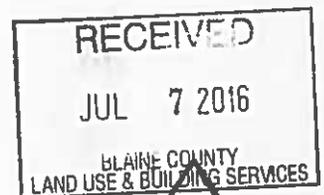


**RULES & REGULATIONS GOVERNING  
THE DIVERSION, DISTRIBUTION AND USE OF WATER WITHIN THE  
THREE CREEKS CROSSING SUBDIVISION**

**Adopted by the Board of Directors of the  
Three Creeks Crossing Subdivision Homeowners' Association**

**Dated: Preliminary 07/07/2016**



These Rules and Regulations Governing the Distribution of Irrigation Water Within the Three Creeks Crossing Subdivision (the "Subdivision") are enacted by the Three Creeks Crossing Subdivision Homeowners' Association ("Association") to ensure the orderly, efficient and equitable distribution, use and conservation of the water resources of the Association. The Association will endeavor to deliver water in a flexible, timely manner consistent with the available water supply and the physical and operational limits of the delivery system facilities.

**1. Association Water Rights**

1.1. The Association owns the following water rights, which are all appurtenant to a 474-acre permissible place of use (PPU) and authorize total irrigation of 319.9 acres: [NOTE: PPU well be amended to add additional lots]

Source	Right No.	Priority	Rate/Vol	Acres
Bullion Creek	37-22067	6/1/1883	1.94 cfs / 395.7 ac-ft	319.9 ac
Bullion Creek from storage	37-21285	7/2/1964	1.94 cfs / 40 ac-ft	54.7 ac
Groundwater	37-7319	1/17/1974	1.09 cfs	222.0 ac
Croy Creek	37-22065	6/1/1883	6.80 cfs	319.9 ac
Unnamed Stream (Rock Creek)	37-22069	6/1/1883	0.29 cfs	319.9 ac
[NOTE: New Storage Right]				

1.2. ATTACHMENT A, hereto, is an aerial photo of the PPU within which the irrigation of 319.9 acres is authorized.

**2. Availability of Water Supply**

2.1. The water available for delivery and use under the Association's water rights will depend on a number of factors, including the available water supply and ability to divert that available water supply. Diversion and use of the Association's water rights will be limited by the various elements of the water rights, as identified above (i.e. priority, rate and acres). The Association may only divert the water rights for use when they are in priority and only to the extent there is an available water supply.

2.2. ATTACHMENT B, hereto, is a [date] Memorandum, prepared by Charles G. Brockway, P.E., discussing the available water supply under the Association's water rights. Dr. Brockway concluded that, although, on paper, the rights allow the irrigation of 319.9 acres, a "reasonably reliable water supply" – one that, in most seasons, would meet all irrigation requirements including the peak demand – is 119 acres.

### 3. Description of Properties Receiving Association Water

3.1. In addition to the 9 Lots and common areas within the Three Creeks Crossing Subdivision, the Association delivers water to the following Additional Lots:

3.1.1. Camp Creek Subdivision Lot 1 ("CCS1"): Comprised of 40 total acres and located on the north side of Croy Creek Road (north of Lot 1 and Lot 2);

3.1.2. Camp Creek Subdivision Lot 2 ("CCS2"): Comprised of 65.21 total acres and located on the north side CCR1A;

3.1.3. Croy Creek Ranch Lot 3A ("CCR3A"): Comprised of 27 total acres and located east of Lot 4;

3.1.4. Croy Creek Ranch Lot 5A ("CCR5A"): Comprised of 28.78 total acres and located south of Lot 5 and Lot 6;

3.1.5. Croy Creek Ranch Lot 5B ("CCR5B"): Comprised of 43.78 total acres and located south of CCR5A.<sup>1</sup>

ATTACHMENT C depicts all of the Subdivision Lots and Additional Lots.

3.2. The delivery of water to these Additional Lots shall be subject to the Policies contained herein.

3.3. As used herein, "Subdivision Lots" shall refer to the lots within the Three Creeks Crossing Subdivision. "Additional Lots" shall refer to the lot identified in Policy 3.1, herein.

