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exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay.

2. None of the parties to the matter filed a response opposing the requested delay and did not allege injury, speculation or conflict with the local public interest.

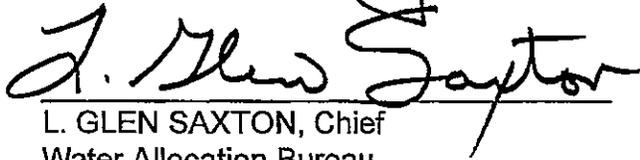
3. A delay in the processing of the applications will not injure the rights of other parties, is not for speculative purposes and will not injure the public interest of the people of Idaho.

4. The department should grant the motion of the Applicant.

### ORDER

IT IS THEREFORE, HEREBY ORDERED that processing of the above captioned applications is **GRANTED** for a period of one (1) year from the date of this Preliminary Order.

Dated this 21<sup>st</sup> day of January, 1999.

  
L. GLEN SAXTON, Chief  
Water Allocation Bureau

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 21<sup>st</sup> day of January, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

IDAHO WATER RESOURCE BOARD  
ATTN JOHN BEAL  
1301 N ORCHARD  
BOISE ID 83706

JERROLD D GREGG  
US BUREAU OF RECLAMATION  
214 BROADWAY AVE  
BOISE ID 83702-7298

JOHN A ROSHOLT  
ROSHOLT ROBERTSON TUCKER  
PO BOX 1906  
TWIN FALLS ID 83303-1906

STEPHEN P MEALEY  
IDAHO FISH AND GAME  
600 S WALNUT  
BOISE ID 83707-0025

JAMES C TUCKER  
ROSHOLT ROBERTSON TUCKER  
PO BOX 1906  
TWIN FALLS ID 83303-1906

LIN BENJAMIN  
HENRY'S FORK FOUNDATION  
PO BOX 852  
ASHTON ID 83420

BARBARA SCOTT-BRIER  
FISH AND WILDLIFE SERVICE  
US DEPT OF INTERIOR  
500 NE MULTNOMAH STE 607  
PORTLAND OR 97232

MARTI BRIDGES  
IDAHO RIVERS UNITED  
PO BOX 633  
BOISE ID 83701

SPENCE WARNER  
SOUTH FORK OUTFITTERS LLC  
PO BOX 22  
SWAN VALLEY ID 83449

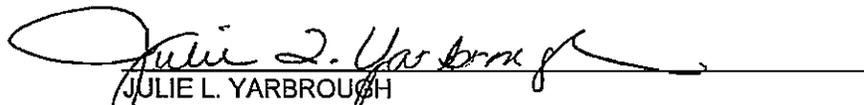
FRED AND BETTY KIPPES  
3951 N 1100 E  
BUHL ID 83316

MARV HOYT  
GREATER YELLOWSTONE COALITION  
1740 E 17TH ST STE F  
IDAHO FALLS ID 83404

ROGER D LING  
LING NIELSEN AND ROBINSON  
615 H ST  
PO BOX 396  
RUPERT ID 83350

MIKE LAWSON  
HENRY'S FORK ANGLERS INC  
HC 66 BOX 491  
ISLAND PARK ID 83429

TIM CALLANAN  
DIVISION OF ENVIRONMENTAL QUALITY  
1410 N HILTON  
BOISE ID 83706

  
\_\_\_\_\_  
JULIE L. YARBROUGH  
Senior Secretary, Water Allocation Bureau

**STARTING  
RIGHT  
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FILE**

**ALAN G. LANCE**  
Attorney General

**CLIVE J. STRONG**  
Deputy Attorney General  
Chief, Natural Resources Division

**DAVID J. BARBER**  
Deputy Attorney General  
700 W. Jefferson Street, Rm. 210  
P.O. Box 83720  
Boise, Idaho 83711-4449  
Telephone (208) 334-2400  
Facsimile (208) 334-2690  
(ISB No. 2597)

**RECEIVED**  
**MAY 4 - 2000**  
Department of Water Resources

Attorneys for State of Idaho, Idaho Water Resource Board

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS FOR )  
WATER RIGHT NOS. 01-07131, 01-07132, )  
01-07133, 01-07134, 01-07135, 01-07136, )      RESPONSE OF THE IDAHO  
01-07137, 01-07139, 01-07140, 01-07141 )      WATER RESOURCE BOARD  
02-07473, 02-07474, 21-07574, 21-07575 )  
21-07576, 21-07577, 21-07578, 21-07579, )  
21-07580 BY THE IDAHO WATER RESOURCE )  
BOARD )

COMES NOW the Idaho Water Resource Board (hereinafter the Board or IWRB) and responds to the OPPOSITION TO REQUEST FOR FURTHER DELAY IN PROCESSING APPLICATIONS TO APPROPRIATE WATERS OF THE STATE OF IDAHO by Idaho Rivers United (hereinafter IRU's Opposition). By a resolution dated March 21, 2000, the Board

requested a renewal of the Department's previous order granting a delay in the commencement of processing of the Board's applications for recharge in the upper Snake River Basin. IRU's Opposition has raised three separate issues concerning the proposed renewal. First, Idaho Rivers United argues that the applicable rules and regulations of the Idaho Department of Water Resources prohibit the proposed delay. Second, Idaho Rivers United argues that the proposed delay is speculative and against the public interest and that the Director should deny the requested delay on those bases. Third, Idaho Rivers United charges that the Idaho Water Resource Board is violating the law by illegally diverting the water in the absence of a permit. The first issue is a straightforward legal issue regarding the interpretation of administrative regulations that may be resolved quickly. The second issue is basically a public policy issue addressed to the sound discretion of the Director. The third issue has not been properly raised in this proceeding. In the final analysis none of the issues raised justify denial of the requested delay in the commencement of the processing the Board's recharge applications.

