

HAEMMERLE & HAEMMERLE, P.L.L.C.

Attorneys & Counselors at Law

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January 20, 2011

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JAN 24 2011

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Idaho Department of Water Resources
c/o Jeff Peppersack
P.O. Box 83720
Boise, ID 83720-0098

Idaho Department of Water Resources, Southern Region
c/o Allen Merritt, Regional Director
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380

Re: Permit No. 37-22459 and Transfers 75849 et seq.

Dear Jeff and Allen:

As you may know, I represent the Heart Rock Ranch, LLC, successor in interest to the Sun Valley Ranch, LLC, and Spring Creek Idaho Ranch, LLC, the parties that filed the aforementioned application for permit and transfers.

Regarding the protests filed on the permit and transfer applications, please be advised that those protests have been resolved. Please find enclosed a Stipulation to Resolve Protests, executed by Al Barker for Lakeside Industries and others; Craig Hobdey for the Big Wood Canal Company; and Tim Graves for Blaine County. Given the Stipulation, I believe that the Department can vacate the hearing date on the protests and proceed to approve the permit and transfers. If I am wrong in this assumption, please advise.

Please advise if anything else is required. Thank you.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
Encl.
cc: client

Albert P. Barker, Esq.
Craig Hobdey, Esq.
Timothy K. Graves, Chief Deputy

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

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ISB #3862

Attorneys for the Heart Rock Ranch, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 37-22459 and)
APPLICATION FOR TRANSFER NOS.)
75849, 75850, 75851, 75852 and 75853)
FILED IN THE NAME OF THE SUN)
VALLEY RANCH, LLC,)

Applicant,)

And)

APPLICATION FOR TRANSFER NOS.)
75838, 75839, 75840, 75854, 75855, 75856)
FILED IN THE NAME OF THE SPRING)
CREEK IDAHO RANCH LLC,)

Applicant,)

BLAINE COUNTY, BIG WOOD CANAL)
CO, LAKESIDE INDUSTRIES,)

Protestants.)

COMES NOW the Applicant, Heart Rock Ranch, LLC, by and through Fritz X. Haemmerle of Haemmerle & Haemmerle, P.L.L.C., and the Protestants (collectively "Protestants") including: Blaine County, by and through Timothy K. Graves, Chief Deputy Blaine County Prosecuting Attorney; Lakeside Industries, d/b/a Wood River Ranch, Tom O'Gara, John F. Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, John Molyneux, Gerald Bashaw, and Pepin Corso-Harris by and through Albert P. Barker of Barker, Rosholt & Simpson, LLP; and the Big Wood Canal Company by and through Craig D. Hobdey of Hobdey & Hobdey, hereby

STIPULATE and AGREE that the Protestants will withdraw their Protests on the aforementioned Permit and Transfers on the following conditions:

1. **Total Diversion Rates.** In the final permit, diversion rates from each water source shall be limited to no more than the diversion rate decreed for each right from each source.
2. **Measuring Devices.** The Applicant shall abide by any required measuring devices as required by the Idaho Department of Water Resources ("IDWR").
3. **Use of Supplemental Groundwater Rights.** For those groundwater rights decreed as supplemental to surface water rights, those groundwater rights will continue to be used as supplemental rights to existing primary surface water right(s). The following conditions are applicable:

- a. **Aesthetic and Wildlife Rights (37-22051, 37-22052 and 37-22533):**

"The wildlife and aesthetic uses described for this water right are subordinated to all existing and future consumptive use water rights from surface and ground water sources in Basin 37."

"The right holder shall make full beneficial use of all surface water rights available to the right holder for aesthetic and wildlife uses on the lands described above. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to provide for aesthetic and wildlife uses authorized under this right."

b. Irrigation Right 37-2492:

“The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.”

“This right is the primary right for the irrigation of 84.5 acres within the place of use described above.”

c. Irrigation Right 37-22050:

“The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.”

d. Irrigation Right 37-2538:

“The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.”

“This right is the primary right for the irrigation of 82.5 acres within the place of use described above.”

4. **Pumping of Groundwater Rights During the Non-irrigation Season.** The Applicant is free to pump from any groundwater right point of diversion during the irrigation season to the extent permitted by law. For the non-irrigation season, the Applicant shall not pump from any groundwater point of diversion. However, the Applicant, for all seasons, is free to maintain the point of diversion and well in any lawful fashion in order to maintain authorized flows. The following condition would be applicable to water rights 37-2492, 37-2538, 37-22050, 37-22051, 37-22052 and 37-22533:

“The right holder shall be able to pump from any ground water right point of diversion during the irrigation season to the extent permitted by law, but shall not pump from any ground water right during the non-irrigation season. The right holder is free to maintain any ground water point of diversion in any lawful fashion during any time of year in order to maintain diversion rates under this right.”

5. **Provide Plan for Use of Ponds.** Brockway Engineering shall provide a narrative on the use of the ponds

6. **Mitigation for Consumptive Use.** The Applicant agrees to dry-up fifteen (15) acres. The reduction in irrigated acres will be reflected in the permissible place of use shape file provided by the Applicant to IDWR, as required by IDWR. The following conditions would be applicable for water rights 37-180, 37-181, 37-231A and 37-233:

“15.0 total combined acres were agreed upon to be dried up under water rights 37-180, 37-181, 37-231A and 37-233 to account for consumptive use associated with the storage components of water right 37-22459.”

