

ORIGINAL

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MAY 21 2018

DEPARTMENT OF  
WATER RESOURCES

*Attorneys for Little Willow Irrigation District*

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

|                              |   |                                 |
|------------------------------|---|---------------------------------|
| IN THE MATTER OF:            | ) |                                 |
|                              | ) | <b>LITTLE WILLOW IRRIGATION</b> |
| APPLICATION FOR TRANSFER NO. | ) | <b>DISTRICT'S PETITION FOR</b>  |
| 81482 IN THE NAME OF LITTLE  | ) | <b>RECONSIDERATION</b>          |
| WILLOW IRRIGATION DISTRICT   | ) |                                 |
|                              | ) |                                 |
|                              | ) |                                 |

COMES NOW Applicant, Little Willow Irrigation District ("Little Willow"), by and through its counsel of record, Barker Rosholt & Simpson LLP, and requests what it believes to be minor clarifications in the conditions of approval that are important in how Little Willow will be able to deliver its water rights.

The Hearing Officer's Order indicates that in order to protect the downstream users from a potential expansion of the water rights, it is necessary to preclude Little Willow from diverting at the new point of diversion until the irrigation storage rights are released and made available to Little Willow's water users. Little Willow understands the Hearing Officer's rationale and does not seek reconsideration of the determination of the need to prevent injury to the downstream natural flow users. However, Little Willow believes that a clarification or modification of condition number 2 to the approval is appropriate.

**LITTLE WILLOW IRRIGATION DISTRICT'S PETITION FOR  
RECONSIDERATION**

This condition limits diversion at this point of diversion until the Little Willow water users' demand exceeds its natural flow water rights. This condition, in Little Willow's view, goes beyond what is necessary to protect the downstream natural flow water users. For example, this year, in April before the storage water was made available and only natural flow rights were being used, the Rolands were not diverting from their pumps in the creek below Little Willow's last diversion. Preventing Little Willow from diverting at this point of diversion, during the times that the Rolands are not diverting, does nothing to protect the Rolands and would be unnecessarily punitive on the water users who rely upon the new point of diversion, particularly the Horsts. If Rolands are not diverting, they cannot be injured by Little Willow's use. Accordingly, Little Willow asks that condition number 2 be amended or clarified to provide that Little Willow may divert its natural flow rights at the new point of diversion prior to release of storage water, as long as the Rolands are not diverting from existing water rights numbers 65-2240 and 65-5773 below the last diversion.

Second, Little Willow's natural flow water rights, 65-0064, 65-02067, 65-03130, 65-03131, 65-03132, 65-03133 and 65-03134, are all senior to the Rolands' water rights. These rights authorize diversion of 14.81 cfs of natural flow. The Hearing Officer's Order requires measurement of natural flow both above Little Willow's first diversion and at each of the diversions. Little Willow proposes that it should be allowed to divert up to the 14.81 cfs authorized under its existing natural flow rights, so long as the total diversions do not exceed the 14.81 cfs authorized. One of the purposes of adding the point of diversion is to eliminate having to divert water higher up in the system and deliver it through a much longer series of ditches than would be necessary to reach those water users below the new point of diversion. Simply moving the point of diversion downstream does not harm the Rolands, as long as the total natural flow

diverted does not exceed the 14.81 cfs. Under the proposed condition, Little Willow would have to divert more natural flow higher up in the system and then use its storage water even earlier in the year, thereby triggering condition number 2 in any event. This would waste storage water. Accordingly, Little Willow requests that the Hearing Officer also amend condition number 2 to provide that water can be diverted from the additional point of diversion authorized by Transfer No. 81482, so long as the total natural flow diversion does not exceed 14.81 cfs. The Order's conditions requiring additional measurement and keeping records of all the measurements of diversions will adequately protect Rolands water rights numbers 65-2240 and 65-5773 under this transfer. Ensuring that the cumulative natural flow diversions do not exceed the natural flow water rights prior to use of storage provides greater protection for Rolands than prohibiting use of the new point of diversion, particularly as Little Willow has a point of diversion below the new point of diversion and the Rolands' pumps. This downstream point of diversion would be able to take all the water in the creek, up to the 14.81 cfs in any event, and the Rolands are no better off.

DATED this 21<sup>st</sup> day of May, 2018.

**BARKER ROSHOLT & SIMPSON LLP**

  
for Albert P. Barker  
*Attorneys for Little Willow Irrigation District*

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 21<sup>st</sup> day of May, 2018, I caused to be served a true and correct copy of the foregoing **LITTLE WILLOW IRRIGATION DISTRICT'S PETITION FOR RECONSIDERATION** by the method indicated below, and addressed to each of the following:

Idaho Department of Water Resources  
Hearing Officer, Jeff Peppersack  
322 E. Front Street  
Boise, ID 83702

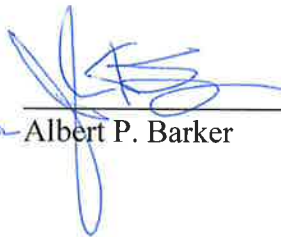
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For Albert P. Barker