

**OTHER DOCUMENTS
EXIST ON MICROFILM IN THE VAULT**

EJA

Big Lost Water Users Association
Box 66
Moore, Idaho 83255

RECEIVED
JAN 30 1991

Cecil D. Andrus, Governor
State Capital Building
Boise, Idaho 83720

RE: Big Lost River Basin

Department of Water Resources

Dear Governor Andrus,

We, the undersigned, are requesting your support and encouragement to IDWR and the office of the Attorney General in seeking to resolve conflicts in the following areas:

1. On July 13, 1990 an order to Cease and Desist the diversion of unauthorized ground water was issued by IDWR to Richard Tuthill, DBA Hillcreek Properties and P.U. Ranch. Despite the issuance of the order, they have continued to pump water. IDWR has told us on more than one occasion that the case for enforcement of the order is in the hands of the Attorney General. We strongly request the Attorney General to act on this matter.
2. On April 19, 1990, Hillcreek Properties made application to transfer surface decree nos. 34-00170 & 34-00556 to land Southwest of Big Lost River Irrigation District boundary. There were numerous protests and this protest hearing has not yet been held. We urge that this hearing be scheduled or the application denied.
3. In the case of Mitchell Sorenson; On Oct. 19, 1989 a Cease and Desist order was issued on ground water #34-7410 and on December 19, 1989 a Cease and Desist order was issued on ground water #34-2428 and surface nos. 34-0496/0692/~~7021~~. T921. They continued to pump despite the order. We urge enforcement action on these.

The water in items 1, 2, & 3 above are the subject of suits filed against the Big Lost River Irrigation District demanding delivery to unauthorized places of use Southwest of district boundaries.

4. There are some 15 to 20 other Cease and Desist orders that have been served, an action that we applaud and request that they also be enforced.
5. There are some 60 applications to divert and use 600cfs of surface and ground water, many of which have been developed without approval. We urge that Cease & Desist orders be issued and enforced in all appropriate cases pursuant to the moratorium signed on August 7, 1990.

We thank you for your past interest and concern and hope necessary decisions can be made and our community can begin to heal.

Respectfully yours,

Lawrence Babcock
Lawrence Babcock, Chairman

Dated this 19th day, Jan. 1991

Enclosures: Eight signature pages containing approximately 165 supporting signatures.

cc: IDWR- R. Keith Higginson & Attorney General- Larry Echohawk

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4	Glenn Hail	" "	"
5	Blana Fra	Moore, Id.	"
6	John Hail	Moore, Id.	83255
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26	Janis Woodbridge	Moore, Id.	83255
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Vieta Corgatelli	Rte #1 Box 43 Darlington Id	83231	48
Jack Woodbridge	Box 564 Arco Idaho		49
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			52
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Mr. Higginson
BLR ADVISORY COMMITTEE:

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FEB 26 1990

Department of Water Resources

I WOULD LIKE TO EXPRESS SOME THOUGHTS TO YOU CONCERNING THE CONJUNCTIVE WATER USE PLAN THAT MR. HIGGINSON HAS PROPOSED FOR OUR WATER DISTRICT. AS HE HAS SAID, THE PLAN IS A PLACE TO START AND PROBABLY FAR FROM THE FINAL DRAFT. I ENCOURAGE YOU TO WORK WITH HIM AND I WILL LIST SOME OF MY REASONS.

1. THERE HAVE BEEN SERIOUS WATER PROBLEMS IN THIS BASIN FOR MANY YEARS....SERIOUS AS IN THREATENING OF LIFE AND PROPERTY THE DISTRUCTION OF COMMUNITY HARMONY, CONTENDING ONE WITH ANOTHER INSTEAD OF TRYING TO BUILD A BETTER COMMUNITY FOR OUR FAMILIES. CONTENTION HAS ADVERSE EFFECT ON EVERYTHING WE DO. IT EFFECTS OUR BUSINESSES, OUR SCHOOLS, OUR CHURCHES, OUR FAMILIES AND INDEED EVERY WALK OF LIFE. I AM SURE YOU WILL AGREE THAT IF ANYTHING CAN BE DONE TO ALLEVIATE THESE PROBLEMS IT IS WORTHY OF THE EFFORTS OF EACH OF US.

2. THERE IS MUCH CONCERN ABOUT A WELL TAX, USE FEE, OR OTHER METHOD OF COLLECTING MONEY TO FINANCE THE DRILLING OF WELLS WHICH WOULD REPLACE WATER SUPPOSEDLY LOST FROM SURFACE RIGHTS BECAUSE OF THE USE OF GROUND WATER. THE DEP'T. GEOLOGIST SAYS THERE IS A THEORETICAL NEGATIVE IMPACT OF GROUND WATER USAGE ON SURFACE WATER FLOWS. THIS THEORY SHOULD BE JUSTIFIED AND QUANTIIFIED BY AN UNBIASED STUDY OF WATER DELIVERY RECORDS, GROUND WATER LEVELS, THE EFFECT OF SO MUCH OF THE IRRIGATION CHANGING FROM FLOOD TO SPRINKLERS, THE EFFECT OF THE DROUGHT, ETC. IF THE STUDY DOES SHOW A NEGATIVE IMPACT ON SURFACE RIGHTS, THERE SHOULD BE A TAX ON WELLS TO PROVIDE WATER TO RESTORE THESE RIGHTS. IF THE STUDY DOES NOT SHOW A NEGATIVE IMPACT, THERE IS STILL NEED FOR A GROUND AND SURFACE WATER USE PLAN. HOPEFULLY, UNDER THIS TYPE OF PLAN, PEOPLE WITH POOR WATER RIGHTS WOULD HAVE THE OPPORTUNITY TO DRILL WELLS IN A DESIGNATED LOW IMPACT AREA. THE PURPOSE WOULD BE TO PROVIDE A MORE DEPENDABLE WATER SUPPLY TO THEIR FARMS.

3. THERE ARE LOAN FUNDS AVAILABLE FROM THE STATE FOR WATER PROJECTS SUCH AS THIS. POSSIBLY THERE WOULD ALSO BE FUNDS AVAILABLE TO HELP COMPENSATE INDIVIDUALS WHO HAVE HAD TO DEEPEN DOMESTIC WELLS.

4. ACCORDING TO WATER STUDIES, THERE IS MORE THAN ADEQUATE WATER MOVING THROUGH OUR DRAINAGE TO PROVIDE PLENTY TO IRRIGATE THE LANDS NOW FARMED. THERE ARE PLACES WHERE WELLS CAN BE DRILLED AND PUMPED QUITE ECONOMICALLY. IT IS POSSIBLE THAT SOME DEEP WELLS ALONG JAMES CREEK AND SPRING CREEK COULD BE PUMPED INTO THESE CREEKS ON A YEAR ROUND BASIS DURING DROUGHT YEARS. THIS COULD ACCOMPLISH TWO PURPOSES (1) KEEP LIVE RIVERS FOR THE FISH AND WILD LIFE (2) REBUILDING SUB WATER IN THE ARCO AREA. THIS MIGHT REQUIRE HYDROLOGY STUDY OR IT MIGHT BE STUDIED BY TRYING IT WITH EXISTING WELLS IN THE OFF IRRIGATION SEASON.

5. THE ALTERNATIVE TO WORKING OUT SOME KIND OF AN AGREEMENT IS APPARENTLY TO SPEND MUCH MONEY AND EFFORT ON LAWYERS AND HYDROLOGISTS AND COURTS TO MAKE A DECISION THAT WILL NOT CURE OUR WATER PROBLEMS.

PLEASE CONSIDER MY THOUGHTS. THEY ALSO ARE ONLY SOMETHING TO WORK WITH. I WISH YOU THE BEST IN YOUR WORK. I WOULD BE GLAD TO HELP YOU IN ANY WAY I CAN.

A handwritten signature in cursive script, appearing to read "Paul White", is located at the bottom left of the page.

This may be lengthy and a lot of rehash but I have formed some thoughts that are my present opinions and hopefully can be constructive to some degree. ABK

MOORE IDAHO
FEB 14, 1990

Dear Keith;

RE: Ideas and Considerations by Stephen B. King

Storage is determined at the beginning of the season, based on the water level in the reservoir. Surface decrees are determined daily at dam; These ^{decrees} are credited as used, or accrued (it is called "Rotating with the district") If the dam runs over, the accruing credits are wiped out and full storage starts anew. i.e. Full dam allocation.

QUESTION--SHALL THIS POLICY CONTINUE ?

OR Since one purpose of the dam is to store water to give late decree holders a more equal share; and since there is the rule that a decree not being used goes to the next right; perhaps the renewed full storage should be effected when the water level reaches the "old spillway" floor.

Since the full storage was set up originally on a formula; this suggestion would move a portion of the "accruing decrees" to the later rights on the formula basis. Still allowing "Rotation" to the level of the original full dam.

OR Another way would be to allow rotating to the extent of 10 or X times the decree. Otherwise the way it is working now gives unlimited accruing until the dam is full.

The first way looks best to me; thus fulfilling the "on to the next decree" rule; at least to some extent. Still preserving the valuable tool we now have in the "Rotation" practice.

AS TO THE WELLS:

At first they were like an insurance to take the place of short surface supply. The first wells were used for flood irrigation. Nearly all were used within a short distance of the well. Thus they were putting water back on the land close by; some recharging was accomplished there also. This was true whether primary or supplementary water.

The advent of sprinklers made the wells needed a bit less for a given plot of land. When put directly to a sprinkler system, only about 1/3 of the water previously used is drawn from the underground. This leaves 2/3 down there; which is probably more than got back to the aquifer with flooding.

THIS SCENERIO caused many to say to themselves, "Now I have extra water, therefore, I will seek to develop more land." Many times this land was located a long ways away.

This seemed to work until drought reared it's head-----this extra land now needs more wells, transfers, or whatever to stay in production.

From about 1961 to about 1975 there was still a minimum of transferring and changing of place-of-use. Then problems began to multiply:

1. Applications were made but not granted for various reasons.
2. actual usage was made (without permits) in a few cases.
3. Wells drilled and pumped without approval.
4. Water used elsewhere without approval.
5. Wells sold (supposedly not needed where initially appertenant)
 - A. Then these persons either bought water or drilled another well to take place of one sold.
6. More wells drilled and pumped and water taken long distances to new lands.

NOW FOR EXAMPLE Well #1 was drilled and used as supplement

Department of Water Resources

FEB 22 1990

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to surface water on 160 acres. The licence was for 160 inches. Since the well was used as a supplement it wasn't pumped continuously for the entire irrigation season. The well would produce more than 160 inches but because of intermitant use--the daily average was ~~probably~~ less than the 160 inch license. Sprinklers are put on this farm.

NEXT the well is sold, because it is rarely needed. The well is used by the new buyer several miles downstream (now that well cannot put anything into the aquifier until miles further on.)

Others see this going on so they aquire land, or may have some not being used, they even buy new land with no water yet appurtenant thereto. They then apply for permit to drill and pump. Some are granted, some are not, the same with transfer of well # 1

For those planning to use land where water is not appurtenant, this looks quite risky. Should this land have water supplied to it without following legal rules? I say that's very risky! If the water is used without the legal rules; what rightfully should be done?

Now for well #1. If it were legally transferred to another place, okay, but the question now must be addressed, since it was 160 inches for 160 acres initially, is it now applicable to 160 acres or 400 acres? This would mean continuous pumping now, where it didn't before. This looks like a ^{possibly} greatly expanded use of the original license

~~to~~ ^{again} if not legally transferred, shouldn't it stop being used until proper license is granted?

Another thing that has happened is: The well on a plot of land is put on a sprinkler system and supplies all that is needed. The surface Decree now is free to to next Decree. The owner doesn't feel that's what he wants so he asks to have the Decree sent some other place. Is this always okay, under what conditions is it okay ~~OR NOT OKAY?~~

For our present situation may I suggest some considrations.

(My Feelings Presently)

1. Where wells were originally drilled and properly licensed, let them continue to be used there. *especially to about 1974.*
2. If proper permits and licenses were issued to a remote spot to transfer those wells, let them continue as long as:
 - a. it's not an expanded use
 - b. the district gets reasonable shrink and reimbursement for use of canals as determined by the district.
 - c. If in a district ditch or canal, the district dictates conditions to be complied with, "is there room" etc?
3. If not properly permitted, these wells should not be used until properly permitted.
4. Decrees used other than on land where appurtenant should be so used in accordance with IDWR stipulations if any. And if lands where it was originally decreed are now using a well, this should be considered in determining expanded use or not.
5. Where ever possible, water from wells should be used on the land reasonably close to the well. When pumped for credit, ~~shouldn't~~ the water still ^{should} be used where it was designed to go? Also, credit should ^{only} be given when someone downstream is utilizing water from the reservoir, this is a district decision.

The District should have the "say" in juggling within the system. The District should determine shrink, credit, and other related items, like transporting, is there room etc.

As for domestic wells, a reasonable depth has got to mean greater than a 20 foot sand-point. The underground water level has risen only 7 feet this winter at the co-op in Moore, from 59 feet up to 52 feet.

This indicates that all the wells being shut off could have affected this water level no more than 7 feet. Since the water level in Oct. was the lowest this would show that the wells DO affect the water level, but not over 7 feet, probably less, it's been long enough since irrigation season to be as high as it would have been if the wells had never pumped last summer.

If I had figured a sand-point well was good enough and now the 7 foot drop along with the drop of natural water flow dries me up, it's my problem, I should deepen my well myself. Many wells that have gone dry are only 50 feet deep. I say they would probably ^{never} gone dry even without the irrigation wells.

I don't believe shutting off all the wells will make any surface water run where it isn't running now; nor make a significant ground water raise. It surely won't make any surface Decrees come on, or by now, Feb of 1990, water would be rising in the Arco area. For this reason I also don't believe the wells that have perforations within 20 feet of the surface affect the ground water level except a small fraction of what the wells small fraction is, therefore have very little effect.

I ~~have concluded~~ ^{Believe} that all regulations existing now regarding permits and licenses for water should be followed and not circumvented. That expanded use must be allowed only upon following said regs.

