

CHARLES L. HONSINGER (ISB #5240)
HONSINGER LAW, PLLC
P. O. Box 517
Boise, Idaho 83701
Telephone: (208) 863-6106
Facsimile: (208) 908-6085
clh@ringertlaw.com

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WATER RESOURCES
WESTERN REGION

Attorneys for Petitioner/Applicant City of Meridian

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____	)	
IN THE MATTER OF APPLICATION FOR	)	
TRANSFER NO. 797788 IN THE NAME OF	)	PETITION FOR
THE CITY OF MERIDIAN	)	RECONSIDERATION
	)	
	)	
_____	)	

COMES NOW, Petitioner/Applicant City of Meridian (hereinafter "City"), and hereby petitions the Idaho Department of Water Resources ("IDWR") to reconsider its Preliminary Order approving Transfer Application No. 79778 issued in the above-captioned matter on March 17, 2016. This petition is filed pursuant to IDAPA 37.01.01.730.02(a) and I.C. § 67-5243. The grounds for this Petition are: (1) that a specific condition added to all water rights that are part of Transfer Application No. 79778 is vague and confusing; and (2) that a specific condition regarding the use of surface water for irrigation purposes prior to the use of water under any of the rights subject to transfer was impermissibly added to the rights even though it was not present prior to approval of the transfer. The specific relief sought by petitioners is the substitution of more appropriate language with respect to the first condition that is not vague and confusing as agreed upon by IDWR and the City through discussion and analysis, and removal with respect to the second condition.

DISCUSSION

1. "Administration" Condition

IDWR approved Transfer Application No. 79778 with a condition in each of the water rights subject to the application that provides information to be used in the event of administration. This condition is denominated as no. 8 in water right nos. 63-12416, 63-31677, 63-12378, 63-12181, 63-12560, 63-31138, 63-31318, 63-31630, 63-31281, 63-10840; as no. 9 in water right nos. 63-2893, 63-3252, 63-7105, 63-7978, 63-8331, 63-8332, 63-9849, 63-10105, 63-32567, 63-11737, 63-32568; as no. 10 in water right nos. 63-12039, 63-11922, 63-12295; and as no. 11 in water right nos. 63-12173 and 63-12162.

The language of the condition provides as follows:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in [decree or license] dated [decree/license date].

The purpose of this language is to ensure that the priority date of the City's transferred water rights can only be applied against other water rights at its original point of diversion. In other words, the language seeks to ensure that the priority dates of the City's transferred water rights can not be applied against junior water rights appropriated prior to approval of Transfer No. 79778 at the City's water rights' new points of diversion, because the junior water rights were appropriated under conditions where the City's senior water rights were not diverted from those new points of diversions. Application of the City's senior priority from new points of diversion against junior priority water rights appropriated prior to approval of Transfer No. 79778 would be both unfair to

the juniors and directly contrary to the principle of Idaho water law that a water right holder is entitled to rely upon conditions present at the time of the water right's appropriation.

The City's concerns lies with the fact that, under the language of the condition, the City's priority dates are limited to the water right's original point of diversion whether the junior water right seeking administration appropriated the junior water right before or after approval of the transfer. In other words, under the condition, the City will never be able to assert the priority dates of its water rights at the new points of diversion approved under the transfer against any other water right. This is clearly in opposition to established law and must be corrected.

The City has experience with drafting and analyzing these types of conditions, and as the water right holder subject to the conditions, desires to be involved in any IDWR discussions and/or decisions regarding the same. The City hereby makes itself and its attorney and consultant available to IDWR to participate in the process of drafting an appropriate condition to protect both junior water right holders and the City.

2. Condition re: Use of Surface Water prior to Use of Ground Water for Irrigation

The Transfer was also approved with a condition in each of the water rights providing for the requirement that available surface water sources be used for irrigation prior to the use of the groundwater rights subject to the application for transfer. This condition is denominated as no. 5 in water right nos. 63-11922, 63-10840, 63-12173, 63-11737, 63-12162, 63-12295, 63-12416, 63-31677, 63-12378, 63-12181, 63-12560, 63-31677, 63-31138, 63-31318, 63-31630, 63-31281; as condition no. 6 in water right nos. 63-2893, 63-3252, 63-7105, 63-7978, 63-8331, 63-8332, 63-9849, 63-10105, 63-32567, 63-32568; and as condition no. 7 in water right no. 63-12039. This condition was present only in water right nos. 63-31677, 63-12560, 63-31138, 63-31281, 63-31318

and 63-31630 prior to approval of Transfer No. 79778.

The condition provides as follows:

The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use or where the use of surface water was replaced by the use of water diverted in connection with this right before the approval of Transfer 79778. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

The problem with this condition is that it was not present in a majority of the water rights at the time of appropriation, at the time of decree or licensure, or at any time prior to approval of Transfer no. 79778. The added condition constitutes the impermissible restriction of a valid property right, and should be removed from those rights where it was not present prior to approval of Transfer no. 79778.

For the reasons discussed above, the City hereby requests that IDWR reconsider its Preliminary Order approving Transfer Application No. 79778 and: (1) draft, with the City's input and assistance, new condition language to replace that applying in circumstances involving administration of the City's new points of diversion; and (2) remove the condition regarding the use of surface water prior to use of ground water from water rights where the condition was not present prior to the approval of the transfer.

Respectfully submitted this 1st day of April, 2016.

HONSINGER LAW, PLLC

By: Charles L. Honsinger

Charles L. Honsinger

Attorney for Petitioner/Applicant