

Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
113 Main Ave. West, Suite 303
P.O. Box 485
Twin Falls, Idaho 83303-485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Intervenor Lisa Vierling

RECEIVED
MAY 23 2008
DEPT. OF WATER RESOURCES
SOUTHERN REGION

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT NO.
37-8388 IN THE NAME OF STEVEN D.
REUTHER

)
)
)
)
)
)
)
**AFFIDAVIT OF TRAVIS L.
THOMPSON**

STATE OF IDAHO)
)ss.
County of Twin Falls)

TRAVIS L. THOMPSON, being first duly sworn upon oath deposes and states as follows:

1. I am one of the attorneys of record providing legal representation to Lisa Vierling in the above captioned matter. I am over the age of 18 and have knowledge of the files pertinent to this matter, and I make this affidavit based upon personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of my June 21, 2001 letter to Steven D. Reuther.

3. Attached hereto as **Exhibit B** is a true and correct copy of the Department's

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of May, 2008, I caused to be served a true and correct copy of the foregoing *AFFIDAVIT OF TRAVIS L. THOMPSON* by the method indicated:

By Hand Delivery:

Allen Merritt
Regional Manager
Southern Region
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380

By U.S. Mail, postage prepaid:

James P. Speck
Speck & Aanestad
120 East Avenue
P.O. Box 987
Ketchum, Idaho 83340

Attorneys for SDRTR, LLC


Travis L. Thompson

October 10, 2002 *Order to Cause* in the matter identified.

4. Attached hereto as **Exhibit C** is a true and correct copy of email correspondence with Allen Merritt and Jim Speck, including my April 28, 2003 email to Allen Merritt.

5. Attached hereto as **Exhibit D** is a true and correct copy of Allen Merritt's August 28, 2003 letter.

6. Attached hereto as **Exhibit E** is a true and correct copy of my January 17, 2005 letter to Allen Merritt.

7. Attached hereto as **Exhibit F** is a true and correct copy of Allen Merritt's January 25, 2005 letter to me.

8. Attached hereto as **Exhibit G** is a true and correct copy of my May 9, 2008 letter to Allen Merritt.

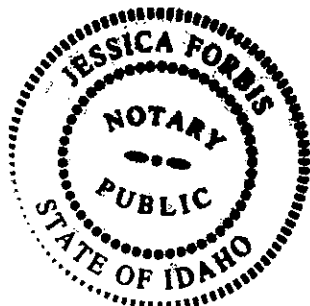
9. Attached hereto as **Exhibit H** is a true and correct copy of Allen Merritt's May 16, 2008 letter to me.

DATED this 23rd day of May 2008.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

SUBSCRIBED AND SWORN to before me this 23 day of May 2008.



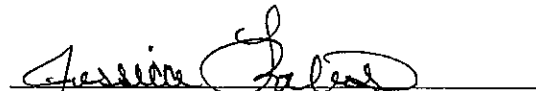
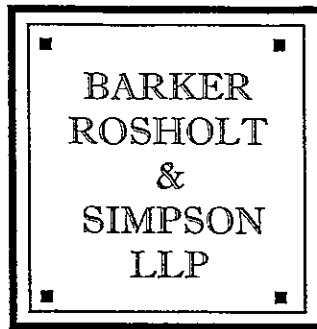

Notary Public for Idaho
Residing at: Twin Falls
Commission Expires: 4/3/12

Exhibit A

*John A. Rosholt
Albert P. Barker
John K. Simpson
Amy D. Chestnut
Travis L. Thompson*



1221 West Idaho Street, Suite 600
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

142 3rd Avenue
Post Office Box 1906
Twin Falls, ID 83303-1906
(208) 734-0700 telephone
(208) 736-0041 facsimile
shs@idahowaters.com

Travis L. Thompson
tlt@idahowaters.com

June 21, 2001

Mr. Steven D. Reuther
10772 Chalon Rd
Los Angeles, CA 90077

Dear Mr. Reuther,

I am writing this letter on behalf of Lisa Vierling and Michael Stonebeck regarding their water right no. 37-12084 (domestic right for .04 cfs) and your recent actions associated with your water permit no. 37-8388.

Ms. Vierling and Mr. Stonebeck recently noticed that you have drilled several well sites to prove up your permit no. 37-8388 in the vicinity of their water right diversion. The source of Ms. Vierling's and Mr. Stonebeck's water right is gravity fed geothermal water from Warfield Hot Spring located on your property delivered through an underground pipeline. Ms. Vierling and Mr. Stonebeck use this water to heat and cool their home. They are concerned about the possibility of injury to their water right due to your proposed diversion.

