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OCT 02 2020

DEPARTMENT OF
WATER RESOURCES

via email

Director Gary Spackman
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83702
gary.spackman@idwr.idaho.gov

Re: Surface Water Users Proposed Alternative Draft Ground Water Management Plan

Dear Director Spackman:

We very much look forward to meeting together on October 7, 2020 to discuss how best to manage and administer the Big Wood River Ground Water Management Area in a way that protects prior rights while allowing full economic development of related water resources. As you know, we have developed an alternate plan (separate from the draft "Big Wood Ground Water Management Plan" that you received on September 9, 2020) to address the management and administration of Water District #37. The core concept of our alternate plan is voluntary "Conjunctive Management" of the District (see attachment). At present, our alternative plan is anticipated to be presented to Galena and South Valley Ground Water Districts within the framework of a private "settlement agreement".

In your letter dated September 22, 2020 to Board Chairmen of the Galena and South Valley Ground Water Districts, you have outlined a process pursuant to Idaho Code § 42-233B which includes the formation of a "ground water advisory committee" and finalizing a "Ground Water Management Plan". We would be very much in favor of moving forward within framework of a "Ground Water Management Plan" under Idaho Code § 42-233B, provided that the substantive terms and conditions of our alternative "settlement agreement" can be integrated into the final "Ground Water Management Plan".

To that end, we look forward to meeting on October 7, 2020 to begin earnest discussions regarding how best to manage "the effects of groundwater withdrawals on the aquifer from which withdrawals are made and on any other hydraulically connected sources of water" that you referenced in your September 22, 2020 correspondence. We feel that this discussion rightly begins with characterization of the magnitude of "effects" of groundwater withdrawals on the underlying aquifer and on "hydraulically connected" surface waters. A better understanding of the magnitude of such effects will inform the planning process in a variety of ways and will assist in determining whether specific stabilization, enhancement or mitigation options are of meaningful benefit to the aquifer system and "hydraulically connected" surface waters.

In addition, this information will assist the Director in determining whether or not "the ground water supply is insufficient to meet the demands of water rights within all or portions of a water management area" (Idaho Code § 42-233B). Such a determination by the Director seems to be a necessary precursor to formally managing "water right holders on a time priority basis...until such time as the director determines that there is sufficient ground water". We intend to follow up our informal presentation on October 7, 2020 regarding the magnitude of the effects of groundwater withdrawals, with an official submission of this analysis to the Director shortly thereafter.

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With respect to the draft “Big Wood Ground Water Management Plan” that you received on September 9, 2020, although we agree with many of the key elements and objectives of that plan, we do not believe that it can be practically implemented at a scale that addresses demonstrated “effects” on the system. Therefore, we are currently of the opinion that the current “Big Wood Groundwater Management Plan” would not meet the intent to “protect prior rights and yet allow full economic development of the resource”. Specifically, the fundamental (and only quantitative element in the plan) is “Management Plan Element 2 – Ground Water Recharge and Adaptive Management”. As we have exhaustively analyzed and evaluated this proposed core management element, we have concluded that any meaningful recharge to the aquifer appears only to be feasible during the wettest years (when surplus water is temporarily available). Although such “surplus recharge” would be a welcomed component of aquifer stabilization in the long-term, it is unlikely that such would provide significant additional water to surface water users during dry years. Fundamentally, centering the Draft Ground Water Management Plan around “surplus recharge” in “wet years”, seems to ultimately result in junior groundwater pumpers having the ability to divert groundwater in all years, while continuing to leave senior surface water rights holders without water in “dry years” in fundamental contradiction to the Idaho’s “Prior Appropriation Doctrine”.

Other types of recharge (i.e., “non-surplus recharge”) have been evaluated, proposed, and discussed at some length during recent meetings with consultants representing holders of senior surface water rights and both Ground Water Districts. However, after extensive evaluation of the feasibility of such “non-surplus recharge”, along with discussions with other water rights experts and the District #37 Watermaster, we are currently of the opinion that “non-surplus recharge” is not feasible at a scale that addresses demonstrated “effects” on the system during dry years. Furthermore, any such recharge, directed to the mitigation of injuries to the impoundment rights on Magic Reservoir, would likely need to occur late in the irrigation season, at a time when discharge is extremely low in the Big Wood River. Consequently, it is felt that, although “conceptually” possible, such “non-surplus recharge” has not been demonstrated to be a practical mitigation strategy. Furthermore, it almost certainly could not be carried out, at meaningful levels, late in the irrigation season as mitigation for injury to impoundments to Magic Reservoir. Although we remain skeptical of the feasibility of “non-surplus”

recharge in the Wood River Valley, we remain open to this mitigation strategy if it can be clearly demonstrated that such recharge is feasible and sustainable, of sufficient magnitude to mitigate for surface water injuries in dry years, and would provide net benefits to impoundments in Magic Reservoir.