7. **Identification of Irrigated Area.** The water rights that are subject to these transfers contain combined use limitations. The Applicant agrees that these combined use limitations shall remain in the transfer conditions. The Applicant further agrees to provide to IDWR a shapefile indicating the intended irrigated acreage within the approved permissible place(s) of use for the water rights. If the Applicant changes the irrigated acreage, the Applicant shall provide IDWR with an amended shapefile.

8. **County Requirements.** The Applicant agrees to the following language:

“This permit and any associated transfers issued by IDWR do not supersede, amend or abolish any permits, conditions or applications previously issued or required by any other political subdivision or agency.”

9. **Idaho Department of Environmental Quality (“IDEQ”) Requirements.** The Applicants agree that all return flows shall satisfy any applicable IDEQ requirement. The applicable condition would be as follows:

“Return flows shall meet all IDEQ standards.”

10. **Surface Water Use (Black 61 and Flood 64).** For Blacks 61 (37-60; 37-61; 37-62; 37-63A; 37-64A; 37-66A; 37-67B, 37-68A; 37-230; 37-231B; 37-232; and 37-577AZ) and Flood 64 surface (37-69B; 37-70; 37-71B) water rights, surface water shall be used as the primary source for irrigation and AWR uses within the

permissible place of use. Surface water rights have a condition, which should be replaced with this *amended* condition including aesthetic and wildlife uses:

“Surface water from this right shall be used as the primary water source for irrigation, aesthetic, wildlife and recreation uses within the above-described places of use.”

11. **Surface Water Use (Black 61 only).** The Black 61 rights (37-60; 37-61; 37-62; 37-63A; 37-64A; 37-66A; 37-67B, 37-68A; 37-230; 37-231B; 37-232; and 37-577AZ) have a condition regarding the Coffin Decree, which shall remain unchanged and as follows:

“Delivery of water under this right shall be in accordance with the provisions of the Coffin Decree. Tom Hughes, et al. v. Mans H. Coffin, Fourth Judicial District of the State of Idaho in and for the County of Blaine, July 18, 1941.

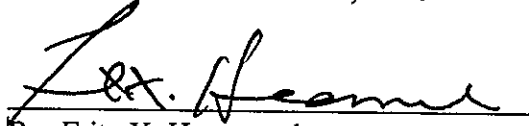
i. Pursuant to the Coffin Decree, water has been and is turned into the Base Line By-Pass whenever the flow in the river above the dry beds has diminished to the point where the capacity of the By-Pass is sufficient to carry the entire flow of the river.

ii. Pursuant to the Coffin Decree, water has been and is turned into the Extension By-Pass Canal whenever the flow in the river above the dry beds, as then delivered through the By-Pass Canal, is insufficient to supply the right with the priority of June 15, 1883, known as the Graf right, diverted in the Dry Beds below the By-Pass.

iii. Water is sometimes delivered through the Extension By-Pass when doing so will maintain delivery of other rights for a longer period of time without causing injury to any water user.”

(End of Stipulation, signature lines to follow)

HEART ROCK RANCH, LLC



By: Fritz X. Haemmerle

Dated: 1/20/11

**LAKESIDE INDUSTRIES, D/B/A WOOD RIVER RANCH, TOM O'GARA,
JOHN F. STEVENSON, BILL MOLYNEUX, PETE VAN DER MEULEN, GRACE
EAKIN, JOHN MOLYNEUX, GERALD BASHAW, AND PEPIN CORSO-
HARRIS**

By: Albert P. Barker

Dated: _____

BLAINE COUNTY



By: Timothy K. Graves, Chief Deputy
Prosecuting Attorney

Dated: 1/19/11

BIG WOOD CANAL COMPANY

By: Craig B. Hobdey

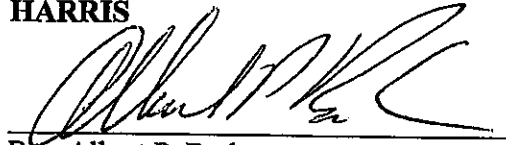
Dated: _____

HEART ROCK RANCH, LLC

By: Fritz X. Haemmerle

Dated: _____

**LAKESIDE INDUSTRIES, D/B/A WOOD RIVER RANCH, TOM O'GARA,
JOHN F. STEVENSON, BILL MOLYNEUX, PETE VAN DER MEULEN, GRACE
EAKIN, JOHN MOLYNEUX, GERALD BASHAW, AND PEPIN CORSO-
HARRIS**



By: Albert P. Barker

Dated: 1/19/2024

BLAINE COUNTY

By: Timothy K. Graves, Chief Deputy
Prosecuting Attorney

Dated: _____

BIG WOOD CANAL COMPANY

By: Craig B. Hobdey

Dated: _____

HEART ROCK RANCH, LLC

By: Fritz X. Haemmerle

Dated: _____

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By: Albert P. Barker

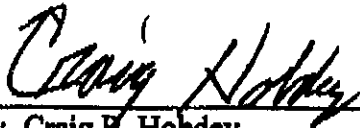
Dated: _____

BLAINE COUNTY

By: Timothy K. Graves, Chief Deputy
Prosecuting Attorney

Dated: _____

BIG WOOD CANAL COMPANY



By: Craig B. Hobdey

Dated: 1-19-11