



Holden Kidwell
Hahn & Crapo P.L.L.C.
L A W O F F I C E S

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405

Tel: (208) 523-0620
Fax: (208) 523-9518
www.holdenlegal.com

Email: rharris@holdenlegal.com

July 18, 2013

RECEIVED

JUL 18 2013

Department of Water Resources
Eastern Region

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

RE: Conditional Withdrawal of Protest of Transfer No. 78390 in the Name of Eunice Tyler, and Notice of Representation for Ed Peterson.

Dear James:

Enclosed please find a *Notice of Appearance* filed by myself regarding representation of Ed Peterson in the above reference transfer.

In addition, after some discussion with Mr. Peterson, he is prepared to withdraw his protest in the above reference transfer application, subject to Ms. Tyler leaving the headgate and measuring device at the currently shared ditch heading (located at the SESW of Sec. 15, Twp. 16N. Rge. 24E). Based upon your email correspondence of today's date, she has agreed to this condition of withdrawal, and therefore, the hearing will be vacated.

Based upon my review of the water right transfer, this appears to be a fairly straight forward transfer to move a number of water rights from a ditch jointly owned and operated by Mr. Peterson and the Tylers to a ditch that will solely be operated by the Tylers. Mr. Peterson is in favor of the Tylers using their own ditch, and understands that the stacked water rights retain their individual acre limitations within the 575-acre permissible place.

As you know, Water Right No. 74-286 has a priority date of November 5, 1909, and allows for the diversion of 6.4 cfs for the irrigation of 265.9 acres. Because of that, we anticipate that if Water Right No. 74-286 is no longer in priority, that the Tylers will reduce their irrigation within the 575-acre permissible place of use by 265.9 acres. We recognize that the difference in priority dates between September 25, 1909 for the part of the stacked Tyler rights and November 5, 1909 is not significant, there could be years where the priority cutoff fits somewhere in between the two and could remain there for a week or two. In those instances, we expect and anticipate that the Tylers will abide by the conditions of their water rights and reduce their irrigation accordingly. To the extent that they do not, we will likely request the Department's

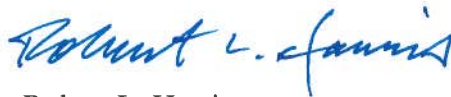
Established in 1896

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involvement. We should also state that because the difference in only a few months between the priority dates in many years will likely result in only a couple of days where one of the rights may be out of priority, the Department's ability to respond and regulate that tightly is likely unrealistic based upon the Department's current staffing situation. We therefore understand and agree that the Department could not respond quickly enough within a 3-4 day time period to regulate irrigated acres that tightly. We are not asking for any conditions to be added to the water right transfer approval with regard to the individual acre issue, we are simply restating our understanding that after the transfer the water rights will retain their individual acre limitations.

If you have any questions or concerns, please let me know. Otherwise, we will presume that the July 23rd hearing has been vacated. Thanks for your assistance.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

Application for Transfer No. 78390

In the Name of Eunice Tyler

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Department of Water Resources
Eastern Region

WITHDRAWAL OF PROTEST

Name of Protestant: Ed Peterson

Represented by: Robert L. Harris

I hereby withdraw my protest to the above referenced matter. All of my issues of protest have been addressed and/or resolved.

☐ My withdrawal is not conditional.

☒ My withdrawal is conditioned on the following:

The Applicant will leave the headgate and measuring device located on the currently shared ditch in place (SESW, Section 15, Township 16 N, Range 24 East, Lemhi County).

Signed this 18th day of July, 20 13.

Robert L. Harris - ATTORNEY FOR PROTESTANT
Signature of Protestant or Protestant's Representative