



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082
PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

September 2, 2008

Willa Withington
11925 Darlene Lane
Moorpark, CA 93021-1022

Randy Joe Wagner
Suzann Wagner
27818 Pioneer Lane
Parma, ID 83660

James Hitch
2030 Brumbach Rd.
Adrian, OR 97901

Paul Arrington
Attorney for Riverside Irrigation District
1010 W. Jefferson, Ste 102
P.O. 2139
Boise, ID 83701-2139

Re: SRBA Claim Nos. 63-2904A and 63-2904B

To the above addressed:

This correspondence is sent in follow up to an informal meeting held at the IDWR state office on Tuesday, August 26, 2008. The meeting was held pursuant to a request from James Hitch, longtime friend of Lowell and Willa Withington, claimants of record for 63-2904A. Dave Tuthill, IDWR Director, James Hitch, Randy Wagner, the claimant of record for 63-2904B and me, Vicky Music, were present at the meeting. The meeting was recorded at the request of James Hitch and Mr. Wagner.

Mr. Hitch requested the informal meeting with the Director to express his concerns about various subjects, including IDWR procedures, SRBA notice and the wastewater issues. This letter summarizes only the matter discussed at the meeting that is before the SRBA Court, which is the objection filed by the Riverside Irrigation District to the source of the above-referenced water rights.

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Water Right No. 63-2904 was licensed to Joseph Brumbach with a priority date of July 14, 1952, for the irrigation of 70 acres. The licensed source of the water was "drain ditch (unnamed stream)." The approved application contains the following permission statement from Riverside Irrigation District:

"Permission is given to pump water from the Scott Drain, as long as water is available in the drain ditch, however, no warranty is given that water will be present at all seasons."

In 1991, a transfer to add a point of diversion, filed by Lowell Withington, split the right into the A portion, owned by the Withingtons and the B portion, owned by the Wagners. The source was confirmed as the Scott Drain. Subsequently, the rights were claimed in the SRBA and recommended to the SRBA Court with the Scott Drain as the source. The following wastewater remark, which is a restatement of Idaho law, was added to the recommendation:

"This right remains subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place or manner of wasting it or to recapture it."

Riverside Irrigation District filed an objection to the source, stating that,

"The source should be described as waste waters, and waste waters belong to the Riverside Irrigation District."

In the REASONS SUPPORTING OBJECTIONS, Riverside further states,

"There has been no lawful appropriation of this right. The description of the source should have been waste water. The waste waters belong to the Riverside Irrigation District and are not available for private development and appropriation. Further, any attempted development of this right constitutes a trespass against the drains of the Riverside Irrigation District. Proposed waste water remark does not sufficiently protect original appropriator. "

Mr. Hitch and Mr. Wagner strongly disagree with the Riverside Irrigation District characterization of the water right in the objection. Mr. Hitch and Mr. Wagner assert that the water in the Scott Drain originates from multiple sources, includes natural sources and disagree with Riverside Irrigation District that the sole source of water in the Scott Drain is wastewater. Therefore, they will not agree to the wastewater remark recommended to the SRBA Court or any version that does not recognize the multiple sources of the water in the Scott Drain.

At the conclusion of the meeting, all attendants decided that I would send you a recording of the meeting on CD and a letter providing versions of the wastewater remark with alternate language used to resolve similar objections. These examples acknowledge that the source of the water is not solely wastewater. Here are four examples:

"The source of this water right includes wastewater. The wasting of water may be discontinued at any time."

"There are multiple sources of the water diverted from the Scott Drain. To the extent that the source is waste water, the wasting of water may be discontinued at any time."

"To the extent the source of this water right includes waste water, the wasting of water may be discontinued at anytime, in compliance with state law."

"To the extent the source of the water diverted from the Scott Drain includes waste water, the wasting of water may be discontinued at any time, in compliance with state law."

As Dave Tuthill explained, the role of IDWR is as a technical advisor to the Court. IDWR cannot change the recommendation or otherwise resolve the Riverside Irrigation District objections to 63-2094A and B. The claimants must work with Riverside Irrigation District to resolve these objections. Therefore, IDWR suggests the claimants contact Paul Arrington regarding a remark that will settle the objections. If you cannot agree on a remark, the SRBA Court will set a trial and the SRBA Special Master will resolve the controversy.

Finally, Mr. Hitch, you informed IDWR that claimant Lowell Withington has passed away. As Mr. Tuthill explained, you must obtain power of attorney from Mrs. Withington to further negotiate on her behalf in this matter, and submit the power of attorney to the SRBA Court.

Please do not hesitate to contact me at 208-334-2190.

Sincerely,



Vicky Music
Sr. Water Resource Agent

cc: Nick Spencer, Deputy Attorney General, IDWR
Enclosure to James Hitch and Randy Joe Wagner: CD recording of August 26, 2008, meeting