1. That domestic wells need to be deep enough to get water that's not the first water down, 100 feet is not unreasonable.
2. ~~ANY~~ New wells be allowed only within a mile ^{or so} or upon, the land where it is to be used. ~~This distance could vary but not long distances except as follows:~~
An exeption allowed ~~if~~ ^{if} no one protests ~~a different arrangement.~~
If protested, that a proper hearing be held and the IDWR be the deciding entity.
3. Any new wells have no perforations above 50 feet down.
4. Existing wells with priority before 1975 be allowed to continue with existing perforations unless transferred to remote lands, then priority ~~of transfer~~ ^{Become Date of Transfer.}
5. Non-permitted usages be required to (cut-it-out) stop, till approved.
6. I conclude also that to gear surface decrees to ground-water ^{would be} ~~would not~~ provide for earlier surface users by shutting down even all the wells.
7. Out of District users need to pay "reasonable" shrink and reasonable O&M for use of canals because without District water wells would deliver very little over the distances they now go. Any benefit the wells do in helping District and decreed water should be recognized but not credited to be anything but (price paid for use of system).

MOST OF THE LAST 15 ^{or more} YEARS ~~and especially the last~~ have seen many wells and transfers for new hands to be formed. Perhaps these should be looked at differently than those ~~1st~~ wells.

Sincerely Hope this has merit

Stephen B. King

RT 1 Box 105
moore ID 83255

37-114 Watermaster Report

DIVER	R	DIST_PRIOR	OWNER	ST_ID	DECREE_TO	PRIOR	INCHES	CFS	ABOVE	BELOW
45	E		B S RANCH	37-0114	R.F. & ROSA BUHLER 05	/ 01 /	8.00	0.16	0.24	0.16
45	E		CARL BROWNING	37-0114	R.F. & ROSA BUHLER 05	/ 01 /	4.00	0.08	0.08	0.08
45	E	49-E2	H G 2 LIMITED PARTNERSHIP	37-0114	R.F. & ROSA BUHLER 05	/ 01 /	112.01	2.24	2.32	2.24
45	E	49-E1	MICHAEL HARRIS	37-0114	R.F. & ROSA BUHLER 05	/ 01 /	626.00	12.52	14.84	12.52



OFFICE OF THE GOVERNOR

STATE CAPITOL

BOISE 83720

CECIL D. ANDRUS
GOVERNOR

January 25, 1990

RECEIVED
208) 834 2100
JAN 31 1990

Department of Water Resources

C.P. Hamilton
Route 1, Box 476
Arco, ID 83213

Dear Mr. Hamilton:

Thank you for your recent letter regarding the water shortage issues in the Big Lost River Valley.

For your information, I have enclosed a report from the Idaho Department of Water Resources regarding some of your allegations about that department's role in water district issues. I hope you find this information useful.

The lack of moisture in the Big Lost River Basin over the past three years is the main cause of the water shortage problems. Irregularities in water management by some users have made the situation worse. The Department of Water Resources will continue to work with the local committee to address the water problems.

With best regards,

Sincerely,

Cecil D. Andrus
Governor

CDA:abl
Enclosure
cc: Department of Water Resources
a/c/f 89122615 iwr
L0123.07

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ARTHUR W. HOLDEN (1877-1967)
ROBERT B. HOLDEN (1911-1971)
TERRY L. CRAPO (1939-1982)
WILLIAM S. HOLDEN (1907-1988)

R. VERN KIDWELL, OF COUNSEL

March 1, 1990

COPY

Mr. Norman C. Young
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RECEIVED
MAR 05 1990
Department of Water Resources

RE: Big Lost River Combined Hearing

Dear Norm:

We feel compelled to respond to Gary Slette's letter of February 28, 1990. While Gary was kind enough to call me late in the afternoon of the 27th and advise he would be sending such a letter, now that we have had an opportunity to read what he has written, we feel a need to make certain our position is not misrepresented or misunderstood.

It is true that in an effort to be candid, we have advised both you and Gary that we have been considering the possible effects of the relatively new statutes, Idaho Code §42-1416(2), passed in 1985, and Idaho Code §42-1416A, passed in 1989, upon our clients' diversions and uses of water. We first attempted to discuss the possible ramifications of these code sections on the pending matter with IDWR personnel last fall. You have all been quite consistent in not disclosing whether IDWR has formed a position with respect thereto or what such position might be. We advised Gary in January that we were considering it and would be doing some research and analysis of the issues to be able to advise our clients. We have, in fact, been engaged in that research and analysis effort and have discovered that there may be a host of complex issues if it becomes necessary to litigate. However, we have not yet advised our clients of what we believe their legal options to be and no decision has been made to withdraw the pending applications at this time. No intent has yet been formed as to whether to withdraw any or

Mr. Norman C. Young
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all of the pending applications, much less the proper time to do so. If such a decision is made, we will certainly encourage our clients to do so as promptly as is consistent with their best interests.

As we understand it, this combined hearing is presently postured to consider some five applications for permit and four applications for transfer. We have been advised that there are a total of five wells and two surface rights involved. We have heard from the Department that there are more than 350 wells in the Big Lost River Basin and of course that basin has now experienced four consecutive years of serious drouth. The total impact of these particular five wells upon surface flows in the Big Lost River or the general water table in the basin cannot be more than an insignificant fraction of all combined impacts. No expert hydrogeologist has yet suggested that there is any injury to any surface or groundwater right in the basin from the continued operation of the five wells or the use of the two surface water rights. We are surprised at the urgency expressed in Gary's letter and do not believe it is warranted. To shut off five wells in panic during this drouth will clearly not result in a benefit to anyone. Our clients would have essentially everything to lose and Gary's clients would have virtually nothing to gain.

The relatively small amount of development dependent upon the five wells and the two surface rights subject to this combined proceeding has been in place for many years, as long as twelve years for much of it. The circumstances under which it came into existence, and the reliance upon those circumstances by the farmers who have invested a substantial amount of their lives and resources and are greatly dependent upon it ought to give pause. Careful consideration and caution must prevail.

We and our clients have applauded and attempted to assist in the efforts of Mr. Higginson, the Director of the Department of Water Resources, in forming a local committee to try to find ways to manage what is potentially an adequate water resource in a manner which will permit the full economic development of the water resources in the basin. Providing for all landowners to adequately satisfy their legitimate water needs may not be the objective of Gary's clients, but we will continue to encourage the efforts by the Director to bring about this result.

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It was gracious of Gary to juggle his schedule to permit him to attend a hearing on March 12th. However, we will be unable to agree to that time. We had originally asked our experts to prepare for a time near the end of March. When Gary advised us sometime ago that he had a conflict at that time and that his expert had a conflict the first week of April, we advised our experts that there would be additional time to prepare. We are still unavailable the second week of April, and we have now received a setting in another matter before IDWR on April 17th and 18th. Realistically, the hearing cannot be scheduled before the week of April 23rd through 27th.

We cannot, of course, presume to instruct the Department on whether to seek immediate injunctive relief, but in light of the pending Cease and Desist Orders and the status of the present proceedings before the Department, it certainly seems to us that such action would be premature and precipitous.

Yours very truly,



Kent W. Foster

#7166.00/srr

cc: Governor Cecil Andrus
Gary D. Slette
Keith Higginson
Phil Rassier
Mitchell Sorenson
M. Todd Perkes
Juel Aikele
Don Aikele
Mike Aikele
Herman Aikele

Proposal for Big Lost River Basin

An effort will be made to organize the ground water users of the Big Lost River Basin to enable them to provide replacement water to offset the effects of their pumping on the flow of the river. The surface and ground water users will be combined into a single water district under the jurisdiction of a water master.

Several decisions will need to be made. It will be necessary to determine those areas where ground water pumping has an effect upon surface water flows. It is assumed that this will include the entire basin upstream from the Moore diversion and an area from the Moore diversion to Arco. South of Arco it is probable that ground water diversion has no effect upon streamflow. All parties need to have assurance in the location of the boundary between the area of effect and the area of no effect. An effort should be made to obtain the input of knowledgeable hydrologists on the location of this line.

It will be important to understand the historic reliability of surface water supplies to the various water rights. The locations and quantities of water necessary to protect surface rights will need to be determined so that replacement can take place. The goal will be to assure a water supply only to the extent that a surface right has historically been satisfied. We will make no effort to improve on the water supply availability of any surface right holder.

Some effort will also need to be made to organize an entity to manage the ground water replacement system. This could be done by the Big Lost River Irrigation District. It may need to be accomplished by some new entity such as a water improvement district. This entity should be able to consider flood control and ground water recharge in addition to ground water replacement of surface water flow.

To accomplish these measures it is proposed that:

- 1) A meeting be organized of all ground water users in the Big Lost River Basin. The purpose of this meeting will be to discuss information concerning the close connection between the surface and ground water resources of the basin and the effect that ground water withdrawal has upon surface flow. This meeting should also discuss the possible organization of an entity to take responsibility for conducting programs of ground water recharge and surface water replacement and the likely costs or such activities.

- 2) A work group of knowledgeable hydrologists should be organized to agree upon a description of the physical connection between surface and ground water in the basin and to identify areas and well construction conditions where ground water diversions have effects upon surface water flow. This could be

accomplished by "zoning" of the basin to distinguish between locations with immediate effects and those areas where the effect may be indirect or negligible.

3) Another work group should attempt to identify those canals and ditches and surface water rights which could be affected by ground water pumping. This group should also address the issues of decreased streamflows of the Lost River and whether there could be benefits from an attempt to replace streamflow for environmental or aesthetic purposes.

4) A third work group should address the need for creation of an entity to manage the ground water replacement system. The entity should also be capable of conducting flood control and ground water recharge activities to take advantage of periodic excess surface water flows. This work group might be composed of attorneys representing various interest groups, i.e. surface right holders, irrigation district, ground water pumpers, etc.

Need for Interim Management Policy

Several applications for new water rights and transfers of existing rights are pending before the Department. If there is general support for the above, it would not seem appropriate to proceed with the required hearings on these matters. At the same time these applicants should not be prohibited from using ground water if there is to be a mechanism whereby the effects of their use and all similar ground water use can be mitigated.

It is proposed that a moratorium on new wells be placed in effect until the above ground water replacement management program is placed in effect. Existing wells will be allowed to continue to operate with the understanding that such well use will be required to participate in the replacement program. As new wells are subsequently proposed, each permit will be conditioned upon such participation.

Hearings on the pending applications and the Cease and Desist Orders issued last year will be suspended temporarily.

Questions

a. What about the domestic well owners? Should there be a limit placed on the size of ground water use which must participate in the replacement program? Should some sort of relief be sought for the domestic well owners who have had to replace their wells?

b. What about transfers of surface rights out of the center of the valley such as to the ERA Flat? Should these rights be required to participate in the replacement program because of possible loss of recharge from such surface right use

in the valley bottom?

c. Can the hydrologic work group address the concern for wells located in the valley with place of water use on the flat?



RODNEY PEARSON

MOORE, IDAHO 83255
PHONE: 527-3360

Moore, Idaho
March 10, 1990

RECEIVED
MAR 12 1990

Department of Water Resources

Mr. Keith Higginson
Department of Water Resources

Dear Mr. Higginson,

I am the woman who has attended all your Big Lost River water meetings and have been given the opportunity by you to express my opinion and I thank you, because I have a very personal interest in this vital concern. (Please excuse my typing errors, I'm a bit rusty)

I have been told that you are an active member of the L.D.S. church, having been a bishop and a stake president. I am also an active member and have taught the Gospel Doctrine class for four years. I have tried to look at this situation from the point of view of not only what I have been teaching, but also by practicing what I preach. This whole episode reminds me of the council and war in heaven and the majority of the players are L.D.S.-- both the protestors and the defenders. What makes it even worse is that the leaders of both groups are from our ward and the problem has divided our ward to an almost irreparable point. Our last general authority met with and talked with both groups. He had to leave the conference session when he finished speaking and his last words to the entire congregation were (as I remember) "I promise you people that if you will cooperate and quit your antagonism, covetness, hate and jealousy and work out your problems that you will be blessed with the moisture you need and if you don't you will not be so blessed." Apostle Ballard told we Mormons that in 1936 we united and quit fighting except for the Group Of Nine led by Rowley Babcock--Lawrence Babcocks uncle and he was a High Councilman as were three others of that group. We are having our ~~war~~ "war in Lost River Valley." I'm sure you know what I mean.

You may wonder why I have been so interested. I was a teenager back in the "30's" when we first had similiar problems. Our family milked from 15--20 cows by hand to keep bread and butter on the table and I helped by milking 5--12 of those cows twice a day winter and summer. When the group of nine were stirring up agitation to blow up the Mackay Dam and all its works along the UC canal, Rowley Babcock came to our barn in the evenings when heknew father would be there and tried to get him involved in their undercover plot. I sat there milking and heard every word he said. My father refused to participate, he had been our ward bishop for about nine years. Another of that group and a high councilman was Doyle Jensen's father. And we personally had problems with Doyle as a result even though he is our friend. It was he as president of B.L.R.I.B. who locked our headgate year after year, when the Department of Water Resources had given us permission to divert our surface water to the disputed flat, where we farmed 2500 of land. We also had three of the disputed wells. The last time Boyle did this we had no water fo any kind for the entire month of

June. ~~Kent F~~

June and as a result we lost a big percentage of our drop that year. Kent Foster was our lawyer and he finally persuaded us to file a lawsuit against the Board and Doyle. We had always tried to settle the matter peacefully. We followed Kents advice and immediately after the ~~decision~~ Judge Bebee decision was delivered to Doyle by the sheriff to have our water delivered within the next 24 hours or he and the members of the board would be in jail, he drove one half mile and unlocked the head-gate, then found my husband and informed him that his water was turned on. We received the same hand delivered notice.

We got permission first from the water resource people in the Idaho Falls office to drill our three irrigation wells (three of the disputed wells) and the transfer of our surface water to our land on the Flat. We then went to the irrigation district board meeting and asked for a permit to build a ditch to carry that water and it was granted. We went to Board Meetings following and ~~read~~ heard that agreement read in their minutes. However, later they said they did not recall such permission. This was brought out in the Timber Dome Canal versus B.L.R.I.B. lawsuit in 1987. And when we went to look at the minutes there was nothing in their minutes. We know they had purposely been removed as did Kent Foster because we had used his advice since the inception of our project. This was all brought out and became a part of Judge Herdon's decision on the settlement of the court case.

