

ROBERT E. WILLIAMS

IDAHO STATE BAR NO. 1693

WILLIAMS, MESERVY & LOTH SPEICH, LLP

Attorneys at Law

153 East Main

P. O. Box 168

Jerome, Idaho 83338

Telephone: (208) 324-2303

Facsimile: (208) 324-3135

Attorney for Mitchel B. Schmidt and

Gordon and Dorothy Schmidt, husband and wife

JAMES P. SPECK

IDAHO STATE BAR NO. 2067

SPECK & AANESTAD

120 East Avenue North

P.O. Box 987

Ketchum, ID 83340

Telephone: (208) 726.4421

Facsimile: (208) 726.0752

Attorney for William Fruehling

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT
LICENSE NO. 37-20628 IN THE NAME
OF WILLIAM FRUEHLING

AFFIDAVIT OF ROBERT E. WILLIAMS IN
SUPPORT OF EXCEPTIONS TO ORDER
DENYING PETITION FOR
RECONSIDERATION DATED
FEBRUARY 27, 2014 AND BRIEF IN
SUPPORT OF EXCEPTIONS

STATE OF IDAHO)

)ss.

County of Jerome)

ROBERT E. WILLIAMS, being first duly sworn, deposes and says as follows:

1. I am a licensed and practicing attorney in the state of Idaho. I am a partner in the firm of Williams, Meservy and Lothspeich, LLP.

2. I represent Gordon and Dorothy B. Schmidt and Mitchell B. Schmidt in these proceedings.

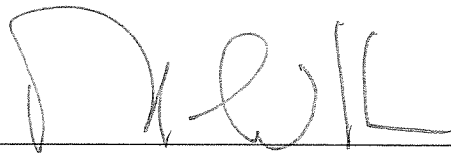
3. On February 27, 2014, I caused to be deposited in the United States mail, first class postage prepaid, a letter addressed to Shelley Keen at the Idaho Department of Water Resources on behalf of Gordon and Dorothy Schmidt. A copy of the letter is attached hereto as **EXHIBIT A.**

4. On Monday, March 3, 2014, I was provided a copy of the Order Denying Petition for Reconsideration in the Matter of Water Right License No. 37-20628 which had been signed by Shelley Keen on February 27, 2014.

5. Later, on Monday, March 3, 2014, I received a telephone call from personnel at the state office of the Idaho Department of Water Resources advising that Shelley Keen had not seen or read my letter of February 27, 2014, prior to entering the Order Denying Petition for Reconsideration on the same date.

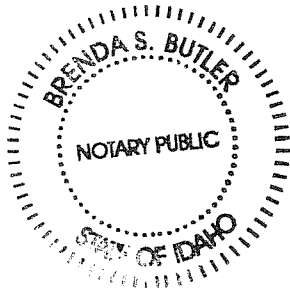
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 14th day of March, 2014.



ROBERT E. WILLIAMS

SUBSCRIBED AND SWORN To before me this 14th day of March, 2014.



Notary Public for Idaho

Residing at:

Comm. Expires:

Gooding
3/5/2016

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that on the 14th day of March, 2014, I caused to be served the foregoing document as follows:

IDWR Southern Region 1341 Fillmore Street, Suite 200 Twin Falls, ID 83301-3380	☒ Via US Mail, Postage Paid ☐ Via Facsimile - ☐ Hand-Delivered - Court Folder ☐ Other _____
IDWR Document Depository P.O Box 83720 Boise, ID 83720-0098	☒ Via US Mail, Postage Paid ☐ Via Facsimile - ☐ Hand-Delivered - Court Folder ☐ Other _____
Gary L. Spackman, Director Deborah Gibson IDWR 322 East Front Street PO Box 83720 Boise ID 83720-0098	☒ Via US Mail, Postage Paid ☐ Via Facsimile - ☐ Hand-Delivered - Court Folder ☒ Other Electronically to: gary.spackman@idwr.idaho.gov deborah.gibson@idwr.idaho.gov
Charles G. Brockway Brockway Engineering 2016 N. Washington St., Suite 4 Twin Falls ID 83301	☒ Via US Mail, Postage Paid ☐ Via Facsimile - ☐ Hand-Delivered - Court Folder ☒ Other _____ charles.g.brockway@brockwayeng.com


