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FEB 27 2012

DEPARTMENT OF
WATER RESOURCES

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Attorneys for McConnel Island Ditch Co., Ltd.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF TRANSFER NO. 73824)
)
) **PETITION FOR**
) **RECONSIDERATION OF**
) **DEPARTMENT'S TRANSFER**
) **APPROVAL NOTICE FOR**
) **TRANSFER NO. 73824**

COMES NOW, Petitioner McConnel Island Ditch Company, Limited ("McConnel" or "Ditch Company"), by and through counsel of record, and pursuant to Idaho Code § 67-5243(3) and Rule 720.02(a) of the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*), and hereby files this *Petition for Reconsideration of Transfer Approval Notice for Transfer No. 73824*.

ARGUMENT

In 2006, an application was filed to transfer the nature of use and period of use for water right 63-4632F from agricultural irrigation to wildlife ponds and year round storage. Water right 63-4632F is held in the name of McConnel Island Ditch Co. The application was signed by John Ketterling, who was at the time, according to the records of the Ditch Company, the president of

the McConnel Island Ditch Company. The ponds were proposed on property owned by Tom Moroney. In January 2009 the Board of the McConnel Island Ditch Company (the “Board”) hired a new Secretary and the Ditch Company’s mailing address changed at that time from PO Box 668 to PO Box 729, Parma Idaho 83660. *See Affidavit of Sheila Seeman*, ¶3. However, from 2007 until 2012, the Department’s records show that correspondence from the Idaho Department of Water Resources continued to be mailed to the Ditch Company’s former PO Box address. *See id.*, at ¶ 4. Consequently, the Secretary of the Board did not receive any mail from the Department concerning this application either directly from the Department or forwarded from the former address, until she received the Department’s Transfer Approval Notice directed to the correct new address, dated February 16, 2012, on February 17, 2012. *See id.*, at ¶ 5. In particular, the Notice of Administrative Proceeding dated July 1, 2008, was sent to the prior address and was not received by the Ditch Company. *See id.*

The Board was not aware of and did not approve the transfer of use from agricultural irrigation to wildlife ponds or year round storage. *See Affidavit of Tony Martinez*, at ¶¶ 3-4. The Board minutes contain no reference to any approval of the transfer. *See Affidavit of Sheila Seeman*, at ¶ 6. At the Board’s annual meeting on February 16, 2012, the Board discussed the ponds dug on the same property which is now owned by John and Kristin Lynch and concluded that those ponds could not be filled with water from the Ditch Company’s water rights. *See Exhibit A, Affidavit of Sheila Seeman*. The Ditch Company records show that John and Kristen Lynch are the record owners of the property where the ponds are located and that at the time of the application in 2006, the owner of record was Tom Moroney. *See Affidavit of Sheila Seeman*, at ¶ 7. It was not until the next day, February 17, 2012, that the Board first learned of the transfer request when it received a copy of the Department’s Transfer Approval Notice. *See id.*,

at ¶ 8; *Affidavit of Tony Martinez*, at ¶ 6. On February 17, 2012 the Board sent a letter to the Lynches informing them that they could not use the Ditch Company's canal water in their ponds. See Exhibit B, *Affidavit of Sheila Seeman*.

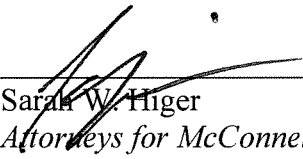
The records of the Ditch Company show that the application for transfer of use was never approved by the Board and never brought to the Board's attention. The Board opposes the transfer and requests that the Department reconsider its preliminary order and deny the transfer request.

CONCLUSION

For the foregoing reasons, the Department should deny the *Transfer Approval*.

DATED this 27th day of February, 2012.

