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SEP 16 2019
DEPT OF WATER RESOURCES
SOUTHERN REGION

AMENDED PROTEST

1. Matter being protested: Transfer No. 83485.
2. Name of protestant: Hiawatha Canal Water Users' Association of Lateral or Laterals ("Hiawatha Canal").
3. Protestant's Representative for service (If different than protestant): Fritz X. Haemmerle of Haemmerle Law, P.L.L.C., P.O. Box 1800, Hailey, Idaho 83333.
4. Service mailing address: Haemmerle Law, P.L.L.C., P.O. Box 1800, Hailey, Idaho 83333.
5. Service telephone no: (208) 578-0520; Email Address: fxh@haemlaw.com
6. Basis of protest (including statement of facts and law upon which the protest is based): The amount of water that is sought for transfer, 1.4 cfs, is mitigation water which the Department required Eccles Flying Hat Ranch, LLCV ("Eccles") to keep in the Hiawatha Canal when Eccles transferred 7.0 cfs of water out of the Hiawatha Canal in the year 2000 under Transfer No. 68526. Attached as Exhibit 1 (to original protest and incorporated herein) is a letter dated December 27, 2000, which I sent to Allen Merritt explaining the Canals's position of Eccles transfer in 2000. Attached as Exhibit 2 (to original Protest and incorporated herein) is a letter from Allen Menitt to Lee Petersen reiterating the fact that 1.4 cfs was left in the Hiawatha Canal for mitigation. All the same principles and rules apply to this particular transfer. Allowing this transfer to proceed would violate Idaho Code Section 42-222 and the Local Public Interest under Idaho Code Section 42-2028. Allowing parties to transfer mitigation water, which they were required to leave in a Canal on a prior transfer, is not only illegal, it would set a terrible precedent. That precedent is that parties can have transfers approved with mitigation requirements and then years later come back to the Department to have the mitigation transferred for their own benefit.
7. What would resolve your protest? Deny the Transfer.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this Amended Protest upon the Applicant.

Signed this 12th of September, 2019.


Fritz X. Haemmerle for Protestant

HAEMMERLE LAW, P.L.L.C

Attorney & Counselor at Law

Fritz X. Haemmerle
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September 12, 2019

IDWR Southern Region
c/o Corey Skinner
650 Addison Ave. W, Suite 500
Twin Falls, ID 83301-5858

Re: *Transfer 83485*

Dear Corey:

As you know, I represent the Hiawatha Canal Water Users' Association of Lateral or Laterals (Hiawatha Canal). The purpose of this letter is to respond to your letter dated August 30, 2019.

My client has elected to proceed through mediation, provided we can proceed through formal proceedings if no resolution is obtained. We are retaining SPF to review Brockway Engineering's calculations. I do not know when that review will be done. I believe it would be very helpful for the Department to have a telephonic conference to establish the ground rules for the mediation.

Also, I am enclosing an Amended Protest. I am correcting paragraph 7 of the Protest. I inadvertently stated that the resolution would be to deny the "protest." I meant to say a resolution would be to deny the "transfer."

Please advise as to how the Department wishes to proceed. Thank you.

Sincerely,

HAEMMERLE LAW, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
Encl.
cc:

Eccles Flying Hat Ranch LLC
P.O. Box 3028
Salt Lake City, UT 84110

Charles E. Brockway
Erick Powell
Brockway Engineering
2016 Washington St. North, Suite 4
Twin Falls, Idaho 83301

Idaho Water Resource Board
Attn: Cynthia Bridge Clark
P.O. Box 83720
Boise, Idaho 83720-0098

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