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DEPARTMENT OF
WATER RESOURCES

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May 8, 2009

David Tuthill, Jr., Director
Idaho Department of Water Resources
322 East Front St.
P.O. Box 83720
Boise, ID 83720-0098

RE: Permit No. 37-07842

Dear Director Tuthill:

This office represents William Arkoosh, the Estate of Vernon Ravenscroft, Koyle Hydro, Inc., Notch Butte Hydro Company, Inc., as well as Shorock Hydro, Inc. William Arkoosh is the owner of WR No. 37-7943 and Permit No. 37-21297. The Estate of Vernon Ravenscroft is the owner of WR No. 37-7857, WR No. 37-7865, and WR No. 37-7922. Koyle Hydro, Inc., is the owner of WR No. 37-7889, and WR No. 37-7889. Notch Butte Hydro Company, Inc., is the owner of WR No. 37-8096, and WR No. 37-8251. Shorock Hydro, Inc., is the owner of WR No. 37-7863, WR No. 37-7911, Permit No. 37-8113, and Permit No. 37-8262.

My clients have received information that water may be diverted from the Little Wood River pursuant to Permit No. 37-07842 for purposes of recharge. Said permit is held by the Water Resources Board. My clients' water rights divert from the Little Wood River, or Malad River, downstream from the stated point of diversion of Permit No. 37-07842. Accordingly, my clients' may be injured by the proposed diversion for recharge.

Some background information may be helpful. An application was filed on July 2, 1980 seeking a permit to divert 800 cfs from the Little Wood and Big Wood Rivers for purposes of ground water recharge. The application denoted the point of diversion as the SW¼ of SE¼ of Section 24, Township 4 S, Range 19 E, located within Lincoln County. The application proposed diverting the water through the use of the Dietrich and Richfield canal systems. It should be noted that neither the Little Wood nor the Big Wood Rivers flow through Section 24, Township 4 S, Range 19 E, however, the Dietrich canal diverts from the Little Wood River in Section 25, Township 4 S, Range 19 E. The Department recognized these errors during an early review and made a note to the file indicating that the point of diversion on the application was in error, and that the point of diversion was actually SWSE - Section 25, Township 4 S, Range 19 E.

The application was incomplete as to the description of the proposed place of use, but did include a drawing indicating that the water would be diverted from the Little Wood River through the Dietrich Canal to the recharge site southeast of Richfield, Idaho. The published notice of application for water right clarified that the possible recharge sites were located within Sections 15, 16, 21, 22 and 28, Township 5 S, Range 19 E. The application indicated that five years was required for completion of the works and application of the water for recharge.

In a nutshell, the application sought a permit to divert water from the Little Wood River through the Dietrich Canal for purposes of recharge southeast of Richfield. The applicants filed another application on the same day seeking to divert water from the Snake River through the Milner-Gooding Canal for purposes of recharge northwest of Shoshone, Idaho. This other application was ultimately assigned Permit No. 01-07054. The existence of these dual applications seems to have caused some confusion during processing.

Application was approved on June 2, 1982, under Permit No. 37-07842, with a completion and submission of beneficial use deadline of June 1, 1987. A request for extension of time was submitted on June 1, 1987, which was returned by the Department to the applicant on July 16, 1987, for additional information. Ultimately, the Department approved the request for extension on October 4, 1989, extending the completion and proof of beneficial use deadline to June 1, 1992.

The Department sent a notice of proof of beneficial use due on March 31, 1992, providing notice that proof of beneficial use had to be submitted no later than June 1, 1992. Proof of beneficial use was not timely submitted and the Department sent a lapsed notice on June 5, 1992. The Department received proof of beneficial use on June 15, 1992. The proof of beneficial use indicated that a total of 300 cfs of surface water had been diverted from the Snake River. The Department returned the proof of beneficial use form to the applicants on June 15, 1992, stating that the proof was unacceptable. The Department further informed the permit holder that the permit was still lapsed, and that the priority date would be penalized one day for every day that the proof was not submitted. On July 9, 1992, the Department received a beneficial use field report regarding the permit, but did not receive the original proof of beneficial use form. The Department informed the permit holders that they could not continue licensing until it received the original proof of beneficial use form. On July 23, 1992, the Department again provided notice that they could not process the permit without an original proof of beneficial use form.

On July 27, 1992, the Department received the original proof of beneficial use form. However, the form had been amended with Permit No. 37-07842 being redacted and Permit No. 01-0705 added by interlineation. The proof of beneficial use, again, indicated a total of 300 cfs of ground water had been diverted from the Snake River. The beneficial use field report also denoted the source as the Snake River, provided a point of diversion different from the application, as well as different place of use. The beneficial field report also denoted that the water was diverted through the Milner-Gooding Canal and not the Dietrich Canal. The Department accepted the amended proof

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of beneficial use and beneficial use field report. The Department entered its order reinstating the permit and advancing the priority date to August 25, 1990 on the 29th day of July, 1992.

