

RECEIVED

APR 11 2013

DEPARTMENT OF  
WATER RESOURCES

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY  
CHARTERED**

101 SOUTH CAPITOL BOULEVARD  
SUITE 300  
BOISE, IDAHO 83702

TELEPHONE (208) 395-0011  
FACSIMILE (208) 433-0167

WWW.RACINELAW.NET

SENDER'S E-MAIL ADDRESS: CMM@RACINELAW.NET

W. MARCUS W. NYE  
RANDALL C. BUDGE  
JOHN A. BAILEY, JR.  
JOHN R. GOODELL  
JOHN B. INGELSTROM  
DANIEL C. GREEN  
BRENT O. ROCHE  
KIRK B. HADLEY  
FRED J. LEWIS  
ERIC L. OLSEN  
CONRAD J. AIKEN  
RICHARD A. HEARN, M.D.  
LANE V. ERICKSON  
FREDERICK J. HAHN, III  
PATRICK N. GEORGE  
SCOTT J. SMITH  
JOSHUA D. JOHNSON  
DAVID E. ALEXANDER  
STEPHEN J. MUHONEN  
CANDICE M. MCHUGH  
CAROL TIPPI VOLYN  
JONATHAN M. VOLYN  
THOMAS J. BUDGE  
BRENT L. WHITING  
DAVE BAGLEY  
JASON E. FLAIG  
FERRELL S. RYAN, III  
AARON A. CRARY  
JOHN J. BULGER  
BRETT R. CAHOON  
NOLAN E. WITTRICK

POCATELLO OFFICE

201 EAST CENTER STREET  
P.O. BOX 1391  
POCATELLO, IDAHO 83204  
TELEPHONE: (208) 232-6101  
FACSIMILE: (208) 232-6109

IDAHO FALLS OFFICE

477 SHOUP AVENUE  
SUITE 107  
POST OFFICE BOX 50698  
IDAHO FALLS, ID 83405  
TELEPHONE: (208) 528-6101  
FACSIMILE: (208) 529-6101

ALL OFFICES TOLL FREE  
(877) 232-6101

LOUIS F. RACINE (1917-2005)  
WILLIAM D. OLSON, OF COUNSEL  
JONATHAN S. BYINGTON, OF COUNSEL

April 11, 2013

Director Gary Spackman  
Idaho Department of Water Resources  
Attn: Deborah Gibson  
P.O. Box 83720  
Boise, ID 83720-0098

**Re: Rangen Matter / Docket No. CM-DC-2011-004  
Supplemental Authority**

Dear Director Spackman:

Enclosed herewith please find Idaho Department of Water Resources' *Responses to Petitioner's First Request for Admission* in Case Number 39576 dated July 14, 1993 wherein the Department of Water Resources states in response to Requests for Admission No. 15 and 16 "The Martin-Curren Tunnel is a horizontal well constructed to intercept the water table of the Snake Plain Aquifer and is not a spring."

Sincerely,

  
CANDICE M. McHUGH

Enclosure

cc: All Parties

I:\34146 TSP\15 Rangen Delivery Call\Correspondence\Spackman ltr.doc

LARRY ECHOHAWK  
Attorney General

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

PETER R. ANDERSON  
Deputy Attorney General  
Statehouse, Room 210  
Boise, Idaho 83720-1000  
Telephone: (208) 334-2400  
FAX: (208) 334-2690

ATTORNEYS FOR PETITIONER

RECEIVED

JUL 15 1993

Department of Water Resources  
Adjudication Bureau

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF TWIN FALLS

In Re the General Adjudication)  
of Rights to the Use of Water )  
From the Snake River Drainage )  
Basin Water System )

Case No. 39576

\_\_\_\_\_ )  
The State of Idaho, ex rel. )  
R. Keith Higginson in his )  
official capacity as director )  
of the Idaho Department of )  
Water Resources, )

