

FAX 208-736-3037

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DEPT. OF WATER RESOURCES  
SOUTHERN REGION

To : Allen Merritt, PE

From : Marshall Ogden

Subject : Stat's report on the "Protest" of  
John & Gwen Moore on application for  
Permit No. 72-16692

Date : Jan. 8, 2007

Pages : 4 including cover 5

Jan 8/2007

Dear Allen:

This is a brief status report on the "Protest" of John & Gwen Moore on my application for Permit # 72-16692.

- 1- I think you have a copy of the proposed Agreement Pat Brown sent to me
- 2- After reading the Agreement I made some notes to include the Moores in the commitments even though by law neither of us could prevent the other from our appropriate rights.
- 3- These additions were sent to Pat Brown after reviewing them with him on the phone. I clarified that both Glen Harding, who has been running Moores place, and the Sprinkling Co. both said Moores could affect me getting appropriate water if they were inclined. But it would be unlawful as it would if I inhibited their water right.  
The junior water right would not be a factor as it can't even be utilized until the old rights are satisfied.  
The pipe maintenance agreement shouldn't even be a question.
- 4- Enclosed tax back from Pat Brown
- 5- Enclosed letter I sent to Pat Brown
- 6- I have received no communication since.

Hopefully we can resolve this without a hearing as it seems straight forward.

Thanks for your help



## WATER RIGHTS & EASEMENT AGREEMENT

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This agreement is entered in to on this 24 day of October, 2006, between Marshall and Jolene Ogden ("Ogdens") and John and Gwendolyn Moore ("Moore's"), in exchange for the promises and covenants set forth in this agreement and other good and valuable consideration, the receipt of which each party to this agreement acknowledges. The parties agree to the following:

1. Ogdens' own certain real property located on French Creek in Custer County Idaho, which is more particularly described in Exhibit A. Exhibit A is attached and incorporated into this agreement. Ogden's also own water rights (water right No. 72-4161A, water right claims, and are in process of seeking additional rights through Application for Permit No. 72-16692, all for use on portions of the property described in Exhibit A.

2. Moore's owned certain real property located on French Creek and along the Salmon River, which is more particularly described in Exhibit B. Exhibit B is attached and incorporated into this agreement. Moore's also own water rights (water right No. 72-4161B) which is used on portions of the property described in Exhibit B

3. Water is conveyed to and used on the above properties pursuant to a recorded easement granted by Ogden's predecessors in interest to Moore's predecessors in interest in March of 1994, and a right-of-way (Dept. of Interior right-of-way IDI-33668) across land administered by the Bureau of Land Management.

4. The purpose of this agreement is to resolve disputes and protests which now exist or may arise concerning the use of water, the maintenance and use of the pipeline, and matters concerning the diversion, measurement, and use of the water.

5. The parties shall each pay for one half the costs of the maintenance, repairs, or replacement of the pipeline, the costs relating to installation and maintenance of diversion and measurement devices (including any required by IDWR and any reasonably needed to control, measure, and apportion diverted water among the parties); and costs associated with BLM right-of-way. Provided, however, any costs incurred to install, maintain, or use water under Application for Permit No. 72-16692 shall be paid for solely by Ogden's. Further, provided that all such costs shall be paid by the party damaging the system if the damage results from the negligence or other fault of that party.

*to Ogden's diversion*  
*On the main line below Ogden's diversion all costs shall be relating to the pipeline shall be paid solely by the Moors.*

6. The use of any water junior in priority to water right No. 72-4161B, and any amount decreed in excess of the 0.33 cfs presently decreed to water right No. 72-4161A, shall be subordinate to the use of water under water right No. 72-4161B, and shall not be permitted to be diverted in any manner which interferes with the amount or pressurization of water in the pipeline. Additionally, Ogden's shall not change the diversion and use of the 0.33 cfs presently decreed to water right No. 72-4161A in any manner which interferes with the amount or pressurization of water in the pipeline. *when being used by A and or B*  
*Additionally, Moors having the advantage of higher pressure being at the end of the line under water right # 72-4161B, shall not change the diversion and use of their decreed water right in any manner which interferes with the amount or pressurization of water in the pipeline to prevent water right # 72-4161A from being diverted from the main pipeline.*

*and water right # 72-4161A*



HUTCHINSON  
&  
BROWN, LLP

Keith E. Hutchinson, Esq.  
Patrick D. Brown, Esq.

ATTORNEYS AT LAW

PHONE: (208) 733-9300  
WATS: (800) 753-2529  
FAX: (208) 733-9343

November 21, 2006

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JAN 6 8 2007  
DEPT. OF WATER RESOURCES  
SOUTHERN REGION

MARSHALL & JOLENE OGDEN  
HC 67 Box 550  
Clayton ID 83227

Re: **Moore**, John & Gwen - Water Rights & Easement Agreement

Dear Mr. & Mrs. Ogden:

I met with my clients and discussed the changes to the agreement you proposed. For the same reasons I have explained to you on the phone, my clients are unwilling to incorporate your proposed changes into the agreement.

Please let me know if you are going to accept the agreement I provided to you. If you are, please sign (it must be notarized) and send the original back to me. If not, please let me know so we may move the SRBA and transfer proceedings along.

I look forward to hearing from you soon. Thank you.

Sincerely yours,

Patrick D. Brown

/cb

cc: John & Gwen Moore

*Ans. Dec 7/2006*

December 7, 2006

Patrick D. Brown  
P.O. Box 207  
Twin Falls, ID 83303-0207

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Re: Moore, John & Gwen - Water Rights & Easement Agreement

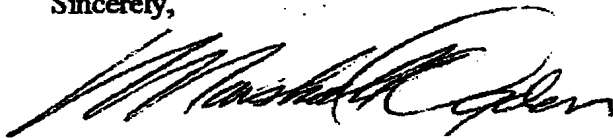
Dear Mr. Brown,

After consulting with my advisors, it was not understandable or clear why the Moores would be hesitant to agree that we didn't have any obligation for the pipe beyond our diversion, just like he has no obligation for our pipe beyond the diversion. (#5, end of first sentence, we would like to add "to Ogden's diversion".)

The other point being in #6. We would agree, if both of us agreed to not change anything with our current water right use that restricts obtaining either of our old water rights out of the pipe. (starting with "additionally", we would like to add, "Additionally, neither party, Ogdens 72-416A of 0.33CFS, or Moores 72-416B shall not change the diversion and use of these presently decreed water rights in any manner which interferes with the amount of pressurization of water in the pipeline.)

We will sign the agreement with these two obvious clarifications of fairness and hopefully work together to achieve both of our goals.

Sincerely,



Marshall Ogden