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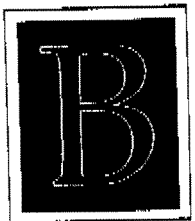
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2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301

To: Gary Spackman	Fax Number: 208-327-7866
From: Chuck Brockway Jr.	# pages (incl. cover): 3
Cc:	Date: May 17, 2004
Re: Transfer No. 71010	

☐ Urgent☐ For Review☐ Please Comment☐ Please Reply**Comments:**

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BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

May 17, 2004

Mr. Gary Spackman
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

VIA FACSIMILE (208) 327-7866

Re: Transfer No. 71010

Dear Mr. Spackman:

Please accept this letter as a formal Petition for Reconsideration in the matter of water right transfer No. 71010 for rights 37-228, 37-229, and 37-2147.

As conditioned in the preliminary order, the transfer limits the irrigated acreage under the decreed rights 37-228 and 37-229 to 227.3 acres. The acreage under the licensed right 37-2147 is limited to 30.0 acres. In combination, all rights are limited to the irrigation of 257.3 acres.

Because 37-228 and 37-229 were decreed without specific acreage, it was necessary in the transfer process to define the maximum acreage that has historically been irrigated with these rights. Amended SRBA claims for these rights asserted that the decreed water has been used on all of the irrigated land shown on the 1987 infrared photo submitted with the transfer application. It is unlikely that a lesser portion of the land was irrigated by the decreed water, as IDWR apparently determined in the transfer process. The owners typically take the entire flow of Chimney Creek, and even when the flow has been insufficient to fill the later-priority license, the same number of acres has historically been irrigated. For example, in a situation where the flow in Chimney Creek was 4.0 cfs (only the decreed rights filled), this amount was diverted and used on all acres. Topographically, water can be delivered by gravity to nearly all of the 257.3 acres, as evidenced by ditches still in place and the testimony of the present owners, who have owned the land or have first-hand knowledge of irrigation practices since the 1940s. A small portion (approximately 5 acres) in the draw located in NWNE Sec. 35 cannot be irrigated from Chimney Creek due to topographic constraints.

CHARLES E.
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PH.D., P.E.

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G. Spackman 5/17/04

The amended SRBA claim for the licensed right 37-2147 asserted an accomplished transfer of the 0.6 cfs and 30 acres to the same land as the decreed water, not as additional acres above the decreed acreage.

The applicant hereby requests that approved transfer No. 71010 be amended to read as follows:

37-228 2.0 cfs / 257.3 acres within 345.4-acre PPU
37-229 2.0 cfs / 257.3 acres within 345.4-acre PPU
37-2147 0.60 cfs / 30.0 acres within 345.4-acre PPU
All rights in combination limited to 4.60 cfs and 257.3 acres

Thank you for your consideration of this matter.

Cordially,



Charles G. Brockway, P.E.

cc: Jay and Fred Faulkner