IDAHO DEPARTMENT OF  
WATER RESOURCES'  
RESPONSES TO  
PETITIONERS' FIRST REQUESTS  
FOR ADMISSION

Petitioner, )

vs. )

United States; State of Idaho; )  
and all unknown claimants to )  
the use of water from the )  
Snake River Drainage Basin )  
Water System, )

Respondents. )

\_\_\_\_\_ )  
J. ALVIN MUSSER; TIM MUSSER; )  
and HOWARD "BUTCH" MORRIS, )

Petitioners, )

vs. )

)  
R. KEITH HIGGINSON, in his )  
official capacity as director )  
of the Idaho Department of )  
Water Resources, and the )  
IDAHO DEPARTMENT OF WATER )  
RESOURCES, )  
Respondents. )  
\_\_\_\_\_ )

#### DESCRIPTIVE SUMMARY

The Idaho Department of Water Resources' responses to Requests for Admission submitted by Respondents J. Alvin Musser, Tim Musser and Howard "Butch" Morris, on the 23rd day of June, 1993.

#### REQUESTS FOR ADMISSION AND RESPONSES THERETO

REQUEST FOR ADMISSION NO. 1: Admit that the Snake Plain Aquifer, the springs tributary to the Snake River, and other surface tributaries, and surface tributaries to the Snake River in Basin 36 downstream from Milner Dam are hydrologically interconnected.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Admitted, with the following qualifications. Not all springs, surface tributaries, the Snake River and the Snake Plain Aquifer are interconnected in Basin 36. The Snake Plain Aquifer extends over 300 miles from Eastern Idaho to Oregon. It receives recharge from precipitation, stream seepage, and underflow from the mountains and watersheds of the Snake River Basin and an extensive amount of recharge from surface water diversions. Only a part of the

eastern portion of the Snake Plain aquifer discharges through springs in locations within Basin 36.

REQUEST FOR ADMISSION NO. 2: Admit that ground water diversions from the Snake Plain Aquifer in Basin 36 affect the amount of water available to senior water right holders from the springs, the spring-fed tributaries of the Snake River downstream from Milner Dam.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: The Department of Water Resources denies that all springs and spring-fed tributaries of the Snake River downstream from Milner Dam are affected by ground water diversions from the Snake Plain Aquifer in Basin 36. The Department of Water Resources admits that ground water diversions from the Snake Plain Aquifer in Basin 36 affect the amount of water discharging in Basin 36 from springs and spring fed tributaries of the Snake River downstream from Milner Dam. The extent of this effect has not been quantified as to location, amount or timing. Because the aquifer is so large in area, contains so much usable water, and such diversions are remote from springs and spring-fed tributaries within Basin 36, any effect by an individual well on an individual spring is generally undetectable by commonly used measuring devices.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether these ground water diversions "affect the amount of water available to senior water right holders from the springs, the spring-fed tributaries of the Snake River downstream from Milner Dam" as a legal matter

because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny this application of law to fact. The Director testified on July 8, 1993 regarding the factual information he would need to answer this question, which information is not currently or readily available to him. For instance, and without limiting the factual and legal defenses of ground water pumpers, it is not known whether any decrease in water supply in Basin 36 from springs and spring-fed streams downstream from Milner Dam is a result of ground water diversions or whether such decrease is caused by lack of system recharge due to drought or from decreases in resulting from changes in use of water for irrigation of surrounding lands. The flow of springs and spring-fed streams downstream from Milner Dam is known to be variable and seasonal with the high flow occurring following the application of irrigation water to the surrounding farm lands. Further, legal and factual questions regarding forfeiture, abandonment, estoppel, full economic development of ground water resources, reasonableness of means of diversion and adverse possession must be answered. The Director has issued a Notice and Order of Contested Case which will allow him to make the necessary determinations regarding those ground water diversions to be specified by Petitioners. The Director objects to this Request for Admission to the extent it requests him to prejudge the outcome of that contested case. The Director has issued a Notice of Intent to Promulgate Rules which will allow him to develop rules regarding which ground water diversions from the

Snake Plain Aquifer, as a legal matter, affect interconnected surface water sources. The Director objects to this Request for Admission to the extent it requests him to establish such rules outside the framework of the Idaho Administrative Procedure Act.

