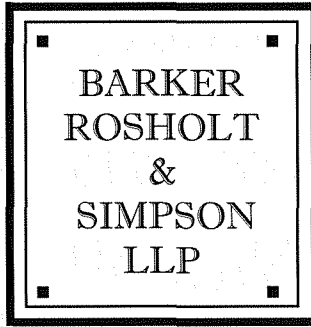


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April 15, 2013

RECEIVED

APR 16 2013

DEPARTMENT OF
WATER RESOURCES

VIA EMAIL & U.S. MAIL

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Six S Ranch LLC (Water Rights 45-7024 and 45-7031) / I.C. § 42-233

Dear Director Spackman:

Our firm represents Six S Ranch LLC (Six S) on various water right matters. Six S requested we write you concerning a question for water rights 45-7024 and 45-7031 and the potential to add a point of diversion to use low temperature geothermal water already authorized by the water rights for irrigation use.

By way of background, the water rights were partially decreed by the SRBA Court in 2005 as follows:

45-7024

Irrigation	6.0 cfs (1,208 af)	302 acres		
Points of Diversion				
NESWSW	Sec. 11	T11S	R25E	Cassia County
NWNWNE	Sec. 22	T11S	R25E	Cassia County
SWSWSW	Sec. 32	T11S	R25E	Cassia County

46-7031

Irrigation	10.52 cfs (2,104 af)	526 acres		
Points of Diversion				
NESWSW	Sec. 11	T11S	R25E	Cassia County
NWNWNE	Sec. 22	T11S	R25E	Cassia County
SWSWSW	Sec. 32	T11S	R25E	Cassia County

Combined, the two water rights are limited to 14.52 cfs (3,312 af) (6,534 gpm). Presently, Six S is able to divert approximately the following amounts from the existing points of diversion:

3.56 cfs (1,600 gpm)	NESWSW	Sec. 11	T11S	R25E	Cassia County
0 cfs	NWNWNE	Sec. 22	T11S	R25E	Cassia County
1.78 cfs (800 gpm)	SWSWSW	Sec. 32	T11S	R25E	Cassia County

5.34 cfs (2,400 gpm)					

As shown above, the existing water supply at the three points of diversion is insufficient to meet the quantities authorized by the water rights, which are necessary for Six S's farming operations. Six S has drilled 3 test wells in the area in an attempt to discover additional water to meet the quantities authorized in the water rights. Although Six S recently added a point of diversion to other ground water rights it holds (T 78301), the new well is not producing any additional water, despite drilling to depths of over 900 feet.

The well in Section 11 originally produced 10.03 cfs (4,513 gpm). *See Attachment (3/4/76 Letter from Fleenor to Skaggs, Summary of IDWR Beneficial Use Exam).* The water in the well also measured at a temperature of 140 degrees. IDWR authorized Six S to perfect the water rights for irrigation purposes, and the water rights were acquired before the enactment of I.C. § 42-233. Accordingly, it is Six S's position that the appropriation has already been perfected and the statute does not apply in the event Six S needs to add a point of diversion through a transfer application.

Given the lack of available water in the area (3 test wells drilled without success), it is clear Six S has no choice but to drill an additional well into the low temperature geothermal resource to ensure it can maintain the authorized diversion rate under its water rights. If the statute applies to an additional well or point of diversion in the low temperature geothermal resource, the Director may exempt the proposed use if the following criteria are satisfied:

- 1) There is no feasible alternative use of the resource;
- 2) There is no economically viable source of water having a bottom hole temperature of eighty-five (85) degrees or less in a well available; and
- 3) The exemption is in the public interest.

I.C. § 42-233(1).

Six S meets the above criteria to qualify for an exemption. First, there is no feasible alternative use of the resource. Six S has used the resource for irrigation purposes as authorized under water rights 45-7024 and 45-7031 for over 30 years. Six S is the only private landowner in the area and it would not be feasible to use the water for other purposes, particularly when the resource is needed to satisfy Six S's farming operations.

Director Gary Spackman
April 15, 2013
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Second, there is no economically viable source of water with a temperature below 85 degrees in a well available. Six S has drilled 3 test wells in the area without finding additional cold water. Finally, the exemption is in the public interest. Maintaining the authorized diversion rates under the existing water rights to support its farming operation supports the local agricultural economy in Cassia County.

Six S seeks confirmation from IDWR that I.C. § 42-233 does not apply to a new transfer application filed to add a point of diversion in the low temperature geothermal resource. Alternatively, if the statute applies, Six S requests confirmation that the irrigation use under the transfer is exempt as provided by I.C. § 42-233(1) and that Six S can proceed to file a transfer application to add a point of diversion.

Since the 2013 irrigation season has arrived we would respectfully request the Director expedite a response to this letter. We appreciate your consideration and please contact me at (208) 733-0700 if you need additional information or have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. Thompson', with a long horizontal flourish extending to the right.

Travis L. Thompson

Enc.

cc: Shelley Keen, IDWR
Corey Skinner, IDWR (Southern Region)



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

March 4, 1976

Lennie Sam Skaggs
P.O. Box 658
Salt Lake City, Utah 84110

Re: Permits No. 45-7024 & 45-7031

Dear Mr. Skaggs:

A representative of this Department has made an examination of the works covered by the above referenced permits and has found the following:

Quantity of water diverted: 14.38 cfs Source: ground water

Point of diversion: SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 11 -and- NW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 22,
Twp. 11 S, Rge. 25 E, B.M.

The Department is prepared to issue water licenses under these permits as follows:

45-7024 Amount of water that can be recognized as beneficially used under
Idaho law: 6.0 cfs
Beneficial use: Irrigation of 302 acres (see attached land description)
Priority established: February 1, 1968

45-7031 Amount of water that can be recognized as beneficially used under
Idaho law: *10.52 cfs
Beneficial use: Irrigation of 526 acres (see attached land description)
Priority established: July 24, 1968

* Subject to the condition that the maximum rate of diversion shall not exceed 14.38 cfs when combined with License No. 45-7024.

If you do not concur with these findings please contact us within 10 days; otherwise, the applications for amendment previously submitted will be approved and water licenses issued as set forth in this letter.

Sincerely,

Bobby D. Fleenor

BOBBY D. FLEENOR
Chief, Water Rights

cc: Mr. Joseph J. Thackaberry
Connecticut General Life Ins. Co.

Description and location of place of use: (45-7024)

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
11 S	25 E	2						4	4			26	25						59
		3	5		6	28									40	30	2	38	149
		10	33			25													58
		11						20	16										36

Total number of acres irrigated 302

Description and location of place of use: (45-7031)

Twp.	Range	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
10 S	25 E	27		9	18		16	5	22	40	40	14		28		13	6		211
		34	21	40	35	40	26			6					36	5		30	239
		35							10			14	20						44
11 S	25 E	2						16	16										32

Total number of acres irrigated 526

FOR MARSH CR Side.

Dumps under Permits 45-7031, 45-7024

1. Caterpillar Diesel Eng #14A3068 10.03 c.f.s.
Badger Meter M0588523 SWSW Sec 11 11S-25E.
This well is also Artesian.
2. Hollasht 200 Hp. #HC1029236 4.35 c.f.s.
Badger Meter M0590953
NW NE Sec 22. 11S-25E. Total = 14.38 c.f.s.

Total Acres 828