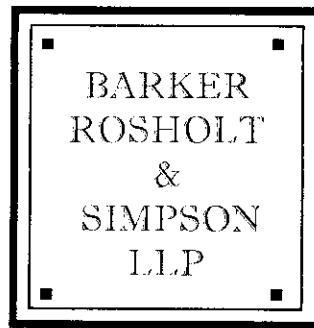


Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



Paul L. Arrington
pla@idahowaters.com

August 10, 2006

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SENT VIA FAX & FIRST CLASS MAIL

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

*RE: Transfer No. 69553
Response to 8/9/06 Letter from Roger Ling*

Dear Mr. Merritt:

I am writing in response to the August 9, 2006 letter from Roger Ling, counsel for Robert and Shane Darrington (the "August 9th Letter"). That letter is presented as an objection and protest to Transfer No. 69553 and the request for an extension to complete the drilling of the new well. For the reasons discussed below, as well as those presented in the August 8, 2006 letter I sent, the Department should grant the extension.

The Darringtons appear to object to the fact that the Stokers will no longer need to use the J Canal – owned by the Burley Irrigation District – for water conveyance purposes. Apparently the Darringtons believe that the private agreement entered into between Mr. Inouye (the predecessor-in-interest to the Stokers) was intended to limit the total diversions from the well not merely the total amount of water that could be conveyed through the J Canal by Mr. Inouye. The Darringtons are mistaken. While there was an agreement with Burley Irrigation District to "transport 170 inches of water into the J canal on a permanent basis" ("BID Agreement"), *see* Application to Burley Irrigation District (attached as Exhibit A), **this contract in no way limits the quantity of water that could be diverted through the new well** pursuant to water right 45-7045. Moreover, the argument is of no consequence since the Stokers do not intend to use the J Canal.

Transfer No. 69553 does not limit the diversion rate from the new well outside of the 5.47 cfs diversion limit stated on water right 45-7045. *See* Transfer No. 69553 (Attached as

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Exhibit B). While there are nine conditions of approval included on the transfer, ***none of these conditions limit the amount of water that could be diverted through the new well to 170 inches.*** In fact, there are only two conditions dealing with a limitation on the diversion from the new well. Condition 2 limits the "total instantaneous diversion of water from all points of diversion" to "5.47 cfs." *Id.* Condition 4 limits the diversion to "no more than 0.02 csf per acre" when combined with other rights. *Id.*

Although Condition 6 states that "Transfer 69553 is subject to agreement with Burley Irrigation District," that statement refers to water conveyance and the "use of a delivery system owned by person(s) other than the right owner." *Id.* In such a situation, it would be necessary to ensure that any attempt to divert water through a third party's system would be approved by that third party, in this case, BID. However, as stated above, the BID Agreement only concerns Mr. Stoker's ability to use the J Canal as a mean of water conveyance, and does not affect water right no. 45-7045, including the right to divert at all of the points of diversion, in any way. Moreover, there is nothing in either the BID Agreement or the transfer that limits the total diversion from the new well to 170 inches.

The Stokers are not seeking to increase the rate of diversion under water right 45-7045 beyond what has clearly been approved by Transfer No. 69553. The Stokers are merely piping the same quantity of water to the same land for the same purpose as contemplated in the transfer (irrigation) and as allowed by law under this water right.

It is also important to note that, as recognized by you in a memo dated January 30, 2002, this "***transfer was processed without protest.***" See Allen Merritt Memo RE: Review & Recommendation for Transfer 69553 (attached as Exhibit C). It is evident that the Darringtons¹ failed to file a timely protest when Transfer No. 69553 was originally noticed and approved in 2002.

