

## Cooper, Jeff

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**From:** Merritt, Allen  
**Sent:** Monday, July 01, 2013 9:57 AM  
**To:** Cooper, Jeff  
**Subject:** FW: Roper Water Rights

Place in WD41 file

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**From:** Spencer, Nick  
**Sent:** Monday, July 01, 2013 9:53 AM  
**To:** Luke, Tim; Clelland, Steve; Merritt, Allen  
**Cc:** Jones, Doug; Keen, Shelley  
**Subject:** RE: Roper Water Rights

Tim, this looks great to me, with one minor exception: I don't recall that I ever expressly stated to Lance and/or Travis that the purpose of the transfer requirement was to impose on the applicant the burden of hiring an engineer to determine a credible conversion of Houtz inches to miners inches in the applicant's Houtz box. However, I think this clearly was the implication based upon my telling them (1) there was variation from box to box; (2) there was variation within any given box under varying conditions; (3) because of this, IDWR determined that it did not have the resources to itself undertake all the technical work necessary to convert all the rights from Houtz inches to miners inches; and (4) it therefore decided to maintain the status quo but with the individual right holders provided the opportunity to use the transfer process to convert to miners inches. NBS

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**From:** Luke, Tim  
**Sent:** Saturday, June 29, 2013 2:03 PM  
**To:** Spencer, Nick; Clelland, Steve; Merritt, Allen  
**Cc:** Jones, Doug; Keen, Shelley  
**Subject:** Roper Water Rights

*Nick and Steve, and Allen,*

*Please review my e-mail response to Travis Thompson regarding my discussion with him and his client, Lance Roper, over a week ago regarding their concerns about Roper's water rights and how they should be measured. I am making representations to Travis based on my discussions with Nick and Steve so I want to make sure I am correct and/or not misstating something.*

*Allen, there was also a question about the City of Rockland using water on land that they don't have a water right – I believe this involves a water right transfer to amend their service area for land application of waste water from their treatment plant. Do you know the status of the transfer. Is it required given the passage of HB 606 this past session, which now should be in effect (7/1/2013)? Please review my response in the last bullet item below.*

Travis,

I had an opportunity late this week to talk to Steve Clelland and Nick Spencer, and the Water District 41 (Rock Creek) watermaster, James Robinson, regarding the questions and issues we discussed over a week ago with your client, Lance Roper. Based on these discussions, I learned and confirmed the following:

- Both Nick and Steve maintain that both you and Mr. Roper had understood that the authorized diversion rates under Mr. Roper's rights, and all other rights in the water district, are different and higher than the actual rate of diversion measured through a Houtz Box. In other words, an inch of water as measured through a Houtz Box is

something less than a standard miner's inch or other standard unit of measurement measured with standard measuring devices. They maintain that you both understood this as a result of your signing the Standard Form 5 for his water rights. The SF5's included the following language:

The quantity listed above shall be measured at the point of diversion listed for this right by means of a measuring box of the type and dimensions decreed by In Re Houtz et al (Oneida County, Sixth Judicial District Court, June 6, 1903). Any change in the method of measurement shall constitute a change in the point of diversion requiring approval by the Idaho Department of Water Resources as a transfer pursuant to I.C. Section 42- 222.

Nick and Steve said that you were clearly advised and understood that a Houtz Box is required to be installed. As the condition provides, Mr. Roper can install a standard measuring device but he will have to first file a water right transfer. Nick Spencer indicated that the purpose of the transfer would be to require the right owner to hire a certified engineer to determine a rate of flow conversion from the Houtz Box to a standard miners inch or other standard unit of measurement using standard measuring devices. Nick advised me that you clearly understood the implications of the transfer condition.

- Neither Nick, Steve, or the watermaster were aware of a uniform or average adjustment factor of 28.6% to convert or adjust flows between the Houtz Box and standard measuring devices as suggested by Mr. Roper. Steve had not heard of this particular number and did not know what the basis for it might be. In fact he indicated that IDWR had desperately hoped to arrive at such a uniform adjustment rate or factor but found deriving such a number was nearly impossible because of the fairly wide inconsistencies of measurement between the Houtz Boxes and standard measuring devices.
- The watermaster advised me that the Houtz Boxes in the water district have inserts to adjust the width of the box to account for different rates of flow authorized under different priority rights. The watermaster also stated that the width of the boxes are not designed to measure high flow rights. The watermaster generally considers high flow water rights to be anything with priorities junior to the year 1890. If Mr. Roper intends to install a Houtz box, then he should design it for a width that will provide for delivery of all his water rights through 1884, plus delivery of the 1884 Kildew right (0.5 cfs, 41-41B) authorized to be diverted at the same ditch or point of diversion. The total irrigation season authorized water right rate of diversion of his 1882 and 1884 rights, plus the Kildew right is 5.9 cfs or 295 miners inches. The total authorized miners inches (as per the rights) divided by the 6 inch prescribed depth in the Houtz Box, is 49.17 inches, or 4.1 feet. The box will then also require an insert for delivery of the 1882 rights, which should be 32.5 inches, or 2.71 feet.
- The watermaster advised me that he does not deliberately deliver water out of priority but he acknowledged that he typically does not make diversion adjustments when users are off or don't use water for just one to two days. In such cases, the water remains in the ditch and returns to the creek or it may be wasted. He stated that he does make adjustments if he knows that a ditch will be off or not making use of water for more than a couple of days. In that case, he will adjust and deliver to the next priority rights as best he can. This approach or practice is pretty consistent with deliveries in other water districts in the state.
- You had raised a question about the City of Rockland using or applying water to lands that may not have a water right. I believe this may be related to land application of water from City's waste water treatment plant. The source of the water from the treatment plant is ground water diverted or used under rights 41-4023 and 41-7082. DEQ regulations apparently prohibit the city from discharging the waste water directly to Rock Creek, hence the need to land apply the water. The City filed a water right transfer last year to amend or update its service area to accommodate the planned land application. It is my understanding that the City has not yet completed the system changes necessary for the land application but they may close to completion. As you may know, HB 608, which was passed by the 2013 Legislature, provides an exemption to certain municipalities or municipal providers and/or sewer districts from having to obtain a water right for the land application of effluent water. I refer you to documents available online for water rights 41-4023 and 41-7082 – there you will find certain correspondence between our regional office and the City regarding the planned land application of effluent water by the City.

In summary, I recommend that Mr. Roper either install a Houtz Box as per the description provided in the Houtz Arbitration of 1903 and in accordance with the widths as described in this e-mail, or that he file a point of diversion water right transfer to obtain authorization to install a standard measuring device. I anticipate that any approved transfer will be conditioned to require Mr. Roper to convert the Houtz Box measurement for his rights to a standard unit of measurement using a standard measuring device.

Regards,

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