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OCT 17 2008

DEPARTMENT OF
WATER RESOURCES

October 14, 2008

Jeff Peppersack
Chief, Water Allocation Bureau
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720

Dear Mr. Peppersack:

We certainly do appreciate your reconsideration of our request to have the conditions on permit 23-11333 modified. We believe your letter represents important progress in resolving this matter.

Before I turn this matter over to Rob Harris at the Holden firm to determine the appropriate process for resolution I wanted to have your response to this letter.

If a hearing were held, the testimony anticipated directly from your attorney, Candice McHugh or from those hearing her opinion given during the arbitration meeting in March of 2005, would be that if the payment receipt for the transfer of the water right had been present, license 23-2071 would have remained in tact. The receipt was not available because it had been lost by IDWR. The Department has the authority and capacity to rectify and make whole a wrong created by IDWR.

In your letter you stated that the proposed condition is required because "New appropriations for consumptive uses...are required to be mitigated." We can not find that State law has such a requirement. It would be most helpful if you could please provide the citation under which the department has been granted this broad authority. It is our understanding that Article 15 Sec. 3 of the Idaho Constitution has never been repealed or modified. The very first sentence in the Constitution makes it very clear that: "*The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied (emphasis added), except that the state may regulate and limit the use thereof for power purposes*". Our application is for irrigation, not power production. The 0.4 acre-feet per day, we may have to purchase for mitigation should Little Pine Creek happen to reach Antelope Creek, is at best arbitrary and the number has no technical basis. The 0.4 acre-feet is a bogus number. It can be argued that "0" is just as defensible a number. However, the egregious part stems from the fact that if we purchase mitigation the state has not a clue whom to deliver that bounty to. It is simply an agency imposed tax – and I am quite confident that the department was never granted taxing authority. The storage we were force to pay \$1, 100 for went to no one.

As we said in our previous letter, we are happy to be part of Water District 1 and to have our water right treated like any other water right distributed by the Watermaster. If the water master determines that our use on Little Pine Creek is depriving some other water user of his water supply, then we should be shut off, or be required to rent sufficient

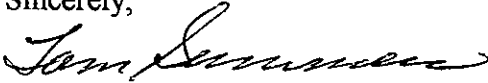
storage to assure that the natural flow of the river is not reduced by our water use. However, if the water from Little Pine Creek does not reach the river, then the Watermaster would do as he has in the past and find any potential call for delivery of Little Pine Creek water to be futile. We have complied with the Idaho Statutes when we applied for permit 23-11333. The Director has personally observed that we are putting the water to beneficial use and therefore we are entitled to be treated like any other surface water user.

This matter can be completely resolved by having Water District 1 refund the \$1,100 we were forced to pay in 2007 and by changing the condition on permit 23-11333 to simply confirm that this right is subject to the control of the Watermaster of Snake River Water District 1.

We appreciated the Director taking the time to come and personally look at our irrigation project on Little Pine Creek. As we explained to him, these issues do not justify the cost of litigation even though we believe that any court would find our position to be not only reasonable but consistent with the right we have under the Constitution. We suggest that it would be in the best interest of the department to request a refund of our \$1,100 from the Rental Pool, condition our permit in a matter that is consistent with way similar application have been treated for decades, and lets all apply our energies to more productive activities than litigation.

We await your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Summers".

Tom Summers

cc: Director Dave Tuthill Jr.