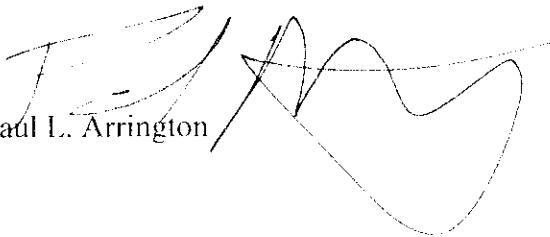
The Darringtons have no right to protest a change that has already been approved. Such an objection is untimely and of no legal affect. Transfer No. 69553 was duly noticed and the Darringtons could have filed a protest as required by I.C. § 42-222. They failed to do this and Mr. Ling's letter is no substitute. The Stokers should not be forced to refile a transfer application that has already been noticed and approved on account of a well driller's work schedule. Moreover, the Stokers are not responsible for the Darrington's misunderstanding about the intent and effect of Mr. Inouye's agreement with BID.

¹ I am unfamiliar with the ownership and usage of the Darringtons' property. Therefore, in referring to the Darringtons here, I intend to include any potential predecessors in interest.

Mr. Allen Merritt
August 10, 2006
Page 3

Accordingly, for these reasons, as well as the reasons set forth in the August 8, 2006 letter, the Department should grant the Stokers an extension. This extension is particularly warranted given the substantial effort that the Stokers have made this year to prepare the new well site for drilling and the fact that the well-driller is on the cusp of completing his work. Please call if you have any questions.

Yours Truly,


Paul L. Arrington

PLA:jrn

cc: Lavel Stoker
Roger Ling

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EXHIBIT "A"

T69553

APPLICATION TO BURLEY IRRIGATION DISTRICT
FOR STRUCTURE OR SPRINKLER IRRIGATION

SERIAL NUMBER _____ PHONE NUMBER _____

PRINT NAME OF LAND OWNER(S) Mits Inouye
NAME AND ADDRESS OF APPLICANT 400 S Hwy 77 Declo, Idaho 83323

THIS CHANGE WILL BE (PERMANENT) (ONE YEAR) (TWO YEARS)

Application is hereby made by the undersigned to the Burley Irrigation District of Burley, Idaho, for permission to change stream flow or change irrigation method or point of diversion or alter structure, canals, laterals or drain ditches of the Burley Irrigation District in Cassia County, Idaho.

Street address, location of change _____
Lateral or canal, the proposed change will be located on _____
Legal _____ Sec. _____ Tps. _____ Rg. _____

Written detailed description of proposed change.

Requests permission to transport 170 inches of water into the J canal on a permanent basis from deep well to supplemental water headgate, which is upstream of his well about 1½ miles.

As shown by the sketch or map attached, which said map or sketch is made part of the application. Said description, sketch or map sets out in detail the method to be used by the undersigned in altering such property.

I, we hereby agree to replace premises and maintain specifications satisfactory to the Burley Irrigation District, at my sole expense. When any change occurs in the use of said property, or at any time when directed to do so by order of the Board of Directors of the Burley Irrigation District, I agree to comply with directions made. The above request cannot restrict the access of equipment or vehicles of Burley Irrigation District or its agents to canals, laterals, or structures for repair or water measurement. I understand that the water taken from BID is on a continuous flow basis and I will be responsible for said water as stated in BID Water Policy now or in the future.

The Landowner, his successors, agrees to be responsible for all costs in the event the change needs to be restored to its original condition. Landowner, his successors or agent, shall indemnify and hold District and United States harmless from and against any and all loss and damage that shall be caused by or to the change or its repair, construction, removal, operation or of any wrongful or negligent act or omission of Landowner.

The Landowner further covenants with the District and United States that Landowner, will pay for any damages caused by the change or done at any time hereafter to any and all Personal or Real Property as a result of the change. The landowner shall indemnify and hold District and United States harmless from and against any and all loss and damage that shall be caused by Burley Irrigation District or their agent to the change.

All titled land owners signatures Mits InouyeDate 11-13-01 Applicant _____

((All down stream waterusers signatures.))

Ditchrider signature _____

This application is approved by the Board of Directors of the Burley Irrigation District this 13th day of November, 1991 subject to execution of proper agreement and signatures.