I. THE RULES AND REGULATIONS OF THE IDAHO DEPARTMENT OF WATER RESOURCES DO NOT PROHIBIT THE REQUESTED EXTENSION OF TIME.

Chapter 2 of Title 42, Idaho Code, does not contain any specific provision regarding the granting of requests for a delay in the processing an application to appropriate water, although Chapter 2 does impose a general requirement that an applicant proceed with due diligence. The implementing regulations of the Idaho Department of Water Resources do address this issue in Water Appropriation Rule IDAPA 37.03.08.040.01.d, which provides in part:

d. An application may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six months (6). The director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. **The director** may approve a request for delay for a

shorter period of time or upon conditions, and **may renew the approval upon written request.**

*Id.* (emphasis added). Here, the director's own regulations limit the length of any one extension to a period of one year. However, those regulations also allow the director to renew previous approvals of such requests. Since the present request of the IWRB is for a renewal under this regulation, the regulation authorizes the granting of this request. The issue of whether to grant the request is addressed to the sound discretion of the director. The regulation identifies the following three specific bases for consideration by the director: (1) others will be injured by the delay, (2) the applicant seeks a delay for the purpose of speculation, and (3) the public interest of the people of the State of Idaho will not be served by the delay.

- A. The proposed delay in processing these applications will not cause injury to any water rights.

The Idaho Legislature authorized and appropriated monies for the IWRB to conduct a recharge program of the upper Snake River Plain to address some the water supply deficiencies that occurred during the last drought. Act of March 17, 1995, ch. 200, 1995 Idaho Sess. Laws 692. Pursuant to this authority and with this money, the IWRB purchased from willing sellers surplus water from its water bank for the recharge program. In addition, the IWRB paid to participating canal companies a carriage fee for the use their diversion facilities for these purposes. The accounting for these diversions has been consistent with the accounting practices in place for Water District 1. See Affidavit of Hal Anderson Dated May 3, 2000, at 2. These accounting practices represent accepted procedures developed over twenty years to preclude injury to any water right. *Id.* Because the diversion and use of this water was in accordance with these accepted accounting practices, this rental did not cause injury to any water right.

- B. The local public interest does not justify denial of the requested delay in the commencement of processing the recharge applications.

The basis for the requested delay in the commencement of processing the recharge applications is a need to evaluate the report completed December 1999, *Feasibility of Large-Scale Managed Recharge of the Eastern Snake Plain Aquifer System*. IWRB Resolution Dated March 21, 2000. The proposed recharge program presents opportunities for the State to satisfy the water needs of many water right holders dependent on the Snake Plain Aquifer and the Snake River. In addition, if poorly implemented, it may operate to the injury of many users it intends to help. Sorting out the relationship between surface and ground water and making those informed judgments about how to proceed is never easy, as the history of the basin demonstrates. This request basically indicates that the IWRB does not wish to be rushed to judgment on how to proceed for implementing recommendations in the December 1999 report. Rather, it would like a further opportunity to consider its proposed recharge program in light of the competing concerns raised in the various protests. After this period of further study, it will make a determination on how best to proceed, and the IWRB will welcome the public input received at the hearing(s) held on its protested applications. The local public interest is served if the IWRB is given this opportunity for further study.

- C. The requested delay in the commencement of processing the recharge applications is not for the purpose of speculation.

The statutory provisions in Idaho Code § 42-203A(5) and the administrative regulations cited above that preclude the recognition of a water right filed for purposes of speculation or delay have their roots in the common law that required a water right claimant to proceed with due diligence. An early Idaho case expressed this requirement well as follows: "He [referring to an appropriator] cannot play the dog-in-the-manger act, and expect for all time to deprive other intended users of the benefits to be derived from appropriations regularly and legally instituted or

made.” *Vineyard Land & Stock Co. v. Twin Falls Salmon River Land & Water Co.*, 245 F. 9, 21 (9th Cir. 1917). Here, the purposes of the requested delay in commencement of the processing the applications are not to play the dog-in-the-manger. Rather, as expressed above, the purposes are to evaluate the recently completed report on large-scale managed recharge. Because of the complexities in this area, the IWRB’s request is reasonable and should be granted.

II. IDAHO RIVERS UNITED’S COMPLAINT REGARDING ILLEGAL DIVERSION OF WATER IS NOT PROPERLY BEFORE THE DEPARTMENT.

The second page of IRU’s Opposition in substance is a complaint under Rules of Procedure of the Idaho Department of Water Resources IDAPA 37.01.01.240 (Procedural Rule 240) because it is a “pleading charging other person(s) with acts of omissions under law administered by the agency . . .” *Id.* Yet, IRU’s Opposition does not comply with procedural requirements of a complaint setting forth fully the acts or things done or omitted. *See* IDAPA 37.01.01.240 (b). The difficulty with the vague statements presented in IRU’s Opposition is that the Board has great difficulty in filing an answer under Rules of Procedure of the Idaho Department of Water Resources IDAPA 37.01.01.270 (Procedural Rule 270) that admits or denies each material allegation of the complaint. More fundamentally, IRU’s charge regarding the Board’s alleged illegal diversions of water really is an expression of dissatisfaction with the accepted accounting system used by Water District 1 because the diversions by the Board were in accordance with that accounting system. If IRU wants to pursue this challenge in an adversarial setting, the proper procedure is for IRU to file a complaint regarding the accounting system for water used by Water District 1. If IRU would prefer to pursue its complaint in some non-adversarial proceeding, the Board would consider any suggestion IRU or other interested groups might provide. In either event, the Board would welcome the opportunity to obtain

public input on ways to improve accounting for water storage and natural flow in Water District

1.

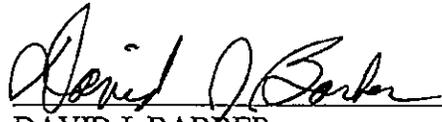
### CONCLUSION

The director should grant the requested renewal of the delay in commencing processing of these applications upon such conditions as the director determines are necessary in the local public interest.

DATED this 7<sup>th</sup> day of May, 2000.