As a corollary to this water right, Ms. Vierling and Mr. Stonebeck have acquired a right of way across your property pursuant to state law, Idaho Code § 42-1103, necessary for its use. In addition to noting the construction activity regarding your water right, they have noticed that a stone wall has been constructed directly over a portion of their pipeline. The pipeline has already been damaged once and repaired by the company performing the construction work. Mr. Stonebeck is concerned about the ability to perform future repairs on this pipeline due to the location of the stone wall.

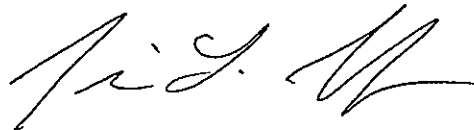
This letter serves as notification of that right of way and to assure that any action taken by you in connection with the construction of your diversion works does not interfere with, or obstruct, the delivery of water to Ms. Vierling and Mr. Stonebeck's home. Ms. Vierling and Mr. Stonebeck do not object to your ability to divert water from Warfield Hot Spring, but only seek to protect their interests and the ability to continue to use their previously acquired water right.

Mr. Steven Reuther
June 21, 2001
Page - 2

Please contact me at (208) 336-0700 if you have any questions.

Very Truly Yours,

BARKER, ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read "T.L. Thompson", with a stylized flourish at the end.

Travis L. Thompson

cc: Michael Stonebeck
Jim Stanton, IDWR Southern Regional Office

Exhibit B

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF COMPLAINT BY JAY PACE)
ALLEGING ILLEGAL WATER USE ON LANDS)
OWNED OR CONTROLLED BY LISA VIERLING)
_____)

**ORDER TO
SHOW CAUSE**

The Director of the Department of Water Resources (department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the state of Idaho and the rules promulgated by the department, and being authorized to order the cessation of violations or apparent violations of the provisions of the law relating to the appropriation, distribution and use of water makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On August 31, 1989 Lisa Vierling &/or Mark Hankinson filed a claim in the Snake River Basin Adjudication alleging or claiming a water right for domestic, heating and recreation uses from water diverted from Warfield Hot Springs tributary to Warm Springs Creek for uses on land locally known as Crony Cove. The claim indicates the water uses have a priority of January 1, 1900. The claim has been numbered 37-13054 in the department's records.
2. On September 12, 1988 D. L. Pace filed a claim in the Snake River Basin Adjudication alleging or claiming a water right for domestic purposes of an artesian spring tributary to Warm Springs Creek. The claim indicates the water use has a priority of January 1, 1900. The claim has been numbered 37-11296. This claim has been amended and currently is in the name of Jay Pace and claims the entire flow of the spring (0.50 cfs) for heating, domestic and recreation uses.
3. On September 23, 2002 the department received a written complaint from James Speck, attorney for Jay and Suzi Pace, alleging that the Lisa Vierling water use from Warfield Hot Springs was established in 1989 in violation of the mandatory permit requirement for establishing a surface water appropriation and further demanded that the department pursue a civil enforcement action pursuant to Sections 42-351 and 42-1701(B) of the Idaho Code to protect his client's interest in the use of Warfield Hot Springs water. The complaint included an attached letter dated August 9, 2002 from Mr. Speck to Lisa Vierling indicating the Vierling use is wrongfully interfering with the Pace right by removing all of the heat value of the water before it reaches the Pace property.
4. Review of the claim records for 37-13054 and 37-11296 finds that they do not contain sufficient detailed evidence to evaluate the priority date. In other words no

detailed evidence is found to show when the water was first diverted for the uses being claimed at the rates being claimed. Additionally the claims identify different sources and different legal descriptions of the points of diversion.

CONCLUSIONS OF LAW

1. Section 42-351(1), Idaho Code, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water or has diverted water from a natural watercourse or from a ground water source without having obtained a valid right to do so or is applying water or has applied water not in conformance with a valid water right, then the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water. Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

2. Section 42-201, Idaho Code, provides in part as follows:

All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise.

3. Section 42-1410, Idaho Code, provides in part:

The director shall commence an examination of the water system, the canals and ditches and other works, and the uses being made of water diverted from the water system for water rights acquired under state law. The examination shall continue in a manner and for such a period of time as the director determines is necessary to evaluate the extent and nature of each water right for which a notice of claim under state law has been filed. The director may conduct any fact-finding hearing necessary for a full and adequate disclosure of the facts.

(2) The director and other employees of the department shall have authority to go upon all lands, both public and private, for the purpose of investigating the uses of water from any water source and may require the cooperation of the claimant in investigating the claimant's water use. The employee investigating the claimant's use shall make a reasonable effort to contact the claimant to schedule a date and approximate time for the examination. If the well or diversion works are located in a building other than an unlocked structure used solely for housing the well or other diversion works in which there is no reasonable expectation of privacy, the employee shall only enter the building in the absence of a court order after requesting and receiving the permission of the claimant or other occupant. The director may request the district court to issue an order compelling inspection and subpoenas requiring the attendance of any witness or the production of documents in accordance with the Idaho rules of civil procedure.

