



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WASDEN

September 20, 2006

Christopher Bromley
Deputy Attorney General
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83720-0098
STATEHOUSE MAIL

Re: Water Right No. 75-04063

Dear Mr. Bromley:

Water Right No. 75-04063 has not been abandoned. Abandonment requires a showing of "(1) an intent to abandon and (2) an actual relinquishment or surrender of the water right." *Jenkins v. State, Dept. of Water Res.*, 103 Idaho 384, 388, 647 P.2d 1256, 1260 (1982). "Intent to abandon must be proved by clear and convincing evidence of unequivocal acts, and mere non-use of a water right, standing alone, is not sufficient for a per se abandonment." *Jenkins v. State, Dept. of Water Res.*, 103 Idaho 384, 388-89, 647 P.2d 1256, 1260-1261 (1982). Here, the bargained-for consideration provided for in the conservation easement was not merely a limitation on the Jenkins' use of Water Right No. 75-04063, but rather, the transfer of Water Right No. 75-04063 to the Idaho Department of Fish and Game. This unequivocal intent to acquire Water Right No. 75-04063, *see Conservation Agreement* at ¶ II.B ("The rights conveyed by this Easement are: 1. All rights and interest in Water Right Claim No. A75-04063."), evidences F&G's intent to possess and maintain its interest therein.¹ This conclusion is supported by F&G's timely filing of its notice of change of ownership.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Stanish", with a long horizontal flourish extending to the right.

DAVID I. STANISH
Deputy Attorney General

cc: Cindy Robertson

¹ Under the SRBA District Court's rulings in Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue (Dec. 29, 1999) at 26-28 and Memorandum Decision and Order on Challenge; and, Order of Partial Decree (*Wood v. Troutt*) (May 9, 2002), the right is not subject to forfeiture during the pendency of the SRBA.