ALAN G. LANCE  
Attorney General

CLIVE J. STRONG  
Deputy Attorney General  
Chief Natural Resources Division

  
\_\_\_\_\_  
DAVID J. BARBER  
Deputy Attorney General  
Natural Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May, 2000, I caused to be served the original of the foregoing RESPONSE OF THE IDAHO WATER RESOURCE BOARD upon the Director of the Idaho Department of Water Resources by the method indicated below and addressed as follows:

Karl Dreher, Director  
Idaho Department of Water Resources  
1301 N. Orchard St.  
Boise, ID 83706

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Statehouse Mail

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May, 2000, I caused to be served true and correct copies of the foregoing RESPONSE OF THE IDAHO WATER RESOURCE BOARD upon all parties of record in this proceeding by the method indicated below and addressed as follows:

Idaho Water Resource Board  
Attn: Clarence Parr, Chairman  
1301 N. Orchard St.  
Boise, ID 83706

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Statehouse Mail

Idaho Water Resource Board  
Attn: Hal Anderson  
1301 N. Orchard St.  
Boise, ID 83706

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Statehouse Mail

Idaho Water Resource Board  
Attn: Frank Sherman  
1301 N. Orchard St.  
Boise, ID 83706

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Statehouse Mail

Idaho Department of Water Resources  
Attn: Glen Saxton  
1301 N. Orchard St.  
Boise, ID 83706

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Statehouse Mail

Laird Lucas  
Land and Water Fund  
408 W. Idaho St.  
P.O. Box 1612  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

John A. Rosholt  
Rosholt Robertson & Tucker  
P.O. Box 1906  
Twin Falls, ID 83303-1906

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

James C. Tucker  
Rosholt Robertson & Tucker  
P.O. Box 1906  
Twin Falls, ID 83303-1906

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Barbara Scott-Brier  
Fish and Wildlife Service  
U.S. Dept. of the Interior  
500 NE Multnomah, Suite 607  
Portland, OR 97232

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Spence Warner  
South Fork Outfitters, LLC  
P.O. Box 22  
Swan Valley, ID 83449

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Marv Hoyt  
Greater Yellowstone Coalition  
1740 E. 17<sup>th</sup> St., Suite F  
Idaho Falls, ID 83404

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Mike Lawson  
Henrys Fork Anglers, Inc.  
P.O. Box 487  
St. Anthony, ID 83445

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Jerrold D. Gregg  
U. S. Bureau of Reclamation  
214 Broadway Ave.  
Boise, ID 83702-7298

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Rod Sando, Director  
Idaho Department of Fish and Game  
600 S. Walnut St.  
Boise, ID 83707

U.S. Mail, Postage Prepaid  
 Hand Delivered  
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 Statehouse Mail

Lyn Benjamin  
Henrys Fork Foundation  
P.O. Box 852  
Ashton, ID 83420

U.S. Mail, Postage Prepaid  
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 Overnight Mail  
 Facsimile

Marti Bridges  
Idaho Rivers United  
P.O. Box 633  
Boise, ID 83701

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Fred and Betty Kippes  
3951 N. 1100 E  
Buhl, ID 83316

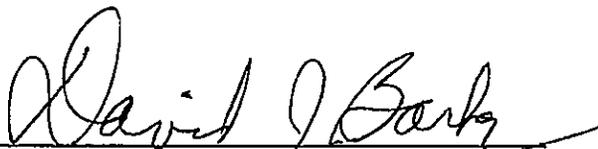
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 Facsimile

Roger D. Ling  
Ling Nielsen and Robinson  
615 H St.  
P.O. Box 396  
Rupert, ID 83350

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Clive J. Strong  
Deputy Attorney General  
Chief, Natural Resources Division  
700 W. Jefferson Street, Rm. 210  
P.O. Box 83720  
Boise, Idaho 83711-4449

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\_\_\_\_\_  
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Deputy Attorney General  
Natural Resources Division

**ALAN G. LANCE**  
Attorney General

**CLIVE J. STRONG**  
Deputy Attorney General  
Chief, Natural Resources Division

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Facsimile (208) 334-2690  
(ISB No. 2597)

Attorneys for State of Idaho, Idaho Water Resource Board

**RECEIVED**

**MAY 4 - 2000**

Department of Water Resources

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS FOR )  
WATER RIGHT NOS. 01-07131, 01-07132, )  
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02-07473, 02-07474, 21-07574, 21-07575 )  
21-07576, 21-07577, 21-07578, 21-07579, )  
21-07580 BY THE IDAHO WATER RESOURCE )  
BOARD )

NOTICE OF SUBSTITUTION OF  
ATTORNEY OF RECORD AND  
NOTICE OF APPEARANCE

TO: All Parties, including Protestants and Intervenors, and their representatives and attorneys of record.

PLEASE TAKE NOTICE that Timothy Joseph Callanan, a former Deputy Attorney General who represented the Idaho Water Resource Board (hereinafter referred to as the

"Board") in this matter, has left the Office of the Idaho Attorney General and that he no longer represents the Board.

PLEASE TAKE FURTHER NOTICE that David J. Barber, Deputy Attorney General, Natural Resources Division, Office of the Idaho Attorney General, hereby enters his appearance as attorney of record for the Idaho Water Resource Board. Service of documents on the Board should be made on Mr. Barber at the address stated above and at the following address:

Idaho Water Resource Board  
Attn: Clarence Parr, Chairman  
1301 N. Orchard St.  
Boise, ID 83706

This Notice of Substitution of Attorney of Record and Notice of Appearance is filed in accordance with the Idaho Department of Water Resources (hereinafter referred to as the "Department") Rules of Procedure, IDAPA 37.01.02000 et seq., including but not limited to Procedural Rules, 200, 201, 202, and 205 and the Department's Water Appropriation Rules, IDAPA 37.03.08000 et seq.

DATED this 14<sup>th</sup> day of May, 2000.

