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WATER RESPONSE

# FREEMAN B. DUNCAN Attorney at Law P.O. Box 1629 Post Falls, ID 83877-1629 (208) 773-8720

January 16, 2007

Ms. Cynthia Bridge-Clark Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, ID 83720-0098

Re: Idaho Department of Environmental Quality/Water rights

Dear Ms. Clark:

For the last six years, I have been serving as a special deputy attorney general representing the Idaho Department of Environmental Quality (DEQ), with land transfer issues associated with the Super Fund site in Shoshone County, Idaho. Under the federal super fund laws, the State of Idaho is to receive title to approximately 1600 acres of land within the boundaries of the super fund site to assist with the future costs of operating and maintaining the remediation efforts installed by the Environmental Protection Agency (EPA). This is basically property ceased by EPA from Bunker Hill (Bunker Limited Partnership) as one of the main responsible parties for the pollution. The Idaho Legislature designated DEQ as the title holder for the acreage. My job has been to coordinate the transfer of title from EPA to DEQ, and the subsequent transfer from DEQ to third parties to create economic development and O & M revenue. We are close to receiving title to all of the acreage, and have begun transferring title to third parties. Now comes the water rights issue.

Properties that are now vested in DEQ have established water rights out of Government Creek (copies attached). I have been working with Bob Haynes in your Coeur d'Alene Office about the best way to handle and document the transfer of the water rights. Since DEQ is basically going to be a short term property owner and does not intend

to personally use the water, Bob suggested that I explore the ability to transfer the water rights to the water bank so that the rights are not forfeited. That makes a lot of sense to me, but I will readily admit that I know very little about water rights and even less about the water bank. Bob suggested that I make contact with you. I would welcome any information you can give me, and copies of any necessary forms.

While DEQ does not have any actual use for the water, the water has been used by both EPA and local government entities for dust control and industrial purposes since the original seizure by EPA. EPA's use is close to ended, but local government entities desire to continue to use our water rights. My client has also been approached by Eagle Crest (the developer of a major golf course complex on 560 acres of 1600 acres) with a request to use the water rights for both dust control and irrigation during the construction of the course. This will require a substantial investment by them to improve the existing diversion point and diversion system. Obviously, they are reluctant to make this investment and my client is reluctant to allow them to make the improvements if it will affect the validity of the water rights. Again, a need to better understand how the water bank process works.

With this introduction to the situation and my lack of knowledge concerning how to proceed in this matter, I look forward to hearing from you.

Sincerely

Freeman B. Duncan

Cc: client

John Karpenko, Meckel Engineering



### STATE OF IDAHO E C E I V E PEPARTMENT OF WATER RESOURCES

JUL 1983

#### **CLAIM TO A WATER RIGHT**

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Northern District Office
Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right. BUNKER LIMITED: PARTNERSHIP Notice is hereby given that \_\_\_\_ (Name of Claimant) Telephone No.(208) 784-1261 83837 P. O. Box 29, Kellogg, Idaho (Mailing Address) (Zip Code) claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows: Date of priority: (When was the water first applied to a beneficial use) \_\_\_\_\_1899 (1)A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source. Describe the source of water: (Name of stream, lake, spring, etc., or ground water) (2) tributary to <u>S. Fork of Coeur d'Alene River</u> Government Creek Describe the purpose for which the water has been used and the time during the year when you have used the right (3) claimed: (Both dates inclusive) (Mo., Day) (Mo., Day) (Domestic, Irrigation, Stock, Etc.) (cfs, gpd, AFA) 3 CFS Use Industrial Period of Use From 1-1- To 12-3] Quantity Period of Use From \_\_\_\_\_ To \_\_ Quantity \_\_\_\_\_ Use \_\_\_\_ То Period of Use From \_\_\_\_\_ \_\_\_\_\_ Use \_\_ Quantity \_\_\_\_ Use \_\_ Quantity \_\_ \_\_\_\_ Use Quantity \_\_\_\_ TOTAL QUANTITY USED. (4) (cfs, gpd, AFA) A) Point of diversion: (Location of point where water is diverted from its source) (5)SE 1/4 SE 1/4, Sec. 10 Twp. 48N Rge. 2E B.M., County of Shoshone Additional points of diversion: \_\_ B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. Diversion dam, 8" pipeline to 20,000 gallon tank, 10" pipeline to Zinc Plant <u>' pipeline to Zinc Plant.</u> (See narrative supplement), Smelter and Mine. A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is (6) not for irrigation, place an "X" in appropriate box to show location. NF% NW% **SW**1/4 SE1/4 R SEC. TOTAL NE% NW% SW% NE% NW% SW% SE% NE% NW% SW% NW% SW% SE% SE% NE% SE¼ 2 2 Х 2E 48N Х 481 Ī Х 3E 48N 6 Х No. of acres B) If water is used for other than irrigation, fully describe that use, being as specific as possible: Industria
Use being used for employee sanitation, non-contact cooling, contact cooling, Boiler feed water, process dilution, yard washdown and fire protection, as well as supply to Central Shoshone Water District. NOTE: Include here the type and number of stock watered: If you are claiming water as a member of an organization, list name of organization: Bunker Limited Partnership.

Claim No. 94-4217

## STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

#### **CLAIM TO A WATER RIGHT**

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of Idaho established by diversion and application to a beneficial use must file a claim with the Department of Water Resources on or before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

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If you are claiming water as a member of an organization, list name of organization: Bunker Limited Partnership

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(8) Remarks \_