If, and until recharge (both surplus and non-surplus) and/or other management elements (e.g., cloud seeding, water conservation, etc.) can be successfully implemented at a scale commensurate with demonstrated "effects", we are of the opinion that management of the system on a "time priority basis" should be the core focus of the Ground Water Management Plan as contemplated and required in Idaho Code § 42-233B once a determination of "insufficiency" has been made.

Implicit in placing "time priority basis" management as the core management element of a revised "Ground Water Management Plan", is the assumption that any subsequent order to "cease or reduce withdrawal of water" (Idaho Code § 42-233B) would be efficacious and "non-futile". The "Findings of Fact" in the 1991 Order designating "The Big Wood River Ground Water Management Area" states:

"The surface and ground waters of the Big Wood River drainage are interconnected. Diversion of ground water from wells can deplete the surface water flow in streams and rivers. New ground water uses can also deplete available supplies for other users and affect basin underflow which presently accumulates in Magic Reservoir."

This reality has been confirmed anecdotally by the Water District #37 Watermaster who has reported significant changes in stream discharge within hours/days of the cessation of groundwater withdrawals. Additionally, quantitative analysis of the results on the IDWR's Simulated Curtailment of Groundwater Use (July 31, 2019) indicate that approximately 65% of the volumetric impact of groundwater withdrawals on adjacent surface streams is experienced within the same irrigation season (i.e., April – October) in which pumping occurs. As a result, significant remedies can be provided by groundwater withdrawal cessation or reductions within the same irrigation season.

Thank you for your consideration of this important information as we begin earnest discussions regarding this complex and challenging problem. We look forward to your direction and facilitation on how best to move forward these discussions during our meeting scheduled for Wednesday October 7, 2020 at 10:00 a.m. at the Lincoln County Community Center in Shoshone.

Respectfully,

A handwritten signature in black ink, appearing to read "Carl Pendleton", with a long horizontal flourish extending to the right.

Mr. John Arkoosh

Mr. Carl Pendleton

c: Mr. Fred Brossy

attached: Agreement Between Participating Members of the Big Wood/Little Wood Water User's Association and Big Wood Canal Company and Participating Members of Galena and South Valley Groundwater Districts

Agreement Between Participating Members of the Big and Little Wood Water User's Association and Big Wood Canal Company and Participating Members of Galena and South Valley Groundwater Districts

Primary Objectives

The Primary objectives of this agreement are:

- To identify and plan for "Groundwater Level Stabilization and Enhancement" actions and measures in the Wood River Valley aquifer to the extent practicable, to minimize present & future impacts to holders of both surface water and groundwater rights.
- To plan for and implement voluntary "Conjunctive Management" (as defined in IDAPA 37.03.11) of surface and groundwater sources within Idaho Water District #37 in substantial adherence to the Prior Appropriation Doctrine (i.e., "first in time is first in right"), to the degree to which such doctrine can be reasonably applied to groundwater diversions. Conjunctive management would begin no later than four (4) years from the effective date of this Agreement.
- To identify and plan for "Mitigation" (compliant with IDAPA 37.03.11.043) actions and measures to address injuries to holders of senior water rights from junior groundwater diversions. The degree to which any such planned "Mitigation" actions and measured are implemented will remain the responsibility of Junior groundwater diverters.
- To identify, plan for and implement, to the degree practicable, Irrigation Water Conservation practices to ensure the maximum reasonable beneficial use of groundwater and surface water within the district.

Implementing Terms & Conditions

Agreement on Common Groundwater Supply

Parties subject to this agreement voluntarily agree that, while this agreement is in force, all groundwater diversions within Water District #37 are within an "Area Having a Common Groundwater Supply" and therefore subject to voluntary "Conjunctive Management" within Water District #37.

Groundwater Level Stabilization & Enhancement

Finalize the development of the “Wood River Valley Ground Water Management Plan” with the objective of stabilizing and enhancing aquifer levels to a level substantially equal to those in 1978 as measured by the average of water levels between 1974- 1982.

Groundwater Recharge

Develop and support the use of temporary water rights (i.e., surplus recharge) pursuant to Idaho Code 42-202A (temporary water rights granted during periods of surplus/unappropriated water) and associated “surplus recharge” facilities.

Other recharge (i.e., non-surplus recharge) will only be accepted on a case-by-case basis if it can be clearly demonstrated that such recharge is feasible and sustainable, of sufficient magnitude to mitigate for surface water injuries in dry years, would provide net benefits to impoundments in Magic Reservoir, formalized in an IDAPA Rule 43 Compliant Mitigation Plan, and agreed to by all parties.

Mitigation Plan

Groundwater Districts agree to voluntarily develop a detailed Voluntary IDAPA 37.03.11.043 (Rule 43) Mitigation Plan which identifies specific & detailed actions and measures to prevent, or compensate holders of senior water rights for, material injury caused by the diversion and use of water by holders of junior water rights.