ALAN G. LANCE  
Attorney General

CLIVE J. STRONG  
Deputy Attorney General  
Chief Natural Resources Division

  
\_\_\_\_\_  
DAVID J. BARBER  
Deputy Attorney General  
Natural Resources Division

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May, 2000, I caused to be served the original of the foregoing NOTICE OF SUBSTITUTION OF ATTORNEY OF RECORD AND NOTICE OF APPEARANCE upon the Director of the Idaho Department of Water Resources by the method indicated below and addressed as follows:

Karl Dreher, Director  
Idaho Department of Water Resources  
1301 N. Orchard St.  
Boise, ID 83706

- U.S. Mail, Postage Prepaid
- Hand Delivered
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- Facsimile
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I HEREBY CERTIFY that on this \_\_\_ day of May, 2000, I caused to be served true and correct copies of the foregoing NOTICE OF SUBSTITUTION OF ATTORNEY OF RECORD AND NOTICE OF APPEARANCE upon all parties of record in this proceeding by the method indicated below and addressed as follows:

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Attn: Clarence Parr, Chairman  
1301 N. Orchard St.  
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Attn: Glen Saxton  
1301 N. Orchard St.  
Boise, ID 83706

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Land and Water Fund  
408 W. Idaho St.  
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Barbara Scott-Brier  
Fish and Wildlife Service  
U.S. Dept. of the Interior  
500 NE Multnomah, Suite 607  
Portland, OR 97232

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214 Broadway Ave.  
Boise, ID 83702-7298

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Rod Sando, Director  
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600 S. Walnut St.  
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Lyn Benjamin  
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Marti Bridges  
Idaho Rivers United  
P.O. Box 633  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
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 Facsimile

Fred and Betty Kippes  
3951 N. 1100 E  
Buhl, ID 83316

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Natural Resources Division

**ALAN G. LANCE**  
Attorney General

**CLIVE J. STRONG**  
Deputy Attorney General  
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Attorneys for State of Idaho, Idaho Water Resource Board

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21-07580 BY THE IDAHO WATER RESOURCE )  
BOARD )

AFFIDAVIT OF  
HAL N. ANDERSON  
DATED MAY 4, 2000

HAL N. ANDERSON, being first duly sworn deposes and states:

1. I am administrator, Planning and Technical Services Division (Acting) of the Idaho Department of Water Resources. I am responsible for overall management of the Division, and this work includes planning, prioritizing, and directing staff support for the Idaho Water Resource Board. I was previously employed as the Chief, Technical Services Bureau for the Idaho Department of Water Resources from November 1987 to July 1999. This work

SCANNED  
NOV 03 2009

included responsibility for surface and ground-water hydrology, modeling, remote sensing, geographic information systems, and ground-water monitoring. From January 1981 to November 1987, I held other positions at the Idaho Department of Water Resources. I received a Bachelor of Science Degree in Forest Management in 1978 and a Master of Science in Forest Management in 1981 both from the University of Idaho.

2. Mr. Ron Carlson who is the Regional Manager of the Eastern Region of the Idaho Department of Water Resources, is also elected by the water users and appointed by the Director, IDWR as the Watermaster for Water District 1. Water District 1 consists of the Snake River and all of the tributary streams above Milner Dam with the exception of the Portneuf and Blackfoot Rivers. Mr. Carlson as Watermaster is charged with the responsibility of distributing the available natural flow and storage to authorized diversions consistent with established water rights and stored water allocations in Water District 1. Mr. Carlson provides information to the Idaho Water Resource Board (Board) and administers the recharge program authorized by the Act of March 17, 1995, ch. 200, 1995 Idaho Sess. Laws 692. As a part of my duties, I supervise staff that provide technical support for Mr. Carlson regarding the accounting system used in Water District 01. The water allocation and accounting system used by the Watermaster was designed to assure that water can only be diverted in accordance with existing water rights and stored water allocations to preclude injury to water users in Water District 1 and to protect unappropriated river flows.

3. The Board, pursuant to Idaho Code Section 42-1765, appointed a local operating committee to administer storage water rentals within Water District 1. Idaho Code Section 42-1764 provides authority for the Board Water Bank and Rental Pool. The Rental Pool operates under procedures adopted pursuant to the "Water Supply Bank Rules", IDAPA 37.0.03. The

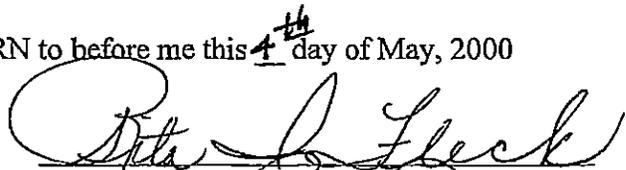
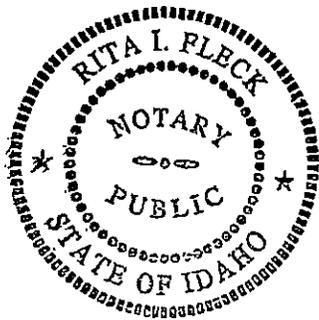
rental procedures adopted by Water District 1 and approved by the Board provide a mechanism for those owning space in Snake River Reservoirs to make surplus storage available to other users and uses. Stored water has been acquired from the rental pool for many years for many purposes, including fish and wildlife protection and enhancement, recreation and recharge. Since 1995, when the Idaho State Legislature appropriated money specifically to rent stored water to recharge the Eastern Snake Plain aquifer, Water District 1 has administered the managed recharge program for the Board authorized by the Act of March 17, 1995, ch. 200, 1995 Idaho Sess. Laws 692. The allocation and accounting process process used by the Watermaster in delivering water for recharge is the same process that has been in use for the last seventy five years for distributing water within Water District 1. The only difference with the current version is use of computer technologies that allow for greater accuracy and speed. There is no evidence that any water rights have been injured because of the accounting process currently in use by the Watermaster. The current water allocation and accounting process used for the allocation of storage and natural flow to water users has been accepted and in use since 1978.