Rodney's father, Roy C. Pearson, played the dominant role in the purchase of the Mackay Dam and works. He was president of the Big Lost River Irrigation District, before---then---later. So, both my husband and I had personal involvement in the entire undertaking. When the purchase and settlement took place, Roy C. Pearson represented the BLRI District, Mr Ambrose was their lawyer attorney, Albert E. Bowen represented Utah Construction Company and Senator William E. Borah represented the state. Those four men were responsible for the By Laws, maps, etc that you have used in this present problem. All the time Rowley and his group were agitating -- just as his nephew in this present situation. Dad Pearson was watermaster of the district for several years following the purchase of the dam/ A more honest, concerned, devoted to a cause person never lived than Rodney's dad and people of the valley of that generation appreciated and looked up to him for what he did not only for their generation but also for generations to come.

The protestors are part of the "generation to come". Most of them talk through their hats about that day as they have either been born much later or moved into the valley. A lot of what they say is what they want it to say and not as it really was.

I'm sure your people have heard Ned Walker (the one who walks out muttering to himself or speaking in Russian) accuse Rodney Pearson, my husband, of stealing those papers or documents you have all been looking for. Rodney says their never was any such document that it was all included in the minutes, written up by Mrs. Hintze and signed by his father at the time of the final settlement. There is the possibility that someone might have removed them as there have been



RODNEY PEARSON

MOORE, IDAHO 83255
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plenty of antagonists in the valley ever since. (Adversity, free agency and the power of good and evil has always been part of this world.) People who heard Ned accuse Rodney told me it was happening so I confronted Ned and he denied having said it. I spoke my mind and he walked away muttering to himself. His answer was, "Rodney does know more about it than anyone else in the valley." Andk he does, but he also keeps his mouth shut and does not make accusations or gossip about people.

We go to the Senior Citizens Center and for the last two years that we have gone there, Mr Virgil Hale -- protestor member, has openly and verbally cursed and abused thuse people on the flat to the Seniors every time we were there and every day during that period of time. I do not swear but he has called them every negative thing he could think of even to using the Lord's name in vain. One day there was an unusually large group there and he was almost shouting, "we are not through with those _____, _____, _____ etc yet and then told what they were going to do. I was so angry I called my lady friend who is on their Senior Board and told her I thought they should ask him to either quit his blasphemy or he would not be welcome because that was a place for friendship and social activities and we should not have to listen to him rave every time we came. The president said he would take care of it. Mirgil has been quiet when we have been there. You know how glibble older Seniors are and all those widows and some of the men were converted by he and two other protestors who attend regularly. *You got your share of the same*

One of the widows in particular had been very lost since her husband died, has fallen for his line and speaks out. Her farm relies entirely on an irrigation well. She does not understand and you can't talk to her. Those protestors have gone to the people in towns and spread their same views. Mr. Gerald Stewart and Virgil spent the entire winter in towns working people over. The daughter of the owner of the Golden West Cafe told me that Mr. Stewart monopolized the group table in the Cafe every day telling their falsehoods about the people on the flat to anybody and everybody.

The defendants have gone about their business, not trying to stir up trouble are make false accusations.

There is one thing that is unfair to the farmers in the valley and the election of new board members to the B.L.R.I.D. is the perfect example of that unfairness and Lawrence and his group took complete advantage of it. The people in the ~~the~~ towns of Mackay, Moore and Arco use city water. (the department of Health and Welfare made Moore drill a city well because the people were drinking their slightly filtered sewage water. Water at the stake house was shut off by them because of the polution.) All three towns are sitting on sub-water ground) The people in those towns have not used their domestic wells for years. Yet, they were persuaded to vote against the farmers in the valley by the protest group who profess to be protecting our water rights.

Lawrence and Larry, etc have vocally said they are working to change the law so everyone can have a vote in the water use. If that happens farmers in our valley will have to move to "Los Angeles." Personally, I feel that if a domestic well has not been used for 20 years (or less) and has supposedly be abandoned, and they have been by the Health Department, that they should not be considered members of the BLRID. They don't even have to worry about a source of water. The city does and should have a voice of one the same as the rest of us. We are concerned that they have adequate water. We don't want to shut off their irrigation well that irrigates all their stomachs and yards. Why do they want to do it to us?

An interesting fact that you should know about is-----

We owned three of the disputed irrigation wells, all being on our property, plus four others, two of which I believe were abandoned last year. We have since sold ours.

We did not own the farm.

When the BLRID refused to let us use the Moore Canal for a distance of about a mile (we had signed right of ways through farmers property and had payed to enlarge the canal from Moore to the point of diversion) we built a Timberdome Canal at our expense to the UC canal-to run our water and the well water of the other protested wells (at no expense to them) WE used a transit to lay out our canal. At the time the water depth when those wells were drilled was at 85 feet. Those 11 protested wells are all on ground much higher than the valley floor. They set the transit on our home directly south of the wells (and they are the lowest of the 11). According to transit measurements the depth at which water was reached was higher than the roof of our house. Our house is at least 15 feet high. We believe that those wells are being fed either by the mountains directly and adjoining on the west or from Antelope or some source other than the river. If it were the same valley source and the water level was higher than our house, the whole valley should have been under 15 --25 feet of water. Our home is on the west side of the valley and at a slightly higher elevation.

The same people who drilled our new domestic well this summer (and we don't believe someone else should be responsible for paying for it. We choose to live here.) drilled one for some people who live at Antelope point, directly north of us about three miles or so. They had to drill through bedrock to reach a huge vein of water at around 200 feet. The drillers said there was enough water coming out of that domestic well to run three irrigation lines. It was almost an artesian type well.

Lawrence complained about the people on the flat not adding to the aquifer. When we have floods on the flat from runoff from the hills that surround that area, the water runs southeast and has been seen reaching and running into the Lost River river area just southwest of Arco, where the highway is and on south along the lavas. FSN'T THAT AREA PART OF LOST RIVER VALLEY? There is a lava formation that divides the two areas. The land out there is the best, most productive in the entire valley. We know because we did farm at least 2,000 acres

of it and 204 acres here in the valley. It is like all volcanic ash land. We produced twice as much out there as in here with the same farming techniques. Juel Aikele has always ~~0000~~ flood irrigated his large acreage out there. Most of his land is approximately the same level as the valley land and joins Gerald Stewart and Larry Reynolds land...the two being divided by the Bypass Canal used for Floodwater purposes by BLRID (see Herndon court decision). Gerald sprinkles his ground and Larry is too lazy most years to take care of his. So, that story doesn't hold water. Lawrence irrigated about 120 acres at the most. How much are they adding to the underground?

Larry Reynolds and Don~~A~~ Aikele own equal parts of an original farm owned by Larry's dad and uncle. Both with the same kind of ground, the same water rights. Last summer Don raised a better crop than was ever raised before until he purchased the ground. Larry plowed his ground in March, planted it in the last of June and made a pretense at watering what he could put out of the head ditch without any work in August, when most farmers begin to slow down. He spent his time chasing the country and stirring up agitation. We all believe he applied for crop disaster due to the drought. His wife supports the family by teaching in California and putting him through college with a degree in farm financial management. He has been unable to get a job until last October when he got one in California.. In January he was dismissed from that job. The State Security Bank in Arco hired him as their manager when they first started. He lasted about the same amount of time and was fired.

Almost all the protestors are ~~fr~~ LDS and the ringleaders are all from our ward. This problem has divided our ward to the point where I don't believe it can be repaired and a good percentage feel the same way. The bishop and the stake president have plead with them in our meetings. I have taught the Gospel Doctrine class and decided to write a letter to the editor explaining how each of us use our underground water. I even contacted Idaho Falls who told me each person there uses 593 gallons per day and the city use 23,000,000 gallons daily. I included wash, toilet, lawn, kitchen, etc gallon usage. Information from REA and Utah Power and Light, town usage and it was an eye opener. Would you believe it, my letter came out in full in the local paper on Thursday and Sunday all the members of my class who are on the protestors side left my class and went into the other Gospel Doctrine class.

I enclosed this clipping from the Arco Advertiser as it smelled of smoke. I called the Arco Advertiser and asked who submitted it and he said Lawrence Babcock. I said I didn't believe it was the decision of the committee as I had been at the meeting. And he said, "Oh yes it is. Mr. Babcock brought it to me and said it was." I tried to talk to him and he wouldn't listen. He has been properly brain washed and has a closed mind. I talked to Mitches wife as I called Mitch to get his input. She was almost in tears. She told me her little children have been abused by kids in school about what a bad man their father is, Mitchell Sorensen.

Children have called him names, a thief and a liar, etc. It is terrible. There is a no more christian person than Mitch and those fellows out there. They have been too good. In this world you have to get mean some times to defend yourselves. Elaine told me that after your last meeting people were calling Mitch until after ten in the evening and all the next morning commending him for what he is doing for them.

I will give Lawrence credit for doing his homework. He has done a good job. But, his interpreting the law is something I can't swallow. We got the best water lawyer in the state to advise us when we were going through the beginning of this thing and I believe we are almost as smart as Lawrence. We never have gotten in trouble with the IRS and Lawrence did to the tune of \$40,000 a few years back when he thought his legal expertize was better than the government of the United States.

Since I have preached a lengthy sermon, I have one additional example. Last summer Albert and Mary Babcock, who support and are part of Lawrence's group told me they had two domestic wells and the day before Rick Reynolds turned on his irrigation well just across the road, they were able to use three sprinklers at either of their two domestic wells.. When Rick turned on his Irrigation well, both of their domestic wells went dry and they had to carry water for their use from Ricks well. Ricks own domestic well went dry as did Sipes just a hundred feet or so away. Arabella Noble 1/8 mile away also went dry and they all had to drill new ones or lower theirs. The protested wells are 3/4 miles away and had been pumping for a month or better.

There ^{are} undisputed wells from 1 or 2,000 feet to 3/4 miles from the protested wells.

1. Close well -- not protested by a protestor.
2. 3/4 mile north -- not protested by protestor.
3. 3 wells withing 1/4 mile of each other, 1/2 mile east, not protested and owned by Baback, Bleak and Hail, protestors.
4. 1/2 miles SE, not protested owned by signer of protest.
5. 2 wells about 1/4 east, not protested owned by farmers disagreeing with protestors.
6. 1 well 1/4 mile southeast, owned By Gerald Stewart, protestor and on main group, *not protested*
7. 1 well 1/4 mile directly south, not protested and owned by non protestor.
8. 1 well 3/4 miles directly south owned by Doyle and Kirby Jensen, not protested, owned by non-protestors.
9. 1 well 3/4 miles southeast, partly owned by Larman Anderson protestor and member of main protestor group.

Lawrence made referance to a sand problem, reason for not drilling. There are 2 good wells just across Lawrences fence line, maybe a block away. 2 directly east 1/4 mile, one of which automatically flows out of the pipe above ground in sub years. A good one 1/2 mile SW and Lawrence and his group have raised ----- for Danny the last year or two.

QUESTION

As a final statement, with Lawrence submitting this article to the paper as if it were the decision off the entire committee, a deliberate effort to mislead?

isn't it

*Sincerely,
Rodney Pearson*

NELSON, ROSHOLT, ROBERTSON, TOLMAN & TUCKER
Chartered

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February 28, 1990



Mr. Norman C. Young
State of Idaho
Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, ID 83720

RE: Big Lost River Combined Hearing

Dear Norm:

I am writing this letter in response to your letter of February 16, 1990. In that letter, you asked whether a hearing date during the first week of April was acceptable to my clients and me. While it would be acceptable to us, it has come to my attention that Dr. Charles Brockway will be in Guam during that week. The following week would be acceptable to us, however, Kent Foster informs me that he will be unavailable during that week. You have asked for an alternative week in March in which we could accomplish this hearing prior to the start of the irrigation season. I have juggled my calendar, and have made the week of March 12 available to accommodate this hearing. Like you and Keith Higginson, I am concerned that this hearing take place prior to the start of the irrigation season.

I believe the time has also come to be candid and forthright regarding this very serious proceeding. It is no secret that Kent Foster, on behalf of the applicants, has indicated to both you and me that he intends to withdraw the applications on the day prior to the hearing. He has communicated that his reasoning behind this is to further his clients' interest by avoiding the impact of the cease and desist orders which are tied to the numbered applications. If the permits are withdrawn, and numbered applications no longer pertain to the wells, he believes that the cease and desist orders are without any force or effect. While I do not particularly agree with his logic, he contends that his clients may then pump those wells and start the irrigation of a crop during the present year. He believes, and perhaps rightly so, that it is unlikely that any court will then order his clients to cease pumping those wells once a crop has started growing. The problem is apparent--the junior priority wells start

Mr. Norman C. Young
Page 2
February 28, 1990

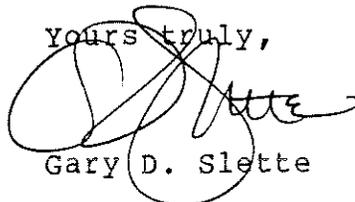
pumping and the senior priority surface water rights once again suffer a loss of their water as they have during the past few years. The junior priority groundwater pumpers are not likely to be deterred by a civil penalty of \$100.00 per day that may be imposed according to Idaho Code §42-352.

What is apparent is that this matter is going to be resolved in a judicial forum rather than in a departmental hearing. My clients and I believe that the time has come for the Department to file for injunctive relief pursuant to Idaho Code §42-351(1). Members of your Department have already determined that withdrawal of groundwater in the Big Lost River Basin affects the present and future use of prior surface water rights. (See, e.g., the memorandums and deposition of Steve Baker). The director of the Department of Water Resources is empowered, pursuant to Idaho Code §42-237(a)(f) to commence actions to enjoin the illegal use of water from wells. As unsavory as that task may be, the holders of those prior surface water rights deserve to be protected in accordance with the appropriation doctrine adopted in the Constitution and statutes of the State of Idaho.

