



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

April 6, 2007

Kent W. Foster, Esq.
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, ID 83405

RE: SRBA Claim Nos. 24-10763 & 24-10764

Dear Kent:

This purpose of this letter is to follow up on your letter of February 1, 2007 to Cindy Bird at IDWR's regional office in Soda Springs with the hope that we can work together to resolve the objections that you have filed on behalf of your clients.

Water right claims 24-10763 and 24-10764 are the result of a split of water right 24-4021. A Claim to a Water Right for the parent right (24-4021) was filed on May 11, 1979 by Harvey G. Kennington. The source under this statutory claim was Crow Creek, Tributary to the Salt River with a priority date of May 1, 1914; a point of diversion of SWNE sec 29, T9S, R46E, and the place of use described as for 50 acres; 20 acres in the NENE; 25 acres in SENE and 5 acres in SWNE all in section 29, T9S, R46E.

In the objection you filed on behalf of your client with regard to water right number 24-10764, you indicate that the source should be Unnamed Spring-Tributary to Sage Creek; with a quantity of 1.5 cfs; a priority date of May 1, 1930; a point of diversion location of SESE sec 20 T9S, R46E and the place of use described as 5 acres in the SESE of sec. 20, 12 acres SWSW of sec. 28 and 6 acres NWNW of sec. 28 all within T9S R46E.

Concerning the Objection filed for water right number 24-10763, you assert that the source should be: Crow Creek-Tributary to Salt River; a quantity of 0.25 cfs; a priority date of May 1, 1914; a point of diversion located at SWNE sec. 29 T9S, R46E. and a place of use description of 4 acres in the NWNW and 4 acres in SWNE of sec. 20, T9S, R46E.

Because the rights as described in the objection are at significant variance with the rights as claimed, it appears that perhaps amended claims will be required in order to attempt to resolve your objections to these water rights. The initial hearings for these matters have not yet been set, so no leave from the SRBA Court is required to amend these claims.

It also may be helpful to arrange a conference call with you, Cindy Bird, my paralegal, Ray Williams, and myself in order for IDWR to gain a better understanding of how Mr. Kennington's claim filed in 1979 (subsequent to the 1971 mandatory permit statute) described the way the right was being used and how that has changed with regard to the children rights in order to determine if amended claims are necessary. It would also be useful to discuss the location of the point of diversion. This appears to be inconsistent with the original filings. In his affidavit, Mr. Beyeler states that the ditch from Sage Creek diverts on the north side of the creek. The statutory claim also states that the ditch from Sage Creek diverts on the north side of the creek. However, the objections indicate that now the ditch is on the south side of Sage Creek and always has been.

We look forward to working with you in resolving the issues. Thank you for your assistance in this matter

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Spencer", with a long horizontal flourish extending to the right.

NICHOLAS B. SPENCER
Deputy Attorney General, IDWR

cc: Cindy Bird