

March 31, 2022

VIA EMAIL: tim.luke@idwr.idaho.gov

Tim Luke
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720-0098

Re: Comments on March Draft Big Wood River Groundwater Management Area Management Plan

Dear Tim:

I am writing on behalf of the Flying Heart Ranch II Subdivision Owners Association (“FHROA” or “Association”). The Association submits the following written comments on the draft management plan presented at the March 22, 2022 public meeting in Hailey, Idaho.

Non-Consumptive Water Rights:

FHROA holds groundwater right 37-22876 for wildlife, recreation, and aesthetic purposes. The water right is non-consumptive and its use actually results in net gain of water to the Big Wood River near Hailey, Idaho. IDWR’s March Draft Management Plan (“Plan”) identifies certain management goals and safe harbor for groundwater users who participate and abide by the terms of the Plan. However, the Plan does not specifically address non-consumptive water rights and whether or not such safe harbor is necessary. At a minimum, the Plan should be modified to ensure that non-consumptive water rights are properly addressed and there is no confusion about the continued use of those water rights and non-participation in any mitigation obligations.

Although the location of the Association’s well was outside the area of potential curtailment regarding the Director’s section 42-237a.g administrative proceeding last year, it is presumed that water right 37-22876 would be treated similarly to IDFG’s non-consumptive water right and excluded from any potential curtailment to satisfy downstream senior surface water rights in any similar proceedings. *See Final Order* at 37-38 (Basin 37 Matter, June 28, 2021). As non-consumptive water rights do not negatively impact the regional groundwater resource or any hydraulically connected surface water rights, there is no basis to curtail or require any mitigation regarding their use.

The Plan notes that the term “groundwater users” refers to “all groundwater users in the BWRGWMA, except for *de minimis* domestic and stockwater right holders whose diversions are not administered by WD37 or WD37B.” *See Plan* at 5. Presumably that means non-consumptive water right holders fall into the “groundwater user” classification. The non-differentiation between consumptive and non-consumptive rights mistakenly places non-consumptive water rights into the category of being responsible to accomplish the actions identified at pages 5-9.

Therefore, FHROA request the Director to revise the Plan and clarify that non-consumptive water rights are not subject to curtailment and should be included within the group of water users that have safe harbor without regard to any required mitigation. Specifically, the Plan should state that non-consumptive water rights are not subject to the Baseline Mitigation Actions or Additional Mitigation Actions in Dry Years.

Finally, the Association requests that non-consumptive water rights not be required to contribute to the Conservation, Infrastructure, and Efficiency Fund ("CIEF"). Presently, the Plan states that "other non-irrigation groundwater users who seek to participate in the Management Plan shall contribute \$10/AF of their withdrawals (using a five-year rolling average of prior annual non-irrigation groundwater diversions) to the CIEF." *See* Plan at 7. While that may be appropriate for consumptive water rights and was a negotiated number based upon the Cities Plan, that should not be required of any non-consumptive water rights. At a minimum, if non-consumptive water rights do not need to participate because there is no mitigation obligation or reason to have "safe harbor," there should be no reason to contribute to the CIEF either. The Plan should clarify this in any final order.

We appreciate the opportunity to comment on the draft Plan and look forward to IDWR addressing the Association's concerns identified above.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Mistick". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Thomas Mistick, President