 37-522, and 37-523) were still appurtenant to the property, but reflected general information from the original decree (unspecified acres in the place of use). Note that the three overlapping surface rights were originally decreed to lands in addition to the original Chapman property. Over the years, the Department has approved several transfers involving portions appurtenant to other lands (discussed in more detail below). However, the portions appurtenant to the original Chapman property consist of portions of the remaining untransferred portions of the three overlapping surface rights.

Brockway Engineering originally submitted transfer applications on behalf of Harry Rinker that dealt with the rights and property mentioned above in August of 1995. However, during the review of these applications, numerous issues involving the rights and the associated property were discovered. Kelly Christensen, SRBA agent, assisted in the research and review of the rights and property involved with the applications. Several meetings and discussions were held between Brockway Engineering, Kelly, and I, but many of the issues were unable to be resolved. In August of 1997, the original applications were sent back to Brockway Engineering and the filing fees were refunded.

On May 28th, 1999 Brockway Engineering submitted six transfer applications in the name of Rinker Co. Four transfers involved three overlapping surface rights, portions of 37-521, 37-522, and 37-523, and the other two transfers involved portions of groundwater right 37-2640. On November 29th, 1999, just prior to the advertising of the applications, Chuck Brockway Jr. called and asked that processing of the applications be put on hold pending further notification. Apparently, Mr. Rinker had subdivided the land located west of Highway 75 into four lots which he had sold to new owners, and the

new owners and each of their respective attorneys wanted to be involved in the pending water right transfers. On December 14th, 2000, we received eight new transfer applications that were intended to replace the previously filed six applications. These applications have been data entered and can be summarized as follows...

Transfer 69269

Filed by Riverview-Cloverly Irrigation, Inc to modify surface rights for the land west of Highway 75. (Note Rinker no longer owns any of this land.)

Transfer 69271

Filed by Harry Rinker to modify surface rights for the land east of Highway 75 (property still owned by Rinker)

Transfer 69272

Filed by Harry Rinker to move one-acre portion of surface rights from west of Highway to land further north in Wood River Valley (owned by Nickelson).

Transfer 69308

Filed by Harry Rinker to move one-acre portion of surface rights from west of Highway to land further north in Wood River Valley (owned by Monroe)

Transfer 71052

Filed by Joyce Gordon to split off a portion of groundwater right (37-2640B) for a system for Lot #1 west of Highway 75.

Transfer 71058

Filed by Jacob Bloom to split off a portion of groundwater right (37-2640B) for a system for Lots #2 and #3 west of Highway 75.

Transfer 71059

Filed by Ward Woods to split off a portion of groundwater right for a system (37-2640B) for Lot #4 west of Highway 75.

Transfer 71060

Filed by Jacob Bloom to split off a portion of groundwater right (37-2640B) for a system for entrance area located on lots #1 and #2 west of Highway 75.

The table above summarizes the intent of the eight transfer applications, but some further discussion is probably needed on a few items relating to the applications...

When the original transfer applications dealing with the River View Ranch property (west of Highway 75) were filed in 1995, a field review revealed that not all of the property appeared irrigated. The majority of the property is located along the Big Wood River and there are several old channels that run through the property, especially towards the north, upper, end, where lots #1 and #2 of River View Ranch are located and the southern, lower, end, where lot #4 is located. This results in portions of the property having somewhat of a "rolling" topography that could not entirely be irrigated via traditional (non-sprinkler) irrigation methods. Due to the abundant tree growth on the property, especially towards the river, it is difficult to determine irrigated areas from aerial photos.

