

From: [Kent Fletcher](#)
To: [Michael C Creamer](#)
Cc: [Weaver, Mathew](#); [Clark, Cynthia Bridge](#); [Skinner, Corey](#); [Blades, Emmi](#); [English, Kimberle](#); [Greg W. Sullivan - Brockway Engineering, PLLC \(greg.sullivan@brockwayeng.com\)](#)
Subject: Re: In the Matter of Application for Transfer 81940 in the Name of E. Valley Cattle LLC - Watermaster Comments [IWOV-GPDMS.FID820343]
Date: Tuesday, January 22, 2019 9:10:23 PM

Dear Mat,

I've received Mike's email. Mr Higgs was disclosed in answers to interrogatories as an expert. Mike elected not to depose him. We complied with the Scheduling Order and again disclosed him as an expert along with his report as an exhibit.

Although not stated in the email, I assume that Mike is claiming that his client is prejudiced by this filing. In addition, Mike wants the right to offer documents into evidence in response to the watermaster's report that have not been disclosed.

I would suggest that if Mike believes that his client is prejudiced by the late filing by the watermaster or my disclosure, the hearing be continued so that Mike can examine whatever additional document he wants and so he can produce whatever additional exhibits he wants to offer into evidence. This would cure any prejudice to his client and allow the hearing to go forward with all evidence being presented fairly.

As I stated in earlier emails, I'm in Boise in meeting through Thursday. I would prefer to address these issues this week if possible. I'm available Friday morning for a conference call. If that doesn't work, please let me know a time this week that would work.

Thank you for your attention to this.

Kent Fletcher

On Jan 22, 2019, at 5:01 PM, Michael C Creamer <mcc@givenspursley.com> wrote:

Dear Mat,

Given the timing and substance of the Watermaster's recommendation, East Valley Cattle wishes to call Mr. Erickson as a witness at the hearing on January 29th.

My understanding is that Mr. Erickson is a department employee, in addition to being appointed as a watermaster by the Director. If a subpoena is required for his appearance, please consider this as a motion for issuance of a subpoena, per IDAPA 37.01.01.01. If this email request is not sufficient for those purposes, please advise and I will file a formal pleading.

Also, with respect to the hearing itself, as indicated in EVC's disclosure of expert witnesses and exchange of exhibits, EVC reserves the right to introduce undisclosed testimony and/or exhibits in rebuttal to any of the Protestants' offered testimony and exhibits.

The facts and expert opinions that the protestants indicate they intend to offer at the hearing were first disclosed to EVC in the protestant's January 15th expert/exhibit disclosure, which comprised a report prepared by Brian Higgs for the Ground Water District. EVC's discovery requests were served on the Protestants on September 24th and asked Protestants to identify any expert witnesses who would be called, and the substance and basis of their testimony. This request included the following definition and request for production:

<image003.png>

<image004.png>

<image005.png>

EVC's production requests of the same date requested production of the following:

<image006.png>

Protestants have not provided EVC with any documents, data or other information considered, reviewed, etc. by Mr. Higgs in reaching the conclusions contained in his report. EVC therefore intends to make a formal oral motion on the record to strike Mr. Higgs' testimony and report at the beginning of the hearing.

Sincerely,

Mike Creamer

Michael C. Creamer
Givens Pursley LLP
601 W. Bannock St.
Boise, ID 83702
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From: Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>

Sent: Monday, January 21, 2019 12:31 PM

To: Michael C Creamer <mcc@givenspursley.com>; W. Kent Fletcher (<wkf@pmt.org>
<wkf@pmt.org>

Cc: Clark, Cynthia Bridge <Cynthia.Clark@idwr.idaho.gov>; Skinner, Corey
<Corey.Skinner@idwr.idaho.gov>; Blades, Emmi <Emmi.Blades@idwr.idaho.gov>;
English, Kimberle <Kimberle.English@idwr.idaho.gov>; Greg W. Sullivan - Brockway
Engineering, PLLC (<greg.sullivan@brockwayeng.com>)

<greg.sullivan@brockwayeng.com>

Subject: RE: In the Matter of Application for Transfer 81940 in the Name of E. Valley Cattle LLC - Watermaster Comments [IWOV-GPDMS.FID820343]

Michael and Kent,

Please take to COB tomorrow to respond.

Thank you,

Mathew Weaver, PE | deputy director
Idaho Department of Water Resources
www.idwr.idaho.gov | 208.287.4800

From: Michael C Creamer [<mailto:mcc@givenspursley.com>]

Sent: Monday, January 21, 2019 12:03 PM

To: Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>; W. Kent Fletcher (wkf@pmt.org) <wkf@pmt.org>

Cc: Clark, Cynthia Bridge <Cynthia.Clark@idwr.idaho.gov>; Skinner, Corey <Corey.Skinner@idwr.idaho.gov>; Blades, Emmi <Emmi.Blades@idwr.idaho.gov>; English, Kimberle <Kimberle.English@idwr.idaho.gov>; Greg W. Sullivan - Brockway Engineering, PLLC (greg.sullivan@brockwayeng.com) <greg.sullivan@brockwayeng.com>

Subject: RE: In the Matter of Application for Transfer 81940 in the Name of E. Valley Cattle LLC - Watermaster Comments [IWOV-GPDMS.FID820343]

Mat,

My office is closed for the MLK holiday, and I have been involved in family activities this weekend and today.

I would appreciate your giving parties until COB Tuesday rather than today to evaluate this issue and to advise you how this development may affect the hearing.

Mike Creamer

From: Weaver, Mathew <Mathew.Weaver@idwr.idaho.gov>

Sent: Friday, January 18, 2019 4:12 PM

To: W. Kent Fletcher (wkf@pmt.org) <wkf@pmt.org>; Michael C Creamer <mcc@givenspursley.com>

Cc: Clark, Cynthia Bridge <Cynthia.Clark@idwr.idaho.gov>; Skinner, Corey <Corey.Skinner@idwr.idaho.gov>; Blades, Emmi <Emmi.Blades@idwr.idaho.gov>; English, Kimberle <Kimberle.English@idwr.idaho.gov>

Subject: In the Matter of Application for Transfer 81940 in the Name of E. Valley Cattle LLC - Watermaster Comments

Gentleman,

It has come to my attention that the WD 143 Watermaster (Nathan Erickson) recently finalized his review comments regarding Transfer #81940. At this time the final watermaster comments have been scanned and placed in the water right file and are attached to this email for your reference. Idaho Code §42-222 requires the watermaster to notify IDWR of his recommendation regarding a transfer application, and the director shall not “finally determine” the application until he has received and considered the recommendations.

Given the late hour in which the watermaster recommendations have come in, please let me know if either of you have concerns with our current hearing schedule. Please respond to my email no later than close of business next Monday (January 21, 2019). As needed we can hold a telephonic status conference meeting next week to discuss.

Thank you,

Mathew Weaver, PE | deputy director
Idaho Department of Water Resources
www.idwr.idaho.gov | 208.287.4800