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DEPARTMENT OF  
WATER RESOURCES

January 6, 2006

Brett Casperson  
8893 E. Maughan Road  
Lava Hot Springs, Idaho 83246  
208-776-5428

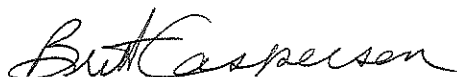
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA Case No. 39576

FOR WATER RIGHT: 29-13407

This information is in response to Special Masters questions during the phone conference 12-21-05. Included are responses from Candice McHugh on the "Shrink Issue" and "Clarification of Settlement Agreement". We hope they help to inform the court of the questions that were raised.

Respectfully,

A handwritten signature in cursive script that reads "Brett Casperson".

Brett Casperson

Brett and Nancy,

Per our conversation, Yes I did talked to Candice McHugh back in the spring of 2005 about the shrink issue never being resolved in the Twin Falls Meeting. She told me according to her notes that the shrink issue was not resolved at that time and she brought up that point to several parties. I told her that Jerry Rigby, council for Lava Irrigation, did not know her opinion and she said she would call him as soon as she and I had finished talking. She was very upfront with me on that. I call Jerry later and Candice had called him and discussed it with him. I'm not sure why or how it got swept into the agreement. I will send you an e-mail from Candice to Wayne Avery, he had asked this questions also. Her answer was the same.

Second, I did ask Candice McHugh back in May of 2005 to clarify the settlement agreement language in Article 4 of the agreement in regards to water being curtailed and still running through the power plant. She declined to comment. As you can see in her e-mail to me on May 24, 2005 she said "The Portneuf Settlement Agreement speaks for its self." As you are aware Mr. Tuthill declared in the August 22, 2005 that IDWR interprets the agreement to mean water can be curtailed and still run trough the power plant. I know that Mr. Budge stated before the court on May 18, 2005 conference that the agreement did not contain language that would allow water to be curtailed and run through the power plant, but that is not the way IDWR has interpreted it. As I have stated before, the words that are carefully placed in Article 4 would allow the lower users to curtail water and still run that water through the power plant.

The real problem with the agreement is that the 17.4 cfs is distorted because of the fact that over the 80 plus years historically 40-50 percent of the water used in late season has been diverted prior to the averaging done by the department. This is a fatal flaw. It appears that historically the upper users have used about 40 cfs of water and in any given year if the upper users pull all the water on Sept. 16 the upper users will only be guaranteed 17.4 cfs. When the court allows and sees fit, you and/or the other users need to present the numbers so they understand that this 17.4 is not the entire picture. The 17.4 can be easily corrected by taking the average historical use prior to the averaging date and adding that amount to the 17.4 cfs number used in the agreement. Because the lower users can determine when the upper users can take water, this becomes an even greater concern because they can manipulate the agreement to their favor.

Norm Avery

**From:** McHugh, Candice [Candice.McHugh@idwr.idaho.gov]  
**Sent:** Tuesday, May 24, 2005 10:16 AM  
**To:** Norm Avery  
**Cc:** Tutbill, Dave; Luke, Tim; Ruberry, Allen; Carlsen, Eric; spinjim@cableone.net; Randy STONE (Randy STONE); Rigby, Jerry (IWRB Member); 'Randy Rudge'  
**Subject:** RE: Request for clarification  
Norm,

The Portneuf Settlement Agreement speaks for itself. The agreement is too complex to summarize in one sentence.

Candice

-----Original Message-----

**From:** Norm Avery [mailto:navery@wwcldye.net]  
**Sent:** Monday, May 23, 2005 2:36 PM  
**To:** candice.mchugh@idwr.idaho.gov  
**Subject:** Request for clarification

Thanks for all you help with the issues on basin 29.

We talked on May 19, about the fact that curtailed water, according to the agreement at hand, will be allowed to be used through the power plant. And that this agreement well override the state statues of subordination to agricultural use and also the subordination clause in the Marsh Valley power plant water right.

No long explanation needed. I just want to make sure we are all on the same page.

Yes, it will be permitted under a curtailment situation.

No, it will not be permitted under a curtailed situation.

Thanks Again!

Norm

Waynes Q and Candice Response Dist. #29 settlement agreement  
From: averyclan6@netzero.net  
Sent: Wednesday, July 27, 2005 9:16 PM  
To: Norm Avery  
Subject: Fw: RE: Dist. #29 settlement agreement

----- Forwarded Message -----  
Norm,

I have reviewed my notes from the mediation and as I have said before to the parties, my notes do not contain any details about the shrink issue. However, because my notes are my work product, I will not provide a copy to the parties.

As for your other concerns, we will add these questions to our agenda for the August 22nd meeting. Thank you.

Candice McHugh  
Deputy Attorney General, IDWR  
208.287.4810

-----Original Message-----

From: averyclan6@netzero.net [mailto:averyclan6@netzero.net]  
Sent: Monday, July 25, 2005 12:06 PM  
To: candice.mchugh@idwr.idaho.gov  
Subject: Dist. #29 settlement agreement

Candice,

Will you please send me a copy of your notes from the Twin Falls Mediation Conference on November 10, 2004.

I am not sure that the issue of shrink in the Portneuf River was resolved and I would like to review the notes.

Also, can you tell me, will the curtailed water be allowed to flow through the hydro plants?

If so, does this comply with Idaho law?

I am of the understanding that Idaho law does not allow water to be curtailed from irrigation to be used for hydro.

Thank you for your assistance.

Wayne Avery  
averyclan6@netzero.net

CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that on this day, December 30, 2005, I mailed a true and Complete copy of the foregoing documents, postage prepaid, to each of the following:

Original to:

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, Idaho 83303-2707

Copies to:

Director of IDWR  
P.O. Box 83720  
Boise, Idaho 83720-0098

Randall C. Budge, Portneuf Marsh Valley Canal Co.  
PO Box 1391, 201 E Center St.  
Pocatello, ID 83204-1391

McCammom Ditch Company  
James A. Spinner  
Po Box 6009  
Pocatello, ID 83205

Randolf C. Stone  
Portneuf Irrigation Company  
PO Box 910  
Burley, Idaho 83318