I urge you to take the immediate and decisive action of seeking injunctive relief that is necessary to bring this matter to a head. We have all danced around the flame because we knew there was a potential for someone to be injured if we got too close. However, the only injuries that have manifested themselves in the past years have accrued to those holders of the prior surface water rights, and such injury runs contrary to the stated priority doctrine of our state. There is no need to wait until mid-April to undertake that which is apparent and imminent. The time to act is now, and I pledge the support of my clients and myself in what will undoubtedly be a difficult undertaking.

I would appreciate your earliest response to this letter.

Yours truly,



Gary D. Slette

GDS:mw/47891

cc: Governor Cecil Andrus
Keith Higginson
Kent Foster
Phil Rassier
Lew Rothwell
Larry Reynolds
Dale Smith
Lawrence Babcock

Jan 5, 1990

Mr. Higginson,

As I consider the climate in our community over the drought conditions and water management, I feel it boils down to the fact that we misunderstand the purposes, differences, powers and administration of the Big Lost Irrigation District and Water District 34.

Because of the coincidence of the last major drought in the 30's and the U.C. Controversy it is all too easy to once again blame all problems with this drought ^{on} the delivery of water outside the district.

If we are able to administer the irrigation canal carries and District 34 within the laws that

are already in place; I believe
we can all through "cooperation"
survive until adequate moisture
once again recharges our
basin to its normal and
adequate capacity.

Thank you

Seth E. Beal

Problem on Lost River

I'm on Antelope so not aware
of the major issues -
the one I'm aware of is
the problem between the
Lungation and Danestic
ground water issue -

Alex Crawford

Name	Address	Zip
Irene W. Anderson	Box 308 Arco,	83213
Leona E. Jones	Box 115 Arco, Ida.	83213
Pauline Jones	"	83213
Robert W. Betts	Box 236 Arco, ID.	83213
Lyle J. Beyer	Rt #1 Box 236 Arco, Id.	83213
Willie E. Carpenter	Rt 1 Box 235 Arco, Id.	83213
Dick Ray Byington	Postal Box 247 Arco Idaho	83213
Irene Byington	Rt 1 Box 243 Arco, Idaho	83213
Ralph Morse	Rt #1 Box 412 Arco, Idaho.	83213
Veta Morse	Rt #1 Box 412 Arco, Idaho.	83213
L. M. Leach	Rt #1 Box 414 Arco, Idaho	83213

Name	Address	Zip Code
Colin Whitehead	RR#1 262	ARCO IDAHO 83213
Lelah Whitehead	RR#1 262	ARCO IDAHO 83213
Clyde Bowenland	Box 47	Arco, Ida 83213
Sherry Boyce	Rt #1 Box 379	Arco, Ida. 83213
Nancy Stewart	P.O. Box 408	Arco, Id 83213
Bill Stewart	"	Arco, Idaw "

NAME	ADDRESS	Zip Code
Alvin J. Roemer	Rt #1, Box 247, Arco, Ida	83213
Hesterde Roemer	Rt #1 Box 247 Arco Ida	83213
Sharon L. Anderson	Rt #1 Box 258 Arco Idaho	83213
Edward Roemer	Rt #1 Box 257 Arco Idaho	83213
Oscar R. Clemens	P.O. Box 634 Arco	83213
Raymond Shostman	Rt. 1 Box 264 ARCO, ID	83213
Ignacio Bower	RR #1 Box 257 Arco Id.	83213
Marcell Anderson	Rt. 1 Box 258 Arco, Id.	83213
Harriet J. Anderson	Rt. 1 P.O. Box 533 Arco, Id.	83213
Gloria Gray	Box 615 Arco Id.	83213
Alan Markham	Rt. 1, Box 525, Arco, Id.	83213
Virginia Markham	Rt 1 Box 525 Arco Id	83213
Jess W. Burch	RT1 Box 349 Arco Id	83213
Sharon Markham	Rt. 1 Box 525 Arco Id	83213
Carol Markham	RT 1 Box 284 Arco Id	83213
Rebbie Acosta	Arco, ID	83213
Dane Durbin	Box 495 Arco Id	83213
Marion Markham	Box 319 Arco Id	83213
Tullian Pearson	Rt 1 Box 349 Arco Id	83213
Monica Anderson	PO Box 308 Arco Id	83213
Jeff Reed	PO Box 200 Arco Id	83213
Fawn Anier	PO Box 576 Arco Id.	83213
J. Braswell	PO Box 96 Arco Id	83213
Kathy Braswell	PO Box 96 Arco ID	83213
Robert T. Anier	PO Box 374 Arco, Id.	83213
John Anier	" " " "	"
Charles T. Anier	PO Box #1 Arco, Idaho.	
Walter T. Anier	Box 312 Arco Id.	83213

NAME	ADDRESS	Zip Code
Richard Saunders	83213-0100 ^{Box}	
Betty Ann Saunders	RT 1, Box 80, Moore Id	83255
W. J. Saunders	RT 1, Box 85 Moore, Id.	83255
Leota Saunders	RT 1 Box 85 Moore Id	83255
Albert C Babcock	Rt 1 Box 76 Moore Idaho	83255
Mary H Babcock	R. T. 1 Box 76 Moore Idaho	83255
Leslie M. Manstrom	RT 1 Box 14 Moore Id	83255
John A. Manstrom	Rt 1 Box 17 Moore Idaho	83255
Faye Manstrom	RT 1 Box 17 Moore Idaho	83255
Wendell J. Anderson	P.O. E	Idaho
Mattie Andersen	P.O. Box 2	Idaho
Ellen Stewart	RT 1 Box 58	Moore, Idaho 83200
M. Luene Harey	RT 1 Box 16	Moore, Idaho
Dale Smith	RT 1 Box 22	Moore, Idaho 83255

	NAME	Address	Zip Code
1	Virgil Hail	Moore Idaho.	83255
2	Charles V. Kail	Moore, Id.	83255
3	Bill [unclear]	Idaho Id.	83213
4	G. Lawrence Nyer	" " "	"
5	Blaine Pea	Idaho, Id.	"
6	[unclear]	Moore Idaho	83255
7	[unclear]	Moore Idaho	83255
8	Gene Bunt	Moore, Id	83255
9	[unclear]	Moore Id	83255
10	Donald [unclear]	Moore, Id	83255
11	[unclear]	Idaho Id.	83255
12	[unclear]	Idaho Id.	83255
13	[unclear]	Idaho Id.	83255
14	Sam Jackson	Moore Idaho	83255
15	Renee Jackson	Moore Idaho	83255
16	[unclear]	Idaho, Id	83255
17	Gay E. [unclear]	Moore, Id.	83255
18	Alvin [unclear]	Moore, ID	83255
19	Janice M. Burch	Moore Id.	83255
20	James T. Burch	Moore, Id.	83255
21	[unclear]	Idaho Id.	83255
22	Ernest [unclear]	Mackay, Id.	83251
23	[unclear]	Moore, Id.	83255
24	Claire Fernandez	MOORE, ID.	83255
25	[unclear]	Idaho Id.	83255
26	James Woodbridge	Mackay, Id.	83251
27	Cornie Sayer	Mackay, Id.	83251
28	[unclear]	Mackay,	83251

NAME	ADDRESS	ZIP CODE	
		83265	39
Jean E. B...		83250	36
...	Rt 1 Box 110	83265	30
...	Box 564	83213	31
...	Box 80	83231	32
...			33
Charles Allen	Box 803	83255	34
Carol M. ...	Rt 1 Box 808	83255	35
Paul Muller	PO Box 27	83213	36
Rosmarie ...	" " " "	" "	37
Nathan ...	P.O. Box 307	Arco Idaho	38
Crystal ...	P.O. Box 307	Arco, Idaho	39
Willie E. ...	Rt 1 Box 235	Arco Idaho	40
George W. ...	Rt 1 Box 271	Arco Idaho	41
Kathleen D. ...	Rt #1 Box 271	Arco, Id.	42
Ira E. Woodbridge	P.O. Box 434	Moore, Id.	43
Audra Woodbridge	" " "	" " "	44
Gene ...	PO Box 384	Arco Id	45
Eed ...	" " "	" " "	46
Jay Corgatelli	Rte #1 Box 443	Darlington, Id	47
Berta Corgatelli	Rte #1 Box 443	Darlington Id	48
Jack Woodbridge	Box 564	Arco Idaho	49
			50
			51
			52
			53

BIG LOST RIVER ADVISORY COMMITTEE

Compilation of Issues Identified

1. ALLOCATION AND MANAGEMENT OF WATER RESOURCES BY IDWR

A. Management of Existing Uses

- ° Control of use of existing ground water rights relative to the priority doctrine and effect on surface flows.
 - Should use of existing permitted wells be controlled based solely on priority or should other factors such as location, effect upon river flows, and type of use (supplemental irrigation wells for example) be considered.
 - Should management be based upon maintenance of reasonable pumping levels? This management principle could require holders of surface water rights to make a reasonable effort to divert their water right; i.e. drill wells or otherwise improve their system to divert, convey and use their water.
 - Should management fully protect senior surface rights from injury from ground water pumping?
- ° Should the rate and amount of water diverted by all right holders be limited and controlled to the authorized rate and amount?
- ° Should holders of rights with unapproved changes in point of diversion and place of use be required to revert to the recorded or authorized place of use until the change can be approved by administrative or judicial processes; i.e., make all uses conform to the decree or license?
- ° Should owners of existing wells be required to reconstruct their wells to avoid or limit the effect of groundwater withdrawal on surface flows?
- ° What control is needed to prevent unauthorized uses of water; i.e., use of water on land to which it is not appurtenant, use of water without a right or on the basis of an unapproved application, temporary diversion of water for the benefit of others.

B. Allocation to New Uses

- ° Availability of water to allow approval of applications:
 - What is the "average rate of future natural recharge"?
 - What percentage of this can be economically and reasonably developed?

- Where can the development occur? What is the relationship of ground water withdrawals to surface water flows?
- ° How should injury to other rights be defined, determined, avoided, compensated or mitigated?
 - What efforts must the holders of senior rights make to efficiently use their rights before injury can be found?
 - Can new wells be allowed with location and construction requirements to protect existing rights?
- ° What is the local public interest concerning further development; i.e., economics, tax base, relationship to electrical supply and cost.
- ° Are domestic wells protected in historic pumping levels? Who is responsible for cost of replacement or deepening? How can these costs be assigned and collected?
- ° Are there alternative ways of supplying water for domestic uses?
- ° What is the purpose of the 50 cfs minimum flow required to be maintained at the 2-B gauge?
 - What reach of the river is it to be maintained over?
 - Can it be reduced by other decreed rights?
 - How can additional water be obtained and maintained for environmental purposes?
 - Can and should such stream flows be assured during drought periods?
 - How can flows be protected from re-diversion?
- ° Maintenance of water quality of both surface and ground waters.

2. DISTRIBUTION OF WATER BY WATER DISTRICT 34

- ° Which water sources are and should be controlled by the watermaster; i.e., ground water exchanged or transported with the river? exchanges or transport in canals? all ground water use?

- Tighter administration needed? Measuring devices on all diversions, recorders, measuring stations on streams and rivers, improved (computerized accounting procedures)?
- Voting procedures at annual meetings.

3. OPERATION OF THE IRRIGATION DISTRICT

- Allocation of storage water to district lands.
- Use of stored water outside of district boundaries.
- Storage of natural flow during irrigation season (Rotation).
- Determination of loss in storage, delivery in river, and delivery in the canals.
- Transfer of decreed rights outside of the district boundary.
- Does the BLID plan of operations prevent use of any of the basin's water resources outside of the district boundary?
- Can and for what purposes should district boundaries be revised?
- Who should be allowed to vote in district elections? What qualifications must a board member have?
- Under what circumstances should authorization be given for use of district facilities to transport non district water or to move district water to other places of use?
- Should the district's stored water be allowed to be marketed within the district?
- Under what circumstances should pumping for "credit" be allowed?
- Use of U.C. canal for conveyance out of district.

3) Where water was available in the surface streams, it was used early in the settlement of the basin. As a result water rights were established to the use of surface water for the irrigation of some 23,000 acres of land with priorities generally from 1880 to 1900. In low streamflow periods, the holders of these rights divert and use the entire available water supply of the river. However, during most years, only the very earliest priority surface water rights are able to receive water throughout the entire irrigation season.

4) The Mackay dam and reservoir was originally constructed in 1917-1918. It currently has an active storage capacity of 44,370 acre feet and is operated by the Big Lost River Irrigation District under water right priorities of 1905 and 1916.

5) Rights to the use of water pumped from wells within the basin have been established with priorities generally subsequent in time and inferior to the early direct flow and storage surface water rights. Several hundred wells have been drilled within the basin and the water from these is used for domestic, municipal and agricultural purposes, including irrigation and livestock watering. These wells intercept part of the total water supply of the basin and, except as hereafter noted, have an impact on the quantity of water available to those diverting surface water from the Big Lost River and its tributaries. There is only a finite quantity of water within the system and any increase in consumptive use of surface or ground water at one location results in a decrease in the water supply available for use at another location either inside or outside the basin at some later time. Some of these wells have operated for as long as 30 years without objection from surface right holders.

6) The flow of the Big Lost River fluctuates widely from year to year. As measured at the USGS gaging station near Arco it has annually totalled as much as 395,900 acre feet in water year 1984 and as little as only 4,900 acre feet in 1988. The gaging station reported zero flow for the entire water year of 1989.

7) A number of studies and estimates have been made of the ground water resources of the basin. An estimate by the U.S. Geological Survey based on data collected in 1968 indicated that the underflow of ground water past Arco in a southerly direction toward the Snake Plain ground water system was in the range of 300,000 acre feet per year

(425 cfs). This indicates that there was then a substantial resource which had been partially developed and was being used to supplement and augment the widely fluctuating surface water supplies of the basin. There has been considerable development of the ground water since that time and the present quantity of unused ground water exiting from the basin is unknown.

8) Idaho water law provides that "first in time is first in right" (Section 42-106, Idaho Code). The surface water rights in the Big Lost River basin generally have the senior priorities as against those using ground water. Strict adherence to the priority of right system could require that whenever any of the prior surface water rights is unable to receive its full entitlement, all subsequent priority uses, including uses of the interconnected ground water, be curtailed. Such priority system, if strictly enforced would protect the use of the limited surface water supplies of the basin while large quantities of ground water would flow unused out of the basin.

