Merritt, Allen

From: Albert Barker [apb@idahowaters.com]
Sent: Saturday, October 18, 2008 3:04 PM
To: Ed Lawson; Merritt, Allen; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam; David Alexander; Peppersack, Jeff
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Allen-
I am fine with Ed's suggested change.

Albert P. Barker
Barker Rosholt & Simpson LLP
(208) 336-0700

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From: Ed Lawson [mailto:eal@lawsonlaski.com]
Sent: Friday, October 17, 2008 11:06 AM
To: Merritt, Allen; Albert Barker; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam; David Alexander; Peppersack, Jeff
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Allen and Al,

We propose to add the term "material" to the second to last sentence which would then read as follows:

Prior to any material change to the #### acres to be irrigated within the 474 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to IDWR.

Let me know if this is acceptable.

Edward A. Lawson
Lawson & Laski, PLLC
675 Sun Valley Road, Suite A
P.O. Box 3310
Ketchum, ID 83340
Tel. 208 725-0055
Fax 208 725-0076

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From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Friday, October 17, 2008 8:06 AM
To: Albert Barker; Ed Lawson; charles.g.brockway@brockwayeng.com

Cc: Skaggs, Pam; David Alexander; Peppersack, Jeff
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Albert and Edward:

Since IDWR's proposed condition does not include the "material change" language apparently desired by both parties you are invited to edit IDWR's proposed condition and submit for our review.

Thanks,

Allen

From: Albert Barker [mailto:apb@idahowaters.com]
Sent: Thursday, October 16, 2008 6:00 PM
To: Ed Lawson; Merritt, Allen; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam; David Alexander; Peppersack, Jeff
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Allen-

We have no objection to inserting a statement to the effect that a new shape file will be submitted when there is a "material change". I agree that it is undefined, but it is a standard legal term, that the Department, it lawyers and a court if necessary could apply to a particilar set of facts. The Department doesn't want a new shape file everytime a minor, insignificant realignment of a boundary or rerouting of a road in the property takes place.

Albert P. Barker

From: Ed Lawson [mailto:eal@lawsonlaski.com]
Sent: Thu 10/16/2008 3:04 PM
To: Merritt, Allen; Albert Barker; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam; David Alexander; Peppersack, Jeff
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Allen,

As you may recall from the settlement conference, "material change" was not defined. It is however a common standard which is dependent on the facts and circumstances surrounding the change in question. I believe this flexible standard is preferable to an explicit definition. It allows the water right holder and the IDWR to judge the change against specific circumstances.

As you perhaps recall the requirement to amend the shape map was proposed by the Concerned Water Users in order to assist the water master in the administration of the right. My client was opposed to the requirement regarding updating a shape map for the PPU reasoning it served no beneficial purpose and its rights should be not be more burdened than any other. It only agreed to the requirement when Mr. Barker accepted the materiality condition.

We are not seeking to make this into a cause celeb, but If we are unable to have the note reflect the terms of the stipulation then we may need to meet and confer.

Edward A. Lawson

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From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Thursday, October 16, 2008 1:33 PM
To: Ed Lawson; Albert Barker; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam; David Alexander; Peppersack, Jeff
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Edward,

As you know your settlement agreement indicates that: " Applicant will prepare and submit to IDWR, a plan identifying the acres to be irrigated within the Permissible Place of Use ("PPU"), and shall submit a revised plan to IDWR, when material changes are made in the identified acres to be irrigated within the PPU."

As you know IDWR proposed the following condition to be placed on each subject right to fulfill this agreement: "This right is limited to a specific #### acres with the 474 acre place of use authorized through approval of Transfer 73856. The specific #### acres to be irrigated by the right holder shall be identified prior to use by submittal of a land list and a representative electronic shape file or map sufficient to allow creation of an electronic shape file to be associated with this right in the Department's Geographic Information System database. Prior to any change to the #### acres to be irrigated within the 474 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to IDWR. Notification of the change shall be accomplished prior to the irrigation season in which the change will occur."

I understand you view our proposed condition lacks a materiality standard. Please explain what the materiality standard is that the parties agreed to in resolving the protests and we will attempt to incorporate your agreed on material standard into the condition. What is meant by "material changes"?

I will await your response.

Thanks,

Allen

From: Ed Lawson [mailto:eal@lawsonlaski.com]
Sent: Thursday, October 16, 2008 11:55 AM
To: Albert Barker; Merritt, Allen; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam; David Alexander
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Allen,

Croy Creek views the order as deficient because of the lack of a materiality standard as set forth in the stipulation.

Edward A. Lawson
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From: Albert Barker [mailto:apb@idahowaters.com]
Sent: Tuesday, October 07, 2008 11:54 AM
To: Merritt, Allen; Ed Lawson; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam
Subject: RE: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

My review of condition X27 is that it is consistent with the agreement and stipulation and Objector has no objection to issuance of the final order with the conditions described.

Albert P. Barker
Barker Rosholt & Simpson LLP
(208) 336-0700

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From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Tuesday, October 07, 2008 7:28 AM
To: eal@LawsonLaski.com; Albert Barker; charles.g.brockway@brockwayeng.com
Cc: Skaggs, Pam
Subject: Croy Creek Properties LLC conditional withdrawal of protests for Transfers 71652, 73854, 73855 and 73856

Gentlemen:

Our office has reviewed the "Stipulation and Withdrawal of Protest" for the above referenced transfers. We have conformed your agreement into a condition of approval that the department has used in the past on other similar situations and finds acceptable. Attached are condition reports for the four water rights involved in these transfers. Please specifically note the second paragraph or condition which I believe captures your intent. Please let me know if these conditions are acceptable. I will issue a preliminary order of approval in 14 days if I do not hear otherwise.

Respectfully,

Allen Merritt

<<T73856ConditionsReport.RTF>> <<T71652ConditionsReport.RTF>> <<T73854ConditionsReport.RTF>>
<<T73855ConditionsReport.RTF>>