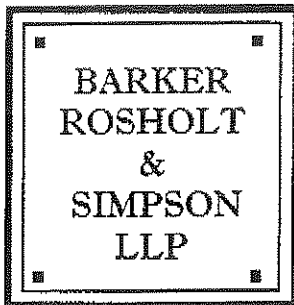


Letter from Semanko

John A. Rosholt
Albert P. Barker
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington



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FACSIMILE COVER SHEET

DATE: 6/1 Recipient's Fax: 287-6700

RE: Challis

TO: Gary Spackman

FROM: Norm Semanko

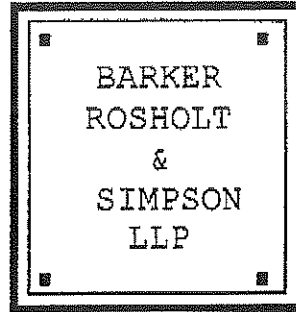
NUMBER OF PAGES INCLUDING THIS COVER SHEET: 5

- Original ^{has been} will not be sent.
- Original will be sent by first class mail.
- Original will be sent by Federal Express.

MESSAGE: This is the letter that we
mailed on May 17. Thank you

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John A. Rosholt
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Norman M. Semanko
Of Counsel

May 17, 2007

Gary Spackman
Administrator, Water Management Division
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: April 27, 2007 Letter to John R. and Patricia W. Challis

Dear Gary:

Having been directly involved in the discussion that occurred at the April 12 meeting at the IDWR State Office between yourself, Jack Challis, Nick Miller and Gary Chamberlain, I requested that Jack and Patricia Challis allow me to respond to your letter dated April 27, 2007, rather than seeking to take it up immediately and directly with Director Tuthill. As you know, I have represented the Challis' on their individual water rights matters for a number of years.

Your letter notes that application for permit no. 72-16686 has not been approved and that water is being stored without a valid right to do so. You further set forth four conditions to ensure compliance with the law. These are set forth below (in italics), followed by our response.

1. *You must not beneficially use stored water while it is in the pond. Beneficial uses within the pond include stocking with fish, recreation, aesthetics, etc.*

Response: The pond will not be used for these purposes until the application is approved. Following the indication by Jim Stanton of IDWR that this permit application should present no problem, and IDWR's initial timely advertisement of the application in the Challis Messenger, the Challis' did, in fact, seek and receive authorization from the Idaho Department of Fish & Game to introduce hybrid Grass Carp into the pond. This was done to control moss and algae build up that was and continues to cause problems with the irrigation pumping system. When IDWR subsequently withheld its second advertisement, the Challis' thereafter ceased further action in this regard. Due to Blue Heron and winter kill, these fish are no longer an issue.

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May 17, 2007
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2. Pursuant to Idaho Code Sec. 42-701, on or before May 25, 2007, you must: (a) install a measuring device or other means of measurement approved by the Department that will accurately measure the flow from your rediversion pump; (b) install a locking control valve or other locking controlling mechanism at the rediversion pump; and (c) install/maintain measuring devices for inflow from wastewater or water delivered to storage pursuant to natural flow rights.

Response: Apparently, you failed to recall the conversation relating to this subject that occurred during our aforementioned meeting. Further, your telephone conversation with Jack Challis prior to sending your letter also covered this subject. Finally, you seemingly failed to research your own files before sending out this letter. Specifically, Jack Challis sent a letter to Allen Merritt of IDWR on June 29, 2006 which included the following:

Based upon relevant information provided by Jeff Peppersack (with whom I met in this regard on a trip to Boise) we subsequently installed a Parshall Flume in the collection ditch that brings the majority of our waste water to the pond. We have another "V" Notch Weir that allows measurement of flow of additional waste water coming through our spring, 72-16563, and, in turn, to the pond.

Knowing the GPM output of our "Big Gun" in our east pasture being fed via pump from the pond, we maintain an ongoing computer record of this output plus all aforementioned flows. Thus we are able to document with extreme accuracy that only waste water, none of the ground water and/or spring flows covered by this non-consumptive permit, are used in our irrigation system. For those times when more waste water is flowing to the pond than being used in our irrigation operation an overflow (screened in accordance with IF&G guidelines) from the pond returning those flows to Challis Creek is functional.

