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DEPARTMENT OF
WATER RESOURCES

November 12, 2013

Tim Luke
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Dear Tim,

You may have recently received an unsolicited notice about regulation or potential curtailment of groundwater rights in the Big Wood valley. Over the past year there has been a great deal of misinformation circulating about this issue, and unfortunately this recent letter only adds to it. Since you are either a client or someone with whom we have had a professional relationship, we feel it is appropriate to correct the record by conveying the following actual facts:

- The Water Measurement District was recently merged into Water District 37. This was an administrative procedure, a step toward conjunctive management, which does not in itself increase the likelihood of any well being curtailed.
- It is not true that “the Watermaster will be authorized to order you to cease irrigating more than a half acre” during July through September. The Watermaster is not regulating wells at this time, and will not do so unless and until directed by the Idaho Department of Water Resources (IDWR).
- At this time, IDWR is not considering any particular conjunctive management scheme, including groundwater curtailment.
- IDWR is on the same path that they have been following for a year or so: A groundwater model is being developed, which is anticipated to be complete within about 2 to 3 years. This model will be the scientific tool that will allow IDWR to evaluate various conjunctive management scenarios, including the effect of groundwater curtailment.

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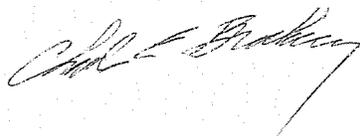
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- A “water call” by one or more surface water users in the Big Wood River could potentially be filed either now or after the model is developed. This would initiate an administrative process, leading ultimately to an administrative hearing. Initial steps would likely include discovery, expert reports, depositions, motions, legal briefs, etc. A hearing would then be held in which all affected parties present evidence and call witnesses. After the hearing, the hearing officer would issue an order addressing the extent of material injury, if any, and what mitigation, if any, is required to bring relief to the calling party. Depending on the particulars of the decision arising from the hearing, IDWR would likely utilize the model to evaluate the effects of groundwater curtailment or other alternative actions which could serve as mitigation. However, if the model has not been completed, it is unclear what course IDWR would take. The conjunctive management rules may provide the flexibility to stay regulation until the model is ready.
- Formation of a groundwater district or a private groundwater users group would be an efficient way to deal with mitigation requirements arising from a water call. This would allow users to act in unity to develop mitigation plans, negotiate with surface water users, or reach agreements with the State, and IDWR would not be faced with the complex, time-consuming task of evaluating and administering potentially hundreds of individual mitigation plans.
- At this time IDWR is not accepting mitigation plans for individual water rights for the purpose of protecting existing rights from potential curtailment that may result from some future delivery call. Absent the aforementioned direction from IDWR, it is not true that the Watermaster will be curtailing your well “unless you have a valid mitigation plan.”
- There is no mechanism in place for the State to recognize the accumulation of “aquifer recharge credits” for the purpose of groundwater mitigation. It is true that recharge may be used to mitigate for a specific proposed new permit, or in conjunction with a specific plan to address a water call, but no mechanism to “bank” recharge credits exists.

If you have any questions concerning groundwater regulation or any other aspect of water rights, please do not hesitate to call or email us. If you are interested in finding out information directly from IDWR, you may call Tim Luke, Water Compliance Bureau, at (208) 287-4959, or the Southern Region Office at (208) 736-3033.

Cordially,



Charles E. Brockway, Ph.D., P.E.



Charles G. Brockway, Ph.D., P.E.