On further review, the Department determined that the beneficial use field report was not acceptable. The applicants provided an amended beneficial use field report on October 19, 1993. The Department determined that the amended beneficial use field report was still not acceptable and returned it to the applicants on October 21, 1993. On November 29, 1993, the Department received another amended beneficial field report denoting both Permit No. 01-07054 and Permit No. 37-07842 with a total diversion of 300 cfs. This time the beneficial use field report indicated the source as the Snake River/Big Wood River but did not include the Little Wood River. Also, the field report indicated a diversion point distinct from application or in Permit No. 37-07842. The Department entered a reinstatement order regarding both permits on December 1, 1993. The Department failed to advance the priority date in recognition of the continuing lapse.

There appears to be little activity in the file until 1999 when the permit holders were anticipating transferring legal ownership to the Idaho Water Resources Board. On March 19, 1999, the Idaho Water Resources Board agreed to accept assignment of the permits. In its review leading up to the acceptance of the assignment, the Department indicated that both Permit No. 01-07054 and Permit No. 37-07842 had filed proof of beneficial use for diversion rate of 300 cfs each. This is incorrect. As noted above, the Proof of Beneficial Use form, as well as the Beneficial Use Field Report indicated a combined total of 300 cfs, with the water coming from the Snake River via the Milner-Gooding Canal.

The conclusion that a total of 300 cfs from the Snake River had been put to beneficial use is supported by the Department's own internal review of the permits. A Memo to the file in October 1999 indicated that recharge under Permit No. 01-07054 from the Snake River through the Milner-Gooding Canal could be confirmed and the license for that has been prepared for signature. However, regarding Permit No. 37-07842 there did not appear to be any application toward beneficial use. Based on the Department's conversation with Dan McFadden of the Lower Snake River Aquifer Recharge District, no ground water recharge had ever taken place from the Little Wood River via the Dietrich Canal. Also, based on the Department's conversation with Paul Castelin of the Technical Services Bureau, no recharge from the Little Wood or Big Wood River had taken place prior to October 1999. The Department concluded that there has been no beneficial use to date and that the permit should be routed for extension or reinstatement processing. This conclusion was further supported by the correspondence from the Big Wood Canal Company and American Falls Reservoir District #2 of November 1999, which clarified that all recharge water from 1986 through 1995 was Snake River water delivered via the Milner-Gooding Canal.

Though the Department's file contains a proof of beneficial use form and beneficial use field report, which has not been withdrawn, and though the "undeveloped" portion of any permit reverts to the State of Idaho upon lapse, the Idaho Water Resources Board adopted a resolution asking the

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Director to extend the proof date regarding the "undeveloped" portion of the permit. An order was entered on April 3, 2000 extending the proof date for the permit until June 1, 2004. On August 25, 2004, the Idaho Water Resources Board again requested for an extension of time to submit proof of beneficial use resulting in another extension to June 1, 2009. In April, 2006 Idaho Water Resources Board applied to lease Permit No. 37-07842 to the Water Supply Bank in the amount of 800 cfs.

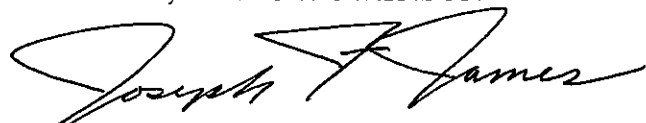
Based upon the foregoing, my clients intend to protest any proposed diversion of water, or further development of, Permit No. 37-07842, for the following reasons:

1. Water under Permit No. 37-07842 was not put to beneficial use in the prescribed period and lapsed;
2. To the extent water under Permit No. 37-07842, if any, was put to beneficial use in the prescribed period, the undeveloped portion lapsed and reverted to the State.
3. The Department cannot consider additional proof unless the initial proof of beneficial use is withdrawn upon a showing that the submitted proof under estimated the amount of water put to use in the prescribed period.
4. The Department did not actuarially advance the priority date of Permit No. 37-07842, either upon reinstatement, or in allowing further development.

I hereby request on behalf of my clients that you conduct an analysis based on the foregoing information prior to any further diversion, or development of, Permit No. 37-07842. Further, I hereby request notice of future decisions regarding the subject permit. Also, please advise if there are presently any administrative remedies available to my clients regarding diversion of, or development of, water under the subject permit.

If you have any questions, please feel free to give me a call.

Sincerely,
BROWN, JAMES & SWENSON



Joseph F. James

JFJ/lw

cc: clients

cc: Idaho Water Resources Board

cc: Philip Rassier