Establishment of a Conjunctive Management Planning Steering Committee (CMPSC)

The parties will agree to form a steering committee composed of representatives of surface and groundwater rights holders and representatives of IDWR, including Water District 37 employees. The CMPSC will advise and represent the interests of respective boards, review progress regarding the implementation of established benchmarks and goals, and develop implementation documents for the various monitoring, mitigation and management plans described herein. The ASC will be separate from the existing Water District 37 Advisory Board and will report to the parties subject to this agreement. Once an agreed upon “Conjunctive Management Plan” is developed and approved, the CMPSC will be dissolved and further oversight will be completed through the existing WD 37 Advisory Board. The CMPSC may also:

- Establish a forum for collecting/reviewing data
- Serve as a forum for mediating water related issues within the Water District
- Support and guide the development of a Ground Water Management Plan
- Develop and propose implementation of a ground water recharge program
- Serve as a forum for communication of water related issues

Establishment of a Technical Advisory Group (TAG)

The TAG will be created to support the Conjunctive Management Planning Steering Committee. The TAG will provide technical & hydrogeological analysis to the Advisory Steering Committee as needed to support agreement objectives.

Interim Mitigation Water Delivery

Prior to the implementation of a Water District wide “Conjunctive Management Plan” junior groundwater diverters will continue to divert without restriction while holders of senior water rights will continue to be subject to time priority water “cuts”. In acknowledging this reality, junior groundwater diverters will provide senior water rights holders with the following volumes of irrigation water (or agreed upon equivalent):

Year 1: 10,000 ac-ft

Year 2: 10,000 ac-ft

Year 3: 10,000 ac-ft

Year 4: Conjunctive Management

Water Bank

Parties agree to support the development of a local water bank to allow existing surface water rights to be leased and rented for recharge use. Any committee overseeing the water bank shall accurately reflect the makeup of WD37 water users and be chaired by an IDWR employee such as the WD37 watermaster, since water bank actions will require approval by IDWR.

Consumptive Use Volume Restrictions

Groundwater diversions shall be voluntarily limited to a maximum annual volume of 40,000 ac-ft/per until conjunctive management is fully implemented no later than four (4) years from the effective date of this Agreement.

Mandatory Near-Real Time Measurement of Groundwater Diversions

All groundwater diversions in excess of 0.2 cfs and/or 200 ac-ft annually will be required to install near-real time measuring devices and ensure that such devices have the ability to transmit flow data at a frequency no longer than 24 hours.

Irrigation Water Conservation Plan

Parties will agree to develop a comprehensive Water District Irrigation Water Conservation Plan that will address, but not necessarily be limited to, the following:

- Increased reliability and enforcement of water use, measurement, and reporting.
- Increase compliance with all elements and conditions of all water rights and ensure enforcement in cases of non-compliance.
- Identify and seek remedy to system inefficiencies within the surface and groundwater delivery systems.

Conversions

The parties will support, plan for, and undertake targeted ground water to surface water conversions and/or fallow land as needed to meet existing water rights as part of Mitigation Plans described in this Agreement.

Trust Water Rights

Parties agree to support the Idaho Water Resource Board (IWRB) in making reasonable efforts to assert their Minimum Stream Flow rights on the Big Wood River and Silver Creek (e.g., WR# 37-7727).

Moratorium New Surface and Groundwater Diversions

Continue the existing moratorium on pending/future water rights applications. New water rights for domestic use only. The CMPSC shall be advised in writing of all new water rights applications, including transfers and conversions.

Implementing Documents

The following documents shall be developed and agreed upon no later than the associated time frame indicated as measured from the Effective Date of this agreement:

Groundwater & Surface Water Diversion Monitoring Plan – 6 months
Voluntary IDAPA 37.03.11.043 (Rule 43) Mitigation Plan – 12 months
Groundwater Stabilization/Enhancement Plan – 18 months
Irrigation Water Conservation Plan – 24 months
Comprehensive Conjunctive Management Plan – 36 months

Safe Harbor

No ground water divertor, party to this agreement, will be subject to a water delivery call by members of the Big and Little Wood Waters User's Association or members of Big Wood Canal Company, who are both party to this agreement, as long as the provision of this agreement are met.

General Terms & Conditions

Non-Participants

Any ground water user not participating in the Agreement or other have another approved Mitigation Plan will be subject to administration.

Term

This is a perpetual agreement until such time as an agreed upon Water District 37 Conjunctive Management Plan is approved and implemented.

Binding Effects

This Agreement shall bind and inure to the benefit of the respective successors of the parties.

Entire Agreement

This agreement sets forth all understandings between the parties with respect to the potential for a delivery call by either BW-LW Water User's Association or Big Wood Canal Company. There are no other understandings, covenants, promises, agreements, conditions, either oral or written between the parties other than those contained herein. The parties expressly reserve all rights not settled by this Agreement.

Effect of Headings

Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretation of the text.

Effective Date of This Agreement

TBD