4. The diversion of the public waters of the state of Idaho not in compliance with existing water rights must be stopped to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. The Director of the department should issue an Order to Show Cause to Lisa Vierling and Jay Pace directing them to within 30 days clearly demonstrate when their water uses were first established and to provide a detailed description of their delivery system and in what amount their water uses consist.

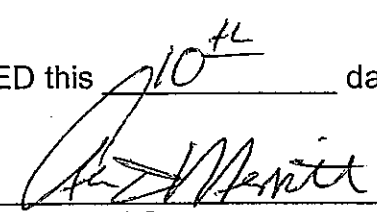
ORDER

IT IS HEREBY ORDERED as follows:

1. Lisa Vierling shall within 30 days of the date of this order demonstrate to the satisfaction of the Director that the water used on the property locally know as Crony Cove has been appropriated consistent with Idaho law by clearly demonstrating when her water uses were first established, by providing a detailed description of her delivery system, dates on which any elements of the delivery system have been modified or added. Additionally Lisa Vierling shall provide copies of records of measurements of flow rates and/or temperatures made within the system or estimates of same and any other documents she wishes the Director to consider pertaining to her water use.

2. Jay Pace shall within 30 days of the date of this order demonstrate to the satisfaction of the Director that the water used on his property in the vicinity of Warfield Hot springs has been appropriated consistent with Idaho law by clearly demonstrating when his water uses were first established, by providing a detailed description of his delivery system, dates on which any elements of the delivery system have been modified or added. Additionally Jay Pace shall provide copies of records of measurements of flow rates and/or temperatures made within the system or estimates of same and any other documents he wishes the Director to consider pertaining to his water use.

DATED this 10th day of October, 2002



Allen Merritt, PE
Southern Region Manager

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of October, 2002 a true and correct copy of the above and foregoing document was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary Baldwin

Secretary

Lisa Vierling
PO Box 869
Sun Valley, ID 83353

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax _____

Travis Thompson
PO Box 2139
Boise, ID 83701-2139

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax x (208) 344-6034

James Speck
PO Box 987
Ketchum, ID 83340

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax x (208) 726-0752

Jay Pace
10331 E Charter Oak Dr
Scottsdale AZ, 85260

Hand delivered _____
U.S. Mail-Regular x _____
U.S. Mail-Certified _____
Fax _____

Exhibit C

Travis Thompson

From: Jim Speck [jimspeck@cox-internet.com]
Sent: Wednesday, June 11, 2003 1:07 AM
To: 'Jones, Doug'; 'Merritt, Allen'
Cc: jaycpace@hotmail.com; seapace@sunvalley.net; SDRPROD@aol.com; 'Travis Thompson'
Subject: RE: RE: RE: Warfield Hot Springs flow measurements

Doug & Allen -

It is now 6 weeks or so since we last heard from you - see below. What is the status of your preliminary recommendations? We need to bring this matter to a head so the parties know what their rights are to the springs and the pipeline. I look forward to hearing from you right away. Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jimspeck@cox-internet.com

CONFIDENTIAL COMMUNICATION

This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you.

-----Original Message-----

From: Merritt, Allen
Sent: Tuesday, April 29, 2003 9:21 AM
To: 'Jim Speck'; Jones, Doug; 'Travis Thompson'
Cc: Merritt, Allen; jaycpace@hotmail.com; seapace@sunvalley.net; SDRPROD@aol.com

Gentlemen:

We do not plan on re-measuring the spring. We are currently evaluating the legal questions with staff attorneys and administrators in preparing the draft recommendations for the claims filed. We will work toward finalizing our preliminary recommendations and share drafts as soon as possible.

We are also working toward resolving the two pending applications for permit being held.

Aside from the water right questions we conclude the system as it presently exists has design flaws that exacerbate the conflict among neighbors. For example...pumps installed above the hydraulic elevation of the pipe should be lowered to eliminate the need to "prime" said pumps. This would eliminate the need for valved flow and interruption of service to downstream users. The issue of trash or debris in pipeline, constricting flow, should be investigated by users. Also closer monitoring of the spring source should be implemented by users to ascertain if Reuther's collection drain affects the pipeline spring. (Installing a staff gauge in spring box and recording levels during a pump test of Reuter's system may resolve this issue.)

All parties may wish to hire a consultant to improve and evaluate the system.

****Note that this message should not be read to infer that all parties claims/applications to water rights will ultimately be approved, recommended or decreed.

