

RECEIVED
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DEPARTMENT OF
WATER RESOURCES

April 22, 2012
Albert C. and Alvera C. Fols
PO Box 56
Carmen, ID 83462

Gary Spackman, Interim Director
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

RE: LICENSE NO. 75-07505

Mr. Interim Director,

John and/or Ruth Burns (The Claimants) have violated IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303). The Claimants have addressed matters in THE PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505 with The Interim Director (The Director) through Idaho Department of Water Resources (IDWR) staff. The information in that contact with IDWR staff has **not** been served on all other parties to the proceedings. It should be noted that The Claimants were given notice of the requirement in a cover letter that accompanied the Claimants' License. The lack of respect for the process cannot be tolerated.

The contacts were in email form (Attachment I) and clearly address THE PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505; therefore are required to be served on all Parties.

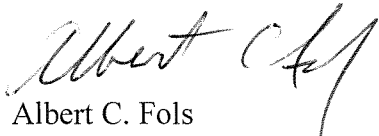
This breach of protocol undermines the reconsideration process and inadvertently diminishes the credibility of staff involved. The Director and/or The Director's Counsel should now be required to take the necessary steps to correct the inappropriate action. The Petitioners assert that The Director and/or IDWR staff cannot use the information in the emails during the reconsideration process.

The emails include a discussion as to the legality of irrigating a Lemhi County road and/or the easement for said road, but The Claimants failed to serve Lemhi County (Counsel for Lemhi County was included as a party by The Petitioners).

To the best of The Petitioners' knowledge, The Claimants have not irrigated Parmenter Road in the past. But, it is clear in the emails that The Claimants believe it is their right to irrigate at least portions of the road easement. This should give The Director and Counsel for Lemhi County pause.

The Petitioners will include a cover letter (Attachment II) in the service to Mr. Bruce Withers, Counsel for Lemhi County, requesting a clarification of Lemhi County road law as it pertains to this matter.

Thank you, in advance, for the time necessary to correct this matter,

A handwritten signature in cursive script, appearing to read "Albert C. Fols".

Albert C. Fols

A handwritten signature in cursive script, appearing to read "Alvera C. Fols".

Alvera C. Fols

ATTACHMENT I

Saxton, Craig

From: John Burns [treeboxmules@custertel.net]
Sent: Thursday, April 19, 2012 3:29 PM
To: Saxton, Craig
Cc: Baxter, Garrick
Subject: License 75-07505
Attachments: Response to Fols Allegations.doc; Groundwater License Dates of Actions.doc; mso75F98.bmp; msoF2A57.bmp

Mr. Saxton:

Earlier I indicated I would be following up with some additional material for the record concerning Mr. Fols' previous comments. In the meantime, I see he is requesting reconsideration of the license, so I'm providing further information in support of the Department's action to issue the license. In particular, I believe the Department's actions and letters in 2006 and 2007 make clear the procedure followed in determining the irrigated acreage (10.9 acres) which excluded the road, etc., from the gross property acreage (11.6 acres.)

If necessary, I will file a formal brief depending upon the course the matter follows in the ensuing days.

John Burns
208-756-3645

Attachments:

Response to Allegations - 3 pages
Chronology of Actions - 1990 through 2012
IDWR Correspondence - 2006 and 2007

Response to Fols' Allegations (Request for Reconsideration)

1. Mr. Fols asserts that the license authorizes more than 1" per acre for domestic use. This assertion is incorrect.

Fols has a recurring tendency to read or quote only selected portions of the Conditions of Use rather than the license and the eight conditions in context with each other..

Page 1 of the license clearly states that the domestic diversion rate for groundwater is limited to 0.02 CFS and the irrigation diversion rate is limited to 0.22 CFS. This basic provision of the license is echoed by Conditions 4, 5, and 6. Condition 7 and 8 express the same thing in terms of annual volume as opposed to diversion rate in CFS.

Note that the original permit issued on July 11, 1990 authorized 0.04 CFS for domestic, which was understood to include stockwater. The application clearly identified "six horses" and one "household," The field exam referred to the stock use as well.

2. Mr. Fols asserts that the license is in conflict with itself. This assertion is incorrect.

The license clearly identifies the diversion rate for domestic purposes as 0.02 CFS and the diversion rate for irrigation as 0.22 CFS per acre for a maximum diversion rate of 0.24 CFS. The irrigation rate per acre is not 0.022 nor 0.024 as Fols states in his footnote.

It is not necessary nor proper to identify acreage in conjunction with domestic use. In fact, it has not been done for any property in this subdivision. In any case it would be pointless as Condition of Use 6 provides that whatever amount of water is so used is part of the irrigation component. In other words that amount of use would count against the groundwater available for irrigation at that point in time.