On January 10, 1996, Kelly Christensen and I met Charles E. Brockway to examine the property, on site. We examined the property and discussed various aspects of the irrigation methods on the property. During this field visit, and during some later meetings, it was mutually agreed upon that probably the most appropriate method to determine the irrigated acres on this property would be to assign certain percentages of actual irrigated acres to various portions of the land that makes up River View Ranches (land west of Highway 75). Using subdivision boundaries, quarter-quarter lines, and topographical boundaries areas of irrigated land, areas of certain percentages of irrigated land, and areas of unirrigated land were determined. Transfers #69269, #69272, and #69308 base the historical number of irrigated acres on this method as outlined in the Brockway Engineering analysis included with the application. A review of the analysis reveals that Brockway Engineering determined appropriate acre amounts for the historical use of the surface rights. The previous site review and reviews of aerial photography revealed that there were no issues with the historical irrigated acres east of the highway, so Transfer # 69271 is more straightforward.

Examination of Transfers #69269, #69271, #69272, and #69308 reveal that they all propose transferring portions of water rights 37-00521, 37-00522, and 37-00523 that total about three inches (0.06 cfs) to the acre. This exceeds the "inch to the acre" standard, but examining the history of the base rights (37-00521, 37-00522, and 37-00523) for the transfers reveals some interesting information relating to the rate per acre for these rights.

Water right 37-00521 was originally decreed for 8.00 cfs, water right 37-00522 was originally decreed for 7.00 cfs, and water right 37-00523 was originally decreed for 6.00 cfs. All three of these rights were decreed to the same, common, place of use, for a total of 21.00 cfs. The decree listed the place of use as just 40-acre tracts, with no number of irrigated acres specified within each 40-acre tract. Assuming, that the entire place of use described in the decree was actually irrigated, then about 520 acres would have been irrigated. Using the total of 21.00 cfs for the three rights, and 520 acres, the original decreed rate per acre is about two inches (0.04 cfs) to the acre.

In 1935, another decree was issued splitting rights 37-00521, 37-00522, and 37-00523 into "A" and "B" portions. The three "A" rights were decreed for a total of 12.60 cfs, with water right 37-00521A being decreed for 4.80 cfs, water right 37-00522A being decreed for 4.20 cfs, and water right 37-00523A being decreed for 3.60 cfs. The three "B" rights were decreed for a total of 8.40 cfs, with water right 37-00521B being decreed for 3.20 cfs, water right 37-00522B being decreed for 2.80 cfs, and 37-00523B being decreed for 2.40 cfs. Both the "A" and "B" portions of these three rights were decreed to specific places of use that were part of the originally decreed place of use for the three original base rights. The decreed place of use for the three "A" rights amounts to about 254.5 total acres and the decreed place of use for the three "B" rights amounts to about 265.5 total acres. Using the 1935 decreed total diversion rate of 12.60 cfs for the "A" rights, and the 254.5-acre place of use, results in a rate per acre of almost 2½ inches (0.0495 cfs) per acre. Using the 1935 decreed total diversion rate of 8.40 cfs for the "B" rights, and the 265.5-acre place of use, results in a rate per acre of just over 1½ inches (0.0316 cfs) per acre.

Examination of Department records indicates that there have been four previous approved transfers, #2992, #3108, #3286, and #3568 involving water rights 37-00521, 37-00522, and 37-00523. Each one of these transfers involved a different rate per acre, and some of the transfers only involved one or two of the rights that were decreed together. Transfer #2992 was approved allowing the use of a 0.92 cfs portion of water right 37-00521 (rights 37-00522 and 37-00523 were not addressed) for the irrigation of 20 acres, which works out to 0.046 cfs/acre. Transfer #3108 was approved allowing a splitting off of a portion of rights 37-00521 and 37-00522 (without addressing water right 37-00523). The total amount of water involved with transfer #3108 amounted to 1.70 cfs for the irrigation of 20 acres, which works out to be 0.085 cfs/acre. Transfer #3286 was approved allowing a splitting off of a portion of rights 37-00521,

37-00522, and 37-00523. The total amount of water involved with transfer #3286 was 2.4 cfs for the irrigation of 38.14 acres, which amounts to 0.063 cfs/acre. Transfer #3568 was approved allowing for the splitting off of a portion of rights 37-00521, 37-00522, and 37-00523. The total amount of water involved with transfer #3568 amounted to 0.16 cfs for the irrigation of 4.0 acres, which amounts to 0.04 cfs/acre. Transfer #3560 initially proposed transferring a total of 0.60 cfs of water rights 37-00521, 37-00522, and 37-00523. However, a January 17th, 1990 letter to the applicant from the Department stated that the Department would only allow 0.16 cfs, or 0.04 cfs per acre, to be transferred. The logic behind this amount was based on the original decreed rate per acre for the three rights.

