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MAR 05 2007
400 South Main Street, Suite 102
DEPARTMENT OF
WATER RESOURCES
Fax: (208) 578-0564

February 28, 2007

IDWR Regional Office
Attn: Mr. Donald Shaff
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Big Gulch Diversion Structure for Water Rights 73-187A, 73-187B, 73-2073 and 73-11953

Dear Mr. Shaff:

As you were previously informed by Mr. Thomas, the diversion structure which had controlled the flow of Big Gulch water for many years was entirely destroyed last fall. A new one must be built as soon as the weather permits. Otherwise, confusion will reign and your watermaster, Ted O'Neill, may be faced with unnecessary problems regarding the delivery of those waters.

The good news is that we now know that Custer County Road and Bridge employees negligently destroyed the diversion facility. The County has promised to assist with the rebuilding effort when we are ready to proceed. The bad news is that although we have tried to arrange a meeting with the new owners of 73-187A to work out in advance any problems respecting the delivery of Big Gulch water, including the design of the new structure, these efforts have not been successful, for whatever reason.

Against this background, we request an urgent meeting with you to discuss and obtain your views concerning the precise configuration the new structure should take in light of your recommendations concerning the above-referenced water rights. For example, 73-187A calls for the delivery of a combined flow of no more than 2.5 cfs from three specifically identified sources: Hill Creek, Graves Springs and Big Gulch Creek. Despite the fact that the recommendation does not, on its face, limit or specify the diversion from these sources at any given time, we understand that a reading most favorable to the owner of right 73-187A would permit, at a maximum, the diversion of no more than 2.5 cfs from Big Gulch.

Given how 73-187A, 73-187B, 73-2073 and 73-11953 are recommended, we propose to design and build a new structure that will allow up to 2.5 cfs to be delivered from Big Gulch to the Sulphur Creek diversion ditch. However, the Sulphur Creek side of the structure will also be equipped with an adjustable measuring device designed to allow the correct volume of Big Gulch flow to flow through to the Sulphur Creek ditch once the combined flows from the other two sources have been determined. Correspondingly, the Summit Ranch side of the new diversion structure will be designed to permit all of the remaining flow of Big Gulch water to be delivered to Summit Ranch.

Mr. Donald Shaff
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Please let us know when we can meet to finalize these matters. As you are well aware, time is of the essence.

Thank you for your attention to this matter.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.

A handwritten signature in dark ink, appearing to read 'Fritz X. Haemmerle', with a stylized, flowing script.

Fritz X. Haemmerle

FXH: fxh
cc: client
Dan Nevala, Esq.
Ted O'Neil, Watermaster