REQUEST FOR ADMISSION NO. 3: Admit that one or more ground water diversions from the Snake Plain Aquifer are having an effect upon the senior water rights in the springs and the spring-fed tributaries of the Snake River downstream from Milner Dam.

RESPONSE TO REQUEST FOR ADMISSION NO. 3: The Department of Water Resources admits that one or more ground water diversions from the Snake Plain Aquifer are having an effect upon the amount of water discharging in Basin 36 from the springs and the spring fed tributaries of the Snake River downstream from Milner Dam. The extent of this effect has not been quantified as to location, amount or timing. Because the aquifer is so large in area, contains so much usable water, and such diversions are relatively remote from springs and spring-fed tributaries any effect by an individual well on an individual spring is generally undetectable by commonly used measuring devices.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether these ground water diversions "are having an effect upon the senior water rights in the springs and the spring-fed tributaries of the Snake River downstream from Milner Dam" as a legal matter because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny

this application of law to fact. The Director testified on July 8, 1993 regarding the factual information he would need to answer this question, which information is not currently or readily available to him. For instance, and without limiting the factual and legal defenses of ground water pumpers, it is not known whether any decrease in water supply from springs and spring-fed streams downstream from Milner Dam is a result of ground water diversions or whether such decrease is caused by lack of system recharge due to drought, or from decreases in recharge resulting from changes in use of water for irrigation of surrounding lands. The flow of springs and spring-fed streams downstream from Milner Dam is known to be variable and seasonal with the high flow occurring following the application of irrigation water to the surrounding farm lands. Further, legal and factual questions regarding forfeiture, abandonment, estoppel, full economic development of ground water resources, reasonableness of means of diversion and adverse possession must be answered. The Director has issued a Notice and Order of Contested Case which will allow him to make the necessary determinations regarding those ground water diversions to be specified by Petitioners. The Director objects to this Request for Admission to the extent it requests him to prejudge the outcome of that contested case. The Director has issued a Notice of Intent to Promulgate Rules which will allow him to develop rules regarding which ground water diversions from the Snake Plain Aquifer, as a legal matter, affect interconnected surface water sources. The Director objects to this Request for Admission to the extent it requests

him to establish such rules outside the framework of the Idaho Administrative Procedure Act.

REQUEST FOR ADMISSION NO. 4: Admit that ground water being pumped from the Snake Plain Aquifer by junior water right holders are reducing the available amount of water for senior water rights, such as those held by petitioners Morris who obtain their water from the Curren Springs and Curren Tunnel near Hagerman, Idaho.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: The Department of Water Resources admits that ground water being pumped from the Snake Plain Aquifer reduces the available amount of water discharging in Basin 36 from the springs, the Martin-Curren Tunnel, and the spring fed tributaries of the Snake River downstream from Milner Dam. The extent of this effect has not been quantified as to location, amount or timing. The Department of Water Resources denies that petitioners Morris obtain their water from the "Curren Springs." The petitioners Morris did not claim the Curren Springs as a source in the Snake River Basin Adjudication. Because the aquifer is so large in area, contains so much usable water, and such diversions are remote from springs and spring-fed tributaries within Basin 36 any effect by an individual well on an individual spring or tunnel is generally undetectable by commonly used measuring devices.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether the ground water being pumped "by junior water rights are reducing the available amount of water for senior water rights" as a legal



