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Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	PROTESTANT DARRELL E.
FOR TRANSFER NO.82318 IN THE	)	MCDONALD'S ANSWER TO
NAME OF TELFORD LANDS LLC,	)	APPLICANT'S MOTION TO
MICHAEL AND SHANNON TELFORD	)	PROCEED TO HEARING WITHOUT
_____	)	IDWR TECHNICAL MEMO

Protestant, Darrell E. McDonald ("McDonald"), by and through his attorney of record, James P. Speck, of the law firm of Speck & Aanestad, A Professional Corporation, hereby answers and opposes Applicant's Motion to Proceed to Hearing Without IDWR Technical Memo (the "Motion").

Applicant contends that the hearing officer's request for a revised Owsley memo is based upon unlawful procedure and must be withdrawn. McDonald respectfully disagrees. The Idaho Department of Water Resources and its staff has the right under Rules 521 and 526 of the Rules of Procedure of the Idaho Department of Water Resources, IDAPA 37.01.01.001 *et seq.* to "conduct statutory inspection, examination, investigation, etc. ..." The request to Mr. Owsley by the hearing officer, in this case, specifically falls within the parameters of such investigations.

Of particular concern to McDonald is the answer to the hearing officer's third question to Mr. Owsley, "Do any of the proposed points of diversion described in Application 82318 divert water from the Eastern Snake Plain Aquifer?" Perhaps this inquiry should be broken down into two parts. First, do the Folkman well, Island wells and proposed Hansen well divert water from the Big Lost River regional aquifer? McDonald asserts the answer to this is clearly "Yes".

PROTESTANT DARRELL E. MCDONALD'S
ANSWER TO APPLICANT'S MOTION TO PROCEED
TO HEARING WITHOUT IDWR TECHNICAL MEMO - 1

Second, do any of the other wells described in this Transfer Application divert water from the same regional aquifer or do they instead divert from a separate aquifer which is not connected to that regional aquifer? One of those other wells is the "Big Hole Well". Attached as **Exhibit A** to this Answer is a copy of the well log. This clearly shows that the water pumped from that well is coming from the broken lava at a depth of 510 feet or more. It is extremely unlikely that the water at that depth is connected in any way to the shallow regional aquifer that supplies the water for the Folkman, Island and proposed Hansen wells. Confirmation of this is critical to the issue of injury in this proceeding. A similar analysis of the other Telford wells in the vicinity of the airport should be done by the Department and made available to all of the parties to this proceeding.

Applicant in the Motion asserts that the Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area (the "Order") which excludes the area where the Applicant's wells are located, determines, as a matter of law, that those wells are diverting water from the Big Lost River regional aquifer and not the ESPA. The Order describes a ground water management area as follows, "A 'ground water management area,' therefore, is a ground water basin or part thereof that the Director determines may be approaching the condition of not having sufficient ground water to provide a reasonably safe supply for irrigation and other uses in the basin under current or projected rates of withdrawal." *Order* at pp.18-19. The Order goes on to state, "the term 'ground water basin' as used in Idaho Code §42-233b is understood as a term referring to an area in which ground water flows or moves within an aquifer or aquifers to common discharge areas, and has boundaries and areas of 'recharge' that are reasonably well-defined." *Id.* at p.21, and that the Director may limit the extent of a ground water management area to part of a ground water basin. *Id.* at p. 22. The Big Lost River basin, where the Department was then considering a ground water management area, was excluded from the ESPAGWMA for the sole reason that "Overlapping management areas should be avoided to prevent administrative redundancy and potential regulatory confusion." *Id.* A ground water management area for the Big Lost River is no longer under consideration so the Department, under the express terms of the Order, may now go back and modify the ESPAGWMA boundary to include the Big Lost River. Furthermore, the mere exclusion of the Big Lost River basin from the ESPAGWMA does not mean wells outside the current ESPAGWMA boundary are not diverting water that would otherwise flow into the ESPAGWMA.

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For the reasons stated above, Applicant's motion should be denied and the hearing in this matter not scheduled until such time as the Owsley memo has been properly revised.

SPECK & AANESTAD,
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Attorneys for Protestant Darrell E.
McDonald

DATED: Nov. 30, 2018


James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail or by facsimile, with the correct postage thereon, on this 30th day of November, 2018.

DOCUMENT SERVED: PROTESTANT DARRELL E. MCDONALD'S ANSWER TO APPLICANT'S MOTION TO PROCEED TO HEARING WITHOUT IDWR TECHNICAL MEMO

ORIGINAL TO: Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

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