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OCT 23 2009

DEPT. OF WATER RESOURCES
SOUTHERN REGION



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October 23, 2009

Idaho Department of Water Resources
Attn: Jeff Peppersack
P.O. Box 83720
Boise, Idaho 83720-0098

RE: *Water Permit No. 47-8246-Johnny and Ginny Sudik*

Dear Mr. Peppersack:

This letter is written in response to your letter to me on the above referenced matter dated October 6, 2009.

As I suggested would happen in our recent telephone conversation, Brian Higgs, on behalf of my clients, Johnny and Ginny Sudik, has filed in the Twin Falls IDWR Regional Office a new application for transfer. Mr. Higgs has been working with Jim Stanton with regard to the transfer application and by this letter I am asking Mr. Stanton to send you a full copy of the filed application if he has not already done so.

If approved, the transfer will create a new water right for Mr. and Mrs. Sudik's dairy in Twin Falls County with a currently requested volume of 113 afy. This volume is based on an analysis of Brockway Engineering done many years ago and is now being reviewed. If the review indicates additional volume is necessary for the dairy operations, the application for transfer will be amended. Upon an order being entered approving the transfer and becoming final and nonappealable, existing Water Permit No. 47-8246 could be cancelled.

In order that you may have a more complete picture of the circumstances regarding the situation described in your October 6th letter, there are additional facts that you should be aware of. Initial knowledge of the necessity for a permit caused the Sudiks to file their Application for Water Permit No. 47-8246 on July 19, 1990. Pursuant to a Notice of Violation issued by IDWR on March 13, 1996, a mitigation plan for the water permit, developed with the assistance of Brockway Engineering, was forwarded to IDWR on January 26, 1997. An Agreement and Consent Order between IDWR and the Sudiks involving the Notice of Violation was entered

into on the 13th and 14th of March, 1996. The mitigation plan required by the Agreement and Consent Order took the form of recharge utilizing Twin Falls Canal Company shares owned by the Sudiks at a recharge pond dug on Sudik Dairy property. The mitigation plan was approved by IDWR on December 10, 1997. Water Permit No. 47-8246 was issued on January 14, 1999. Mr. Sudik constructed the necessary recharge pond on his property in anticipation of the agreement with the Twin Falls Canal Company allowing the use of the recharge pond with shares of Twin Falls Canal Company stock owned by the Sudiks. He spent over \$40,000 in construction and engineering fees in that regard. The agreement between the Sudiks and the Twin Falls Canal Company allowing the Sudiks to use 28.5 shares of Twin Falls Canal Company stock for mitigation for groundwater pumping at the recharge pond constructed on the Sudik property was signed January 7, 2000.

Despite the agreement of January 7, 2000, the Twin Falls Canal Company, in the spring of 2000, decided that there were reasons it did not want its shares being used for recharge at the Sudik site, or at any site. This was a departure from what was contemplated by the agreement. A Petition to Modify Permit Condition, dated April 23, 2000, was drafted by John A. Rosholt on behalf of the Twin Falls Canal Company and agreed to by the Sudiks. The petition sought to modify Permit No. 47-8246 by permitting mitigation through leaving 113 acre feet of surface water attributable to the Twin Falls Canal Company shares in the Twin Falls Canal system as mitigation. After an order was entered modifying the permit accordingly, extensions of the right to leave the Twin Falls Canal Company shares in the canal as mitigation were filed and approved as described in your letter.

Discussions continued with the Twin Falls Canal Company about alternative mitigation measures throughout all the above. The Twin Falls Canal Company continued to consider alternative mitigation plans that might be acceptable to it and the Sudiks, including the possibility of utilizing the recharge pond originally constructed after all. It was not until the summer of 2008 that it became clear that the final position of the Twin Falls Canal Company was that the recharge pond could not be used under any circumstances. The Twin Falls Canal Company had no new mitigation measures to suggest at that time, other than leaving the Twin Falls Canal Company shares in the canal, which was not acceptable to IDWR.

The Sudiks, while fully complying with the requirement to leave Twin Falls Canal Company shares in the canal, also looked for groundwater sources suitable for transfer to their dairy site as a means to permanently address the problem. Despite making many inquiries to area landowners with groundwater rights and with persons who act as "finders" for suitable water for the type of transfer required by Mr. Sudik, no suitable water source for transfer with a willing party was located until recently. That water source is the subject of the application for transfer recently filed.

The approval of the currently pending transfer application will solve the legality of the stock water and commercial water issues at the Sudik dairy by providing the necessary amount of water to fulfill the dairy's needs. Because of the history of this matter and the Sudiks' continual compliance with their nonuse of Twin Falls Canal Company shares left in the canal as mitigation, coupled with the inability to implement the original approved mitigation plan through no fault of the Sudiks, your further consideration is requested. It is respectfully requested that, during the pendency of the recently filed transfer application, no further mitigation be required with respect to Water Permit No. 47-8246, other than leaving the twenty-eight and one-half (28½) shares of Twin Falls Canal Company water in the Twin Falls Canal Company system as has been done in the

past. The Sudiks agree to diligently pursue the pending application for transfer to its completion. I look forward to your response.

Very truly yours,

WILLIAMS, MESERVY & LOTHSPREICH, LLP

A handwritten signature in black ink, appearing to read 'R. Williams', with a long horizontal line extending from the end of the signature.

ROBERT E. WILLIAMS

REW/bsb
Encl.
c. Client
Jim Stanton
Idaho Department of Water Resources
Brian Higgs
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