4. Further your affiant sayeth naught.



HAL N. ANDERSON  
Administrator (acting), Planning and Technical  
Services Division

SUBSCRIBED and SWORN to before me this 4<sup>th</sup> day of May, 2000



Notary Public for Idaho  
Residing at Boise, ID  
My Commission expires: 7/25/2006

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May, 2000, I caused to be served the original of the foregoing AFFIDAVIT OF HAL N. ANDERSON DATED MAY 4, 2000, upon the Director of the Idaho Department of Water Resources by the method indicated below and addressed as follows:

Karl Dreher, Director  
Idaho Department of Water Resources  
1301 N. Orchard St.  
Boise, ID 83706

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail

I HEREBY CERTIFY that on this 4<sup>th</sup> day of May, 2000, I caused to be served true and correct copies of the foregoing AFFIDAVIT OF HAL N. ANDERSON DATED MAY 4, 2000, upon all parties of record in this proceeding by the method indicated below and addressed as follows:

Idaho Water Resource Board  
Attn: Clarence Parr, Chairman  
1301 N. Orchard St.  
Boise, ID 83706

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail

Idaho Water Resource Board  
Attn: Hal Anderson  
1301 N. Orchard St.  
Boise, ID 83706

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail

Idaho Water Resource Board  
Attn: Frank Sherman  
1301 N. Orchard St.  
Boise, ID 83706

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail

Idaho Department of Water Resources  
Attn: Glen Saxton  
1301 N. Orchard St.  
Boise, ID 83706

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail

Laird Lucas  
Land and Water Fund  
408 W. Idaho St.  
P.O. Box 1612  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

John A. Rosholt  
Rosholt Robertson & Tucker  
P.O. Box 1906  
Twin Falls, ID 83303-1906

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

James C. Tucker  
Rosholt Robertson & Tucker  
P.O. Box 1906  
Twin Falls, ID 83303-1906

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Barbara Scott-Brier  
Fish and Wildlife Service  
U.S. Dept. of the Interior  
500 NE Multnomah, Suite 607  
Portland, OR 97232

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Spence Warner  
South Fork Outfitters, LLC  
P.O. Box 22  
Swan Valley, ID 83449

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Marv Hoyt  
Greater Yellowstone Coalition  
1740 E. 17<sup>th</sup> St., Suite F  
Idaho Falls, ID 83404

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Mike Lawson  
Henry's Fork Anglers, Inc.  
P.O. Box 487  
St. Anthony, ID 83445

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Jerrold D. Gregg  
U. S. Bureau of Reclamation  
214 Broadway Ave.  
Boise, ID 83702-7298

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Rod Sando, Director  
Idaho Department of Fish and Game  
600 S. Walnut St.  
Boise, ID 83707

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail

Lyn Benjamin  
Henrys Fork Foundation  
P.O. Box 852  
Ashton, ID 83420

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Marti Bridges  
Idaho Rivers United  
P.O. Box 633  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Fred and Betty Kippes  
3951 N. 1100 E  
Buhl, ID 83316

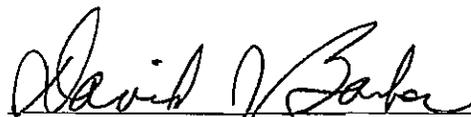
U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Roger D. Ling  
Ling Nielsen and Robinson  
615 H St.  
P.O. Box 396  
Rupert, ID 83350

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile

Clive J. Strong  
Deputy Attorney General  
Chief, Natural Resources Division  
700 W. Jefferson Street, Rm. 210  
P.O. Box 83720  
Boise, Idaho 83711-4449

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile  
 Statehouse Mail



DAVID J. BARBER  
Deputy Attorney General  
Natural Resources Division

NOV 03 2009

## MEMORANDUM

**To:** Files 01-07131, et. al.  
**From:** L. Glen Saxton *LS*  
**RE:** MOTION FOR DELAY - ASSOCIATED TIME LINES  
**Date:** April 20, 2000

On March 21, 2000, the Idaho Water Resource Board ("Board") adopted a Resolution seeking a second delay in the processing of its applications for permit seeking aquifer recharge. Since the Board had not served the resolution on the other parties to the matter, on March 28, 2000, the department provided a copy to the other parties and asked for comment within 14 days.

On April 7, 2000, the Land and Water Fund of the Rockies ("petitioner") responded to the resolution opposing it. On April 14, 2000, the department corresponded with the petitioner advising that the response needed to be served on all parties to the matter. On April 20, the petitioner provided information to show that on April 17, 2000, the petitioner had properly served the other parties.

The department should allow 14 days for response to the petition i.e. until May 1, 2000. After May 1, 2000, the department should evaluate the petition and any responses to it and should issue a preliminary order either approving or denying the Board's resolution and should serve it on all the parties.

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NOV 03 2009



PO BOX 633  
BOISE, ID 83701  
(208) 343-7481  
FAX (208) 343-9376

tru@idahorivers.org  
www.idahorivers.org

EXECUTIVE DIRECTOR  
Bill Sedivy  
Boise

BOARD OF DIRECTORS  
Gail Aler  
Gooding

Rick Eichstadt  
Lewiston

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Amy Haak  
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Jim Long  
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Andy Muntler  
Kelchum

Jerry Myers  
Salmon

Jon Ochi  
Idaho Falls

Dana Olson-Elle  
Pocatello

Dr. Stephen Pauley  
Kelchum

Keith Stonebraker  
Juliaetta

Tom Stuart  
Boise/Stamley

Curtis Webb  
Twin Falls

April 17, 2000

Idaho Department of Water Resources  
Attn: Deborah Drew-Ellis  
1301 N. Orchard  
Boise, ID 83706

RECEIVED

APR 19 2000

Department of Water Resources

Dear Ms. Ellis:

On April 6, 2000 our attorneys, Laird J. Lucas and William M. Eddie, submitted a document opposing the request for further delay in processing applications to appropriate waters which had been filed by the Idaho Water Resource Board. Evidently the certificate of service list did not include all the protestants or intervenors to this proceeding. Therefore, I am resending our document to all parties on the updated service list you provided, including the Department.