matter because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny this application of law to fact. The Director testified on July 8, 1993 regarding the factual information he would need to answer this question, which information is not currently or readily available to him. For instance, and without limiting the factual and legal defenses of ground water pumpers, it is not known whether any decrease in water supply from springs and spring-fed streams downstream from Milner Dam is a result of ground water diversions or whether such decrease is caused by lack of system recharge due to drought, or from decreases in recharge resulting from changes in use of water for irrigation of surrounding lands. The flow of springs and spring-fed streams downstream from Milner Dam is known to be variable and seasonal with the high flow occurring following the application of irrigation water to the surrounding farm lands. Further, legal and factual questions regarding forfeiture, abandonment, estoppel, full economic development of ground water resources, reasonableness of means of diversion and adverse possession must be answered. The Director has issued a Notice and Order of Contested Case which will allow him to make the necessary determinations regarding those ground water diversions to be specified by Petitioners. The Director objects to this Request for Admission to the extent it requests him to prejudge the outcome of that contested case. The Director has issued a Notice of Intent to Promulgate Rules which will allow him to develop rules regarding which ground water diversions from the Snake

Plain Aquifer, as a legal matter, affect interconnected surface water sources. The Director objects to this Request for Admission to the extent it requests him to establish such rules outside the framework of the Idaho Administrative Procedure Act.

REQUEST FOR ADMISSION NO. 5: Admit that petitioners Morris have a decreed water right to 4.8 cfs of irrigation water from the Curren Springs via the Martin-Curren Tunnel with a priority date of April 1, 1892.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: The Department of Water Resources admits that the petitioners Morris are the successors in interest to the Seven H. L. Sheep Company who were decreed a water right for 4.8 cfs diverted from springs by the Martin Curren Tunnel and Curren Ditch with a priority of April 1, 1892 in New International Mortgage Bank v. Idaho Power, Idaho Federal District Court, Equity No. S-1602. The Department of Water Resources denies that the Petitioners Morris have any other right than that recommended in the Director's Report for Reporting Area 3 in the names of J. Alvin and Tim Musser in the SRBA Director's Report for Basin 36 for 4.1 cfs from the Martin-Curren Tunnel for irrigation of 205 acres of land and for domestic and stock watering use. No objection has been filed by Petitioners or others to the recommendation.

REQUEST FOR ADMISSION NO. 6: Admit that petitioners Morris have a decreed water right for 4.8 cfs of irrigation water from the springs that are captured by the Martin-Curren Tunnel, which rights have been decreed by the court in New International

Mortgage Bank v. Idaho Power, Idaho Federal District Court, Equity No. S-1602.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: The Department of Water Resources admits that the petitioners Morris are the successors in interest to the Seven H. L. Sheep Company who were decreed a water right for 4.8 cfs diverted from the springs by the Martin Curren Tunnel and Curren Ditch with a priority of April 1, 1892 in New International Mortgage Bank v. Idaho Power, Idaho Federal District Court, Equity No. S-1602. The Department of Water Resources denies that the Petitioners Morris have any other right than that recommended in the Director's Report for Reporting Area 3 in the names of J. Alvin and Tim Musser in the SRBA Director's Report for Basin 36 for 4.1 cfs from the Martin-Curren Tunnel for irrigation of 205 acres of land and for domestic and stock watering use. No objection has been filed by Petitioners or others to the recommendation.

REQUEST FOR ADMISSION NO. 7: Admit that petitioners Morris are not receiving the full amount of the decreed water right from the Curren Springs via the Curren Tunnel.