### 4. Allocation of Water Supply

4.1. Based on Dr. Brockway's analysis, the Association has determined that it will allocate the Association's water rights based on the irrigation of 119 acres. This will provide lot owners with more surety in their planning, development and use of water within the individual lots.

4.2. The Association will retain 9 acres of water to irrigate the common areas, including Subdivision entry signs and points, the area around Storage Pond #2 and a walking path.

4.3. The allocation of water will be as follows:

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<sup>1</sup> It is recognized that the Croy Creek Ranch Subdivision plat may be altered or amended from time to time and that the designations for lots within the Croy Creek Ranch Subdivision may change over time.

	Proportion of Allocated Acres	Allocated Acres
Association (Common Areas)	N/A	9
Lot 1	X	X
Lot 2	X	X
Lot 3	X	X
Lot 4	X	X
Lot 5	X	X
Lot 6	X	X
Lot 7	X	X
Lot 8	X	X
Lot 9	X	X
CCS1	X	X
CCS2	X	X
CCR3A	X	X
CCR5A	X	X
CCR5B	X	X

4.4. Contingent on available water supply and other limiting factors, the Association will attempt to deliver water to each Property sufficient to irrigate the above Allocated Acres.

4.5. The apportionment of water for each Allocated Acre is \_\_\_\_\_ c.f.s. or \_\_\_\_\_ miner's inches.

4.6. From year to year, additional water may be available for diversion and use ("Excess Water"). In such an instance, the Association will deliver that Excess Water, upon request, to the properties based on the above proportions. The delivery of Excess Water may, or may not, be apportioned at the same diversion rate as the water for Allocated Acres, as stated in Policy 4.5, herein. The delivery of Excess Water will be based on the available water supply.

4.7. If a Property Owner does not intend to use his/her Allocation of water, whether the Allocated Acres or the Excess Water, then that Property Owner may assign, in writing, his/her right to the water to a different Property Owner. Any use of water on each Property shall be subject to the maximum acreage limitations identified in Policy 9, herein.

*Nothing in these Rules and Regulations should be construed as a guarantee by the Associations that a particular quantity of water will be available for diversion and use in any given year. The allocations provided herein may be impacted from year to year based on available water supply and other limiting factors.*

#### 5. Association Water Diversion, Storage and Delivery System

5.1. The Association shall install, operate and maintain a water diversion, storage and delivery system for the Association (the "Water System"). The Water System shall be comprised of the following:

- Storage Pond #1: Located on Bullion Creek on the north side of Croy Creek Road (north and east of Lot 4).
- Pump & Buried Pipeline: A pump shall be installed on Storage Pond #1 to divert water into a buried pipeline for delivery to Storage Pond #2.
- Storage Pond #2: Located within the subdivision property south and east of Lot 3.
- Pump, Pipelines & Stubs: A pump, or pumps as needed, shall be installed on Storage Pond #2 to divert water into pipelines that will deliver water to the individual lots. Water shall be delivered to a stub at each lot.

5.2. In addition to the above, the Association may, in its discretion, construct aesthetic features using the available water, including, but not limited to, open streams-like diversions and/or water falls.

## 6. Lot Connections, Meters & Connection Fee

6.1. The Association shall place a stub for each lot to connect to the Water System. Absent written approval from the Association, Lot owners shall not be permitted to connect to the Water System at any location other than the stub identified for each particular lot. ATTACHMENT C depicts the location of the stub for each lot.

6.2. As the Subdivision Lots and/or Additional Lots are sold and/or developed, they will be connected to the Water System. When a Subdivision Lot or Additional Lot is connected to the Water System, the owner of that lot shall purchase and install, at the owner's expense, a meter at the stub for the monitoring and measurement of water deliveries. Attached as ATTACHMENT D, hereto, is a list of meters that have been approved by the Association for use at the connection stub. No other meters are permitted at the stub and the Association will not delivery water to any stub with an unapproved meter.

## 7. Reduction of Allocation/Rotation of Water Use

7.1. During times of water shortage, the Association may take action to maximize the efficiency and use of water, or to minimize the impacts of a short water supply. These actions may include, but are not necessarily limited to, a reduction in the apportionment of water or the implementation of a rotation system.