BARKER ROSHOLT & SIMPSON LLP



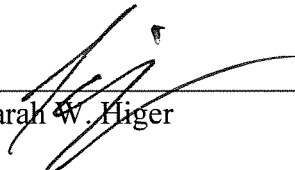
Sarah W. Higer
Attorneys for McConnel Island Ditch Co.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing PETITION FOR RECONSIDERATION OF DEPARTMENT'S TRANSFER APPROVAL NOTICE FOR TRANSFER NO. 73824 to the person(s) listed below:

Gary Spackman, Director
Idaho Department of Water Resources
322 East Front Street
P. O. Box 83720
Boise, ID 83720-0098

ERO Resources Corporation
c/o David Shaw
3314 Grace Street
Boise, ID 83703



Sarah W. Higer

Albert P. Barker, ISB #2867
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DEPARTMENT OF
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Attorneys for McConnel Island Ditch Co., Ltd.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF TRANSFER
NO. 73824

**AFFIDAVIT OF SHEILA SEEMAN IN
SUPPORT OF MCCONNEL ISLAND
DITCH COMPANY'S PETITION FOR
RECONSIDERATION**

SHEILA SEEMAN, being first duly sworn upon oath, deposes and says:

1. I am the Secretary for the McConnel Island Ditch Co., Limited. I am over the age of 18, and I make this affidavit based upon personal knowledge.

2. In 2006, an application was filed to transfer the nature of use and period of use for water right 63-4632F from irrigation to wildlife ponds and year round storage. Water right 63-4632F is held in the name of McConnel Island Ditch Co. The application was signed by Rick Ketterling, who was at the time, according to the records of the Ditch Company, the president of the Ditch Company.

3. In January of 2009 I was hired as the new Secretary of the McConnel Island Ditch Co. Board. The Ditch Company's mailing address changed at that time from P.O. Box 668 to P.O. Box 729, Parma Idaho 83660.

4. From 2007 until 2012, the Department's records show that correspondence from the Idaho Department of Water Resources continued to be mailed to the Ditch Company's former PO Box address.

5. As Secretary of the Board I did not receive any mail from the Department concerning this application either directly from the Department or forwarded from the former address, until I received the Department's Transfer Approval Notice dated February 16, 2012 on February 17, 2012. In particular, the Notice of Administrative Proceeding dated July 1, 2008, was sent to the prior address and was not received by the Ditch Company.

6. I have reviewed the minutes of the Board and its business records from 2006, when the application was filed. There is no record that the Board was aware of or approved the transfer of use from agricultural irrigation to wildlife ponds or year round storage in the Board minutes.

7. At the Ditch Company's annual meeting of the Stockholders on February 16, 2012, the stockholders discussed the ponds dug on the property owned by John Lynch and concluded that those ponds could not be filled with water from the Ditch Company's water rights. The Ditch Company records show that John and Kristen Lynch are the record owners of the property where the ponds are located and that at the time of the application in 2006, the owner of record was Tom Moroney.

8. It was not until the next day that the Board first learned of the transfer request on February 17, 2012, when I received a copy of the Department's Transfer Approval Notice and advised the Board members of that Notice.

9. On February 17, 2012 I sent a letter to the Lynches on behalf of the Ditch Company informing them that they could not use McConnel Island Ditch Company's canal water in their ponds.

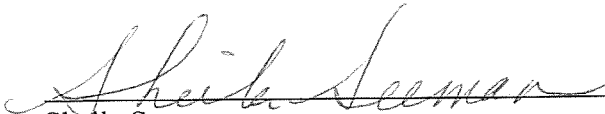
10. Attached hereto as Exhibit A is a true and correct copy of the Board minutes from February 16, 2012 discussing the Lynch's use of agricultural irrigation water for wildlife ponds.

11. Attached hereto as Exhibit B is a true and correct copy of the letter I sent to John E. and Kristen L. Lynch at the direction of the Board.