Allen & Doug

-----Original Message-----

From: Jim Speck [mailto:jimspeck@cox-internet.com]
Sent: Monday, April 28, 2003 5:31 PM
To: 'Jones, Doug'; 'Travis Thompson'
Cc: 'Merritt, Allen'; jaycpa@hotmai.com; seapace@sunvalley.net; SDRPROD@aol.com
Subject: RE: RE: Warfield Hot Springs flow measurements

Allen -

I must respectfully disagree with Travis on the need for another round of measurements. As he implies, they are not necessary to resolve the current dispute between our clients and will only serve to further delay that resolution, a process that has taken far too long already. I suggest your time is better spent completing your analyses based upon the existing data.

Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jimspeck@cox-internet.com
CONFIDENTIAL COMMUNICATION

This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you:

-----Original Message-----

From: Travis Thompson
Sent: Monday, April 28, 2003 12:29 PM
To: Jones, Doug; James P Speck (E-mail)
Cc: Merritt, Allen

Doug, Allen

Michael Stonebeck expressed some concern to me about the flow levels of the spring source both a few days prior and the day the measurements were taken. Apparently the flow levels dropped the week prior to your site visit in March, below what was experienced all winter, and then returned somewhat following your measurements. Accordingly, I would suggest at least one more round of measurements to obtain data on more "normal" spring flows from Warfield Hot Springs. Although it may not be necessary for the present matter, I think another measurement would be worthwhile, particularly given the other two applications for permit that are out there.

Thanks,

Travis Thompson

-----Original Message-----

From: Jones, Doug [mailto:DJones@idwr.state.id.us]
Sent: Wednesday, April 23, 2003 4:49 PM
To: James P Speck (E-mail); 'tlt@idahowaters.com'
Cc: Merritt, Allen
Subject: Warfield Hot Springs flow measurements

Gentlemen,

Mr. Speck inquired about the flow rates described in Allen Merritt's letter to Babcock and Shelton. To address this I have attached a spread sheet I compiled after returning to the office. Included on the spreadsheet are the formulas I used for the various data reductions.

During our field work preliminary calculations were made based on certain assumptions. One assumption was that the bucket(s) used were 5.0 gallons. The spreadsheet calculates the specific volume of each of the buckets. It was found that one bucket was about 5.4 gallons and the other was about 5.5 gallons. This affects the flow measurement at each point. The sum of flow for the various points measured was 33.1 gpm.

The flow measurement at the head of the pipe, calculated in the field as about 54 gallons per minute, was likewise subject to certain assumptions and a fundamental uncertainty. If you recall, Jim, I was not confident that the measurement would yield meaningful results because the meter was operated "backwards" in the pipe opening. I addressed this issue by operating the meter in a stream near my office in both directions (pointing upstream -- normal, and then pointing downstream -- "backwards") under several flow velocity conditions. The results were supportive that the meter would yield appropriate results when operated as was done during the measurement at the head of the pipe.

The measurement at the head of the pipe was done as nearly as practicable in the center of the pipe cross section. Numerous velocity measurements were made to be certain that consistent results were obtained. By measuring velocity at the centerline we actually measured the maximum velocity occurring in the pipe cross section. In order to calculate pipe flow the average velocity is used. It is a well established hydraulic fact that fluid velocity in a pipe is maximum at the center and minimum at the edges. Reference to standard texts on fluid mechanics state that the ratio of Average Velocity to Maximum Velocity is 0.5. However, other factors are also influencing the measurement under the conditions in which it was made (e.g. edge effects, intake shape, measuring device profile). Many of these factors cannot be determined with precision. Allen and I conclude that a more appropriate ratio to use is 0.7. Therefore the 54 gpm maximum is adjusted by .7 to yield a flow rate of about 38 gpm.

In conclusion, given the accuracy constraints of the measurement methods, the estimated velocity ratio assumption, and undocumented "leaky" pipe conditions I have reasonable confidence in the measurement results. I hope this addresses your questions. Please let me know if you need anything else. Allen and I will be proceeding with our analyses and hope to be in touch again soon.

Thanks for your patience and assistance.

Douglas Jones

<<Flow Rate Calc.xls>>

Exhibit D



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 28, 2003

James P. Speck
P.O. Box 987
Ketchum ID 83340

RE: Warfield Hot Springs diversions

Dear Jim, *Travis*

On September 17, 2002, you submitted a letter of complaint on behalf of your client Jay Pace alleging illegal diversion by Lisa Vierling. The letter alleges that uses by Ms. Vierling commenced in 1989 or later and that Ms. Vierling has no permit, license or decree for those uses. Your letter seeks remedies that include issuance of a Notice of Violation against Ms. Vierling and enforcement of Cease and Desist provisions to prevent diversions.

