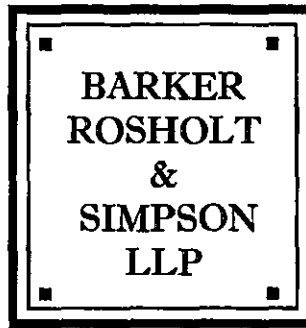


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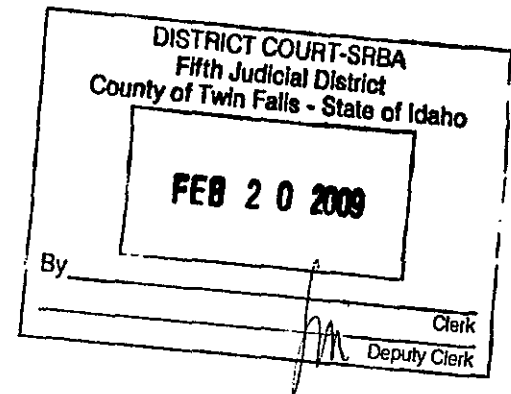
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February 18, 2009

Cal Groen, Director
Idaho Dept. of Fish & Game
P.O. Box 25
Boise, Idaho 83707

Jim Lukens, Supervisor
Idaho Dept. of Fish & Game
P.O. Box 1336
Salmon, Idaho 83467



Re: Installation of Fish Screens (Carmen Creek) / Public Writings Request

Dear Sirs:

This firm represents certain water right holders¹ on Carmen Creek (hereinafter collectively referred to as "Carmen Creek Users"). It is our understanding that IDFG (or its contractor) is proceeding with a project to install fish screens on various water diversion structures on Carmen Creek north of Salmon, Idaho. Our clients have the following concerns regarding this project and the impact it may have on existing litigation over water right claims in the Snake River Basin Adjudication (SRBA) District Court.

For your information, our clients have all filed water right claims in the SRBA and have filed objections to other claimants' claims as well. Importantly, part of the Carmen Creek Users' objections involve the lack of a viable point of diversion for water right claims filed by Thomas and Donna Jackson (#75-10062AB, #75-70S), James Hudson (#75-100061B, #75-100062C, #75-69B, #75-70B), and Shirley Mattis (#75-10061Z, #75-10062X, #75-69P, #75-70P). These claimants have claimed a point of diversion located on Carmen Creek in the SENWNW, Section 2, Township 22N, Range 22E, Lemhi County.

¹ Our clients are Albert & Alvera Fols, Charles & Mary Harling, A.C. & Luella Pilkerton, Lloyd & Sheryl Tutor, Marci Dixon, and Tracy Mascia.

Our clients dispute the existence and use of this point of diversion, particularly during the time of the year when water is "low" on Carmen Creek and only the senior most priority rights receive water (1875, 1882 priorities).

Accordingly, our clients would request IDFG (and its contractor) to refrain from performing any work including altering the present condition of the diversion structure located in the SENWNW, Section 2, Township 22N, Range 22E, Lemhi County. The existing condition of the diversion is important evidence in the SRBA litigation and must be preserved until the case is resolved through trial or otherwise. Pursuant to Idaho law, IDFG cannot "destroy" or "alter" the existing diversion structure since it will be used for trial in the SRBA. See Idaho Code § 18-2603.

Apart from the above request, the Carmen Creek Users, pursuant to Idaho's Public Writings Act (Idaho Code § 9-338 *et seq.*), request the following information from IDFG related to its fish screen installation project on Carmen Creek:

- 1) Copies of all documents, including notes, photographs, electronic communications, and any other documents contained in IDFG's files on this project;
- 2) Copies of all documents related to the fish screen designs, and any and all stream flow measurements used for purposes of that design;
- 3) Copies of all federal and state permits related to this project, including, but not limited to Section 404 permits issued by the U.S. Army Corps of Engineers and stream alteration permits issued by the Idaho Department of Water Resources;
- 4) Copies of any communications or notes of communications, including contracts, between IDFG personnel and its contractor for the project;
- 5) Copies of any communications or notes of communications between IDFG personnel (and its contractor) and any and all of the following persons concerning the fish screen installation project: James Hudson, Shirley Mattis, Thomas & Donna Jackson, John & Ruth Burns, Rodney & Susan Edmiston, Johnny Cabigas, William Clementz, Robert & Jacqueline Ernest, Phillip Eisenhauer, Shelley Erwin, Terry & Veralyn Hershey, George Matjeko, Robert & Fransicka Mosher, Rick & Linda Rice, James & Cathleen Tippet, and Steven Yowell.

Our clients would appreciate a timely response to the above requests. Again, the preservation of the existing diversion at the location listed is important evidence and is protected by Idaho law. As such, IDFG should refrain from taking any actions that would "destroy" or "alter" the present condition of the diversion structure. In addition, our clients would appreciate

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notification if IDFG is aware of any actions by others that may affect the condition of the existing diversion structure. Thank you for your attention to this matter and please call met at (208) 733-0700 if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: Albert Fols (c/o Carmen Creek Users)
Ray Rigby
Dallas Burkhalter
Special Master Terrence Dolan, SRBA Court ✓