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August 18, 2017

VIA EMAIL & U.S. MAIL

Director Gary Spackman
IDWR
322 E. Front St.
Boise, Idaho 83702-0098
gary.spackman@idwr.idaho.gov

Lyle Swank, Watermaster
Water District 01
900 N. Skyline Dr., Suite A
Idaho Falls, Idaho 83402-1718
lyle.swank@idwr.idaho.gov

Dear Director Spackman & Mr. Swank:

I am writing on behalf of my client the Milner Irrigation District (Milner) concerning anticipated surface water right administration this fall in Water District 01. This letter follows up on my October 7, 2014 letter on the same subject.

As you are aware various water users in Water District 01 have been negotiating and discussing the fall “storage reset” for purposes of water right administration in the context of the SRBA. The Court recently decreed the Basin 01 storage water rights last August. The Watermaster is bound to distribute water in accordance with the water right decrees pursuant to state law.

As we understand it, the Water District “resets” the storage water right accounts on September 15th each year for purposes of priority administration. In other words, when available natural flow exceeds the irrigation demand of senior water rights, the District distributes that water to storage water rights in priority, even if the right’s storage volume had already filled once for the year.

Through our research and discussions it is now known that the priority date used for purposes of the “reset” administration has changed over time. It is our understanding the Water District now uses the Lake Walcott priority (12/14/1909) when water is distributed to storage in the fall. According to the current District accounting records the Lake Walcott storage right completely filled earlier in 2017. As such we are unaware of any law that would authorize the Water District to begin filling that water right in priority for a “second time” this calendar year (i.e. beginning on September 15th).

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The administration is of particular interest to Milner because the reset to the Walcott priority has in effect curtailed Milner's natural flow water right 1-17 (November 14, 1916 priority date) in recent years. Instead of being allowed to divert available natural flow to deliver to its landowners, Milner has been forced to exhaust its storage water for those deliveries while the Water District distributes the natural flow to the Walcott storage right (for the second time in the same calendar year). Again, we are unaware of any statute, rule, or caselaw that would authorize such distribution.

The fall storage "reset" is not authorized in the current storage water right partial decrees, including the Lake Walcott storage right (1-219). Therefore, if the conditions arise this fall, we would request the Water District and Director ensure Milner receives the appropriate natural flow as required by Idaho law. We would specifically request a formal written response to this letter by **Friday September 1, 2017** so that further options can be pursued to protect Milner's water right if deemed necessary.

We appreciate your attention and timely response to this matter. Please call me at (208) 733-0700 if you have any questions.

Sincerely,

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

cc: (email only)
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