As you know, Snake River Basin Adjudication claims have been filed for Mr. Pace (37-11296) and Ms. Vierling (37-13054 & 37-20894). A de minimis domestic right (37-13394) has been decreed to Miller (now apparently owned by Embry) in the SRBA, also a user on the pipeline that is contested in this matter. Recommendations have not been made to the court for the beneficial claims by Pace and Vierling. It is anticipated that the recommendations of these adjudication claims will be submitted to the court in 2005.

In response to your letter, IDWR issued an Order to Show Cause to participants in the complaint on October 10, 2002. Documentation corroborating historic uses on the system was sought by the order. The parties, through February 2003, filed a series of responses and supporting affidavits to the Show Cause Order. On March 13, 2003, Douglas Jones and I conducted a field investigation that began at the head of the pipeline and proceeded to the outfall of the pipeline into Warm Springs Creek at Pace's property. During this field visit observations regarding the use of water, and flow and water temperature measurements were made. Measurements were taken at the head of the pipeline and at accessible stub outs along the pipeline.

Based on the evidence submitted to IDWR and observations made during the field visit IDWR believes that there is sufficient information to conclude that there is some color of proof as to the existence of at least one water right for each user in the system. **For this reason IDWR declines to issue a Notice of Violation at this time.**

AUG 29 2003

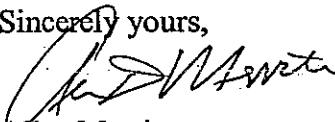
As noted above, the specifics of each element of several claims are still pending recommendations and processing before the SRBA court. Depending on the finding of the SRBA court regarding the elements of the claims, the resolution of the description of the water rights *may* result in curtailment or limitation of current uses in the system.

It was observed during the investigation that all claimants to this spring could address a couple of circumstances through voluntary efforts that may reduce the disputes between users. In an effort to facilitate some type of resolution of this matter prior to the finalization of the claims in the SRBA, IDWR makes the following suggestions to all of the water users of the pipeline:

- First, IDWR recommends avoiding pipeline flow interference by closing (wholly or partly) or widely opening valves along the main pipeline. This can be accomplished by altering plumbing or accessories to maintain positive pressures in the main pipe and in subsystems (e.g. lower the pumps below elevation of the pipeline).
- Second, each user (per claimant not per claim) could self impose a limitation of re-diverting only a total of 13,000 gallons per day, equating to a continuous flow of 0.02 cfs or 9 gallons per minute. This total volume/rate would include flow re-diverted and then returned to the pipeline. Adhering to this limitation in the interim would not prejudice IDWR's recommendation to the court regarding any claims.
- Third, it is recommended that removable screening be installed at the head of the pipe to prevent accidental intake of coarse debris into the pipeline. Maintenance of the pipeline must be conducted to assure continued service to users.

Finally, if controversy among the water users continues, provisions exist in Idaho law for appointment of lateral ditch managers to be paid for by the water users to regulate in the event of continued disputes on a distribution system. Control and measuring works may ultimately be required at the head of the pipe and for each subsystem.

Sincerely yours,

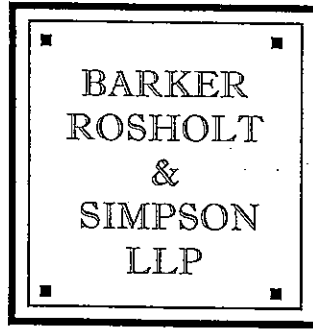


Allen Merritt

Cc: Travis Thompson
All SRBA claims to Warfield Hot Spring Verling, Pace and Miller

Exhibit E

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis*



113 Main Ave. W., Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

205 N. Tenth St., Suite 520
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

Travis L. Thompson
tltp@idahowaters.com

January 17, 2005

Mr. Allen Merritt
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Re: Warfield Hot Springs Diversions

Dear Allen:

Michael Stonebeck contacted me last week regarding his concerns over the recent drop in the water supply and temperature at his diversion at Warfield Hot Springs. As expressed in my April 28, 2003 email to you (Exhibit A), this is not the first time the pipeline system has experienced interference with the normal water flow and temperature measurements. In fact, the system witnessed a similar reduction in supply and temperature last winter as well.

My client is concerned that the installation and operation of Mr. Reuther's hot water system (collection pipe and pump) is the cause of the recent interference. Apparently IDWR has granted Mr. Reuther a water right permit (#37-8388) at the same source. The water level for my client's gravity pipeline (collection box) currently measures about two and half feet lower than normal. In addition, the water temperature has been reduced by approximately four degrees. My client estimates the total water flowing down the pipe now is about half of what it was when IDWR conducted its measurements in March 2003. The current reduction is even lower than what was experienced when I expressed concerns that the March 2003 measurements were not reflective of normal water conditions.

If the cause of the reduced water supply and temperature is the result of a third party's actions, including diversions under a junior priority water right permit, and not due to natural conditions, IDWR has a duty to investigate the interference and administer the source if necessary.