I do hereby certify that on this 17th day of April, 2000, the foregoing documents were served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following on the attached page.

*Marti L. Bridges*

Marti L. Bridges  
Conservation Director  
Idaho Rivers United

Attachments - 3

Opposition to Delay  
Certificate of Service  
IDWR Letter of April 14, 2000

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NOV 03 2009

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APR 7 - 2000

Department of Water Resources

Laird J. Lucas  
William M. Eddie  
LAND AND WATER FUND OF THE ROCKIES  
P.O. Box 1612  
Boise, ID 83701

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS	)	
FOR WATER RIGHT Nos. 01-07131	)	OPPOSITION TO REQUEST FOR
through 01-07137, 01-07139 through	)	FURTHER DELAY IN PROCESSING
01-07141, 02-07474, and 21-07574 through	)	APPLICATIONS TO APPROPRIATE
21-07580 BY THE IDAHO WATER	)	WATERS OF THE STATE OF IDAHO
RESOURCES BOARD	)	

Protestant IDAHO RIVERS UNITED ("IRU") strongly opposes the request of the Idaho Water Resources Board ("Board") to further delay processing its applications to appropriate waters of the State of Idaho for aquifer recharge purposes.

These applications -- which are speculative and request a use of water that is contrary to the local public interest -- are now into the third year of administrative delay. The Department's administrative rule governing delays in processing applications does not allow indefinite application periods controlled only by the whims of the applicant. IDAPA 37.03.08.040.01(d). To the contrary, the Director must consider the public interest in evaluating any request for delay, and may deny the request in his discretion. *Id.* The Board has offered no cogent reason to further delay these applications, but rather has essentially repeated verbatim its prior requests for delay. These applications are ripe for the Department's consideration: the ESPA Managed Recharge Study is complete, and adequate information relating to harm to fish and wildlife from these appropriations is available. The Department should deny the request for delay and promptly set this matter for public hearing.

SCANNED  
NOV 03 2009

Moreover, IRU remains deeply troubled that the Board continues to appropriate water for recharge purposes in the Upper Snake region, including the lower Henry's Fork drainage, without any valid permit. Fundamental principles of Idaho water law prohibit such illegal appropriations. See I.C. §§ 42-103 (right to use water acquired only through permit or license); 42-201 (all use of water subject to permitting provisions); 42-203 (water user must obtain permit before appropriating water); 42-234 (permit required for ground water recharge purposes); 42-1734 and 1734G (Board subject to permitting provisions). The Board's illegal appropriations must be halted immediately not only to maintain the rule of law, but to protect the phenomenally important fish and wildlife resources of the Upper Snake region. We demand that the Department take immediate action to halt this unlawful use of the State's water by ordering the Board to cease and desist such appropriations.

Dated: April 6, 2000

Respectfully submitted,



---

William M. Eddie, Attorney  
Land and Water Fund of the Rockies  
On behalf of Idaho Rivers United

CERTIFICATE OF SERVICE

I certify that on this 6<sup>th</sup> day of April 2000, I caused true and correct copies of the foregoing OPPOSITION TO REQUEST FOR FURTHER DELAY IN PROCESSING APPLICATIONS TO APPROPRIATE WATERS OF THE STATE OF IDAHO to be served upon the following persons via U.S. Mail:

Idaho Water Resource Board  
Attn: Frank Sherman  
1301 N. Orchard  
Boise, ID 83720

Idaho Department of Water Resources  
Attn: Glen Saxton  
1301 N. Orchard  
Boise, ID 83720



William M. Eddie

*I. W. R. B. Service List*

**CERTIFICATE OF SERVICE**

I DO HEREBY CERTIFY that on this 17th day of April, 2000, the foregoing documents were served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

IDAHO WATER RESOURCE BOARD  
ATTN FRANK SHERMAN  
1301 N ORCHARD  
BOISE ID 83706

JERROLD D GREGG  
US BUREAU OF RECLAMATION  
214 BROADWAY AVE  
BOISE ID 83702-7298

JOHN A ROSHOLT  
ROSHOLT ROBERTSON TUCKER  
PO BOX 1906  
TWIN FALLS ID 83303-1906

JERRY MALLET  
ACTING DIRECTOR  
IDAHO FISH AND GAME  
600 S WALNUT  
BOISE ID 83707-0025

JAMES C TUCKER  
ROSHOLT ROBERTSON TUCKER  
PO BOX 1906  
TWIN FALLS ID 83303-1906

KIM CLARKIN  
HENRY'S FORK FOUNDATION  
PO BOX 852  
ASHTON ID 83420

BARBARA SCOTT-BRIER  
FISH AND WILDLIFE SERVICE  
US DEPT OF INTERIOR  
500 NE MULTNOMAH STE 607  
PORTLAND OR 97232

MARTI BRIDGES  
IDAHO RIVERS UNITED  
PO BOX 633  
BOISE ID 83701

SPENCE WARNER  
SOUTH FORK OUTFITTERS LLC  
PO BOX 22  
SWAN VALLEY ID 83449

FRED AND BETTY KIPPES  
3951 N 1100 E  
BUHL ID 83316

MARV HOYT  
GREATER YELLOWSTONE COALITION  
1740 E 17TH ST STE F  
IDAHO FALLS ID 83404

ROGER D LING  
LING NIELSEN AND ROBINSON  
615 H ST  
PO BOX 396  
RUPERT ID 83350

MIKE LAWSON  
HENRY'S FORK ANGLERS INC  
BOX 487  
ST ANTHONY ID 83445

CLIVE STRONG  
OFFICE OF THE ATTORNEY GENERAL  
NATURAL RESOURCES DIVISION  
P.O. BOX 83720  
BOISE ID 83720-0010

*Marti L. Bridges*

SCANNED  
NOV 03 2009



**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

April 14, 2000

Laird J. Lucas  
William M. Eddie  
LAND AND WATER FUND OF THE ROCKIES  
P.O. Box 1612  
Boise, ID 83701

