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DEC - 2 2004
DEPARTMENT OF
WATER RESOURCES

Barry Wood
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Gooding, Idaho 83330-0494
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November 29, 2004

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Att: Jeff Peppersack, Manager
Water Rights Permits Section
State of Idaho, IDWR
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RE: Transfer No. 71367-Water Right 37-11243.

Dear Mr. Peppersack and IDWR:

Please consider this letter as an Exception and Brief to the proposed "Conditions of Approval", a Petition for Reconsideration, and a Request for Hearing on the same.

Background:

On November 20, 2004, I received via the mail, a Transfer Approval Notice regarding my water right 37-11243. The certificate of Service states the Transfer Approval was mailed to me on November 18, 2004. Enclosed with the letter of Transfer Approval Notice was the actual three (3) page Transfer of Water Right which enumerates ten different "Conditions of Approval", numbered 1 through 10 inclusive. Also enclosed was an "Explanatory Information to Accompany a Preliminary Order." This letter is in response thereto.

Objection/exceptions to conditions of approval:

I object/ take legal exception to "Conditions of Approval", #'s 4, 5, 6, & 7, which in turn require the same to conditions 8 and 9.

Brief:

As a general exception/objection, the proposed conditions: are in violation of constitutional and/or statutory provisions; are in excess of the statutory authority of the agency; are made upon unlawful procedure; are not supported by substantial evidence on the record as a whole; and/or are arbitrary, capricious, and/or are an abuse of discretion.

In addition, I offer the following:

Proposal Condition #4 is improper for a variety of reasons, some of which are:

1. In violation of express statutory provisions, including but not limited to I.C. §42-701(7) and the Idaho Code Sections cited therein.
2. In violation of both constitutional and statutory provisions as a diminishment of the property right of the partially decreed right 37-11243.
3. In violation of constitutional provisions, including provisions of both equal protection and an unlawful taking.
4. Is unnecessary, arbitrary and capricious as both the original right and the transfer right already contain **both** a volume and a diversion rate restriction. See also proposed conditions of approval 1, 2, and 3 of the transfer which already acknowledge these use limitations by IDWR.

Proposed Condition #5:

The Watermaster is welcome anytime to come inspect, measure, visit, etc. This right has a decreed priority date of December 31, 1940 and is to be administered in accordance therewith. Any proposed administration at variance thereto is improper and unlawful; see also exceptions to proposed condition 4 which are incorporated herein. I also take exception because my understanding is that single-family domestic water rights are not presently administered by the Watermaster in Water District 130.

Proposed Condition #6:

See exceptions to proposed Condition #4 above. Without waiving those exceptions, and as has been stated before, including in the permit to drill the new well, the 2nd point of diversion is a new domestic well. My domestic water system now consists of two (2) domestic wells, one serving as the primary well and the other as a backup. Additionally, the two wells are operated by a mutually exclusive, "only one well at a time", electrical system, i.e., both are wired to one electrical control panel and when one is on, the other is off. See the

enclosed photo. There is also a "2 valve system" in each water line which prevents water from one well going to the other. It is designed so one of the two valves in each line is automatic and the other has to be physically turned on (and the other line off) to switch between the two wells. Again, the Watermaster is not only welcome to come and inspect, but is asked to come and inspect so as to relieve any concern of IDWR.

Proposed Condition #7:

The use of the water right is governed by the original-partially decreed right #37-11243. It contains both a daily volume restriction and a diversion rate restriction. Domestic and stock use for this water is governed by I.C. §§42-111 and 42-1401A. Thus any attempt to further restrict the original right is improper, both statutorily and constitutionally. As such, the exceptions to proposed condition 4 are also incorporated herein.

Proposed Condition #8:

This condition is neither necessary nor proper. See also my comments to proposed conditions 4, 5, & 6, above. Additionally, the second (new) well, which provides the additional (second) point of diversion for water right 37-11243 is already drilled and is operational. An IDWR employee has been out and physically inspected the same, took GPS readings, and personally talked to me at the site.

Proposed Condition #9:

Same response as No. 8 above.

Request for hearing:

It is my request that I be allowed to meet and try to resolve these concerns on an informal basis with IDWR. In the event that is not allowed, I request a formal hearing. For scheduling purposes, I will be out of the area December 3 through 12, 2004.

Thank you,


Barry Wood

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2004, I Karen Marie Wood mailed a true and correct copy, certified mail – return receipt requested, postage prepaid, of the foregoing Exception, Brief, and Request for Reconsideration and Hearing to the person(s) listed below:

**Jeff Peppersack, Manager
Water Rights Permits Section
State of Idaho, IDWR
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098**

Dated: 11/29/04
Signed: Karen M. Wood
Karen Marie Wood

