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Arthur W. Holden  
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Terry L. Crapo  
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(1907-1988)

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MAY 03 1995

Department of Water Resources  
Eastern District Office

May 2, 1995

Mr. Doug Rosenkrance, Water Master  
Water District 34  
Mackay, Idaho 83251

Dear Mr. Rosenkrance:

Our client Mr. Mitchell D. Sorensen is in receipt of a copy of a letter addressed to you from Mr. Kirby A. Jensen which Mr. Sorensen received on April 4, 1995. The subject of Mr. Jensen's letter is a matter of dispute over contractual provisions between Mr. Jensen and Mr. Sorensen which we believe is not within the jurisdiction of the water master. It may be well for you to submit that letter to the Idaho Department of Water Resources and seek the advice of an attorney for the department.

In 1976 Mr. Sorensen's predecessor in interest entered into a contract with Mr. and Mrs. Kirby Jensen and Mr. and Mrs. J. Doyle Jensen to exchange the use of certain surface water rights for the use of a groundwater right. In 1979, Sorensen's entered into a similar agreement with J. Doyle and Catherine K. Jensen. Appropriate formal exchanges were approved by Idaho Department of Water Resources for each contract and the contracts and exchanges remain in full force and effect at this time.

During the drouth period (1987 to 1994) the present controversy arose. The contracts called for Sorensens to pay a portion of the pumping costs for the wells. The contracts also provided that:

"In the event the decreed water shall become unavailable for any reason, the decree owners shall use all reasonable efforts to supply well owners with an alternative source of irrigation water. If decree owners are unable to provide such an alternative source, the right to use the well water shall revert to well owners during such failure of the decreed water."

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As you are probably aware, decreed water was unavailable on many occasions during the drouth years. Sorensens maintain Jensens made no attempt to supply an alternative source of water and refused to allow Sorensen to exercise the reversionary clause of the contract. As a result, Sorensens suffered crop losses each year which now exceed some \$70,000. Some of the power charges which Sorensens would otherwise have been obligated to pay have not been paid. The damages from crop losses suffered by Sorensens far exceed the unpaid power charges and Mr. Sorensen has elected to treat such unpaid charges as an offset against the crop losses.

There are no provisions in either contract or the approved exchanges which authorize Mr. Jensen to make the unilateral demand you have received. We sincerely hope the parties will be able to resolve the dispute, but if they are unable, we believe it will be necessary for the contractual issues to be resolved by a court of law rather than the water master.

If we may provide additional information or be of any assistance, please feel free to call upon us at your convenience. Thank you for your kind consideration in this matter.

Very truly yours,



Kent W. Foster

pc. Norm Young, IDWR  
Ron Carlson, IDWR  
Carter Fritchle, IDWR  
Kirby A. Jensen  
Teresa Sturm  
Mitchell D. Sorensen

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