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Idaho Department of Water Resources
Northern Regional Office
7600 Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763

July 8, 2016
RECEIVED
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IDWR / NORTH

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Re: Director's Report for Basin 94 water rights

Dear Mr. Goodwin,

I am writing on behalf of Mr. John Brewster Jr. of Harrison, Idaho. Mr. Brewster Jr.'s father had eight (8) Basin 94 water rights which, as you know, are being adjudicated in the Coeur d'Alene-Spokane River Basin Adjudication (CSRBA). There are some remaining issues with IDWR's recommendations for these water rights that my client hopes can be resolved without filing an objection in the CSRBA court.

Before discussing these issues, I believe it is helpful to provide background on the situation. In July of 2015, John Brewster Sr. received IDWR's preliminary recommendations for his Basin 94 water rights. On August 31, 2015, I sent Notices of Error to IDWR on Mr. Brewster Sr.'s behalf contesting the preliminary recommendations for six (6) of his Basin 94 water rights. I sent these Notices of Error on the grounds that IDWR's preliminary recommendations for these water rights did not match the Notices of Claim regarding place of use, points of diversion, purpose of use, source, and priority date.

On January 25, 2016, I received a letter from Deputy Attorney General Meghan Carter regarding the Notices of Error. In this letter, Ms. Carter stated IDWR's position is that its recommendations for Mr. Brewster Sr.'s Basin 94 water rights are consistent with the Notices of Claim. In email correspondence with my associate, Greg George, during March 2016, Ms. Carter stated the differences between the Notices of Claim and IDWR preliminary recommendations stemmed from IDWR's use of the Public Land Survey System to locate points of diversion and places of use and IDWR's use of the style found in USGS topographical maps to name water sources.

Mr. Brewster Sr. passed away on April 12, 2016. Since then, I have been working with Mr. Brewster Jr. on his father's Basin 94 water rights. On May 31, 2016, my associate Greg George and I visited the Harrison, Idaho property on which Mr. Brewster Sr.'s Basin 94 water rights are located. This property is owned by Fat Bastard Cattle Company, LLC. We visited and took latitude/longitude measurements of each point on the property where water is diverted to a beneficial use. We discussed the purposes of use at each point with Mr. Brewster Jr. and Doug Hille, the ranch hand on the property.

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Letter to IDWR re: Brewster Basin 94 water rights

Upon returning from the Harrison property, we used the latitude/longitude measurements to determine the quarter-quarter section for each location we visited where water is diverted to a beneficial use. We then compared the information we gathered to the Notices of Claim and IDWR recommendations to determine whether any of the discrepancies between the claims and the recommendations have a practical impact on the current or projected use of the water rights.

In other words, our aim was to find which of IDWR's recommendations for Mr. Brewster Sr.'s Basin 94 water rights are inconsistent with how the water rights are currently used or are planned to be used in the future. Based on what we found during our visit to the property, I determined there are three inconsistencies between the IDWR recommendations and the current or projected use of these Basin 94 water rights. There is also an issue regarding the priority date for Water Right No. 94-7842. I will discuss each of these issues in turn.

The first issue is the purpose of use for Water Right Nos. 94-7844 and 94-7845. The only purpose of use claimed or recommended by IDWR for these water rights is Stockwater. However, based on the information we recorded during our visit to the Brewster property I believe IDWR should add Wildlife use to the purposes of use for these water rights.

Specifically, one of the points we visited on May 31 is, based on the latitude/longitude, in the Southwest quarter of the Northwest quarter of Section 30, Township 48 North, Range 2 West, Kootenai County, Idaho.¹ Mr. Hille, the ranch hand, informed us water at this point is used for wildlife and cattle. Of Mr. Brewster Sr.'s Basin 94 water rights, only Water Right No. 94-7844 includes this quarter-quarter section as a place of use or point of diversion, as shown in both the Notice of Claim and the IDWR recommendation. It therefore appears strongly Water Right No. 94-7844 should include Wildlife as a purpose of use.

My client believes IDWR should reach the same conclusion regarding Water Right No. 94-7845. Another point on the property we visited May 31 is a spring that runs year-round and goes down toward the residence on the property. I was informed this spring is used for wildlife and cattle. Based on the latitude/longitude, I determined this point is in the Northeast quarter of the Northeast quarter of Section 25. The IDWR recommendation for Water Right No. 94-7845 lists this quarter-quarter section as a place of use and a point of diversion for Stockwater. However, based on the use of the spring in this quarter-quarter section for wildlife in addition to cattle, my client believes Water Right No. 94-7845 should also include Wildlife as a purpose of use.

The second issue is adding Irrigation as a purpose of use for Water Right Nos. 94-7100, 94-7840, 94-7841, 94-7845, and 94-7847. The IDWR recommendation for each of these water rights includes as a place of use the Northwest quarter of the Southeast quarter of Section 25. One of the locations we visited on the property is in this quarter-quarter section. Mr. Hille informed me the water at this location may also be used for irrigation beginning in 2017. None of the five water rights listed above includes Irrigation as a purpose of use. My client therefore wishes to add Irrigation as a purpose of use for each of these water rights. Please advise on how he can do so.

¹ For easier reading in the remainder of this letter, legal descriptions will refer only to the Township, Range, and Section.

The third issue is adding Stockwater as a purpose of use for Water Right Nos. 94-7100. One of the points we visited on the property, between Blue Lake and Swan Lake, is located in the Southwest quarter of the Northwest quarter of Section 25. This quarter-quarter section is listed in the IDWR recommendation for Water Right No. 94-7100 as a place of use for Wildlife Storage. Mr. Brewster Jr. also uses the water in this quarter-quarter section for cattle. Therefore, he would like to have Stockwater added as a purpose of use for Water Right No. 94-7100. Please advise on the process for doing so.

The fourth issue is the priority date for Water Right No. 94-7842. The IDWR recommendation for this water right states the priority date is 1/12/1911, but the Notice of Claim states the priority date is 1/1/1906. The IDWR recommendations for Water Right Nos. 94-7841, 94-7843, 94-7844, and 94-7845 all include a priority date of 1/1/1906. It is uncertain whether the discrepancy in the priority date for Water Right No. 94-7842 will have a practical impact. However, my client would like to resolve the issue so there is no doubt about the priority of this water right. Please let me know how my client can determine the correct priority date for Water Right No. 94-7842.

Please contact me if you have further questions or desire additional information. Upon review of this letter, please let me know when would be a good time to communicate further about the four issues above. Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory M. George", with a stylized flourish extending from the end.

Gregory M. George
Attorney at Law

Cc: Client