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Sun City West, AZ 85375
April 5, 2006

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DEPARTMENT OF
WATER RESOURCES

Mr. Tim Luke
Water Distribution Section
322 East Front Street
Boise, ID 83720-00998

Dear Mr. Luke,

Thank you for taking my call on March 29, 2006. I appreciate discussing our concerns on the affects of mitigation on the distribution of Antelope Creek water. I am not sure if I clarified the likely events that will change the historical use of Antelope Creek water during the *first part* of the irrigation season as my knowledge of District 34 water rules and how they have been applied to delivery calls is somewhat limited. I hope this letter will clarify our concerns and lead to discussions that will result in a reasonable solution possibly pursuant to IDAPA 37.03.11.C which in part states "The mitigation plan must include contingency provisions to assure protection of the senior priority rights in the event of the mitigation water source becomes unavailable."

It is eminent that during water shortage years Antelope Creek water rights will be curtailed at the *beginning* of the irrigation season as a result of ground water diversions and the refusal of Water District 34 to use storage water for mitigation burdens. Surface water will become insufficient to satisfy senior surface water rights on the Big Lost River resulting in delivery calls curtailing water rights on Antelope Creek. Historical data provided by the IDWR provides documentation that prior to ground water diversions, water was delivered to the Moore diversion through out the irrigation season. Before and during well development, a period of approximately eighty years, calls were not made to curtail Antelope Creek diversions at the *first part* of the irrigation season. The historical data on the affects of ground water diversions was included in the Finding of Fact Number 20 in the order responding to the Jensens' call dated July 12, 2004, which states,

The Big Lost River loses significant quantities of surface water because of percolation into the ground between Leslie and Moore. Nonetheless, historic diversion data from 1959 to 1971 and from 1975 to 1983 indicate that prior to and during the development of ground water rights, water was delivered to the Moore diversion throughout the entire irrigation season, including the months of August, September, and October, even during the low water years of 1959, 1960, 1961, 1966, 1977 and 1979.

Finding of Facts Number 22 states,

Unavailability of water at the Moore diversion coincides nearly directly in time with the vacating of storage from Mackay Reservoir and the loss of the delivered storage that augments natural stream flows in the Big Lost River.

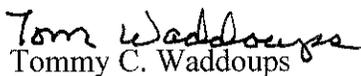
The order does not consider the location of wells, including wells located over ten miles below the Moore Diversion. It was ordered that all holders of ground water rights bearing priority dates later than June 30, 1883, must mitigate to provide replacement water to the Jensens' water right. Wells at the mouth of Antelope Creek are much closer to the lower meadow reaches of Antelope Creek than the distance of the wells from the Jensens' point of diversion. Based upon this precedence it seems reasonable that the senior surface water right holders on Antelope Creek would be entitled to call for mitigation against the junior ground water right holders at the mouth of Antelope Creek.

In water shortage years there is near certainty that senior surface water right holders will curtail Antelope Creek junior surface water right holders because the surface water for the senior right holders will be unavailable due to junior ground water diversions. The material damage resulting from ground water diversions is real regardless of the path to surface water curtailment. Without recourse Antelope Creek water rights holders will be curtailed 100% while junior ground water right holders continue out of priority diversions and surface water right holders on the Big Lost River satisfy their water rights through mitigation by District 34 ground water rights holders.

It may be satisfactory to the ground water right holders at the mouth of Antelope Creek if they were allowed to satisfy their mitigation burden by mitigating replacement water to the senior surface water rights holders on Antelope Creek. This would allow some relief from the affects of ground water diversions on Antelope Creek surface water rights. It would also provide for the efficient use of water by diverting surface water to the meadows of Antelope Creek rather than attempting to divert Antelope Creek surface water to the Big Lost River through porous reaches that have excessive losses.

I do not want to leave the impression that we are attempting to gain any advantage in the distribution of water. We do have concerns about mitigation and that the District 34 mitigation plan be applied uniformly, fair and equitability to the Big Lost River and its tributaries. I do hope you understand our position and if there is a reasonable solution to our problem I would appreciate your consideration in developing a plan that would prevent future problelms. My current telephone number is (623) 546-5784 and email address is tbwadd@netzero.net.

Respectfully,


Tommy C. Waddoups

Upper Antelope Creek Water Users

Cc: Gary Spackman