President Cecil F. Blau

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EXHIBIT “B”

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 69553

This is to certify that: MITSUO INOUE OR
MILDRED D INOUE
401 S HWY 77
DECLO ID 83323
(208)654-2742

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

Right	Origin/Basis	Priority	Rate	Volume	Acres	Total	Source
45-7045	AJC/License	12/16/1969	5.47 cfs	1656.0 af		414.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

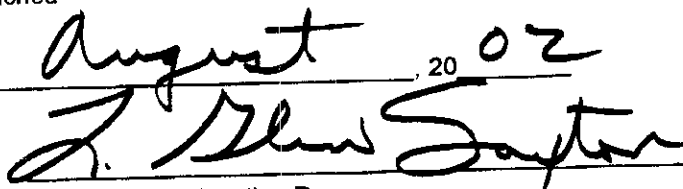
Current Number	Split	POD	PQU	Add POD	Period of Use	Nature of Use
45-7045	NO	YES	NO	NO	NO	NO

Summary of Water Rights After the Approved Change

Existing Right	New No. (changed portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
45-7045	45-7045	5.47 cfs	1656.0 af	N/A	414.0		N/A	N/A	NA	N/A
TOTALS		5.47 cfs	1656.0 af	N/A	414.0		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 1st day of August, 2002


Chief, Water Allocation Bureau

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WATER RIGHT NO. 45-7045
As Modified by Transfer No. 69553

In accordance with the approval of Transfer No. 69553, Water Right No. 45-7045 is now described as follows.

Right Holder: LAVEL D STOKER
 WENDY W STOKER
 BRENT STOKER
 MARLA J STOKER
 707 E 500 S
 BURLEY ID 83318

Priority Date: 12/16/1969

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01 to 10/31	5.47 CFS	1,656.0 AF
		5.47 CFS	1,656.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	SWNENW Sec. 11 Twp 11S Rge 24E CASSIA County
GROUND WATER	SWNWNW Sec. 11 Twp 11S Rge 24E CASSIA County
GROUND WATER	SWNENW Sec. 14 Twp 11S Rge 24E CASSIA County
GROUND WATER	NENWNW Sec. 15 Twp 11S Rge 24E CASSIA County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S 24E 11					28.0	30.0			40.0				40.0		40.0	40.0	218.0
11S 24E 14			40.0	13.0	40.0	36.0	32.0	35.0									196.0

Total Acres: 414

CONDITIONS OF APPROVAL

- Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
- The total instantaneous diversion of water from all points of diversion under Right 45-7045 shall not exceed 5.47 cfs, nor total combined annual volume of 1,656.0 af.
- The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
- This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

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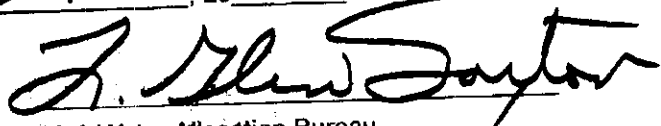
WATER RIGHT NO. 45-7045
As Modified by Transfer No. 69553

CONDITIONS OF APPROVAL

5. The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 10/31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than 4-10-2000.
6. Approval of Transfer 69553 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner. Transfer 69553 is subject to agreement with Burley Irrigation District.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 1st day of August, 2002


Chief, Water Allocation Bureau

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EXHIBIT “C”

FEB - 4 2002

MEMO

FROM: Allen Merritt *AM*

DATE: January 30, 2002

TO: Transfer File No. T69553

In the name of: Mitsuo Inouye

Water Right(s): 45-7045

SUBJECT: Review and Recommendation

This transfer proposes to change the point of diversion of a right which has recently been transferred under T5645. The new proposal involves conveying water or exchanging water in the BID canal. The BID has granted approval as documented in the file.

The transfer was processed without protest.

The applicant has called and wishes to file an expedited request to drill the well.

Recommendation

I recommend that this transfer be approved subject to the following conditions:

WATER RIGHT NO. 45 7045

- 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
- 067 The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
- T07 The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
- T08 Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
- T09 Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.
- T17 Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- T19 Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
- W57 Approval of Transfer 69553 does not grant any right-of-way or easement for use of a

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AUG 15 2002

delivery system owned by person(s) other than the right owner. Transfer 69553 is subject to agreement with Burley Irrigation District.

W61 The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/1 and after 10/31 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date of this approval.

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