Re: Applications for Water Right Nos. 01-07131 thru 01-07137, 01-07139  
thru 01-07141, 02-07474, and 21-07574 through 21-07580 by the Idaho  
Water Resources Board

Dear Mr. Lucas and Eddie:

The Department of Water Resources (the department) is in receipt of your Opposition to Request for Further Delay in Processing Applications to Appropriate Waters of the State of Idaho, dated April 6, 2000. The certificate of service list for your document did not show that you have served all parties to this matter. Hence, this document does not meet the requirements of service according to the department's Rules of Procedure, IDAPA 37.01.01.302 - 304. Therefore, I am sending you a copy of the referenced document along with a copy of the service list. You need to promptly serve all the parties on the list and provide proof of service to the department.

If you have any questions, please contact me at (208)327-7953.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Drew-Ellis".

Deborah Drew-Ellis  
Administrative Assistant  
Water Allocation Bureau

Enclosures

SCANNED  
NOV 03 2009



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE  
GOVERNOR

April 14, 2000

KARL J. DREHER  
DIRECTOR

Laird J. Lucas  
William M. Eddie  
LAND AND WATER FUND OF THE ROCKIES  
P.O. Box 1612  
Boise, ID 83701

Re: Applications for Water Right Nos. 01-07131 thru 01-07137, 01-07139  
thru 01-07141, 02-07474, and 21-07574 through 21-07580 by the Idaho  
Water Resources Board

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If you have any questions, please contact me at (208)327-7953.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Drew-Ellis".

Deborah Drew-Ellis  
Administrative Assistant  
Water Allocation Bureau

Enclosures

SCANNED  
NOV 03 2009

RECEIVED

APR 7 - 2000

Department of Water Resources

Laird J. Lucas  
William M. Eddie  
LAND AND WATER FUND OF THE ROCKIES  
P.O. Box 1612  
Boise, ID 83701

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATER OF APPLICATIONS )	
FOR WATER RIGHT Nos. 01-07131 )	OPPOSTION TO REQUEST FOR
through 01-07137, 01-07139 through )	FURTHER DELAY IN PROCESSING
01-07141, 02-07474, and 21-07574 through )	APPLICATIONS TO APPROPRIATE
21-07580 BY THE IDAHO WATER )	WATERS OF THE STATE OF IDAHO
RESOURCES BOARD )	

Protestant IDAHO RIVERS UNITED ("IRU") strongly opposes the request of the Idaho Water Resources Board ("Board") to further delay processing its applications to appropriate waters of the State of Idaho for aquifer recharge purposes.

These applications -- which are speculative and request a use of water that is contrary to the local public interest -- are now into the third year of administrative delay. The Department's administrative rule governing delays in processing applications does not allow indefinite application periods controlled only by the whims of the applicant. IDAPA 37.03.08.040.01(d). To the contrary, the Director must consider the public interest in evaluating any request for delay, and may deny the request in his discretion. Id. The Board has offered no cogent reason to further delay these applications, but rather has essentially repeated verbatim its prior requests for delay. These applications are ripe for the Department's consideration: the ESPA Managed Recharge Study is complete, and adequate information relating to harm to fish and wildlife from these appropriations is available. The Department should deny the request for delay and promptly set this matter for public hearing.

SCANNED  
NOV 03 2009

Moreover, IRU remains deeply troubled that the Board continues to appropriate water for recharge purposes in the Upper Snake region, including the lower Henry's Fork drainage, without any valid permit. Fundamental principles of Idaho water law prohibit such illegal appropriations. See I.C. §§ 42-103 (right to use water acquired only through permit or license); 42-201 (all use of water subject to permitting provisions); 42-203 (water user must obtain permit before appropriating water); 42-234 (permit required for ground water recharge purposes); 42-1734 and 1734G (Board subject to permitting provisions). The Board's illegal appropriations must be halted immediately not only to maintain the rule of law, but to protect the phenomenally important fish and wildlife resources of the Upper Snake region. We demand that the Department take immediate action to halt this unlawful use of the State's water by ordering the Board to cease and desist such appropriations.

Dated: April 6, 2000

Respectfully submitted,



---

William M. Eddie, Attorney  
Land and Water Fund of the Rockies  
On behalf of Idaho Rivers United

**CERTIFICATE OF SERVICE**

I certify that on this 6<sup>th</sup> day of April 2000, I caused true and correct copies of the foregoing OPPOSITION TO REQUEST FOR FURTHER DELAY IN PROCESSING APPLICATIONS TO APPROPRIATE WATERS OF THE STATE OF IDAHO to be served upon the following persons via U.S. Mail:

Idaho Water Resource Board  
Attn: Frank Sherman  
1301 N. Orchard  
Boise, ID 83720

Idaho Department of Water Resources  
Attn: Glen Saxton  
1301 N. Orchard  
Boise, ID 83720



William M. Eddie



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

March 28, 2000

**RE: IN THE MATTER OF APPLICATION FOR PERMIT NOS. 01-07131 THRU 01-07137, 01-07139 THRU 01-07141, 02-07473, 02-07474, AND 21-07574 THRU 21-07580**

Dear Interested Party:

Enclosed is Resolution of the Idaho Water Resource Board ("Board") adopted at its regularly scheduled Board Meeting on March 21, 2000. The resolution seeks delay in the processing of the above captioned applications for an additional year. The applications were filed by the Board on March 20, 1998 seeking to appropriate water from the Snake River, Henry's Fork Snake River and Fall River for recharge purposes.