We believe this is more than sufficient, particularly given the prior consultation with Jeff Peppersack and subsequent detail provided to Allen Merritt, not to mention personal observation of the system by IDWR personnel on two separate occasions.

3. Pumping from your well cannot exceed the rate of surface water inflow into your reservoir from a combination of wastewater and flow diverted under other water rights. Alternatively, you may balance the daily volume of water pumped with the combined daily volume of wastewater and water delivered to the pond from natural flow water rights. You must maintain records of the daily accounting of inflow and outflow, and must submit them to the Department upon request.

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Response: Again, it doesn't appear that your letter was prepared with the benefit of first reviewing your own files. The Challis' do not pump from any "well" (other than their domestic well, for domestic use only). The remainder of this condition is addressed in the response to condition no. 2 above.

4. *At the end of the irrigation season (October 15, 2007), unless the Department has approved permit No. 72-16686, you must lower the level of water in the pond to the natural ground surface. This would include breaching any berms surrounding the pond.*

Response: The Challis' can, and given no other legal option, will plan to do this. However, given that this is still five months away (and acknowledging the end of the irrigation season in Custer County is October 31st, not the 15th), we request that IDWR finish processing the Challis' application for this permit and approve it, forthwith. The application was filed on November 22, 2005. The required approvals have been obtained from the Idaho Department of Fish & Game and the Idaho Department of Environmental Quality, as documented in IDWR's files. All additional information requests have been fully satisfied. The Water District 170 Watermaster has given his approval and Jim Stanton's comment/analysis concludes that "the permit should be approvable with standard conditions." There is no reason for further delay and we request immediate approval, or a firm timeline as to when we can expect such approval, along with an explanation as to why the application has not been approved yet.

The admonishment of Jack Challis as the Watermaster for Water District No. 72-A, stating that his position places an extra burden upon him and stating that "swift enforcement action" will be taken by the Department if the measuring device and controlling works are not installed by May 25, strikes us as both unnecessary and hastily conceived. Again, these works have already been installed, pursuant to Jack Challis' consultation with Jeff Peppersack, and as fully reported to Allen Merritt and observed by IDWR staff. We request an immediate written acknowledgement that the works have been installed, that you failed to note this from your own files and conversations with Jack Challis, and that your letter mistakenly chastises Jack Challis for failure to do something that he has in fact already done, most notably, with IDWR's knowledge and consultation. This seems to us the proper and professional thing to do. We request that your written acknowledgment be copied to the same parties to whom your previous letter was sent.

Finally, we would like to know what prompted your letter. Please indicate whether the letter was the result of a complaint lodged with IDWR or whether the agency issued the letter on its own initiative. We suspect that you, and perhaps others at IDWR, felt compelled to send a "companion letter" to accompany the "Illegal Storage Pond" letter that you also sent to Robin Wegner on the same day. Perhaps this was done in an effort to appear fair and even-handed. We assume this is why you provided a copy of your letter to Robin Wegner; there is no other

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explanation. However, there are some key differences between these two situations, which are worth noting:

- Challis' have responded to and satisfied all requests for additional information to process their application for permit; Wegner has not.
- Challis' filed their application for permit on November 22, 2005 and it is ready for approval; Wegner's is not.
- Challis' have installed the necessary measuring and controlling works; Wegner has not.

In the future, we suggest that "enforcement" letters be issued on a case-by-case basis, with some review of the respective file, rather than appearing to be issued as a "tit-for-tat".

To sum up, we believe we have adequately responded to the four conditions set forth in your letter. If not, please let us know immediately. Also, as requested above, please provide us with a written acknowledgement that Jack Challis has indeed installed the necessary measuring and controlling works, with IDWR's advance knowledge and written after-the-fact confirmation, and that your chastisement was therefore unwarranted. We would also like to know what prompted your letter, in light of the concerns expressed above. Finally, we request approval of application for permit no. 72-16686 or a written explanation of why the permit has not been approved, notwithstanding that all required information has been submitted to IDWR, along with a timeframe for completing the approval process. Alternatively, we will request that any and all of these issues be taken up directly with Director Tuthill.

Thank you for your cooperation in this matter and we look forward to hearing from you soon.

Sincerely,



NORMAN M. SEMANKO
Attorney at Law

cc: David Tuthill, Director
Gary Chamberlain, Idaho Water Resource Board
Bob Foster
Allen Merritt
Nick Miller
Jack and Patricia Challis