

RECEIVED

OCT 03 2014

WATER RESOURCES
WESTERN REGION

Honsinger Law, PLLC
Charles L. Honsinger
(208) 863-6106

October 2, 2014

Tim Luke
Rob Whitney
Compliance Bureau
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Water District 61E Complaint

Dear Messrs Luke and Whitney:

This correspondence responds to the September 9, 2014 letter written to you from Bruce Smith of Moore Smith Buxton and Turcke on behalf of Casa del Norte, LP ("CDN"). CDN's letter is misleading and attempts to obfuscate the facts laid out with supporting evidence by Double Anchor ("DA") in its August 12, 2014 complaint letter by making conclusory statements without any supporting data.

CDN begins its rebuttal by making false allegations against DA about the circumstances of its recently withdrawn transfer application. But beyond the fact that it is lying about DA's and its consultant's conduct, CDN apparently fails to understand that it withdrew its own application, and that the circumstances surrounding that withdrawal are simply not relevant to the water distribution and delivery concerns raised by DA. It is the withdrawal itself that is relevant. Thus, the relevant portions of CDN's rebuttal are addressed below.

1. Water Supply Bank Rental Agreement

Upon receipt of DA's complaint letter on August 12, CDN apparently (belatedly) realized that its withdrawal of Transfer 78272 meant that it was in violation of the conditions of its Water Supply Bank Rental Agreement - a point raised by DA. Thus, on August 20, 2014 CDN submitted a new transfer application in an effort to establish that it is "diligently pursuing a permanent water right to provide for the uses" authorized under its rental agreement. CDN complains mightily about DA's alleged conduct that apparently "forced" CDN to withdraw its application. Yet, if CDN's application no. 78272 was in fact a valid attempt to obtain a

Tim Luke
Rob Whitney
October 2, 2014
Page 2

permanent water right for the area covered by the rental agreement, why did it not move forward to a hearing on that application or amend that application instead of withdrawing it and subsequently (and belatedly) filing a new application? The answer is obvious: CDN is merely using multiple transfer applications as ongoing "cover" for its otherwise illegal Ryegrass Pivot sprinkler. CDN breached the Water Supply Bank Rental Agreement by withdrawing its application, and is attempting to retroactively remedy that breach and extend the agreement by filing yet another transfer application. IDWR should not permit the extension of the agreement beyond the end of the current irrigation season, because CDN has demonstrated very clearly that it is not "diligently pursuing a permanent water right" for that pivot. Moreover, DA hereby formally objects to any further extension of the Water Supply Bank Rental Agreement or any other Water Bank lease involving the rental of groundwater rights for which the permanent points of diversion are outside the Cold Springs Creek drainage.

CDN also filed its new transfer application for irrigation in the S $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 16, T4S R9E once its illegal water use in that area was exposed by DA's complaint letter. CDN, in its September 9, 2014 letter admits to the illegal use by attempting to cover itself with the statement that a transfer application has been filed for that purpose. This illegal use of water cannot be permitted to continue until and unless the transfer application is approved.

Out of season diversions.

CDN makes light of the illegal diversions of Cold Springs Creek water on February 14 by stating that because the watermaster did not note them, they did not occur. How then does CDN explain the fact that its ponds were full, and its ditches flowing on this date prior to the commencement of the irrigation season when the watermaster was onsite? How does it explain the photographs showing the diversions and wasting of water on that same day? The answer is simple; it does not. CDN knows it was illegally diverting water on that date, but is simply hoping that a statement that it was not will suffice to pull the wool over IDWR's eyes for another year. IDWR and the watermaster can not permit these illegal out-of-season diversions to occur again this coming winter because the diversions interfere with the recharge of Cold Springs Creek's bank storage, and subsequently with its natural flows during the irrigation season. This interference might in fact be the very reason CDN makes the illegal diversions - to induce an earlier futile call, thereby allowing CDN to divert more water earlier than it would otherwise be able to under conditions in which the out-of-season diversions are curtailed, and not coincidentally, preventing the flow of water downstream to other Cold Springs Creek water right holders such as DA.