7.2. Reduction in Apportionment: Upon a review of the available water supplies, or in anticipation of an inadequate water supply in an upcoming irrigation season, the Association may reduce the per-acre apportionment of water below that provided in Policy 4.5, herein. The Association will make the determination to reduce the apportionment of water at a meeting of the Association Board of Directors upon notice to all lot owners, as provided in the Article of Incorporation, Bylaws and/or Declaration of Covenants, Conditions and Restrictions.

7.3. Rotation: The Association may, upon a meeting of the Association Board of Directors, implement a rotation system among the water users. The Association will notify water users no fewer than 48 hours before a rotation is implemented and shall notify lot owners when the rotation is being discontinued.

7.4. The violation of any action by the Association under the policy shall be cause for the Association to discontinue the delivery of water to the lot in violation until the violation is cured and the lot owner is in full compliance with the Rules and Regulations.

## 8. Operation & Maintenance Obligations

8.1. The Water System and the meters at each individual lot stub are under the exclusive direction, management and control of authorized Association personnel. No persons other than authorized Association personnel shall have any right to operate or otherwise interfere with the Water System or meters in any manner. Authorized Association personnel shall be the only persons authorized to perform any work on the Water System and the meters. Lot owners should not attempt to perform any maintenance and/or repair of the Water System or meters. If a Lot owner discovers a maintenance or repair need, the Lot owner should notify the Association immediately.

8.2. Individual lot owners shall be responsible for all costs associated with the design, construction, operation, maintenance and repair of water infrastructure beyond the lot stub and meter. Lot owners shall ensure that they do not interfere with the normal operation of the Association's Water System.

## 9. Access & Encroachments

9.1. An easement has been established on each lot for the Water System. The Association, and any authorized Association personnel, shall have the right, at all times, to reasonably enter any lot for the following purposes:

9.1.1. Inspecting the Water System, the flow of water within and through such Water System (including measurement thereof);

9.1.2. Checking meters at each lot stub;

9.1.3. Maintaining or operating the Water System and/or meters;

9.1.4. Investigating any incident or report involving the Water System and/or meters;

9.1.5. Responding to an emergency involving the Water System and/or meters;

9.1.6. Performing any work contemplated under these Procedures.

9.2. No encroachments shall be installed, constructed or placed in, on, over, under or across any portion of the Water System, including the lot stubs and meters, unless the Association has given specific written approval for such encroachment. In granting such approval, the Association may impose such conditions (including reasonable fees) and/or restrictions as the Association deems appropriate.

9.3. Upon written notification from the Association to a lot owner placing any unauthorized encroachment, said lot owner shall immediately remove such encroachment. If such encroachment is not promptly removed, the Association may take all reasonable action to remove the encroachment at the sole expense of the lot owner.

9.4. Encroachments in, on, over, under or across the Water System, including the lot stubs and meters, that interfere with the operation or maintenance of the Water System and/or meters may be removed by the Association without notice, at the sole expense of the encroacher or adjacent lot owner.

## 10. Water Assessments

10.1. The Association shall assess owners of each of the Subdivision Lots and Additional Lots for the construction, operation, maintenance and repair of the Water System and the meters at each individual lot stub, based on their proportional Allocation as identified in Policy 4, above. Provided, that the Association may assess individual lot owners for any expenses incurred relative to the meter at an individual lot stub, pursuant to the provisions of the Declaration.

10.2. Assessments shall be determined and issued no fewer than 30-days before February 15 of each year. Assessments shall be due and payable no later than February 15 of each year. The Association will base the assessment on a consideration of past expenses and anticipated future expenses relative to the Water System for the upcoming year. The total cost shall be divided proportionally among the lot owners.

10.3. The Association may issue a supplemental assessment for unexpected costs related to the or the construction, operation, maintenance and repair of the Water System and the meters at each individual lot stub pursuant to the provision provided in the Articles of Incorporation, Bylaws, Declaration of Covenants, Conditions and Restrictions and/or Idaho Law.

