

December 13, 2004

Mr. Allen Merritt
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RECEIVED
DEC 15 2004
Department of Water Resources
Southern Region

Re: IDWR Application 37-08859 (SMR Development LLC) October 1996

Dear Allen:

After eight years I was recently contacted by William N. Carter about the pond project and IDWR application noted above. In essence, Dr. Carter asked me for a note withdrawing the protest I and my late husband filed to that project. Our protest was filed Dec. 6, 1996. A copy of it is enclosed.

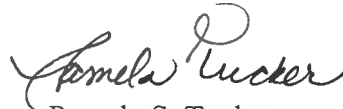
Also enclosed here is a copy of the letter drafted June 19, 1997 following our on-site visit to the pond project. The original letter may never have been sent to you.

In reviewing our file on the application and protest I realize that the concerns expressed in the June 1997 letter are more relevant than ever. In addition there are two more important considerations:

- 1) Since 1996-1997 the Camas Prairie, as well as the rest of southern Idaho, has experienced several years of substantially below average rain and snow fall.
- 2) In December 1999 our 315-acre farm through which the West Fork of Three Mile Creek flows was protected by a Conservation Easement with the Wood River Land Trust. Water in Three Mile Creek, even where it is only seasonal, is critically important to the conservation of the land. Enclosed please find a letter from the Land Trust confirming this point.

I'm not inclined to withdraw the protest. This letter, along with the enclosures, is offered in explanation.

Very sincerely,


Pamela S. Tucker

Cc: Wood River Land Trust, William N. Carter

Enc: December 6, 1996 Protest
June 6, 1996 letter from Bigwood Canal Company
June 19, 1997 letter from Stephen and Pamela Smith
December 14, 2004 letter from Wood River Land Trust

P.O. Box 14
Fairfield, ID 83327
208.764.2060

COPY

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED

DEC 15 2004

Department of Water Resources
Southern Region

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

Application for Permit No. 37-09859/SME Development LLC

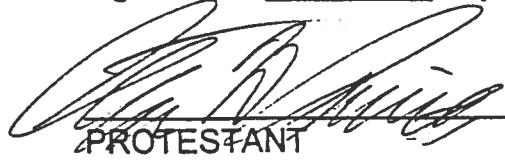
1. Matter being protested Diversion of water from Three Mile Creek, West
2. Name of protestant Stephen W. and Pamela J. Smith Fork of Camas Creek
3. Protestant's representative for service (If different than protestant)
NA
4. Service mailing address P.O. Box 3089, 821 Deerfield Drive, Hailey, Idaho 83333
5. Service telephone no. 208.788.5982
6. Basis of protest (including statement of facts and law upon which the protest is based)

Please See Attached Sheet

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? Denial of application for diversion

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 6 day of December, 1996.

Pamela J. Smith
PROTESTANT
NA

PROTESTANT'S REPRESENTATIVE

COPY

Notice of Protest
Idaho Department of Water Resources
December 6, 1996

6. Basis of protest

A. Diversion of water would result in a decrease of water flow downstream, specifically the west 1/2 of Section 34, Township 1N, Range 13E which is property we own. Diversion of water would decrease wildlife habitat and do major damage to the aesthetics on both sides of the stream for the mile running through our property.

B. We own shares of the Big Wood Canal Company with diversion near Gooding, Idaho. Our M&O (maintenance and operation) charges would increase if less water flowed into Magic Reservoir. Irrigators who rely on Magic Reservoir water have their M&O charges reduced in low water or drought years. Those charges are passed on to American Falls water users including ourselves.

COPY

June 19, 1997

Mr. Allen D. Merritt, P.E.
Southern Region Manager
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RE: APPLICATION FOR PERMIT NO. 37-08859 (SMR DEVELOPMENT LLC)

Dear Allen,

Upon the gracious invitation of Mr. Bill Carter, member of SMR Development LLC, we made a site visit and took a short tour of the ponds included in Application 37-08859. The visit was done on Saturday, June 7, 1997

The area is even more beautiful than usual this spring due in large part to higher than average snow pack, and we came away from the tour somewhat less concerned than we had been before it. The wetlands being created are lovely and are obvious additions to wildlife, especially bird, habitat.

However, at least three concerns remain:

- * Interestingly, the ponds being applied for are accomplished fact. SMR Development appears to be seeking permission for two, existing, man made, in-stream ponds.

- * No matter how positive the additional wetlands are, the fact remains that spring snow melt will feed them before it flows downstream to provide water to the Big Wood Canal System irrigators. Those of us who have lived all of our lives in Idaho *know* that relatively dry winters, and therefore dry growing years, are inevitable, and in dry years we think irrigators should have precedence over esthetic, golf course ponds.

- * In addition to Big Wood Canal System irrigation water, we fear for water flowing south all along Three Mile Creek. There are other places of bird habitat, and in the instance of our land just south of the golf course, willows and large animal habitat which should not be jeopardized in extremely low water years in order to fill small esthetic ponds.

COPY

During our tour we asked Mr. Carter how the ponds would change if IDWR approval was granted. Mr. Carter assured us that there would be no change to the two small ponds. We did not take measurements, but it seemed clear that far fewer than 5.000 CFS (2.50 AF) are needed to maintain the existing ponds.

Considering the points mentioned above, we offer the following remedy to our protest of the project. We would not object nor proceed with our protest if we had a firm assurance that IDWR would grant SMR Development additional water rights to provide *only* that amount of water actually being currently used in the ponds (estimated at 1.500 to 2.000 CFS). We do not want to see the existing ponds expanded or additional ponds added in the future.

We are providing a copy of this letter and proposal to Mr. Carter. We look forward to hearing from you regarding the next step in the process. Thank you.

Very sincerely yours,

Stephen W. Smith

Pamela J. Smith

cc: Bill Carter, SMR Development LLC

12.14.04
Allen Morrill -
IDWR did receive
original, signed
letter in June,
1997.

COPY

June 6, 1997

Jerry Carter
Hidden Paradise Ranch Development
Fairfield, Idaho

Re: Diversion of Water from Three Mile Creek

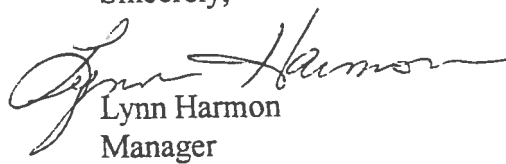
Dear Jerry,

We recently received information of your water filing for Three Mile Creek at Fairfield from one of our shareholders, Mr. Stephen W Smith. Our concern as to your filing is that Three Mile Creek water flows into Magic Reservoir and is used to supply irrigation water for downstream irrigators on the Big Wood Canal system. Even though it maybe a non-consumptive use, any time water is diverted from a stream and is ponded there is a resulting loss of water associated.

We feel that any diversion of water upstream of Magic Reservoir, even as small as what you have proposed is cause for concern on our part, as it is our responsibility to protect the water rights of company shareholders.

Therefore we support the protest filed by Mr. Smith, and share equally his concern as to any diversion of water upstream of Magic Reservoir, and would like to go on record as firmly being opposed to your water filing.

Sincerely,



Lynn Harmon
Manager