9) Section 42-237a, Idaho Code provides, in part, as follows:

In connection with his supervision and control of the exercise of ground water rights the director of the department of water resources shall also have the power to determine what areas of the state have a common ground water supply and whenever it is determined that any area has a ground water supply which affects the flow of water in any stream or streams in an organized water district, to incorporate such area in said water district ... The administration of water rights within water districts created or enlarged pursuant to this act shall be carried out in accordance with the provisions of title 42, Idaho Code, as the same have been or may hereafter be amended, except that in the administration of ground water rights either the director of the department of water resources or the watermaster in a water district ... shall, upon determining that there is not sufficient water in a well to fill a particular ground water right therein by order, limit or prohibit further withdrawals of water under such right as hereinabove provided....

10) Under the provisions cited in paragraph 9 it is possible for the Director to include the rights to the use of ground water which have an effect upon the flow of the Big Lost River within the jurisdiction of the watermaster of Water District 34 (Big Lost River). Before doing so however, the water rights must first be adjudicated as provided in Section 42-604, Idaho Code which reads, in part, as follows:

The department of water resources shall divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district: ... provided, that this section shall not apply to streams or water supplies whose priorities of appropriation have not been adjudicated by the courts having jurisdiction thereof.

11) The necessity for adjudication of water rights within a proposed combined water district was further emphasized by the Idaho Supreme Court in the case of *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977). Since the ground water rights within the Big Lost River drainage have not been quantified it is necessary to complete an adjudication covering the basin before the rights can be combined within a single district for the purpose of administration by the department or a watermaster.

12) The Big Lost River basin water rights (both surface and ground water) are subject to adjudication in the Snake River Basin General Adjudication of Water Rights currently pending in the District Court of the Fifth Judicial District of Idaho. The Director has determined that the report which is required to be filed with the court under the provisions of Section 42-1411, Idaho Code, covering rights within the Big Lost River sub-basin of the Snake River basin will be the first such report submitted to the court in this matter due to the concerns and conflicts within the area. The Director plans to file this report with the court in 1991. Through this adjudication the water users, the Department and the court can address the legal relationships and priorities of surface and ground water rights within the Big Lost River basin.

13) Section 42-1409(9), Idaho Code, provides that the holders of permits or licenses from the water system within which rights are being adjudicated, and who submit proof of appropriation of water after the date of the commencement of the adjudication may be given notice of the requirement to file an adjudication claim covering such rights. Such notice is required to be furnished at least 120 days prior to the filing of the Director's Report.

14) Section 42-1417, Idaho Code provides for interim administration of water rights at any time after the filing of the Director's report in a water rights adjudication proceeding upon order of the court. An order allowing such administration may be entered

by the court only upon a) a motion by the director or a claimant in such adjudication, b) notice to all claimants who could be adversely affected by the order, and c) a determination by the court that interim administration of water rights is reasonably necessary to protect senior water rights.

15) The 1990 session of the Idaho Centennial Legislature appropriated \$50,000 to the Department "for the purpose of conducting a water management study for the (Big) Lost River Basin for the period July 1, 1990, to June 30, 1991." The results of studies conducted using such funding will not be available until some time in 1991. It is not possible at this time to determine whether the studies to be conducted using this funding will provide information needed to resolve all conflicts over use of Big Lost River basin water.

16) As of the date of this order, the Big Lost River drainage basin is in its fourth consecutive season with below-average water supplies. As a result, ground water levels have declined throughout the basin and streamflow has decreased. Information is not currently available to determine the extent to which the operation of specific wells has had an effect upon streamflow and upon ground water levels.

17) There are currently pending before the Department some sixty (60) applications for new permits to divert and use 600 cfs of surface and ground water within the Big Lost River basin for irrigation of approximately 26,000 acres of land. In addition there are 10 outstanding permits for the diversion of 42 cfs of surface and ground water for irrigation of 2,200 acres and for which proof of appropriation of water has not been submitted to the Department. Some of these permits are subject to and are currently undergoing the review provisions of Section 42-203D, Idaho Code.

18) Petitions have been filed seeking a moratorium on the issuance of additional permits and prohibiting further development under existing permits for the diversion and use of ground water within the Big Lost River basin under the provisions of Section 42-

1805(7), Idaho Code, which includes among the powers and duties of the Director the following:

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code

19) Petitions have been filed opposing the imposition of a moratorium on the consideration of the pending applications and further development under permits to divert ground water within the basin. Said petitions recommend a cooperative effort among the entire Big Lost River community to formulate a method for utilizing the ground water supplies of the basin while still protecting vested rights.

20) Unless some action is taken at this time, Big Lost River water users may not be able to respond in a timely manner to water administration requirements which may result from the ongoing adjudication and to information obtained through proposed studies.

IT IS THEREFORE, HEREBY ORDERED AS FOLLOWS:

1) The rights to the use of ground water within the Big Lost River drainage basin will be incorporated into Water District 34 and shall become subject to the administrative supervision of the Water District 34 watermaster, upon satisfaction of the following conditions:

a. The Director has filed with the court his report in the Snake River Basin Adjudication pursuant to Section 42-1411, Idaho Code covering all water rights within Water District 34.

b. The court has issued either (1) an order pursuant to Section 42-1417, Idaho Code, permitting interim administration or (2) its final decree of the water rights of the Big Lost River drainage pursuant to Section 42-1412, Idaho Code.

c. The Director's report shall have identified each well the operation and/or use of which, in the opinion of the Director, has an effect upon the flow of the Big Lost River upstream from the USGS gaging station near Arco and also identifies each well

which, in the opinion of the Director, has no such effect.

d. The Director's report shall include findings and recommendations, as appropriate, concerning the relationship between the early priority surface water rights and subsequent ground water rights as to whether certain legal principles apply including, but not limited to adverse possession, equitable estoppel, estoppel by laches, forfeiture, and abandonment.

e. Those ground water rights which the Director's report finds and recommends and the court determines have an effect upon the flow of the Big Lost River and which are subject to the prior rights of the surface water users after consideration of the legal principles affecting the relationship of surface and ground water rights will become part of the Water District 34.

f. The Director's report shall include findings and recommendations concerning all previously adjudicated water rights in the Big Lost River basin which are rebuttably presumed to have been applied to beneficial use under the provisions of Section 42-1416(1), Idaho Code.

g. The Director's report shall include findings and recommendations concerning the validity of rights claimed to have been created as an expansion of a valid (previously) unadjudicated water right under the provisions of Section 42-1416(2), Idaho Code.

h. The Director's report shall include findings and recommendations concerning rights (surface and ground water) claimed to have been changed without having first obtained approval of a required application for change pursuant to Section 42-222, Idaho Code as necessary to satisfy the substantive criteria of said code section for approval of such changes as provided in Section 42-1416A, Idaho Code.

i. The Director shall give notice to the holders of all permits and licenses to appropriate water within the Big Lost River basin and in connection with which proof of appropriation was submitted after the date of the commencement of the Snake River Basin Adjudication of the requirement to file a claim to such permitted or licensed right in the

adjudication, and such claimed rights shall be evaluated along with all other claimed rights being adjudicated.

2. A moratorium on the consideration and issuance of new permits to appropriate surface and ground water within the Big Lost River drainage is imposed pursuant to the provisions of Section 42-1805(7), Idaho Code. This moratorium shall remain in place until revoked by the Director after the Director's report for the basin is filed with the court in the Snake River Basin Adjudication. This moratorium shall not apply to applications for drilling permits to replace or deepen existing wells nor to applications to transfer existing rights.

3. This order providing for the future combining of ground water rights into Water District 34 and establishing a moratorium on the consideration and issuance of new ground water permits shall not apply to any well used solely for "domestic" purposes as such term is defined by Section 42-111, Idaho Code, as amended by the 1990 Idaho Legislature. An exception will also be considered for any well proposed to be used for municipal purposes.

4. No moratorium is imposed on development under outstanding permits to appropriate water, provided, however, that such permits remain subject to all water law provisions including the requirement for reprocessing under Section 42-203D, Idaho Code. Any risks associated with development under such permits prior to the completion of the reprocessing is borne by the permittees.

5. In lieu of strict administration of affected ground water rights according to water right priority the holders of such rights may propose, either individually or with others similarly situated, a program of compensation or water replacement to assure that the senior water rights in the basin are not affected by the operation of wells which are found in the Director's report to have an effect upon the flow of the Big Lost River upstream from the USGS gaging station near Arco. Such program may include consideration of artificial ground water recharge to mitigate the effects of ground water pumping and to make use of

the waters which otherwise escape from the basin during periods of high runoff.

ISSUED THIS 7TH DAY OF AUGUST, 1990



A handwritten signature in cursive script, appearing to read "R. Keith Higginson", is written over a horizontal line.

R. KEITH HIGGINSON
Director



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

Copy for Keith

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 27, 1990

CERTIFIED MAIL

Juel and Michael Aikele
Rt. 1
Moore, ID 83255

Marshall Todd Perkes
Rt. 1 Box 110
Arco, ID 83213

#33172

RE: Order to Cease and Desist Irrigation of Lands within the
SW1/4NW1/4 and SE1/4NW1/4, SEC. 5, TWP. 4N, RGE. 26E, B.M.

Gentlemen:

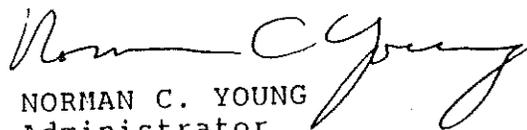
Department records indicate that the land in the above referenced 80-acre tract is included in three licensed water right and that the land is in a federal land set aside program. A further review of the Department's records indicate that a transfer of the licensed water rights has not been applied for.

The attached order to cease and desist requires that irrigation on the land not having a recorded water right be stopped until a right authorizing irrigation is obtained to allow irrigation of the land.

You have the right to have an administrative hearing before the department pursuant to Section 42-1701A, Idaho Code, if a request is received by the department no later than 15 days after the service of this order.

Please feel free to contact the department if you have questions.

Sincerely,


NORMAN C. YOUNG
Administrator

NCY:rf

c: Kent Foster
bc: Gary Slette

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE DIVERSION OF)
GROUNDWATER WITHOUT A VALID RIGHT FROM)
WELLS LOCATED IN SW1/4NW1/4 AND SE1/4NW1/4)
SEC. 5, TWP. 4N, RGE. 26E, B.M.)
OWNED AND/OR CONTROLLED BY MARSHALL)
TODD PERKES, AND/OR JUEL AIKELE)
AND/OR MICHAEL AIKELE)

ORDER TO
CEASE AND DESIST

The Director of the Department of Water Resources (Department), being charged with the duties of protecting vested water rights, enforcing specific statutes of the State of Idaho and the rules promulgated by the Department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water, makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. The Department has issued licenses in connection with water right identification numbers 34-7080A, 34-7136 and 34-7169. The points of diversion for these licenses are two wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. (Perkes wells) and the place of use is within parts of Sec. 11, Twp. 3N, Rge. 25E, B.M.
2. On July 26, 1990, the owner of the wells, Marshall Todd Perkes, testified under oath before the Department that the lands to which the three licensed water rights are appurtenant are in a federal land set aside program and are not being irrigated.
3. Also on July 26, 1990, Juel Aikele testified under oath before the Department that his son, Michael Aikele, had been "loaned" the use of the Perkes well or wells and has been diverting and using water from the well or wells for irrigation purposes.
4. Department records do not show that water diverted from the Perkes wells is appurtenant to any land other than the land in the set aside program which presently is not being irrigated.

5. The Director of the Department has not given approval to divert groundwater from the Perkes wells onto any land other than the land licensed under the rights.

CONCLUSIONS OF LAW

1. Section 42-351, Idaho Code, provides as follows:

If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural water source without obtaining a valid right to do so or is applying water not in conformance with the conditions of a valid right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right.

2. Section 42-229, Idaho Code, provides that: "The right to the use of ground water of this state may be acquired only by appropriation."

3. Water diverted for use from the Perkes wells for use on land other than licensed under the rights or otherwise approved by the department is in violation of the statutes of the state of Idaho and Water Appropriation Rule 3,1,1.

4. The illegal diversion of the public waters of the state of Idaho must be stopped or mitigated to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. Section 42-352, Idaho Code, provides that:

Any person who wilfull violates any cease and desist order issued under Chapter 3, Title 42, Idaho Code, after the same has been served upon him shall be subject to a civil penalty not to exceed one hundred dollars (\$100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs.

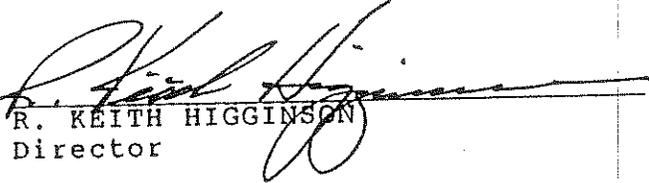
6. Illegal diversion from each well or illegal application of water constitutes a separate, individual diversion and if used without a valid water right constitutes a separate violation of Section 42-351, Idaho Code.

7. The Director should issue a Cease and Desist Order pursuant to the authority of Section 42-351, Idaho Code.

ORDER

IT IS THEREFORE hereby ORDERED, that Marshall Todd Perkes and/or Juel Aikele and or Michael Aikele immediately CEASE AND DESIST the diversion and use of water from the Perkes wells located in SW1/4NW1/4 and SE1/4NW1/4, Sec. 5, Twp. 4N, Rge. 26E, B.M. for the irrigation of any lands to which the rights are not appurtenant until such approval is obtained from the Director of the Department of Water Resources.

Dated this 27TH day of July, 1990.


R. KEITH HIGGINSON
Director



United States Department of the Interior



GEOLOGICAL SURVEY
WATER RESOURCES DIVISION
230 Collins Road
Boise, Idaho 83702

March 13, 1990

Mr. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard
Boise, Idaho 83706

Dear Keith:

The U.S. Geological Survey conducted a 3-year Phase II study of the Big Lost River basin as part of the federally funded Snake River Plain Regional Aquifer System Analysis (RASA). The study began in October 1984 (S.A. Goodell, written communication, 1987). The principle objective of the study was to quantify and estimate changes in ground-water discharge from a typical drainage basin tributary to the eastern Snake River Plain. The study concentrated on the area between Mackay Dam and Arco. The scope included: 1) Improved definition of the geohydrologic framework, 2) estimation of hydraulic properties of major rock types, 3) evaluation of ground-water and surface-water interaction, and 4) development of a ground-water flow model to aid in the analysis.

