

September 8, 1998

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To: Steve Lester
Idaho Department of Water Resources

Fax: 334-2348

From: Kenley Hinrichs

Re: Response to your letter dated July 31, 1998

Mr. Lester,

You sent a letter to my wife, Lisa O'Toole and myself dated July 31, 1998 concerning our protests of the Fease/Ellensohn applications for water rights. You stated that while our concerns were "well articulated and thoroughly discussed" at the July 14, 1998 meeting, the protests of 63-12459 and Transfer #5284 would be enhanced if we documented our concerns in writing. Pursuant to Section 42-203A and 42-222 and to respond to your request, please supplement our protests of Permits 63-12459 and Transfer #5284 with this letter. We reserve the right to provide additional supplements to our protests pursuant to 42-203A and 42-222.

At the July 14, 1998 meeting, we attempted to provide you with documentation at that time and you refused to accept it. I am not entirely certain what information you are now seeking - that documentation, our notes from the July 14, 1998 meeting or something else. However, the following text is a brief outline taken from my notes of the discussions we had at the July 14, 1998.

- 1) On July 14, 1998, Lisa and I met with Steve Lester of IDWR at IDWR offices located by the airport.
- 2) Mr. Lester, Lisa, and I discussed the recent letters we had received from IDWR and the public notice in the Idaho Statesman.
- 3) Mr. Lester provided us with some of the details of the following water issues -
 - a) 63-12459: Application for a non-consumptive storage water right.
 - b) Transfer #5284 - Ballentyne Ditch Co.
 - c) A63-30484: SRBA Clarification of claim.
 - d) A63-30485: SRBA Grandfather filing of previously un-filed claim.
- 4) We showed Mr. Lester a series of photographs we have taken and discussed the photos.
- 5) We discussed several unfounded allegations made by Tim Fease, Kathy Ellensohn and Dave and Beverly Pillot and the potential damage these false allegations may have on the applications for water rights.
- 6) We discussed in some detail, the water issues, photos, and false allegations.
- 7) We discussed the process of protesting the water right applications and the Snake River Basin Adjudication claims.

At the time we met, you provided us with an explanation of the four water right issues with the information as you understood it. However, you indicated that you did not fully understand the applications and did not have all of the details with respect to the applications. Therefore, part of our protest is in part, an effort to remove any ambiguities and to obtain specific details of the actual implementations. You agreed that this is something that the applicants should address and provide supplemental information.

We discussed, in general, our concern that the proposed permit applications are in not in the public interest as the proposed uses interfere with the level of water in the "system" (i.e. down stream ponds and conveyances). Mitigation of this interference was not addressed in the applications. Further, you could not provide us with any specific details of their plans. Again, you agreed that the applicants should address this issue and provide supplemental detailed information.

We discussed our concern that the proposed applications damage and interfere with our interest in our non-consumptive water right application pending before the IDWR. The proposed permit applications could create additional drainage to our property not addressed by applicants. In fact, the applicants have

Supplemental protest info for T. 5284 / Ballentyne Ditch Co.
and
63-12459 \ FEASE

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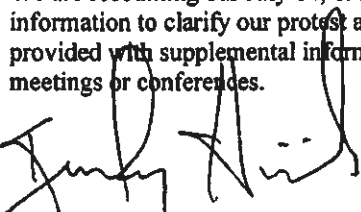
protested our permit application primarily because of the lack of drainage. This is clearly a contradiction that the applicants should address and clarify. Additionally, because the water quickly drains from their pond downstream, pumping water from their pond once it has drained away causes draw downs to our pond and other downstream ponds. We also believe that the proposed permit applications do not accurately reflect the volume and use of water by applicants nor the detrimental effects to our and other's interest for year-round consumptive use.

We discussed our concern that applicants may block or otherwise restrict water flow to our pond in order to retain, to the extent possible, the water in their pond and would not be consistent with historically free flowing water. Again, this could have the effect of drawing down our pond by eliminating or reducing a water source to our pond. You did not have any information concerning this issue. Again, applicants should address this issue and provide supplemental detailed information.

We also discussed evidence of apparent violations of water use by Fease/Ellensohn with respect to the directives stated in the IDWR letters dated August 7, 1997 and October 31, 1997. We showed you photos of Fease/Ellensohn sprinkling water in the nursery outside of the irrigation season and outside of the 24-hour window provided for in your letters. You could not provide us with details of the source of water for this use. Further, you had no information of the volumes of water being placed in the pond, from what sources, or the volume of water being pumped from the pond and when it was being pumped. Again, applicants should address this issue and provide supplemental detailed information.

We also discussed a series of photos taken of the irrigation head gate/check box located roughly at the center point on the east side of our property. You indicated that Fease/Ellensohn and Pillott's have represented to you and others that we altered this head gate to prevent water flow. The photos clearly show that water does indeed flow from this head gate/check box. Again, you had no explanation why these false representations had been made. Again, applicants should address this issue and provide supplemental detailed information. We are extremely concerned of the potential impact of this and other false allegations and misrepresentations made by Fease/Ellensohn and Pillott's and the impact they may have on our and/or applicant's water right applications.

We are recounting our July 14, 1998 meeting with you to memorialize our concerns and to provide further information to clarify our protest as you requested in your July 31, 1998 letter. We would prefer to be provided with supplemental information concerning the applications prior to the scheduling of any further meetings or conferences.



Kenley Hinrichs