Tim Luke
Rob Whitney
October 2, 2014
Page 3

Ryegrass Creek Hot Well/Ditches and 2+ Hot Well

CDN's excuse for its Ryegrass Creek reservoir being full is that a ranch hand left the Walker Hot Well running. The diversion of water into the reservoir by CDN, whether with its knowledge or not, was illegal. CDN also admits elsewhere in its response that the valve on the 2+ Hot Well was also inadvertently illegally left open, thereby increasing flows in Cold Springs Creek. Notably, CDN does not tell us exactly when the 2+ Hot Well valve was left open or how much water was flowing from the open valve - just that it was fixed upon the McCallums' return to the ranch on May 31. Moreover, the alleged decreased flows resulting from CDN's closing of the open valve on May 31 do not correspond with measured flows at DA's weir at or around the same date, as shown on Exhibit C of DA's complaint letter. The admissions by CDN that it can't even keep track of its own diversions to prevent the long-term illegal use of water that results in the filling of a large reservoir or the noticeable increase of flows in a stream for some undetermined period of time is an excellent reason to install monitoring equipment and lock all diversions on CDN's ranch, including all surface and ground water diversions.

CDN addresses the fact that cold water was running down the ditch into the Ryegrass Creek reservoir on March 13, 2014 by stating that "this would have been impossible" despite the onsite observations of Mr. Honsinger and Mr. Squires, and the photographic evidence establishing the same on that same day. As with much of its letter, CDN simply makes false and vague assertions about DA's allegations that are backed up with evidence, hoping that IDWR and the watermaster will take CDN at its word, despite the fact that it has no evidence to back up its false assertions.

Elk Pen Flow Meter

At least CDN admits that something is wrong with its flow meters, and asserts that "batteries do need to be replaced sometimes." This is true, but an appropriate time to replace batteries would be prior to the irrigation season, and to have a spare on-hand. Notably the watermaster's report for 2013 shows that CDN had battery issues with its flow meters as well. Moreover, the simple fact is that the flow meters have not worked properly on at least two occasions that Mr. Squires visited the CDN property, and on another visit by the watermaster. At a bare minimum, the Elk Pen flow meter must be replaced with a measuring device on which the readout can not be adjusted and one that is placed in a more appropriate location.

Ground Water Pumping Depletes Cold Springs Creek Flows

CDN states that there is no supporting information for the depletionary impacts its ground water pumping has on Cold Springs Creek flows. In fact, DA provided stream flow data and interpretaion with its complaint letter in Exhibit C, but apparently CDN either doesn't

Tim Luke
Rob Whitney
October 2, 2014
Page 4

understand, or willfully refuses to understand the data provided. Moreover, a simple pumping test of CDN's main cold water well would clear up entirely the issue of whether or not CDN's ground water pumping impacts water flows in Cold Springs Creek. Such a test would require a simple data logger installed in CDN's main cold well to record data two weeks prior and two weeks after the initiation of the well's use for the irrigation season, coupled with hand measured water levels in the well. DA hereby offers to conduct such a test at DA's own expense. CDN and/or its consultants could certainly be involved both in designing and conducting the test so that CDN is assured of the pumping test's validity. CDN will also be provided the entirety of all data generated from the test.

CDN asserts that it was not pumping its cold water well until June 1, 2014 as proved by Idaho Power records which, regretfully, CDN neglected to include in its response. If CDN truly believes there is no impact upon Cold Springs Creek flows caused by its pumping then it should have no problem providing IDWR and DA the power usage data from all three of its cold water wells. If it is in fact the case that there is no pumping impact on the creek from CDN's wells it would be a very important determination to be made; one that, as mentioned above, requires only a pumping test to confirm.

Moreover, CDN was irrigating with its Ryegrass pivot sprinkler on May 29, 2014 as evidenced by HLI's Ed Squires' and Blaine Dawson's site visit, and the digitally date-stamped photographs showing the same (attached hereto as Exhibit A). In fact, CDN had been irrigating with its Ryegrass pivot sprinkler at least 30 days prior to the date of this photo, and had even already produced a first-cutting alfalfa crop. If CDN did not use its cold water well until June 1 as asserted in its letter, then it was apparently irrigating under this pivot with Cold Springs Creek water. This additional significant illegal out-of-priority diversion of water out of the Cold Springs Creek drainage basin shows exactly why all of CDN's ground water wells and surface water diversions must be properly monitored to protect downstream water users.