10.4. The failure of any lot owner to pay assessments provided herein shall be cause for the Association to withhold water delivery to that lot owner until assessments are paid in full.

### 11. Maximum Irrigation Per Lot

11.1. Excess water may be available, from year to year, based on the available water supply. If Excess Water is available, the Property Owners may be able to irrigate additional acres in that particular year.

11.2. As stated above, the Association's water rights are limited to a total irrigation of 319.9 acres in any given year. As such, regardless of the available water supply, lot owners may not irrigate their entire property. Irrigation within the lots must be limited.

11.3. Under no circumstances shall a lot owner be permitted to irrigate more than the following total acres within the individual lots:

Property	Maximum Acres
Common Areas	9
Lot 1	27
Lot 2	22
Lot 3	13
Lot 4	14
Lot 5	13
Lot 6	14
Lot 7	21
Lot 8	25
Lot 9	25
CCS1	18
CCS2	28
CCR3A	25
CCR5A	25
CCR5B	41

11.4. Any violation of these irrigation acre maximums will be cause for the Association to discontinue the delivery of excess water to the lot in violation until the violation is cured and the lot owner is in full compliance with the Rules and Regulations.

### 12. Domestic/In Home Water

12.1. The water delivered through the Water System is not potable water and is not intended for human consumption. Each Lot owner shall be solely responsible for ensuring that the water delivered to the lot is not consumed by any human.

12.2. Each lot owners shall be responsible for all costs and authorizations necessary to drill a domestic well for in-home use and other domestic uses on their lot.

### 13. Ponds and Other Water Features

13.1. The Association's water rights authorize the storage of water for irrigation purposes. The storage authorized under the Association's water right will be located solely within Storage Pond #1 and/or Storage Pond #2. There will be no portion of the Association's storage water rights made available to the lot owners for use on the individual lots.

13.2. The following are two scenarios by which a lot owner may construct a pond on his/her lot:

13.2.1. Domestic Exempt Water Right: A pond may be constructed in association with a residence using the domestic exemption. Under current Idaho law, a domestic water right is exempt from the application process if the water user diverts no more than 0.02 c.f.s., and 13,000 gallons per day, for use for one home and up to ½ acre of irrigation. If designed correctly, a pond may be included within this exemption.

13.2.2. 24-Hour Guidance: At the time this Policy was created, the Idaho Department of Water Resources followed a guidance allowing for a pond, without a separate water right, whenever that pond was designed such that it could be filled in 24-hours or less using the authorized diversion rate of the associated water right(s). Attached hereto, as ATTACHMENT E, is a copy of that policy. Each lot owner desiring to construct a pond under this guidance will be responsible to ensure compliance with the guidance, as it may be amended from time to time. Further, in no circumstances shall a lot be permitted to construct a pond pursuant to the 24-hour guidance that is larger than the following volumes:

Property	Maximum 24-Hour Volume
Lot 1	
Lot 2	
Lot 3	
Lot 4	
Lot 5	
Lot 6	
Lot 7	
Lot 8	
Lot 9	
CCS1	

CCS2	
CCR3A	
CCR5A	
CCR5B	

13.3. A lot owner desiring to implement a pond or other water feature on his/her property will be solely responsible for ensuring that the pond or other water feature is in compliance with all Idaho laws, regulations and policies, including those applicable to the development and use of water in the State of Idaho.

13.4. To the extent that mitigation may be required for the development of a new water right for a pond or other water feature, the lot owner may not use any of the Association's water rights to mitigate for the new water right.

