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February 9, 1999

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

RECEIVED

FEB 11 1999

Department of Water Resources

RE: Portneuf River Diversions

Dear Tim:

In your October 23, 1998, letter to Portneuf Irrigating Company ("PIC") the Department requested that written comments be submitted explaining how and when the Gordon Avery shares were used and delivered. Gordon Avery has turned over the farm to his son, Russ, and his wife, Teresa. I have met with all of them to review their water rights and respond on their behalf. The Averys own two shares (90") in PIC and 3 ½ shares (24 ½") in McCammon Ditch Company ("MCD"). The water is delivered by Portneuf Marsh Valley Canal Company ("PMV"). The Averys' home place is located in Sections 19 and 20, T9S,R37E,B.M. Bannock County. They irrigate approximately 75 acres there in the south half of the southeast quarter of Section 19 and in the southwest quarter of southwest quarter of Section 20. This property was flood irrigated until about 1975 when they converted to sprinklers.

The Averys also own 160 acres located in Section 31, T9S,R37E,B.M. Beginning in about 1987, and continuing to date, in most years but not every year, they have also sprinkler irrigated with the same water rights approximately 75 acres located in the southwest southeast and northwest southeast of Section 31. The water was rotated between the two parcels based upon need and water availability. The Averys advise that this was done with the knowledge and approval of the Portneuf River Water Master, Arlin Olson, the President of PIC, Roger Johnson, and also from Ervin Gilbert, President of PMV. Gordon Avery obtained permission from Ervin Gilbert to install the headgate in the PMV canal. At the time Gordon Avery was also on the Board of Directors of PIC. Accordingly, the Averys contend they have a right to use their water at either location. The Averys advise that none of the canal companies have objected to their diversions or use practices.

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I am enclosing for your convenient reference a copy of Pages 19 through 23 of the *Union Grain v. McCammon Ditch* decree entered in Case No. 2203 on December 4, 1922, reflecting PIC's waterright number 40 together with PIC's February 8, 1990, SRBA Claim No. A29-00051. The decree reflects 226.9 acres in Section 31, while the SRBA claim reflects 241.4 acres. Neither includes in the place of use the Avery property (note the decree reflects 3236.7 irrigated acres and they claim 3345.7 irrigated acres).

The foregoing is intended to clarify and correct the information reported to IDWR concerning the points of diversion and places of use of the Averys' shares in PIC and MCD. It further appears that the SRBA claim of PIC's should be amended to include in the place of use the property in Section 31 that the Averys have irrigated since 1987, being 40 acres in the southwest northeast and 25 acres in the northwest southeast of Section 31, T9S, R37E. The Averys believe that neither PIC or PMV would have any objection to the proposed amendment and will be discussing the matter with members of their respective boards at their upcoming annual meetings. By copy of this letter, I am advising PMV President Ervin Gilbert and PIC secretary Delores Smith of the foregoing, and would ask that they notify you and me if they have any questions or concerns.

Please contact me if you have any questions or would like to discuss this matter further. We look forward to your response and a prompt resolution of any misunderstandings.

Sincerely,



RANDALL C. BUDGE

RCB:cr

Enclosures

cc: Harold Jones, IDWR
Ervin Gilbert, Pres PMV
Delores Smith, Sec, PIC
Russ and Teresa Avery