



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Interim Director

June 1, 2007

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MICHAEL C. CREAMER  
GIVENS PURSLEY  
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Re: Dairymen's Mitigation Agreement

Dear Mr. Simpson and Mr. Creamer:

Staff of the Idaho Department of Water Resources (Department) reviewed the "*Dairymen's Mitigation Agreement*" ("the Dairymen plan" or "the plan") submitted on April 13, 2007, and information submitted at and subsequent to the Informational Status Conference held on May 2, 2007. As discussed at the status conference, the plan will be assessed in a two-phased process. Phase one addresses the acceptability of the proposal as a replacement water plan for 2007. Phase two addresses the acceptability for the proposal as a longer-term mitigation plan, under the Department's Conjunctive Management Rules. In light of these two phases, we have the following concerns:

**Mitigation Acres**

The Department supports the concept of drying up acres to offset aquifer depletions. To ensure that the acres nominated for voluntary curtailment effectively mitigate for depletions, the Department needs specific information about each acre. Minimum required information for any Mitigation Acre shall include:

- A standard PLS legal description of each tract to quarter-quarter designation, with number of mitigation acres per quarter-quarter noted;
- Clear maps or digitized images or shape files showing exact locations of mitigation acres within each quarter-quarter;

- Identification of all appurtenant water rights and any other sources of water used on the land, including canal shares;
- Identification of points of diversion and current owners of the water rights and lands; and
- Use of the land for years 2005 and 2006.

Aside from maps, all information shall be assembled in electronic spreadsheet format. The Department will review all candidate Mitigation Acres to be provided under the Mitigation Agreement and compute consumption for those acres using the METRIC model. For mixed-source irrigated acres, the Department will also compare METRIC results with available ground water withdrawal data to determine actual ground water depletion as a percentage of total consumption. Ground water diversions with incomplete measurement records may not receive the full credit allowable. An acceptable alternative to METRIC for calculating net evapotranspiration (ET) is to use information provided with the May 2004 Aquifer Model training and calculate net ET as average ET less average precipitation. Using May 2004 Aquifer Model training data is consistent with previous analysis by Department staff and uses readily available information.

### **Participating Dairies**

As soon as practicable, the Department requires a list of participating dairy facilities, current owners and their contact information, and all water rights to be protected under the Dairymen's Mitigation Agreement. Updates to the list must be submitted in a timely fashion if additional signups occur. The list should include the number of mature dairy cows for each owner/operator in 2007.

### **Dairy Consumptive Use**

The Department believes that 29.1 gallons per cow per day underestimates dairy consumptive use. Given the lack of published water usage data for dairies in southern Idaho, the Department considers annual volumes obtained from calibrated flow meter readings to be the best data to determine ground water consumption at dairy facilities. Therefore, actual flow meter readings should be submitted as the consumptive volume for dairy facilities that intend to become party to the plan. For facilities that do not have a flow meter and a full year of calibrated meter readings, consumption should be estimated by multiplying the number of cows at that facility by 74 gallons per day.<sup>1</sup> Dairy facilities may substitute other site-specific information in lieu of 74 gallons per day for Department consideration.

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<sup>1</sup> Based on an assessment of flow meter readings taken from 23 dairies included in the list submitted with Exhibit B of the Dairymen's Mitigation Agreement, the Department determined that the average volume of water consumed per mature dairy cow on a daily basis at these facilities in 2005 was 74 gallons. The 23 dairies were selected based on a difference of two percent or less between the facility meter reading and a calibrated Department flow meter. The Department analysis relied upon actual flow measurements with no assumptions or estimates for consumption or water use in parlors. The meter readings record withdrawal for replacement heifers, young heifers, or any other type of use that may occur at a dairy facility. In addition, the Department assumes that ground water withdrawal for dairy facilities is totally consumptive and that the water usage rate has not changed significantly in 2007.

The calculated Total Consumptive Volume for the Mitigating Dairymen is 23,252 acre-feet/year if the total number of cows reported in Appendix B for 2007 (2007 Study Animal # 280,502) is multiplied by 74 gallons per day. Unless additional site-specific information demonstrates otherwise, the Mitigating Dairymen need to acquire sufficient Mitigating Acres with appurtenant Mitigating Water Rights to mitigate for 23,252 acre-feet of Aggregate Annual Depletions.

### **Water Replacement**

The proposal does not establish:

- The timing of delivery of replacement water;
- The concept and plan for how the leased water provides mitigation for the delivery calls made by the Surface Water Coalition and those in the Thousand Springs area.

If the intention is for recharge in the Thousand Springs area, the Department also requests:

- A demonstration of the physical capability of the sites to recharge water into the ground at needed rates;
- Location(s) of proposed recharge sites;
- Water quality monitoring activities approved by the Idaho Department of Environmental Quality, if the proposed recharge is to be outside normally used delivery systems.

As a result of the above gaps in supporting information, the Department cannot yet determine the acceptability of the replacement proposal.

### **Motion To Exclude The Mitigating Dairymen From Any Curtailment Order**

The Department cannot at this time exclude the Mitigating Dairymen from any other curtailment order except with respect to delivery calls by parties signatory to this agreement. It is possible that the location of the lands identified for voluntary curtailment will not adequately mitigate for a future call. The Department must provide persons not party to the present agreement with an opportunity to object to the adequacy of the mitigation plan before it can be formally approved.

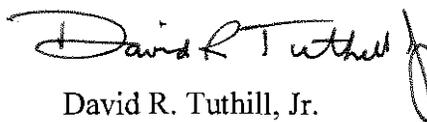
### **Conclusion**

The Department supports the concept of offsetting aquifer depletions by voluntarily drying up ground-water irrigated lands. However, the Department believes that an estimated consumptive use by dairy facilities of 29.1 gallons/cow/day significantly underestimates dairy consumptive use and proposes 74 gallons/cow/day based on calibrated meter readings.

The Department needs more information to evaluate the replacement water plan proposed for the initial years of the plan.

This letter is a request for additional information to respond to the deficiencies identified above. Please submit the additional information on or before **June 20, 2007**, to provide for assessment of phase one, the acceptability of the proposal as a replacement water plan for 2007. As you are aware, in order to formally consider the mitigation plan under the Rules for Conjunctive Management of Surface and Ground Water Resources, we must provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights.

Sincerely,

A handwritten signature in black ink that reads "David R. Tuthill, Jr." with a stylized flourish at the end.

David R. Tuthill, Jr.  
Director

cc. Distribution List

**COMBINED CERTIFICATE OF SERVICE  
FOR SURFACE WATER COALITION, BLUE LAKES TROUT FARM AND  
CLEAR SPRINGS FOODS, INC.**

I HEREBY CERTIFY that on this 1<sup>st</sup> day of June, 2007, the foregoing letters dated June 1, 2007, regarding the Dairymen's Mitigation Agreement and the WMC Mitigation Agreement were served in the following manner:

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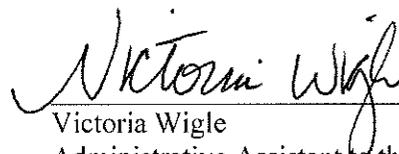
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