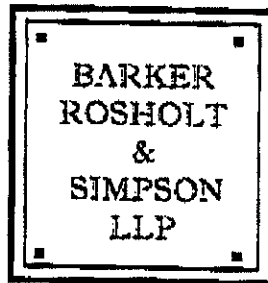


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August 10, 2006

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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 cfs 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.

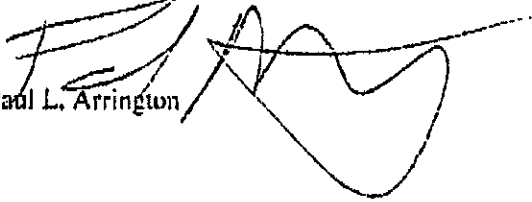
The Darringtons have no right to protest a change that has already been approved. Such an objection is untimely and of no legal effect. Transfer No. 69553 was duly noticed and the Darringtons could have filed a protest as required by I.C. § 42-222. They failed to do this and Mr. Ling's letter is no substitute. 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.

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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