#### LIST OF ATTACHMENTS

- Attachment A: Water Right Permissible Place of Use ("PPU") Aerial
- Attachment B: Brockway Memo
- Attachment C: Map showing all lots subject to these policies and location of stubs
- Attachment D: List of Approved Meters
- Attachment E: IDWR 24-Hour Guidance Document

## Yard Bird, LLC: Croy Creek Property Water Rights, Irrigation Requirements, Available Water Supply, and Possible Company Structure

Charles G. Brockway P.E. 4/28/2016

### A. Recorded Water Rights

All rights are appurtenant to a 474-acre permissible place of use (PPU) and are structured as follows:

Source	Right No.	Priority	Rate/Vol	Acres
Bullion Creek	37-22067	6/1/1883	1.94 cfs / 395.7 ac-ft	319.9 ac
Bullion Creek from storage	37-21285	7/2/1964	1.94 cfs / 40 ac-ft	54.7 ac
Groundwater	37-7319	1/17/1974	1.69 cfs	222.0 ac
Croy Creek	37-22065	6/1/1883	6.80 cfs	319.9 ac
Unnamed Stream (Rock Creek)	37-22065	6/1/1883	0.29 cfs	319.9 ac
Total rights on paper			10.12 cfs and 40 ac-ft from storage	319.9 ac
Total per-acre water right on paper			0.0316 cfs/acre (1.58 miners inch/acre)	

#### Notes:

1. Bullion Creek right and groundwater right are fully overlapping.
2. Bullion Creek right and Bullion Creek "from storage" right are fully overlapping.
3. Acreage on Bullion Creek from storage right was decreed based on land which could historically be reached by gravity from the reservoir.
4. Overlap of "from storage" right and groundwater right is not explicitly specified. However, a transfer approved in 1991 on the groundwater right included a map showing acreage mostly south of Croy Creek and not including the area subsequently claimed and decreed under the "from storage" right. Therefore, it is concluded that these right are not overlapping.

### B. Reasonably reliable water supply

Water supply on the property is extremely limited, and actual water availability is much less than the face value of the water rights. The yield from Croy Creek and Rock Creek has for many years been essentially zero except for during early spring runoff periods. These sources are assumed to be unavailable for irrigation supply – especially during peak demand periods. Bullion Creek is a continuously-flowing spring-fed stream. No systematic measurements have been made, but periodic estimates made over the last

decade indicates that the reliable flow is about 1.0 cfs. Groundwater well yield is also limited, but with the new well drilled in 2007 the total yield is close to the water right amount. Flow tests in January 2016 showed a total yield of 0.94 cfs with the installed pumps. Therefore the total reliable supply is estimated to be  $1.0 + 0.94 = 1.94$  cfs.

Source	Right No.	Flow (cfs)
Bullion Creek	37-22067	Not measured, but estimated to be 1.0 cfs
Bullion Creek from storage	37-21285	40 ac-ft (8 fills/refills of the pond)
Groundwater	37-7319	420 gpm or 0.94 cfs, based on January 2016 flow tests
Croy Creek	37-22065	Essentially zero except early season
Unnamed Stream (Rock Creek)	37-22069	Essentially zero except early season
Total reliable water supply		1.94 cfs
Total reliable water supply per acre on 319.9 acres		0.00606 cfs/acre (0.30 miners inch/acre)

### C. Irrigation water requirement relative to water supply

A monthly analysis of irrigation water requirements was made for the property (see attached sheet). The total seasonal volume requirement is 33.17 inches or 2.76 ac-ft/acre. The peak diversion rate requirement (occurs in late June or early July) is 0.0163 cfs/acre or 0.82 miners inches per acre. If the objective is to never have a shortage of water, meaning all irrigation requirements including the peak demand would be met by the available water supply, the maximum irrigable acreage would be 119 acres. If shortages can be tolerated during peak times so that only the total seasonal volume need be met, the irrigation can be up to 255 acres. Any acreage between 119 and 255 is also possible, depending on the level of shortage that is tolerable.

A related issue concerns forfeiture. A physical shortage of water is a clear defense against forfeiture. Based on the above analysis, a good case could be made that as long as at least 119 acres are being irrigated, there should be no risk of forfeiture on the unused 200.9 acres. This analysis depends on the estimate of 1.0 cfs from Bullion and zero from Croy Creek. If the physical water supply were to increase for some reason, more acres would need to be irrigated to protect them from forfeiture. Placing unused acres in the water bank is not a viable option, since that would proportionally reduce the available diversion rate under the surface and groundwater rights, leaving insufficient diversion authorization.

