

MEMORANDUM

DATE: January 7, 2005

TO: File for Application 37-21177

FROM: Shelley W. Keen ^{SWK}

RE: Mitigation

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Department of Water Resources
Southern Region

I recommend advertising Application 37-21177, which was submitted by Blaine County School District No. 61 for the diversion of 0.14 cfs from ground water to irrigate seven acres at the new Woodside School between Hailey and Bellevue in the Wood River Valley. IDWR has some concerns about the mitigation plan proposed by the applicant to overcome the Eastern Snake Plain Moratorium and the Big Wood Ground Water Management Area restrictions, but I think those concerns can be addressed as described below.

The applicant proposes to mitigate for the depletion of water in the valley by leaving a portion of Big Wood River SRBA Claim 37-21114 undiverted in the Big Wood River. In the SRBA process some questions have been raised about the validity of the mitigation claim. Those questions will have to be resolved through the SRBA process. In the meantime, if the application is approved it could include the following condition, which was placed on Right 37-8821.

In the event that Claim 37-21114 is not confirmed in the Snake River Basin Adjudication, the right holder shall provide an alternate source of mitigation water or shall cease diverting water under this right.

Right 37-8821 also relies on Claim 37-21114 as its source of mitigation water.

Another concern is how to change the mitigation right to communicate to the right holder and the watermaster that the amount dedicated to mitigation shall remain in the Big Wood River. Yesterday afternoon IDWR circulated a draft memorandum entitled "Water Rights Dedicated for Mitigation Protected from Forfeiture" about this very subject. The draft memorandum proposes using the approval order for the new permit as the vehicle for changing the official record for the mitigation right(s) that will no longer be used. The condition to be placed on the approval order for the new permit is as follows:

To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right(s) will be changed to show that diversion

and use of water is not authorized because the rights, or portion(s) thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate	Mitigation Volume	Mitigation Acres
37-21114	Use	00.00	00.0	00

The land that will no longer be irrigated under this right is located within the <XX¹/₄XX¹/₄, Section 00, Township 00 North, Range 00 East, B.M.>

If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

This approach to changing mitigation rights has been used before in Southern Region on Permit 72-16624, and there is little reason to expect that this method will not be adopted when the memo is finalized. Therefore, I would expect the approval for this application, if one were issued, to employ this method of changing the mitigation right.

Non-use of water under Right 37-21114 is not the only mitigation requirement, however. Historically the mitigation right has been diverted from the Big Wood River many miles upstream from the proposed ground water use. To prevent injury to senior surface water users downstream from the new ground water use, the watermaster will have to prevent surface water users upstream of the impacts of the new use from intercepting the mitigation water, and he will have to make the mitigation water available to the senior surface water users downstream from the impacts of the new use. To make this objective clear, the permit should carry the following additional condition, or something like it.

The portion of Right 37-21114 committed to mitigation for the diversion of water under this right shall remain in the Big Wood River from the point of diversion for the Hiawatha Canal in the SW¹/₄NW¹/₄, Sec. 20, T3N, R18E, B. M., to the point where the Big Wood River enters Sec. 22, T2N, R18E, B. M., where it shall be added to the natural flow available to satisfy water rights diverted from the Big Wood River.

To implement this mitigation requirement, IDWR should also provide specific directions to the watermaster in Water District 37. Steve Burrell addressed this topic in his memo to me dated 12/20/2004.