RESPONSE TO REQUEST FOR ADMISSION NO. 7: The Department of Water Resources admits that it took water measurements on June 30 and July 1, and 7, 1993, that showed that there was insufficient water flowing from the Martin-Curren Tunnel on those dates to fully satisfy Petitioners Morris' water right as recommended in the Director's Report for Reporting Area 3 or the Seven H. L. Sheep Company's decreed water right from the Martin-Curren Tunnel in New International Mortgage Bank v. Idaho Power, Idaho Federal

District Court, Equity No. S-1602, if all water rights having seniority exercised their water rights.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether "the petitioners Morris are not receiving the full amount of the decreed water right from the Curren Springs via the Curren Tunnel" for other than those three dates because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny this fact. The Director testified on July 8, 1993, that petitioners would have to install a measuring device on the diversions from the Martin-Curren Tunnel before he would regulate, if ever, junior water users to deliver water to petitioners. Because no measuring device is presently installed on the diversions from the Martin-Curren Tunnel the Director does not have enough information to admit what the flow at the Tunnel is other than on the dates the Department of Water Resources took its measurements.

Additionally, the Idaho Department of Water Resources cannot truthfully admit or deny, after making reasonable inquiry, whether plaintiffs Morris are not receiving 4.8 cfs of water from the Curren Springs because it does not know what the "Curren Springs" are.

REQUEST FOR ADMISSION NO. 8: Admit that petitioners Morris are not receiving 4.8 cfs of irrigation water from the Curren Springs via the Curren Tunnel.

RESPONSE TO REQUEST FOR ADMISSION NO. 8: The Idaho Department of Water Resources admits that it took water

measurements on June 30 and July 1, and 7, 1993, that showed that there was insufficient water flowing from the Martin-Curren Tunnel on those dates to provide Petitioners Morris' 4.8 cfs of irrigation water, although they do not have a right to that amount of water, if all water rights having seniority exercised their water rights.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether "the petitioners Morris are not receiving 4.8 cfs of irrigation water" for other than those three dates because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny this fact. The Director testified on July 8, 1993, that petitioners would have to install a measuring device on the diversions from the Martin-Curren Tunnel before he would regulate, if ever, junior water users to deliver water to petitioners. Because no measuring device is presently installed on the diversions from the Martin-Curren Tunnel the Director does not have enough information to admit what the flow at the Tunnel is other than on the dates the Department of Water Resources took its measurements.

Additionally, the Idaho Department of Water Resources cannot truthfully admit or deny, after making reasonable inquiry, whether plaintiffs Morris are not receiving 4.8 cfs of water from the Curren Springs because it does not know what the "Curren Springs" are.

REQUEST FOR ADMISSION NO. 9: Admit that petitioners Morris have made a demand or call for the delivery of their decreed

water rights from the Curren Springs and Tunnel upon respondents Higginson and the Idaho Department of Water Resources.

RESPONSE TO REQUEST FOR ADMISSION NO. 9: The Department of Water Resources admits that the exchange of letters which constitute Exhibit 1 from the hearing of July 8, 1993, occurred. A copy of that Exhibit is attached to these responses. The Department of Water Resources further admits that the letter of June 16, 1993, to Norman C. Young of the Department of Water Resources provides "Would you please consider this letter as a demand on behalf of Messrs. Musser and Morris for the full and immediate delivery of their decreed irrigation water rights from the Curren Tunnel." The Department of Water Resources denies that this demand was for delivery of water from Curren Springs.

REQUEST FOR ADMISSION NO. 10: Admit that defendant Higginson and defendant Idaho Department of Water Resources have rejected petitioners Morris' demand or call for the delivery of water from the Curren Springs.

RESPONSE TO REQUEST FOR ADMISSION NO. 10: The defendant Higginson and defendant Department of Water Resources deny that they have received a demand or call for the delivery of water from the Curren Springs and therefore deny that they have rejected petitioners Morris' demand or call for the delivery of water from the Curren Springs.

REQUEST FOR ADMISSION NO. 11: Admit that petitioners Morris are being damaged as a result of the failure to receive the full entitlement to water from the Curren Springs.

