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July 17, 2009

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RE: Application for Transfer; Right Number 65-02590B, 0.08 cfs

To whom it may concern:

We are submitting the enclosed Application for Transfer of our water right to a point of diversion upon our property. The current point of diversion is located across the highway and on the Payette River. We are seeking to maintain our senior water right through direct connection with our present source. Please reference the Shepherd Application Ident No. 65-22885. Portions of the Shepherd's file are enclosed for your review.

A brief history of the sequence of events surrounding the small Riverview Manor Homeowner's-Irrigation Association:

Montgomery's subdivided in approximately 1996-1997, and developed several home sites, eventually consisting of five (5) individual property owners and parcels. (See Record of Survey Map, Instrument No. 196264, in the records of the Gem County Recorder, Gem County, Idaho). The Irrigation agreement establishing use and maintenance of the system was accepted by all of the original property owners at the time of purchase and/or closing.

In April of 2002, Petersons (Lot 4 & 5 within the Record of Survey) applied for a transfer of diversion, Transfer No. 69909, with Petersons no longer using the Homeowner's common irrigation system. The main line for the irrigation association and the point of diversion remained upon the Peterson property but we were not aware of their intentions to deny other members the use and access in the future.

In April of 2004, Shepherds (Lot 2 within the Record of Survey) filed an Application for Permit to drill a supplemental irrigation well upon their property, Ident No. 65-22885. It appears from the record that a supplemental well was their original intent, but as a result of the IDWR response, Shepherds amended their application, leading up to the present mitigation.

Immediately, once Shepherd's were approved alternative means of irrigation in 2005, Peterson's constructed a fence over the historical access to the pump and denied the remaining three (3) property owners access to the pump for irrigation and filed a lawsuit in the Gem County District Court. Shepherds argued that they had no obligation to maintain the irrigation mainline that ran across their land, and together with the Petersons, effectively denied us use by keeping the riser on their property open and diverting water.

If we had any reason to believe that we would be denied access to our irrigation water as a result of Petersons and Shepherds obtaining their own private source, we would have protested at that time.

The Holden property, (Lot 3 within the Record of Survey) transferred ownership to the Garrett Group I Project, in March of 2006. It appears from the Well Driller's Report No. 414834, Garrett Group I, represented by Heritage Lands LLC/Rod Ralphs Attorney for the Garrett Group, had a "test well" drilled on 12/28/06. After closer review of this Report, the dates and sequence of events simply don't make sense.

Because of this well the owners of Lot 3 have seemingly secured their private source for irrigation, leaving us as the only remaining party from the original irrigation association, without a source of irrigation water.

The Gem County, District Judge has recently ruled that no easements exists, leaving us without access to the current point of diversion. Therefore, by the courts ruling, we are left with no alternatives other than apply for a transfer of our present right, in order to receive irrigation water and to maintain our original senior right.

Enclosed please find the Application for Transfer and the following Exhibits to this letter:

- A: Recommendation of Watermaster, dated March 20, 2005, consisting of 1 page.
- B: Memorandum from Shelley W. Keen dated April 29, 2005, consisting of 1 page.
- C: E-mail from Shepherds to Shelley W. Keen, dated May 2, 2005, consisting of 1 page.
- D: Memorandum from Shelley Keen dated May 3, 2005, consisting of 1 page.
- E: Amendment of Permit, NO. 65-22885 (showing priority date of 1954) dated May 4, 2005, consisting of 2 pages.
- F: Memorandum from Shelley Keen dated May 5, 2005, consisting of 1 page.
- G: Comments page taken from IDWR file for 65-2590, consisting of 1 page.
- H: Letter from Mike and Linda Mihalka to Watermaster Ron Shurtleff, dated December 8, 2008, consisting of 2 pages.

I: Letter from Mike and Linda Mihalka to Watermaster Ron Shurtleff dated November 12, 2007 consisting of 2 pages.

J: E-mail to the Director of the IDWR, David Tuthill, dated July 30, 2007 consisting of 2 pages.

K: Letter from John Westra IDWR, dated July 31, 2007 consisting of 2 pages.

Also enclosed, please find a check in the amount of ONE HUNDRED DOLLARS (\$100.00), for the Transfer Fee.

As you can see from the lengthy documentation, we have been deprived of our irrigation far too long. We would greatly appreciate any assistance that could possibly expedite this process and afford us drilling our well for irrigation as soon as possible.

We look forward to hearing from an Idaho Department of Water Resources official, at their earliest convenience.

Sincerely,


Mike and Linda Mihalka

cc: Jan.Shurte@idwr.idaho.gov