



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

June 1, 2007

Ted O'Neil, Watermaster, Water District No. 73
81 Furey Lane
May, ID 83253

Re: Interim Guidance to Watermaster Regarding Delivery of Water Rights from Big Gulch
Creek, Water District No. 73

Dear Mr. O'Neil

You have asked for guidance regarding delivery of water rights 73-187A and 73-187B from Big Gulch Creek. Specifically, questions have risen regarding conditions in a water right transfer approved in 1953 that split water right 73-187 into the respective parts A and B. The Department provides the following guidance below but cautions that this guidance is intended for interim purposes only until such time as the rights are partially decreed by the Snake River Basin Adjudication (SRBA) District Court or the SRBA Court provides some other order. The Idaho Department of Water Resources (Department) understands that one or more objections have been filed to the Department's recommendations of these rights. The Department does not currently have interim authorization from the SRBA District Court to deliver water rights in accordance with the Department's recommendations in the Director's Report. In the absence of any partial decrees or orders from the SRBA Court, the Department may provide administrative guidance to the watermaster based on the Department's knowledge of historical practices and materials on file with the Department.

The condition from the 1953 order approving Transfer No. 814 that split right 73-187 to parts A & B and that is the subject of your questions states as follows:

Two (2) cubic feet per second of the said right may be transferred when the total amount available from Hill Creek and Graves Springs equals or exceeds 125 miners inches (2.5 cfs); and

When the combined amount from all three sources (Hill Creek, Big Gulch Creek, and Graves Springs) is less than 225 miners inches, 100/225 of the combined amount may be transferred if available in Big Gulch Creek at the point of diversion.

Information in the Department's SRBA file for water right 73-187B, which was the 2.0 cfs transferred portion of 73-187 pursuant to Transfer 814, seems to support the claim that the waters of Big Gulch Creek have historically been divided between Summit Ranch and Sulphur Creek Livestock in accordance with part two of the condition above during times in which the

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flow of the creek is less than 225 inches (4.5 cfs). Some additional information regarding the diversions and sources of water under these rights include:

- Information in the files and the 1952 hearing transcript of Transfer No. 814 indicate that the historic combined flow of Hillside Creek (Hill Creek) and Graves Springs has consistently been less than 125 inches during most irrigation seasons. You have also advised that the combined flow of these two sources is consistently less than 125 inches.
- You have advised that water from Graves Springs is not physically diverted by anyone and that the quantity of water from this source is minimal and probably only sufficient for some minimal stockwater use. You have further stated that the small quantity of water from the spring would not likely reach the place of use for Sulphur Creek Livestock if a ditch were constructed and extended to the place of use.
- You have advised and Mr. Eaton of Sulphur Creek Livestock has confirmed that there is a pipeline diversion from Hillside Creek to Sulphur Creek Livestock.
- Hillside Creek (also known as Hill Creek), Graves Springs and Big Gulch Creek are the original decreed sources of water for water right 73-187 as per the judgment of Lorenzo Falls and Edward O'Neil vs. Uriah Wells, et. al., dated April 1, 1910.
- Summit Ranch holds a second water right from Big Gulch Creek bearing a priority date of July 19, 1911 authorizing diversion of up to 9.6 cfs. Rights 73-187A and 37-187B are the only other irrigation rights from Big Gulch Creek, both bearing a priority date of June 18, 1909.
- Transfer No. 814 split decreed right 73-187 into a part B for 100 inches with the source of water limited to Big Gulch Creek, while the remaining portion of the right, part A, retained the original three sources of water, or Big Gulch Creek, Hillside Creek and Graves Spring.

Based on the above information, the Department provides the following guidance regarding the delivery of water rights from Big Gulch Creek, Hillside Creek and Graves Springs Water Rights:

- If the flow of Big Gulch Creek and Hillside Creek equals or exceeds 225 inches (4.5 cfs) and the June 18, 1909 priority water rights 73-187A and 73-187B are deliverable, then deliver 100 inches (2.0 cfs) to Summit Ranch under right 73-187B, and deliver a combined total of 125 inches (2.5 cfs) from Big Gulch Creek and Hillside Creek to Sulphur Creek Livestock under right 73-187A. Any remaining water from Big Gulch Creek may be delivered to Summit Ranch under its 1911 priority right, 73-2073, assuming that the 1911 priority is deliverable relative to watermaster regulation or downstream delivery calls.
- If the combined flow of Big Gulch Creek and Hillside Creek (Hillside Creek at Sulphur Creek Livestock diversion) is less than 225 inches and the June 18, 1909 priority water rights 73-187A and 73-187B are deliverable, then divide the combined flow under rights 73-187A and 73-187B, with 44% of the flow delivered to Summit Ranch and 56% delivered to Sulphur Creek Livestock. Under this scenario, the Hillside Creek diversion must be counted toward the 56% of the combined flow and diversion to Sulphur Creek Livestock. If Sulphur Creek Livestock elects not to divert water available at its Hillside Creek diversion, then the amount of water at the Hillside Creek diversion must still be counted toward Sulphur Creek Livestock's 56% share of the combined flow from Hillside and Big Gulch Creeks.

- If there is a downstream delivery call on the Pahsimeroi River or Goldberg Creek and the watermaster is regulating water rights to priority dates senior to June 18, 1909, then rights 73-187A and 73-187B should be curtailed. If the flows of Big Gulch Creek and Hillside Creek will not reach downstream senior priority right diversions and/or can not be beneficially used by downstream senior right holders, then the watermaster may consult with the Department regarding a futile call determination and the watermaster may be authorized by the Department to deliver rights 73-187A and 73-187B out of priority.

Again, this guidance is provided only on an interim basis until the Department provides you different direction based on partial decrees or other orders issued by the SRBA District Court.

Please contact me directly at 208-287-4959 if you have any further questions or require any additional assistance relative to this matter.

Respectfully,



Tim Luke

Water Distribution Section Manager

Cc: Royden Eaton, Sulphur Creek Livestock
Edwin Thomas, Triple T Summit Ranch
IDWR Eastern Region
Bob Foster, IDWR Salmon Field Office