RESPONSE TO REQUEST FOR ADMISSION NO. 11: The Idaho Department of Water Resources admits that it took water measurements on June 30 and July 1 and 7, 1993, that showed that there was insufficient water flowing from the Martin-Curren Tunnel on those dates to fully satisfy Petitioners Morris' water right as recommended in the Director's Report for Reporting Area 3 or the Seven H. L. Sheep Company's decreed water right from the Martin-Curren Tunnel in New International Mortgage Bank v. Idaho Power, Idaho Federal District Court, Equity No. S-1602, if all water rights having seniority exercised their water rights.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether "petitioners Morris are being damaged as a result of the failure to receive the full entitlement to water from the Curren Springs" for other than those three dates because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny this application of law to fact. The Director testified on July 8, 1993, that petitioners would have to install a measuring device on the diversions from the Martin-Curren Tunnel before he would regulate, if ever, junior water users to deliver water to petitioners. Because no measuring device is presently installed on the diversions from the Martin-Curren Tunnel the Director does not have enough information to admit what the flow at the Tunnel is other than on the dates the Department of Water Resources took its measurements.

The Department of Water Resources denies that petitioners have a right to the Curren Springs. The petitioners Morris have claimed a right only from the Martin-Curren Tunnel in the Snake River Basin Adjudication.

Further, after reasonable inquiry the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny the legal conclusion that the petitioners Morris are being "damaged" by the lack of water on the three dates when measurements were taken. The Director testified on July 8, 1993 regarding the factual information he would need to answer this question, which information is not currently or readily available to him. For instance, and without limiting the factual and legal defenses of ground water pumpers, it is not known whether any decrease in water supply from springs and spring-fed streams downstream from Milner Dam is a result of ground water diversions or whether such decrease is caused by lack of system recharge due to drought, or from decreases in recharge resulting from changes in use of water for irrigation of surrounding lands. The flow of springs and spring-fed streams downstream from Milner Dam is known to be variable and seasonal with the high flow occurring following the application of irrigation water to the surrounding farm lands. Further, legal and factual questions regarding forfeiture, abandonment, estoppel, full economic development of ground water resources, reasonableness of means of diversion and adverse possession must be answered. The Director has issued a Notice and Order of Contested Case which will allow him to make the



necessary determinations regarding those ground water diversions to be specified by Petitioners. The Director objects to this Request for Admission to the extent it requests him to prejudge the outcome of that contested case. The Director has issued a Notice of Intent to Promulgate Rules which will allow him to develop rules regarding which ground water diversions from the Snake Plain Aquifer, as a legal matter, affect interconnected surface water sources. The Director objects to this Request for Admission to the extent it requests him to establish such rules outside the framework of the Idaho Administrative Procedure Act.

REQUEST FOR ADMISSION NO. 12: Admit that junior appropriators of ground water from the Snake Plain Aquifer upgradient from petitioners are receiving water, which reduces the quantity of water that would otherwise be received by petitioners Morris from the Curren Springs.

RESPONSE TO REQUEST FOR ADMISSION NO. 12: The Director admits that one or more diversions of ground water from the Snake Plain Aquifer upgradient from petitioners are receiving water which may affect the amount of water discharging in Basin 36 from the springs and the spring fed tributaries of the Snake River downstream from Milner Dam. The extent of this effect has not been quantified as to location, amount or timing. Because the aquifer is so large in area, contains so much usable water, and such diversions are relatively remote from springs and spring-fed tributaries, any effect by an individual well on an individual spring is generally undetectable by commonly used measuring devices.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether "junior appropriators of ground water from the Snake Plain Aquifer upgradient from petitioners are receiving water, which reduces the quantity of water that would otherwise be received by petitioners Morris from the Curren Springs" as a legal matter because the information known or readily obtainable by the Department of Water Resources is insufficient to enable it to admit or deny this application of law to fact. The Director testified on July 8, 1993 regarding the factual information he would need to answer this question, which information is not currently or readily available to him. For instance, and without limiting the factual and legal defenses of ground water pumpers, it is not known whether any decrease in water supply from springs and spring-fed streams downstream from Milner Dam is a result of ground water diversions or whether such decrease is caused by lack of system recharge due to drought, or from decreases in recharge resulting from changes in use of water for irrigation of surrounding lands. The flow of springs and spring-fed streams downstream from Milner Dam is known to be variable and seasonal with the high flow occurring following the application of irrigation water to the surrounding farm lands. Further, legal and factual questions regarding forfeiture, abandonment, estoppel, full economic development of ground water resources, reasonableness of means of diversion and adverse possession must be answered. The Director has issued a Notice and Order of Contested Case which will allow him to make this factual

