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DEPT OF WATER RESOURCES
SOUTHERN REGION

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER	)	POST HEARING BRIEF
NO. 79943	)	
IN THE NAME OF :	)	
ALBION 12 INVESTMENTS LLC	)	
_____	)	

COMES NOW Protestant Earl Warthen, by and through his counsel of record, Charles L. Honsinger of Honsinger Law, PLLC, and, pursuant to the Hearing Officer's verbal order at the December 8, 2016 hearing of this matter, hereby files this *Post-Hearing Brief*. This *Post-Hearing Brief* is supported by the record herein.

DISCUSSION

The testimony and evidence produced and admitted at the December 8, 2016 hearing focused primarily on two issues related to the above-captioned transfer application: (1) whether diversions of groundwater pursuant to water right no. 45-14284 would interfere with or injure other ground or surface water rights; and (2) whether the surface water supply at the proposed place of use under application for transfer no. 79943 is at least as sufficient as the surface water supply at the original place of use for water right no. 45-14284. This brief will address the second of those two issues, along with an issue touched on lightly by the testimony and evidence

but nonetheless of great importance to Warthen: the absolute necessity of adequate monitoring and reporting should this transfer application be approved.

1. Surface Water Supply Sufficiency

Applicant offers the District 45F watermaster records as proof that the surface water supply at the Albion 12 (new) place of use is better and more consistent than at the Montgomery (old) place of use. Specifically, Applicant argues that the records establish that water right no. 45-284B is more reliable than the Montgomery surface water supply. Unfortunately for Applicant however, their expert Erick Powell (who interpreted the watermaster records in his testimony) never bothered to discuss those records with the watermaster himself.

Watermaster Don Gunderson testified that his records included water delivered via the 45-284B diversion point that was not related to water right no. 284B. This included the delivery of water right no. 45-327D together with what the watermaster termed “high water” available in spring and early summer. However, the watermaster also testified that he did not keep specific records as to the deliveries of quantities of water rights other than water right no. 45-284B through that delivery point. Accordingly, it is impossible to differentiate between quantities delivered pursuant to water right no. 45-284B and other water rights and deliveries. More importantly however, because of the deliveries of additional water through the point of delivery for water right no. 45-284B that is included in the delivery records, but not separately accounted for, it is also difficult, if not impossible, to determine that water right no. 45-284B is in fact a more consistent and better surface water supply than that on the Montgomery place of use. Mr. Gunderson’s testimony interpreting and explaining the watermaster records sheds much light on Mr. Powell’s erroneous conclusion that the surface water supply at the proposed new place of use

is at least as good and consistent as at the old place of use. Given Mr. Gunderson's history and experience as watermaster, together with the fact that he himself actually compiled the records sought to be used as conclusive evidence for Applicant's position, his testimony must be given much weight.

The hearing officer should not permit the transfer of this supplemental ground water right for this reason, or at a bare minimum, must severely limit its use.

2. Monitoring and Reporting

Because the testimony at hearing established that the supplemental water right sought to be transferred in this proceeding (45-14284) is to be diverted and injected into a large integrated irrigation system diverting several other water rights and that irrigates a large place of use, it is imperative that the diversion and use of the supplemental water right is closely monitored, and that such monitoring is strictly reported and made available to the protestants and other interested parties. Water right no. 45-14284 is limited to the irrigation of 67 acres, but if successfully transferred, will be pumped into a system with other water rights that irrigates 480 acres. The ability to pump the supplemental water right into such an integrated system provides the opportunity to illegally use the supplemental water right on lands other than that to which they are appurtenant, and to use the supplemental water right at times during which the "primary" water right is available for use. This opportunity, if used, damages other water right holders and should be permanently closed off with strict monitoring and reporting requirements. IDWR should not approve this transfer application because of the difficulty in ensuring that the supplemental groundwater right will not be used beyond the irrigation of 67 acres (and only used when the surface water appurtenant to those lands is unavailable), or any of its other parameters.

IDWR must hold applicant strictly accountable for its use of water right no. 45-14284 through any and all means possible.

DATED this 13th day of January, 2017

HONSINGER LAW, PLLC

By: 
Charles L. Honsinger
Attorneys for Protestant

CERTIFICATE OF MAILING

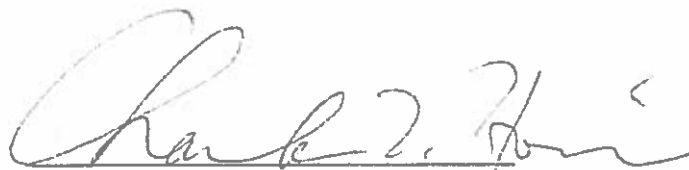
I HEREBY CERTIFY that a true and correct copy of the foregoing document was served via U.S. Mail on the following on this 13th day of January, 2017:

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