Mr. Allen Merritt (IDWR)
January 17, 2005
Page - 2

Consequently, my client requests IDWR conduct an investigation into the cause of the interference with the source at the Warfield Hot Springs diversion. Please contact me at 733-0700 if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. L. Thompson', with a stylized flourish at the end.

Travis L. Thompson

cc: Michael Stonebeck
Jim Speck (c/o Steve Reuther, Jay Pace)

EXHIBIT “A”

Travis Thompson

From: Merritt, Allen [AMerritt@idwr.state.id.us]
Sent: Tuesday, April 29, 2003 9:21 AM
To: 'Jim Speck'; Jones, Doug; 'Travis Thompson'
Cc: Merritt, Allen; jaycpa@hotmai.com; seapace@sunvalley.net; SDRPROD@aol.com
Subject: RE: RE: Warfield Hot Springs flow measurements

Gentlemen:

We do not plan on re-measuring the spring. We are currently evaluating the legal questions with staff attorneys and administrators in preparing the draft recommendations for the claims filed. We will work toward finalizing our preliminary recommendations and share drafts as soon as possible.

We are also working toward resolving the two pending applications for permit being held.

Aside from the water right questions we conclude the system as it presently exists has design flaws that exacerbate the conflict among neighbors. For example...pumps installed above the hydraulic elevation of the pipe should be lowered to eliminate the need to "prime" said pumps. This would eliminate the need for valved flow and interruption of service to downstream users. The issue of trash or debris in pipeline, constricting flow, should be investigated by users. Also closer monitoring of the spring source should be implemented by users to ascertain if Reuther's collection drain affects the pipeline spring. (Installing a staff gauge in spring box and recording levels during a pump test of Reuter's system may resolve this issue.)

All parties may wish to hire a consultant to improve and evaluate the system.

****Note that this message should not be read to infer that all parties claims/applications to water rights will ultimately be approved, recommended or decreed.

Allen & Doug

-----Original Message-----

From: Jim Speck [mailto:jimspeck@cox-internet.com]
Sent: Monday, April 28, 2003 5:31 PM
To: 'Jones, Doug'; 'Travis Thompson'
Cc: 'Merritt, Allen'; jaycpa@hotmail.com; seapace@sunvalley.net; SDRPROD@aol.com
Subject: RE: RE: Warfield Hot Springs flow measurements

Allen -

I must respectfully disagree with Travis on the need for another round of measurements. As he implies, they are not necessary to resolve the current dispute between our clients and will only serve to further delay that resolution, a process that has taken far too long already. I suggest your time is better spent completing your analyses based upon the existing data.

Thank you.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation

120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jimspeck@cox-internet.com

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-----Original Message-----

From: Travis Thompson
Sent: Monday, April 28, 2003 12:29 PM
To: Jones, Doug; James P-Speck (E-mail)
Cc: Merritt, Allen

Doug, Allen

Michael Stonebeck expressed some concern to me about the flow levels of the spring source both a few days prior and the day the measurements were taken. Apparently the flow levels dropped the week prior to your site visit in March, below what was experienced all winter, and then returned somewhat following your measurements. Accordingly, I would suggest at least one more round of measurements to obtain data on more "normal" spring flows from Warfield Hot Springs. Although it may not be necessary for the present matter, I think another measurement would be worthwhile, particularly given the other two applications for permit that are out there.

Thanks,

Travis Thompson

-----Original Message-----

From: Jones, Doug [mailto:DJones@idwr.state.id.us]
Sent: Wednesday, April 23, 2003 4:49 PM
To: James P Speck (E-mail); 'tlt@idahowaters.com'
Cc: Merritt, Allen
Subject: Warfield Hot Springs flow measurements

Gentlemen,

Mr. Speck inquired about the flow rates described in Allen Merritt's letter to Babcock and Shelton. To address this I have attached a spreadsheet I compiled after returning to the office. Included on the spreadsheet are the formulas I used for the various data reductions.

During our field work preliminary calculations were made based on certain assumptions. One assumption was that the bucket(s) used were 5.0 gallons. The spreadsheet calculates the specific volume of each of the buckets. It was found that one bucket was about 5.4 gallons and the other was about 5.5 gallons. This affects the flow measurement at each point. The sum of flow for the various points measured was 33.1 gpm.

The flow measurement at the head of the pipe, calculated in the field as about 54 gallons per minute, was likewise subject to certain assumptions and a fundamental uncertainty. If you recall, Jim, I was not confident that the measurement would yield meaningful results because the meter was operated "backwards" in the pipe opening. I addressed this issue

by operating the meter in a stream near my office in both directions (pointing upstream -- normal, and then pointing downstream -- "backwards") under several flow velocity conditions. The results were supportive that the meter would yield appropriate results when operated as was done during the measurement at the head of the pipe..

