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July 12, 2012

Sent Via Email (Nick.VanDyke@idwr.idaho.gov)

Nick Van Dyke
Idaho Department of Water Resources
322 East Front Street
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Boise, ID 83720-0098

RE: *Comments Regarding Lance & Lisa Funk Water Supply Bank Applications*

Dear Mr. Van Dyke:

Pursuant to your letter dated July 2, 2012, we are submitting comments on the above referenced water bank applications on behalf of A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company and Twin Falls Canal Company (the "Districts"). Minidoka Irrigation District, represented by Kent Fletcher, joins in these comments.

In addition to the comments provided herein, we incorporate the comments in our letter, dated June 25, 2012. In that letter, we sought information regarding the Department's plan of action relative to the unlawful diversion and use of water by Mr. and Mrs. Funk. It is our understanding that, notwithstanding the Department's June 21, 2012 *Cease & Desist Letter*, Mr. and Mrs. Funk continue to unlawfully divert and use water on the property in question. Mr. and Mrs. Funk were well aware of the prohibition against diverting and using this water until after the water bank applications had been processed. The *Cease & Desist Letter* indicates that James Cefalo, Water Resources Program Manager in the Eastern Region, informed Mr. and Mrs. Funk that "no irrigation could take place until the WSB rental was approved." In addition, the rental applications, which were signed by Mr. Funk, provide that no water can be diverted until after the water bank applications are processed. Notwithstanding the repeated recognition, and the *Cease & Desist Letter*, Mr. and Mrs. Funk continue to illegally divert and use this water. We presume IDWR will take the appropriate action to recover the penalties imposed by Idaho law.

Furthermore, based on your July 2, 2012 letter, which states that you have only completed your review of one of the five applications, it does not appear that Mr. and Mrs. Funk will have authorization to divert and use any water in the near future.

Nicholas Van Dyke

July 12, 2012

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In addition to the above, we submit the following requests and comments:

- Your July 2, 2012 letter states that you have completed the review of the ESPA modeling that was submitted with the rental applications and that the information “shows that the proposed rental would not result in increased depletions to any reaches of the Snake River.” Please provide a copy of the analysis and all relevant data that purport to support this conclusion. In addition, please provide any further analysis by IDWR on the remaining water bank applications.
- The five water bank applications seek to rent some portion of several water rights with several authorized points of diversion within Basin 35. What is the impact of concentrating these diversions near American Falls Reservoir as opposed to their original points of groundwater withdrawal? In other words, the impact of concentrated diversions from several wells near the American Falls reach will likely have different impacts on the aquifer as compared to diversions from several wells in multiple locations at their original authorized points of diversion. Your analysis should consider these impacts.
- Please provide information as to the history of use of the groundwater rights referenced in the applications.
- Any approval of a water bank application should not result in approval of the Applications for Permit. As you are aware, our clients have protested several Applications for Permit that were filed by Mr. and Mrs. Funk (Permit Nos. 35-1420 through 35-14244). These applications seek to divert up to 37.7 c.f.s for the irrigation of up to 1879.3 acres. As mitigation for the applications, Mr. and Mrs. Funk have identified a lease of water rights 35-14014 and 35-14015. These same water rights are identified in several of Mr. and Mrs. Funk’s water bank applications. In other words, Mr. and Mrs. Funk are seeking to rent the exact same water they are seeking to use as mitigation for their Applications. Approval of a water bank application should not prevent the Department from conducting the appropriate analysis in conjunction with the protested Applications.
- The rental applications anticipate a change in purpose of use (industrial to irrigation) and season of use (annual to irrigation season) – i.e. 35-14014 and 35-14015. Your analysis should consider impacts that such a change will have on the water supply.

We appreciate the opportunity to provide comments. Please provide the requested information as soon as possible. If you have any further questions, feel free to give me a call.

Yours truly,


Paul L. Arrington

PLA/jn

cc: Rob Harris
James Cefalo
Gary Spackman
W. Kent Fletcher

Via email