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DEPARTMENT OF
WATER RESOURCES

August 31, 2015

Mr. Gary Spackman, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Meeting on August 25, 2015 regarding Water Right 37- 577BP
Eccles Flying Hat Ranch Project No. 275-23-2013

Dear Gary:

Thank you for meeting with Evan Robertson and I regarding the return of the 1.4 cfs of Water right 37-577BP to Flying Hat Ranch from the Hiawatha Canal. As a result of the meeting, I believe there were four basic topics which need further discussion:

1. There still may be a concern as to whether the Hiawatha Canal has, in fact, enough or more than enough dedicated seepage mitigation water rights to justify that additional water is "no longer necessary for such mitigation." As we mentioned, Allen Merritt has performed two evaluations of the seepage from the Hiawatha Canal and had denied a request from the Hiawatha Canal for a third evaluation. In my opinion, the operational seepage rate in the Hiawatha Canal reduced by the canal lining project which the Valley Club effected for development of the West Nine golf course and the seepage mitigation water available more than justifies implementation of Condition #3 of the water right. Indian Creek is tributary to the Hiawatha canal upstream of the Indian Creek road and flows into the canal as high as 10 cfs have been observed or measured at the confluence. This discharge is not counted as mitigation for seepage by IDWR or the Watermaster. The available flow in the Hiawatha Canal for mitigation for seepage is, therefore, significantly in excess of the operational seepage in the Hiawatha Canal.
2. Both Jeff and you expressed the proposition that Condition #3 of the 37-577BP right requires that any water rights which have been transferred out of the Hiawatha Canal with mitigation water left in, should benefit if any water is returned to an affected right holder. Condition #3 indicates that "A portion of Right 37-577BP, 1.40 cfs, shall continue to be diverted into the Hiawatha Canal until such time

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as the canal ceases operation or is otherwise no longer necessary for such mitigation.” It is my understanding that no other water rights which have been transferred from the Hiawatha Canal have this same condition. You mentioned that Shelly Keen of your office had researched the IDWR water rights data base and had identified some 12 water rights which had been totally or partially removed from the Hiawatha Canal and which contained conditions requiring mitigation for the loss of seepage water. Would it be possible to obtain the list of water rights which Shelly compiled?

3. Jeff Peppersack indicated that there may be a question regarding the operational seepage rate in the Cove canal where the 5.6 cfs of water right 37-577BP was transferred and where it is proposed the additional 1.4 cfs be diverted. A preliminary analysis performed by Brockway Engineering indicates that the estimated seepage from the 2.95 mile Cove canal is likely 2.4 cfs, none of which is mitigated by specific water rights.
4. You apparently have a concern that implementation of Condition #3 without a formal transfer and hearing would somehow deny Hiawatha Canal water users or any other potentially affected persons the opportunity to be adequately informed and would deny the opportunity to have input to any proposed change in the water right. I contend that the procedures followed by IDWR to evaluate Transfer No 68526 which resulted in the current configuration of water right 37-577BP provided ample opportunity for input from potentially affected persons and offered any concerned citizens their ‘day in court’. Condition #3 is the result of an adequate application of administrative procedures and anticipated that the current seepage condition would occur.
5. We suggest you consult with Nick Spencer concerning the meaning and intent of Condition No. 3. This is a unique provision which was negotiated between Mr. Spencer and Evan Robertson, attorney for Eccles Flying Hat Ranch, in settlement of our client’s objection to the Departments’ seemingly arbitrary requirement that 20% of this irrigation water right be left behind for “carry losses” during the transfer of 37-577BP from the Hiawatha Ditch. To take the position now that Condition No. 3 does not mean what it says, without the necessity of further transfer or other public processes within IDWR

seems inconsistent with the settlement agreement previously reached
with Mr. Spencer and approved in the adjudication.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Brockway", written in a cursive style.

Charles E. Brockway, Ph.D., P.E.

cc: Kevin Lakey-Watermaster District 37
Evan Robertson
Marc Reinemann