The assertion that the common terms of "lawn, garden, and landscaping" must be defined in the license is absurd. While a field of alfalfa in bloom is no doubt a beautiful sight, the dissertation on grass clippings, cattle feed, grass varieties, etc., makes this process nothing more than an expensive and time consuming farce intended to harass.

3. Mr. Fols asserts that the Director has included acreage in the license that is illegal to irrigate. This assertion is incorrect.

At the time the SRBA commenced well over 22 years ago local property owners had no way of knowing what convention IDWR would use to adjust acreage from gross to irrigated. In this area it was understood that the gross acreages would be used for application purposes and when the process reached Basin 75-D the Department would make appropriate adjustments using aerial photogrammetry and landowners would have the opportunity to interact with the Department and seek changes if warranted.

In the initial filings in February of 1990 I used the figure of 11½ acres which on some documents in subsequent years showed up as 11.5. However the actual figure of 11.6 was used in later documents leading to the Department's preliminary recommendations provided in late 2006. At that time IDWR staff met with claimants to review their individual claims and resolve questions.

That stage of the process, as expected, extensively involved acreage adjustments. In the meeting with staff I questioned the reduction to 10.9 acres, which I considered to be larger than most. My concern was reviewed in detail by the staff, and on December 12, 2006 I received a response from IDWR which stated:

"The total number of irrigated acres was not changed at this time because the outline of the place of use when it is overlayed on the aerial photo computes to 10.9 acres. Although you may own 11.6 acres, the right is only for those acres actually irrigated. When roads, driveways, homes and outbuildings are removed the irrigated acreage equals 10.9 acres."

On January 10, 2007, the Department provided their recommendations to claimants. That included their recommendation for an irrigated acreage of 10.9, to which I agreed. I accepted the Department's conclusion, and since that time 10.9 has been the figure used in IDWR calculations, recommendations, court actions, SF-5's and, in fact, Mr. Fols's numerous appeals and filings leading up to the more recent issuance of partial decrees.

Since it is obvious from the Department's correspondence that the road was considered in their calculations, and that their process was methodical (and was reviewed on my request) Mr. Fols' assertion that the road was recently "discovered" is without merit. The road's position has not changed in the 22 years of my residence here and shows quite prominently on the aerial photos.

Incidentally, the easement width is immaterial. I hold fee title to all land within the easement, and can irrigate, graze, or mow any portions outside the roadbed (which is much narrower than the easement) should I so choose.

Since Mr. Fols seeks to involve the County in this matter I should mention that no water has ever gone onto the road. Also, the easement is not held by the County, and the road is not a County road.

Since the groundwater permit was not involved in the adjudication, the acreage figure of 11.6 remained on the permit. The current licensing activity logically used the established Department calculation of 10.9 which is the correct figure for the license. The salient point is that regardless of Mr. Fols' mathematical gyrations, the Department has calculated the irrigated acreage within the boundaries of my parcel as 10.9. That basic fact is not affected by the road which was built in the late 1970's.

4. Mr. Fols asserts that the Director cannot issue a license that embraces an illegal activity. This assertion is incorrect as the license does not "embrace" an illegal activity.

This assertion is fallacious. The irrigated acreage was calculated directly from the aerial photograph, and did not include the road.

5. Recitation of Dates. No comment.

6. Mr. Fols asserts that the quantity of water licensed should be 0.02 cfs for 9.9 acres when the acre of easement for Parmenter Road is removed from the irrigated acreage. This assertion is incorrect.

The Department's irrigated acreage figure does not include the road. The figure of 10.9 is correct.

Previous false comments and allegations by Mr. Fols requiring correction.

In Mr. Fols' several e-mails with Department staff he has alleged that I have applied groundwater and ditch water in combination to total 0.06 cfs per acre. This is completely false and is simple harassment with no basis in fact. For the bulk of my property I use a sprinkler system through which I can pump either ditch or groundwater. I suspect that Mr. Fols thinks the sprinkler system pumps only groundwater.

My groundwater permit issued in 1990 is clear as to the limits of use for groundwater in combination with surface rights. 1915 surface rights were not part of the situation when the permit was issued, but I have no need nor wish to seek or apply excess water to this property. The license, as issued, is perfectly reasonable.