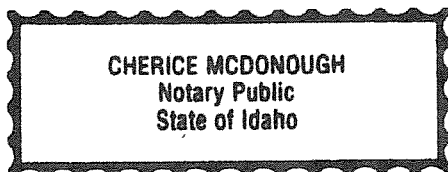
12. The records of the Ditch Company show that the application for transfer of use was never approved by the Board and never brought to the Board's attention. The Board opposes the transfer and requests that the Department reconsider its preliminary order and deny the transfer request.

Further your affiant sayeth naught.

DATED this 27th day of February, 2012.


Sheila Seeman
Secretary, McConnel Island Ditch Co., Limited

SUBSCRIBED AND SWORN to before me this 27th day of February, 2012.



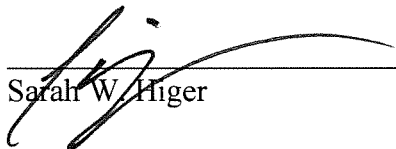

NOTARY PUBLIC FOR IDAHO
Residence: Parma ID
My Commission Expires: 12/02/2017

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing AFFIDAVIT OF SHEILA SEEMAN IN SUPPORT OF MCCONNEL ISLAND DITCH COMPANY'S MOTION FOR RECONSIDERATION to the person(s) listed below:

Gary Spackman, Director
Idaho Department of Water Resources
322 East Front Street
P. O. Box 83720
Boise, ID 83720-0098

ERO Resources Corporation
c/o David Shaw
3314 Grace Street
Boise, ID 83703



Sarah W. Higer

Minutes of the Annual Meeting of the Stockholders
Of
McConnel Island Ditch Company

Secretary's Office

Thursday, February 16, 2012

Shareholders present were GW Farms, representative Tony Martinez, Dennis Fox, and Gary Van Vliet. Also present was Sheila Seeman, Secretary.

The secretary declared that there was a quorum of 1,126 shares represented.

Tony Martinez, President, called the meeting to order at 8:40 a.m.

Minutes of Annual Meeting held February 7, 2011 were read and discussed. The secretary presented the Financial Report for the year ended December 31, 2011.

Gary Van Vliet moved, with the motion seconded by Dennis Fox, to approve the minutes and financial report as printed. Motion carried.

Tony Martinez reported that he is having the road built up around the curve near the pond. Tony also noted that there are a lot of beavers this year.

Tony Martinez discussed the ponds that have been dug on John Lynch's property. After the discussion, it was decided to write Mr. Lynch a letter explaining that he cannot fill the ponds with water from the canal. Our water right is for agricultural irrigation only.

Tony Martinez stated that he wanted to get rid of the rest of the canal boards and put the remaining head gates in. Gary Van Vliet suggested that Tony get Keith Allender to put in the head gates. The head gates will be put in approximately ½ mile south of Hexon Road, where canal goes north.

After discussing the cost of putting in the two remaining head gates and the cost of mowing chemical, Tony Martinez moved to set the 2012 assessment at \$16.00 per share. The motion was seconded by Dennis Fox and carried.

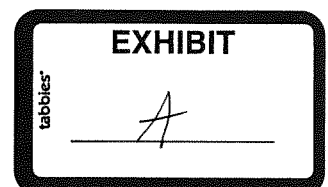
The secretary announced that it was time to reorganize the board of directors. Gary Van Vliet moved to have secretary cast a unanimous ballot for the 2011 officers and directors to succeed themselves. The motion was seconded by Tony Martinez and unanimously carried.

It was noted that there was one stock transfer during the year; Northern Trust Company to GW Farms, LLC for 488 shares.

The secretary is to send copies of the annual meeting minutes, the annual financial report, as well as a copy of the 2012 budget.

With no further business appearing, the meeting adjourned at 10:10 a.m.

Respectfully submitted,
Sheila Seeman, Secretary



McConnel Island Ditch Co., Limited

P. O. Box 729

Parma, Idaho 83660-0729

(208) 722-5044

February 16, 2012

John E. & Kristen L. Lynch
3784 N. Lancer Way
Boise, ID 83713

Dear Mr. & Mrs. Lynch:

At the Annual Meeting of the McConnel Island Ditch Company, held earlier today, the directors discussed the ponds on your property.

