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Department of Water Resources

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October 2, 2003

Via U.S. Mail and Facsimile

Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: SRBA Subcase Nos. 65-3617, 65-7461, 65-8627 and 65-11261

Dear Mr. Baxter:

Yesterday, Harley Noe of Associated Earth Sciences, Inc. delivered to Scott King a Hubble analysis report for Water Right Nos. 65-7461 and 65-11261. As you know, Mr. Noe previously prepared a Hubble analysis report for the other Payette River irrigation water rights used on Birding Island Ranch, 65-3617 and 65-8627.

The new Hubble analysis report for 65-7461 does not include acreage which is covered by Water Right Nos. 65-3617 and 65-8627 on the basis that those acres will be covered under the more senior irrigation rights. We agree with IDWR's recommendation in this regard and authorize the removal of acreage covered under Water Right No. 65-7461 to the extent the same acreage is covered under Water Right Nos. 65-3617 or 65-8627. We estimate that approximately 16.5 acres fall into this category. Also, we would request that about an additional 7 acres be added to the place of use for Water Right No. 65-7461 to fully cover the overlapping place of use with Water Right No. 65-11211. After these adjustments, the total irrigated acreage under Water Right No. 65-7461 would decrease from 159 to 150 acres. An additional 8 acres of overlap with Water Right No. 65-11261 may be removed from 65-7461 to the extent there may be another way (besides coverage under Water Right No. 65-7461) to address the quantity error under Water Right No. 65-11261. As we previously discussed, Ron Howerton and I discovered a clerical error in the *Payette Adjudication* records that resulted in Water Right No. 65-11261 being decreed for only .13 cfs for surface irrigation of 10 acres.

Garrick Baxter, Esq.

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After these acreage adjustments, Harley's report identifies the need for a total of about 9.4 cfs for the approximately 150 acres covered under Water Right Nos. 65-7461 and 65-11261. Since Water Right No. 65-7461 was licensed for only 6.17 cfs, I would like to discuss with you and other appropriate IDWR personnel, addressing this shortfall of about 3 cfs. Since Permit Application No. 65-7461 originally was published for over 10 cfs and since the matter of the duty of water for Birding Island Ranch remained pending in the *Payette Adjudication* and the SRBA throughout out the permitting and licensing process, I believe there are sufficient grounds for correcting the insufficient quantity prematurely issued to Water Right No. 65-7461. Also, I note that the license condition limiting Water Right No. 65-7461 to 1.5 miner's inches per acre in combination with other rights also may limit the ability to obtain other water rights to address the quantity shortfall. The best solution appears to be correction of Water Right No. 65-7461 in light of the good information that now is available.

If you have any questions about these matters, please contact me. I look forward to discussing this matter further with you.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

A handwritten signature in black ink, appearing to read "Dana Hofstetter", written in a cursive style.

Dana L. Hofstetter

cc: Shelley Keen
Scott King
George Colwell

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