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February 1, 2007

Cindy Bird
Idaho Department of Water Resources
15 W. Center St.
Soda Springs, ID 83276



RE: Claims of Kevin Toner, Yodon Thonden and Joel Porter

Dear Ms. Bird:

You may already have seen these, but we are enclosing copies of objections we filed on behalf of Kevin Toner and Yodon Thonden, and on behalf of Joel Porter with respect to the water rights for the former Harvey Kennington Ranch on Sage Creek and Crow Creek in Sections, 20, 21, 28 and 29, T9S., R46E. As you know, Mr. Kennington had filed five (5) statutory claims to document the beneficial use rights for this ranch back in 1979, numbers 24-4018, 24-4019, 24-4020, 24-4021 and 24-4022. His statutory claims appeared to be supported by a 1956 affidavit of one Fred Beyler and one from A.L. Dorney of the same date.

We have tried to determine, as accurately as possible, the history of the irrigation system and practices on this ranch. Mr. Monte Clemow was hired by Mr. Toner and Mr. Porter last year to manage and operate the ranch. Mr. Porter owns the west portion and Mr. Toner and Ms. Thonden now own the east portion. In the process of managing the ranch, Mr. Clemow had consulted with former operators to understand the irrigation system. He had visited at length with Mr. Robert Beus, a son-in-law of Harvey Kennington, Max Beyeler, a son of Fred Beyler, who homesteaded much of the ranch, and a brother-in-law of Harvey Kennington, and Mr. Errol Hoopes, who had worked for Mr. Kennington and helped with the irrigation in the 1940s and 1950s. We were able to obtain affidavits from Mr. Clemow, Mr. Beus and Mr. Beyeler, copies of which are enclosed with this letter (as well as the Kennington Affidavits (statutory claims), Fred Beyler and A.L. Dorney affidavits). Unfortunately, before we were able to visit with Mr. Hoopes, who was quite elderly, he was taken ill and passed away.

We had Messrs. Clemow, Beus and Beyeler help prepare a map to show what they know of the irrigation system and irrigated lands. A copy is attached to each of their affidavits.

As we have come to understand it, there are five ditch systems which affect the lands on this ranch, and it appears that is basically why Mr. Kennington filed the five statutory claims. As the map attached to the Clemow, Beus and Beyeler affidavits show, and as the gentlemen have explained it to us, the five ditch systems appear to be essentially as follows:

1. A ditch heads on south side of Crow Creek in the NENE, Sec. 29. It flows to the east, and a branch flows north along the east property line of the Toner/Thonden property. It irrigates the land in blue, approximately 36 acres. This appears to be closest to the statutory claim number 24-4018, filed by Harvey Kennington.
2. A ditch heads on north side of Sage Creek in SESW, Sec. 20, T9S., R46E. It flows to the east and apparently irrigates some acreage of the Toner/Thonden land north of Sage Creek and south of the road in the SESE, Sec. 20. This appears to be closest to the statutory claim, number 24-4019, filed by Harvey Kennington, and has been recommended as 24-10751.
3. A ditch heads on south side of Sage Creek in the SESW, Sec. 20. It flows to the east and irrigates the land shown in pink, approximately 32 acres, some 18 of which are owned by Joel Porter and 14 of which are owned by Toner/Thonden. This is closest to the statutory claim number 24-4020, of Harvey Kennington, and has apparently been split into 24-10750 and 24-10752, in the name of Joel Porter, and 24-10753 in the names of Toner and Thonden.
4. A ditch heads at a spring which rises about midway along and just north of the south line of the SESE, Sec. 20, and also collects runoff water from irrigation of the lands in pink from Sage Creek and the lands in yellow from Crow Creek. It runs to the east and waters the land shown in orange, about 23 acres of Toner/Thonden property. We have used the number 24-2021 for this one, although the statutory claim of Harvey Kennington is confusing to us. Apparently this number was split into 24-10763 and 24-10764, neither of which were recommended.
5. A ditch heads on the north side of Crow Creek in the SENE, Sec. 29, and flows northeast to irrigate about 36 acres shown in yellow. About 8 acres is owned by Porter and 28 acres by Toner/Thonden. This appears to us to be closest to the statutory claim of Harvey Kennington, number 24-4022.

This is the best information available to us at this time. We will look forward to getting together with you and Nick Spencer to try to work out the appropriate SF5 to resolve the objections. Thank you for your assistance and efforts on these subcases.

Cindy Bird
Idaho Department of Water Resources
February 1, 2007
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Yours very truly,

A handwritten signature in black ink, appearing to read "Kent W. Foster", written in a cursive style.

Kent W. Foster

Enclosures

c: Nick Spencer

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