determination regarding those ground water diversions to be specified by Petitioners. The Director objects to this Request for Admission to the extent it requests him to prejudge the outcome of that contested case. The Director has issued a Notice of Intent to Promulgate Rules which will allow him to develop rules regarding which ground water diversions from the Snake Plain Aquifer, as a legal matter, affect interconnected surface water sources. The Director objects to this Request for Admission to the extent it requests him to establish such rules outside the framework of the Idaho Administrative Procedure Act.

The Director denies that petitioners Morris receive water from the Curren Springs. Petitioners have only claimed the Martin-Curren Tunnel as their source of water in the Snake River Basin Adjudication.

REQUEST FOR ADMISSION NO. 13: Admit that the Curren Springs from which petitioners Morris receive their water are fed by water supplied from the Snake Plain Aquifer.

RESPONSE TO REQUEST FOR ADMISSION NO. 13: The Idaho Department of Water Resources admits that the immediate source of the water flowing from the Martin-Curren Tunnel is the Snake Plain Aquifer and that the ultimate source of the water flowing from the Tunnel may be from precipitation, underflow from the mountains, seepage from streams and return flow from irrigation. The Idaho Department of Water Resources denies that the Martin-Curren Tunnel is a spring or that petitioner Morris receive their water from Curren Springs. The Martin-Curren Tunnel is a horizontal well constructed to intercept the water table of the

Snake Plain Aquifer and is not a spring. The petitioners Morris have not claimed a spring as their source of water in the Snake River Basin Adjudication.

REQUEST FOR ADMISSION NO. 14: Admit that the source of petitioners Morris' water that is utilized for irrigation purposes through the Curren Tunnel is supplied by springs fed from the Snake Plain Aquifer.

RESPONSE TO REQUEST FOR ADMISSION NO. 14: The Department of Water Resources admits that the immediate source of the water flowing from the Martin-Curren Tunnel is the Snake Plain Aquifer and that the ultimate source of the water flowing from the Tunnel may be from precipitation, underflow from the mountains, seepage from streams and return flow from irrigation. The Department of Water Resources denies that the Martin-Curren Tunnel is a spring. The Martin-Curren Tunnel is a horizontal well constructed to intercept the water table of the Snake Plain Aquifer and is not a spring.

REQUEST FOR ADMISSION NO. 15: Admit that plaintiffs' springs are hydrologically interconnected to the Snake Plain Aquifer.

RESPONSE TO REQUEST FOR ADMISSION NO. 15: The Department of Water Resources admits that the immediate source of the water flowing from the Martin-Curren Tunnel is the Snake Plain Aquifer and that the ultimate source of the water flowing from the Tunnel may be from precipitation, underflow from the mountains, seepage from streams and return flow from irrigation. The Department of Water Resources denies that the Martin-Curren Tunnel is a spring

or that plaintiffs receive their water from springs. The Martin-Curren Tunnel is a horizontal well constructed to intercept the water table of the Snake Plain Aquifer and is not a spring. The plaintiffs have not claimed a spring as their source of water in the Snake River Basin Adjudication.

REQUEST FOR ADMISSION NO. 16: Admit junior ground water users in the Snake Plain Aquifer are reducing the amount of water that would be available to petitioners Morris at the Curren Springs near Hagerman, Idaho.

