



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 16, 2004

VIA FACSIMILE TRANSMISSION

Dana L. Hofstetter, Esq.
Hofstetter Law Office
608 W. Franklin Street
Boise, Idaho
FAX NO. 424-8774

Re: Hubsmith Water Right Nos. 37-7268, 37-7454, 37-7602, and 37-8679

Dear Dana:

I have reviewed your letter dated February 26th regarding the above-referenced water rights, and discussed it with Jeff Peppersack. We believe some clarifications are in order.

First, for IDWR to take any formal action on your requested changes to any of the water rights it needs a petition or letter explaining the errors in the water rights, specifying the relief requested, and providing a detailed basis for why the changes are necessary. Thus we need this letter not only to initiate consideration of the issues surrounding the 1978 Proof of Beneficial Use, but also for purpose of considering the information contained in the September 29, 2003 report of Brockway Engineering and the clarifications to that report, identified in our February 23rd meeting., which you propose to provide. In short, before IDWR can consider making any changes to any of these water rights it needs some sort of formalized written request to which it can respond.

Second, in addressing the clarifications to the September 29, 2003 Brockway Engineering report, it is important to understand precisely what IDWR's concerns are regarding Dr. Brockway's use of an 82% efficiency rather than the standard 70% efficiency. Typically IDWR considers requests to amend licenses based on clear computational or clerical errors. The choice of pump efficiency percentage is in fact a matter of professional judgment, and being as it is in effect a judgment call it is difficult

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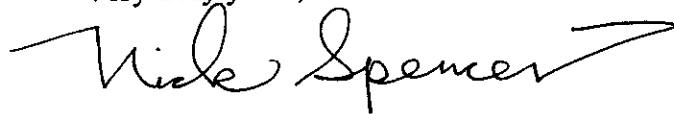
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to characterize the choice of one percentage versus another percentage as constituting error. Therefore, Dr. Brockway's clarification in this regard needs to address why in this particular case the use of a 70% efficiency is so far outside the realm of reasonable judgment as to constitute an outright error.

Next, if the efficiency is determined to be an outright error, then Mr. Peppersack needs more than the two clarifications listed in the second paragraph of your letter. In addition to clarification regarding (1) the pump efficiency percentage and (2) no replacement of the pump in 1989, Mr. Peppersack additionally would need (3) a detailed description of the pumping, distribution and irrigation application system, including changes—if any—that have been made since the development period of the right(s) in question, plus an analysis of what effect any such changes may have had upon system capacity.

I hope and trust that this makes a little clearer what IDWR needs to move forward on your request to amend the licenses in question. Should you have any other concerns or questions, please feel free to contact Mr. Peppersack directly at 327-7940.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nick Spencer", with a long horizontal flourish extending to the right.

NICHOLAS B. SPENCER

Deputy Attorney General

Idaho Department of Water Resources

Cc: Jeff Peppersack