## ADMINISTRATOR'S MEMORANDUM

To: Regional Offices,  
Water Allocation Bureau

Application Processing No. 73  
Licensing No. 12  
Transfer Processing No. 28

From: Jeff Peppersack 

Re: UTILIZATION OF THE 24-HOUR FILL ALLOWANCE FOR IMPOUNDMENTS

Date: April 18, 2013

Department practices and policies have recognized the use of the 24-hour fill allowance (aka the "24-hour rule") in establishing the maximum impoundment volume allowed in association with a water right permit, license, or decree, for which a storage component identified as an element of the water right is not required (AP Memo 67<sup>1</sup>). The Department has not provided additional guidance for implementation of this policy; consequently, the 24-hour fill allowance has been implemented by staff in a variety of ways. Additional guidance is necessary to avoid a proliferation of ponds on new or existing water diversion systems that may result in additional consumptive use and lack of control of the water to the detriment of other water users. It is important to note that this memo does not represent promulgated rules, but is instead a statement of the policy and practical implementation of the 24-hour fill allowance that has historically been used by the Department.

The guidance provided in this memo is intended to provide clarity, consistency, and detail in the implementation and use of the 24-hour fill allowance for ponds constructed or proposed to be constructed after the date of this memorandum and to changes in use of existing ponds, where the change in use occurs or is proposed to occur after the date of this memorandum. It is not intended to direct Department staff to initiate investigative or regulatory action for ponds existing prior to the date of this memorandum, that otherwise met past interpretations of the 24-hour fill allowance, or to address the need for a claim to be filed in an ongoing adjudication of water rights. If a written complaint is filed with the Department showing probable injury to an existing water right where the injury is alleged to be related to the use of a pond developed prior to the date of this memorandum, staff is instructed to forward the complaint to the division administrator for case-by-case guidance.

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<sup>1</sup> Application Processing Memorandum No. 67 Permitting Requirements for Ponds, signed by Norm Young on February 28, 2003, states in part "A water right permit is not required to construct and use a pond or ponds that are part of a system used to distribute and use water in accordance with a valid water right if the pond or ponds do not impound a larger volume of water than authorized for diversion within a 24-hour period under the water right or rights associated with the project."

Historic utilization of the 24-hour fill allowance came about as recognition that many diversion structures will incidentally impound a certain amount of water to either raise the water level or otherwise facilitate diversion into a canal or other conveyance or distribution system, or to provide for short-term detention (24-hours) to facilitate operation of the distribution system for the purpose of use authorized under the water right. An example of the first case is creation of a small pool of water to ensure proper submergence of the suction piping in a pumping system. An example of the second case is detention of water in a small pond to provide a delayed, adjusted rate of diversion for night-time irrigation of a golf course or other facility where continuous irrigation during the day is not practical. Recognition of the 24-hour fill allowance for such uses is beneficial to the Department and water users because it eliminates the need to describe a storage component on a large number of water rights, allowing for faster processing of water right applications.

Further application of the 24-hour fill allowance by Department staff over time included its use for aesthetic, wildlife and/or recreation ponds. However, such application goes beyond the original intent of the 24-hour fill allowance because the pond is the end use of the water and the water right should include a storage component to properly describe the use. A storage component as part of the water right is necessary for such uses to ensure that the Department can address consumptive use associated with the pond and to describe any quantities, period of use or conditions necessary to limit the use to avoid injury to other water users.

Due to the lack of formal resources addressing the 24-hour fill allowance, questions are often raised by Department staff regarding its implementation. The following explanation and scenarios are intended to illustrate proper use of the 24-hour fill allowance and to prevent future misunderstandings of the policy by Department staff and water users.

#### **DIVERSION RATE USED TO CALCULATE THE 24-HOUR FILL ALLOWANCE**

The volume of water provided under the 24-hour fill allowance is calculated by multiplying the diversion rate by a 24-hour time period. As a simple example, if a water right recognizes a diversion rate of 1 cfs for irrigation, an impoundment volume less than or equal to 1.98 ac-ft used to facilitate pumping would not require a storage component on the water right.<sup>2</sup> Conversely, for the same water right, an impoundment volume greater than 1.98 ac-ft would require that the water right contain an element describing the entire storage component consistent with Water Appropriation Rule 35.03 (b) iv and v (*IDAPA 37.03.08*).

