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December 27, 2007

BY FACSIMILE TRANSMISSION AND REGULAR MAIL

Idaho Department of Water Resources
David R. Tuthill, Jr., Director
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Petition for Reconsideration of Issuance of License for Water Right No. 27-7420

Dear Director Tuthill:

My name is B. J. Driscoll. I am the attorney for the City of Shelley, the owner of the above-referenced water right. I write to request IDWR reconsider its issuance of the license for this particular water right. Technically, the 14-day time period for petitioning for reconsideration has passed. However, I write to share with you the circumstances of the issuance of the license and ask IDWR to reconsider the license nonetheless.

On October 17, 2007, Special Master Brigitte Bilyeu conducted a telephonic conference on the status of the permit from subcase no. 27-7420 of the SRBA. At that hearing, Nick Spencer, on behalf of IDWR, reported that IDWR had issued a license for water right no. 27-7420 that very morning. In reviewing the details of the license, the parties and the Special Master discovered that the terms of the license differed significantly from the terms of both the permit and the Amended Standard Form 5 Stipulation resolving the objections in the subcase. On the record, I stated that the City of Shelley objected to the changes from the permit and SF5 to the license. The Special Master then set the matter for a subsequent status conference on December 19, 2007, and encouraged the City and IDWR to try to resolve the differences informally and report back.

I immediately followed up with IDWR. Mr. Spencer promptly responded by faxing me a copy of the license discussed that morning of the October hearing. I later contacted Andrea Courtney, another attorney for IDWR assigned to this file. Mrs. Courtney and I agreed to do some research, gather some documents, and then follow up with each other before the December 19 status conference to try to resolve the differences. We did communicate and exchange information, but were unable to resolve the matter informally before the December 19 status conference. We agreed, and the Special Master ordered, to set another status conference on the water right for April 2, 2008. Allowing the parties additional time to try and resolve the differences is important because this particular right is

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located on the site of the Eastern Idaho Regional Waste Water Authority's (EIRWWA) treatment plant near Shelley. I continue to communicate with the EIRWWA's engineers and research the legal issues involved.

The City did not immediately file its petition for reconsideration with IDWR because it had already stated its objection on the record at the hearing held the same IDWR issued the license. The same day IDWR issued the license, the City began working with IDWR, through Mr. Spencer and Mrs. Courtney, to resolve the differences. I reported to the City on my objection at the hearing and on my contact with IDWR. A few days later, the City received the letter regarding issuance of the license and the 14-day period to petition for reconsideration. However, I did not receive a copy of the letter until after the 14-day period had expired because the City made its objection at the hearing and was already working to resolve the issues directly with Mr. Spencer and Mrs. Courtney of IDWR.

Although IDWR is already reviewing and reconsidering the license, I write to formally state the City's objection on the record and to preserve the City's rights to the fullest extent possible. I look forward to continuing to work with IDWR through Mrs. Courtney to resolve these important issues.

Sincerely,

McGRATH, MEACHAM & SMITH, PLLC



B. J. Driscoll

c: City of Shelley



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**McGRATH,
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Fax

To: David R. Tuthill, Jr., Director

From: B. J. Driscoll, Esq.

Idaho Department of Water Resources

Fax: (208) 287-6700

Pages: 3 pages

Phone:

Date: 12/27/2007

Re: Water Right No. 27-7420

CC: File

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

● **Comments:**

David:

Please see attached correspondence.

Thank you.

B.J. Driscoll

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error, please immediately notify us by telephone to arrange for return of the original documents to us. Thank you.