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April 13, 2005

Idaho Department of Water Resources
Roger Warner
Ron Carlson
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

Idaho Department of Water Resources
Karl Dreher
PO Box 83720
Boise, ID 83720-0098

Re: Transfer No. 71632

Dear Gentlemen:

We are writing at the request of Pancheri, Inc., regarding the above referenced matter to express some grave concerns about how the situation appears to be developing.

As you know, Mr. Vance Hawley filed an application to add an old well located in the SESE, Sec. 13, T6N., R28E., as an extra point of diversion, or perhaps the main point of diversion, for two water rights of Mr. Hawley, in addition to three (3) existing wells located near the place of use on the western side of the valley. The proposed additional point of diversion is a hole with some casing in it that hasn't been used for the purpose of diverting water from the aquifer for many years. There is no electrical service or panel, no pump, no motor, no column, and there is no facility to convey the water from the site of the old former well to the place of use.

Pancheris have a number of irrigation wells located immediately downgradient from this proposed additional new point of diversion, the closest of which is within a half mile. The Pancheris have a great deal of experience with wells and irrigation in the Little Lost River Valley, including the Hawley land and wells themselves. In their opinion, operation of a pump at the proposed new location will injure their water rights by negatively impacting their wells, especially given the current drouth conditions. They therefore timely protested the application numbered 71632, notice of which was published March 10 and March 17 of this year. To our knowledge, no hearing or pre-hearing conference to deal with this protest has yet been scheduled.

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Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Roger Warner
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Karl Dreher
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Nevertheless, Mr. Hawley is proceeding rapidly to install the equipment and facilities in order to use the well this season, at (we assume) very significant expense. When Pancheri called the Eastern Region office, they were informed that Mr. Hawley is proceeding on the basis of a temporary transfer under Idaho Code § 42-222A. This sounds like an attempt to circumvent Mr. Hawley's burden of proving that there will be no injury to any of the water rights of Pancheri, Inc., and we object.

Pancheri, Inc. is satisfied there will be injury and considers this letter to be "information that the change will injure any other water right" under Idaho Code § 42-222A(3). We also point out that Idaho Code § 42-222A(4) does not "authorize the construction of a new well as a new point of diversion". While there is an old hole in the ground with some casing in it, we think "construction" of a "new well as a new point of diversion" might also include the bringing of electrical service to the site, the installation of an electrical panel, motor, pump, column and the assembly of discharge and water transport facilities, including laying of pipeline.

We believe it would not be responsible to permit the expenditure of the time and expense (even though the applicant may say he is willing to take the risk) until a determination of the injury issue is properly made. It has been our experience in the past that once an individual has gone to great expense to drill a well or install equipment, the department is very reluctant thereafter to take action that might have prohibited the same in advance.

We will appreciate the department taking appropriate action to resolve the injury issue before Mr. Hawley gets the cart ahead of the horse. Please let us have the benefit of your thoughts and comments as soon as possible so that we may consider court action if necessary.

Yours very truly,



Kent W. Foster

c: Vance Hawley
Pancheri, Inc.