

Cresto, Liz

From: Bromley, Chris
Sent: Friday, April 19, 2013 1:08 PM
To: Cresto, Liz; Strong, Clive; Orr, Michael
Subject: FW: April 15, 2013 letter from Boise Project Board of Control
Attachments: 20130417_BPBC letter to GSpackman re Admin of Boise river storage rights; Boise River Flood Control Management_Nov 1974.pdf

From: Gibson, Deborah
Sent: Friday, April 19, 2013 10:46 AM
To: Weaver, Mathew; Baxter, Garrick; Bromley, Chris
Cc: Spackman, Gary
Subject: FW: April 15, 2013 letter from Boise Project Board of Control

The attached letter which I provided to you yesterday referred to an copy of a 1974 report that was not included with the document. The attached report titled "Boise River Flood Control Management, November 1974."

Debbie

From: Gibson, Deborah
Sent: Thursday, April 18, 2013 9:56 AM
To: Weaver, Mathew; Baxter, Garrick; Bromley, Chris
Cc: Spackman, Gary
Subject: April 15, 2013 letter from Boise Project Board of Control

Mat, Garrick, & Chris,

Gary asked that I send you a copy of the attached letter. We received this letter yesterday and it contains a meeting notice for May 8, at 10 a.m. at BPBC's office. It appears that all of you as well as Gary have a conflict in attending this meeting. Gary needs to coordinate and assign someone who can attend on his behalf.

Debbie

RICHARD MURGOITIO
CHAIRMAN OF THE BOARD

KENNETH COLE
VICE CHAIRMAN OF THE BOARD

TIMOTHY M. PAGE
PROJECT MANAGER

ROBERT D. CARTER
ASSISTANT PROJECT MANAGER

APRYL GARDNER
SECRETARY-TREASURER

JERRI FLOYD
ASSISTANT SECRETARY-
TREASURER

BOISE PROJECT BOARD OF CONTROL

(FORMERLY BOISE U.S. RECLAMATION PROJECT)

2465 OVERLAND ROAD
BOISE, IDAHO 83705-3155

OPERATING AGENCY FOR 167,000
ACRES FOR THE FOLLOWING
IRRIGATION DISTRICTS

NAMPA-MERIDIAN DISTRICT
BOISE-KUNA DISTRICT
WILDER DISTRICT
NEW YORK DISTRICT
BIG BEND DISTRICT

April 15, 2013

TEL: (208) 344-1141
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APR 17 2013

DEPARTMENT OF
WATER RESOURCES

Gary Spackman
Director
Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Dear Mr. Spackman:

The Boise Project Board of Control is the operating agent for five irrigation districts: Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Big Bend Irrigation District, and Wilder Irrigation District, who hold contracts with the Bureau of Reclamation. These contracts include the right to storage for approximately 85% of the storage space in Arrowrock and Anderson Ranch Reservoirs. As the Supreme Court recognized in the *Pioneer Irrigation District* case, the Districts hold equitable title to the water rights for this storage and Reclamation holds nominal legal title. 63-33737; 63-33738(?) (Arrowrock and Anderson storage). The Districts' landowners bought and paid for the storage rights and their contracts are fully paid up.

Over the years, the Districts have cooperated with Reclamation in the flood control releases on the Boise required by flood control rule curves. In recent years, the rule curves have worked well in practice as physical fill into the space after the water has been released for flood control has typically filled the District's water rights. IDWR has been a partner in approving and managing these flood control releases. In fact, in 1974, the Department, at the direction of the Governor, prepared a report arguing that greater flood control releases from these same reservoirs were necessary to protect property in the Boise valley. [attach copy]

Recent developments and positions taken by the State of Idaho in the SRBA are very troubling to the Boise Project Board of Control and its member Districts. Those positions and developments place at risk the historic Boise River flood control operations and, importantly, the Districts' ability to put water to use than has historically physically filled the reservoirs following flood control releases. We are very concerned that the Department intends to make this water that the Districts have historically used, available to new users who have not paid for the reservoirs.

