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MAY 26 2004

Arthur W. Holden
(1917-1977)
DEPARTMENT OF
WATER RESOURCES
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

May 24, 2004

L. Glen Saxton, P.E.
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

Re: Notice to Resume Water User for Water Right No. 41-7030

Dear Mr. Saxton:

We wrote to you on this matter on May 5, 2004, but have heard nothing since. There is one further thought that should probably be raised, but which we did not express in the May 5 letter. It involves a question of whether the forfeiture language of Idaho Code § 42-222 is tolled or suspended during the pendency of the SRBA proceedings.

We are not certain of the official position of the Idaho Department of Water Resources on this issue. I have read the relevant decision of the SRBA court and have heard IDWR employees state that from November 19, 1987, the date of the commencement of the Snake River Basin Adjudication proceeding, until a partial decree is entered by the SRBA District Court, the forfeiture provisions of the statute are suspended or tolled. If that is so, perhaps that would be sufficient authority to relieve our concern about resuming use of water under water rights numbers 41-7030 and 41-7034, until the partial decrees may be entered.

As you know, the SRBA proceedings are presently ~~be~~ held up pending completion of the administrative transfer proceeding. Until the transfer proceeding is completed and formal approval is granted, we understand it would be illegal to resume diversion and use of water under the two rights.

We are most eager to do everything required by law to protect these rights. Your comments and instructions would be most welcome. Please let us know how we may be of assistance.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kent W. Foster". The signature is fluid and cursive, with the first name "Kent" being the most prominent.

Kent W. Foster

c: Tim Deeg
Dr. Charles E. Brockway