When applying the 24-hour fill allowance to calculate the maximum volume of a pond, series of ponds, reservoir, or series of reservoirs (henceforth referred to as a pond) associated with a specific water right, the diversion rate used in the calculation is limited to the authorized diversion rate associated with the water right and is further limited by the available water supply or the capacity of the works at the inlet to the pond. Regardless of availability of water, diversion rates in excess of that authorized on the water right

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<sup>2</sup> 1.98 ac-ft = (1 ft<sup>3</sup>/s)\*(86,400 s/day)\*(1 ac/43,560 ft<sup>2</sup>). This conversion is simplified as 1.984 ac-ft per cfs per day.

or rights, specifically utilizing the pond in question, are inappropriate for use in the 24-hour fill allowance calculation.

An example of inappropriate diversion rate includes a natural stream flow rate for an on-stream pond—an extreme variant of this is relying on the peak stream flow rate for analysis and pond sizing. This can be encountered when reviewing on-stream hydropower water rights. In such instances, the 24-hour fill allowance should be limited to the volume derived from the authorized diversion rate of the water right, and consideration of any excess available natural flow rates associated with the stream channel is inappropriate. Another example of a diversion rate that is inappropriate for consideration includes a diversion rate in a delivery system associated with other unrelated water rights for which the pond does not facilitate operation. This may include downstream water rights that use the system for conveyance (e.g. downstream irrigators), or water rights with additional beneficial uses that are not facilitated by the pond (e.g. stockwater used above the irrigation works in the system).

The appropriate diversion rate used to calculate the 24-hour fill allowance volume cannot exceed the fully authorized diversion rate associated with a specific water right; however, oftentimes the actual diverted (measured) rate is something less than the fully authorized rate. In these instances it is the rate that is actually being diverted, not the authorized diversion rate, that should be used in the calculation to determine the 24-hour fill allowance volume. For example, if an irrigation water right authorizes 5 cfs of diversion, but in actuality only 3 cfs of the total rate is conveyed into a part of the system incorporating the pond under consideration, and the remaining diversion rate is used in a separate part of the system, then the 24-hour fill allowance calculation is limited to a diversion rate of 3 cfs.

#### Combination of Beneficial Uses and/or Multiple Water Rights

It has been the Department's practice to allow for a combined pond volume based on the 24-hour fill allowance calculation of multiple beneficial uses under the same water right, and/or multiple water rights associated with the same system. As an example of the first case, if a golf course resort plans to develop a water right that includes a pond to facilitate a golf course irrigation component (2.5 cfs) and a commercial (equipment washing) component (1.2 cfs for two hours), the appropriate combined 24-hour fill allowance volume is 5.16 ac-ft.<sup>3</sup> As an example of the second case, if an irrigation system includes a pond and has two water rights associated with the system for 2 cfs and 3 cfs respectively, then the appropriate combined 24-hour fill allowance volume is 9.92 ac-ft.<sup>4</sup> Note, both examples are contingent upon the diversion or operation being facilitated by the pond.

#### Seepage & Evaporation in Conjunction with the 24-Hour Fill Allowance

When calculating the 24-hour fill allowance volume, no consideration should be given to gains and losses to the pond volume associated with precipitation, evaporation, or seepage. The volume calculation is based solely on the product of the appropriate diversion rate associated with the water right and a 24-hour diversion period. No adjustments up or down should be made to the diversion rate or allowable pond volume to reflect actual water balance conditions.

