



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 29, 2000

Vince Alberdi
Manager, Twin Falls Canal Company
P. O. Box 326
Twin Falls, ID 83303-0326

VIA FACSIMILE TO (208) 733-1958 AND FIRST CLASS MAIL

Re: Adequacy of Eastern Snake Plain Ground Water Model

Dear Vince:

I have considered your letter to me dated September 25 regarding the schedule I proposed to negotiate rules for conjunctive management in the Eastern Snake River Plain and the adequacy of the associated ground water model. While I appreciate and understand your concerns, I do not agree with your conclusions that the "proposed timetable was excessively protracted" and the schedule "appeared to be predicated on a lack of faith in the model."

As you know, the primary mechanism established by the Idaho Legislature for the administration of water rights in accordance with the prior appropriation doctrine in Idaho is through the creation and operation of water districts. Under the supervision of the Department of Water Resources, watermasters and their assistants, who are employees of the water districts, provide for distribution of water among right holders. However, Idaho Code § 42-604 does not allow the creation of water districts until the "priorities of appropriation have ... been adjudicated by the courts having jurisdiction thereof." Although Idaho Code § 42-237a. g. provides for including an area in an organized water district when the ground water supply of that area affects the flow of surface water in the water district, this provision does not explicitly provide an exception to the requirements of Idaho Code § 42-604. Since the Department is not scheduled to complete submission of its recommendations to the SRBA District Court for ground water rights in the Eastern Snake Plain Aquifer until November of 2003, and the recommendations for previously decreed surface water rights from the mainstem of the Snake River until November of 2004, the Department will not be able to create water districts in the Eastern Snake River Plain that include ground water rights until sometime in the year 2004, at the earliest.

Prior to the issuance of partial decrees for water rights that would allow for administration through a water district, the SRBA District Court could allow the distribution of water among rights pursuant to interim administration. However, Idaho Code § 42-1417 requires that the water rights to be administered must have at least been reported to the SRBA District Court by the Department and that the court conduct a hearing to determine whether interim administration is reasonably necessary to protect senior water rights. The earliest interim administration could be considered would be late in the year 2003, or possibly even 2004, again because of when the remaining water rights will be reported by the Department to the SRBA District Court.

Another possibility for implementing earlier conjunctive administration of ground water rights and surface water rights would be through the establishment of a ground water management area pursuant to Idaho Code § 42-233b. As currently set forth, this statutory provision does not explicitly provide for the Department establishing a ground water management area to protect senior priority water rights. In the event the Department is unsuccessful in establishing rules that can be legislatively confirmed for the conjunctive administration of water rights in the Eastern Snake River Plain through negotiated rule-making, the Department intends to consider designating the Eastern Snake River Plain as a ground water management area for the purpose of protecting senior priority water rights, with or without legislative clarification. Such designation would allow the Department to adopt a ground water management plan to protect senior priority water rights by order rather than by rule.

The remaining alternative for implementing conjunctive administration of ground water rights and surface water rights would be in response to delivery calls made under the provisions of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11. A delivery call may result in conjunctive administration across the entire Eastern Snake River Plain or within a more limited area, depending on the specific nature of the call.

The schedule set forth in my August 22 letter to negotiate rules for conjunctive management in the Eastern Snake River Plain is designed to: (1) dovetail with the timing for the creation of water districts subsequent to the SRBA District Court issuing partial decrees, or interim administration subsequent to completion of reporting water rights in the Eastern Snake River Plain to the court; (2) maximize the probability of reaching sufficient consensus during negotiations to adopt rules for conjunctive administration of water rights in the Eastern Snake River Plain that will survive legislative review; and (3) minimize premature efforts expended by the participants in the negotiated rule-making during the time period it is anticipated that the same participants may be engaged in significant litigation regarding the 2000 Biological Opinion for the operation of the Federal Columbia River Power System and/or Federal/Tribal water right claims in the SRBA.

Note that adequacy of the Eastern Snake Plain Ground Water Model is not a primary consideration for the proposed schedule. I am not aware that I have ever stated or implied that the Eastern Snake Plain Ground Water Model is or is not adequate to pursue the adoption of rules for conjunctive administration. Similarly, I do not believe I have stated or implied that the

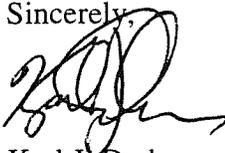
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Eastern Snake Plain Ground Water Model is inadequate for responding to a delivery call made under the existing procedural rules for conjunctive management. I have said that the concerns raised by the consulting firm retained by the holders of ground water rights in the Eastern Snake River Plain should be addressed through additional calibration and enhancements to the Eastern Snake Plain Ground Water Model before the holders of ground water rights can be expected to meaningfully engage in negotiated rule-making. Given the ground water users current positions on conjunctive administration, coupled with the report regarding the model that the ground water users received from their consultant, it is unlikely that meaningful negotiations will occur until after most, if not all, of the additional calibration and enhancements are made to the model. However, this is significantly different than the Department concluding that the Eastern Snake Plain Ground Water Model is or is not adequate for conjunctive administration.

In your September 25 letter, you specifically requested that I ask the Eastern Snake Hydrologic Modeling Committee to provide me some form of recommendation regarding the adequacy of the Eastern Snake Plain Ground Water Model for utilization in the development of rules for conjunctive administration. The Department utilizes the modeling committee as a forum to develop broad-based, objective consensus on the technical aspects of ground water modeling for the Eastern Snake Plain Aquifer. While the modeling committee has various types and levels of technical expertise regarding ground water modeling, the committee is not the appropriate entity under Idaho laws to determine the adequacy of the model for the administration of water rights.

I recognize that your request probably results from the frustration, spanning many years, of not having firm conjunctive administration of ground water rights and surface water rights for the Eastern Snake River Plain. However, I would ask that you consider the meaningful progress towards conjunctive administration that has been made since 1995, and that you recognize the intent of the actions that I have proposed is to resolve conjunctive administration issues in the Eastern Snake River Plain within a realistic, not a protracted, time frame.

Sincerely,



Karl J. Dreher
Director

c: Robert E. Bakes