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FEB 20 2014

**DEPARTMENT OF
WATER RESOURCES**

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February 19, 2014

State of Idaho
Department of Water Resources
322 East Front Street
PO Box 83720
Boise ID 83720-0098

ATTN: Gary Spackman

Re: Notice of Pending Curtailment of Ground Water Rights with Priority
Dates Junior to July 13, 1962 – Rangen Delivery Call

Affected Water Right No. 36-8439

Dear Mr. Spackman:

Our office represents Blue Lakes Country Club, Inc. Our client received from Cindy Yenter, Watermaster at your office, a letter dated February 4, 2014, regarding the Rangen Delivery Call. Despite having received this letter, it is my client's position that the Notice of Pending Curtailment of Ground Water Rights with Priority Dates Junior to July 13, 1962, excludes my client's water right identified as number 36-8439 for the reasons outlined in this letter.

In 2009, Blue Lakes Country Club, Inc., received a similar notice of curtailment. Our office contacted David R. Tuthill, Jr., regarding that notice and we set forth the legal basis for exclusion. I have attached a copy of that letter and on behalf of my client I reassert my client's position set forth therein as the basis for exclusion from the curtailment.

Furthermore, I received a letter from Tim Luke in your office dated July 23, 2009, responding to our March 11, 2009, letter. I have attached a copy for your reference. In that letter he specifically stated that my client's water right was removed from the ESPAM so that it would "...not be subject to future conjunctive management delivery calls in Water District 130..." because it is below the rim of the Snake River Canyon. Our client has never received

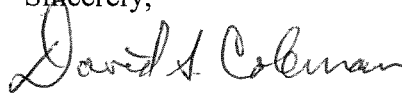
COLEMAN, RITCHIE & CLUFF

GARY SPACKMAN
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FEBRUARY 19, 2014
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any notification from your office that this has been changed and therefore assumes that the representation Tim Luke made to us at that time is still in effect.

If you or one of your agents wish to visit with me further about this matter, please do not hesitate to contact me at the above telephone number.

Sincerely,


DAVID A. COLEMAN

DAC

cc: client

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March 11, 2009

State of Idaho
Department of Water Resources
322 East Front Street
PO Box 83720
Boise ID 83720-0098

Via U.S. Mail

ATTN: David R. Tuthill, Jr.

Re: Final Order Accepting Ground Water Districts' Withdrawal of
Amended Mitigation Plan, Denying Motion to Strike, Denying
Second Mitigation Plan and Amended Second Mitigation Plan in
Part; and Notice of Curtailment. Water District Nos. 130 and 140.

Affected Water Right No. 36-8439

Dear Mr. Tuthill:

Our office represents Blue Lakes Country Club, Inc. The purpose of this letter is to respond to your Notice of Curtailment dated March 5, 2009, and described above. It is my client's position that the Notice of Curtailment excludes water right number 36-8439 because its use falls within the parameters of Idaho Code § 42-111.

Water right number 36-8439 is the water right our client acquired in 1989 in conjunction with drilling a well for the purpose securing water for its clubhouse. Blue Lakes Country Club, Inc., is an Idaho non-profit corporation owned by its members and does not use the water under water right number 36-8439 for any commercial purpose. My client uses the water from this well and under this water right for the single purpose of providing culinary water to its clubhouse. There is no water from this well used for irrigation or other outdoor consumptive use.

In addition to the fact that my client does not use the water for a consumptive use, the amount of water my client uses is a *de minimus* amount. Because the only use of the water under this right is for culinary water in its clubhouse, my client estimates the actual use of the water from this well to be approximately 1,000 gallons per

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March 11, 2009

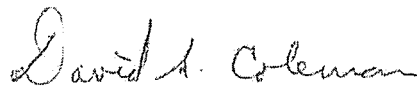
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day. The daily amount used from this well is significantly less than the total amount which may be drawn and used for a domestic well pursuant to Idaho Code § 42-111(1)(b).

Although the water described in this water right is designated as "commercial" for its beneficial use, the actual use is more in the nature of a domestic use. In fact, when I reviewed the Application for Permit filed with the Idaho Department of Water Resources in 1989, I found under item 4 that it initially designated the use as "domestic" then a line was typed through it and the word "Commercial" was typed above it. We are unaware who made the changes to the application and cannot explain why the "commercial" use was designated. If necessary, my client can and will file a temporary or permanent transfer to more accurately identify the nature of use that is being made under water right 36-8439.

Because my client's use of the water under water right number 36-8439 is already significantly less than the amount for which it is permitted and because its actual use is more in the nature of a domestic water right, it believes that it is not subject to the Notice of Curtailment dated March 5, 2009, and identified above. Furthermore, it believes that it uses significantly less water than the amount described as *de minimus* in Idaho Code 42-111(1)(b) and should therefore be excluded from the provisions of the Notice of Curtailment. It is my client's intention to continue to use this water right as described above because it falls within the exclusion provisions of the Notice of Curtailment dated March 5, 2009. Based upon the foregoing information, my client does not intend to comply with the provisions of the Notice of Curtailment dated March 5, 2009, unless I am otherwise informed by your office.

Sincerely,



DAVID A. COLEMAN

DAC

cc: client



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

July 23, 2009

Blue Lakes Country Club
C/O Coleman, Ritchie, & Robertson
Attn: David Coleman
PO Box 525
Twin Falls, ID 83303-0525

RE: Your Correspondence Dated March 11, 2009 Concerning Water Right 36-8439

Dear Mr. Coleman:

On March 12, 2009, the Idaho Department of Water Resources (Department) received a letter from you in response to your having received a notice of curtailment from the Water District 130 watermaster for the above referenced water right pursuant to the Clear Springs Foods Snake River Farm delivery call. Your letter was forwarded to me for a response and I initially prepared one but did not send it since the pending curtailment in March of this year was avoided due to the Director's acceptance of a plan to mitigate the delivery call from the Idaho Ground Water Appropriators. I apologize for not having responded earlier.

As you may be aware, the current Interim Director signed a second curtailment order in the Snake River delivery call matter on July 22, 2009. The Department has not sent Idaho Power a notice of curtailment relative to this second order and in fact removed the above referenced right from the list of water rights affected by the order. The Department removed the right from the list of affected rights based on the fact that the location of the water right and well is located below the canyon rim. The area below the rim and within both Administrative Basin 36 and Water District 130 will be removed from the next version of the Department's Eastern Snake Plain Aquifer ground water model (ESPAM). The Department therefore has granted the request sought by your March 11, 2009 letter.

For the record, the Department does not particularly agree with your analysis that the use authorized by right 37-8439 meets the domestic exemption provided by Idaho Code § 42-111. However, this point is perhaps not relevant since the Department is removing the right and the area below the rim from the ESPAM. The right should not be subject to future conjunctive management delivery calls in Water District 130. We are happy to further discuss with you the exemption provisions in Idaho Code § 42-111 if necessary.

Respectfully,

Tim Luke
Water Distribution Section

Cc: Cindy Yenter, Water District 130 Watermaster