RESPONSE TO REQUEST FOR ADMISSION NO. 16: The Department of Water Resources admits that one or more ground water diversions from the Snake Plain Aquifer reduce the amount of water discharging in Basin 36 from the springs and the amount of water in the spring fed tributaries of the Snake River downstream from Milner Dam. The extent of this effect has not been quantified as to location, amount or timing. Because the aquifer is so large in area, contains so much usable water, and such diversions are relatively remote from springs and spring-fed tributaries within Basin 36, any effect by an individual well on an individual spring is generally undetectable by commonly used measuring devices.

After making reasonable inquiry the Department of Water Resources cannot truthfully admit or deny whether "junior ground water users in the Snake Plain Aquifer are reducing the amount of water that would be available to petitioners Morris at the Curren Springs" as a legal matter because the information known or readily obtainable by the Department of Water Resources is

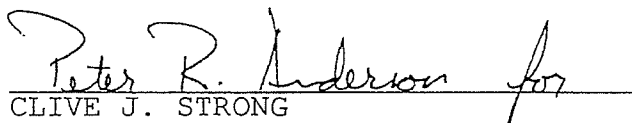
insufficient to enable it to admit or deny this application of law to fact. The Director testified on July 8, 1993 regarding the factual information he would need to answer this question, which information is not currently or readily available to him. For instance, and without limiting the factual and legal defenses of ground water pumpers, it is not known whether any decrease in water supply from springs and spring-fed streams downstream from Milner Dam is a result of ground water diversions or whether such decrease is caused by lack of system recharge due to drought, or from decreases in recharge resulting from changes in use of water for irrigation of surrounding lands. The flow of springs and spring-fed streams downstream from Milner Dam is known to be variable and seasonal with the high flow occurring following the application of irrigation water to the surrounding farm lands. Further, legal and factual questions regarding forfeiture, abandonment, estoppel, full economic development of ground water resources, reasonableness of means of diversion and adverse possession must be answered. The Director has issued a Notice and Order of Contested Case which will allow him to make this factual determination regarding those ground water diversions to be specified by Petitioners. The Director objects to this Request for Admission to the extent it requests him to prejudge the outcome of that contested case. The Director has issued a Notice of Intent to Promulgate Rules which will allow him to develop rules regarding which ground water diversions from the Snake Plain Aquifer, as a legal matter, affect interconnected surface water sources. The Director objects to this Request for

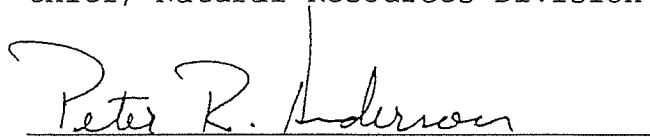
Admission to the extent it requests him to establish such rules outside the framework of the Idaho Administrative Procedure Act.

The Idaho Department of Water Resources denies that the Martin-Curren Tunnel is a spring or that water is made available to petitioners Morris at the Curren Springs. The Martin-Curren Tunnel is a horizontal well constructed to intercept the water table of the Snake Plain Aquifer and is not a spring. The petitioners have not claimed Curren Springs as a source of water in the Snake River Basin Adjudication.

DATED this 14<sup>th</sup> day of July, 1993.

LARRY ECHOHAWK  
Attorney General

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


  
PETER R. ANDERSON  
Deputy Attorney General  
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on this 14th day of July, 1993, I served a true and correct copy of this IDWR's Responses to Petitioners' First Requests for Admissions by placing a true and correct copy thereof in the United States mail, postage prepaid or in the Statehouse Mail, as the case may be, addressed as follows:

John T. Lezamiz  
Hepworth, Nungester & Lezamiz, Chtd  
133 Shoshone St. North  
P.O. Box 389  
Twin Falls, ID 83303-0389

U.S. Department of Justice  
Environment & Natural Resources Division  
550 West Fort Street, Box 33  
Boise, ID 83734

  
PETER R. ANDERSON  
Deputy Attorney General  
Natural Resources Division

p3187naa