

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*
Scott A. Magnuson

* Licensed in Idaho & Washington



195 River Vista Place, Suite 204
Twin Falls, Idaho 83301
(208) 733-0700 telephone
(208) 735-2444 facsimile

1010 West Jefferson, Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Paul L. Arrington
pla@idahowaters.com

January 16, 2015

SENT VIA EMAIL TO James.Cefalo@idwr.idaho.gov

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

*RE: Draft Permits 35-14240 thru 35-14243
In the Name of Lance and/or Lisa Funk Partnership*

Dear James:

Thank you for sending us the drafts of the permits you intend to issue relative to water rights 35-14240 thru 35-14243 for the Lance and Lisa Funk Partnership. Your email, dated December 16, 2014, set a deadline of January 16, 2015 to notify you of any concerns with the draft permits. As discussed herein, our clients cannot agree with the changes to the stipulated conditions. Kent Fletcher has also authorized us to advise you, his clients do not agree with the changes to the stipulated comments.

On December 1, 2014, Rob Harris, attorney for the Applicants, filed the *Stipulation for Withdrawal of Protests* signed by the Applicants and the Surface Water Coalition. Article 2 of the Stipulation included several conditions that were to be included in the draft permit. Article 4 provided that "resolution of this Protest is conditioned upon the approval, by IDWR, of the conditions set forth in Paragraphs 1 and 2 in substantially the same form as set forth herein."

The draft permits substantially alter – and in some cases eliminate – the conditions identified in the Stipulation. For example, Article 2.e of the Stipulation requires an annual payment of \$500 to the Department for an "in-person field examination" to occur "each year to verify the required mitigation and authorized irrigation under this right." This requirement, which was integral to the Coalition's agreement to stipulate to withdraw their protest, is completely eliminated from the draft permits. In addition, there are several other changes to the stipulated conditions.

Reaching a resolution in this matter was no small feat. Our clients are extremely concerned about the development of nearly 2,000 new acres without a permanent source of mitigation water. In addition, they have substantial concerns about the adequacy of the mitigation proposed and whether future mitigation will address the impacts that diversions under these new water rights will have on the Coalition's senior surface and ground water rights. The stipulated conditions resulted from a resolution that would allow the permits to move forward while still providing the Coalition members some assurance that their concerns would be addressed. Without these stipulated conditions, the Coalition believes that the stipulation is void and this matter would then proceed to hearing.

While we appreciate IDWR's concerns and are certainly willing to address those further with the Applicant, the Coalition would request that the Hearing Officer set a status conference to discuss this matter further and, if necessary, schedule a hearing.

Yours Truly,


Paul L. Arrington

PLA/jn

cc: Rob Harris (via email)
Randy Budge (via email)
John Simpson (via email)
Kent Fletcher (via email)