- o Driller's logs and surface geophysics were used to define geology
- o Hydrologic data included ground-water levels, streamflow measurements, and estimates of water use
- o Ground-water levels were measured in 153 wells in April 1985
- o Gain and loss measurements of Big Lost River streamflow were made in March, April, and November 1985
- o Ground-water flow was simulated with a 2-dimensional finite difference computer program (McDonald and Harbaugh, 1984)
- o A variable grid model was constructed with grid cells measuring 0.25 to 0.50 miles on a side
- o Steady-state conditions were calibrated to April 1985 ground-water levels and river gains and losses. Transient model calibration was for March 1985 to March 1986 hydrologic conditions
- o Sensitivity analysis indicated the model was most sensitive to values of transmissivity and river gains and losses; it was least sensitive to values of specific yield

o Examples of model predictive capabilities* are:

- effects of droughts on ground-water storage and streamflow
- effects of well interference
- effects of pumpage on streamflow
- effects of water use on ground-water levels and streamflow

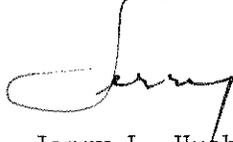
* predictions limited by magnitude of stress or hydrologic event

Current plans are to complete the report by October 1990. If desired, the study objectives and approach could be presented to Big Lost River valley residents providing sufficient notice is recieved so visuals can be prepared. Discussion of study results must be withheld or used with extreme caution until they are reviewed by the Geological Survey.

A field demonstration of effects of ground-water pumpage on ground-water levels and possibly streamflow could be arranged to help valley residents understand ground-water hydraulics. A simple, qualitative test could be done in late April or early May (before seasonal pumpage begins) assuming full support of well owners. This test would be very crude and only show drawdown and well interference. A more thorough test could be conducted which would yield quantitative results (transmissivity, storage, coefficient, and boundary conditions) that could be used to refine the model. That test could be structured to almost assure effect on streamflow but it could not be done until after pumpage was discontinued and the system had opportunity to recover, probably in the Spring of 1991.

I hope this information is useful in your discussions with the Big Lost River Valley residents. They have a serious supply and management problem and we will do everything possible to assist them and the Department.

Sincerely,



Jerry L. Hughes
District Chief

JLH/mr1

A G E N D A
Big Lost River Ground Water Study Meeting
Burley, Idaho, June 20, 1990

1. Introductions

2. Review of House Bill 883

"...\$50,000...for the purpose of conducting a water management study of the Lost River Basin for the period July 1, 1990 to June 30, 1991."

3. Discussion of Department activities

- a. Public Meeting - August 10, 1989
- b. Big Lost River Advisory Committee meetings 11/07, 11/29, 12/13, 1/05, 1/29, 2/27, 4/09
- c. Ground Water Pumpers meeting 4/09
- d. Snake River Basin Adjudication
- e. Proposed Order public hearing 5/30

4. Previous Studies

- a. Stearns, Crandall and Stewart, 1938
- b. Crosthwaite, et al, 1970
- c. Baker, memos 23 Jun 89, 14 Jul 89
- d. USGS - Sally Goodell

5. Discussion of Study Needs

a. What is the most important use that can be made of the available funding? We can not assume that additional funds will be made available by the next legislature.

b. Can we answer the questions concerning well interference with surface flow?

c. Is it possible to draw lines across the basin which define areas within which unquestionably wells do or do not affect surface flow?

d. If we can, then can we concentrate our study efforts on those parts of the basin where surface/ground water relationships are poorly defined at present?

e. Is the USGS model available as a tool for analysis and what further information would make it more useful?

No f. Does the USGS have the capability of matching any part of the \$50K if it were to be offered to the Coop program?

g. What effort needs to be made with the water district and irrigation district to provide better information on present water management practices?

BIG LOST SRBA STAFF BRIEFING

IDAHO FALLS, MAY 5, 1990

- A. Background Information
 - 1. Initial development along river and streams-a good water right dates from the mid 1880's.
 - 2. Mackay Dam, the U.C. Canal and Era Flat.
 - 3. Big Lost Irrigation District formation.
 - 4. Early ground water development mainly for supplemental.
 - 5. Jones-McAffee Ground water board.
 - 6. Ground water development of Era Flat.
 - 7. Opposition to development.
 - 8. IDWR permit conditions-casing and sealing & W.M.
 - 9. 1982 management study.
 - 10. Swan Falls moratorium.
- B. IDWR efforts to resolve controversy.
 - 1. Cease and desist orders.
 - 2. Proposed decision for Aikele.
 - 3. Public meeting at Moore.
 - 4. Local Advisory Board.
 - 5. Administrative hearing on protests, set and delayed.
- C. Hydrogeology
 - 1. Studies and data gathering sites.
 - 2. Basin water supplies.
 - 3. Interrelationship of surface and ground water.
- D. Water Law
 - 1. Management as separate resources
 - 2. Management as a single resource
 - 3. Conjunctive management
- E. Responsibilities of the Water Management Entities in the Big Lost
 - 1. Water District
 - 2. Irrigation District
 - 3. IDWR
- F. Present policies to address controversy
 - 1. Proposed order
 - 2. Memo concerning expansions and accomplished transfers.
 - 3. Accelerated SRBA report
 - 4. Management study
- G. How to handle specific field situations

1. Complaints that specific land is being irrigated without a right.
2. Complaints that specific wells are being pumped without a right.
3. Complaints that specific wells are affecting another well or spring.
4. Complaints that the diversion rate from a well is excessive.
5. Complaints about Irrigation District policies; for example, pumping for credit, transport agreements, storage or decreed rights, delivery shrink,
6. Complaints about Water District operation.
7. Concerns that combining wells into Water District will stop use of all wells.
8. Domestic wells drying up.
9. Requests to temporarily divert water from a well for use on land to which it isn't appurtenant.
10. Requests to construct an emergency well (Rule 8).

H. Who's Who?

1. Water District 34-Doug Rosenkrance, watermaster
Water District office is located in Mackay with BLID
2. Big Lost River Irrigation District, Rita Lundy Secretary
Directors- Lou Rothwell
Gerald Stewart
Rick Reynolds
3. Big Lost Waterusers Association
Lawrence Babcock
Lou Rothwell
4. Water District 34 Wateruser's Inc.
5. IDWR Advisory Committee
Members



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

* * * * * NOTICE * * * * *

To All Interested Persons:

Attached to this notice is a Proposed Order which I am considering issuing with regard to the administration of the surface and ground water of the Big Lost River basin.

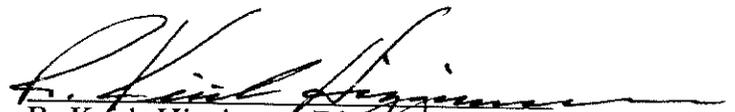
Before doing so I will hold a hearing to obtain public input on the matter beginning at 7:00 p.m., Wednesday, May 30, 1990 in the auditorium of the Mackay High School. All interested persons are invited to be present and to submit written or oral testimony at the hearing or within 10 days thereafter.

As set forth in the draft order the following matters may be addressed at the hearing:

- * The relationship between surface and ground water within the Big Lost River basin
- * The relationship between surface and ground water rights
- * The Director's authority to incorporate ground water rights within Water District 34
- * The Snake Basin Adjudication
- * The opportunity for utilization of the ground water resources of the basin through conjunctive management
- * The requested moratorium on the issuance of permits

You are invited to attend and to give your views concerning these and any other related matters.

DATED this 7th Day of May, 1990.


R. Keith Higginson, Director

Encl.: Proposed Order

RA

LOUIS F. RACINE, JR.
WILLIAM D. OLSON
W. MARCUS W. NYE
GARY L. COOPER
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODSELL*
JOHN B. INGELSTROM
DANIEL C. GREEN
REED W. LARSEN
CARY B. COLAIANNI
BRENT O. ROCHE
FRED J. LEWIS
KIRK B. HADLEY

LAW OFFICES OF
RACINE, OLSON, NYE, COOPER & BUDGE

CHARTERED
CENTER PLAZA-CORNER FIRST & CENTER
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-0391

TELEPHONE
AREA CODE 208
232-6101
—
TELEX
208-232-6109

*ALSO MEMBER ILLINOIS BAR

May 14, 1990

RECEIVED
MAY 16 1990

Department of Water Resources

R. Keith Higginson, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, Idaho 83720

Re: Big Lost River Basin

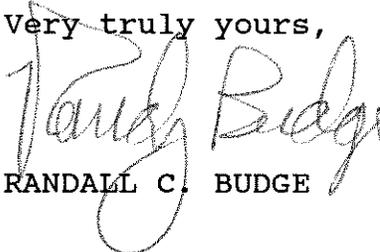
Dear Keith:

Just a note to thank you for sending me copies of your proposed Order, Hearing Notice and the paper on the South Platte experience.

I also wish to express my appreciation to you and Norm for taking all the time to meet with me on such short notice while I was in Boise to discuss to the District 34 Water Resource Users, Inc. This new non-profit organization has a primary objective of identifying and solving the water problems of the Basin without regard to determining fault. Although the organization is in its infancy, its Board of Directors are aggressively soliciting members and financial support and potentially can have a positive impact on developing and promoting harmonious solutions to the problems without litigation and to maximize the beneficial use of the available water resources.

We look forward to working with you on these matters and would welcome any suggestions you may have.

Very truly yours,


RANDALL C. BUDGE

RCB:gr



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

February 21, 1990

Lawrence R. Babcock, Chairman
Big Lost Water-Users Association
Box 66
Moore, Idaho 83255

Re: Revisions to Irrigation District Operating Policies

Dear Lawrence:

Your letter of January 18, 1990, asked for a review and response to a draft resolution proposing changes to the Big Lost River Irrigation District policies concerning movement of water within and without the district. I am sure that you know that the department does not have responsibility for supervising the internal operations of an irrigation district. Further, it is not appropriate for the Department to provide legal guidance to the district on its operating policies. However, to the extent the proposed policy changes address coordination of irrigation district operations with department programs for water allocation and supervision of distribution of rights to the public waters, I believe it is appropriate to respond.

The issues the policy changes address are intertwined with the matters that I am committed to resolving in cooperation with the members of the Big Lost River Advisory Committee. I am sure that you are aware that the proposed policy changes have the potential to disrupt the practices and operations of a significant number of water users in the Basin.

With these concerns in mind, I offer the following general responses to the proposed changes:

1. Idaho's water statutes require that a water right be obtained prior to commencing a new use of water. The statutes also require that an approved transfer be obtained before any existing water right is diverted or used at a different location or is put to a different use. IDWR is given the responsibility of reviewing proposed new uses and proposed changes to existing uses. Thus, an irrigation district policy which requires such approvals before allowing district facilities to be used to transport and deliver water will assist the state in preventing unauthorized uses of water and possible injury to other rightholders.
2. All valid water rights and all valid changes to existing rights are not necessarily of record in the department. New uses could have been established from groundwater prior to 1963 and from surface water prior to 1971 without obtaining a permit from the department. Existing water rights could be changed

without approval of the department prior to 1969. These valid uses can be claimed in the ongoing Snake River Basin Adjudication (SRBA) and decreed by the court. Irrigation district policies need to recognize that such valid unrecorded rights can and probably do exist and such rightholders can be allowed to continue use of the district facilities in accordance with agreed to prior contracts and policies.

3. Irrigation of additional acreage and changes in points of diversion and places of use made after the mandatory dates listed in the foregoing paragraph for an otherwise valid right can also be claimed in the SRBA and a right can be decreed for the right with additional or changed uses, if the change complies with certain requirements listed in Sections 42-1416 and 42-1416A Idaho Code. These are referred to as "accomplished changes."

Until the court rules on the validity of these changes a definitive answer is not available relative to whether an irrigation district should continue to allow its facilities to be used for conveyance and delivery of the changed uses of these rights. Refusing to continue to deliver water under prior agreements and policies causes an unwarranted disruption and possible injury to a rightholder if the changes to the right are ultimately recognized in the court decree. Conversely, continuing to deliver such a right could cause injury to other rightholders in the event the court refuses to recognize the changes.

IDWR faces the same concerns relative to taking action to enjoin the use of these changed rights. I believe that it would be unnecessarily disruptive to attempt to stop every changed use claimed in the SRBA. However, in those cases where I am aware that other users are claiming to be injured by the change, the change appears to be an expansion in use of the right, or the change appears otherwise to not meet the requirements for approval under applicable law, I will take action to prevent the changed use.

The foregoing discussion leads to the following observations on the draft policy changes and the ability of IDWR to provide the approvals or other information sought by the district as a precedent to starting or continuing to allow use of district facilities for conveyance or delivery.

1. A policy requiring waterusers to have a permit to make new (in the future) appropriations or an approved transfer from IDWR before making new changes to existing rights is appropriate.
2. A policy allowing existing valid rights including valid changes to existing rights, even though unrecorded with IDWR, to continue to use district facilities for conveyance and delivery under existing agreements and contracts is appropriate. The determination of whether such rights are valid will be made in the ongoing SRBA. IDWR will give a preliminary indication that a water use meets the requirements to be grandfathered if adequate non-contradictory information is available.
3. A more difficult matter arises when the proposed district policy is applied to accomplished changes which can be claimed in the SRBA. The statutes do not

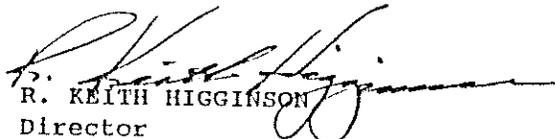
Lawrence R. Babcock
February 21, 1990
Page 3

require an application to be filed and processed in an administrative proceeding before IDWR if the right is claimed in the SRBA. Application of the district's proposed policy requiring prior approval of IDWR to allow continued use of district facilities will require either that an application be filed and processed by IDWR or that IDWR expedite the consideration of the adjudication claims filed for such uses. Recent experience in resolving protested filings in the Big Lost River Basin indicates that a decision cannot be finalized prior to the next irrigation season for an application which is protested. An expedited review of the adjudication claims would probably not be any faster.