CDN's letter also states that certain "peaks" in flows at the DA weir on Cold Springs Creek are due to CDN's cessation of diversions during pipeline repairs. If this is true, CDN should have no problem providing both DA and IDWR with the details of those repairs such as their location and nature. More importantly, CDN has used DA's hydrograph (Exhibit C to the complaint letter) to make its determination regarding "peak" stream flows despite CDN's contention that Exhibit C "is useless". This use of DA's data by CDN clearly establishes the usefulness of Exhibit C and that CDN's water diversions are easily evidenced by the small monitoring effort conducted by DA this year.

Summary

CDN appears to be in denial about its illegal water diversions and unwilling to accept and/or attempt to understand DA's carefully obtained and presented scientific data and


Tim Luke
Rob Whitney
October 2, 2014
Page 5

supporting evidence establishing that CDN is diverting more than its authorized share of available water. One only needs to read DA's complaint letter carefully to see that its conclusions are supported by the evidence supplied with that letter.

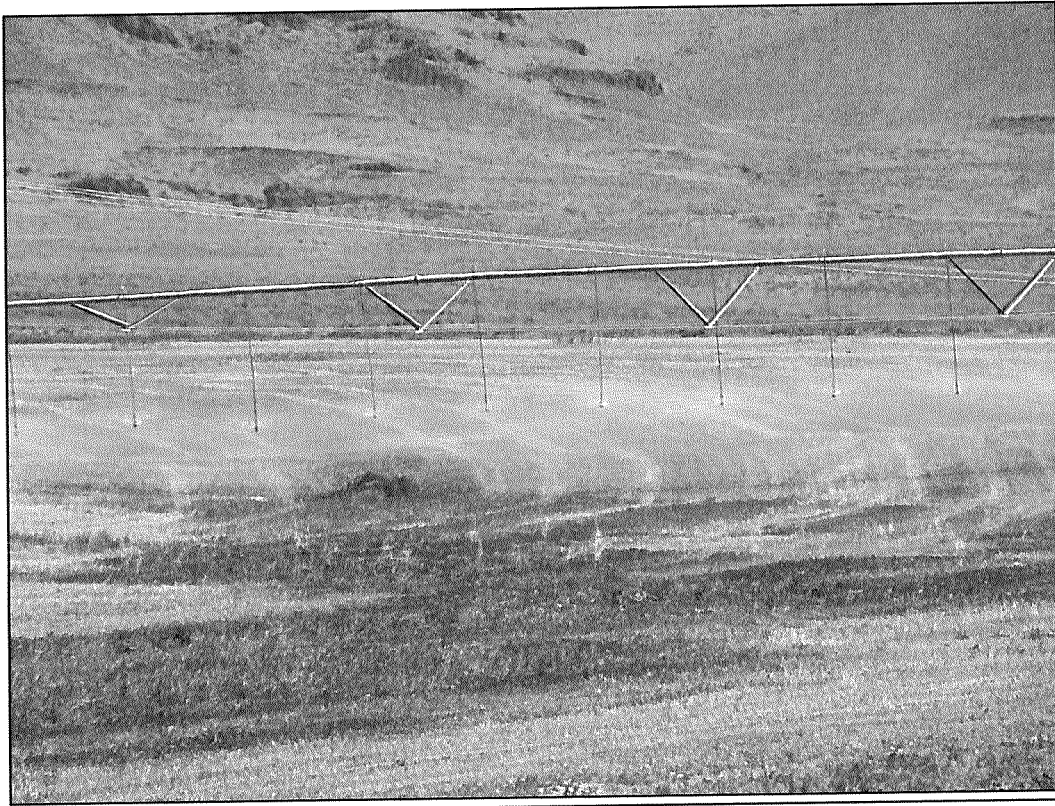
As with CDN, DA agrees that it is important for the watermaster to be allowed to do his job and administer water rights according to priority, along with carefully documenting his observations and actions during such administration. However, the simple fact is that CDN's letter itself provides the reasons that the current mechanisms available to the water master for monitoring and controlling water on Cold Springs Creek are inadequate (the water master has agreed with this point on several occasions). There are simply too many inadequately and vaguely explained circumstances without any supporting data in CDN's letter to permit water administration to continue under the existing mechanisms. Accordingly, DA refers IDWR back to pages 10 and 11 of its August 12 complaint letter for the proper actions to take and facilities to install.

We look forward to the positive changes in this basin by IDWR. Additionally, DA would be happy to discuss the pump test referred to herein at length with IDWR, CDN, and/or its consultants and attorney.

