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DEPARTMENT OF
WATER RESOURCES

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

In the Matter of Transfer No. 76418, Water
Right No. 37-22121

**FLANIGANS' EXCEPTIONS TO TRANSFER
APPROVAL**

Applicant Chris and Jackie Flanigan (the "Flanigans"), through its attorneys Givens Pursley LLP, and pursuant to Idaho Department of Water Resources Rule 730(b), IDAPA 37.01.01.730(b), hereby files its Exceptions to the approval of Transfer No. 76418, Water Right No. 37-22121 dated June 21, 2010 (approval letter dated June 22, 2010) ("Transfer Approval").

The Transfer Approval approved the Flanigans' requested transfers of four water rights: 37-2168A, 37-2168C, 37-22121, and 37-22125. The Flanigans file exceptions only with respect to the transfer of Water Right No. 37-22121. The Flanigans respectfully request that the Director remove Condition No. 6 from the new water right.

Condition No. 6 states: "The water delivery system established in accordance with this right shall be fully enclosed and shall be equipped with an automatic shutoff valve or a mechanism for returning unused water to the source through an enclosed water system."

It appears that this condition may have been imposed pursuant to Idaho Code § 42-113(3)(a)(ii). Idaho Code § 42-113 provides a streamlined alternative to transfers under Idaho Code § 42-222. It is specifically designed for changes from instream stockwater rights to off-stream stockwatering. This section is not applicable here because the Flanigans pursued a formal transfer pursuant to Idaho Code § 42-222.

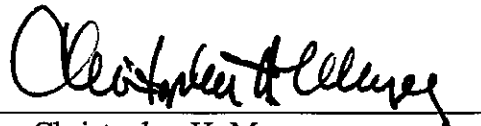
Moreover, the condition is not practical or reasonable under the circumstances. This is not a traditional off-channel diversion for stockwater as envisioned in Idaho Code § 42-113. Instead, this right involves diversion of spring water through a system involving a cistern and a combination of underground piping and above-ground channels leading to an artificial pond. From the pond, some water is further diverted to a stock tank. Stockwatering occurs at various places, including the above-ground channel, the pond, and the stock tank. All of this was fully disclosed in detail in the application and in discussions with IDWR staff. Notably, to the extent this water would not be diverted from the spring, it would end up in the same place: the pond (which occasionally overflows into another small pond which seeps into the ground). In other words, the spring water follows the same basic path that it did historically before any diversion from the spring. Accordingly, adding additional controls is unnecessary to protect other water rights.

DATED this 6th day of July, 2010.

Respectfully submitted,

GIVENS PURSLEY LLP

By


Christopher H. Meyer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of July, 2010, the foregoing was filed, served, or copied as follows:

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