John & Ruth Burns
April 19, 2012

Water Right (Groundwater Permit – License) 75-07505

John E. & Ruth C. Burns

Box 264

Carmen, Idaho 83462

208-756-3645

treeboxmules@custertel.net

Dates of Actions

March 16, 1990	Application for groundwater permit submitted. Fee \$45 paid.
May 10, 1990	Receipt of application acknowledged. Publication date scheduled – 5/17 and 5/24/90.
July 11, 1990	Permit issued for Irrigation and Domestic. 0.23 cfs irrigation. 0.04 domestic. Total 0.27cfs.
May 31, 1991	Proof Due Notice from IDWR.
July 16, 1991	Proof of Beneficial Use submitted. 2 sumps, domestic and irrigation. 0.27 cfs, 11.6 acres. Proof of Beneficial Use Fee \$100 paid.
July 23, 1991	Analysis Sheet for Proof of Beneficial Use. Proof Acceptable.
August 14, 1991	Proof Acknowledgement Letter from IDWR.
June 13, 1996	Beneficial Use Field Exam Keith Wilson for Don Simpkins. 17 sprinklers – 0.23 cfs 1.5 acres.
December 12, 2006	IDWR Letter Calculation of Irrigated Acreage Method of Calculations - Reduction 10.9 Acres Irrigated
January 10, 2007	IDWR Letter Recommendations to SRBA Court 10.9 Acres Irrigated

Dates of Actions

Page 2

March 14, 2012

IDWR Transmittal of Application for Amendment.
Points of Diversion (Township Error.)
Correction Necessary prior to License Issuance.

March 31, 2012

Application Submitted, Fee \$100 paid.
T22N R22E NE SE Section 3
10.9 acres, 0.02 cfs Domestic, 0.22 cfs Irrigation.
Eight Conditions of Use

April 4, 2012

License Issued
Domestic 0.02 cfs, Irrigation 0.22 cfs, 10.9 acres.
Eight Conditions of Use

Saxton, Craig

From: John Burns [treeboxmules@custertel.net]
Sent: Friday, April 20, 2012 10:42 AM
To: Saxton, Craig
Cc: Baxter, Garrick
Subject: Groundwater Right 75-07505

Mr. Saxton:

I just noticed a typo in the Dates of Actions attachment to the material I sent yesterday. For the date June 13, 1996 the line reading 17 sprinklers - 0.23 cfs 1.5 acres should read 11.5 acres.

John B.

ATTACHMENT II

COVER LETTER FOR:
IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303) violations.

April 22, 2012
Bruce Withers, County Prosecutor and Counsel for Lemhi County Commissioners
1301 Main Street, Ste. 6
Salmon, ID 83467

RE: THE PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO.
75-07505

Mr. Prosecutor,

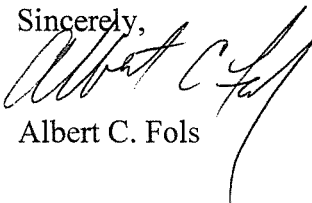
On April 16, 2012, I served your office THE PETITION FOR RECONSIDERATION OF WATER RIGHT LICENSE NO. 75-07505. Since that time, The Claimants for said Water Right have violated IDAPA rules (see documents included with this COVER LETTER)

Initially, The Petitioners included your office in this matter because The Interim Director, Idaho Department of Water Resources, may knowingly include a Lemhi County maintained road easement, which has never been irrigated, as irrigated acreage. The Petitioners did not request input from your office at that time.

But, The Claimants that own the Water Right have now indicated that they have a right to irrigate at least portions of the Parmenter Road easement (see Attachment II).

It would now seem appropriate that the Prosecutor's Office (Counsel for Lemhi County), as a courtesy to the Interim Director, submit a brief to clarify Lemhi County road ordinances/law as it pertains to the irrigation issue on all or part of the Parmenter Road easement ("county right of way").

Sincerely,



Albert C. Fols

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2012, I mailed the original copy, postage prepaid, of the foregoing LETTER dated April 22, 2012 (including attachments) to the person(s) listed below:

Gary Spackman, Interim Director
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

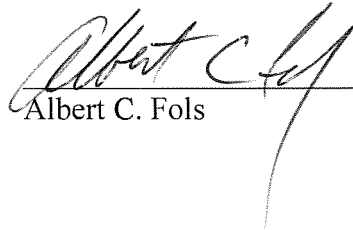
and that I mailed on the same day a true and correct copy, postage prepaid, of the foregoing LETTER dated April 22, 2012 (including attachments) to the person(s) listed below:

John E. Burns
Ruth C. Burns
PO Box 264
Carmen, ID 83462

State of Idaho
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

and that I hand delivered on the same day a true and correct copy, postage prepaid, of the foregoing LETTER dated April 22, 2012 (including attachments) to the person(s) listed below:

County Prosecutor and Counsel for Lemhi County Commissioners
Bruce Withers
1301 Main Street, Ste. 6
Salmon, ID 83467


Albert C. Fols