I was directed to write this letter explaining that you cannot fill the ponds located on your property with water from the McConnel Island Ditch Company canal or laterals coming from their canal. McConnel Island Ditch Company's water rights are for agricultural irrigation only.

If you have any questions regarding this letter please contact us at the above letterhead address.

Sincerely,


Sheila Seeman
Secretary-Treasurer

EXHIBIT

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B

Albert P. Barker, ISB #2867
Sarah W. Higer, ISB #8012
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
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DEPARTMENT OF
WATER RESOURCES

Attorneys for McConnel Island Ditch Co., Ltd.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF TRANSFER
NO. 73824

**AFFIDAVIT OF TONY MARTINEZ IN
SUPPORT OF MCCONNEL ISLAND
DITCH COMPANY'S PETITION FOR
RECONSIDERATION**

TONY MARTINEZ, being first duly sworn upon oath, deposes and says:

1. I am the current President of the McConnel Island Ditch Co., Limited. I am over the age of 18, and I make this affidavit based upon personal knowledge.
2. In 2006, an application was filed to transfer the nature of use and period of use for water right 63-4632F from irrigation to wildlife ponds and year round storage. Water right 63-4632F is held in the name of McConnel Island Ditch Co.
3. The Board of the McConnel Island Ditch Co. was not aware of this application until Sheila Seeman, the Secretary, received the Department's Transfer Approval Notice dated February 16, 2012 on February 17, 2012.

4. The Board has not approved and does not approve of the transfer of use of any of the Ditch Company's water rights from agricultural irrigation to wildlife ponds or year round storage in the Board minutes.

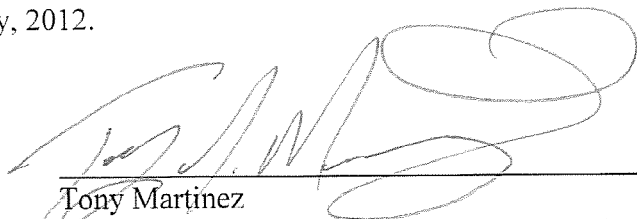
5. At the Ditch Company's annual meeting on February 16, 2012, I raised the issue of the ponds dug on the property owned by John Lynch. The stockholders concluded that those ponds could not be filled with water from the Ditch Company's water rights.

6. I first learned of the transfer request on February 17, 2012, when Sheila Seeman advised me that she had received a copy of the Department's Transfer Approval Notice.

7. The Board of Directors opposes the transfer and requests that the Department reconsider its preliminary order and deny the transfer request.

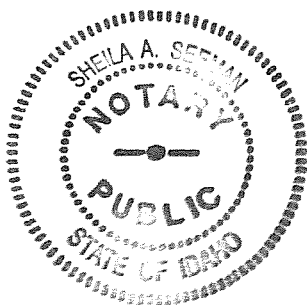
Further your affiant sayeth naught.

DATED this 27th day of February, 2012.



Tony Martinez
President, McConnel Island Ditch Co., Limited

SUBSCRIBED AND SWORN to before me this 27th day of February, 2012.





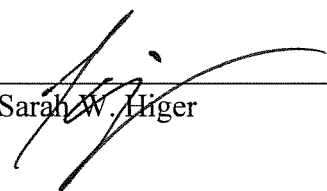
NOTARY PUBLIC FOR IDAHO
Residence: Parma, Idaho
My Commission Expires: 3/17/2016

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing AFFIDAVIT OF TONY MARTINEZ IN SUPPORT OF MCCONNEL ISLAND DITCH COMPANY'S MOTION FOR RECONSIDERATION to the person(s) listed below:

Gary Spackman, Director
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