



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

JOHN K. SIMPSON
BARKER ROSHOLT & SIMPSON LLP
1010 W. JEFFERSON, SUITE 102
BOISE ID 83701

JOSEPHINE BEEMAN
BEEMAN & ASSOCIATES
409 W JEFFERSON
BOISE ID 83702

Re: WMC Mitigation Agreement

Dear Mr. Simpson and Ms. Beeman:

Staff of the Idaho Department of Water Resources (Department) reviewed the *WMC Mitigation Agreement* ("the WMC Plan" or "the plan") and information submitted at and subsequent to at 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:

Calculation of Consumptive Use

Department staff reviewed the WMC Mitigation Agreement to develop an understanding of the approach and to assess the adequacy of the mitigation provided to compensate the Senior Water Coalition (SWC) for Water Mitigation Coalition (WMC) ground water depletions. The review included an analysis using METRIC to verify consumptive use for selected water rights of one of the WMC signatories. The computed consumption using METRIC (6,310 acre feet) was comparable to the estimate provided in the Mitigation Agreement for irrigated lands using a consumptive use fraction of 0.68 (6,756 acre feet). It was further verified that the consumptive use fraction that was applied to estimate industrial and commercial consumptive use (0.8) is reasonable based on published literature. The use of 0.8 for ET on other agricultural lands is conservative.

Modeling Results

Department staff could not reproduce the results provided in EXHIBIT C to the *Stipulation Regarding Mitigation and Motion for Approval*. In particular, staff were unable to replicate the information that is presented in the Figure entitled “*Estimated Steady State Reach Gains From Specific Priority Curtailment (Water Resource Coalition Water Rights – 1960, 1965, 1970, 1975)*.” The inset on this figure shows significant impact in the Ashton-Rexburg reach, but the map showing diversion locations indicates that none of the processor facilities are located near the Ashton-Rexburg reach. Model runs by Department staff show a much lower impact on the Ashton-Rexburg reach.

Mitigation Accounting

It is important to recognize that the amount of water provided to the SWC under the Mitigation Agreement is the same every year (10,000 acre feet) and therefore is independent both of the water supply shortfall and the portion of impact caused by the WMC. Because of this and in years of shortage, the Department will determine the impact caused by WMC members junior to the curtailment date necessary to satisfy SWC demand and subtract that impact from the total amount owed by the non-WMC ground water users. The mitigation accounting is illustrated in the table below for three scenarios.

Scenario	Predicted SWC Shortfall (acre feet)	WMC Mitigation (acre feet)	Curtailment Date	Steady State Depletions by WMC ground water users in Blackfoot to Neeley and Neeley to Minidoka reaches	Remaining Mitigation required by non-WMC ground water users for SWC call (acre feet)
A	50,000	10,000	1960	13,130	36,870 (50,000 - 13,130)
B	50,000	10,000	1975	2,275	47,725 (50,000 - 2,275)
C	5,000	10,000	1975	2,275	2,725 (5,000 - 2,275)

This methodology is similar to that of Option 2 at page 6 (paragraph 11) as provided in the May 9, 2007 submittal in this matter from the Idaho Ground Water Appropriators, Inc., and the City of Pocatello.

Note that this method of mitigation accounting applies only to the SWC calls and neither penalizes nor rewards non-signatory members of the ground water community. It is our interpretation that this methodology also is consistent with provision 9 of the *Stipulation Regarding Mitigation and Motion for Approval*.

Note also that, for the purpose of calculating WMC's impact, the Department will use METRIC rather than the Agrimet-based technique described in Exhibit C of the *Stipulation Regarding Mitigation and Motion for Approval*.

Motion To Exclude The WMC From Any Curtailment Order

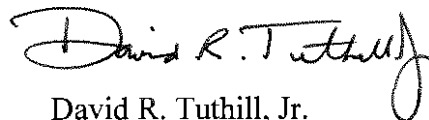
The Department cannot at this time exclude the WMC from any other curtailment order except with respect to delivery calls by parties signatory to this agreement. It is possible that the location of the lands identified for voluntary curtailment will not adequately mitigate for a future call. The Department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

Conclusion

The Department will consider conditional acceptance of the WMC Plan as a replacement water plan, however, staff was unable to reproduce the modeling results included in Exhibit C. Because the Department intends to subtract the modeled impact of the WMC depletions from the injury of the SWC, this issue needs to be resolved. Department staff members will make themselves available for consultation.

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,



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 1st 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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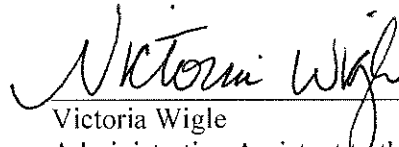
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