<sup>3</sup> 5.16 ac-ft = (2.5 cfs)\*(1.984 ac-ft/cfs/day) + (1.2 cfs)\*(2 hrs)/(24 hrs/day)\*(1.984 ac-ft/cfs/day)

<sup>4</sup> 9.92 ac-ft = (2 + 3 cfs)\*(1.984 ac-ft/cfs/day)

## TYPES OF IMPOUNDMENTS

### Off-Stream Impoundments to Facilitate Diversion or Operation of the Distribution System

Application of the 24-hour fill allowance to address off-stream impoundments is appropriate when the impoundment is used to facilitate the diversion of water or operation of a distribution system for the authorized purpose of use. Such impoundments may include sumps for pumping systems or short-term detention ponds for irrigation systems.

### Off-Stream Impoundments for Recreation, Wildlife and Aesthetic Uses

As a general rule, it is not appropriate to utilize the 24-hour fill allowance for off-stream impoundments where the impoundment represents the end use of the water such as aesthetics, recreation and or wildlife uses.<sup>5</sup> Such impoundments, which may include wide meanders and/or pools within the conveyance channel, must include a storage component as part of the water right authorizing the use.

### On-Stream Impoundments to Facilitate Diversion or Operation of the Distribution System

Application of the 24-hour fill allowance to address on-stream impoundments is limited to impoundments that facilitate diversion of water or operation of a distribution system for the authorized purpose of use. Such impoundments may include use for on-stream hydropower facilities or on-stream diversions for authorized off-stream water uses.

In regards to run-of-the-river (ROR) hydroelectric water uses, application of the 24-hour fill allowance to support incidental on-stream impoundment is an acceptable application. ROR hydroelectric projects are those with small or no reservoir capacity. In the strictest sense of the definition, this implies that water passing through the facility must be used at that moment, or must be allowed to bypass the dam. Oftentimes in practice ROR facilities are actually operated in a "load following" manner. Load following indicates a practice where power output is adjusted to meet the fluctuating demand throughout a 24-hour period. Load following requires that a small amount of storage occur upstream of the dam to provide water releases to meet the peak daily demand for electrical generation. The Lower Salmon Falls Hydroelectric facility is one such example. Traditionally the Department has not required a storage water right in association with ROR facilities if the volume of water impounded upstream of the dam in support of a load following operation satisfies the 24-hour fill allowance calculation. Note that conditions of a hydropower water right, or conditions of other permits associated with the use (e.g. a FERC license) may preclude such practice.

### On-Stream Impoundments for Recreation, Wildlife and Aesthetic Uses

Similar to off-stream impoundments for such uses, it is not appropriate to utilize the 24-hour fill allowance for on-stream impoundments where the impoundment represents the end use of the water such as aesthetics, recreation and or wildlife uses. Furthermore, such use would constitute a minimum in-stream

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<sup>5</sup> A storage component may not be necessary if the total use falls within the statutory definition of a domestic or stockwater right.

flow because the water right quantity would be described as a flow rate, and consistent with Idaho Code Title 42, Chapter 15, Minimum Stream Flow, only the Idaho Water Resource Board (IWRB) can file an application and hold a minimum stream flow water right.

## **OTHER CONSIDERATIONS**

### **Water Tanks**

Many water users incorporate tanks or cisterns in their distribution system. Such features are generally not considered storage and are not required to be covered under a specific storage water right. Some circumstances, especially where a tank or cistern is added to an established non-municipal water right, may raise injury and/or enlargement concerns and may require a storage component.

### **Timing of Fill**

The diversion of water to a pond where impoundment is only allowed by implementation of the 24-hour fill allowance, and where no storage component is identified on the water right, can only occur during the season of use described on the water right. As an example, if an irrigation water right includes a pond with a volume established by the 24-hour fill allowance, diversion of water to fill that pond can occur no earlier than the first day of the irrigation season of use. It would be an illegal diversion of water if the pond were filled when the water right is out of season, to take advantage of water availability (i.e. early season runoff).

### **Drainage of Pond**

Once diverted, water impounded to facilitate diversion or operation is considered beneficially used and water users are not expected to drain the pond or return the water to the source at the end of the season or when the water is off due to a priority cut. However, significant amounts of water routinely held at the end of the period of use may raise questions regarding the intent of the pond or impoundment and may result in the need for a water right for an alternate use such as aesthetics or recreation storage.