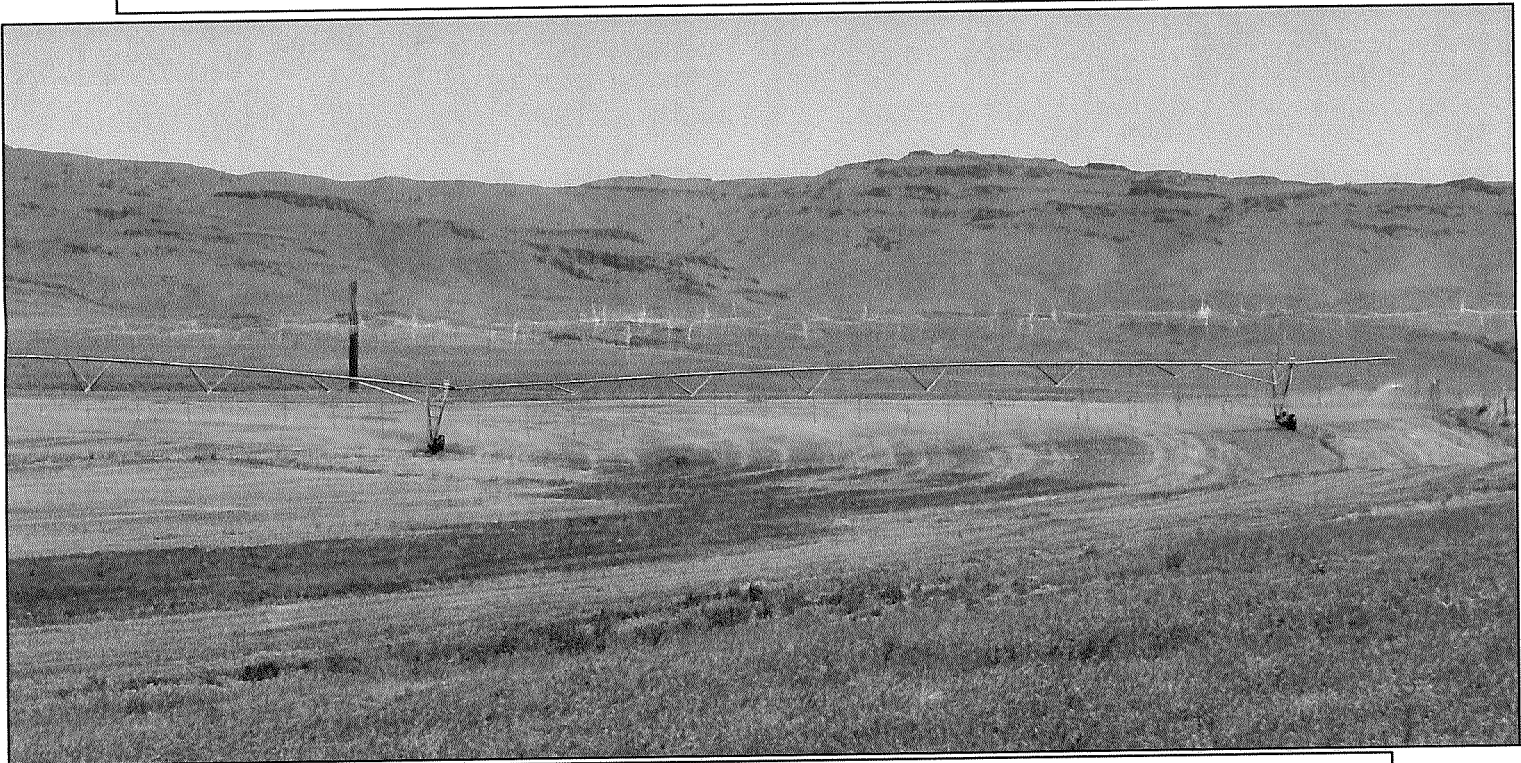
Sincerely,


Charles L. Honsinger

cc: John Westra
Rich Neal
Bruce Smith
Double Anchor Ranches
Hydro Logic, Inc.
Water District 61E members



May 29, 2014 photographs of the CDN's "Ryegrass Pivot" in use prior to the date of CDN activating its main cold ground water well on June 1st.



Photographs taken by Ed Squires and Blain Dawson of Hydro Logic, Inc. on its May 29, 2014 site visit to Cold Springs Creek and Ryegrass Creek drainages. Digital, date-stamped photographs are available on request.