The measurement at the head of the pipe was done as nearly as practicable in the center of the pipe cross section. Numerous velocity measurements were made to be certain that consistent results were obtained. By measuring velocity at the centerline we actually measured the maximum velocity occurring in the pipe cross section. In order to calculate pipe flow the average velocity is used. It is a well established hydraulic fact that fluid velocity in a pipe is maximum at the center and minimum at the edges. Reference to standard texts on fluid mechanics state that the ratio of Average Velocity to Maximum Velocity is 0.5. However, other factors are also influencing the measurement under the conditions in which it was made (e.g. edge effects, intake shape, measuring device profile). Many of these factors cannot be determined with precision. Allen and I conclude that a more appropriate ratio to use is 0.7. Therefore the 54 gpm maximum is adjusted by .7 to yield a flow rate of about 38 gpm.

In conclusion, given the accuracy constraints of the measurement methods, the estimated velocity ratio assumption, and undocumented "leaky" pipe conditions I have reasonable confidence in the measurement results. I hope this addresses your questions. Please let me know if you need anything else. Allen and I will be proceeding with our analyses and hope to be in touch again soon.

Thanks for your patience and assistance.

Douglas Jones

<<Flow Rate Calc.xls>>

Exhibit F



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 24, 2005

Travis Thompson
113 Main Ave. W. Suite 303
Twin Falls, ID 83301-6167

RE: Warfield Hot Springs Diversions

Dear Travis:

As I indicated to you last Friday our office has received your letter dated January 17, 2005.

As you know the Warfield Hot Springs Pipeline (also known as Pace Pipeline) was observed by IDWR during a field review in 2003 precipitated by complaints of waterusers in that pipeline regarding use within the pipeline. IDWR's field review served the purpose of investigating the SRBA claims that have been filed by the various waterusers including Vierling (Stonebeck), your client. The status of the SRBA review has not changed since my August 28, 2003 letter to James Speck (Copy enclosed). In the letter I wrote: *"Depending on the finding of the SRBA court regarding the elements of the claims, the resolution of the description of the water rights may result in curtailment or limitation of current uses in the system."* I also wrote that: *"Control and measuring works may ultimately be required at the head of the pipe and for each subsystem."* The resolution of controversy among pipeline users in my opinion has been stalled until the SRBA process is finalized.

Your recent letter points to the potential or alleged impact of development of permit 37-8388 on the user(s) in the Warfield Hot Springs Pipeline. Your letter requests that IDWR conduct an investigation into the cause of the interference with the source at Warfield Hot Springs diversions.

As you know, currently in the scheme of priority pursuant to Section 42-607 of the Idaho Code, beneficial use claims (such as your client's), in times of scarcity of water are held to be subsequent to or first to be curtailed with preference being given to any decreed, permitted or licensed right. Only after your client's rights are decreed in the SRBA will interference be an issue IDWR would investigate. IDWR at this time declines to conduct a study until such time as the water rights to the uses of the water in the Warfield Hot Springs Pipeline are decreed in the SRBA Court. After that time, if the users have installed a measuring device at the head of the pipeline and it is shown that the rights as decreed are not being filled it may be appropriate to investigate further.

As you may know permit 37-8388 is conditioned that a measuring device be installed as part of its diversion works. Assuming that an investigation may be conducted in the future, it is recommended that the pipeline users install a measuring device at the head of the pipeline as well. It is also recommended that measurement of use from both diversions commence and be recorded (by a third party if possible) to aid in any future analysis.

If you have questions please feel free to contact this office.

Sincerely,

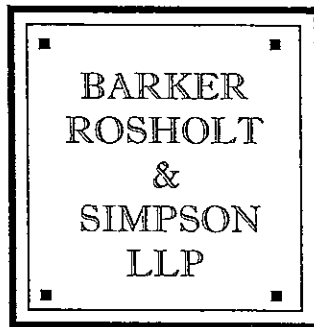
A handwritten signature in black ink, appearing to read "Allen Merritt", written in a cursive style.