During the SRBA proceedings over the Arrowrock and Anderson Ranch rights the Department did not suggest that these water rights had to recognize the right to continue to release water for flood control or refill after flood control. Then, in the Basin 01 proceedings,

the State argued that no "refill" of space vacated for flood control could take place unless the water right itself specifically authorized "refill." In the Basin Wide #17 proceedings, the State of Idaho argued that there was no authority for the operator of the reservoir to release water for flood control and to do so would even constitute waste. The State has argued that the water released from the reservoirs for flood control is the water that counts towards the Districts' storage water rights, even though that release water cannot be put to beneficial use by the Districts' landowners. You have made similar statements in meetings with water users groups.

As you know, the SRBA Court in the Basin Wide #17 case determined that Reclamation could not "refill" a storage water right in priority after water was released for flood control purposes. The court refused to decide what it means to "fill" the water right in the first place, stating that decision is the Director's prerogative. You have indicated in public meetings that your view is that the first water that enters a reservoir belongs to the spaceholder, regardless of whether it is released or not. Therefore, we are very concerned about what this position means for the Boise Project.

The SRBA Court also concluded that Idaho Law does not allow a diversion without a water right, that there is no exception to this rule for flood control releases, and that Reclamation's storage water rights including those on the Boise River do not authorize any releases of water for flood control.

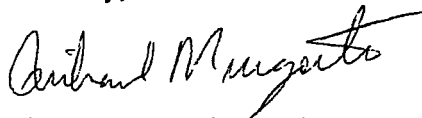
The irrigation districts have a fiduciary responsibility to their landowners to protect their water for beneficial uses for which the water rights were acquired. With the rulings of the SRBA Court and the positions taken by the State and the Department of Water Resources, the Boise Project Board of Control and its member Districts have advised Reclamation not to release any water stored on behalf of these Districts and their landowners for flood control. This change in operations may have serious downstream implications, but those implications are the direct result of the positions taken by the Department and the State and the Board of Control will not be responsible for the consequences of the Department and State's positions.

The Boise Project is extremely concerned with how the Department intends to administer water in the Boise Basin. We are therefore requesting that you personally come to the next meeting of the Boise Project Board of Control at 10:00 a.m., May 8, 2013 at 2465 Overland Road, Boise, 83705, to explain the Department's position on operations in the Boise. We request at that time that you provide answers to the following questions and explanations for the Department's positions.

1. How does the Department intend to administer the storage rights in the Boise River now that the Board of Control does not authorize flood control releases of its water?
2. Is it necessary for the storage rights 63-33737; 63-33738(?) to have a flood control purpose of use before any water can be released for flood control? If so, how will that be accomplished?
3. Is there any authority for any flood control releases in the Boise, after the SRBA Court's decision?

4. Does the Department agree that there is no authority for flood control in Idaho law?
5. What steps will the Department take to provide flood protection downstream without flood control releases on the Boise? Has the Department consulted with the Corps of Engineers over the State's position that flood control may be a waste of water?
6. How do you intend to define "fill" of the storage rights in the Boise?
 - a. Does "fill" include pass-through flood water when inflow equals outflow?
 - b. Does "fill" include water that is stored and then released for flood water?
7. What is the rationale for defining "fill" as you have, and is there any rule, regulation, or written decision explaining this rationale?
8. Do you intend to enforce the provisions of the Boise River water rights allowing them to be diverted only during flood control releases?
9. Do you intend to include that same remark requiring diversion only during flood control releases in future applications?
10. What is the basis for proposing subordination to future uses for fill after flood control?
11. Has the Department analyzed the impact of its proposal to make "refill" water available to future users or the existing storage accounts for stream flow maintenance and for flow augmentation?

Sincerely,



Richard Murgoitio, Chairman
Boise Project Board of Control