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ISB #1037, 4242, 5904

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OCT 09 2001

Department of Water Resources  
Southern Region

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OCT 10 2001

Department of Water Resources  
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF )  
APPLICATION FOR TRANSFER )  
NUMBER 69399 in the name of )  
CANNON-SHELLEY PROPERTIES )  
LTD PARTNERSHIP )  
\_\_\_\_\_ )

**NOTICE OF PROTEST**

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TWIN FALLS CANAL COMPANY and NORTH SIDE CANAL COMPANY  
(hereinafter the " Canal Companies"), by and through their attorneys, Barker Rosholt &  
Simpson, file their Notice of Protest to the approval of the above-numbered Application for  
Transfer filed by Cannon-Shelley Properties LTD Partnership. The basis for the Canal  
Companies' protest is as follows:

1. The proposed transfer will result in injury to the Canal Companies' water rights  
even though mitigation is provided. Ground water is hydraulically connected to the  
springs that supply the Canal Companies' water rights. This mitigation proposal does not  
account for the cumulative impact of historical and future depletions to the Shelley to  
Neeley reach of the Snake River. The model used for determining the impact to this

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reach of the Snake River calculates the difference in depletions from the existing well compared to the proposed new well at steady-state conditions. This computation is based upon static conditions and does not account for non-steady state, long-term withdrawal and the depletionary effect. As a result, the mitigation proposed is not sufficient to compensate all depletions that would occur in the reach due to this transfer and, therefore, the Canal Companies will be injured;

2. The applicant seeks to divert non-trust ground waters that are tributary to the flow of the Snake River above Milner Dam;
3. Applicant seeks to transfer the water right from an area statutorily depicted as "trust water area" to the "non-trust water area" in contravention of previous Department of Water Resources' decisions and policy; and
4. For such other and further reasons as may be set forth at the hearing on this matter.

This protest could be resolved by the following:

- a. Additional mitigation, in an amount agreed upon by the Applicant and Canal Companies, to minimize the depletive effect of the proposed transfer.
- b. Imposition of a condition, if the Department chooses to approve the application, that recognizes the distinction between mitigation provided by use of the model and the implication of transferring a water right from trust water to non-trust water.

DATED this 9<sup>th</sup> day of October, 2001.

BARKER ROSHOLT & SIMPSON

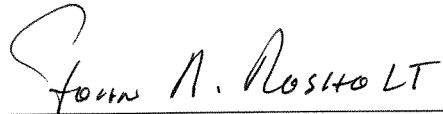
By: John A. Rosholt  
John A. Rosholt

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of October, 2001, I served a copy of the foregoing NOTICE OF PROTEST, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Idaho Department of Water Resources  
Eastern Regional Office  
900 N. Skyline  
Idaho Falls, ID 83401-3653

Cannon-Shelley Properties LTD Partnership  
1470 N 750 E  
Shelley, Idaho 83274

The image shows a handwritten signature in dark ink. The signature is written in a cursive style and appears to read "John A. Rosholt". The signature is positioned above a horizontal line.

John A. Rosholt