



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

November 9, 2009

Robert St. Clair
PO Box 8
Davenport, WA 99122

RE: SRBA Subcase No. 75-4501

Dear Mr. St. Clair:

Having not received a response to the telephone message I left for you on October 2, 2009, I thought that I would follow up with a letter. As stated in my telephone message, based upon the field investigation and a review of aerial photography, the Department now agrees to recommend this water right with domestic and stock water components. However, the Department cannot agree to recommend this water right with an irrigation component. To be able to recommend a water right for irrigation, a claimant must submit proof of use of water for irrigation prior to May 20, 1971. Up to this point, you have failed to submit proof of the beneficial use of water for irrigation to the Department. Furthermore, even if you were able to submit proof of use prior to 1971, the information gathered by IDWR during the recent field visit raises an issue of forfeiture. Idaho Code § 42-222 provides:

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter; except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

Thus, if water is not used for five consecutive years, the water right is forfeited unless a defense to forfeiture under Idaho Code 42-223 is proven. The field exam showed extensive sage brush in the areas in which irrigation is claimed to have taken place. As sage brush will not grow on irrigated land, the size and density of the sage brush suggests that the land has not been irrigated for many years, if ever.

Enclosed please find a Standard Form 5 ("SF5") for the above-referenced water right. Please review the document. If you are willing to settle this case consistent with the new water right recommendation attached to the SF5, please sign on the indicated signature line, initial the revised recommendations and **RETURN THE ORIGINAL DOCUMENTS TO ME**. I will obtain the remaining signatures and file the documents with the SRBA Court.

If you should have any questions regarding the attached recommendations, please do not hesitate to contact me at (208) 287-4811.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Baxter', with a long horizontal stroke extending to the right.

GARRICK BAXTER
Deputy Attorney General
Idaho Department of Water Resources

Enclosures