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Attorneys for
South County Estates, LLC

COPY

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AUG 24 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 73969

ROBERT ROHE,

Applicant

**SOUTH COUNTY ESTATES
PROTEST AND PETITION FOR
HEARING ON TRANSFER
APPROVAL NOTICE**

COMES NOW South County Estates, LLC (hereinafter "Petitioner" or "South County"), by and through its attorney James R. Laski, Lawson Laski Clark & Pogue, PLLC, pursuant to Idaho Code § 42-1701A(3) and IDAPA 37.01.01.230 and hereby files this Protest and Petition for Hearing regarding the Idaho Department of Water Resources' ("IDWR") issuance of Transfer Approval Notice Transfer No. 73969 on August 7, 2009. The initial basis for Petitioners' protest and petition are as follows:

1. The transfer includes the following condition, numbered 3 (three) which states:

To prevent injury to water rights 37-7919 and 37-8307 held by the Water Resource Board for minimum stream flow on the Big Wood River the 0.02 cfs allowed for irrigation use from ground water authorized by transfer 73969 shall be subject to curtailment 3 days after flows at the Hailey gauge drop below 189 cfs or curtailed by priority, which ever occurs first. The Director retains jurisdiction to modify the condition of use authorized by transfer 73969 to prevent injury to

other users as may be required based on future studies or the addition of gauges on the Big Wood River.

2. The transfer includes the following condition, numbered 4 (four), which states:

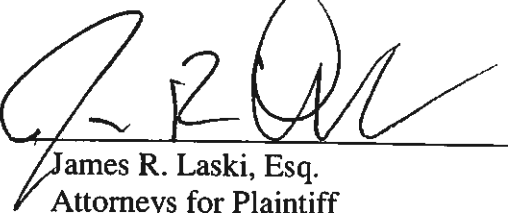
The 0.06 cfs portion of this right listed as mitigation use shall remain undiverted to compensate for the evaporation losses necessary to maintain the pond authorized under right 37-22385 and to mitigate potential injury to rights 37-7919 and 37-8307.

3. The above referenced conditions should be removed because the requirements: (1) amount to a taking without just compensation in violation of Art. XV, § 3, and Art. 14, § 1, of the Idaho Constitution as well as Art. 5, of the United States Constitution; (2) prohibit the ability of prior appropriators to divert water under "first in time, first in right" in violation of Art. XV, §§ 3, 4 and 5, of the Idaho Constitution; (3) contravene the enabling legislation for minimum stream-flows as set forth under Chapter 15, Title 42; (4) lack precedence; (5) are unnecessary to protect the minimum stream-flow rights; (6) may have precedential effect which would impact the viability of future upstream water right transfers along the Wood River, including water rights held by Petitioner; and (7) deny Petitioner equal protection under law.

4. The Petitioner hereby requests a hearing before the Director to contest the foregoing conditions to the transfer as issued pursuant to Idaho Code 42-1701A(3). In requesting a hearing to preserve its rights in this matter, the Petitioner expressly reserves the right to proceed in other forums as appropriate.

DATED: August 21, 2009

LAWSON LASKI CLARK & POGUE, PLLC

By: 

James R. Laski, Esq.
Attorneys for Plaintiff
South County Estates, LLC

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2009 I served a true and correct copy of the foregoing document **PROTEST AND PETITION FOR HEARING**, by email and/or mail:

ALLEN MERRITT
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301
Allen.merritt@idwr.idaho.gov

ROBERT ROHE
PO Box 2288
Ketchum, ID 83340

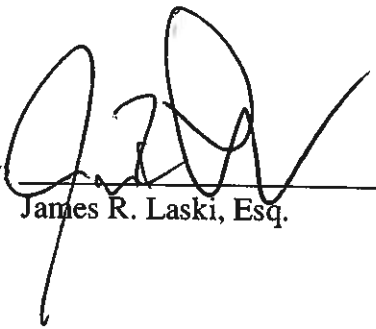
FISHER & ASSOCIATES
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Missoula, MT 59802

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DIRECTOR
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83702
Boise, ID 83724

By


James R. Laski, Esq.

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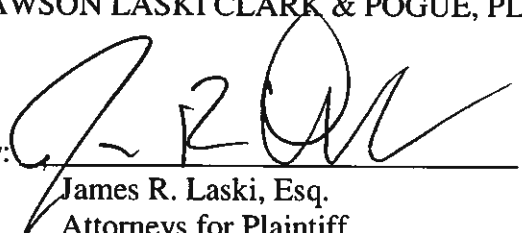
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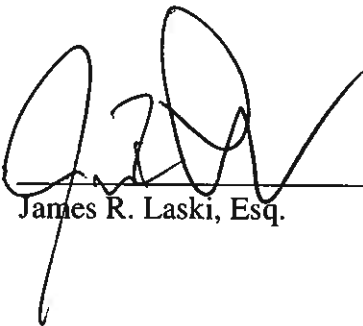
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James R. Laski, Esq.