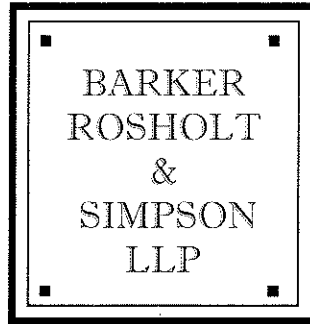


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December 15, 2006

**Via Email & U.S. Mail**

Mr. Roger Warner  
IDWR – Eastern Region  
900 N. Skyline Dr. Suite A  
Idaho Falls, Idaho 83402

**Re: Application for Transfer No. 72385 (City of Blackfoot)**

Dear Roger:

I am writing on behalf of the protestants in the above-referenced matter (A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company). The protestants, the City, and New-Sweden Irrigation District entered into a Settlement Agreement (“Agreement”) to resolve the outstanding protests last summer. A status conference was held on September 20, 2006 to discuss the Agreement and how the Department intended to proceed. We recently received the Department’s draft approval of the transfer. As requested, we provide the following comments on that draft approval.

**Elements of Transferred Water Right 1-181C**

The Agreement is specific about the transferred purpose of use (irrigation and recreation) and period of use (4/1 to 10/31). *See* Agreement, ¶¶ 1.b, 1.c. By agreement, the parties have stipulated to these elements which modifies the original application for transfer filed by the City. Contrary to the Agreement, the draft approval includes “ground water recharge” and “ground water recharge storage” as new purposes of use for water right 1-181C. These proposed uses should be removed. In addition, contrary to the Agreement, the draft approval includes a year-round “irrigation storage” and “recreation storage” purpose of use. Pursuant to the Agreement, these two storage elements must be limited to a 4/1 to 10/31 period of use, not 1/1 to 12/31. Further, under paragraph 1.e of the Agreement, only incidental recharge will be recognized and the City is required to file a new application if it desires to change the nature of use to

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“recharge.” Paragraph 1.b of the Agreement further requires the City to obtain approval from the protestants to change the nature of use of water under this right.

**Condition #5**

We do not agree with the second sentence in this proposed condition (“This right authorizes additional storage in the amount of 186 afa to make up losses from evaporation.”). The protestants are unaware of any “right” to “additional storage” to make up for evaporation losses in the reservoir.

**SRBA**

At the status conference in September the Director raised the question about “ownership” of water right 1-181C and how it was still subject to future determination in the SRBA. Has the Department determined how the water right will be recommended to the SRBA Court yet? We note that Condition #8 includes a provision for future SRBA review. We remain concerned about what happens if the water right is recommended as claimed, and then partially decreed by the Court, without any reference to this transfer or the Agreement. The protestants do not want to file objections to this claim in the SRBA. If the recommendation does not reflect the water right after the transfer approval, what assurances will the Department provide that the water right will be changed to comply with the Agreement?

Apart from the above concerns, the draft approval is acceptable. Once these concerns are addressed through a revised draft approval, the protestants will withdraw their protests. Please contact me at (208) 733-0700 if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: Jerry Rigby (for NSID)  
Dan Acevedo (for City of Blackfoot)  
Tom Arkoosh  
Roger Ling  
Kent Fletcher