


# Memorandum

**To:** Jeff Peppersack

**From:** Tim Luke 

**Date:** March 10, 2009

**Re:** Brockway Letter Requesting Department Clarify Watermaster Guidance on Delivery of Certain Non-Consumptive Water Rights, Water District 37

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Attached is a letter from Brockway Engineering asking IDWR to clarify recent guidance to the Big Wood River watermaster regarding delivery of non-consumptive right 37-7822. The right is for a diversion of water from the Big Wood for a flow-through aesthetic channel. Could you please review the letter and advise of your impressions or thoughts. The regulatory language on the license itself is probably a little vague. You can access our guidance to the watermaster using the following link:

[http://www.idwr.idaho.gov/water/districts/WD37%20and%2037M/WD37Response\\_Items-All-041508\\_Attachments.pdf](http://www.idwr.idaho.gov/water/districts/WD37%20and%2037M/WD37Response_Items-All-041508_Attachments.pdf) (see page 26).

Brockway suggests on behalf of their client that we instruct the watermaster not to regulate the right because no injury is caused by its' diversion. We had instructed the watermaster that the right would need to be regulated or mitigated upon a determination of consumptive use. Last year the watermaster measured inflow and outflow and found that most of the water was lost through the channels (watermaster current metered the ditches).

I spoke with the watermaster last week and learned or verified the following:

- No measuring device exists to measure the water returning to the river. The watermaster would like to have one and I believe it is a condition of the right.
- Weir on one of the two diversion channels is generally submerged; water from downstream pond backs up and causes the submergence. This needs to be fixed.
- Watermaster did not measure or investigate the irrigation pump diversion between the inflow and outflow points, and did not investigate for any other potential unauthorized diversions or other problems that might help explain some of the ditch loss.

I suggest that part of our response be to require the owners to fix one of the two weirs at the diversion points and install a measuring device at the point of return. At a minimum, the right should be regulated until the measuring device issues are corrected. Also, the volume limit must

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be regulated even if there is no channel loss (a condition of the right that is not addressed by Brockway). I suspect the volume limit may not be reached due perhaps to ditch or head gate capacity limits. I understand that a significant loss in the channel may not necessarily result in injury but at this point it seems we can't prove that it doesn't. Brockway's model may show no injury but I understood from Gary that Brockway has not provided any information or documentation to IDWR about the model so I don't know if or when our hydrology staff can comment on an injury determination.

Do you have any other thoughts or suggestions?