ROBERT E. WILLIAMS

EXHIBIT A

Williams, Meservy & Lothspeich, LLP
Attorneys at Law

153 East Main Street
Post Office Box 168
Jerome, Idaho 83338-0168



ROBERT E. WILLIAMS
JAMES C. MESERVY
JOHN B. LOTHSPREICH
BRIAN J. WILLIAMS - ASSOCIATE
THEODORE R. LARSEN - ASSOCIATE
EUGENE D. FREDERICKSEN - RETIRED

TELEPHONE: (208) 324-2303
TELECOPIER: (208) 324-3135
E-MAIL: REWILLIAMS@CABLEONE.NET

February 27, 2014

Idaho Department of Water Resources
Attn: Mr. Shelley Keen
322 East Front Street
PO Box 83720
Boise ID 83720-0098

*RE: Petition for Reconsideration of Preliminary Order for License No. 37-20628,
dated January 28, 2014*

Dear Mr. Keen:

I represent Gordon and Dorothy Schmidt of Fairfield, Idaho. Mr. and Mrs. Schmidt have an ownership interest in Water Right No. 37-13251, mentioned in Condition No. 9 of the license above referenced.

My clients have reviewed the preliminary order issued January 28, 2014, In The Matter Of The Issuance Of The License Of Water Right No. 37-20628. The license is owned by William Fruehling of Ketchum, Idaho. My clients have also been provided a copy of the Petition for Reconsideration addressed to the Idaho Department of Water Resources ("IDWR") under date of February 11, 2014, signed by Charles G. Brockway on behalf of Mr. Fruehling. I request that this letter on behalf of the Schmidts be made part of the permanent record of the matter involving the licensing of water right no. 36-20628.

My clients object to the combined diversion rate limitation of 6.52 cfs. described in the Condition of Approval No. 9 in the license. My clients, who have no ownership interest in the license, or in the underlying Permit and Application for Permit related to the license, do have an ownership interest in Water Right No. 37-13251. The partial decree for Water Right No. 37-13251 in the SRBA issued on September 24, 2010, provides for two separate points of diversion for the right. One point of diversion is located in the NENESW of Section 10, Township 1 South Range 15 EBM, Section 10, Camas County, Idaho ("North Well"). The second point of diversion for the right is within the NESESW of Section 10, Township 1 South, Range 15 EBM, Camas County, Idaho ("South Well"). Only the North Well is involved with the licensing of Water Right No. 37-20628.

Mr. Shelley Keen
February 27, 2014
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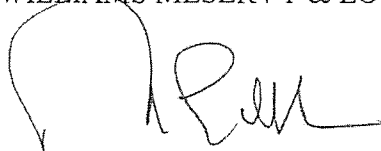
The Schmidts believe that the Fruehling licensing procedure is not a means by which IDWR can lawfully modify their partial decree rights in the South Well point of diversion under Water Right No. 37-13251. If the Fruehling license stands as now approved in the preliminary order, my clients would only be permitted to divert 2.35 cfs. from the South Well under their right. This is an unacceptable material alteration of the partial decree for Water Right 37-13251. My clients contend that it is unlawful for IDWR to modify the terms of any partial decree as part of a licensing procedure of another right to which the owner of the water right under the partial decree was not a party. Further, the licensing procedure for Water Right No. 37-20628 is not with any of the grounds specified by Idaho Rule of Civil Procedure 60(b) as a basis for the possible modification of an order of a court like the partial decree for the Schmidts' right.

My clients fully support the Petition for Reconsideration filed on behalf of Mr. Fruehling and request that Condition No. 9 of the license be modified to provide that the combined diversion rate in Condition No. 9 be changed to 9.05 cfs. To permit Condition No. 9 of the Fruehling license to stand as now constituted will cause significant harm to my clients in that the remaining diversion rate for Right No. 37-13251 would be reduced to 2.35 cfs., a loss of 2.53 cfs. from the amount now available under the partial decree for that right.

Please contact me with any questions you may have.

Very truly yours,

WILLIAMS MESERVY & LOTHSPREICH, LLP



ROBERT E. WILLIAMS

REW/bsb
Encl.
C: Client
Jim Speck
Chuck Brockway, Jr.
Director of Idaho Department of Water Resources
William Fruehling
\\SERVER\\share\\data\\Schmidt, Gordon & Dorothy\\IDWR\\Keen 14 Feb 26th.doc