Until the adjudication of these rights is completed, the district's policy needs to allow continued deliveries to claimed accomplished changes without specific prior approval from IDWR unless IDWR notifies the district that it has issued a cease and desist order to the rightholder because complaints have been lodged against the changed use or IDWR has information to indicate that the change does not meet the requirements for approval under Section 42-222, Idaho Code.

I applaud the resolve of the district's board of directors to fully comply with water law and to cooperate with IDWR, but I encourage restraint in implementing such changes to allow time for the water users to adjust to new policies. I will be happy to discuss these matters further with you and the directors of the irrigation district.

Sincerely,


R. KEITH HIGGINSON
Director

RKH:dc

cc: Big Lost Irrigation District
Doug Rosenkrance, Watermaster

G.W. PUMPER'S MEETING

MACKAY
4/9/90

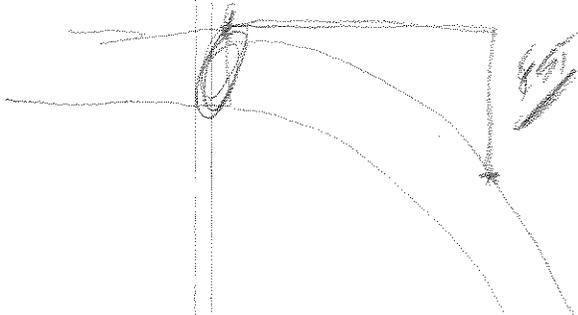
Roster of Attendance

<u>Name</u>	<u>Address</u>	<u>Representing</u>
SPENCER W. TOONE	BOX 820 HA CO	
Larry Paist	Rt 1 Box 203 Arco	
JAMES MILLIGAN	Moscow, IDAHO	UofI
art Quist	Rt 1 Box 203 Arco	
John Tony + SALLY	Rt 1 Box 4447 ARCO	PU RANCH
Mohand Dayer	Box 213 Mackay	Self
Jay Infanger	Rt #1, Box 174 Salmon House of Rep.	
Doug Richardson	Rt #1 Box 24 Mackay Id.	
Judy Lord	Rt 1 Box 34 Mackay, Id	
Molly O'Leary Cecil	P.O. Box 1143 Challis, 83226	The Post Register
Charles Burgess	Rt 1 Box 28, Mackay 83251	
Renu Burgess	" " " "	
Lynn J. Miteall	Rt 1 Box 35 Darlington 83231	
Velma L Miteall	" " " "	Self.
Lavelle Purser	Rt #1 Box 120A Moore, 83255	Self.
Dee Van Etter	RT 1 DARLINGTON, 89231	
Mare Kelly	Rt 1 Darlington	self
Mel J. Ellwein	Rt 1 Mackay,	
James L. Lambert	Rt 1 Mackay	
Ward C. Lambert	8371 Mackay	
Jay Lambert	MOORE ID	Self
Jane Lambert	Moore Id	
Stephen K King	Rt 1 Box 107A Moore, ID	self
Stephen B. King	RT 1 Box 105 Moore	Self
Vaughn L. Jensen	RT. 1 Box 93 Moore	Self
George L. Wheeler	Rt 1 Box 89 Moore	self,
Chin Wheeler	Box 915 Moore Idaho	Self

Shawn Brock	Box 416	Mackay Ida
Harvey Walker	Box 200	ARCO Idaho
Leon Johnson	Box 823	ARCO, IDAHO
George Gore		Darlington Idaho
Jay V. Jensen	Rt1 Box 112	Moore, Idaho
L. Vaughn Jensen	Rt1 Box 35	" "
Shane Foskome		Mackay Id.
Orville L. Smith		Darlington
Mike Duke		Darlington Id
Herman Aikels	Rt1 Box 61	Moore
Juel Aikels	Rt1 Box 630	Moore
Mitchell Sorensen	Rt1 Box 630-1	Moore
Don A. Aikels	Rt1 Box 60	Moore
Ronald Sorensen	Rt-1	Moore
Lynn Rothwell	Rt #1	Darlington
Leon L. Williams	Rt #1 Box 20	Darlington
Brett Williams	R1 Box 21	Darlington
Lloyd A. Smith	Rt. 1	Mackay
Preston Bell	Rt 1	Darlington
Harlan H. Smith	RT	Darlington
Lenny Nelson	Sta Rt.	Mackay Id.
Marx Hintze	Rt #1, Box 14,	Mackay Id.
Jim Hintze	Box 125	Mackay Ida
Keith Waddoups	Box 62A.	Moore Ida.
Walt Waddoups	Box 20	Moore Id.
Bob Waddoups	Box 42	Moore Idaho
Jim Huebner	Route 1 Box 122A	Moore Id.
Doug Schuerman	Rt. 1 Box 226	ARCO, Ide.
James Babcock	Box 81	Moore Idaho

<u>NAME</u>	<u>Address</u>	<u>Representing</u>
Deuter X Babcock	Moore, Idaho	Self
Albert C Babcock	Moore, Idaho	Self
Dale Smith	Moore, Idaho	Self
Vingil Hail	Moore Idaho	Self
Randy McAffee	Darlington Idaho	Self
Harold E Smith	Darlington Idaho	Self
Byron Johnson	Darlington Idaho	Self
John Peterson	Darlington Idaho	Self
Gene Beal	Moore Idaho	Self
Jud Burt	Moore, Id.	Self
Ferry Taylor	Mackay Id	Self
Darrell Wilburn	Darlington Id	Self
Willard Obell	Arco Id	Self -
Bob Weaver	Buhl Id.	Self
W. M.	Arco Id	Self
Rita McAffee	Arco, Id.	Self
David E. McFarrell	Arco, Id.	Self
Rex Turners	Rigley, Id.	Legislator
STAN HAWKINS	UCON ID.	LEGISLATOR
RD Palmer	Mackay Id	School Supt.
John Storey	Idaho Falls	Legislative Candidate
Andrew Martin	moore	Orville Smith
Bo Clark	Darlington	Self.
Ruth Hill	Mackay	Dorcas Linnom
Randy Lehman	Mackay	Self
Loan Leyer	Mackay	Self
M. Luane Nancy	Moore	Self
C Brooks Buxton	arco	Self
Ralph S. Parkinson	arco	Self

<u>Name</u>	<u>Address</u>	<u>Representing</u>
M Todd Perkes	Moore	Self
Dean Anderson	Moore	Self
Queen Elizabeth	London Eng	The British Empire
Roger Rabbit	Toon town	Fantasy Land
RANDY DAMIANA	Rt 1 Box 113A Moore	Self
Phil Jones	Rt 1 Box 50 Moore	Self
John & Pauer	P.O. Box 493	Merkey Id
ERIC Aikele	Rt 1 Box 63E, Moore, Idaho	Self Butte Co. School Dist II





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

March 21, 1990

To: Irrigation Ground Water Users
Big Lost River Basin

I am certain that you are aware of the discussions and meetings which have been held in the Big Lost River basin over the issue of water supplies and effects of wells upon streamflow. The advisory committee has suggested that a general meeting of all major ground water users needs to be held to alert them to matters being considered which may affect the future exercise of their pumping rights.

I have arranged for such a meeting to be held at 7:00 pm, Monday, April 9, 1990 in the auditorium of the Mackay High School in Mackay. You are invited to be present to participate in the discussion of options being considered and to make recommendations of steps which can be taken by ground water pumpers to mitigate effects they may be having on streamflow of the Big Lost River.

I look forward to seeing you at the meeting.

Sincerely,

R. KEITH HIGGINSON
Director

RKH:dc



1939-1989

P.O. BOX 420
MACKAY, IDAHO 83251-0420
208 - Telephone 588-3311

Lost River Electric Cooperative, Inc.

March 12, 1990

R. Keith Higginson, Director
State of Idaho
Department of Water Resources
Statehouse Mail
Boise, Idaho 83720

RECEIVED
MAR 13 1990

Department of Water Resources

Dear Mr. Higginson:

At the request of Mitchell D. Sorensen of Moore, Idaho, we are enclosing a listing of our irrigation customers and their addresses. We have highlighted in yellow those irrigators who have electric service to a deep well in the Big Lost River Valley.

Cordially yours,

LOST RIVER ELECTRIC COOPERATIVE, INC.

A handwritten signature in cursive script that reads "Lew R. Greene".

Lew R. Greene, Manager

LRG/dh

Enclosure

cc: Mitchell D. Sorensen, w/enclosure

Oval Caskey
P. O. Box 41
Mackay, Idaho 83251

Hintze Farms, Inc.
P. O. Box 125
Mackay, Idaho 83251

George Hone
Darlington, Idaho 83231

Marvin, Jack, and Ross Goddard
Star Route
Mackay, Idaho 83251

Travelers Hotel Group LTD/DBA JC Ranch
3711 Winding Creek Rd.
Sacramento, CA 95864

Leo Haralson
Route 1 Box 450
Arco, Idaho 83213

VAUGHN L. JENSEN
ROUTE 1 BOX 93
MOORE ID 83255

JENSEN/NOBLE/NOBLE
C/O L. VAUGHN JENSEN
ROUTE 1 BOX 35
MOORE ID 83255

JOSEPH R. JOHNSON
RT. #1 BOX 187
ARCO ID 83213

VICTOR A. & SCOTT A JOHNSON
DBA CHURNDASHER RANCH
STAR ROUTE
MACKAY ID 83251

MARCUS D. KELLY
RT. #1 BOX 60
DARLINGTON ID 83231

PERNECY D. KENT
MACKAY ID 83251

GARY L. KIMBALL/K. CLARK/ R. JAMISON
~~C/O LOST RIVER RANCH~~ *c/o Gary Kimball*
~~P.O. BOX 26290~~ *Mackay, Id. 83251*
~~SANTA ANA CA 92799~~

STEPHEN B. KING
RT. #1 BOX 105
MOORE ID 83255

STEPHEN K. KING
MOORE ID 83255

GAVEN C. KNIGHTON
MOORE ID 83255

HAROLD C. LAMBERT
ROUTE 1
MACKAY ID 83251

DANIEL J. HJELM
ROUTE 1 BOX 64
MOORE ID 83255

N. MERLE HONE
DARLINGTON ID 83231

L. JAMES HUELSMAN
IRRIGATION #2
ROUTE 1 BOX 122A
MOORE ID 83255

ALLEN MERRILL HUFFAKER ESTATE
C/O DALE HUFFAKER
DARLINGTON ID 83231

CHARLES D. HUGGINS
ROUTE 1 BOX 216
ARCO ID 83213

DON S. HYMAS
ROUTE 1 BOX 26
MOORE ID 83255

JACK A. JENSEN
ROUTE 1 BOX 32
MOORE ID 83255

JAY VAUGHN JENSEN
RT. #1 BOX 112
MOORE ID 83255

KIRBY A. JENSEN
ROUTE 1 BOX 50
MOORE ID 83255

L. VAUGHN JENSEN
ROUTE 1 BOX 35
MOORE ID 83255

LLOYD E. JENSEN
RT. #1 BOX 34
MOORE ID 83255

GRANITE TRUST ORGANIZATION
C/O LAWRENCE BABCOCK
ROUTE 1 BOX 66
MOORE ID 83255

DELVIN A. HALE
P.O. BOX 443
ARCO ID 83213

M. DUANE HANEY
ROUTE 1 BOX 116
MOORE ID 83255

BILL L. HARALSON
ROUTE 1 BOX 450
ARCO ID 83213

MORGAN C. HAROLDSSEN
STAR ROUTE
MACKAY ID 83251

RODGER H. HARP
STAR ROUTE
MACKAY ID 83251

GORDON C. HARRIS
IRRIGATION #2
MACKAY ID 83251

HARTMANN/ROSENKRANCE/FHA
C/O FRANK HARTMANN
ARCO ID 83213

GERTRUDE HIBARGER
P.O. BOX 630
MOORE ID 83255

KEITH B. HILL
STAR ROUTE
MACKAY ID 83251

M. MARX HINTZE
IRRIGATION
RT. #1
MACKAY ID 83251

MELVIN J. ELLWEIN & BOLEN URESTI
C/O MELVIN ELLWEIN
ROUTE 1
MACKAY ID 83251

MARLIN FELTON
P.O. BOX 835
ARCO ID 83213

FLAT TOP SHEEP CO.
P.O. BOX 88
CAREY ID 83320

LEON FOLKMAN
P.O. BOX 823
ARCO ID 83213

RICHARD T. FREEMAN
ROUTE 1 BOX 432
ARCO ID 83213

DEWAYNE FULLMER
P.O. BOX 192
MACKAY ID 83251

ALBERT W. FULLMER JR.
ROUTE 1 BOX 1090
LESLIE ID 83255

FRANK L. GAMETT
P.O. BOX 907
MOORE ID 83255-0907

ROBERT E. GILBERT
ROUTE 1
DARLINGTON ID 83231

MARVIN GODDARD
STAR ROUTE
MACKAY ID 83251

ERNEST L. GOFF
ROUTE 1
MACKAY ID 83251

CRATER FARMS INC.
P.O. BOX 91
ARCO ID 83213

HARRY J. CRAWFORD
ROUTE 1 BOX 8
DARLINGTON ID 83231

RANDAL G. DAMIANA
RT. #1 BOX 113A
MOORE ID 83255

ARTHUR DEBOER & JAMES A. LORD
DIAMOND LAZY L RANCH
C/O JAMES A. LORD
DARLINGTON ID 83231

LOREN K. DEICHMAN
P.O. BOX 513
ARCO ID 83213

DICK-CON INC. & TIM-JON INC.
DBA HILLCREEK PROPERTIES
C/O RICHARD TUTHILL
4500 IMPERIAL AVE.
SAN DIEGO CA 921

TERRENCE V. DONAHUE
IRRIGATION
STAR ROUTE
MACKAY ID 83251

HUGH H. DORST
STAR ROUTE
MACKAY ID 83251

MICHAEL D. DUKE
DARLINGTON ID 83231

FREDERICK W. DUNDAS
1912 UKIAH WAY
UPLAND CA 91786

GRANT R. ELLSWORTH
P.O. BOX 283
CAREY ID 83320

DENNIS L. BRASWELL
ROUTE 1 BOX 215
ARCO ID 83213

BURNETT/MCAFFEE/REYNOLDS
IRRIGATION
C/O JACK MCAFFEE
ROUTE 1
DARLINGTON ID 83231

FRED N. BURT
P.O. BOX 628
MOORE ID 83255-0628

BUTTE CO. CEMETERY DIST.
P.O. BOX 302
ARCO ID 83213

C. BROOKS BUXTON
RT. #1 BOX 231
ARCO ID 83213

DONALD W. CAIN SR.
ROUTE 1
MACKAY ID 83251

WILLIAM C. CANNON
ROUTE 1 BOX 254
ARCO ID 83213

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April 12, 1990

RECEIVED
APR 13 1990

Department of Water Resources

Keith R. Higginson, Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Matter of Applications for Permit and Applications for
Transfers Nos. 34-7247, 34-7296, 34-7410, 34-7483,
34-7486, 34-0496/0692/T921, 34-2428, 34-2417, and 34-2419.