Allen Merritt, PE
Southern Region Manager

CC: James Speck
Kevin Lakey, Watermaster District 37

Exhibit G

*John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington*



Travis L. Thompson
tlth@idahowaters.com

113 Main Ave. W., Suite 303
P.O. Box 485
Twin Falls, ID 83303-0485
(208) 733-0700 telephone
(208) 735-2444 facsimile
jf@idahowaters.com

1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

May 9, 2008

VIA FACSIMILE 736-3037 & U.S. MAIL

Mr. Allen Merritt
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Re: Warfield Hot Springs Illegal Diversion -- Robbins (Lapsed Permit #37-8388)

Dear Allen:

As you are aware I represent Lisa Vierling, owner of two water rights (#37-13054 and #37-20894) to Warfield Hot Springs, a source tributary to Warm Springs Creek west of Ketchum, Idaho. As well documented in your files, my client has experienced significant reductions in water flow and temperature in her pipeline conveyance system the last five years. This past winter my client experienced the worst conditions to date with serious consequences: Ms. Vierling lost virtually all heating value as well as the hot water supply for her home. In addition, my client has been threatened and blamed by a downstream neighbor (Ben Pace) over the lack of hot water in the pipeline. Ms. Vierling has feared for her own safety due to the hostility of the situation, and it is likely to occur again unless this matter is resolved.

To date, the Idaho Department of Water Resources ("Department") has refused to take any action to address these problems and interference with Ms. Vierling's water rights. The lack of action has subjected Ms. Vierling to an unnecessary conflict with her neighbors. Moreover, the lack of action is threatening Ms. Vierling's quality of life and the ability to heat and use hot water in her home. Accordingly, the Department and/or the Watermaster for Water District 37 must take action now.

Mr. Tony Robbins, who owns property upstream and adjacent to Ms. Vierling, has been and continues to divert water from Warfield Hot Springs under a lapsed permit (#37-8388). Mr. Robbins' illegal water use is interfering with Ms. Vierling's water rights and damaging her property.

Mr. Allen Merritt (IDWR)

May 9, 2008

Page - 2

In addition, work performed on Mr. Robbins' property has covered the collection box and point of diversion for Ms. Vierling's water rights (which is located on Mr. Robbins' property). Presently, Ms. Vierling cannot access her point of diversion due to the unlawful interference by Mr. Robbins.

The Department has an obligation to investigate and order Mr. Robbins to cease and desist his unlawful water use and interference with Ms. Vierling's point of diversion. *See Idaho Code §§ 42-351, 18-4304, 18-4306.* Accordingly, Ms. Vierling formally requests that you take the required action immediately.

Please advise me of the course of action that the Department and/or Watermaster will take in this matter as soon as possible. Thank you for your attention to this matter and please call me at 733-0700 if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: Kevin Lakey, Watermaster (Water District 37)
Director David K. Tuthill, Jr.
Lisa Vierling

Exhibit H



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380
Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

May 16, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

Travis L. Thompson
PO Box 485
Twin Falls, ID 83303-0485

RE: Warfield Hot Springs

Dear Travis:

I have discussed your May 9th letter with state office staff of the Idaho Department of Water Resources ("Department"). I received a faxed letter from Mr. Speck yesterday and the original in the mail today which includes an assignment of permit 37-8388 from Reuther to SDRTR, LLC and a petition to reinstate the lapsed permit. The Department is currently reviewing the petition and supporting documents. Based on the documentation, the permit will likely be reinstated once the proof of beneficial use statement is filed. If lapsed permit 37-8388 is reinstated the use of water you are contesting will probably be recognized by permit 37-8388 and/or subsequent license. A notice of violation does not appear to be warranted at this time.

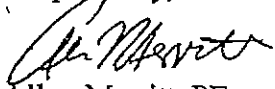
I am saddened by your description of the acrimony that has developed among the neighbors in the Pace Pipeline area. As you know one major root of the problem is the quantification of the water rights associated with what is know as the Pace Pipeline. Numerous water right claims were filed for the use of these waters. Included are claims filed by Lisa Vierling, who you represent, as well as others including Pace. As you know the Vierling and Pace claims are objected to in the SRBA. A final determination by the SRBA court for these water rights will establish the basis for future regulation or injury analysis. *Essentially little has changed since the January 24, 2005 letter to you (Copy enclosed) about these same matters.*

In your recent letter you allege modification/damage to the diversion works for the Pace pipeline and prevention of access to these diversion works for your client. In your letter you further cite criminal statutes which might pertain in this situation. The Department does not have jurisdiction to prosecute these alleged criminal matters and advises you seek relief with the Blaine County prosecutor or file a civil action in district court. Ultimately, once the rights have been decreed, the Department will order in measuring devices and control works, and instruct the watermaster of Water District 37 to regulate the diversions &/or order the establishment of a lateral ditch users association to regulate the pipeline distribution system.

If you wish to organize an informal meeting between the neighbors IDWR offers to host a meeting to discuss these matters in an effort to illuminate or diffuse the situation as needed. Hopefully amicable solutions can be found.

If you have questions please feel free to contact this office.

Respectfully,



Allen Merritt, PE
Southern Region Manager

CC: Kevin Lakey - WD37
Gary Spackman, Jeff Peppersack, Tim Luke – IDWR State Office
SDRTR, LLC
James Speck