The Department is providing a copy of the resolution to the parties in the matter to allow the protestants the opportunity to oppose the requested delay and to comply with IDAPA 37.01.01417 (Procedure Rule 417). Please provide any comment on the requested delay within fourteen (14) days of the service date of this letter.

Please feel free to contact me if you have questions.

Sincerely,

A handwritten signature in black ink that reads "L. Glen Saxton". The signature is written in a cursive, flowing style.

L. GLEN SAXTON, P.E.  
Chief, Water Allocation Bureau

Encl: 1

c: IDWR - Region

SCANNED  
NOV 03 2009

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 28<sup>th</sup> day of March, 2000, the foregoing documents were served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

IDAHO WATER RESOURCE BOARD  
ATTN FRANK SHERMAN  
1301 N ORCHARD  
BOISE ID 83706

JERROLD D GREGG  
US BUREAU OF RECLAMATION  
214 BROADWAY AVE  
BOISE ID 83702-7298

JOHN A ROSHOLT  
ROSHOLT ROBERTSON TUCKER  
PO BOX 1906  
TWIN FALLS ID 83303-1906

JERRY MALLET  
ACTING DIRECTOR  
IDAHO FISH AND GAME  
600 S WALNUT  
BOISE ID 83707-0025

JAMES C TUCKER  
ROSHOLT ROBERTSON TUCKER  
PO BOX 1906  
TWIN FALLS ID 83303-1906

LIN BENJAMIN  
HENRY'S FORK FOUNDATION  
PO BOX 852  
ASHTON ID 83420

BARBARA SCOTT-BRIER  
FISH AND WILDLIFE SERVICE  
US DEPT OF INTERIOR  
500 NE MULTNOMAH STE 607  
PORTLAND OR 97232

MARTI BRIDGES  
IDAHO RIVERS UNITED  
PO BOX 633  
BOISE ID 83701

SPENCE WARNER  
SOUTH FORK OUTFITTERS LLC  
PO BOX 22  
SWAN VALLEY ID 83449

FRED AND BETTY KIPPES  
3951 N 1100 E  
BUHL ID 83316

MARV HOYT  
GREATER YELLOWSTONE COALITION  
1740 E 17TH ST STE F  
IDAHO FALLS ID 83404

ROGER D LING  
LING NIELSEN AND ROBINSON  
615 H ST  
PO BOX 396  
RUPERT ID 83350

MIKE LAWSON  
HENRY'S FORK ANGLERS INC  
BOX 487  
ST ANTHONY ID 83445

CLIVE STRONG  
OFFICE OF THE A  
NATURAL RESOU  
P.O. BOX 83720  
BOISE ID 83720-00

← David Barber  
May 4, 2000

Deborah Drew-Ellis  
Deborah Drew-Ellis  
Administrative Assistant  
Water Allocation Bureau

BEFORE THE WATER RESOURCE BOARD  
OF THE STATE OF IDAHO

IN THE MATTER OF REQUESTING A RENEWAL )  
OF DELAY IN THE PROCESSING OF PENDING )  
APPLICATIONS FOR PERMIT TO APPROPRIATE ) RESOLUTION  
WATER FOR RECHARGE PURPOSES IN THE )  
NAME OF THE IDAHO WATER RESOURCE )  
BOARD )  
\_\_\_\_\_ )

WHEREAS, the Idaho Water Resource Board ("Board"), on March 20, 1998, filed with the Idaho Department of Water Resources ("IDWR") 20 applications for permit to appropriate a limited volume of water for managed recharge of the Eastern Snake River Plain Aquifer ("ESPA") using the canal systems of various water distribution entities which have entered into conveyance agreements with the Board; and

WHEREAS, eleven parties have filed protests or petitions to intervene in the proceedings before IDWR on the Board's applications for permit, expressing both concern and support regarding the use of water for recharge purposes; and

WHEREAS, IDWR has contracted for hydrologic studies (the "ESPA Managed Recharge Study") to assess the feasibility of managed recharge as a means of enhancing the conjunctive management of surface and ground waters within the Eastern Snake River Plain; and

WHEREAS, the results of the ESPA Managed Recharge Study are presently under review; and

WHEREAS, Rule 40 of IDWR's Water Appropriation Rules provides that an applicant may request that commencement of processing of an application to appropriate water be delayed for a period not to exceed one (1) year, and that approval of a delay may be renewed upon written request; and

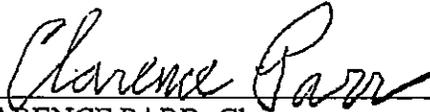
WHEREAS, IDWR previously granted a delay in processing of the Board's applications for a period of one year on January 21, 1999; and

WHEREAS, the Board considers that a further one-year delay in the processing of the Board's applications for permit would be consistent with the best interests of the public and that the resulting delay would be neither speculative nor injurious to the interests of other parties or members of the public.

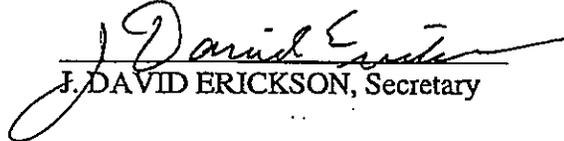
NOW THEREFORE, BE IT RESOLVED that the Idaho Water Resource Board hereby authorizes the Chairman to cause this resolution to be forwarded to the Director of the Department of Water Resources as the written request of the Board for a further delay in

processing of the Board's pending applications for permit for recharge purposes for a period of one (1) year. The Board's pending applications for permit affected by this resolution are identified by the following numbers: 01-07131, 01-07132, 01-07133, 01-07134, 01-07135, 01-07136, 01-07137, 01-07139, 01-07140, 01-07141, 02-07473, 02-07474, 21-07574, 21-07575, 21-07576, 21-07577, 21-07578, 21-07579, 21-07580.

PASSED AND APPROVED this 21st day of March, 2000.

  
CLARENCE PARR, Chairman

ATTEST:

  
J. DAVID ERICKSON, Secretary