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January 16, 2009

Nate Arave
Sr. Water Resource Agent
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: **Claim No.: 31-11982**
GP File No. 5978-4

RECEIVED
JAN 20 2009
Department of Water Resources
Eastern Region

Dear Nate:

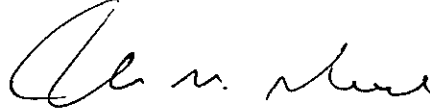
Thank you for sending me your draft preliminary recommendation for the State of Idaho's claim no. 31-11982 and for seeking our comment. We reviewed your draft recommendation in light of the water right decrees the Hagenbarths obtained in Basin 31 when it was adjudicated in the SRBA, including the various settlement agreements we brokered in contested cases. The adjudication of Basin 31 involved many contentious subcases with controversies centered on the effect of the prior decree in the basin. In general terms, the result of the litigation and settlements required subordination of the Hagenbarths' more senior upper basin rights because they were not included in the prior decree. This is true for right 31-10245 and its priority of 9-24-1912.

Your draft recommendation for State of Idaho claim 31-11982 includes a priority date of 9-25-1912. As it currently stands, this recommendation will likely draw objection from the same parties that objected to the recommendations of the Hagenbarths' claims. It certainly would draw objection from the Hagenbarths as it would result in a water right inserted in front of rights 31-2274 and 31-2275 and without the subordination provisions the Hagenbarths' claims 31-10245 and 31-10740 were subject to. To avoid objection from the Hagenbarths, and likely objections by third parties, we would suggest the priority date for claim 31-11982 should be the day

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after Hagenbarths' licensed water rights 31-2274 and 31-2275 that have priorities of 3-31-1944. This would result in a recommended priority for 31-11982 of 4-1-1944. Also, the point of diversion for right 31-11982 should match the decreed point of diversion for right 31-10245, which is located in the NWNWSW of Section 36.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Marshall". The signature is fluid and cursive, with the first name "John" being the most prominent.

John M. Marshall

JMM:lah
cc: David Barber