Realistically, the entire originally decreed place of use was more than likely not irrigated historically, due to the presence of unique features such as broken topography, the Big Wood River, roads, buildings, and a railroad. For example the investigation of the historical surface water use on the original Chapman ranch west of the highway revealed that only around 80 acres out of a possible 160 decreed acres were actually irrigated. This results in an even higher rate per acre than what was described in the Departments January 17th, 1990 letter. In addition, the three surface rights, have three different years of priority dates and could be theoretically cut at different times so only one or two of the rights could be used at one particular time.

An excess flow analysis was not performed to justify the rates per acre described in Transfers #69269, #69271, #69272, and #69308. However, Brockway Engineering based the transferred amounts off of water master delivery records, which are smaller than the amounts originally claimed in the SRBA by John Chapman, the original owner of the property involved with the transfers. Examination of competing claims against portions of 37-521, 37-522, and 37-523 revealed that approving the transfers in the amounts proposed would not infringe on amounts available for other claimants. Considering the decreed rates per acre, the rates per acre created by previous transfers involving the same base rights, the limited number of irrigable acres within the decreed place of use, the gravelly soil near the river, some of the longer delivery ditches, and the rather inefficient historical irrigation practices, the rate(s) per acre proposed by Transfers #69269, #69271, #69272, and #69308 do not seem that unreasonable.

The four groundwater transfers (#71052, #71058, #71059, and #71060) are relatively straightforward since they basically assign portions of groundwater right 37-2640A to the respective lot owners west of the highway as outlined in various agreements included with the applications. Note that the untransferred portion resulting from transfer #71060, most of which is appurtenant to land east of the Highway, will remain in the name of Harry Rinker. However, due to the presence of the surface rights on these same properties it appears that the groundwater rights are supplemental and should have appropriate supplemental conditions implemented.

Examination of the Departments database reveals that there are some overlapping water rights and/or SRBA claims on the property involved with the eight transfers. The first overlapping rights are portions of a couple of old surface water rights, 37-00833 and 37-00899. During the transfer review, it was discovered that the water master has no records of ever delivering these rights to the Chapman property, including those portions subsequently owned by Mr. Rinker. In addition, preliminary SRBA recommendations have been made to recommend the overlapping portions of these rights as disallowed (see recommendations 37-833S, 37-833T, 37-899A, and 37-899B). John Chapman also has a SRBA claim, 37-4106, filed for use of spring water on his property that is part of the place of use described by transfer #69269. As previously mentioned, the surface rights and the groundwater right involved with the eight transfers overlap with each other. Water right 37-02640A (subject to transfers #71052, #71058, #71059, and #71060) overlaps parts of the places of use associated with transfer #69269. Note that all of the ground water acres overlap the surface water acres, but some of the surface water acres do not overlap the groundwater acres. The leftover portion of 37-02640A, after transfer #71060, will overlap with

part of the place of use described in transfer #69269 (2 acres) and # 69271(58.4 acres). In addition, water right 37-02507A (SRBA claim A37-02507A) overlaps part of the place of use described in transfer #69271.

- **Authority to File:**
Applicant is listed as current owner of record on IDWR records.
- **Water Right Validity:**
Right is licensed and claimed in SRBA. Right appears to be valid.
- **Injury to Other Water Rights:**
None anticipated. Proposed point of diversion change is less than 0.6 mile.
- **Enlargement of Use:**
None if appropriate conditions and limits are implemented.
- **Local Public Interest:**
No negative impacts anticipated. Application will be subject to public notice and protest.
- **Beneficial Use/Conservation of Water Resources:**
Proposed use is recognized as a beneficial use of water.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.