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November 8, 2000

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Department of Water Resources

Phillip Radier⁵⁶
IDAHO DEPARTMENT OF
WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

Dear Phil:

I am writing again on the Tim Deeg matter, about which I have spoken with you by telephone and written previously on October 16, 2000. I think I mentioned to you in our most recent conversation that an initial hearing was scheduled in American Falls on Thursday, November 2, 2000, regarding objections we filed to the Director's recommendations for 41-07030 and 41-07034 before SRBA Special Master Terrance Dolan.

We did attend at that time and met briefly with Roxanne Brown and Nick Spencer before we all agreed to ask the court for a continuance to explore possible settlement. In a spirit of helpfulness, Nick and Roxanne suggested a couple of alternative approaches that might have some potential for addressing our concerns. I thought perhaps I ought to present them to you as well and then we will be happy to discuss what you think is best.

First, Tim and I were somewhat relieved, after explaining the dilemma, to hear expressions from both Nick and Roxanne that they also seemed skeptical about the "loss of portions of the water rights by virtue of conditions in transfers" theory previously expressed by Alan Merritt. (In fairness to Alan, we didn't talk long, and I may not have understood his position correctly, or I may have managed to confuse him by what I said.) In any event, both Nick and Roxanne seemed to me to agree that no portion of rights 41-07030 or 41-07034 had yet been lost, assuming the elements of forfeiture or abandonment do not

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presently apply, if such rights (which are now leased) are, for example, transferred back to the lessors' lands before five years plus any extensions expire. They did not however offer any opinion as to one of the questions we presented to you: What procedure should Tim follow now that he desires to increase the capacity of his well to produce up to 10 CFS or more?

Rather, they offered a couple of alternative thoughts. In our letter of October 16, 2000, I listed five possible water rights in this well; 41-07030, 41-07034, 41-07071, 41-07076 and 41-07081. The first two are the leased rights that came to the well by way of transfer. The third is a small right acquired by Tim when he drilled the well he now uses primarily for domestic water. It was suggested, and I agree, that there might need to be a transfer of this third right for the water to be diverted from the larger irrigation well. The last two rights are in the permit stage and proof of beneficial use has been submitted and even a field exam done in 1997, but no licenses have yet been issued. Nick wondered if that process could be interrupted long enough to upgrade the equipment, divert the additional water, and redo the proof or at least field exam.

This approach would certainly be acceptable to Tim. The amounts under the two permits total 11.75 CFS which is probably more than adequate to cover the extra amount that might be produced with larger equipment. Dr. Brockway thought around 10.0 CFS could be diverted from this well or a new one that might be drilled a few feet from the existing one with the larger equipment. The day the field exam was conducted, the well produced 6.68 CFS. Tim actually farms the entire 816 acres, and has been rotating use to produce what crops he can on it, but it is short of water; although 10 FCS would be much better, even that would be a marginal amount for the 816 acres.

The second approach suggested by Nick and/or Roxanne was another permit. Tim indicated he had filed another application for permit but it is being held in abeyance pending the termination of the moratorium. Nick wondered if there might not be an appropriate exception that would apply in this case. After the meeting, I asked Tim to send me the information on that application and I have now received it. It appears Tim filed it in February of 1993, and it was assigned number 41-07089 and receipted, but Tim received a letter signed by Mel Schulte, dated March 3, 1993, saying it would be held without further processing until the moratorium is lifted. It doesn't seek extra water, just extra acres. At that time Tim was trying to expand his acreage and didn't have the information suggesting

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his well might produce more water with different equipment. I suppose if we could find a way to process this application it would need to be amended to include some 3.32 CFS and to apply to all 816 acres in order to accomplish what Nick was trying to envision anyway.

In summary, I suppose that Tim could withdraw his objections in the SRBA processing if he had some written assurance that the quantity elements of 41-07030 and 41-07034 have not been lost as a result of the transfers that brought them to his land and well. However, Tim needs either the additional water under those two rights (1.4 CFS plus 1.82 CFS equals 3.22 CFS) or about that much additional water under either permit number 41-07076 or 41-07078 or a new permit such as 41-07089, (10.0 CFS less 6.68 CFS equals 3.32 CFS). We will certainly look forward to hearing from you when you have had a chance to consider whether one of these alternatives might be employed to accomplish our objective and, in any case, what procedure we should follow.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kent", written in a cursive style.

Kent W. Foster