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RECEIVED
MAY 07 2009
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Attorney for Protestant BWCC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 74871)
)
THE HARRY and DIANE RINKER)
REVOCABLE TRUST,)
)
Applicant)
_____)

SOURCE: Groundwater(?)

**RESPONSE TO PETITION FOR
RECONSIDERATION OF
PRELIMINARY ORDER**

COMES NOW, Big Wood Canal Company, Protestant, through its attorney, Craig D. Hobdey, Hobdey Law Office, and responds to Applicant's Petition for Reconsideration of Preliminary Order dated April 16, 2009.

1. In his Petition for Reconsideration Applicant indicates groundwater as the source. If indeed groundwater is the source, flood irrigation should never be allowed. Therefore the one inch per acre and 3.5 afa is appropriate.

2. I attach a copy of The Idaho Department of Water Resource's Preliminary Recommendation for Water Right No. 37-113K. Under the quantity remark it indicates as follows:

"This right when combined with all other rights shall provide no more than 3.5afa per acre at the field headgate for irrigation of the lands above."

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This remark comports with the afa remark on the approved transfers.

3. Idaho Code §42-220 provides:

“...no such license or decree of the court allotting such water shall be issued confirming the right to the use of more than 1 second foot of water for each 50 acres of land so irrigated, unless it can be shown to the satisfaction of The Department of Water Resources granting such license, and to the court making such decree, that a greater amount is necessary, and neither such licensee nor anyone claiming a right under such decree, shall at any time be entitled to the use of more water than can beneficially applied on the lands for the benefit of which such right may have been confirmed.”

4. There has been no showing that a greater amount than 1 inch (.02 cfs) per acre is necessary for the irrigation of the lands upon which the transfer has been made appurtenant.

5. Paragraph 4 of the Conditions of Approval of the Preliminary Order gives applicant the full benefit it sought via the transfer application and agreed to the transfer in the application process.

CONCLUSION

6. The Idaho Department of Water Resources should confirm its Preliminary Order dated April 16, 2009 as originally issued.

DATED THIS 6 May, 2009.

HOBDEY LAW OFFICE, PLLC

By: Craig D. Hobdey
Craig D. Hobdey
Attorney for Protestant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6 day of May, 2009, I served a true and correct copy of the foregoing RESPONSE TO PETITION FOR RECONSIDERATION OF PRELIMINARY ORDER by the method indicated below and addressed to the following:

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U.S. Mail

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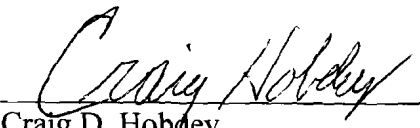
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