Dear Mr. Higginson:

We are writing to formally request, on behalf of our clients, Mitchell D. Sorensen, Juel Aikele, Michael Aikele, M. Todd Perkes, and Everett T. Acor, Jr., the applicants for permit and for transfer in the above-entitled matter, a postponement of the combined hearing scheduled on the above numbered applications for April 24, 25 and 26, 1990, for an indefinite period of time until a satisfactory study can be completed to supply adequate information upon which to base appropriate decisions with respect to operation and management of the water supply in Basin 34 as a whole.

After wrestling with the matter for several months now and becoming more familiar with the water supply problems facing the entire Big Lost River Basin, it has become apparent that the proceedings on the above numbered nine applications will potentially have a major impact on many aspects of water use and management within the entire basin. This particular combined proceeding on the nine applications, however, is directed only to a very small and insignificant fraction of the basin and its water supply and management issues.

You and others of the Idaho Department of Water Resources have been engaged in a monumental effort to bring some order out of the chaos in this basin, and it is our observation that this particular proceeding is interfering with and retarding

Keith R. Higginson, Director
April 12, 1990
Page 2

the desired results of such statesmanship. While the few wells involved in this particular action are of crucial importance to the individuals who own and operate them, they are unimportant in the extreme on a basin-wide scale. The importance of the legal and social issues raised in connection with the current proceeding on these nine pending applications is greatly out of proportion to the relative insignificance of the five wells in the hydrologic and hydrogeologic circumstances of the basin. The specific social and legal issues raised in the matter of these nine applications are by no means comprehensive nor are they even necessarily representative of the basin-wide concerns. The situation suggests to our mind the analogy of a small tail wagging the dog.

In support of our request and motion for postponement, we would suggest the following considerations:

1. Economic conditions in the Big Lost River Basin are not healthy. The pending proceeding has resulted, and will continue to result, in draining resources the participants can ill afford to expend.
2. There appears to be an adequate supply of water within this basin to accommodate the needs of all current water users and more. United States Geological Survey estimates suggest some 2.6 million acre feet of water is stored in the upper 200 feet of the aquifer, and that there is an average discharge into the Snake Plain Regional Aquifer, south of Arco, of some 425 cubic feet per second. It appears that there is more than adequate water for everyone if it can just be made available and managed in some appropriate and acceptable manner.
3. So far, we are unaware of any evidence or even suggestion that any of the five wells related to the nine applications are, or have been, causing any direct injury to any specific water right. On the other hand, the most the current status of the hydrogeological information appears to show is that possibly the pumping of these five wells, in

Keith R. Higginson, Director
April 12, 1990
Page 3

combination with some 350 other wells in the basin, contributes to a cumulative depletionary effect on the groundwater present in the basin. It is believed that the groundwater and surface water supplies in the basin are closely related and that groundwater levels have a substantial effect on surface flows. The Department of Water Resources has apparently concluded, however, that drought conditions for the past four years have had, and are having, a much greater impact upon both surface flows and groundwater levels than all of the groundwater pumping combined. Even the theoretical effect of the pumping of these particular five wells cannot be more than miniscule.

4. We understand the 1990 legislature has appropriated funds which can be used in the Department's efforts to gain more knowledge of the hydrogeologic conditions and perhaps to assist as well in development of a management program to help assure adequate water supplies for all users. While we are probably not the ones to suggest the specific type of studying that needs to be done and what would be the wisest use of that money, we would certainly favor its wise use and application and think that it might at least be enough to precipitate the commencement of the requisite studying and planning or implementation of a satisfactory management program. At least some portion of the resources that could be saved by avoiding or postponing litigation over the nine pending applications could potentially also be available to assist in this effort.

5. As some of the legal issues raised in this particular proceeding are very complex and will be relatively new to the Idaho courts, the end results are probably uncertain and possibly undesirable. Such issues might include the possible applicability of an equitable estoppel type of theory to efforts by IDWR to enforce cease and desist orders for wells which have been in use for five to twelve years, and in which, and as a result of which, there has been

Keith R. Higginson, Director
April 12, 1990
Page 4

a very substantial investment with the knowledge and implied acquiescence of IDWR. Whether there is or is not merit in any estoppel argument, it will not likely change in any material respect as a result of a postponement. Additional issues may include a construction of the new statutes, Idaho Code §42-1416(2) and Idaho Code §42-1416A. You are well aware that of the nine applications involved in the combined proceeding, with respect to all but two, the circumstances surrounding any water use related thereto arguably constitute either a permitted expansion under §42-1416(2) or an accomplished transfer under §42-1416A. Only 34-7410, relevant to which there is no water use because no well has ever been drilled, and 34-7296 are exceptions. The facts relevant to 34-7296 probably give rise to one of the strongest cases that can be made for estoppel, and of course there is a pending application for transfer of three licensed rights as an alternative means to protect the operation of the well also. Last summer when IDWR issued show cause orders, it was necessary for many of our clients to respond, in part, with criticism of IDWR's delays in processing these applications, and in the event of litigation, it seems it would be essential to raise the estoppel issue. However, we are not suggesting that these applications ought to just languish forever. The postponement of action on 34-7410 pending the outcome of a study in the continuation of efforts to effect an appropriate management program for the basin which would permit development of that application, certainly would result in no adverse impact to anyone except the applicant, because no well has been drilled and no water is yet being diverted and used pursuant thereto. Likewise, with respect to 34-7296, although the well has been in use for approximately ten years, its use could be continued under the three rights which are the subject of the proposed transfer, temporarily, until such time as an appropriate management plan is in place so that 34-7296 could be granted without the perceived negative impacts. Nor will the other seven

Keith R. Higginson, Director
April 12, 1990
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applications remain unaddressed as a result of a postponement. SRBA claims have already been filed raising the 42-1416(2) and 42-1416A arguments. IDWR has stepped-up the SRBA procedure for Basin 34 so that these items will probably be addressed next year.

We will very much appreciate your early consideration and ruling on this motion for postponement. We submit there is nothing to lose by postponing the hearing on the pending applications and potentially much to gain, including focusing the attention, energy and resources which are being diverted by this matter to the more important matter of developing a comprehensive management plan for the Big Lost River Basin. Our clients would like to assist and are trying every way they know how to do so in this effort.

Yours very truly,



Kent W. Foster

#7161.00/srr

cc: Gary D. Slette
Mitchell D. Sorensen
Juel Aikele
M. Todd Perkes
Everett T. Acor, Jr.

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April 6, 1990



Department of Water Resources

Keith Higginson, Director
IDAHO DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street
Statehouse Mail
Boise, Idaho 83720

RE: Water Problems in the Big Lost River Basin

Dear Mr. Higginson:

We have reported to our clients, as best we are able, the gist of our meeting on March 15, 1990. They were pleased that we were able to meet together and to have a candid and extensive discussion. They have asked us to convey to you that they will be happy to have you meet with the expert hydrogeologists, and if you desire to have either Mr. Jack or Don Barnett present you have permission to invite either or both.

As you know, we represent only six individuals, and of course their combined pumping of groundwater is a small fraction of the total groundwater pumping which occurs in the basin. These six are very concerned about the drouth and the impacts it may be having on surface flows and groundwater levels in the basin. While they do not pretend to know who specifically is being adversely affected, or how much of the problem may actually be attributable to lack of precipitation and how much to groundwater pumping, they are completely willing, in principle, to participate in any reasonable program designed to provide needed relief from the drouth during the 1990 irrigation season. They are also willing to assist however they may be able in the formulation of a long-range plan to properly resolve water management and distribution problems for the entire basin or any specific portion to which their water rights and use may be directly related.

Keith Higginson, Director
April 6, 1990
Page 2

These six clients do not profess to know which specific water rights may be affected during the coming irrigation season, or where or how storage or pumped water might be provided to mitigate detrimental impacts. However, assuming enough other surface and groundwater users are willing to participate, and IDWR and/or the private experts can design a feasible program for augmenting any rights that can be determined to need augmentation, to the extent they are economically able to do so our clients are prepared to contribute their fair share.

They are looking forward to your meeting with all groundwater pumpers, and in the meantime will encourage everyone they can to attend, to be positive, and to prepare to participate in an appropriate community wide effort. If any of these six can be of assistance to you in some specific way, they hope you will feel free to call upon them.

Yours very truly,



Kent W. Foster

#7166.00/srr

cc: Governor Cecil D. Andrus
Gary D. Slette, Esq.
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March 9, 1990

RECEIVED
MAR 12 1990

Department of Water Resources

Mr. Keith Higginson
Idaho Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, ID 83720

RE: Big Lost River

Dear Keith:

I am planning to attend the meeting on March 15 in Idaho Falls, at which time you would like us to discuss a temporary resolution to the Big Lost River area problem. I applaud the efforts that you, Norm and other Department personnel have expended with regard to this issue, however, I must confess that I am left in the dark as to what a plausible short-term "fix" might be. I would appreciate receiving from the Department their views or suggestions as to how we will begin the discussions at that meeting. Neither the Department nor Kent Foster and his clients have advanced any position from which they would offer a short-term solution either. Quite frankly, that meeting will be expensive for my clients to have me attend, and I know they would feel better if we had some parameters from which to start. My clients do not believe that permitting the owners of the contested groundwater wells to continue pumping as in previous years is in any way a resolution to the problem or an action that is advantageous to them. They believe that they have to take action now to begin abating the problem.

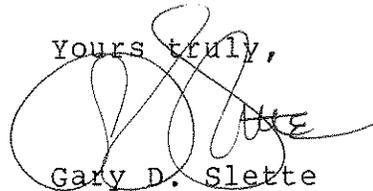
I realize the discontinuation of past practices of groundwater pumping and certain transfers of water will create economic hardships for certain individuals. However, it must be realized that many of my clients have borne the effects of unfettered groundwater development, which has deprived them of their priority surface rights. I just spoke with one of them who last year was able to bale 350 bales of hay, when a normal crop year would have produced 12,000 bales.

Mr. Keith Higginson
Page 2
March 9, 1990

On a related matter, I have received requests from some of my clients to attend that meeting, if for nothing more than to observe the proceedings. I have heard that departmental personnel have refused that request, and am somewhat uncertain as to how I explain to them why they can't attend, other than that is the wish of the Department. If we are truly searching for some "middle ground", perhaps it would be advantageous for those who can make the decision to attend the meeting, if for nothing more than to observe and to advise their respective counsel. In any event, I will defer to the Department's wishes concerning their attendance.

At my clients direction, I will attend the meeting, but would certainly appreciate any further input that you can provide me as to a discussion framework. Should you care to discuss this matter, I would be happy to receive a call from either you or Norm.

Yours truly,



Gary D. Slette

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March 20, 1990



Mr. Keith Higginson
Idaho Department of Water Resources
1301 North Orchard
Statehouse Mail
Boise, ID 83720

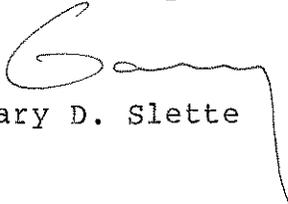
Department of Water Resources

Dear Keith:

I met today with representatives of the Big Lost River Waterusers Association. The meeting was conducted in response to your request made at last Thursday's meeting, in which you solicited the support of the Association for an interim measure to sustain reasonable irrigation supplies in 1990. After much deliberation, the representatives of the Association have asked me to express their willingness to cooperate in a temporary program whereby groundwater would be used to augment surface water flows for irrigation. It is our understanding that any proposal for 1990 would provide for groundwater pumpers to pump groundwater into the District canals for delivery to surface waterusers in the District at a rate similar to that received by them in 1961 or a representative year. Any such proposal would be contingent upon the first water out of the wells going to satisfy the earlier priority rights of the surface waterusers prior to delivery elsewhere.

The members of the Association are aware of the complexity and the magnitude of the problem faced by all waterusers, and desire to work with the Department and the other waterusers to reach a productive solution. We look forward to the Department's scheduling of a meeting with the groundwater pumpers to see if your proposal can be embraced by them as a group. Hopefully, the Association's willingness to compromise will result in improving community relationships.

Yours truly,


Gary D. Slette

GDS:mw/50061

cc: Governor Cecil D. Andrus
Big Lost River Waterusers Association
Kent Foster
Norm Young

Briefing for Legislators

1. Background of Problem
 - a. Pending Applications - Swan Falls moratorium
 - b. Wells drilled without benefit of permits
 - c. Past practices of Irrigation District
2. Actions taken on pending applications
 - a. Proposed decisions
 - b. Protests
 - c. Cease and desist orders
 - d. Hearing schedule
3. Other actions
 - a. Public meeting in Moore in August
 - b. Organization of Big Lost River Advisory Committee
 - c. Committee meetings
 1. organization
 2. hydrogeology of Big Lost River basin
 3. state laws and regulations
 4. local decrees, water districts, rules
 5. consideration of problems, issues, etc.
 6. discussion of possible solutions
4. Efforts being organized
 - a. Meeting with attorneys representing interests
 - b. Meeting with hydrogeologists
 - c. Work with watermaster
 - d. Schedule a meeting with all ground water users
 - e. Legislative briefing